



## **Trading and Events in Public Places Bylaw 2015**

### ***Te Ture ā-Rohe Te Mahi Tauhokohoko me nga Takunetanga ki ngā Wāhi Marea 2015***

#### **Board of Auckland Transport**

#### **Resolution**

**on**

**31 March 2015**

Pursuant to the Local Government Act 2002, Local Government (Auckland Council) Act 2009, and the Land Transport Act 1998 the Governing Body of Auckland Transport make the following bylaw

*Explanatory note:*

*The Local Government (Auckland Council) Act 2009 provides for Auckland Council and Auckland Transport to make bylaws under the Local Government Act 2002 and Land Transport Act 1998 to allow trading in public places with reasonable controls. The bylaw also includes clauses on events and filming in public places. Public places includes streets, roads, parks, recreation grounds and other public land owned, managed or under the control of Auckland Council and its council controlled organisations, including Auckland Transport.*

*This explanatory note is for information purposes only and does not form part of this bylaw.*

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**1 Title**

This bylaw is the Auckland Transport Trading and Events in Public Places Bylaw 2015.

**2 Commencement**

This bylaw comes into force on 1 July 2015.

**3 Application**

This bylaw applies to public places under the care, control and management of Auckland Transport.

**Part 1  
Preliminary provisions**

**4 Purpose**

- (1) The purpose of this bylaw is to provide for the control of events and trading in public places by:
- (a) regulating trading activities and the conduct of persons selling or offering goods or services in public places by requiring approval from the council, Auckland Transport or other council controlled organisation;
  - (b) regulating events and filming in roads and other public places by requiring operators to obtain an approval;
  - (c) setting general and specific conditions for trading and events in public places to ensure that appropriate standards of health and safety, pedestrian and vehicle access and visual amenity are maintained;
  - (d) prescribing for fees in respect of any approval in relation to matters specified in subclauses (1)(a) and (b).

**5 Interpretation**

- (1) In this bylaw, unless the context otherwise requires,—

**Act** means the Local Government Act 2002 or Land Transport Act 1998 as the context requires.

**amenity** means the natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes.

**approval** means a licence, permit or other form of approval granted under this bylaw and includes all conditions to which the approval is subject.

**Auckland** has the meaning given by the Local Government (Auckland Council) Act 2009.

*Explanatory note: section 4(1) states: "Auckland means the area within the boundaries determined by the Local Government Commission under section 33(1) (as that determination is given effect to by Order in Council under section 35(1))."*

**charity** means a non-profit organisation that raises funds for the benefit of the needy, a community group, an environmental cause, or the benefit of the public.

**commercial services** means selling or hiring any goods or services which are offered or provided in a public place in exchange for payment, reward or otherwise. This includes, but is not limited to, the production and sale of personal portraits, hiring recreational equipment or,

any other service of any kind whatsoever.

**continuous accessible path of travel** means an uninterrupted route to or within premises or buildings that provides access to all services and facilities.

**council** means the governing body of the Auckland Council or any person delegated or authorised to act on its behalf.

**council controlled organisation** has the same meaning as substantive council controlled organisation in the Local Government (Auckland Council) Act 2009.

*Explanatory note: section 4(1) states: “substantive council-controlled organisation”—  
(a) means a council-controlled organisation that is either wholly owned or wholly controlled by the Council and either—*

- (i) is responsible for the delivery of a significant service or activity on behalf of the Council; or*
- (ii) owns or manages assets with a value of more than \$10 million; and*
- (b) includes Auckland Transport.*

**dangerous materials and objects** means any material or object that pose risk or hazard to the public and performers. Dangerous materials include flammable materials and chemicals, fire, fireworks, smoke, flares, heated elements or anything giving off heat or toxicity that could harm or damage the public or the environment. Dangerous objects include chainsaws, knives, whips, spears, swords, spikes and sharp objects of any kind that could harm the public or performers.

**event** means an organised temporary activity that takes place on one or more days including an organised gathering, parade, protest, wedding, private function (which is independent of premises), festival, concert, celebration, multi-venue sports event of a significant scale, fun run, marathon, duathlon or triathlon. For the purposes of this bylaw an indoor performance, indoor private function, tasting and sampling activity, giveaway, market, sports practice or training is not an event.

