



## **Food Safety Bylaw 2013 Whakapai kai 2013**

(as at 1 March 2016)

**Made by Governing Body of Auckland Council**

**Resolution in Council**

**23 May 2013**

*(amended by minute GB/2016/8 with effect from 1 March 2016)*

Pursuant to the Local Government Act 2002 and the Health Act 1956, the Governing Body of Auckland Council makes the following bylaw.

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## 1 Title

- (1) This bylaw is the Food Safety Bylaw 2013.

## 2 Commencement

- (1) This bylaw comes into force on 1 July 2013.

*Explanatory note: Clauses 4, 5, 7, 8, 10, 11, 12 and Additional Information to the Food Safety Bylaw 2013 have been amended and Clauses 6, 9, 13, Schedules 1 and 2 have been revoked for consistency with the Food Act 2014 and the Food Regulations 2015. Refer to Section 1 of Additional Information to the Food Safety Bylaw 2013.*

## 3 Application

- (1) This bylaw applies to Auckland.

### Part 1 Preliminary provisions

## 4 Purpose

- (1) The purpose of this bylaw is to promote and protect public health by -
- (a) requiring food businesses registered with the council that operate subject to a Food Control Plan to display a food safety grade certificate for public information;
  - (b) regulating food businesses registered with the council pursuant to the Food Hygiene Regulations 1974 until they transition to the Food Act 2014, including:
    - (i) requiring food businesses to display a food safety grade certificate for public information;
    - (ii) requiring staff to be trained in basic food hygiene; and
    - (iii) regulating the storage, preparation and sale of food from food stalls and mobile food shops.

## 5 Interpretation

- (1) In this bylaw, unless the context otherwise requires, -

**Approved basic food hygiene course** means a training program which has been accredited by the New Zealand Qualifications Authority for the purposes of food preparation and handling training, or an alternative course in food hygiene approved in writing by the council.

**Auckland** has the meaning given by the Local Government (Auckland Council) Act 2009.

*Explanatory note: As at 22 September 2009, the definition in Section 4(1) of the Local Government (Auckland Council) Act 2009 states: "Auckland means the area within the boundaries determined by the Local Government Commission under Section 33(1) (as that determination is given effect to by Order in Council under Section 35(1))".*

**Certificate of registration** means a certificate of registration issued under the Health (Registration of Premises) Regulations 1966 by a local authority.

**Council** means the Governing Body of the Auckland Council or any person delegated to act on its behalf.

**Food** has the meaning given by the Food Act 2014.

*Explanatory note: As at 1 June 2014, Section 9 of the Food Act 2014 includes the following definition: "food means anything that is used, capable of being used, or represented as being for use, for human consumption (whether raw, prepared, or partly prepared)".*

**Food business** has the meaning given by the Food Act 2014.

*Explanatory note: As at 1 June 2014, the definition in Section 10 of the Food Act 2014 states: "food business means -*

- (a) a business, activity, or undertaking that trades in food (whether in whole or in part); and*
- (b) includes a business, activity, or undertaking that—*
  - (i) sells food on the internet; or*
  - (ii) is declared by the Governor-General, by Order in Council made under Section 393, to be a food business for the purposes of this Act; but*
- (c) does not include a business, activity, or undertaking—*
  - (i) merely because it carries on a business other than trading in food and, in the course of doing so, acts as an intermediary between persons who trade in food by providing, for reward, a place (including mobile premises) or services (for example, an internet service provider or an auction site on the internet); or*
  - (ii) that is declared by the Governor-General, by Order in Council made under Section 393, not to be a food business for the purposes of this Act".*

**Food Control Plan** has the meaning given by the Food Act 2014.

*Explanatory note: As at 1 June 2014, the definition in Section 36 of the Food Act 2014 states: "food control plan is a plan designed for a particular food business to identify, control, manage, and eliminate or minimise hazards or other relevant factors for the purpose of achieving safe and suitable food, taking into account—*

- (a) each type of food that the food business trades in; and*
- (b) each type of process or operation that is applied to the food; and*
- (c) each place in which the food business trades in food.*

*As at 1 June 2014, the definition in Section 414 of the Food Act 2014 states: "deemed food control plan means a registered food safety programme that is deemed to be a registered food control plan".*

*As at 7 December 2015, the definition in Section 3 of the Food Regulations 2015 states: "template food control plan means a registered food control plan that is based on an official template or model".*

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

- (a) supermarket checkout operators or persons handling already packaged food at the point of sale;
- (b) persons employed exclusively in the handling of packaged goods in storage or the carriage of, or delivery of, packaged goods to and from premises;
- (c) any other person employed in a food premises or works in connection with a food premises who in the opinion of the council should be exempt.

