



CITY OF VINCENT

“FOOD ACT 2008”

POLICY NO. 3.8.10

**(Adopted at the Ordinary Meeting of Council
held on 1 December 2009)**

POLICY NO: 3.8.10

"FOOD ACT 2008"

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OBJECTIVES

To:

- provide clear direction regarding the ongoing management of the *Food Act 2008*, *Food Regulations 2009*, and the Australia New Zealand Food Standards Code (in particular Chapter 3);
- develop consistent approach to the application of food safety enforcement tools including the issuing of infringement notices, improvement notices and prohibition orders, in addition to the option of prosecution;
- provide consistent guidance to food businesses in relation to the expectations and application of the *Food Act 2008*, including the administrative, skills and knowledge, enforcement and approvals (construction and fit out of food premises) components; and
- ensure risk management principles and best practice approaches are adopted, consistent with the nationally adopted Code, Department of Health and Food Standards Australia and New Zealand guidelines.

POLICY STATEMENT

The *Food Act 2008* (the Act) and *Food Regulations 2009* (the Regulations) were proclaimed on 23 October 2009, in conjunction with a repeal of Part VIII of the *Health Act 1911* and the *Health (Food Hygiene) Regulations 1993*, becoming the principal legislation governing food control within Western Australia. The objectives of the Act include the following:

- to ensure food for sale is both safe and suitable for human consumption;
- to prevent misleading conduct in connection with the sale of food; and
- to provide for the application of the *Australia New Zealand Food Standards Code* ('the Code').

The new Act will ensure that food enforcement and education is more relevant, incorporating the principles of risk management and best practice, in a nationally consistent manner by adoption of the Code.

It also moves away from inflexible, prescriptive legislation to a more outcome and risk based approach. The new Act allows greater flexibility for local government and food business proprietors in achieving acceptable food safety outcomes. It also incorporates significant changes to enforcement provisions; specifically, the introduction of Infringement Notices, Improvement Notices and Prohibition Orders and an increase of maximum penalties from \$50 to \$10,000 to between \$50,000 and \$500,000 for convictions in a court of law.

The Council acknowledges that the move to nationally consistent legislation is a welcomed change, and represents a significant shift in the regulation of the Western Australian food industry. A guiding policy is considered necessary, to ensure the consistent application of the new legislation by the City's Officers, and to provide clear guidance to food business proprietors on the City's expectations in relation to public health and food safety.

This Policy should be read in conjunction with the *Food Act 2008*, *Food Regulations 2009* and *Australia New Zealand Food Standards Code*.

Date Adopted:	December 2009
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GUIDELINES AND POLICY PROCEDURES RELATING TO THE FOOD ACT 2008

INTERPRETATION

Food Act 2008

The City's 'Environmental Health Officers' are approved as 'Authorised Officers' under the *Food Act 2008* (the Act); the terms are interchangeable in this document.

'*Food Business*' is defined as: 'a business, enterprise or activity (other than primary food production), that involves the handling of food for sale, or the sale of food; regardless of whether, subject to section 6, the business, enterprise or activity concerned is of a commercial, charitable or community nature or whether it involves the handling or sale of food on one occasion only.'

'*Sell*' (i.e. sale of food) includes: 'barter, offer or attempt to sell; receive or have in possession for sale; display for sale; cause or permit to be sold or offered for sale; send, forward or deliver for sale; dispose of by any method for valuable consideration; dispose of to an agent for sale on consignment; provide under a contract of service; supply food as a meal or part of a meal to an employee in accordance with a term of an award governing the employment of the employee or a term in the employee's contract of service, for consumption by the employee at the employee's place of work; dispose of by way of raffle, lottery or other game of chance; offer as a prize or reward; give away for the purpose of advertisement or in furtherance of trade or business; supply food under a contract (whether or not the contract is made with the consumer of the food), together with accommodation, service or entertainment, in consideration of an inclusive charge for the food supplied and the accommodation, service or entertainment; supply food (whether or not for consideration) in the course of providing services to patients or inmates in public institutions; and sell for the purpose or resale.'

