



Outdoor Fire Safety Bylaw 2014
Ture- ā- Rohe, Whakatūpato Tahu Ahi i Waho 2014

(as at 18 December 2014)

Governing Body of Auckland Council
Resolution in Council

18 December 2014

Pursuant to the Local Government Act 2002, the Governing Body of Auckland Council makes the following bylaw.

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1 Title

- (1) This bylaw is the Outdoor Fire Safety Bylaw 2014.

2 Commencement

- (1) This bylaw comes into force on 20 December 2014.

3 Application

- (1) This bylaw applies to Auckland.

**Part 1
 Preliminary provisions**

4 Purpose

- (1) The purpose of this bylaw is to protect public health and safety from the start or spread of fire, by regulating the use of outdoor fires and other fire hazards.

Explanatory note: This bylaw is a fire control measure in addition to existing fire control measures available to Auckland Council under the Local Government Act 2002, the Forest and Rural Fires Act 1977 and the Forest and Rural Fires Regulations 2005. This bylaw applies to both the Urban and Rural Fire Districts of Auckland.

This bylaw complements the Auckland Council Unitary Plan which regulates activities that discharge contaminants into air, such as outdoor burning, in order to protect air quality. Some activities may require resource consent depending on the type of activity and location of the activity.

This bylaw complements the Auckland Council Public Safety and Nuisance Bylaw 2013 which prohibits the lighting of fires, fireworks and flares in all public places, except for fires contained in an outdoor fire device designed for outdoor cooking or when prior council approval has been obtained.

- (2) For the avoidance of doubt, nothing in this bylaw prevents the council from exercising its functions as the Rural Fire Authority under the Forest and Rural Fires Act 1977.
- (3) Nothing in this bylaw derogates from any duty, power or responsibility arising from any other Act, Regulation, bylaw or rule, including sections 20 to 22 of the Forest and Rural Fires Act.

5 Interpretation

- (1) In this bylaw, unless the context otherwise requires:

Approval means an approval from the council to do something and includes all conditions to which the approval is subject to.

Approved incinerator means an incinerator made from non-combustible materials that:

- (a) contains all embers and sparks; and
 (b) has a grate and lid, or spark arrestor.

Explanatory note: Any incinerator that does not meet the above requirements is considered to be a fire in the open air. An approved incinerator under this bylaw may require resource consent to carry out the activity that discharges contaminants into air.

Auckland has the meaning given by the Local Government (Auckland Council) Act 2009.

Combustible material means a substance or material that is able to catch fire and burn and may include overgrown vegetation, hay, timber and sawdust.

Council means the governing body of the Auckland Council or any person delegated or authorised to act on its behalf.

Ethnic cooking fire means any hāngi, umu, or similar solid fuel outdoor fire used for the preparation of food using traditional cooking methods.

Fire hazard means the danger of potential harm and degree of exposure arising from:

- (a) the start and spread of fire; and
- (b) the smoke and gases that are generated by the start and spread of fire.

Fire in the open air in relation to outdoor fires means fire that is not contained within:

- (a) an outdoor fire device fuelled by gas; or
- (b) an outdoor fire device that contains all embers and sparks; or
- (c) an approved incinerator.

Fireworks has the same meaning as the Hazardous Substances (Fireworks) Regulations 2001.

Fire Officer means any person authorised by the council to act as a fire officer or who is a member of the New Zealand Fire Service in accordance with the Fire Services Act 1975 or a Rural Fire Officer in accordance with the Forest and Rural Fires Act 1977.

Means of fire suppression means anything that is able to control the spread of fire or extinguish fire such as a water supply, fire extinguisher or an alternative means of fire suppression approved by the council.

Nuisance means, in relation to an outdoor fire, smoke or ash that is offensive or objectionable beyond the property boundary where the outdoor fire has been lit.

Occupier means, in relation to any land, the owner and includes any tenant, agent, manager, foreperson or other person apparently acting in the general management or control of the land.

Outdoor fire means any activity that uses fire to ignite and burn fuel in the outdoors and includes any fire in the open air, fire contained within an outdoor fire device, approved incinerator and fireworks.

