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LOCAL GOVERNMENT ACT 1995

SHIRE OF MANJIMUP

FENCING LOCAL LAW 2012

**LOCAL GOVERNMENT ACT 1995
DIVIDING FENCES ACT 1961**

SHIRE OF MANJIMUP

FENCING LOCAL LAW 2012

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LOCAL GOVERNMENT ACT 1995
DIVIDING FENCES ACT 1961

SHIRE OF MANJIMUP

FENCING LOCAL LAW 2012

Under the powers conferred by the *Local Government Act 1995*, the *Dividing Fences Act 1961* and under all other powers enabling it, the Shire of Manjimup resolved on 8 November 2012 to make the following local law.

PART 1—PRELIMINARY

1.1 Title

This is the *Shire of Manjimup Fencing Local Law 2012*.

1.2 Commencement

This local law comes into operation 14 days after the date of its publication in the *Government Gazette*.

1.3 Application

This local law applies throughout the district of the local government.

1.4 Interpretation

In this local law, unless the contrary intention appears—

Act means the *Local Government Act 1995*;

applicant means a person who applies for a licence;

application means an application for a licence;

application fee means the fee determined by the local government under section 6.16 of the Act and payable upon lodgement of an application for a licence and which relates to the lodgement, assessment and determination of the application;

Australian Standards means an Australian Standard or Australian/New Zealand Standard published by Standards Australia;

Building Code means the latest edition of the Building Code of Australia published from time to time by, or on behalf of, the Australian Building Codes Board, as amended from time to time, but not including explanatory information published with that code;

Commercial Lot means a lot where a commercial use—

(a) is or may be permitted under the planning scheme; or

(b) is or will be the predominant use of the lot;

composite fence means a fence that is constructed using multiple dissimilar materials;

district means the district of the local government;

electrified fence means a fence carrying or designed to carry an electrical charge;

fence means any structure, including a retaining wall, used or functioning as a barrier, irrespective of where it is located and includes any gate;

front setback area means the area between the front boundary and the front setback line as determined by the Planning Scheme;

height in relation to a fence means any vertical distance between—

(a) the top of the fence at any point; and

(b) the ground level or, where the ground levels on each side of the fence are not the same, the higher ground level, immediately below that point;

Industrial Lot means a lot where an industrial use—

(a) is or may be permitted under the planning scheme; or

(b) is or will be the predominant use of the lot;

licence means a licence under this local law;

licensee means a person who holds a licence;

local government means the Shire of Manjimup;

lot has the meaning given under the *Planning and Development Act 2005*;

planning scheme means a local planning scheme made in accordance with the *Planning and Development Act 2005* and operational in the district;

Residential Lot means a lot where a residential use—

- (a) is or may be permitted under the planning scheme; or
- (b) is or will be the predominant use of the lot;

retaining wall means any structure which prevents the movement of soil in order to allow ground levels of different elevations to exist adjacent to one another;

Rural Lot means a lot where a rural use—

- (a) is or may be permitted under the planning scheme; or
- (b) is or will be the predominant use of the lot;

Rural Residential Lot means a lot where a Rural Residential use—

- (a) is or may be permitted under the planning scheme; or
- (b) is or will be the predominant use of the lot;

Schedule means a Schedule under this local law; and

sufficient fence means a fence as described in clause 2.1.

1.5 Relationship with Local Government (Miscellaneous Provisions) Act 1960 and the Building Act 2011

Nothing in this local law derogates from the provisions of the *Local Government (Miscellaneous Provisions) Act 1960* or the *Building Act 2011*.

PART 2—SUFFICIENT FENCE

2.1 Sufficient fences

For the purpose of the *Dividing Fences Act 1961*, for that part of the district described in Column 1 of Schedule 1, a fence described in Column 2 of Schedule 1 immediately opposite that part is a sufficient fence.

PART 3—FENCES REQUIRING A LICENCE

3.1 Fences requiring a licence

- (1) A person must not, without a licence, erect—
 - (a) a brick, masonry, stone, composite or similar fence;
 - (b) a fence which does not meet the requirements of a fence as listed in Schedule 1;
 - (c) a fence within the front setback area that is above 1200 mm in height;
 - (d) a fence greater than 1800 mm in height; or
 - (e) any fence not listed in Schedule 1.
- (2) A person who contravenes this clause commits an offence.

