

Invercargill City Council

Environmental Health Bylaw

2017

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1. GENERAL PROVISIONS

A Bylaw of the Invercargill City Council made in pursuance of the powers contained in the Health Act 1956 and the Local Government Act 2002. The primary purpose of the Bylaw is to enhance the safety and welfare of the public by minimising nuisance and adverse environmental health effects caused to the community, as far as is practicable through legislative means.

1.1 SHORT TITLE AND COMMENCEMENT

This Bylaw shall be known as the Invercargill City Council Bylaw 2008/1 – Environmental Health and shall come into force on 7 November 2017, (includes amendments on 6 March 2019 and 7 November 2019).

This Bylaw replaces any other Environmental Health Bylaws created by Invercargill City Council.

1.2 INTERPRETATION

In this Bylaw, unless the context otherwise requires:

ABANDONED VEHICLE means a vehicle that no longer has a current Warrant of Fitness and/or Registration (pursuant to the Transport (Vehicle and Driver Registration and Licensing) Act 1986), is no longer being maintained by its owner and has been left on the same land for six calendar months or more.

AFFECTED AREA means all land in the Invercargill City District.

ALCOHOL means a substance –

(a) that:

- (i) is or contains a fermented, distilled or spirituous liquor; and
- (ii) at 20°C is found on analysis to contain 1.15% or more ethanol by volume; or

(b) that:

- (i) is a frozen liquid, or a mixture of a frozen liquid and another substance or substances; and
- (ii) is alcohol (within the meaning of paragraph (a)) when completely thawed to 20°C; or

(c) that, whatever its form, is found on analysis to contain 1.15% or more ethanol by weight in a form that can be assimilated by people.

AUTHORISED OFFICER means any officer appointed by the Council as an enforcement officer under S. 177 of the Local Government Act 2002 as an enforcement officer with powers of entry as prescribed by sections 171-174; the Sale of and Supply of Alcohol Act 2012 or the Health Act 1956.

BUILDING means a temporary or permanent movable or immovable structure intended for the purpose for occupation by people, animals, machinery or chattels.

COUNCIL means the Invercargill City Council.

CITY means the City of Invercargill.

CITY COUNCIL and **COUNCIL** means the Invercargill City Council.

DISPOSE means to remove to a bona fide automotive dismantling or recycling facility or business.

DISTRICT PLAN means the Invercargill District Plan pursuant to the Resource Management Act 1991.

EAVES mean the part of a roof that meets or overhangs the walls of a building.

EXPIRY DATE means 28 days after the date of the service of the notice or any such other date as may be specified by the Council in any notice served.

LEGAL ROADWORTHY STANDARD means a vehicle that has both a Current Warrant of Fitness and Registration in terms of the Transport (Vehicle and Driver Registration and Licensing) Act 1986.

LONG GRASS is grass that is over 25 cm long and is unkempt (unless it is within the Rural Sub Area).

MIND ALTERING SUBSTANCE means any glue, solvent, drug or other substance whether synthetic or naturally occurring which alters consciousness, mood or emotions, intoxicates or induces pleasurable sensations (but does not include alcohol or nicotine) and may cause persons seeking those effects to behave in a disorderly manner or give the appearance of acting in a drunken manner.

MOBILE TRADING includes:

- (a) Hawking or peddling
- (b) Trading from a mobile or travelling shop

NUISANCE means the interference to the enjoyment of land that is caused by an action or activity (or failure to action) by one or more persons that is harmful or annoying to others.

NOXIOUS PLANT means a Plant contained under the Regional Pest Plant Plan for the Southland Region (copies available from Environment Southland). In the affected area these are:

- (a) Boxthorn - *Lycium ferocissimum*
- (b) German Ivy – *Senecio mikanoides*
- (c) Lagarosiphon - *Lagarosiphon major*
- (d) Broom - *Cytisus scoparius*
- (e) Gorse - *Ulex europaeus*
- (f) Old Man's Beard - *Clematis vitalba*
- (g) Spartina - *Spartina anglica*

Further plants considered Noxious under this Bylaw are:

- (h) Blackberry - *Rubus fruticosus* agg
- (i) Convolvulus (Greater Bindweed) - *Calystegia silvatica*
- (j) Ragwort - *Senecio jacobaea*

OWNER / OCCUPIER means the occupier is the person who is in possession of the land and exercises day to day control over it and includes tenants. Owner is the registered proprietor of the land.

