

Notice of Meeting:

I hereby give notice that an ordinary Meeting of the Regulatory and Hearings Committee will be held on:

Date: Thursday 29 August 2019
Time: 9.30am
Meeting Room: Council Chamber
Venue: Municipal Building, Garden Place, Hamilton

Richard Briggs
Chief Executive

Regulatory and Hearings Committee OPEN AGENDA

Membership

Chairperson: Cr Angela O'Leary

Deputy Chairperson: Cr Leo Tooman

Membership: The Mayor and all Councillors
Maangai James Whetu
(The composition of any Regulatory Hearings Committee for quorum purposes to be determined by the Chairperson)

Meeting frequency: As required

Quorum: Three members

Becca Brooke
Governance Lead

21 August 2019

Telephone: 07 838 6439
Becca.Brooke@hcc.govt.nz
www.hamilton.govt.nz

Purpose

1. To conduct fair and effective hearings and make determinations on a range of the Council's quasi-judicial functions under legislation and other matters as referred to the Committee.
2. To convene and coordinate Task Force groups on matters referred by other Committees.

The Committee is delegated the following Terms of Reference and powers:
--

Terms of Reference:

1. Hear and determine any statutory or regulatory hearings under relevant legislation unless otherwise delegated by Council, including (but without limitation):
 - objections under the Dog Control Act 1996;
 - matters regarding drainage and works on private land under the Local Government Act 1974 and Local Government Act 2002;
 - proposals for temporary closure of any road.
2. Consider and determine changes to the registers and restrictions in the Traffic Bylaw and Speed Limit Bylaw, including hearing any submissions relating to those proposed changes.
3. Hear and determine matters arising under current bylaws, including applications for dispensation from compliance with the requirements of bylaws, unless such matters are otherwise delegated by Council.
4. Hear and determine other matters that require hearings or submissions, as referred by Council or other Committees.
5. To convene Task Force groups and carry out the terms of reference approved and referred by Council or other Committees.

The Committee is delegated the following powers to act:

- Approval of matters determined by the Committee within its Terms of Reference.
- Approval of activities and expenses relating to Task Force groups consistent with their terms of reference and approved Task Force group budget.

The Committee is delegated the following recommendatory powers:

- The Committee may make recommendations to the Council.
- The Committee may make recommendations to Committees.

Special Notes:

- The Committee may request expert advice through the Chief Executive when necessary.
- The Committee may appoint additional members for hearings where the relevant terms of reference specify the requirement for expert or external representation.

ITEM	TABLE OF CONTENTS	PAGE
1	Apologies	4
2	Confirmation of Agenda	4
3	Declarations of Interest	4
4	Solid Waste Bylaw - Submissions and Hearings Report	5
5	Prostitution Bylaw Review - Submissions and Hearings Report	30

1 Apologies

2 Confirmation of Agenda

The Committee to confirm the agenda.

3 Declaration of Interest

Members are reminded of the need to be vigilant to stand aside from decision making when a conflict arises between their role as an elected representative and any private or other external interest they might have.

Council Report

Item 4

Committee: Regulatory and Hearings Committee

Date: 29 August 2019

Author: Sandra Murray

Authoriser: Eeva-Liisa Wright

Position: Consultant

Position: General Manager
Infrastructure Operations

Report Name: Solid Waste Bylaw - Submissions and Hearings Report

Report Status	<i>Open</i>
----------------------	-------------

Purpose

1. To inform the Regulatory and Hearings Committee on the submissions ([Solid Waste Bylaw 2019 - Hamilton City Council - Citizen Space](#)) received in response to public consultation on the Council's Solid Waste Bylaw 2019.

Staff Recommendation

2. That the Regulatory and Hearings Committee:
 - a) receives the report;
 - b) hears and considers the submissions for the Solid Waste Bylaw 2019; and
 - c) notes that a Deliberations Report for the Solid Waste Bylaw 2019 will be considered at the 17 September 2019 Council meeting.

Executive Summary

3. On 7 May 2019, the Growth and Infrastructure Committee approved consultation on the proposed Solid Waste Bylaw with two options for feedback from the community:
 - **Option 1** – that a Bylaw is the most appropriate way of addressing the perceived problems in relation to controlling waste issues in Hamilton.
 - **Option 2** – that a Bylaw is not the most appropriate way of addressing the perceived problems in relation to controlling waste issues in Hamilton.
4. The Council received 50 submissions during the consultation period of 7 June 2019 to 7 July 2019.
5. Analysis of the results has been completed and these results along with a summary of submission comments is included in this report.
6. A full copy of all the submissions can be viewed via the following link [Solid Waste Bylaw 2019 - Hamilton City Council - Citizen Space](#).
7. One submitter (Tony McLauchlan, representing Chedworth Properties Limited) has indicated that they would like to be heard in support of their written submission.

8. A majority (70%) of submitters supported **Option 1**: that a Bylaw is the most appropriate way of addressing the perceived problems in relation to controlling waste issues in Hamilton.
9. The main points made in submissions are outlined below.

Support for Option 1	Support for Option 2
<ul style="list-style-type: none"> • Support for more effective control of waste / more recycling • Support for protecting the environment • Option 2 is no Bylaw, which was not palatable to some submitters. 	<ul style="list-style-type: none"> • Support for greater manufacturer responsibility • Comments unclear or appear in contradiction to the Option chosen

10. Many submitters commented on the new rubbish and recycling service which is commencing in July 2020. These comments have been provided to the Rubbish and Recycling Project team for consideration but are not relevant to the review of the Solid Waste Bylaw.
11. Once submissions have been heard, and the analysis of the results considered, the Regulatory and Hearings committee will need to provide staff direction for the preparation of a Deliberations Report which will be presented to the Council meeting on the 17th September 2019.
12. Staff consider the matters in this report have low significance and that the recommendations comply with the Council's legal requirements.

Background

13. The Bylaw refers to "Solid Waste", in order to clearly differentiate it from "Tradewaste" or liquid waste managed through stormwater or wastewater systems. Solid Waste means anything disposed of or discarded; and includes a type of waste that is defined by its composition or sources (for example, organic waste, electronic waste, or construction and demolition waste); and to avoid doubt, includes any component or element of diverted material, if the component or element is disposed of or discarded.
14. The existing Solid Waste Bylaw 2012 has been reviewed to include substantial new and amended controls needed to support the new service levels for the collection and disposal of rubbish and recycling being implemented in Hamilton City from 1 July 2020.
15. The review has also been an opportunity to align the Solid Waste Bylaw 2019 with the [2018-2026 Waste Management and Minimisation Plan](#) adopted by Council in September 2018.
16. The purpose of the Bylaw is to set controls and regulate solid waste in the district.
17. The Local Government Act 2002 (LGA) requires the Council to consult the public on whether to continue the existing Bylaw without amendment (s160(3)(b), of the LGA) or amend, revoke or replace the Bylaw (ss160(3)(a) and 156(1), of the LGA).
18. On 7 May 2019 the Growth and Infrastructure Committee approved consultation on the proposed Solid Waste Bylaw 2019 with two Options for feedback from the community:
 - **Option 1** – that a Bylaw is the most appropriate way of addressing the perceived problems in relation to controlling waste issues in Hamilton.
 - **Option 2** – that a Bylaw is not the most appropriate way of addressing the perceived problems in relation to controlling waste issues in Hamilton.
19. The Council received 50 submissions during the consultation period of 7 June 2019 to 7 July 2019.
20. One submitter (Tony McLauchlan representing Chedworth Properties Limited) has indicated that they would like to be heard in support of their written submission.

Discussion

21. Of the 50 submissions received, a majority (70%) of submitters supported approving the amended Solid Waste Bylaw (**Option 1**: that a Bylaw is the most appropriate way of addressing the perceived problems in relation to controlling waste issues in Hamilton).

	Number	Percentage
Yes	35	70%
No	10	20%
Not Answered	5	10%
Total	48	100%

22. Most submitters were individuals or householders, and broadly representative of all age groups and household situations.

	Number	Percentage
An individual/householder	46	92%
A representative of a business, organisation or community group	2	4%
Not Answered	2	4%

Support

t for Option 1 (support adopting the Solid Waste Bylaw 2019)

23. Most submitters (70%) supported approving the amended Solid Waste Bylaw (Option 1 – that a Bylaw is the most appropriate way of addressing the perceived problems in relation to controlling waste issues in Hamilton).
24. Key points raised by submitters supporting Option 1 included:
- Support for more effective control of waste / more recycling
Example: *“We need to be able to more effectively control what goes into landfill. Being able to recycle different types of plastics and raw waste products is a step in the right direction.”* (Individual)
 - Support for protecting the environment
Example: *“It’s better for the environment, will save waste & hopefully make us all aware of what our buying and wasteful habits are. Pressure needs to put on those who use so much packaging for their products, including Pharmacies.”* (Individual)
 - Preference for having a Bylaw (as opposed to no Bylaw)
Example: *“The other option appears to be ‘revoke’ and having nothing seems a bit wild west to me.”* (Individual)
25. A representative of a property development company, who supported Option 1, raised concerns for how some aspects of the Bylaw would be enacted, and suggested amending the Bylaw as follows:

“CPL request that the Proposed Bylaw be amended to include an additional clause in Section 5.15 General Controls on the collection, transportation and disposal of waste to ensure that where road corridors are narrowed to 9m for urban design outcomes that the size of refuse trucks used for collection by contractors may need to be reduced.