**Food premises** means –

- (a) any premises registered pursuant to the Food Hygiene Regulations 1974:
  - (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 food stall or mobile food shop.

**Food stall or mobile food shop** includes any portable container, tent, movable stand or table, trailer, caravan, motor vehicle, fishing vessel, or similar structure, on or from which food is sold.

**Grade and Grading** means the allocated grade resulting from an inspection of the food premises or assessment of a food business' compliance with their Food Control Plan by the council according to the grading system determined by the council from time to time.

*Explanatory note: For further information on the Auckland Council Food Safety Grading System refer to Section 7 of Additional Information to the Food Safety Bylaw 2013 – Guidelines to the Auckland Council Food Grading System.*

**Marae** has the meaning given by the Food Act 2014.

*Explanatory note: As at 1 June 2014, the definition in Section 8 of the Food Act 2014 states: “marae includes the area of land on which all buildings such as wharenuī (meeting house), wharekai (dining room), ablution blocks, and any other associated buildings are situated”.*

**Occupier** means the occupier as defined in the Food Hygiene Regulations 1974 and is the person responsible for compliance with the Food Hygiene Regulations 1974.

**Operator of a food business** has the meaning given by the Food Act 2014.

*Explanatory note: As at 1 June 2014, the definition in Section 8 of the Food Act 2014 states: “operator of a food business means the owner or other person in control of the business”.*

**Operator of a Food Control Plan** has the meaning given by the Food Act 2014.

*Explanatory note: As at 1 June 2014, the definition in Section 8 of the Food Act 2014 states: “operator of a food control plan or operator of a registered food control plan means—  
(a) if the plan applies to only one food business, the operator of the food business; or  
(b) if the plan applies to more than one food business, the person responsible for the plan”.*

**Operator verification** has the meaning given by the Food Act 2014 and the Food Regulations 2015.

*Explanatory note: As at 1 June 2014, the definition in Section 8 of the Food Act 2014 states: “operator verification means a process to ensure that internal practices, procedures, and activities comply with the applicable requirements of this Act”. As at 7 December 2015, in Section 32 of the Food Regulations 2015, the process for operator verification includes regular checks of:  
(a) places of food business, facilities, and equipment; and  
(b) staff and visitors; and  
(c) practices, procedures, and activities”.*

**Place of food business** has the meaning given by the Food Regulations 2015.

*Explanatory note: As at 7 December 2015, the definition in Section 3 of the Food Regulations 2015 states: “place of food business means a place where a food business does either or both of the following:  
(a) produces food  
(b) processes and handles food; and  
(c) that is covered by a food control plan or subject to a national programme”.*

**Processing and handling** has the meaning given by the Food Act 2014.

*Explanatory note: As at 1 June 2014, the definition in Section 11 of the Food Act 2014 states: “processing and handling in relation to food for sale, includes any one or more of the following:  
(a) preparing the food  
(b) manufacturing the food  
(c) packing the food  
(d) labelling the food  
(e) transporting the food  
(f) storing the food  
(g) displaying the food  
(h) serving the food”.*

**Readily perishable food** means food for sale that consists wholly or partly of milk, milk products, eggs, meat, poultry, fish, or shellfish, or ingredients that are capable of supporting the progressive growth of microbiological organisms that can cause food poisoning or other food-borne illness.

**Safety and suitability** has the meaning given by the Food Act 2014.

*Explanatory note: As at 1 June 2014, the definition in Section 12 of the Food Act 2014 provides that: “safety” means a condition in which food, in terms of its intended use, is unlikely to cause or lead to illness or injury to human life or public health. “Suitability” means that the composition, labelling, identification, and condition of the food are appropriate in terms of its intended use; but does not include matters of quality or presentation of the food that relate to a purely commercial decision by the person trading in the food. Food is unsuitable if it—*

