

**Manukau City Council (Control of
Graffiti) Bill**

Local Bill

As reported from the committee of the whole
House

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Graffiti) Bill**

Key to symbols used in reprinted bill

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House**

text inserted

~~text deleted~~

Hon George Hawkins

Manukau City Council (Control of Graffiti) Bill

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The Parliament of New Zealand enacts as follows:

1 Title
This Act is the Manukau City Council (Control of Graffiti) Act **2005**.

1A Commencement 5
(1) Section 6 comes into force on the day that is 3 months after the date on which this Act receives the Royal assent.
(2) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

Part 1 10
Preliminary provisions

2 Commencement
This Act comes into force on the day after the date on which it receives the Royal assent.

3 Purpose 15
The purpose of this Act is to—
(a) control the sale of spray paint in the District; and
(b) control graffiti in the District.

4 Application

This Act applies to activities in the District of the Manukau City Council.

5 Interpretation

In this Act, unless the context otherwise requires,— 5

authorised person means a person appointed by the Council in accordance with section 9 or a member of the police ~~or a police office~~

carry includes to have about one's person

Council means the Manukau City Council 10

District means the district of the Manukau City Council

graffiti implement includes any implement capable of being used to mark graffiti

minor means a person under the age of 18 years

mark graffiti includes to deface property in any way 15

private property means property other than property of the Crown or a local authority, or an agency or instrument of the Crown or a local authority

property includes a building, structure, road, paved surface or object of any kind 20

public place has the meaning given to it by section 2 of the Summary Offences Act 1981

sell includes offer for sale

shop means a building, place, or part of a building or place, where goods are sold by retail, or kept or offered for sale by retail; and— 25

(a) includes—

(i) an auction mart; and

(ii) a barrow, stall, or other subdivision of a market; but 30

(b) does not include a building, place, or part of a building or place, where the only business carried on is that of selling goods to people who are dealers who buy the goods to sell them again

spraycan means a container (made of any material or materials) that—

- (a) contains paint, dye, ink, or some other pigment; and
- (b) is so designed that the pigment it contains can be propelled from it (whether by a compressed or liquefied gas, or by mechanical means).

Part 2

Sale of spray paint

- 6 Cans of spray paint to be secured**
- (1) If members of the public have access to parts of retail premises where cans of spray paint are stored; the seller of the cans must keep the cans securely locked in a cabinet or otherwise secured to the satisfaction of the Council so that the public cannot access the cans without—
 - (a) the assistance of the seller; or
 - (b) the assistance of an employee or agent of the seller.
 - (2) **Subsection (1)** does not apply to the sale of cans of spray paint of a type that the Council has agreed in writing may be stored openly.
 - (3) Every person storing cans of spray paint in breach of **subsection (1)** commits an offence and is liable on summary conviction to a fine not exceeding \$1,500.
- 6 Spraycans in shops to be secured**
- (1) This subsection applies to a spraycan if—
 - (a) it is kept for sale in a part of a shop to which members of the public have access; and
 - (b) it is not—
 - (i) under the physical control of the occupier of the shop, or an agent or employee of the occupier; or
 - (ii) under the physical control of a potential buyer who is being directly supervised by the occupier of the shop, or an agent or employee of the occupier; and
 - (c) the shop is open to the public.
 - (2) The occupier of a shop must ensure that every spraycan in the shop to which **subsection (1)** applies is kept secured so that

members of the public cannot obtain possession of it without the help of the occupier, or an agent or employee of the occupier.

- (3) The occupier of a shop who fails or refuses to comply with **subsection (2)** commits an offence, and is liable on summary conviction to a fine not exceeding \$1,500. 5

7 Sale of cans of spray paint to minors

- (1) Every person commits an offence who sells a can of spray paint to a minor.
- (2) A person who commits an offence against **subsection (1)** is liable on summary conviction to a fine not exceeding \$1,500. 10
- (3) It is a defence to a charge of an offence against **subsection (1)** to prove that—
- (a) the defendant, or a person acting on behalf of the defendant, required the minor to produce evidence of age; 15
and
- (b) the minor made a false statement, or produced false evidence, in response to that requirement; and
- (c) in consequence the defendant reasonably assumed that, at the time of the sale, the minor was of or over the age of 18 years. 20

