

## Part 2

### Interpretation

#### 5. Definitions

In this bylaw:

**“Annual registration”** means the registration of food premises required by the Food Hygiene Regulations 1974 and the Health (Registration of Premises) Regulations 1966;

**“Appliance”** has the same meaning as it has in s.2 of the Food Act 1981;

**“Approved Food Hygiene Course”** means a training programme which has been accredited by the New Zealand Qualifications Authority for the purposes of food preparation and handling, or an alternative course approved in writing by an Environmental Health Officer;

**“Environmental Health Officer”** means an Environmental Health Officer appointed by the Council;

**“Food”** has the same meaning as it has in s.2 of the Food Act 1981;

**“Food handler”** means any person who manufactures, prepares or packs food for sale. It does not apply to:

- (a) Supermarket checkout operators or persons handling already packaged food at the point of sale;
- (b) Persons only employed in the handling of packaged goods and storage or the carriage of packaged goods to and from storage;
- (c) Persons only employed in the delivery of packaged goods to and from premises; or
- (d) Any other person employed in food premises or who works in connection with food premises who in the opinion of an Environmental Health Officer should be exempted.

**“Food premises”** means premises which must be registered under the Health (Registration of Premises) Regulations 1966 and Regulation 4 of the Food Hygiene Regulations 1974. Note that “Exempt Premises” operate under an approved Food Safety Programme pursuant to the Food Act 1981. They are exempt from the requirements of the Food Hygiene Regulations 1974, and are not required to register with, or be inspected by, the Council. They are audited by a New Zealand Food Safety Authority approved auditor.

**“Grade and grading”** means the allocated grade resulting from an inspection of the food premises by an Environmental Health Officer assessed according to the Grading of Food Premises Grading determined by the Council from time to time.

**“Occupier”** has the same meaning as it has in Regulation 2 of the Food Hygiene Regulations 1974.

**“Requisition”** means a written notice served on the occupier of food premises by an Environmental Health Officer specifying works that are required to be carried out on the premises in order for the premises to comply with food hygiene legislation and reduce

the risk of food born illness or contamination arising from any food prepared, manufactured, stored or sold from the premises.

**"New Zealand Qualification Authority"** means the New Zealand Qualifications Authority established under the Education Act 1989.

**"Sale or sell"** has the same meaning as in the Food Act 1981 and includes the extended meaning given in Regulation 2(5) of the Food Hygiene Regulations 1974.

## 6. General Requirements

- 6.1 Every occupier of food premises which are not exempt premises must comply with the obligations contained in the Health Act 1956, the Food Act 1981, the Food Hygiene Regulations 1974 and the Health (Registration of Premises) Regulations 1966. Failure to comply with those obligations is a breach of this bylaw.
- 6.2 The provisions contained in the rest of this bylaw apply to every occupier of food premises within the City which are not exempt premises, and are additional to the obligations referred to in 6.1.

## Part 3

### Closure of Premises

- 7.1 Where any food premises or part of any food premises or any appliance, fitting or fixture or other equipment on any food premises by reason of their situation, construction, disrepair, operation, or state are in such a condition that any food in the food premises maybe exposed to contamination or become dirty or deteriorate the Council's Team Manager: Environmental Compliance may serve a notice in writing on the occupier of the food premises requiring him/her to:
  - (a) stop using the premises as food premises;
  - (b) clean, reconstruct or repair the premises or part of the premises;
  - (c) stop using any appliance, fittings, fixture, or other equipment on the premises;
  - (d) clean, reconstruct or repair any appliance, fittings, fixtures or other equipment on the premises;
  - (e) adopt processes and procedures to ensure food safety and/or
  - (f) take any other specified action

In accordance with the requirements and within the time specified in the notice.

- 7.2 Where an occupier has been directed to cease to use any food premises, the occupier shall not recommence use of those food premises until permission has been given by an Environment Health Officer.
- 7.3 An occupier shall not continue to operate any food premises if the Council has revoked the Certification of Registration pursuant to Regulation 9(3) and (4) of the Health (Registration of Premises) Regulations 1966.

## Part 4

### Staff Qualifications

#### *Qualification Requirements*

- 8.1 No person shall be issued with a certificate of registration for any food premises unless that person has passed an Approved Basic Food Hygiene Course and will be on the food premises at all times when food is being manufactured, prepared, handled, sold or ancillary processes incidental thereto are being undertaken; **or**
- 8.2 There will be on the food premises at all times when food is being manufactured, prepared, handled, sold or ancillary processes are being undertaken, a manager or supervisor with sufficient authority and with specific responsibility for staff training and supervision, who has passed an Approved Basic Food Hygiene Course.
- 8.3 In the case of food premises which consist of separate departments or sections, each of which functions more or less in isolation from the others, one person per section will have sufficient authority and specific responsibility for staff training and supervision and have passed an Approved Basic Food Hygiene Course.
- 8.4 In addition to the qualification requirements in 8.1, 8.2, and 8.3, every occupier shall ensure that:
- (a) At least 75% of all persons on the premises at any one time employed as food handlers, have passed an Approved Basic Food Hygiene Course and
  - (b) All food handlers who have not attended an Approved Basic Food Hygiene Course shall complete such a course within 3 months of this bylaw coming into force, or within 3 months of commencing work on the premises.

#### *Refresher Courses/retraining*

- 8.6 All persons who have passed Approved Basic Food Hygiene Courses must attend refresher courses or food hygiene retraining every three years to ensure that their knowledge of food hygiene standards and methods remains current and relevant.

#### *Exemption from qualification (type of premises)*

- 8.7 An Environmental Health Officer may grant an exemption from the requirements of this part of the bylaw if satisfied that it would be unreasonable or impracticable to insist on compliance having regard to the type of premises or the type of food being packed, stored, handled or sold.