'*Premises*' includes: 'land; the whole or part of any building, tent, stall or other structure (whether of a permanent or temporary nature); a pontoon; or a vehicle (other than a food transport vehicle while it is engaged in the transport of food).'

Australia New Zealand Food Standards Code (the Code)

The following standards are listed in Chapter 3 – Food Safety Standards, of the Code:

- Standard 3.1.1 – Interpretation and Application
- Standard 3.2.1 – Food Safety Programs
- Standard 3.2.2 – Food Safety Practices and General Requirements
- Standard 3.2.3 – Food Premises and Equipment,
- Standard 3.3.1 – Food Safety Programs for Food Service to Vulnerable Persons

The Code, generally requires food businesses to:

- comply with the requirements for food safety practices and food premises and equipment;
- ensure that staff have skills and knowledge in food hygiene and safety matters commensurate with their work activities;
- have in place a system for food recall; and
- notify the relevant authority about the business.

1. NOTIFICATION AND REGISTRATION REQUIREMENTS

1.1 Notification

In accordance with the notification requirements detailed in Clause 4, Standard 3.2.2 of the Code, all food businesses must, before the food business commences any food handling operations, notify the City of:

- their contact details;
- nature of the food business; and
- location of all food premises associated with that food business (within the City).

This notification process is a once-off requirement, and attracts a notification fee. Notification is also required whenever there is a change to the nature of the business, and/or proprietor.

Failure to notify the City of a food business activity creates an offence under the Act.

1.2 Registration

All food businesses must 'notify' the City of their intention to operate, regardless of whether they are required to 'register' the business in accordance with the Act. In order to comply with Section 109, a food business must ensure that any premises used in conjunction with the sale of food is approved by the City, as part of the food business' 'registration'.

1.3 Certificate of Registration

A formal certificate of registration will be issued to all approved food businesses within the City. Registration and invoicing of annual fees will occur annually, and be valid for the financial year. A registration is considered to be cancelled when, for example, annual fees are not paid by the due date or the business changes hands. Failure to cease operation of the food business, or re-register in these circumstances, respectively creates an offence.

1.4 Temporary Food Businesses (TFB)

Temporary Food Businesses typically include: food vehicles, market and barbecue stalls, including those operating at events and these businesses must:

- undertake the notification process within the Local Authority in which they are housed (i.e. food van), or where the food business is located (i.e. where food is manufactured for). TFB will be approved and inspected by the City's Environmental Health Officers prior to commencement of trade, and being permitted to operate. *NOTE: Food may not be prepared in a residential premises, unless it is registered with the relevant Local Authority.*
- apply for registration within the Local Authority in which they intend to operate (i.e. Special Events Permit). Where registration is sought, the City's Environmental Health Officers will assess the suitability of the TFB operating within the City, and will issue an approval to trade, if the TFB meets the appropriate requirements.
- in accordance with Council Policy 3.8.3 – Concerts and Events, if more than five (5) individual food service outlets are proposed, the event organiser/promoter will be required to coordinate the collection and submission of application forms, including relevant payments.

1.5 Fees and Charges

Fees are set under Part 6, Division 5, Subdivision 2 of the *Local Government Act 1995*, and are adopted by Council in the 'Schedule of Fees and Charges' for the relevant financial year.

- Notification - existing food businesses that have already completed the notification process with the City, prior to the proclamation of the Act will not be charged. New food businesses, or those that had not previously notified the City will be charged in accordance with the 'Fees and Charges' adopted by the Council.
- Registration – annual registration fees will be charged for all food businesses in accordance with a risk based fee structure, i.e. High/Medium/Low/Very Low Risk. Further details are found in Clause No. 2 – Food Business Risk Profiling.
- Re-inspection fees – food premises will be charged for inspections that result from an identified non-compliance.
- Temporary Food Businesses will also be charged a risk based registration fee, for each temporary food premises in the form of a one-off event (up to two consecutive days) or an annual permit for a particular event/location (i.e. NIB Stadium; regular Weekend Markets).
- Mobile Temporary Food Premises have traditionally not been approved by the City (formerly known as 'Itinerant Vendors' i.e. ice-cream vans that stop for custom on public property, when hailed by a customer). It is considered that this Policy formalises this position that mobile temporary food premises will not be approved within the City. In consultation with the City's Ranger and Community Safety Services section and Planning, Building and Heritage section, the following details were identified:

