

# Hamilton City Council BYLAWS

<b>Approved By:</b> Council	<b>Date Adopted :</b> 27 November 2014
<b>Date In Force:</b> 15 December 2014	<b>Review Date:</b> 27 November 2019

## **HAMILTON SAFETY IN PUBLIC PLACES BYLAW 2014**

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

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### 1. PURPOSE

1.1. The purposes of this bylaw are:

- a) protecting the public from nuisance;
- b) protecting, promoting, and maintaining public health and safety; and
- c) minimising the potential for offensive behaviour in public places.

### 2. APPLICATION

2.1. This bylaw applies to public places in Hamilton.

### 3. DEFINITIONS

3.1. The following definitions apply to this bylaw, except where inconsistent with the context:

<b>Authorised officer</b>	Means any enforcement officers appointed and warranted by Council under the Local Government Act 2002.
<b>Council</b>	Means Hamilton City Council.
<b>Mind-altering substance</b>	Means a synthetic or naturally-occurring substance which may alter consciousness or intoxicate. It includes psychoactive substances and substances used for glue sniffing, but does not include: <ol style="list-style-type: none"><li>a) Medically prescribed substances ingested by the person who was prescribed them;</li><li>b) Substances purchased from a pharmacy without a medical prescription;</li><li>c) Caffeine;</li><li>d) Nicotine;</li><li>e) Alcohol as defined in the Sale and Supply of Alcohol Act 2012.</li></ol>
<b>Nuisance</b>	Nuisance includes but is not limited to: <ol style="list-style-type: none"><li>a) The definition in section 29 of the Health Act 1956 so far as it relates to Council functions;</li><li>b) A nuisance behaviour.</li></ol>
<b>Nuisance behaviour</b>	Nuisance behaviour includes: <ol style="list-style-type: none"><li>a) Begging in a public place in a manner that is likely to cause harassment, alarm, or distress to any reasonable person, or causes an unreasonable interference with the peace, comfort or convenience of any person.</li><li>b) Riding a skateboard within the areas defined in the Skateboarding Prohibited Areas Register.</li><li>c) Sleeping in a public place in such a way as to cause an obstruction.</li><li>d) Urinating or defecating in a public place other than a toilet.</li><li>e) Consuming, injecting, inhaling or ingesting a mind-altering substance in a public place.</li><li>f) Any conduct in a public place that is likely to cause unreasonable interference with the peace, comfort or convenience of a reasonable person in the circumstances in which it occurs, whether or not that person is in a public place, to the extent that it disturbs public order and is more</li></ol>

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than those subjected to it should have to tolerate.

<b>Offensive behaviour</b>	Behaviour in a public place that is capable of arousing real anger, resentment, disgust or outrage in the mind of a reasonable person, objectively assessed, to the extent that it disturbs public order and is more than those subjected to it should have to tolerate.
<b>Psychoactive substance</b>	Means the definition in section 9 of the Psychoactive Substances Act 2013.
<b>Public Place</b>	Public place includes any place or space that is not private property and which is open to the public.
<b>Skateboard</b>	Does not include a cycle, scooter, roller skates, roller blades, in-line skate or a mobility device such as wheelchair or pushchair.

*Note:* This bylaw is required to comply with the New Zealand Bill of Rights Act 1990, which protects freedom of expression among other rights. The mere fact of participating in a public protest will not, on its own, constitute offensive or nuisance behaviour. Public order is sufficiently disturbed if the behaviour causes offence of such a kind or to such an extent that those affected are substantially inhibited in carrying out the purpose of their presence at that place.

#### 4. BREACH OF BYLAW

4.1. The following conduct is an offence under this bylaw:

- a) Nuisance;
- b) Behaviour in a public place that poses a threat to public safety;
- c) Offensive behaviour;
- d) Failing to comply with any lawful notice or direction given under this bylaw;
- e) Obstructing or hindering any authorised officer in performing any duty or power conferred by this bylaw.

4.2. Authorised officers are empowered to enforce this bylaw in the event of a breach.

#### 5. CONTROL OF SKATEBOARDING

5.1. The Council may, by resolution, amend the scope of clause 4.1(a) with respect to skateboarding by adding, modifying or deleting an area to the Skateboarding Prohibited Areas Register.

#### 6. PENALTIES AND POWERS

6.1. Under section 242 of the Local Government Act 2002, any person who breaches this Bylaw, commits an offence and is liable on summary conviction to a fine not exceeding \$20,000.

6.2. Under section 163 of the Local Government Act 2002 the Council or an authorised officer may remove or alter any work or thing that is or has been constructed in breach of this Bylaw and may recover the costs of doing so from the person who committed the breach. This does not affect that person's liability for the breach.

6.3. Under section 162 of the Local Government Act 2002 the Council may apply to the District Court for an injunction restraining a person from committing a breach of this Bylaw.

6.4. The Council or an authorised officer may seize and impound property materially involved in committing an offence, under sections 164 and 165 of the Local Government Act 2002.

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- 6.5. The Council will return or may dispose of property seized and impounded in accordance with sections 167 and 168 of the Local Government Act 2002.
- 6.6. Under section 176 of the Local Government Act 2002 any person who has been convicted of an offence under this bylaw is liable to pay the Council the costs of remedying any damage caused in the course of committing the offence.

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

Councillor: .....

Councillor: .....

Chief Executive: .....

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### EXPLANATORY NOTE

This note is for information purposes and does not form part of this Bylaw.

