



**STAFF REPORT  
INFORMATION ONLY**

**Food Premises with Repeated Non-compliance with  
Food Safety Requirements**

<b>Date:</b>	January 29, 2010
<b>To:</b>	Board of Health
<b>From:</b>	Medical Officer of Health
<b>Wards:</b>	All
<b>Reference Number:</b>	

**SUMMARY**

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This report provides a summary of the measures taken by Toronto Public Health (TPH) in response to food establishments with repeated non-compliance with food safety requirements.

Compliance with food safety requirements has increased significantly since the establishment of the DineSafe program, from an estimated 50% in 2000 to over 90% in 2008. However, each year there are a very small number of establishments with repeated non-compliance leading to multiple conditional pass and/or closure notices. There is no authority under the Health Protection and Promotion Act (HPPA) or the Toronto Municipal Code, Chapter 545, Licensing, to close food premises permanently. However, the Toronto Food Inspection and Disclosure System includes a number of measures for promoting compliance including referral of premises to the Toronto Licensing Tribunal through the Municipal Licensing and Standards (ML&S) division. The Tribunal is a quasi-judicial body authorized under Toronto Municipal Code 545, Licensing, to hear evidence and submissions and to make independent decisions respecting whether a licence should be issued, refused, suspended, revoked or have conditions placed upon it.

The Medical Officer of Health will continue to monitor food safety in Toronto premises and take necessary action in the event of repeated non-compliance.

**Financial Impact**

There are no financial impacts arising from this report.

## **DECISION HISTORY**

A report titled Food Safety in Toronto was presented to the Board of Health at its meeting on April 20, 2009. The Board of Health requested the Medical Officer of Health to report on whether there are additional measures that can be taken by Toronto Public Health to permanently close those food premises with an ongoing record of serious health violations.

## **ISSUE BACKGROUND**

Public concern with food safety has increased in recent years and there is growing awareness of the potential health risks associated with current systems of food supply, preparation and distribution. There is a public expectation that food served by commercial food establishments will be safe. Toronto Public Health (TPH) delivers a comprehensive food safety program to protect the health of the population.

In addition to enforcing the Health Protection and Promotion Act (HPPA) and ensuring compliance with the Ontario Public Health Standards, TPH exceeds provincial requirements with its award-winning DineSafe food safety inspection and disclosure system. This system of inspection and disclosure of results, which was implemented in 2001, is designed to reduce the risk of foodborne illness in Toronto. Disclosure of inspection results occurs through on-site posting of Inspection Notices, provision of Food Safety Inspection reports and the posting of inspection details on the DineSafe website ([www.toronto.ca/fooddisclosure](http://www.toronto.ca/fooddisclosure)).

Food establishments are expected to be in compliance with the requirements of the relevant food safety legislation at all times. Public Health Inspectors conduct unannounced inspections of the approximately 16,000 Toronto food establishments based on mandated inspection frequencies. When infractions are identified, written instructions are given to the owner/operator outlining the actions that must be taken to correct deficiencies.

Section 13 of the HPPA provides authority for the closure of food premises when a health hazard is identified. A Section 13 Order specifies the steps that must be taken before the establishment can be allowed to reopen. Once all these conditions are met, as determined by a re-inspection, the closure order is lifted and the premises monitored to ensure continued compliance. When significant infractions which do not constitute a health hazard are identified, a Conditional Pass Notice is issued. This notice must be displayed at the establishment until the infractions are corrected. The authority to post the notice is provided under City of Toronto Municipal Code Chapter 545, Licensing.

Since the implementation of the DineSafe program, there has been a steady increase in compliance at the time of the initial inspection (Table 1). In 2001, the compliance rate rose to 78% from less than 50% in 2000. Over the past five years, the compliance rate on first inspection has been maintained at over 90%. However each year, there are a small number of establishments with a record of repeated non-compliance reflected in more than one closure or conditional pass notice. This report provides details on the actions taken by TPH to address the issue of repeated non-compliance.

**TABLE 1: Food Safety in Toronto - Compliance Rate on 1<sup>st</sup> Inspection: 2001 – 2008**

YEAR	INSPECTIONS	PASS	CONDITIONAL PASS	CLOSED	COMPLIANCE RATE (%)
2001	22,202	17,362	4,762	79	78.2 %
2002	27,293	23,461	3,805	27	86 %
2003	27,522	24,336	3,164	22	88.3 %
2004	28,421	25,990	2,395	36	91.4 %
2005	30,311	28,097	2,179	35	92.7%
2006	29,687	28,093	1,571	23	94.6%
2007	28,268	26,377	1,871	21	93.3%
2008	28,008	26,005	1,955	48	92.8%

Source: Toronto Healthy Environments Information System (THEIS).

Note: Prior to the implementation of the DineSafe program in 2001, the compliance rate was approximately 50%.

