

WAIMATE DISTRICT CONSOLIDATED BYLAW 2018

CHAPTER 4

4 LIQUOR BAN IN PUBLIC PLACES

Scope

The purpose of this chapter of the Bylaw is to promote a safer environment in Waimate District by reducing the incidence of property damage and anti-social behaviour through the control, possession or use of liquor within specified areas of Waimate District in accordance with the powers provided in the Local Government Act 2002.

401 Liquor control

401.1 The following acts are prohibited in all Public Places that are subject to an alcohol ban prescribed by this chapter of the Bylaw:

- (a) the consumption of liquor in a Public Place;
- (b) the bringing of liquor into a Public Place;
- (c) the possession of liquor in a Public Place;
- (d) in conjunction with the activities prohibited under paragraphs (a) to (c), the presence or use of a Vehicle in a Public Place for those purposes.

401.2 For the purposes of clarity, this chapter of the Bylaw does not prohibit the activities described in sections 147, 147A-C of the Local Government Act 2002 (reproduced in the Second Schedule to this chapter of the Bylaw) or any activities detailed in any subsequent amendment to that section of the Act.

402 Liquor control area

402.1 The Council may from time to time by resolution of Council declare any specified area to be subject to the provisions of this chapter of the Bylaw for such times as are considered appropriate.

402.2 Areas specified as being subject to an alcohol ban under the provisions of clause 402.1 shall be generally detailed in the First Schedule to this chapter of the Bylaw, however Council may also apply as it sees fit alcohol bans of a temporary nature to areas that may not be in the First Schedule.

402.3 This chapter of the Bylaw does not prohibit the consumption or possession of liquor in a place for which a liquor licence has been issued under the Sale and Supply of Alcohol Act 2012.

402.4 For the avoidance of doubt the liquor control area includes all designated road and footpath areas within the liquor control area.

403 Times of liquor control

403.1 Liquor control shall apply at all times in the liquor control area unless an exemption is granted under the provisions of clause 404 of this Bylaw.

404 Exemptions

- 404.1 Any person may apply to the Regulatory Manager (or their nominated representative) for an exemption by prior written permission for any activity that would be in breach of any prohibition under this bylaw.
- 404.2 Fees may be prescribed for processing these permissions. This fee may be refunded, remitted, or waived at the Regulatory Manager's (or their nominated representative) discretion.

405 Breach of Bylaw

- 405.1 Any Person who acts in breach of this chapter of the Bylaw commits an offence and is liable on summary conviction to a fine of **up to \$20,000**.

406 Enforcement of Bylaw

- 406.1 The Police will enforce this chapter of the Bylaw by means of the powers of arrest, search and seizure found in sections 169, 169A and 170 of the Local Government Act 2002 (reproduced in the Second Schedule to this chapter of the Bylaw).
- 407 Sale and Supply of Alcohol Act 2012
- 407.1 This chapter of the Consolidated Bylaw may be subject to amendment following any subsequent Legislation, Regulations and Local Alcohol Policy requirements and/or amendments.

