

THEEWATERSKLOOF MUNICIPALITY

FENCING AND WALLS BY-LAW

Under the provisions of section 156 of the Constitution of the Republic of South Africa, 1996 the Municipal Council of the Theewaterskloof Municipality, hereby enacts as follows:

PREAMBLE

The Theewaterskloof Municipality is aware of the responsibility of the institution, to ensure a safe and healthy environment for the residents of and visitors to the area of jurisdiction of the Municipality, and the purpose of this by-law is to regulate fencing, fences and walls for purpose of the protection of residents and visitors.

TABLE OF CONTENTS

1. Interpretation
2. Application of the by-law
3. Fences
4. Compliance notices
5. Demolition order
6. Costs
7. Serving of notices and other documents
8. Transitional provisions
9. Exemptions
10. Appeals
11. Offences and penalties
12. Competencies of officials
13. Community liaison forums
14. Conflict between legislation
15. Repeal of by-laws
16. Schedule form part of the by-law
16. Short titel
17. Operative date

Schedule A: Application to erect a fence

1. INTERPRETATION

In this by-law, the English text prevails in the event of any conflict with the Afrikaans text, and unless the context indicates otherwise –

“**agent**”, means a person who acts on behalf of the owner of a property, and who is authorized -

- (a) to collect rent or other payments due, with regard to the property; or
- (b) make payment on behalf of the owner with regard to the property;

“**alter**”, means to cause, allow or permit something to be altered or changed from its original design;

“**authorized official**”, means any peace officer authorized in terms of section 334 of the Criminal Procedures Act, 1977 (Act No 51 of 1977), as amended, or any employee of the Theewaterskloof Municipality, who is authorized by the Theewaterskloof Municipality to enforce the provisions of this by-law;

“**boundary**”, means the real or notional geographical line marking the limits of a premises;

“**erect**”, means to cause, allow or permit something to be erected;

“**fence**”, which include “**wall**”, “**buttress**” and “**fencing**”, means all regular fences made of wire, metal, cement, stone, concrete, wood, brick or similar material, electrified fences, barbed wire fences and razor blade fences, and further refer to -

- (a) any fence, including any gate or any other structure forming part of such a fence, which is erected as a boundary between two portions of land, buildings or premises in the municipal area;
- (b) a fence not erected on a boundary, such as a garden fence or a detached wall on an erf, piece of land or premises; or
- (c) a buttress erected on the boundary between two privately owned premises, or a private property and a public place or a public road;

“**ground level**”, means the unmodified natural level of the ground, except where such level has been disturbed by excavation or filling, in which case the median of the excavated ground levels connecting evenly with the existing levels of a butting land units, shall be the assumed new ground level;

“**Municipality**”, means the Theewaterskloof Municipality, and includes reference to any duly delegated and / or appointed officials and / or service providers in terms of service level agreements of the Theewaterskloof Municipality;

“**occupant**”, means a person who occupies and control land or a premises, and includes a resident;

“**owner of property**”, means with regard to the ownership of any land, any person who resides on a premises or a portion of land, or use or utilize it for whatever purpose, or who as agent of the owner exercise control over it;

“**property**” means –

- (a) immovable property registered in the name of a person, including in the case of a sectional title scheme, a sectional title unit registered in the name of a person;
- (b) a right registered against immovable property in the name of a person, excluding a mortgage bond registered against the property;
- (c) a land tenure right registered in the name of a person or granted to a person in terms of legislation; and
- (d) public service infrastructure;

“**public place**”, means any premises or property or land, under the control of the Theewaterskloof Municipality, to which the public have access, and includes, but are not restricted to: any square; building; park; recreational area; sports grounds; open space; nature reserve; municipal street, alley or road reserve; public road; parking area, municipal commonage; unused, used, build-up or vacant municipal land; or a cemetery;

“**public road**”, means any public road as referred to in section 1 of the National Road Traffic Act, 1996 (Act No 93 of 1996), as amended, and includes any municipal road, alley or road reserve;

“**repair**”, has the meaning assigned to it in the Fencing Act, 1963 (Act No 31 of 1963), as amended;

“**responsible authority**”, means the Theewaterskloof Municipality, or any other national or provincial department or institution, who on account of their functions and responsibilities may impose restrictions or conditions for fences and walls;

“**rural settlements**”, means a grouping of residential premises located outside the urban boundary of urban areas, which are utilized for residential occupation, and includes, but are not restricted to, agri-villages, Transnet properties, and settlements previously administered in terms of the Rural Areas Act, 1987 (Act No 9 of 1987), as amended;

“**SANS code**”, means a South African National Standard as contemplated in section 2 of the Standards Act, 2008 (Act No 8 of 2008), as amended, and the use of the abbreviation “SANS” followed by any series of numbers, means a reference to a SANS code of practices, specifications or standards, published under the corresponding number;

“**town areas**”, means premises which form part of formally proclaimed towns;

“**transgressor**”, means a person who is transgressing the provisions of a national or provincial act or regulation, or the provisions of any by-law of the Theewaterskloof Municipality;

“**urban areas**”, has a similar meaning as “**town areas**”;

“**urban boundary**”, means the geographical boundary of urban areas as determined from time to time by the responsible authority, which indicate the dividing line between the urban and agricultural use of land.