Outdoor fire device means any non-combustible receptacle, appliance or device designed or intended to be used in the outdoors for cooking, heating or amenity that contains combustion or the burning of fuel and may include barbeques, smokers, braziers, pizza ovens and other like devices.

Open fire season has the same meaning as the Forest and Rural Fires Act 1977.

Person includes an individual, a corporation sole, a body corporate, and an unincorporated body and includes the Crown and any successor of a person.

Non-combustible receptacle means a receptacle made of fire resistant materials to contain combustion or the burning of fuel.

Restricted Fire Season has the same meaning as the Forest and Rural Fires Act 1977.

Rural area means land within the Rural Fire District but excludes land zoned residential or business as defined in the Unitary Plan.

Explanatory note: Land zoned residential or business are predominately in the Urban Fire District, however some rural and coastal settlements are within the Rural Fire District.

Rural Fire District means land constituted under the Forest and Rural Fires Act 1977 as a Rural Fire District.

Total fire ban means:

- (a) a fixed or indefinite period of time when the lighting of outdoor fires is prohibited; and
- (b) in a Rural Fire District, has the same meaning as a prohibited fire season as defined in the Forest and Rural Fires Act 1977.

Urban area means:

- (a) land within the Urban Fire District; and
- (b) land zoned residential or business as defined in the Unitary Plan.

Explanatory note: In order to maintain air quality and reduce smoke, the Unitary Plan restricts outdoor burning activities in all residential and business zones to cooking and heating fires only.

Urban Fire District means land constituted under the Fire Service Act 1975 as an Urban Fire District.

Unitary Plan means any proposed or operative plan made by the council under the Resource Management Act 1991.

Vegetation means:

- (a) all plants and the produce thereof, live or dead, standing, fallen, windblown, cut, broken, pulverised, sawn or harvested, natural or disturbed in use or as waste, debris, stump, stubble or otherwise;
 - (b) fossil fuel exposed at or lying within 20 metres of the surface of any land; and
 - (c) peat in any form;
 - (d) but does not include wood forming part of a structure or otherwise in processed form.
- (2) Any explanatory notes are for information purposes and do not form part of this bylaw. They may be made, amended and revoked without formal process.
- (3) The Interpretation Act 1999 applies to this bylaw.

Part 2

Regulation to prevent the spread of fire from outdoor fires and other fire hazards

6 Lighting outdoor fires in urban areas

- (1) A person must not light or allow to be lit any outdoor fire in an urban area, unless that fire is on private land and is:
 - (a) contained within an outdoor fire device; or
 - (b) an ethnic cooking fire; or
 - (c) fireworks; or
 - (d) any other outdoor fire that the council has approved.
- (2) Notwithstanding subclause (1), approval is required to light an ethnic cooking fire on private land in a Rural Fire District during a restricted fire season.

Explanatory note: Land zoned residential or business are predominately in the Urban Fire District, however some rural and coastal settlements are within the Rural Fire District.

The Public Safety and Nuisance Bylaw 2013 restricts the use of outdoor fire devices for cooking purposes only in all public places.

7 Lighting outdoor fires in rural areas

- (1) A person must not light or allow to be lit any outdoor fire in a rural area during a restricted fire season, unless that fire is:
- (a) contained within an outdoor fire device fuelled by gas; or
 - (b) contained within an outdoor fire device that contains all embers and sparks; or
 - (c) contained within an approved incinerator on private land; or
 - (d) fireworks on private land, except on Great Barrier Island where approval is required; or
 - (e) a hāngi fire on a marae approved by the council;
 - (f) any other outdoor fire that the council has approved pursuant to the Forest and Rural Fires Act 1977.

Explanatory note: During an open fire season, outdoor fires are permitted in rural areas subject to the Forest and Rural Fires Act 1977, the Unitary Plan and clause 8 of this bylaw. The Auckland Council Rural Fire Plan should also be consulted.

In addition to the requirements of this clause, the Public Safety and Nuisance Bylaw restricts the use of outdoor fire devices for cooking purposes only in all public places.

