

# WAIKATO DISTRICT COUNCIL

## FIRES IN THE OPEN AIR BYLAW 2007

In exercise of the powers and authorities conferred on it under Part 8 of the Local Government Act 2002 and all other authorities enabling it in that behalf, the Waikato District Council made the following bylaw pursuant to a resolution passed on 28 August 2007.

### A TITLE

The bylaw shall be known as the “**Waikato District Council Fires in the Open Air bylaw 2007**” and shall consist of the “New Zealand Model General Bylaw 9201: Part 11:2000 – Fires in the Open Air” attached hereto, subject to the modifications set out in the First Schedule annexed to the bylaw.


### B COMMENCEMENT


This bylaw shall come into effect on 1 October 2007.

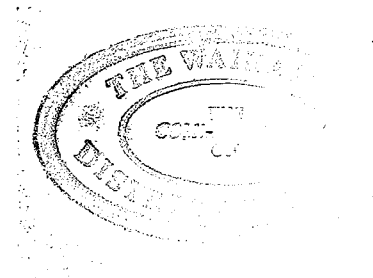
### C REVOCATION OF PREVIOUS BYLAW

The “New Zealand Model General Bylaw 9201: Part 11:2000 – Fires in the Open Air”, adopted by the Council on 27 August 2002, is revoked from the date the new bylaw comes into effect.

The Common Seal of the Waikato )  
District Council was hereto affixed )  
In the presence of: )

