

# **STATEMENT OF PROPOSAL CONTROL OF DRINKING IN PUBLIC PLACES BYLAW 2003**

**Introduction** (please see attached for copies of referenced legislation)

1. In accordance with sections 83, 86 and 89 of the Local Government Act 2002, a special consultative procedure is necessary for the making of a bylaw, and requires that a Statement of Proposal and Summary of Information be prepared for the purposes of public consultation.
2. At Council's meeting of 24 September 2003 the attached draft bylaw was approved for public consultation in accordance with the special consultative procedure.
3. Public submissions on the bylaw can be made to Waitakere City Council's Legal Services Manager, Private Bag 93109 Henderson, until 31 October 2003, and will be considered by the Environmental Management Committee on 11 November 2003, with a report brought back to Council on 10 December 2003.

## **Background Information**

4. The bylaw is to be made pursuant to section 147 of the Local Government Act 2002 (Power to make bylaws for liquor control purposes) and is intended to emulate the now repealed s.709A-H public places liquor ban provisions of the Local Government Act 1974.
5. In past years Council has imposed liquor bans at Piha from 5pm-5am during public holiday periods pursuant to s.709C Local Government Act 1974. This bylaw is intended to impose a similar liquor ban, and also continue to allow for special event bans as per s.709A Local Government Act 1974.
6. The Piha community have been consulted regarding the proposed bylaw, and it is clear that there is unanimous support for the continuance of public holiday liquor bans at Piha in order to prevent problems previously experienced with vandalism and other negative behaviour resulting in safety issues for the general public.
7. While consideration across Council departments has been given to other potential options, it is thought that a bylaw imposing a liquor ban is still the most effective solution for public holidays at Piha. Council will be giving wider consideration to the matter in early 2004 in respect of a city-wide alcohol strategy, for which public submissions will be sought.

## **Draft Bylaw**

8. The Control of Drinking in Public Places Bylaw 2003 will impose a liquor ban at the Piha beach areas during statutory holiday periods, between 5pm and 5am. This follows previous years where liquor bans were imposed pursuant to the now repealed section 709C of the Local Government Act 1974. Special event liquor bans will also be allowed as previously, by Council resolution with the appropriate public notification.
9. Note that section 147(3) of the Local Government Act 2002 does allow an exemption for transporting unopened alcohol through a public place to licensed premises or private residences.
10. Section 169 and 170 of the Local Government Act 2002 allows for Police powers to search, confiscate, and arrest as necessary, but for the Piha holiday period liquor bans, as previously, they must give people a reasonable opportunity to remove the alcohol or leave the area first.
11. Public notification of the bylaw will be given by newspaper and on-location signage.

## **SUMMARY OF INFORMATION CONTROL OF DRINKING IN PUBLIC PLACES BYLAW 2003**

### **Introduction**

1. In accordance with sections 83, 86 and 89 of the Local Government Act 2002 (LGA02), a special consultative procedure is necessary for the making of a bylaw, and requires that a Statement of Proposal and Summary of Information be prepared for the purposes of public consultation.
2. To inspect or obtain a copy of the Statement of Proposal for the Control of Drinking in Public Places Bylaw 2003, you can visit Waitakere City Council's Counter Services at the Civic Centre, 6 Waipareira Ave, Henderson, or phone the Call Centre on 839 0400 ([web?](#)).
3. Public submissions on the bylaw can be made to Waitakere City Council's Legal Services Manager, Private Bag 93109 Henderson, until 31 October 2003, and will be considered by the Environmental Management Committee on 11 November 2003, with a report brought back to Council on 10 December 2003.

