

This PUBLIC BILL originated in the HOUSE OF REPRESENTATIVES, and, having this day passed as now printed, is transmitted to the LEGISLATIVE COUNCIL for its concurrence.

*House of Representatives,
24th October, 1935.*

Mr. Endean.

AUCKLAND METROPOLITAN MILK
AMENDMENT.

[LOCAL BILL.]

ANALYSIS.

- | Title. | |
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| 1. Short Title. | 15. Section 41 of principal Act (as to licenses) amended. |
| 2. Section 2 of principal Act (Definitions) amended. | 16. Regulation of further matters affecting supply and distribution of milk. |
| 3. District extended. | 17. Matters which may be considered by Council in fixing milk prices. Power to allow concessions in special cases. |
| 4. Amendment of reference in section 4 of principal Act. | 18. Determination of price of milk in certain cases. |
| 5. Sections 5 and 8 of principal Act (voting-powers of electors) amended. | 19. Offences. |
| 6. Section 8 of principal Act (as to qualifications of electors) amended. | 20. Power to compensate roundsman on refusal of license and to purchase business, &c. Agreements for revocation of license, &c. No appeal in case of compensation or purchase. Disposal of business purchased. Council's consent required to service of customers affected. Service of customers affected. |
| 7. Section 9 of principal Act (term of office of members) amended. | 21. Roundsman selling round to offer to Council first. Refusal of license where offer not made. Definition of "milk-round". |
| 8. Section 22 of principal Act amended. | 22. Protection of Council when purchasing personal property. |
| 9. Provisions of principal Act as to borrowing-powers of Council amended. | 23. Right of appeal not to apply to certain cases. |
| 10. Section 33 of principal Act amended. | 24. Relief from contracts impossible of performance by operation of this Act or of resolution of Council. |
| 11. Annual estimate of expenditure may include annual charges in respect of certain loans. | 25. Costs of promoting Act. |
| 12. Date for payment of levy and incidence thereof. Payment for cream. | 26. Validation of existing resolutions and regulations. |
| 13. Returns by milk-vendors of milk sold. Penalty for failure to make return or pay levy within prescribed time. Default assessment. Repeal. | |
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A BILL INTITULED

Title. AN ACT to amend the Auckland Metropolitan Milk Act, 1933.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority 5 of the same, as follows:—

Short Title. 1. This Act may be cited as the Auckland Metropolitan Milk Amendment Act, 1935, and shall be read together with and deemed part of the Auckland Metropolitan Milk Act, 1933 (hereinafter referred to 10 as the principal Act).

Section 2 of principal Act (Definitions) amended. 2. The principal Act is hereby amended by repealing section two, and substituting the following section:—

“2. In this Act, unless the context otherwise requires,— 15

“ ‘Council ’ or ‘ Milk Council ’ means the Auckland Metropolitan Milk Council constituted under this Act:

“ ‘ Dairyman ’ means the occupier of any dairy or dairy premises: 20

“ ‘ Dairy ’ or ‘ dairy premises ’ means any land or premises used for or in connection with the stalling, grazing, feeding, or milking of cows for the purpose of producing milk:

“ ‘ District ’ or ‘ milk district ’ means the Auckland 25 Metropolitan Milk District as for the time being subsisting:

“ ‘ Financial year ’ means the period from the first day of April in any year to the thirty-first day of March in the next following year, both 30 days inclusive:

“ ‘ Gallon ’, in relation to milk, means a quantity of milk weighing ten decimal thirty-three pounds avoirdupois:

“ ‘ Milk ’ includes cream but does not refer to— 35

“ (a) Milk or cream (hereinafter referred to as surplus milk) intended for manufacture into butter, cheese, or casein; or

“ (b) Milk or cream which is outside the district and is not intended to be supplied to 40 or sent or brought into the district:

