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# ASHBURTON DISTRICT COUNCIL BYLAWS

## CHAPTER 1 – INTRODUCTION & MISCELLANEOUS

This bylaw has been created using the process required by the Local Government Act 2002.

### SCOPE

The purpose of this chapter is to explain the provisions of the bylaw, how it will be enforced and to identify those terms and expressions that are used throughout the bylaw document and to clearly interpret those terms and expressions.

**100** The following enactments are referred to in this bylaw:

- Animal Welfare Act 1999
- Building Act 2004
- Dog Control Act 1996
- Forest and Rural Fires Act 1977
- Forest and Rural Fires Regulations 2005
- Health Act 1956
- Impounding Act 1955
- Land Transport Act 1998
- Local Government Act 1974
- Local Government Act 2002
- Reserves Act 1977
- Reserves and Domains Act 1953
- Resource Management Act 1991

### INTERPRETATION

**101** In this bylaw, unless the context otherwise requires -

**AGENT** means a person or business authorised to act on another's behalf.

**ANIMAL** means a living organism which feeds on organic matter, has specialized sense organs and nervous system, and is able to move about and to respond rapidly to stimuli.

**APPROVED** means approved by Council or by any officer of the Council authorised in that behalf.

**AUTHORIZED OFFICER** means any officer or employee of the Council appointed by the Council to exercise the powers, duties, functions, and discretions, of an authorized officer under this part of this bylaw. This also includes a member of the Police.

**BYLAW** means a bylaw of Council for the time being in force, made under the provisions of any Act or authority enabling Council to make bylaws.

**COUNCIL OR COUNCIL OFFICER OR OFFICER** means the Ashburton District Council or any officer of the Ashburton District Council to whom authority is delegated by Council to take action in relation to any particular bylaw or to undertake the duties of a Council Officer under the bylaw.

**CUSTODIAN** means any person for the time being appointed by Council to control or manage or to assist in the control and management of any land, building, or premises belonging to or under the jurisdiction of the Council.

**DISTRICT** means the district within the jurisdiction and under the control of Council.

**DWELLING OR DWELLINGHOUSE** means and includes any house, tent, vehicle or other structure, whether permanent or temporary, and whether attached to the soil or not, used in whole or in part for human habitation, and includes the land appurtenant to a dwelling.

**ENFORCEMENT OFFICER** means an individual as defined in the Local Government Act 2002 Section 5(1).

**LICENSED** means holding a licence under this bylaw or under any statute.

**LOCAL AUTHORITY** as defined in the Local Government Act 2002 Section 5(1).

**MOTOR VEHICLE** shall have the meaning assigned to it from time to time by the Transport Act 1998 and its amendments and re-enactments.

**NUISANCE** shall bear the meaning assigned to it by the Health Act 1956 Section 29 and its amendments and re-enactments.

**OCCUPIER** means an occupier as defined in the Rating Powers Act 1988.

**OFFENCE** includes any act or omission in relation to this bylaw or any part thereof for which any person can be punished either on indictment or by summary process.

**OWNER** means the owner of any property, or any person for the time being entitled to receive the rent of such property, or who would be so entitled if the same were let to a tenant at a rack rent; and where any such person is absent from New Zealand, shall include their attorney or agent.

**PERSON** means a natural person and includes a corporation sole and also a body of persons, whether corporate or un-incorporate.

**POULTRY** means any live domesticated bird including but not limited to, domestic fowls, ducks, geese, turkeys, guinea-fowl, pheasants and pigeons.

**PREMISES** means any land, dwelling, storehouse, warehouse, shop, cellar, yard, building, or part of the same, or enclosed space separately occupied, and all lands, buildings, and places adjoining each other and occupied together shall be deemed to be the same premises.

