

COMMITTEE OF THE WHOLE OCTOBER 22, 2001

**YORK REGION DISCLOSURE SYSTEM
FOOD PREMISES
CITY OF VAUGHAN**

Recommendation

The City Clerk in consultation with the Manager of Special Projects, Licensing & Permits recommends:

That Sections 16.0 and 19.0 of the City's Licensing By-Law 2-2001, dealing with the licensing of eating and foodstuff establishments respectively, be amended to provide for the mandatory posting of food premises inspection reports as conducted by the York Region Health Department and that the most recent inspection report be kept posted in a conspicuous place clearly visible to members of the public at or near the entrance of such establishment; and

That the above noted recommendation be effective as of July 1, 2002, subject to approval of the 2002 York Region budget which will allow for the Region to inform business owners of the mandatory postings through media campaigns, direct mail outs and the purchase of holders within which inspection notices will be inserted; and

That the definition section of By-Law 2-2001 be amended, by adding the following:

FOOD SAFETY INSPECTION REPORT – means a report issued by the Medical Officer of Health or Certified Public Health Inspector to an eating or foodstuff establishment as a result of an inspection conducted pursuant to the Health Protection and Promotion Act or the regulations enacted thereunder, as amended from time to time.

Purpose

The purpose of this report is to amend the City's eating establishment and foodstuff by-laws to require business owners to post the most recent food safety inspection report in a conspicuous place in the licensed establishment. These reports will be accessible by the public and will provide information about the operating conditions of a food premises at the date and time of the inspection.

Background - Analysis and Options

In February 2000 The Toronto Star published a series of articles exposing the lack of follow-up and enforcement in the inspection of food premises in the City of Toronto. In response the City conducted a blitz of food premises throughout the municipality making available to the public, the names and addresses of food premises closed or facing charges pursuant to The Provincial Offences Act. In a report dated June 19, 2000 it was recommended that the City amend its licensing by-law to require food premises to post disclosure notices. (Green, Yellow and Red Notices). The green posting represents a passing grade for the establishment indicating it meets the requirements of the Ontario Food Premises Regulation. The yellow posting represents a conditional pass indicating minor deficiencies requiring ratification within 24 to 48 hours. In this case the deficiencies are not serious enough to require closure. The red notice indicates a failing grade and the premises are immediately closed to the public until such time as the deficiencies are rectified.

On Aug. 24, 2000, York Region Council adopted the recommendation of the Health and Social Services Committee to adopt a rating system similar to Toronto. In adopting the report, the Committee directed staff to meet with the stakeholders including staff from the local municipalities. Staff from the Health Department met with representatives of the local Chambers

of Commerce, the food industry and local municipalities on a number of occasions. The meetings produced a shift away from the proposed "rating system" that was originally suggested to a "disclosure system" which would see operators post the most recent inspection notice affixed in a conspicuous place in the establishment indicating that the Health Department had inspected the premises and if further information was required where to call. Industry stakeholders in the Region felt that the Toronto "rating system" is unfair because the "yellow" gives a lasting impression that there is a problem in the premises.

At the May 24, 2001 Regional Council meeting, Council adopted Report #5 of the Health and Emergency Medical Services Committee. The report outlined five alternative "rating" system options. These options were received and deferred until such time as the area municipalities enacted licensing by-laws. At this point in time the only municipalities that have by-laws requiring the licensing of eating establishments are Markham, Whitchurch-Stouffville and Vaughan. The Town Clerk in Aurora recently brought forward a report to Council recommending licensing of eating establishments. However, Council chose not to do so. The remaining municipalities are still considering their options.

At the June 28, 2001, Regional Council meeting, Council adopted report # 6 of the Health and Emergency Medical Servicing Committee. The report outlined three options, which would encompass a York Region Disclosure System. The first option, effective July 1, 2001 provides for the weekly release to the media of the names of food premises that had been closed or against whom charges have been laid as well as the status of those charges. The second option, deferred to June 1, 2002, pending approval of York Region budget, provides for the implementation of a Health Connection Information line where the public can access inspection reports and past inspection history for food establishments by e-mail, telephone and facsimile transmission. The third option, dealing with the mandatory posting of inspection notices was also deferred to June 1, 2002 pending the enactment or amendment of licensing by-laws by the local municipalities.