- 5 “ ‘ Milk-store ’ means any building, shed, or place at or upon which milk is treated, separated, deposited, or stored, and includes any building, premises, or place within the milk district at or upon which milk is sold:
- 10 “ ‘ Milk-vendor ’ means any person who is the occupier of a milk-store, or who himself or by his employee receives or accepts milk to be forwarded or supplied to the milk district otherwise than as a carrier, or who sells milk therein:
- 15 “ ‘ Person ’ includes a corporation sole and also a body of persons whether corporate or unincorporate:
- 20 “ ‘ Prescribed ’ means prescribed by resolution of the Council:
- 25 “ ‘ Roundsman ’ means any person who sells or delivers milk from door to door:
- 30 “ ‘ To sell ’ means to sell by wholesale or by retail, and includes barter, supply for profit, offer for sale, receive for sale, have in possession for sale, expose for sale, send forward or deliver for sale, cause or suffer or allow to be sold, offered or exposed for sale; and ‘ sale ’ and ‘ sold ’ have corresponding meanings:
- 30 “ ‘ Treatment ’ includes the examination, cleansing, pasteurization, modification, testing, grading, cooling, refrigerating, bottling, or packing of milk, or otherwise preparing milk for sale or consumption; and ‘ treat ’ has a corresponding meaning.”

35 3. Section three of the principal Act is hereby amended by inserting, after the words “ Mount Roskill ” in subsection one, the words “ the Auckland Domain and Hospital Reserve, the Port of Auckland as defined pursuant to section six of the Harbours Act, 1923, and the Port of Manukau as defined pursuant to the Marine Act, 1867 ”; and by adding after subsection two the following subsection:—

40 “ (3) For the purposes of this Act any ship or vessel while in either the Port of Auckland or the Port of Manukau shall be deemed to be included in the milk district.”

Amendment of reference in section 4 of principal Act.
Sections 5 and 8 of principal Act (voting-powers of electors) amended.

4. Section four of the principal Act is hereby amended by omitting from subsection three the words " Part XV ", and substituting the words " Part XIV ".

5. For the purposes of sections five and eight of the principal Act—

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(a) The sale or production for sale of any quantity of cream shall be deemed to be the sale or production for sale, as the case may be, of twelve times the same quantity of milk:

(b) Any milk which is produced by a dairyman licensed by the Council to produce the same shall be deemed to be produced by such dairyman for sale within the district notwithstanding that such milk or any part thereof may not have been sent or brought into the district.

Section 8 of principal Act (as to qualifications of electors) amended.

6. Section eight of the principal Act is hereby amended as follows: By omitting from paragraph (b) of subsection four all words after the word " elector ".

Section 9 of principal Act (term of office of members) amended.

7. Section nine of the principal Act is hereby amended by repealing subsection one thereof, and substituting the following subsection:—

"(1) Every member of the Council appointed or elected under subsection one of the last preceding section shall come into office on the day following that on which he is appointed or elected, and, unless his office sooner becomes vacant, shall continue in office until members appointed or elected at the next appointment or election under that subsection come into office."

Section 22 of principal Act amended.

8. Section twenty-two of the principal Act is hereby amended by repealing subsection one, and substituting the following subsection:—

"(1) The Council may out of its funds pay to each of its members (other than the Chairman) an allowance of *one pound one shilling* for each meeting of the Council or any Committee thereof attended by him, but not exceeding the sum of *fifty-two pounds* in any financial year:

" Provided that the maximum amount which may be paid to any member in respect of any one day shall not exceed *one pound one shilling*, notwithstanding that such member may have attended one or more meetings of the Council or of any Committee thereof on such day."

9. Section twenty-seven of the principal Act is hereby amended by repealing subsection two, and substituting the following subsection:—

Provisions of principal Act as to borrowing-powers of Council amended.