2. APPLICATION OF THE BY-LAW

Subject to the provisions of the Fencing Act, 1963 (Act No 31 of 1963), as amended, and the provisions of the applicable Zoning Scheme Regulations of the Municipality, this by-law shall –

- (a) be applicable on all regular fences made of wire, metal, cement, stone, concrete, wood, brick or similar material, electrified fences, barbed wire fences and razor blade fences, or buttresses, located within the urban boundaries of urban areas and rural settlements; and
- (b) not be applicable on fencing on land zoned for agricultural usage, except where an electrified fence, barbed wire fence or razor blade fence forms the boundary between land zoned for agricultural use and public places or public roads or residential premises, which are part of any urban area or rural settlement, or where it hold a potential danger for pedestrians or a right of way.

3. FENCES

- (1) No one may, without the prior approval of the Municipality and in line with any applicable law or regulations –
 - (a) erect a fence higher than one point eight (1.8) meters above ground level, or as otherwise stipulated in the applicable Integrated Zoning Scheme or associated overlay schemes;
 - (b) alter or add to an existing fence, which is higher than one point eight (1.8) meters from ground level, or as otherwise stipulated in the applicable Integrated Zoning Scheme or associated overlay schemes;
 - (c) erect or install a fence, electrified fence, electrified railing or any other electrified barricade on a boundary, except –
 - (i) when it is mounted on a wall which shall be at least one point eight (1.8) meter in height, build with bricks, cement, concrete or a similar material; and
 - (ii) when the proposed structure comply to legislative provisions;
 - (d) erect a buttress as boundary between a premises and a public place or a public road, which is more than one (1) meter in height; and
 - (e) erect a barbed wire fence or razor blade fence, railing or any other barricade with long nails or other hardend and sharpened projections, except when it is mounted on a wall, which shall be at least one point eight (1.8) meters in height, excluding palisade fences, on the boundary of any premises in an urban area or rural settlement.

- (2) A person who wishes to obtain permission from the Municipality for the erection of a fence, as contemplated in section 3(1) of this by-law, shall apply for the erection of such a fence, on the application form included as Annexure A in this by-law
- (3) The Municipality shall consider the application contemplated in section 3(2) of this by-law, and approve or decline the application, and when an application is declined, shall the applicant be provided with written reasons by the Municipality why the application has been declined.
- (4) When approval has been granted by the Municipality for the erection of a fence, or for additions or alterations to fences, any conditions, requirements or specifications may be imposed by the Municipality, as deemed proper for each individual case, which shall include, without being limited thereto, compliance to the SANS codes for fencing, on condition that -
 - (a) the approval granted, be noted on the application form contemplated in subsection 3(2) of this by-law; and
 - (b) the approval being granted immediately be presented, when requested by any authorized official.
- (5) A person who received an approval for the erection of a fence, or an addition or alteration to a fence, shall ensure in terms of subsections 3(2) en 3(4) of this by-law that the constructed fence comply to the required conditions and that the fence be properly maintained.
- (6) No one shall –
 - (a) without the prior written approval of the Municipality demolish or alter a fence, which was approved in terms of subsections 3(2) and 3(4);
 - (b) erect a fence within one point five (1.5) meter from any public road, or such other distance as may be determined by the Municipality for a specific area, which is covered with –
 - (i) canvas, grass, or other combustible material, excluding poles or split poles or any natural wood or any other approved wood used to cover fences or used as fences, or any hedge; or
 - (ii) corrugated metal sheeting or roof sheeting;
 - (c) erect a fence on a common boundary between two premises, without the consent of the owner of the adjoining property, which may not be unreasonably withheld;
 - (d) allow any fence to fall in disrepair; and

- (e) allow that any placards or similar notices or advertising signs or name plates, are affixed or allow them to be affixed on any fence, or that any drawing, painting or graffiti are painted on any fence, except when authorized and approved in terms of the Outdoor Advertising and Signage By-law of the Theewaterskloof Municipality.
- (7) The Municipality may, whenever it shall be in the interest of public safety, the general public and the environment, decide that -
- (a) a fence needs to be erected or repaired, instruct the owner or occupant of the premises concerned, where the fence needs to be erected or repaired, in writing to undertake such steps as dictated; or
 - (b) the height of a fence on a street corner needs to be reduced or be amended, instruct the owner or occupant of the premises concerned, where such fence needs to be reduced or amended, in writing to implement the necessary actions as required to reduce the height of the fence or amend the fence.