PART 4—PROHIBITED MATERIALS

4.1 Materials prohibited in fences

- (1) A person must not erect a fence which is comprised, in whole or in part of—
 - (a) broken glass with jagged or spiked projections;
 - (b) razor wire; or
 - (c) barbed wire on a residential lot.
- (2) A person who contravenes this clause commits an offence.

PART 5—LICENSING

5.1 Who may apply for licence

An application for a licence may only be made to the local government by a natural person.

5.2 Application for licence

An application must be—

- (a) in writing in a form approved by the local government;
- (b) accompanied by any document or information that is required under this local law; and
- (c) accompanied by the application fee.

5.3 Information required for application

The following documents and information are required to accompany an application—

- (a) two copies of specifications describing materials to be used in the construction of the new fence and, where not indicated on the drawings, the sizes thereof together with all other information not shown on the drawings, which is necessary to show that the fence will, if constructed in accordance with the specifications, comply with the provisions of the Building Code;

- (b) a block and drainage plan (to a scale not less than 1:500) showing—
 - (i) street names, lot number, and title reference to the site with the north point clearly marked;
 - (ii) the size and shape of the site;
 - (iii) the dimensioned position of proposed new fence and of any existing buildings on the site; and
 - (iv) the relative levels of the site with respect to the street or way adjoining; and
- (c) any other information the local government considers necessary in accordance with clause 5.4.

5.4 Further information relevant to application

- (1) The local government may ask an applicant for any additional document or information that the local government considers is or could be relevant to making a decision on the application.
- (2) If the local government makes a request under subclause (1) the local government does not have to consider the application, or consider it further, until the request is complied with.
- (3) Any costs incurred in complying with the request under subclause (1) are to be paid by the applicant unless the local government determines otherwise.

5.5 Power of local government to grant licence

Where an application is made to the local government, the local government may determine the application by—

- (a) granting a licence to the applicant to erect a fence referred to in clause 3.1; or
- (b) rejecting the application.

5.6 Considerations relevant to determination of application

In determining an application, the local government is to have regard to—

- (a) the suitability of the fence in the context of surrounding fences in particular and the amenity of the locality in general;
- (b) the comments of adjoining owners for fences greater than 1800 mm in height;
- (c) compliance with the Building Code and those Australian Standards referenced in the Building Code; and
- (d) the provisions of any policy made under Part 6.

5.7 Other conditions

The local government may grant a licence subject to any conditions that the local government considers appropriate.

5.8 Contravention of conditions

A licensee who contravenes a condition of the licence commits an offence.

PART 6—POLICIES

6.1 Making policies

The local government may prepare a policy in respect of any matter related to this local law and so as to apply—

- (a) generally or for a particular class or classes of matters; and
- (b) throughout the district or in one or more parts of the district,

and may amend, add to or rescind the policy.

6.2 Due regard to be had to policy

A policy does not bind the local government in respect of any application for a licence, but the local government is to have due regard to the provisions of the policy and the objectives which the policy is designed to achieve before making its determination.

6.3 Notice of proposed policy

- (1) If the local government resolves to prepare a policy, the local government—
 - (a) is to publish a notice of the proposed policy once a week for 2 consecutive weeks in a newspaper circulating generally throughout the district, giving details of—
 - (i) where a copy of the the draft policy may be obtained or inspected;
 - (ii) the subject and nature of the draft policy; and
 - (iii) in what form and during what period (being not less than 21 days from the day the notice is published) submissions may be made; and
 - (b) may publish a notice of the proposed policy in any other manner and carry out any other consultation that the local government considers appropriate.
- (2) After the expiry of the period within which submissions may be made, the local government is to—
 - (a) consider any submissions made; and
 - (b) may resolve to adopt the policy with or without modification, or not to proceed with the policy.

6.4 Adoption of policy

(1) If the local government decides to adopt the policy the local government is to publish notice of the policy once in a newspaper circulating generally throughout the district.

(2) A policy has effect on publication of a notice under subclause (1).

(3) A copy of each policy, as amended from time to time, is to be kept and made available for public inspection during business hours at the offices of the local government.

6.5 Amendment to policy

Clauses 6.1 to 6.4 with any necessary changes, apply to the amendment of a policy.

