

CHBDC:Part 11:2008

# **CENTRAL HAWKE'S BAY DISTRICT COUNCIL BYLAWS**



## **Part 11 – Fires in the Open Air**

Superseding Model General NZS 9201:Part 11:2000

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### **Explanatory Note**

This Bylaw is based on the Model General Bylaw NZS9201:Part 11:2000 Fires in the Open Air as compiled by Standards New Zealand. This Bylaw amends that Standard as necessary to meet the requirements of the Central Hawke's Bay District Council.

### **Copyright**

The copyright of the Model General Bylaw NZS9201:Part 11:2000 Fires in the Open Air is the property of the Standards Council. The copying and amendment of the Model Bylaw has been carried out by a Territorial Authority in the process of preparing its local bylaw, as permitted by the Standards Council.

### **Referenced Documents**

Reference is made in this document to the following:

#### **New Zealand Legislation**

- Forest and Rural Fires Act 1977
- Forest and Rural Fires Regulations 2005
- Health Act 1956
- Local Government Act 1974
- Local Government Act 2002

**Foreword**

This CHBDC Bylaw is a revision of the Model General NZ Standard Fires in the Open Air Bylaw prepared by Standards New Zealand. The Model General has been reviewed by technical staff and amendments have been made where required to meet the requirements of the Central Hawke's Bay District Council. Further updates have been made where necessary to reflect changes in related legislation.

The bylaw must be used in conjunction with the provisions of the Forest and Rural Fires Act 1977 where a Restricted or Prohibited Fire Season is declared. Separate declarations must be made under the Forest and Rural Fires Act 1977 for rural areas and under this bylaw for urban areas. For declarations for both rural and urban areas both the Forest and Rural Fires Act 1977 and this bylaw should be used.

This bylaw addresses the requirement of the Local Government Act 2002 for local authorities to have a bylaw to prevent the spread of fires involving vegetation.

New terms related to fires have been defined in this Part but for other definitions reference should be made to CHBDC: Part 1 Introductory.

## CHBDC BYLAWS

### Part 11 - FIRES IN THE OPEN AIR

#### 1100 SCOPE

**1100.1** The purpose of the CHBDC Bylaw Part 11 is:

- (a) to allow Council to exercise control over burning in the open air in urban areas of the District and prevent smoke from fires in the open causing a nuisance.
- (b) to meet the requirements of the Local Government Act 2002 section 146 (c) for territorial authorities to have a bylaw to prevent the spread of fires involving vegetation.

**1100.2** Council has a further avenue of control over smoke nuisance in the Nuisances provisions of the Health Act and persons responsible for causing a smoke nuisance may be prosecuted under the provisions of either the Health Act or the bylaw.

**1100.3** Regional Councils have responsibility for discharges into air. Consents and approvals may be required from Regional Councils for discharges into air from fires in the open air.

**1100.4** This bylaw is made pursuant to section 146 of the Local Government Act 2002 and section 20 of the Forest and Rural Fires Act 1977.

#### 1101 GENERAL

Nothing in this Part of this bylaw shall be regarded as derogating from the provisions of the Forest and Rural Fires Act 1977 and Forest and Rural Fires Regulations 2005.

#### 1102 DEFINITIONS AND INTERPRETATION

**1102.1** For the purposes of this bylaw the following definitions shall apply:

**Acceptable Means of Fire Suppression** - means a hose connected to a reticulated water supply or an alternative means of fire suppression approved in writing in a particular case by the authorised officer.

**Barbecue** - 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.

**Ethnic Cooking Fire** - means any hangi, umu or similar fire in the open air and used for the preparation of food using ethnic cooking methods.

**Fire Permit** - means a permit to light a fire in the open air granted in accordance with Section 1104.4 of this Part of this bylaw.

**Incinerator** - means a container used for burning of 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.

**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 Section 1105.1 of this Part of this bylaw.

**Restricted Fire Season** - means a period of time whether of fixed or indefinite duration during which period permits or authorities are required for the lighting of fires in the open air in accordance with Section 1104.1 of this Part of this bylaw.

