Agenda - Executive Policy Committee - April 19, 2006

Report - Standing Policy Committee on Protection and Community Services - April 10, 2006

Item No. 1 Access to Information - Food Establishment Health Inspections
File EH-1.6

STANDING COMMITTEE RECOMMENDATION:

On April 10, 2006, the Standing Policy Committee on Protection and Community Services concurred in the administrative recommendations dated January 30, 2006 and March 23, 2006, as amended, and submits the following to Council:

1. That effective November 6, 2006, the names and addresses of all food establishments convicted or closed for food handling infractions or insanitary conditions, including the reason for the conviction or closure, be posted on the City of Winnipeg Website extending for a period of one year after the conviction or the lifting of the closure.

2. That the front entrance of all food establishments closed for insanitary conditions be posted with a placard to indicate that the premises have been closed for insanitary conditions and the reason for closure.

3. That food establishments not be compelled to produce health inspection reports upon request of customers.

4. That the Community Services Department issue a press release every six (6) months on all convictions and closures issued under the Food Service Establishment By-law No. 5160/89 for the previous six (6) month period.

5. That the City Solicitor/Manager of Legal Services be instructed to prepare an amending by-law replacing the term mandatory notice with the term deficiency order within the Food Service Establishment By-law No. 5160/89.

6. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

Agenda - Executive Policy Committee - April 19, 2006

Report - Standing Policy Committee on Protection and Community Services - April 10, 2006

DECISION MAKING HISTORY:

STANDING COMMITTEE RECOMMENDATION:

On April 10, 2006, the Standing Policy Committee on Protection and Community Services concurred in the administrative recommendations dated January 30, 2006 and March 23, 2006, as amended, namely;

- Add the following Recommendation 4 and renumber the remaining recommendations accordingly:

    "4. That the Community Services Department issue a press release every six (6) months on all convictions and closures issued under the Food Service Establishment By-law No. 5160/89 for the previous six (6) month period,"

and submitted the matter to the Executive Policy Committee and Council.

On March 6, 2006, the Standing Policy Committee on Protection and Community Services directed that in addition to its recommendation of February 7, 2006, requesting the Administration to report back within sixty (60) days on amending the Food Service Establishment By-law No. 5160/89 to allow the possibility of compelling food establishments to produce their Health Inspection Report upon the request of customers, the Administration also be requested to consider in its report, the potential unfairness of establishments who have had to close for reasons beyond their control, being grouped with establishments who have had to close for unsanitary reasons of their own doing.

On February 7, 2006, the Standing Policy Committee on Protection and Community Services laid over consideration of the matter and requested the Administration to report back within sixty (60) days on amending the Food Service Establishment By-law No. 5160/89 to also allow the possibility of compelling food establishments to produce their Health Inspection Report upon the request of customers.

On December 6, 2005, the Standing Policy Committee on Protection and Community Services granted a further extension of time to February 6, 2006 for the Administration to report back on the Executive Policy Committee motion of November 17, 2004.

On October 13, 2005, the Standing Policy Committee on Protection and Community Services granted a further extension of time to December 6, 2005 for the Administration to report back on the Executive Policy Committee motion of November 17, 2004.

Agenda - Executive Policy Committee - April 19, 2006

Report - Standing Policy Committee on Protection and Community Services - April 10, 2006

DECISION MAKING HISTORY (continued):

STANDING COMMITTEE RECOMMENDATION (continued):

On July 11, 2005, the Standing Policy Committee on Protection and Community Services granted an extension of time to October 13, 2005 for the Administration to report back on the Executive Policy Committee motion of November 17, 2004.

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On November 17, 2004, the Executive Policy Committee passed the following resolution:

WHEREAS concerns regarding health inspections of food establishments have been featured prominently in the media recently;

AND WHEREAS many Winnipeggers do not know how to easily access information regarding health inspections of food establishments;

AND WHEREAS other jurisdictions make this information readily available to citizens by posting it on the internet or requiring food establishments to post notices of health violations;

THEREFORE BE IT RESOLVED THAT the Administration be directed to: a) conduct a review of current policy in this area; b) analyze how other jurisdictions publicize the results of health inspections of food establishments; and c) present options the City of Winnipeg could consider for implementation;

AND BE IT FURTHER RESOLVED that the Administration be requested to report back to the Standing Policy Committee on Protection and Community Services within 120 days in this regard.