### **Draft Bylaw**

4. The Control of Drinking in Public Places Bylaw 2003 will impose a liquor ban at the Piha beach areas during statutory holiday periods, between 5pm and 5am. This follows previous years where liquor bans were imposed pursuant to the now repealed section 709C of the Local Government Act 1974. Special event liquor bans will also be allowed as previously, by Council resolution with the appropriate public notification.
5. Note that section 147(3) of the Local Government Act 2002 does allow an exemption for transporting unopened alcohol through a public place to licensed premises or private residences.
6. Section 169 and 170 of the Local Government Act 2002 allows for Police powers to search, confiscate, and arrest as necessary, but for the Piha holiday period liquor bans, as previously, they must give people a reasonable opportunity to move the alcohol first.
7. Public notification of the bylaw will be given by newspaper and on-location signage.

## LOCAL GOVERNMENT ACT 2002

### 83 Special consultative procedure

- (1) Where this Act or any other enactment requires a local authority to use or adopt the special consultative procedure, that local authority must-
  - (a) prepare-
    - (i) a statement of proposal; and
    - (ii) a summary of the information contained in the statement of proposal (which summary must comply with section 89); and
  - (b) include the statement of proposal on the agenda for a meeting of the local authority; and
  - (c) make the statement of proposal available for public inspection at-
    - (i) the principal public office of the local authority; and
    - (ii) such other places as the local authority considers necessary in order to provide all ratepayers and residents of the district with reasonable access to that statement; and
  - (d) distribute in accordance with section 89(c) the summary of the information contained in the statement of proposal; and
  - (e) give public notice, and such other notice as the local authority considers appropriate, of the proposal and the consultation being undertaken; and
  - (f) include in the public notice a statement about how persons interested in the proposal-
    - (i) may obtain the summary of information about the proposal; and
    - (ii) may inspect the full proposal; and
  - (g) include in the public notice a statement of the period within which submissions on the proposal may be made to the local authority; and
  - (h) ensure that any person who makes a submission on the proposal within that period-
    - (i) is sent a written notice acknowledging receipt of that person's submission; and
    - (ii) is given a reasonable opportunity to be heard by the local authority (if that person so requests); and
  - (i) ensure that the notice given to a person under paragraph (h)(i) contains information-
    - (i) advising that person of that person's opportunity to be heard; and
    - (ii) explaining how that person may exercise that person's opportunity to be heard; and
  - (j) ensure that, except as otherwise provided by Part 7 of the Local Government Official Information and Meetings Act 1987, every meeting at which submissions are heard or at which the local authority, community board, or committee deliberates on the proposal is open to the public; and
  - (k) subject to the Local Government Official Information and Meetings Act 1987, make all written submissions on the proposal available to the public.
- (2) The period specified in the statement included under subsection (1)(g) must be a period of not less than 1 month beginning with the date of the first publication of the public notice.
- (3) This section does not prevent a local authority from requesting or considering, before making a decision, comment or advice from an officer of the local authority or any other person in respect of the proposal or any submission or both.

### 86 Use of special consultative procedure in relation to adoption or review or amendment of bylaws

- (1) This section applies in relation to the following activities:
  - (a) the making of a bylaw under section 156;
  - (b) the making of an amendment of a bylaw (other than an amendment to which section 156(2) applies);
  - (c) the review of a bylaw under section 158;
  - (d) the revocation of a bylaw.
- (2) Where the special consultative procedure is used in relation to an activity to which this section applies, the statement of proposal referred to in section 83(1)(a) is-
  - (a) a draft of the bylaw as proposed to be adopted, amended, or continued without amendment; or
  - (b) if it is proposed that the bylaw be revoked, a statement to that effect.
- (3) A statement of proposal to which subsection (2) applies must include-
  - (a) the reasons for the proposal; and
  - (b) as the case requires, a report of-
    - (i) the local authority's consideration under section 155 of the problem being addressed by the proposal; or
    - (ii) the review carried out by the local authority under section 158.

### 89 Summary of information

A summary of the information contained in a statement of proposal must-

- (a) be a fair representation of the major matters in the statement of proposal; and
- (b) be in a form determined by the local authority; and
- (c) be distributed as widely as reasonably practicable (in such manner as is determined appropriate by the local authority, having regard to the matter to which the proposal relates) as a basis for general consultation; and
- (d) indicate where the statement of proposal may be inspected, and how a copy may be obtained; and
- (e) state the period within which submissions on the proposal may be made to the local authority.