- The City is well serviced by permanent food premises;
- Mobile vendors do not necessarily contribute to the sustainment or development of the City's District, Commercial and Local Centres;
- Potential road traffic hazards (i.e. stopping for trade in no-stopping areas, obstructing driveways), and ability for the mobile food operator to stop for trade outside a permanent premises selling similar goods; and the difficulty in monitoring approved versus unapproved vendors.
 - Charitable/Community Temporary Food Premises will not be charged registration fees, except in the case where a food business demonstrates non-compliance with the City's requirements on the day of the event (invoicing will be undertaken post-event). Further details on requirements and exemptions specific to charity and community events are detailed below.
- Exempt Premises under Food Regulations 2009 (the Regulations)
 - Food businesses conducted as fundraising events (see Clause 1.6 - Charity and Community events for further details).
 - Food businesses that register an office or warehouse within the City for storage purposes only (i.e. a premises where food is not prepared, handled or sold).
 - Food businesses that provide complimentary drinks in conjunction with another kind of business, e.g. hairdresser providing complimentary beverages.
 - Food businesses conducted in premises that are, or form part of a registered establishment - as per the definition given in the *Export Control Act 1982* (Commonwealth) section 3.

The following categories of food premises are also considered by the City to be eligible for an exemption. These premises will be required to undertake the Notification process, and Register with the City, but will not be charged any notification/annual registration fees, unless the premises is identified to have serious non-compliance issues or a history of non-compliance during routine inspections.

- Public School Canteens, where funds are directly benefit the school (i.e. not operated by an external contractor).
- Registered not-for-profit organisations, e.g. community child care groups.

1.6 Charity and Community Events

Charity and Community Fundraising Events are exempt from some of the requirements under the Act and Regulations provided that:

- all the money raised is for a community or charitable cause; and
- foods produced are not potentially hazardous (i.e. low risk cakes and slices), or are cooked thoroughly for immediate consumption (i.e. sausage sizzles).

The specific exemptions relate to:

- Fees associated with Notification. *NOTE: Temporary Food Permit fees (for assessment and surveillance are only exempt when deemed so by the City.*
- Skills and knowledge requirements of food handlers in Standard 3.2.2 of the Code. *NOTE: volunteers are required to meet the health and hygiene requirements for food handlers, such as taking all practicable measures to ensure that they do not contaminate food when producing food, and observe basic hygiene requirements.*
- Food labelling requirements. *NOTE: information relating to food allergens must be provided to potential customers and the easiest way to provide this is on a label.*

Volunteers who donate food such as cakes, slices and preserves for fundraisers are only permitted to make these foods from home as long as the food they are producing is not 'potentially hazardous' and if the City's approval has been obtained. Premises used for the preparation of non-potentially-hazardous food by volunteers will not need to be registered. However, these types of food businesses will still be required to notify the City of their proposed food preparation activities, and submit the necessary application forms to operate a Temporary Food Premises.

Preparation of potentially hazardous foods must be undertaken in an approved food premises (i.e. commercial kitchen, approved school canteen facility). In this instance, Notification and Registration requirements apply to Charitable and Commercial Events. Waiving of fees is at the discretion of the City (refer to 1.5 - Fees and Charges above). *NOTE: 'Potentially hazardous' food products include examples such as: cream cakes, fried rice, sushi, salads, curries, soups and casseroles.*

2. FOOD BUSINESS RISK PROFILING

2.1 FSANZ – Food Safety: The Priority Classification System for Food Businesses

All food businesses in the City are currently assessed using the Food Standards Australia and New Zealand Priority Classification System for Risk Assessment. This risk-based scoring system is designed to classify businesses into priority ratings, based on the risk they present to public health and safety.

