

LOCAL AUTHORITY NOTICE 815 OF 2023**KING SABATA DALINDYEBO LOCAL MUNICIPALITY:****FENCES AND FENCING BY-LAW**

This by-law is developed under Section 41 of the Municipal Systems Act no 32 of 2000 and provisions of Section 156 of the Constitution of the Republic of South Africa, 1996 the King Sabata Dalindyebo Local Municipality, develops the Fences and Fencing by-law for regulating Boundary walls and Fencing on area of jurisdiction of the King Sabata Dalindyebo Local Municipality:-

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a) INTERPRETATION

In these By-laws, unless the context otherwise indicates- "boundary" means the real or notional line marking the limits of premises.

"Council" means – (a) the KSD Local Municipality council.

(b) its successor in title.

(c) a structure or person exercising a delegated power.

"fence" includes a fence which is not erected on a boundary.

b) PRINCIPLES AND OBJECTIVES

1. The King Sabata Dalindyebo Local Municipality adopts the Fences and Fencing by-law to provide for the identification, control and management of erecting and construction of boundary walls, fences on its area of jurisdiction with the aim of protecting and promoting the interests of all people in the King Sabata Dalindyebo Local by providing, in conjunction with applicable laws, a legal and administrative framework within which the local authority can develop and manage its constitutional and other legislative obligations, including but not limited to its obligations to promote a safe and healthy environment.
2. In the implementation and enforcement of this by-law, the local authority may take into consideration the realities of the King Sabata Dalindyebo Local Municipality area, the different customs, cultures, circumstances, geographical areas, kinds of premises, and kinds of boundary walls.
3. This by-law shall regulate and control boundary excess gate control and ensure prohibition of municipality land being encroached and fenced by local communities.
4. This by-law will be applicable to KSD municipality area of jurisdiction.

c) APPLICATION

- i. 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.
- ii. 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 a public road or residential premises

forming part of any township indicated on a diagram or general plan approved by the Surveyor General.

d) FENCES

- (1) No person may, without the consent of the council –
 - (a) erect or cause, allow or permit to be erected a fence which is more than 1.8 metres height on a boundary of a premises.
 - (b) Alter or cause, allow or permit to be altered or do an addition to an existing fence which is more than 2 metres in height on a boundary of a premises.
 - (c) Erect a boundary wall exceeding 2.4 m high, requires submission of a rational design approved by Agreement' South Africa to accompany submission for council approval.
 - (d) 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 2 metres high and built of brick, cement, concrete or similar material;
 - ii. the electrified fence, electrified railing, or other electrified barrier is designed and installed in accordance with a standard issued in terms of King Sabata Dalindyebo Local Municipality Building Management Act 2019 (Part G, H & K) the person has obtained the prior written consent of the Council in terms of the SPLUMA Act, 2013 (Act 6 of 2013), SANS 10400 and KSD Building Management by-laws 2019.
 - iii. erect or course 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.
 - iv. Consent from other neighbour sharing same boundary line should be submitted on application for construction of boundary wall or fencing.
- (2) A person who wishes to obtain the consent of the Council must submit an application form similar to the form as attached Annexure A, to the Council and the Council may refuse or grant consent.
- (3) Should the Council refuse permission, it must, on request, supply the person in writing with the reasons for the refusal.
- (4) Should the Council grant consent, it may do so subject to provisions of South African Bureau of Standards (SABS) Code No. 1372 and SANS Standard code of practise.
- (5) A person who has obtained consent to erect boundary wall may apply for commencement when ready to start construction. An inspector shall be designated to ensure all minimal standards are adhered to during construction of such boundary wall.
- (6) No person may-

(a) without the consent of the Council first having been obtained, demolish, interfere with or damage a fence for which consent has been granted in terms of subsection (4);

(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) may 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 above natural ground level: or

(ii) sheet iron, corrugated galvanized iron or any other sheeting along or within 4,5 m of any street.

(7) The council may, whenever it appears that, in the interests of safety, vehicular, pedestrian or otherwise-

(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 such wall, hedge or fence to a height specified in such order and being not less than one metre for a distance not exceeding six metres along each side of such corner" in reference to the Mthatha Town Planning Scheme.

(8) 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 authorized official as contemplated in subsection (2).

