

THE REGIONAL MUNICIPALITY OF NIAGARA

BY-LAW NO. 78-2010

A BY-LAW RESPECTING
MANDATORY FOOD HANDLER CERTIFICATION

WHEREAS pursuant to section 474.21 of the *Municipal Act, 2001*, The Regional Municipality of Niagara has the powers, rights and duties of a board of health under the *Health Protection and Promotion Act*,

AND WHEREAS the Council for The Regional Municipality of Niagara acting on its own behalf and as the Board of Health wishes to implement mandatory certification of food handlers in the Regional Municipality of Niagara;

AND WHEREAS sections 8, 9 and 11 of the *Municipal Act, 2001* authorize The Regional Municipality of Niagara to pass by-laws necessary or desirable for municipal purposes, and in particular paragraphs 5 through 8 of subsection 11(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* authorizes The Regional Municipality of Niagara to pass by-laws providing that a person who contravenes a by-law of The Regional Municipality of Niagara passed under that Act is guilty of an offence;

AND WHEREAS the *Municipal Act, 2001* further authorizes The Regional Municipality of Niagara, 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 Regional Municipality of Niagara (“the Region”) enacts as follows:

Definitions

1. In this by-law (the “By-law”):

- (a) “Accredited Program” means:
 - (1) the Region’s Food Handler Certification Program; or
 - (2) 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) “Council” means the Council of The Regional Municipality of Niagara;
- (d) “Food” means food or drink for human consumption and includes an ingredient of food or drink for human consumption;
- (e) “Food Handler” means any Person who works at a Food Premises handling or coming in contact with Food during its processing, preparation, storage, handling, display, distribution, transportation, sale, service, or offering for sale;
- (f) “Food Handler Certificate” means a certificate issued to a Person:
 - (1) by the provider of an Accredited Program certifying that the Person has successfully completed that Accredited Program; or
 - (2) who successfully challenges an appropriate examination administered or approved by the Medical Officer of Health;
- (g) “Commercial Food Premises” means a Premises where Food is manufactured, processed, prepared, stored, handled, displayed, distributed, transported, sold or offered for sale, and includes restaurants, banquet halls, long-term care facilities, licensed day nurseries, hospitals, grocery stores, and street vendors selling hazardous foods;
- (h) “Hazardous Food” means any Food that is capable of supporting the growth of pathogenic organisms or the production of the toxins of such organisms;

- (i) “High-Risk Food Premises” means a Food Premises:
 - (1) where Hazardous Food is prepared; or
 - (2) where, in the Medical Officer of Health’s assessment, there exists a high likelihood of an occurrence of Food borne illness (having reference to the risk factors outlined in the Risk Categorization Questionnaire, as defined below); or
 - (3) that has been implicated or confirmed as a source of Food borne illness;
- (j) “Medical Officer of Health” means the Region’s Medical Officer of Health or his or her designate;
- (k) “Medium-Risk Food Premises” means a Food Premises which, in the Medical Officer of Health’s assessment, represents a moderate likelihood of occurrence of a Food borne illness outbreak, having reference to the risk factors outlined in the Risk Categorization Questionnaire, as defined below;
- (l) “Officer”:
 - (1) means a Public Health Inspector or any other Person assigned or appointed by the Medical Officer of Health to administer or enforce this By-law and includes a Person employed by the Region whose duties are to enforce this By-law; and
 - (2) includes, for the purposes of exercising any power of entry under this By-law, a police officer;
- (m) “Operator” means a Person who has responsibility for or control over an activity carried on at a Food Premises and there may be more than one Operator of the same Food Premises;
- (n) “Person” includes a natural person, an association, a corporation, a body politic or a partnership whether acting by themselves or through, with or by a servant, agent, representative or employee and further includes the heirs, executors, administrators, successors and assigns or other legal representative of such Person;
- (o) “Premises” means lands and structures, or either of them, and includes water; ships and vessels; trailers and portable structures designed or used for residence, business or shelter; trains, railway cars, vehicles and aircraft;

- (p) “Region” means the municipality of The Regional Municipality of Niagara or the geographic area of the Regional Municipality of Niagara, as the context requires;
- (q) “Region’s Food Handler Certification Program” means a Food Handler Certification Program approved by the Medical Officer of Health that is provided by, or on behalf of, the Region; and
- (r) “Risk Categorization Questionnaire” is that referred to in the Risk Categorization Model for Food Retail /Food Service Establishments – 2nd Edition (Revised May 4, 2007) by the Federal Provincial Territorial Committee on Food Safety Policy as amended or revised from time to time.

