



***Proposed* Upper Hutt City Council Prevention of Nuisance From Fires and Smoke Bylaw 2018**

Explanatory Note

This Bylaw is called the Prevention of Nuisance from Fires and Smoke Bylaw and was made pursuant to sections 145 of the Local Government Act 2002 and section 64(1)(a) of the Health Act 1956.

Adopted by Council [insert date]

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1. Purpose and Application of Bylaw

1.1. This purpose of this bylaw is to:

- (a) protect the public from nuisance related to fires and smoke; and
- (b) protect and maintain public health and safety around fire and smoke (with regard to aspects other than fire safety).

1.2. This bylaw is made under section 145 of the Local Government Act 2002 and section 64(1)(a) of the Health Act.

1.3. Nothing in this bylaw derogates from the Fire and Emergency Act 2017 or regulations made under that Act. To the extent that it is covered by that Act, nothing in this bylaw:

- (a) Relates to the removal of fire hazards; or
- (b) Declares prohibited or restricted fire seasons; or
- (c) Prohibits or otherwise regulates or controls the lighting of fires in open air; or
- (d) Relates to the prevention of the spread of fires involving vegetation.

2. Commencement

2.1. This Bylaw came into force on [insert date].

3. Interpretation

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

“Authorised Officer” means an enforcement officer authorised under the Local Government Act 2002, an Environmental Health Officer authorised under the Health Act 1956, or any other person authorised by Council for the purposes of administering and enforcing this bylaw.

“Council” means the Upper Hutt City Council.

“Environmental Health Officer” means an Environmental Health Officer authorised under the Health Act 1956.

“Public Place” means any place that at any material time is under the control of the 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.

“Nuisance” has the same meaning given to it by the Health Act 1956.

References to “nuisance or risk” include potential nuisance or risk.

4. Nuisance or Health and Safety Risk From Fires or Smoke

4.1. No person may light, or allow to remain lit, a fire that creates a nuisance, health risk, or safety risk to any person or property.

- 4.2. No person may permit smoke, noxious fumes or any other matter to be emitted in such a way as to create a nuisance, health risk, or safety risk to any person or property.
- 4.3. An Authorised Officer, who has reasonable grounds to suspect an offence under this bylaw, may enter a public place or private land for the purpose of detecting an offence and issue a notice to cease such an offence.
- 4.4. If an Authorised Officer is of the opinion that clauses 4.1 or 4.2 of this bylaw are breached, or have the potential to be breached on a Public Place, they may take reasonable steps in accordance with sections 163 and 164 of the Local Government Act 2002 to abate, or cause to be abated, the nuisance or risk including the removal of the fire.
- 4.5. If an Environmental Health Officer is of the opinion that clauses 4.1 or 4.2 of this Bylaw are breached on private land and that the immediate abatement of the nuisance is necessary the Environmental Health Officer may without notice enter the land and abate the nuisance.
- 4.6. For the avoidance of doubt, nothing in clause 4 of this bylaw applies to fire safety risk governed by the Fire and Emergency NZ Act 2017 or regulations made under that Act, including the matters listed in clauses 1.3 (a) – (d) of this bylaw.

5. Offences and Cost Recovery

- 5.1. Every person commits an offence who:
 - (a) breaches clauses 4.1 or 4.2 of this bylaw; or
 - (b) interferes with or fails to comply with the reasonable direction of an Authorised Officer, acting under clause 4.3 or 4.4 or an Environmental Health Officer acting under clause 4.5 of this bylaw.
- 5.2. Council may recover any costs it incurs as a result of acting under the bylaw. Costs are recoverable from:
 - (a) the owner of the land on or from which the nuisance or risk originated; and/or
 - (b) from any person or persons who caused the nuisance of risk.