7 Sale of spraycans to people under 18 prohibited

- (1) Every person commits an offence who sells a spraycan to a person under the age of 18 years.
- (2) A person who commits an offence against **subsection (1)** is liable on summary conviction to a fine not exceeding \$1,500. 25
- (3) In any proceedings for an offence against **subsection (1)** in respect of selling a spraycan to a person (the **buyer**), it is a defence if the defendant proves that—
- (a) the defendant is— 30
- (i) a Board (within the meaning of section 2(1) of the Education Act 1989), or an employee of a Board;
or
- (ii) the governing body of a tertiary education provider (within the meaning of section 159(1)) 35

- of the Education Act 1989), or an employee of a tertiary education provider; and
- (b) when the spraycan was sold, the buyer was enrolled at a school or institution managed by the Board or tertiary education provider; and 5
- (c) the spraycan was sold to the buyer to enable him or her to undertake the work of his or her course at the school or institution, or to complete an assignment or project for the school or institution.
- (4) In any proceedings for an offence against **subsection (1)** in respect of selling a spraycan to a person (the **buyer**), it is a defence if the defendant proves that,— 10
- (a) before or at the time of the sale of the spraycan, there was produced to the defendant a document purporting to be an evidence of age document; and 15
- (b) the defendant believed on reasonable grounds that the document—
- (i) was in fact an evidence of age document; and
- (ii) related to the buyer; and
- (iii) indicated that the buyer was of or over the age of 18 years. 20
- (5) For the purposes of **subsection (4)**, **evidence of age document** means a document that—
- (a) contains—
- (i) a photograph of the person to whom it is issued; and 25
- (ii) information enabling the person's age to be determined; and
- (b) is—
- (i) a New Zealand passport; or 30
- (ii) an overseas passport; or
- (iii) a driver licence issued under the Land Transport Act 1998; or
- (iv) a document of the kind described in section 2A(2)(d) of the Sale of Liquor Act 1989. 35

8 Notice to be displayed

- (1) A notice containing the following words must be displayed in a prominent position in premises from which ~~cans of spray paint~~ spraycans are sold:

IT IS GENERALLY UNLAWFUL TO SELL CANS OF SPRAY PAINT SPRAYCANS TO PERSONS UNDER 18. PERSONS MAY BE REQUIRED TO PRODUCE EVIDENCE OF AGE WHEN PURCHASING CANS OF SPRAY PAINT SPRAYCANS.

- (2) The words required to be displayed on a notice under **subsection (1)** must appear on the notice in legible letters or numerals not less than 15 millimetres in height and of a colour that contrasts with the background colour of the notice. 10
- (3) Every person commits an offence who, being a seller of ~~cans of spray paint~~ spraycans, fails to display a notice in accordance with **subsections (1) and (2)**. 15
- (4) A person who commits an offence against **subsection (3)** is liable on summary conviction to a fine not exceeding \$500.

9 Appointment and powers of authorised persons

- (1) The Council may issue a warrant to an officer or any person under section 174 of the Local Government Act 2002 as an authorised person for the purposes of the enforcement of this Part or provisions of this Part specified in the warrant. 20
- (2) Subject to any conditions specified in the warrant, an authorised person may, as reasonably required for the purposes of enforcing a provision of this Part that the person is authorised to enforce, enter and remain in any premises from which the authorised person reasonably believes ~~cans of spray paint~~ spraycans are being or have been sold. 25
- (3) An authorised person who enters premises under this section may— 30
- (a) investigate whether the provisions of this Part that the person is authorised to enforce are being or have been complied with; and
- (b) take photographs or make films or other recordings in the premises. 35

- (4) An authorised person may only exercise powers under this section in relation to premises during the usual business hours of the premises.
- (5) An authorised person must, on demand by a person affected by an exercise or proposed exercise of a power under this section, produce for inspection by the affected person, the warrant issued to the authorised person under the Local Government Act 2002. 5
- (6) Every person commits an offence who,—
- (a) without reasonable excuse, hinders or obstructs an authorised person in the exercise of powers under this section; or 10
- (b) uses abusive, threatening or insulting language to an authorised person.
- (7) A person who commits an offence against subsection (6) is liable on summary conviction to a fine not exceeding \$1,500. 15

