



CITY OF VINCENT

LOCAL GOVERNMENT ACT 1995

FENCING LOCAL LAW 2008

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LOCAL GOVERNMENT ACT 1995

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FENCING LOCAL LAW 2008

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the City of Vincent resolved on 12 February 2008 to make the following local law.

PART 1 - PRELIMINARY

1.1 Citation

This local law may be cited as the *City of Vincent Fencing Local Law 2008*.

1.2 Objective

- (1) The objective of this local law is to establish the minimum requirements for fences within the district.
- (2) The effect of this local law is to—
 - (a) regulate, manage and control fences; and
 - (b) establish the standard of a “*sufficient fence*” according to land use.

1.3 Commencement

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

1.4 Repeal

The *City of Vincent Local Law Relating to Fences, Floodlights and Other External Lights* published in the *Government Gazette* on 27 July 1999 and as amended and published in the *Government Gazette* on 11 February 2000 is repealed on the day this local law comes into operation.

1.5 Application

This local law applies throughout the district.

1.6 Interpretation

In this local law, unless the context requires otherwise-

“Act” means the *Local Government Act 1995*;

“applicant” means a person who makes an application for approval under this local law;

“AS” means an Australian Standard published by the Standards Association of Australia;

“authorised person” means a person authorised by the local government under section 9.10 of the Act to perform any of the functions of an authorised person under this local law;

“boundary fence” means a fence constructed on the boundary of a lot which abuts a thoroughfare;

“Building Surveyor” means a Building Surveyor of the local government;

“CEO” means the Chief Executive Officer of the local government;

“Commercial lot” means a lot where a commercial use is or may be permitted under the local planning scheme, and is or will be the predominant use of the lot, and no residential use is a use of the lot;

“dangerous” in relation to any fence means:

- (a) an electrified fence other than a fence approved by the Local Government under this local law;
- (b) a fence containing barbed wire other than a fence erected and maintained in accordance with this local law;
- (c) a fence containing exposed broken glass, asbestos fibre, razor wire or any other potentially harmful projection or material; or
- (d) a fence which is likely to collapse or fall, or part of which is likely to collapse or fall, from any cause;

“district” means the district of the local government;

“dividing fence” has the meaning given to it in and for the purposes of the *Dividing Fences Act 1961*;

“electrified fence” means a fence carrying or designed to carry an electric charge;

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

“front boundary” means the boundary line between a lot and the thoroughfare upon which that lot abuts, or in the case of a lot abutting on more than one thoroughfare the boundary line between the lot and the primary thoroughfare;

“front fence” means a fence erected on the front boundary of a lot or on a line adjacent to the front boundary;

“front setback area” means the area between the building line of a lot and the front boundary of that lot;

“height” in relation to a fence means the 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 is or may be permitted under the local planning scheme and is or will be the predominant use of the lot, and no residential use is a use of the lot;

“local government” means the City of Vincent;

“local government property” means anything except a thoroughfare -

- (a) which belongs to the local government;
- (b) of which the local government is the management body under the *Land Administration Act 1997*; or
- (c) which is an “otherwise unvested facility” under section 3.53 of the Act;

“local planning scheme” means a local planning scheme of the local government made under the Planning and Development Act 2005;

“lot” has the meaning given to it in and for the purposes of the *Planning and Development Act 2005*;

“notice of breach” is defined in clause 5.1;

“non-sacrificial graffiti protection” means a coating applied to a fence which is not removed in the process of removing graffiti;

“occupier” has the meaning given to it in the Act;

“owner” has the meaning given to it in the Act;

“Residential lot” means a lot where a residential use is or may be permitted under the City planning scheme, and is or will be a use of the lot;

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

“Schedule” means a Schedule to this local law;

“sufficient fence” means a fence that satisfies clause 2.1 and includes a fence of the description and quality agreed upon by the owners of adjoining lots which does not fail to satisfy clause 2.1;

“thoroughfare” has the meaning given to it in the Act.

1.7 Fees and charges

All fees and charges applicable under this local law shall be determined by the local government from time to time under and in accordance with sections 6.16 to 6.19 of the Act.

PART 2 - FENCES

Division 1 – Sufficient Fences

2.1 Sufficient fence

- (1) A person shall not erect a dividing fence or a boundary fence that is not a sufficient fence unless –
 - (a) in respect of a dividing fence –
 - (i) All the owners of land that the dividing fence separates agree in writing to the type of dividing fence that is to be erected and that fence does not exceed 2400 millimetres in height and is designed by a suitably qualified structural engineer and constructed in accordance with that design; or
 - (ii) The dividing fence is determined to be a sufficient fence, for the purposes of the *Dividing Fences Act 1961*, by a magistrates court, under the *Dividing Fences Act 1961*; or
 - (iii) The approval of the local government has been obtained for such a fence.

