



Public Places Bylaw 2019

Explanatory Note

This Bylaw controls activities within Public Places which may have an adverse effect on other users of these facilities, or the public at large.

Several sections of the Local Government Acts 1974 and 2002 in particular, and other relevant Acts, prescribe the powers of the Council in regard to streets and Public Places and are not necessarily repeated within this Bylaw. These should therefore be read in conjunction with this Bylaw.



Western Bay of Plenty District Council

Public Places Bylaw 2019

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Authority

Pursuant to the powers vested in it under section 146(a)(v) the Local Government Act 2002, the Western Bay of Plenty District Council makes this Bylaw.

Title

This Bylaw is the Western Bay of Plenty District Council Animals (excluding dogs) Bylaw 2019 and shall come into force on 30 September 2019.

Repeal

Chapter 2 of the Western Bay of Plenty District General Bylaw 2008 is repealed.

Bylaw Structure

This Bylaw comprises the document.

Scope

This Bylaw applies to the whole of the district administered by Western Bay of Plenty District Council, and other locations that are controlled by Western Bay of Plenty District Council, now and in the future.

Validation

The Western Bay of Plenty District Council Animals (excluding dogs) Bylaw 2019 was duly made at a meeting of the Western Bay of Plenty District Council held on 29 August 2019, after completion of the Special Consultative Procedure, and will come into force on 30 August 2019.

Savings

All approvals, permits, and other acts of authority (including any resolutions of the Council) which originated under Chapter 2 of the Western Bay of Plenty District Council General Bylaw 2008, and all applications, and other acts of parties and generally all documents, matters, acts, and things which so originated and are continuing at the commencement of this Bylaw, continue for the purposes of this Bylaw to have full force and effect.

The revocation of Chapter 2 of the Western Bay of Plenty District Council General Bylaw 2008 does not prevent any legal proceedings, criminal or civil, being taken to enforce that bylaw and such proceedings continue to be dealt with and completed as if that bylaw had not been revoked.



Western Bay of Plenty District Council

Public Places Bylaw 2019

Pursuant to the powers vested in it under section 145 and section 146 of the Local Government Act 2002, the Western Bay of Plenty District Council makes this Bylaw.

Definitions

Act means The Local Government Act 2002.

Advertising Device means every sign or advertising matter of whatever kind located upon or visible from any Public Place and includes any board, hoarding, or similar structure which supports the device.

Animal means any living stage of any member of the animal kingdom except human beings and in the case of any mammal, bird, fish, or reptile includes the carcass.

Appeal – See Right of Appeal.

Approved means approved by the Council or by an Officer of the Council authorised in that behalf, and "**approval**" has a corresponding meaning.

Authorised Officer means an officer or other person appointed by the Council to perform duties required under this Bylaw, irrespective of the designation given to that officer or person and includes any Police officer, with powers of entry as prescribed by sections 171-174 of the Local Government Act 2002

Building has the meaning given to that term by the Building Act 2004.

Bylaw means a Bylaw of the Council for the time being in force, made under the provisions of any enactment enabling the Council to make Bylaws.

Consent means the permission, licence or dispensation in writing given by the Council under this Bylaw authorising the person to whom it is given to carry out any action or activity which is controlled by the provisions of this Bylaw or of any statutory enactment.

Containers means bins used for collection of litter and/or waste, fruit or vegetables used for promotional purposes, delivery of products or removal of household effects.

Council means the Western Bay of Plenty District Council.

Cycle or **bicycle** means a vehicle having at least 2 wheels and designed to be propelled solely by the muscular energy of the rider. Children's cycles having wheels less than 355 mm (14") diameter are excluded.



Cycle track or cycle-way means any portion of a Road which has been designated by the Council under Section 332 of the Local Government Act 1974 or this Bylaw for the use of cyclists.

Disposal means final deposit of waste on land set apart for the purpose.

District means the area administered by the Western Bay of Plenty District Council

District Plan means the Western Bay of Plenty Operative District Plan.

Driver in relation to any motor vehicle, means any person who uses or drives the motor vehicle on any Road, or causes or Permits it to be on any Road or to be driven on any Road, whether or not the person is present with the motor vehicle and includes any person apparently in charge of the motor vehicle.

Footpath has the meaning assigned to that term in section 315(1) of the Local Government Act 1974.

Goods means any articles, materials, or merchandise and includes any waste, debris, empty or partly empty crates and other packages, shavings, hay, straw, oily rags or waste and other flammable or combustible materials and substances.