Interpretation

- 2. The headings and subheadings used in this By-law are not for interpretive purposes but are inserted solely for convenience of reference.
- 3. The requirements of this By-law are in addition to any requirements contained in any other applicable by-laws, statutes or regulations.
- 4. Unless the context otherwise requires, words imparting the singular number shall include the plural and vice versa. Further, words imparting the masculine gender shall include the feminine and vice versa where the context requires.

Operator and Food Handler Duties

- 5. Effective January 1, 2013, every Operator of a Commercial Food Premises that is a High-Risk Food Premises shall ensure that:
 - (a) the Commercial Food Premises shall have a minimum of one Operator and one Food Handler who each have a current and valid Food Handler Certificate;
 - (b) at least one Certified Food Handler shall be present at the Food Premises to supervise the processing, preparation, storage, handling, display, distribution, transportation, sale, service, or offering for sale, of Food at all times during operation; and

- (c) on request by the Medical Officer of Health or an Officer, it shall produce or caused to be produced for inspection the Food Handler Certificate for each Certified Food Handler and each Operator along with a photo identification card for each.
6. Effective January 1, 2014, every Operator of a Commercial Food Premises that is a Medium-Risk Food Premises shall ensure that:
- (a) the Food Premises shall have a minimum of one Operator and one Food Handler who each have a current and valid Food Handler Certificate;
 - (b) at least one Certified Food Handler shall be present at the Food Premises to supervise the processing, preparation, storage, handling, display, distribution, transportation, sale, service, or offering for sale, of Food at all times during operation; and
 - (c) on request by the Medical Officer of Health or an Officer, it shall produce or caused to be produced for inspection the Food Handler Certificate for each Certified Food Handler and each Operator, along with a photo identification card for each.
7. On request by the Medical Officer of Health or an Officer, every Certified Food Handler shall produce for inspection his or her Food Handler Certificate, along with a photo identification card.

Food Handler Training and Certification

8. 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 Region's Food Handler Certification Program.
9. Every provider of a Food Handler Training and Certification Program seeking accreditation under this By-law shall apply in writing to the Medical Officer of Health with the appropriate application fee and provide such information as the Medical Officer of Health considers necessary to evaluate the program.
10. Every provider of an Accredited Program shall, on request, provide the Medical Officer of Health with such information as the Medical Officer of Health considers necessary to:
- (a) evaluate, monitor and audit the program, including, but not limited to, the lessons, materials, texts, examinations and qualifications of the instructors used in the program; and

- (b) determine the validity of individual Food Handler Certificates issued by the provider including, but not limited to, the attendance records, course submissions, examination results and true copies of the certificates issued.
11. The Medical Officer of Health may terminate the accreditation of any Accredited Program and the certification of an individual Certified Food Handler if he or she is satisfied that the program has ceased to be equivalent to the Region's Food Handler Certification Program or that the program provider has failed to comply with any provision of this By-law.
 12. Unless terminated beforehand by the Medical Officer of Health, the accreditation of an Accredited Program is valid for five years from the date of accreditation.
 13. A provider of an Accredited Program may issue a Food Handler Certificate to a Person if that Person has successfully completed an Accredited Program.
 14. Unless terminated beforehand by the Medical Officer of Health, a Food Handler Certificate is valid for five years from the date of issue.