Approval for hāngi fires on marae can be issued as a site specific approval, lasting the duration of a Restricted Fire Season.

8 Conditions for lighting outdoor fires in all areas at all times

- (1) A person must not light or allow remain alight, any outdoor fire in any of the following circumstances:
- (a) Where the location, wind, or other conditions, cause, or are likely to cause the outdoor fire to become:
 - (i) a danger to any person or property; or
 - (ii) out of control or to spread beyond the limits of the property on which the fire is lit; or
 - (iii) a smoke or ash nuisance to any person or property; or
 - (iv) a hazard to road traffic.
 - (b) Within three metres of any combustible materials such as a building, fence or vegetation that may cause or be likely to cause a fire hazard, unless the fire is contained within an outdoor fire device that:
 - (i) is fuelled by gas; or
 - (ii) contains all embers and sparks.
 - (c) Without adequate supervision being maintained at all times;
 - (d) Without an appropriate means of fire suppression being available.
- (2) A person must not light an outdoor fire (excluding fireworks) between the hours of sunset and sunrise, unless the fire is:
- (i) contained within an outdoor fire device; or
 - (ii) an outdoor fire approved by the council.
- (3) Every person who lights an outdoor fire must ensure the outdoor fire is totally extinguished on completion of the activity.

Explanatory note: The Unitary Plan outdoor burning rules strictly prohibits the burning of household or commercial waste, treated or wet wood, plastic, tyres and any other materials that create excessive smoke and hazardous pollutants when burnt.

9 Total fire ban during periods of extreme fire hazard

- (1) The council may make, amend or revoke a total fire ban in any specified part or parts of Auckland to minimise the risk of the start or spread of fire, during periods of extreme fire hazard.
- (2) A person must not light, or allow to be lit, any outdoor fire where a total fire ban is in place, unless that fire is:
 - (a) in an urban area and contained within an outdoor fire device that:
 - (i) is fuelled by gas; or
 - (ii) contains all embers and sparks and used on private land; or
 - (b) in a rural area and is not a fire in the open air.
- (3) A person may apply to the council for an approval to light an outdoor fire during a total fire ban, if the outdoor fire is:
 - (a) required as part of a significant community or cultural event; or
 - (b) the most effective means to reduce a fire hazard; or
 - (c) the most effective means to reduce any other hazard to life, health, property or the environment.

10 Live ash or smouldering substances

- (1) A person must not place or dispose any live ash, cinders, embers or any other smouldering substance on any land except: when:
 - (a) contained in a non-combustible receptacle so as to prevent the transmission of fire or heat to any combustible material; or
 - (b) in a pit on private land, which will prevent the spread of fire or heat by the action of wind or otherwise.

11 Storage of combustible materials

- (1) Every occupier of any land must ensure combustible materials are stored in a manner that prevents or minimises fire hazard as far as practicable.
- (2) Where combustible materials on any land are likely to create a fire hazard, the council may require the occupier to eliminate or minimise that fire hazard.
- (3) The occupier must comply with the requirements and timeframes specified by the council to eliminate or minimise that fire hazard.

Explanatory note: The council has further powers under section 183 of the Local Government Act 2002 for the removal of growth or matter that is likely to become a fire risk.

Part 3

Council controls, approvals, powers to extinguish

12 Council approval to light an outdoor fire

- (1) The council may make controls and set fees for the following matters with respect to any approval required under this bylaw:
 - (a) application for an approval, including forms and information;
 - (b) assessing an application;
 - (c) inspecting any land;
 - (d) granting or declining an approval;
 - (e) the conditions that may be imposed on an approval;

- (f) the duration of the approval;
 - (g) reviewing an approval or its conditions;
 - (h) extending or renewing an approval;
 - (i) suspending or cancelling an approval.
- (2) At the discretion of the council, and having regard to any controls made under sub clause (1), approvals may be declined, or granted subject to any conditions.
- (3) An approval is personal to the holder and property and is not transferable.