(9) Should a person fail to comply with a provision of subsection 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 Council may serve a notice of compliance and failure to comply shall lead to legal proceedings.

e) PENALTIES FINES

a) Any person found guilty of a contravention on of these by-laws shall be guilty of an offence and liable on conviction to a fine of **R 4 500.00**.

b)

c) Failure to comply with the requirement of this by-law institute legal proceeding against property, trust, body corporate etc. for application of the demolition order of such boundary wall or fence.

f) NOTICE OF COMPLIANCE AND REPRESENTATIONS

- (1) The notice of compliance state –
- (a) the name and residential address of the affected person;
 - (b) the requirements which has not been complied with;
 - (c) having in detail the measures required to remedy the situation;
 - (d) that the person must within a specified period take measures to comply with the notice and complete the measures before a specified date.
- (2) The Council, when considering any measure or period envisaged in subsection (1)(c) or (d), must have regard to the principles and objectives of these By-laws, the nature of the non-compliance, and other relevant factors.
- (3) Where a person does not make representations in terms of subsection (1), and the person fails to take the measures before the date contemplated in subsection (1)(d), he or she commits an offence, and the Council may, irrespective of any penalty which may be imposed under section 4, act in terms of subsection (5).
- (4) Where person fails to discharge the obligations contemplated in subsection (5), he or she commits an offence and the Council may, irrespective of any penalty which may be imposed under section 4, act in terms of subsection (5).
- (5) The Council 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 Council in accordance with section 6.

g) COSTS

- i. Should a person fail to take the measures required of him or her by a notice of compliance contemplated in section 5, the Council may, subject to subsection (3) recover, as a debt, all costs incurred as a results of it acting in terms of section 5 (5) from that person and may any or all of the following persons and any or all of the following persons:
- (a) the owner of the land, building or premises.
- i. The costs recovered must be reasonable and may include, without being limited to, cost relating to labour, water, equipment, administrative and overhead costs, legal costs, contracted cost and any costs incurred by the Council under section 5.
- ii. If more than one person is liable for costs incurred, the liability must be appointed 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.

h) DEMOLITION ORDER

- a) Shall be carried through declaration by court in failure to honour requirements of this by-law with legal cost being carried out as section 5 by the person responsible of non-compliance.

i) AUTHENTICATION AND SERVICE OF NOTICES AND OTHER DOCUMENTS

- a. A notice issued by the Council in terms of these By-laws is deemed to be duly issued if it is signed by an Officer as delegated by the Council.
- b. Any notice or other document that is served on person in terms of these By-laws is registered as having been duly served-
 - i. when it has been delivered to that person personally.
 - ii. (b) when it has been left at person's place or residence or business in the South Africa with 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, postal or business address in the Republic, and an acknowledgement 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 paragraph (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 the copy is deemed to be service of the original.

(4) When any notice or other document is served on the owner or holder of any property, if is sufficient if that person is described in the notice or other document as the owner, or holder of the property or right in question, and it is not necessary to name that person.

j) APPEAL

- a) A person whose rights are affected by a decision of an official of the Council acting in terms of these By-laws may appeal against that decision by giving written notice of the appeal and reasons to the accounting officer within 21 days of the date of the notification of the decision.
- b) The appeal authority contemplated in subsection (3) must consider the appeal, and confirm, vary or revoke the decision, but no such variation or revocation of a

decision may detract from any rights that may have accrued as a result of the decision.

- c) When the appeal is against a decision taken by-
- i. a staff member other than the accounting officer, the accounting officer is the appeal authority;
 - ii. the accounting officer, the Executive Mayor is the appeal authority.
- d) The appeal authority must commence with an appeal within six weeks of receipt of the notice of appeal and decide the appeal within a reasonable time.

10. IMPLEMENTATION AND ENFORCEMENT

- a) The Council must appoint and mandate officials to administer the implementation and enforcement of these By-laws.
- b) Upon appointment the Council must issue the officials with an identity card.
- c) An official, acting within the powers vested in him or her by these By-laws, must on demand produce the identity card and proof of identity.
- d) An official, within his or her mandate in terms of subsection (1) –
 - i. must monitor and enforce compliance with these By-laws;
 - ii. may investigate an act or omission which on reasonable suspicion may constitute an offence in terms of these By-laws;
 - iii. may, for the purpose of paragraph (a) and (b), enter upon premises on which a business is carried on with aim of ascertaining if an offence in terms of these By-laws has been or is being committed, and
 - iv. may request the owner or occupier to provide such information as he or she deems necessary.
- e) A person commits an offence if he or she-
 - i. hinders or interferes with an official in the execution of his or her official duties
 - ii. falsely professes to be an official.
 - iii. furnishes false or misleading information when complying with a request of an official; or
 - iv. Fails to comply with a request of an official.
- f) A person who contravenes a provision of subsection (5) commits an offence.