#### *Exemption from qualification (equivalent qualification held)*

- 8.8 An Environmental Health Officer may, in respect of particular food handlers grant an exemption from the requirements regarding certification in food hygiene if an equivalent/other suitable qualification is held.

#### *Record of Qualifications*

- 8.9 The holder of the certificate of registration or the occupier of food premises must keep on the premises where the food handlers are employed:
- (a) Adequate records of staff training on food hygiene and food safety;
  - (b) Copies of all certificates or other qualifications of persons employed on the premises.

#### *Availability of training records*

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- 8.10 The holder of the certification of registration, or the occupier of the food premises, must if requested by an Environmental Health Officer give to the officer the records required to be kept under clause 8.9.

## Part 5

### Food Utensil Hirers

#### *Approval of hire premises*

- 9.1 No person shall use any premises for the hire of utensils, dishes, glasses, crockery, cutlery or other appliances, used in the service or consumption of food unless the premises have been approved in writing by an Environmental Health Officer and comply with these requirements:
- (a) The walls, floors, ceilings and roofs must be built properly, kept in good repair and easy to clean;
  - (b) The premises must have sinks, dishwashing machines and other sanitary fittings reasonably necessary for the cleansing of utensils, dishes, glasses, crockery, cutlery or other appliances hired from the premises or used in connection with the hire of those items;
  - (c) The premises must have an adequate supply of hot and cold water, soap or other detergent;
  - (d) The premises must have wash hand basins for the use by people employed at the premises;
  - (e) All wash hand basins must be maintained in good clean working order, and must have a pipe supply of hot and cold water, or tempered running water at a temperature not less than 38° Celsius, soap or other detergent, nail brushes and paper towels or other drying equipment approved by an Environmental Health Officer;
  - (f) The premises must be kept adequately lit at all times when any work is being carried out to the satisfaction of an Environmental Health Officer;
  - (g) The premises must be ventilated to the satisfaction of an Environmental Health Officer;
  - (h) The premises and all fittings, appliances and utensils contained in the premises must be maintained in a good clean and tidy condition and free from any accumulation of boxes, rubbish or other material that may hide pests or insects;
  - (i) The premises must be kept as far as practical free of birds, vermin and insects;
  - (j) The premises must not be used for any purpose that might affect the cleanliness or hygienic condition of any articles for hire for use and service or eating of food;

#### *Washing of utensils*

- 9.2 No person shall hire out any utensils, dish, glass, crockery, cutlery, appliance, similar item or other equipment for use in the service or consumption of food unless it has been effectively cleansed and made hygienic by one of the methods set out in Regulation 35 of the Food Hygiene Regulations 1974.

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- 9.3 Any hot water rinsing machine or chlorine chemical rinsing machine installed for the purpose of meeting the requirements of clause 9.2 shall conform with the provisions of Regulations 37 or 37A of the Food Hygiene Regulations 1974.

*Previously used cardboard containers*

- 9.4 No cardboard container which has previously been used for containing unwashed utensils, dishes, crockery, cutlery, glasses, appliances or similar items may again be used for such items intended for use in the service and consumption of food, after they have been washed and made hygienic under the provisions of clause 9.2.

*Washing of other containers*

- 9.5 Subject to the prohibition contained in clause 9.4 regarding cardboard containers, no other type of container previously used for containing unwashed utensils, dishes, glasses, appliances or similar items may again be used for containing such items for use in the service and consumption of food unless the container has been washed and made hygienic under the provisions of clause 9.2 or by a method which may be approved by an Environmental Health Officer after taking into account the nature of the container and the material it is made from.

## Part 6

### Grading

*New food premises*

- 10.1 Upon receipt of a first application for a Certificate of Registration in respect of new food premises, an Environmental Health Officer will inspect the premises for the purposes of issuing the Certificate of Registration. Two months after the issue of the first Certificate of Registration, an Environmental Health Officer will inspect the premises for grading purposes, and shall grade the food premises in accordance with the Council's Grading of Food Premises Policy.

*Change of occupier*

- 10.2 New occupiers of existing food premises must apply to the Council for the transfer of the Certificate of Registration within fourteen days of taking over occupation of the food premises in accordance with Regulation 6 of the Health (Registration of Premises) Regulations 1966. Two months after the application for the transfer of the certificate is received, an Environmental Health Officer will inspect the premises for grading purposes.

*Grading Certificate*

- 10.3 The grading certificate noting the assessed grade as determined by the Environmental Health Officer will be immediately issued to the occupier of the food premises following a grading inspection. Additional copies of the grading certificate will be delivered to the occupier as soon as practicable following the grading inspection if additional copies are required to comply with 10.6 below.

*Annual inspection*

- 10.4 An Environmental Health Officer will perform a grading inspection annually, and within twelve months of the last grading inspection.
- 10.5 The grading certificate shall be current for a period not exceeding 12 months from the date of the grading inspection, or until such lesser time as it is amended, cancelled or

withdrawn by an Environmental Health Officer following a subsequent grading, or any other inspection during which the food hygiene of the premises has either improved or worsened, compared to the current grade awarded and noted on the certificate.

*Grading Certificate to be displayed*

- 10.6 The current grading certificate shall be conspicuously displayed in or about the food premises in a location which is visible to members of the public before they enter the premises. If all points of entry to the premises are not clearly defined, (such as in the case of a food hall in a mall) the certificate must be displayed on the food premises at a location or locations approved by an Environmental Health Officer, being a location which is visible to members of the public before they make a selection or purchase food items and is in accordance with any policy for the display of grading certificates made by Council from time to time.