#### **147 Power to make bylaws for liquor control purposes**

(1) In this section,-

**liquor** has the meaning given to it in the Sale of Liquor Act 1989

**public place-**

(a) means a place-

- (i) that is under the control of the territorial authority; and
- (ii) that is open to, or being used by, the public, whether or not there is a charge for admission; and

(b) includes-

- (i) a road, whether or not the road is under the control of a territorial authority; and
- (ii) any part of a public place.

(2) Without limiting section 145, a territorial authority may make bylaws for its district for the purpose of prohibiting or otherwise regulating or controlling, either generally or for 1 or more specified periods,-

(a) the consumption of liquor in a public place:

(b) the bringing of liquor into a public place:

(c) the possession of liquor in a public place:

(d) in conjunction with a prohibition relating to liquor under paragraphs (a) to (c), the presence or use of a vehicle in a public place.

(3) A bylaw made under this section does not prohibit, in the case of liquor in an unopened bottle or other unopened container,-

(a) the transport of that liquor from premises that adjoin a public place during any period when, under the Sale of Liquor Act 1989, it is lawful to sell liquor on those premises for consumption off the premises, provided the liquor is promptly removed from the public place:

(b) the transport of that liquor from outside a public place for delivery to premises that adjoin the public place, provided the premises are licensed for the sale of liquor under the Sale of Liquor Act 1989:

(c) the transport of that liquor from outside a public place to premises that adjoin a public place-

- (i) by, or for delivery to, a resident of those premises or by his or her bona fide visitors; or
- (ii) from those premises to a place outside the public place by a resident of those premises, provided the liquor is promptly removed from the public place. *[Compare: 1974 No 66 s709A]*

#### **169 Powers of arrest, search, and seizure in relation to bylaw prohibiting liquor in public place**

(1) In this section and in section 170,-

**liquor** has the meaning given to it in the Sale of Liquor Act 1989

**offence** means an offence under section 239 that is a breach of a bylaw prohibiting-

(a) the consumption or possession or both of liquor in, or the bringing of liquor into, a public place; or

(b) in conjunction with a prohibition relating to liquor, the presence or use of a vehicle in a public place.

**public place** means a public place as defined in section 147(1) in respect of which there is a bylaw prohibiting-

(a) the consumption or possession or both of liquor in, or the bringing of liquor into, that place; or

(b) in conjunction with a prohibition relating to liquor, the presence or use of a vehicle in that place.

(2) A member of the police may, without warrant,-

(a) for the purpose of ascertaining whether liquor is present, search-

- (i) a container (for example, a parcel, package, bag, or case) in the possession of a person who is in, or entering, a public place;
- (ii) a vehicle that is in, or is entering, a public place:

(b) seize and remove liquor and its container if the liquor is in a public place in breach of a bylaw:

(c) arrest a person whom the member of the police finds committing an offence:

(d) arrest a person who has refused to comply with a request by a member of the police-

- (i) to leave the public place; or
- (ii) to surrender to a member of the police the liquor that, in breach of a bylaw, is in that person's possession.

(3) Liquor or a container seized under subsection (2)(b) is forfeited to the Crown if the person from whom the liquor or container is seized is convicted of breaching the bylaw.

#### **170 Conditions relating to power of search**

(1) Before exercising the power of search under section 169(2)(a) in relation to a container or a vehicle, a member of the police must-

(a) inform the person in possession of the container or the vehicle, as the case may be, that he or she has the opportunity of removing the container or the vehicle from the public place; and

(b) provide the person with a reasonable opportunity to remove the liquor or the vehicle, as the case may be, from the public place.

(2) However, on specified dates or in relation to specified events, notified in accordance with subsection (3), a member of the police may, immediately and without further notice, exercise the power under section 169(2)(a) to search a container or a vehicle.

