

LOCAL GOVERNMENT AMENDMENT

EXPLANATORY NOTE

THIS Bill amends the Local Government Act 1974 so far as it relates to the powers of local authorities to prohibit vehicles in public places and prohibit the consumption and possession of liquor in public places.

The principal changes are:

- (a) Extension of the present provisions, which apply only to roads, (as specially defined in the principal Act) to include all public places that are under the control of the council, and open to public use either free or on payment of a charge:
- (b) Separation of the powers to prohibit vehicular traffic in public places and the powers to prohibit consumption and possession of liquor:
- (c) Extension of the powers to regional and united councils as well as territorial authorities:
- (d) An effective reduction in the period within which the council may make decisions under the provision by making changes to the public notice requirements, and by removing the requirement that the council must act by resolution (thus permitting delegation of the powers to make decisions under the section):
- (e) The references to liquor containers and the prohibitions relating to empty liquor containers apply to all such containers and not just glass ones.

Clause 1 relates to the Short Title.

Clause 2 is the substantive provision, and inserts a new section 709A in the principal Act to replace section 343.

Subsection (1) gives councils the power to prohibit the use of vehicles in public places to enable the holding of any public event, function, or gathering. The council may also prohibit the consumption of liquor, the bringing of liquor or liquor containers into the public place, and the possession of liquor or liquor containers in the public place.

At present these powers can only be exercised jointly, and only in respect of roads. The definition of the term "public place" is wider (see *subsection (14)*).

The council will be able to exercise these powers separately, i.e., it may prohibit vehicles but not liquor, or prohibit liquor but not vehicles.

Because the new section is in Part XLV of the principal Act the definition of the term "council" is wider, and now includes regional councils and united councils.

The powers need not be exercised by resolution, and may be exercised at any time not later than the day before the event, function, or gathering. There is nothing to prevent delegation of the powers.

The references to empty containers are no longer confined to glass containers.

Subsection (2) is unchanged in effect from the present section 343 (2), and provides that no prohibition may have effect for more than 12 hours in any consecutive period of 24 hours.

Subsection (3) is unchanged in effect from the present section 343 (3), and provides exemptions relating to the transport of liquor to or from licensed premises or premises having a frontage onto the public place providing that the liquor is removed promptly from the public place.

Subsection (4) is unchanged in effect from part of the present section 343 (4), and requires public notice of decisions under *subsection (1)* to be given in newspapers on at least 3 occasions during the 21 days before the prohibitions take effect.

Subsection (5) is new. It provides that where the council cannot comply with *subsection (4)* because of insufficient time it must comply so far as practicable, and must also ensure that similar notices are displayed in the public place.

Subsection (6) sets out the matters that are to be included in the public notice of the prohibitions. The only significant change is that the form of the notice is no longer to be prescribed by regulations.

Subsections (7) and (8) are unchanged in effect from section 343 (5) and prescribe offences.

Subsection (9) is unchanged in effect from section 343 (6) and sets out the powers of arrest and search that may be exercised by constables.

The powers of search are subject to limitations set out in *subsections (10) and (11)* that are similar in effect to the limitations set out in the proviso to section 343 (6), and in section 343 (7).

Subsections (12) and (13) are similar in effect to section 343 (8), and relate to the seizure and forfeiture of liquor.

Subsection (14) defines terms used in the section. The principal feature is the definition of the term "public place", and in considering references in this note to provisions being similar in effect to existing provisions it should be noted that the term "public place" is probably somewhat wider than the term "road", even though that term as defined in section 315 (1) of the principal Act includes every square or place intended for use of the public generally.

Clause 3 effects a consequential repeal and a consequential revocation.

Hon. Dr Michael Bassett

LOCAL GOVERNMENT AMENDMENT

ANALYSIS

Title
1. Short Title

2. Prohibition of vehicles and consumption
or possession of intoxicating liquor in
public place
3. Repeal and revocation

A BILL INTITULED

An Act to amend the Local Government Act 1974

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

1. Short Title—This Act may be cited as the Local
Government Amendment Act **1984**, and shall be read together
with and deemed part of the Local Government Act 1974*
(hereinafter referred to as the principal Act).

*R.S. Vol. 5. p. 77

Amendments: 1980, No. 82; 1981, Nos. 23, 111; 1982, Nos. 3, 166; 1983, No. 132

10 **2. Prohibition of vehicles and consumption or
possession of intoxicating liquor in public place**—The
principal Act is hereby amended by inserting, after section 709
(as enacted by section 2 of the Local Government Amendment
Act 1979), the following heading and section:

“Prohibition of Vehicles and Consumption or Possession of Liquor in Public Places

“709A. (1) In addition to the powers conferred on the council by sections 319, 342, and 366 (2) of this Act or by regulations made pursuant to section 77 (1) (u) of the Transport Act 1962, the council may, in any case where it considers that on the occasion of the holding in any public place or part of a public place (in this section referred to as the specified public place) of any public event, function, or gathering,—

“(a) The use of ordinary vehicular traffic in the specified public place should be prohibited; or

“(b) The consumption of liquor in the specified public place during that period or those periods, the bringing of liquor or empty liquor containers into the specified public place during that period or those periods, and the possession of liquor or empty liquor containers in the specified public place during that period or those periods should be prohibited; or

“(c) That both the prohibition referred to in **paragraph (a)** of this subsection and the prohibitions referred to in **paragraph (b)** of this subsection should apply,—

the council may, not later than the day before the day of the public event, function, or gathering,—

“(d) Prohibit the use in the specified public place of ordinary vehicular traffic for any period or periods specified in the resolution; or

“(e) Prohibit the consumption of liquor in the specified public place during that period or those periods, the bringing of liquor or empty liquor containers into the specified public place during that period or those periods, and the possession of liquor or empty liquor containers in the specified public place during that period or those periods; or

“(f) Do both the matters specified in **paragraphs (d) and (e)** of this subsection.

