

CHAPTER 1 - INTRODUCTORY

The Marlborough District Council hereby makes by resolution the following Chapter 1 of the Marlborough District Council Bylaw 2010 pursuant to the powers contained in Sections 145 and 146 of the Local Government Act 2002, and any other Act or authority in any way enabling the Council in that behalf.

101 Interpretation

101.1 In this Bylaw, unless the context otherwise requires it or it is expressed to the contrary:

Animal for the purposes of Chapter 7 – Keeping of Animals, Poultry & Bees includes poultry and birds.

Approved means approved by the Council.

Authorised officer means any person authorised by the Council to exercise the powers or carry out the functions of the Council.

Burial for the purposes of Chapter 6 - Cemeteries means the burial of human bodies, but does not include the burial of ashes.

Bus means a motor vehicle:

- (i) Designed for the carriage of nine (9) or more people inclusive of the driver; and
- (ii) Used for hire or reward for the carriage of passengers on defined routes.

Camp includes using a tent, caravan, vehicle or portable structure for living or sleeping purposes.

Carpark means a parking area that is owned or managed by the Council.

Communicable Disease has the same meaning as in the Health Act 1956.

Council means the Marlborough District Council, and includes any person or Committee of the Council to whom the Council has lawfully delegated any of its powers and functions.

Dairy Cattle means cattle being used for milk production.

District means the area within the jurisdiction and under the control of the Council.

District Plan means a District Plan, proposed District Plan or

Transitional District Plan made pursuant to the Resource Management Act 1991.

Engineer means any person specifically or generally appointed by the Council to perform the duties of Council's Engineer or his or her delegate.

Environmental Health Officer means any Environmental Health Officer appointed by the Council under the authority of the Health Act 1956 or any other Act.

Fee for Interment means the plot fee and the costs charged for a burial as set by council resolution publicly notified.

Flat Plaque Lawn Cemetery means a cemetery in which the surface is laid down as a grass lawn and where there are no headstones projecting above the ground.

Games includes all forms of sport.

Goods includes any goods, wares or merchandise.

Hours of daylight means any period of time between half an hour before sunrise on one day and half an hour after sunset on that day.

Itinerant Trader includes:

- (i) Any hawker or keeper of a mobile shop; or
- (ii) Any person, whether a trader or employee, who:
 - (a) Carries on any business involving the sale or exposure for sale of any goods or services; and
 - (b) is not the owner, lessee or licensee for a period of at least six calendar months, of any premises where and when the business is carried out.

Except that *Itinerant trader* does not include a commercial traveller who deals only with persons, firms or companies carrying on business as retailers or manufacturers of food, goods or services.

Licence means a Licence issued by the Council in accordance with this Bylaw.

Licensed means holding a licence under the relevant part of a Bylaw or any relevant statute.

Litter includes any refuse, rubbish, animal remains, glass, metal, garbage, debris, dirt, filth, rubble, ballast, stones, earth, or waste matter, or any other thing of a like nature.

Long term parking means an area designated by the Council where vehicles may be parked for specific periods upon payment of the appropriate fee.

Manager means the Chief Executive of Council and includes any person appointed specifically or generally by the Council to perform the duties of that position.

Memorial Park (Berm or Garden) cemetery means areas of cemeteries set aside for interments which shall contain headstones or plaques set on a concrete berm but not contain plots that have a concrete top, fencing, perimeter kerbing, vaults or another monument thereon.

Metered space means an area in a metered zone marked out by painted lines between which a vehicle may be parked, and where a parking meter is installed.

Metered zone means any car park or road under the Council's control authorised under this Bylaw to be used as a place where vehicles may be parked, where parking meters may be installed, but does not include multiple meter areas.

Mobile food stall means any vehicle used for selling or offering for sale any food or beverage.

Mobile Shop includes a travelling shop and means any vehicle from which goods or services are offered, exposed for sale or may be ordered, (whether or not there is an invitation to call with the goods) while the vehicle is parked on a road, but does not include a vehicle used for transporting and delivering goods according to a prior order.

Month means a calendar month.

Motor Vehicle has the same meaning as in the Transport Act 1962.

Vehicle has the same meaning as in the Transport Act 1962.

Motor cycle has the same meaning as in the Transport Act 1962, and includes mopeds.

Multiple meter area means any carpark where a multiple parking meter is installed.

Occupier means, in relation to any land, the owner and any person in actual occupation of the land.

Owner has the same meaning as in the Health Act 1956, except that for the purposes of Chapter 4 - Dog Control *Owner* has the same meaning as in the Dog Control Act 1996.

Parking:

- (i) In relation to any space where parking is governed by parking meters, means stopping or standing a vehicle within the confines of that parking space for any period exceeding five minutes;
- (ii) In relation to any other portion of a car park, means stopping or standing a vehicle on that portion of that carpark;

and *park* has a corresponding meaning.

Parking meter means a meter installed at a metered space or a multiple meter area, that measures and indicates the time during which a vehicle may be parked.

Parking permit means a permit issued by Council authorising a vehicle to be parked in a specified location, that is valid for a specified period.