## COMMENTS

A progressive enforcement approach is used to address non-compliance with food safety requirements. A ticket is issued if infractions are not corrected at the time of the first re-inspection. This escalates to a summons if there is still non-compliance after subsequent re-inspection. Table 2 contains a summary of prosecutions undertaken and results obtained for Toronto food premises since 2001.

**TABLE 2: Food Safety Prosecutions for Toronto Food Premises, 2001 - 2009**

	2001	2002	2003	2004	2005	2006	2007	2008	2009
<b>Charges</b>	700	731	842	540	612	639	576	642	438
<b>Concluded</b>	467	416	359	181	188	184	183	411	161
<b>Conviction</b>	311	342	298	163	155	156	157	316	120
<b>Conviction Rate</b>	67%	82%	83%	90%	82%	85%	86%	76.9%	74.5%
<b>Fine (\$)</b>	278,740.00	109,611.75	100,305.00	86,445.00	65,282.50	85,143.00	77,060.00	179,179.50	145,364.50

Source: Toronto Healthy Environments Information System (THEIS).

There is no provision under the HPPA or Toronto Municipal Code 545 to close permanently those premises with a history of repeat non-compliance. However, food establishments meeting the criteria listed below are flagged and reviewed for additional enforcement through an internal quality assurance process:

- Two closures in a year; or
- Two consecutive Conditional Passes (Yellow Notice); or
- Three Conditional Passes/Closures in a year.

A total of 106 premises met these criteria from 2004 – 2009 out of approximately 16,000 inspected annually.

For these premises, a number of other measures in addition to prosecutions may be used to enhance compliance, including:

- increased monitoring above and beyond mandated inspection frequencies
- agreement with the owner/operator on an action plan including timeframes for compliance
- training for all food handlers above and beyond the requirements of the Food Handler Training and Certification requirements of the by-law

The demonstrated willingness and ability of the owner/operator to comply within the specified timeframe and to remain in compliance as demonstrated on subsequent inspections, is an important factor in determining whether or not further enforcement actions are required.

Food establishments with repeated non-compliance which have not responded to the measures outlined above and which do not demonstrate willingness and ability to improve compliance are referred through Municipal Licensing and Standards to the Toronto Licensing Tribunal with a recommendation for modification or suspension of their business license. The Toronto Licensing Tribunal is a quasi-judicial body authorized under Toronto Municipal Code 545, Licensing, to hear evidence and submissions and to make independent decisions respecting whether a licence should be issued, refused, suspended, revoked or have conditions placed upon it.

Over the last five years, eight establishments were referred to the Licensing Tribunal through ML&S following the internal review. The license for one establishment was revoked by the Licensing Tribunal while conditions were imposed on four others. The conditions imposed by the Tribunal included: the successful completion of food handler training and certification; keeping of records pertaining to pest control and cooking; and holding temperatures for hazardous food products. One referral is still pending investigation by ML&S. Two establishments could not be dealt with by the Tribunal as they had no municipal licences. In the limited context of food premises which contravene the City's licensing by-law (for example, failure to have a valid license or failure to post a disclosure notice), the Court may make closure orders pursuant to section 387(2) of the City of Toronto Act. These closure orders may not exceed a period of two years. In the case of the two unlicensed premises, a three month closure order was imposed by the courts for failure to obtain a licence.

### **Other Jurisdictions**

Regional health units in the Greater Toronto Area experience similar issues with problem premises after the enforcement actions of the Health Protection and Promotion Act are exhausted. These health units do not have a Regional Licensing Board and are required to communicate with the licensing departments of each lower tier municipality. Some municipalities do not require food premises to have a licence to operate.

The City of Hamilton Public Health Services works closely with their municipal licensing department in a manner similar to Toronto. An operator who routinely fails to comply with food safety legislation can be brought before a "Show Cause Hearing" by the

licensing department, where the outcome may result in the operator's licence being revoked, suspended or having conditions imposed on the business.

Public health jurisdictions in Europe, the United States and other Canadian provinces that were consulted indicate that they work with their respective licensing authorities and tribunals in a similar manner.

### **Other Legal Options**

The City Solicitor has advised that there are no provisions in either the Health Protection and Promotion Act (HPPA) or Toronto Municipal Code Chapter 545, Licensing, that authorize the permanent closure of food premises with repeated convictions for non-compliance with either of these two statutes. The Court has no inherent jurisdiction to make such an order.

### **CONCLUSION**

Food premises with repeated non-compliance with food safety requirements are uncommon and in most cases can be brought into compliance using available education and enforcement measures. A small number are referred to the Toronto Licensing Tribunal which has suspended, placed conditions on, or revoked business licenses. No additional enforcement mechanisms are recommended at this time. The Medical Officer of Health will continue to monitor food safety compliance and take necessary enforcement action in the event of non-compliance.

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### **SIGNATURE**

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