*Certificates are non-transferable*

- 10.7 The grading certificate shall be specific to both the food premises and the occupier of the food premises at the time of the grading inspection. Grading certificates are not transferable.

*Application for re-grading*

- 10.8 An application for re-grading of food premises may be made by the occupier of the food premises at any time, but no such application will be considered by the Council until two months has expired since the last grading inspection.
- 10.9 The grading certificate remains the property of the Waitakere City Council.

## Part 7

### Administration

#### 11. Fees

The Council may by resolution publicly notified prescribe fees in respect of any certificate, authority, approval, permit, or consent from or inspection by the Council under this bylaw.

#### 12. Serving of Orders and notices

- 12.1 Except where otherwise expressly provided in any Act, in any case in which it is provided by this bylaw that an order may be made or notice given to any person requiring that person to do or abstain from doing anything, or any notice as required by this bylaw is to be given or sent to any person, the order or notice shall be delivered to that person either personally or by sending it to the person's last known address, place of abode, or business and in the case of a company to its registered office, by messenger or by post.
- 12.2 If that person is absent from New Zealand, the order or notice may be sent to his/her agent instead of to that person in any manner mentioned in the last preceding sub-clause.
- 12.3 If the person is not known, or is absent from New Zealand and has no known agent in New Zealand, and the order or notice relates to any land or building, the order or notice, addressed to the owner or occupier of the land or building, as the case may be, may be

served on the occupier of the property, or left with some person occupying the property, or, if there is no occupier, may be put up on some conspicuous part of the land or building. It shall not be necessary in any such notice to name the occupier or the owner of the land or building.

12.4 If that person is deceased, the order or notice shall be served in any manner as aforesaid on that person's personal or legal representative or executive.

12.5 Where an order or notice is sent by post, it must be sent so as to arrive in the due course of post on or before the latest time on which the order or notice is required to be served and shall be deemed to have been served at the time when the letter would be delivered in the ordinary course of post.

### 13. Powers of Delegation

In all cases where this bylaw provides for the issue of any order, certificate, notice requisition or licence, such order, certificate, notice, requisition, or licence shall be deemed to be issued in compliance with this bylaw if the same is issued by any officer of the Council authorised by the Council for that purpose.

### 14. Inspections

14.1 For any of the purposes of this bylaw any inspector, officer, or other person appointed by the Council in that behalf may at all reasonable times enter upon any land, building, or premises in order to carry out an inspection.

14.2 Every person who obstructs or hinders any such inspector or other person in the execution of these powers shall be liable to prosecution for an offence against this bylaw.

### 15. Offences and breaches

15.1 No person shall do anything or cause any condition to exist for which a licence, a certificate or approval from the Council is required under this bylaw without first obtaining that licence, certificate or approval and failing to do so shall constitute a breach of this bylaw.

15.2 No application for a licence certificate or authority from the Council, and no payment or receipt for any fee paid in connection with such application, licence, or authority shall confer any right, authority or immunity on the person making such application or payment.

15.3 A person commits a breach of this bylaw who:

(a) Does or causes to be done or knowingly permits or suffers to be done or is concerned in doing anything whatsoever contrary to or otherwise than as provided by this bylaw;

(b) Omits or neglects to do, or knowingly permits or suffers to remain undone anything which ought to be done at the time and in the manner provided by this bylaw;

(c) Knowingly permits or allows any condition to exist or continue to exist contrary to this bylaw or neglects to comply with any notice given to that person under this bylaw;

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- (d) Obstructs or hinders any officer of the local authority in the performance of any duty to be discharged by that officer under or in exercise of any power conferred by this bylaw;
- (e) Fails to comply with any lawful notice or direction given under this bylaw;
- (f) Fails to display a current grading certificate in a location or locations on the premises to which it relates in accordance with clause 10.6;
- (g) Displays a grading certificate that is not current;
- (h) Displays a grading certificate that is not applicable to the food premises or occupier to which the grading certificate relates.

## 16. **Enforcement and Penalties**

- 16.1 Pursuant to s.239 Local Government Act 2002, every person who breaches a bylaw, commits an offence and is liable on summary conviction to the penalties set out in s.242 Local Government Act 2002.
- 16.2 The Council may also apply to a District Court for an injunction restraining a person from committing a breach of the bylaw pursuant to s.162 Local Government Act 2002.
- 16.3 The Council may remove or alter a work or thing which has been constructed in breach of a bylaw and recover the cost of removal or alteration from the person who committed the breach by virtue s.163 Local Government Act 2002.

## 17. **Dispensations**

- 17.1 The Council may grant a dispensation from full compliance with any provision in this bylaw in a case where the Council is of the opinion that full compliance would needlessly and injuriously affect any person or business without a corresponding benefit to the public or any section of it.
- 17.2 Written application for a dispensation shall be made to the Council, giving full details of the relief sought and the reasons for the application. The Council's Planning and Regulatory Committee shall consider the application and may either refuse or grant it subject to such conditions as it considers appropriate.
- 17.3 The applicant for a dispensation may elect to appear in person or by representative when the application is being considered.