13 Council may extinguish fires

- (1) Where an outdoor fire has been lit or allowed to burn in breach of any part or parts of this bylaw, the council may direct the occupier of the land where the outdoor fire is located and/or the person(s) who lit the outdoor fire, to immediately extinguish the fire.
- (2) If a direction given under sub clause (1) is not complied with to the satisfaction of the council, a fire officer may extinguish the outdoor fire and take other steps as considered reasonably necessary, to prevent the spread of fire.
- (3) Where an outdoor fire has been extinguished pursuant to sub clause (2), the council may recover any costs incurred in attending, containing and/or extinguishing the fire from the occupier of the property on which the outdoor fire was located and/or from any person who lit, fuelled or allowed the fire to remain alight.

14 Exemptions

- (1) The council may exempt by written approval, any person from any requirement of this bylaw.
- (2) In granting any written exemption to any clause of this bylaw the council must consider the effects of the exemption on public health and safety.
- (3) The council may revoke any exemption at any time the council has reason to believe public health or safety has been, or may be, adversely affected.

Part 4

Enforcement, offences, penalties

15 Enforcement powers

- (1) The council may use its powers under the Local Government Act 2002 to enforce this bylaw.

16 Offences and penalties

- (1) A person who fails to comply with any part of this bylaw commits a breach of this bylaw and is liable to a penalty under the Local Government Act 2002.

17 Savings and transitional provisions

- (1) This clause applies to the former bylaws:
- (a) Franklin District Council Fires in the Open Air Bylaw 2008;
 - (b) Manukau City Council Rural Fires Bylaw 2008;
 - (c) North Shore City Council Fire Prevention Involving Open Air Fires 2000; and
 - (d) Rodney District Council Fires in the Open Air Bylaw 1998.

- (2) Any licence, consent, permit, dispensation, permission or other form of approval granted under a bylaw referred to in subclause (1), will continue to remain in force, except where a total fire ban is in place, but –
 - (a) expires on the date specified in that approval; or
 - (b) if no expiry date is specified, it expires on the date one month after the commencement of this bylaw; and
 - (c) can be renewed only by application made and determined under this bylaw.

- (3) Any application for a permit or other form of approval made under a bylaw referred to in subclause (1) that was filed before the day on which this bylaw commences must be dealt with by the council as if it had been made under this bylaw.

Additional Information to the Outdoor Fire Safety Bylaw 2014

This document contains matters for information purposes only and do not form part of any bylaw. They include matters made pursuant to a bylaw and other matters to assist in the ease of understanding, use and maintenance.

The information contained in this document may be updated at any time.

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Section 1
History of bylaw

Action	Description	Date of Decision	Decision Reference	Commencement date
Make	The following bylaws relating to outdoor fires in force on 31 October 2010 deemed to have been made by Auckland Council: <ul style="list-style-type: none"> • Franklin District Council • Manukau City Council • North Shore City Council • Rodney District Council 	01 Nov 2010	Section 63 Local Government (Auckland Transitional Provisions) Act 2010	01 Nov 2010
Revoke	<ul style="list-style-type: none"> • Franklin District Council • Manukau City Council • North Shore City Council • Rodney District Council 	18 Dec 2014	Local Government Act 2002	20 Dec 2014
Make	Outdoor Fire Safety Bylaw	18 Dec 2014	Local Government Act 2002	20 Dec 2014

