

Manukau City Council (Regulation of Prostitution in Specified Places) Bill

Local Bill

Explanatory note

General policy statement

This Bill provides for local bylaw control over the locations where the business of prostitution or commercial sexual services may occur when that business or those services take place or are conducted other than in a brothel or a small owner-operated brothel in Manukau City.

The purpose of the Bill is to authorise the Manukau City Council to make bylaws prohibiting the business of prostitution or commercial sexual services in specified public places in Manukau City. The business of prostitution in private premises carried on in accordance with the provisions of the Prostitution Reform Act 2003 will not be affected.

The Bill gives the Manukau City Council the power to make bylaws for this purpose only if it is first satisfied that it is necessary to do so to prevent activities or behaviour in a public place that are likely to cause a nuisance or serious offence to ordinary members of the public using the area, or because the activities or behaviour are incompatible with the existing character or use of that area. No such bylaw may have the effect of prohibiting the conduct of the business of prostitution or commercial sexual services in all public places in the district.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 provides that the Bill comes into force on the day after the date on which it receives the Royal assent.

Clause 3 states that the purpose of the Bill is to authorise the Manukau City Council to make bylaws specifying places in the district where the business of prostitution or

commercial sexual services may not occur otherwise than in a brothel or a small owner-operated brothel.

Clause 4 contains interpretation provisions. Where appropriate, the definitions are the same as those in the Prostitution Reform Act 2003.

Clause 5 allows the Council to make bylaws designating any public place as a specified place. The business of prostitution or commercial sexual services may not be conducted or take place in a specified place, except in a brothel or a small owner-operated brothel. Before such a bylaw can be made the Council must be satisfied that it is necessary to prevent activities or behaviour in a public place that are likely to cause a nuisance or serious offence to ordinary members of the public using the area, or are incompatible with the existing character or use of that area. A bylaw must not have the effect of prohibiting the taking place or the conduct of the business of prostitution or commercial sexual services in all public places in the district.

Clause 6 requires the Council to signpost specified places where it is reasonably practicable to do so.

Clause 7 applies the provisions of the Local Government Act 2002 as to the public notice and availability of the bylaw to any bylaw made under this Act.

Clause 8 requires the Council to review a bylaw made under the Act within 5 years.

Clause 9 requires the Council to undertake a review of the bylaw 10 years after its initial review.

Clause 10 describes the procedure for and the nature of a review of any bylaw made under the Act.

Clause 11 states that a bylaw made under the Act, if not reviewed, will be revoked after 2 years as required.

Clause 12 prohibits the conduct of the business of prostitution or the supply or receipt of any commercial sexual service in a specified place. Contravention of this provision is an offence carrying a fine of up to \$2,000.

Clause 13 gives a constable the power to arrest without warrant a person who he or she has good cause to suspect has committed an offence under *clause 12*.

Clause 14 gives a constable the power to stop a vehicle in order to make an arrest. The constable must be readily identifiable as a constable either by uniform or by the nature of the vehicle used to stop the car, and must provide identification and information to establish the reason the vehicle has been stopped. The constable is authorised to search the vehicle, require any person in the vehicle to give their name and address, and to require the vehicle to remain stopped while exercising the powers in the Act. Failure to stop or comply carries a fine of up to \$1,000.

Clause 15 states only a constable may lay an information under the Act.

Hon George Hawkins

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Manukau City Council (Regulation of Prostitution in Specified Places) Act **2010**.

2 Commencement

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

3 Purpose

The purpose of this Act is to authorise the Council to make bylaws specifying places in the district where the business of prostitution or commercial sexual services may not occur otherwise than in a brothel or a small owner-operated brothel. 5

4 Interpretation

(1) In this Act, unless the context otherwise requires,— 10

brothel has the same meaning as in the Prostitution Reform Act 2003

Council means—

(a) from the date of commencement of this Act until 31 October 2010, the Manukau City Council:

(b) from 1 November 2010 the Auckland Council 15

district means the district of the Manukau City Council as at the date of commencement of this Act

prostitution has the same meaning as in the Prostitution Reform Act 2003

public place has the same meaning as in the Prostitution Reform Act 2003

small owner-operated brothel has the same meaning as in the Prostitution Reform Act 2003 20

specified place means a public place designated as a specified place for the purpose of this Act in a bylaw made under **section 5**.

(2) Without limiting the definition of the term **public place** or **specified place** in **subsection (1)**, for the purposes of this Act, a person is in a **specified place** if he or she is in or on a vehicle that is in a **specified place**. 25

5 Power to make bylaws designating specified places

(1) The Council may, from time to time, make bylaws designating any public place as a specified place for the purposes of this Act.

(2) In making a bylaw under **subsection (1)**, the Council must use the special consultative procedure set out in section 83 of the Local Government Act 2002. 30

(3) Section 86(2)(a) and (b) of the Local Government Act 2002 apply to the making of a bylaw under **subsection (1)** as if it were an activity described in section 86(1) of that Act.

