

WAITAKERE CITY COUNCIL

BYLAW NO.26 1994 - FOOD SAFETY



The Waitakere City Council, acting in pursuance and exercise of the powers and authorities conferred on it by the Local Government Act 1974, the Health Act 1956, the Bylaws Act 1910, their respective amendments, and all other powers and authorities in any way enabling it HEREBY RESOLVES BY SPECIAL ORDER TO MAKE the following bylaw.

1. **SHORT TITLE**

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

2. **COMMENCEMENT**

This amended bylaw shall come into force on the 1st 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
- (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 foodborne 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 (Present 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, bakehouse, cake kitchen, produce or grocery, or where in the case of eatinghouse premises, including premises licensed under the Sale of Liquor Act 1989 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 regrading inspection, or any other inspection during which the food hygiene of the premises has worsened when compared to the current Grading Certificate.
- 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 subclause 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**

- 9.1 **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.
- 9.2 **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 subclause 8.7 above.
- (i) Displays a Grading Certificate that is not current, except during the 2 month period provided for in subclause 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 subclause 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.

THE COMMON SEAL of)
THE WAITAKERE CITY COUNCIL)
is hereinto affixed in the presence of:)

Mayor / Deputy Mayor

Chief Executive