WAIMATE DISTRICT CONSOLIDATED BYLAW 2018

CHAPTER 4

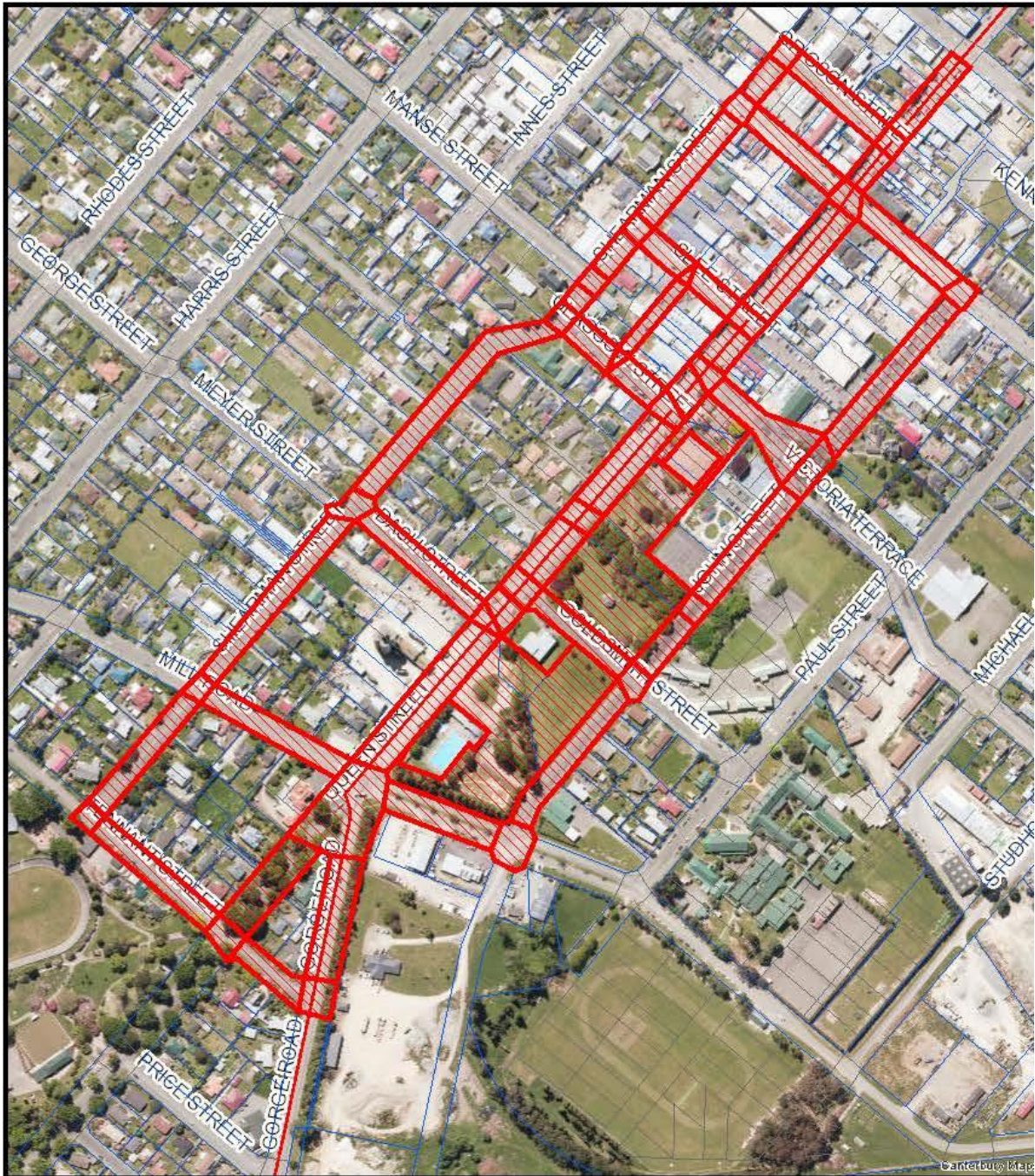
4 LIQUOR BAN IN SELECTED PUBLIC PLACES

FIRST SCHEDULE

BYLAW POLICY LIQUOR CONTROL AREA

SUBJECT: CLAUSE 402 – LIQUOR CONTROL AREA. (REFER ALSO TO ATTACHED PLANS)

Waimate District Council Proposed Liquor Control/Ban Area



Liquor Ban Area

WAIMATE DISTRICT CONSOLIDATED BYLAW 2018**CHAPTER 4****4 LIQUOR BAN IN PUBLIC PLACES****SECOND SCHEDULE****BYLAW POLICY LIQUOR CONTROL ENFORCEMENT OF BYLAW**

SUBJECT: CLAUSE 401.2 AND 406.1 – LIQUOR CONTROL & ENFORCEMENT OF BYLAW.

