

Cape Agulhas, South Africa

## Fencing of Premises

Legislation as at 3 October 2005

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# Cape Agulhas South Africa

## Fencing of Premises By-law, 2005

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Commenced on 3 October 2005

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To control the erection of fences

### 1. Definitions

In this by-law, unless inconsistent with the context:—

"**the Act**" means the National Building Standards and Building Regulations Act, [Act 103 of 1977](#);

"**Council**" means the municipal council of the municipality;

"**engineer**" means the person appointed by the municipality to act as engineer for the purpose of administering this by-law;

"**erect**" includes the making of alterations to a fence;

"**fence**" includes a boundary, garden or other freestanding wall;

"**municipality**" means the Municipality of Cape Agulhas;

"**occupier**" means any person in actual occupation of premises or having the charge or management thereof, without regard to the title under which he or she occupies it;

"**NBR**" means any national building regulations promulgated in terms of the Act, and any South African Bureau of Standards Code of Practice for the application of the national building regulations;

"**premises**" means any piece of land, with or without improvements;

"**owner**" means the person in whom is vested the legal title to premises and includes an occupier;

"**Tariff Policy By-law**", means the Tariff Policy By-law adopted by the municipality and published in Provincial Gazette;

"**zoned**" means a land use right which may be exercised on premises in terms of the provisions of a town planning scheme, and includes any approval which may have been granted in respect of the particular premises in terms of any town planning legislation.

### 2. Application of this by-law

- (1) This by-law binds an organ of state.
- (2) The provisions of this by-law do not derogate from the provisions of any other legislation.
- (3) Notwithstanding the provisions of subsection (1) above, the provisions of any legislation relating to town planning are subject to this by-law.
- (4) The erection of a fence which falls within the definition of "building", in terms of the provisions of the Act, shall also be subject to compliance with the provisions of this by-law insofar as the provisions of the by-law are supplementary to the provisions of the NBR.

- (5) Fences on premises zoned for agricultural purposes and which do not constitute a boundary with public land, are exempted from compliance with the provisions of this by-law.

### **3. Erection of fences**

- (1) No person may erect or cause to erect a fence on premises:—
  - (a) without the prior approval of the engineer, and
  - (b) otherwise than in accordance with this by-law.
- (2) An application for the engineer's approval to erect a fence, must be:—
  - (a) submitted on a form provided by the engineer;
  - (b) accompanied by plans in duplicate, drawn in accordance with the scales stipulated in the NBR, clearly indicating the position of the premises concerned, the foundation, the building materials to be used and the method of construction, together with adequate dimensions of the proposed fence;
  - (c) accompanied by the appropriate fee determined in terms of the Tariff Policy By-law; and
  - (d) in accordance with the specifications for the erection of fences, as contained in the Schedule to this by-law.
- (3) If the engineer has reason to believe that fencing of a premises will prevent a danger to persons or property, the engineer may require from the owner of such premises to erect a boundary fence within a reasonable period of time.

### **4. Dilapidated, defaced and unsightly fences**

- (1) An owner on whose premises a fence has been erected may not—
  - (a) allow the fence to:—
    - (i) fall into a dilapidated or unsightly condition, or
    - (ii) become a danger or potential danger to persons or property;
  - (b) deface, or allow the fence to be defaced by posters, placards or graffiti, or
  - (c) affix or paint, or allow to be affixed or painted on the fence, advertising signs not approved in accordance with the Council's by-law relating to outdoor advertising.
- (2) The engineer may require from the owner of premises to repair, alter, remove or demolish a fence which has become defaced, dangerous, dilapidated or unsightly.

### **5. Ownership of fences**

- (1) In cases where there is a dispute in regard to the ownership of a fence, and such ownership cannot be determined from municipal records, it will be incumbent upon the registered owners of the premises concerned to provide proof of ownership at own cost.
- (2) If the owners fail to provide proof of ownership, the engineer will appoint a land surveyor to determine the ownership of the fence, and recover the costs from the person who is proved to be the owner.
- (3) If the land surveyor finds the fence to be situated on the boundary of the properties concerned, the costs will be recovered from each owner concerned.

