

CITY OF HAMILTON

***Public Health Services
Health Protection Division***

Report to: Mayor and Members Board of Health	Submitted by: Elizabeth Richardson, MD, MHSc, FRCPC Medical Officer of Health Public Health Services
Date: June 22, 2007	Prepared by: Robert Hart x5428

SUBJECT: Mandatory Food Handler Certification By-law BOH07041 (City Wide)

RECOMMENDATION:

- (a) That the by-law *Respecting Mandatory Food Handler Certification* attached as Appendix "A" to this report be enacted by City Council.
- (b) That the Medical Officer of Health be authorized to apply to the Senior Regional Judge for approval of set fines for offences under the above-noted by-law when it has been enacted.

Elizabeth Richardson, MD, MHSc, FRCPC
Medical Officer of Health
Public Health Services

EXECUTIVE SUMMARY:

At the April 23, 2007 meeting, the Board of Health directed Public Health Services (PHS) staff to draft a by-law requiring the food safety certification of food premise supervisors in accordance with the strategy described in Report BOH07006.

This report fulfils that direction by providing a draft by-law attached as Appendix "A" with a recommendation that the by-law be enacted by Council.

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BACKGROUND:

The by-law *Respecting Mandatory Food Handler Certification* provides for the mandatory certification of food handlers. As discussed at the Board of Health meetings of January 22 and April 23, 2007, there is a strong correlation between mandatory food handler training and improved food safety compliance. The strategy is already in place in many jurisdictions in North America and is endorsed by the food service/retail industry.

The Ontario Ministry of Health and Long Term Care also supports in principle the concept of mandatory food handler training but has advised that province-wide legislation will not be enacted in the foreseeable future. However, in the event that such legislation is enacted, the more stringent law (i.e. provincial regulation vs. Hamilton by-law) will apply locally.

Highlights of the by-law content and implementation (as previously described in Report BOH07006) are as follows:

Certification will be required for only those food premises personnel in a supervisory capacity and will apply only to high and medium risk food premises.

A high or medium risk food premises means any food premises which prepares, processes or serves foods which have been shown to cause foodborne illness if handled improperly. Examples of these premises include restaurants, fast food take-out facilities, cafeterias, butcher shops, grocery stores with butcher/deli operations, nursing home kitchens and childcare facilities that prepare food for their clients.

Premises which are exempt from this by-law include those exempt from the *Ontario Food Premises Regulation* such as special events operated by religious organizations, service clubs and fraternal organizations and farmers' market food vendors.

Certification can be obtained through a variety of providers and fees will remain low.

Certification training will be available through home study, on-line training and classroom sessions. Currently, on-line and classroom sessions cost \$35.00 and the home study course (including a work book) costs \$25.00. However, PHS will be providing its course materials on-line for free access and download. This will reduce home study costs to a \$10.00 examination fee. Certification is valid for a period of five years. Therefore, annual certification costs for an individual will be as low as \$2.00.

Certification awarded by all other Ontario health units as well as corporate programs will be recognized as equivalent to PHS certification. However, corporate programs will require assessment for equivalency with the PHS training curriculum in order to obtain accreditation.

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Certification will be phased in over a three year period. High risk premises will be required to have certified personnel by the end of 2008. Medium risk premises certification will be required by 2010.

It is estimated that approximately 7,000 individuals will require certification. A three year phase-in will allow both the industry to adjust to the new requirement and PHS to meet the demand for increased access to training. In addition, it is anticipated that many individuals not currently employed in food premises will apply for certification in order to improve their chances in the job market. Over time, this will assist food premises operators in being able to recruit staff that is already certified.

Public Health Inspectors will enforce the by-law as a component of routine food premises inspections.

During routine inspections, inspectors will monitor for the presence food safety certified supervisory personnel. People working in a supervisory capacity are required under the by-law to show their certificate to inspectors. The phase-in of certification will be a consideration as enforcement takes place.

Failure by an operator to maintain certified supervisory personnel or failure by personnel to produce their certificates in accordance with this by-law can result, upon conviction, in fines. Maximum fines range from \$5,000 for a first offence to \$100,000 for a repeat offence. If the recommendations of this report are carried, staff will apply to the Senior Regional Judge for approval of set ticket fines ranging from \$100 to \$300.

