

PROVINCIAL NOTICE

[NO. 188 OF 2011]

**NOTICE IN TERMS OF SECTION 14(2)(a)(i) OF THE LOCAL GOVERNMENT: MUNICIPAL SYSTEMS ACT, 2000:
PUBLICATION: STANDARD FENCES AND FENCING BY-LAW**

I, M.G Qabathe, member of the Executive Council responsible for Cooperative Governance, Traditional Affairs and Human Settlement in the Free State, after consulting the Minister of Cooperative Governance and Traditional Affairs and the South African Local Government Association: Free State, do hereby in terms of section 14(2)(a)(i) of the Local Government: Municipal Structures Act, 2000 (Act No 32 of 2000), make standard By-laws as set out in the Schedule.

SCHEDULE

FENCES AND FENCING STANDARD BY-LAW

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Definitions

1. In this by-law, unless the context otherwise indicates -
"alter" includes to cause, allow or permit to be altered;
"boundary" means the real or notional line marking the limits of premises;
"agent", in relation to the owner of a property, means a person appointed by the owner of the property-
(a) to receive rental or other payments in respect of the property on behalf of the owner; or
(b) to make payments in respect of the property on behalf of the owner;
"erect" includes to cause, allow or permit to be erected;
"fence" means any fence, together with any gate or any contrivance forming part or serving the purpose of such a gate, erected as a boundary between any erven, lots or stands within the municipal area, and includes a fence which is not erected on a boundary, such as a garden fence or a free-standing wall on an erf, lot or stand;
"ground level" means the natural level of the ground, except where such level has been disturbed, in which case the street level is to be regarded as the ground level;
"municipality" means the Local Municipality of established in terms of Section 12 of the Local Government: Municipal Structures Act of 1998 (Act No. 117 of 1998) and includes any political structure, political office bearer, councillor, duly authorised agent or any employee acting in connection with this by-law by virtue of a power vested in the municipality and delegated or sub-delegated to such political structure, political office bearer, councillor, agent or employee;
"public land" means land the ownership of which is vested in an organ of state;

"repair" has the meaning assigned to it in the Fencing Act, 1963 (Act No. 31 of 1963);

"SANS Codes" means the South African National Standard Codes issued in terms of the Standards Act, 1993 (Act No. 29 of 1993).

Principles and objectives

2. The objective of this bylaw is to regulate fencing.

Application

3. Subject to the provisions of the Fencing Act, 1963 (Act No. 31 of 1963), the provisions in this by-law relating to an electrical fence, barbed wire and razor wire do not apply to land zoned for agricultural purposes, except where such electrical fence, barbed wire or razor wire is erected on the boundary between the land and public land.

Fences

4. (1) No person may, without the consent of the municipality, on a boundary of premises -
 - (a) erect a fence which is more than 2 metres in height from ground level;
 - (b) alter or make an addition to an existing fence which is more than 2 metres in height from ground level;
 - (c) erect or may have on a boundary, an electrified fence, electrified railing or other electrified barrier, unless it is erected on top of a wall which may not be less than 2 metres high and built of brick, cement, concrete or similar material; and
 - (d) erect a barbed-wire fence, railing, or other barrier with spikes or other sharp or pointed protrusions unless it is erected on top of a wall of not less than 2 metres in height
- (2) A person who wishes to obtain the consent of the municipality must submit an application form determined by the municipality, and the municipality may refuse or grant consent.
- (3) Should the municipality refuse permission, it must, on request, supply the applicant in writing with the reasons for the refusal.
- (4) Should the municipality grant consent, it may impose conditions, requirements or specifications according to each individual case, and subject to the provisions of SANS Code No. 1372 relating to Prefabricated Concrete Components for Fences, and the consent must be entered in Item C of the form referred to in subsection (2), and a person who has obtained consent, must at the request of an authorised official, immediately produce the consent.
- (5) A person who has obtained consent in terms of subsection (4) must ensure that the fence is maintained in a good condition.
- (6) No person may:-
 - (a) without the prior written consent of the municipality demolish, interfere with or damage a fence for which consent has been granted in terms of subsection (4);
 - (b) having opened a gate in a fence, leave such gate open or unfastened;
 - (c) climb over or crawl through a fence without the permission of the owner or occupier of the land;
 - (d) erect a fence covered with -
 - (i) canvas, reeds, grass or any combustible material, except poles or split poles, or approved wood, within 4,5 metres of any street; or
 - (ii) sheet iron, corrugated galvanised iron or any other sheeting along or within 4,5 metres of any street;
 - (e) allow a fence to fall into disrepair; and
 - (f) affix to or allow to be affixed to a fence any posters, placards or similar notices, or draw or apply anything on a fence unless it is done so in terms of the Advertising By-law .
- (7) The municipality may, whenever it appears that, in the interests of safety -
 - (a) a fence needs to be erected or repaired, instruct the owner or occupier on whose premises such fence needs to be erected or repaired, to undertake such steps as stipulated in the instruction; or
 - (b) the height of a wall, hedge or fence at a street corner needs to be reduced, by order in writing instruct the owner or occupier property to reduce the height of such wall, hedge or fence to a height specified in such order.
- (8) A person commits an offence if he or she contravenes a provision of subsections (1) or (6) or fails to produce consent at the request of an authorised official as contemplated in subsection (4).

- (9) Should a person fail to comply with a provision of subsection (1), with a condition, requirement or specification contemplated in subsection (4), or subsection (5) or an instruction issued in terms of subsection (7), the municipality may serve a notice of compliance or a demolition order on the person.