Part 3 Graffiti offences

- 10 Marking of graffiti**
- (1) Every person commits an offence who without lawful authority marks graffiti. 20
- (2) A person who commits an offence against **subsection (1)** is liable on summary conviction to a fine not exceeding \$2,500.
- (3) A court finding a person guilty of an offence against this section must,— 25
- (a) if the court is satisfied that it will be reasonably practicable for the person to take action, under the supervision of an appropriate authority, to remove or obliterate the graffiti, order that the person take that action and, in doing so, comply with all reasonable directions of the Council; or 30
- (b) in any other case, impose a sentence of reparation pursuant to the provisions of subpart 1 of Part 2 of the Sentencing Act 2002.
- (4) An order under **subsection (3)(a)** will have effect as an order requiring the performance of community work. 35

- 10** **Graffiti vandalism, tagging, defacing, etc** 5
- Every person is liable to a community-based sentence (within the meaning of section 4(1) of the Sentencing Act 2002) or a fine not exceeding \$2,000, or to both, who writes, draws, paints, sprays, or etches on, or otherwise marks any building, structure, road, tree, property, or other thing—
- (a) without lawful authority; and
- (b) without the consent of the occupier or owner or other person in lawful control.
- 11** **Carrying graffiti implement** 10
- (1) Every person commits an offence who—
- (a) carries a graffiti implement with the intention of using it to mark graffiti without lawful authority; or
- (b) carries a graffiti implement of a prescribed class without lawful excuse in a public place or a place in which the person is trespassing or has entered without invitation. 15
- (2) A person who commits an offence against **subsection (1)** is liable on summary conviction to a fine not exceeding \$1,500.
- (3) For the purposes of this section the following classes of graffiti implement are prescribed: 20
- (a) graffiti implements capable of spraying paint or a similar substance:
- (b) graffiti implements designed or modified to produce a mark that—
- (i) is not readily removable by wiping or by use of water or detergent; and 25
- (iii) is more than 15 millimetres wide:
- (c) graffiti implements capable of etching glass.

Part 4

Council powers in relation to graffiti 30

- 12** **Council may remove or obliterate graffiti**
- (1) The Council may enter private property and take any action necessary to remove or obliterate graffiti on the property that is visible from a public place if—

- (a) a notice under this section was served on the owner or occupier of the property at least ten days prior to the action being taken; and
- (b) the owner or occupier on whom the notice was served has not objected, in accordance with the notice, to the action being taken. 5
- (2) A notice served on an owner or occupier under this section must—
- (a) be in writing; and
- (b) give particulars of the action proposed to be taken by the Council; and 10
- (c) specify the day on which the Council proposes to take the action; and
- (d) advise the owner or occupier that—
- (i) the owner or occupier may, prior to the specified day, object to the proposed action by notifying the Council, or a specified agent of the Council, in a manner specified in the notice; and 15
- (ii) if such an objection is made, the Council will not take the proposed action. 20
- (3) In taking action to remove or obliterate graffiti under this section, the Council must—
- (a) take reasonable steps to consult with the owner or occupier of the property in relation to the manner in which the action is to be taken; and 25
- (b) ensure, as far as practicable, that the work is carried out—
- (i) expeditiously and in such a way as to avoid unnecessary inconvenience or disruption to the owner or occupier of the property; and 30
- (ii) with reasonable care and to a reasonable standard.
- (4) Action to be taken by the Council under this section may be taken on the Council's behalf by an employee of the Council or by another person authorised by the Council for that purpose. 35
- (5) No civil liability attaches to the Council, an employee of the Council, or a person acting under the authority of the Council, for anything done by the Council, employee, or person under this section.

- (6) Nothing in this section imposes a duty on the Council to remove or obliterate graffiti.

Part 5 Infringement offences

- 13 Infringement offences** 5
- (1) In this Act, infringement offence means an offence specified in **Schedule 1**.
- (2) Where any person is alleged to have committed an infringement offence, that person may either—
- (a) be proceeded against summarily for the offence; or 10
- (b) be served with an infringement notice as provided in **section 14**.
- 14 Infringement notices**
- (1) An infringement notice may be served on a person if a police officer member of the police, or an authorised person in the case of an infringement under **section 6(3)** or **section 8(3)**— 15
- (a) observes a person committing an infringement offence; or
- (b) has reasonable cause to believe that an infringement offence is being or has been committed by that person. 20
- (2) An infringement notice may be served—
- (a) by a police officer member of the police, or an authorised person in the case of an infringement under **section 6(3)** or **section 8(3)** (not necessarily the person who issued the notice), personally delivering it (or a copy of it) to the person alleged to have committed the infringement offence; or 25
- (b) by post addressed to that person's last known place of residence or business.
- (3) For the purposes of the Summary Proceedings Act 1957, an infringement notice sent to a person under **subsection (2)(b)** must be treated as having been served on the person when it was posted. 30
- (4) An infringement notice must be in the form prescribed in **Schedule 2**, and must contain the following particulars: 35

