

THE CORPORATION OF THE CITY OF PETERBOROUGH

BY-LAW NUMBER 13-029

BEING A BY-LAW RESPECTING MANDATORY FOOD HANDLER CERTIFICATION IN HIGH-RISK FOOD PREMISES AND MODERATE-RISK FOOD PREMISES IN THE CITY OF PETERBOROUGH

WHEREAS Section 10(2) of the *Municipal Act, 2011*, S.O. 2011, c. 25 as amended, permits councils of local municipalities to pass by-laws and make regulations for the health, safety and well-being of persons within the municipality;

AND WHEREAS the *Health Protection and Promotion Act*, R.S.O. 1990, c. H-7 sets out numerous regulations applicable to food premises for the purpose of protecting and promoting public health and including the duty of every medical officer of health to inspect or cause the inspection of food premises and food and equipment thereon or therein;

AND WHEREAS it has been determined that requiring mandatory food handler certification is important to help ensure the health, safety and well-being of the inhabitants of Peterborough;

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

AND WHEREAS the *Municipal Act, 2001*, S.O. 2001, c. 25, further authorizes the City of Peterborough 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;

THE CORPORATION OF THE CITY OF PETERBOROUGH by the Council thereof hereby enacts as follows:

ARTICLE 1.0 – DEFINITIONS

1.1 In this By-law:

- a. **accredited program** – means:
 - i. The Peterborough County-City Health Unit's Food Handler Certification Program;
 - ii. A food handler training and certification program offered by a health unit or health department in the Province of Ontario; or
 - iii. 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 and whose responsibilities include supervising the preparation, processing, packaging, service and/or storage of food;
- c. **City** – means, as the context requires, the Corporation of the City of Peterborough or the geographic area of the City of Peterborough;

- d. **Council** – means the Council of the City of Peterborough;
- 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 moderate-risk food premises or a high-risk food premises handling or coming in contact with food or drink during its preparation, processing, storage, handling, display, distribution, transportation, sale, service, or offering for sale;
- 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;
- i. **high-risk food premises** – means a food premises assigned as high risk by the Medical Officer of Health having reference to the most current version of the *Risk Categorization Model* provided by the Ministry of health and Long-Term Care;
- j. **Medical Officer of Health** – means the Medical Officer of Health of the Peterborough County-City Health Unit or his or her designate;
- k. **moderate-risk food premises** – means a food premises assigned as moderate risk by the Medical Officer of Health having reference to the most current version of the *Risk Categorization Model* provided by the Ministry of Health and Long-Term Care;
- l. **Officer** – means a Public Health Inspector who is employed by the Peterborough County-City Health Unit;
- m. **operator** – means a person who has responsibility for or control over an activity carried on at a moderate-risk food premises or a high-risk food premises and there may be more than one operator of the same food premises;
- n. **person** – means, as the context requires: 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
- o. **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; or
 - iv. Trains, railway cars, vehicles and aircraft.

ARTICLE 2.0 – INTERPRETATION

- 2.1 The headings and subheadings used in this By-law shall not form a part of the by-law, but shall be deemed to be inserted for convenience of reference only.
- 2.2 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.
- 2.3 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.

ARTICLE 3.0 – OFFENCES FOR OPERATORS AND FOOD HANDLERS

- 3.1 No operator shall permit a moderate-risk food premises or high-risk food premises to operate without at least one certified food handler present and working in a supervisory capacity.
- 3.2 No food handler who, when working as the certified food handler, shall fail to produce for inspection his or her food handler certificate and a photo identification card upon the request of an Officer or of the Medical Officer of Health.

ARTICLE 4.0 – FOOD HANDLER TRAINING AND CERTIFICATION

- 4.1 The Medical Officer of Health may accredit any food handler training and certification program upon being satisfied that the program is equivalent to the Peterborough County-City Health Unit's Food Handler Certification Program, having regard to the standards contained in the "Food Safety Protocol" of the Ontario Public Health Standards, 2008, issued under the *Health Protection and Promotion Act*, as amended.
- 4.2 Every provider of a food handler training and certification program seeking accreditation under Article 4.1 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.
- 4.3 Every provider of an accredited program shall provide the Medical Officer of Health with such information as the Medical Officer of Health reasonably 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 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.
- 4.4 The Medical Officer of Health may terminate the accreditation of any food handler training and certification program upon being satisfied that the program has ceased to be equivalent to the Peterborough County-City Health Unit's food handler certification program or that the program provider has failed to comply with Articles 4.2 or 4.3.

- 4.5 Unless terminated sooner by the Medical Officer of Health, the accreditation of a food handler training and certification program is valid for five years.
- 4.6 A provider of an accredited program may issue a food handler certificate to any natural person who has successfully completed an accredited program.
- 4.7 Unless terminated sooner by the Medical Officer of Health, a food handler certificate is valid for five years from the date of issue.

