

WAITAKERE CITY COUNCIL

FOOD SAFETY BYLAW 2005

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WAITAKERE CITY COUNCIL

FOOD SAFETY BYLAW 2005

Part 1

Introduction

1. **Citation**

This bylaw may be cited as the Waitakere City Council Food Safety Bylaw 2005.

2. **Commencement**

This bylaw comes into force on 1 February 2006.

3. **Revocation**

Waitakere City Council's Bylaw No. 26 Food Safety (1994) as amended in 2003 is revoked with effect from the commencement date of this Food Safety Bylaw 2005.

4. **Purpose**

This bylaw is made under Part 8 of the Local Government Act 2002. Its purpose is to improve the standard of food hygiene and safety and reduce the incidence of food related diseases within the City. The bylaw allows the Council to:

- (a) Take action against dirty and unhygienic food premises;
- (b) Set food hygiene qualification requirements for all staff employed in premises where food is prepared for sale;
- (c) Provide for the grading of food premises and make it mandatory for a grading certificate to be displayed where it can be seen by members of the public visiting the food premises, before they enter the premises if applicable; and
- (d) Provide for the approval of premises which hire crockery, glasses etc to the public to ensure such equipment is thoroughly cleaned after it is used.

The overriding aim of this bylaw is to ensure that safe food is available in all food premises throughout the City.

Part 2

Interpretation

5. Definitions

In this bylaw:

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

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

“Approved Basic 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;

“Certificate of Registration” means a certificate issued by the Council under the Health (Registration of Premises) Regulations 1966;

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

“Food” has the same meaning as it has in section 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 food 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 any Grading of Food Premises Policy 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.

“**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.

“**Working Days**” means a day of the week other than;

- (a) A Saturday, Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the sovereign’s birthday and Labour Day; and
- (b) A day in the period commencing 25 December in a year and ending with 2 January in the following year; and
- (c) If 1 January falls on a Friday, the following Monday; and
- (d) If 1 January falls on a Saturday or a Sunday, the following Monday or Tuesday.

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 clause 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 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, fitting, fixture or other equipment on the premises;
 - (d) clean, reconstruct or repair any appliance, fitting, fixture 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 clause 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

- 8.5 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)

- 8.6 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)*
- 8.7 An Environmental Health Officer may, in respect of particular food handlers grant an exemption from the requirements regarding qualification in food hygiene if an equivalent/other suitable qualification is held.

- Record of Qualifications*
- 8.8 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*
- 8.9 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 8.8.

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 in the service or consumption 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.
- 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 those items 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 any policy relating to the grading of food premises, made by Council from time to time.

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 clause 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 such lesser time if it is amended, cancelled or withdrawn by an Environmental Health Officer following a subsequent grading or 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 the 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.

Right of Appeal

- 10.10 (a) An owner or occupier of food premises in respect of which a grading certificate has been issued under this bylaw by an Environmental Health Officer may appeal in writing to the Council's Group Manager: Regulatory against that decision within 5 working days of receiving notice of that grading decision.
- (b) Upon reviewing a grading decision the Group Manager: Regulatory may confirm, reverse or modify that decision.

- (c) The outcome of the review process will be communicated by the Group Manager: Regulatory in writing to the owner or occupier within 5 working days of receiving the appeal.
- (d) The original grading decision is effective from the date it is made unless or until it is reversed or modified.

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 clause 12.1.

12.3 If the person or their New Zealand address is not known, or the person 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, 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 to ensure the provisions of any bylaw are observed, 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, 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;
 - (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 the occupier to which the grading certificate relates.

16. Enforcement and Penalties

- 16.1 Pursuant to section 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 section 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 section 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 section 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 21 December 2005 by Resolution 2542\2005.

WAITAKERE CITY COUNCIL

GRADING OF FOOD PREMISES POLICY 2005

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; and
 - (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 legislative food hygiene requirements, displays a high standard of cleaning and hygiene and superior food handling practices.

 - **B Grade** meets legislative food hygiene requirements, displays a satisfactory standard of cleaning and hygiene and good food handling practices.

 - **D Grade** falls below the minimum legislative 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 legislative 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.

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 clause 10.6 of the Food Safety Bylaw 2005 as follows:

“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.”

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.