

Public Places Bylaw

Date made:	17 December 2015
Commencement:	21 December 2015
Amendments:	17 October 2024
Next review date:	17 October 2034
Review frequency:	No later than 5 years after the bylaw was first made, then every 10 years after the last review, as per section 158 and 159 of the Local Government Act 2002.
Relevant legislation:	This bylaw is made under the Local Government Act 2002, the Health Act 1956 and the Litter Act 1979.

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PART 1: INTRODUCTION

1.0 Short title, commencement and application

This Bylaw shall be known as the Whakatane District Council Public Places Bylaw.

This Bylaw comes into force on 21 December 2015.

This Bylaw applies to public places in the Whakatāne District.

2.0 Purpose

The purpose of this Bylaw is to:

- a) protect the public from nuisance;
- b) protect, promote and maintain public health and safety;
- c) minimise the potential for offensive behaviour in public places;
- d) protect the misuse of or damage to public places.

3.0 Interpretation

Authorised officer means an employee, or a contractor of the Whakatāne District Council appointed or authorised to carry out general or specific duties arising from any of the provisions of this Bylaw, and includes an Enforcement Officer.

Council means the Whakatāne District Council.

Enforcement Officer means any person appointed by Council for the purpose of enforcing the provisions of the Bylaw as defined in section 5 of the Local Government Act 2002.

Nuisance has the same meaning as defined in Section 29 of the Health Act 1956 and includes a person, animal, thing, or circumstance causing unreasonable interference with the peace, comfort, or convenience of another person whether or not that person is in a public place.

Public Place means a site that is open to or used by the public, with or without payment of a charge, and which is owned, managed, maintained, or controlled by or on behalf of the Council (e.g. parks, reserves, footpaths, roads, grass berms, garden, recreational grounds, sports grounds, land, cemetery, reserve, park, access way, Council operated or controlled facility that is open for public use (excluding any property subject to a lease to a third party), thoroughfare and walkway of a public nature).

Poster means a sign consisting of a placard posted or displayed in a public place as an announcement of a function or event.

Premise 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.

Vehicle means:

- a) a contrivance equipped with wheels, tracks, or revolving runners on which it moves or is moved; and
- b) includes a hovercraft, a skateboard, in-line skates, and roller skates; but
- c) does not include—
 - (i) a perambulator or pushchair:
 - (ii) a shopping or sporting trundler not propelled by mechanical power:
 - (iii) a wheelbarrow or hand-trolley:
 - (iv) a pedestrian-controlled lawnmower:
 - (v) a pedestrian-controlled agricultural machine not propelled by mechanical power:
 - (vi) an article of furniture:
 - (vii) any other contrivance specified by the rules set out in the Land Transport Act not to be a vehicle for the purposes of this definition:
 - (viii) any rail vehicle.

Vehicular crossing means a formed access for vehicles to enter or leave private land from or to a road.

Written permission means a written approval, permit, licence, or consent provided by Council or as delegated, and includes any conditions to be met by the applicant.

PART 2: BYLAW CLAUSES

4.0 Public safety and nuisances

4.1 Except with the prior written permission of the Council or an authorised officer, and in accordance with any conditions that may be required, a person shall not:

- a) ride or use a skateboard, roller skates, roller blades, scooter or bicycle or similar device in such a way as to be dangerous or cause a nuisance or damage the public place;
- b) set off any fireworks or explosive material in or on any public place or so near to any such public place as to endanger, annoy or frighten passers-by along such public place;
- c) light any fire in or on any public place. This provision shall not apply to barbeques (meaning any fixed or portable electric, or gas fired appliance or device, designed, or intended for the cooking of food); or emergency flares; or fires lit in accordance with the Beaches Bylaw; and subject to prohibitions or restrictions on the lighting of fires imposed by Fire and Emergency New Zealand.

Refuse and Offensive Material

- d) deposit in or around a public litter receptacle any household, business or trade refuse;
- e) cause or allow any material or thing to be deposited or dropped onto a public place or road;
- f) dispose of the body or part of the body of any animal in their possession into a public place or into any water body or onto any bank thereof;
- g) deposit, discharge or leave any offensive or dangerous matter or cause pollution of any river, stream, pond, lake, watercourse, or open drain;

Soliciting, Advertising and Busking

- h) solicit any subscription, collection or donation in a manner that creates a nuisance;
- i) preach, lecture, sing, busk, or play a musical instrument in a manner that creates a nuisance;
- j) use any loud speaker or other broadcast system or similar device in a manner that creates a nuisance;
- k) distribute any printed or written material advertising any product, service or entertainment in a manner that creates a nuisance.