**Adopted at a meeting of the Waitakere City Council on                      by Resolution    \2005.**

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NOT ADOPTED BY COUNCIL

WAITAKERE CITY COUNCIL

DRAFT GRADING OF FOOD PREMISES POLICY

Part 1: GRADING OF PREMISES

1. The grading policy determined by the Council by ordinary resolution publicly notified from time to time shall take account of the following:
  - (a) Regulatory requirements;
  - (b) Current food safety knowledge, practice and technology;
  - (c) Cleanliness of premises, including restaurant facilities;
  - (d) Training of staff;
2. The grading given to individual food premises is based upon the last grading inspection and assessed according to Council's current grading criteria as follows:
  - **A Grade** exceeds regulatory food hygiene requirements, displays a high standard of cleaning and hygiene and superior food handling practices.
  - **B Grade** meets regulatory food hygiene requirements, displays a satisfactory standard of cleaning and hygiene and good food handling practices.
  - **D Grade** falls below the minimum regulatory food hygiene requirements. Improvements are required to cleaning and/or maintenance and/or food handling practices. Council has issued a requisition requiring all identified faults to be rectified within a specified time period. Depending on the nature of the faults, the Environmental Health Officer may suggest that the premises are closed voluntarily to allow work to be undertaken. A subsequent prosecution is at the discretion of the Environmental Health Officer depending upon all the circumstances.
  - **E Grade** – premises are found to be in a poor condition and well below the minimum regulatory food hygiene requirements. Improvements are required relating to cleaning and/or maintenance and/or food handling practices, or infestation. Council has issued a requisition requiring all identified faults to be rectified within a specified time period. Where an E grade is given, an automatic and immediate closure order is issued by the Environmental Health Officer, and a prosecution will be pursued.

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**PART 2: REQUIREMENTS FOR THE DISPLAY OF GRADING CERTIFICATES**

1. The general requirement for grading certificates to be displayed on Food Premises is stated in section 10.6 of the Food Safety Bylaw 2005 as follows:

*"The current grading certificate shall be conspicuously displayed in or about the food premises to ensure that it is visible to members of the public before they enter the premises. If all points of entry to the premises are not clearly defined (such as in the case of a food hall in a mall), the certificate must be displayed on the food premises at a location or locations to ensure that it is visible to members of the public before they select food or make a purchase to the satisfaction of an Environmental Health Officer in accordance with any policy for the display of grading certificates made by Council from time to time."*

2. The policy guidelines are as follows:

(a) ***In the case of premises with an external door, wall or window constructed wholly or partly of glass or other transparent material that is a customer entrance or is adjacent to a customer entrance:***

- (i) The grading certificate shall be displayed on the inside of the glass or other transparent material, facing outwards and clearly visible to any customer that may contemplate entering the premises through that entrance.
- (ii) The grading certificate must be displayed at a height of at least 1.6 metres but not more than 1.9 metres and when displayed adjacent to a customer entrance, displayed within 1 metre of the customer entrance.
- (iii) A grading certificate shall be displayed on or adjacent to each customer entrance.

Where there is no external door, wall or window made of glass then;

(b) ***Premises with an internal privacy barrier, wall or screen directly facing the customer entrance:***

Premises with an internal privacy barrier, wall or screen, facing a customer entrance shall display the grading certificate on the privacy barrier, wall or screen directly facing the customer entrance at a height of at least 1.6 metres but not more than 1.9 metres, so as to be clearly visible to any customer entering the premises.

Where there is no external door, wall or window made of glass, or privacy barrier, wall or screen inside the customer entrance then;

(c) ***Display at the service/sales counter:***

Grading certificates shall be clearly and visibly displayed at each service/sales counter in a conspicuous position and directly face the customer approaching and using the counter.

(d) ***Premises with a drive through sales option:***

Premises with a drive through option shall display a grading certificate in a prominent position at the start of the drive through, on the right hand side (drivers side) so that the certificate is readily visible to approaching motorists before an order is placed.

## SUMMARY OF INFORMATION

### DRAFT FOOD SAFETY BYLAW 2005

#### **INTRODUCTION**

1. At Council's meeting on 27 July 2005 the above draft bylaw was approved for public consultation. Sections 83, 86 and 89 of the Local Government Act 2002 sets out the special consultative procedure requirements for making a bylaw, including that a Statement of Proposal and Summary of Information should be prepared for the purposes of public consultation.
2. For a Statement of Proposal, which includes a copy of both the current bylaw and draft bylaw, together with a submission form, please visit Waitakere City Council's Counter Services at the Civic Centre, 6 Waipareira Avenue, Henderson, phone the Call Centre on 839-0400, visit the website: <http://www.waitakere.govt.nz/HavSay/index.asp> or e-mail [info@waitakere.govt.nz](mailto:info@waitakere.govt.nz).
3. Submissions on the draft bylaw should be made by sending a completed submission form (attached to the Statement of Proposal) before the deadline of 4.00pm on 30 September 2005 to Waitakere City Council, Private Bag 93109, Henderson (or fax: 836-8001), visit <http://www.waitakere.govt.nz/HavSay/index.asp> or email [info@waitakere.govt.nz](mailto:info@waitakere.govt.nz). Submissions will be considered by Council's Planning & Regulatory Committee on 11 and 14 November from 9.30am and 15 November from 1pm.

#### **DRAFT BYLAW**

4. The existing Food Safety Bylaw No.26 was adopted in 1994 with an additional section relating to Grading Certificates inserted in 2003. Section 158 of the Local Government Act 2002 requires all local authorities to review their existing bylaws by 2008 to ensure they remain relevant and appropriate.
5. The draft Food Safety Bylaw 2005 updates and simplifies the existing bylaw. Some changes have been made relating to the display of grading certificates and the qualification requirements for food handlers. There is also a new section proposed to regulate and monitor persons that hire out equipment used in the service or consumption of food.
6. The changes are proposed to ensure that the bylaw is fair, and clearly understandable, and furthers the Council's objective to protect public health by improving standards of food protection.
7. Pursuant to s.239 of the Local Government Act 2002, every person who breaches a bylaw made under that Act commits an offence and is liable on conviction to the penalty set out ins.239 (4) namely a fine not exceeding \$20,000.