- (a) is in a condition that is offensive;*
- (b) is damaged, deteriorated, or perished to the extent of affecting its reasonable intended use;*
- (c) contains, or has attached to it or enclosed with it, any damaged, deteriorated, perished, or contaminated substance to the extent of affecting its reasonable intended use;*
- (d) contains a biological or chemical agent, or other substance, that is foreign to the nature of the food and the presence of which would be unexpected and unreasonable in food prepared or packed for sale in accordance with good trade practice;*
- (e) has packaging that is damaged, deteriorated, perished, or contaminated to the extent of affecting the food’s reasonable intended use.*

*Food is not unsafe or unsuitable merely because—*

- (a) any part of the community objects to it on moral, ethical, cultural, spiritual, or religious grounds; or*
- (b) any person objects to it because of personal preference; or*
- (c) its consumption of inappropriate quantities may damage a person’s health; or*
- (d) its presence or consumption is unhealthy for any person who has an allergy or other personal health condition”.*

**Sale** has the meaning given by the Food Act 2014.

*Explanatory note: As at 1 June 2014, the definition in Section 13 of the Food Act 2014 states: “sale means—*

- (a) selling food for processing and handling or for human consumption; and*
- (b) includes reselling food for processing and handling or for human consumption; and*
- (c) includes the following activities relating to food for human consumption;*
  - (i) offering food for sale or attempting to sell food, or receiving or having food in possession for sale, or exposing food for sale, or sending or delivering food for sale, or causing or permitting food to be sold, offered for sale, or exposed for sale;*
  - (ii) bartering food;*
  - (iii) supplying food, together with any accommodation, service, or entertainment, as part of an inclusive charge;*
  - (iv) supplying food in exchange for payment or in relation to which payment is to be made in a shop, hotel, or restaurant, at a stall, in or on a craft or vehicle, or in any other place;*
  - (v) supplying food to an employee or other person in accordance with an employment agreement or an agreement for services;*
  - (vi) for the purpose of advertisement or to promote any trade or business, giving away food or, whether or not on payment of money, offering food as a prize or reward to the public;*
  - (vii) exporting food;*
  - (viii) every other method of disposition of food for valuable consideration; but*
- (d) does not include—*
  - (i) exchanging food for food or other goods or services as part of a personal relationship between individuals that is not commercial in nature; or*
  - (ii) supplying food together with accommodation to a person residing at a private dwelling or farm in exchange for services or labour by the person; or*
  - (iii) supplying drinking water by network reticulation to the point of supply of any dwelling or commercial premises”.*

- (2) A term or expression that is defined in the Food Hygiene Regulations 1974, Food Act 2014 and Food Regulations 2015, and is used in this bylaw but not defined by this bylaw, has the meaning given by the legislation.
- (3) Any explanatory notes and attachments are for information purposes only, but do not form part of this bylaw, and may be made, amended, revoked or replaced by the council at any time.

- (4) The Interpretation Act 1999 applies to this bylaw.

**Part 2**  
**Grading of food businesses registered pursuant to the Food Act 2014**

**6 Display of food safety grade certificates**

- (1) The council will assess the following food businesses that operate subject to a deemed or template Food Control Plan registered with the council to provide a grading for those businesses:
- (a) the food retail sector where food businesses prepare or manufacture and sell food, and
  - (b) the food service sectors specified in Schedule 1 of the Food Act 2014.
- (2) The current food safety grade certificate issued by the council must be conspicuously displayed at the principal entrance to the place of food business in full and un-obscured view. The council may require an alternative display position in situations where the council deems it necessary to ensure that the grading certificate can be seen before a person enters the place of food business.
- (3) The current food safety grade certificate issued by the council must be displayed at every site where food is sold directly to the public, including food stalls and mobile shops.
- (4) Applications for re-grading must be made in writing and subject to the prescribed fee.
- (5) The grading certificate will remain the property of the council and may be withdrawn and removed by the council if the performance of the food business falls below the grading standard prescribed by the council.
- (6) Clauses 6(1) to 6(5) do not apply to any food business:
- (a) that was operating prior to 1 March 2016, and that was not required to be registered by the council pursuant to the Food Hygiene Regulations 1974; or
  - (b) that is established from 1 March 2016, and that would not have been required to be registered by the council pursuant to the Food Hygiene Regulations 1974 had it been operating prior to 1 March 2016.

*Explanatory note: The Food Act 2014 introduces regulatory requirements for food sectors that were not subject to registration under the Food Hygiene Regulations 1974, such as businesses that sell food from marae, school tuckshops and work cafeterias. The grading requirements of this bylaw are not intended to apply to those businesses that would not have been subject to grading under the bylaw prior to 1 March 2016.*

- (7) Notwithstanding Clause 6(6), the operator of any food business that would otherwise be exempt from grading may notify the council in writing that the food business elects to waive the exemption, in which case Clauses 6(1) to 6(5) will apply to that food business.

