

Statement of Proposal

Fire and Smoke Nuisance Bylaw review 2025



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1. Summary of information

This Statement of Proposal relates to a review of Part 3: Fire and Smoke Nuisance of the Wellington City Council Consolidated Bylaw 2008 (the 'Fire and Smoke Nuisance Bylaw').

The purpose of the Fire and Smoke Nuisance Bylaw is to protect the public from the nuisance arising from fire and smoke, in regard to aspects other than fire safety. The current bylaw prohibits fires, smoke, or noxious fumes which create a nuisance, health risk, or safety risk to any person or property (excluding safety risks to which the Fire and Emergency New Zealand Act 2017, or regulations made under that Act, apply). The bylaw enables Council officers, if required, to take reasonable steps to abate (decrease, diminish, or lessen) the nuisance.

Officers recently reviewed the Fire and Smoke Nuisance Bylaw for appropriateness as it has not been updated since 2018. Following the review, we recommend that Council continues to have a bylaw to protect the public from fire and smoke nuisance.

This Statement of Proposal supports public consultation on the Fire and Smoke Nuisance Bylaw review. It contains:

- information about the current Fire and Smoke Nuisance Bylaw (Part 3: Wellington City Council Consolidated Bylaw 2008)
- a discussion of the bylaw review and findings
- the updates we are proposing to the current bylaw
- our assessment of whether the bylaw is 'appropriate,' under the Local Government Act (LGA)
- the draft Fire and Smoke Nuisance Bylaw 2025
- a marked-up version of the current Fire and Smoke Nuisance Bylaw for comparison.

Key dates

Key dates for the rest of the review process are set out below. These dates may change depending on Committee schedules or the number of submissions received.

29 May 2025	The Council's Social, Cultural, and Economic Committee approves public consultation on the draft Fire and Smoke Nuisance Bylaw 2025.
13 June to 15 July 2025	Public consultation.
August or September 2025	Oral submissions scheduled if required.
4 September 2025	The Social, Cultural, and Economic Committee considers updates to the draft bylaw and decides whether to recommend that the Council adopts the final Fire and Smoke Nuisance Bylaw 2025.
11 September 2025	The Council decides whether to adopt the final Fire and Smoke Nuisance Bylaw 2025.

2. We want to hear from you

Please let us know what you think about the draft Fire and Smoke Nuisance Bylaw 2025. **Public consultation opens on 13 June and closes on 15 July 2025.**

To provide your feedback, you can:

- **make a submission online** at www.letstalk.wellington.govt.nz/fire-and-smoke-nuisance-bylaw.
- **download a submission form from the website and email** it to policy.submission@wcc.govt.nz
- **fill in the submission form** and send it to:

Freepost 2199
Wellington City Council
Fire and Smoke Nuisance Bylaw Review
Policy Team
PO Box 2199
Wellington 6140

Printed copies of this Statement of Proposal are available:

- at all Wellington City Libraries
- by emailing policy.submission@wcc.govt.nz
- by phoning 04 499 4444 to request a copy.

If you wish to make an oral submission, please indicate this on your submission form and ensure that you have included your contact details. We will contact you to arrange a time for you to speak.

Oral hearings will take place in August or September 2025.

Note that the scope of this bylaw review is fire and smoke nuisance only.

Fire and Emergency New Zealand (FENZ) is responsible for fire safety, and Greater Wellington Regional Council (GWRC) monitors air quality and responds to concerns about air pollution.

Privacy statement – what we do with your personal information

Submissions including your name and opinions on the draft bylaw will be published and made available to elected members and the public. Contact details provided by you may be given to elected members if they wish to contact you about your submission. Contact details may be used by Council staff for administration of the consultation process. Council staff will have access to complete submissions for the purposes of analysing feedback.

Except for your name, personal details collected in the ‘your details’ section of the submission form will be redacted before publishing. Please note that you should not include any personal information in the open text fields of the form if you do not wish it to be made public.

For further details around privacy, please see our extended Privacy Statement on the Wellington City Council website at wellington.govt.nz/contact-us/privacy-statement. All information collected will be held by Wellington City Council in accordance with the Privacy Act 2020. You have a right to ask for a copy of any personal information we hold about you, and to ask for it to be corrected if you think it is wrong. Please contact us at policy.submission@wcc.govt.nz.