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## STATEMENT OF PROPOSAL DRAFT FOOD SAFETY BYLAW 2005

### INTRODUCTION

1. At Council's meeting on 27 July 2005 the attached draft bylaw was approved for public consultation in accordance with the Special Consultative Procedure.
2. In accordance with ss.83, 86 and 89 of the Local Government Act 2002, the Special Consultative Procedure takes place when a local authority is making a bylaw or reviewing an existing bylaw. The procedure requires a Statement of Proposal and Summary of Information to be prepared for the purposes of public consultation.
3. Submissions on the draft bylaw should be made by sending a completed submission form (attached to the Statement of Proposal) before the closing date of 30 September 2005 to Waitakere City Council, Private Bag 93109, Henderson (or fax: 836-8001), visit <http://www.waitakere.govt.nz/HavSay/index.asp>, or e-mail [info@waitakere.govt.nz](mailto:info@waitakere.govt.nz). Submissions will be considered by Council's Planning & Regulatory Committee on 11 and 14 November from 9.30am, and 15 November from 1pm.

### BACKGROUND INFORMATION

4. The existing Food Safety Bylaw No.26 was adopted in 1994 with an additional section relating to Grading Certificates inserted in 2003. Section 158 of the Local Government Act 2002 requires all local authorities to review their existing bylaws by 2008 to ensure they remain relevant and appropriate.
5. Waitakere has approximately 780 food premises in the City. Whilst the Council recognises the growing demand for, and supply of a diverse range of food outlets, it also has a responsibility for the health, safety and wellbeing of members of the public who use those food premises.
6. As part of the statutory review process, Council has considered all other reasonably practicable options to further its objective to protect public health by improving food hygiene standards. The current bylaw could be left in place, but under the Local Government Act 2002 it must be reviewed before June 2008 or it will cease to have effect two years later. Another option would be to revoke the current bylaw and rely entirely on the Food Hygiene Regulations 1974 to regulate food premises. The Regulations are however limited in scope and penalties. They do not cover 'food handler' qualification requirements or grading certificates. The maximum fine for breach of a Regulation is \$200.
7. Council considers that the best option is to update the current bylaw confirming Council's commitment to improving food safety and acknowledging community expectations regarding Council's role in monitoring and regulating food premises. It also allows the existing bylaw to be simplified and improved where necessary, and ensures the Council fulfils its statutory duty to review the bylaw under the Local Government Act 2002.

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## THE DRAFT BYLAW

8. The draft bylaw simplifies and updates the existing bylaw. The major substantive changes are as follows:

(b) **Staff Qualifications**

In the existing bylaw all persons employed as food handlers must have received 'Credit for Unit Standards 167 and 167 or satisfy an Environmental Health Officer that they are enrolled in an appropriate course and pursuing a course of study with the intent of gaining such credits within 12 months of the date upon which the application for registration is made.'

It is considered that given the level of staff turnover and the numbers of part time and casual staff employed in the business, it may not be reasonable to expect every food handler present at any one time to have attended an approved food hygiene course. It is reasonable however to expect at least 75% of food handlers on the premises at any one time, to have completed an approved course. Confirming Council's commitment to food safety, the occupier of food premises will also be required to ensure that all other staff employed as food handlers complete such a course within 3 months of the bylaw coming into force, or within 3 months of commencing work on the premises. The existing bylaw allows a period of 12 months for attendance on a relevant course that is considered to be too long a period.

The draft bylaw therefore states that in addition to the requirement that the holder of the Certificate of Registration (or an employed supervisor) has passed an approved food hygiene course,

- (a) *At least 75% of all persons on the premises at any one time employed as food handlers, have passed an Approved Basic Food Hygiene Course and*
- (b) *All food handlers who have not attended an Approved Basic Food Hygiene Course shall complete such a course within 3 months of this bylaw coming into force, or within 3 months of commencing work on the premises.*

To ensure training remains current and relevant, it is also proposed to reduce the period in which retraining or refresher courses must be undertaken from 5 to 3 years.

(b) **Hiring out utensils**

A new section has been inserted to regulate and monitor persons hiring out utensils, dishes, glasses, crockery, cutlery and other appliances used in the service or consumption of food. This acknowledges that the hire of dirty equipment could lead to food borne diseases, and therefore similar hygiene standards should be applied.

(c) **Grading**

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The proposed bylaw section 10 "Grading" replaces section 8 in the existing bylaw. The significant change relates to the display of grading certificates. Clarity is required regarding where exactly the certificate should be displayed. At present s.8.3 reads:

*'a grading certificate shall be displayed in a prominent place on the food premises to which it relates so as to be readily visible to members of the public visiting the premises'.*

The purpose of the display requirement is to ensure that potential customers are aware of the current grading before deciding whether or not to patronise the premises. The proposal is therefore to replace with 10.6;

*"The current grading certificate shall be conspicuously displayed in or about the food premises in a location which is visible to members of the public before they enter the premises. If all points of entry to the premises are not clearly defined, (such as in the case of a food hall in a mall) the certificate must be displayed on the food premises at a location or locations approved by an Environmental Health Officer, being a location which is visible to members of the public before they make a selection or purchase food items and is in accordance with any policy for the display of grading certificates made by Council from time to time."*

A draft policy relating to grading of premises and providing clarification as to where the certificate or certificates should be displayed, is also attached.

9. Note that pursuant to s.239 Local Government Act 2002, every person who breaches a bylaw made under that Act commits an offence and is liable on summary conviction to a maximum fine of \$20,000 as set out in s.242 (4).

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6 **FOOD PREMISES GRADING - PROPOSED AMENDMENT TO FOOD SAFETY BYLAW**

1014/2003

MOVED by Cr Dallow, seconded Cr Hoskin:

**BYLAW NO. 26 1994 - FOOD SAFETY - AMENDMENT NO. 1 2003**

1. **SHORT TITLE**

The short title of this bylaw shall be the Waitakere City Council Bylaw No. 26 1994 - Food Safety, Amendment no. 1 2003.