Presently neither the Region nor local municipalities have the jurisdiction to compel food premises to post notices pursuant to the Health Protection and Promotion Act. Further, the Region does not have the authority to pass licensing by-laws and therefore cannot compel food premises to post notices. It is for this reason that the Region has been working with the local municipalities to implement and/or amend licensing by-laws containing provisions requiring the posting of notices issued by the Health Department. Amending Vaughan's by-law at this time to require the posting of notices as of June 1, 2002 coincides with the yearly licensing for eating and foodstuff establishments whose licenses expire June 30, 2002. Staff will be able to notify these owners well in advance of the changes and their responsibilities under the amended by-law.

Conclusion

This report has outlined the various steps that have taken place to arrive at a "disclosure system" for food premises in York Region brought about through the joint efforts of representatives of the local municipalities and staff from York Region Health Services. Report #6 of the Health & Emergency Medical Services Committee, adopted by Regional Council on June 28, 2001, sets out three options for a "disclosure" system. One of the options has already been put in place. The recommendation contained herein addresses the remaining two options with respect to the City of Vaughan.

Attachments

- Appendix "A" – Report of the Health and Emergency Medical Services Committee
- Options for Disclosing the Results of Food Premises Inspection, adopted by Regional Council on June 28, 2001

Report prepared by:

Joseph A.V. Chiarelli
Manager Special Projects Licensing & Permits

Respectfully submitted,

John D. Leach
CITY CLERK

/vp



Office of the Regional Clerk
Corporate Services Administration Department

June 29, 2001

RECEIVED
JUL 06 2001
CITY OF WASHINGTON
CORPORATE SERVICES DEPARTMENT

Mr. John D. Leach, Clerk,
City of Naugatuck,
2141 Major Mckenna Drive,
Naugatuck, Orange, LSA, CT

Dear Mr. Leach:

Re: Options for Disclosing the Results of Food Premises Inspections

I am forwarding the attached Clause No. 2, contained in Report No. 6 of the Health and Emergency Medical Services Committee, which was adopted, without amendment, by Council of The Regional Municipality of York, in a resolution passed on June 26, 2001.

Read the attached Clause No. 2, which is as follows:

'2. The Regional Clerk, circulates this report and any recommendations arising from this report to the nine area municipal Councils for information and any action as appropriate.'

I would appreciate your assistance in bringing this matter before Council for consideration.

Please call Elizabeth Neame-Spencer at 905-940-1787, Ext. 4240, if you have any questions.

Thank you

Yours truly,

Denis Kelly,
Regional Clerk,
905-940-1787

To: Clerk, Town of Amherst
Clerk, Town of Beaufort
Clerk, Town of Georgina
Clerk, Town of Markham
Clerk, Town of North York

Clerk, Town of Newmarket
Clerk, Town of Richmond Hill
Clerk, City of Vaughan
Clerk, Town of Whitby

cc: Mr. K. J. Mackay, Commissioner of Health Services and Medical, Office of Health,
[1009]

cc: Municipal Clerk, Council of Regional Municipality of York, 1000 Main Street, Aurora, Ontario, L4R 1A6

In response to these studies, the City of Toronto implemented a database system to inform the public as to the results of a food premises inspection through the use of the City of Toronto website (www.toronto.ca) and a telephone hotline that allows the public to make inquiries about a food premises from the telephone or through email.

The City of Toronto also amended its licensing bylaws to implement a rating system that requires food premises to post green, yellow and red signs indicating whether the food premises passed, conditionally passed or failed their last inspection.

3.2 Definitions

The purpose of this report is to analyze various disclosure systems that might be implemented in York Region.

It is important to note the difference between disclosure systems, which are the subject of this report, and rating systems which were the subject of a report to Regional Council on May 26, 2009, entitled "Options for the Implementation of a Rating System for Food Premises in York Region".

