



# NAPIER CITY

## Fire Control Bylaw ~~2014~~ 2021

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## NAPIER CITY FIRE CONTROL BYLAW ~~2014~~

2021

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## 1. Scope

- 1.1 The purpose of this bylaw is to exercise control over burning in the Open Air in the District and prevent smoke from fires in the open causing a nuisance.
- 1.2 Council has a further avenue of control over smoke nuisance in the Nuisances provision of the Health Act 1956 and Persons responsible for causing a smoke nuisance may be prosecuted under the provisions of either the Health Act 1956 or this bylaw.
- 1.3 Regional Councils have responsibility for discharges into air. Consents and approvals may be required from the Hawkes' Bay Regional Council for discharges into air from fires in the Open Air.
- 1.4 This bylaw is made pursuant to section ~~146-145~~ of the Local Government Act 2002 (the Act).
- 1.5 This bylaw comes into force on ~~1 February 2015~~ date of adoption to be inserted.
- ~~1.6 This bylaw revokes the Napier City Fire Control bylaw 2008.~~
- ~~1.7~~1.6 So far as they are applicable, and are not contrary to the provisions of this bylaw, the provisions of the Napier City Introductory Bylaw ~~2014~~2021 are incorporated into and form part of this bylaw.
- ~~1.8~~1.7 All Fire Permits issued under the Napier City Fire Control Bylaw ~~2008~~2014, after the coming into force of this bylaw are deemed to have been issued under this bylaw and are subject to the provisions of this bylaw.
- ~~1.9~~1.8 All matters and proceedings commenced under the Napier City Fire Control Bylaw ~~2008-2014~~ pending or in progress on the coming into operation of this bylaw may be continued, completed or enforced under this bylaw.

## 2. Definitions and Interpretation

- 2.1 For the purposes of this bylaw the following definitions apply:

ACCEPTABLE MEANS OF FIRE SUPPRESSION means a charged hose connected to a reticulated water supply or an alternative means of fire suppression approved in writing in a particular case by an Authorised Officer.

BARBEQUE means any fixed or portable gas or solid fuel burning equipment or device designed or intended for the cooking of food in the Open Air.

FIRE PERMIT means a permit to light a fire in the Open Air granted under this bylaw.

INCINERATOR means a container used for burning waste material, which is made of non-combustible materials and which has a grate and a lid or spark arrester.

INCINERATOR FIRE means a fire within an incinerator.

OPEN AIR means in the open whether on or above ground level.

OPEN FIRE SEASON means a period of time, whether fixed or indefinite, during which the lighting of fires in the Open Air is permitted, subject to any conditions that may apply as set out in section 4 of this bylaw.

PROHIBITED FIRE SEASON means the period of time, whether fixed or indefinite, during which the lighting of fires in the Open Air is prohibited in accordance with 6.1 of this bylaw.

RESTRICTED FIRE SEASON means a period of time, whether fixed or indefinite duration, during which permits are required for the lighting of fires in the Open Air in accordance with 5.1 of this bylaw.

TRADITIONAL COOKING FIRE means any hangi, umu or similar fire in the Open Air and used for the preparation of food using traditional cooking methods.

URBAN AREA means any area of the city that does not have 'rural' in its zone description under the District Plan.

VEGETATION includes:

- (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, rubbish, refuse or debris, stump, stubble or otherwise; and
- (b) Fossil fuel exposed at or lying within 20 metres of the surface of any land; and
- (c) Peat in any form,

but does not include wood forming part of a structure or otherwise in processed form.

### **3. Prohibition in Urban Areas**

3.1 In the urban area, a Person must not at any time light any fire or use any incinerator in the Open Air with the exception of:

- (a) Barbeques; or
- (b) Traditional cooking fires where a Fire Permit has been issued.