Hours of Darkness means any period of time between half an hour after sunset on any one day and half an hour before sunrise on the next day.

Name Plate means any plate fixed to the wall surface or in a sign case near the entrance to Premises to denote the name, business, designation, and agencies of an occupier of such Premises.

Nuisance means nuisance as defined by the Health Act 1956, and includes anything obnoxious, offensive or injurious to the community or any member of it.

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

Offence includes any act or omission in relation to this Bylaw or any part of this Bylaw for which any person can be punished either on indictment or by summary process.

Offensive Matter/Liquid means any waste, organic material, animal remains, waste chemicals or gases, or any other obnoxious material which is ill-smelling, annoying or in any way likely to be injurious to health, or will give rise to a nuisance to the community or any member of it; but does not include any matter or material authorised for discharge under a current discharge Consent granted in terms of the Resource Management Act 1991 or under any Bylaw.

Owner in relation to any land or Premises, means the person for the time being entitled to receive the rent of the land or Premises, whether on his or her own account or as the agent of or trustee for any other person, or who would be so entitled if the land or Premises were let at a rent.



Owner in relation to a motor vehicle, means the person lawfully entitled to possession of that vehicle except where –

- (a) the motor vehicle is subject to a bailment for a period not exceeding 28 days; or
- (b) the motor vehicle is let on hire under the terms of a rental-service licence; in which case "owner" means the person who, but for the bailment or letting on hire, would be lawfully entitled to possession of the motor vehicle; and "**owned**" and "**ownership**" have corresponding meanings.

Parking has the meaning as in the Land Transport (Road User) Rule 2004 or subsequent amendments, and "**park**" has a corresponding meaning.

Person includes any individual person, or group of individual persons bound together by common purpose, and includes a body corporate or body sole

Premises means either –

- a) A property or allotment which is held under a separate certificate of title or for which a separate certificate of title may be issued and in respect to which a building consent has been or may be issued; or
 - b) A building that has been defined as an individual unit by a cross-lease, unit title or company lease and for which a certificate of title is available; or
 - c) Land held in public ownership (e.g. reserve) for a particular purpose; or
- Individual units in buildings which are separately leased or separately occupied.

Public Place includes every Road, Street, public highway, footpath, Footway, court, alley, lane, accessway, and thoroughfare of a public nature or open to or used by the public as of right; and every place of public resort or place to which the public have access, so open or used; and every reserve, park, domain, beach, foreshore and recreational ground under the control of Council, whether admission is free or on payment of a charge.

Resident means any person who has a permanent address within the Western Bay of Plenty District or who has lived in the District for a period of one month or more and includes any person who owns property within the District.

Ride a Skateboard means having either one or both feet or any other part of the body of any person on the skateboard when it is moving.

Right of Appeal means a right of Appeal to Council against any decision, order, or direction given under any provision of this Bylaw.

Road has the meaning assigned to it under Section 2 of the Land Transport Act 1998. It also means all land lying between the borders of a road including footpaths and berms.

Section means a property contained on one Certificate of Title and includes a cross-lease property.



Skateboard means a wheeled device controlled or propelled by gravity, or by the muscular energy of the rider, (or by any other means of propulsion), and also includes roller-skates, in-line skates, scooters or any similar device, but does not include any bicycle, tricycle, wheelchair, baby or invalid carriage.

Vehicle has the meaning as in section 2(1) of the Land Transport Act 1998.

Waste means any kind of waste, including human waste.

Waste Receptacle means any container or bag used for the keeping of waste and approved by Council.

Window Sign means any sign displayed in or painted, printed, Written, carved, inscribed, endorsed, or otherwise fixed to or upon any window.

Writing, Written or any term of like import means and includes words printed, painted, engraved, lithographed, or otherwise traced or copied, and where anything is required to be Written it may be partly in writing and partly in printing.