**PROPERTY** means a separately rateable property.

**PUBLIC NOTICE** as defined in the Local Government Act 2002 Section 5(1).

**PUBLIC PLACE** has the meaning as defined in Section 147(1) of the Local Government Act 2002.

**RESERVE** As defined in Section 2(1) of the Reserves Act 1977.

**ROAD** shall have the meaning assigned to it in the Land Transport Act 1998 and its amendments and re-enactments.

**STOCK** includes but is not limited to:

- (a) Any live horse, cattle, sheep, swine, alpaca, llama, bison, donkey, hinny, mule, or water buffalo that is not in a wild state:
- (b) Any deer, goat, thar, rabbit, possum, or other animal that is kept within a fence or enclosure for domestic or farming purposes:

**STREET, PRIVATE ROAD, FOOTPATH AND PRIVATE WAY** shall have the meanings assigned to them in the Local Government Act 1974 and shall where the context requires include a road.

**URBAN AREA** means any area defined in the operative or proposed District Plan of the Council, as being zoned "Residential" or "Township". Areas within and adjoining such zones that are zoned business are included in this definition.

**VEHICLE** shall have the meaning that is assigned to the term in Section 2(1) of the Land Transport Act 1998.

**VERANDA** means and includes every awning, porch, portico, shed, shade, or covering upon, across, or over any public footway or part of a road, street, private street, or access-way for the purpose of shade or shelter, together with any supports thereof, other than the building against which it shall be.

**WATERWORKS** means as defined in the Local Government Act 2002 Section 5(1).

**WRITING, WRITTEN** or any term of like import means and includes words printed, painted, engraved, lithographed, or otherwise traced or copied.

**102** Words importing the singular number include the plural number, and words importing the plural number include the singular number; for the purposes of this bylaw the word "shall" refers to practices that are mandatory for compliance with this bylaw, while the word "should" refers to practices which are advised or recommended.

**102.1** Words referring to any district, locality, place, person, office, officer, functionary, party, or thing shall be construed distributively as referring to each district, locality, place, person, office, officer, functionary, party, or thing, to whom or to which the provision is applicable.

**102.2** The headings to the clauses of this bylaw shall not affect the construction thereof.

**102.3** Where in any bylaw there is a reference to New Zealand statute or regulation, that reference shall include in all instances any amendments or re-enactments of such statute or regulation.

## **SCHEDULES AND POLICIES**

**103** Every Schedule and Policy Note to this bylaw shall be deemed to form part of this bylaw provided that any such schedule or policy note may be altered from time to time by Council resolution.

## **OFFICERS TO CONTINUE IN OFFICE**

**104** All officers appointed by Council under or for the purpose of any repealed bylaw, and holding office at the time of the coming into operation of this bylaw, shall be deemed to have been appointed under this bylaw.

## **SERVING OF ORDERS AND NOTICES**

**105** Except where otherwise expressly provided for in any Act, in any case where it is provided by this bylaw, an order may be made or notice may be given to any person requiring them to do or abstain from doing anything. Such order or notice shall be delivered to such person, and may be delivered to them either personally or by sending the same, by messenger or post, to them at their last-known place of abode or business.

**105.1** If such person is absent from New Zealand the order or notice may be sent to their agent instead of to such person, in any manner mentioned in the last preceding sub clause.

**105.2** If such person is not known, or is absent from New Zealand, and has no known agent in New Zealand, and the order or notice relates to any land or building the order or notice, addressed to the owner or occupier of such building or land, as the case may require, may be served on the person in occupation thereof, if there is no person in occupation, may be put up on some conspicuous part of such building or land. It shall not be necessary in such notice to name the occupier or the owner of such land or building.

**105.3** Where an order or notice is sent by registered post it shall be sent so as to arrive in the due course of post on or before the latest time on which such order or notice is required to be served.

**105.4** Any order or notice issued shall state the time within which the remedial action is to be carried out, this may be extended from time to time by the written authority or an authorised officer.

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## POWERS OF DELEGATION

- 106** In all cases where this bylaw provides for the issue of any order, notice or licence, such order notice or licence shall be deemed to be issued in compliance with this bylaw if the same be issued by any officer of Council authorised by Council for that purpose.
- 106.1** Where pursuant to this bylaw any powers or duties are imposed on a Council Officer that officer may with the consent of Council delegate any of those powers or duties either generally or particularly to any other officer of Council.