PUBLIC PLACE means a place:

- (a) that is under the control of the territorial authority; and/or
- (b) that is open to, or being used by, the public, whether or not there is a charge for admission; and
- (c) includes a road, whether or not the road is under the control of the territorial authority and
- (d) any part of a public place.

PUBLIC RIGHT OF WAY means public roads, footpaths and any other public access.

RESERVE means any park, garden, plantation, forest, open space or ground set aside for public recreation or enjoyment and which is controlled or administered by Council.

RURAL SUB AREA means the area defined as the Rural Sub Area in the Invercargill City District Plan.

SPOUTING means an open gutter attached to eaves.

VERANDAH means a permanent structure, constructed of weatherproof material, which is either cantilevered or supported on posts or pillars, which extends from the building façade, usually on the street frontage and at first floor level, and overhangs a footpath or other similar public pedestrian accessway or space.

1.3 FEES AND CHARGES

All fees and charges under this Bylaw are prescribed in Council's Annual Plan.

1.4 DISPENSING POWER

Council may on the application of any person grant dispensation to that person from full compliance with any of the provisions of this Bylaw if full compliance would needlessly or injuriously affect that person or the course or operation of that person's business or cause that person loss or inconvenience without any corresponding gain or benefit to the community.

1.5 NAME AND ADDRESS TO BE SUPPLIED

If it appears that any person is committing or has committed any offence under the provisions of this Bylaw the Council may require such person to desist from such offence and may require that that person supply his or her real name in full, and his or her residential address. If any person after being so required fails to supply such information or gives incorrect information that person commits a further offence against this Bylaw.

1.6 LICENCES HELD UNDER RESCINDED BYLAWS

All licences issued under any provision of any Bylaw hereby repealed shall after the coming into force of this Bylaw be deemed to have been issued under the corresponding provision of this Bylaw and be subject to its provisions, provided that the Council may notify the holder of any licence of an earlier date of termination than would have applied had this Bylaw not been passed and may require the holder to reapply for a licence under the provisions of this Bylaw.

1.7 APPEALS

In any case where the issue of a licence or permit or any consent or approval under this Bylaw has been refused or is revoked the applicant or holder of the licence as the case may be shall be entitled to appeal to the Council.

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2. MOBILE TRADING

2.1 PURPOSE OF PART 2

To licence and control mobile traders in public places under the control of the Council.

2.2 MOBILE TRADERS TO BE LICENSED

No person may engage in mobile trading without first obtaining a Mobile Trading Licence under this Bylaw. The holder of the licence shall observe the conditions recorded on the licence.

2.3 APPLICATIONS

All applications for a Mobile Trading Licence shall be made on the form supplied by the Council. The Council will require the applicant to provide such information as is necessary for proper consideration of the application, including but not limited to:

- (i) Vehicle warrant of fitness and registration;
- (ii) Electrical certificate;
- (iii) Road user certificate;
- (iv) LPG cylinder annual inspection certificate - from a registered craftsman gasfitter;
- (v) A copy of the applicant's public indemnity or liability insurance.

2.4 ISSUE OF LICENCE

The Council may issue a Mobile Trading Licence to any person on being satisfied that the person is a fit and proper person to hold such a licence by the applicant supplying (on request) the Council with evidence of their good character (personal/business reference/s), and that the proposed operation meets all of the requirements of the Council's Bylaw and any other applicable laws, Bylaws, regulations or rules made by a competent authority and that the fee fixed for issue of the licence has been paid. Police advice may be sought at Council's discretion regarding the suitability of any applicant.

The Council may include in licences such conditions as it thinks fit.

2.5 DURATION OF LICENCES

Mobile Trading Licences issued under this Bylaw shall be valid for not more than one year from their date of issue and if not revoked may be renewed by payment of a further annual fee.

The Mobile Trading Licence is not transferable to another person. If the business or vehicle is sold or transferred to another person, the Invercargill City Council must be notified within 14 working days. The new owner will be required to apply for a licence and will not be permitted to use the mobile or travelling shop until a licence is issued.