1. Obstructions in Public Places

- 1.1. No Person may place or leave any material or thing in, on or over a Public Place, and allow it to remain there in circumstances where it obstructs the public right of passage, without the prior written permission of the Council.
- 1.2. No Person may place or erect any Building on or over any Public Place without the prior written permission of the Council.
- 1.3. No Person may construct any projection of any kind, including windows, balconies or walls, in a position such that it obstructs free passage on any Public Place, without the prior written permission of the Council.
- 1.4. Council may require the alteration or removal of any material, Building or thing placed on a Public Place in contravention of this Bylaw, by giving notice to the Owner. The Owner must comply with any notice within the time stated on the notice.
- 1.5. The display of Goods for sale is not permitted on Footpaths except in the areas zoned commercial and industrial in the District Plan and then only subject to the following conditions –
 - (i) all Goods are to be displayed within an area having a height of 1.0 metre, a width of 1.0 metre and maximum length of 2.0 metres;
 - (ii) any such display must be placed adjacent to the Premises to which the display relates and must not encroach onto the pavement more than 0.5 metres; and
 - (iii) notwithstanding the provisions of (i) and (ii) above, no display may be placed in a manner which will in the opinion of an Authorised Officer of Council be likely to cause an undue obstruction to pedestrians or constitute a danger to people or property or cause an obstruction to easy access to adjoining property.

2. Public Safety and Hazards

- 2.1. Where any wall, fence or land adjacent to a Public Place is in a condition or state of disrepair which in the opinion of an Authorised Officer of Council could cause damage or injury to Persons passing, the Officer may give notice requiring the Owner or Occupier to make the land safe within such time as specified in the notice.
- 2.2. No Person may blast any rock, stone, earth timber or other material in, on or near any Public Place, without the prior written permission of the Council, and then only in compliance with any conditions the Council may impose.
- 2.3. Upon the request of a duly Authorised Officer of Council, an Owner or Occupier must cut back any tree deemed by the Officer to be overhanging a street light in a Public Place, within the time period specified by the Officer.



3. Disturbance or Damage to Public Places

- 3.1. No Person may disturb or remove the surface of any Public Place without the prior written permission of the Council, and then only in accordance with such conditions as the Council may impose.
- 3.2. No Person may –
- (i) deposit any building material or building rubbish on; or
 - (ii) make or maintain a hole or excavation in; or
 - (iii) prepare building materials on
- any part of any Public Place, without the prior written permission of the Council.

4. Waste and Offensive Matter

- 4.1. No Person may make use of any street tidy or other public Waste Receptacle for the purpose of placing or depositing any Offensive Matter or any household, shop, office, or any trade Waste of any description.
- 4.2. No Person may, other than in the Approved manner –
- (i) Slaughter, throw or leave any dead Animal or part thereof, or Animal remains, or Offensive Matter of any kind, upon any Public Place, or into any river, creek, stream or other water, or on the bank thereof.
 - (ii) Fail to dispose of the body or part of the body of any Animal in their possession that may have been killed or died while straying, or while being driven on any Public Place.
 - (iii) Sweep any Waste, dust, or litter onto any Public Place from any house or business Premises.
- 4.3. No Person may cause, or permit the burning of any matter on any Public Place.

5. Fences

- 5.1. With the exception of those areas zoned rural in the District Plan, no Person may repair or renew or erect any barbed wire or electric wire or fence along, or within 1 metre of, any boundary line between any adjoining land or Building, unless the barbed wire is placed at a height not less than 2 metres from the ground level of any such Public Place. No mains operated electric fence may be erected in any residential area without the approval of Council which will only be given in special circumstances.



6. Advertising Devices

- 6.1. One "Sandwich Board" type sign or other non-fixed signage such as teardrop/flag per Premises is permitted in areas zoned Commercial and Industrial under the District Plan subject to the following conditions –
- (i) the sign dimensions be no greater than 0.5 metres in width and no greater than 1.2 metres in length and no less than 0.9 metres in height.
 - (ii) notwithstanding (i) above, no sign is permitted which in the opinion of an Authorised Officer of Council is likely to cause undue obstruction to pedestrians, or constitute a danger to people or property, or is likely to be offensive or cause a detraction from amenities.
 - (iii) any additional Advertising Devices must be placed flat against the Building and secured in a manner that will prevent them from falling onto the Footpath.
 - (iv) nothing in this section enables Advertising Devices to be placed if resource consent is required under the District Plan
- 6.2. Window Signs and Name Plates are permitted subject to compliance with all other aspects of the Bylaw and the District Plan.
- 6.3. Every application for a permit must provide such information as is required to assess the application to the satisfaction of an Authorised Officer of Council.
- 6.4. The following matters must be considered in the siting of any Advertising Device –
- (i) possible physical obstruction of traffic and pedestrians. The minimum siting criteria for devices is generally 2.5 metres above the foot-path, 0.5 metres back from the kerb line, 5.5 metres above the carriageway, with sign cases and show cases projecting over the pavement no more than 0.1 metres.
 - (ii) possible visual obstruction to traffic and pedestrians.
 - (iii) possible visual confusion to vehicle drivers (generally no reflective material or illuminated or other red or green colours near traffic lights).
 - (iv) possible effect on public areas of inadequate maintenance of the Advertising Device.
 - (v) District Plan requirements.
- 6.5. Every Advertising Device must at all times be maintained in good repair and condition to the satisfaction of an Authorised Officer of the Council.
- 6.6. If any Advertising Device is, at any time, not in good order and condition or unsightly or dangerous, the Council may, by notice in writing require the Owner or Occupier to repair or secure or otherwise put in order or remove such device within a period stated in the notice.
- 6.7. When an Advertising Device becomes redundant or, by reason of change of occupancy or otherwise it is no longer relevant to the business carried on in the