ANALYSIS/RATIONALE:

n/a

ALTERNATIVES FOR CONSIDERATION:

Not endorsing the recommendations in this report may result in a lost opportunity to enhance programs that benefit public health.

FINANCIAL/STAFFING/LEGAL IMPLICATIONS:

Increases in food safety compliance resulting from these recommendations could result in increased efficiencies related to reduced inspection times, number of required inspections and enforcement actions.

Increases in food safety compliance could also lower the local incidence of food borne illness. This, in turn, could reduce lost productivity and health care costs associated with this illness.

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POLICIES AFFECTING PROPOSAL:

n/a

RELEVANT CONSULTATION:

As indicated in Report BOH07006, the following groups/agencies were consulted in the development of a mandatory food handler certification strategy: the local general public, local food premise operators, neighbouring health units, the Ministry of Health and Long Term Care, Mohawk College (Hamilton), Liaison College (Hamilton), the Canadian Restaurant and Food Service Association, the Canadian Council of Independent Grocers, City of Hamilton Legal Services

CITY STRATEGIC COMMITMENT:

By evaluating the “**Triple Bottom Line**”, (community, environment, economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.

Community Well-Being is enhanced. X Yes No

If adopted, the recommendations in this report could lead to a reduction in the risk of food borne illness as a result of improved food safety program delivery.

Environmental Well-Being is enhanced. X Yes No

If adopted, the recommendations in this report could result in improved food safety compliance leading to healthier and safer food premises.

Economic Well-Being is enhanced. X Yes No

If adopted, the recommendations in this report could result in increased consumer confidence in local food premises leading to increased business for food premises.

Does the option you are recommending create value across all three bottom lines?

X Yes No

Do the options you are recommending make Hamilton a City of choice for high performance public servants?

X Yes No

An enhanced, leading edge food safety program may attract high performance inspection staff.

CITY OF HAMILTON

DRAFT BY-LAW NO. 07-

Respecting Mandatory Food Handler Certification

WHEREAS Council desires to provide for mandatory certification of food handlers in the City of Hamilton;

AND WHEREAS sections 8, 9 and 10 of the *Municipal Act, 2001*, S.O. 2001, c. 25, authorize the City of Hamilton to pass by-laws necessary or desirable for municipal purposes, and in particular paragraphs 5 through 8 of subsection 10(2) authorize by-laws respecting: the economic, social and environmental well-being of the municipality; the health, safety and well-being of persons; the provision of any service or thing that it considers necessary or desirable for the public; and the protection of persons and property, including consumer protection;

AND WHEREAS section 425 of the *Municipal Act, 2001*, S.O. 2001, c. 25, authorizes the City of Hamilton to pass by-laws providing that a person who contravenes a by-law of the City of Hamilton passed under that Act is guilty of an offence;

AND WHEREAS the *Municipal Act, 2001*, S.O. 2001, c. 25, further authorizes the City of Hamilton, amongst other things, to delegate its authority, to impose fees or charges on persons for services or activities provided or done by or on behalf of it, to provide for inspections and inspection orders, and to make orders to discontinue activity or to do work;

NOW THEREFORE the Council of the City of Hamilton enacts as follows:

Definitions

1. In this By-law:
 - (a) "accredited program" means:

- (i) the City's Food Handler Certification Program; or
 - (ii) a food handler training and certification program that has been accredited by the Medical Officer of Health;
- (b) "certified food handler" means a food handler who holds a valid food handler certificate;
- (c) "City" means the municipality of the City of Hamilton or the geographic area of the City of Hamilton, as the context requires;
- (d) "Council" means the Council of the City of Hamilton;
- (e) "food" means food or drink for human consumption and includes an ingredient of food or drink for human consumption;
- (f) "food handler" means any person who works at a medium-risk food premises or a high-risk food premises handling or coming in contact with food or drink during its preparation, processing, packaging, service or storage;
- (g) "food handler certificate" means a certificate issued to a person by the provider of an accredited program certifying that the person has successfully completed that accredited program;
- (h) "food premises" means a premises where food is manufactured, processed, prepared, stored, handled, displayed, distributed, transported, sold or offered for sale, but does not include a private residence or food premises excepted from the application of R.R.O. 1990, Reg. 562 (the Food Premises Regulation under the *Health Protection and Promotion Act*) as set out in section 2 of that Regulation;