The following major risk factors are considered:

- the type of food;
- activity of the business;
- method of processing; and
- customer base (e.g. vulnerable groups).

This Risk Assessment tool has been formally adopted by the City, and will be used to determine whether a premises is profiled as High, Medium or Low Risk.

2.2 WA Food Regulation: Food Business Risk Profiling

The Department of Health document provides further guidance to the classification of food businesses. This model also introduces a fourth category of Very Low Risk, which has been adopted by the City for the purposes of Risk Profiling. This relates to the exempt premises as specified in the Act.

2.3 Examples of Typical Food Business Risk Profiling

- High Risk – child care centre, nursing home, smallgoods manufacturer, caterers.
- Medium Risk – restaurant/cafe, delicatessen, bakery, manufacturer, butcher, fast food chain, school canteen.
- Low Risk – liquor shop, fruit and vegetable shop.
- Very Low Risk – newsagency/pharmacy selling confectionary and potato crisps.

NOTE: profiling also depends on individual premises assessment and takes into account the factors detailed in Clause 2.4 – Inspection Frequency.

2.4 Inspection Frequency

All premises will be allocated an initial inspection frequency based on their risk profile, however the following factors must also be taken into consideration:

- performance history of the food business;
- changes to food production or fit-out that affect the inherent risk;
- substantiated complaints; and
- risk reduction programs that may be implemented by a food business (i.e. demonstrated good food safety practices and compliance with an audited food safety program - refer to No. 3 for further details).

Base inspection frequencies adopted by the City are as follows:

- High Risk – 4 to 6 monthly.
- Medium Risk – 6 to 9 monthly.
- Low Risk – 12 to 18 monthly.
- Very Low Risk – unlikely to require inspection however may be undertaken annually, based on health risk and complaints.

NOTE: the above inspection frequencies are considered appropriate to the City, and are higher than the national guidelines, that is, a balance between the historical frequencies recommended by the Department of Health, and those currently identified by FSANZ.

The above factors will be used to determine the fees associated with food surveillance activities undertaken by the City. This will allow more equitable allocation of costs across the food industry and reflect the level of resourcing allocated by the City. Should a large number of non-compliances or a serious non-compliance be identified, additional inspections will be required and charged for accordingly, as detailed in Clause - 1.5 Fees and Charges. This will ensure that compliant premises do not absorb service costs due to the re-inspection of non-compliant premises.

3. FOOD SAFETY PROGRAMS AND AUDITING

Food Safety Programs are a risk management/hazard control document that provide for the monitoring and control of hazards in a food premises, and require regular auditing. Food Safety Programs are now legally required for specific high-risk food businesses such as hospitals, child care centres, nursing homes and specific high risk food processes:

- Standard 3.3.1 of the Code specifically regulates Food Safety Programs for Food Service to Vulnerable Persons; and
- Standard 4.2.4 of the Code regulates the Primary Production and Processing Standard for Dairy Products.

Part 8 of the Act, specific to Auditing comes into effect for WA food businesses in October 2010. Auditing and Food Safety requirements will be guided by the WA Food Safety Auditing Framework, currently being drafted by the Department of Health. This document will set out how regulatory food safety auditing will be managed and operated in Western Australia.

The City's Environmental Health Officers will request to view the Food Safety Program during routine inspections, and will maintain a copy of a food business's Food Safety Program on the relevant premises file, should a copy be voluntarily provided to the City.

Audits of Food Safety Programs will not be undertaken by the City's Environmental Health Officers due to resourcing implications relating to training, administration and Officer time; liability implications; and potential conflict of interest. Food Businesses will need to obtain the services of an authorised Food Safety Auditor to ensure their Food Safety Program is audited within the required timeframes (to be set by the WA Food Safety Auditing Framework). Food Safety Auditors will be approved by the Chief Executive Officer of the Department of Health, with a list of approved auditors being made publicly available.

4.2 Infringement Notice

Section 126 of the Act allows for the issue of an Infringement Notice for 'prescribed offences', within 28 days of the alleged offence being committed. Schedule 3 of the Regulations details recognised offences and associated modified penalties.