*Explanatory note: For further information on the Auckland Council Food Safety Grading System refer to Section 7 of Additional Information to the Food Safety Bylaw 2013.*

**Part 3**  
**Regulation of food businesses registered pursuant to the Food Hygiene Regulations 1974**

**7 Display of food safety grade certificates**

- (1) The council will annually inspect food premises registered with the council pursuant to the Food Hygiene Regulations 1974 to provide a grading for those premises.
- (2) A food safety grade certificate resulting from the annual inspection of a food premises by the council will be sent to the occupier of the food premises as soon as reasonably practical after the inspection. The grading certificate will have an A, B, D, or E grading as appropriate for the premises.

*Explanatory note: The grading certificate is one of the factors that will determine the annual registration fee for food premises. Premises graded A are likely to pay a smaller registration fee than premises graded B, D or E selling the same types of food.*

- (3) The current food safety grade certificate issued by the council must be conspicuously displayed at the principal entrance to a food premises in full and un-obscured view. The council may require an alternative display position in situations where the council deems it necessary to ensure that the grading certificate can be seen before a person enters the premises.
- (4) The grading issued under Clause 7(1) must remain in place for a period of two months from the date of issue before any application for re-grading will be considered. Applications for re-grading must be made in writing and subject to the prescribed fee.
- (5) The grading certificate will remain the property of the council and may be withdrawn and removed by the council if the food premises falls below the grading standard prescribed by the council.
- (6) Clauses 7(1) to 7(5) will expire at the end of the transitional period of the Food Act 2014 on 28 February 2019.

*Explanatory note: For further information on the Auckland Council Food Safety Grading System refer to Section 7 of Additional Information to the Food Safety Bylaw 2013.*

## **8 Training of staff at food premises**

- (1) A person will not be issued with a certificate of registration for any food premises unless:
  - (a) the person has passed an approved basic food hygiene course and will normally be present at the food premises when food is manufactured, prepared, handled or sold; or
  - (b) a manager or staff member is working full-time on the premises who has specific responsibility for staff training and supervision, has passed an approved basic food hygiene course and is involved in food manufacture, preparation and handling at that specific premises.
- (2) In addition to the requirements of Clause 8(1), the occupier of a food premises must ensure that at least 50 per cent of all food handlers employed at the food premises at any one time (including part-time workers) have passed an approved basic food hygiene course either before they commenced work or within three months of commencing work on those premises.
- (3) The occupier of a food premises must ensure that adequate evidence of staff training in food hygiene is kept on the premises for the staff working on those premises, so that compliance with the provisions of Clause 8(1) can be demonstrated to the council.
- (4) The council may grant an exemption from the training requirements of this bylaw if the council is satisfied that it would be unreasonable or impractical to insist on compliance, having regard to the type of premises, the standard of those premises, the frequency of their use and/or the types of food being prepared, handled, packed or sold.
- (5) Clauses 8(1) to 8(4) will expire at the end of the transitional period of the Food Act 2014 on 28 February 2019.

## **9 Food stalls and mobile food shops**

- (1) A person operating from a food stall that was registered with the council prior to 1 March 2016 must not operate without a certificate of registration issued by the council which certifies that at the time of issue, the food stall complied or was likely to comply with appropriate food hygiene standards for the types of food to be sold. This requirement does not apply to:
  - (a) food businesses that are registered under the Food Act 2014;
  - (b) food businesses that are exempt from registration under the Food Act 2014;
  - (c) food stalls that:
    - (i) do not sell readily perishable food; and
    - (ii) are located within a market that is registered as required by the Food Hygiene Regulations 1974;
  - (d) food stalls at which the only food sold is food that has been prepared off-site in a registered food premises prior to sale and the stall operator either:
    - (i) is the holder of the certificate of registration and displays a copy of that certificate of registration on the stall; or



- (ii) is operating the food stall under the authority of the holder of the certificate of registration and displays a copy of that certificate of registration on the stall.
- (2) The food stall operator must display the current certificate of registration in view of the public at the food stall or mobile food shop at all times when trading.
- (3) Where in the opinion of the council it is necessary for the protection of public health, the council may impose conditions that ensure compliance with the bylaw on the operation of any food stall as a condition of issuing a certificate of registration.
- (4) Where the council is satisfied that compliance with any requirements of this bylaw or any control made by the council for food stalls would be unreasonable or impractical having regard to the type of food that is to be sold, or the method of packaging, an exemption may be granted in whole or part with such modifications as are desirable in the circumstances.
- (5) Clauses 9(1) to 9(4) will expire at the end of the transitional period of the Food Act 2014 on 28 February 2019.