- (j) “hazardous food” means any food that is capable of supporting the growth of pathogenic organisms or the production of the toxins of such organisms;
- (k) “high-risk food premises” means a food premises where hazardous food is prepared and:
 - (i) a process or processes to prepare food that involves many preparation steps is used;
 - (ii) food frequently implicated as the cause of food-borne illness is served; or
 - (iii) that has been implicated or confirmed as a source of food-borne illness;
- (l) “Medical Officer of Health” means the City’s Medical Officer of Health or his or her designate;
- (m) “medium-risk food premises” means a food premises where hazardous food, other than hazardous food as described in paragraph (i) of the definition of “high-risk food premises”, is prepared;
- (n) “Officer”:
 - (i) means a Public Health Inspector or any other person assigned or appointed by the Director to administer or enforce this By-law and includes a person employed by the City whose duties are to enforce this By-law; and
 - (ii) includes, for the purposes of exercising any power of entry under this By-law, a police officer;

- (o) “operator” means a person who has responsibility for or control over an activity carried on at a medium-risk food premises or a high-risk food premises and there may be more than one operator of the same food premises;
- (p) “person” includes a natural person, an association, a corporation, a body politic or a partnership whether acting by themselves or by a servant, agent or employee and the heirs, executors, administrators, successors and assigns or other legal representative of such person; and
- (q) “premises” means lands and structures, or either of them, and includes:
 - (i) water;
 - (ii) ships and vessels;
 - (iii) trailers and portable structures designed or used for residence, business or shelter;
 - (iv) trains, railway cars, vehicles and aircraft.

Interpretation

2. The headings and subheadings used in this By-law shall not form a part of it, but shall be deemed to be inserted for convenience of reference only.
3. The requirements of this By-law are in addition to any requirements contained in any other applicable by-laws of the City or applicable provincial or federal statutes or regulations.
4. Unless the context otherwise requires, words imparting the singular number shall include the plural, and words imparting the masculine gender shall include the feminine, and further, the converse of the foregoing also applies where the context requires.

Operator and Food Handler Duties

5. Every operator shall ensure that there is, at all times when their medium-risk food premises or high-risk food premises is operating, at least one certified food handler working at the premises who is supervising the preparation, processing, packaging, service or storage of food.
6. Every food handler, when working as the certified food handler supervising the preparation, processing, packaging, service or storage of food under section 5, shall produce for inspection his or her food handler certificate upon request by the Medical Officer of Health or an Officer.

Food Handler Training and Certification

7. The Medical Officer of Health may accredit any food handler training and certification program if he or she is satisfied that the program is equivalent to the City's Food Handler Certification Program, having regard to:
 - (a) the standards contained in the "Food Handler Training Protocol, Food Safety Program", in accordance with the "Mandatory Health Programs and Services Guidelines, January 1, 1998", issued under the *Health Protection and Promotion Act*, as amended; and
 - (b) the examination criteria and standards contained in the report of the Food Safety Certification Task Force, Canadian Institute of Public Health Inspections, Ontario Branch, entitled "Food Safety Training and Certification, A Standard for Health Units/Departments Ontario".
8. Every provider of a food handler training and certification program seeking accreditation under section 7 shall:

- (a) provide the Medical Officer of Health with such information as the Medical Officer of Health considers necessary to evaluate the program; and
 - (b) pay the prescribed application fee for accreditation.
- 9. Every provider of an accredited program shall provide the Medical Officer of Health with such information as the Medical Officer of Health considers necessary:
 - (a) to monitor and audit the program, including but not limited to the examinations used in the program; or
 - (b) to determine the validity of food handler certificates issued by the provider.
- 10. The Medical Officer of Health may terminate the accreditation of any food handler training and certification program if he or she is satisfied that the program has ceased to be equivalent to the City's food handler certification program or that the program provider has failed to comply with sections 8 or 9.
- 11. Unless sooner terminated by the Medical Officer of Health, the accreditation of a food handler training and certification program is valid for five years.
- 12. A provider of an accredited program may issue a food handler certificate to a person if that the person has successfully completed an accredited program.
- 13. A food handler certificate is valid for five years.