Examples of modified penalties which can be issued 'on the spot' or within 28 days, by the City's Authorised Officers are as follows:

Offence under <i>Food Act 2008</i>	Modified penalty (individual)	Modified penalty (body corporate)
s. 22(1) – Failure to comply with a requirement of the Food Standards Code	\$250	\$1000
s. 22(2) – Sale of food that does not comply with a requirement of the Food Standards Code	\$500	\$1000
s. 107(1) – Conducting food business without meeting Notification requirements	\$250	\$1000
s. 109(1) - Conducting food business without meeting Registration requirements	\$500	\$1000

NOTE: associated re-inspection fees will be charged in accordance with Clause 1.5 – Fees and Charges.

4.3 Improvement Notice

Section 62 of the Act allows for the service of an Improvement Notice on the proprietor of a food business if the Authorised Officer believes, on reasonable grounds that a food business is operating a food premises that is:

- unclean or insanitary, or unfit for purpose intended to be used;
- does not comply with a provision of the Food Safety Standards;
- not adequately implementing its food safety program; or
- contravening the Food Standards Code in relation to handling of food intended for sale.

An Improvement Notice (in the form of an order) may be served on the proprietor of the food businesses for non-compliance, and require certain measures to be taken within a specified time frame (minimum 24 hours) - e.g. equipment to be replaced, premises to be cleaned to the satisfaction of an Authorised Officer. In accordance with Section 72, the Notice:

- must specify the provision of the Code to which it relates; and
- may specify particular action to be taken by a person to ensure compliance with the provision of the Code to which it relates.

The Authorised Officer may, prior to the end of the period specified in the Notice, extend the compliance timeframe. The Improvement Notice may also include ancillary or incidental directions. Compliance with a Notice must:

- be noted with the date of compliance on a copy of the Notice; and
- if requested, the City must provide a copy to the person served.

NOTE: associated re-inspection fees will be charged in accordance with Clause 1.5 – Fees and Charges.

4.4 Prohibition Order

A Prohibition Order issued under section 65 of the Act requires that no food be handled in the circumstances defined in the order, until a certificate of clearance order has been issued. A Prohibition Order may be issued if an Improvement Notice has not been complied with, within the specified time or if the initial non-conformance is severe enough to cause an immediate danger to public health. In accordance with Section 72, the Order:

- must specify the provision of the Code to which it relates; and
- may specify particular action to be taken by a person to ensure compliance with the provision of the Code to which it relates.

A Prohibition Order can result in part or all of a food premises being prohibited for use, for the handling or conveyance of food, or specified equipment or activities being restricted. Ultimately, this is likely to result in the food business needing to cease operation to comply, and subsequently, the issue of a prohibition order must be carefully considered. A proprietor may be eligible for compensation under Section 70 of the Act if it is determined that there were insufficient grounds for making the order, and the proprietor suffered loss as a result of the City making the order.

All prohibition orders and associated Certificates of Clearance must be signed by the CEO (under delegated authority). An Authorised Officer must request the CEO to issue a Certificate of Clearance in accordance with Section 66, once a prohibition order has been complied with. If a request for a Certificate of Clearance is refused, the proprietor may, in accordance with section 69, request a review of that decision, by the State Administrative Tribunal (within 28 days of the notification of the decision).

Re-inspections will be actioned as soon as practicable by the City's Authorised Officers. A proprietor may make a written request for a re-inspection to be undertaken by an Authorised Officer in accordance with Section 67. In the instance that the re-inspection is not undertaken within 48 hours of receipt of the request, a certificate of clearance is taken to have been given to the proprietor of the food business.

Offence under <i>Food Act 2008</i> – Infringement Notice	Modified penalty (individual)	Modified penalty (body corporate)
s. 68 – Contravention of, or failure to comply with a Prohibition Order	\$500	\$1000
Offence under <i>Food Act 2008</i> – Prosecutable Offence*	Penalty (individual)	Penalty (body corporate)
s. 68 – Contravention of, or failure to comply with a Prohibition Order	\$50,000	\$250,000

** Due to the severity of non-conformity with a Prohibition Order, it is likely to be more appropriate to initiate legal proceedings in this situation.*

NOTE: associated re-inspection fees will be charged in accordance with Clause 1.5 – Fees and Charges.

