

# Hamilton City Council BYLAWS

Approved By: Council	Date Adopted: 26 February 2015
Date In Force: 5 March 2015	Review Date: 5 March 2020 (revised 2 August 2018 removing FENZ Act inconsistencies)

## HAMILTON OPEN AIR BURNING BYLAW 2015

This bylaw is made by the Hamilton City Council under the powers given to it by the Local Government Act 2002 and any amendments to that act.

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### 1. PREAMBLE

1.1. This bylaw is made under powers given to Hamilton City Council by the Local Government Act 2002. It applies to Hamilton City.

### 2. SHORT TITLE

2.1. This bylaw may be cited as the Hamilton Open Air Burning Bylaw.

### 3. PURPOSE

- 3.1. The purposes of this bylaw is to protect and maintain public health and safety by:
- a) Enabling Council to exercise control over the lighting of fires in the open air and to prevent fires in the open causing a nuisance; and by
  - b) Preventing the spread of fires in periods of extremely dry weather.

### 4. DEFINITIONS

4.1. In this bylaw except where inconsistent with the context:

<b>Acceptable means of fire suppression</b>	Means a hose connected to a reticulated water supply or another effective means of fire suppression having regard to the type and size of fire.
<b>Authorised officer</b>	Means any person authorised under the Local Government Act 2002 to exercise the powers in clause 6 of this bylaw. Includes the employees and officers of Fire and Emergency New Zealand and enforcement officers appointed by Waikato Regional Council under the Resource Management Act 1991. Includes Enforcement Officer.
<b>Barbecue</b>	Means any fixed or portable gas or solid fuel burning equipment or device designed or intended for the cooking of food in the open air.
<b>Brazier</b>	Any fixed or portable solid fuel or gas fired equipment or appliance designed for heating and used outdoors.
<b>Combustible material</b>	Includes but is not limited to any materials, rubbish or any other matter which is flammable or capable of being burnt or consumed by fire
<b>Enforcement officer</b>	Means a person appointed by Council to exercise the powers of an enforcement officer in relation to offences against the Local Government Act 2002, including enforcement of Council's bylaws.
<b>Fire ban</b>	Means the period of time, whether fixed or indefinite, during which the lighting of fires in the open air is prohibited in accordance with 6.1.
<b>Incinerator fire</b>	Means a fire within an incinerator.
<b>Incinerator</b>	Means a container used for burning of waste material, which is made of non-combustible materials and which has a grate and a lid or spark arrester.
<b>Nuisance</b>	Any smoke, odour, debris or fumes produced by a fire in such quantity or of such nature as to cause unreasonable inconvenience or annoyance or harmful effects to any person.

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**Occupier** Means in relation to any premise, any owner, tenant, agent, manager, foreperson or other person who appears to the Authorised Officer to be acting in the general management or control of the premise.

**Open air** Means in the open whether on or above ground level in any area of Hamilton.

In relation to fires, means otherwise than:-

- (a) within a fireplace (including any enclosed fireproof place or incinerator) constructed and maintained in a dwelling or other structure to the approval of the public or local authority having jurisdiction to issue the relevant permit to build such dwelling or structure or to authorise the construction or installation of the fireplace;
- (b) Within a barbeque, brazier, or incinerator;
- (c) A traditional cooking fire.

**Premises** Means any private land that is occupied or unoccupied.

**Traditional cooking fire** Means a hangi, umu or similar outdoor fire for the sole purpose of food preparation using traditional cooking methods.

### 5. CONDITIONS FOR THE LIGHTING OF FIRES

5.1. A person must not light any fire at any time in the open air, or within a barbecue, brazier or incinerator, or burn a traditional cooking fire under the following conditions:

- a) Where the location, wind, or other conditions cause or are likely to cause the fire to become:
  - I. A danger to any person or property; or
  - II. Out of control or spread beyond the boundaries of the premises on which it is lit; or
  - III. A nuisance beyond the boundaries of the premises on which it is lit; or to:-
  - IV. Deposit ash or other debris beyond the boundaries of the premises on which it is lit;
- b) Without continuous supervision being maintained at all times; or
- c) Without an acceptable means of fire suppression being available at all times or
- d) In breach of any Act or regulation (including any rule in a district or regional plan under the Resource Management Act 1991).

5.2. A person must not light any fire at any time in the open air, including a traditional cooking fire, within three metres of any part of a building, tree, hedge, fence or any other combustible material. This clause does not apply to barbeques, braziers or incinerators.

### 6. AUTHORISED OFFICER MAY EXTINGUISH FIRES

6.1. Where a fire has been lit or allowed to burn in breach of clause 5.1 or clause 5.2 an authorised officer may:

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- a) direct the occupier of premises on which the fire is located, or the person who lit the fire, to immediately extinguish the fire; and
  - b) obtain such assistance that may be reasonably necessary to ensure the safety of any person or to protect the property or any other property.
- 6.2. Where any occupier of premises upon which a fire in the open air is located, or person who lit such a fire, does not comply with an authorised officer's direction under clause 6.1.a to extinguish the fire, the authorised officer may extinguish the fire and to take such other steps as may be reasonably necessary to ensure the safety of any person or to protect the property, or any other property. The function of extinguishing fires under clause 6.2 is delegated to Fire and Emergency New Zealand.
- 6.3. An authorised officer exercising the power under clause 6.2 may obtain such assistance as is reasonably necessary.
- 6.4. Pursuant to section 187 of the Local Government Act 2002, where an authorised officer has extinguished a fire pursuant to clause 6.2, the Council may recover costs incurred by Council associated with extinguishing the fire from the person to whom the direction was made.

### 7. POWERS OF ENTRY

- 7.1. An enforcement officer may enter land for the purpose of detecting a breach of this bylaw if the officer has reasonable grounds for suspecting that a breach of the bylaw is occurring on the land. Before entering the land the officer must, if practicable, give reasonable notice to the occupier of the land of the intention to exercise the power, unless the giving of notice would defeat the purpose of entry.
- 7.2. An enforcement officer may enter land without notice for a purpose authorised by this bylaw if there is sudden emergency causing or likely to cause loss of life or injury to a person; or damage to property; or damage to the environment; or there is danger to any works or adjoining property.

*Note, This note does not form part of the bylaw:* Members of Fire and Emergency New Zealand have powers of entry under the Fire and Emergency New Zealand Act 2017.

### 8. PENALTIES AND OFFENCES

- 8.1. A person commits a breach of this bylaw who:
- a) Burns a fire in contravention of clause 5.1 or clause 5.2;
  - b) Fails to comply with a direction given under clause 6.1.a
- 8.2. Pursuant to section 239 and 242 of the Local Government Act 2002, any person who breaches this bylaw commits an offence and is liable on conviction to a fine not exceeding \$20,000.
- 8.3. Pursuant to section 229 of the Local Government Act 2002, any person who obstructs or hinders any authorised officer in the performance of any duty to be discharged by that officer under or in exercise of any power conferred by this bylaw commits an offence and is liable on conviction to a fine not exceeding \$5,000.
- 8.4. Under section 162 of the Local Government Act 2002 the Council may apply to the District Court for the grant of an injunction restraining a person from committing a breach of this bylaw.

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The COMMON SEAL of the HAMILTON CITY COUNCIL  
was hereunto affixed in the presence of:

Councillor: \_\_\_\_\_

Councillor: \_\_\_\_\_

Chief Executive: \_\_\_\_\_