SECTIONS OF THE LOCAL GOVERNMENT ACT 2002 REFERRED TO IN THIS CHAPTER OF THE BYLAW**“147 Power to make bylaws for alcohol control purposes**

(1) In this section,—

alcohol has the meaning given by section 5(1) of the Sale and Supply of Alcohol Act 2012

licensed premises has the meaning given by section 5(1) of the Sale and Supply of Alcohol Act 2012

public place—

- (a) means a place that is open to or is being used by the public, whether free or on payment of a charge, and whether any owner or occupier of the place is lawfully entitled to exclude or eject any person from it; but
 - (b) does not include licensed premises.
- (2) A territorial authority may make bylaws for its district for the purpose of prohibiting or otherwise regulating or controlling, either generally or for one or more specified periods, any or all of the following:
- (a) the consumption of alcohol in public places:
 - (b) the bringing of alcohol into public places:
 - (c) the possession of alcohol in public places.
- (3) In conjunction with a bylaw under subsection (2), a territorial authority may make bylaws for its district for the purpose of prohibiting or otherwise regulating or controlling, either generally or for one or more specified periods, the presence or consumption of alcohol in vehicles, or vehicles of stated kinds or descriptions, in public places.
- (4) A bylaw under this section does not prohibit, regulate, or control, in the case of alcohol in an unopened container,—
- (a) the transport of the alcohol from licensed premises next to a public place, if—
 - (i) it was lawfully bought on those premises for consumption off those premises; and

- (ii) it is promptly removed from the public place; or
 - (b) the transport of the alcohol from outside a public place for delivery to licensed premises next to the public place; or
 - (c) the transport of the alcohol from outside a public place to premises next to a public place by, or for delivery to, a resident of the premises or his or her bona fide visitors; or
 - (d) the transport of the alcohol from premises next to a public place to a place outside the public place if—
 - (i) the transport is undertaken by a resident of those premises; and
 - (ii) the alcohol is promptly removed from the public place.
- (5) Subsections (2) and (3) do not limit section 145.

147A Criteria for making or continuing bylaws

- (1) Before making a bylaw under section 147, a territorial authority—
- (a) must be satisfied that it can be justified as a reasonable limitation on people's rights and freedoms; and
 - (b) except in the case of a bylaw that will apply temporarily for a large scale event, must also be satisfied that—
 - (i) there is evidence that the area to which the bylaw is intended to apply has experienced a high level of crime or disorder that can be shown to have been caused or made worse by alcohol consumption in the area; and
 - (ii) the bylaw is appropriate and proportionate in the light of that crime or disorder.
- (2) Before deciding that a bylaw under section 147 should continue without amendment, a territorial authority must be satisfied that the level of crime or disorder experienced before the bylaw was made (being crime or disorder that can be shown to have been caused or made worse by alcohol consumption in the area concerned) is likely to return to the area to which the bylaw is intended to apply if the bylaw does not continue.
- (3) Before making under section 147 a bylaw that is intended to replace an expiring bylaw and is to the same effect (or to substantially the same effect) as the expiring bylaw, a territorial authority must be satisfied that—
- (a) the bylaw can be justified as a reasonable limitation on people's rights and freedoms; and
 - (b) a high level of crime or disorder (being crime or disorder caused or made worse by alcohol consumption in the area concerned) is likely to arise in the area to which the bylaw is intended to apply if the bylaw is not made; and
 - (c) the bylaw is appropriate and proportionate in the light of that likely crime or disorder.
- (4) Subsection (1) does not apply to a bylaw of a kind described in subsection (3).

147B Criteria for making resolutions relating to bylaws

Before making under section 151 a resolution relating to a bylaw under section 147, a territorial authority must be satisfied that—

- (a) there is evidence that the area to which the bylaw applies (or will apply by virtue of the resolution) has experienced a high level of crime or disorder that can be shown to have been caused or made worse by alcohol consumption in the area; and
- (b) the bylaw, as applied by the resolution,—
 - (i) is appropriate and proportionate in the light of the evidence; and
 - (ii) can be justified as a reasonable limitation on people's rights and freedoms.