**filming** means the recording of images, moving or still, but excludes the recording of a private celebration or event, personal or amateur photography, a home video type activity or, the recording of current affairs or news for immediate release.

**footpath** means a path or way principally designed for, and used by, pedestrians.

**fundraising umbrella organisation** means any organisation recognised by the council as coordinating fundraising activities across charities, and includes the Public Fundraising Regulatory Association.

**market** means the whole of the place and the whole of the activity, where more than one stall at a common location where goods and / or services are offered for sale or hire, whether for commercial or charitable purposes.

**market operator** means any person who operates a market.

**mobile shop** means a vehicle, whether self-propelled or not, standing on a road or other public place and from which:

- (a) goods are offered or exposed/displayed for sale; or
- (b) goods may be ordered (whether or not in pursuance of an invitation to call with the goods); or
- (c) services are offered for sale;

but does not include:

- (d) any vehicle used for the purpose of transporting and delivering goods pursuant to a prior order being placed; or
- (e) a mobile library.

**outdoor display of goods** means the display of goods in a road or other public place adjacent to business premises, and includes any display structure

**outdoor dining (alfresco)** means a road or other public place used by an adjacent business premise for the purpose of providing food or drink.

**pavement art** means temporary images or drawings created either directly on to the pavement or on removable surfaces such as paper or plastic laid out on the pavement. Advertising on the pavement is not considered pavement art under this bylaw.

**pavement artist** means any person who create pavement art for the purposes of public exhibition.

**person** includes a corporation sole, a body corporate, and an unincorporated body.

**premises** means any separately occupied land, building, or part of the same.

**produce stall** has the same meaning as in the Unitary Plan.

*Explanatory note: "produce stall" means a place where farm produce or handcrafts produced on the site are sold and includes:*

- the sale of plants
- the sale of food from 'occasional food premises' as defined in section 2 of the Food Hygiene Regulations 1974 as it was in December 2012.

**public place** means any place that, at any material time, is owned, managed, maintained or controlled by Auckland Transport.

**road** has the meaning given by the Local Government Act 1974.

*Explanatory note: section 315 states: Road means the whole of any land which is within a district, and which—*

- (a) immediately before the commencement of this Part was a road or street or public highway; or
- (b) immediately before the inclusion of any area in the district was a public highway within that area; or
- (c) is laid out by the council as a road or street after the commencement of this Part; or
- (d) is vested in the council for the purpose of a road as shown on a deposited survey plan; or
- (e) is vested in the council as a road or street pursuant to any other enactment;— and includes—
- (f) except where elsewhere provided in this Part, any access way or service lane which before the commencement of this Part was under the control of any council or is laid out or constructed by or vested in any council as an access way or service lane or is declared by the Minister of Works and Development as an access way or service lane after the commencement of this Part or is declared by the Minister of Lands as an access way or service lane on or after 1 April 1988:

- (g) *every square or place intended for use of the public generally, and every bridge, culvert, drain, ford, gate, building, or other thing belonging thereto or lying upon the line or within the limits thereof;—*  
*but, except as provided in the Public Works Act 1981 or in any regulations under that Act, does not include a motorway within the meaning of that Act or the Government Roading Powers Act 1989*

**shared space area** means an area specified as a shared zone under the Auckland Transport Traffic Bylaw 2012 or a road declared to be a pedestrian mall pursuant to the Local Government Act 1974.

**sound performance** means performance that involves amplification, musical instruments or other noise making objects or loud voices.

**special street performance approval** means any street performance including dangerous materials, objects or animals.

**stall** means a stand, stall, structure, vehicle, awning, table or temporary structure from which goods and / or services are offered for distribution or sale and which is erected, placed or maintained in or on a public place.

**street performance / busking** means the provision of entertainment on or in a public place, and includes playing an instrument, singing, dancing, juggling, mime, puppetry, performance art, conjuring, aerobatics, recitation, undertaking artworks and performing other acts of theatrical or visual forms.

**trading goods** means all structures, items, furniture, screens, barriers, objects, stalls, signs, vehicles, and any other equipment associated with the trading activity.