2.6 LICENCE TO BE CARRIED

The holder of a Mobile Trading Licence shall carry the licence at all times while engaged in mobile trading and shall show it to any Police Officer, or Authorised Officer on demand. The licence will apply only to the vehicle whose registration number is specified on the licence. The use of any other vehicle will not be permitted without prior written consent from the Council.

The Mobile Trading Licence is valid during the hours specified on the licence.

2.7 NUISANCE, ANNOYANCE OR DANGER TO ANY PERSON

The licensee or operator shall operate any mobile or travelling shop used in connection with the licence, in such a manner as to avoid causing any nuisance, annoyance or danger to any person.

2.8 LIABILITY INSURANCE

The licensee shall carry insurance cover to cover the direct damage to vehicles and public liability (Third Party Insurance) in connection with the vehicles.

2.9 NAME TO BE DISPLAYED

The name of the licensee and details of the products for sale shall be displayed on any stall or vehicle used in connection with the mobile trading.

2.10 HAZARDOUS SUBSTANCES

All LPG cylinders must be stored securely outside the mobile or travelling shop and total no more than 100kg LPG net content. If the mobile or travelling shop is likely to be unattended at any time while in a public place, the cylinders shall be secured against tampering.

2.11 TRADING LIMITS

- (a) Unless permission has been applied for and granted from the appropriate Council departments, the Council prohibits all holders of Mobile Trading Licences from trading in the following areas:
 - (i) Parks and Reserves, including car parks and roads in Reserves, and Wachner Place except with permission from Council's Parks Manager
 - (ii) Roading Manager – all roads including State Highways
 - (iii) Environmental Health - Restricted Areas including:
 - Within 300 metres of another premises selling similar products, or
 - Within 50 metres of any intersection or pedestrian crossing where people visiting the site may be placed in danger.
- (b) The licensee or operator of any mobile or travelling shop shall not stand or remain stationary in any public place or road except for such time as may be reasonably required for the transaction of business with customers on that occasion, and in any case shall not remain stationary on any one site for a period exceeding two hours, nor stand on any one site more than twice in any eight hour period.

- (c) The licensee or operator shall when requested by any Police Officer or Authorised Officer of the Council, alter their position or move from place to place on any road or public place as directed.
- (d) Should the licensee or operator fail to comply with the provisions of Condition (b) or if the mobile or travelling shop owned or operated by him or under his control is left unattended in any road or public place it shall be lawful for any officer mentioned in Condition (c) to move the mobile or travelling shop to any safe position.

2.12 LITTER

The licensee or operator shall remove any litter from the surrounding area of the mobile or travelling shop that has been generated by the activities of his/her operations.

2.13 LICENCE MAY BE REVOKED

A Mobile Trading Licence may be revoked by the Council if:

- (a) The holder in connection with mobile trading, permits a breach of any provision of this Bylaw or any other law, Bylaw or regulation.
- (b) The holder fails to observe the conditions of the Mobile Trading Licence.
- (c) Permits any unlicensed person to operate as a mobile trader in connection with the mobile trading operation usually carried out by the licence holder.

2.14 SALES FROM BOATS EXEMPT

Nothing in this Bylaw shall apply to any sale of fish by the owner of a fishing vessel, provided that the fishing boat is registered under Section 103 of the Fisheries Act 1996 and in respect of which a boat fishing permit is for the time being in force, where he, or a person appointed by him in that behalf, sells fresh fish or fresh shellfish (being fresh fish or fresh shellfish taken from that boat in accordance with the conditions of the permit) from that boat at the place where it is moored, berthed, or beached or from a stall (including a vehicle used as a stall) within 450 metres of that place.

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3. ALCOHOL BAN

3.1 PURPOSE OF PART 3

For better crowd control, public safety and the prevention of the consumption, possession and bringing of alcohol in public places under the control of the Council.

3.2 OPERATION

The Council (subject to any licences or special licences that may be in force at any particular time) prohibits the consumption of, the bringing of and the possession of alcohol in the Alcohol Ban Affected Area during the hours and days of operation of the Bylaw.