#### **Part 4**

#### **Enforcement, offences and penalties**

#### **10 Non-compliance with bylaw**

- (1) The council may use its powers under the Health Act 1956 and the Local Government Act 2002 to enforce this bylaw.

#### **11 Offences and penalties**

- (1) A person who fails to comply with this bylaw commits an offence against Section 239 of the Local Government Act 2002 and is liable on conviction to the penalties set out in Section 242(4) of the Local Government Act 2002.

# Additional Information to the Food Safety Bylaw 2013

This document contains matters for information purposes only and does not form part of the bylaw. They include matters to assist in the ease of understanding, use and maintenance of the bylaw.

The information contained in this document may be updated at any time.

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## Section 1 History of bylaw

Action	Description	Date of Decision	Decision Reference	Commencement
Make	<p>Following food safety bylaws in force on 31 Oct 2010 deemed to have been made by Auckland Council</p> <ul style="list-style-type: none"> <li>• Auckland City Council Food Premises Bylaw 2008</li> <li>• Auckland City Council Food Stalls Bylaw 2008</li> <li>• Franklin District Council Food Hygiene Bylaw 2010</li> <li>• Manukau City Council Food Hygiene and Food Handlers Training Bylaw 2008 (chapter 8)</li> <li>• North Shore City Council Food Safety Bylaw 2000 (part 17)</li> <li>• Rodney District Council Food Premises Bylaw 1998 (chapter 24)</li> <li>• Waitakere City Council Food Safety Bylaw 2005</li> </ul>	01 Nov 2010	Section 63 Local Government (Auckland Transitional Provisions) Act 2010	01 Nov 2010
Revoke	<ul style="list-style-type: none"> <li>• Auckland City Council Food Premises Bylaw 2008</li> <li>• Auckland City Council Food Stalls Bylaw 2008</li> <li>• Franklin District Council Food Hygiene Bylaw 2010</li> <li>• Manukau City Council Food Hygiene and Food Handlers Training Bylaw 2008 (chapter 8)</li> <li>• North Shore City Council Food Safety Bylaw 2000 (part 17)</li> <li>• Rodney District Council Food Premises Bylaw 1998 (chapter 24)</li> <li>• Waitakere City Council Food Safety Bylaw 2005</li> </ul>	23 May 2013	GB/2013/48	01 July 2013
Make	Auckland Council Food Safety Bylaw 2013	23 May 2013	GB/2013/48	01 July 2013
Amend	Auckland Council Food Safety Bylaw 2013	18 Feb 2016	GB/2016/8	01 March 2016

## Section 2 Related documents

Document Title	Description of Document	Location of Document
Decision Minutes and Agenda of the Governing Body for 18 February 2016	Decision on amendments to the Food Safety Bylaw 2013	<a href="http://www.aucklandcouncil.govt.nz">www.aucklandcouncil.govt.nz</a>
Decision Minutes and Agenda of the Governing Body for 23 May 2013	Decisions on submissions to proposed food safety bylaw	<a href="http://www.aucklandcouncil.govt.nz">www.aucklandcouncil.govt.nz</a>
Background report for the hearing of submissions to the proposed Food Safety Bylaw 2013 - 19 April 2013	Background and summary of submissions to proposed food safety bylaw	<a href="http://www.aucklandcouncil.govt.nz">www.aucklandcouncil.govt.nz</a>
Food Safety Bylaw Review	Provides background to the proposed	<a href="http://www.aucklandcouncil.govt.nz">www.aucklandcouncil.govt.nz</a>