A disclosure system is a means of providing the public with access to information pertaining to the inspection of a food premises, such as information of noted, charge, laid and closure made pursuant to the Food Premises Regulation of the Health Protection and Promotion Act. Disclosure systems may be implemented through a number of vehicles including telephone, e-mail, human lines, websites and media releases.

3.3 Current Disclosure Systems

3.3.1 Current Disclosure System Used by the York Region Health Services Department, Public Health Branch

Presently in York Region, all updates to status changes, closures and re-openings are communicated to the public through the Health Concerns line manned between the hours of 9 AM and 4:30pm, Monday to Friday, by Public Health Inspectors. In addition, information about charges and closures under the Health Protection and Promotion Act has also been furnished to the local media upon request. All formal Freedom of Information requests for such information are forwarded to the Office of the Regional Clerk and are dealt with according to the information policy of York Region and Province of Ontario (YORP/PAO). To date there has not been any such request.

3.3.2 Disclosure Systems Used by Other Health Units

Regional staff has consulted with neighbouring Health Units to determine the type of disclosure systems implemented for food premises. The following is a summary of the disclosure systems implemented by the City of Toronto and the Regional Municipality of Peel and Durham.

Peel Region implemented a telephone hotline that allows residents to make verbal inquiries about the status of a food premises and to speak with a Public Health Inspector (PHI). The hotline provides information to the public between the hours of 9:00 am and 4:00 pm.

York Region

Clause No. 2, embodied in Report No. 8 of the Health and Emergency Medical Services Committee, was adopted, without amendment, by the Council of The Regional Municipality of York at its meeting of June 28, 2001.

2

OPTIONS FOR DISCLOSING THE RESULTS OF FOOD PREMISES INSPECTIONS

The Health and Emergency Medical Services Committee recommends the adoption of the recommendations contained in the following report, May 30, 2001, from the Commissioner of Health Services:

1. RECOMMENDATIONS

The report concludes that:

This report has received and that Health and Emergency Medical Services Committee and Regional Council adopt Options 1, 3 and 5 together as a York Region Disclosure System as follows:

- a) Option 5 to be implemented on July 1, 2001, and
- b) Options 1 and 3 to be implemented on April 1, 2002, pending approval of the 2001-02 budget and passage of rate and municipal by-laws for the implementation of Option 1.

The Regional Clerk circulates this report and any recommendations arising from the report to the Chair and Municipal Councils for information and any action as appropriate.

2. PURPOSE

The purpose of this report is to provide Health and Emergency Medical Services Committee ("the Committee") and Regional Council with an analysis of available food premises disclosure systems to assist the Committee and Regional Council in selecting a disclosure system for York Region. This report also serves to outline the assistance that may be required from the nine municipalities in implementing the disclosure system selected.

3. BACKGROUND

3.1 Cause of Increased Awareness of Food Premises Inspections

In February 2001, a series of articles in *The Toronto Star* exposed the alleged lack of enforcement in the inspection of food premises in the City of Toronto. Toronto's Health Services Department, the Health Inspection and Protection Unit required high risk premises to be inspected three times a year, medium risk premises to be inspected twice a year and low risk premises to be inspected once a year. It was alleged that the City of Toronto failed to meet these requirements. York Region, however, has historically met these requirements.

**Clause 2 of
Report No. 6 of the
Health and Emergency Medical Services Committee**

Monday to Friday only. Written requests for information are referred to the Freedom of Information Office.

Durham Region also provides residents with a telephone hotline to enable them to make verbal inquiries about a food premises to an Area Inspection Manager. The hotline provides information to the public between the hours of 8:30 a.m. and 4:30 p.m., Monday to Friday only. Again, all written requests are referred to the Freedom of Information Office.

The City of Toronto has a more extensive disclosure system. Information from past and recent inspections is available through its website and through e-mail and telephone inquiries. The hotline provides information to the public between the hours of 8:30 a.m. and 8:30 p.m., Monday to Friday, as well as from 12:00 p.m. to 4:00 p.m. on the weekend.

