

KNYSNA MUNICIPALITY FENCES AND FENCING BY-LAWS

In terms of and under the provisions of section 156 of the Constitution of the Republic of South Africa, 1996 the Knysna Municipality, enacts as follows:-

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1. Interpretation

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 Municipality of Knysna established in terms of Section 12 of the Municipal Structures Act, 117 of 1998, Provincial Notice 484 dated 22 September 2000 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 31 of 1963).

2. Principles and objectives

The Municipality, aware of its duty to provide a safe and healthy environment, in this By-law regulate fencing with the aim of safeguarding its residents and visitors to the area.

3. Application

(1) Subject to the provisions of the Fencing Act, 1963 (Act 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.

(2) The provisions of this By-law apply only insofar as they are not in conflict with existing Zoning Scheme Regulations of the Knysna Municipality or any of its legal predecessors.

4. Fences

(1) No person may, without the prior written consent of the municipality and subject to any conditions it may impose –

- (a) erect a fence on lateral or rear boundaries of premises which is more than 1,8 metres in height from ground level;
- (b) erect a fence within 4,5 metres of a street boundary which is more than 1,2 metres in height from ground level, provided that a fence not exceeding 1,8 metres may be erected for a distance not exceeding 10 metres where such fence screens a swimming pool or a yard area where it will not interfere with sight lines of vehicles entering or leaving the property, or passing traffic;
- (c) on a boundary of premises alter or make an addition to an existing fence which is more than 1,8 metres in height from ground level;
- (d) erect or may have on a boundary, an electrified fence, electrified railing or other electrified barrier, unless it–

- (i) is erected on top of a wall which may not be less than 1,8 metres high and built of brick, cement, concrete or similar material; and
 - (ii) it complies with the Electrical Machinery Regulations, as published in Government Notice R1593, dated 12 August, 1988; and
 - (e) subject to subsection (8), erect on a boundary of premises a barbed-wire fence, railing, paling, wall or other barrier with spikes or other sharp or pointed protrusions.
- (2) A person who wishes to obtain the consent of the municipality must submit an application form similar to the form contained in the Schedule A to 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 form.
- (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) climb over or crawl through a fence without the permission of the owner or occupier of the land;
 - (c) erect a fence covered with –
 - (i) canvas, reeds, grass or any combustible material, except poles or split poles, or approved wood, which may not be erected within 4,5 m of any street and which may not exceed 1,8 m in height; or
 - (ii) sheet iron, corrugated galvanised iron or any other sheeting along or within 4,5 m of any street;
 - (d) allow a fence to fall into disrepair; and
 - (e) 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 Outdoor 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) In the instance where barbed-wire or other barrier with spikes or other sharp or pointed protrusions are erected on a wall of 1,8 meters in height from ground level on an erf outside the defined urban Conservation Area or on an erf not zoned for residential purposes, the consent of the municipality is not required, provided that such barbed-wire, barrier with spikes or other sharp or pointed protrusions does not increase the height of the fence to more than 2,1 metres, and the protrusion is not unsightly and is maintained in a good state of repair.

(9) A person commits an offence if he or she contravenes a provision of subsection (6) or fails to produce a form at the request of an authorised official as contemplated in subsection (4).

(10) 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.

5. Penalties

A person who has committed an offence in terms of this By-law contravenes 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.

6. Notice of compliance and representations

(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 10.

(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 5, 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.

7. Costs

(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 6(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.

8. Demolition order

(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 remove the materials and dispose of the whole or any part of the materials 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.

(4) Should the proceeds of an auction or sale in terms of subsection (2) be insufficient to cover the costs of any pulling down, removal, demolition or disposal, the municipality may, subject to section 7(3), recover from that person, as a debt, the outstanding balance of the costs incurred.

9. Authentication and service of notices and other documents

(1) An order, notice or other document requiring authentication by the Municipality must be sufficiently signed.

(2) Any notice or other document that is served on a person in terms of this By-law, is regarded as having been served when it is served in

accordance with section 115(1) of the Local Government: Municipal Systems Act, Act 32 of 2000.

(3) Service of a copy shall be deemed to be service of the original.

(4) Any legal process is effectively and sufficiently served on the municipality when it is delivered to the municipal manager or a person in attendance at the municipal manager's office.

10. Appeal

A person whose rights are affected by a decision delegated by 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, Act 32 of 2000 to the municipal manager within 21 days of the date of the notification of the decision.

11. Implementation and enforcement

(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.

12. Exemptions

(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.

13. Liaison forums in community

(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 of 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 may on own initiative submit an input to the municipality for consideration.

14. Revocation 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, and insofar as it has been made applicable to the municipality by the authorisation for the execution of powers and functions in terms of section 84(3) of the Local Government: Municipal Structures Act, Act 117 of 1998.

15. Short title and commencement

This By-law are called the Knysna Fences and Fencing By-laws, and commences on the date of publication thereof in the Provincial Gazette.

**SCHEDULE A
(Section 4(2))**

APPLICATION TO ERECT FENCE

A. OWNER OR OCCUPIER

Surname and first names of person

.....

I.D. Number

Address: Postal address:

.....

.....

.....

Residential address:

.....

.....

.....

.....

Telephone number: Business

Residential

B. PARTICULARS OF PREMISES AND FENCE

Erf Number

Address where the premises can be inspected

.....

.....

NATURE OF FENCE TO BE ERECTED/ALTERED

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

C. ISSUING LOCAL AUTHORITY

Consent is hereby granted in terms of section 4(4) of the Knysna Fences and Fencing By-laws that the above-mentioned fence may be erected on above-mentioned premises

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

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SIGNATURE OF INSPECTOR

DATE

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Name of inspector:

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Official designation:

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