

Clause 16 in Report No. 13 of Committee of the Whole was adopted, without amendment, by the Council of The Regional Municipality of York at its meeting held on September 24, 2015.

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Mandatory Food Handler Certification Bylaw

Committee of the Whole recommends adoption of the following recommendations contained in the report dated August 14, 2015 from the Medical Officer of Health and the Commissioner of Community and Health Services:

1. Recommendations

It is recommended that:

1. Council enact a mandatory food handler certification bylaw in accordance with the terms set out in this report.
2. Staff be directed to make an application to the Regional Senior Justice for a set fine order for the fines prescribed in the bylaw, as set out in Attachment 1.

2. Purpose

This report is prepared for Council in order for it to carry out its legislative duties as a Board of Health under the *Health Protection and Promotion Act*.

This report seeks Council's approval to implement a mandatory food handler certification bylaw for food premises in York Region. This bylaw would require that at least one operator and one food handler be certified in safe food handling and that at least one certified food handler be present at all times at a food premise during operation.

Section 11(2) of the *Municipal Act*, 2001 permits municipalities to pass bylaws respecting the health, safety and well-being of persons.

3. Background

Mandatory certification can assist the Region's Board of Health in carrying out its mandate under the *Health Protection and Promotion Act*

The *Health Protection and Promotion Act* requires that boards of health provide health programs and services in the area of community sanitation to ensure sanitary conditions and the prevention or elimination of health hazards. In addition, both the Ontario Public Health Standards (2014) and Food Safety Protocol (2013) require that boards of health ensure food handlers, in food premises, have access to training in safe food-handling practices and principles.

Under the Ontario Public Health Standards, boards of health must also promote that at least one certified food handler be present at the food premises during all hours of operation for all high and moderate-risk food premises.

Other health units in Ontario have implemented food handler certification bylaws

In 2004, the Province appointed Justice Haines of the Superior Court of Justice to lead an independent review and report on Ontario's meat regulation and inspection system to strengthen health and safety and business confidence in the public health sector. One of the recommendations from the review was that the provincial government amend the *Health Protection and Promotion Act* to require that the operator of a food premise and at least one staff member, present during all hours of operation, be a certified safe food handler. Despite these recommendations, no amendments have been made to public health legislation. Public health units have advocated for mandatory food handler training to be legislated provincially. Currently, eight health units have successfully implemented mandatory food handler certification bylaws: Toronto, Halton, Hamilton, Niagara, Brant, Middlesex-London, Lambton, and Peterborough. Hamilton is planning to evaluate in 2016. After a period of adjustment when the bylaws were initially implemented, including communications and consultations with food premise operators and the public, the bylaws in these jurisdictions have been well received with minimal ongoing complaints. Many jurisdictions and operators have said these bylaws have been a positive change within the industry.

Regulations under the *Long-Term Care Homes Act* and the *Retirement Homes Act* require that food service workers employed in long-term care and retirement homes have certain training and qualifications. However, there are no legislated requirements for other facilities serving food to vulnerable populations including homes for special care, group homes and child care centres to have certified

food handlers. A Regional bylaw would ensure that food premises serving our vulnerable populations have at least one person certified at all times.

York Region's Food Handler Certification Program has been enhanced as a result of consultations with food premises

York Region's Food Handler Certification Program certifies over 3,000 participants each year and is delivered as a workshop, on-line course or self-study option in multiple languages at multiple locations. Cost varies depending on module (e.g. workshop \$45.00, online \$40.00, self-study \$10.00 and exam \$15.00). Pricing is comparable to other GTA Health Units and is based on cost-recovery for materials, printing and online fees.

In 2014, York Region Public Health conducted a telephone survey with over 820 food premises that did not have a certified food handler present during at least one inspection in 2013. The purpose of the survey was to determine attitudes regarding certification and barriers to becoming certified.