5.0 Obstructing public places

5.1 Except with the prior written permission of the Council or an authorised officer, and in accordance with any conditions that may be required, a person shall not:

- a) carry out any work on any vehicle in or on any public place, except in the case of an accident or emergency when immediate repairs are necessary to allow the vehicle to be removed;
- b) loiter in or remain in or on any public place in a manner that causes a nuisance after being directed to move on by an authorised officer;

Parking on Grass Verge or Berms

- c) stop, stand or park a vehicle on the grass verge or berm, flower bed or shrubbery laid out on any road or on land vested in or under the control of Council, or on a median strip or traffic island;
- d) park any machinery, equipment, materials or waste disposal bins on any road or public place;
- e) erect, place or use any stationery engine, concrete mixer, air compressor, crane, hoist or any other machinery in or on any public place;

Overhanging Vegetation

- f) no owner or occupier of land shall allow vegetation growing over any public place to overhang or encroach by their roots or branches on, above or across any public area so as to obstruct, interfere with, cause damage or injury to any person or traffic in that place;
- g) at the discretion of Council or an authorised officer, any vegetation referred to in clause 5.1(f) may be partly or fully removed, or trimmed back to the property boundary. The Council's costs may be recovered from the property owner.

6.0 Damage to public places

- 6.1 Except with the prior written permission of the Council or an authorised officer, and in accordance with any conditions that may be required, a person shall not:
- a) pollute, damage, deface or disfigure, apply graffiti, posters or advertising to, or interfere with any ornament, statute, building, structure or facilities or anything in or constructed on or standing on any public place;
 - b) cause or permit to be done any act whatsoever which causes damage to any public place, or any work or thing in, on, over or under the public place;
 - c) damage or interfere with any natural feature, animal or plant in or on any public place;
 - d) use any vehicle in any manner so that it damages any part of a public place.

7.0 Parades and assembly

- 7.1 Except with the prior written permission of the Council or an authorised officer, and in accordance with any conditions that may be required, a person shall not in any public place:

- a) organise or take part in any assembly (including parades or processions) or combine with other persons in such a way as to impede pedestrian or vehicular traffic to or along any public place or to any shops or premises facing onto any public place.

7.2 The written permission referred to in clause 7.1 will not be unreasonably withheld. Reasons shall be provided in a written decision where permission is refused. Permission may be refused in circumstances where the Council reasonably believes the activity will or is likely to:

- a) cause a nuisance or;
- b) endanger public health and safety (including traffic safety).

Explanatory note

This Bylaw will be applied in accordance with the New Zealand Bill of Rights Act 1990, which protects various rights, including freedom of expression. It is important to note that taking part in a public protest does not automatically qualify as a nuisance.

8.0 Posters and display boards

8.1 The Council may erect or approve display boards in any public place for the purpose of allowing posters to be displayed announcing forthcoming events.

8.2 Any poster must be removed within three days of the advertised event concluding. The poster must be removed by the person running the event, or their agent. Should that person not remove the poster(s), Council staff may remove them at the expense of the person or organisation running the event.

9.0 Buildings and structures

9.1 Except with the prior written permission of the Council or an authorised officer and in accordance with any conditions that may be required, or where provided for in the District Plan or permitted by any other Bylaw, a person shall not:

- a. erect or place any structure on, over or under any public place;
- b. put any portico, projecting window, balcony, wall, lamp, doorstep, cellar door, 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 the free passage of pedestrians or traffic upon on or in any public place;
- c. erect or maintain or cause to be erected or maintained any awning over any public place, or hang any awning, blind or screen from any portico on any public place;
- d. cause or allow the drippings from the eaves or other projections of any building or other structure to fall upon any public place;

- e. omit or neglect to secure and maintain the foundations of any building or any wall or fence, or cause or permit any encroachment by any building, wall, or fence abutting on any public place in a way that the public may be damaged or obstructed;
 - f. mix concrete or carry out any other work upon any public place so as to deface or obstruct such public place;
 - g. fail to keep in good repair any rail, gate, fence or cover over any area or entrance or lighting place to any cellar, or any other place opening into or on or over any public place, or keep open for more than a reasonable time for the taking in and out of articles, any entrance to any such area, cellar, or other place, or omit to protect such entrance when open for use;
- 9.2 If any structure or any part thereof is erected, constructed or placed upon, under, over or across any public place, the Council may, by written notice, require the owner of such structure to remove the structure or part thereof.
- 9.3 The notice referred to in clause 9.2 may require such precautions to be taken as the Council determines necessary to ensure public safety.

