

# **TORONTO** STAFF REPORT

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August 28, 2006

To: Board of Health

From: Dr. David McKeown, Medical Officer of Health

Subject: Amendments to Ontario Food Safety Regulations Exempting Farmers' Markets, Religious Organizations, Service Clubs and Fraternal Organizations

Purpose:

To report on the impact of recent amendments to Ontario Regulation 562 on food safety in Toronto and to propose actions to ensure the food safety is maintained given these changes.

Financial Implications and Impact Statement:

There are no financial implications stemming directly from this report.

Recommendations:

It is recommended that:

- (1) the Board of Health convey to the Minister of Health and Long-Term Care its serious concerns about the impact on food safety in Toronto of the recent amendments to Ontario Regulation 562 (Food Premises) and request the Minister to:
  - (a) amend the Food Premises Regulation to exempt only those vendors at a farmers' market who are farmers selling their own farm products;
  - (b) amend the Food Premises Regulation to limit the exemption for special events held by religious organizations, service clubs and fraternal organizations to which the general public is invited to those with planned attendance of 1,000 people or less;
  - (c) take a more active role in explaining the amendments to health units and affected food premises; and
- (2) this report be referred to the Association of Local Public Health Agencies, Association of Supervisors of Public Health Inspectors of Ontario, Canadian Institute of Public Health

Inspectors, Council of Ontario Medical Officers of Health and the Ontario Ministers of Agriculture, Health Promotion and Municipal Affairs and Housing; and

- (3) the appropriate City Officials be authorized and directed to take the necessary action to give effect thereto.

Background:

On Thursday June 15, 2006, the Ministry of Health and Long-Term Care filed amendments to the Food Premises Regulations (see Appendix 1). These changes added farmers' markets to the group of food premises exempt from the entire Regulation. An entire farmers' market is now exempt from The Regulation if more than half of the vendors are selling their own farm products. Even individuals or businesses that are not selling their own farm products are exempt if the farmers' market where they are located, is exempt.

The new amendments also extended the current exemption for community groups (religious organizations, service clubs and fraternal organizations) to include hazardous food served to the general public. Previously, a community group special event, such as a public bake sale, was exempt from the Regulation if hazardous food was not sold. The changes now allow a community group to have a special event open to the general public at which hazardous foods (contains milk, milk products, egg, fish, meat) are served and be exempt from the Regulation if the community group meets two requirements:

- (1) posting a notice in a conspicuous place that states whether or not the food premises has been inspected in accordance with the Food Premises Regulation; and
- (2) keeping a list of all people who donated hazardous food to the event.

If the event is private or only non hazardous foods (e.g. cookies, muffins, fruit filled pies, etc.) are sold to the public, then the requirement for notice and the list do not apply. Failure to have a sign or provide the list means the Regulation applies to the event.

For both farmers' markets and community groups these exemptions apply only to the Food Premises Regulation. The duties and powers of the Health Protection and Promotion Act and other relevant legislation remain unchanged. This includes the duty to inspect and the ability to make orders to eliminate a health hazard.

Comments:

The Rationale for Amendments to the Food Premises Regulation:

The changes to The Regulation were made with the stated purpose of releasing certain food premises such as Farmer's markets from regulatory requirements that were designed for fixed places like restaurants and supermarkets and as a result were deemed too strict. Minimizing these requirements can be seen as way to increase access of individuals to food and improve their food security. Toronto Public Health supports the goal of providing access to locally produce

foods. A lack of consistent province-wide enforcement of the Regulation was also a stated reason for change.

#### The Impact of Amendments on Inspection Practice:

Public Health inspectors will no longer be able to require the basic measures and equipment set out in the Regulation in an exempt premise. These are important in reducing the potential for food borne illness and outbreaks and include such things as hand washing facilities, proper temperatures for the storage, cooking and holding of food, record keeping, maintenance, cleaning and sanitizing of utensils. Instead public health inspectors will only be able to act on immediate risks to health. For example if raw chicken is found to be un-refrigerated on inspection, that alone is not enough for an inspector to take action in an exempt premises. The inspector will need to demonstrate that the food has been left out for a prolonged period of time at an unsafe temperature before it can be considered a health hazard.