2. **COMMENCEMENT**

This amended bylaw shall come into force on the 1<sup>st</sup> day of July 2003.

3. **APPLICATION OF BYLAW**

This bylaw will only apply to Food Premises subject to Annual Registration by Council.

4. **PURPOSE**

The purpose of this amended bylaw is to further improve the standard of food safety in Food Premises through the mandatory display of a Grading Certificate in a prominent place on the Food Premises to which it relates, so as to be readily visible to members of the public visiting the Food Premises, thereby creating a motivation to improve standards and achieve a higher grading.

5. **INTERPRETATION**

In this bylaw, unless the context otherwise requires:-

**Annual Registration** means the registration of Food Premises required by the Food Hygiene Regulations 1974 and the Health (Registration of Premises) Regulations 1966.

**Appliance** has the same meaning as appliance in Section 2 of the Food Act 1981.

**Council** means the Waitakere City Council.

**District** means the district within the jurisdiction and under the control of the Waitakere City Council.

**Environmental Health Officer** means an Environmental Health Officer appointed by the Council under the authority of the Health Act 1956.

**Food** has the same meaning as Food in Section 2 of the Food Act 1981:

Anything that is used or represented for use as food or drink for human beings; and includes -

(a) Any ingredient or nutrient or other constituent of any food or drink, whether that ingredient or nutrient or other constituent is consumed or represented for consumption by human beings by itself or when used in the preparation of or mixed with or added to any food or drink; and

(b) Anything that is or is intended to be mixed with or added to any food or drink; and

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- (c) Chewing gum, and any ingredient of chewing gum, and anything that is or is intended to be mixed with or added to chewing gum.

**Food Premises** has the same meaning as Food Premises in Regulation 2 of the Food Hygiene Regulations 1974:

- (a) Any premises -
  - (i) On or at which food is manufactured, prepared, packed, stored, or handled, for sale; or
  - (ii) On or from which food is sold; or
  - (iii) That is used in connection with any other food premises, for the purposes of their work, by persons who work on those other food premises.
- (b) Any stall.

**Grade and Grading** means the allocated grade resulting from an inspection of the Food Premises by an Environmental Health Officer, assessed according to the grading system determined by Council from time to time and which shall take into account regulatory requirements and the current state of food safety knowledge, technology and practice.

**A Grade** means that during the last Grading Inspection the Food Premises were assessed according to Council's current grading system at the time, and found to exceed regulatory food hygiene requirements, displaying a high standard of cleaning and hygiene and superior food-handling practices.

**B Grade** means that during the last Grading Inspection the Food Premises were assessed according to Council's current grading system at the time, and found to meet regulatory food hygiene requirements, displaying a satisfactory standard of cleaning and hygiene and good food-handling practices.

**D Grade** means that during the last Grading Inspection the Food Premises were assessed according to Council's current grading system at the time, and found to fall below the minimum regulatory food hygiene requirements, with improvements in: cleaning and/or maintenance and/or food-handling practices required; for which Council has issued a Minor Requisition.

**E Grade** means that during the last Grading Inspection the Food Premises were assessed according to Council's current grading system at the time, and found to be in a poor condition and well below the minimum regulatory food hygiene requirements, with improvements in: cleaning and/or maintenance and/or food-handling practices required; for which Council has issued a Major Requisition.

**Local Authority** means the Council, person, or group of persons authorised by any Act to make bylaws, and which has made this bylaw, and includes the body corporate on behalf of which any such Council, or person or groups act.

**New Zealand Qualifications Authority** means the New Zealand Qualifications Authority established under Part 20 of the Education Act 1989.

**Occupier** means the occupier as defined in the Food Hygiene Regulations 1974.

**Officer** means any officer authorised to carry out or exercise the duties of an officer under this Bylaw.

**Requisition** means a written notice served on the Occupier of Food Premises by an Environmental Health Officer specifying works that are required to be carried out on the premises in order for the premises to comply with food hygiene legislation and reduce the risk of food borne illness or contamination arising from any food prepared, manufactured, stored or sold from the premises.

**Major Requisition** means a Requisition that addresses any situation in which Food Premises or its fittings, fixtures or equipment are found to be in disrepair or dirty; or where any condition or set of conditions on the premises could expose food to contamination or taint, or that could allow food to become dirtied or deteriorated.

**Minor Requisition** means any Requisition that is not a Major Requisition.

**Sale or Sell** has the same meaning as in the Food Act 1981 and also includes the extended meaning given in Regulation 2(5) of the Food Hygiene Regulations 1974.

**Team Manager - Environmental Compliance** means an Environmental Health Officer appointed to that position or the person for the time being carrying out the duties of Team Manager - Environmental Compliance.

**Unit Standard 167** means Unit Standard 167 (Produce Safe Food) or equivalent New Zealand Qualifications Authority National Qualifications Standard.

**Unit Standard 168** means Unit Standard 168 (Prevent Food Contamination) or equivalent New Zealand Qualifications Authority National Qualifications Standard.

**Unit Standard 169** means Unit Standard 169 (Plan for Production and Service of Food) or equivalent New Zealand Qualifications Authority National Qualifications Standard.

**Unit Standard 170** means Unit Standard 170 (Supervise a Food Safety Programme) or equivalent New Zealand Qualifications Authority National Qualifications Standard.