...The Proposed Bylaw can help ensure the emphasis for roading design is on urban design outcomes rather than waste collection contractor requirements in terms of truck size and manoeuvring ability.” (abridged)

26. Staff note that road corridor width is an ongoing issue for discussion. Some stakeholders prefer narrower road corridors, while Council has concerns regarding the increased cost of waste service provision and other concerns such as fire engine and utilities truck access. The issue of road width is complex and needs to balance a range of factors including:
- Narrower roads require different truck sizes, and often a change from side-load to rear-load – with additional health and safety implications.
 - Smaller trucks cannot carry as much before needing to travel to the transfer station of landfill – increasing truck movements with associated emissions concerns, as well as increasing the time taken to collect waste (at increased cost).
 - Multiple service types across the city reduce the benefits of standardised contract, increasing costs to Council over the lifespan of the development.
 - Fire engines and some utilities servicing trucks are the same size or larger than waste collection vehicles. Road corridor width therefore impacts multiple services, with the underlying issue being the immediate preference of developers vs long term operational costs.
27. Staff recommend the issue of appropriate road corridor width is best managed through other channels such as the District Plan or National Standards; and is not appropriate to be included in the Solid Waste Bylaw.
28. The same submitter also opposed the requirement that any person who owns, occupies or manages a multi-unit development must prepare and comply with a waste plan. The submitter stated:
- “MuD’s that front a road should not be required to have a waste plan as these properties can be adequately serviced by waste collection trucks. This provision should only apply to new MuD’s that cannot be reached by waste collection trucks.”*
29. **Note:** MUD means Multi-Unit Development – this is a property comprising three or more separately occupied residential units or business units, whether in the same building or in separate buildings, and held either in common ownership or in separate ownership.
30. Staff note that, while in most cases it is correct that a MUD with a road frontage will be able to use a Standard Collection Service provided by Council, it is not always the case.
31. For example, where a MUD is on a narrow property, there may be insufficient space for all the bins from the development to fit on the kerb frontage without causing street access issues. In such cases the provision of a MUD Waste Plan will identify this issue at an early stage of development – allowing Council to work with the developer to alleviate the issue.
32. It is Council’s responsibility to ensure each instance is individually considered in relation to waste service provision for new developments, to avoid nuisance situations arising.
33. Staff also note that the submitter has not yet seen the waste plan guidelines or templates (currently under development) and therefore may not fully understand the requirements of the waste plan component of the Solid Waste Bylaw, leading to a concern that these will be unduly onerous.
34. Targeted consultation will be undertaken during the development of waste plan guidelines and templates for MUDs. Staff will ensure this submitter is part of those discussions.

Support for Option 2 (do not support adopting the Solid Waste Bylaw 2019)

35. Of the submissions received, 20% did not support adopting the amended Solid Waste Bylaw 2019.

36. However, most submitters in this group made comments related to the roll out of new waste services in 2020 rather than issues related to the Bylaw.
37. In relation to the Solid Waste Bylaw, comments against adopting the proposed Bylaw was related to manufacturer responsibility

Example: "If council want to reduce waste, the Council and Government should be putting their foot down on companies that create UN-recyclable waste like Margarine containers, takeaway containers etc and stop trying to punish the public for things companies are doing." (Individual)

Support not identified

38. A small number of submitters did not indicate a preference for supporting or not supporting the amended Bylaw (10%).
39. Analysis of comments suggests these submitters were either unclear of the details related to the Bylaw, or simply wished to express concerns related to waste services in general.

Example: "There needs to be clearer instructions given to residents on how to manage solid waste, and harsher penalties for those that dispose of waste illegally or neglectfully. We also need a better recycling system - Give us wheelie bins like other regions!" (Individual)

Points raised related to new waste services:

40. Submitters made a range of comments related to the new waste services including:
- Wheelie bin sizes inappropriate
 - Concern for how multi-unit developments will store the new wheelie bins
 - Concern for how people will transport new wheelie bins to kerb (long/steep driveway)
41. Submitters concerns regarding Council waste services are not related to the Solid Waste Bylaw review process. Staff have noted submitters concerns and will use this information in the development of information and communications as part of the roll out of new services.

Financial Considerations

42. The total cost to complete the review on the Bylaw including adopting a Bylaw or revocation and any anticipated consultation will be approximately \$20,000-\$25,000 (including legal reviews). This has been budgeted for through the 2018-28 10-Year Plan.
43. The decisions regarding the adoption of the proposed Bylaw will not affect landfill levy funding received by Hamilton City Council from the Ministry for the Environment.

Legal and Policy Considerations

44. There have been multiple legal reviews undertaken throughout the existing Bylaw review process.
45. Staff confirm that the staff recommendations comply with the Council's legal and policy requirements.
46. Staff confirm that the review of the Solid Waste Bylaw complies with the Council's legal and policy requirements under the Waste Minimisation Act 2008 and the Local Government Act 2002.

Cultural Considerations

47. Te Runanga o Kirikiriroa and Te Haa o te Whenua o Kirikiriroa were informed by email of the Council's review of the Bylaw and invited to provide feedback, however no feedback was received.

Risks

48. Given the robust legal review and pre-consultation with key stakeholders, there are no known risks associated with the staff recommendations.
49. If it is determined that a Solid Waste Bylaw is not required, there is risk that Council would have no enforcement of litter, illegal dumping or private waste operators and may fail to meet its obligations under legislation.

Significance & Engagement Policy**Significance**

50. Staff considered the following factors under the Significance and Engagement Policy:
- The form of engagement used in the past for similar proposals and decisions
51. The consultation for the proposed regulatory changes has been completed in accordance with the legal requirements, and staff have therefore assessed that the recommendations have low significance.

Engagement

52. Community views and preferences are already known to the Council through the consultation that has been undertaken prior to the preparation of this report.

Attachments

Attachment 1 - Proposed Hamilton City Solid Waste Bylaw 2019

Approved By:	Date Adopted :
Date In Force:	Review Date:

HAMILTON CITY SOLID WASTE BYLAW 2019

This Bylaw is made by the Hamilton City Council under the powers given to it by the Waste Minimisation Act 2008, Local Government Act 2002, Heath Act 1956, and the Litter Act 1979.

Contents

1.	PURPOSE	2
2.	APPLICATION	2
3.	DEFINITIONS	2
4.	CONTROLS.....	8
5.	COLLECTION, TRANSPORTATION, PROCESSING, AND DISPOSAL OF WASTE	8
	GENERAL RESPONSIBILITIES	8
	LICENSING OF WASTE COLLECTION AND WASTE MANAGEMENT FACILITY OPERATORS.....	9
	GENERAL CONTROLS ON THE COLLECTION, TRANSPORTATION AND DISPOSAL OF WASTE	10
	COLLECTIONS FROM A PUBLIC PLACE	11
	COUNCIL COLLECTION POINTS	12
	DONATION COLLECTION POINTS.....	12
	INORGANIC MATERIAL	12
	NUISANCE AND LITTER	13
	PROVISION OF WASTE PLANS.....	13
	MULTI-UNIT DEVELOPMENT (MuD) WASTE PLANS.....	13
	EVENTS WASTE PLANS.....	14
	SITE WASTE PLANS FOR BUILDING WORK	15
6.	GENERAL PENALTIES AND POWERS.....	16
7.	OTHER ENFORCEMENT POWERS	16
	GENERAL RESPONSIBILITIES	16
	LICENCED WASTE OPERATORS.....	16
	COLLECTIONS FROM A PUBLIC PLACE OR COLLECTION POINT	17
	INORGANIC MATERIAL	17
	NUISANCE AND LITTER	17
	WASTE MANAGEMENT AND MINIMISATION PLANS.....	17
	WASTE PLANS FOR MULTI-UNIT DEVELOPMENTS (MuD)	18
	WASTE PLANS FOR EVENTS	18
	WASTE PLANS FOR BUILDING WORK.....	18
8.	EXCEPTIONS AND SAVING PROVISIONS.....	18
9.	FEES AND CHARGES	18

Hamilton City Council BYLAWS

1. PURPOSE

- 1.1. The purpose of this Bylaw is to support the management and minimisation of waste by:
- promoting and delivering effective and efficient waste management and minimisation in Hamilton City as required under the Waste Minimisation Act 2008;
 - supporting the implementation of the Council's Waste Management and Minimisation Plan;
 - upholding the purpose of the Waste Minimisation Act and the goals in the New Zealand Waste Strategy;
 - regulating the deposit, removal, collection, transport, and processing of waste;
 - enabling fees and charges for use of waste management and minimisation services and facilities provided, owned, or operated by the territorial authority;
 - protecting the health and safety of waste collectors, waste operators and the public; and
 - enabling the management of litter and nuisance in public places.

2. APPLICATION

- 2.1. This Bylaw applies to the District of the Hamilton Council.

3. DEFINITIONS

- 3.1. The following definitions apply to this Bylaw, except where inconsistent with the context:

Term -	means:			
Approved	Written authorisation from the Council			
Approved container	Any container (including bags) that has been approved by the Council for the collection of any type of waste, with approval based on the following criteria: the prevention of nuisance, the protection of the health and safety of waste collectors and the public, and the achievement of effective waste management and minimisation.			
Authorised Council officer	A person appointed by Hamilton City Council for the purposes of ensuring compliance with the Bylaw, as defined as an Enforcement Officer in the Waste Minimisation Act 2008 section 76, Local Government Act 2002 section 177 and as defined as Litter control officers under the Litter Act 1979 section 5.			
Building work	means work— (a) for, or in connection with, the construction, alteration, demolition, or removal of a building; and (b) on an allotment that is likely to affect the extent to which an existing building on that allotment complies with the building code; and (c) includes sitework.			
Bylaw	This Solid Waste Bylaw			
Class 1-5 landfills	Class	Common Name	Accepted Waste Material	Material Source
	1	Municipal Solid	Non-hazardous waste. Typically, mixed waste from multiple sources and containing a high content of organic material; may include waste cited for classes 2, 3, 4 and 5. May be developed for	Households, industry, institutions,

Hamilton City Council BYLAWS

Item 4

Attachment 1

		Waste Landfill	specific industrial wastes (for example, monofills or residual waste sites)	construction sites, contaminated sites
	2	C&D Landfill	Unsorted/uncontrolled construction and demolition material. May be developed for specific industrial wastes (for example, monofills or residual waste sites)	Construction sites, demolition material, soil from areas with significantly different chemical properties
	3	Managed Fill	Inert material (e.g. selected inert construction or demolition material) or soils with specified maximum contaminant concentrations greater than applicable local background concentrations.	Selected materials from construction and demolition sites, earthworks and site remediation
	4	Controlled Fill	Inert material (e.g. selected inert construction or demolition material) or soils with trace element concentrations greater than applicable regional background concentrations	Selected materials from construction sites and demolition sites and earthworks
	5	Clean Fill	<p>Virgin excavated natural materials (VENM) such as clay, soil and rock that are free of:</p> <ul style="list-style-type: none"> combustible, putrescible, degradable or leachable components; hazardous substances or materials (such as municipal solid waste) likely to create leachate by means of biological breakdown; products or materials derived from hazardous waste treatment, stabilisation or disposal practices; materials such as medical and veterinary waste, asbestos, or radioactive substances that may present a risk to human health if excavated; contaminated soil and other contaminated materials; and liquid waste. <p>When discharged to the environment, clean fill material will not have a detectable effect relative to the background.</p>	Slips/road clearance, construction site clearance, earthworks surplus
Council	The Hamilton City Council or any person delegated or authorised to act on its behalf			
Council collection points	Places or containers approved by Council where approved containers may be left for collection or waste may be deposited if collection from a public place is unfeasible or impractical			
Cover material	Means material specified by the Council under clause 4.1.f as suitable for use as cover material at a class 1-4 landfill site			
Deposit	<p>To cast, place, throw, drop or allow to escape any waste or diverted material</p> <p><i>depositing</i>, in relation to litter, includes—</p> <p>(a) casting, placing, throwing, or dropping litter; and</p> <p>(b) allowing litter to be cast, thrown, dropped, or to escape, from any motor vehicle or trailer</p>			
Disposal	As defined in the Waste Minimisation Act 2008			