4. COMPLIANCE NOTICES

- (1) When the owner of a property or an occupant of a premises, contravenes any provision of this by-law, the Municipality may issue a compliance notice to the transgressor, and demand that the person concerned implement remedial actions.
- (2) A compliance notice shall contain the following information –
- (a) the name and residential or postal address of the person concerned;
 - (b) the requirements which were not been complied with;
 - (c) the measures required to remedy the situation;
 - (d) the prescribed period within which compliance shall be attained and a specified date of completion; and
 - (e) the right to appeal, as contemplated in section 10 of this by-law.
- (3) The Municipality may take such further measures as it deems necessary to remedy a situation of non-compliance, including obtaining a demolition order for the demolition of a fence, and the cost of such demolition shall be recovered from the transgressor concerned.

5. DEMOLITION ORDER

- (1) When a person fails to comply to the provisions of sections 3 and 4 of this by-law, the Municipality may obtain a demolition order in terms of the prescribed procedures, and may serve a compliance notice or the demolition order as such on the involved transgressor.
- (2) A person on who a demolition order has been served, shall demolish the concerned fence and remove the material and / or building rubble.
- (3) When the circumstances require that the Municipality has to demolish any fence, the material of such demolished fence may be removed and be disposed of, subject to the provisions of the demolition order, by means of a public auction or a public tender or by depositing such material at a waste disposal facility, and the costs of demolition of such fence, the removal of waste and for obtaining a demolition order, may be deducted from the proceeds of the material disposed of and the balance shall be paid over to the owner of the fence which was removed or demolished.

6. COSTS

- (1) When a transgressor fails to implement the required corrections, which he or she have been ordered to implement by a compliance notice, the Municipality may subject to subsection 6(3) of this by-law, recover all costs incurred for the correction of the situation or transgression from –
 - (a) the involved person; or
 - (b) the owner of the property, building or premises concerned; or
 - (c) the person or occupant in charge of the property, building or premises concerned; or
 - (c) any person who obtained a right to use the property, building or premises concerned, or possessed the right when the transgression occurred.
- (2) The cost recovered shall be reasonable and fair, and may include, without being limited to, costs relating to labour, material, transport, equipment, administrative and overhead costs, and the costs for obtaining a demolition order, incurred by the Municipality.
- (3) When more than one person may be liable for the costs incurred, the liability shall be apportioned as agreed among the persons concerned, and those persons liable shall be collectively and separately responsible for the costs.

7. SERVING OF NOTICES AND OTHER DOCUMENTS

- (1) A notice, instruction, letter of demand, or other document issued by the Municipality in terms of this by-law, is deemed to be duly issued, when a duly delegated official of the Municipality has signed it.
- (2) Any notice, instruction, letter of demand, or other document that is served on a person in terms of this by-law, is regarded as having been duly and effectively 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 of South Africa, with a person apparently older than sixteen 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 of South Africa, and proof of the posting thereof is provided;
 - (d) if that person's address in the Republic of South Africa is unknown, when it has been served on that person's agent or representative in the Republic of South Africa, in a manner as provided in subsections 7(2)(a), 7(2)(b) or 7(2)(c) of this by-law;
 - (e) if that person's address and agent or representative in the country of South Africa is unknown, when it has been posted in a conspicuous place on the property or premises to which it relates; or
 - (f) in the event of a body corporate, when it has been delivered at the registered office or the business premises of the body corporate.
- (3) When any notice, instruction, letter of demand, or other document is served on a person in terms of this by-law, it is sufficient for purpose of the serving of the notice, instruction, letter of demand, or other document, to describe the person in the notice, instruction, letter of demand or other document, as the owner, occupant, or holder of the property or rights in question, and it is not a requirement to name that person.
- (4) A notice, instruction, letter of demand, or other document shall for purpose of authentication, be properly signed by the Municipality.

8. TRANSITIONAL PROVISIONS

- (1) An owner or occupant of a premises, whose premises at the date of commencement of this by-law, does not comply with the provisions of this by-law, shall within a period of six (6) months, after proper notice of non-compliance has been given by the Municipality to such owner or occupant of a premises, ensure that his or her premises comply with the provisions of this by-law.
- (2) Fences erected in terms of previous provisions, requirements, instructions and conditions, may on specific application by the owner or occupant of a premises to the Municipality, be exempted from the provisions of this by-law, or a person may exercise his or her right of appeal or both.

