

# Upper Hutt City Council

## Public Places Bylaw 2005

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### Explanatory note

This Bylaw is called the Public Places Bylaw 2005 and was made pursuant to Sections 145 and 146 of the Local Government Act 2002.

# 1 Application of Bylaw

- 1.1 This Bylaw applies within the district of Upper Hutt City Council (Council).
- 1.2 The purpose of this Bylaw is to regulate and control a diverse range of activities that can be carried out in or can affect Public Places to ensure that acceptable standards of convenience, safety, visual amenity and civic values are maintained for the wellbeing and enjoyment of the community.

# 2 Commencement

- 2.1 This Bylaw came into force on 11 November 2005.
- 2.2 This Bylaw was reviewed in 2017.
- 2.3 The amendments as a result of that review will commence from 3 November 2017.
- 2.4 This version of the bylaw was reprinted as at 28 October 2020.

# 3 Interpretation

- 3.1 In this Bylaw, unless the context otherwise requires:

**Animal** means stock, poultry and any other vertebrate animal of any age or sex that is kept in a state of captivity or is dependent upon human beings for its care and sustenance.

**Authorised Officer** means any person appointed or authorised by Council to act on its behalf and with its authority.

**Camping** means:

- i. To stay in one or more of the following over at least one night:
  - a tent
  - other temporary structure
  - a caravan
  - a car
  - a campervan
  - a house truck
  - other indoor vehicle used to sleep in whether it is specifically set out for sleeping

and

- ii. does not include:
  - parking a vehicle for less than a night, or
  - recreational activities commonly known as day trip excursions, or
  - resting, other than overnight, or sleeping at the roadside in a caravan or vehicle to avoid driver fatigue.

**Council** means Upper Hutt City Council and any Authorised Officer.

**Drone** means a control-line model aircraft, a free-flight model aircraft, or a remotely-piloted aircraft, as defined by the Civil Aviation Rules.

**Dwelling** or **Dwelling House** includes any house, tent, caravan, vehicle or other structure whether permanent or temporary, and whether attached to the soil or not, used in whole or in part for human habitation and includes the land appurtenant to a dwelling.

**Material** or **Thing** means any material of whatever kind and includes jumbo bins and other containers for waste material, but excludes vehicles.

**Motor Vehicle** and **Vehicle** have the meanings given to them by Section 2 of the Land Transport Act 1998.

**Nuisance** has the meaning given to it by Section 29 of the Health Act 1956.

**Occupier** means the inhabitant or occupier of any property, and in any case where any building, house, tenement or Premises is or are unoccupied, shall be deemed to include the owner.

**Owner** of any property or as applied to any land, building or premises, means any person for the time being entitled to receive the rent of such property, or who would be so entitled if the same were let to a tenant at a rack rent, and where any such person is absent from New Zealand shall include their attorney or agent.

**Person** includes a corporation sole, a body corporate, and an unincorporated body.

**Premises** means any land, dwelling, storehouse, warehouse, shop, cellar, yard, building, or part of the same or enclosed space separately occupied, and all lands, buildings, and places adjoining each other and occupied together, shall be deemed to be the same premises.

**Park** includes all parks, reserves, recreation grounds, gardens and open spaces under the control of Council.

**Public Place** means any place that, at any material time, is under the control of Council and is open to or being used by the public whether free or in payment of a charge, and includes any Road that is not under the control of the New Zealand Transport Agency, and also includes every Park and Akatarawa Cemetery.

**Road** has the meaning given in Section 315 of the Local Government Act 1974 and includes all land lying between the boundaries of a road including footpaths or berms.

**Stock** means:

- a. Any live horse, cattle, sheep, alpaca, llama, bison, donkey, hinny, mule or water buffalo that is not in a wild state;
- b. Any deer, goat, tahr, rabbit, possum or other animal that is kept within a fence or enclosure for domestic or farming purposes.

**Trading** has the meaning in clause 7.

# Part 1 – Public Safety, Convenience and Amenity

## 4 Public Safety

- 4.1 A person shall not in or on any Public Place without the permission of Council:
- a. Deposit in a public litter receptacle any household or trade refuse;
  - b. Interfere with any refuse that is awaiting collection by an authorised collector;
  - c. Drive any vehicle except on a formed Road;
  - d. Cause or allow any Material or Thing to be deposited onto a Public Place or Road or on any area or areas set aside for such purpose;
  - e. Fly from or land any aeroplane including a hot air balloon or hang glider, parachutes or similar, excluding drones, except in an emergency;
  - f. Act or operate any device in a manner which may intimidate, be dangerous or injurious or cause a Nuisance to persons in the Public Place, or damage the Public Place;
  - g. Erect or place any structure on, over or under the Public Place.