Hamilton City Council BYLAWS

Donation collection point	A place approved by Council where reusable or recyclable types of waste may be deposited for the purposes of raising funds from the waste items
Event	An activity that is irregular or infrequent and does not require the construction of a permanent building, the installation of permanent infrastructure or services, or works such as vegetation clearing or other operational work. Events involve large groups of people either as participants or spectators and include carnivals, parades, concerts, markets, craft or trade fairs, field days, open days, displays and the like. This definition applies only where the activity is not covered by another definition/activity in the District Plan
Home composting	The activity of creating decaying organic matter from domestic green waste and/or food waste into compost
Illegal Dumping	Means the same as Litter
Licence	A licence, consent, permit or approval to do something under this Bylaw and includes any conditions to which the licence is subject
Litter	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 deposited in a public place
Litter receptacle	A receptacle provided for the collection of litter
Manager	A person who controls or manages any premises, activity, or event, regardless of whether that person has a proprietary interest in those premises or that activity or event. Includes a Body Corporate
Multi - Unit Development	A property comprising three or more separately occupied residential units or business units, whether in the same building or in separate buildings, and held either in common ownership or in separate ownership
MuD	Multi - unit Development
Nuisance	A nuisance in terms of the Health Act 1956
Occupier	The inhabitant occupier of any property; and in relation to any land (including any premises and any coastal marine area), includes any agent, employee, or other person acting or apparently acting in the general management or control of the land, or any plant or machinery on that land
Packaging	Materials used to wrap or protect goods
Person	An individual, a corporation sole, a body corporate, and an unincorporated body
Premises	A building or buildings and the land belonging to it or them
Public place	As defined in the Litter Act 1979 Includes— (a) every motorway, road, street, private street, footpath, access way, service lane, court, mall, and thoroughfare:

Trim ID

HAMILTON CITY COUNCIL HAMILTON CITY SOLID WASTE BYLAW 2019

4

Hamilton City Council BYLAWS

Item 4

Attachment 1

	<p>(b) any public reserve within the meaning of section 2 of the Reserves Act 1977 to which the public generally has access, whether with or without payment of any fee, and any reserve under that Act classified as a nature reserve or a scientific reserve:</p> <p>(c) any park, garden, or other place of public recreation to which the public has access, whether with or without payment of any fee:</p> <p>(d) any beach or foreshore, or the bank of any river or stream, or the margin of any lake, to which the public traditionally has access, whether with or without payment of any fee:</p> <p>(e) any waters to which the public traditionally has access, whether with or without payment of any fee, for bathing or other recreational purposes:</p> <p>(f) every wharf, pier, or jetty (whether under the control of a harbour board or not) to which the public has access:</p> <p>(g) any conservation area within the meaning of the Conservation Act 1987:</p> <p>(h) any airport within the meaning of section 2 of the Airport Authorities Act 1966:</p> <p>(i) any cemetery within the meaning of section 2 of the Burial and Cremation Act 1964:</p> <p>(j) any land vested in or controlled by any local authority (within the meaning of section 5(1) of the Local Government Act 2002) or the Crown, being land that is not occupied pursuant to any lease, licence, or other authority by any private person:</p> <p>(k) any national park constituted under the National Parks Act 1980:</p> <p>(l) any other place whether public or private in the open air, including any walkway within the meaning of section 4 of the Walking Access Act 2008, to which the public has access, whether with or without payment of any fee, — but does not include any site for the disposal of litter, or any receptacle installed in any such public place pursuant to this Act or any other Act</p>						
Public Notice	<p>To:</p> <p>(a) publish on an Internet site to which the public has free access a notice that—</p> <p>(i) includes all the information that is required to be publicly notified; and</p> <p>(ii) is in the prescribed form (if any); and</p> <p>(b) publish a short summary of the notice, along with details of the Internet site where the notice can be accessed, in 1 or more newspapers circulating in the entire area likely to be affected by the matter to which the notice relates.</p> <p>The notice and the short summary of the notice must be worded in a way that is clear and concise</p>						
Recovery	The extraction of materials or energy from waste or diverted material for further use or processing; and includes making waste or diverted material into compost						
Retail	The use of land or buildings where goods and services are offered or exposed to the general public for sale, hire or use, but excludes restaurants, licenced premises, offices or drive-through services						
Solid Waste Storage Area	An on-site storage area for refuse, recyclable material and organic matter that is accessible for waste collection services						
Treatment	Means subjecting waste to any physical, biological, or chemical process to change its volume or character so that it may be disposed of with no or reduced adverse effect on the environment; but does not include dilution of waste						
Waste	<p>(a) means any thing disposed of or discarded; and</p> <p>(b) includes a type of waste that is defined by its composition or source (for example, organic waste, electronic waste, or construction and demolition waste); and</p> <p>(c) to avoid doubt, includes any component or element of diverted material, if the component or element is disposed of or discarded</p> <p>Waste categories:</p> <table><tr><th>Related to the source of the waste</th><th>Related to the composition of waste</th><th>Related to restrictions applied to waste</th></tr><tr><td>Domestic Waste Commercial Waste Construction and Demolition Waste</td><td>Food Waste Green Waste Hazardous Waste Inorganic Material Recyclable Material Refuse Reusable Material Special Waste</td><td>Diverted Material Prohibited Waste</td></tr></table>	Related to the source of the waste	Related to the composition of waste	Related to restrictions applied to waste	Domestic Waste Commercial Waste Construction and Demolition Waste	Food Waste Green Waste Hazardous Waste Inorganic Material Recyclable Material Refuse Reusable Material Special Waste	Diverted Material Prohibited Waste
Related to the source of the waste	Related to the composition of waste	Related to restrictions applied to waste					
Domestic Waste Commercial Waste Construction and Demolition Waste	Food Waste Green Waste Hazardous Waste Inorganic Material Recyclable Material Refuse Reusable Material Special Waste	Diverted Material Prohibited Waste					

Hamilton City Council BYLAWS

Attachment 1

Item 4

Category	Definition
Commercial waste	Waste that results from a commercial enterprise and includes waste generated by the carrying on of any business, manufacture, process, trade, market, or other undertaking
Construction and demolition waste	Waste generated from any building construction or demolition works; and includes any concrete, plasterboard, wood, steel, brick, cardboard, metals, plastic or glass
Diverted material	Any thing that is no longer required for its original purpose and, but for commercial or other waste minimisation activities, would be disposed of or discarded
Domestic waste	Waste consisting of refuse, recyclable material or organic matter (food waste and/or green waste) originating from any household or from the cafeteria, lunchroom or canteen of any commercial enterprise, but does not include commercial waste nor prohibited waste.
Food waste	Waste that is derived from any item of food and is organic in origin and includes fruit and vegetable scraps, meat, fish and bone discards, and any other similar food waste
Green waste	Compostable plant material
Hazardous waste	Waste that is reasonably likely to be or contain a substance that meets 1 or more of the classification criteria for substances with explosive, flammable, oxidising, toxic, corrosive or ecotoxic properties under the Hazardous Substances (Classification) Notice 2017
Inorganic material	Waste consisting of household equipment, furniture, appliances and material of a similar type that due to its nature or size cannot be collected as domestic waste in an approved container, and that is specified by the Council as suitable for: <ul style="list-style-type: none"> a) collection from a public place by the Council; b) collection from any premises by the Council; or c) delivery to a resource recovery facility
Litter	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 deposited in a public place. For clarity, litter includes illegal dumping.
Organic matter	Food waste and/or green waste that is specified by the Council under clause 5.15a4.1.a as organic matter
Prohibited waste	Waste containing- <ul style="list-style-type: none"> • any material capable of causing injury to any person or animal unless the material is sufficiently contained to prevent injury; • any material capable of causing damage to the approved container or likely to shatter in the course of collection material unless the material is sufficiently contained to prevent damage to the approved container or to prevent injury; • any material that may endanger any person, animal or vehicle which may come in to contact with it prior to, during or following collection, transportation or disposal; • any radioactive wastes, but excluding domestic smoke detectors; • any used oil and lead-acid batteries; • any hazardous waste;

Trim ID

HAMILTON CITY COUNCIL HAMILTON CITY SOLID WASTE BYLAW 2019

6

Hamilton City Council BYLAWS

Item 4

Attachment 1

		<ul style="list-style-type: none"> • medical waste; • any other material publicly notified as prohibited by the Council under clause 5.15h
	Recyclable material	Waste specified by the Council under clause 5.15a as suitable for recycling
	Recycling	The reprocessing of waste or diverted material to produce new materials
	Refuse	Waste which (a) subject to (b), is not organic matter, recyclable material, prohibited waste, construction and demolition waste or inorganic material; (b) may include organic matter and/or recyclable material that does not exceed the maximum allowable limits specified by the Council under clause 5.15 of this Bylaw
	Reusable material	Waste or diverted material that is further used in its existing form for the original purpose of the materials or products that constitute the waste or diverted material, or for a similar purpose <i>reuse</i> means the further use of waste or diverted material in its existing form for the original purpose of the materials or products that constitute the waste or diverted material, or for a similar purpose
	Special Waste	Any waste whether from a commercial premise or any other source which is hazardous, toxic or by its nature requires special disposal because of environmental considerations or landfill operational requirements. Examples of such are: asbestos, inflammable, explosive or corrosive substances and radioactive substances
Waste collector	A person who collects or transports waste and includes commercial and non-commercial collectors and transporters of waste (for example, community groups and not-for-profit organisations); but does not include individuals who collect and transport waste for personal reasons (for example, a person taking household garden waste to a landfill)	
Waste management facility	A facility which primarily provides waste management and disposal services or waste remediation and materials recovery services, in relation to solid waste	
Waste management facility operator	A person who owns or manages a waste management facility	
Waste management and minimisation plan	A waste management and minimisation plan adopted by a territorial authority under section 43 of the Waste Minimisation Act 2008	
Waste Plan	A plan, required by the Council under this Bylaw, that sets out how waste is managed at a Multi – unit Development, Event or Site where building works are carried out	
Waste operator	A person who is a waste collector or operates a waste management facility	