Unfortunately the interpretation of the amendments is complex and there is the potential for misunderstanding. Affected vendors may feel that they are exempt from all public health inspection and resist visits from Toronto Public Health staff. In addition there is ambiguity around some definitions and requirements that could create conflicting opinions.

#### The Impact on Food Safety:

Infractions of the Food Premises Regulation do occur at farmers' markets and special events. In Toronto, there are 15 farmers' markets, 10 of which are located on City property. From January 2004 to December 2005, 138 vendors at Toronto farmers markets were inspected because they serve hazardous food and 103 infractions of the Food Premise regulation were found. It is important to keep in mind that many of the vendors at farmers' markets are not farmers and most closely resemble a take-out restaurant.

There were over 200 special events in Toronto in each of 2004 and 2005. The size of the events varied from less than 2,000 people to over 100,000. In 2005 there were 30 events inspected at which the attendance was over 30,000 people. There are approximately 1,500 inspections and re-inspections done at special events in Toronto every year. Infractions occur on approximately one-quarter of inspections at special events.

Infractions at farmers' markets and special events range from minor to hazardous. The most common infraction is failure to keep foods at a proper temperature –the most important food preparation error causing food borne illness. Other infractions at special events include the use of a garden hose to supply fresh water and the preparation of food in back alleys and unequipped vans. De-regulation runs the risk that these types of infractions may increase. Experience from the DineSafe program has shown that consistent enforcement of the Regulation when combined with operator education and public disclosure leads to an improvement in compliance.

Farmers' markets and special events are not always a low risk setting in terms of food safety. From 1993 to 1996, 4% of foodborne disease outbreaks in Ontario were linked to churches and clubs (this is disproportionately large considering that they probably account for much less than

4% of all meals). The risk of food borne illness is mainly determined by whether the food is “hazardous” and the entire preparation process. Foods that can support the growth of organisms that cause disease or that can support organisms producing toxins are termed hazardous foods. Examples of hazardous foods are dairy products, meat, poultry, fish and those that contain raw eggs (mayonnaise contains raw eggs). Serving hazardous foods requires careful storage, handling and preparation in order to minimize the risk of food borne illness. Errors anywhere in this process can result in food that causes acute human illness. While sausages at a farmers’ market or egg salad sandwiches at a charity event are everyday food items, they need to be prepared properly because they are hazardous foods.

#### The Way Forward:

Toronto Public Health will continue to work with the organizer of each farmers’ market and special event to promote safe food handling practices. Toronto Public Health distributes guides for organizers and vendors that are specific to farmers’ markets and special events. The special event guides are currently distributed by Toronto Public Health, Parks, Forestry and Recreation Division, City of Toronto Special Events, on the City of Toronto website and are referenced by Toronto Fire and Police services. These guides will need to be modified to explain the amendments to the Regulation.

At farmers’ markets, Toronto Public Health currently conducts a risk assessment of each individual vendor to determine the frequency of inspection. Those that sell only fresh fruits and vegetables are not inspected unless there is a complaint. Others are routinely inspected one to two times per year based on the risk of food borne illness according to explicit criteria. The vendors are treated much the same as an equivalent venue in the DineSafe program. Tickets, summons and orders can be issued to correct infractions. However, the inspection results are not posted at the vendor’s premises or on the DineSafe web site.

Under the amended Food Safety Regulation, Toronto Public Health will conduct additional assessments at each farmers’ market to determine if it is exempt. Farmers’ market organizers have been informed in writing of the amendments to the Regulation, that Toronto Public Health will be conducting assessments to determine if they are exempt and that a public health inspector will be contacting them to carry out the assessment. After the initial assessment farmers’ markets will be assessed every time a routine inspection is done.

Since there are so many special events in Toronto, Toronto Public Health (TPH) classifies these events by risk to determine if an inspection will be done. Events serving hazardous foods, with more than 10 vendors and open to the general public will be inspected. Other events may be inspected if they have large numbers of people, are held from non-fixed premises or are outdoors. Toronto Public Health has made excellent progress by having most large event organizers work with TPH on the planning and implementation of their events. This way food safety can be addressed right from the start and problems dealt with before food is even prepared. Toronto Public Health encourages event organizers to require their participating vendors to attend the modified Special Events-Food Handler Training course (if not already a holder of the Food Handler Training Certification). Toronto Public Health has found that those

who attended these courses have fewer or no infractions at the time of the event in comparison to those who had no food handler training.

