

**WAITAKERE CITY COUNCIL**  
**STATEMENT OF PROPOSAL**

**REVIEW OF WAITAKERE CITY COUNCIL BYLAWS - 2010**

**INTRODUCTION**

1. Waitakere City Council is undertaking a review of its existing bylaws, as required by the Local Government Act 2002. As a result of the bylaw review process, a draft set of bylaws has been developed that are now available for community consultation and comment.
2. The bylaws that are the subject of review were largely made under the Local Government Act 1974, and many of these bylaws have become outdated and need to reflect legislative changes and public expectations. The review process has identified where some bylaws could be amalgamated with other bylaws, some revoked or left to expire, and where new bylaws are necessary. The review has not resulted in substantial changes, but rather a rationalising of existing bylaws, with the proposed new bylaws largely reflecting current provisions.
3. Councils are enabled by legislation to make bylaws that enable the following purposes to be met:
  - (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.
4. The intention of this review is to create modern and effective bylaws that serve to enhance the well being of the Waitakere community.
5. This Statement of Proposal has been prepared in accordance with the requirements set out in section 86 of the Local Government Act 2002 for the adoption of the special consultative procedure. It includes:
  - (a) the reasons for the proposal;
  - (b) consideration of whether a bylaw is the most appropriate way to address the perceived problem;
  - (c) whether the proposed bylaw is the most appropriate form of bylaw;
  - (d) implications under the New Zealand Bill of Rights Act 1990; and
  - (e) a draft of the proposed bylaw.

**HAVE YOUR SAY**

6. Council encourages you to have your say about the draft bylaws proposed. Please take the time to make a submission detailing your views on the draft bylaws, any amendments you think would enhance the draft bylaws, and your views on whether a bylaw is the best mechanism to achieve the desired outcomes. A submission form is attached.
7. All information relating to the bylaws can be found at the main libraries of Henderson, New Lynn, Massey and Titirangi, as well as the Council's website [www.waitakere.govt.nz/bylaws](http://www.waitakere.govt.nz/bylaws), and the Council's offices at 6 Henderson Valley Road, Henderson.

8. Submissions must be **in writing** and received no later than **5pm 23 July 2010**. Submissions must note whether you wish to be heard. Each person will be allocated 10 minutes to speak to their submission should they wish to be heard. The **hearings** will be from 9.30 am to 4 pm between **9 and 16 August 2010**. The Council will be in touch with those submitters who wish to be heard.
9. Written submissions can be directed to the Council by:

Personal delivery:

Bylaws Review  
Waitakere City Council  
Legal Services Unit  
*Attention: Neta Mailata*  
6 Henderson Valley Road  
Henderson.

Post:

Bylaws Review  
Waitakere City Council  
Legal Services Unit  
*Attention: Neta Mailata*  
Private Bag 93109  
Waitakere 0650.

Email:

[bylawsreview@waitakere.govt.nz](mailto:bylawsreview@waitakere.govt.nz)  
Subject: Bylaws Review  
Attention: Legal Services Unit – Neta Mailata

Fax:

Bylaws Review  
Waitakere City Council  
Legal Services Unit  
Attention: Neta Mailata  
+64 09 836 8046

Please note the Council will not take responsibility where emailed submissions fail to get through the server or there is a failure in postal delivery.

## **REVIEW OF BYLAWS**

10. Councils are empowered by various statutes, particularly the Bylaws Act 1910 and the Local Government Act 2002, to make bylaws for its district for one or more of the following reasons:
  - (a) protecting the public from nuisance:
  - (b) protecting, promoting, and maintaining public health and safety:
  - (c) minimising the potential for offensive behaviour in public places.
  
11. Councils are then required to review their bylaws periodically under section 158 of the Local Government Act 2002 which states:
  - (a) All bylaws that were made or had effect prior to the commencement of the Local Government Act 2002 on 1 July 2003 must be reviewed within five years of that date.
  - (b) Bylaws made under the provisions of the Local Government Act 2002 must be reviewed within five years after the date on which they were made.
  
12. Once a bylaw has been reviewed under section 158, the next review must be carried out within 10 years after the date of the last review of the bylaw under this section.

## **CREATING BYLAWS**

13. The Local Government Act 2002 includes a procedure that must be followed to make bylaws. This procedure ensures the rationale for having the bylaw is sound and has been used in the review of the Waitakere City Council Bylaws and in the development of the proposed new bylaws included in this proposal.