(3) Before a member of the police may exercise the power of search under subsection (2), the territorial authority must-

(a) specify the public place (within the meaning of section 169(1)) where, and the period when, this power may be exercised by the police by public notice given 14 days in advance in accordance with this Act; and

(b) indicate the location of the public place by 1 or more clearly legible notices affixed in 1 or more conspicuous places on, or adjacent to, the place to which the notice relates, unless it is impracticable or unreasonable to do so.

(4) Subsection (2) only applies if the member of the police is authorised to exercise that power by a bylaw made under section 147. *[Compare: 1974 No 66 s709H]*

## LOCAL GOVERNMENT ACT 1974

### Prohibition of vehicles and consumption or possession of liquor in public places

#### 709A Prohibition of vehicles and consumption or possession of intoxicating liquor in public place

(1) In addition to the powers conferred on the council by sections 319, 342, and 366(2) of this Act or by regulations made pursuant to section 77(1)(u) of the Transport Act 1962 or by rules made under section 157 of the Land Transport Act 1998, the council may, in any case where it considers that on the occasion of the holding in any public place or part of a public place (in this section referred to as the specified public place) of any public event, function, or gathering,-  
*[Section 366 was repealed on 1 July 1992]*

- (a) The use of ordinary vehicular traffic in the specified public place should be prohibited; or
- (b) The consumption of liquor in the specified public place during that period or those periods, the bringing of liquor into the specified public place during that period or those periods, and the possession of liquor in the specified public place during that period or those periods should be prohibited; or
- (c) That both the prohibition referred to in paragraph (a) of this subsection and the prohibitions referred to in paragraph (b) of this subsection should apply,-  
the council may, not later than the day before the day of the public event, function, or gathering, but sooner so as to be able to comply with subsection (5) of this section unless the council considers there are special circumstances,-
- (d) Prohibit the use in the specified public place of ordinary vehicular traffic for any period or periods specified in the resolution; or
- (e) Prohibit the consumption of liquor in the specified public place during that period or those periods, the bringing of liquor into the specified public place during that period or those periods, and the possession of liquor containers in the specified public place during that period or those periods; or
- (f) Do both the matters specified in paragraphs (d) and (e) of this subsection.

(2) The council may delegate its powers under subsection (1) of this section to any committee of the council appointed under section 104 of this Act that comprises only members of the council, but may not delegate those powers to any committee that has any members who are not members of the council or to any officer of the council under section 715 of this Act. *[Section 104 was repealed on 1 November 1989]*

(3) A prohibition of ordinary vehicular traffic under subsection (1)(d) must not have effect for more than 12 hours in any consecutive period of 24 hours.

(4) No prohibition relating to liquor under this section shall be deemed to prohibit-

- (a) The transport of liquor from premises on land having a frontage to the specified public place during any period while pursuant to the *[Sale of Liquor Act 1989]* liquor may lawfully be sold on those premises for consumption off the premises, provided the liquor is promptly removed from the specified public place:
- (b) The transport of liquor from outside the specified public place for delivery to premises on land having a frontage to the specified public place, being premises licensed for the sale of liquor pursuant to the Sale of Liquor Act 1989:
- (c) The transport of liquor from outside the specified public place to premises on land having a frontage to the specified public place by or for delivery to a person residing on those premises or by his bona fide visitors, or from such premises to a place outside the specified public place by a person residing on the premises, provided the liquor is promptly removed from the specified public place.

(5) The council shall give public notice of every decision under this section in a newspaper circulating in the district on at least 3 occasions during the period of 21 days immediately preceding the day on which the prohibition or prohibitions are to have effect, or, where the prohibition or prohibitions are to have effect on 2 or more days, the first of those days.

