



4 Dec 2018

Auckland Council Governing Body
Auckland Council
Private Bag 92300
Auckland 1142

publicsafetyandnuisancebylaw@aucklandcouncil.govt.nz

SUBMISSION ON PROPOSED CHANGES TO PUBLIC SAFETY AND NUISANCE BYLAW 2013

Attached the submission from AKL BIDS representing the joint view of most of the BIDS.
The Parnell Business Association endorse the submission by the ALK BID group with reference to the range of bylaws and the councils proposed response to the review thereof.

In particular, we would like to reference that we do not support the removal of the terminology of begging and nuisance from the bylaws.

We understand these complex social issues affect whole country and are looking for a Government and /or Council led way forward which supports and genuinely assists vulnerable people, but does not incentivize the 'art of begging' for lucrative gain and/ or the collusion with other criminal acts, which in turn can negatively affect businesses in Town Centres.

We feel that the terminology proposed in this bylaw needs to be clear and descriptive, and by removing the term begging and nuisance, it is actually sublimating the problem, which in the long term will not serve either business or vulnerable people, whose actions would then need to be considered under the vague umbrella of bad behaviour?

Kind Regards
Cheryl Adamson
General Manager
Parnell Business Association
cheryl@parnell.net.nz

AKBIDS

BUSINESS IMPROVEMENT DISTRICTS AUCKLAND

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Submission to Proposed Changes to the Public Safety and Nuisance Bylaw 2013

Introduction

AKBIDS – the Business Improvement Districts of Auckland - is a collective of BIDs that come together to give feedback when required as ‘one voice’ at an Auckland regional level.

There are currently 48 BIDs in Auckland, representing over 25,000 businesses with a combined capital value estimated at \$24 billion. Through the BID programme, Auckland’s BIDs work with the Auckland Council to improve the local business environment and grow the regional economy.

Auckland Council is seeking feedback on proposals for changes to the Public Safety and Nuisance Bylaw 2013 (‘Proposed Bylaw’).

Our feedback is set out below.

Auckland Transport Public Safety and Nuisance Bylaw 2013

We note that the Auckland Transport Public Safety and Nuisance Bylaw 2013 is not currently being reviewed. We understand that Auckland Transport will review its own bylaw in light of any changes that are finally approved to Auckland Council’s bylaw. There are currently no firm timeframes set for Auckland Transport’s review of its bylaw, but we understand a review will be completed by November 2020 at latest.¹

¹ A concern we have with this approach is that under section 158 of the Local Government Act 2002 a review must be made no later than 5 years after the date on which the bylaw was made. The AT Bylaw appears to have been made pursuant to the Local Government Act 2002, came into force on 26 May 2014, so presumably was made before then. We would have thought a review must be done before (at least) 26 May 2019? Section 160A of the Local Government Act 2002 provides that: “A bylaw that is not reviewed as required under section 158, if not earlier revoked by the local authority concerned, is revoked on the date that is 2 years after the last date on which the bylaw should have been reviewed under that section.” It appears that unless a review is undertaken shortly, the AT Bylaw will expire and a new Bylaw will need to be made.

A significant issue for us is that it appears that many of the activities purported to be regulated under the Proposed Bylaw are for public places actually controlled under the Auckland Transport Public Safety and Nuisance Bylaw (such as footpaths and roads). We also note that Auckland Transport previously delegated their authority to enforce their bylaw to Auckland Council. We are concerned that any changes in the Proposed Bylaw that do not align with the Auckland Transport Bylaw will result in two different bylaws operating and consequential inconsistent regulation. We ask that the Auckland Transport Bylaw be urgently reviewed.

Proposal 1: Leaving or storing items in public place

Council's proposal is to include bylaw wording to list construction materials, boats, shipping containers and consumer goods as items that must not be left or stored in a public place. Other items may be left provided it is not litter and does not cause a problem. Council says it is concerned about items stored or left in public places as they can cause problems by getting in the way of people using those places or causing damage. The proposed change makes it easier for people to understand which items must not be left or stored on a public place rather than trying to prohibit everything.

The packing or storing of goods in a public place remains a nuisance and safety issue for BIDs. We support the proposal to amend the bylaw to prevent the misuse of public places associated with the storing or packing of goods and for the bylaw to be consistent with the Auckland Council Trading and Events in Public Places Bylaw 2015.

