

## LOCAL AUTHORITY NOTICE 214

## LEPHALALE LOCAL MUNICIPALITY FENCES AND FENCING BY-LAWS

The Municipal Manager of Lephalale Local Municipality hereby in terms of section 13(a) of the Local Government Municipal Systems Act, 2000 (Act 32 of 2000) publishes Fences and Fencing by-law for the municipality as approved by its council as set out hereunder:

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#### Schedule

### 1. Definitions

In this by-law, unless the context otherwise indicates –

**"boundary"** means the real or notional line marking the limits of premises;

**"Council"** means the council of the Lephalale Local Municipality;

**"fence"** means any fence, together with any necessary 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 Lephalale and includes any political structure, political office bearer, municipality or duly authorised agent thereof or any employee thereof 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, municipality or, agent or employee;

**"public land"** means land of which the ownership is vested in an organ of state;

**"repair"** means putting and maintaining fence in good order by trimming, cutting or any other means;

**"the act"** means Fencing Act, 1963 (Act 31 of 1963)

## 2. Purpose

To regulate fences and fencing within the municipality.

## 3. Fences

- (1) No person may, without the consent of the municipality –
  - (a) erect or cause, allow or permit to be erected a fence which is more than 1.8 metres in height from ground level on a boundary of a premises;
  - (b) alter, make or cause, allow or permit to be altered or made an addition to an existing fence which is more than 1.8 metres in height from ground level on a boundary of a premises;
  - (c) erect or cause or permit to be erected on a boundary, or may have on a boundary, an electrified fence, electrified railing or other electrified barrier, unless –
    - (i) the electrified fence, electrified railing or other electrified barrier 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) the electrified fence, electrified railing, or other electrified barrier is designed and installed in accordance with the Electrical Machinery Regulations; and
  - (d) subject to subsection (9), erect or cause or permit to be erected on a boundary 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 approval of the municipality must submit building plans on the application form as contained in the Schedule.
- (3) The municipality has right to approve or disapprove a plan.
- (4) Should the municipality disapprove the plan, it must, on request, supply the person in writing with the reasons for the disapproval.
- (5) Should the municipality grant consent, it may do so subject to such conditions, requirements or specifications which it may determine in each individual case, and subject to the provisions of SANS Code No. 1372, Prefabricated Concrete Components for Fences, as published on 20 May, 1985 in the Government Gazette, and the consent must be entered in Item C of the form contemplated in subsection (2), and a person who has obtained consent, must at the request of an authorised official, immediately produce the form.
- (6) A person who has obtained approval in terms of subsection (5) must ensure that the fence is maintained in a good condition.
- (7) No person may –
  - (a) without the consent of the municipality first having been obtained, demolish, interfere with or damage a fence for which an approval has been granted in terms of subsection (5);
  - (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 upon which such fence is situated, first having been obtained;
  - (d) erect or cause to be erected 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

- (c) The municipality may, on its own volition, conduct any further investigations to verify the facts if necessary, and the results of the investigation must be made available to the permit holder, who must be given an opportunity of making a further response if he or she so wishes, and the municipality must also consider the further response.
  - (d) The municipality must, after consideration of the representations and any response and further response make an order in writing and serve a copy of it on the person, which order must confirm, in whole or in part, alter, or set aside the notice of compliance, and where the notice of compliance is confirmed, in whole or in part, or altered, the municipality must inform the person that he or she must, within the period specified in the order, discharge the obligations set out in the order and that failure to do so constitutes an offence.
  - (e) Where a person fails to discharge the obligations contemplated in subsection (4)(d), he or she commits an offence and the municipality may, irrespective of any penalty which may be imposed act in terms of subsection (5).
- (5) 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 5.

#### 5. Costs

- (1) Should a person fail to take the measures required of him or her by a notice of compliance contemplated in section 4, the municipality may, subject to subsection (3) recover, as a debt, all costs incurred as a result of it acting in terms of section 4(5) 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 4(5).
- (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.

#### 6. Demolition order

- (1) A person on whom a demolition order has been served in terms of section 3(10), must demolish the fence and remove the materials.
- (2) Should a person fail to act in accordance with subsection (1), the municipality may demolish a fence, and it may dispose of the whole or any part of the materials from any fence, whether wholly or partly removed or demolished, by public auction or public tender.
- (3) The municipality may deduct from the proceeds of any materials so disposed of the costs of any such pulling down, removal or demolition and the costs incurred in so disposing of the said materials and the surcharge thereon and shall thereafter pay any balance to the owner of the fence removed or demolished.
- (4) The exercise of any powers set forth in subsection (2) and (3) shall not prejudice or diminish the rights of the municipality to recover in terms of other provisions of this by-law.

#### 7. Authentication and service of notices and other documents

- (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 to 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.

## **8. Implementation and enforcement**

- (1) The municipality may appoint and mandate an official to administer the implementation and enforcement of this by-law.
- (2) Upon appointment the municipality must issue the official with an identity card which must state the name and function of the official, and which includes a photograph of the official.
- (3) An official, acting within the powers vested in him or her by this by-law, must on demand by a person produce the identity card and proof of identity.
- (4) An official, within his or her mandate in terms of subsection (1) –
- (a) must monitor and enforce compliance with this by-law;
  - (b) may investigate an act or omission which on reasonable suspicion may constitute an offence in terms of this by-law;
  - (c) may, for the purposes of paragraphs (a) and (b), enter upon premises on which a business is carried on with the aim of ascertaining if an offence in terms of this by-law has been or is being committed; and
  - (d) may request the owner or occupier to provide such information as he or she deems necessary.

## **9. Transitional provision**

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 3 years, ensure that his or her premises comply with the provisions of this by-law.

**SCHEDULE**

**APPLICATION TO ERECT FENCE**

**A. OWNER OR OCCUPIER**

Surname and first names of person .....

I.D. Number .....

Address: Postal address: .....

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.....

Residential address:.....

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.....

Telephone number: Business ..... Residential .....

**B. PARTICULARS OF PREMISES AND FENCE**

Erf Number .....

Address where the premises can be inspected

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.....

**NATURE OF FENCE TO BE ERECTED/ALTERED**

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**C. ISSUING LOCAL AUTHORITY**

Consent is hereby granted in terms of section 3(5) of the Lephalale Fences and Fencing By-law that the above-mentioned fence may be erected on above-mentioned premises

Conditions, requirements or specifications in terms of section 3(5):

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SIGNATURE OF INSPECTOR DATE

Name of inspector: .....

Official designation: .....