**trading in a public place** means an activity undertaken by any person or organisation involving the sale of goods in a public place or the offering of a commercial service for payment, reward or otherwise, including but not limited to:

- (a) markets and stalls;
- (b) mobile shops;
- (c) outdoor dining;
- (d) fundraising for a charitable cause, soliciting of any subscription or collection of any one-off or on-going donation;
- (e) offering commercial services in a public place;
- (f) distribution of promotional goods and materials;
- (g) outdoor display of goods;
- (h) street performance / busking
- (i) pavement art.

**trading activity** has a corresponding meaning to **trading in a public place**.

**Unitary Plan** means any proposed or operative plan made by the council under the Resource Management Act 1991.

**vehicle** has the meaning given by the Land Transport Act 1998.

*Explanatory note: section 2(1) states: Vehicle-*

- (a) *means a contrivance equipped with wheels, tracks, or revolving runners on which it*

- moves or is moved; and*
- (b) *includes a hovercraft, a skateboard, in-line skates, and roller skates; but*
  - (c) *does not include-*
    - (i) *a perambulator or pushchair;*
    - (ii) *a shopping or sporting trundler not propelled by mechanical power;*
    - (iii) *a wheelbarrow or hand-trolley;*
    - (iv) *a pedestrian-controlled lawnmower;*
    - (v) *a pedestrian-controlled agricultural machine not propelled by mechanical power;*
    - (vi) *an article of furniture;*
    - (vii) *a wheelchair not propelled by mechanical power;*
    - (viii) *any other contrivance specified by the rules not to be a vehicle for the purposes of this definition;*
    - (ix) *any rail vehicle.*
- (2) To avoid doubt, compliance with this bylaw does not remove the need to comply with all other applicable Acts, regulations, standards, bylaws, regional plan rules, condition of a resource consent; a reserve management plan prepared under the Reserves Act 1977, a park management plan prepared under the Local Government Act 2002 or any controls specified under this bylaw from time to time.
- (3) Unless the context requires another meaning, a term or expression that is defined in the Local Government Act 2002 or the Land Transport Act 1998 and used in this bylaw, but not defined, has the meaning given by that Act.
- (4) Any explanatory notes and attachments are for information purposes, do not form part of this bylaw, and may be made, amended and revoked without formality.
- (5) The Interpretation Act 1999 applies to this bylaw.

## **Part 2 General**

### **6 Requirement to hold an approval**

- (1) A person must hold an approval issued by Auckland Transport to undertake the following activities in public places:
- (a) trading in a public place;
  - (b) events;
  - (c) filming.

### **7 Exemptions to holding an approval**

- (1) Notwithstanding clause 6 (1), the following are exempted from the requirement to obtain an approval under this bylaw so long as they comply with any relevant guidelines, standards, controls, policies or codes of practice set by resolution of the council or Auckland Transport:
- (a) outdoor display of goods;
  - (b) art installed on public places by Auckland Transport;
  - (c) goods or services delivered to private premises or service delivery vehicles such as milk vendors or newspaper delivery to private residences or businesses;
  - (d) classes and training provided by outdoor fitness operators

- (e) regular sporting activities carried out by amateur organised sport and recreational groups;
- (f) the sale of produce from a produce stall

*Explanatory note: Operators with any outdoor displays of goods are still required to comply with the conditions set out in clause 24 of this bylaw.*

## 8 Designated public places

- (1) Auckland Transport may, from time to time, by resolution, designate a specific road or part of a road or public place where all trading activities or any specified category of trading are prohibited to ensure public safety, prevent nuisance, minimise obstructions or mis-use of public place.

### Part 3

### Approvals and other administrative matters

## 9 Application for approval

- (1) Applications for approval must be made in the prescribed form, describe the activities in respect of which the approval is sought and be accompanied by further supporting information as Auckland Transport may require to enable processing of the application.
- (2) The holder of an existing approval may apply to Auckland Transport for a renewal of that approval.