In response to findings and recommendations from this survey, York Region Public Health has:

- provided on-line registration and on-line interactive training
- increased the number of after-hours workshops and exam sessions
- provided workshops and exam sessions at business locations
- increased the number of regularly scheduled workshops at five different office locations including: East Gwillimbury, Georgina, Markham, Richmond Hill and Vaughan
- provided workshops, course materials and exams in multiple languages
- offered, as actions through both the Immigration Settlement Strategy and Making Ends Meet initiative, eligible individuals no-cost or low-cost options (e.g. students, low and moderate-income residents who are clients of community organizations, newcomers)

4. Analysis and Options

Food premises with certified food handlers have significantly better compliance

Between 2011 and 2013, York Region Public Health analyzed over 32,000 inspection records completed during this time frame. Results from this analysis suggest that food premises that would currently satisfy the proposed bylaw have 32% fewer infractions compared to those premises that would not. Overall, food premises that already satisfy the proposed bylaw average 0.60 infractions per inspection, less than half the 1.25 infractions per inspection found at premises that do not satisfy the proposed bylaw.

In addition, the analysis also found a significant link between food handler certification and critical infractions (i.e. infractions most likely to cause food-borne illnesses). Premises that would currently satisfy the proposed bylaw had less than half the critical infractions (average of 0.18 per inspection) compared to food premises that did not (average of 0.40 per inspection).

Combined, these results provide support for the proposed bylaw recommended in this report.

Food premises without certified food handlers are twice as likely to have enforcement activities

Between 2011 and 2014, York Region Public Health also analyzed food premises enforcement data to determine whether having certified food handler staff impacted enforcement activities. Food premises with no certified food handler were twice as likely to have enforcement activities (i.e. closures, tickets, summons) than premises with certified food handler staff, a statistically significant difference. Enforcement activities in food premises are based on health hazards or repeat non-compliance with the Food Premises Regulation and result in increased Public Health Inspector time in follow-up and court appearances.

York Region residents support mandatory food handler certification

In 2014, public support for mandatory food handler certification was assessed through a telephone survey of York Region residents. Results indicated that 88% of York Region residents supported mandatory food handler certification.

Mandatory food handler certification would increase consumer confidence in York Region food premises and allow the presence of certified staff to be

disclosed on the YorkSafe website. The website makes available to the public York Region Public Health's food safety disclosure information.

The proposed bylaw would require certain food premises to have certified food handlers on the premises

As part of the proposed bylaw, food premises would be categorized as "high-risk" and "moderate-risk." These categorizations are assessed and completed based on a questionnaire developed by the Ministry of Health and Long-Term Care. Assessment criteria include: the population served, complexity of food preparation, compliance history and presence of a certified food handler. In general, high-risk food premises have more complex food preparation and can include restaurants, child care centres and long-term care homes. Moderate-risk premises have fewer preparation steps and can include food take-outs and coffee shops.

The basic requirements under the proposed bylaw are:

- (a) each high and moderate-risk premises must have a minimum of one operator and one food handler who each have a current, valid food handler certificate; and
- (b) at least one certified food handler must be present at the premises to supervise the preparation and handling of food.

The proposed bylaw contains provisions for conducting public health inspections and issuing orders. Inspections may be undertaken at any time to determine compliance with the bylaw. If an inspector is satisfied that a contravention of the bylaw has occurred, an order can be made to comply with the bylaw.

It is recommended that set fines are established to provide streamlined enforcement of the bylaw. The proposed fine structure for offences under the bylaw is set out in Attachment 1. These fines are consistent with those levied in other jurisdictions. In order for the set fines to be implemented, an application must be made to the Regional Senior Justice following enactment of the bylaw. Approval of the set fines will permit enforcement through the issuance of tickets.

Implementation of the bylaw would be phased-in over three years

Currently, 67% of high and 62% of moderate-risk food premises in York Region already have at least one certified food handler. By implementing a bylaw, high-risk premises would require certified staff by the end of 2016 and moderate-risk premises by the end of 2018. Therefore, it is estimated that 3,800 individuals would require certification between 2016 and 2018. To meet this growing demand for certification under the bylaw, certification requirements would be phased in over a three year period to allow businesses time to comply. This

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phased in approach has been successful based on feedback from other health units that received little to no resistance from the restaurant and food industry in their jurisdictions. In addition, York Region Public Health has consulted with the Ontario Restaurant, Hotel and Motel Association and they agree, in principle, with Mandatory Food Handler Certification.