Statement of Proposal - Decision Minutes and Agenda of the Governing Body for 20 December 2012	food safety bylaw	
Long Term Plan	Outlines financial plans	<a href="http://www.aucklandcouncil.govt.nz">www.aucklandcouncil.govt.nz</a>
Annual Plan	Sets fees for food operators	<a href="http://www.aucklandcouncil.govt.nz">www.aucklandcouncil.govt.nz</a>
Local Government Act 2002	Provides certain functions, duties, powers and penalties to make and enforce this bylaw	<a href="http://www.legislation.govt.nz">www.legislation.govt.nz</a>
Health Act 1956	Provides certain functions, duties, powers and penalties to make and enforce this bylaw	<a href="http://www.legislation.govt.nz">www.legislation.govt.nz</a>
Local Government (Auckland Transitional Provisions) Act 2010	Provides certain functions, duties, powers and penalties to make and enforce this bylaw	<a href="http://www.legislation.govt.nz">www.legislation.govt.nz</a>
Bylaws Act 1910	Provides for certain matters related to the validity of bylaws	<a href="http://www.legislation.govt.nz">www.legislation.govt.nz</a>
Interpretations Act 2009	Provides for certain matters related to the interpretation of bylaws	<a href="http://www.legislation.govt.nz">www.legislation.govt.nz</a>
Health (Registration of Premises) Regulations 1966	Provides for the registration of premises	<a href="http://www.legislation.govt.nz">www.legislation.govt.nz</a>
Food Act 1981	Provides for exemptions to the Food Hygiene Regulations 1974, food standards and enforcement	<a href="http://www.legislation.govt.nz">www.legislation.govt.nz</a>
Food Hygiene Regulations 1974	Provides regulations for registration, conduct, maintenance, application to food premises, workers, manufacturers and specific provisions for types of premises and types of food sold	<a href="http://www.legislation.govt.nz">www.legislation.govt.nz</a>
Food Act 2014	Provides for the regulation of food businesses through risk-based measures to achieve the safety and suitability of food for sale and minimise and manage risks to public health	<a href="http://www.legislation.govt.nz">www.legislation.govt.nz</a>
Food Regulations 2015	Provides regulations for food businesses subject to risk-based measures under the Food Act	<a href="http://www.legislation.govt.nz">www.legislation.govt.nz</a>

### Section 3 Delegations for matters contained in the bylaw

Clause	Function, duty, power to be delegated	Delegated authority	Date of delegation decision	Decision reference	Commencement of delegation
Clause 5(1)	Determining the grading system.	Tier 4 Manager Environmental Health	23 May 2013	Resolution number GB/2013/48	1 July 2013
Clause 5(3)	Amending explanatory notes and attachments to the bylaw.	Tier 5 Manager Social Policy and Bylaws	23 May 2013	Resolution number GB/2013/48	1 July 2013
Clause 6(5) and 7(5)	Prescribing standards relating food safety for businesses that operate at a lower standard than the issued grade.	Tier 4 Manager Environmental Health	23 May 2013	Resolution number GB/2013/48	1 July 2013
Clause 9	Determining the appropriate controls for food stalls.	Tier 4 Manager Environmental Health	23 May 2013	Resolution number GB/2013/48	1 July 2013

## Section 4 Register of controls

Action	Description	Date of decision	Decision reference	Commencement
None	N/A	N/A	N/A	N/A

## Section 5 Enforcement powers

Legislative provision	Description
<b>Health Act 1956</b>	23 General powers and duties of local authorities in respect of public health 30 Penalties for permitting or causing nuisances 33 Proceedings in respect of nuisances 34 Power to abate nuisance without notice 41 Owners or occupiers may be required to cleanse premises 42 Local authority may require repairs and issue closing order 65 General provisions as to bylaws 66 Penalties for breach of bylaws 137 Offences punishable on summary conviction
<b>Local Government Act 2002</b>	162 Injunctions restraining commission of offences and breaches of bylaws 163 Removal of works in breach of bylaws 164 Seizure of property not on private land 165 Seizure of property from private land 168 Power to dispose of property seized and impounded 171 General power of entry 172 Power of entry for enforcement purposes 173 Power of entry in cases of emergency 175 Power to recover for damage by wilful or negligent behaviour 176 Costs of remedying damage arising from breach of bylaw 178 Enforcement officers may require certain information 183 Removal of fire hazards 185 Occupier may act if owner of premises makes default 186 Local authority may execute works if owner or occupier defaults 187 Recovery of cost of works by local authority 188 Liability for payments in respect of private land

## Section 6 Offences and penalties

Clause	Description of offence	Fine	Infringement fee	Other penalty
All	A person who fails to comply with Part 2 or Part 3 of this bylaw commits a breach of this bylaw and is liable to a penalty under the Local Government Act 2002 and/or the Health Act 1956.	Under Section 242 of the Local Government Act 2002 person who is convicted of an offence against a bylaw is liable to a fine not exceeding \$20,000. Under Section 66 of the Health Act 1956, any person who breaches a bylaw is liable to a fine not exceeding \$500 and, in the case of a continuing offence, to a further fine not exceeding \$50 for every day on which the offence has continued.	nil	



## **Guidelines to the Auckland Council Food Safety Grading System**

as at [insert date]

## Introduction

These guidelines provide information on the Auckland Council Food Safety Grading System. The Food Safety Bylaw 2013 requires certain food businesses registered with the council to display a food safety grade certificate for public information.