Hamilton City Council BYLAWS

Waste remediation and materials recovery services	The remediation and clean-up of contaminated buildings and mine sites, mine reclamation activities, removal of hazardous material and abatement of asbestos, lead paint and other toxic material. This also includes recovery, sorting, and/or storage services in relation to waste
Waste treatment and disposal services	The treatment or disposal of waste (including hazardous waste), including the operation of landfills, combustors, incinerators, compost dumps and other treatment facilities (except sewage treatment facilities), and waste transfer stations

4. CONTROLS

4.1. Any control specified by the Council under s 151(2) of the Local Government Act 2002 to support the implementation of this Bylaw:

- a. must, after consultation pursuant to the Local Government Act 2002, be made by a resolution and public notice; and
- b. may:
 - I. prohibit, restrict, or control any matter or thing generally, for any specific category or case, or in a particular case;
 - II. apply to all waste or to any specified category of waste; and
 - III. apply to the District or to a specified part of the District; and
 - IV. apply at all times or at any specified time or period of time

5. COLLECTION, TRANSPORTATION, PROCESSING, AND DISPOSAL OF WASTE

GENERAL RESPONSIBILITIES

- 5.1. The occupier and the manager of a premises must ensure that the domestic waste from the premises is separated into waste types as determined by the Council, and deposited for collection in the correct approved container.
- 5.2. No person may deposit in a container material that is not approved for that type of container.
- 5.3. The owner and/or the manager of any premises must ensure that approved containers are provided to tenants.
- 5.4. The owner, occupier and the manager of any premises must ensure that:
 - a. reasonable steps are taken to prevent the waste escaping from any waste container;
 - b. waste from the premises has no more than a minimal adverse effect on neighbouring occupiers;
 - c. any waste container is regularly emptied when it is full;
 - d. the contents of any waste container, excluding containers for green waste, are protected from rain or ingress or egress of flies and animals;
 - e. all dwellings contain a practical means and route of safe access and egress to any solid waste storage area for both residents and waste operators (where applicable); and
 - f. steps are taken to ensure that no waste is deposited in or about any residential building or its precincts (including kerbside) except in accordance with this Bylaw;
- 5.5. The occupier and the manager of any premises who is in control of an approved container must ensure that:

Hamilton City Council BYLAWS

Item 4

Attachment 1

- a. the container is kept in a safe location, hygienic, in good repair, and without any modifications or alterations to its appearance;
 - b. if required, waste is deposited in the container in a manner that allows the whole of the contents to fall out easily and cleanly when the container is emptied;
 - c. unless the container is placed at a Council collection point, the container is placed for collection in an upright position off the carriageway, in front of the premises from which the waste originated and as close to the kerbside as possible;
 - d. reasonable steps are taken to prevent the container disrupting or obstructing pedestrian and vehicular traffic and to preserve access to the premises.
- 5.6. No person may:
- a. put waste into an approved container which has been provided to any other person, without that other person's consent;
 - b. remove waste from, or interfere with any waste deposited in an approved container, except the Council, a licenced waste collector or the person who deposited the waste;
 - c. remove or interfere with any mode of identification of any approved container, including electronic devices attached to the container;
 - d. remove a container provided by the Council from the premises to which it has been allocated, except with the prior written approval of the Council.
- 5.7. The occupier and the manager of any premises is responsible for any waste generated on the premises until it has been collected.

LICENSING OF WASTE COLLECTION AND WASTE MANAGEMENT FACILITY OPERATORS

- 5.8. The following waste operators must have a waste operator licence issued by the Council and must not collect waste if they do not hold such a licence:
- a. Any waste collector who collects and/or transports waste from land in the District:
 - I. in a quantity of at least 40 tonnes of waste in any twelve-month period; and / or
 - II. at least 40 times in any twelve-month period
 - b. Waste management facility operators with a facility in the District which handles more than 40 tonnes of waste in any twelve-month period.
- 5.9. An application for a waste operator licence must be made on the application form which is available from the Council, and must be accompanied by any application fee and the information required by the Council to process the application.
- 5.10. The holder of an existing licence may apply to the Council for a renewal of that licence.
- 5.11. A licence is personal to the holder and is not transferable.
- 5.12. A licence may be granted or refused at the discretion of the Council, and if granted may be on such terms and conditions as the Council thinks fit.
- 5.13. When considering a licence application, the Council may take into account the following non-exhaustive list of factors:
- a. The extent to which the licenced activities will promote public health and safety;
 - b. The extent to which the licenced activities support achievement of the Council's waste management and minimisation plan, including goals and initiatives within that plan;

Hamilton City Council BYLAWS

- c. The quantity and type of waste to be handled;
 - d. The methods employed for the handling of the waste;
 - e. The frequency and location of the waste collection, removal and transportation services;
 - f. The specifications of the vehicles, equipment, and containers to be used for the handling of waste;
 - g. The applicant's experience, reputation, and track record in the waste and diverted material industry; and
 - h. The terms and conditions under which any disposal of waste is permitted and the existence of, or need for, any statutory approvals, authorisations, or consents required to be held or complied with in respect of such disposal.
- 5.14. A licenced waste operator must comply with all terms and conditions of the licence. These conditions may include, but are not limited to, the following matters:
- a. Term – a licence may be granted for a term of up to 5 years;
 - b. Licence fee – the licensee must pay an annual licence fee in an amount determined by the Council from time to time;
 - c. Bond – the Council may, from time to time and on a case by case basis, require a licence holder to post a bank-guaranteed bond;
 - d. Compliance with standards – the licence holder must comply with any standards or policies the Council has set for waste handling such as:
 - I. Provision of waste collection services within reasonable times specified by the Council;
 - II. The collection of any litter within a specified distance of an approved container awaiting collection and any litter spillage from the licence holder's vehicle during the collection, transportation or disposal process; and
 - e. Kerbside collections – restrictions on the timing and/or location of collections; and
 - f. Provision of information – the licence holder must provide data relating to waste they have handled to the Council during the term of their licence, in the form and at the times determined by the Council from time, which may include:
 - I. the quantities of various waste categories that have been handled by the waste operator during a period of time;
 - II. waste log books for each vehicle operated in accordance with the licence recording the quantity, composition and destination of each waste type and the point in time when such data was recorded during the waste collection, transportation or disposal process;
 - III. weighbridge receipts;
 - IV. gate records of waste tonnage.

GENERAL CONTROLS ON THE COLLECTION, TRANSPORTATION AND DISPOSAL OF WASTE

- 5.15. The Council may specify controls for the following matters in relation to the collection, transportation or disposal of waste from any property:

Hamilton City Council BYLAWS

- a. types of domestic waste that may be treated for all purposes (including deposit, collection, transportation, and disposal) as recyclable material, organic matter or refuse;
 - b. maximum allowable limits of a specified waste type that may be collected or transported from a public place in an approved container for refuse and that subsequently may be disposed of;
 - c. maximum allowable limits of a waste type that may be placed in a container approved for another waste type;
 - d. the maximum number of hours prior to or following the collection period that a container may be placed in a public place; and
 - e. the maximum weight of waste put in individual containers; and
 - f. types of waste that may be handled at any class 1 – 4 landfill and material that may be used as cover material at any such site;
 - g. materials that may be used as natural or other hardfill material at a Class 5 landfill;
 - h. types of waste that are prohibited; and
 - i. the locations where collections from a public place may occur;
 - j. the types of waste that may be collected from a public place.
- 5.16. General controls on the collection, transportation and disposal of waste must be accordance with clause 4.
- 5.17. Any waste operator who collects or transports waste must:
- a. make available to the owner, occupier or manager of a premises one or more approved containers to enable separate collection of each of the waste types required to be separately collected from the premises; and
 - b. not collect for disposal any domestic waste which has not been separated into refuse, recyclable material and organic matter and exceeds the maximum allowable limits specified by the Council under clause 5.15c; and
 - c. not dispose to a class 1 – 4 landfills any waste type that could be reused or recycled.

COLLECTIONS FROM A PUBLIC PLACE

- 5.18. Any person providing or using a waste collection service in or from a public place must comply with this Bylaw.
- 5.19. Waste may not be placed on a public place for collection unless it is:
- a. domestic waste;
 - b. green waste;
 - c. any other type of waste determined by the Council in clause 5.15 as able to be placed on a public place for collection.
- 5.20. Prohibited waste, diverted material, construction and demolition waste or commercial waste may not be placed in a public place for collection unless authorised by the Council under this Bylaw.
- 5.21. Any waste operator who collects or transports waste from a public place must ensure waste containers provided clearly differentiate the waste operators' containers from the containers of other operators.
- 5.22. The Council may specify controls for the following matters in relation to the collection or transportation of waste from a public place:
- a. the area to which the control applies;
 - b. the type, size, colour, and construction of containers that may be used for the storage and collection of waste;
 - c. the types of waste that may be collected in various types of container;
 - d. the categories of waste that may be deposited at or collected from a public place;

Hamilton City Council BYLAWS

- e. the conditions applicable to any collection service from a public place;
 - f. the placement and retrieval of approved containers for collection, collection days and times, and restrictions on the number and weight of approved containers;
 - g. requirements to ensure the correct separation of categories of wastes into approved containers;
 - h. the locations, access times and conditions of use of Council collection points;
 - i. any other operational matter required for the safe and efficient operation of a collection service from a public place.
- 5.23. No person may deposit waste at a Council or donation collection point other than in accordance with clauses 5.25 to 5.27.
- 5.24. Controls in relation to the collection or transportation of waste from a public place must be accordance with clause 4.

COUNCIL COLLECTION POINTS

- 5.25. The Council may specify:
- a. any place, or receptacle in a public place or on a barge in a freshwater area, as a Council collection point for the collection of domestic waste; and
 - b. controls relating to the deposit of waste at the Council collection point.
- 5.26. Controls in relation to Council collection points must be accordance with clause 4.

DONATION COLLECTION POINTS

- 5.27. Anyone intending to provide a donation collection point must obtain Council approval in advance and must operate the donation collection point in compliance with any requirements the Council specifies including, but not limited to:
- a. the location;
 - b. vehicle access;
 - c. the type of waste which may be deposited;
 - d. the use of approved containers;
 - e. the removal of deposited waste from the collection point; and
 - f. a requirement to clean up or remove any litter or graffiti.

INORGANIC MATERIAL

- 5.28. The Council may specify controls for the following matters in relation to the collection of inorganic material from a public place:
- a. the weight, size and nature of inorganic material that may be deposited for collection;
 - b. the categories of inorganic material that may be deposited for collection;
 - c. the times, locations and conditions applicable to the collection of inorganic material;
 - d. the methods by which the inorganic material may be collected;
 - e. any other operational matters required for the safe and efficient collection of inorganic material from a public place.
- 5.29. Any person who deposits inorganic material for collection on, or collects or transport inorganic material from, a public place must comply with the controls made by the Council.
- 5.30. Controls in relation to the collection of inorganic material from a public place must be accordance with clause 4.