4.5 Prosecution

Prosecution will be initiated by the City in accordance with the Council Prosecution Policy No. 4.1.22. The penalties associated with a successful prosecution are significant, and are to be used in the case of serious non-conformance with the legislative requirements. The Act specifies that legal proceedings must be instituted within twelve (12) months of the date of the offence, or within 6 months of when a food sample was obtained.

Examples of prosecutable offences are listed as follows (using the same examples detailed in the Infringement Notices above):

Offence under <i>Food Act 2008</i>	Penalty (individual)	Penalty (body corporate)
s. 22(1) – Failure to comply with a requirement of the Food Standards Code	\$50,000	\$250,000
s. 22(2) – Sale of food that does not comply with a requirement of the Food Standards Code	\$50,000	\$250,000
s. 107(1) – Conducting food business without meeting Notification requirements	\$10,000	\$50,000
s. 109(1) - Conducting food business without meeting Registration requirements	\$10,000	\$50,000

4.6 Notification of Convictions

All food related convictions proved in a court of law must be reported to the Department of Health within fourteen (14) days, and will remain on the state-wide 'Name and Shame' Notification of Convictions register for a period of twenty four (24) months from the date of conviction.

In particular circumstances, the City may apply to have a conviction removed from the register prior to the twenty four (24) month period (i.e. when a food business changes hands, or when conditions have significantly improved over a sustained period). A proprietor may also apply to the City to have this reviewed.

4.7 Food Seizure

Section 49 of the Act permits an item (i.e. equipment, food) to be seized and detained in the premises, or removed to another place and detained there. As soon as practicable after the seizure, an Authorised Officer must provide written notification of the seizure in accordance with Section 50, including:

- a description of the item seized;
- the reason for the seizure;
- an explanation of the person's right to make application to the court under section 57 for an order disallowing the seizure;
- the address of the place where the item is held if the item has been removed from the premises where it was seized; and
- the name of the enforcement agency to whom the authorised officer reports (i.e. City of Vincent).

Where an Authorised Officer who has seized food is satisfied that the food consists wholly or partly of filthy, decomposed or putrid matter, or that it poses an immediate risk to health or property, the Authorised Officer (disregarding any provision to the contrary in this Part) may cause the food to be destroyed.

For the purposes of interpretation, the Macquarie Dictionary defines:

'Filthy' – foul with, characterised by, or having the nature of filth disgusting, dirty; vile, obscene; highly offensive or objectionable.

'Decomposed' – to rot; putrefy.

'Putrid' – in a state of foul decay or decomposition, as animal or vegetable matter; rotten.

In relation to food that is considered to be an immediate risk to public health, the Code deems the following as 'unsafe and unsuitable':

- food contaminated by biological or chemical agent, or other matter or substance that is foreign to the nature of the food (i.e. vermin/pests/faeces/glass/mould/bleach);
- food that is damaged, deteriorated or perished to an extent that affects its reasonable intended use (i.e. dented canned, perforated vacuum sealed meat);
- product of a diseased animal, or an animal that has died otherwise than by slaughter, and has not been declared safe for human consumption; and/or
- potentially hazardous food that has been exposed to temperatures which will adversely affect the microbiological safety of the food (i.e. between 5°C and 60°C, where the business cannot demonstrate that maintenance of food at this temperature for the period of time for which it will be maintained, will not adversely affect the microbiological safety of the food).

Where an item is not willingly destroyed onsite by the proprietor or employee of the food business, to the satisfaction of the Authorised Officer, the owner of that item (i.e. proprietor) is liable for any costs incurred by the City to arrange for the lawful destruction or disposal of the item (including storage costs). For example, cost for the City's waste disposal truck to attend food premises, refuse site tipping costs, or freezer storage unit to store seized food.