3.3 ALCOHOL BAN AFFECTED AREA

The public place bounded by and inclusive of the following streets:

- Herbert Street from the corner of Herbert Street and Dee Street to the corner of Herbert Street and Kelvin Street.
- Kelvin Street from the corner of Herbert Street and Kelvin Street to the corner of Victoria Avenue and Kelvin Street but excluding Alice Street east of Kelvin Street.
- Victoria Avenue from the corner of Victoria Avenue and Kelvin Street east along Victoria Avenue to its termination and thence in a straight line to Queens Drive (so as to include the Gala Street Reserve) and Queens Drive south on to the intersection of Queens Drive and Tay Street.
- Elles Road from the intersection of Queens Drive and Tay Street to the corner of Elles Road and Tweed Street.
- Tweed Street from the corner of Tweed Street and Elles Road to the corner of Tweed Street and Liddell Street.
- Liddell Street from the corner of Liddell Street and Tweed Street to Leven Street, Leven Street on to Liffey Street.
- Liffey Street to its intersection on to Fox Street.
- Fox Street from the corner of Fox Street and Liffey Street to the corner of Fox Street and Dee Street.
- Dee Street from the corner of Dee Street and Fox Street to the corner of Dee Street and Herbert Street.

The Alcohol Ban Affected Area is to be adequately signposted to inform the community of their responsibilities.

3.4 HOURS AND DAYS OF OPERATION

The Alcohol Ban is in operation 24 hours of every day.

3.5 TEMPORARY ALCOHOL BAN

The Council may from time to time make a resolution:

- (a) prohibiting or otherwise regulating or controlling, either generally or for one or more specified periods:
 - (i) the consumption of alcohol in a public place; or
 - (ii) the bringing of alcohol into a public place; or

- (iii) the possession of alcohol in a public place,
 - (iv) in conjunction with a prohibition relating to alcohol under paragraphs (i) to (iii) the presence or use of a vehicle in a public place.
- (b) within a specified place or places.

3.6 EXEMPTIONS

The exemptions set out in section 147(3) of the Local Government Act 2002 apply to this Bylaw. This Bylaw does not prohibit, in the case of alcohol in an unopened bottle or other unopened container:

- (a) The transport of that alcohol from premises that adjoin a public place during any period when, under the Sale and Supply of Alcohol Act 2012, it is lawful to sell alcohol on those premises for consumption off the premises, provided the alcohol is promptly removed from the public place.
- (b) The transport of that alcohol from outside a public place for delivery to premises that adjoin the public place, provided the premises are licensed for the sale of alcohol under the Sale and Supply of Alcohol Act 2012.
- (c) The transport of that alcohol 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 alcohol is promptly removed from the public place.

3.7 OFFENCES AND PENALTIES

Every person who breaches the Bylaw commits an offence and is liable on summary conviction to a fine, pursuant to Section 242(4) of the Local Government Act 2002.

3.8 POLICE POWERS

Pursuant to this Bylaw the Police have the following powers:

- (i) The power to arrest without a warrant a person contravening the Bylaw.
- (ii) The power to arrest without a warrant a person who refuses to leave the public place after requested to do so.
- (iii) The power to arrest without a warrant a person who refuses to surrender alcohol that is in their possession in breach of the Bylaw.
- (iv) The ability to search without a warrant a vehicle in, entering or about to enter the public place subject to the Bylaw for the purpose of ascertaining whether or not the vehicle contains alcohol.
- (v) The ability to search a container in the possession of any person in, entering or about to enter the public place, subject to the Bylaw, for the purpose of ascertaining whether or not the container contains alcohol.

- (vi) The ability to seize and remove alcohol and its container if the alcohol is in the public place in breach of the Bylaw.

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4 SOLVENT ABUSE

4.1 PURPOSE OF PART 4

For the prevention of harm to individuals and for public safety in public places under the control of the Council.

4.2 PROHIBITION

No person shall knowingly in any public place, consume, inject, inhale or sniff any Mind Altering Substance, except as prescribed for that person for a medical condition, which may cause that person to behave in a disorderly manner or give the appearance of the person acting in a drunken manner.

4.3 OFFENCES AND PENALTIES

Every person who breaches the Bylaw commits an offence and is liable on summary conviction to a fine, pursuant to Section 242(4) of the Local Government Act 2002.