- (2) Pursuant to section 24 of the *Dividing Fences Act 1961* and subject to sub-clauses (3) and (4), a sufficient fence –
 - (a) on a Residential lot is a dividing fence or a boundary fence constructed and maintained in accordance with the specifications and requirements of Schedule 2; and
 - (b) on a Commercial lot or Industrial lot is a dividing fence or a boundary fence constructed and maintained in accordance with the specifications and requirements of Schedule 3.
- (3) Where a fence is erected on or near the boundary between a Residential lot and a Commercial lot or Industrial lot, a sufficient fence is a dividing fence constructed and maintained in accordance with the specifications and requirements of Schedule 2.
- (4) Unless an authorised person determines otherwise, a sufficient fence on a boundary between lots other than those specified in sub-clauses (2) and (3) is a dividing fence constructed in accordance with the specifications and requirements of Schedule 2.

Division 2 - General

2.2 Relationship with other laws

- (1) Nothing in this local law affects the need for compliance, in respect of a fence, with –
 - (a) any relevant provisions of a local planning scheme; and
 - (b) any relevant provisions that apply if a building permit is required for that fence under the *Building Act 2011* or Building Regulations 2012.
- (2) Where there is inconsistency between the standards and requirements of this local law and those specified in a local planning scheme, the standards and requirements of a local planning scheme shall prevail.

2.3 Gates in fences

A person shall not erect or maintain a gate in a boundary fence which does not –

- (a) open into the lot; or
- (b) open by sliding parallel and on the inside of the fence, of which it forms part, when closed.

2.4 Depositing fencing material on public place

A person shall not deposit or permit the deposit of any materials whatsoever used in the construction or maintenance of any fence, on any thoroughfare, public place or local government property unless the approval of the local government has been obtained.

2.5 Alteration of ground levels

- (1) A fence constructed of corrugated fibre reinforced pressed cement shall not have more than 150 millimetres difference in the ground levels on each side of the fence.
- (2) Where land has been filled or retained to a height of more than 500 millimetres above natural ground level at or within 1000 millimetres of a boundary of a lot, a person shall only erect a dividing fence that is a sufficient fence on the said fill or retaining wall if the person produces to the local government the written agreement of the owners of the adjoining lot.
- (3) A person shall not alter (whether by removing soil or bringing in fill of any kind) the natural ground level of land on or within 1000 millimetres of the boundary of a lot, by more than 500 millimetres without the approval of the local government.

2.6 Maintenance of fences

- (1) An owner of a lot on which a fence is erected shall maintain the fence in good condition so as to prevent it from becoming dangerous, dilapidated, unsightly or prejudicial to the amenity of the locality.
- (2) Where in the opinion of the local government or an authorised person, a fence is in a state of disrepair or is dangerous or is otherwise in breach of a provision of this local law, the local government or an authorised person may give a notice of breach under clause 5.1 to the owner of the lot on which the fence is erected.

2.7 [deleted]

2.8 Fences across rights-of-way, public access ways or thoroughfares

A person must not, without the approval of the local government, erect or maintain a fence or obstruction of a temporary or permanent nature across any right-of-way, public access way or thoroughfare so as to impede or prevent use of those facilities in the manner for which they are intended and constructed.

2.9 General discretion of the local government

- (1) Notwithstanding the provisions of clause 2.1, the local government may approve the erection or repair of a dividing fence which is not a sufficient fence where all of the owners of the lots to be separated by the dividing fence make an application for approval for that purpose.
- (2) In determining whether to grant its approval under sub-clause (1), the local government may consider whether the erection or retention of the fence would have an adverse effect on –
 - (a) the safe or convenient use of any land;
 - (b) the safety or convenience of any person; or
 - (c) the visual amenity of the locality.

Division 3 - Fencing Materials

2.10 Pre-used fencing materials

- (1) Notwithstanding clause 2.1, a person shall not construct a boundary fence on a Residential lot, a Commercial lot or an Industrial lot from pre-used materials without the approval of the local government.
- (2) Where the local government approves the use of pre-used materials in the construction of a boundary fence under sub-clause (1), that approval shall be conditional on the applicant painting or treating the pre-used material as stated in or attached to the form of approval issued by the local government under clause 3.2.