Premises on which it appears, the Owner must effectively and properly paint out or remove such device.

- 6.8. If any Advertising Device fails to conform to all the provisions of this Part of this Bylaw, it is the duty of the Occupier or Owner for the time being of the Premises or stationary vehicle on which such Device is displayed or erected, after being served with a notice in writing by the Council, to remove or take down the Device or that portion that does not conform to the provisions of this Part of this Bylaw within the period of time specified in the notice.
- 6.9. If the Person on whom a notice has been served fails to comply with the terms of that notice within the time specified they are liable to prosecution for an Offence against this Part of this Bylaw.
- 6.10. Following a second Offence the Advertising Device may be removed and held until the expiration of any Appeal period and failing any Appeal disposed of by such means as determined by the Council.
- 6.11. The applicant, or the Owner of an Advertising Device which is the subject of any action made under this Bylaw, after having been informed in writing of such action and the reasons for it, may, within fourteen (14) days of notification of such decision, apply in writing to the Council for a review of the decision.

7. Vehicle Crossings

- 7.1. Any Person wishing to construct, remove repair or widen any vehicle crossing must first obtain a written Permit from the Council.
- 7.2. Where the work is carried out by the applicant a bond may be required prior to work commencing. All work must be completed to the satisfaction of an Authorised Officer of Council.
- 7.3. Where a crossing is in a bad or unsafe state of repair the Council may order such crossing to be removed immediately and by notice to the Owner or Occupier of the land or Premises require the crossing to be renewed within a period stated in the notice.
- 7.4. A temporary crossing may be required by an Authorised Officer of Council where access to a construction site is necessary. The Officer may impose any conditions considered necessary for the protection of public safety and convenience.
- 7.5. Where, in the opinion of the Council reinforcing of a footway or crossing is necessary, the Owner or Occupier of the applicable Premises or land may be required, by notice, to provide adequate reinforcing to such footway or crossing, within the time specified in the notice.



8. Containers for Litter

- 8.1. Where the nature of any business carried on within the District results in substantial quantities of disposable paper, or plastic wrapping, containers, wooden or plastic sticks or material of a like nature being deposited in Public Places the Council may require the Proprietor of the business to provide Approved containers for the reception of that litter. The Proprietor of the business must pay for any additional costs incurred by the Council in the cleaning of the footways, gutters and Public Places in the vicinity of the Premises of the Proprietor by reason of the litter generated by that business.

9. Roading and Building Identification

- 9.1. The Owner or Occupier of every Building must mark the Building (subject to clause 10.4) with such numbers as an Authorised Officer of Council shall direct or Approve, and must renew the numbers if they are obliterated or defaced.
- 9.2. Every number being not less than 50mm in height must be placed upon the Building in such a position as to be readily visible from any street fronted by the Building; or if no such position is available must be placed upon a post, fence, or gate near, or adjacent to the Building, and be visible from the street.

10. Licences

- 10.1. Any person doing or proposing to do anything or to cause any condition to exist for which a licence from the Council is required under this Bylaw must first obtain a licence from the Council.
- 10.2. The Council may attach to any licence such terms or conditions as it thinks fit.
- 10.3. No application for a licence from the Council, and no payment of or receipt for any fee paid in connection with an application for a licence, confers any right, authority or immunity on the person making such application or payment and the Council is under no obligation to grant any such licence.
- (i) The Council may by notice in writing call on a licence holder to appear before the Council and give reasons as to why the licence should not be revoked or suspended, if it is brought to the notice of the Council that the licence holder;
 - (ii) Has acted or is acting in a manner contrary to this Bylaw; or
 - (iii) Has failed to comply with any of the conditions of the licence; or
 - (iv) Is in any way unfit to hold the licence; or
 - (v) Has allowed the Premises covered by the licence to be used for any purpose other than that stated in the licence, or has failed to maintain the Premises in the condition required by such licence.
- 10.4. The Council may, if it considers the allegations correct or if there is no appearance by the holder of a licence, revoke the licence or suspend the same for as long as it may think fit.