## 10 Deciding an application

- (1) Subject to compliance with this clause, Auckland Transport may grant (with or without conditions) or refuse any application for approval at its discretion.
- (2) The decision to grant or refuse an application for an approval together with any conditions on the approval, may be made in accordance with any relevant guidelines approved by resolution of Auckland Transport, specified under this bylaw from time to time.
- (3) In deciding to grant or decline an application for approval Auckland Transport must consider the following matters:
  - (a) the location of the activity and whether it is likely to cause a nuisance, obstruction or a hazard to pedestrians or vehicular traffic ;
  - (b) the specifications of any furniture, structures, equipment, vehicles and other items to be used for the activity;
  - (c) the impacts on the surrounding environment and users as a result of noise, smell, glare, light spill ,appearance or any other effects and; whether these impacts have been appropriately mitigated;
  - (d) the suitability of a person to hold an approval taking into account any known past operational issues and the applicant's experience and track record;
  - (e) where applicable, whether an applicant is a registered charity or a member of a registered organisation;
  - (f) whether the activity is consistent with Auckland Council policies and plans, including but not limited to, the Auckland Plan, Smokefree Policy , local alcohol and gambling policies.
- (4) Any person who has an application declined or revoked by Auckland Transport must

apply in writing for a review of the decision and Auckland Transport must review it accordingly.

## 11 Approval conditions

- (1) The conditions upon which an approval is granted may include, but are not limited to, the following:
  - (a) the designated times of operation (hours and days) including limitations on the hours of set up and pack down;
  - (b) the duration of the approval;
  - (c) the location of the activity, taking into account the surrounding land uses and street layout and the minimum clear widths of footpaths required for pedestrian access;
  - (d) a requirement that the activity is not located in a public place (including near intersections, bus stops, vehicle crossings, accessways or service lanes) in a way that it is likely to cause a nuisance, unreasonable obstruction or hazard to pedestrian and vehicle access;
  - (e) that a continuous accessible path of travel is provided for;
  - (f) requiring compliance with a traffic management plan and/or any waste management and minimisation plan;
  - (g) requiring compliance with any guidelines or policies for shared space areas;
  - (h) specifications on the use of any furniture, structures, equipment, vehicles and other items associated with the activity;
  - (i) safety, health and hygiene requirements;
  - (j) the requirement for public liability insurance;
  - (k) restrictions on the use of amplified music/sound;
  - (l) requiring compliance with Auckland Council policies and plans, including but not limited to, the Auckland Plan, Smokefree Policy, local alcohol and gambling policies.
- (2) Notwithstanding subsection(1) any trading activity involving use of the footpath must maintain a minimum unobstructed footpath width of no less than 1.8 metres.

## 12 Fees

- (1) Auckland Transport may prescribe fees for an approval, including fees to process an application, to review an existing approval and to inspect trading activities and charges for the period of the approval.

## 13 Display of approval

- (1) Unless exempted by Auckland Transport a person with an approval issued by Auckland Transport must prominently display their approval so that it is able to be read by the public at all times during activities.

## 14 Review of an approval

- (1) Auckland Transport may cancel, amend or initiate a review of an approval issued under this bylaw if:
  - (a) the activity is likely to interfere with intended works undertaken by or on behalf of the council or Auckland Transport or a network utility operator that it is entitled by

- statute to undertake in a public place and provided all otherwise necessary authorisation is obtained;
- (b) if urgent action is required to protect the public from unhygienic, unsafe or hazardous conditions;
  - (c) the activity authorised in the approval is likely to impact on public health and safety or cause a nuisance, unreasonable obstruction or damage.

#### **Part 4**

### **Trading and events in public places**

#### **15 Markets and stalls**

- (1) In addition to any of the approval conditions specified under clause 11 of this bylaw Auckland Transport can impose the following conditions on an approval for markets and stalls
  - (a) the location of the market and any associated signs and displays;
  - (b) the type, number, size and position of stalls and any trading goods used within a market;
  - (c) where food is to be sold, requirements for compliance with food hygiene regulations.

#### **16 Mobile shops**

- (1) In addition to any of the approval conditions specified under clause 11 of this bylaw Auckland Transport can impose the following conditions on an approval for mobile shops:
  - (a) the exact location of the mobile shop and any associated signs and displays;
  - (b) the hours or days that the mobile shop occupies a public place at any one time;
  - (c) the types of goods that may be sold from the mobile shop;
  - (d) where food is to be sold, requirements for compliance with food hygiene regulations.
  - (e) any additional conditions reasonably required to appropriately mitigate any adverse impact on local businesses or the local environment arising or likely to arise from the mobile shop.