Council, in granting such permission, may impose such conditions as it deems necessary.

- 4.2 Where any fence, wall, retaining wall or land adjacent to a Public Place is in a condition or state of disrepair which in the opinion of Council could cause damage or injury to persons passing, Council may give notice requiring the Owner or Occupier to repair or remove the fence, wall or retaining wall, or make the land safe.

- 4.3 Notwithstanding the requirements of any other clause of this Bylaw a Person in any Public Place may only:
- a. Light any fire in fireplaces specially provided, or in appliances designed for outdoor cooking, subject to any restriction imposed by Council or Fire and Emergency New Zealand (FENZ);
  - b. Camp in an area not set aside for the purpose.

## 5 Obstructions and Projections in Public Places

- 5.1 A person shall not:
- a. Obstruct the entrances to or exits from a Public Place;
  - b. Carry out any work on any Motor Vehicle in a Public Place, except in the case of any accident or emergency when repairs are necessary to allow the vehicle to be removed,
  - c. Permit or allow vegetation to encroach onto or over any Public Place that is not a Road so as to obstruct or interfere with the activities and or operation of that public place,
  - d. Put any portico, projecting window, balcony, wall, lamp, door step, cellar door, lamp post, signboard, window shutter, gate post, or other obstruction or projection of any kind whatsoever in, on, over or under a Public Place or in such a position as to interfere with or obstruct in any way the free passage of pedestrians or traffic upon any Public Place.  
**Note:** this restriction shall not apply to any veranda or awning erected pursuant to a requirement of the Council's District Plan.
  - e. No person shall stand on any veranda erected over a Public Place except for the purpose of inspection, maintenance or egress in the case of fire.

## 6 Damage and Use of Public Places

6.1 No person may in a Public Place, without Council's permission:

- a. Damage, interfere with, destroy or remove any grass plot, flower bed, tree, shrub or plant or any inscription or label relating to it;
- b. Pollute, damage, deface or disfigure, apply posters or advertising devices to, or interfere with any ornament, statue, building, structure, or facilities;
- c. Cause or permit to be done any act whatsoever by which damage is caused to any Public Place, or any work or thing in, over or under the Public Place;
- d. Damage or interfere with any natural feature, Animal or plant;
- e. Use any vehicle, or be in control of an Animal in any manner, so that it damages any part of a Public Place;
- f. Drive or park any vehicle in a Public Place except in an area set aside for the driving or parking of vehicles;
- g. Remove or damage any:
  - i. sand, soil or other naturally occurring material found in a Public Place,
  - ii. inscription or label,
  - iii. plant or plants;
- h. Open any drain or sewer on, or disturb or remove the surface of, any Public Place;
- i. Deface or disfigure any Building, structure, ornament or facilities;
- j. Not place or leave on, or cause or permit to be placed or left, any Material or Thing, on any Public Place;
- k. Place deposit or dispose of any non-recyclable material in a receptacle for the collection of recyclable refuse;
- l. Place, deposit or dispose of any recyclable material in a receptacle that is not for the collection of that recyclable material.

## 7 Trading in Public Places

7.1 In this Bylaw trading has the following meaning:

i. Trading includes:

- soliciting any subscription
- collecting donations
- busking
- distributing printed or written material advertising any product, service or entertainment
- displaying for sale or hire any article or goods, and
- the sale or hire of goods of any description.

ii. Trading does not include:

- A service delivery vehicle being used for the purpose of delivering goods and not being used to sell goods to the general public in a Public Place,

- A market, stall or stand that has a licence from Council, or a resource consent, or permission under any other legislation.

- 7.2 No Person may trade in a Public Place without a licence from Council.
- 7.3 An application to trade in a Public Place must contain or be supported by such information as Council may reasonably require in order to determine the precise nature and scope of the proposed trading and to satisfy it as to the suitability of the applicant. Information must include how the Applicant's and Council's obligations under the Health and Safety at Work Act 2015 are to be addressed and a Traffic Management Plan if the Council considers it relevant.
- 7.4 Applications are to be made to the Manager of the specific Public Place as listed in Schedule 1.
- 7.5 Council may prescribe fees for licences from time to time by resolution and will be in addition to any site rental required.
- 7.6 In granting any licence, Council may impose such conditions as it deems necessary.
- 7.7 Every licence holder shall at all times when engaged in trade, carry a licence and show the licence to an authorised officer on request.
- 7.8 Notwithstanding the licence conditions, licence holders shall, upon being requested to do so by an Authorised Officer, move to another site or position as directed by the Authorised Officer.
- 7.9 No licence issued under this Bylaw shall be transferable to any other person.