(6) Notwithstanding subsection (5) of this section, where it is not practicable to give any or all of the notices required by that subsection because the decision of the council was made in special circumstances within a short period before the date of the prohibition or prohibitions, the council shall comply with subsection (5) of this section so far as is practicable and shall ensure that similar notices are displayed in the specified public place and given to the public in whole or in part by such other means as the council, after consultation with the Police, considers appropriate.

(7) Every notice required to be given or displayed under subsection (5) or subsection (6) of this section shall-

- (a) Describe clearly the specified public place and the proposed event, function, or gathering:
- (b) Specify whether or not the use of ordinary vehicular traffic is prohibited in the place, and shall specify the classes of vehicles (if any) to which the prohibition does not apply:
- (c) Specify any prohibitions relating to consumption of liquor and the bringing or possession of liquor that are to apply:
- (d) Specify the day or days on which any prohibition or prohibitions are to have effect, and the hours of each day during which the prohibition or prohibitions are to have effect:
- (e) Set out the powers conferred on the Police by this section:
- (f) Set out the maximum penalty for offences against this section.

(8) Every person commits an offence, and is liable on summary conviction to a fine not exceeding \$500, who, knowing that any prohibition under subsection (1) of this section is in force in respect of the specified public place,-

- (a) Consumes liquor in the specified public place in breach of any prohibition imposed under subsection (1) of this section; or
- (b) Brings liquor into any specified public place in breach of any such prohibition; or
- (c) Is in possession of liquor in any specified public place in breach of any such prohibition; or
- (d) Drives or rides any motor vehicle, being ordinary vehicular traffic, in any specified public place in breach of any such prohibition.

(9) Nothing in subsection (8)(d) of this section shall apply to the driving or riding of a motor vehicle by a person residing in premises on land having a frontage to the specified public place or by his bona fide visitors.

(10) Any constable may, without warrant,-

- (a) Arrest any person whom he finds committing an offence against this section:
  - (b) During the period of the prohibition or prohibitions, arrest any person whom he has reasonable cause to suspect of having committed such an offence:
  - (c) But subject to subsections (11) and (12), search any-
    - (i) Vehicle in, entering, or about to enter any specified public place in respect of which any prohibition relating to liquor under subsection (1) is for the time being in force, for the purpose of ascertaining whether or not the vehicle contains any liquor:
    - (ii) Parcel, package, bag, case, or other container in the possession of any person in, entering, or about to enter any specified public place in respect of which any prohibition relating to liquor under subsection (1) is for the time being in force, for the purpose of ascertaining whether or not the parcel, package, bag, case, or container contains any liquor.
- (11) Before exercising the power of search conferred by subsection (10)(c), the constable must inform the person in possession of the vehicle or parcel, package, bag, case, or other container of the provisions of subsection (12), and in any case where the person is in possession of the vehicle or item in the specified public place, give the person a reasonable opportunity of removing the vehicle or item from the specified public place.
- (12) No constable may exercise the power of search conferred by subsection (10)(c) if the person in possession of the vehicle or parcel, package, bag, case, or other container removes it from or, as the case may be, refrains from taking it into the specified public place and leaves it outside the public place until the period of the prohibition ceases.
- (13) Any constable may seize and remove any liquor and its container or any other container that he has reasonable cause to believe would be evidence of the commission of an offence against this section.
- (14) Any liquor or container seized under subsection (13) of this section and in respect of which any person is convicted of an offence under this section, together, in the case of any liquor, with the container of the liquor, shall be deemed to be forfeited to the Crown.

(15) In this section,-

liquor has the same meaning as in the Sale of Liquor Act 1989:

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 on payment of a charge; and includes any road whether or not it is under the control of the council:

ordinary vehicular traffic, in relation to any specified public place, means all vehicular traffic other than traffic of any kind (if any) that pursuant to the decision of the council under subsection (1) of this section is permitted to use the specified public place during the period of the prohibition.