- 10.5. Any person whose licence has been suspended, and any Premises in respect of which the licence has been suspended, is, during the period of such suspension, deemed to be unlicensed.

11. Dispensations

- 11.1. The Council may grant a dispensation from full compliance with any provision in this Bylaw or any other Bylaw enacted by it, in a case where the Council is of opinion that full compliance would needlessly and injuriously affect any person or business, without a corresponding benefit to the public or any part of it.
- 11.2. Any application for a dispensation must –
- (i) Be in writing; and
 - (ii) Give full details of the relief sought and the reasons why the relief is sought.
- 11.3. The Council may either refuse the application, or grant it subject to such conditions as it may consider appropriate.

12. Offences and Breaches

- 12.1. Every person commits a breach of this Bylaw who:
- (i) Does, or causes to be done, or permits anything to be done that is contrary to this Bylaw; or
 - (ii) Omits, or neglects to do, or permits to remain undone, anything which ought to be done by him or her at the time and in the manner provided in this bylaw; or
 - (iii) Does not cease any action which the person is required to cease under this Bylaw; or
 - (iv) Knowingly permits or allows any condition of things to exist or continue to exist contrary to this Bylaw; or
 - (v) Fails, refuses or neglects to comply with any notice duly given to that person under this Bylaw; or
 - (vi) Obstructs or hinders any Officer of the Council or other person appointed by the Council in the exercise of any power conferred on that officer or other person by this Bylaw;
 - (vii) Fails to comply with any notice, or direction, or conditions contained in any licence granted by the Council.
- 12.2. If a person fails to comply with a lawful notice, request, or order, given by an Authorised Officer or Enforcement Officer under this Bylaw the failure, whether



wilful or otherwise, to comply with that notice, request, or order is a separate Offence on each day that such person so fails to comply.

- 12.3. Clause 12.2 does not relieve any person from any penalty which he or she may have incurred before receiving that notice, request, or order.
- 12.4. Subject to any Act, any person (including a member of the Police) may lay any information for an Offence against this Bylaw.

13. Penalties

- 13.1. Every person who commits an offence against this bylaw is liable to –
- (i) The penalty set out in section 242(4) of the Act, in relation to the provisions of the bylaw that are made under Part 8 of the Act; or
 - (ii) Where another enactment specifies the penalty for a breach of the Bylaw, that other penalty in relation to the provisions of this bylaw that are made under that other enactment.

14. Right of Appeal

- 14.1. Any person who claims to be unfairly or adversely affected by any decision, order, or direction, given by an Authorised Officer of Council has the right of Appeal to the Council.
- 14.2. The Appeal must be in writing setting out the reasons for the Appeal and must be lodged within fourteen (14) days of the date on which the decision, order, or direction was given.
- 14.3. The Council may appoint any standing committee of Council to consider the Appeal and to hear Written or personal submissions from the appellant if the committee so decides.
- 14.4. The committee, after considering such evidence as it thinks necessary, may revoke, confirm, or modify the decision, order, or direction giving rise to the Appeal.

15. Removal of works in breach of bylaw

- 15.1. The Council may authorise any officer or agent to remove or alter a work or thing that is, or has been constructed in breach of this Bylaw.
- 15.2. The Council may recover the costs of such removal or alteration from the person who committed the breach in accordance with section 163 of the Act.
- 15.3. The removal or alteration of any work or thing under this clause does not relieve any person from liability for any penalty for erecting or permitting the continued



existence of any work or thing contrary to this Bylaw.

16. Fees

- 16.1. If this Bylaw provides for the Council to issue a certificate, permit, or consent or give its authority or approval for anything, or carry out an inspection, the Council may require the payment of a fee.
- 16.2. Any such fee must be prescribed by the Council under section 150 of the Act.
- 16.3. Fees may differ for any class of certificate, permit, consent, authority, approval or licence.