- (a) details of the alleged infringement offence sufficient to inform fairly a person of the time, place, and nature of the alleged offence:
 - (b) the amount of the infringement fee specified for that offence in **Schedule 1**: 5
 - (c) the time within which the infringement fee must be paid:
 - (d) the address of the place at which the infringement fee must be paid:
 - (e) a summary of the provisions of section 21(10) of the Summary Proceedings Act 1957: 10
 - (f) a statement that the person served with the notice has a right to request a hearing:
 - (g) a statement of what will happen if the person served with the notice neither pays the infringement fee nor requests a hearing: 15
 - (h) any other particulars as are prescribed.
- (5) If an infringement notice has been issued under this section—
- (a) proceedings in respect of the offence to which the notice relates may be commenced in accordance with section 21 of the Summary Proceedings Act 1957, and 20
 - (b) the provisions of that section apply with all necessary modifications.

Part 6

Powers of police

25

15 **Police or authorised person may require certain information**

- (1) If a police officer or authorised person believes on reasonable grounds that a person is committing or has committed an offence under this Act, the police officer or authorised person may direct the person to give— 30
- (a) his or her name and address; and
 - (b) to the extent known to that person, the name and address and whereabouts of any other person connected in any way with the alleged offence. 35
- (2) Every person commits an offence who intentionally refuses to give information when directed to do so by any police offi-

cer or authorised person under **subsection (1)**, or knowingly
misstates information:

- (3) A person who commits an offence against **subsection (2)** is
liable on summary conviction to a fine not exceeding \$500:

16 Arrest

5

Any ~~police officer~~ member of the police, and all persons whom
he or she calls to his or her assistance, may arrest and take
into custody without a warrant any person whom he or she has
good cause to suspect of having committed an offence against
section 10(1) **section 10** or **section 11(1)** of this Act.

10

Schedule 1
Infringement offences and fees**s 13**

Section	Brief description of offence	Infringement fee (\$)
6(3)	Failing to properly store can of spray paint	\$200
8(3)	Failing to display a notice	\$100
10(1)	Mark graffiti without lawful authority	\$300

Schedule 2
Infringement notice

s 14

(Issued under authority of **section 14** of the
Manukau City Council (Control of Graffiti) Act
2005)

5

Infringement notice No: Date of notice:

All queries and correspondence regarding this infringement notice
must be directed to (*insert address*).

This notice is issued to—

Name:

10

Address:

This notice is issued by

(*name and number of member of police issuing the notice*).

OR

(*name of authorised person, for MANUKAU CITY COUNCIL*)

15

DETAILS OF ALLEGED INFRINGEMENT OFFENCE(S)

The member of the police

OR

The authorised person

issuing this notice has reasonable cause to believe that on (*insert day
and date*) at (*insert details of place*) you committed the following
infringement ~~offence(s)~~ offence:

20

- * 1. Being the seller of cans of spray paint, where members of the
public have access to parts of retail premises where cans of
spray paint are stored; you failed to keep the cans securely
locked in a cabinet or otherwise secured to the satisfaction of
the Council so that the public cannot access the cans without—
(a) the assistance of the seller; or
(b) the assistance of an employee or agent of the seller.

