



Introductory **BYLAW**

2021



NAPIER
CITY COUNCIL
Te Kaunihera o Ahuriri

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Napier City Introductory Bylaw 2021

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1. Scope

- 1.1** The Local Government Act 2002 (the Act) gives authority to the Napier City Council to adopt bylaws to:
- protect the public from nuisance;
 - protect, promote and maintain public health and safety; and
 - minimise the potential for offensive behaviour in public places.
- 1.2** Specific bylaw-making powers are referred to in the individual bylaw to which they are applicable. In all other cases the bylaw is made under the general powers as set out above.
- 1.3** The purpose of this bylaw, made under the provisions of the Act, is to identify and clearly interpret those terms and expressions that are used throughout all Napier City Council bylaws.
- 1.4** This bylaw outlines serving of orders and notices, powers of delegation and entry, suspension and revocation of licences, removal of works executed contrary to the bylaw, fees and charges, offences, breaches, and penalties for breach of bylaws.
- 1.5** The provisions of the Napier City Introductory Bylaw 2021 are incorporated into and form part of all Napier City bylaws, so far as they are applicable and are not contrary to the provisions of that bylaw.
- 1.6** Definitions not included within this bylaw are contained within the particular bylaw to which they apply.
- 1.7** This bylaw comes into force on 21st December 2021.
- 1.8** The Council must use the Special Consultative Procedure set out in the Act when making, amending or revoking bylaws made under the Act unless:
- The bylaw does not concern a matter identified in the local authority's policy under section 76AA of the LGA as being of significant interest to the public; and
 - The local authority does not consider that there is, or is likely to be a significant impact on the public due to the proposed bylaw or changes to or revocation of the bylaw

- 1.9 However, where the changes or corrections required to be made are minor or necessary to correct an error and do not affect:
- a) An existing right, interest, title, immunity, or duty of any Person to whom the bylaw applies; or
 - b) An existing status or capacity of any Person to whom the bylaw applies;
- Council may make those minor changes or corrections by resolution publicly notified.

2. Definitions and Interpretation

- 2.1 For the purposes of this bylaw, unless the context requires otherwise, the following definitions apply:

The **ACT** means the Local Government Act 2002 and its amendments.

AGENT means a Person or business authorised to act on another's behalf.

ANIMAL means any member of the animal kingdom, including any mammal, bird, finfish, shellfish, reptile, amphibian, insect or invertebrate and includes the carcass of constituent parts thereof but does not include human beings.

APPROVED/APPROVAL means approved by the Council or by any Authorised Officer or Authorised Agent on behalf of the Council in writing.

AUTHORISED AGENT means any Person who is not an employee of the Council but is authorised in writing by the Chief Executive or by the Council to act on its behalf and with its authority and includes a member of the police.

AUTHORISED OFFICER means any Person who is an employee of the Council appointed or authorised in writing by the Chief Executive or by the Council to act on its behalf and with its authority.

BYLAW means a bylaw of the Council for the time being in force made under the provisions of any Act or authority enabling the Council to make bylaws.

CHIEF EXECUTIVE means the principal administrative officer of Council, irrespective of the designation given to the officer, and includes any Person for the time being appointed by the Council to perform the duties or a particular duty of the chief

executive.

COUNCIL means the Napier City Council or any Authorised Officer.

CUSTODIAN means any Person for the time being appointed by Council to control, manage or to assist in the control and management of any Premises belonging to or under the jurisdiction of the Council.

DISTRICT has the meaning assigned to that term in section 5(1) of the Act.

DWELLING or **DWELLINGHOUSE** includes any house, tent, 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 of the dwelling.

ENFORCEMENT OFFICER has the meaning assigned to that term in section 5(1) of the Act.

FOOTPATH, PRIVATE ROAD and **PRIVATEWAY** have the meaning assigned to them in section 315(1) of the Local Government Act 1974.

INFRINGEMENT OFFENCE means an offence specified as such in regulations made under section 259(a) of the Act (regulations prescribing breaches of bylaws that are infringement offences under the Act).

LICENCE means a Licence or Approval issued under a Bylaw.

LOCAL AUTHORITY means the Napier City Council.

MOTOR VEHICLE has the meaning assigned to that term in section 2(1) of the Land Transport Act 1998.

NUISANCE has the meaning assigned to that term in section 29 of the Health Act 1956.

OCCUPIER means the Person entitled to occupy or use any Premises and, in any case where any Premises are unoccupied, includes the Owner.

OFFENCE includes any act or omission in relation to a Bylaw for which any Person can be punished either on indictment or by summary process.

OWNER as applied to any Premises means any Person for the time being entitled to receive the rent for such Premises, or who would be so entitled if it were let to a tenant

at a rack rent and, where any such Person is absent from New Zealand, includes their attorney or Agent.