Certification would be valid for five years and the Region would recognize food handler certifications individuals received from other health units as well as corporate and private certification programs deemed equivalent by the Ministry of Health and Long-Term Care.

Enforcement of the bylaw would be part of routine public health inspections

Public Health Inspectors would enforce the bylaw as a component of routine food premises inspections starting in 2017 for high-risk premises. A communication and consultation phase for operators and stakeholders including local municipalities and operators of food premises would be developed.

Link to key Council-approved plans

Reaching uncertified food handlers through mandatory food handler certification, along with inspection, enforcement and disclosure activities supports the Community Health and Well-Being priority area of the 2015 to 2019 Strategic Plan. It also aligns with an action of Vision 2051 to foster the health and well-being of the population through the promotion and protection of health and the prevention of illness.

5. Financial Implications

Public Health can meet an increased demand for training

The approved outlook as part of the 2015-2018 Multi-Year Budget and Business Plan provides for the addition of a Supervisor in 2016 to oversee the Food Handler Certification program. The anticipated increase in demand for training and education as a result of implementation of mandatory food handler certification bylaw is expected to be managed within the current staff complement and budget by optimizing the use of online learning and other equivalent courses that are available.

By having mandatory food handler certification, public health enforcement activities will be reduced resulting in overall operating efficiencies. For example, in 2014 there were 139 enforcement activities related to uncertified food handlers compared to only 31 enforcement activities where there were both a certified operator and food handler present.

6. Local Municipal Impact

There is no direct impact from these recommendations on local municipalities as the food safety program and proposed bylaw are regionally funded and administered.

Once implemented, the proposed bylaw will be promoted widely in an effort to raise awareness across all nine municipalities. Other jurisdictions who have implemented a similar bylaw have indicated a favourable response by their local municipalities to this type of legislation.

7. Conclusion

York Region Public Health is seeking Council approval to develop and implement a mandatory food handler certification bylaw. The recommended approach would require that all high and moderate-risk food premises have at least one certified operator and one certified food handler and that a certified food handler be present at all times during hours of operation.

The next step would be to communicate the requirements of the bylaw and the implementation plan to all stakeholders.

For more information on this report, please contact Joe La Marca, Director, Health Protection at ext. 74025 or Becky Hester, Manager, Health Protection at ext. 74689.

The Senior Management Group has reviewed this report.

August 14, 2015

Attachment (1)

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Accessible formats or communication supports are available upon request

Short Form Offences and Set Fines

Item	COLUMN 1 Short Form Wording	COLUMN 2 Offence Creating Provision	COLUMN 3 Set Fine
1.	Operator fails to ensure a minimum of one Operator per High-Risk Premises is a holder of a valid Food Handler's Certificate.		\$250
2.	Operator fails to ensure a minimum of one Food Handler who is a holder of a valid Food Handler's Certificate is present at High-Risk Premises during operation.		\$250
3.	Operator fails to produce a valid Food Handler's Certificate and photo identification card for High-Risk Premises.		\$100
4.	Operator fails to ensure a minimum of one Operator per Moderate-Risk Premises is a holder of a valid Food Handler's Certificate.		\$250
5.	Operator fails to ensure a minimum of one Food Handler who is a holder of a valid Food Handler's Certificate is present at Moderate-Risk Premises during operation.		\$250
6.	Operator fails to produce a valid Food Handler's Certificate and photo identification card for Moderate-Risk Premises.		\$100
7.	Food Handler fails to produce a valid Food Handler's Certificate and photo identification card.		\$100

- Note: The general penalty provision for the offences listed above is section 61 of the *Provincial Offences Act*, R.S.O. 1990, c. P. 33.