2.11 Barbed wire fences and spiked or jagged materials

- (1) An owner or occupier of a Residential lot, a Commercial lot or an Industrial lot shall not erect, affix to or allow to remain on any fence on such a lot any barbed wire or other material with spiked or jagged projections, unless the approval of the local government has been obtained.
- (2) Where an approval has been obtained in accordance with sub-clause (1), that approval shall be taken to have been issued subject to a condition that the owner or occupier shall not erect, affix or allow to remain on any fence bounding that lot any barbed wire or other materials with spiked or jagged projections unless such wire or materials are carried on posts set at an angle of 45 degrees into the lot, and unless the bottom row of wire or other materials is set back 150 millimetres from the face of the fence, is at least 2000 millimetres above ground level and the total height shall not exceed 2400 millimetres.

2.12 Electrified and razor wire fences

- (1) An owner or occupier of a lot shall not -
 - (a) construct or use an electrified fence on that lot without obtaining the approval of the local government; or
 - (b) construct a fence wholly or partly of razor wire on that lot without obtaining the approval of the local government.
- (2) The local government shall not approve an application for the purpose of sub-clause (1)(a) -
 - (a) in respect of a lot which is or which abuts a Residential lot;
 - (b) unless the fence complies with AS/NZS3016:1994; and
 - (c) unless provision is made so as to enable the fence to be rendered inoperable during the hours of business operations, if any, on the lot where it is erected.

- (3) The local government shall not approve an application for the purpose of sub-clause (1)(b) -
- (a) if the fence is within 3000 millimetres of the boundary of the lot; or
 - (b) where any razor wire used in the construction of the fence is less than 2000 millimetres or more than 2400 millimetres above the ground level.
- (4) An application for approval for the purpose of sub-clauses (1)(a) or (1)(b) shall be made by the owner of the lot on which the fence is or is to be erected, or by the occupier of the lot with the written consent of the owner.

2.13 Prohibited fencing materials

A person shall not affix or use broken glass in the construction of any fence.

Division 4 - Tennis Court Fencing

2.14 Tennis court fencing

- (1) A person shall not erect a fence around or partly around a tennis court on a lot unless –
- (a) the fence is not more than 3600 millimetres in height;
 - (b) the whole of the fence is at least 900 millimetres from the boundary between the lot on which the tennis court is located and the adjoining lot; and
 - (c) the fence is fabricated from 2.5 millimetre poly-vinyl chloride coated or galvanised wire 50 millimetre link mesh not more than 3600 millimetres in height, and is erected in accordance with the manufacturer's specifications.
- (2) A person shall not erect a fence around or partly around any tennis court other than in accordance with sub-clause (1) without the approval of the local government.
- (3) In determining any application for approval for the purpose of sub-clause (2), where the fence will be less than 900 millimetres from the boundary between the lot on which the tennis court is located and the adjoining lot, the local government shall invite the owner of the adjoining lot to make submissions on the proposal, and the local government shall have regard to any such submissions in making its decision under clause 3.2.

PART 3 - APPROVALS

3.1 Application for approval

- (1) Where a person is required to obtain the approval of the local government under this local law, that person shall apply for approval in accordance with sub-clause (2).
- (2) An application for approval under this local law shall –
 - (a) be in the form determined by the local government;
 - (b) be signed by the applicant and the owner of the lot;
 - (c) provide the information required by the form; and
 - (d) be forwarded to the CEO together with any fee imposed and determined by the local government under and in accordance with sections 6.16 to 6.19 of the Act.
- (3) The local government may require an applicant to provide additional information reasonably related to an application before determining an application for approval.
- (4) The local government may refuse to consider an application for approval which is not in accordance with sub-clauses (2) and (3).

3.2 Decision on application for approval

- (1) The local government may –
 - (a) approve an application for approval unconditionally or subject to any conditions; or
 - (b) refuse to approve an application for approval.
- (2) If the local government approves an application for approval, it is to issue to the applicant an approval in the form determined by the local government.
- (3) If the local government refuses to approve an application for approval, it is to give written notice of that refusal to the applicant.
- (4) Where a clause of this local law refers to conditions which may be imposed on an approval or which are to be taken to be imposed on an approval, the clause does not limit the power of the local government to impose other conditions on the approval under sub-clause (1)(a).

3.3 Compliance with approval

Where an application for approval has been approved, the applicant and the owner and occupier of the lot to which the approval relates, shall comply with the terms and any conditions of that approval.