#### **17 Outdoor dining**

- (1) In addition to any of the approval conditions specified under clause 11 of this bylaw Auckland Transport can impose the following conditions on an approval for outdoor dining:
  - (a) a requirement that the approval holder delineate the exact operating location of the outdoor dining area;
  - (b) the numbers of tables and chairs permitted;
  - (c) that no additional tables and chairs are to be placed in the public place without approval from Auckland Transport;
  - (d) that any front and side awnings that have been given approval allow for clear visibility, and, do not obstruct the passage or compromise the safety of any persons.

## 18 Fundraising

- (1) In addition to any of the approval conditions specified under clause 11 of this bylaw Auckland Transport can impose the following conditions on an approval for fundraising:
- (a) a requirement that the applicant is registered as a charity with the Department of Internal Affairs or, be approved as a donee organisation by the Inland Revenue Department;
  - (a) that boxes, bags, clothing or collection devices used for charity appeals or fundraising organisations must clearly identify the appeal or organisation;
  - (b) that a collector must provide information on the charity to subscribers / donors;
  - (c) the locations and hours of collections.

## 19 Offering commercial services

- (1) In addition to any of the approval conditions specified under clause 11 of this bylaw Auckland Transport can impose the following conditions on an approval for offering commercial services:
- (a) the intended location including whether there are multiple sites;
  - (b) the quality and standard of services being offered;
  - (c) any additional conditions reasonably required to appropriately mitigate any adverse impact on local businesses, residential areas, or the local environment arising or likely to arise from the commercial service.

## 20 Distribution of promotional goods or materials

- (1) In addition to any of the approval conditions specified under clause 11 of Auckland Transport can impose the following conditions on an approval for the distribution of promotional goods or materials:
- (a) the intended location including whether there are multiple sites;
  - (b) the quality and standard of promotional goods or materials being offered;
  - (c) any additional conditions reasonably required to appropriately mitigate any adverse impact on local businesses, residential areas, or the local environment arising or likely to arise from the commercial service;
  - (d) a requirement that the promotional goods or materials being distributed:
    - i. are not discriminatory and do not advocate discrimination based on one or more of the prohibited grounds of discrimination set out in the Human Rights Act 1993;
    - ii. are not objectionable within the meaning of the Films, Videos and Publications Classification Act 1993;
    - iii. do not cause or have the potential to cause widespread or serious offence to members of the public;
    - iv. do not threaten harm;
    - v. do not incite or counsel any person to commit any offence;
    - vi. are not defamatory.

## 21 Street performance/busking

- (1) Street performers must not approach individuals requesting money or solicit funds in a way that is likely to impact with any other person in their use of that public place.

- (2) Street performers must take all practicable steps to ensure that their performance causes no harm to themselves or members of the public.
- (3) Street performers must obtain a special street performance approval to use dangerous materials or objects.
- (4) Street performers must follow any code of conduct, approved by the council or Auckland Transport by resolution, for street performances.

## 22 Pavement artists

- (1) A person with an approval to create pavement art in a public place must use materials that can be washed off with water without leaving any residue. Materials must not be slippery or likely to impact on public safety.
- (2) Advertising is not permitted in pavement art.
- (3) Auckland Transport may, from time to time, designate specific areas where pavement artists are permitted or prohibited.

## 23 Events and Filming

- (1) In addition to decisions regarding an application for approval as specified in Clause 10 Auckland Transport will consider the following matters when assessing an application for an event or filming approval:
  - (a) whether there is a prior booking of the public place and the two events or, filming activities, cannot reasonably take place at the same time, or
  - (b) whether there will be significant disruption to traffic flows or public passage, or
  - (c) any impacts on public safety.

*Explanatory note: Film approval applications are handled by Screen Auckland, which is the film office for the Auckland region and operates as part of Auckland Tourism Events and Economic Development.*

## 24 Outdoor displays of goods

- (1) All outdoor displays of goods must:
  - (a) not impede the movement of pedestrians or vehicles, or be likely to cause danger to any person;
  - (b) not be in a public place outside the business hours of the business;
  - (c) be moved to another part of the public place if directed by Auckland Transport to do so;
  - (d) be placed immediately adjoining the premises from which the good and services displayed may be purchased;
  - (e) not display knives or firearms or be dangerous or offensive;
  - (f) not be placed in a carriageway, driveway/vehicle crossing, grass verge or traffic island.