  
\_\_\_\_\_  
Mayor

  
\_\_\_\_\_  
Chief Executive





**STANDARDS**  
NEW ZEALAND  
PĀPĀHĀWA AOTEAROA

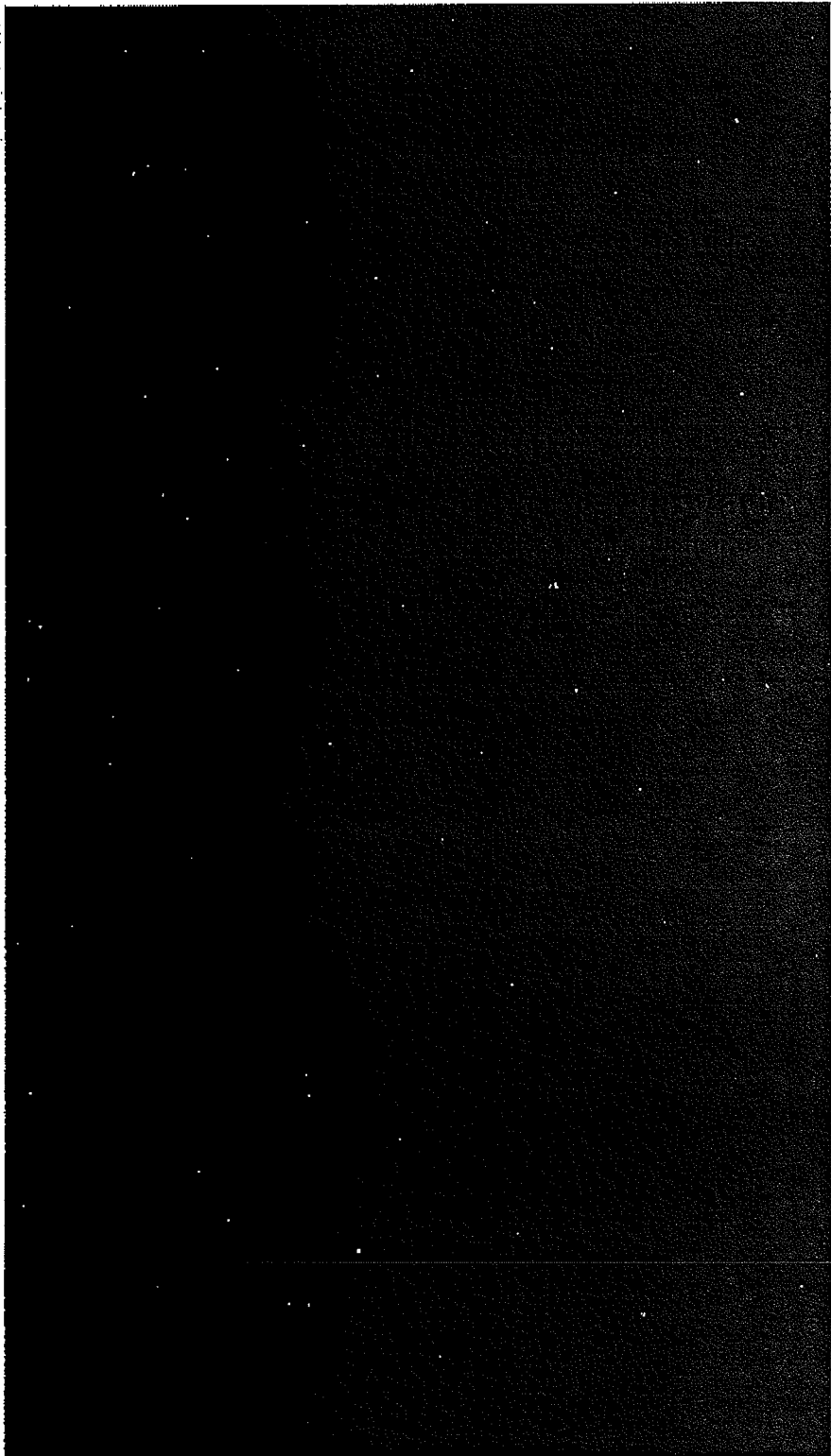
New Zealand Standard

**Model General Bylaws**

Part 11 – Fires in the Open Air

Superseding NZS 9201:Chapter 11:1972

NZS 9201:Part 11:2000



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**NZS 9201:Part 11:2000**

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**NEW ZEALAND LEGISLATION**

Forest and Rural Fires Act 1977  
Forest and Rural Fires Regulations 1979  
Health Act 1956  
Local Government Act 1974

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**FOREWORD**

The NZS 9201 series are model general bylaws covering various matters under local authority jurisdiction. Local authorities are empowered under the Local Government Act 1974 to make bylaws.

This Standard supersedes NZS 9201:Chapter 11:1972 *Nuisances*. The Committee felt that this model was redundant as its provisions are already covered by existing legislation. However it has been recognized that smoke from fires in the open air can cause a nuisance. Hence the revision has been given a new title *Fires in the open air* to address this situation.

The bylaw also addresses the requirement of the Local Government Act 1974 for local authorities to have a bylaw to prevent the spread of fires involving vegetation.

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.

New terms related to fires have been defined in this Part but for other definitions reference should be made to NZS 9201: Part 1 *Introductory*.

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**NEW ZEALAND STANDARD****MODEL GENERAL BYLAWS****Part 11****FIRES IN THE OPEN AIR**

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**1100 SCOPE****1100.1**

The purpose of this Part of the bylaw 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 1974 section 649 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 684 of the Local Government Act 1974 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 1979.

**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 authorized 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 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 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 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 metres of any part of a 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.

**1104 RESTRICTED FIRE SEASON****1104.1**

An authorized 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 authorized officer.

**1104.3**

The authorized officer may from time to time prescribe a form of application for the purposes of 1104.2.

**NZS 9201:Part 11:2000**

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**1104.4**

Upon receiving an application under 1104.2 an authorized officer may issue a fire permit and may impose such conditions and restrictions in respect of the permit as the authorized 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 ethnic cooking fire, an incinerator or a 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 authorized 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 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 1105.2 applies to the use of gas fire barbecues. The authorized officer may in certain circumstances prohibit the use of gas barbecues.

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**1106 PUBLIC NOTICE OF RESTRICTED OR PROHIBITED FIRE SEASON**

Public notice of the prescription of a restricted or a prohibited fire season made under 1104.1 or 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.

**1107 REVOCATION OR SUSPENSION OF PERMITS****1107.1**

Subject to 1107.2, every fire permit issued in accordance with 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.

**1107.2**

Notwithstanding any other provisions in this bylaw, any permit issued under this Part of this bylaw may be revoked or suspended by an authorized officer at any time, or suspended for such periods of time on such terms and conditions, as the authorized officer may consider reasonable in the circumstances.

**1108 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.

**1109 COUNCIL MAY EXTINGUISH FIRES****1109.1**

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 1104.4; or
- (c) A prohibited fire season, in breach of 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.