3.4 Duration of approval

Unless otherwise stated in the form of approval, an approval granted under this local law runs with the lot to which it relates and for the avoidance of doubt, it may be relied upon by any subsequent occupier or owner of the lot, and may be enforced against them by the local government.

PART 4 - MISCELLANEOUS

4.1 False or misleading statement

A person shall not make a false or misleading statement in connection with any application, requirement or request under this local law.

PART 5 - NOTICES OF BREACH

5.1 Notices of breach

- (1) Where a breach of any provision of this local law has occurred in relation to a fence on a lot, the local government may give a notice in writing to that owner of that lot ('notice of breach').
- (2) The notice of breach shall –
 - (a) specify the provision of this local law which has been breached;
 - (b) specify the particulars of the breach; and
 - (c) state that the owner is required to remedy the breach within the time specified in the notice.
- (3) An owner given a notice of breach shall comply with the terms of the notice and remedy the breach within the time specified in the notice.

5.2 Limit on liability

An owner to whom a notice of breach has been given is not entitled to make any claim by way of damages or otherwise, against an authorised person, local government employee, local government appointed sub-contractor or other person authorised by the local government arising from anything done while they are acting under clause 5.1(3).

PART 6 - OFFENCES

6.1 Offences and penalties

- (1) A person who fails to comply with a notice of breach commits an offence and is liable upon conviction to a penalty of not less than \$500 and not exceeding \$5000 and, if the offence is a continuing offence, to a maximum daily penalty of \$500.
- (2) A person who fails to comply with or who contravenes any provision of this local law commits an offence and is liable on conviction to a penalty of not less than \$500 and not exceeding \$5000 and, if the offence is a continuing offence, to a maximum daily penalty of \$500.

6.2 Modified penalties

- (1) An offence against any provision of this local law is a prescribed offence described for the purposes of section 9.16 (1) of the Act.
- (2) The amount appearing in the final column of Schedule 1 directly opposite a prescribed offence in that Schedule is the modified penalty for that prescribed offence.
- (3) For the purpose of guidance only, before giving an infringement notice to a person in respect of the commission of a prescribed offence, an authorised person should be satisfied that –
 - (a) commission of the prescribed offence is a relatively minor matter; and
 - (b) only straightforward issues of law and fact are involved in determining whether the prescribed offence was committed, and the facts in issue are readily ascertainable.

6.3 Form of notices

For the purposes of this local law –

- (a) the form of the infringement notice referred to in sections 9.16 and 9.17 of the Act is to be in or substantially in the form of Form 2 in Schedule 1 of the *Local Government (Functions and General) Regulations 1996*; and
- (b) the form of the notice referred to in section 9.20 of the Act is to be in or substantially in the form of Form 3 in Schedule 1 of the *Local Government (Functions and General) Regulations 1996*.

PART 7 - OBJECTIONS AND REVIEW

7.1 Objections and review

When the local government makes a decision under clause 3.2, the provisions of Division 1 of Part 9 of the Act and regulation 33 of the *Local Government (Functions and General) Regulations 1996* apply to that decision.

SCHEDULE 1

PRESCRIBED OFFENCES

Item	Clause No.	Nature Of Offence	Modified Penalty \$
1	2.1 (1)	Erect a fence which is not a sufficient fence	500
2	2.3(a)	Erect or maintain a gate in a boundary fence not opening into the lot	500
3	2.3(b)	Erect or maintain a gate in a boundary fence not sliding parallel and inside of fence	500
4	2.6 (1)	Failure to maintain a fence in good condition/prevent fence becoming dangerous, dilapidated, unsightly	500
5	2.8	Erect or maintain a fence/obstruction temporary or permanent across a right-of-way, public access way or thoroughfare without approval	500
6	2.10 (1)	Construct a boundary fence on a Residential, Commercial or Industrial lot from pre-used materials without written approval	500
7	2.11 (1)	Erect a fence using barbed wire or material with spiked or jagged projections in fence construction without approval	500
8	2.12 (1)	Construct, erect or use razor wire in a fence or electrify a fence without approval	500
9	2.13	Affix, or use, any broken glass in a fence	500
10	2.14 (1)(a)	Erect a tennis court fence higher than 3600 millimetres without approval	500
11	2.14 (1)(b)	Erect tennis court fence less than 900 millimetres from boundary of adjoining lot without approval	500
12	2.14 (1)(c)	Erect a link mesh fence higher than 3600 millimetres or not in accordance with manufacturer's specification without approval	500
13	3.3	Failure to comply with terms or conditions of approval	500
14	5.1 (3)	Failure to comply with notice of breach	500