Proposal 2: Aggressive or intimidating behaviour around begging

Council's proposal is to remove references to begging activity from the bylaw. Instead, the bylaw will focus on the behaviours expected of all Aucklanders in public places rather than on vulnerable people who may engage in begging activity. Council says the bylaw review found that a bylaw is not effective for addressing intimidating or nuisance behaviour around begging. Engagement and relationships between council staff, City Watch staff and the begging community are what makes a difference. Any nuisance or intimidating behaviour could still be addressed by council with City Watch using clause 6 of the bylaw – Bad behaviour in public places.

There is a high degree of frustration amongst BIDs concerning begging and we hold a view that more needs to be done to address the issue. BIDs are concerned at the impact begging has upon local businesses and upon perceptions of Auckland amongst visitors. We are especially concerned about the intimidation of shops owners by people who beg, particularly recent migrant Asian business owners who are less likely to make complaints about nuisance from begging. There is also frustration on the part of some BIDs that regional sub-centres are not receiving as much attention on the issue of begging as the central city and the inclusion of City Watch in the bylaws is exclusionary to the rest of Auckland as it is unique to the central city. BIDs are concerned that unless universal approaches are taken, initiatives in one part of the region can simply displace begging to other parts of the region.² For example, it appears that approaches taken recently in the Manurewa Town Centre have displaced beggars to the Manukau City Centre.

We also note that different approaches are being taken by different councils across the country to begging. One example is the approach recently taken by the Tauranga City Council. Here begging or rough sleeping is prohibited within 5m of the public entrance to retail or hospitality premises in defined CBD areas of Tauranga City, Greerton and Mount Maunganui. Napier City Council has a bylaw requiring people to have a permit to solicit for money, but has not sought to enforce the bylaw. Hamilton City Council and Auckland Council introduced bylaws in 2014 prohibiting nuisance begging. Wellington City Council decided not to have any specific bylaw on begging at all.

Further, we note the unique approach being initiated by Heart of the City through the Street Guardians pilot. We appreciate the effort put into these kinds of non-regulatory approaches. If approaches similar to these are intended to be the way forward on this issue, then we also ask that Council resources be made available so they can be replicated appropriately across the region.

² Public Safety and Nuisance Bylaw 2013 Findings Report 2017, pages 33 – 34.

In the meantime, taking into account the various approaches available, most BIDs agree that Auckland Council should retain the current specific provision prohibiting nuisance begging in the Proposed Bylaw. Most BIDs believe that nuisance begging is a particular form of nuisance that should be highlighted as specifically undesirable.

We recommend retaining a provision in clause 6 of the Proposed Bylaw:

“6(4) A person must not use a public place to beg, in a manner that may intimidate or cause a nuisance to any person.”

Further, we are concerned that the ‘word’ nuisance does not appear in clause 6(1) of the Proposed Bylaw, despite this being a specific power in section 145(a) of the Local Government Act 2002. Including ‘nuisance’ in clause 6(1) of the Proposed Bylaw is very important to us. As a consequence, we recommend clause 6(1) of the Proposed Bylaw be amended to state that:

“A person must not use a public place to wilfully obstruct, disturb, interfere with, alarm, distress, intimidate or harm **or cause a nuisance to** any other person in their use or enjoyment of that public place.”

Proposal 3: Nuisance and safety issues relating to drones

Council’s proposal is to update the wording in the bylaw to now include drones and rules around their use over public places. Council says the use of drones has become much more common in public places since this bylaw was created in 2013. Drones can cause safety risks and nuisance issues. Council wants to make the rules about drones over public places clear to the public by including them in the bylaw.

BIDs agree that concerns regarding drones are growing and we support amending the bylaw to improve clarity and the regulation of drone operations in public places.

Proposal 4: Controls on set netting

Council’s proposal is to make the bylaw wording clearer about how controls on recreational fishing are made. The proposed change provides more guidance in the bylaw about how decisions are made on restricting recreational fishing activities including set-netting. Set-netting is a fishing method that involves setting a net in the water to act as a netted wall and leaving it for a period.³

This is not an issue of particular concern to BIDs.