4. ANALYSIS AND OPTIONS

The following is an analysis of various disclosure systems that may be implemented in York Region. It is important to note that a disclosure system provides information to the public about the operating conditions of a food premises at the date and time of the inspection only and does not guarantee the operating condition at any other date and time.

Five different disclosure system options are presented below in tabular format. These options appear in no particular order of preference. These options are presented separately, but may be combined together as part of a more comprehensive disclosure system. When various options are combined, the pros and cons of the individual options then apply to the hybrid system.

4.1 Option 1: Mandatory Posting of Inspection Reports

Under Option 1, a food premises would be required to post its most recent inspection reports, as or near the entrance to the premises, in a conspicuous place clearly visible to members of the public.

4.1.1 Legal Implications

Neither the Region nor the area municipalities have the jurisdiction to require a food premises to post its most recent inspection reports pursuant to the Health Protection and Promotion Act. Further, unlike the City of Toronto, the Region does not have the jurisdiction to license businesses and to implement licensing by-laws requiring food premises to post their most recent inspection reports as a condition of obtaining or maintaining a license.

The authority to license businesses in York Region rests with the area municipalities. At present only Markham, Vaughan and Whitechurch-Stouffville have by-laws licensing food premises. These by-laws, however, do not contain provisions requiring food premises to post their most recent inspection reports.

To implement such a system, the three area municipalities with licensing by-laws would need to amend their by-laws to include provisions implementing mandatory posting of inspection reports, and the other six municipalities would need to enact licensing by-laws containing these same provisions.

The report can not assume jurisdiction for posting food inspection data, as the municipalities within the Region assume the jurisdiction to license businesses from the local municipalities. The assumption of such jurisdiction would require a "three-way" process of the permission of the Municipalities.

Table 1
Option 1: Mandatory Posting of Inspection Reports

Pros	Cons
1. Information is immediately provided to the public as the food purchases.	1. Requires area municipal licensing by laws to implement mandatory posting of inspection reports.
2. Obligation to post is mandatory.	2. Cannot implement immediately.
3. Underlying assumption is that compliance with the Health Practices performance will increase.	3. Area municipalities must be a hearing site where enforcement is required due to failure to post and must enforce the bylaw.
4. Information readily available and there is no requirement for electronic infrastructure.	4. More cooperation between food processor operators and PHU.
	5. Copy of the inspection reports mandated by the Missouri Health and Long Term Care (MHLTC) is not and may be manually searched with the red "closed" sign implemented by Foreco.
	6. Excessing the posted inspection reports could lead to a number of misperceptions and would require to follow up with a PHU for clarification.
	7. Inspection reports are only available in English, leading to language barriers.
	8. Represents a "snapshot" of the condition of the food processor at one point in time only.
	9. Legislation possible for delamination to level of business if information on the inspection report is incorrect or misleading.

4.2 Option 2: Voluntary Posting of Inspection Reports

Under Option 2, a food processor could voluntarily post inspection reports, as or near the entrance to the premises, at a conspicuous place clearly visible to members of the public.

Table 2
Option 2: Voluntary Posting of Inspection Reports

Pros	Cons
<ol style="list-style-type: none">1. Information is voluntarily provided to the public at the food processor.2. Underlying assumption is that compliance with the <i>Food Protection and Inspection Act</i> will increase.3. Information readily available and there is no requirement for a certificate of inspection.4. No need for area municipal licensing by date.5. Public transparency and empowerment.6. Public pressure will encourage operators of food processors to post their inspection reports.	<ol style="list-style-type: none">1. Copy of the inspection reports submitted to the SPC/MLTC is not and may be associated with additional requirements by Teocuch.2. Reviewing the posted inspection reports could lead to questions of interpretation and how to quite talk-up was a PHH for compliance.3. Inspection reports are only available to English speaking language farmers.4. Posting of inspection reports in restaurants, therefore compliance will likely be less than 100%.5. Represents a "snapshot" of the condition of the food processor at one point in time only.

