



Food Act 2001 - Inspection Fees

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Department:	City Development	Division:	Environmental Health and Safety
Function:	11 - Health Management	Responsible Officer:	Manager Environmental Health and Safety

A - PREAMBLE

1. Regulation 13 of the *Food Regulations 2017* (made under the *Food Act 2001*) provides for Councils as enforcement agencies to charge an inspection fee for the carrying out of any inspection of any premises or food transport vehicle, which is reasonably required in connection with the operation or administration of the Act.

B - SCOPE

2. This policy applies to premises and or food transport vehicles, which undertake the sale of food as prescribed in the Food Act 2001. The inspection fee must not exceed the reasonable costs of the enforcement agency with respect of the inspection, and in any event must not exceed the maximum prescribed.
3. The current maximum fees for inspections are set under Regulation 13 of the Food Regulations 2017, and prescribed by notice annually in the Government Gazette.

Fees are established for two classes of business:

1. small business (where no more than 20 people (full time equivalents) are engaged in handling food; and
2. in any other case (other than small business)

Fees are adopted by Council and published in Council's Fees and Charges document annually.

4. Where the inspection is levied and performed by the Council, it will be exempt from GST as the fee does not constitute consideration for GST purposes. This position is confirmed in Class Ruling 2013/41 where the Commissioner sets out the GST treatment of the following inspection fees. Exempt - paragraph 81-15.01(1)(f) of the GST Regulations.

5. Inspection fees may be recovered from the occupier of the premises or from the owner or operator of a food transport vehicle (as the case may be) as a debt due to the Council.
6. A fee shall be imposed for each routine inspection undertaken, for every premise, except in the circumstance when:
 - Multiple business are owned by one proprietor; and
 - They are registered under 1 ABN and
 - The businesses are located next to each other; and
 - The inspection for each site is carried out at the same time.
7. This policy has been developed in line with the model policy from the Local Government Association and SA Health.

C – POLICY PURPOSE/OBJECTIVES

8. This Policy depicts the circumstances and provision in which Council classifies and charges a food premises for an inspection.

D - FREQUENCY OF INSPECTIONS

9. The Food Business Risk Classification System endorsed by SA Health is utilised to allocate priority classifications for businesses and frequency of inspections. The frequency may be revised based on level of compliance.
10. Business risk ratings are based on the Australian New Zealand Food Authority Food Safety Priority classification system.

The City of Salisbury’s risk rating inspection schedule is as follows:

Table: Priority Classification Inspection Frequencies (every x month)

Priority Classification	Starting point	Maximum	Minimum
Priority 1 (P1) High Risk	6	3	12
Priority 2 (P2) Medium Risk	6	3	12
Priority 3 (P3) Low Risk	12	12	24 or No Inspection
Priority 4 (P4) Negligible Risk	12	12	24 or No Inspection
Priority 1 (P1) High Risk Bakery - process / manufactures (This classification is required by SA Health)	6	3	6

11. Changes of Frequency

The frequency of inspection shall be changed under the following circumstances:

- Businesses assessed using the Australian Food Safety Assessment tool:
 - The frequency of inspection shall be increased to the maximum frequency for any business that registers:
 - 2 consecutive unsatisfactory (major non-compliance) inspection results

- Business on the maximum inspection frequency shall revert to the starting frequency after 2 consecutive inspections with results of either satisfactory or satisfactory (minor non-compliance)
- The frequency of inspection shall be decreased from starting frequency to the minimum frequency for any premise that registers two consecutive routine inspections with a satisfactory or a satisfactory (minor non-compliance) result.
- Businesses assessed with the South Australian Food Safety Rating Scheme
 - The frequency of inspection shall be increased to the maximum frequency when the businesses receive two consecutive 0 star ratings assessments.
 - Business on the maximum inspection frequency shall revert to the starting frequency after 2 consecutive inspections with results of 4 star rating or above ratings
 - The frequency of inspection shall be decreased from the starting frequency to the minimum frequency if the business receives two consecutive 5 star rating assessments.
- The frequency of inspection shall revert to the starting frequency in the circumstance of a new proprietor.