“(2) In respect of every such loan the provisions of the Local Bodies’ Loans Act, 1926, and the Local Government Loans Board Act, 1926, shall apply, *mutatis mutandis*, but subject as in this Act provided, and in particular with the following modifications:—

“(a) The Council may do by resolution whatever may be done by a local authority under the said Acts with the consent of ratepayers or by special order:

“(b) The expressions ‘local fund’ and ‘general fund’ shall be deemed, where used in the said Acts, to refer to or include the general fund of the Council:

“(c) Before raising a special loan the Council shall publish in a newspaper circulating in the district once in each week for four successive weeks a notice setting forth:—

“(i) The particular purpose or purposes for which the loan is required:

“(ii) The sum proposed to be borrowed for each such purpose:

“(iii) The proposed security and the provision for repayment of the loan:

“(iv) A statement whether or not it is proposed to pay out of the loan the cost of raising the loan or the interest and sinking fund for the first year.”

10. Section thirty-three of the principal Act is hereby amended by adding at the end thereof the following words: “and all profits or income of any kind made or received by the Council”.

Section 33 of principal Act amended.

11. There may be included in the estimate to be made under section thirty-four of the principal Act of the proposed expenditure for any year the amounts estimated by the Council to be required in that year to pay interest on any special loan in respect of which no special levy has been made, and any sums required to meet payments of principal or provide the sinking fund in respect thereof.

Annual estimate of expenditure may include annual charges in respect of certain loans.

6. *Auckland Metropolitan Milk Amendment*

Date for
payment of
levy and
incidence
thereof.
Payment for
cream.

12. Section thirty-six of the principal Act is hereby amended by inserting, after the word "district" where it first occurs, the following words: "and the amount of such levy payable in respect of the milk sold in each calendar month shall be paid on the fourteenth day of the succeeding month, and may be recovered by the Council by action in any Court of competent jurisdiction"; and by adding at the end of such section the following: "Where milk is or may be the subject of more than one sale, the Council may determine that the levy shall be payable in respect of one sale only, and where it has so determined shall determine also in respect of which sale the levy shall be payable. Any determination aforesaid may be of general application, or apply only to a particular case or class of cases, and shall be revocable at the pleasure of the Council. For the purpose of this section a sale of any quantity of cream shall be deemed to be a sale of twelve times the same quantity of milk".

Returns by
milk-vendors
of milk sold.

13. (1) Every milk-vendor shall within fourteen days after the end of each calendar month deliver to the Council a return in the form prescribed by the Council setting forth the quantity of milk sold by him during that month, and such other particulars (whether of a like nature or not to the particulars specified in this section) as may be from time to time required by the Council. The return shall, if required by the Council, be verified by statutory declaration.

Penalty for
failure to
make return
or pay levy
within
prescribed
time.

(2) Every milk-vendor who fails to deliver to the Council any return required under this section within the time hereinbefore provided in that behalf, or who fails to pay the levy within seven days from the date when the same became payable, shall be liable to an additional payment of ten per centum on the amount which should have been so paid.

Default
assessment.

(3) In the event of any milk-vendor failing to deliver to the Council any return required under this section within the time hereinbefore provided in that behalf, or delivering a return which in the opinion of the Council does not show the quantity of milk actually sold by him, the Council may make an assessment of the quantity of milk upon which in its opinion such milk-vendor ought to pay the levy, and the quantity so assessed shall be deemed to be the correct quantity upon which the levy

is payable by such milk-vendor, save in so far as he satisfies the Council or establishes in any action taken by the Council to recover the levy or in any other legal proceedings that the assessment is excessive.

5 (4) The provisions of subsections *one* and *two* of this section are in substitution for section thirty-eight of the principal Act, and that section is hereby accordingly repealed. Repeal.

10 **14.** (1) From and after such date as may be fixed by the Council for the purpose and publicly notified it shall not be lawful for any person— License required for producing milk, for pasteurizing plants, dairy premises, and milk-stores, and for importing ice-cream into district.

(a) To sell outside the district any milk intended to be supplied to or sent or brought into the district; or

15 (b) To pasteurize milk or subject milk to any treatment designed for the same purpose as pasteurization, or to install or operate in the district plant for the pasteurization or like treatment of milk; or

20 (c) To use any particular premises as a dairy or milk-store,—

save under a license issued in that behalf by the Council and in accordance with the terms and conditions thereof:

25 Provided always that the Council shall not include in any such license any term or condition which conflicts with any regulation made under the Dairy Industry Act, 1908.

