

Swartland, South Africa

Walls and Fences

Legislation as at 24 June 2016

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Walls and Fences

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Swartland South Africa

Walls and Fences By-law, 2016

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

1. Definitions

In this by-law, the English text shall prevail in the event of an inconsistency between the different texts, and unless the context otherwise indicates:—

"**alter**" includes to cause, allow or permit to be altered;

"**boundary**" in relation to a land unit, means one of the cadastral lines separating such unit from another land unit or from a public street or road;

"**erect**" includes to cause, allow or permit to be erected;

"**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 Swartland established in terms of Section 12 of the Municipal Structures Act, Act 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;

"**owner**" means—

- (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;

"**public land**" means any land of which the ownership is vested in the municipality;

"**repair**" has the meaning assigned to it in the Fencing Act, 1963 (Act 31 of 1963);

"**structure**" in addition to its ordinary meaning, includes a system of constructional elements and components of any wall, fence or pillar;

"**the Act**" means the National Building Regulations and Standards Act, 1977 (Act 103 of 1977) and the regulations promulgated in terms thereof;

"**wall**" means any wall, fence or enclosing structure erected on or next to a property boundary and any other structures (including but not limited to security devices, for example spikes, electric fencing, barbed or razor wire) affixed to or on top of it.

2. Principles and objectives

The municipality, aware of its duty to provide a safe and healthy environment, in this by-law regulates walls and fences with the aim of safeguarding its residents and visitors to the area.

3. Application

- (1) This by-law shall apply in the area of jurisdiction of the municipality, including private residential developments with or without controlled entrance in as far as this by-law is not in conflict with the conditions imposed in terms of the municipality's Zoning Scheme Regulations on any development.
- (2) Subject to the applicable Zoning Scheme Regulations of the Municipality, the provisions of 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 agricultural land and public land or residential premises forming part of any township indicated on a diagram or general plan approved by the Surveyor General;

4. Permission for erection of walls fences

- (1) No person may, without the consent of the municipality, and subject to any conditions imposed by the municipality, erect a wall or fence of any nature on any boundary.
- (2) The provisions of subsection (1) shall not apply in respect of a wall or fence erected on agricultural land where such a wall or fence does not abut on a township or public land.
- (3) Any person applying for the municipality's permission to erect a wall or fence must submit plans drawn in accordance with the scales stipulated in the Act, clearly indicating the position of the erf, materials to be used in construction and the method of construction together with the dimensions of the proposed wall or fence.
- (4) Should the municipality refuse permission, it must furnish reasons in writing for the refusal.

5. Height of walls and fences

- (1)
 - (a) The height of any wall or fence situated on street boundaries or abutting upon public land shall not exceed the measurements as described in Tables 17 and 18 of SANS 10400;
 - (b) Walls and fences comprising of materials not described in the tables referred to in paragraph (a) shall not exceed a height of 2.1 metres.
- (2) An electrified fence, electrified railing or other electrified barrier may not be erected on any boundary, unless—
 - (a) it 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
 - (b) it complies with the Electrical Machinery Regulations, as published in Government Notice R1593, dated 12 August, 1988.
- (3) A barbed wire fence, railing, or other barrier with spikes or other sharp or pointed protrusions must be erected on top of a wall of not less than 2 metres in height.
- (4) The height of walls and fences shall be measured from the level of the pavement and in the absence of a pavement, from the natural level of the ground outside the property immediately adjacent to such wall or fence. If the ground level slopes longitudinally along the length of the wall, then its height at each end of the slope shall not exceed the permitted height and it may be stepped in which case it shall be stepped in a series of even steps between piers (where necessary) which steps shall deviate as little as possible from the average permitted height.