ARTICLE 5.0 – INSPECTIONS AND ORDERS

- 5.1 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 a moderate-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.
- 5.2 An Officer may, for the purposes of an inspection under Article 5.1:
 - 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.
- 5.3 An inspection order made under Article 5.1 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.
- 5.4 Where service cannot be given in accordance with Article 5.3, 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.
- 5.5 An Officer may, pursuant to an order under section 438 of the *Municipal Act, 2001*, undertake an inspection for a purpose described in Article 5.1 and exercise powers described in Article 5.2 where he or she has been prevented or is likely to be prevented from carrying out an inspection under Articles 5.1 and 5.2, 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*.
- 5.6 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.
- 5.7 An order under Article 5.6 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.
- 5.8 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.
- 5.9 An order under Article 5.8 shall set out:
 - a. Reasonable particulars of the contravention adequate to identify the contravention and the location of property on which the contravention occurred;
 - b. The work to be done; and
 - c. The date or dates by which the work must be done.
- 5.10 An order to discontinue contravening activity made under Article 5.6 or an order to do work made under Article 5.8 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.

- 5.11 Where service cannot be given in accordance with Article 5.10, 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.

ARTICLE 6.0 – ADMINISTRATION AND ENFORCEMENT

- 6.1 The Medical Officer of Health is authorized to administer and enforce this By-law and has the 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.

- 6.2 Fees or charges for services and activities provided under this By-law shall be set and approved by the Board of Health for the Peterborough County-City Health Unit from time to time.
- 6.3 Unpaid fees or charges set and approved under Article 6.2 constitute a debt to the City and may be added to tax roll and collected in the same manner as municipal taxes.
- 6.4 The Medical Officer of Health may assign or appoint Officers to enforce this By-law who shall have the authority to:
- a. Carry out inspections;
 - b. Make orders to requiring an operator or any person to discontinue activities which contravene this By-law;
 - c. Make orders requiring an operator or any person to undertake work to correct contraventions of this By-law; or
 - d. Give immediate effect to any order; and
 - e. Otherwise enforce this By-law.
- 6.5 The Medical Officer of Health may assign duties or delegate tasks under this By-law whether in his or her absence or otherwise.
- 6.6 This By-law may be cited as the "Mandatory Food Handler Certification By-law".
- 6.7 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.

ARTICLE 7.0 – PENALTIES

- 7.1 Any person who contravenes any provision of this By-law is, upon conviction, guilty of an offence and is liable to the penalty imposed by applicable law, which is recoverable pursuant to the *Provincial Offences Act*:
- a. Upon a first conviction, to the lesser of the then current set fine amount, if any, or an amount not exceeding \$500; and
 - b. Upon a second conviction to a minimum fine of \$500 and a maximum fine of \$5,000; and
 - c. Upon a third or any subsequent conviction, to a minimum fine of \$2,500 and a maximum fine of \$25,000.
- 7.2 Despite Article 7.1, where the person convicted is a corporation, the corporation is liable:
- a. Upon a first conviction, to a minimum fine of \$2,500 and a maximum fine of \$25,000; and
 - b. Upon a subsequent conviction, to a minimum fine of \$5,000 and a maximum fine of \$50,000.

7.3 At the discretion of the Peterborough County-City Health Unit, 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 1 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.

7.4 Schedule "A" offences shall not be utilized until the amounts of the fines in Schedule "A" have been set by the Regional Senior Justice for the Superior Court of Ontario.

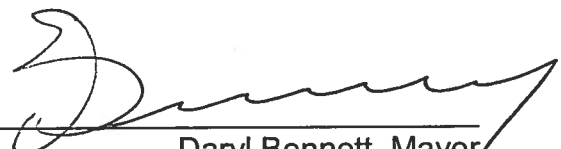
ARTICLE 8.0 – EFFECTIVE DATE

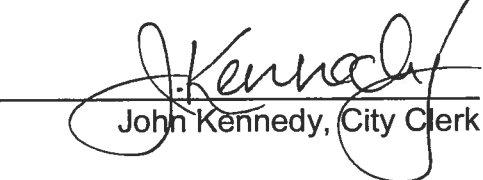
8.1 Save and except Article 3.1 and 3.2, the By-law shall come into force and effect on the day it is passed and enacted.

8.2 Articles 3.1 and 3.2 of the By-law as it relates to high-risk food premises shall come into force and effect on the 1st day of January 2014.

8.3 Articles 3.1 and 3.2 of the By-law as it relates to moderate-risk food premises shall come into force and effect on the 1st day of January 2015.

By-law read a first, second and third time this 18th day of March, 2013.


Daryl Bennett, Mayor


John Kennedy, City Clerk

CERTIFIED UNDER THE HAND OF THE CLERK AND SEAL OF THE CORPORATION OF THE CITY OF PETERBOROUGH TO BE A TRUE COPY OF	
<u>City of Peterborough</u>	
<u>By-law 13-029</u>	
DATED THIS <u>25</u>	DAY OF <u>March, 2013</u>
<u>Kendra Sedgwick</u>	
KENDRA SEDGWICK COMMITTEE COORDINATOR/DEPUTY CLERK, CITY OF PETERBOROUGH	

Schedule "A"

The City of Peterborough

Part 1 *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 failed to ensure a minimum of one certified food handler working in a supervisory capacity.	Article 3.1	\$250
2.	Food handler failed to produce a valid food handler certificate and photo identification card when working as the certified food handler.	Article 3.2	\$125

Note: The general provision for the offences listed above is section 61 of the *Provincial Offences Act*, R.S.O. 1990, c. P.33.