9. EXEMPTIONS

- (1) The owner or occupier of a premise may apply in writing to the Municipality to be exempted from any provision of this by-law.
- (2) The Municipality may –
 - (a) grant any exemption in writing, and determine the conditions, extend and period for which such exemption has been granted, or determined;
 - (b) alter or cancel any exemption or condition in an exemption; or
 - (d) refuse to grant any exemption, or only approve it in part.
- (3) An exemption does not take effect before the applicant has undertaken in writing to comply with the conditions imposed by the Municipality, and when an activity is commenced with before such undertaking has been submitted to the Municipality, such exemption granted shall lapse.
- (4) When any conditions of an exemption is not complied to, the exemption shall lapse immediately.

10. APPEALS

A person whose rights are affected by a decision of the Municipality in terms of any delegated powers, may appeal against such a decision in terms of section 62 of the Local Government: Municipal Systems Act, 2000 (Act No 32 of 2000), as amended, by giving written notice of the appeal against the decision and the reasons for the appeal to the Municipal Manager, within twenty one (21) days of the date of the notification of the decision.

11. OFFENCES AND PENALTIES

Any person who -

- (a) fails to comply with any notice served in terms of this by-law;
- (b) contravenes any provision of this by-law;
- (c) fails to comply to the instructions of an authorized official issued in terms of this by-law;
- (d) fails to comply to any instruction posted on a notice board; or
- (e) deliberately obstruct an authorized official in the execution of his or her duties in terms of this by-law,

is guilty of an offence and is liable on conviction, for -

- (i) a fine or imprisonment, or to such imprisonment without the option of a fine, or to both such fine and such imprisonment;
- (ii) in the case of a successive or continuing offence, to an additional fine or additional period of imprisonment, or such additional imprisonment without the option of a fine, or to both such additional fine and such additional imprisonment, for every day such offence continues; and
- (iii) any further amount as an order of court for costs, equal to any costs and / or expenses, deemed by the Court, to have been incurred by the Municipality as a result of such contraventions.

12. COMPETENCIES OF AUTHORIZED OFFICIALS

- (1) The authorized officials appointed by the Municipality to monitor and enforce this by-law, may investigate any action or omission, which are considered to be a transgression or non-compliance to the provisions of this by-law, when reasonable suspicion exist that an offence occurred.
- (2) Authorized officials may not be refused access to any premises, in the execution of their duties.

13. COMMUNITY LIAISON FORUMS

- (1) The Municipality may establish liaison forums for the purposes of –
 - (a) creating opportunities for the local community to participate in the affairs of the Municipality;
 - (b) to advise the Municipality on matters, referred to a liaison forum by the Municipality; and
 - (c) promoting a safe environment.

- (2) A liaison forum may consist of –
- (a) a member or members of an interested group or affected persons;
 - (b) a member or members of the community; and
 - (c) a designated official or officials of the Municipality or other organs of state.
- (3)(a) The Municipality may, when considering an application for an approval or an exemption in terms of this by-law, request the input of a liaison forum.
- (b) A liaison forum or any person or persons contemplated in subsection 13(2) of this by-law, may on their own initiative provide input to the Municipality for consideration.

14. CONFLICT BETWEEN LEGISLATION

When any stipulation of this by-law, is in conflict with national and provincial legislation or regulations, the national and provincial legislation or regulations shall prevail.

15. REPEAL OF BY-LAWS

The provisions of any by-laws previously promulgated by the Municipality or by any of the disestablished municipalities now incorporated in the Municipality, are hereby repealed as far as they relate to matters provided for in this by-law.

16. SCHEDULE FORM PART OF THE BY-LAW

Schedules A of this by-law, form part of this by-law for all practical purposes.

17. SHORT TITLE

This by-law shall be called the Fencing and Walls By-law of the Theewaterskloof Municipality.

18. OPERATIVE DATE

This by-law shall take effect on the date of publication.

SCHEDULE A

APPLICATION TO ERECT A FENCE

A. OWNER OR OCCUPANT

Surname and name of person

.....

Identity number:.....

Address: Postal address:

.....

.....

.....

Residential address:

.....

.....

.....

.....

Telephone number: Work

Home

B. PARTICULARS OF PREMISES AND FENCE

Erf number.....

Address where premises is located

.....

TYPE OF FENCE TO BE ERECTED / ALTERED

.....
.....
.....

C. ISSUING LOCAL AUTHORITY

Approval is hereby granted in terms of section 3(4) of the Fencing and Walls By-law of the Theewaterskloof Municipality, for the erection of the indicated fence on the indicated premises.

Conditions, requirements or specifications in terms of section 3(4):

.....
.....
.....
.....
.....

SIGNATURE OF INSPECTOR

DATE

.....

Name of Inspector:

.....

Capacity:

.....