6.6 Revocation of policy

A policy may be revoked by—

- (a) the adoption by the local government of a new policy made under clauses 6.1 to 6.4 that is expressed to supersede the existing policy; or
- (b) publication of a notice of revocation by the local government once a week for 2 consecutive weeks in a newspaper circulating generally throughout the district.

PART 7—OFFENCES AND PENALTIES**7.1 Offences**

(1) A person who fails to do anything required or directed to be done under this local law, or who does anything which under this local law that person is prohibited from doing, commits an offence.

(2) An offence against a clause specified in Schedule 2 is a prescribed offence for the purposes of section 9.16(1) of the Act.

(3) Any person who commits an offence under this local law is liable, on conviction, to a penalty not exceeding \$2000 and, if the offence is of a continuing nature, to an additional penalty not exceeding \$200 for each day or part of a day during which the offence has continued.

7.2 Offence description and modified penalty

(1) The offences contained in Schedule 2 are offences in relation to which a modified penalty may be imposed.

(2) The amount appearing in the final column of Schedule 2 directly opposite an offence described in that Schedule is the modified penalty for that offence.

7.3 Infringement and infringement withdrawal notices

For the purpose of this local law—

- (a) the form of the infringement notice referred to in section 9.17 of the Act is Form 2 in Schedule 1 of the *Local Government (Functions and General) Regulations 1996*; and
- (b) the form of the infringement withdrawal notice referred to in section 9.20 of the Act is Form 3 in Schedule 1 of the *Local Government (Functions and General) Regulations 1996*.

7.4 Prosecution for offences

A penalty for an offence against this local law (not being a modified penalty) may be recovered by the local government in the Magistrates Court.

Schedule 1
SUFFICIENT FENCES

[clause 2.1]

Column 1	Column 2
Description of part of the district	Description of sufficient fence
Residential Lot	<p>A. A fully enclosed timber fence built to manufacturer's specifications or in accordance with established construction techniques, the height of the fence to be a maximum of 1800 mm except with respect to a fence within the front setback area for which the height of the fence is to be a maximum of 1200 mm.</p> <p>B. A fence constructed of corrugated fibre reinforced pressed cement or steel sheeting erected to manufacturer's specifications or which otherwise satisfies the following specifications—</p> <ol style="list-style-type: none"> (a) a minimum in-ground length of 25 per cent of the total length of the sheet, but in any case shall have a minimum in-ground depth of 600 mm; (b) the total height and depth of the fence to consist of a single continuous fibre reinforced cement or steel sheet;

Column 1	Column 2
Description of part of the district	Description of sufficient fence
Commercial Lot or Industrial Lot	<p>(c) the sheets to be lapped and capped with extruded “snap-fit” type capping in accordance with the manufacturers written instructions; and</p> <p>(d) the height of the fence to be a maximum of 1800 mm except with respect to the front set back area for which the height of the fence is to be a maximum of 1200 mm.</p> <p>C. A fence constructed of brick, stone, concrete or a composite fence to 1800 mm and with respect to a fence within the front setback area, is visually permeable above 1200 mm, which—</p> <p>(a) has been designed in accordance with the Building Code and those Australian Standards referenced in the Building Code; or</p> <p>(b) certified by a practising structural engineer; and</p> <p>(c) has had building approval as a class 10b structure in accordance with the <i>Building Act 2011</i> and its subsidiary legislation.</p> <p>D. A fence constructed of galvanised or PVC coated rail-less link mesh, chain mesh or steel mesh which satisfies the following specifications—</p> <p>(a) corner posts to be minimum 50 mm nominal bore x 3.5 mm and with footings of a 225 mm diameter x 900 mm depth;</p> <p>(b) intermediate posts to be minimum 32 mm nominal bore x 3.15 mm at maximum 4 m centres and with footings of a 225 mm diameter x 600 mm depth;</p> <p>(c) struts to be minimum 32 mm nominal bore x 3.15 mm fitted at each gate and 2 at each corner post and with footings 225 mm x 600 mm depth;</p> <p>(d) cables to be affixed to the top, centre and bottom of all posts and to consist of 2 or more 3.15 mm wires twisted together or single 4 mm wire;</p> <p>(e) rail-less link, chain or steel mesh is to be a minimum height of 1800 mm on top of which are to be 3 strands of barbed wire carrying the fence to a maximum height of 2400 mm; and</p> <p>(f) galvanised link mesh wire to be a minimum height of 1800 mm and constructed of 50 mm x 50 mm x 2.5 mm galvanised iron wire and to be strained, neatly secured and laced to the posts and affixed to cables. Vehicle entry gates shall provide an opening of not less than 3.6 m and shall be constructed of 25 mm tubular framework with one horizontal and one vertical stay constructed of 20 mm piping and shall be covered with 50 mm x 50 mm x 2.5 mm galvanised link mesh strained to framework. Gates shall be fixed with a drop bolt and locking attachment.</p> <p>E. A fence of fibre reinforced cement sheet or steel sheeting constructed to the minimum specifications referred to in Item B.</p> <p>F. Subject to the written approval of the local government, painted galvanised steel or aluminium sheeting may be used behind the building line to a maximum 2400 mm high when supported on posts and rails to the satisfaction of the local government.</p> <p>G. Fences of timber, brick, stone or concrete constructed in accordance with the requirements referred to in Items A and C.</p>
Rural Lot	<p>H. In the case of a non-electrified fence, a sufficient fence on a Rural Lot is a fence of posts and wire construction, the minimum specifications for which are—</p> <p>(a) wire shall be high tensile wire and not less than 2.5 mm. A minimum of 5 wires shall be used, generally with the lower wires spaced closer together than the higher wires so as to prevent smaller stock passing through, and connected to posts in all cases;</p> <p>(b) posts shall be of indigenous timber or other suitable material including—</p> <p>(i) timber impregnated with a termite and fungicidal preservative;</p>