“(2) No prohibition under this section shall have effect for more than 12 hours in any consecutive period of 24 hours.

“(3) No prohibition relating to liquor under this section shall be deemed to prohibit—

“(a) The transport of liquor from premises on land having a frontage to the specified public place during any period while pursuant to the Sale of Liquor Act 1962 liquor may lawfully be sold on those premises for consumption off the premises, provided the liquor is promptly removed from the specified public place:

5 “(b) The transport of liquor from outside the specified public place for delivery to premises on land having a frontage to the specified public place, being premises licensed for the sale of liquor pursuant to the Sale of Liquor Act 1962:

10 “(c) The transport of liquor from outside the specified public place to premises on land having a frontage to the specified public place by or for delivery to a person residing on those premises or by his bona fide visitors, or from such premises to a place outside the specified public place by a person residing on the premises, provided the liquor is promptly removed from the specified public place.

15 “(4) The council shall give public notice of every decision under this section in a newspaper circulating in the district on at least 3 occasions during the period of 21 days immediately preceding the day on which the prohibition or prohibitions are to have effect, or, where the prohibition or prohibitions are to have effect on 2 or more days, the first of those days.

20 “(5) Notwithstanding **subsection (4)** of this section, where it is not practicable to give any or all of the notices required by that subsection because the decision of the council was made within a short period before the date of the prohibition or prohibitions, the council shall comply with **subsection (4)** of this section so far as is practicable and shall ensure that similar notices are displayed in the specified public place.

25 “(6) Every notice required to be given or displayed under **subsection (4) or subsection (5)** of this section shall—

30 “(a) Describe clearly the specified public place:

“(b) Specify whether or not the use of ordinary vehicular traffic is prohibited in the place, and shall specify the classes of vehicles (if any) to which the prohibition does not apply:

35 “(c) Specify any prohibitions relating to consumption of liquor and the bringing or possession of liquor or liquor containers that are to apply:

40 “(d) Specify the day or days on which any prohibition or prohibitions are to have effect, and the hours of each day during which the prohibition or prohibitions are to have effect:

“(e) Set out the powers conferred on the Police by this section:

“(f) Set out the maximum penalty for offences against this section.

“(7) Every person commits an offence, and is liable on summary conviction to a fine not exceeding \$500, who, knowing that any prohibition under **subsection (1)** of this section is in force in respect of the specified public place,—

“(a) Consumes liquor in the specified public place in breach of any prohibition imposed under **subsection (1)** of this section; or 5

“(b) Brings liquor or any empty liquor container into any specified public place in breach of any such prohibition; or 10

“(c) Is in possession of liquor or any empty liquor container in any specified public place in breach of any such prohibition; or

“(d) Drives or rides any motor vehicle, being ordinary vehicular traffic, in any specified public place in breach of any such prohibition. 15

“(8) Nothing in **subsection (7) (d)** of this section shall apply to the driving or riding of a motor vehicle by a person residing in premises on land having a frontage to the specified public place or by his bona fide visitors. 20

“(9) Any constable may, without warrant,—

“(a) Arrest any person whom he finds committing an offence against this section:

“(b) During the period of the prohibition or prohibitions, arrest any person whom he has reasonable cause to suspect of having committed such an offence: 25

“(c) But subject to **subsections (10) and (11)** of this section, search any parcel, package, bag, case, or other container in the possession of any person in, entering, or about to enter any specified public place in respect of which any prohibition relating to liquor under **subsection (1)** of this section is for the time being in force, for the purpose of ascertaining whether or not the parcel, package, bag, case, or container contains any liquor or any empty liquor container. 30 35

“(10) Before exercising the power of search conferred by **subsection (9) (c)** of this section, the constable shall inform the person in possession of the parcel, package, bag, case, or other container of the provisions of **subsection (11)** of this section, and in any case where that person is in possession of the item in the specified public place, give him a reasonable opportunity of removing the item from the specified public place. 40

“(11) No constable may exercise the power of search conferred by **subsection (9) (c)** of this section if the person in possession of the parcel, package, bag, case, or other container removes it from or, as the case may be, refrains from taking
5 it into the specified public place and leaves it outside that public place until the period of the prohibition ceases.

“(12) Any constable may seize and remove any liquor and its container or any other liquor container that he has reasonable cause to believe would be evidence of the
10 commission of an offence against this section.

“(13) Any liquor or container seized under **subsection (12)** of this section and in respect of which any person is convicted of an offence under this section, together, in the case of any liquor, with the container of the liquor, shall be deemed to be
15 forfeited to the Crown.

“(14) In this section,—

“ ‘Liquor’ has the same meaning as in the Sale of Liquor Act 1962:

20 “ ‘Public place’ means any place that, at any material time, is under the control of the council and is open to or being used by the public, whether free or on payment of a charge; and includes any road whether or not it is under the control of the council:

25 “ ‘Ordinary vehicular traffic’, in relation to any specified public place, means all vehicular traffic other than traffic of any kind (if any) that pursuant to the decision of the council under **subsection (1)** of this section is permitted to use the specified public place during the period of the prohibition.”

30 Cf. 1974, No. 66, s. 343; 1978, No. 43, s. 2

3. Repeal and revocation—(1) Section 343 of the principal Act is hereby repealed.

(2) The Local Authorities (Prohibiting Liquor in Streets and Roads) Regulations 1975 (S.R. 1975/268) are hereby revoked.