[Compare: 1974 No 66, s346; 1978 No 43, s2] [s709A: Inserted on 14 December 1984 by 1984 No 18, s2]

[For authorisation to extend until 30 April 2002 the powers as exercised before 22 December 2001 see 2001 No 106, s10]

[s709A(1)(b)&(e): Words "or empty liquor containers" omitted after "liquor" on 10 September 1999 by 1999 No 108, s10(1)]

#### **709B Interpretation** [s709B - s709H: Inserted on 10 September 1999 by 1999 No 108, s11]

In sections 709C to 709H, unless the context otherwise requires,-

"liquor" has the same meaning as in the Sale of Liquor Act 1989:

"prohibition" means a prohibition under section 709C:

"public place"-

(a) Means a place that is-

- (i) Under the control of a council; and
- (ii) Open to or being used by the public, whether admission is free or on payment of a charge; and

(b) Includes-

- (i) A road, whether or not the road is under the control of a council; and
- (ii) One or more parts of a public place:

"specified day" means a day or any days specified by a territorial authority in a resolution under section 709C(2) as a day or days in respect of which one or more powers under that subsection are to be exercised

"vehicle"-

(a) Has the same meaning as in section 2 of the Land Transport Act 1998; but

(b) Does not include an ambulance, fire engine, or police vehicle.]

["specified day": Definition repealed and substituted on 22 December 2001 by 2001 No 106, s9: "(a) Waitangi Day: (b) The seventh of February: (c) A day in the period beginning on Good Friday and ending on the close of the following Easter Monday: (d) A day in the period comprising the Sovereign's birthday and the Saturday and Sunday immediately before it: (e) A day in the period comprising Labour Day and the Saturday and Sunday immediately before it: (f) The fifth of November: (g) The sixth of November: (h) A day in the period beginning on 24 December and ending on the close of 2 January in the following year"]

#### **709C Further power to prohibit vehicles and liquor in public places**

(1) A council may exercise the power in subsection (2), if the council-

(a) Is satisfied on reasonable grounds that-

- (i) Liquor will be present in a public place on a specified day; and
- (ii) The presence of liquor in the public place on the specified day is likely to lead to the commission in the public place of a number of offences against 1 or more of the following sections of the Summary Offences Act 1981:
  - (A) Section 3 (disorderly behaviour):
  - (B) Section 4 (offensive behaviour or language):
  - (C) Section 5A (disorderly assembly):

(D) Section 7 (fighting in a public place):

(E) Section 9 (common assault); and

(b) Has used the special consultative procedure in section 716A.

(2) A council may prohibit 1 or more of the following:

(a) The use of vehicles in a public place during a specified day:

(b) The consumption of liquor in a public place during a specified day:

(c) The bringing of liquor into a public place during a specified day:

(d) The possession of liquor in a public place during a specified day.

[For extension until 30 April 2002 of the application of powers exercised before 22 December 2001 see 2001 No 106, s10]

(3) The power in subsection (2) may be exercised-

(a) In respect of 1 or more periods of time in a specified day:

(b) In respect of the whole of a specified day.

(4) The power in subsection (2) may be exercised in respect of 2 or more specified days, whether consecutive or not.

(5) A council must not delegate its power in subsection (2) to-

(a) A committee of the council under section 114Q unless all the members of the committee are members of the council; or

(b) A member or officer of the council under section 715.

(6) The power in subsection (2) is in addition to the powers conferred on a council under-

(a) Sections 319 and 342:

(b) Regulations made under section 167 of the Land Transport Act 1998.

#### **709D Exceptions to prohibition for residents and their visitors**

A prohibition does not apply to-

(a) The use of a vehicle by a person residing in premises on land having a frontage to the public place concerned or by genuine visitors of the person:

(b) The transport of liquor from premises on land having a frontage to the public place concerned if-

(i) The liquor is being delivered by a person residing on the premises or by the person's genuine visitors to a place outside the public place; and

(ii) The liquor is promptly removed from the public place:

(c) The transport of liquor from outside the public place concerned if-

(i) The liquor is being delivered to a person residing on premises having a frontage to the public place or to the person's genuine visitors; and

(ii) The liquor is promptly removed from the public place.

