

Grey District Council Fires in the Open Air

This bylaw was first adopted by the Grey District Council on 9 June 2008.

The bylaw was amended on 9 March 2020 following consideration of submissions received as part of the Special Consultative procedure.

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GREY DISTRICT COUNCIL FIRES IN THE OPEN-AIR BYLAW

1. FOREWORD

This bylaw is based on the NZS 9201 series of model general bylaws covering various matters under local authority jurisdiction. Local authorities are empowered under the Local Government Act 2002 to make bylaws.

The Standard superseded NZS 9201:Chapter 11: *1972 Nuisances*.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

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

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

New terms related to fires have been defined in this Part but for other definitions reference should be made to The Grey District Council Introductory Bylaw.

2. SCOPE

2.1 The purpose of this Part of the bylaw is:

- (a) To allow Council to exercise control over burning in the open air in urban areas of the District and prevent smoke from fires in the open causing a nuisance.
- (b) To meet the requirements of the Local Government Act 1974 section 649 for territorial authorities to have a bylaw to prevent the spread of fires involving vegetation.

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

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

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

2.5 This bylaw is to be read in conjunction with the Grey District Council Introductory Bylaw.

3. GENERAL

3.1 Nothing in this Part of this bylaw shall be regarded as derogating from the provisions of the Forest and Rural Fires Act 1977 and Forest and Rural Fires Regulations 1979.

4. DEFINITIONS AND INTERPRETATION

4.1 For the purposes of this bylaw the following definitions shall apply:

ACCEPTABLE MEANS OF FIRE SUPPRESSION means a hose connected to a reticulated water supply or an alternative means of fire suppression approved in writing in a particular case by the authorised officer.

BARBECUE means any fixed or portable gas or solid fuel burning equipment or device designed or intended for the cooking of food in the open air.

ETHNIC COOKING FIRE means any hangi, umu or similar fire in the open air and used for the preparation of food using ethnic cooking methods.

FIRE PERMIT means a permit to light a fire in the open air granted in accordance with 5.1 of this Part of this bylaw.

INCINERATOR means a container used for burning of waste material, which is made of non-combustible materials and which has a grate and a lid or spark arrester.

INCINERATOR FIRE means a fire within an incinerator.

OPEN AIR means in the open whether on or above ground level.

OPEN FIRE SEASON means a period of time, whether fixed or indefinite during which the lighting of fires in the open air is permitted.

PROHIBITED FIRE SEASON means the period of time, whether fixed or indefinite during which the lighting of fires in the open air is prohibited in accordance with 7.1 of this Part of this bylaw.

RESTRICTED FIRE SEASON means a period of time whether of fixed or indefinite duration during which period permits or authorities are required for the lighting of fires in the open air in accordance with 6.1 of this Part of this bylaw.

4.2 For the purposes of this Standard, the word "shall" refers to practices that are mandatory for compliance with this Standard, while the word "should" refer to practices which are advised or recommended.

5. FIRES IN THE OPEN

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

- (a) Where the location, wind, or other conditions cause or are likely to cause the fire to become:
 - (i) A danger to any person or property; or
 - (ii) Out of control or spread beyond the limits of the premises on which it is lit;
or
 - (iii) A smoke or ash nuisance to any person;

- (b) Within three metres of any part of a building, tree, hedge, fence or other combustible material; or
- (c) Without continuous supervision being maintained at all times; or
- (d) Without an acceptable means of fire suppression being available where the fire is located on residential premises, or land adjoining such premises.

6. RESTRICTED FIRE SEASON

- 6.1 An authorised officer may at any time prescribe a restricted fire season or seasons within the District or in any specified part or parts thereof and may at any time cancel or vary such a prescription.
- 6.2 Any person wishing to obtain a fire permit during a restricted fire season shall apply to the authorised officer.
- 6.3 The authorised officer may from time to time prescribe a form of application for the purposes of 6.2.
- 6.4 Upon receiving an application under 6.2, an authorised officer may issue a fire permit and may impose such conditions and restrictions in respect of the permit as the authorised officer considers reasonably necessary having regard to:
 - (a) Any cultural requirements or practices;
 - (b) The location, terrain, natural vegetation, and the existence of buildings or other structures and any other fuels; and
 - (c) Protection of the safety, health and convenience, of persons on the premises in respect of which the permit is issued and adjoining lands and premises.
- 6.5 Nothing in section 6.4 shall apply to an ethnic cooking fire, an incinerator or a barbecue. Provided that Council may in certain circumstances include the above where it considers it necessary to do so.

7. PROHIBITED FIRE SEASON

- 7.1 An authorised officer may at any time prescribe a prohibited fire season or seasons within the District or in any specified part or parts thereof and may at any time cancel or vary such a prescription.
- 7.2 In a prohibited season no person shall light any fire in the open air including an ethnic cooking fire, an incinerator or a barbecue, and no person being the occupier of any premises shall pause, permit or suffer any fire to be lit or continue to burn in the open air on those premises.
- 7.3 Nothing in 7.2 applies to the use of gas fire barbecues. The authorised officer may in certain circumstances prohibit the use of gas barbecues.

8. PUBLIC NOTICE OF RESTRICTED OR PROHIBITED FIRE SEASON

- 8.1 Public notice of the prescription of a restricted or a prohibited fire season made under 6.1 or 7.1 or the cancellation or variation of such a prescription, shall be made by:
 - (a) Broadcast or other similar means within the District; or

- (b) By a notice inserted in a daily or community newspaper circulating within the District.
- (c) By any effective means.