30 (2) The provisions of the principal Act relating to the grant, refusal, suspension, or revocation of licenses required by section thirty-nine thereof, or to appeals against decisions of the Council in respect thereof, or to breach of the terms or conditions of such licenses, shall apply, *mutatis mutandis*, to licenses under this section. On the hearing of any appeal in respect of
35 the refusal, suspension, or revocation of any license relating to a plant in existence at the date of the commencement of this Act and designed for the pasteurization or like treatment of milk, the Court shall take into consideration the amount of compensation (if
40 any) which has been or is to be paid to the appellant in respect of such refusal, suspension, or revocation.

45 **15.** Section forty-one of the principal Act is hereby amended by adding at the end of such section the following: " Before granting or renewing any license to a milk-vendor the Council may require him to furnish Section 41 of principal Act (as to licenses) amended.

such guarantee, bond, or security as the Council shall deem fit for the payment of debts then owing or that may thereafter be incurred by him in respect of the purchase of milk, and may cause any moneys recovered under such guarantee, bond, or security, less the expenses of recovery, to be applied in or towards satisfaction of such debts or any of them. The revocation of any license hereunder or any term or condition imposed in the granting of a license hereunder may be made to take effect from such date not being earlier than the date of the resolution decreeing such revocation or imposing such term or condition as the Council may fix.”

Regulation of further matters affecting supply and distribution of milk.

16. Section forty-five of the principal Act is hereby amended as follows:—

- (a) By omitting the word “milkman” in subparagraph (iii) of paragraph (c) of subsection one, and substituting the words “milk-vendor or dairyman”:
- (b) By adding to paragraph (d) of subsection one the words “and in particular may inaugurate any coupon or token system of payment, print or manufacture and sell or otherwise dispose of coupons or tokens for use in the milk industry, and make regulations requiring the adoption thereof and prescribing the uses of same or preventing abuses or evasions of any such system”:
- (c) By omitting from paragraph (e) of subsection one the word “may” wherever it occurs, and substituting the word “shall”:
- (d) By adding to subparagraph (ii) of paragraph (f) of subsection one the following words: “and require all or any milk to be treated, carried, deposited, stored, distributed, or sold as prescribed by the Council”:
- (e) By adding at the end of paragraph (f) of subsection one the following:—
- “(viii) Forbid milk produced at any dairy which does not comply with the Council’s requirements and the requirements of the Dairy Industry Act, 1908, to be sold in or sent or brought into the district:
- “(ix) Prescribe the situation, materials, method of construction, size, contents, accessories, or adjuncts of milk-stores, and the

nature of the vessels or receptacles to be used therein and the condition in which such milk-stores, vessels, and receptacles must be maintained:

5 “(x) Forbid the deposit or storage of milk at milk stores or premises which do not comply with regulations made by the Council in that behalf and with the requirements of the Health Act, 1920:

10 “(xi) Provide for exemptions either generally or in any special case from any requirements of the Council:

15 “(xii) Fix the standard of quality of milk that may be sold, and fix different standards according to the treatment to which the milk is to be subjected or according to the purpose for which it is to be used or according to any other circumstances whatsoever which in the opinion of the Council render the fixing of different standards advisable:

20 “(xiii) Prescribe the standard of quality to which milk must conform or the tests which it must pass before it may be pasteurized, and forbid the pasteurization of milk which does not conform to the standard or pass the tests so fixed.”

25 (f) By adding at the end of subsection three the words “All persons shall be deemed to have received notice of any resolution or decision of the Council on the day following the day on which it is first notified by advertisement as aforesaid.”

30 17. (1) Without in any way limiting the generality of the Council’s power of fixing prices contained in the principal Act, the Council may fix different prices for milk according to—

Matters which may be considered by Council in fixing milk prices.