4.8 Food Sampling

Part 7 of the Act allows the City to take samples for analysis to determine compliance with the Code. The City will take samples in the following circumstances:

- from premises listed as manufacturers by the Local Health Authorities Analytical Committee (LHAAC)/Department of Health;
- as a part of sampling studies conducted by the Department of Health WA Food Monitoring Program, the Metropolitan Food Monitoring Group or by the City, itself; and
- in relation to a food complaint, or in the event of a food premises being associated with a food-borne illness outbreak.

Section 78 of the Act details the legal process that is required to take samples. When taking a legal sample, the City must purchase three samples – one to be forwarded to the approved analyst and the other two to be kept by the City and business owner respectively, should a dispute arise regarding the results. The City's Authorised Officers will also ensure that correct 'chain-of-evidence' techniques are strictly followed in the case of legal sampling. As detailed in Clause 4.5 – Prosecution, prosecution must be initiated within six months of a legal sample having been obtained by the City.

Non-legal sampling (taking only one sample for analysis) is the preferred method of sampling by the City and will be used when general monitoring is undertaken, in order to minimise costs and resourcing burdens associated with legal sampling. For follow-up investigations and/or should a complaint be received, legal sampling techniques, detailed in Section 78 of the Act, will be followed as far as is practicable.

NOTE: The City is not permitted to undertake a prosecution should substandard results be determined following analysis of a non-legal sample.

When obtaining a sample, the Authorised Officer will pay, or tender payment to the person from whom the sample is obtained, in accordance with Section 75 of the Act.

Laboratories and analysts must be approved by the CEO of the Department of Health. The City will submit samples to:

- PathWest for microbiological analysis.
- The analyst(s) approved by the LHAAC for chemical analysis.

5. CONSTRUCTION OF FOOD PREMISES AND OPERATIONAL CONSIDERATIONS

5.1 Assessment of Plans for Construction and Fit-Out of Food Premises

The assessment of plans for food premises via the Development Application, Building Licence or Food Premises Fit-Out process will be undertaken by the City's Environmental Health Officers in accordance with Standard 3.2.3 of the Code, and Australian Standard 4674:2004 - Design, Construction and Fit-Out of Food Premises.

New construction standards are outcome based and less prescriptive than those detailed in the repealed *Health (Food Hygiene) Regulations 1993*. However, to assist food businesses in achieving appropriate outcomes, the City's Environmental Health Officers will utilise AS 4674:2004 as a recognised design guide and detail examples of compliance with legislative requirements in the.

5.2 Residential Food Businesses (Home Occupation)

The Act does not prohibit food preparation in residential premises, but requires all food businesses to ensure compliance with the Act, which adopts the Code in full (i.e. all food businesses must comply with its requirements).

Chapter 3 of the Code contains the structural and hygiene outcomes that all food businesses must meet. Allowance is made within the Code for some exemptions relating to requirements for food premises that are used principally as a private dwelling if the proprietor has the approval in writing of the appropriate enforcement agency [e.g. Standard 3.2.2 clause 17(2)].

Prior to a food business receiving approval to operate from a residential food premises within the City, the following must be met:

- Planning Approval for a Home Occupation is required to be obtained, if the proposal involves the installation of a commercial grade kitchen and if the Home Occupation does not comply with the City's Minor Nature Development Policy.
- Relevant notification/registration requirements in accordance with the Act;
- The structure/fit-out of the premises must be deemed appropriate for the proposed food handling activities, in accordance with Standard 3.2.3 of the Code (i.e. all facilities to be located within the one room); and
- The risk of the food preparation activities assessed (i.e. low risk operations only).

Consideration will also be given to whether the activity is for commercial gain, or for fundraising/charitable purposes.

The Department of Health policy on food businesses that operate from premises that are used principally as a private dwelling, is that the approval for the exemptions contained within the Code should only be granted for those food businesses that have been classified as 'low risk'. Examples include the manufacture of 'cottage industry' goods such as jams, biscuits and preserves. It is considered appropriate that the City adopt the DOH policy in this regard, meaning that medium and high risk food businesses will not be approved to operate from residential food premises.