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5. UNTIDY BUILDINGS, SECTIONS AND ABANDONED VEHICLES

5.1 PURPOSE OF PART 5

To promote and maintain public health and safety by protecting the public from nuisances caused by abandoned vehicles, long grass, noxious plants, overgrown vegetation, items likely to harbour vermin, leaking, derelict buildings and verandahs.

5.2 OPERATIONAL PROVISIONS

- (a) Long grass and/or noxious plants on land within the affected area irrespective of whether the land is disused, used, vacant, developed or otherwise must be cut down and removed.
- (b) Owners and/or occupiers of land upon which trees or shrubs or other plants are situated and overhang and cause obstruction to public rights of way, must trim the trees, shrubs or other plants so that they are a minimum of 2.5 metres above the public right of way.
- (c) Owners and / or occupiers must not store items on land that are, or may become a fire danger and/or provide harbourage for vermin. Such items include but shall not be limited to disused vehicle bodies, automotive parts, building waste, refuse and abandoned items of furniture.
- (d) An abandoned vehicle must not remain on land where it can become a hazard to public health and/ or a public nuisance.
- (e) Owners and / or occupiers of commercial buildings must not allow their buildings to be in such a state that they cause public nuisance.
 - (e)(i) Verandahs over a public right of way must not be in such a state so as to allow water to overflow onto the public right of way.
 - (e)(ii) The verandahs shall be maintained to prevent harbourage for vermin or the nesting of birds.
 - (e)(iii) All building spouting including that of a verandah must be maintained to prevent blockages that would cause water to overflow, other than in the ordinary course of events.
- (f) Authorised Officers – all officers authorised under s. 174 or s. 177 or paragraph 32 of schedule 7 of the LGA, shall possess and produce on request warrants of authority and evidence of identity.
- (g) Any authorised officer may enter at any reasonable time any property believed to contain elements that contravene or may contravene this Bylaw and may take any photographs or other evidence necessary to establish that a breach of the Bylaw has occurred.

5.3 NOTICE

Council may serve upon the owner and/or occupier of any land within the affected area a Notice in writing requiring the owner and/or occupier prior to the expiry date to:

- (a) Cut down, remove and generally clear the land from all long grass and/or noxious plants; and/or

- (b) Trim trees or shrubs or other plants overhanging and causing obstruction to a public right of way, so that the trees or shrubs or other plants are a minimum of 2.5 metres above the public right of way; and/or
- (c) Remove trees or shrubs or other plants overhanging and causing obstruction to the public right of way; and / or
- (d) Remove items that are or may become a fire danger and/or provide harbourage for vermin; and/or
- (e) Dispose of an abandoned vehicle or bring an abandoned vehicle to a legal roadworthy standard.
- (f) Remove any blockages within the spouting that affects overflow onto the public right of way; and / or
- (g) Fix and / or repair the verandah to prevent the harbourage of vermin or nesting of birds.

5.4 COUNCIL MAY COMPLETE THE WORK

If any person on whom a Notice has been served under Clause 5.4 fails or neglects to do any act or thing specified in the Notice prior to the expiry date or fails or neglects to do any act or thing in such manner as may be so specified in the Notice prior to the expiry date the Council may without further notice to the person served do that act or thing or complete the requirements of the Notice.

5.5 COUNCIL MAY RECOVER ITS COSTS

If any work is carried out by the Council or its agent on any land pursuant to 5.5 above then the full cost of undertaking any work including all labour, materials and other charges incurred shall be recovered from the registered proprietor of the land. The Council may also register these costs as a charge upon the land pursuant to the Statutory Land Charges Act 1928.

5.6 APPEAL OF NOTICE

Within seven days after service of any Notice of this Bylaw, the person on whom the Notice is served may apply to the District Court for an Order setting aside the Notice. The Notice will be deemed to be suspended until determination is made by the District Court.

If the District Court determines the Notice is valid then the person served shall have 28 days to complete the work specified in the Notice. If after 28 days the work has not been completed the Council may enter upon the land to complete the work and recover costs as described above in Clauses 5.5 and 5.6.

5.7 OFFENCES AND PENALTIES

Every person who breaches the Bylaw commits an offence and is liable on conviction to a fine, pursuant to Section 242(4) of the Local Government Act 2002.