10.0 Building and excavation work

- 10.1 Except with the prior written permission of the Council or an authorised officer and in accordance with any conditions that may be required, no person shall carry out building work or excavations on or in a public place or where any public place may be interfered with or damaged as a result of the works.
- 10.2 No written permission issued under clause 10.1 shall be transferable to any other person without the consent of the Council or an authorised officer.
- 10.3 If any building or excavation work is carried out on a public place, or adversely affects a public place, without the Council's prior written permission, the Council may remove or alter that work. The Council's costs may be recovered from the person who undertook the work, or the property owner for whom the work was being done.
- 10.4 In all cases where building or excavation work is being carried out, the applicant for the requisite consents shall also make any necessary application for the permit for the scaffolding, gantry, hoarding, or barricade to be erected in connection with such building, alterations, repairs or excavations.
- 10.5 The person(s) responsible for any works permitted under this Bylaw shall take all precautions for guarding against injury to passers-by as may be necessary, including the provision of adequate lighting where the danger remains during the hours of darkness.
- 10.6 Nothing in this Bylaw relieves any person from responsibility for compliance with all of the provisions of this Bylaw, any other Bylaw, or any relevant or applicable legislation or regulation.

11.0 Fencing

- 11.1 Where a hazard to public safety exists adjacent to a public place, the Council or authorised officer may give written notice to the owner or occupier of the hazardous land requiring them to construct a fence or a retaining wall to protect the public from that hazard.
- 11.2 Where an existing fence or retaining wall adjacent to a public place is in an unsafe condition, Council may require the owner or occupier to remove or make safe the structure.

12.0 Restrictions on use of barbed wire and electrified fencing

- 12.1 Except with the prior written permission of Council or an authorised officer and in accordance with any conditions that may be required, no person shall erect any barbed or razor wire within one metre of the boundary of a public place unless it is two metres or higher above the ground level of the public place.
- 12.2 No person shall erect or repair any electrified fencing on a boundary adjoining a public place in any area zoned for residential activity or mixed use in the Whakatane District Plan. The owner or occupier of the land adjacent to the public place shall be responsible for complying with this Bylaw.
- 12.3 Clauses 12.1 and 12.2 shall not apply within any area zoned "rural" in the operative Whakatāne District Plan, except when the fence can be touched from a public footpath.

13.0 Vehicular crossings

- 13.1 Except with the prior written permission of the Council or an authorised officer and in accordance with any conditions that may be required, no person shall construct, repair, remove, widen, or narrow any vehicle access.
- 13.2 Before granting permission, the Council will consider what is reasonably necessary to:
- a) ensure the safe and convenient use of the road by pedestrians and vehicles; and
 - b) protect the road (including any footpath or berm) adjacent to the vehicle access; and
 - c) comply with any Council Policy or District Rule Plan in force at the time.
- 13.3 Following approval of the application and after the applicant has paid to the Council the fees required, the work shall be carried out by the applicant or their agent in accordance with the specifications and policy set by the Council and at the full cost of the applicant.
- 13.4 The authorised work shall be carried out as soon as reasonably practicable.

- 13.5 If in the opinion of the Council or an authorised officer, any vehicle crossing is in a bad or unsafe state of repair, the Council or an authorised officer may by written notice require the owner or occupier of the land which the crossing provides access to repair, reconstruct or renew such crossing to the satisfaction of the Council or an authorised officer, or to pay such sum of money as shall be necessary in the opinion of the Council or an authorised officer to repair, reconstruct, or renew such crossing.
- 13.6 Where a permanent vehicle crossing is not required, but access to a construction site or for any other purpose is required, a temporary vehicle crossing is necessary.
- 13.7 Except with the prior written permission of Council or an authorised officer and in accordance with any conditions that may be required, no person shall use any temporary vehicle crossing.

14.0 Naming of streets

- 14.1 Except with the prior written permission of Council and in accordance with any conditions that may be required, no person shall give any name to or affix, set up, or paint any name on any street, private street, or public place.
- 14.2 Every person shall be guilty of an offence against this Bylaw who wilfully or maliciously destroys, pulls down, obliterates, or defaces the name of any street, or the number of any property or building, or paints, affixes or sets up any name of any street or any number to any building, contrary to the provisions of this Bylaw.

PART 3: OTHER MATTERS

15.0 General offence and penalties

- 15.1 Every person who fails, refuses, or neglects to do anything required to be done, or does anything prohibited by this Bylaw commits a breach of this Bylaw and is liable to a penalty under section 242 of the Local Government Act 2002.
- 15.2 Council may, pursuant to section 163 of the Local Government Act 2002:
- a) remove or alter any work or thing that is, or has been, constructed, deposited, stored, or accumulated in breach of this bylaw; and
 - b) recover the costs of removal, repair or alternation from the person who committed the breach or was responsible for the activity creating the breach.

16.0 Exclusions

- 16.1 This Bylaw does not apply to any person who carries out an act that is done by a member of the emergency services in the course of carrying out their duties.

17.0 Fees

- 17.1 Council may in accordance with section 150 of the Local Government Act 2002 prescribe fees or charges for any written permission, certificate, licence, approval, permit, consent form, or inspection made by Council under this Bylaw as set out in Council Fees and Charges Schedule.
- 17.2 Where a fee has been paid under clause 17.1 for a service which has not been given, the Council may provide a refund, a remission, or waiver of such fee, or portion of it as the Council may determine.