9. REVOCATION OR SUSPENSION OF PERMITS

- 9.1 Subject to 9.2, every fire permit issued in accordance with 6.4 shall remain in force from the date of issue until the expiry of the period, date or time specified in the permit, unless a prohibited fire season is declared.
- 8.2 Notwithstanding any other provisions in this bylaw, any permit issued under this Part of this bylaw may be revoked or suspended by an authorised officer at any time or suspended for such periods of time on such terms and conditions, as the authorised officer may consider reasonable in the circumstances.

10. FEES FOR PERMITS

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

11. COUNCIL MAY EXTINGUISH FIRES

- 11.1 Where a fire has been lit or allowed to burn in:

- (a) An open fire season in breach of section 5; or
- (b) A restricted fire season in breach of the conditions of a fire permit issued in accordance with 6.4 or
- (c) A prohibited fire season, in breach of 7.2;

any officer or agent of the Council (including Fire and Emergency New Zealand) may extinguish any such fire or direct the occupier of premises on which the fire is located, or the person who lit the fire, to extinguish such fire.

- 11.2 Where an authorised officer or agent of the Council has extinguished a fire pursuant to 11.1, the Council may recover any costs incurred in extinguishing the fire from the occupier of premises on which the fire was located, or the person who lit the fire.
- 11.3 Where any occupier of premises upon which a fire in the open air is located, or person who lit such a fire, disregards a Council direction under 11.1 to extinguish the fire, the authorised officer may authorise an agent of the Council (including the Fire and Emergency New Zealand) to extinguish the fire and to take such other steps as may be reasonably necessary to ensure the safety of any person or to protect the premises, or any other property.
- 11.4 The Council may recover from the occupier of the premises, or the person who lit the fire, any costs incurred by it as a result of its officer or agents taking any action authorised by the authorised officer under 11.3.

12. LIVE ASHES

- 12.1 No person shall place any live cinders, embers or ashes in or upon any premises other than:

- (a) In a container made and constructed of concrete or other similarly fire-resistant material to prevent the transmission of heat to any combustible material; or
- (b) In a pit or upon any fire-resistant substance in a manner which will prevent the spreading of fire or heat by the action of wind or otherwise.
- (c) As part of an ethnic cooking process including hangi and umu.

13. REMOVAL OF GORSE AND OTHER GROWTH

- 13.1 No occupier or any other person having the control of any land shall allow any broom, gorse, bushes, scrub, dry grass, or similar growth to exist within 6 metres of any building or adjoining premises, in such a condition or state that it is likely to become a source of risk from fire.
- 13.2 An authorised officer of the Council may, by written notice, require an occupier or person having control of any land to remove any dangerous growth.
- 13.3 The Council may cut down or otherwise eradicate and remove any broom, gorse, bushes, scrub, dry grass or similar growth to which 13.1 applies, after giving oral notice to the occupier or where there is no occupier, to the owner of the land, if life, property or any road is in imminent danger. The cost of the work shall be a charge against the land.
- 13.4 Should the owner or occupier fail to comply with the written request of the Council to remove the dangerous growth then the Council may arrange the removal of such growth and recover the cost of removal from the owner or occupier.

14. STORAGE OF CUMBUSTIBLE MATERIALS

- 14.1 Except as provided in 14.2 and 14.3, no occupier of any premises shall permit the storage or stacking in the open of any combustible material, unless the distance of the stack from any boundary other than a street boundary is at least equal to the height of the stack, but in any case, not less than 1.4 metres.
- 14.2 A stack may be placed closer to the boundary than the distance specified in 14.1 if a brick, stone, or concrete wall extending not less than 450 millimetres above and not less than 1.4 metres beyond the length of the stack, is situated between the stack and the boundary.
- 14.3 A stack may, with the written approval of the adjoining owner and of the authorised officer, be placed closer to the boundary than the distance specified in 14.1 where any of the following conditions continue to exist:
- (a) Where there is a brick, stone or concrete wall as defined in 14.2 without openings situated on the adjoining property and within 1.4 metres of the common boundary; or
 - (b) Where there are no buildings on the adjoining land; or
 - (c) Where there is no danger of a stack adjacent to a boundary increasing the risk of the spread of fire.

15. STORAGE OF HAY

- 14.1 No occupier of any premises shall permit the storage or stacking in the open of more than 3 cubic metres of hay, or similar material unless the distance of the stack from any building,

boundary, fence, private road, public place, or adjacent land is not less than 6 metres and the intervening space is at all times kept free from any rubbish or obstruction of any kind.

14.2 No occupier of any premises shall permit the storage of more than 1 cubic metre of hay or similar material in any building attached to, or at a distance of less than 6 metres from, any other building unless the first mentioned building has a roof of approved fire-resistant material and walls constructed wholly of brick, stone, or concrete or any combination of brick, stone and concrete and complying with the specifications mentioned in 14.2.

14.3 The provisions of 14.2 shall not apply in any case where agricultural produce required for the keeping of horses is kept or stored in any building used only for the purpose of or in connection with a stable.

16. RELEVANT LEGISLATION AND RELATED DOCUMENTS

- Fire and Emergency New Zealand Act 2017
- Forest and Rural Fires Act 1977
- Forest and Rural Fires Regulations 1979
- Health Act 1956
- Local Government Act 1974
- Local Government Act 2002
- Grey District Council Introductory Bylaw