3. The current Fire and Smoke Nuisance Bylaw

The Council’s current Fire and Smoke Nuisance Bylaw seeks to protect the public from the nuisance arising from fire and smoke, in regard to aspects other than fire safety.

Changes were last made to the bylaw in 2018 following the introduction of the Fire and Emergency New Zealand Act 2017 (FENZ Act). That Act gave Fire and Emergency New Zealand (FENZ) a range of responsibilities that were previously held by the Council. The FENZ Act also required councils to revoke or amend their relevant fire bylaws to address any inconsistencies.

The current Fire and Smoke Nuisance Bylaw prohibits:

- lighting, or allowing to remain lit, a fire which creates a nuisance, health risk, or safety risk to any person or property
- smoke, noxious fumes or any other matter to be emitted in such a way as to create a nuisance, health risk, or safety risk to any person or property.

The bylaw also enables Council officers to assess a situation and, if required, to take reasonable steps to abate (decrease, diminish, or lessen) the nuisance. This can include directing that a fire is put out.

4. Review of the Fire and Smoke Nuisance Bylaw

We have reviewed the Fire and Smoke Nuisance Bylaw and have not identified any problems with how the bylaw has operated to date.

The bylaw allows authorised officers to take reasonable steps to abate, or cause to be abated, fire or smoke nuisance or risk. Additionally, the Health Act 1956 gives environmental health officers the power to enter a property without notice and abate a nuisance if in their opinion immediate action is necessary.

Since June 2020, the Council has received about 120 fire and smoke nuisance service requests. These often relate to smoke from residential fireplaces or backyard burns drifting into nearby properties. There are occasional complaints about smoke from commercial buildings impacting neighbours or the public.

The Council's Public Health team responds to the majority of the City's smoke and fire nuisance issues.

In practice, Council officers have not extinguished fires or needed to – it is usually sufficient to ask that the person responsible for the fire puts it out. However, if the officer's request to extinguish the fire was declined, the bylaw would provide the Council with the necessary enforcement tool if needed.

Where fires are causing a safety risk, they are referred to FENZ as the agency responsible for fire safety. Fires or smoke causing potential environmental risk are responded to by Greater Wellington Regional Council (GWRC), which monitors air quality and responds to air pollution concerns.

Given the evidence of fire and smoke nuisance issues in Wellington City, and that the current bylaw is functioning well, we consider that the current bylaw powers are adequate and important to keep.

Our proposal is to retain the Fire and Smoke Nuisance Bylaw and take the opportunity to make some minor updates that do not affect the public's existing rights.

5. Updates we are proposing to the bylaw

We propose to make a small number of changes to the Fire and Smoke Nuisance Bylaw. The bylaw is currently part of the Council's mostly superseded Consolidated Bylaw, and we propose taking it out of the Consolidated Bylaw and making it a stand-alone bylaw instead.

This is consistent with our approach to other recent bylaw reviews, and makes it easier for the public to find the bylaw they are looking for. We are also suggesting some changes to make information in the bylaw clearer.

The changes we are proposing to the current bylaw are:

1. Updating the title of the bylaw to reflect the bylaw becoming stand-alone.
2. Moving some existing information from the preamble into a new, non-regulatory explanatory note.
3. Including reference to fire seasons and fire permits in the new explanatory note for clarity of where that information can be found.
4. Adding to the explanatory note that fires in public places can also be managed under the Council's Public Places Bylaw (these powers already exist). The Public Places Bylaw is available on the Council's website at wellington.govt.nz/your-council/plans-policies-and-bylaws/bylaws/public-places-bylaw-2022.
5. Adding new definitions for **person**, **owner**, and **the Council** in the 'Interpretation' section.
6. Updating the meaning of **nuisance or risk** in the interpretation section to read: "Nuisance or risk" means an unreasonable inconvenience or risk, actual or potential, and is at the discretion of an Authorised Officer following an assessment.
7. Addition of clause 5.2 regarding continuous offences (this clause already exists in the Consolidated Bylaw).
8. Addition of Section 6: Penalties, to show penalties for breaching the bylaw (as allowed for under the LGA and Health Act 1956).
9. Addition of Section 7: Bylaws revoked (these clauses already exist in the Consolidated Bylaw).
10. Minor updates throughout the bylaw to improve readability, clarity, and flow.