### **4. Fires Permits and Conduct**

4.1 A Person may light a fire in the Open Air, including an Incinerator Fire, only under the following conditions:

- (a) Having first obtained the appropriate Fire Permit from Council (except where Council has declared an Open Fire Season); and
- (b) At least five metres from any part of a building, tree, hedge, fence or other combustible material; and
- (c) Maintaining continuous supervision at all times; and
- (d) Between the hours of sunrise and sunset, except with specified permission; and
- (e) With an Acceptable Means of Fire Suppression available, where the fire is located on residential Premises, or land adjoining such Premises.

4.2 In any rural area, a Person must not light any fire in the Open Air, including an Incinerator Fire, where the location, wind, or other conditions will cause, or is likely to cause, the fire to become:

- (a) A danger to any person or property; or
- (b) Out of control or to spread beyond the limits of the Premises on which it is lit; or
- (c) A smoke or ash nuisance to any Person;
- (d) Within proximity to any National Grid transmission line or substation

- 4.3 No Occupier on any private residential Premises must permit smoke, noxious fumes or other matter to be emitted from any chimney, fireplace, barbecue, incinerator or other device on such Premises, to such an extent as to cause a nuisance to Persons residing or being in the neighbourhood. Where in the opinion of an Authorised Officer a nuisance is being caused, the Authorised Officer may require the nuisance to be satisfactorily abated immediately.
- 4.4 No Person shall place any live cinders, embers or ashes in or upon any Premises other than:
- (a) In a container made and constructed of concrete or other similarly fire resistant material to prevent the transmission of heat to any combustible material; or
  - (b) In a pit or upon any fire-resistant substance in a manner which will prevent the spreading of fire or heat by the action of wind or otherwise.
  - (c) As part of a traditional cooking process including hangi and umu.,\_
- 4.5 Every Fire Permit to light a fire in the Open Air must be in the form or to the effect of the form "Fire Permit" set out in the schedule 1.
- 4.6 The Council may from time to time, by resolution publicly notified, specify the fee or fees payable in respect of the issue of any Fire Permit under this part of the bylaw. Any fees prescribed must be paid upon collecting the Fire Permit.
- 4.7 Subject to 4.8, every Fire Permit issued in accordance with 5.4 will remain in force from the date of issue until the expiry of the period, date or time specified in the Fire Permit, unless a Prohibited Fire Season is declared.
- 4.8 Notwithstanding any other provisions in this bylaw, any Fire Permit issued under this bylaw may be revoked or suspended by an Authorised Officer at any time, or suspended for such periods of time on such terms and conditions as the Authorised Officer may consider reasonable in the circumstances.
- 5. Restricted Fire Season**
- 5.1 An Authorised Officer may at any time prescribe a Restricted Fire Season or seasons within the District or in any specified part or parts thereof, and may at any time cancel or vary such a prescription.
- 5.2 Any Person wishing to obtain a Fire Permit during a Restricted Fire Season must apply to the Authorised Officer.
- 5.3 The Authorised Officer may from time to time prescribe a form of application for the purposes of 5.2.
- 5.4 Upon receiving an application under 5.2 an Authorised Officer may issue a Fire Permit and may impose such conditions and restrictions in respect of the Fire Permit as the Authorised Officer considers reasonably necessary having regard to:
- (a) Any cultural requirements or practices;
  - (b) The location, terrain, natural vegetation, and existence of buildings or other structures and any other fuels; and
  - (c) Protection of the safety, health and convenience, of Persons on the Premises in respect of which the Fire Permit is issued and adjoining Premises.
  - (d) The proximity to any National Grid transmission line or substation

5.5 Nothing in section 5 applies to a Traditional Cooking Fire, an Incinerator or a Barbeque, provided that Council may in certain circumstances include the above where it considers it necessary to do so.

## **6. Prohibited Fire Season**

6.1 An Authorised Officer may at any time prescribe a Prohibited Fire Season or seasons within the District or in any specified part or parts thereof, and may at any time cancel or vary such a prescription.

6.2 In a prohibited season no Person must light any fire in the Open Air including a Traditional Cooking Fire, an incinerator or a barbecue, and no Person being the Occupier of any Premises must cause or permit any fire to be lit or continue to burn in the Open Air on those Premises.