40 (a) Differences of grade, quality, description, or quantity (whether grades, qualities, or descriptions are prescribed or not), or in the locality or conditions of production, collection, conveyance, treatment, sale, or delivery:

 (b) Differences in the classes of milk-vendors:

45 (c) Differences in the classes of purchasers or in the natures of their businesses or in their treatment or disposal of milk purchased:

(d) Differences in the purposes for which the milk is sold, bought, or to be used:

(e) The circumstances or exigencies of the milk trade.

Power to allow concessions in special cases.

(2) The Council may from time to time either generally or specifically, for reasons of charity or public policy, authorize the reduction of any price fixed or special discounts or concessions or gifts of milk or make such other provision as it thinks fit. 5

Determination of price of milk in certain cases.

18. For the purpose of determining the amount or price to be paid in respect of milk sold by a dairyman to a milk-vendor the Council may from time to time prescribe generally, or decide in any particular case or class of case the proportion or quantity of such milk which shall be deemed to be surplus milk and the proportion or quantity which shall be deemed to be or to have been sold or bought for any particular purpose or to be included in any particular category of its price-fixing provisions, and payment shall be made and accepted for such milk as if the proportions and quantities so prescribed or decided were the actual proportions or quantities notwithstanding any stipulation to the contrary in any agreement between such dairyman and milk-vendor. 10 15 20

Offences.

19. No person shall purchase milk at a price less than that fixed by the Council or from a person not licensed by the Council to sell or supply same, and no person shall bring into the district milk purchased at less than the price so fixed or produced at dairy premises not licensed as aforesaid, and no person shall sell or supply milk to a milk-vendor who is not the holder of a license to sell milk issued by the Council. 25 30

Power to compensate roundsman on refusal of license and to purchase business, &c.

20. (1) Where in pursuance of its powers under section forty-one of the principal Act the Council has in respect of any roundsman revoked or refused to grant a license, or, in granting a license, has attached any condition restricting his operations, it shall be lawful for the Council to compensate such roundsman by payment of such amount as may be agreed upon or in such other manner as may be agreed upon and to purchase for such consideration as may be agreed upon the business of such roundsman, the goodwill thereof, and any chattels or personal property used for the purpose of or belonging or pertaining to such business. 35 40

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(2) The Council may for the purpose of consolidation or zoning of rounds enter into and carry into effect any agreement with a roundsman for the revocation of his license or for the grant of a license with terms or conditions restricting the operations of such roundsman, and any such agreement may provide for the compensation of such roundsman and the purchase of his business, goodwill, chattels, or property as mentioned in the last preceding subsection, and such other matters as the Council deems necessary or expedient.

Agreements for revocation of license, &c.

(3) Where the Council has, following upon any decision revoking or refusing a license or attaching any condition thereto, compensated the roundsman affected or purchased his business as aforesaid, no appeal shall lie or be proceeded with against such decision.

No appeal in case of compensation or purchase.

(4) The Council may sell or otherwise dispose of, as it thinks fit, any business, goodwill, chattels, or property purchased as aforesaid.

Disposal of business purchased.

(5) No person shall, without the consent of the Council, which may be granted for such consideration and on such terms as it thinks fit, deliver milk except at a milk-store to any person who at the date of revocation or refusal of a license was a customer of the roundsman affected by such revocation or refusal, or whose custom has been taken away from a roundsman by reason of any restrictive condition attached to his license.

Council's consent required to service of customers affected.

(6) Where the Council has revoked the license of a roundsman or refused him a license or attached a condition thereto restricting his operations, it may—

Service of customers affected.

