

**SUBMISSION: Public Trading, Events
and Filming Bylaw 2022
13TH JULY 2021**

Business North Harbour Incorporated
Kevin O'Leary – General Manager
PO Box 303 126
North Harbour 0751
Phone 09 968 2222 or 0274 799 563
Email: kevin@businessnh.org.nz

13th July 2021

Auckland Council,
Public Trading, Events and Filming Bylaw 2022
Freepost Authority 190197
Private Bag 92300
Victoria Street West
Auckland 1142

ptefbylaw@aucklandcouncil.govt.nz.

Submission to the Public Trading, Events and Filming Bylaw 2022.

Introduction

Business North Harbour (BNH) representing the North Harbour Business Improvement District welcomes the opportunity to make this Submission on the Public Trading, Events and Filming Bylaw 2022.

BNH is a significant commercial and industrial Business Improvement District (BID), representing over 4,500 commercial property owners and businesses within the North Harbour area. Collectively they employ over 35,000 Auckland residents and ratepayers.

The organisation is located within the Upper Harbour Local Board area, which remains one of the fastest growing areas in the country, in both absolute and percentage population terms, which brings both challenges and opportunities to the North Harbour business district.

BNH represents and works with a wide range of businesses comprising of a mix of sole traders, Small Medium Enterprises (SME), through to multi-national organisations representing sectors such as ICT, business services, specialist manufacturing, light – medium warehousing, logistics, retail and hospitality. In addition, we have key educational institutions within or on our boundary, including Massey University Albany and AUT Millennium, along with a variety of primary and secondary schools including Rangitoto College, the largest secondary school in New Zealand.

Background

Every day a variety of trading activities, events and filming occur in public places controlled by Auckland Council. These activities increase the vibrancy and appeal of public places such as streets, footpaths, local parks and civic spaces by enhancing amenity and delivering social and economic benefits, however there are also a number of associated risks. Auckland Council are proposing a new Public Trading, Events and Filming Bylaw 2022 that will minimise:

- public safety risks
- nuisance
- misuse of council-controlled public places and will be
- easier to read and understand

The main proposals are to:

- continue to regulate trading, events and filming in a similar way to the current Bylaw
- set specific rules for rental micro-mobility devices

- clarify activities that need approval, are allowed subject to conditions, or are not addressed in the Bylaw
- update the title, structure, format, definitions, and wording of the Bylaw

Auckland Council is seeking feedback on the proposed new Bylaw.

Business North Harbour Feedback

Proposal 1.

Continue to regulate trading, events and filming in a similar way to the current Bylaw.

We want to ensure that a new bylaw continues to address public safety risks, nuisance and misuse caused by trading activities, events and filming in council-controlled public places. This means that most activities must either obtain an approval or comply with conditions, for example when, where and how the activity is allowed.

We are proposing that a new Bylaw –

- retains a similar regulatory approach to the one in the current Bylaw to address public safety risks, nuisance and misuse caused by trading activities, events and filming in council-controlled public places
- requires an approval (a licence or permit) for most activities in council-controlled public places, for example markets, mobile shops, hire of micro-mobility devices, events or filming [**cl 7**]
- allows for certain limited activities to operate without an approval, for example the sale of produce adjacent to the premises where it was grown or filming for the purpose of current affairs or news [**cl 6**]
- allows us to process approval applications and stipulate conditions [**cl 10 to 14**]
- clarifies the duration of an approval, requirement to display an approval, review of approval conditions, transactional provisions, enforcement and the transfer of approvals [**cl 15 to 25**]
- allows us to make additional rules in a 'control', for example conditions on activities that do not require a Bylaw approval and how a Bylaw approval will be considered [**cl 9**].

What is your opinion on this proposal?

BNH agrees with this proposal. We believe that the new Bylaw should give Council the necessary control and enforcement options to ensure that public safety risks, nuisance and misuse caused by trading activities, events and filming in council-controlled public places are minimised and mitigated whenever possible.

BNH believes that the Bylaw needs to be flexible enough to find a balance between regulation and common sense by allowing for certain limited activities to operate without an approval, for example the sale of produce adjacent to the premises where it was grown or filming for the purpose of current affairs or news.

BNH is concerned that, due to the volume of applications for licences or permits required under the Bylaw, Auckland Council may not have sufficient resources to effectively consider applications, apply conditions when necessary and monitor and enforce those approved applications, on a case-by-case basis. We would therefore ask that Council mitigate this risk appropriately to ensure that the Bylaw can be administered in the most effective and efficient manner for applicants and Council alike.

BNH would ask that when decisions are being made on whether or not to allow certain trading activities, that due consideration is given to the financial impacts on fixed

businesses from temporary activities that directly compete for customers and have unfair advantages from rent, rate and maintenance free commercial space.

We would also ask that any fees involved in granting licences for outdoor dining are priced fairly and reflect the difficult financial position that many hospitality businesses still face, as they endeavour to recover their financial sustainability, which for many has been put in jeopardy as a result of the trading restrictions imposed during the various lockdowns endured over the last sixteen months. Those businesses that can utilise outdoor space for dining, thus hopefully increasing their revenue, should not be unduly penalised with excessive licencing costs.

Proposal 2.

Clarify the need for rental micro-mobility devices to be approved under their own licence instead of a mobile shop licence as they currently are.

We want to ensure that licensing of rental e-scooters, e-bikes and bikes parked in council-controlled public places reflects the significance of the potential issues that can result from the rental of power-assisted devices.