ADMINISTRATIVE REPORT

RE:	**Access to Food Inspection Information**
FOR SUBMISSION TO:	**Standing Policy Committee on Protection and Community Services**
ORIGINAL REPORT SIGNED BY:	**Ursula Stelman, Director Community Services Department**
REPORT DATE:	**January 30, 2006**

RECOMMENDATION(S):

1. That, effective November 6, 2006, the names and addresses of all food establishments *convicted or closed* for food handling infractions or insanitary conditions, including the reason for the conviction or closure, be posted on the City of Winnipeg Website extending for a period of one year after the conviction or the lifting of the closure;

   and that the front entrance of all food establishments closed for insanitary conditions be posted with a placard to indicate that the premises have been closed for insanitary conditions and the reason for closure.

2. That the proper officers of the City of Winnipeg be authorized to do all things necessary to implement the intent of the foregoing.

3. That the City Solicitor be instructed to prepare an amending by-law replacing the term mandatory notice with the term deficiency order within the Food Service Establishment By-law.

REPORT SUMMARY:

Key Issues:

- As per the request of the Executive Policy Committee, this report provides information relative to:
  a) current policy in the area of providing food inspection information to the public;
  b) an analysis of how other jurisdictions publicize the results of health inspections of food establishments; and
  c) an option the City of Winnipeg could consider for implementation.

- Seventeen Canadian jurisdictions were contacted by phone and email and were asked to provide information on any by-laws, policies, procedures and/or guidelines in place to address operational and legal issues regarding the publication or posting of health

inspection reports of food establishments. Of the seventeen jurisdictions contacted, a total of seven complete responses were received, including Winnipeg.

- Five of the seven jurisdictions release the names and addresses of food establishments closed or charged/convicted for food service infractions without a formal freedom of information request. The reason for closure or charge is also released.
  - This information is provided on request to the media or general public or is posted regularly on the website.
  - Winnipeg also releases this information, however not on a website.

- In Winnipeg, inspection findings pertaining to a specific establishment is released in accordance with FIPPA legislation. Inspection findings can be defined as the actual infractions noted during an inspection.
  - This is also consistent with the practices of most jurisdictions.
  - Only one jurisdiction (Toronto), releases inspection findings without a formal FIPPA request.
  - Toronto is also the only jurisdiction that may release specific inspection findings, depending on the severity of the infraction, on a website; and requires the owner of the establishment to provide a copy of the last inspection to anyone who requests it.
  - In Toronto all food service establishments are posted with a green(pass), yellow(conditional pass) or a red(closed) rating.

- The City of Winnipeg has three types of records that pertain to food service establishment inspections. These include:
  - *A Closing Notice* – The mandatory closure of a food service establishment to prevent public access in order to protect against unacceptable heath risks.
  - *A Charge* –The issuance of a common offence notice (ticket) for a violation of the City of Winnipeg Food Service By-law or other related by-laws. These are then dealt with by the Courts (may result in a conviction).
  - *A Mandatory Notice (Deficiency Order)* – A list of by-law infractions requiring correction within a specified time period. This is issued to the person in charge of the food service establishment as a result of food safety violations noted during an inspection of the establishment.

- Easier public access to information regarding convictions and closures of food service establishments will assist citizens to make informed decisions; and knowing that this information will be easily available to the public will encourage food service establishments to achieve high food safety standards. The recommendations include:
  - providing easy web access to information regarding all food establishment convictions and closures;
  - visibly posting a closure notice at the entrance of any closed establishment, including the reason for closure; and
  - upon request, providing the information contained within Mandatory Notices (Deficiency Orders) as permitted by the Food Services By-law and in

accordance with FIPPA legislation. These Deficiency Orders, which contain specific inspection findings, are issued at the conclusion of most inspections. Although made available upon request, this level of detailed information would not be routinely posted on the website.

- The report recommends that convictions be posted on the website for one year; and that closures remain on the website for one year after the lifting of the closure. This provides the public with a reasonable food safety history related to establishments. Most other jurisdictions across Canada maintain this information on their websites for approximately 1-3 years, some indefinitely. Should the restaurant change ownership all information will be removed from the website upon request of the new owner.