E - DEFINITIONS

- *"Community and charitable organisation"* means any group that does not provide financial gain to any members.
- *"Negligible risk business"* means a business that handles only nominal risk foods, and hence will not warrant frequent or lengthy inspections. Nominal risk foods are foods that are not potentially hazardous and are received and sold in the same packaging.
- *"Priority classification"* means the risk classification allocated to a business as determined by the SA Health Food Business Risk Priority Classification System.
- *"Routine inspection"* means an inspection conducted at a frequency determined by the business' priority classification and performance history based on the Australian Food Safety Assessment system.
- *"Small business"* means a business where not more than 20 people are engaged in handling food (determined as people who work full-time in handling food, or the full-time equivalents of such people).
- *"Mobile food van"* means a van/vehicle used to transport, prepare and offer food for sale directly from the vehicle for immediate consumption.
- *"Food transport vehicle"* means a vehicle used to store and transport food for sale.
- *"Australian Food Safety Assessment (AFSA)"* – is an assessment tool used by Environmental Health Officers to determine a food businesses compliance with the food safety standards.
- *"Food Safety Rating Scheme"* – is an initiative of SA Health which is voluntary and allows Environmental Health Officers to calculate a score based on how well the food business meets the food safety standards. The score is interpreted into a star rating which gives consumers information about how well the business complies.
- *"Minor non-compliance"* – the issue identified is considered to be a breach of the standards, however only of a low risk in nature and can be easily remedied, without a direct risk to food safety or public health.
- *"Major Non-Compliance"* – the issue identified is considered to be a breach of the standards; requiring significant remediation or is of high risk with a direct risk to food safety or public health.
- *Satisfactory (minor non-compliance)* – the business has been assessed as generally satisfactory with 2 or less minor non-conformances being identified which have a negligible risk and can be easily remedied and are not a direct risk to food safety or public health.
- *Unsatisfactory (minor non-compliance)* – the business has been assessed as generally

unsatisfactory with 3 or more non-conformances being identified which have a negligible risk and can be easily remedied and are not a direct risk to food safety or public health.

F - POLICY STATEMENT

12. Routine Inspections

Inspection fees will apply to routine inspections of food premises, mobile food vans and food transport vehicles.

Comments:

Inspection fees will not be applied to food transport vehicles that have been inspected by the Council in whose jurisdiction the food transport vehicle is located. The nature of these businesses requires that they operate across numerous Council areas and hence it is not expected that inspection fees be charged by other Councils that choose to inspect the vans while they are operating in their areas.

Inspection fees will not be applied to mobile food vans and food transport vehicles based in the City of Salisbury and inspected as part of the routine food premises inspection, and those issued a street trading permit.

Mobile food vans operating at Markets will be subject to half fees as specified in clause 10.

13. Routine Inspections for Home Based Food Premises

Inspection fees will apply to routine inspections of home based food premises, mobile food vans and food transport vehicles. A home based food business is one that meets the criteria in the Council's Guidelines for Home Based Food Businesses.

Comments:

The frequency of inspection will be dependent on the Food Business Risk classification, and the results of the Australian Food Safety Assessment. Inspection frequency of food businesses may increase or decrease depending on their performance history. Refer to Table: Priority Classification Inspection Frequencies above

Where the home based food business has been granted approval in accordance with the guideline to use the domestic kitchen and is classified as a Priority 3 – Low Risk or Priority 4 – Negligible Risk then the business will receive a fee equivalent to 50% of the base fees for a small business.

14. Notice or Order Follow Up Inspections and Compliance Inspections

Inspection fees equivalent to 50% of the base fees will apply to follow up inspections of food premises, mobile food vans and food transport vehicles, related to ensuring compliance with an Improvement Notice or Prohibition Order.

Inspection Fees will not be applied if expiation has been issued for the non-compliances or the non-compliance of the Notice or Order.

Inspection fees will not be applied to compliance follow-up inspections related to non-compliance of the Food Act that are addressed with a letter or the AFSA report or verbally.

Comments:

In those instances where non-compliance has occurred (after being given appropriate time frames to rectify problems) and re-inspection is required, Councils as enforcement agencies are provided with the mechanisms to achieve compliance using the provisions of the Food Act, for example expiation notices, prohibition and/or improvement orders. Notices and orders are utilised to achieve compliance of food safety standards where there are multiple concerns or recurring

concerns or serious non compliances. Issuing a Notice or Order requires a follow up inspection and subsequently places greater demand on resources. As the inspection is usually specific in nature the length of inspection is reduced and subsequently the fee is set at 50% of the base fee.

Where a penalty or expiation is imposed for the non-compliance or failure to comply with the notice the inspection fee is not charged as the expiation penalty is considered sufficient.

15. Complaints Inspections

Inspection fees will not be applied to inspections carried out in relation to complaints received from the public as there are other penalty provisions for any complaints or offences that are substantiated.

Comments:

From time to time Councils will inspect food premises as part of complaint investigations. Inspection fees should not be charged in these instances due to complaints often being unsubstantiated and because the ad hoc inspection for this purpose is often quite quick (normal inspection fees would apply to these businesses for standard inspections). Where complaints are substantiated then alternative penalty provisions can apply.

16. Community and charitable organisations

Inspection fees will apply to inspections of food premises, mobile food vans and food transport vehicles operated by listed community and charitable organisations.