## POWERS OF ENTRY FOR PURPOSES OF THIS BYLAW

- 107** Except where provided for under any enactment, sections 171,172,173 and 182 of the Local Government Act 2002 apply to power of entry under this bylaw.

## SUSPENSION AND REVOCATION OF LICENCES

- 108** Save and except as may be otherwise expressly provided for in any particular case in this bylaw:-
- (a) Should the holder of any licence, granted pursuant to this bylaw be convicted of any offence thereunder or touching their character as a licensee Council may immediately thereupon revoke such licence or suspend the same for as long as it may think fit.
  - (b) Should it be brought to the notice of Council either by a report from a Council Officer or otherwise that the holder of any licence granted hereunder has acted or is acting in a manner contrary to the true intent and meaning of this bylaw or that in any way they are deemed to be unfit to hold such licence, then and in any of such cases Council may cause to be served upon such holder a notice calling upon him/her to appear before Council or a committee thereof and show cause why their licence should not be revoked or suspended, and Council may, if it considers the matter proved or if there be no appearance by the holder of such licence revoke such licence or suspend the same for as long as it may think fit.
  - (c) Should it be brought to the notice of Council either by a report from a Council Officer or otherwise howsoever that any premises licensed under this bylaw or any part of such premises -
    - (i) Have been or are being used for any other purpose than that stated in such licence; or
    - (ii) Have fallen into a state of disrepair or are not being kept and maintained in the condition required by such licence; or
    - (iii) That in any other manner the bylaw in respect to such premises is not being observed in accordance with its true intent and meaning.

Then and in any such case Council may cause to be served upon the owner or the occupier of such premises, being the holder of such licence, a notice similar to that provided for in sub clause (b) hereof and may hear and determine the matter as provided in the said sub clause (b).

- (d) Any person whose licence has been suspended as aforesaid, and any premises in respect of which the licence has been suspended as aforesaid shall, during the period of such suspension, be deemed to be unlicensed.

## **OFFENCES AND BREACHES**

**109** No person shall do anything or cause any condition to exist for which a licence or approval from Council is required under this bylaw without first obtaining that licence or approval, and the failure to do so shall constitute a breach of this bylaw.

**109.1** No application for a licence or authority from Council, and no payment of or receipt for any fee paid in connection with such application, licence, or authority, shall confer any right, authority, or immunity on the person making such application or payment.

**109.2** Any person commits a breach of this bylaw who -

- (a) Does, or causes to be done, or knowingly permits or suffers to be done anything whatsoever contrary to or otherwise than as provided by this bylaw; or
- (b) Omits or neglects to do, or knowingly permits or suffers to remain undone, anything which according to the true intent and meaning of this bylaw, ought to be done by them at the time and in the manner therein provided; or
- (c) Does not refrain from doing anything which under this bylaw they are required to abstain from doing; or
- (d) Knowingly permits or suffers any condition of things to exist contrary to any provision contained in this bylaw; or
- (e) Refuses or neglects to comply with any notice duly given to him/her under this bylaw; or
- (f) Obstructs or hinders any officer of Council in the performance of any duty to be discharged by that officer under or in the exercise of any power conferred upon him/her by this bylaw; or
- (g) Fails to comply with any notice or direction given under this bylaw.

**109.3** Any person commits a breach of this bylaw who -

- (a) Having constructed, affixed or provided, or caused to be constructed, affixed, or provided, any building or any part of a building, or any work, appliance, or material of any description whatsoever, contrary to, or otherwise than in accordance with the provision of this bylaw; or
- (b) Having omitted to construct, affix, or provide any work, appliance or materials as required thereby and who does not within a reasonable time after notice in writing has been given to them by Council or any officer of Council, carry out the remedial action specified in that notice.

**109.4** The notice shall state the time within which the remedial action is to be carried out, and may be extended from time to time by written authority of a Council officer.

**109.5** The provisions of this clause shall also apply to any building, part of a building, work, appliance, or material that has, before the coming into force of this bylaw, been constructed, affixed, or provided or omitted contrary to or otherwise than as provided by any provision of any bylaw hereby repealed, but re-enacted, in substance in this bylaw, and notice as aforesaid may be given and renewed in respect of any such building, part of a building, work, appliance or material.