Related to item 6, it is important for authorised officers to include consideration of cultural and tikanga practices in relation to fires when using their discretion to assess a fire and/or smoke situation. Providing opportunities to ensure appropriate understanding in these areas will be actioned at an operational level.

None of the updates we are proposing to the bylaw result in changes to existing powers. The marked-up version of the current bylaw in section 8 of this document shows the changes proposed in context.

6. Determining whether the bylaw is appropriate

Section 155 of the LGA requires that when proposing a new bylaw or undertaking the review process, a local authority must determine whether a bylaw is the most appropriate way of addressing the perceived problem, determine whether the proposed bylaw is the most appropriate form of bylaw, and ensure that any proposed bylaw is not inconsistent with the New Zealand Bill of Rights Act 1990 (NZBORA).

We consider that the draft Fire and Smoke Nuisance Bylaw 2025 meets these requirements, as discussed below.

Determining that a bylaw is the most appropriate way to address the problem

Section 145 of the LGA allows councils to make bylaws for the purposes of protecting the public from nuisance.

Section 64(1)(a) of the Health Act 1956 allows councils to make bylaws for “improving, promoting, or protecting public health, and preventing or abating nuisances”. In line with these Acts, the Council may have a bylaw to protect the public from fire and smoke nuisance.

While there are other tools available to manage fire and smoke issues (for example adjusting operational practices and providing information, advice, guidance and advocacy), these are not always sufficient. Voluntary compliance cannot always be relied on, and educational measures may not reach everyone or provide an effective deterrent.

Where activities have the potential to impact public health, the Council needs to have the ability to enforce compliance with its rules. A Fire and Smoke Nuisance Bylaw provides the appropriate and critical regulatory tool for the Council to protect the community from fire and smoke nuisance.

Developing the most appropriate form of bylaw

Section 152b(5) of the LGA states that a territorial authority must not make a bylaw that is inconsistent with the FENZ Act or any regulations or notice under that Act. The draft Fire and Smoke Nuisance Bylaw 2025 complies with these requirements.

In preparing the draft Fire and Smoke Nuisance Bylaw 2025, it is proposed to remove the bylaw from the Consolidated Bylaw to make it stand alone. This will make the bylaw more accessible to the public and those using it as a regulatory tool.

Under the bylaw, authorised officers can use their discretion to assess a fire and/or smoke situation. This includes consideration of relevant factors including but not limited to cultural and tikanga practices in relation to fires.

New Zealand Bill of Rights Act 1990 implications

It is the Council's view that no provision of the draft Fire and Smoke Nuisance Bylaw 2025 is inconsistent with the NZBORA.

7. Draft Fire and Smoke Nuisance Bylaw 2025

1. Preamble

This bylaw is made under section 145 of the Local Government Act 2002 and section 64(1)(a) of the Health Act 1956.

This bylaw was adopted on [DATE].

Nothing in this bylaw derogates from the Fire and Emergency New Zealand Act 2017 or any regulations or notice made under that Act. To the extent that it is covered by that Act, nothing in this bylaw:

- relates to the removal of fire hazards; or
- declares prohibited or restricted fire seasons; or
- prohibits or otherwise regulates or controls the lighting of fires in open air; or
- relates to the prevention of the spread of fires involving vegetation.

These fire safety measures are regulated by Fire and Emergency New Zealand pursuant to the Fire and Emergency Act 2017.

Explanatory note:

Fire safety rules, fire ban information, fire season status, confirmation of whether a fire permit is required, and instructions for how to apply for a permit can be found on the FENZ websites www.fireandemergency.nz and www.checkitsalright.nz, or by contacting FENZ on 0800 658 628.

Fires in public places can also be managed under the Council's Public Places Bylaw, which allows the Council to set conditions or restrictions for the use of public places.