## 6. Delegation of powers and duties

- (1) The engineer may delegate any power or duty that have been conferred on the engineer in terms of this by-law to any official of the municipality.
- (2) A delegation in terms of sub-section (1)–
  - (a) must be in writing;
  - (b) is subject to any limitations, conditions and directions the engineer may impose;
  - (c) does not divest the engineer of the responsibility concerning the exercise of the power or the performance of the duty.
- (3) The engineer may amend or withdraw any delegation in terms of sub-section (1), but no such amendment or withdrawal shall invalidate anything done as a consequence of such delegation.

## 7. Offences and penalties

Any person who contravenes or fails to comply with any provision of this by-law is guilty of an offence and liable on conviction to a fine.

## Schedule

### SPECIFICATIONS FOR THE ERECTION OF FENCES

#### 1. General specifications for the erection of fences

- (1) Fences must be erected within the boundaries of the premises of the owner and may not encroach on or project over any other property.
- (2) Except with the permission of the engineer, the maximum height of a fence may not exceed 2,1 m.
- (3) For the purpose of (2) above, the height of a fence is calculated from natural ground level. In cases where the natural ground level has been disturbed, natural ground level will be regarded as street or road level.
- (4) Where in the opinion of the engineer the proposed height of a fence may restrict the sight distance of traffic, may cause a danger of any kind, or restrict the light on adjacent properties, the engineer may require that the height of the fence be restricted to a height lower than the maximum of 2,1 m.
- (5) Corner splays must comply with the relevant design codes prescribed for streets and roads and should be cleared with the Chief Traffic Officer of the municipality before an application for the erection of a fence is submitted.
- (6) Except with the permission of the engineer, gates may not swing towards the street when opened.
- (7) Except with the permission of the engineer, no fence may be constructed from previously used materials.
- (8) Barbed wire and razor wire components may not be lower than 1,8 m from ground level.

#### 2. Fences that fall within the definition of "building" in the Act.

Fences in this category are subject to the provisions of the NBR and must in addition, comply with the following specifications:

- (a) Concrete fences that form boundaries with streets and public land and must have the smooth side facing the street or public land.
- (b) Plastered walls must be painted.
- (c) Metal components of walls must either be galvanised or painted.

### 3. Fences that are constructed mainly from metal components

- (1) Metal components must either be galvanised or painted.
- (2) Anchor posts must be set in concrete foundations which comply with the SABS Code of Practice for the application of the NBR, 0400 of 1999.
- (3) When components with sharpened ends are used, the sharpened ends must be at least 1,8 m from ground level.

### 4. Wire fences

- (1) Anchor posts must be set in concrete foundations which comply with the SABS Code of Practice for the application of the NBR, 0400 of 1999.
- (2) Subject to item 1(8), except in areas zoned for agricultural purposes, no barbed wire fences are allowed.

### 5. Wooden fences

- (1) Anchor posts must be set in concrete foundations which comply with the SABS Code of Practice for the application of the NBR, 0400 of 1999.
- (2) Wooden components must be free of splinters and either varnished, painted or treated with creosote.
- (3) No pole or split pole fences will be allowed on boundaries on streets, roads or public land.
- (4) When components with sharpened ends are used, the sharpened ends must be at least 1,8 m from ground level.

### 6. Electric fences

Fences in this category are subject to the provisions of the Electrical Machinery Regulations (GNR 1592, as amended), issued in terms of the Occupational Health and Safety Act, [Act 85 of 1993](#).

### 7. Hedges

- (1) Hedges on boundaries on streets, roads and public land must be planted at least 1 m inside the boundary line and, in the case of fast-growing shrubs, at least 1,5 m inside the boundary line.
- (2) Hedges on boundaries on streets, roads and public land may not consist of plants which bear thorns, are liable to produce sharp branches or leaves or is poisonous to persons or animals.