(4) The Council may make a bylaw under this section only if it is satisfied that the bylaw is reasonably necessary in order to prevent activities or behaviour in a public place that— 35

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- (a) are likely to cause a nuisance or serious offence to ordinary members of the public using the area; or
- (b) are incompatible with the existing character or use of that area.
- (5) A bylaw must not be made under **subsection (1)** if the effect of the bylaw, either by itself or in conjunction with other bylaws made under **subsection (1)**, would be that all the public places in the district are specified places. 5
- 6 Signposting of specified places**
- (1) The Council must, where reasonably practicable, indicate the location of a specified place, designated by a bylaw made under **section 5**, 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. 10
- (2) No prosecution under **section 12**, and no arrest or seizure under **section 13**, may be challenged on the ground that a notice was not affixed in accordance with **subsection (1)**.
- 7 Public notice of bylaws and availability of copies** 15
- Section 157 of the Local Government Act 2002 applies to a bylaw made under **section 5** as if the bylaw had been made under that Act.
- 8 Review of bylaws**
- The Council must review a bylaw made by it under **section 5** no later than 5 years after the date on which the bylaw was made. 20
- 9 Further reviews of bylaws every 10 years**
- The Council must review a bylaw made by it under **section 5** no later than 10 years after it was last reviewed as required by **section 8** or this section.
- 10 Procedure for and nature of review**
- (1) The Council must review a bylaw to which **section 8 or 9** applies by making the determinations required by **section 5(4)**. 25
- (2) For the purposes of **subsection (1)**, **section 5(4)** applies with all necessary modifications.
- (3) If, after the review, the Council considers that the bylaw—
- (a) should be amended, revoked, or revoked and replaced, it must act in accordance with **section 5(2) and (3)**: 30
- (b) should continue without amendment, it must use the special consultative procedure in section 83 of the Local Government Act 2002, and **section 5(3)** does not apply.
- (4) For the purposes of **subsection (3)(b)**, the statement of proposal referred to in section 83(1)(a) of the Local Government Act 2002 must include— 35
- (a) a copy of the bylaw to be continued; and

- (b) the reasons for the proposal.

11 Bylaw not reviewed within specified time frame revoked

A bylaw that is not reviewed as required under **section 8 or 9**, if not earlier revoked by the Council, is revoked on the date that is 2 years after the last date on which the bylaw should have been reviewed under that section.

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12 Prohibition of business of prostitution or commercial sexual services

- (1) Except within the confines of a brothel or small owner-operated brothel, no person may conduct the business of prostitution or supply or receive any commercial sexual service or services at any time in a specified place in the district.

- (2) Every person who, without reasonable excuse, contravenes **subsection (1)** commits an offence and is liable on summary conviction to a fine not exceeding \$2,000.

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13 Powers of arrest

A constable may, without a warrant, arrest a person who the constable has good cause to suspect has committed an offence against **section 12(2)**.

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14 Power to stop vehicle to exercise powers of arrest or seizure

- (1) A constable may stop a vehicle without a warrant to exercise the power in **section 13** in relation to a person if the constable has reasonable grounds to believe that the person is in or on the vehicle.

- (2) A constable who stops a vehicle under **subsection (1)** must be—

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- (a) wearing a uniform or distinctive cap, hat, or helmet with a badge of authority affixed to that cap, hat, or helmet; or
- (b) following immediately behind the vehicle in a motor vehicle displaying flashing blue lights, or flashing blue and red lights, and sounding a siren.

- (3) A constable exercising the stopping power conferred by **subsection (1)** must, immediately after the vehicle has stopped,—

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- (a) identify himself or herself to the driver of the vehicle; and
- (b) tell the driver that the stopping power is being exercised under this section for the purpose of exercising powers under **section 13**; and
- (c) if not in uniform and if so required, produce evidence that he or she is a constable.

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- (4) Without limiting **section 13**, a constable exercising the stopping power conferred by **subsection (1)** may do any 1 or more of the following:

- (a) search the vehicle to locate a person referred to in **subsection (1)**;
- (b) require any person in or on the vehicle to state his or her name, address, and date of birth, or any of those particulars that the constable may specify:

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- (c) require the vehicle to remain stopped for as long as is reasonably necessary to exercise the powers in—
- (i) **paragraphs (a) and (b)**; and
 - (ii) **section 13**, in relation to a person referred to in **subsection (1)** of this section. 5
- (5) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$1,000 who, without reasonable excuse, fails—
- (a) to stop as soon as practicable when required to do so by a constable exercising the power conferred by this section; or
 - (b) to comply with a requirement made by a constable under **subsection (4)(b) or (c)**. 10
- (6) A constable may, without warrant, arrest any person who the constable has good cause to suspect has committed an offence against **subsection (5)**.
- 15 Laying of information for offence**
- An information for an offence under this Act may be laid only by a constable. 15