Hamilton City Council BYLAWS

Item 4

Attachment 1

NUISANCE AND LITTER

- 5.31. No person may:
- a. allow any accumulation of waste or diverted material on or around any premises they own, occupy or manage to become offensive, a nuisance or likely to be injurious to health;
 - b. use an approved container in a manner that creates a nuisance, is offensive or is likely to be injurious to health.
- 5.32. Except as provided for under any Council Bylaw, no person may:
- a. burn or allow to be burnt on any property they own, occupy or manage any waste except organic matter;
 - b. bury or allow to be buried on any property they own, occupy or manage any waste except:
 - I. organic material;
 - II. dead companion animals and nuisance pests; or
 - III. for the purposes of home composting.
 - c. dispose of any waste on any premises except at:
 - I. a class 1-4 landfill, or
 - II. any premises they own, occupy or manage, for the purposes of home composting.
- 5.33. No person may:
- a. deposit any waste arising from that person's household or that person's business activities in any litter receptacle provided by the Council in any public place;
 - b. remove any waste from any litter receptacle provided by the Council in any public place, where this results in any waste being deposited outside the receptacle, unless authorised by the Council to do so;
 - c. deposit or attempt to deposit any waste in any receptacle provided by the Council in any public place if:
 - I. the receptacle is full; or
 - II. the waste is likely to escape.
 - d. affix any item to any litter receptacle provided by the Council in any public place; or
 - e. damage any litter receptacle provided by the Council in any public place.
- 5.34. The owner, occupier or manager of any premises on which any item is affixed or displayed that is likely to become litter, must take all steps to the satisfaction of the Council to prevent it becoming litter, and to promptly remove it in the event that it does become litter.
- 5.35. The occupier of a retail premises must provide appropriate facilities so that customers can choose to remove packaging associated with products that they have purchased and leave that packaging at the retail premises at the point of purchase. For the purposes of this Bylaw, such packaging is the responsibility of the occupier of the retail premises unless and until it is removed from the premises by a purchaser.

PROVISION OF WASTE PLANS

MULTI-UNIT DEVELOPMENT (MuD) WASTE PLANS

- 5.36. Any person who owns, occupies or manages a MuD must comply with any approved MuD Waste Plan required under this Bylaw.
- 5.37. From the date of adoption of this Bylaw, any person intending to construct a MuD must submit a MuD Waste Plan at the same time as the resource consent application for that MuD.
- 5.38. Any MuD Waste Plan must comply with 5.39 and 5.40 of this Bylaw and be approved by the Council.
- 5.39. A MuD Waste Plan must include, but is not limited to, the following:

Hamilton City Council BYLAWS

Attachment 1

Item 4

- a. identification of an adequate area on the premises for the storage of containers that is readily accessible to the occupiers of units and to a licenced waste operator (where applicable) to enable separate collection and transportation of refuse, recyclable material and/or organic matter;
 - b. the methods to be used to minimise noise and odour and to keep the area hygienic, free from vermin or other infestations and protected from theft and vandalism;
 - c. identification of the practical means and route of safe access and egress to the solid waste storage area for both residents and waste operators (where applicable);
 - d. an estimate of the volumes of refuse, recyclable material and organic matter that will be generated;
 - e. how waste generated by the MuD is to be minimised;
 - f. how the collection and use of recyclables and reusable material will be maximised;
 - g. a statement that:
 - I. the MuD is able to be serviced via the notified standard Council-provided waste service; or
 - II. the MuD requires a waste service which cannot be serviced via the notified standard Council-provided waste service. This statement must also include detail of the non-standard service requirements and whether the occupier will be expected to pay any servicing costs.
 - h. the steps which will be taken to ensure that no waste is deposited in or about the MuD or its precincts (including kerbside) in breach of this Bylaw; and
 - i. any other matter required by the Council to ensure MuD waste is managed in accordance with the Council Waste Management and Minimisation Plan.
- 5.40. The Council may specify controls for the following matters in relation to the collection or transportation of waste from MuD:
- a. the categories of recyclable material, organic matter and refuse that may be deposited at or collected from a Multi-unit Development;
 - b. the times, locations and conditions applicable to any collection service from a MuD, including the placement and retrieval of containers for collection, collection times and restrictions on the number and weight of approved containers;
 - c. requirements to ensure the correct separation of refuse, organic matter and recyclable materials into approved containers;
 - d. any other operational matter required for the safe and efficient operation of a collection service from a MuD.
- 5.41. Any person who manages a MuD or owns or occupies a unit in a MuD must comply with any controls for the deposit, collection, transportation and management of waste in the MuD made by the Council.
- 5.42. Controls on the collection or transportation of waste from MuD's must be accordance with clause 4.
- 5.43. The Council may, on application, grant a written exemption from compliance with all or any the requirements of this clause if:
- a. in the opinion of the Council, the costs of full compliance would be disproportionate to any resulting waste management and minimisation benefits; or
 - b. the manager or owner demonstrates to the satisfaction of the Council that refuse, recyclable material and organic matter are collected separately; and regularly.

EVENTS WASTE PLANS

Hamilton City Council BYLAWS

- 5.44. Any organiser of any event must obtain prior approval from the Council for an Event Waste Plan for the event.
- 5.45. The Council may require an Event Waste Plan to meet requirements set out by the Council Event guidelines which may include:
 - a. an estimate of the types and volumes of waste to be generated by the event;
 - b. how waste generated by the event is to be minimised;
 - c. the steps to be taken to maximise the collection and re-use of recyclable material and reusable material;
 - d. the equipment to be provided for the storage, collection and transportation of waste and diverted material;
 - e. the method of and person responsible for the collection and disposal of waste generated by the event;
 - f. the provision of litter minimisation, collection, and removal from within the event site and its immediate surrounds; and
 - g. any other matters relating to event waste management and minimisation that may be specified by the Council.
- 5.46. The organiser of an event must comply with the approved Event Waste Plan.
- 5.47. On completion of the event, the organiser must provide the Council with a report on the implementation of the Event Waste Plan, including:
 - a. a waste analysis which sets out the predicted and actual types and amounts of waste generated by the event; and
 - b. the waste management facilities used to recover, recycle, treat or dispose of waste generated by the event.

SITE WASTE PLANS FOR BUILDING WORK

- 5.48. Any person applying for a building consent must also submit a Site Waste Plan to the Council for approval.
- 5.49. A Site Waste Plan must comply with the Council guidelines which may include:
 - a. the name of the client, principal contractor, and person who prepared the Site Waste Plan; and
 - b. the location of the site;
 - c. the estimated total cost of the building work;
 - d. a description of each type of waste expected to be produced;
 - e. an estimate of the quantity of each type of waste; and
 - f. the proposed method of waste management for each type of waste (e.g. recovery, recycling, disposal).
- 5.50. While the building work is being carried out, the principal contractor must:
 - a. ensure that
 - I. reasonable steps are taken to prevent waste escaping from any waste container;
 - II. waste from the site has no more than a minimal adverse effect on neighbouring occupiers;
 - III. any waste container is regularly emptied when it is full;
 - b. review the Site Waste Plan as necessary;
 - c. record quantities and types of waste produced; and
 - d. record the types and quantities of waste that have been:
 - I. reused (on or off site)
 - II. recycled (on or off site)

Hamilton City Council BYLAWS

- III. sent to other forms of recovery (on or off site)
 - IV. sent to landfill
 - V. otherwise disposed of.
- 5.51. Within 90 days of completion of the building work the principal contractor must provide an updated Site Waste Plan to the Council that includes:
- a. confirmation that the plan has been monitored and updated;
 - b. a comparison of estimated quantities of each type of waste generated against the actual quantities of each waste type; and
 - c. an explanation of any deviation from the plan
- 5.52. The principal contractor must ensure that a copy of the plan is kept on site, and that every contractor knows where it can be found. It must be available to any contractor carrying out any work described in the plan.

6. GENERAL PENALTIES AND POWERS

- 6.1. Any person who acts in breach of this Bylaw commits an offence and is liable upon summary conviction to a fine, as provided for under the Local Government Act 2002 (which specifies a fine not exceeding \$20,000), and may also be liable to penalties under other legislation.

7. OTHER ENFORCEMENT POWERS

GENERAL RESPONSIBILITIES

- 7.1. Where an owner, occupier or manager of a premises does not comply with any of clauses 5.1 to 5.7, the Council may:
- a. Notify the occupier, owner or manager that they have failed to comply with the Bylaw; and
 - b. Provide details of the failure to comply and information on how to comply; and
 - c. Inform the occupier, owner or manager:
 - I. that the breach shall be recorded against their property; and
 - II. if the property receives three recorded breaches within a three-month period their waste service may be withdrawn; and
 - III. specify the steps which the owner or manager will need to follow in order to appeal the decision or reinstate the service.
- 7.2. Any final notice of withdrawal of service shall also be sent to the postal address of the ratepayer for the property and shall specify:
- a. the date of service withdrawal; and
 - b. the steps which the owner or manager will need to follow in order to appeal the decision or reinstate the service.

LICENCED WASTE OPERATORS

- 7.3. Where a licence holder does not comply with the terms and conditions of a waste operator licence, the Council may:
- a. issue a written warning to the licence holder, which may be treated as evidence of a prior breach of a licence condition during any subsequent review of the licence;
 - b. review the licence, which may result in:
 - I. amendment of the licence; or
 - II. suspension of the licence; or
 - III. withdrawal of the licence.

Hamilton City Council BYLAWS

Item 4

- c. have recourse to any bond where the Council has incurred any cost as a result of the breach of the licence condition. This includes where the Council has itself performed or arranged for the performance of any licenced activity on the default of the licence holder;
- d. review the amount and nature of the bond, which may result in an increase of the amount of the bond;
- e. enforce any offence that may have been committed under the Litter Act 1979; and
- f. enforce any breach of this Bylaw, as provided for in the Local Government Act 2002 or other legislation.

COLLECTIONS FROM A PUBLIC PLACE OR COLLECTION POINT

7.4. The Council may:

- a. remove the contents of any approved container left out for collection from a public place, where the contents or placement of the container do not comply with any aspect of clause 5.18 to 5.24;
- b. suspend the use of any Council collection point service, where any aspect of clauses 5.25 or 5.265.27 have not been complied with;
- c. withdraw approval for provision of a donation collection point, where any aspect of clause 5.27 has not been complied with;
- d. enforce any offence that may have been committed under the Litter Act 1979;
- e. enforce breach of this Bylaw, as provided for in the Local Government Act 2002 or other legislation.