25

- * 2. You failed to display a notice containing the following words, in legible letters or numerals not less than 15 millimetres in height and of a colour that contrasts with the background colour of the notice, in a prominent position in premises from which cans of spray paint are sold: 5
- IT IS GENERALLY UNLAWFUL TO SELL CANS OF SPRAY PAINT SPRAYCANS TO PERSONS UNDER 18. PERSONS MAY BE REQUIRED TO PRODUCE EVIDENCE OF AGE WHEN PURCHASING CANS OF SPRAY PAINT SPRAYCANS.** 10
- * 3. You, without lawful authority, marked graffiti:
- * The infringement notice may specify 1 or more infringement offences. ~~Delete if inapplicable:~~
- The infringement fee/s payable in respect of the infringement offence/s described above is/are (*insert fee for offence or offences*). 15
- Infringement fees are payable within 28 days after (*earliest date notice delivered personally or posted*).
- Infringement fees are payable at (*address where fees payable*). 20
- This notice, or a copy of it, should be presented or forwarded when making payment. Cheques or money orders should be made out to the New Zealand Police/Manukau City Council (*delete one*) and should be crossed or marked “NOT TRANSFERABLE” or “ACCOUNT PAYEE ONLY”. If this notice sets out more than 1 infringement offence, the total amount of 25
- the infringement fees payable is \$.....

IMPORTANT: Please read the summary of rights printed on the following pages.

SUMMARY OF RIGHTS

1. This notice sets out 1 or more alleged infringement offences. If this notice sets out more than 1 alleged infringement offence, each offence that is identified by a number is a separate infringement offence. You may decide what to do in respect of each alleged offence individually, and may act in the same way 30

in respect of all alleged offences or in different ways in respect of different alleged offences, as set out below.

Payments

2. If you pay the infringement fee within 28 days of the issue of this notice, no further action will be taken. Payment may be made at the places indicated on the front of this notice. 5

Defences

3. You have a complete defence against proceedings if the infringement fee was paid to the New Zealand Police/ Manukau City Council (*delete one*) at any of the places for payment shown on the front page of this notice or within 28 days after you were served with a reminder notice. Note that late payment or payment at any other place will not be a defence. 10

Further Action

4. If you wish to 15
- (a) raise any matter relating to the alleged offence for consideration by the New Zealand Police/Manukau City Council (*delete one*); or
 - (b) deny liability for the offence and request a court hearing (refer to paragraphs 5 and 9 below); or 20
 - (c) admit liability for the offence, but wish to have a District Court consider written submissions as to penalty or otherwise (refer to paragraphs 6 and 9 below),
- you should write to the New Zealand Police/Manukau City Council (*delete one*) at the address shown on the front page of this notice. Any such letter should be personally signed. 25
5. You have a right to a court hearing. If you deny liability for the offence and request a hearing, the New Zealand Police/Manukau City Council (*delete one*) will serve you with a notice of hearing setting out the place and time at which the matter will be heard by the court (unless the New Zealand 30

Police/Manukau City Council (*delete one*) decide not to start court proceedings).

Note that if the court finds you guilty of the offence, costs will be imposed in addition to any penalty.

6. If you admit the offence but want the court to consider your submissions as to penalty or otherwise, you should, in your letter— 5
- (a) ask for a hearing; and
 - (b) admit the offence; and
 - (c) set out the written submissions you wish to be considered by the court. 10

The New Zealand Police/Manukau City Council (*delete one*) will then file your letter with the court (unless they decide not to commence court proceedings). There is no provision for an oral hearing before the court if you follow this course of action. 15

Note that costs will be imposed in addition to any penalty.

Non-payment of fee

7. If you do not pay the infringement fee and do not request a hearing within 28 days after the issue of this notice, you will be served with a reminder notice (unless the New Zealand Police/Manukau City Council (*delete one*) decide otherwise). 20
8. If you do not pay the infringement fee and do not request a hearing within 28 days after being served with the reminder notice, the New Zealand Police/Manukau City Council (*delete one*) may file the reminder notice in the court and you will become liable to pay **costs in addition to the infringement fee**, under section 21(5) of the Summary Proceedings Act 1957. 25

Queries/Correspondence

9. When writing or making payment, please include 30
- (a) the date of the infringement; and
 - (b) the infringement notice number; and

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- (c) the identifying number of the alleged offence and the course of action you are taking in respect of it; and
- (d) your address for replies.

Note

Full details of your rights and obligations are in section 21 of 5
the Summary Proceedings Act 1957.

All queries and all correspondence regarding this infringement
notice must be directed to the New Zealand Police/Manukau
City Council (*delete one*) at the address for correspondence
shown. 10

Legislative history

22 November 2005	Introduction (Bill 5-1)
7 December 2005	First reading and referral to Local Government and Environment Committee
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