For guidance on how all other nuisance behaviours are covered by other Council Bylaws and Polices please refer to the Nuisance Behaviour and Policy and Bylaws table.

- Nuisance** Section 29 of the Health Act 1956 provides:
- Without limiting the meaning of the term **nuisance**, a nuisance shall be deemed to be created in any of the following cases, that is to say:
- (a) where any pool, ditch, gutter, watercourse, sanitary convenience, cesspool, drain, or vent pipe is in such a state or is so situated as to be offensive or likely to be injurious to health:
  - (b) where any accumulation or deposit is in such a state or is so situated as to be offensive or likely to be injurious to health:
  - (c) where any premises, including any accumulation or deposit thereon, are in such a state as to harbour or to be likely to harbour rats or other vermin:
  - (d) where any premises are so situated, or are in such a state, as to be offensive or likely to be injurious to health:
  - (e) *[Repealed]*
  - (f) where any building or part of a building is so overcrowded as to be likely to be injurious to the health of the occupants, or does not, as regards air space, floor space, lighting, or ventilation, conform with the requirements of this or any other Act, or of any regulation or bylaw under this or any other Act:
  - (g) where any factory, workroom, shop, office, warehouse, or other place of trade or business is not kept in a clean state, and free from any smell or leakage from any drain or sanitary convenience:
  - (h) where any factory, workroom, shop, office, warehouse, or other place of trade or business is not provided with appliances so as to carry off in a harmless and inoffensive manner any fumes, gases, vapours, dust, or impurities generated therein:
  - (i) where any factory, workroom, shop, office, warehouse, or other place of trade or business is so overcrowded while work is carried on therein, or is so badly lighted or ventilated, as to be likely to be injurious to the health of the persons employed therein:
  - (j) where any buildings or premises used for the keeping of animals are so constructed, situated, used, or kept, or are in such a condition, as to be offensive or likely to be injurious to health:
  - (k) where any animal, or any carcass or part of a carcass, is so kept or allowed to remain as to be offensive or likely to be injurious to health:
  - (ka) where any noise or vibration occurs in or is emitted from any building, premises, or land to a degree that is likely to be injurious to health:
  - (l) where any trade, business, manufacture, or other undertaking is so carried on as to be unnecessarily offensive or likely to be injurious to health:
  - (m) where any chimney, including the funnel of any ship and the chimney of a private dwellinghouse, sends out smoke in such quantity, or of such nature, or in such manner, as to be offensive or likely to be injurious to health, or in any

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manner contrary to any regulation or Act of Parliament:

(n) where the burning of any waste material, rubbish, or refuse in connection with any trade, business, manufacture, or other undertaking produces smoke in such quantity, or of such nature, or in such manner, as to be offensive or likely to be injurious to health:

(o) where any street, road, right of way, passage, yard, premises, or land is in such a state as to be offensive or likely to be injurious to health:

(p) where any well or other source of water supply, or any cistern or other receptacle for water which is used or is likely to be used for domestic purposes or in the preparation of food, is so placed or constructed, or is in such a condition, as to render the water therein offensive, or liable to contamination, or likely to be injurious to health:

(q) where there exists on any land or premises any condition giving rise or capable of giving rise to the breeding of flies or mosquitoes or suitable for the breeding of other insects, or of mites or ticks, which are capable of causing or transmitting disease

Under s 29 of the Health Act 1956 “nuisance” has its full natural and ordinary meaning: *Adam v Napier City Council* AP55/86 HC Napier, 29 September 1987 (HC).

### Offensive behaviour

The definition of offensive behaviour is taken from the decision of the Supreme Court in *Morse v Police* [2011] NZSC 45; (2011) 25 CRNZ 174.

### Psychoactive substances

Section 9 of the Psychoactive Substances Act 2013 provides:

(1) In this Act, unless the context otherwise requires, **psychoactive substance** means a substance, mixture, preparation, article, device, or thing that is capable of inducing a psychoactive effect (by any means) in an individual who uses the psychoactive substance.

(2) **Psychoactive substance** includes—

(a) an approved product:

(b) a substance, mixture, preparation, article, device, or thing that is, or that is of a kind that is, or belongs to a class that is, declared by the Governor-General by Order in Council made under section 99 to be a psychoactive substance for the purposes of this Act.

(3) Despite subsections (1) and (2), **psychoactive substance** does not include—

(a) a controlled drug specified or described in [Schedule 1, 2, or 3](#) of the Misuse of Drugs Act 1975:

(b) a precursor substance specified or described in [Schedule 4](#) of the Misuse of Drugs Act 1975:

(c) a medicine within the meaning of [section 3](#) of the Medicines Act 1981 or a related product within the meaning of [section 94](#) of that Act:

(d) a herbal remedy (within the meaning of [section 2\(1\)](#) of the Medicines Act 1981):

(e) a dietary supplement (within the meaning of [regulation 2A](#) of the Dietary Supplements Regulations 1985):

(f) any food (within the meaning of [section 2](#) of the Food Act 1981):

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(g) any alcohol, unless the alcohol contains a psychoactive substance as defined in subsection (1) or (2) that is not alcohol:

(h) any tobacco product (within the meaning of [section 2\(1\)](#) of the Smoke-free Environments Act 1990), unless the tobacco product contains a psychoactive substance as defined in subsection (1) or (2) that is not tobacco:

(i) a substance, mixture, preparation, article, device, or thing that is, or that is of a kind that is, or belongs to a class that is, declared by the Governor-General by Order in Council made under [section 99](#) not to be a psychoactive substance for the purposes of this Act