It seems likely that large public events (attendance in the thousands) were not intended to be exempted by changes to the Regulation even when held by religious organizations, service clubs and fraternal organizations. Where there is more than one organization preparing food at an event, each organization or vendor would have to be inspected to determine if they meet the exemption requirements. Potentially exempt vendors must meet the requirements to post a warning and have a list of those who prepared the food to be exempt from the Regulation. If this is lacking, the food premises does not qualify for the exemption and the Regulation applies. Unlike a farmers' market, exempt and non exempt premises can be at the same event.

For exempt vendors at both farmers' markets and special events, public health inspectors will provide education and advice about safe food handling. This will include drawing attention to infractions previously covered by the Regulation. In addition, inspection in response to a complaint or as part of an outbreak investigation will continue to be done at farmers' markets and special events. Public Health Inspectors will continue to take action under the Health Protection and Promotion Act in situations posing an immediate health hazard.

The Association of Supervisors of Public Health Inspectors of Ontario (ASPHIO) has convened a work group to establish a common understanding and approach to exempted premises for health units in Ontario. Toronto Public Health is an active participant in this process.

#### Conclusions:

Recent changes to the Food Premises Regulation were intended to remove public health regulation of low risk food preparation while increasing access to farmers' markets and removing barriers for community organizations (religious organizations, service clubs and fraternal organizations) holding special events to which the general public is invited.

However, the amendments have inadvertently deregulated some situations in Toronto in which hazardous food is served to large numbers of people, thereby removing an important public health protection measure. The recent changes are also complex and difficult to understand and explain. The provincial government should revisit the recent amendments to correct this situation, and more clearly communicate the interpretation and application of the amended regulations to public health units and affected operators.

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List of Attachments:

Appendix 1: Ministry of Health and Long-Term Care – Background  
Food Premises Regulation Amendments

June 15, 2006

## **FOOD PREMISES REGULATION AMENDMENTS**

The government is protecting farmers' markets from the rigid requirements of Regulation 562 (Food Premises) under the Health Protection and Promotion Act (HPPA). The government has also expanded the current exemption provided in the Food Premises Regulation for religious organizations, service clubs and fraternal organizations where special events are open to the public. Regulation 562, in place under the HPPA since 1984, spells out food storage, handling, sanitation, and preparation provisions for food premises for large operations like supermarkets and restaurants.

Beginning this summer the ministry will undertake a proactive \$1.5 million education campaign to widely promote safe food handling and preparation practices at farmers' markets and community-based events.

### **Farmers' Markets**

Recognizing the distinct nature of farmers' markets, the government has exempted them from having to follow the requirements of the Food Premises Regulation under the HPPA.

While market vendors are now exempted from the Food Premises Regulation, the HPPA will still apply. The sections that are particularly relevant are:

- Section 10 (duty to inspect re: health hazards),
- Section 13 (power to issue an order re: health hazard)
- Section 16 (intent to commence the operation),
- Section 17 (prohibition on sale of food unfit for consumption)
- Section 18 (prohibition on sale of unpasteurized milk and milk products)

The sale of uninspected meats, unpasteurized milk and ungraded eggs at farmers' markets continues to be prohibited. Public health inspectors will continue to have the duty and authority to investigate and intervene – on a case by case basis - should a health hazard exist.

### **Religious Organizations, Service Clubs, and Fraternal Organizations**

Previously, religious organizations, service clubs and fraternal organizations fell under the Food Premises Regulation when they prepared and served meals for special events that were open to the general public. Now, decades-old events like pot luck suppers and bake sales held by these organizations are exempted from the regulation and will be protected from overly-aggressive inspections from public health officials.

When high risk food is served at a special event that does not originate from a food premise that is

inspected under the Food Premises Regulation, these organizations are now required to post a notice stating whether or not the facilities have been inspected by the local public health unit. They will also be required to keep a log of providers of high risk foods to be given to the local public health inspector upon request.

### **Foods considered high risk**

Food items deemed high risk are generally those that contain raw eggs, dairy products, meat, poultry and fish. Some examples would include the following:

Cakes/pastries with whipped cream, cheese or synthetic cream fillings

Dairy products (e.g., milk, cream, cheese, yogurt)

Food containing raw eggs as ingredients (e.g., custards, salads)

Fresh or processed meat, sausages.

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