**1109.2**

Where an authorized officer or agent of the Council has extinguished a fire pursuant to 1109.1, 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.

**1109.3**

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 1109.1 to extinguish the fire, the authorized officer may authorize 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.

**1109.4**

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 authorized by the authorized officer under 1109.3.

**1110 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.
- (c) As part of an ethnic cooking process including hangi and umu.

## **1111 REMOVAL OF GORSE AND OTHER GROWTH**

### **1111.1**

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 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.

### **1111.2**

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

### **1111.3**

The Council may cut down or otherwise eradicate and remove any broom, gorse, bushes, scrub, dry grass or similar growth to which 1111.1 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.

### **1111.4**

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.

## **1112 STORAGE OF COMBUSTIBLE MATERIALS**

### **1112.1**

Except as provided in 1112.2 and 1112.3, 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.

**1112.2**

A stack may be placed closer to the boundary than the distance specified in 1112.1 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.

**1112.3**

A stack may, with the written approval of the adjoining owner and of the authorized officer, be placed closer to the boundary than the distance specified in 1112.1 where any of the following conditions continue to exist:

- (a) Where there is a brick, stone or concrete wall as defined in 1112.2 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.

**1113 STORAGE OF HAY****1113.1**

No occupier of any premises shall permit the storage or stacking in the open of more than 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 6 metres and the intervening space is at all times kept free from any rubbish or obstruction of any kind.

**1113.2**

No occupier of any premises shall permit the storage of more than 1 cubic metre of hay or similar material in any building attached to, or at a distance of less than 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 1112.2.

**1113.3**

The provisions of 1113.2 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.

## FIRST SCHEDULE

### **Modifications to New Zealand Standard Model General Bylaw 9201: Part 11:2000 to form part of the Waikato District Council Fires in the Open Air Bylaw 2007.**

#### **Page 3    Foreword**

First paragraph: Replace "Local Government Act 1974" with "Local Government Act 2002".

Last paragraph: Delete the last paragraph.

#### **Page 5    1100    Scope**

1100.1: Delete 1100.1 (b).

1100.4: Replace with the following:

This bylaw is made pursuant to Part 8 of the Local Government Act 2002.

#### **Page 6    1102    Definitions**

1102.1: Add the following definitions:

**AUTHORISED OFFICER** means any person appointed or authorized by the Council to act on its behalf and with its authority including a Police Officer.

**AUTHORISED AGENT** means any person who is not an employee of the Council but is authorized by the Council to act on its behalf.

**COUNCIL** means Waikato District Council or any officer authorized to exercise the authority of the Council.

**DISTRICT** means the district within the jurisdiction and under the control of the Council.

**OCCUPIER** means the inhabitant occupier of any property, and in any case where any building, house, tenement, or premises is or are unoccupied shall be deemed to include the owner as defined herein.

**OWNER** of any property, or as applied to any land, building, or premises, means any person for the time being entitled to receive the rent of such property, or who would be so entitled if the same were let to a tenant at a rack rent, and where any such person is absent from New Zealand, shall include their attorney or agent.

PERSON includes a corporation sole and also a body of persons, whether corporate or unincorporated.

PREMISES means any land, dwelling, storehouse, warehouse, shop, cellar, yard, building, or part of the same, or enclosed space separately occupied, and all lands, buildings, and places adjoining each other and occupied together shall be deemed to be the same premises.

**Page 12 - Add new clause 1114:**

#### **1114 OFFENCES AND BREACHES**

Any person commits a breach of this bylaw who:

- a) Does or omits, or causes to be done or omitted any act, matter, or thing, or who causes or knowingly permits or suffers any condition or thing to exist contrary to any provision contained in this bylaw shall be deemed to have committed a breach of such provision, and shall be liable accordingly; or
- b) Does anything or causes any condition to exist for which a permit or approval from the Council is required under this bylaw without first obtaining that permit or approval; or
- c) Fails to comply with any notice or direction given under this bylaw.

#### **1115 PENALTIES**

Every person who commits a breach of any of the provisions of this bylaw shall be liable to a penalty not exceeding Twenty Thousand Dollars (\$20,000.00).