**1102.2** For the purposes of this Standard the word “shall” refers to practices that are mandatory for compliance with this Standard, while the word “should” refers to practices which are advised or recommended.

### **1103 FIRES IN THE OPEN**

No person shall in any open fire season light any fire in the open air including a barbecue, ethnic cooking fire, or an incinerator fire under the following conditions:

- (a) where the location, wind, or other conditions cause or are likely to cause the fire to become:
  - (i) a danger to any person or property; or
  - (ii) out of control or spread beyond the limits of the premises on which it is lit; or
  - (iii) a smoke or ash nuisance to any person.
- (b) within three (3) metres of any part of a boundary, building, tree, hedge, fence or other combustible material; or
- (c) without continuous supervision being maintained at all times; or
- (d) without an acceptable means of fire suppression being available where the fire is located on residential premises, or land adjoining such premises; or
- (e) between the hours of sunset and sunrise without a permit.

### **1104 RESTRICTED FIRE SEASON**

**1104.1** 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.

**1104.2** Any person wishing to obtain a fire permit during a restricted fire season shall apply to the authorised officer.

**1104.3** The authorised officer may from time to time prescribe a form of application for the purposes of Section 1104.2.

**1104.4** Upon receiving an application under Section 1104.2 an authorised officer may issue a fire permit and may impose such conditions and restrictions in respect of the permit as the authorised officer considers reasonably necessary having regard to:

- (a) any cultural requirements or practices;
- (b) the location, terrain, natural vegetation, and the 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 permit is issued and adjoining lands and premises.

**1104.5** Nothing in Section 1104 shall apply to an approved incinerator or a gas barbecue. Provided that Council may in certain circumstances include the above where it considers it necessary to do so.

#### **1105 PROHIBITED FIRE SEASON**

**1105.1** 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.

**1105.2** In a prohibited season no person shall light any fire in the open air including an ethnic cooking fire, an incinerator or a solid fuel barbecue, and no person being the occupier of any premises shall cause, permit or suffer any fire to be lit or continue to burn in the open air on those premises.

**1105.3** Nothing in Section 1105.2 applies to the use of gas fire barbecues. The authorised officer may in certain circumstances prohibit the use of gas barbecues.

#### **1106 EXEMPTIONS FROM PROHIBITIONS ON LIGHTING FIRES IN THE OPEN AIR**

Subject to Section 20 of the Forest and Rural Fires Act 1977:

- (a) The occupier of any premises or public place in which an operation is being carried out which necessitates the use of fire in the open air may apply to the Council for an exemption from the Prohibited Fire Season imposed by Section 1105.1 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 to the Council for an exemption from the Prohibited Fire Season imposed by Section 1105.1 of this Bylaw. Applications should be made no less than ten (10) working days before the special occasion or event.
- (c) Upon receipt of any such application the Council may issue a Special Fire Permit subject to any conditions as it considers fit to impose.

**1107 PUBLIC NOTICE OF RESTRICTED OR PROHIBITED FIRE SEASON**

Public notice of the prescription of a restricted or a prohibited fire season made under Section 1104.1 or Section 1105.1 or the cancellation or variation of such a prescription, shall 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.
- (c) by any effective means.

**1108 REVOCATION OR SUSPENSION OF PERMITS**

**1108.1** Subject to Section 1107.2, every fire permit issued in accordance with Section 1104.4 shall remain in force from the date of issue until the expiry of the period, date or time specified in the permit, unless a prohibited fire season is declared.

**1108.2** Notwithstanding any other provisions in this bylaw, any permit issued under this Part of 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.

**1109 FEES FOR PERMITS**

The Council may from time to time, by resolution publicly notified, specify the fee or fees payable in respect of the issue of any permit under this Part of this bylaw. Any fee prescribed shall be paid upon uplifting the permit.

