



Food Safety Bylaw 2013 Whakapai kai 2013

(as at 28 February 2019)

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 notes:

Clauses 4, 5, 7, 8, 10, 11, 12 amended and Clauses 6, 9, 13, Schedules 1 and 2 have been revoked for consistency with the Food Act 2014 and the Food Regulations 2015 by minute GB/2016/8, in force on 01 March 2016.

Clause 5 and Part 3 amended to reflect expiry of Part 3 on 28 February 2019.

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) *[consequential editorial deletion]*

Explanatory note: clause 4(1)(b) removed for ease of reading because it relates to expired Part 3 Regulation of food businesses registered pursuant to the Food Hygiene Regulations 1974.

5 Interpretation

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

Approved basic food hygiene course *[consequential editorial deletion]*

Explanatory note: definition removed for ease of reading because it relates to expired Part 3 Regulation of food businesses registered pursuant to the Food Hygiene Regulations 1974.

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 *[consequential editorial deletion]*

Explanatory note: definition removed for ease of reading because it relates to expired Part 3 Regulation of food businesses registered pursuant to the Food Hygiene Regulations 1974.

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 [consequential editorial deletion]

Explanatory note: definition removed for ease of reading because it relates to expired Part 3 Regulation of food businesses registered pursuant to the Food Hygiene Regulations 1974.

Food premises [consequential editorial deletion]

Explanatory note: definition removed for ease of reading because it relates to expired Part 3 Regulation of food businesses registered pursuant to the Food Hygiene Regulations 1974.

Food stall or mobile food shop [consequential editorial deletion]

Explanatory note: definition removed for ease of reading because it relates to expired Part 3 Regulation of food businesses registered pursuant to the Food Hygiene Regulations 1974.

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 wharenuui (meeting house), wharekai (dining room), ablution blocks, and any other associated buildings are situated".

Occupier [consequential editorial deletion]

Explanatory note: definition removed for ease of reading because it relates to expired Part 3 Regulation of food businesses registered pursuant to 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 [*consequential editorial deletion*]

Explanatory note: definition removed for ease of reading because it relates to expired Part 3 Regulation of food businesses registered pursuant to the Food Hygiene Regulations 1974.

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 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.

Explanatory note: consequential editorial amendment to clause 5(2) to remove reference to Food Hygiene Regulations 1974 for ease of reading because it relates to expired Part 3.

- (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:
 - (c) 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
 - (d) 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

[Expired]

7 Display of food safety grade certificates

[Expired]

Explanatory note: clause 7 expired as all food businesses now regulated under the Food Act 2014.

8 Training of staff at food premises

[Expired]

Explanatory note: clause 8 expired as all food businesses now regulated under the Food Act 2014.

9 Food stalls and mobile food shops

[Expired]

Explanatory note: clause 9 expired as all food businesses now regulated under the Food Act 2014.

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"> • Auckland City Council Food Premises Bylaw 2008 • Auckland City Council Food Stalls Bylaw 2008 • Franklin District Council Food Hygiene Bylaw 2010 • Manukau City Council Food Hygiene and Food Handlers Training Bylaw 2008 (chapter 8) • North Shore City Council Food Safety Bylaw 2000 (part 17) • Rodney District Council Food Premises Bylaw 1998 (chapter 24) • Waitakere City Council Food Safety Bylaw 2005 	01 Nov 2010	Section 63 Local Government (Auckland Transitional Provisions) Act 2010	01 Nov 2010
Revoke	<ul style="list-style-type: none"> • Auckland City Council Food Premises Bylaw 2008 • Auckland City Council Food Stalls Bylaw 2008 • Franklin District Council Food Hygiene Bylaw 2010 • Manukau City Council Food Hygiene and Food Handlers Training Bylaw 2008 (chapter 8) • North Shore City Council Food Safety Bylaw 2000 (part 17) • Rodney District Council Food Premises Bylaw 1998 (chapter 24) • Waitakere City Council Food Safety Bylaw 2005 	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
Update	Auckland Council Food Safety Bylaw 2013	28 Feb 2019	n/a	n/a

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	www.aucklandcouncil.govt.nz
Decision Minutes and Agenda of the Governing Body for 23 May 2013	Decisions on submissions to proposed food safety bylaw	www.aucklandcouncil.govt.nz
Background report for the hearing of submissions to	Background and summary of submissions to proposed food safety bylaw	www.aucklandcouncil.govt.nz

Document Title	Description of Document	Location of Document
the proposed Food Safety Bylaw 2013 - 19 April 2013		
Food Safety Bylaw Review Statement of Proposal - Decision Minutes and Agenda of the Governing Body for 20 December 2012	Provides background to the proposed food safety bylaw	www.aucklandcouncil.govt.nz
Long Term Plan	Outlines financial plans	www.aucklandcouncil.govt.nz
Annual Plan	Sets fees for food operators	www.aucklandcouncil.govt.nz
Local Government Act 2002	Provides certain functions, duties, powers and penalties to make and enforce this bylaw	www.legislation.govt.nz
Health Act 1956	Provides certain functions, duties, powers and penalties to make and enforce this bylaw	www.legislation.govt.nz
Local Government (Auckland Transitional Provisions) Act 2010	Provides certain functions, duties, powers and penalties to make and enforce this bylaw	www.legislation.govt.nz
Bylaws Act 1910	Provides for certain matters related to the validity of bylaws	www.legislation.govt.nz
Interpretations Act 2009	Provides for certain matters related to the interpretation of bylaws	www.legislation.govt.nz
Health (Registration of Premises) Regulations 1966	Provides for the registration of premises	www.legislation.govt.nz
Food Act 1981	Provides for exemptions to the Food Hygiene Regulations 1974, food standards and enforcement	www.legislation.govt.nz
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	www.legislation.govt.nz
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	www.legislation.govt.nz
Food Regulations 2015	Provides regulations for food businesses subject to risk-based measures under the Food Act	www.legislation.govt.nz

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	Function, duty, power to be delegated	Delegated authority	Date of delegation decision	Decision reference	Commencement of delegation
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
Health Act 1956	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
Local Government Act 2002	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	