INORGANIC MATERIAL

7.5. Where a person does not comply with a control made by the Council under clauses 5.28 and 5.29, the Council (or a licenced waste operator where applicable) may:

- a. reject (i.e. not collect) the inorganic material, if the inorganic material or placement if any aspect of clauses 5.28 and 5.29, have not been complied with;
- b. remove the inorganic material, where the inorganic material or placement if any aspect of clauses 5.28 and 5.29, have not been complied with;
- c. enforce any offence that may have been committed under the Litter Act 1979; and
- d. enforce breach of this Bylaw, as provided for in the Local Government Act 2002 or other legislation.

NUISANCE AND LITTER

7.1. Where a person does not comply with a control made by the Council under clause 5.31 to 5.35, the Council may:

- a. issue a notice requiring corrective action within a specified time period;
- b. recover costs as set out in 9.3;
- c. enforce any offence that may have been committed under the Litter Act 1979; and
- d. enforce breach of this Bylaw, as provided for in the Local Government Act 2002 or other legislation

WASTE MANAGEMENT AND MINIMISATION PLANS

7.2. Where a person does not comply with any Waste Plan required under this Bylaw for a Multi-unit Development, Event or Building Work, the Council may:

- a. revoke the applicable Waste Plan and require a new Waste Plan to be submitted for approval, which may require a new application fee to be paid; and
- b. impose a higher fee for Waste Plan applications following revocation, in accordance with the Local Government Act 2002; and
- c. enforce any offence that may have been committed under the Litter Act 1979; and

Attachment 1

Hamilton City Council BYLAWS

- d. enforce breach of this Bylaw, as provided for in the Local Government Act 2002 or other legislation.

WASTE PLANS FOR MULTI-UNIT DEVELOPMENTS (MuD)

7.3. Where a person does not comply with any of clauses 5.36 to 5.41, the Council may:

- a. issue a notice requiring corrective action within a specified time period; and
- b. recover costs as set out in 9.3.

7.4. Where an owner, occupier or manager of a MuD does not comply with any of clauses 5.36 to 5.41, the Council may:

- a. notify the occupier, owner or manager that they have failed to comply with the Bylaw;
- b. provide details of the failure to comply and information on how to comply; and
- c. inform the occupier, owner or manager
 - I. that the breach shall be recorded against their property; and
 - II. if the property receives three recorded breaches within a three-month period their waste service may be withdrawn; and
 - III. specify the steps which the owner or manager will need to follow in order to appeal the decision or reinstate the service.

7.5. Any final notice of withdrawal of service shall also be sent to the postal address of the ratepayer for the address and shall specify:

- a. the date of service withdrawal; and
- b. the steps which the owner or manager will need to follow in order to appeal the decision or reinstate the service.

WASTE PLANS FOR EVENTS

7.6. Where an applicant does not comply with any of clauses 5.44 to 5.47, the Council may:

- a. withhold or revoke consent for any event;
- b. issue a notice requiring corrective action within a specified time period; and
- c. recover costs as set out in 9.3.

WASTE PLANS FOR BUILDING WORK

7.7. Where a person does not comply with any of clauses 5.48 to 5.52, the Council may:

- a. issue a notice requiring corrective action within a specified time period; and
- b. recover costs as set out in 9.3.

8. EXCEPTIONS AND SAVING PROVISIONS

8.1. 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 Council officer.

9. FEES AND CHARGES

- 9.1. The Council may charge fees for licences or Waste Plans, including fees to process an application or carry out inspections as part of any waste collection or facility operator licence; or Waste Plan.
- 9.2. The Council may require waste collection and facility operators to provide a bond pursuant to s56(3) of the Local Government Act 2002.
- 9.3. The Council may recover costs associated with enforcement of this Bylaw in accordance with the Local Government Act 2002 or other legislation.

The COMMON SEAL of the HAMILTON CITY COUNCIL

Trim ID

HAMILTON CITY COUNCIL HAMILTON CITY SOLID WASTE BYLAW 2019

18

**Hamilton City Council
BYLAWS**

was hereunto affixed in the presence of:

Councillor:

Councillor:

Chief Executive:

EXPLANATORY NOTE

This note is for information purposes and does not form part of this Bylaw [Insert if required].

Council Report

Committee: Regulatory and Hearings Committee

Date: 29 August 2019

Author: Sandra Murray

Authoriser: Jen Baird

Position: Consultant

Position: General Manager City Growth

Report Name: Prostitution Bylaw Review - Submissions and Hearings Report

Report Status	<i>Open</i>
----------------------	-------------

Purpose

1. To inform the Regulatory and Hearings Committee on the submissions received in response to public consultation on the review of the Council's Prostitution Bylaw 2009.

Staff Recommendation

2. That the Regulatory and Hearings Committee:
 - a) receives the report;
 - b) hears and considers the submissions for the Prostitution Bylaw 2009 review; and
 - c) notes that a Deliberations Report for the Prostitution Bylaw 2009 review will be considered at the 17 September 2019 Council meeting.

Executive Summary

3. The Council is required to review its 2009 Prostitution Bylaw (the Bylaw) (Attachment 1) to meet its 10-yearly legislative requirements under the Local Government Act 2002 (s159, the LGA).
4. This requirement provides an opportunity for the Council to engage the community on how the current Bylaw is working and to consider feedback.
5. On 14 March 2019, the Council resolved to approve public consultation on the proposed continuation of the current Prostitution Bylaw from 18 March 2019 to 18 April 2019.
6. In mid-April 2019, the Council's lawyers reviewed the resolution and consultation process. They advised that there was legal risk relating to the process.
7. At a Council meeting on 27 June 2019, staff requested direction from the Council on whether to accept the risk and continue the review or recommence the review process.
8. The Council determined to undertake a second consultation process, which ran from 1 July 2019 to 1 August 2019.
9. The consultation resulted in a total of 101 submissions (86 carried over from the first consultation and 20 new/amended submissions from the second consultation). This number includes submissions from 10 organisations.

10. Sixty-one per cent of submitters supported the continuation of the current Prostitution Bylaw (no amendments); 39% did not support the continuation of the current Prostitution Bylaw.
11. Key themes from the feedback as to why the current Bylaw is appropriate included:
 - The Bylaw provides an appropriate balance already;
 - Children, men and neighbourhoods are protected under the Bylaw;
 - Solicitation is an unpleasant activity and the Bylaw helps prevent this.
12. Key themes from the feedback as to why the current Bylaw is not appropriate included:
 - The solicitation clauses in the Bylaw are likely to be invalid as they are repugnant to the Prostitution Reform Act 2003;
 - The solicitation clauses are inconsistent with the Bill of Rights Act 1990;
 - It re-criminalises a lawful industry which is discreet;
 - The Bylaw endorses vulnerability and creates negative consequences.
13. See paragraphs 29 and 30 for more detail on the submissions.
14. The deliberations report will be presented to the Council at the 17 September 2019 meeting.
15. Staff consider the decisions in this report have low significance and that the recommendations comply with the Council's legal requirements.
16. Staff consider that the recommendation in the report complies with the Council's legal requirements.

Background

17. The Council is required to review its existing 2009 Prostitution Bylaw (Attachment 1) to meet its 10-yearly legislative requirements under the Local Government Act 2002 (s159, the **LGA**).
18. The legislative requirement to review the Bylaw provides an opportunity for the Council to engage the community on how the current Bylaw is working and to consider feedback.
19. At the [14 March 2019 Council meeting](#) the Council made a resolution that it:
 - a) *approves that the current Hamilton City Council Prostitution Bylaw is the most appropriate means of controlling the issue of prostitution services in Hamilton City; and*
 - b) *approves public consultation for one month, from 18 March to 18 April 2019, on the proposed continuation of the current Prostitution Bylaw.*
20. In mid-April 2019, the Council's lawyers reviewed the resolution and consultation process and advised that there was legal risk relating to the process. They advised that to be fully compliant Council should:
 - make a specific determination in relation to the Bylaw's interaction with the Bill of Rights Act 1990 (BORA);
 - include in the consultation the reasons the Council believes that the current bylaw remains the most appropriate form of bylaw to regulate commercial sexual services in Hamilton;
 - include the determination in the consultation document.
21. At a Council meeting on 27 June 2019, staff requested direction from the Council on whether to accept the risk and continue the review or recommence the review process.
22. Council determined to address the procedural issues and undertake a second consultation process. This consultation opened on 1 July 2019 and closed on 1 August 2019.

23. Submitters from the first consultation were notified. Submissions from the first consultation were automatically accepted as submissions for the second consultation, unless the submitter wished to withdraw or amend or add to their submission.
24. For both consultations, an invitation to provide feedback was emailed to Maaori organisations, key organisations associated with the prostitution industry and contacts in the Council's consultation database.
25. The consultation was also advertised on the Council's social media pages and via a Council media release.