PERSON includes a natural Person and also a body of Persons, whether corporate or unincorporated.

POULTRY means any live domesticated or farmed bird including but not limited to: fowl, goose, duck, pigeon, turkey, parrot, budgerigar, pheasant, canary, ostrich, guinea fowl or emu.

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

PUBLIC NOTICE has the meaning assigned to that term in section 5(1) of the Act.

PUBLIC PLACE means a place that is open to or is being used by the public, whether free or on payment of a charge and whether any owner or occupier of the place is lawfully entitled to exclude or eject any person from it.

RESERVE has the meaning assigned to that term in section 2(1) of the Reserves Act 1977.

ROAD has the meaning assigned to that term in section 2(1) of the Land Transport Act 1998.

STOCK means cattle, sheep, horses, deer, donkeys, mules, goats, pigs, alpacas, llamas or other animal (excluding dogs), including their young, kept in captivity or farmed and dependent on humans for their care and sustenance.

TERRITORIAL AUTHORITY has the same meaning assigned to that term in section 5(1) of the Act.

TRAILER has the same meaning assigned to that term in section 2(1) of the Transport (Vehicle and Driver Registration and Licensing) Act 1986.

VEHICLE has the same meaning assigned to that term in the Land Transport Act 1998.

WATERWORKS has the meaning assigned to that term in section 5(1) of the Act.

WRITING has the meaning assigned to that term by section 29 of the Interpretation Act

1999 and **WRITTEN** has the corresponding meaning.

- 2.2** In all Bylaws the singular includes the plural and the plural includes the singular.
- 2.3** Words referring to any district, locality, place, Person, office, officer, functionary, party or thing means each district, locality, place, Person, office, officer, functionary, party, or thing to whom or to which the provision applies.
- 2.4** Every schedule to this bylaw forms part of this bylaw and may be altered from time to time in accordance with the Act.

3. Officers to Continue in Office

- 3.1** All officers appointed by the Council at the time this bylaw takes effect are deemed to have been appointed under this bylaw.

4. Serving of Orders and Notices

- 4.1** Except as otherwise provided for in any other enactment where any notice, order, or other document is required to be served on any Person for the purposes of this bylaw, service may be effected by delivering it personally to the Person or by sending it by registered post to that Person's last known residential or business address.
- 4.2** If the Person is absent from New Zealand, the order, notice or other document may be served on the Person's Agent in the manner referred to in 4.1.
- 4.3** If the order, notice or other document relates to Premises, then the order, notice or other document should be served on the Person who owns that land or buildings. However, if that Person is not known or is absent from New Zealand or has no known Agent in New Zealand, the order or notice may be:
 - a) Served on the Person who is occupying the Premises; or
 - b) If there is no Person in occupation, put up on some conspicuous part of the Premises.

It is not necessary in that notice to name the Occupier or the Owner of that Premises.

- 4.4** Where an order or notice is sent by registered post, the order or notice will be sent so as to arrive no later than the latest time on which such order or notice is required to be served.
- 4.5** Any order or notice issued must state the time within which the remedial action is to be carried out. The time period may be extended from time to time by written authority of an Authorised Officer.

5. Powers of Entry for Purpose of Bylaws

- 5.1** Except where provided for under any other enactment, sections 171, 172, 173, and 182 of the Act apply in relation to any power of entry under this bylaw.

6. Licences

- 6.1** Any Person doing or proposing to do anything or to cause any conditions to exist for which a Licence from the Council is required under this Bylaw must first obtain a Licence from the Council or any Authorised Officer.
- 6.2** Every application for a Licence must be accompanied by the relevant fee. If the application for the licence is declined, the fee will be refunded less any reasonable processing costs. Where a fee has been paid for which no service has been given, the Council may provide a refund or waiver of all or part of the fee as it may determine.
- 6.3** No application for a Licence, and no payment of or receipt for any fee paid in connection with such application confers any right, authority or immunity on the Person making that application or payment.
- 6.4** Any Licence is deemed to be issued in compliance with this Bylaw if it is issued by an Authorised Officer, and every licence is subject to any conditions that are imposed.
- 6.5** Unless this Bylaw provides otherwise, every Licence and every application for a Licence must be in such form as prescribed from time to time by the Council.
- 6.6** Unless this Bylaw provides otherwise, a licence is not transferable and no such licence authorises any Person other than the licence holder to act in any way under its terms or conditions.

- 6.7** If, following a request for payment, any licence fee due remains unpaid, the licence will immediately cease to have effect.