Proposal 5: Setting off fireworks on public property

Council’s proposal is to keep the bylaw clause prohibiting (banning) setting off fireworks in public places. The bylaw review found that there are still significant safety and nuisance issues with use of fireworks by the public in public places that can be addressed using the bylaw and that it is necessary to retain the ban on the use of fireworks in public places. Public firework displays in public places can still be approved by council.

BIDs agree that the setting off of fireworks in a public place creates nuisance, such as noise nuisance throughout the night (and day); the proximity of the activity to people; the potential for injury and damage; damage to public and private property; and litter.

BIDs agree that the safety and nuisance issues associated with the use of fireworks in public places should be addressed using the bylaw and that it is necessary to retain the ban on the use of fireworks in public places.

³ Current set-netting restrictions would continue to apply. The Ministry for Primary Industries has restrictions on Auckland’s west coast, and Auckland Council restrictions apply on Arkles Bay, Omaha Beach, Te Haruhi Beach, Army Bay and on all regional parks.

Proposal 6: Issues addressed in existing legislation and other bylaws⁴

Council's proposals are to:

a) Remove the following issues from the bylaw to instead be addressed using government legislation: Damage to council property, car window washing, use of mind-altering substances in public places, graffiti, noise, fish offal, gates in parks, fireworks on private property affecting people or property in public places,⁵ street names and property numbering.

Car window washing

BIDs see car window washing as an overwhelmingly undesirable activity. We are frustrated that the current bylaw is not able to be enforced and that neither Council nor the Police are able to respond in a timely manner when car window washers are operating. We are especially concerned about the following 'hot spots' for car window washing:⁶

- Manukau (Intersection Great South Road, Cavendish and Te Irirangi Drive);
- Manurewa (Intersection Weymouth, Alfriston and Great South Road);
- CBD (Federal, Hobson and Victoria Streets);
- Botany (Intersection Botany Road, Ti Rakau and Te Irirangi Drive);
- Greenlane (intersection Great South Road and Green Lane West);
- Mount Wellington (intersection Penrose, Waipuna and Mount Wellington Highway); and
- Takapuna / Papakura (Intersection Great South Road, Manuroa and Beaumaris Way).

Some BIDs suggest that Council and the Police explore the possibility of prohibiting people from paying car window washers (ie making it an offence to give) or introducing information campaigns to dissuade people from paying car window washers, such as "Don't Pay – They'll Go Away".

We note that in Queensland, NSW and Perth, drivers or passengers are prohibited from paying window washers. For example, see Rule 236(5) of the Queensland Transport Operations (Road Use Management—Road Rules) Regulation 2009: "A driver, or a passenger, in or on a vehicle must not buy, or offer to buy, an article or service from a person standing on the road."

Although Rule 11.6A of the NZ Land Transport (Road User) Rule prohibits window washers, it does not make it illegal for a driver or passenger to pay. Nonetheless, we believe section 22AB(zk) of the Land Transport Act 1998 is broad enough to prohibit drivers and passengers of vehicles from paying car window washers through a bylaw, especially having regard to the safety concerns window washers pose in traffic.

Auckland Transport, could, for road safety reasons, amend its Public Safety and Nuisance Bylaw using its powers under section 22AB(zk) of the Land Transport Act 1998 to provide that:

"A driver, or a passenger, in or on a vehicle must not buy, or offer to buy, an article or service from a person standing on the road."

Use any mind-altering substances

The use of mind-altering substances in public places (such as glue sniffing and the use of illegal synthetics and other drugs) is a very pressing concern for BIDs. Business owners are frightened of moving users on as sometimes there is retaliation. Generally, there is great difficulty in managing people with mind-altering substances given their nuisance behaviour and street obstruction.⁷

⁴ Nonetheless, Council would continue to respond to complaints or queries from the public about the following issues proposed to be removed from the bylaw.

⁵ Police can already respond to issues of injury, alarm or harm to people or property in public places caused by fireworks set off on private property. Council Noise Control can also already respond to noise complaints from fireworks on private property.

⁶ Public Safety and Nuisance Bylaw 2013 Findings Report 2017, pages 50 and 57.

⁷ Public Safety and Nuisance Bylaw 2013 Findings Report 2017, pages 68-69.

BIDs agree that the current clause in the bylaw is impractical as it asks for an assessment about whether it is reasonable to assume that an individual has taken a mind-altering substance. Often this is impossible because the effects are similar to alcohol.