6.3 Nothing in 6.2 applies to the use of gas fire barbecues. The Authorised Officer may in certain circumstances prohibit the use of gas barbecues.

6.4 The Hawke's Bay Regional Council may also prescribe a Prohibited Fire Season to preserve air quality. Such a prohibition would operate independently of this bylaw.

## **7. Public Notice of Fire Seasons**

7.1 Public notice of the prescription of a restricted or a Prohibited Fire Season made under 5.1 or 6.1 or the cancellation or variation of such prescription, will be made by:

- (a) Broadcast or other similar means within the District; or
- (b) By a notice inserted in a daily or community newspaper circulating within the District; or
- (c) By any effective means.

## **8. Breaches and Exemptions**

8.1 Where a fire has been lit or allowed to burn in:

- (a) An Open Fire Season in breach of 3 or 4; or
- (b) A Restricted Fire Season in breach of the conditions of a Fire Permit issued in accordance with 5.4; or
- (c) A Prohibited Fire Season in breach of 6.2;

Any Authorised Officer or Authorised Agent of the Council (including the New Zealand Fire Service) may extinguish any such fire or direct the Occupier of Premises on which the fire is located, or the Person who lit the fire, to extinguish such fire.

8.2 Where an Authorised Officer or Authorised Agent of the Council has extinguished a fire pursuant to 8.1, the Council may recover any costs incurred in extinguishing the fire from the Occupier of the Premises on which the fire was located or the Person who lit the fire.

8.3 Where any Occupier of Premises upon which a fire in the Open Air is located, or Person who lit such a fire, disregards a Council direction under 8.1 to extinguish the fire, the Authorised Officer may authorise an Agent of the Council (including



the New Zealand Fire Service) to extinguish the fire and to take such other steps as may be reasonably necessary to ensure the safety of any Person or to protect the Premises or any other property.

8.4 The Council may recover from the Occupier of the Premises, or the Person who lit the fire, any costs incurred by it as a result of its Authorised Officer or Authorised Agents taking any action authorised by the Authorised Officer under 8.3.

8.5 Exemptions from prohibitions on lighting fires in the Open Air are:

(a) The Occupier of any Premises in which an operation is being carried out which necessitates the use of fire in the Open Air may apply in writing to the Napier City Council for an exemption from the Prohibited Fire Season imposed by 6.1 of this bylaw where that process or operation will be prejudicially affected by such prohibition.

(b) The organiser of any special occasion or event may apply in writing to the Napier City Council for an exemption from the Prohibited Fire Season imposed by 6.1 of this bylaw.

(c) Upon receipt of any such application the Council may grant, in writing, such exemptions subject to such conditions as it considers fit to impose.

## **9. Offences and Penalties**

9.1 Any Person who:

(a) Does anything, or causes anything to be done or knowingly permits anything to be done, contrary to any provision of this bylaw; or

(b) Omits or neglects to do, or knowingly permits to remain undone, anything in this bylaw at the time and in the manner provided; or

(c) Does not refrain from doing anything as required under any provision of this bylaw; or

(d) Knowingly permits any condition of things to exist contrary to any provision of this bylaw; or

(e) Refuses or neglects to comply with any notice duly given under any provision of this bylaw; or

(f) Obstructs or hinders any Authorised Officer or Authorised Agent of the Council in the performance of any duty to be discharged by such officer or Agent under, or in the exercise of, any power conferred under this bylaw, or any provision thereof;

commits a breach of this bylaw.

9.2 Any Person who commits a breach of the bylaw under 9.1 commits an offence under section 239 of the Act and is liable to a fine as specified in section 242 of the Act, or the issue of an infringement notice under section 245 of the Act, or such other sums or penalties as may be prescribed in any other Statute or Regulation from time to time.