## REMOVAL BY COUNCIL OF WORKS EXECUTED CONTRARY TO THE BYLAW

**110** Council may authorise any officer thereof to pull down, remove or alter or cause to be pulled down, removed or altered any work material or thing erected or being in contravention of any bylaw of Council.

**110.1** Council may recover from any person responsible for the erection or from any person permitting the continued existence of any such work material or thing all expenses incurred by it, in connection with such pulling down, removal or alteration.

**110.2** The exercise of this authority shall not relieve any such person from responsibility for any penalty for erecting or permitting the continued existence of any such work, material or thing.

## PENALTIES FOR BREACH OF BYLAWS

**111** Any person who commits an offence against this bylaw commits an offence against Section 238 of the Local Government Act 2002 and on summary conviction any person who commits an offence is liable for a penalty specified in Section 242 of the Local Government Act 2002. Maximum penalties (subject to amendment) are indicated in the table below:

Chapter	Title	Maximum Penalty	Maximum Infringement Fine
2	Control of Advertising Signs, Placards, and Footpath Advertising	\$5000	\$500
3	Keeping of Animals, Bees and Poultry	\$20000	\$500
4	Hostels	\$20000	\$500
5	Construction, Demolition and Maintenance of Buildings and Site Works	\$20000	\$500
6	Dog Control	\$20000	As Set by the Dog Control Act Otherwise \$500
7	Fires in the Open Air	\$20000	\$500
8	Food Safety	\$20000	\$500
9	Mobile & Travelling Shops, Hawkers and Itinerant Traders	\$20000	\$500
10	Transportation and Parking Management	As per Land Transport Act otherwise \$20000	As set by Land Transport Act otherwise \$500

11	Public Places	\$20000	\$500
12	Prostitution	\$20000	\$500
13	Wastewater Drainage Bylaw	\$20000 and/or 3 years imprisonment	\$500
14	Water Supply		\$500
15	Stockwater		\$500
16	Solid Waste	\$20000	\$500
17	Trade Waste	\$200000	\$500
18	Parks and Public Gardens	\$20000	\$500
19	Cemeteries	\$20000	\$500

**111.1** Where another enactment specifies the penalty for the breach of the bylaw, that other penalty shall apply.

**111.2** Council may, after a conviction for the continuing breach of any bylaw, apply to any Court of competent jurisdiction for an injunction to restrain the further continuance of the breach by the person so convicted.

**111.3** The continued existence of any work or thing in a state contrary to this bylaw shall be deemed a continuing offence within the meaning of this clause.

## **DISPENSING POWER**

**112** Where in the opinion of Council a full compliance with any of the provisions of this bylaw, would needlessly or injuriously affect any person, or the course or operation of the business of, or be attended with loss or inconvenience to, any person without any corresponding benefit to the community, Council may, on the special application of that person dispense with the full compliance with the provisions of this bylaw.

**112.1** Provided that any other terms or conditions (if any) that Council may deem fit to impose shall be complied with by such person as aforesaid.

## **INSTALLATION, ETC, NOT OTHERWISE PROVIDED FOR**

**113** If, after the coming into force of this bylaw, any person desirous of installing or using in the District any article or thing which had not been introduced into the District prior to the coming into force of this bylaw and which, while not complying entirely with the provisions of this bylaw, may, in the opinion of the Council Officer be properly installed, and put into use, the Council Officer may either generally or specifically authorise the installation and use of such article or thing, and they may impose such conditions as they deem necessary.

## **FORMS**

**114** Wherever throughout this bylaw forms are prescribed, slight deviations therefrom, but to the same effect and not calculated to mislead, shall not negate them.

**FEES AND CHARGES**

- 115** Council may at any time by ordinary resolution prescribe fees that may be charged in respect of any certificate, authority, approval, consent given, inspection made or service given by the Council under the provisions of the Local Government Act or any other enactment where that enactment contains no provision for authorising the Council to charge a fee.
- 115.1** Where any inspection or service for which a fee has been paid (under the provisions of clause 115) has not been given or made, the Council may refund any such fee or portion thereof as it may determine.