2. Purpose

The purpose of this bylaw is to protect the public from the nuisance arising from fire and smoke, in regard to aspects other than fire safety.

3. Interpretation

In this bylaw, unless the context otherwise requires:

“Authorised officer” means an enforcement officer appointed under the Local Government Act 2002, an environmental health officer appointed under the Health Act 1956, or any other person authorised by Wellington City Council for the purposes of administering and enforcing this bylaw.

“Nuisance or risk” means an unreasonable inconvenience or risk, actual or potential, and is at the discretion of an Authorised Officer following an assessment.

“Owner” has the meaning given by the Local Government Act 1974.

“Person” has the meaning given by the Legislation Act 2019 and may refer to an individual or a company.

“Reasonable steps” includes but is not limited to issuing a direction to extinguish the fire and/or extinguishing the fire.

“The Council” means Wellington City Council.

4. Nuisance or health and safety risk from fires or smoke

- 4.1 No person may light, or allow to remain lit, any fire that creates a nuisance, health risk, or safety risk to any person or property.
- 4.2 No person may permit smoke, noxious fumes or any other matter to be emitted in such a way as to create a nuisance, health risk, or safety risk to any person or property.
- 4.3 If an authorised officer is of the opinion that clause 4.1 or 4.2 has been breached, or is likely to be breached, the officer may take reasonable steps to abate, or cause to be abated, the nuisance or risk.
- 4.4 To avoid doubt, nothing in this bylaw applies to a fire safety risk to which the Fire and Emergency New Zealand Act 2017, or regulations made under that Act, applies.

5. Offences and cost recovery

- 5.1 Every person commits an offence who:
 - a. breaches clause 4.1 or 4.2 of this bylaw; or
 - b. fails to comply with a direction of an authorised officer issued under clause 4.3 of this bylaw.
- 5.2 The continued existence of any work, building, land, premises or thing in such a state or form as to be in contravention of any provision of this bylaw shall be deemed to be a continuing offence under this bylaw.
- 5.3 The Council may recover any costs it incurs as a result of acting under this bylaw. Costs are recoverable from:
 - a. the owner of the property on or from which the nuisance or risk originated; and/or
 - b. any person who caused the nuisance or risk.

6. Penalties

- 6.1 A person who is convicted of an offence against this bylaw may be liable to a penalty under the Local Government Act 2002 or the Health Act 1956.

7. Bylaws revoked

- 7.1 Any resolution made under the Wellington Consolidated Bylaw 2008, before this bylaw came into force, continues in force under this bylaw until altered or revoked by further resolution.
- 7.2 The revocation of existing bylaws does not extinguish any existing cause of action.
- 7.3 All bylaws revoked shall remain in force and effect so far as they relate to anything done or any offence committed, penalty incurred, prosecution or proceeding commenced, right or liability accrued, licence issued, notice given, or order made, under or against any of the provisions of that bylaw before the coming into force of this bylaw.
- 7.4 All Council officers appointed under or for the purpose of any revoked bylaw, and holding office at the time of the coming into operation of this bylaw, shall be deemed to have been appointed under this bylaw.

8. Tracked-change version of the current Fire and Smoke Nuisance Bylaw

Changes proposed to the current Fire and Smoke Nuisance Bylaw are set out below in red. Deleted content is struck through and inserted content is underlined.

~~Wellington Consolidated Bylaw 2008: Part 3:~~ Fire and Smoke Nuisance Bylaw 2025

1. Preamble

This ~~part of the B~~ylaw is made under section 145 of the Local Government Act 2002 and section 64(1)(a) of the Health Act 1956.

This bylaw was adopted on [DATE].

Nothing in this ~~part of the B~~ylaw derogates from the Fire and Emergency New Zealand Act 2017 or any regulations or notice made under that Act. To the extent that it is covered by that Act, nothing in this ~~part of the B~~ylaw:

- relates to the removal of fire hazards; or
- declares prohibited or restricted fire seasons; or
- prohibits or otherwise regulates or controls the lighting of fires in open air; or
- relates to the prevention of the spread of fires involving vegetation.