#### **709E Exceptions to prohibition for licensed premises**

A prohibition does not apply to-

(a) The transport of liquor from premises on land having a frontage to the public place concerned if-

(i) The liquor has, under the Sale of Liquor Act 1989, been sold on the premises for consumption off the premises; and

(ii) The liquor is promptly removed from the public place:

(b) The transport of liquor from outside the public place concerned for delivery to premises on land having a frontage to the public place concerned if-

(i) The liquor may, under the Sale of Liquor Act 1989, be sold on the premises; and

(ii) The liquor is promptly removed from the public place.

#### **709F Public notice**

(1) A prohibition has no effect unless public notice of the prohibition is given in accordance with this section.

(2) Public notice of a prohibition must be given-

(a) By displaying the notice in the public place concerned on the date it comes into force and before the time it comes into force; and

(b) In a newspaper circulating in the district concerned on at least 3 occasions during the period of 21 days immediately before-

(i) The specified day on which the prohibition comes into force; or

(ii) If the prohibition applies to 2 or more consecutive specified days, the first of the specified days on which the prohibition comes into force.

(3) However, if it is not practicable to give public notice of a prohibition in accordance with subsection (2)(b) because the decision of the council was made in special circumstances within a short period before the date of the prohibition, the council must-

(a) Comply with subsection (2)(b) so far as is practicable; and

(b) Ensure that similar notices are given to the public in whole or in part by such other means as the council, after consultation with the police, considers appropriate.

(4) A notice required to be given or displayed under subsection (2) or subsection (3) must-

(a) State the specified day or days on which the prohibition is in force and the hours of the specified day or days during which the prohibition is in force; and

(b) Describe clearly the public place concerned; and

(c) State whether or not the use of vehicles is prohibited in the public place concerned and, if it is, state the classes of vehicles (if any) the prohibition does not apply to; and

(d) State any prohibitions relating to the consumption of liquor and the bringing or possession of liquor that apply; and

- (e) State the powers conferred on the police by section 709H; and
- (f) State the maximum penalty for offences against section 709G.

#### **709G Offences**

Every person commits an offence and is liable on summary conviction to a fine not exceeding \$500 who, knowing that a prohibition is in force, contravenes the prohibition.

#### **709H Powers of arrest, search, and seizure**

- (1) A member of the police may, without a warrant,-
  - (a) Arrest a person whom the member of the police finds committing an offence against section 709G:
  - (b) While a prohibition is in force, arrest a person whom the member of the police has reasonable cause to suspect of having committed an offence against section 709G.
- (2) A member of the police may, without a warrant, search-
  - (a) A vehicle in, entering, or about to enter a public place, in respect of which a prohibition under 1 or more of paragraphs (b) to (d) of section 709C(2) is in force, for the purpose of ascertaining whether or not the vehicle contains liquor:
  - (b) A container (for example, a parcel, package, bag, or case) in the possession of a person who is in, entering, or about to enter a public place, in respect of which a prohibition under 1 or more of paragraphs (b) to (d) of section 709C(2) is in force, for the purpose of ascertaining whether or not the container contains liquor.
- (3) Before exercising the power of search in subsection (2), a member of the police must-
  - (a) Inform the person in possession of the vehicle or container of the provisions of subsection (4); and
  - (b) If the person is in possession of the vehicle or container in the public place, give the person a reasonable opportunity to remove the vehicle or container from the public place.
- (4) A member of the police must not exercise the power of search in subsection (2) if the person in possession of the vehicle or container removes it from, or refrains from taking it into, the public place concerned.
- (5) A member of the police may seize and remove liquor and its container or any other container that the member of the police has reasonable cause to believe would be evidence of the commission of an offence against section 709G.
- (6) Liquor or a container seized under subsection (5) is forfeited to the Crown if the person from whom the liquor or container is seized is convicted of an offence against section 709G.