## Part 5 Enforcement powers

### 25 Non-compliance with conditions of approval

- (1) Where a person does not comply with the conditions of the approval Auckland Transport may take one or more of the following steps:
  - (a) Issue a written warning to the approval holder, which may be considered as evidence of a prior breach of an approval condition during any subsequent review of the approval;
  - (b) Review the approval where:
    - i. a person has failed to meet the conditions of their approval or any other requirements of any relevant criteria, policy or guidelines approved by Auckland Transport;
    - ii. a person that holds an approval fails to meet any written instructions in a notice issued by Auckland Transport within the time specified in that notice;
  - (c) Enforce any breach of this bylaw, as provided for in the Local Government Act 2002, and/ or the Land Transport Act 1998 and/or the Health Act 1956 and/or Litter Act 1979.
- (2) A review of an approval, may result in:
  - (a) amendment of the approval; or
  - (b) suspension of the approval; or
  - (c) withdrawal of the approval; or
  - (d) no further action.

### 26 Removal of material or things

- (1) Auckland Transport may recover from the person who committed the breach of this bylaw the appropriate costs in connection with the removal of the material or thing;
- (2) That the approval holder be liable for all costs of repair to any damage or cleaning to the footpaths that is caused by the trading activity.

### 27 Exceptions

- (1) A person is not in breach of this bylaw if that person proves that the act or omission was in compliance with the directions of an authorised officer.

## Part 6 Offences and penalties

### 28 Bylaw breaches

- (1) A person who fails to comply with this bylaw commits a breach of this bylaw and is liable to a penalty under the Local Government Act 2002, and/ or the Land Transport Act 1998 and/or the Health Act 1956.
- (2) A person who commits a breach of this bylaw that is an offence under the Litter Act 1979 is liable to a penalty under that Act.

## Part 7

### Savings, transitional provisions and revocations

#### 29 Savings and transitional provisions

- (1) This clause applies to:
  - (a) Auckland Regional Council Parks Bylaw 2007;
  - (b) Auckland City Council No 20 - Public Places Bylaw 2008;
  - (c) Franklin District Council Trading in Public Places Bylaw 2008;
  - (d) Chapter 7 (Events and Trading in Parks and Public Places) of the Manukau City Consolidated Bylaw 2008;
  - (e) Part 3 (Trading in Public Places) of the North Shore City Council Bylaw 2000;
  - (f) Papakura District Council Trading in Public Places Bylaw 2008;
  - (g) Chapter 5 (Trading in Public Places) of the Rodney District Council General Bylaw 1998;
  - (h) Waitakere City Council Public Places Bylaw 2010.
- (2) Any resolution or other decision made under the bylaws referred to in clause 29 (1) remains in force in the area to which it applied until revoked or replaced by an equivalent resolution or decision made by Auckland Transport under this bylaw.
- (3) Any approval, consent, permit, dispensation, permission or other form of approval made under the bylaws referred to in clause 29 (1) continues in force but:
  - (a) expires on the date specified in that approval; or
  - (b) if no expiry date is specified, expires 12 months from the date that this bylaw becomes effective; and
  - (c) can be renewed only by application made and determined under this bylaw.
- (4) Any application for an approval, consent, permit, dispensation, permission or other form of approval made under a bylaw referred to in clause 29(1) that was filed before the day on which this bylaw commences must be dealt with by Auckland Transport under the relevant former bylaw in clause 29(1).

#### 30 Revocations

- (1) The following bylaws are revoked to the extent these relate to the regulation of trading in a public place.
  - (a) Auckland Regional Council Parks Bylaw 2007 (Part 2);
  - (b) Auckland City Council No 20 - Public Places Bylaw 2008 (clauses 20.6 – 20.7);
  - (c) Franklin District Council Trading in Public Places Bylaw 2008;
  - (d) Chapter 7 (Events and Trading in Parks and Public Places) of the Manukau City Consolidated Bylaw 2008;
  - (e) Part 3 (Trading in Public Places) of the North Shore City Council Bylaw 2000;
  - (f) Papakura District Council Trading in Public Places Bylaw 2008;
  - (g) Chapter 5 (Trading in Public Places) of the Rodney District Council General Bylaw 1998;
  - (h) Waitakere City Council Public Places Bylaw 2010 (Part 5).