147C Signage for areas in which bylaws for alcohol control purposes apply

Regulations under section 259 may do any or all of the following:

- (a) require territorial authorities to erect and maintain signs indicating the existence or boundaries of areas in their districts in which a bylaw under section 147 applies:
- (b) describe the required placement of the signs required to be erected and maintained:
- (c) prescribe particular forms for particular kinds of sign required to be erected and maintained (including, without limitation, content, size, lettering, symbols, and colouring).

169 Powers of arrest, search, and seizure in relation to alcohol bans

(1) In this section and in sections 169A and 170,—

alcohol has the meaning given by section 5(1) of the Sale and Supply of Alcohol Act 2012

alcohol ban means a bylaw made under section 147

offence means a breach of an alcohol ban

restricted place means a public place (within the meaning of section 147(1)) in respect of which an alcohol ban is in force.

(2) A constable may, without warrant,—

- (a) for the purpose of ascertaining whether alcohol is present, search—
 - (i) a container (for example, a bag, case, package, or parcel) in the possession of a person who is in, or entering, a restricted place; or
 - (ii) a vehicle that is in, or is entering, a restricted place:
- (b) seize and remove any alcohol (and its container) that is in a restricted place in breach of an alcohol ban:
- (c) arrest any person whom the constable finds committing an offence:

- (d) arrest any person who has refused to comply with a request by a constable—
 - (i) to leave a restricted place; or
 - (ii) to surrender to a constable any alcohol that, in breach of an alcohol ban is in the person's possession.
- (3) Alcohol or a container seized under subsection (2)(b) is forfeited to the Crown if the person from whom the alcohol or container is seized pays the infringement fee.

169A Proving substance is alcohol in relation to alleged breach of alcohol ban

- (1) In this section, labelled trade container means a container that is of a type sold in the ordinary course of trade, and is labelled to the effect that it contains 1.15% or more ethanol.
- (2) This subsection applies to a substance in respect of which a breach of alcohol ban is alleged to have been committed if the substance was in a container at the time the offence is alleged to have been committed, and—
 - (a) the container was a labelled trade container; or
 - (b) the container was not a labelled trade container but appeared to contain alcohol, and when it was opened the substance smelled like alcohol; or
 - (c) the defendant has at any time made to a constable an admission to the effect that the substance was alcohol.
- (3) If, in any proceedings for a breach of alcohol ban, it is proved that subsection (2) applies to the substance in respect of which the breach is alleged to have been committed, the substance must be presumed to be alcohol unless the defendant—
 - (a) proves that it was not; or
 - (b) has served on the prosecution notice in writing at least 20 working days before the hearing that he or she disputes that the substance was alcohol.

170 Conditions relating to power of search

- (1) Before exercising the power of search under section 169(2)(a) in relation to a container or a vehicle, a constable must—
 - (a) inform the person in possession of the container or the vehicle, as the case may be, that he or she has the opportunity of removing the container or the vehicle from the public place; and
 - (b) provide the person with a reasonable opportunity to remove the container or the vehicle, as the case may be, from the public place.
- (2) However, on specified dates or in relation to specified events, notified in accordance with subsection (3), a constable may, immediately and without further notice, exercise the power under section 169(2)(a) to search a container or a vehicle.
- (3) Before a constable may exercise the power of search under subsection (2), the territorial authority must—

- (a) specify the public place (within the meaning of section 169(1)) where, and the period when, this power may be exercised by the Police by public notice given 14 days in advance in accordance with this Act; and
 - (b) indicate the location of the public place by 1 or more clearly legible notices affixed in 1 or more conspicuous places on, or adjacent to, the place to which the notice relates, unless it is impracticable or unreasonable to do so.
- (4) Subsection (2) only applies if the constable is authorised to exercise that power by a bylaw made under section 147.”