Parking space means a space marked out to indicate where a vehicle may be parked, and includes a metered space.

Person includes natural and legal persons and groups of persons, whether corporate or unincorporate.

Poultry House includes a poultry run and bird cage.

Premises includes any part of any land, dwelling, storehouse, warehouse, shop, cellar, yard or building and includes any building or outbuilding designed or used for housing animals. Land, buildings and places adjoining each other and occupied by the same person are deemed to be the same premises.

Publicly Notified has the same meaning as in the Local Government Act 2002.

Public Place means places which are open to or used by the public as of right, and includes:

- (i) Council car parks;
- (ii) Council parks and reserves;
- (iii) Roads, streets, and public highways;
- (iv) Footpaths, footways, courts;
- (v) Alleys, lanes, access ways;
- (vi) Bridges, culverts, wharves; and

(vii) Places of public resort and places to which the public has access.

Except that in Chapter 2 – Public Places, *Public Places* has the same meaning as in the Summary Offences Act 1981 and includes wharves, reserves and roads, and

In the case of Chapter 4 – Dog Control *Public Places* has the same meaning as in the Dog Control Act 1996.

Public refuse receptacle means any receptacle for the disposal of refuse which is located in a public place.

Refuse means all waste material, compost and manure, debris and litter and includes domestic and trade refuse. For the purposes of this definition *trade refuse* includes any rubbish or refuse resulting from the carrying on or operation of any business, shop, industry or other commercial undertaking.

Reserve includes any public reserve as defined in the Reserves Act 1977, and any sports ground or place of public recreation or enjoyment administered or controlled by the Council.

Road has the same meaning as in the Local Government Act 1974, and in Chapter 2 – Public Places includes physically formed roads up to and including footpaths and berms.

Sexton means the person authorised by Council to provide for the oversight and management of cemeteries within the district.

Stand means a portion of a street designated by Council for parking taxi cabs, buses, street stalls, or mobile food stalls.

Stock includes any:

- (i) Horse, mare, gelding, colt, filly or foal;
- (ii) Bull, cow, ox, steer, heifer or calf;
- (iii) Ass, mule or donkey;
- (iv) Goat or kid;
- (v) Sheep, ram, ewe, wether or lamb; and
- (vi) Boar, sow or other pig.

Street stall means the temporary display of goods or services for the purpose of sale or advertisement.

Taxi Cab has the same meaning as in the Transport Act 1962.

Vessel has the same meaning as “Ship” in the Maritime Transport Act 1994.

Working Dog has the same meaning as in the Dog Control Act 1996.

101.2 Unless otherwise inconsistent with the context:

- (i) Words in the singular include the plural;
- (ii) Words in the plural include the singular;
- (iii) Words in the feminine include the masculine; and
- (iv) Words in the masculine include the feminine.

101.3 The headings to the clauses of this Bylaw do not affect its construction.

101.4 Every schedule to this Bylaw is deemed to form part of this Bylaw.

102 Officer to Continue in Office

102.1 All officers appointed by the Council under or for the purpose of any repealed Bylaw, and holding office at the time of the coming into operation of this Bylaw, are deemed to have been appointed under this Bylaw.

103 Serving of Orders and Notices

103.1 Where this Bylaw permits an order to be made, or notice to be given to any person requiring that person to do or abstain from doing anything, the order or notice may be delivered to that person personally or sent by messenger or mail to that person at their last known place of residence or business.

103.2 If a person is absent from New Zealand an order or notice may be sent to that person's agent, in any manner mentioned in 103.1 above.

103.3 If such person and their agent are unknown or are absent from New Zealand and the order or notice relates to land the order or notice may be:

- (i) Served on the person in occupation or the land; or
- (ii) Attached to some conspicuous part of the land.

It is not necessary in such notice to name the occupier or the owner of such building or land.

103.4 Where an order or notice is sent by mail, it is deemed to have been

delivered when it would have been delivered in the ordinary course of post.

104 Powers of Delegation

- 104.1 Any officer authorised by the Council who issues any order, notice or licence must ensure that it complies with this Bylaw.
- 104.2 Where any officer of the Council pursuant to this Bylaw has any powers or duties imposed on him or her, that officer may, with the consent of the Council, delegate any of those powers or duties to any other officer of the Council.
- 104.3 A certificate signed by the Mayor or the Chief Executive Officer for the time being of Council to the effect that any person was duly authorised by Council to perform any particular function is, in the absence of proof to the contrary, conclusive evidence of such authorisation.

105 Inspection

- 105.1 An authorised officer of the Council, may, during the hours of daylight, enter upon any land, building or premises other than a dwelling house in order to carry out an inspection for the purposes of this bylaw, in accordance with section 171 of the Local Government Act 2002 or any other enactment.
- 105.2 Every person who obstructs or hinders any such inspection commits an offence against this Bylaw.

106 Reduction of Licence Fees

- 106.1 Where an annual fee in excess of \$50.00 is payable in respect of a licence and the licence is issued for less than one year, the fee will be reduced by one-twelfth for every complete month by which the term of the licence is less than one year, but such fee will not be reduced to less than \$50.00.