These fire safety measures are ~~now~~ regulated by Fire and Emergency New Zealand following pursuant to the Fire and Emergency Act 2017.

Explanatory note:

~~All the new Fire safety~~ rules, fire ban information, ~~fire season status, confirmation of whether a fire permit is required, and instructions for~~ how to apply for a fire permit can be found on the ~~FENZ Fire and Emergency New Zealand~~ websites ~~www.fireandemergency.nz~~ and ~~www.checkitsalright.nz~~, or by contacting ~~FENZ Fire and Emergency New Zealand~~ on 0800 658 628.

~~Fires in public places can also be managed under the Council's Public Places Bylaw, which allows the Council to set conditions or restrictions for the use of public places.~~

~~This part was adopted on 16 December 2015 and amended on 29 November 2018.~~

21. Purpose

The purpose of this ~~part of the B~~ylaw is to protect the public from the nuisance arising from fire and smoke, in regard to aspects other than fire safety.

32. Interpretation

In this ~~part of the B~~ylaw, unless the context otherwise requires:

“**Authorised officer**” means an enforcement officer ~~authorised~~ appointed under the Local Government Act 2002, an environmental health officer appointed under the Health Act 1956, or any other person authorised by Wellington City Council for the purposes of administering and enforcing this bylaw.

“**Nuisance or risk**” ~~includes potential nuisance or risk, means an unreasonable inconvenience or risk, actual or potential, and is at the discretion of an Authorised Officer following an assessment.~~

“**Owner**” has the meaning given by the Local Government Act 1974.

“**Person**” has the meaning given by the ~~Interpretation Act 1999~~ Legislation Act 2019 and may refer to an individual or a ~~business company~~.

“**Reasonable steps**” includes but is not limited to issuing a direction to extinguish the fire and/or extinguishing the fire.

“**The Council**” means Wellington City Council.

43. Nuisance or health and safety risk from fires or smoke

~~34.1~~ No person may light, or allow to remain lit, any fire that creates a nuisance, health risk, or safety risk to any person or property.

~~34.2~~ No person may permit smoke, noxious fumes or any other matter to be emitted in such a way as to create a nuisance, health risk, or safety risk to any person or property.

~~34.3~~ If an authorised officer is of the opinion that clause ~~34.1~~ or ~~34.2~~ has been breached, or is likely to be breached, the officer may take reasonable steps to abate, or cause to be abated, the nuisance or risk.

~~34.4~~ To avoid doubt, nothing in this ~~part of the~~ bylaw applies to a fire safety risk to which the Fire and Emergency New Zealand Act 2017, or regulations made under that Act, applies.

54. Offences and cost recovery

45.1 Every person commits an offence who:

- a. breaches clause ~~34.1~~ or ~~34.2~~ of this ~~B~~bylaw; or
- b. fails to comply with a direction of an authorised officer issued under clause ~~34.3~~ of this bylaw.

5.2 The continued existence of any work, building, land, premises or thing in such a state or form as to be in contravention of any provision of this bylaw shall be deemed to be a continuing offence under this bylaw.

~~4.2~~ **5.3** The Council may recover any costs it incurs as a result of acting under this bylaw. Costs are recoverable from:

- a. the owner of the property on or from which the nuisance or risk originated; and/or
- b. any person who caused the nuisance or risk.

6. Penalties

6.1 A person who is convicted of an offence against this bylaw may be liable to a penalty under the Local Government Act 2002 or the Health Act 1956.

7. Bylaws revoked

7.1 Any resolution made under the Wellington Consolidated Bylaw 2008, before this bylaw came into force, continues in force under this bylaw until altered or revoked by further resolution.

7.2 The revocation of existing bylaws does not extinguish any existing cause of action.

7.3 All bylaws revoked shall remain in force and effect so far as they relate to anything done or any offence committed, penalty incurred, prosecution or proceeding commenced, right or liability accrued, licence issued, notice given, or order made, under or against any of the provisions of that bylaw before the coming into force of this bylaw.

7.4 All Council officers appointed under or for the purpose of any revoked bylaw, and holding office at the time of the coming into operation of this bylaw, shall be deemed to have been appointed under this bylaw.