7. Suspension and Revocation of Licences

- 7.1** Unless this Bylaw provides otherwise, should the Licence holder be convicted of any offence relating to the Licence holder's suitability as a licensee the Council may immediately revoke or suspend the Licence for any specified time.
- 7.2** The Council may by notice in writing call upon the Licence holder to appear before the Council and give reasons why the Licence should not be revoked or suspended if any of the following are brought to the notice of the Council:
- a) The Licence holder -
 - i) Has acted or is acting in a manner contrary to the true intent and meaning of this Bylaw;
 - ii) Has failed to comply with any of the conditions of the Licence; or
 - iii) Is in any way unfit to hold a licence;
 - b) That the Premises for which the Licence was issued is being used for any purpose other than that stated in the Licence or is in a state of disrepair contrary to the terms of the Licence; or
 - c) That the Bylaw is not being properly observed.
- 7.3** The Council may, if it considers the allegations correct or if there is no appearance by the Licence holder, revoke or suspend the licence for any specified time.
- 7.4** A Person whose Licence has been suspended under 6.1 or 6.3 is, during the period of that suspension, deemed to be unlicensed.

8. Dispensing Power

- 8.1** Where in the opinion of the Council full compliance with any of the provisions of this bylaw would needlessly or injuriously affect any Person, or the course or operation of the business of any Person or bring loss or inconvenience to any Person without any corresponding benefit to the community, the Council may, on the special application of that Person, dispense with the full

compliance with the provisions of this bylaw, provided that any terms or conditions, if any, that Council may deem fit to impose must be complied with by that Person.

9. Forms

9.1 Wherever forms are prescribed in Bylaws, slight deviations to the same effect and not calculated to mislead will not invalidate those forms.

10. Fees and Charges

10.1 The Council may prescribe fees or charges payable for any certificate, authority, approval, permit or consent from, or inspection by the Council in accordance with section 150 of the Act.

10.2 Where a fee has been paid under 10.1 for a service that has not been given, the Council may provide a refund, remission, or waiver of any such fee, or portion of it, as the Council may determine.

11. Offences and Breaches

11.1 Any Person commits a breach of this Bylaw who:

- a) Does, or causes to be done, or knowingly permits to be done, anything whatsoever contrary to or otherwise than as provided by this Bylaw;
- b) Omits or neglects to do, or knowingly permits to remain undone, anything which according to the true intent and meaning of this bylaw ought to be done by them at the time and in the manner provided by this bylaw;
- c) Does not refrain from doing anything which under this bylaw they are required to refrain from doing;
- d) Knowingly permits any condition or things to exist contrary to any provision contained in this Bylaw;
- e) Refuses or neglects to comply with any notice given to that Person under this bylaw;
- f) Obstructs or hinders any Authorised Officer of Council in the performance of any duty to be discharged by that officer under or in the exercise of any power

conferred upon that officer by this Bylaw;
or

g) Fails to comply with any notice or direction given under this bylaw.

11.2 Where it is suspected that any Person has committed a breach of this bylaw, that Person must, on the direction of an Authorised Officer, provide their full name and address.

12. Removal of Works

12.1 Where a notice or order served under 4 has not been complied with, the Council or any Authorised Officer or Authorised Agent of the Council may remove or alter a work or thing that is or has been constructed in contravention of any Bylaw (refer to section 163 of the Act).

12.2 The Council may recover all costs directly or indirectly incurred on the removal or alteration of the work or thing from the Person who committed the breach referred to in 12.1.

12.3 The exercise of the authority referred to in 12.1 and 12.2 does not relieve any such Person from liability for any other breach of the Bylaw.

12.4 If, however, the breach is such that public health or safety considerations or risk of consequential damage to Council assets are such that delay would create unacceptable results, the Council may take immediate action to rectify the defect and recover all reasonable costs (as set out in 12.2).

12.5 On payment of all Council's costs, including storage where applicable, the lawful owner may claim any object, material or thing removed under 12.1.

13.6 If not claimed within a reasonable time, the Council may dispose of any object, material or thing as it sees fit and apply the proceeds to meet any outstanding costs. The lawful owner will be entitled to claim any residual sum.

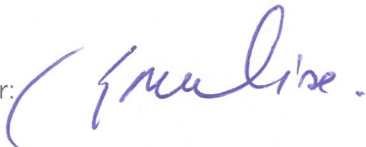
13. Penalties for Breach of Bylaws

- 13.1** Every Person who commits an offence against this bylaw is liable to:
- a) The penalty set out in section 239 of the Act; or
 - b) Where another enactment specifies the penalty for a breach of the bylaw, that other penalty (for example Schedule 4 of the Land Transport Act 1998).
- 13.2** In accordance with section 162 of the Act, the Council may apply to the District Court for an injunction to restrain a Person from committing a breach of this Bylaw.

14. Date Bylaw Made

This bylaw was made by the Napier City Council at a meeting of the Council on 21st December 2021.

Sealed with the Common Seal of the Napier City Council in the presence of:

Mayor: 

Chief Executive: 

Date: **21st December 2021**