**1110 COUNCIL MAY EXTINGUISH FIRES**

**1110.1** Where a fire has been lit or allowed to burn in:

- (a) an open fire season in breach of Section 1103; or
- (b) a restricted fire season in breach of the conditions of a fire permit issued in accordance with Section 1104.4; or
- (c) a prohibited fire season, in breach of Section 1105.2;

any officer or 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.

**1110.2** Where an authorised officer or agent of the Council has extinguished a fire pursuant to Section 1110.1, the Council may recover any costs incurred in extinguishing the fire from the occupier of premises on which the fire was located, or the person who lit the fire.

**1110.3** 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 Section 1110.1 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.

**1110.4** 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 officer or agents taking any action authorised by the authorised officer under Section 1110.3.

#### **1111 LIVE ASHES**

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; or
- (c) as part of an ethnic cooking process including hangi and umu.

#### **1112 REMOVAL OF GORSE AND OTHER GROWTH**

**1112.1** No occupier or any other person having the control of any land shall allow any broom, gorse, bushes, scrub, dry grass, or similar growth to exist within six (6) metres of any building or adjoining premises, in such a condition or state that it is likely to become a source of risk from fire.

**1112.2** An authorised officer of the Council may, by written notice, require an occupier or person having control of any land to remove any dangerous growth.

**1112.3** The Council may cut down or otherwise eradicate and remove any broom, gorse, bushes, scrub, dry grass or similar growth to which Section 1112.1 applies, after giving oral notice to the occupier or where there is no occupier, to the owner of the land, if life, property or any road is in imminent danger. The cost of the work shall be a charge against the land.

**1112.4** Should the owner or occupier fail to comply with the written request of the Council to remove the dangerous growth then the Council may arrange the removal of such growth and recover the cost of removal from the owner or occupier.

#### **1113 STORAGE OF COMBUSTIBLE MATERIALS**

**1113.1** Except as provided in Section 1113.2 and Section 1113.3, no occupier of any premises shall permit the storage or stacking in the open of any combustible material, unless the distance of the stack from any boundary other than a street boundary is at least equal to the height of the stack, but in any case not less than 1.4 metres.

**1113.2** A stack may be placed closer to the boundary than the distance specified in Section 1113.1 if a brick, stone, or concrete wall extending not less than 450 millimetres above and not less than 1.4 metres beyond the length of the stack, is situated between the stack and the boundary.

**1113.3** A stack may, with the written approval of the adjoining owner and of the authorised officer, be placed closer to the boundary than the distance specified in Section 1113.1 where any of the following conditions continue to exist:

- (a) where there is a brick, stone or concrete wall as defined in Section 1113.2 without openings situated on the adjoining property and within 1.4 metres of the common boundary; or
- (b) where there are no buildings on the adjoining land; or
- (c) where there is no danger of a stack adjacent to a boundary increasing the risk of the spread of fire.

**1114 STORAGE OF HAY**

**1114.1** No occupier of any premises shall permit the storage or stacking in the open of more than three (3) cubic metres of hay, or similar material unless the distance of the stack from any building, boundary, fence, private road, public place, or adjacent land is not less than six (6) metres and the intervening space is at all times kept free from any rubbish or obstruction of any kind.

**1114.2** No occupier of any premises shall permit the storage of more than one (1) cubic metre of hay or similar material in any building attached to, or at a distance of less than six (6) metres from, any other building unless the first mentioned building has a roof of approved fire-resistant material and walls constructed wholly of brick, stone, or concrete or any combination of brick, stone and concrete and complying with the specifications mentioned in Section 1113.2.

**1114.3** The provisions of Section 1114.2 shall not apply in any case where agricultural produce required for the keeping of horses is kept or stored in any building used only for the purpose of or in connection with a stable.

**1115 BYLAW APPROVAL DATE**

The Common Seal of the Central Hawke's Bay District Council was attached, under Resolution (*Reference - CHBDC:Part11:2008*) passed at a meeting of the Central Hawke's Bay District Council held on ..... (Day) ..... (Month) ..... (Year).

DATE CONFIRMED : \_\_\_\_/\_\_\_\_/\_\_\_\_