Discussion

26. The consultation resulted in a total of 101 submissions (86 from the first submission period carried over; and 20 new/amended submissions). This number includes submissions from 10 organisations.
27. Sixty-one percent of submitters supported the continuation of the current Prostitution Bylaw (no amendments); 39% did not support the continuation of the current Prostitution Bylaw.
28. Excluding the 10 organisations, 52 submitters (62%) indicated they lived in Hamilton, and 35 submitters (38%) lived outside of Hamilton.
29. Of those who did *not* live in Hamilton, 31% were from the Waikato District; 9% from Waipa District; 34% from the rest of New Zealand and 26% did not answer this question.
30. Support for continuing the current Prostitution Bylaw (no amendments) included the following key themes:

Submitters supporting continuation of current Prostitution Bylaw (no amendments)	Rationale (comments from submitters)
The Bylaw provides an appropriate balance already	<p>'The signage and distance restrictions are appropriate. I think that the limitations of location is appropriate.' <i>(Individual)</i></p> <p>'I think these by laws are common sense.' <i>(Individual)</i></p> <p>'The right balance. Against street prostitution. There is no right or need for it. Just like I can't drink on the street downtown.' <i>(Individual)</i></p> <p>'The Prostitution Bylaw has worked well this far and I do not want to see it changed. I also would not like to see a brothel opened up next door to my house or my son's house. And quite frankly, why would you change something that has been working fine these last 10 years.' <i>(Individual)</i></p>
Children, men and neighbourhoods are protected under the Bylaw	<p>'The Prostitution Reform Act provided a means for citizens to resist the presence of prostitution in their neighbourhoods. Please enforce this right.' <i>(Individual)</i></p> <p>'I think prostitution is offensive and exploitative. I think it would be best for New Zealand to have it banned again. However, given that it's currently legal I think that every effort should be taken to protect the community and especially children and young people from exposure to these services.' <i>(Individual)</i></p> <p>'We will be cheapening our children. It entices the young and married men to subject their families to communicable diseases. It will create sleazy and unsafe streets.' <i>(Individual)</i></p>

	<p>'There should be no advancement by places of prostitution into more suburban areas as this will bring a certain contrary element of behaviour and focus into areas that are designed for family living with many children and adolescents around.' <i>(Individual)</i></p> <p>'Protecting our children from prostitution.' <i>(Individual)</i></p> <p>'To keep families safe in the suburbs.' <i>(Individual)</i></p> <p>'I don't want a brothel near my home.' <i>(Individual)</i></p> <p>'Thanks for the ban on solicitation, I appreciate not being solicited to when I am out at night in Hamilton. I also appreciate the limitations on signage and location.' <i>(Individual)</i></p> <p>'We don't want used condoms and needles on the streets, loud brothel noises, prostitutes exposing themselves, men knocking on the wrong door and cars lined up to take their turn. We need to protect children and our families from an environment like that.' <i>(Individual)</i></p>
Solicitation is an unpleasant activity and the Bylaw helps prevent this	'These days prostitutes can sell their services via the internet, newspaper, working from a hotel, brothel, home. They are no more restricted than anyone else providing services.' <i>(Individual)</i>

31. Key themes from the submitters who **do not** support continuing the current Prostitution Bylaw included:

Submitters who do not support continuing the current Prostitution Bylaw	Rationale (comments from submitters)
The solicitation clauses in the Bylaw are likely to be invalid as they are repugnant to the Prostitution Reform Act 2003.	<p>Lee Salmon Long, Barristers and Solicitors representing the Prostitutes Collective, state that, in their opinion, 'the non-solicitation provisions are likely to be invalid as they are repugnant to the Prostitution Reform Act 2003'.</p> <p>They also note that the non-solicitation provisions in the Bylaw appear to be:</p> <p>(a) broader in scope than the former s26 of the Summary Offences Act: the Bylaw prohibits solicitation not only in any public place, but from anywhere in the Hamilton City Council area where that person is, or may be, visible from any public place reserve or area; and</p> <p>(b) subject to harsher penalty than the former s26 of the Summary Offences Act; the Bylaw provides that a person who acts in breach of the Bylaw commits an offence and is liable upon summary conviction to a fine not exceeding \$20,000.</p> <p><i>Staff note that previous legal opinions obtained by Hamilton City Council support this submitters comments. However, these provisions have not yet been tested in court.</i></p> <p><u>Other submitters also commented on this issue:</u></p> <p>'The NZAF believe that the current Prostitution Bylaw works against the purpose of the Prostitution Reform Act (PRA) 2003.' <i>(New Zealand Aids Foundation)</i></p> <p>'Modifying and ignoring national level legislation intended to provide</p>

Item 5

	<p>protection to workers seems unlawful. Moreover, high penalties disproportionately victimise those who opt, sometimes due to factors beyond their control, street based work. <i>(Individual)</i></p>
<p>The solicitation clauses are inconsistent with the Bill of Rights Act 1990</p>	<p>Lee Salmon Long, Barristers and Solicitors representing the Prostitutes Collective, state that, in their opinion 'the non-solicitation provisions are also arguably inconsistent with the New Zealand Bill of Rights Act 1990 (BORA), in particular, s8 (the right not to be deprived of life) and s14 (freedom of expression).</p> <p><u>Other submitters also commented on this issue:</u></p> <p>'This section of the bylaw contradicts the Prostitution Reform Act 2003 and the New Zealand Bill of Rights Act 1990. This exposes the city to expensive legal battles. Some councillors are claiming the bylaw has been tested in court. However, the Conley v Hamilton City Council case only tests the "Location of Brothels" section of the bylaw.' <i>(Organise Aotearoa)</i></p>
<p>It recriminalises a lawful industry which is discreet</p>	<p>'The Bylaw re-criminalizes sex work, thus putting sex workers in danger once again. Instead allow sex workers to work from certain streets, if you want them to avoid overly busy areas. Overall the bylaws in Hamilton are very cruel towards sex workers. Sex work is work.' <i>(Individual)</i></p> <p>'The current bylaw endorses the criminalisation of sex work (illegal under the Prostitution Reform Act 2003) and endorses harm towards sex workers.' <i>(New Zealand Prostitutes Collective)</i></p> <p>'To create punitive bylaws against them is to discriminate against people who are part of the rate paying community. Sex work is not against the law so why should the local council try to pass bylaws against it?' <i>(Individual)</i></p> <p>'The current laws are in breach of Human Rights. They are draconian and a step backwards for all.' <i>(Individual)</i></p> <p>'Leave the sex workers alone, let them mind their own business.' <i>(Individual)</i></p> <p>'The \$20,000 maximum fine for street-based sex work, as stated in the bylaw, is excessive, and the courts are likely to impose a significantly reduced fine. In contrast a \$200 fine was given under the pre-reform Prostitution Act..... high penalties disproportionately victimise those who opt, sometimes due to factors beyond their control, street-based work. In the avaricious and moralistic pursuit of huge financial penalties the council a) expects the police to collude with them, where elsewhere in the country they are expected to work productively and collaboratively with the sex industry and b) perpetuates the damaging myth that sex workers can pay this sort of fine. When they can't, your option is prison. That is absurd and a throwback to a criminalised environment which stands in opposition to the national law enacted to protect workers' rights and safety.' <i>(New Zealand Aids Foundation)</i></p>
<p>The Bylaw endorses vulnerability and creates negative consequences</p>	<p>'Works against the intent of the PRA by not supporting welfare or occupational health and safety for prostitutes; or what is best for public health. It creates barriers to accessing health services for HIV and STI prevention, treatment and support. Sex workers are often vulnerable people who in the course of undertaking their perfectly legal business are at risk from abuse. The ability to solicit in a public place is important as this is naturally a place where any altercation would raise an alarm and</p>

	<p>allow assistance to be rendered to the sex worker.' <i>(New Zealand Aids Foundation)</i></p> <p>'It makes independent sex workers less safe, as it creates a situation where workers are less likely to report violence to police.' <i>(Individual)</i></p> <p>'The current Hamilton City Council Prostitution Bylaw works against the purpose of the Prostitution Reform Act (PRA) 2003. By prohibiting solicitation of commercial sexual services anywhere within the Hamilton City Council Area, the bylaw limits the range of work options for sex workers to large managed brothels, and small owner-operated brothels. NZAF are concerned that this provision would make sex workers vulnerable to exploitation, and that it create barriers to accessing health services for HIV and STI prevention, treatment and support.' <i>(New Zealand Aids Foundation)</i></p> <p>Lee Salmon Long, Barristers and Solicitors representing the New Zealand Prostitutes Collective, state that, in their opinion the non-solicitation provisions can have negative consequences for public health and safety that have not been properly considered by the Council.</p>
--	--

32. A small number of submitters opposed all forms of prostitution and wanted prostitution to be illegal or requested that the Bylaw should be made stricter.

Example: 'The prostitution bylaw should be changed. No premises within residential, childcare, commercial business areas.' *(individual)*

Example: 'I feel that prostitution is demeaning to the value and person of both women and men.' *(individual)*

33. Ten organisations made submissions.

Organisations supporting the continuation of the current Prostitution Bylaw (no amendments)	Organisations that do not support the continuation of the current Prostitution Bylaw
<ul style="list-style-type: none"> • The Voice Waikato network • Family First NZ • National Council of Women - Hamilton Branch • Social & Ecumenical Action Committee, Parish Council of St Andrew's Presbyterian Church • Mothers for Safe Suburbs • Freedom Institute of Higher Education 	<ul style="list-style-type: none"> • New Zealand Prostitutes' Collective • Lee Salmon Long (Barristers & Solicitors) • Organise Aotearoa • New Zealand AIDS Foundation

34. Six organisations supported the current Bylaw.
- The submissions from Voice Waikato and Family First opposed suburban brothels and raised concerns including men seeking brothels knocking on the wrong doors, men visibly coming and going from brothels, lines of their cars waiting in the street, brothel noise intruding into adjacent units, parents feeling unable to let their children play on their front lawns, and lewd behaviour.
 - Regarding solicitation, Voice Waikato raised concerns related to the embarrassment of having to refuse what could be persistent advances; and parents and caregivers having to answer their children's questions about things they see happening when they are in town.
35. Four organisations did not support the current Bylaw.
- All four organisations highlighted that the non-solicitation provisions in the Bylaw are likely to be invalid as they are repugnant to the Prostitution Reform Act 2003 i.e. because the Bylaw goes beyond what the Prostitution Reform Act 2003 gave councils to legislate on as the Act does not empower councils to deal with street-based work or solicitation
 - The New Zealand Aids Foundations (NZAF) expressed concern that the current Bylaw makes sex workers vulnerable to exploitation, created barriers to accessing health services for HIV and STI prevention, treatment and support; and undermined the purpose of the PRA by not supporting welfare, occupational health and safety, and what is best for public health.
 - These organisations also raised a concern that the \$20,000 maximum fine for street-based sex work, as stated in the bylaw, is excessive - noting a \$200 fine was given under the pre-reform Prostitution Act.
 - The New Zealand Prostitutes' Collective (NZPC) felt the current Bylaw endorses the criminalisation of sex work, contrary to the Prostitution Reform Act 2003.
36. Submitters suggested the following amendments to the Bylaw:
- To revoke the "Soliciting of Commercial Sexual Services" section of the bylaw. This section of the bylaw bans sex workers from working in all public spaces of Hamilton.
 - To increase the distance from schools and other sensitive sites to 250m.
 - To include all registered educational institutions in the list of sensitive sites.
 - To limit signage to 1sqm.
 - To replace the term "*controlled*" with "*managed*" to avoid an implied judgement of prostitution activities.
For example: "*To control the soliciting of commercial sexual services in Hamilton*"; would change to "*To manage the soliciting of commercial sexual services in Hamilton*".
37. Staff make no recommendations regarding these suggestions. However, if any amendments are to be made, further legal review is recommended, prior to change.
38. A full copy of submissions is available online [here](#).