### **What is the reason for the proposal?**

14. The bylaws that are the subject of review were largely made under the Local Government Act 1974 and were made in 1990, some 20 years ago. Many of these bylaws have become outdated, and need to reflect legislative changes and public expectations.

### **Is a bylaw the most appropriate way of addressing the issues?**

15. Factors influencing this decision include:
  - (a) Whether existing legislation give adequate powers to deal with the issues without the need for a bylaw?
  - (b) Whether a bylaw the most appropriate way of addressing the perceived problem, or will other mechanisms such as the use of policy or rules achieve the desired outcome?
  - (c) Whether the proposed bylaw exceeds the powers vested in territorial authorities?
  
16. As part of its decision-making process, Council is required to identify and assess all reasonably practicable strategies that could provide the desired solution. Non-regulatory initiatives could not by themselves satisfactorily control activities that are the subject of the proposed bylaws, and protect, promote and maintain public health and safety. However, such policies, programmes and education campaigns could be utilised to support a bylaw. Similarly, national legislation on these particular issues is not designed to address local situations and the concerns of the public of Waitakere. Therefore, a bylaw has been determined to be the most effective mechanism for:

- Public places
- Sanitation and hygiene in commercial premises
- Use of roads and parking
- Control of intruder alarm systems
- Urupa (Maori Burial Site)
- General administration.

### **Are the proposed bylaws in the most appropriate form?**

17. In drafting the six new bylaws, Council must determine whether the proposed bylaws are in the most appropriate form. Waitakere City Council believes it has developed the most appropriate form of bylaw, which will incorporate relevant provisions from existing bylaws and new provisions where required, with the aim of having new, comprehensive and coherent bylaws.

### **Do the proposed bylaws give rise to any issues under the New Zealand Bill of Rights Act?**

18. Any proposed bylaw must meet the legal standards of reasonableness, and cannot be inconsistent with the freedoms protected and affirmed in the New Zealand Bill of Rights Act 1990. This requirement has been considered for each of the draft bylaws included in this document and Council believes all meet this requirement.
19. Tables A and B below shows the analysis and decisions made by Council relating to the reasons for each bylaw and its particular form, main changes and the proposed actions.

### **SUBMISSIONS TO THE PROPOSED WAITAKERE CITY COUNCIL BYLAWS**

20. Council is now inviting the community to provide feedback on the proposed new Waitakere City Council bylaws. Submissions to the proposed bylaws can be made in writing and submitters can choose to also present their submissions to Council in person.
21. Submitters wanting to present their submission in person should indicate if they wish to do this. Council will hear oral submissions on the Bylaw Review in the period 9 to 17 August 2010 9.30am to 4pm.
22. Please note that all submissions are a matter of public record and subject to the requirements of the Local Government Official Information and Meetings Act 1987. All submitters must be identifiable with a name and address although these will not be disclosed in full, other than reference to surnames, in the assessment of submission.
23. Council is required to publicly notify the making of the new bylaws in accordance with section 157 of the LGA 2002. This process for which submissions are being sought is the notification process required under s 157.

### **THE BYLAW REVIEW PROCESS**

24. Most of the existing bylaws were created in 1990. Since then there have been significant changes in legislation and in some of the issues affecting the people of Waitakere. This has meant that some bylaws have become ineffective or out-dated.

25. The Council began a review of bylaws in 2004 in accordance with the provisions of the Local Government Act 2002. There are five options open to Council:

- Option 1 - Make a new bylaw
- Option 2 - Amend an existing bylaw
- Option 3 - Revoke an existing bylaw by letting it expire
- Option 4 - Revoke an existing bylaw and replace with new bylaw
- Option 5 - Continue an existing bylaw without amendment.

26. The review process identified some areas where bylaws could be amalgamated or revoked/let expire and where new bylaws were deemed necessary as follows:

(a) Make new bylaws for:

- Public places
- Sanitation and hygiene in commercial premises
- Use of roads and parking
- Control of intruder alarm systems
- Urupa (Maori Burial Site)
- General administration.