(a) For such consideration by way of lump sum or periodical payment or otherwise, as it thinks fit, authorize any person, either by special license or by extension of an existing license or otherwise, and for such period as it deems advisable, to serve the customers or any of the customers the right to serve whom has been lost by such roundsman, and any authority given by the Council hereunder may be given subject to such conditions as it thinks fit and may be cancelled by it for non-payment of any consideration fixed therefor or for breach of any condition attached thereto. The Council

may renew or extend the period of such authority from time to time on such terms as it thinks fit or on cancellation thereof grant similar authority to any other person:

- (b) Make such other provision as it thinks fit for service by itself or otherwise of the customers aforesaid or any of them. 5

Roundsman
selling round
to offer to
Council first.

21. (1) No roundsman or other person entitled to dispose of a milk-round shall sell to any purchaser the goodwill of such milk-round or of any portion thereof without first offering to sell the same to the Council on at least as favourable terms as those on which he is willing to sell to such purchaser. Such offer shall remain open for six days from the date upon which it is made, and if not accepted by the Council within that time shall be deemed to have been declined. 10 15

Refusal of
license where
offer not made.

(2) The Council may refuse to grant a license to any person who has purchased the goodwill of any milk-round or of any portion thereof if the same has not prior to such purchase been offered for sale to the Council on at least as favourable terms as those on which such person has purchased the same, and no appeal shall lie against any such refusal. 20

Definition of
"milk-round".

(3) For the purposes of this section "milk-round" means the business of supplying customers with milk for consumption or use by daily or other deliveries at their homes or premises. 25

Protection of
Council when
purchasing
personal
property.

22. In any case where the Council has agreed to purchase any personal property from any person (herein referred to as the vendor) operating any milk-round, business, service, or undertaking in the district, the Council may insert in any two of the leading daily newspapers circulating in the City of Auckland a notification of such purchase and a request that any person claiming an interest in or charge upon such property shall notify the Council in writing of such claim. At any time after the expiration of seven days from the latest insertion of such notification if no notice of any claim has then been received by the Council and there is no person then entitled to any interest in or charge upon such property by virtue of any instrument registered under the Chattels Transfer Act, 1924, or the Companies Act, 1933, the Council may pay the purchase-money for such property to the vendor. 30 35 40

If the date for payment of purchase-money fixed by any such agreement is too early to enable the foregoing steps to be taken, it shall be extended accordingly. Upon payment of the purchase-money for such property

5 in accordance with the foregoing provisions, the same shall vest in the Council absolutely free and clear of all estates, interests, or encumbrances whatsoever.

23. Notwithstanding anything contained in the principal Act, no appeal shall lie against the decision

10 of the Council in any case where the Council refuses to grant any license (as it shall be entitled to do) on the ground that there are already sufficient holders of licenses of the kind applied for to adequately meet the needs of the district or the portion thereof in which the

15 applicant proposes to operate, or that otherwise it would be economically unsound or inequitable to grant such license unless the applicant is or was at the date of expiry of the preceding licensing period the holder of a similar license and is at the time of application

20 operating the business or service for which such license was obtained, or unless the license is required for the supply of milk from dairy premises or any portion of dairy premises from which milk is at the time of application being supplied to the milk district under

25 license from the Council, or for the purpose of continuing a milk-vendor's business taken over or about to be taken over from a licensee of the Council.

Right of appeal not to apply to certain cases.

24. If compliance with the terms of any contract in force at the date of coming into operation of this Act

30 or of any resolution passed pursuant thereto or to the principal Act is prevented wholly or partially by such operation, then in respect of such prevention this Act shall be a complete defence to any action on any such contract:

Relief from contracts impossible of performance by operation of this Act or of resolution of Council.

35 Provided always that, if any party would be precluded by this provision from recovering the price of any goods supplied or remuneration for work done prior to such date, such party shall, any rule of law to the contrary notwithstanding, be entitled to recover

40 the fair value of such goods or work.

Costs of
promoting Act.

25. The Council shall be entitled to pay out of its funds for all services rendered and expenses incurred on its behalf in framing and promoting this Act.

Validation of
existing
resolutions and
regulations.

26. All resolutions and regulations made by the Council which would if this Act had been in force at the time they were made have been valid shall be deemed to be and always to have been valid and to affect or apply to the milk district as hereby extended.

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