Next Steps

39. The deliberations report will be presented to the Council at the 17 September 2019 meeting.

Options

40. No options are available for the Council to consider as no decision is required other than to receive the report.

Financial Considerations

41. The review of the Bylaw is a regular operating activity funded through the 10-Year Plan.
42. The approximate cost to complete the submission analysis and this report is \$14,000. This is higher than usual due to the necessity of the second consultation process.
43. Costs leading up to and including the deliberation report are estimated at an additional \$3,000-\$5000.
44. The total costs to complete the review of the Bylaw are approximately \$25,000-\$30,000 including the original determination report of 14 March 2019.

Legal and Policy Considerations

45. Staff confirm that the recommendation in this report complies with the Council's legal and policy requirements.

Cultural Considerations

46. Te Runanga o Kirikiriroa and Te Haa o te Whenua o Kirikiriroa were informed of the Council's review of the Bylaw and invited to provide feedback and both organisations will be invited to provide the Council feedback during any further public consultation.
47. Organisations representing Maaori in Hamilton were also given notice of the review process and their opportunity to provide feedback.

Risks

48. There are no known risks associated with the decisions required for this matter.

Significance & Engagement Policy

Significance

49. Staff considered the following factors under the Significance and Engagement Policy:
- The form of engagement used in the past for similar proposals and decisions
50. The consultation for the proposed regulatory changes has been completed in accordance with the legal requirements, and staff have therefore assessed that the recommendations have low significance.

Engagement

51. Community views and preferences are already known to the Council through the consultation that has been undertaken prior to the preparation of this report.

Attachments

Attachment 1 - Existing Prostitution Bylaw 2009

Prostitution Bylaw 2009

Bylaw of the Hamilton City Council made in pursuance of the powers contained in the Prostitution Reform Act 2003 and the Local Government Act 2002, and any other authority enabling the Council in that behalf.

Interpretation

Adjoining: means allotments sharing one or more common boundaries or separated only by a road width or similar equivalent.

Brothel: means

1. any premises
 1. kept; or
 2. habitually used for the purposes of prostitution; but
2. does not include a premises at which accommodation is normally provided on a commercial basis if the prostitution occurs under an arrangement initiated elsewhere.

Brothel Permitted Area: means the area indicated on Map 1 that defines the area of the city where brothels may be located.

Children and young people: means individuals under 18 years of age.

Commercial sexual services: means sexual services that-

1. involve physical participation by a person in sexual acts with, and for the gratification of, another person; and
2. are provided for payment or other reward (irrespective of whether the reward is given to the person providing the services or another person).

Council: means Hamilton City Council.

District Plan: means the Proposed Hamilton City District Plan (References version 2001) or any subsequent amendments (or the Waipa District Plan (1997 version) in respect of the Temple View area where this is not yet subject to the Hamilton City District Plan).

Marae: means land and buildings of premises that:

1. are used as a public marae; and
2. are included on the Prostitution Sensitive Sites Register held by Hamilton City Council.

Place of Worship: means land and buildings of premises that are:

1. used as a place of religious worship; and
2. are subject to Part 1 of Schedule 1 of the Local Government (Rating) Act 2002; and

3. are included on the Prostitution Sensitive Sites Register held by Hamilton City Council.

Prostitution: means the provision of commercial sexual services.

School / Licensed Early Childhood Centre: means a parcel or adjoining parcels of land that:

1. contain a school as defined in section 2 of the Education Act 1989, or
2. a licensed Early Childhood Centre as defined in section 308 of the Education Act 1989, and
3. are included on the Prostitution Sensitive Sites Register held by Hamilton City Council.

Sensitive site: means a site that is either:

1. a school / Licensed Early Childhood Centre, or
2. a place of worship, or
3. a marae.

and is identified as a sensitive site on the Prostitution Sensitive Sites Register held by Hamilton City Council.

Sex worker: means a person who provides commercial sexual services.

Solicit: means any person who, in any public place offers any commercial sexual service not in pursuance to any invitation.

Objectives of the Bylaw

1. To support the purpose and intent of the Prostitution Reform Act 2003.
2. To enable commercial sexual service providers to operate within Hamilton City in a manner that both meets community demand for services and addresses community concerns and sensitivities.
3. To allow the establishment of brothels in areas where the effects associated with the operation can be readily controlled.
4. To limit the exposure of children and young people to commercial sex activities.
5. To control the establishment of signage associated with brothels to minimise community harm or offence.
6. To control the soliciting of commercial sexual services in Hamilton.

Location of Brothels

1. Permitted areas of operation

Brothels are permitted to locate and provide commercial sexual services from premises located within the Permitted Brothel Area indicated on Map 1 (Refer to Page 5), subject to meeting other conditions in the bylaw.

2. Proximity to Sensitive Sites

Any brothel shall not be located within 100 metres (in a straight line) of any sensitive site as shown on the current version of the Prostitution Sensitive Sites Register held by Council, unless it was lawfully established prior to the date this bylaw comes into force, and not discontinued for more than six months.

Where a sensitive site establishes within 100 metres of an existing and lawfully established brothel, the brothel will be exempt from this restriction, provided that this exemption shall not apply where the operation of the brothel is discontinued for a continuous period of more than 6 months.

Signage of Commercial Sexual Services

1. Brothels

Any sign advertising any brothel must be fixed to the premises at which the commercial sexual service is provided.

Only one sign is permitted per premises.

The maximum area of total signage per site should be 2m².

Signs must not:

1. contain neon lighting or include or be lit by flashing lights; or
2. contain words reasonably considered to be sexually explicit or offensive by Council or delegated officer (under clause 32 of schedule 7 of the Local Government Act 2002); or
3. contain any images (photographs or artwork) or models (human or mannequin) or shapes reasonably considered by Council or delegated officer (under clause 32 of schedule 7 of the Local Government Act 2002) to be sexually explicit or offensive.

Soliciting of Commercial Sexual Services

No person shall solicit within the Hamilton City Council area or in any street, road, footpath, road reserve, public place or area.

No person shall solicit within the Hamilton City Council area where that person is, or may be visible from any public place, reserve or area.

Breach of Bylaw

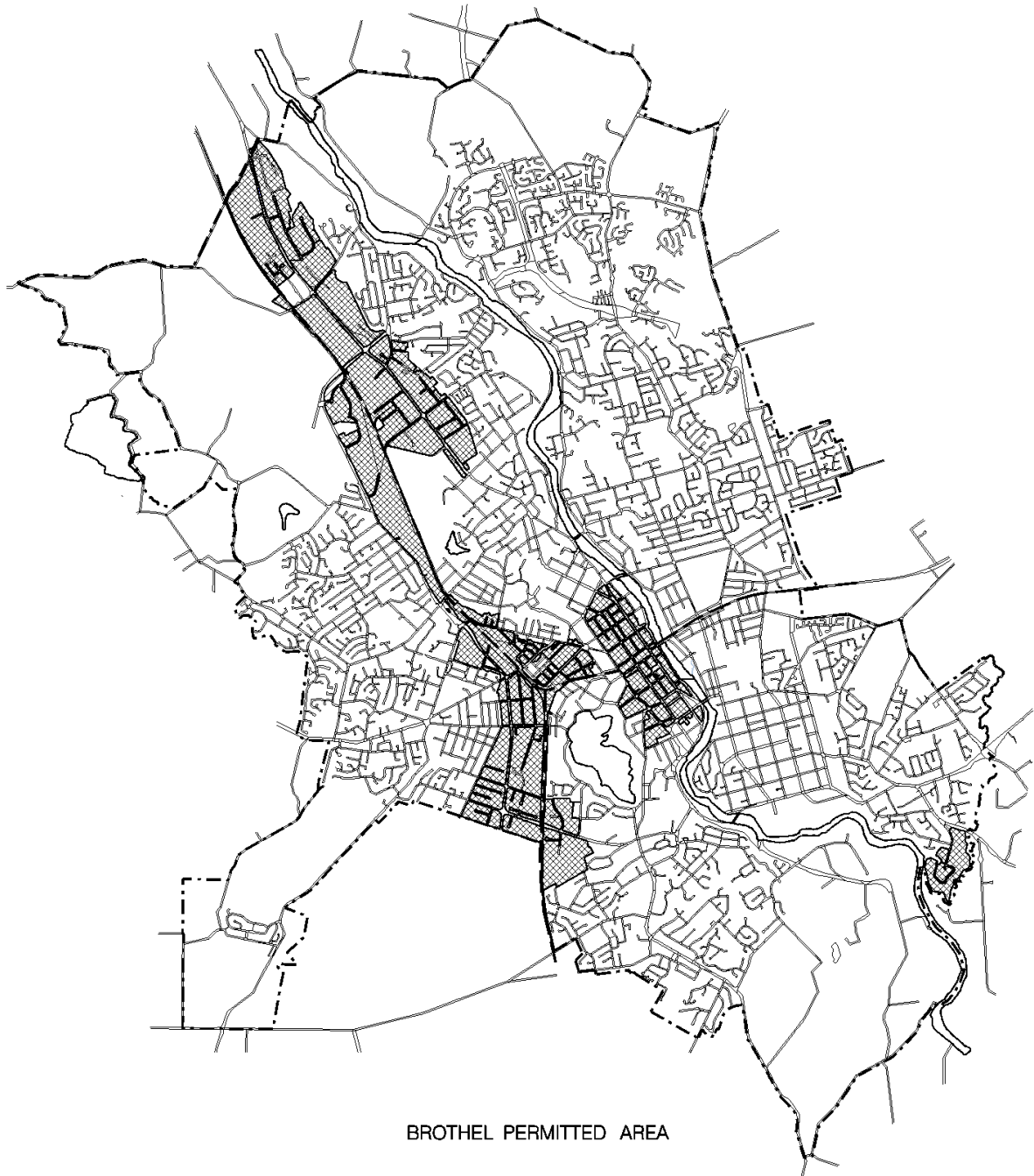
Any person who acts in breach of this Bylaw commits an offence and is liable upon summary conviction to a fine, as provided for under the Local Government Act 2002 (which specifies a fine not exceeding \$20,000), and may also be liable to penalties under other legislation.

Commencement

This bylaw applies to all Brothels located in Hamilton City and comes into force on 1 July 2009.

Advisory Note: Brothels are subject to the provisions of this bylaw and the Hamilton District Plan and both regulations must be complied with at all times.

MAP 1



The foregoing bylaw was duly made by the Hamilton City Council by a resolution passed on the 26th day of June 2009 following consideration of submissions received during the special consultative procedure. The Prostitution Bylaw 2009 was ordered to come into force on the 1st day of July 2009.

The COMMON SEAL of the HAMILTON CITY
COUNCIL was hereunto affixed in the presence
of:

Councillor _____

Chief Executive _____