(b) Formally revoke bylaws and include any relevant provisions from:

- Bylaw No 4 Chapter 2 – Public Places (1990)
- Bylaw No 4 Chapter 4 - Mobile or Travelling Shops and Hawkers (1990)
- Bylaw No 4 Chapter 17 – Parks and Reserves (1990)
- Bylaw No 7 - Traffic (1991)
- Bylaw No 8 - Barbed Wire Fences (1990)
- Bylaw No 9 - Beaches and Waters (1990)
- Bylaw No 18 - Cemeteries and Crematoria (1990)
- Bylaw No 22 - Use of Public Roads (1990)
- Bylaw No 31 - Hygienic Operation of Massage Facilities (1999)
- Bylaw No 32 - Health Protection - Skin Piercing (2002)
- Bylaw No 2 - Waitakere Scenic Drive (1990)
- Bylaw No 7 - Traffic (1991)
- Bylaw No 28 - Urupa (Maori Burial Site) (1996)
- Bylaw No 4 Chapter 1 - Introductory (1990).

(c) Let the following bylaws expire:

- Bylaw No 1 - Upper Harbour Bridge (1990)
- Bylaw No 4 - General (Adoption of New Zealand Standard 9201, No.4)
- Bylaw No 4 Chapter 7 - Water Supply (1990)
- Bylaw No 4 Chapter 9 – Scaffolding and Deposit of Building Materials (1990)
- Bylaw No 4 Chapter 11 - Nuisances (1990)
- Bylaw No 6 - Fire Prevention (1990)
- Bylaw No 19 - Septic Tanks and Disposal Systems (1990)
- Bylaw No 20 - Amusement Galleries (1990)
- Bylaw No 25 - Radio Frequency Radiation (1991)
- Bylaw No 27 - Spray Paint Cans (1995)
- Building Bylaw (1990).

27. Listed below the main changes to the existing bylaws that are recommended in this review:

**TABLE A: RECOMMENDATIONS FOR EXISTING BYLAWS**

<b>NAME OF BYLAW</b>	<b>DATE MADE</b>	<b>SUGGESTIONS FOR REVIEW</b>	<b>EXPLANATION</b>
Amusement Galleries, No 20	1990	Let expire	Made under sections 684(1)(31) and 686 Local Government Act 1974 ("bylaws as to billiard rooms, amusement galleries, and shooting galleries"), now repealed by section 266 of the Local Government Act 2002. Matters are covered by the Health Act 1956, Summary Offences Act 1981, Building Act 2004.
Barbed Wire Fences, No 8	1990	Revoke and replace	Recommend that relevant provisions of bylaw be included into new Public Places Bylaw.
Beaches and Waters, No 9	1990	Revoke and replace	Recommend that relevant provisions of bylaw be included into new Public Places Bylaw.
Building	1990	Let expire	Matters are covered by the Building Act 2004 (and Regulations and Building Code), Health Act 1956, Housing Improvement Regulations 1947, Resource Management Act 1991, and the Waitakere City Council Operative District Plan.
Cemeteries and Crematoria, No 18	1990	Revoke and replace	Recommend that relevant provisions of bylaw be included into new Public Places Bylaw.
Control of Noise, No 4 Chapter 20	1990	Revoke and replace	Largely dealt with by Waitakere City Council Operative District Plan and Resource Management Act 1991. Recommend that relevant provisions of bylaw relating to the noise of activated intruder alarms be included into new Control of Intruder Alarm Systems Bylaw.
Fire Prevention, No 6	1990	Let expire	Made under section 649 of the Local Government Act 1974, now repealed by section 266 of the Local Government Act 2002. Matters are covered by the (ARC) Proposed Auckland Regional Plan: Air, Land and Water (Part 2); Health Act 1956 (smoke nuisances), Resource Management Act 1991, Summary Offences Act 1981 (lighting of fires), Forest and Rural Fires Act 1977 and Regulations, Reserves Act 1977, Hazardous Substances and New Organisms Act 1996 and Regulations, and National Environmental Standards (woodburners, air quality).
General, No 4	1990	Let expire	Replicated from Model General Bylaw NZS 9201 (1972). Chapters now largely revoked and replaced.
Health Protection - Skin Piercing, No 32	2002	Revoke and replace	Recommend that relevant provisions of bylaw be included into new Sanitation and Hygiene in Commercial Premises Bylaw.
Hygienic Operation of Massage Facilities, No 31	1999	Revoke and replace	Recommend that relevant provisions of bylaw be included into new Sanitation and Hygiene in Commercial Premises Bylaw.
Introductory, No 4 Chapter 1	1990	Revoke and replace	Recommend that relevant provisions of bylaw be included into new General Administration Bylaw to provide assistance with the interpretation and general provisions for Waitakere City Council Bylaws.
Mobile or Travelling Shops and Hawkers, No 4 Chapter 4	1990	Revoke and replace	Recommend that relevant provisions of bylaw be included into new Public Places Bylaw.