To be inserted following adoption

~~This bylaw was made by the Napier City Council by resolution at a Council meeting on 17 December 2014 and must be reviewed within 5 years in accordance with section 158 of the Act.~~

~~Sealed with the Common Seal  
Of the Napier City Council  
In the presence of:~~



~~  
\_\_\_\_\_  
  
\_\_\_\_\_~~

Mayor

Chief Executive

**SCHEDULE 1 - Form of Fire Permit**

**NAPIER CITY COUNCIL**

**FIRE PERMIT**

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

\_\_\_\_\_ PHONE: \_\_\_\_\_

Pursuant to the Napier City Council Fire Control Bylaw ~~2014~~2021, and compliance with the conditions here set out, you are authorised to light a fire in the Open Air in accordance with the particulars of this permit.

**PARTICULARS**

LOCATION: \_\_\_\_\_

PROPERTY: \_\_\_\_\_

MATERIAL: \_\_\_\_\_ including area of burn off

DATES: \_\_\_\_\_ Daylight hours only

REASON: \_\_\_\_\_

**CONDITIONS**

Statutory conditions as listed overleaf (see especially 6 and 12).

Other Conditions:

1. Fire must not be sited within 5 metres of any building, tree, hedge, fence, etc.
2. Facilities must be available to extinguish the fire immediately.
3. The fire must be supervised at all times.

**WARNING: EXCESSIVE SMOKE NUISANCE MAY RESULT IN FIRE BEING EXTINGUISHED**

FIRE OFFICER:----- DATE: -----

**EXTREME FIRE HAZARD NOTICES SUSPEND THIS PERMIT  
(See Note 6 overleaf)**

**SCHEDULE 1 - continued****Notes for Information of Permittee**

Under the Napier City Council Fire Control Bylaw 20142021, there are compulsory conditions indicated below. For their full legal form, please see the applicable Act, Regulations and Bylaws.

- |                       |   |   |
|-----------------------|---|---|
| Open Air              | 1.  | "Open Air" means not in a fireplace, barbecue, or other place duly approved in such case.   |
| Wind, etc             | 2.  | Do not light up in a strong wind, or in conditions likely to spread the fire or to present a fire hazard (including an adverse long range weather forecast). Check the weather forecast.  |
| Camping, etc          | 3.  | If camping or cooking or needing comfort or warmth, keep fire at least 3m clear of any tree, log, stump, or dry vegetation. Remove all combustible material within 3m of the fire site.   |
| Patrol                | 4.  | Patrol the fire until completely out and ensure it cannot spread.   |
| Notice                | 5.  | Before lighting a controlled burn, notify neighbours.   |
| <b>Extreme Hazard</b> | <b>6.</b>   | <b>PERMITS ARE SUSPENDED by fire hazard emergency warnings or orders prohibiting all open fires. Check by radio, or ring the Fire Authority. If fire is essential for emergency (e.g. stock disease) seek a "special permit".</b>                         |
| Showing Permit        | 7.  | This written permit must be produced on demand to a member of Police or a Fire Officer.   |
| Damage                | 8.  | A permit is not legal defence against claims for damage caused by the fire.   |
| Parks, etc            | 9.  | Except where officially signposted, permits are needed at all times for open fires in National or Maritime Parks, in specially protected sites, and in other State areas or forest areas (including their fire safety margins, usually of one kilometer). |
| Escape                | 10.   | If the fire gets out of hand, try to extinguish it. Urgently notify the New Zealand Fire Service or a Fire Officer.   |
| Offences              | 11.   | It is an offence to light an open fire without the appropriate permit, or to break permit conditions or to let a fire spread to and injure a State area, forest area, or specially protected property, or to leave it unprotected against such spread.    |
| <b>Joint Permits</b>  | <b>12.</b>  | <b>Obtain further permits from the Crown, or other statutory Fire Authorities whose approval is required, if this is not a joint permit signed on their behalf.</b>   |
| Landholder            | 13.   | Separate consent by the landholder may be needed.   |
| Revocation            | <b>This Permit is revocable upon notice at anytime without prior warning.</b> |   |

### SCHEDULE 2 - The Urban Area Defined