4.3 Option 3: Health Connection Information Link

Under Option 3, inspection reports and past inspection history would be available to the public by email, telephone and in-person transactions through the Health Connection link between the hours of 8:30 a.m. and 4:00 p.m. Monday to Friday. Public Health Inspectors would also respond to telephone inquiries between those hours relating to food premises. Any extension in the hours of operation of the Health Connection and our request for a new website and updated signage information areas that have not been included in the 2019 budget.

If email, telephone and in-person requests for information would be responded to within 24 hours. The Health Service Department does not have the electronic infrastructure that would permit expedient transactions of information. Currently the large user files of the Health Services Department are in "paper" and "electronic" format.

Typically, the goal would be to develop an electronic database for food premises inspections during 2002 which would facilitate disclosure to the public in a more efficient and timely manner. The general and important aims that would need to be included in the 2002 budget. In addition, proposals would need to be developed in order to ensure the nature of the information that may be disseminated by the Health Commission staff. That way ensure that specific forms be developed.

The public may also request the release of information under the MIOPPA. All requests made under MIOPPA require that an application form be completed and a fee be obtained. The Privacy Commissioner does not accept the requests otherwise.

Table 3
Option 3: Health Commission Information Line

Pros	Cons
<ol style="list-style-type: none">1. Easy access to critical information and research from premises prior to arriving at the premises.2. Lowering assumption is that compliance with the <i>Health Protection and Promotion Act</i> will increase.3. The need for extra municipal warning system.	<ol style="list-style-type: none">1. Negotiations with the union may be necessary in the event the hours of the Health Commission staff are extended.2. Additional costs occur if the hours of the Health Commission staff are extended.3. Significant additional resources and infrastructure requirements for the development of an electronic database during 2002.4. The release "leakage" of the conditions of the food premises is one point to take into
<ol style="list-style-type: none">1. Almost immediate implementation2. FIDE are available to intercept and filter the information3. There is equal public access to the information given that the Health Commission has ATIS translation services7. Minimal PDS training required	

Option 4: Regional Website

Under Option 4, the public would be able to search and access information about a food premises' most recent and past inspections as well as closures and charges resulting in convictions through the Regional website. The Regional website would also incorporate journals of information, definitions and food safety tips, which would serve a public education function.

The implementation of the Regional website would require the development of an electronic database for food premises inspections given the inspection files of the Health Services Department are currently in "paper" not "electronic" format. The cost of an electronic database has not been included in the 2002 budget and would require further consultation with IT Services.

Table 4
 Option 4: Regional Website

Pros	Cons
1. Website disclosure would enable the public to search and access information 24 hours a day, 7 days a week, 365 days a year. 2. Results of scientific education and research fund projects put to writing at the premises. 3. Underlying assumption is that compliance with the Health Protection and Promotion Act will increase. 4. May need for area municipal planning by-law: a. Precedent for use of public information	1. Cannot implement immediately due to the need to develop an electronic database. 2. Costs associated with writing and the development of an electronic database. 3. Legal action possible for defamation or loss of privacy if information on the website is incorrect or misleading. 4. Represents a "snapshot" of the condition of the town, which may not persist in time only. 5. Factors assessed by rate 2/3 of population (Province of Canada): a. Budget, staffing, language literacy and lack of computer skills. 6. Highest cost for implementation of all five options.

Option 5: Media Releases

Under Option 5, media releases would be distributed to the media disclosing the names of food premises that had been closed as a result of various charges have been laid (as well as the names of the charges).

Table 5
 Option 5: Media Releases

Pros	Cons
1. Underlying assumption is that compliance with the Health Protection and Promotion Act will increase. 2. May need for area municipal planning by-law: 3. Least costly to implement. 4. Immediate implementation if published by the local media. 5. Precedent if published by the local media.	1. Legal action possible for defamation or loss of privacy if information in the media release is incorrect or misleading. 2. Discontinuous when a period of time, the media may not continue to publish information. 3. May not be effective on its own but could be combined with another disclosure system. 4. Represents a "snapshot" of the condition of the town, which may not persist in time only.

5. FINANCIAL IMPLICATIONS

The following tables have been prepared to identify additional staff and program needs required for the implementation of the five disclosure options outlined in this report.