The council's principal objectives of a food safety grading system are to:

- (a) encourage food businesses to maintain high standards of food safety; and
- (b) enable potential customers to make informed choices when purchasing food (certificates are required to be displayed at the principal entrance).

Recent changes to national regulations for food safety have resulted in a review of the Auckland Council Food Safety Grading System.

The Food Act 2014 comes into effect 1 March 2016 and replaces the Food Hygiene Regulations 1974 over a three year transitional period. The Food Act 2014 introduces significant improvements to the way food safety is addressed by food businesses across New Zealand. The primary duty of ensuring food safety will be the responsibility of the operator of a food business.

During the three year transitional period, the council will administer two grading schemes while businesses transition from compliance with the Food Hygiene Regulations 1974 to the Food Act 2014. The new grading scheme reflects the changes introduced through the Food Act 2014.

These guidelines aim to assist food business operators understanding of the two grading systems during this transitional period. Part 1 relates to existing businesses registered pursuant to the Food Hygiene Regulations 1974, and Part 2 relates to businesses registered pursuant to the Food Act 2014.

## Part 1

### Food Safety Grading under the Food Hygiene Regulations 1974

#### Introduction

Food businesses registered with the council pursuant to the Food Hygiene Regulations 1974 will continue to be graded on an annual basis until they transition their registration under the Food Act 2014. The transitional phase will end on 28 February 2019. The allocated grade is based on an annual inspection of compliance with the Food Hygiene Regulations 1974. Following the inspection, the food operator will receive a grade certificate with either an A, B, D, or E Food Safety Grade for the food business.

The following table outlines the assessment criteria required for a high grade.

<b>High Priority for an A Food Safety Grade</b>
<ol style="list-style-type: none"><li>1. Staff are trained and aware of food protection and food safety practices</li><li>2. The current registration and grading certificates are publically displayed</li><li>3. Good awareness of the importance of hand washing practices and a dedicated hand washing basin available with hot and cold water</li><li>4. Adequate cleaning/sanitising schedule and pest control plan in place (available for inspection)</li><li>5. Ventilation is adequate for cooking food</li><li>6. Compliance with building code requirements (e.g. provision of toilets) or applicable building standards</li></ol>
<b>Critical Matters for an A or B Food Safety Grade</b>
<ol style="list-style-type: none"><li>1. Pest control: There are no discernible pest control issues i.e. no evidence of weevils, cockroaches, mice or rats</li><li>2. Temperature control: Dishwashers are working to the required temperatures. Refrigerators are working to required temperatures (e.g 4°C and -12°C as appropriate)</li><li>3. Food protection: Food is stored to protect from contamination e.g. red meat will not drip on other food, any food stored in the open is covered and protected from contamination, sneeze guards are in place for displayed food etc</li><li>4. Premises are well cleaned, maintained and meet the standards of the Food Hygiene Regulations 1974 e.g. sinks/hot water etc</li></ol>
<b>Medium Priority for an A or B Food Safety Grade</b>
<ol style="list-style-type: none"><li>1. Hot water capacity is adequate</li><li>2. Lighting is adequate for tasks including cleaning</li><li>3. Adequate space in kitchen for food preparation and storage</li><li>4. Adequate refuse/waste storage/disposal facilities</li><li>5. Adequate and clean facilities to dispose of waste oil or fat including grease traps</li><li>6. Operator provides protective clothing appropriate to the type of food preparation</li><li>7. Changing facilities are proportionate to the number of staff</li></ol>
<b>Low Priority Items</b>
<ol style="list-style-type: none"><li>1. The colour of the walls, floor and ceiling</li><li>2. The ceiling height</li><li>3. Coving at the edge of the flooring</li><li>4. Appropriate notices are present e.g. hand washing or smoking notices</li></ol>

#### Application for re-grading

Food businesses registered pursuant to the Food Hygiene Regulations 1974 may apply for a re-grade assessment two months after the grade certificate has been issued by the council.

