

Upper Hutt City Unoccupied Commercial Premises Bylaw 2013

1. Introduction

Council is conscious that if Unoccupied Commercial Premises are allowed to fall into disrepair, or are not maintained to immediately tenable standards, they undermine public health and safety, increase the potential for offensive behaviour in public places, and expose the public to nuisance.

This bylaw aims to protect the public from nuisance, protect, promote and maintain public health and safety and minimise the potential for offensive behaviour in public places by setting standards for the maintenance of Unoccupied Commercial Premises.

This bylaw was adopted on 27th February 2013 and came into force from 8th March 2013.

It was reviewed and affirmed on 7th November 2018, and reprinted on 23 December 2020.

2. Interpretation

2.1. In this Bylaw, unless the context otherwise requires:

Commercial Premises means land, whether or not it is all or only part of the land described in a Computer Register or rating unit, that is:

- able to be separately occupied, and
- zoned Business in the Upper Hutt City Council District Plan, or
- rated in the Business or utilities rating categories, or
- land described in Schedule 1, Part 1, section 6 of the Local Government Rating Act 2002 and includes all buildings, part buildings, fences, yards or other structures situated on the land.

Immediately Tenable means premises that do not require any work done to them other than that work required for the purpose of a new tenant before they can be let. The listed examples of the type of work that would not be considered to be "required for the purpose of a tenant" are for clarification and are not exhaustive:

- repair or maintenance of broken or rusty or unmaintained fences
- repair of broken windows
- removal of boarding or permanently attached materials from windows

- removal of accumulated litter, and or rubbish
- removal of noxious weeds or plants
- removal of weeds or plants reducing the usability of the yard
- painting areas of peeling paint
- fumigation, eradication of vermin
- building work required to make the premises comply with the Building Act 2004.

Nuisance means both a private and public nuisance and includes criminal nuisance and the meaning in section 29 of the Health Act 1956.

Offensive Behaviour means behaviour in or within view of a public place, which would be considered by an ordinary and reasonable New Zealander to be such as would wound the feelings of, or arise real anger, or resentment, or disgust, or outrage, in the mind of the type of person actually subjected to it.

Owner means in relation to any Premises the person for the time being entitled to receive the rent from the Premises, whether on his or her own account or as an agent of, or trustee of for any other person, or who would be so entitled if the Premises were let at a rent; and Owner includes any person for the time being registered under the Land Transfer Act 1952 as a proprietor of the Premises.

Unoccupied means Premises that are vacant whether or not they are subject to a lease or tenancy agreement.

3. Application

- 3.1. This Bylaw applies to all Unoccupied Premises within Upper Hutt City.

4. Owners obligations

- 4.1. An Owner of Unoccupied Commercial Premises shall keep and maintain those Premises to an Immediately Tenantable standard. To keep Unoccupied Commercial Premises to an Immediately Tenantable standard an Owner must both do the following and ensure the Unoccupied Commercial Premises comply with the definition of Immediately Tenantable:

4.1.1. remove accumulated litter and rubbish that is likely to attract, harbour, or promote the breeding of rodents, flies, cockroaches, mosquitos, or other vermin from the Unoccupied Commercial Premises

4.1.2. maintain all verandas constructed over public places so that they are not a nuisance to the public, they do not reduce public health and safety or increase the likelihood of Offensive Behaviour in immediately neighbouring public places

4.1.3. repair all damage to the ground floor level of the Unoccupied Commercial Premises by removing graffiti and taking whatever steps are necessary to ensure that the Unoccupied Commercial Premises condition does not undermine public health or safety, increase the likelihood of nuisance or offensive public behaviour in neighbouring public places.

- 4.2. Council will decide at its discretion with reference to the examples in this Bylaw whether work is required to make any Unoccupied Commercial Premises Immediately Tenantable or for the Owner to comply with the Owners' obligations under section 4.1.
- 4.3. Where Council considers an owner is not maintaining Unoccupied Commercial Premises to an Immediately Tenantable standard or is not fulfilling the Owner's obligations in section 4.1 of this Bylaw, Council may:
 - 4.3.1. By notice in writing require the Owner to within a reasonable time do such work or take such action to make the Unoccupied Commercial Premises comply with the Immediate Tenantable standard in this Bylaw and fulfils the Owner's obligations in section 4.1. Both the reasonable time and the required work or action will be prescribed in the notice.
 - 4.3.2. In the event the Owner does not comply with the notice, Council may carry out the action prescribed in the notice and recover the cost of doing such work from the Owner as a debt.
 - 4.3.3. Council may only enter the Unoccupied Commercial Premises and carry out the work if it has given the Owner 48 hours' prior written notice delivered or posted to the owner's address for Upper Hutt City council rates tax invoices of its intention to do so.
 - 4.3.4. Prosecute the Owner under this Bylaw.

5. Offences

- 5.1. Everyone commits an offence against this Bylaw who does not comply with this Bylaw.
- 5.2. Council is not required to issue a notice under section 4.3.1 before prosecuting an Owner under section 4.3.4.
- 5.3. The continued non-compliance of Unoccupied Commercial Premises with one or more of the provisions of this Bylaw shall be deemed to be a continuing offence under this Bylaw.
- 5.4. The compliance with a section 4.3.1 notice by an Owner is not a defence to prosecution under this Bylaw.

6. Penalties

- 6.1. Council may, at its sole discretion, limit a fine for a first offence under this Bylaw to no more than \$500.
- 6.2. If the fine has not been limited under section 6.1 under this Bylaw the penalty is a fine not exceeding \$20,000, or the penalty imposed by the Local Government Act 2002, whichever is greater.