BIDs reluctantly accept that a bylaw is not the best way to address people using a public place to use any mind-altering substance as Police powers exist under the Psychoactive Substances Act 2013 and Summary Offences Act 1981.

Graffiti

BIDs identify graffiti or vandalism as one of their top public nuisance and safety issues. We recognise the quick response time for graffiti removal and the success of the graffiti eradication programme has had a positive impact on reducing incidents of graffiti across Auckland. The graffiti management model in place appears to be effective and the dedicated focus on this issue is a key success factor. We ask for the reinstatement of and further support for the 'education' phase of the three phase graffiti prevention model. We consider this important to ensure incident numbers continue to decrease. Any reduction in the management plan will undoubtedly lead to an increase in incidents.

We also recommend retaining a provision in clause 6 of the Proposed Bylaw concerning graffiti:

"6(5) Except at a facility or site specifically provided, or with the prior written approval of the council or council-controlled organisation, a person must not use a public place to display or fix any graffiti on any property that is under the control of the council or council-controlled organisation."

PA System, Instruments and Noise

A number of BIDs are concerned with noise nuisance from the use of public address systems, amplified sounds systems and playing instruments in a public place. Some BIDs have referred to 'busking' using a PA system as 'creative begging' and suggested that all amplification in a public space should require a permit.⁸

While we understand that it is proposed to revoke provisions used to address noise nuisance from the use of public address systems, amplified sounds systems and playing any instrument in a public place, we want to be assured that other regulations will be enforced to address these issues.

Skateboarding

A number of BIDs are concerned that skateboarding is a particular nuisance that includes noise, damage to public property, abuse and aggressive behaviour and the deliberate personal use of public space in a manner that prevents others from using it.

Some BIDs suggest that skateboarding should be prohibited in all public places other than designated facilities. Others have requested regular security staff presence in problem areas and that all public spaces are constructed in a manner that prevents use by skateboarders.

Overall, BIDs believe the Council must remain focussed on the negative issues that arise from skateboarding and ask that the provision in the current bylaw be retained.

We recommend retaining a provision in clause 6 of the Proposed Bylaw concerning skateboarding:

"6(6) A person must not use a public place to use any material or thing (including a vehicle, bicycle, motorised scooter, skateboard, roller skates or roller blades or similar object) recklessly or in a manner which may intimidate, be dangerous, be injurious to or cause a nuisance to any person."

Street names and property numbering

⁸ Public Safety and Nuisance Bylaw 2013 Findings Report 2017, pages 81-82..

With regard to street names and property numbering, we note that Council proposes to retain these requirements in the equivalent Auckland Transport Public Safety and Nuisance Bylaw 2013. We support that approach and note that street names and property numbers are important for the delivery of goods and services as well as for customers identifying premises.

b) Remove the following issues from the bylaw to instead be addressed using other Auckland Council bylaws: Animals, signage, stormwater, vehicles on parks and beaches. However, some of these other bylaws would need amendments to achieve this.

With regard to this question, we understand that there is an overlap in that signs are regulated both under this bylaw and the Signage Bylaw 2015. We accept the proposal to remove issues related to signage from this bylaw and to strengthen the Signage Bylaw 2015 (especially with regard to the requirements for posters).

c) Remove legacy council bylaw clauses about fences and make the wording in this bylaw clearer and easier to understand.

This is not an issue of particular concern to BIDs.

Banning the sale of fireworks to the public

Council's proposal is to prohibit (ban) the sale of fireworks to the general public for private use.

Council says it is concerned about deliberate and unintentional injury and distress to people and animals, damage to property and high demand for council and emergency services relating to the use of fireworks. Council says it intends to ask government to ban the sale of fireworks to the public to end their private use and only allow public firework displays in New Zealand.

Individual BIDs and their members will look to make their own submissions on this question.

Other feedback

Council has asked for any other comments on the Public Safety and Nuisance Bylaw, such as: (i) making the bylaw clearer which activities on regional parks are managed under the bylaw; (ii) how council approves exceptions to activities on public places that would otherwise be prohibited; and (iii) making the bylaw wording and format easier to understand including through related information.

Individual BIDs and their members may look to make their own submissions on this question.

Hearing

We ask to be heard at the hearing of the review of the Public Safety and Nuisance Bylaw 2013.