<b>NAME OF BYLAW</b>	<b>DATE MADE</b>	<b>SUGGESTIONS FOR REVIEW</b>	<b>EXPLANATION</b>
Nuisances, No 4 Chapter 11	1990	Let expire	Matters are covered by the Health Act 1956, Resource Management Act 1991, Local Government Act 2002, Building Act 2004, Litter Act 1979, Waitakere City Council Waste Bylaw (2005) and the (ARC) Proposed Auckland Regional Plan: Air, Land and Water.
Parks and Reserves, No 4 Chapter 17	1990	Revoke and replace	Recommend that relevant provisions of bylaw be included into new Public Places Bylaw.
Public Places, No 4 Chapter 2	1990	Revoke and replace	Recommend new, comprehensive, Public Places Bylaw be made and include relevant provisions of: Bylaw No 4 Chapter 2 – Public Places (1990) Bylaw No 4 Chapter 4 - Mobile or Travelling Shops and Hawkers (1990) Bylaw No 4 Chapter 17 – Parks and Reserves (1990) Bylaw No 7 - Traffic (1991) Bylaw No 8 - Barbed Wire Fences (1990) Bylaw No 9 - Beaches and Waters (1990) Bylaw No 18 - Cemeteries and Crematoria (1990) Bylaw No 22 - Use of Public Roads (1990)
Radio Frequency Radiation, No 25	1991	Let expire	Matters are now covered by the Resource Management (National Environmental Standards for Telecommunication Facilities) Regulations 2008, Telecommunications Act 2001, National Standard (NZS2772.1:1999), National Environmental Standard for Telecommunications Facilities (from 9 October 2008), and National Guidelines for Managing the Effects of Radiofrequency Transmitters (Ministry for the Environment and Ministry of Health, 2000).
Restriction on the Use of Jaw Traps, No 10	1990	Let expire	Consequently revoked by operation of section 198 of the Animal Welfare Act 1999 (from 31 December 2007).
Scaffolding and Deposit of Building Materials, No 4 Chapter 9	1990	Let expire	Matters are covered by the Waitakere City Council Waste Bylaw (2005) and the Building Code (clauses F5.2 and F5.3).
Septic Tanks and Disposal Systems, No 19	1990	Let expire	Matters are covered by the Proposed Auckland Regional Plan: Air, Land and Water (Rules 5.5.20 to 5.5.28) and Technical Publication 58 ("TP58"), the Local Government Act 2002 (Part 7), Building Act 2004 (and Regulations and Building Code), the Resource Management Act 1991, and the Health Act 1956.
Spray Paint Cans, No 27	1995	Let expire	Matters are now covered by sections 14A and 14B of the Summary Offences Act 1981 (as amended by the Summary Offences (Tagging and Graffiti Vandalism) Amendment Act 2008).
Traffic, No 7	1991	Revoke and replace	Recommend relevant provisions be included in new Use of Roads and Parking Bylaw and new Public Places Bylaw.
Upper Harbour Bridge, No 1	1990	Let expire	Consequently revoked by operation of section 8(1) of the Cities of Takapuna and Waitemata (Upper Harbour Bridge) Empowering Act 1976 once the bridge became part of the State highway and under the control of the New Zealand Transport Agency (from 18 June 1992).

NAME OF BYLAW	DATE MADE	SUGGESTIONS FOR REVIEW	EXPLANATION
Urupa (Maori Burial Site), No 28	1996	Revoke and replace	Recommend new Urupa (Maori Burial Site) Bylaw be made updating existing bylaw.
Use of Public Roads, No 22	1990	Revoke and replace	Recommend that relevant provisions of bylaw be included into new Public Places Bylaw.
Waitakere Scenic Drive, No 2	1990	Revoke and replace	Recommend that relevant provisions of bylaw be included into new Use of Roads and Parking Bylaw.
Water Supply, No 4 Chapter 7	1990	Let expire	Matters are now covered by the Health Act 1956 as amended by the Health (Drinking Water) Amendment Act 2007.