Notice of compliance and representations

5. (1) The notice of compliance must state -
- (a) the name and residential or postal address of the affected person;
 - (b) the requirement which has not been complied with;
 - (c) detailed measures required to remedy the situation;
 - (d) that the person must within a specified period take the measures to comply with the notice and to complete the measures before a specified date; and
 - (e) the right to appeal as contained in section 9.
- (2) Where a person does appeal and fails to take the measures before the date contemplated in subsection (1)(d), he or she commits an offence, and the municipality may, irrespective of any penalty which may be imposed under section 14, act in terms of subsection (3).
- (3) The municipality may take such measures as it deems necessary to remedy the situation, including the demolition of the fence, and the cost thereof must be paid to the municipality in accordance with section 7.

Costs

6. (1) Should a person fail to take the measures required of him or her by a notice of compliance, the municipality may, subject to subsection (3) recover, as a debt, all costs incurred as a result of it remedying the situation from that person and any or all of the following persons:
- (a) the owner of the land, building or premises; or
 - (b) the person or occupier in control of the land, building or premises or any person who has or had a right to use the land at the time when the situation came about.
- (2) The costs recovered must be reasonable and may include, without being limited to, costs relating to labour, water, equipment, administrative and overhead costs incurred by the municipality under section 5(3).
- (3) If more than one person is liable for costs incurred, the liability must be apportioned as agreed among the persons concerned according to the degree to which each was responsible for the emergency resulting from their respective failures to take the required measures.

Demolition order

7. (1) A person on whom a demolition order has been served must demolish the fence and remove the materials.
- (2) Should the municipality demolish a fence, it may dispose of the whole or any part of the materials from any fence by public auction or public tender.
- (3) The municipality may deduct from the proceeds of any materials disposed of the costs of any pulling down, removal or demolition and the costs incurred of disposal and will thereafter pay any balance to the owner of the fence removed or demolished.

Authentication and service of notices and other documents

8. (1) A notice issued by the municipality in terms of this by-law is deemed to be duly issued if it is signed by an officer authorised by the municipality.
- (2) Any notice or other document that is served on a person in terms of this by-law is regarded as having been duly served -
- (a) when it has been delivered to that person personally;
 - (b) when it has been left at that person's place of residence or business in the Republic with a person apparently over the age of 16 years;
 - (c) when it has been posted by registered or certified mail to that person's last known residential or business address in the Republic, and an acknowledgment of the posting thereof from the postal service is obtained;
 - (d) if that person's address in the Republic is unknown, when it has been served on that person's agent or representative in the Republic in the manner provided by paragraphs (a), (b) or (c);
 - (e) if that person's address and agent or representative in the Republic is unknown, when it has been posted in a conspicuous place on the land or business premises to which it relates;
 - (f) in the event of a body corporate, when it has been delivered at the registered office of the business premises of such body corporate; or

- (g) when it has been delivered, at the request of that person, to his or her e-mail address.
- (3) Service of a copy is deemed to be service of the original.
- (4) When any notice or other document is served on the owner, occupier, or holder of any property, or right in any property, it is sufficient if that person is described in the notice or other document as the owner, occupier, or holder of the property or right in question, and it is not necessary to name that person.

Appeal

9. A person whose rights are affected by a decision of the municipality may appeal against that decision by giving written notice of the appeal and the reasons therefore in terms of section 62 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), to the municipal manager within 21 days of the date of the notification of the decision.

Implementation and enforcement

10. (1) The municipality may appoint an official to administer the implementation and enforcement of this by-law.
(2) A person commits an offence if he or she -
(a) hinders or interferes with an official in the execution of his or her official duties;
(b) falsely professes to be an official;
(c) furnishes false or misleading information when complying with a request of an official; or
(d) fails to comply with a request of an official.

Saving and transitional provision

11. An owner or occupier whose premises, at the date of commencement of this by-law, do not comply with the provisions of this by-law must, within a period of 6 months, ensure that his or her premises comply with the provisions of this by-law.

Exemptions

12. (1) Any person may in writing apply to the municipality for exemption from any provision of this by-law.
(2) The municipality may -
(a) grant an exemption in writing and set and determine the period for which such exemption is granted;
(b) alter or cancel any exemption or condition in an exemption; or
(c) refuse to grant an exemption.
(3) An exemption does not take effect before the applicant has undertaken in writing to comply with the conditions imposed by the municipality, however, if an activity is commenced before such undertaking has been submitted to the municipality, the exemption lapses.
(4) If any condition of an exemption is not complied with, the exemption lapses immediately.

Liaison forums in community

13. (1) The municipality may establish one or more liaison forums in a community for the purposes of obtaining community participation with regard to the matters dealt with in this by-law.
(2) A liaison forum may consist of -
(a) a member or members of an interest group, or an affected person;
(b) a designated official or officials of the municipality; and
(c) a councillor.
(3) (a) The municipality may, when considering an application for consent, permit or exemption in terms of this By-law, request the input of a liaison forum.
(b) A liaison forum or any person contemplated in sub section (2) may on own initiative submit an input to the municipality for consideration.

Penalties

14. A person who has committed an offence in terms of this by-law is on conviction liable to a fine or in default of payment, to imprisonment, or to such imprisonment without the option of a fine, or to both such fine and such imprisonment, and in the case of a successive or continuing offence, to a fine for every day such offence continues, or in default of payment thereof, to imprisonment.

Repeal of by-laws

15. Any by-laws relating to fences and fencing adopted by the Council or any municipality now comprising an administrative unit of the Council is repealed from the date of promulgation of these by-laws.

Short title

16. This by-law is called the Fences and Fencing Standard By-law, 2011.