## 8 Vehicle Crossings

- 8.1 Any person wishing to construct, repair, remove or widen any vehicle crossing shall obtain a Carriageway Access Request and ensure that such work is done so that when completed the vehicle crossing complies with the Council's Standard (available on request from the Council).
- 8.2 No person shall drive, ride, propel, or wheel any motor vehicle across any footpath or water channel in any Public Place otherwise than upon a crossing properly constructed under the provisions of this clause.
- 8.3 If in the opinion of Council any crossing is in a bad or unsafe state of repair, Council may by notice in writing, require the owner of the land which the crossing provides access to, to repair, reconstruct, or renew such crossing to the satisfaction of Council. Every such Owner or Occupier who fails to comply with any such notice within the period specified shall commit an offence against this Bylaw.

## 9 Assembly

- 9.1 When a temporary road closure is not required in order to minimise disruption to pedestrians, vehicular traffic and other users, the organiser of an event, demonstration, competition, parade or procession that is likely to interfere with traffic or pedestrian entrance, exit or thoroughfare in a Public Place shall notify Council and provide Council with a traffic management plan in sufficient time to enable Council to notify Police and emergency services.

## 10 Restrictions on use of Barbed Wire and Electrified Fences

- 10.1 Except with the permission of Council, no person shall erect or permit to be erected any electrified fencing or barbed wire along, or within one metre of any boundary line between any land or building on the one side, and any Public Place on the other side.

- 10.2 Provided that clause 10.1 shall not:
- a. Prohibit the placing of such barbed or razor wire at a height of not less than two metres or electrified fencing not less than three metres from the level of the ground of any such Public Place; or
  - b. Apply within any area which has a predominantly rural character except when the fence abuts or adjoins a footpath.
- 10.3 Council may from time to time specify conditions that will apply to temporary electric fences.

## 11 Road and Building Identification

- 11.1 Council shall have the exclusive right to cause to be painted or affixed on a conspicuous part of a building, the name of the road, private road or Public Place to which it has frontage.
- 11.2 Notwithstanding that a building or property is identified by other means, the owner or occupier of every building or group of buildings forming part of a complex or of the property shall mark such building or complex with numbers. Numbers shall be allocated or approved by Council and shall be displayed so as to be readily visible from the road to which it has frontage.
- 11.3 Numbers required by clause 11.2 shall be maintained by the Owner or Occupier in such a manner as to readily identify the building or property at all times.
- 11.4 Council shall have power at any time to alter the number of any building or property where in the Council's opinion it may be necessary or advisable to do so.

## 12 Animals in Public Places

- 12.1 No person shall take or allow any animal under their care or control onto any Public Place if Council has by resolution publicly notified, prohibited entry of that type of animal to that Public Place.
- 12.2 Any person having control of stock in any Public Place shall ensure that:
- a. The stock is kept under proper control, with consideration for other persons using the Public Place.
  - b. The stock is driven in such a manner and by such points of access to an exit from the road as to ensure that damage is not caused to the Public Place.
  - c. Excrement, urine or other matter deposited upon the Public Place from such stock is removed, and disposed of in an appropriate manner.
- 12.3 Any person being the Owner of, or having control of, any horse in a Public Place shall as soon as is reasonably practicable remove from any Public Place any faeces deposited by that horse.
- 12.4 Every person being the Owner of, or having the care, custody or control of, any Animal shall properly supervise and control the Animal to prevent the same from wandering or being at large in any Public Place unless the area has been set aside for such purpose.

## Part 2 - Penalty for Breach of Bylaw

### 13 Offences and Penalties

13.1 A Person who fails to comply with:

- i. this Bylaw; or
- ii. a condition of any Council permission or consent granted under this Bylaw; or
- iii. a rule of entry and use in respect of a specific Public Place;

commits a breach and is liable to a penalty under the Local Government Act 2002 or the Health Act 1956.

13.2 A person who breaches this Bylaw may be liable on conviction for a fine of up to \$20,000 under Section 242(4) of the Local Government Act 2002.

### 14 Exemptions

14.1 It is a defence to a breach of this Bylaw if a Person has obtained prior written consent of Council to do the act that is in breach of this Bylaw, or the act that is the breach is permitted by other legislation.

## Schedule 1

Applications for licences to trade in Public Places must be submitted to the:

- a. Library Manager for a licence to trade in a Council library; or
- b. Recreation Services Manager for a licence to trade in H<sub>2</sub>O Xtreme; or
- c. Parks and Reserves Manager for a licence to trade in the cemetery, a park, reserve or other Council owned property that is not described in a or b above or is not a road; and
- d. Retail and Business Liaison Officer for Roads and all other Public Places.