Comments:

Inspection fees for community and charitable organisations will not be applied if the following criteria are evident:

- The organisation conducts only fund raising events, or
- The organisation only sells nominal risk foods, or
- The organisation only sells BBQ foods when the food cooked when ordered and sold directly from the cooking surface, or
- The organisation only provides food for free (or donation) to recipients for charitable purposes

For the purpose of this section nominal risk is as described in the definitions and includes, packaged foods sold in the same packaging it has been received.

Other types of activities involving sale of food, conducted by community and charitable organisations may be considered nominal risk and is at the discretion of the Environmental Health Assessment Unit.

17. Local Sporting Clubs

Inspection fees will apply to food premises, mobile food vans and food transport vehicles operated by local sporting clubs.

Comments:

Inspection fees for local sporting clubs will not be applied if the following criteria are evident:

- The organisation is predominately run by volunteers, or
- The organisation conducts only fund raising events, or
- The organisation only sells nominal risk foods, or
- The organisation only sells BBQ foods when the food cooked when ordered and sold directly from the cooking surface

For the purpose of this section nominal risk is as described in the definitions and includes, packaged foods sold in the same packaging it has been received.

18. Negligible risk businesses

P4 Negligible risk premises that are determined to require a regular inspection will have inspection fees applied.

Inspection fees will not be applied to "negligible risk" businesses that are determined to not require inspections as a result of their low risk activities. This includes storage and sale of pre-packaged low risk foods, or warehousing and storage of frozen goods or fresh fruit and vegetables without any further handling.

19. Schools

Inspection fees will apply to inspections of canteen facilities in education institutions.

Comments:

Inspection fees for education institutions will not be applied if the operator of the canteen facility is run by the school /institution and is not for profit,

20. Festivals, fetes and shows

Inspection fees will not be applied to inspections of food premises, food stalls and food vehicles operating at the festivals, fetes and shows that only occur once a year.

Comments:

These events can be one off events or annual events and are in the main conducted by community and/or charitable organisations, and as such should not be imposed an inspection fee.

When events occur on a frequent basis they will be classified as "Food Markets" and fees can apply as per the following section.

21. Food Markets

Inspection fees will apply to inspections of food premises, food stalls and mobile food vans operating at the food markets at a reduced rate equivalent to 50% of the fee for small businesses.

Inspection fees for food markets will not be applied if the following criteria are evident:

- The food premises, food stalls and mobile food vans operating at the food markets are run by a community club or charitable organisations, and is a one off fundraising event conducted only once a year
- The food premises, food stalls and mobile food vans are deemed to be a "*Negligible risk business*".
- The food business is offering for sale pre-packaged, shelf stable and appropriately labelled products that do not require specific storage requirements such as temperature controls.
- The business operating the mobile food van is based in the City of Salisbury and is inspected as part of a routine premises inspection and subject to an Inspection Fee during that inspection.

Comments:

The reduced rate of fees is applicable as many stall holders could be established at numerous locations and be subject to fees from other authorities also. The reduced fee also recognises the transient nature of the stall holders and many will change from time to time.

22. Businesses with Food Safety Programs

Inspection fees will apply to food businesses that have food safety management systems and food safety programs in place and are audited by external auditors.

Inspection fees will not be applied if the food safety management system and food safety program is required by legislation and the auditing agency is a Government Authority, including but not limited to:

- Primary Industries and Resources South Australia
- Dairy Authority of South Australia
- SA Health (Department of Health)
- Local Government Food Safety Auditors and the
- The food safety program covers the requirements of the Food Act 2001, Food Regulations 2002 and the Food Safety Standards, and
- Council receives copies of all Audit Reports conducted by the 3rd party auditors.

Comments:

Formal food safety programs are those based on Hazard Analysis and Critical Control Point (HACCP) principals, however they are only legislatively required across several business sectors within SA at this point in time. Many businesses in the manufacturing and processing sector have chosen to implement food safety programs within their organisations for business reasons, or as a proactive measure to help ensure food safety.

Organisations that invest the time, upfront and ongoing costs of a fully audited food safety program may consider the additional cost of a Council inspection fee is unfair/unwarranted, however inspections of these premises are likely to take as long as similar type inspections.

As the enforcement agency Council can inspect such food businesses as part of their general inspection program, however audited premises that fulfil the above requirements with regards to their audits that are required by legislation may be exempted from inspections, and inspection fees.

Premises that have an audited Plan not required by legislation at present are subject to regular inspections and subsequently fees are applicable.

F – LEGISLATION/ REFERENCES

- Food Act 2001
- Food Regulations 2017, Regulation 13
- A New Tax System (Goods And Services Tax) Act 1991 Division 81 - Payments of taxes, fees and changes
- The South Australian Food Business Risk Classification, November 2018, South Australia. Department for Health and Wellbeing

Document Control

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