6. **CLOSURE OF PREMISES**

The following provisions shall apply with regard to the sale of food in the District:

6.1 **Closure of premises for cleaning, repair** - Where any food premises or part of any food premises or any appliance, fitting or fixture or other equipment on any food premises by reason of their situation, construction, disrepair, or state are in such a condition that any food in the food premises may be exposed to contamination or taint or become dirty or deteriorated the Team Manager - Environmental Compliance may cause a notice in writing to be served on the Occupier of the Food Premises requiring him/her:

- (a) To cease to use the premises as food premises, or to clean or reconstruct, or to repair the premises, or part of the premises; or
- (b) To cease to use, or to clean, reconstruct, or repair any appliance, fittings, fixture or other equipment on those premises:

In accordance with the requirements and within the time specified in the notice.

- 6.2 **Permission to re-open** - Where an occupier has been directed to cease to use any food premises the occupier shall not recommence use of those food premises until permission has been given in writing by an Environmental Health Officer.
- 6.3 **Operation to cease** - An occupier shall not continue to operate any food premises if the Council has revoked the Certificate of Registration pursuant to Regulation 9(3) and (4) of the Health (Registration of Premises) Regulations 1966.

7. **FOOD HYGIENE QUALIFICATION**

- 7.1 Every registered Food Premises shall, within three (3) months of its first registration, have working on the premises a person or persons who meet the following requirements:
- (a) The person, if that person is a natural person, has received credit for Unit Standards 167, 168, and 169, and will normally be present at the Food Premises when food manufacture, preparation, handling, sale or ancillary processes incidental thereto are being undertaken; or
  - (b) There will be working on the Food Premises a manager, or a staff member with sufficient authority and with specific responsibility for staff training and supervision who has received credit for Unit Standards 167, 168 and 169; and
  - (c) Every other person to be employed as a food handler on those premises has received credit for Unit Standards 167 and 168, or satisfies an Environmental Health Officer that they are enrolled in an appropriate course and pursuing a course of study with the intent of gaining such credits within twelve (12) months of the date upon which application for registration is made; and
  - (d) In the case of any Food Premises, including premises commonly known as supermarkets, where there are several departments or sections such as delicatessen, butchery, bake house, cake kitchen, produce or grocery, or where in the case of eating house premises, including premises licensed under the Sale of Liquor Act 1988 there are separate departments, sections or facilities within the premises for the preparation or service of food there shall be a departmental manager, section manager, or similar person with responsibility for the area of operation concerned who has authority for staff supervision and training who in addition to Units 167 and 168 has received credit for Unit Standard 169;
  - (e) In any case to which the provisions of Clause 7.1(d) apply there shall in addition to the persons described in that Clause be a manager or other person with authority for staff supervision and food hygiene and food safety training throughout the entire premises who in addition to Units 167, 168 and 169 has received credit for Unit Standard 170.

- 7.2 In any case where an Environmental Health Officer is of the opinion that any food premises is of such a size or of such a nature that it may present a considerable risk to public health if there is a lapse in food safety supervision, the holder of the Certificate of Registration or the occupier of the food premises may be required to employ a manager or other person with authority for staff supervision and training throughout the entire premises who has received credit for Unit Standards 167, 168, 169 and 170.
- 7.3 The qualifications referred to in Clause 7.1 shall be renewed after the expiry of five (5) years from its issue.
- 7.4 Subject to an applicant satisfying the Team Manager - Environmental Compliance that he or she has undertaken appropriate training and holds a qualification equal to or in excess of any of the Food Handling Unit Standards 167, 168, 169 or 170 that person shall be deemed to have complied with the appropriate provisions of this Bylaw.
- 7.5 The Team Manager - Environmental Compliance may grant an exemption from the requirements of Clause 7.1 if satisfied that it would be unreasonable or impractical to insist on compliance, having regard to the type of premises, or types of food being packed, stored, handled or sold.
- 7.6 The holder of the Certificate of Registration or the occupier of the food premises shall be responsible for ensuring that adequate records relating to the training of staff in matters relating to food hygiene and food safety and copies of all certificates or other evidence of persons employed on those premises having obtained the appropriate Unit Standards or other qualifications are kept on the premises where the food handlers concerned are employed.
- 7.7 The holder of the Certificate of Registration or the occupier of the food premises shall on request make available for perusal by any Environmental Health Officer the records required to be kept pursuant to Clause 7.6.

8. **GRADING**

- 8.1 During the first Annual Registration inspection of the Food Premises an Environmental Health Officer shall perform a grading inspection (the "Grading Inspection") and shall grade the Food Premises.
- 8.2 A Grading Certificate noting the grading as determined by the Environmental Health Officer shall be delivered to the Occupier of the Food Premises as soon as practicable following the Grading Inspection.
- 8.3 The current Grading Certificate shall be displayed in a prominent place on the Food Premises to which it relates, so as to be readily visible to members of the public visiting the premises.
- 8.4 The Grading Certificate shall remain the property of the Waitakere City Council.
- 8.5 The Grading Certificate shall be deemed to be current for a period of twelve (12) months from the date of the Grading Inspection from which the grade was determined or until such lesser time as it is amended or withdrawn by an Environmental Health Officer following a subsequent grading or re-grading inspection, or any other inspection during which the food hygiene of the premises has worsened when compared to the current Grading Certificate.

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- 8.6 The Grading Certificate shall be specific to the Food Premises and Occupier of the Food Premises at the time of the Grading Inspection. Grading Certificates shall not be transferable.
- 8.7 Fourteen (14) days after the commencement of operation by a new Occupier of Food Premises, the new Occupier shall make an application for a Grading Certificate, provided that new Food Premises, or Food Premises with a new Occupier, shall not be graded until at least two (2) months have passed since the commencement of operation, or taking over the occupancy, of the Food Premises.
- 8.8 An application for re-grading of Food Premises may be made at any time in writing to Council's Team Manager - Environmental Compliance, accompanied by the appropriate fee, provided that no such application shall be considered until the expiry of a period of two (2) months following the receipt of the notification referred to in sub clause 8.2.
- 8.9 An Occupier of Food Premises in respect of which a Grading Certificate has been issued under this Bylaw may contest their grading by writing to Council's Team Manager - Environmental Compliance within 14 days of receipt of the Grading Certificate.