We are proposing that a new Bylaw:

- defines 'micro-mobility' and provides examples such as rental e-scooters, e-bikes and other devices
- clarifies that rental micro-mobility devices are approved under their own licence in a new bylaw (currently licensed as mobile shops because they were introduced in 2018 after the current Bylaw was created)
- provides links to relevant webpages, forms and codes of practice in a 'related information note'
- better reflects the information we may require when evaluating an application for an approval, assessment criteria and approval conditions, for example by limiting the number of micro-mobility devices that may be offered for rent.

What is your opinion on proposal 2?

BNH agrees with this proposal. Given that central government sets a number of the rules in relation to micro-mobility devices this Bylaw must ensure that, whenever possible, Council can control their use to mitigate any risk to public safety, misuse and nuisance. Additionally, identifying these devices as a stand-alone group rather than including them as mobile shops is welcomed.

BNH believes that provision should be made in the Bylaw to allow Auckland Council to include in these controls other similar micro-mobility devices that may become available to the market as technology improves, thus allowing regulation to respond and be implemented quickly in any such circumstances.

BNH believes that offering a low emission mode of transport for short journeys is an opportunity to support Auckland's Climate Plan and could assist with the behavioural change required by some commuters as the city looks to reach its low emissions targets. If the use of these devices is to increase, thus increasing the associated risks, then the ability to regulate their use with the Bylaw becomes even more important in relation to mitigating those increased risks to public safety, misuse and nuisance.

Proposal 3.

Clarify which activities require an approval, don't require an approval as long as certain conditions are met, and are not addressed in the Bylaw.

We want to clearly state which activities in council-controlled public places are regulated under a new Bylaw and which are not required to obtain an approval under a new Bylaw, with or without meeting certain conditions.

We are proposing that a new Bylaw:

- clarifies that the occasional sale of homemade goods by children outside the house where the goods were made is allowed (for example, the sale of cupcakes or lemonade)
- clarifies that non-exclusive use of a council-controlled public place for informal recreation (for example, a family picnic) is allowed because that activity is not captured under the definition of an event
- reflects the right to protest under the New Zealand Bill of Rights 1990 and our operational practice by removing 'protest' from the definition of an event (disorder associated with events is regulated using existing legislation, for example the Public Safety and Nuisance Bylaw or the Summary Offences Act)
- allows us to use controls to impose conditions on activities that do not require a Bylaw approval, for example for fitness classes or training provided by outdoor fitness operators in parks.

What is your opinion on Proposal 3?

BNH agrees with this proposal. The fact that the Bylaw clarifies these requirements should help everyone who is considering undertaking some form of activity in Council-controlled public places to better understand what approval, if any, is required or what conditions, if any, must be met. This should make the application process easier and more efficient for applicants and should support peoples' understanding, thus reducing the number of incidents of non-compliance due to people simply not comprehending what is required of them when undertaking a particular activity.

BNH also supports the clarification of and the common sense approach to the occasional sale of homemade goods by children, informal recreation and the right to protest.

Proposal 4.

Update the title, structure, format, definitions, and wording to ensure that a new Bylaw is easier to read, understand and comply with.

We want to provide rules that are easier to read, understand and comply with.

We are proposing to update the format, structure and wording of the current Bylaw to ensure that a new Bylaw:

- explains the wider regulatory framework (other rules and permissions) and provides links to those rules
- acts as 'one-stop shop' for applicants by using 'related information notes' that provide links to relevant webpages and forms (notes do not form part of the proposed bylaw rules and can be easily updated)
- reflects that busking and pavement art are considered in a similar way (street performance licence)
- reflects in the title of a new bylaw and its structure that events and filming are treated separately as filming does not directly involve the general public (presents less risk to public safety)

- clarifies the approval framework by outlining examples of the type of information we may require when evaluating an application and examples of conditions we may impose on a granted approval
- clarifies matters we may address in a 'control' by stating what types of controls can be made and by improving certainty about who can make them.

What is your opinion on Proposal 4?

BNH agrees with this proposal. If the Bylaw is easier to read, understand, comply with and is supported by links to additional information then, as stated above, this should make the application process easier and more efficient for applicants. This should support peoples' understanding, thus reducing the number of incidents of non-compliance due to people simply not comprehending what is required of them when undertaking a particular activity.

BNH understands the rationale behind the separation of filming and events but would ask that due consideration is always given to public safety and nuisance as a matter of course within any filming approval application. The process for the granting of filming approval must remain robust avoiding permission being granted simply because it is filming and not an event.

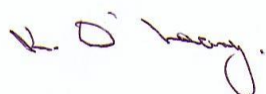
Conclusions

In closing, BNH would reiterate:

- When decisions are being made on whether or not to allow certain trading activities, that due consideration is given to the financial impacts on fixed businesses from temporary activities that directly compete for customers and have unfair advantages from rent, rate and maintenance free commercial space.
- Any fees involved in granting licences for outdoor dining are priced fairly and reflect the difficult financial position that many hospitality businesses still face as they endeavour to recover their financial sustainability which has been put in jeopardy as a result of the trading restrictions imposed during the various lockdowns endured over the last sixteen months. Those businesses that can utilise outdoor space for dining, thus hopefully increasing their revenue, should not be unduly penalised with excessive licencing costs.
- BNH is concerned that, due to the volume of applications for licences or permits required under the Bylaw, Auckland Council may not have sufficient resources to effectively consider applications, apply conditions when necessary and monitor and enforce those approved applications, on a case-by-case basis. We would therefore ask that Council mitigate this risk appropriately to ensure that the Bylaw can be administered in the most effective and efficient manner for applicants and Council alike.

Should there be any questions or other matters arising from this Submission, we would be pleased to respond to those.

Yours sincerely,

A handwritten signature in purple ink, appearing to read "K. O'Leary".

Kevin O'Leary
General Manager