**TABLE B: PROPOSED NEW BYLAWS**

PROPOSED NEW BYLAW	BYLAW TO BE REVOKED	EXPLANATION
<b>Public Places</b>	<ul style="list-style-type: none"> <li>• Bylaw No 4 Chapter 2 – Public Places (1990)</li> <li>• Bylaw No 4 Chapter 4 - Mobile or Travelling Shops and Hawkers (1990)</li> <li>• Bylaw No 4 Chapter 17 – Parks and Reserves (1990)</li> <li>• Bylaw No 7 - Traffic (1991)</li> <li>• Bylaw No 8 - Barbed Wire Fences (1990)</li> <li>• Bylaw No 9 - Beaches and Waters (1990)</li> <li>• Bylaw No 18 - Cemeteries and Crematoria (1990)</li> <li>• Bylaw No 22 - Use of Public Roads (1990)</li> </ul>	<p>Recommend new, comprehensive, Public Places Bylaw be made and include relevant provisions of existing bylaws that currently address issues associated with public places. The new bylaw would address:</p> <ul style="list-style-type: none"> <li>• Public health and safety</li> <li>• Nuisances</li> <li>• Offensive behaviour</li> <li>• Obstructing or damaging public places</li> <li>• Erecting or placing any structure in public places</li> <li>• Keeping, placing or parking any vehicle in public places</li> <li>• Trading in public places</li> <li>• Construction and use of vehicle crossings</li> <li>• Street numbering of buildings</li> <li>• Lighting of fires</li> <li>• Impeding pedestrian or vehicular traffic.</li> </ul>
<b>Sanitation and Hygiene in Commercial Premises</b>	<ul style="list-style-type: none"> <li>• Bylaw No 31 - Hygienic Operation of Massage Facilities (1999)</li> <li>• Bylaw No 32 - Health Protection - Skin Piercing (2002)</li> </ul>	<p>Recommend a new general, comprehensive bylaw aimed at protecting the public from infection or contamination by setting sanitation and hygiene standards and requiring certain commercial premises and practices to be licensed. The premises include those offering skin piercing, beauty therapy, massage, and health and fitness services. A new bylaw would incorporate relevant provisions from the Massage Facilities and Skin Piercing bylaws.</p>
<b>Use of Roads and Parking</b>	<ul style="list-style-type: none"> <li>• Bylaw No 2 – Waitakere Scenic Drive (1990)</li> <li>• Bylaw No 7 – Traffic (1991)</li> </ul>	<p>Recommend that some provisions of the Traffic Bylaw (1991) should be continued and incorporated into a new Use of Roads and Parking Bylaw, together with particular provisions of the Waitakere Scenic Drive Bylaw (prohibiting heavy vehicles between Woodlands Park Road and Shaw Road on the Scenic Drive). Other relevant provisions of the 1991 bylaw are recommended to be incorporated into a new Public Places Bylaw.</p>

<b>PROPOSED NEW BYLAW</b>	<b>BYLAW TO BE REVOKED</b>	<b>EXPLANATION</b>
<b>Control of Intruder Alarm Systems</b>	<ul style="list-style-type: none"> <li>Bylaw No 4 Chapter 20 – Control of Noise (1990)</li> </ul>	<p>Recommend a new noise bylaw which would require new and upgraded alarm systems to have an automatic cut-out device and be maintained. Other matters addressed in the Control of Noise Bylaw (1990) are now largely dealt with by the Waitakere City Council's Operative District Plan and the Resource Management Act 1991.</p>
<b>Urupa (Maori Burial Site)</b>	<ul style="list-style-type: none"> <li>Bylaw No 28 – Urupa (Maori Burial Site) (1996)</li> </ul>	<p>Recommend a new bylaw to update the 1996 bylaw to manage and regulate the Urupa at Waikumete Cemetery. The bylaw largely mirrors the general Waitakere City Council Cemeteries and Crematoria Bylaw of 1990, but also contains unique provisions relating to the Urupa and the role of the Urupa Management Trustees (Komiti).</p>
<b>General Administration</b>	<ul style="list-style-type: none"> <li>Bylaw No 4 Chapter 1 – Introductory (1990)</li> </ul>	<p>Recommend that Bylaw No 4, Chapter 1 – Introductory (1990) (based on Model General Bylaw NZS 9201 of 1972) be updated. A new general administration bylaw would provide assistance with the interpretation and general provisions for Waitakere City Council Bylaws.</p>