107 Suspension and Revocation of Licences

- 107.1 Except as may be otherwise expressly provided for in this Bylaw:
- (i) Should the holder of any licence granted pursuant to this Bylaw be convicted of an offence against this Bylaw or any offence reflecting on his or her character, the Council may immediately revoke such licence or suspend the licence for as long as it thinks fit;

- (ii) Should it be brought to the notice of the Council that any person holding any licence granted according to this Bylaw:
 - (a) Has acted or is acting in a manner contrary to the intent or meaning of this Bylaw; or
 - (b) Is in any way unfit to hold such licence;

then the Council may serve a notice upon the licence holder inviting that person to appear before the Council or an authorised Committee at a time and place stated in such notice to show cause why their licence should not be revoked or suspended. If it considers the matter proved or if the licence holder fails to appear the Council may revoke such licence or suspend the licence for as long as it may think fit.

- (iii) Should it be brought to the notice of the Council that any premises licensed under this Bylaw or any part of such premises:
 - (a) Have been or are being used for any other purpose than that stated in such licence; or
 - (b) Have fallen into a state of disrepair or are not being kept and maintained in the condition required by such licence; or
 - (c) That in any other manner the Bylaw in respect of such premises is not being observed in accordance with its intent and meaning;

then the Council may serve upon the owner or the occupier of such premises, being the holder of such licence, a notice similar to that provided for in sub-clause (ii) above and may hear and determine the matter as provided in that sub-clause (ii).

- (iv) Any person whose licence has been suspended, and any premises in respect of which the licence has been suspended is deemed to be unlicensed in terms of this Bylaw during the period of such suspension.

108 Offences and Breaches

108.1 No person shall do anything or cause any condition to exist for which a licence or approval from the Council is required under this Bylaw without first obtaining that licence or approval, and the failure to do so constitutes a breach of this Bylaw.

108.2 No right, authority or immunity is conferred upon any person who:

- (i) Makes an application for a licence or authority from the Council; or
- (ii) Makes payment or obtains a receipt for such application.

108.3 Every person commits a breach of this Bylaw who:

- (i) Does or allows to be done anything contrary to this Bylaw; or
- (ii) Omits or neglects to do or allows to be omitted or remain undone anything which is required to be done under this Bylaw; or
- (iii) Allows any condition to exist contrary to any provision contained in this Bylaw; or
- (iv) Does not comply with any notice duly given to him or her under this Bylaw; or
- (v) Obstructs or hinders any officer of the Council in the performance of any duty to be discharged by that officer under or in the exercise of any power conferred upon him or her by this Bylaw; or
- (vi) Fails to comply with any notice or direction given under this Bylaw.

108.4 All the provisions of this clause apply to any Council resolution made according to this Bylaw.

109 Penalties for Breach of Bylaws

109.1 Except as otherwise provided in this Bylaw every person who commits a breach of this Bylaw is liable to a fine not exceeding \$500.00 and, where the breach is a continuing one, then to a further fine not exceeding \$50.00 for every day on which the breach has continued.

109.2 Where there is a continuing breach of any Bylaw, the Council may apply to a Court of competent jurisdiction for an injunction to restrain the further continuance of the breach by that person.

109.3 The continued existence of any work or thing in a state contrary to this Bylaw, or the intermittent repetition of any action, is a continuing offence.

110 Forms

110.1 Where forms are prescribed, minor variations to such forms do not invalidate them, provided such variations are not calculated to mislead.

111 Removal by the Council of Works Executed Contrary to the Bylaw

- 111.1 The Council may authorise any officer to pull down, remove or alter or cause to be pulled down, removed or altered any work, material or thing erected or being in contravention of any Bylaw of the Council.
- 111.2 The Council may recover from any person responsible for the erection or from any person permitting the continued existence of any such work, material or thing all expenses incurred by it in connection with such pulling down, removal or alteration.
- 111.3 The exercise of this authority does not relieve any person from liability for any penalty for erecting or permitting the continued existence of any such work, material or thing.

112 Repeal

- 112.1 At the commencement date of this Bylaw, this Bylaw replaces all Bylaws of the following:
- (i) The former Blenheim Borough Council;
 - (ii) The former Marlborough County Council;
 - (iii) The former Picton Borough Council;
 - (iv) The Marlborough District Council;
 - (v) The former Awatere County Council;
 - (vi) The former Nelson-Marlborough Regional Council as applicable to the district of Marlborough;
 - (vii) The former Marlborough Harbour Board.

except where such Bylaws are expressly saved by the Resource Management Act 1991 and any other provision.

- 112.2 The Bylaws replaced by this Bylaw are revoked, except that they remain in full force and effect in respect of any offence committed, liability or penalty incurred, prosecution or proceedings commenced or notices given before the commencement of this Bylaw.
- 112.3 All acts of authority, applications, and actions, and all documents, matters, acts and things which originated under the Bylaws revoked by this Bylaw are of continuing effect at the coming into operation of this Bylaw and endure for the purpose of this Bylaw as if they originated under this Bylaw.