The costs identified in the tables below are annualized and have not been included in the 2001 budget. The net Regional impact has been calculated on the basis that 50% provincial funding will be received for all one-time and on-going costs. As a non-emergency public health program, the Chief Medical Officer of Health for Ontario has not committed to funding a disclosure option at this time.

Table 6
 Financial Analysis of the Five Options

Option #1	Gross One Time Costs	# of New FTE Req'd	Gross Salaries/Benefits & Program Costs (additional FTE's)	Net One Time Costs	Net On-Going Costs
Mandatory Posting	\$144,500	0	\$0	\$72,250	\$0

One-time costs include media campaign, direct mail out to all restaurants and the purchase of sign holder for all restaurants in York Region.

Option #2	Gross One Time Costs	# of New FTE Req'd	Gross Salaries/Benefits & Program Costs (additional FTE's)	Net One Time Costs	Net On-Going Costs
Voluntary Posting	\$114,500	0	\$0	\$57,250	\$0

One-time costs include media campaign and the purchase of sign holder for all restaurants in York Region.

Option #3	Gross One Time Costs	# of New FTE Req'd	Gross Salaries/Benefits & Program Costs (additional FTE's)	Net One Time Costs	Net On-Going Costs
Health Officers Post/Post Walks	\$181,100 (6 FTE's @ 30,000)	0	\$0	\$90,550	\$10,000

One-time costs include the database setup, 6 FTE officers to visit with Health Connection 20% for a total of 12 weeks of the program and a media campaign. Ongoing costs cover the touring costs of the 6 officers required once in each district and an additional 10,000 cost for the second FTE at the Health Connection Desk.

Option # 4	Gross One-Time Costs	# of New FTE Req'd	Gross Salaries/Benefits & Program Costs (Additional FTE's)	Net One-Time Costs	Net FTE-Group Costs
Web-Based System	\$139,500	4	\$250,000 (3 clerks and 1 reviewer)	\$110,500	\$112,240

One-time costs include database set-up, hardware, licenses and a media campaign. Ongoing costs include the cost of the four additional FTE's salaries and benefits, additional computer uses and associated program supplies.

Option # 5	Gross One-Time Costs	# of New FTE Req'd	Gross Salaries/Benefits & Program Costs (Additional FTE's)	Net One-Time Costs*	Net FTE-Group Costs*
Web-Based Release	\$115,000	0	\$0	\$95,000	\$0

One-time costs would be under \$100,000 for a media campaign.

5.1 Unknown Additional Costs

None of the estimates include any potential additional costs that may be incurred by other Regional Departments as a result of the disclosure system selected. In particular, costs may be incurred by the Information Technology Services Branch relating to the maintenance and operation of the electronic database and costs may be incurred by the Corporate and Legal Services Department as a result of preparations for future litigation, prospective lawsuits and potential external legal costs associated with litigation for defamation and invasion of privacy.

6. LOCAL MUNICIPAL IMPACT

Officials of the area municipalities may be required to pass legislation to laws or modify existing by-laws to implement a disclosure system for posting of food permits and thereby incur an indirect cost due to license administration and by-law enforcement projects.

7. CONCLUSION

The report has initiated and analyzed disclosure systems for food permits in York Region. Further to the recommendations contained in the report adopted by Regional Council on May 24, 2000, in regard to Options for the Implementation of a Rating System for Food Permits in York Region.

Options 1, 3 and 5 together are recommended as a proposed York Region Disclosure System. Option 1 (Electronic Posting of Inspection Reports) would, however, require that the area municipalities develop and enact legislation to laws. York Region Health Services Department,

Public Health Branch, already has some experience with restaurant-related information release through Option 3 (Health Connection Hotline) and Option 5 (Media Releases). It is anticipated that a disclosure system, as outlined above, would place greater volume demands upon staff than has been experienced in the past. Option 3 is more effectively implemented by making use of an electronic database for expedient information disclosure than currently exists. Furthermore, using 6 PHU students for the first 12 weeks of disclosure under Option 3 is a cost-effective use of temporary staff in the short-term.

This report has been reviewed by the Senior Management Group.

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12

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