Column 1	Column 2
Description of part of the district	Description of sufficient fence
Rural Residential	<p>(ii) standard iron star pickets; or (iii) concrete.</p> <p>(c) if timber posts are used, timber posts are to be cut not less than 1800 mm long x 70 mm diameter at small end if round or 125 mm x 60 mm if split or sawn. Timber posts to be placed at not more than 10 m intervals, set a minimum 600 mm in the ground and 1200 mm above the ground; and</p> <p>(d) strainer posts, if timber, shall be not less than 2250 mm long and 150 mm diameter at the small end (tubular steel to be 50 mm in diameter) and shall be cut from indigenous timber or other suitable material. These shall be placed a minimum of 1000 mm in the ground and set at all corners, gateways and fence line angles but not exceeding 200 m apart.</p> <p>I. An electrified fence having 4 wires only is a sufficient fence if constructed generally in accordance with Item H of this schedule.</p> <p>J. In the case of a non-electrified fence, unless otherwise stipulated by the Planning Scheme a sufficient fence on a Rural Residential Lot is a fence of posts and wire construction, the minimum specifications for which are—</p> <p>(a) wire shall be high tensile wire and not less than 2.5 mm. A minimum of 5 wires shall be used, generally with the lower wires spaced closer together than the higher wires so as to prevent smaller stock passing through, and connected to posts in all cases;</p> <p>(b) posts shall be of indigenous timber or other suitable material including—</p> <p>(i) timber impregnated with a termite and fungicidal preservative;</p> <p>(ii) standard iron star pickets; or (iii) concrete.</p> <p>(c) if timber posts are used, posts are to be cut not less than 1800 mm long x 70 mm diameter at small end if round or 125 mm x 60 mm if split or sawn. Posts to be placed at not more than 10 m intervals, set minimum 600 mm in the ground and 1200 mm above the ground; and</p> <p>(d) strainer posts, if timber, shall be not less than 2250 mm long and 150 mm diameter at the small end (tubular steel to be 50 mm in diameter) and shall be cut from indigenous timber or other suitable material. These shall be placed a minimum of 1000 mm in the ground and set at all corners, gateways and fence line angles but not exceeding 200 m apart.</p>

Schedule 2
MODIFIED PENALTIES

[clause 7.2]

Clause	Description	Modified Penalty
3.1	Erecting a prescribed fence without a licence	\$200
4.1	Erecting a fence which is comprised, in whole or in part of prohibited materials.	\$200
5.8	Contravention of licence conditions.	\$200

Dated: 8 November 2012.

The Common Seal of the Shire of Manjimup was affixed by authority of a resolution of the Council in the presence of—

C. R. WADE DeCAMPO, Shire President.
JEREMY HUBBLE, Chief Executive Officer.