For further information contact Auckland Council on 09 301 0101 or see [Auckland Council Food Grading](#).



## Part 2

### Food Safety Grading under the Food Act 2014

#### Introduction

From 1 March 2016, a food business that registers their Food Control Plan with the council pursuant to the Food Act 2014 will be graded according to their level of compliance with their Food Control Plan (deemed or template food control plans only). Compliance will be assessed based on the performance of the business in critical areas of their Food Control Plan. The Food Act 2014 recognises that each business is different and promotes food safety by focussing on the processes of food production, not the physical premises where food is made or sold.

One of the principal objectives of the Food Act 2014 is to achieve the safety and suitability of food for sale. Food Control Plans are a method by which this objective can be achieved.

The Food Safety Bylaw 2013 requires every operator of a food business to display a Food Safety Grade Certificate where the business registers their Food Control Plan with the council (deemed or template Food Control Plan). These businesses include the food service sector specified in Schedule 1 of the Food Act 2014, and the food retail sector where food is prepared or manufactured and sold.

The council will issue grades for these businesses based on a new council grading scheme that is consistent with the Food Act 2014. Grades are divided into 'pass' grades and 'fail' grades. The pass grades are made up of the A-Grade ('exceptional'), the B-Grade ('high standard') and the C-Grade ('satisfactory'). The fail grades are made up of the D-Grade ('unsatisfactory') and the E-Grade ('enforcement action').

#### Assessment for pass grades

Food businesses that undergo verification of their Food Control Plan by the council will be assessed for a pass grade where the verification results in an 'acceptable outcome'.

The grading assessment will be based on selected elements of the template Food Control Plan that fall within the critical areas of 'Cook, Clean, Chill and Conduct'. These areas are described as:

- Cook - procedures or processes that use heat as a means to control, eliminate, or reduce, the growth of microorganisms
- Clean - any procedure or process designed to clean, sanitise or disinfect
- Chill - any procedures or processes that use refrigeration (i.e. cold temperature) as a means to control, eliminate or reduce, the growth of microorganisms
- Conduct - training, competence, ability, skill, compliance with suitability requirements and behaviour of the people in the food business.

The performance of a food business in each of these areas will be scored out of 25 points, with the maximum total score being 100 points. The pass grade awarded will depend on the maximum score achieved as outlined in Table 1 below.

**Table 1: Grade resulting from a pass grade assessment**

SCORE	Grade
91-100	A-Grade
61-90	B-Grade
50-60	C-Grade

### Assessment of fail grades

Food businesses that undergo verification of their Food Control Plan by the council will be assessed for a fail grade whenever the verification results in an 'unacceptable outcome', or, in the absence of a verification, a critical non-compliance is identified. In such circumstances a Food Safety Officer will be tasked to investigate and take the necessary enforcement and compliance action. The fail grades (i.e. the D-Grade or E-Grade) will be determined by the nature of enforcement or compliance action that a Food Safety Officer deems necessary.

A D-Grade certificate will be issued to a food business where an improvement notice has been issued pursuant to Section 302 of the Food Act 2014 for failure to comply with the Food Act 2014.

An E-Grade certificate will be issued to a food business where a Food Safety Officer has restricted the use of or closed the premises because food has been identified as unsafe, pursuant to Section 307 of the Food Act 2014.

If a food business is issued with both a closure notice (E-Grade) and an improvement notice (D-Grade), the closure notice will take precedence so that only the E-Grade certificate will be issued.

### Application for re-grading

Businesses issued with a pass grade (A, B or C-grade) may apply for a re-grade after the certificate has been issued by the council. Applications for a re-grade do not apply to businesses issued with a fail grade because the subsequent grade assessment will be undertaken in conjunction with the next scheduled verification, which will be a minimum of three months.

For further information contact Auckland Council on 09 301 0101 or see [Auckland Council Food Grading](#).

#### Helpful web links

[Auckland Council food registration and fees](#)

[Food Act 2014](#)

[Food Regulations 2015](#)

[Ministry for Primary Industries "Where Do I Fit Tool" for the Food Act 2014](#)

[Ministry for Primary Industries Marae Food Safety Guide](#)

[Ministry for Primary Industries Guidance on Selling Food from Food Stalls](#)