SCHEDULE 2

SPECIFICATIONS FOR A SUFFICIENT FENCE ON A RESIDENTIAL LOT

Each of the following is a “*sufficient fence*” on a Residential lot:

- A. A fully enclosed timber boundary fence or dividing fence built in accordance with established construction techniques, and
 - i) the height of the dividing fence to be 1800 millimetres except with respect to the front setback area;
 - ii) the height of the boundary fence to not exceed 1800 millimetres.
- B. A dividing fence constructed of corrugated fibre reinforced pressed cement or metal sheeting erected in accordance with the manufacturer's specifications and which satisfies the following specifications:
 - (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 millimetres;
 - (b) the total height and depth of the fence to consist of a single continuous fibre reinforced cement or steel sheet;
 - (c) the sheets to be lapped and capped with extruded “snap-fit” type capping in accordance with the manufacturer’s instructions or established construction techniques; and
 - (d) the height of the dividing fence to be 1800 millimetres, except with respect to the front setback.
- C. A boundary fence or dividing fence constructed of brick, masonry, stone or concrete, which satisfies the following specifications:
 - (a) concrete footings with minimum dimensions of 225 millimetres x 150 millimetres for single leaf walls or 300mm x 300mm for double leaf walls;
 - (b) fences to be offset a minimum of 200 millimetres at maximum 3000 millimetres centres or 225 millimetres x 100 millimetres engaged piers to be provided at maximum 3,000 millimetres centres;
 - (c) expansion joints in accordance with the manufacturer’s written instructions; and
 - (d) the height of the dividing fence to be 1,800 millimetres except with respect to the front setback area.
 - (e) The height of the boundary fence to not exceed 1800 millimetres.

- D. A composite dividing fence having an overall height of 1,800 millimetres, except with respect to the front setback area, which satisfies the following specifications for the brick component of the construction:
- (1)
 - (a) brick piers of minimum 345 millimetres x 345 millimetres at 1,800 millimetres centres bonded to a minimum height base wall of 516 millimetres (6 courses);
 - (b) each pier shall be reinforced with one 10 millimetre diameter galvanised reinforced starting rod 1,500 millimetres high with a 250 millimetres horizontal leg bedded into a 500 millimetres x 200 millimetres concrete footing and set 65 millimetres above the base of the footing. The top of the footing shall be 1 course (85 millimetres) below ground level;
 - (c) the minimum ultimate strength of brickwork shall be 20 Megapascals. Mortar shall be a mix of 1 part cement, 1 part lime and 6 parts sand;
 - (d) the ground under the footings is to be compacted to 6 blows per 300 millimetres and checked with a standard falling weight penetrometer; and
 - (e) control joints in brickwork shall be provided with double piers at a maximum of 6000 millimetre centres; or
 - (2)
 - (a) brick piers of a minimum 345 millimetres x 345 millimetres x 2,700 millimetres centres bonded to the base; and
 - (b) each pier shall be reinforced with two 10 millimetre diameter galvanised reinforced starting rods 1500 millimetres high with a 250 millimetres horizontal leg bedded into a 500 millimetres x 200 millimetres concrete footing and set 65 millimetres above the base of the footing. The top of the footing shall be 1 course (85 millimetres) below ground level.

SCHEDULE 3

SPECIFICATIONS FOR A SUFFICIENT FENCE ON A COMMERCIAL LOT OR INDUSTRIAL LOT

Each of the following is a “*sufficient fence*” on a Commercial lot or Industrial lot:

- A. A dividing fence constructed of galvanised or PVC coated rail-less link mesh, chain mesh or steel mesh to a height of 1800 millimetres all supported by galvanised iron posts of a minimum diameter of 30 millimetres spaced at no more than 3000 millimetres centres and sunk in the ground a minimum of 600 millimetres encased in concrete with a minimum diameter of 150 millimetres, except with respect to the front setback area.
- B. A dividing fence of fibre reinforced cement sheet constructed to the specifications referred to in Schedule 2, except with respect to the front setback area.
- C. A dividing fence constructed of metal sheeting when supported on posts and rails provided that it is used behind a building line and is of a minimum height of 1800 millimetres.
- D. Fences of timber, brick, stone or concrete constructed to the specifications referred to in Schedule 2, except with respect to the front setback area.

Dated this 12th day of February 2008

The Common Seal of the City of Vincent was affixed by authority of a resolution of the Council in the presence of:

NICK CATANIA, JP, MAYOR

JOHN GIORGI, JP, CHIEF EXECUTIVE OFFICER