Section 2
Related documents

Document Title	Description of Document	Location of Document
Decision Minutes and Agenda	Decisions relating to the proposed outdoor fire safety bylaw.	http://infocouncil.aucklandcouncil.govt.nz/Open/2014/12/GB_20141218_MIN_4577_WEB.HTM
Hearings Report	Background and summary of submission to the proposed outdoor fire safety bylaw.	http://www.aucklandcouncil.govt.nz/SiteCollectionDocuments/aboutcouncil/hearings/outdoorfiresafetybylawreport20141114.pdf
Auckland Council Statement of Proposal Outdoor Fire Safety Bylaw 2014	Provides background information to the proposed outdoor fire safety bylaw.	http://www.aucklandcouncil.govt.nz/SiteCollectionDocuments/aboutcouncil/hearings/outdoorfiresafetybylawstatementofproposal20141114.pdf
Proposed Auckland Council Unitary Plan	Includes rules for outdoor burning activities.	www.aucklandcouncil.govt.nz
Local Government Act 2002	Provides certain functions, duties, powers and penalties to make and enforce this bylaw.	www.legislation.govt.nz
Forest and Rural Fires Act 1977	Provides certain functions, duties, powers and penalties relating to fire control measures in the Rural Fire District.	www.legislation.govt.nz
Local Government (Auckland Transitional Provisions) Act 2010	Provides certain functions, duties, powers, and penalties to make this bylaw.	www.legislation.govt.nz
Bylaws Act 1910	Provides for certain matters related to validity of bylaws.	www.legislation.govt.nz

Section 3 Delegations

Clause	Function, Duty, Power to be Delegated	Delegated Authority	Date of Delegation Decision	Decision Reference	Commencement of Delegation
All	All powers, duties and functions	Rural Fire – Tier 5 (Warranted Rural Fire Officers)	18 Dec 2014	http://infocouncil.aucklandcouncil.govt.nz/Open/2014/12/GB_20141218_MIN_457_7_WEB.HTM	20 Dec 2014
9	Make, amend and revoke total fire bans	Rural Fire – Tier 4 (Principal Rural Fire Officer)	18 Dec 2014	http://infocouncil.aucklandcouncil.govt.nz/Open/2014/12/GB_20141218_MIN_457_7_WEB.HTM	20 Dec 2014
12	Council approval to light an outdoor fire	Rural Fire - Tier 4 (Principal Rural Fire Officer)	18 Dec 2014	http://infocouncil.aucklandcouncil.govt.nz/Open/2014/12/GB_20141218_MIN_457_7_WEB.HTM	20 Dec 2014
13	Powers to extinguish	Rural Fire – Tier 5 New Zealand Fire Service	18 Dec 2014	http://infocouncil.aucklandcouncil.govt.nz/Open/2014/12/GB_20141218_MIN_457_7_WEB.HTM	20 Dec 2014
14	Power to grant exemption	Rural Fire – Tier 4 (Principal Rural Fire Officer)	18 Dec 2014	http://infocouncil.aucklandcouncil.govt.nz/Open/2014/12/GB_20141218_MIN_457_7_WEB.HTM	20 Dec 2014

Section 4 Enforcement powers

Legislative Provision	Description of Legislative Provision
Part 8 of Local Government Act 2002	162 Injunctions restraining commission of offences and breaches of bylaws 163 Removal of works in breach of bylaws 164 Seizure of property not on private land 165 Seizure of property from private land 168 Power to dispose of property seized and impounded 171 General power of entry 172 Power of entry for enforcement purposes 173 Power of entry in cases of emergency 175 Power to recover for damage by wilful or negligent behaviour 176 Costs of remedying damage arising from breach of bylaw 178 Enforcement officers may require certain information

	183 Removal of fire hazards 185 Occupier may act if owner of premises makes default 186 Local authority may execute works if owner or occupier defaults 187 Recovery of cost of works by local authority 188 Liability for payments in respect of private land
Fire Services Act 1975	New Zealand Fire Service Commission is responsible for prevention, suppression and extinction of fires in the Urban Fire District.
Forest and Rural Fires Act 1977	Auckland Council is responsible for prevention, suppression and extinction of fires in the Rural Fire District as the Rural Fire Authority.

Section 5 Offences and penalties

Description of offence	Infringement fee	Other penalty
A person who fails to comply with Part 2 or Part 3 of this bylaw commits a breach of this bylaw and is liable to a penalty under the Local Government Act 2002.	Nil	\$20,000.
A person who fails to comply with any other Act, Regulation, bylaw or rule which this bylaw relates to is liable to a penalty under that Act, Regulation, bylaw or rule.	Subject to the Act, Regulation, bylaw or rule.	Subject to the Act, Regulation, bylaw or rule.