5.3 Food Recalls

A food recall is defined as 'an action taken to remove from distribution, sale and consumption, food which may pose a health and safety risk to consumers'. All food businesses involved in the wholesale food supply, manufacture or importation of food must ensure they have a food recall system in place, and a food recall contact, in accordance with Standard 3.3.2 of the Code.

The FSANZ Food Recall Protocol has been developed to help food businesses plan for and respond to an incident, where the recall of potentially unsafe food is required, and details:

- the legal requirements for food businesses in relation to food recall, specified in Standard 3.2.2 Food Safety Practices and General Requirements in the *Australia New Zealand Food Standards Code* (the Code);
- the roles and responsibilities of food businesses and government agencies when a recall is necessary;
- the key steps in the recall process; and
- important elements of a recall plan.

6. EDUCATION AND TRAINING

6.1 Education

The City's Health Services have an active education program targeted at ensuring food businesses are aware of the implications of the Act on their operations, and other relevant issues.

Information is disseminated to food businesses by the following means:

- *Food Safety Matters* newsletter (quarterly publication).
- Formal notification via mail-outs.
- Education during inspections.
- Fact sheets available on the City's website.
- Information Sessions on topical issues.
- City of Vincent quarterly newsletter.
- Telephone/email queries.

6.2 Training – Skills and Knowledge

All food businesses must ensure that persons undertaking or supervising food handling operations have appropriate skills and knowledge in relation to food safety and food hygiene matters, in accordance with Standard 3.2.2 of the Code.

Approximately 90% of the food industry within the City is involved in the hospitality industry, which traditionally has a relatively high staff turn-over, particularly casual staff. It is strongly recommended that at least one managerial staff member complete the nationally accredited 'Hygiene for Handlers' Certificate, obtained by completing the Online Food Handler Training Course offered by the City in conjunction with Challenger TAFE (see useful links for further information). All other sectors of the food industry are strongly encouraged to seek appropriate training specific to their industry from a Registered Training Organisation.

All food business proprietors and other trained staff members are strongly encouraged to impart food safety knowledge to other staff members who are not formally trained, e.g. providing information at team meetings, demonstrating skills, and displaying posters regarding correct practices.

The City's Health Services also actively promote a variety of health promotion initiatives, including MenuWise and the Vincent Food Hall of Fame. Further details can be found in Council's 'Healthy Vincent' Policy No. 3.8.9 and on the City's website.

7. USEFUL LINKS:

- **Food Act 2008 and the Food Regulations 2009** are available at online via the State Law Publisher: www.slp.wa.gov.au (click on WA Legislation and Legislative Information Databases)
- **Food Safety Standards** are available at: www.foodstandards.gov.au (use the Quick Links drop down menu for Food Safety Standards, Fact Sheets, Safe Food Australia and Industry User Guides)
- **FSANZ Food Industry Recall Protocol** - A Guide to Conducting a Food Recall and Writing a Food Recall Plan:
http://www.foodstandards.gov.au/srcfiles/Food%20Recall_WEB.pdf
- **Department of Health**: www.public.health.wa.gov.au (click on Food)
- **Department of Health WA Food Regulation – Food Business Risk Profiling**
<http://www.public.health.wa.gov.au/cproot/2624/2/WA%20Food%20Regulation%20-%20Food%20Business%20Risk%20Profiling.pdf>
- **Publication of Notification of Offenders (DOH Name and Shame Register)**
[http://www.public.health.wa.gov.au/2/825/2/publication_of_names_of_offenders.
pm](http://www.public.health.wa.gov.au/2/825/2/publication_of_names_of_offenders.pm)
- **City of Vincent - Health Services**
Food Premises Guideline - Guide to Operation, Design and Construction of Food Premises; Temporary Food Premises Guide:
http://www.vincent.wa.gov.au/3/497/1/food_premises.pm
Online Accredited Food Handler Training:
http://www.vincent.wa.gov.au/3/636/1/food_handling_course.pm