Inspections and Orders

15. Pursuant to the *Municipal Act, 2001*, the *Health Promotion and Protection Act* and the regulations thereto, an Officer may enter a Food Premises at any reasonable time for the purpose of carrying out an inspection to determine whether the following are being complied with:
 - (a) this By-law; and
 - (b) any direction, requirement or order made or given under this By-law, the *Municipal Act, 2001* the *Health Protection and Promotion Act*, or the regulations thereto.
16. In addition to any powers or authorities granted under the *Municipal Act, 2001*, the *Health Protection and Promotion Act*, or the regulations thereto, an Officer may take all reasonable steps to effect an inspection including the following:
 - (a) requiring the production of any documents or things relevant to the inspection;
 - (b) reviewing, inspecting, copying, removing or seizing documents or things relevant to the inspection;
 - (c) requiring 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, making examinations or taking tests, samples, or photographs necessary for the purposes of the inspection.
17. In addition to any powers or authorities granted under the *Municipal Act, 2001*, the *Health Protection and Promotion Act*, or the regulations thereto, 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 Operator, owner or occupier of the Premises on which the contravention occurred, to, among other things:
- (a) discontinue the contravening activity;
 - (b) vacate the Premises;
 - (c) close the Premises or a specific part of the Premises;
 - (d) placard the Premises to give notice of an order requiring the closing of the Premises;
 - (e) perform the work specified in the order in, on or about Premises specified in the order;
 - (f) cease, or continue only on conditions imposed by the Officer, the manufacturing, processing, preparation, storage, handling, display, transportation, sale, offering for sale or distribution of any Food or thing;
 - (g) cease, or continue only on conditions imposed by the Officer, the use of any Premises or thing.
18. An order under section 17 shall set out:
- (a) reasonable particulars of the contravention adequate to identify the contravention and the location of the Premises 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.
19. Any order made under this By-law may be given verbally, 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.

20. Where it is not reasonable to effect service of an order as outlined in section 19, sufficient service is deemed to have taken place when the Officer places a placard containing the order in a conspicuous place on the property which is the subject of the order.

Administration and Enforcement

21. Council hereby delegates to the Medical Officer of Health all authorities necessary to implement, administer, execute and enforce all provisions of this By-law including the imposition of conditions as necessary to ensure compliance with this By-law.
22. Fees or charges for services and activities provided under this By-law shall be set and approved by Council from time to time.
22. Unpaid fees or charges set and approved under this By-law constitute a debt to the Region and may be added to tax roll and collected in the same manner as municipal taxes.
23. Council hereby appoints all employees of the Region as Officers for the purposes of this By-law. The Medical Officer of Health may assign or appoint additional Officers as required. All Officers have the authority to enforce this By-law including 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.
24. This By-law may be cited as “Niagara Region’s Mandatory Food Handler Certification By-law”.
25. If any provision of this By-law is declared invalid by an adjudicator of competent jurisdiction, that provision shall be severed from this By-law and the remainder of this By-law shall continue to be in force and effect.

Penalties

26. 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 pay a fine of not more than \$5,000 for each and every offence, exclusive of costs.

Alternative Set Fine Procedure

27. In the discretion of the Region, charges may be laid for offences committed in contravention of this By-law using the certificate of offence set fine procedure set out under Part I of the *Provincial Offences Act*, R.S.O. 1990, CH. P.33, or any successor legislation, for the offences enumerated in short form in Schedule "A" of this By-law.
28. Schedule "A" offences shall not be utilized until the amounts of the fines in Schedule "A" have been set by the Chief Judge of the Ontario Court (Provincial Division).

Enactment

29. This By-law comes into force and effect on January 1, 2011.

THE REGIONAL MUNICIPALITY OF NIAGARA

Original Signed By:

(Peter Partington, Regional Chair)

Original Signed By:

(Kevin Bain, Regional Clerk)

Passed: July 15, 2010

Schedule "A"

THE REGIONAL MUNICIPALITY OF NIAGARA

Part I *Provincial Offences Act*

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.	s. 5(a)	\$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.	s. 5(b)	\$250
3.	Operator fails to produce a valid Food Handler's Certificate and photo identification card for High-Risk Premises.	s. 5(c)	\$100
4.	Operator fails to ensure a minimum of one Operator per Medium-Risk Premises is a holder of a valid Food Handler's Certificate.	s. 6(a)	\$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 Medium-Risk Premises during operation.	s. 6(b)	\$250
6.	Operator fails to produce a valid Food Handler's Certificate and photo identification card for Medium-Risk Premises.	s. 6(c)	\$100
7.	Food Handler fails to produce a valid Food Handler's Certificate and photo identification card.	s. 7	\$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.