11. AVAILABILITY OF THE BY-LAWS

- a. A copy of these by-laws shall be available for inspection at the municipal offices at all reasonable times.
- b. A copy of these by-laws may be obtained in accordance with the provisions of the Council's Manual on the Promotion of Access to Information Act, 2 of 2000.
- c. The copy of these by-laws will also be available on Municipality websites page.

12. SAVING AND TRANSITIONAL PROVISION

An owner or occupier whose premises, at the date of commencement of these By-laws, do not comply with the provisions of these By-laws must, within a period of 12 (twelve) months, ensure that his or her premises comply with the provisions of these By-laws.

13. Short title and commencement

These By-law is called the King Sabata Dalindyebo Local Municipality: Fences and Fencing Bylaws, 2022, and shall commence on a date of publication thereof in the Provincial Gazette.

ANNEXURE A**DRAFT FENCES AND FENCING STANDARD OPERATION PROCEDURES****STAGE 01: NON-COMPLIANCE MONITORING REQUIREMENTS**

- No fencing shall be constructed on KSLDM without consent granted by local authority,
- Consult your municipality before construction, installation of fences within jurisdiction of local authority

STAGE 02: APPLICATION FOR FENCING APPROVAL

A client to submit boundary fencing drawings and compulsory documents for the approval.

(Complete application forms, 4 x set of boundary drawings with 1 x set in colour, copy of title deed, Zoning certificate, Approved rational design for boundary wall exceeding 1,8m height, approval for access gates by Roads and Stormwater. Application to be submitted to the Human Settlements (Building Control Division Office no 234, Munitata Building, 2nd Floor, 54 Corner Sutherland, Mthatha). All boundary fencing designs to be drawn by Professional Registered Architect, Draughtsman.

Once boundary fencing application submitted and received by the local authority.

STAGE 02: ESTABLISHMENT OF THE BUILDING APPROVAL FEES AND REGISTRATION OF THE BOUNDARY FENCING APPLICATION

On submission Building Control official check all information if available completed application forms.

Establishment of the approval fees and invoicing in with Municipality Approved Tariffs.

Proof of Payment for application confirmation.

Once boundary wall designs confirmation of the payment.

Completed application gets registered on the Fencing Register

Once registration of boundary wall application gets complete.

STAGE 03: BOUNDARY FENCING APPLICATION SCRUTINISED

The fencing application gets presented and scrutinised through the building plans committee for evaluation of the following specialist department for compliance and regulation in law relation to SANS application and applicable legislation by the following Divisions:

- KSDLM Spatial Planning.
- KSDLM Roads and Stormwater.
- KSDLM Electricity
- KSDLM Fire Services
- KSDLM Solid Waste.
- ORTAMBO District Municipality Water & Sanitation
- KSDLM Building Control

Circulation process from registration take 14 working days with no defects being highlighted from processing.

Each department must sign off the Scrutiny Slip list the fencing application gets recommended for its approval. In case were defects are highlighted by relevant departments applicable section will detail comment on the scrutiny slip and the defects section will be signed by relevant official only once the defects are rectified by the property owner/Architect.

Query list gets rectified to the applicant for corrections and resubmission of the corrections. Once defects gets rectified, confirmed by relevant department, and signed off therefore building plans are recommended for approval.

Process gets extension to 90 days for rectification and resubmission, circulation for further scrutiny and signed off for approval recommendation.

STAGE 04: APPROVAL/ NOT APPROVAL RECOMMENDATION

Once circulation process gets completed and all stakeholders approve their respective responsibilities, council recommendation for Approval or declination of boundary fencing application.

Notification of approval or declination gets issued for attention of the applicant.

3 X SET OF APPROVED GETS ISSUED TO THE APPLICANT WERE BUILDING PLANS ARE APPROVED.

1 x set colour copy, application forms, comments from respective stakeholders gets filed and archives for records.

Communication of the status of boundary wall application to be communicated **within 5 x working days of completion of scrutiny process.**

ANNEXURE B: FINE SCHEDULE:

**OFFENCES OR PENALTIES FOR CONTRAVENTION OF THE KING SABATA
DALINDYEBO MUNICIPALITY DRAFT FENCE AND FENCING BY-LAW.**

NO	OFFENCE/PENALTIES	FINES
1.	Any person found guilty of a contravention of these by-laws shall be guilty of an offence and liable on conviction.	R4 500,00