6. Materials of walls and fences

Walls and fences erected on street boundaries or boundaries abutting upon public open spaces shall be comprised of either of the following materials only—

- (a) face bricks with face-brick finishing;

- (b) plastered and painted brickwork or bagged or cement finished brickwork;
- (c) plastered and painted concrete block work or bagged or cement finished concrete block work;
- (d) decorative brick blocks;
- (e) precast concrete panels;
- (f) galvanised or plastic coated wire mesh;
- (g) wooden fences which shall consist of processed timber as approved by the building control officer;
or
- (h) cast iron work or vertical steel railings; or
- (i) any other material which complies with the specifications or requirements of the municipality.

7. Piers and columns

Where piers or columns of brick, stone, concrete or similar materials are required by the municipality to ensure stability, their size and spacing shall be in accordance with the requirements of the municipality.

8. Fair face walls and fences

All walls and fences shall present a fair face to the street and to abutting public open spaces in accordance with the provisions of section 6.

9. Dilapidated and unsightly walls and fences

- (1) A person who has obtained permission in terms of subsection (4) must ensure that the wall or fence is maintained in a good condition.
- (2) Notwithstanding the provisions of the Fencing Act, ([Act 61 of 1963](#)), the owner of agricultural land upon which a wall or fence is erected which abuts on a township or public land, remains responsible for the maintenance of such wall or fence.
- (3) 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) allow a wall or fence to fall into disrepair or to become unsightly or dangerous to the safety of any person or property;
 - (c) 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 any other by-law of the municipality.

10. Compliance and enforcement

- (1) The municipality may, whenever it appears that in the interests of safety—
 - (a) a wall or fence needs to be erected or repaired, instruct the owner or occupier on whose premises such wall or fence needs to be erected or repaired, to undertake such steps as stipulated in the notice; or
 - (b) the height of a wall or fence at a street corner needs to be reduced, by order in writing instruct the owner or occupier of the property to reduce the height of such wall or fence to a height specified in such notice.
- (2) Where a person contravenes a provision of this by-law, the municipality may in writing issue a compliance notice and serve it on the person concerned to take remedial measures.

- (3) The notice of compliance must state—
 - (a) the name and residential or postal address of the responsible person;
 - (b) the requirement which has not been complied with;
 - (c) 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 14.
- (4) The municipality may take such measures as it deems necessary to remedy the situation, including obtaining a demolition order from a competent court, and recover any cost incurred in doing so from the owner or occupier of such premises.
- (5) The municipality may appoint any official to administer the implementation and enforcement of this by-law

11. Demolition order

- (1) A person on whom a demolition order has been served must demolish the wall or fence and remove the materials.
- (2) Should the municipality demolish it, 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 will pay any balance to the owner or occupier of the premises.

12. Authentication and service of documents and notices

- (1) An order, notice or other document requiring authentication must be signed by the municipality.
- (2) Any notice or other document that is served on a person is regarded as having been served when it is served in accordance with section 115(1) of the Local Government: Municipal Systems Act, 2000 ([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.

13. Offences and Penalties

- (1) 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) pretends 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.
- (2) A person who contravenes any provision of this by-law or fails to comply with any notice issued in terms of section 10 commits an offence and shall on conviction be liable to—
 - (a) a fine or imprisonment, or either such fine or imprisonment or to both such fine and such imprisonment and,

- (b) in the case of a continuing offence, to an additional fine or an additional period of imprisonment or to such additional imprisonment without the option of a fine or to both such additional fine and imprisonment for each day on which such offence is continued and,
- (c) a further amount equal to any costs and expenses found by the court to have been incurred by the municipality as result of such contravention or failure.

14. Appeal

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

15. 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.

16. 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) 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.
- (4) A liaison forum or any person contemplated in subsection (2) may on own initiative submit an input to the municipality for consideration.

17. Repeal of by-laws

The By-law Relating to the Control of Boundary Walls and Fences on Streets and Open Places promulgated in Provincial Gazette No. 6067 of 19 September 2003 is hereby repealed.

18. Short title and commencement

This by-law shall be known as the Swartland Municipality: By-law Relating to Walls and Fences, and commences on the date of the publication thereof in the Provincial Gazette.