Inspections and Orders

- 14. In accordance with the conditions set out in sections 435 and 437 of the *Municipal Act, 2001*, including the provision of notice to an occupier, an Officer

may enter on a medium-risk food premises or a high-risk food premises at any reasonable time for the purpose of carrying out an inspection to determine whether or not the following are being complied with:

- (a) this By-law;
- (b) a direction, requirement or order made under this By-law; or
- (c) an order made under section 431 of the *Municipal Act, 2001* in respect of a contravention of this By-law.

15. An Officer may, for the purposes of an inspection under section 14:

- (a) require the production for inspection of documents or things relevant to the inspection;
- (b) inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
- (c) require information from any person concerning a matter related to the inspection; or
- (d) alone or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purposes of the inspection.

16. An inspection order made under section 14 may be served personally or by registered mail to the last known address of such persons affected by it as the Officer making the order determines. Service by registered mail shall be deemed to have taken place five (5) business days after the date of mailing.

17. Where service cannot be given in accordance with section 16, sufficient service is deemed to have taken place when the Officer places a placard containing the order in a conspicuous place on the property where the contravention occurred.
18. An Officer may, pursuant to an order under section 438 of the *Municipal Act, 2001*, undertake an inspection for a purpose described in section 14 and exercise powers described in section 15 where he or she has been prevented or is likely to be prevented from carrying out an inspection under sections 14 and 15, provided that:
 - (a) unless otherwise provided in the order, the conditions set out in section 435 of the *Municipal Act, 2001* apply; and
 - (b) in the case of an order authorizing an inspection of a room or place actually being used as a dwelling, the occupier is given notice concerning the inspection in accordance with subsection 438(5) of the *Municipal Act, 2001*.
19. If an Officer is satisfied that a contravention of this By-law has occurred, he or she may make an order requiring the person who contravened the By-law or who caused or permitted the contravention or the owner or occupier of the property on which the contravention occurred to discontinue the contravening activity.
20. An order under section 19 shall set out:
 - (a) reasonable particulars of the contravention adequate to identify the contravention and the location of the property on which the contravention occurred; and
 - (b) the date or dates by which there must be compliance with the order.

21. If an Officer is satisfied that a contravention of this By-law has occurred, he or she may make an order requiring the person who contravened the By-law or who caused or permitted the contravention or the owner or occupier of the property on which the contravention occurred to do work to correct the contravention.

22. An order under section 21 shall set out:
 - (a) reasonable particulars of the contravention adequate to identify the contravention and the location of property on which the contravention occurred; and
 - (b) the work to be done; and
 - (c) the date or dates by which the work must be done.

23. An order to discontinue contravening activity made under section 19 or an order to do work made under section 21 may be served personally or by registered mail to the last known address of:
 - (a) the owner or occupier of the property where the contravention occurred; and
 - (b) such other persons affected by it as the Officer making the order determines.

Service by registered mail shall be deemed to have taken place five (5) business days after the date of mailing.

24. Where service cannot be given in accordance with section 23, sufficient service is deemed to have taken place when the Officer places a placard containing the order in a conspicuous place on the property where the contravention occurred.

Administration and Enforcement

25. The Medical Officer of Health is authorized to administer and enforce this By-law and has delegated authority granted by Council to execute the provisions of the By-law, including the imposition of conditions as necessary to ensure compliance with this By-law.
26. Fees or charges for services and activities provided under this By-law shall be set and approved by Council from time to time.
27. Unpaid fees or charges set and approved under section 26 constitute a debt to the City and may be added to tax roll and collected in the same manner as municipal taxes.
28. The Medical Officer of Health may assign or appoint Officers to enforce this By-law who shall have the authority to carry out inspections, make orders to discontinue contravening activities or to do work to correct contraventions, give immediate effect to any order and otherwise enforce this By-law, and the Medical Officer of Health may assign duties or delegate tasks under this By-law whether in his or her absence or otherwise.
29. This By-law may be cited as the “Mandatory Food Handler Certification By-law”.
30. If a court declares any provision of this By-law invalid, it is the intention of Council that the remainder of the By-law shall continue to be in force and effect.

Penalties

31. Every person who fails to comply with this By-law or an order made under this By-law is, upon conviction, guilty of an offence and is liable to a fine of not more than:

- (a) \$5,000 for a first offence;
- (b) \$25,000 for a second offence; or
- (c) \$100,000 for a third or subsequent offence.

Enactment

32. This By-law comes into force and effect on the day it is passed and enacted.

PASSED and ENACTED this day of , 200 .

MAYOR

CLERK