9. **FEES**

**Setting of fees** - The Council may by resolution publicly notified prescribe fees in respect of any certificate, authority, approval, consent, service given or inspection made by the Council under this Bylaw or any other enactment in any case where that provision or enactment contains no provision authorising the Council to charge a fee, and does not provide that the certificate, authority, approval, consent, service or inspection is to be given or made free of charge.

**Reduction of licence fee** - Where an annual fee is payable in respect of a licence issued under this Bylaw or any Part thereof, such fee shall, where the licence is issued for less than one year, be reduced by one twelfth thereof for every complete month by which the term of the licence is less than one year.

10. **SERVING OF ORDERS AND NOTICES**

- 10.1 Except where otherwise expressly provided for in any Act, in any case in which it is provided by this bylaw, that an order may be made upon or notice be given to any person requiring him to do or abstain from doing anything, or any notice is required by this bylaw to be given or sent to any person, such order or notice shall be delivered to such person, and may be delivered to him either personally or by sending the same, by messenger or by registered post, to him at his last-known place of abode or business.
- 10.2 If such person is absent from New Zealand the order or notice may be sent to his agent instead of to such person, in any manner mentioned in the last preceding sub-clause.
- 10.3 If such person is not known, or is absent from New Zealand, and has no known agent in New Zealand, and the order or notice relates to any land or building the order or notice, addressed to the Occupier of such building or land, as the case may require, may be served on the person in occupation, or may be put on some conspicuous part of such building or land. It shall not be necessary in such notice to name the Occupier of such building or land.
- 10.4 Where an order or notice is sent by post it shall be sent so as to arrive in the due course of post on or before the latest time on which such order or notice is required to be served.

11. **POWERS OF DELEGATION**

In all cases where this bylaw provides for the issue of any order, notice or licence such order, notice or licence shall be deemed to be issued in compliance with this bylaw if the same be issued by any officer of the local authority authorised by the local authority for that purpose.

12. **INSPECTION**

12.1 For any of the purposes of this bylaw any inspector or other person duly appointed by the local authority in that behalf may at all reasonable times enter upon any land, building, or premises in order to carry out an inspection thereof.

12.2 Every person who obstructs or hinders any such inspector or other person as aforesaid in the execution of these powers hereunder shall be liable to prosecution for an offence against this bylaw.

13. **OFFENCES AND BREACHES**

13.1 No person shall do anything or cause any condition to exist for which a licence or approval from the local authority is required under this bylaw without first obtaining that licence or approval, and the failure to do so shall constitute a breach of this bylaw.

13.2 No application for a licence or authority from the local authority, and no payment of or receipt for any fee paid in connection with such application, licence, or authority, shall confer any right, authority, or immunity on the person making such application or payment.

13.3 Any person commits a breach of this bylaw who:

- (a) Does, or causes to be done, or knowingly permits or suffers to be done or be concerned in doing, anything whatsoever contrary to or otherwise than as provided by this bylaw; or
- (b) Omits or neglects to do, or knowingly permits or suffers to remain undone anything which according to the true intent and meaning of this bylaw, ought to be done by him at the time and in the manner therein provided; or
- (c) Does not refrain from doing anything which under this bylaw he is required to abstain from doing; or
- (d) Knowingly permits or suffers any condition of things to exist contrary to any provision contained in this bylaw; or
- (e) Refuses or neglects to comply with any notice duly given to him under this bylaw; or
- (f) Obstructs or hinders any officer of the local authority in the performance of any duty to be discharged by that officer under or in the exercise of any power conferred upon him by this bylaw; or
- (g) Fails to comply with any notice or direction given under this bylaw.
- (h) Fails to display a current Grading Certificate in a prominent place on the Food Premises to which it relates, so as to be readily visible to members of the public visiting the premises, except during the 2 month period provided for in sub clause 8.7 above.

- (i) Displays a Grading Certificate that is not current, except during the 2 month period provided for in sub clause 8.7 above.
- (j) Displays a Grading Certificate that is not applicable to the Food Premises or Occupier to which the Grading Certificate relates, except during the 2 month period provided for in sub clause 8.7 above.

14. **DISPENSING POWERS**

Where in the opinion of the local authority full compliance with any of the provisions of this bylaw, would needlessly or injuriously affect any person, or the course or operation of the business of, or be attended with loss or inconvenience to, any person without any corresponding benefit to the community, the local authority may, on the special application of that person dispense with the full compliance with the provisions of this bylaw.

Provided that any other terms or conditions (if any) that the local authority may deem fit to impose shall be complied with by such person as aforesaid.

15. **PENALTIES FOR BREACH OF BYLAWS**

- 15.1 Every person who commits a breach of this bylaw is liable to a fine prescribed by the Local Government Act 1974 or its successor.
- 15.2 The local authority may, after a conviction for the continuing breach of any bylaw, apply to any Court of competent jurisdiction for an injunction to restrain the further continuance of the breach by the person so convicted.
- 15.3 The continued existence of any work or thing in a state contrary to this bylaw shall be deemed a continuing offence within the meaning of this clause.

2. **AFFIXING OF THE SEAL**

That the Common Seal of the Waitakere City Council be affixed to such documents as may be necessary to give effect to the Special Order and be attested as soon as practicable by any two of the following:

- Mayor, or Deputy Mayor or Councillor;
- Chief Executive, or the Acting Chief Executive in his absence;
- Director: Corporate & Civic Services.

**CARRIED**

5.39 pm Cr Presland returned to the meeting.