- Subject to executive approval, Manitoba Conservation Operations has agreed in principle to make available to the City of Winnipeg for posting on the City website, the convictions and closures of food service establishments within their Winnipeg public health inspection jurisdiction (suburban Winnipeg). As a result, consistent information for all food service establishments throughout Winnipeg will be available to the public. This is critical from a customer service and business fairness perspective.

- Food establishment stakeholders (such as the Manitoba Food Service Association, Canadian Council of Grocery Distributors and the Manitoba Hotel Association) support the release of establishment information (closures and charges) that pose significant risk to the public. They believe the public should be aware of the risks posed by poorly maintained establishments or their failure to comply with food inspection legislation.

- The third recommendation would update the terminology in the Food Service Establishment By-law to ensure consistency with the wording used on the new forms contained within the Environmental Health Services Branch automated records system.

Implications of the Recommendation(s):

General implications:

None

X **For the organization overall and /or for other departments**

X **For the community and/or organizations external to the City of Winnipeg**

Involves a multi-year contract

Comment(s):

- Posting of this information adds value to the overall usefulness of the City Website as a public information source.
- Extreme due diligence is required to ensure posted information is accurate and timely in order to mitigate potential liability issues for the City of Winnipeg.
- Generally speaking, there is increasing public expectation for the provision of information systems that provide easier access to this type of information and allow citizens to make informed decisions. Knowing that this information will be easily available to the public will also encourage food service establishments to

achieve high food safety standards. The recommendation contained within this report facilitates easy access to relevant food inspection information.

- The recommended option informs the public and media of the health inspection status with respect to convictions and closures of particular establishments. Patrons could more conveniently search this specific food establishment information.
- The limited number of charges and closures issued by the City of Winnipeg and Manitoba Conservation would make it relatively easy for the public to sort through this information and make their own informed decisions.
- Specific information on every inspection as contained within a Mandatory Notice (Deficiency order) relating to a particular establishment would also continue to be provided upon request, as permitted by the Food Services By-law and FIPPA legislation, however would not be posted on the website.

Policy implications:

No

X **Yes**

Comment(s):

- Concerns regarding health inspections of food establishments have been featured prominently in the media. The information presently made available to Winnipeggers is consistent with the information made available to most of the other jurisdictions surveyed. However, in the other jurisdictions this information is more readily available on a website. The policy recommendation contained within this report will ensure that Winnipeg citizens have easy access to relevant food inspection information in a manner consistent with most other larger Canadian cities.

Environmental implications:

X **No**

Yes

Comment(s):

Human resources implications:

X **No**

Yes

Comment(s):

Financial implications:

X Within approved current and/or capital budget

Current and/or capital budget adjustment required
Comment(s):

REASON FOR THE REPORT:

On November 17, 2004, Executive Policy Committee directed the Administration to conduct a review of current policy in this area (access to health inspection information), analyze how other jurisdictions publicize the results of health inspection of food establishments, and present options the City of Winnipeg could consider for implementation.

Further, the Executive Policy Committee requested the Administration to report back to the Standing Policy Committee on Protection and Community Services within 120 days in this regard.

Moved by Councillor Steeves,

WHEREAS concerns regarding health inspections of food establishments have been featured prominently in the media recently;

AND WHEREAS many Winnipeggers do not now how to easily access the information regarding health inspections of food establishments;

AND WHEREAS other jurisdictions make this information readily available to citizens by posting it on the internet requiring food establishments to post notices of health violations;

THEREFORE BE IT RESOLVED THAT the Administration be directed to: a) conduct a review of current policy in this area; b) analyze how other jurisdictions publicize the results of health inspection of food establishments; and c) present options the City of Winnipeg could consider for implementation.

On July 11, 2005 an extension to October 13, 2005 for submission of the report was granted. Further extensions were granted to December 6, 2005 and February 6, 2006.

HISTORY:

The current City of Winnipeg Food Services By-law was enacted in 1989, with amendments being made since that time.

- Within the By-law, a food service establishment *"means any place where food is kept, handled, manufactured, packaged, stored or prepared. The term shall include any such place regardless of whether consumption is on or off the premises and regardless of whether there is or is not a charge for the food, in includes bakeries, institutions, retail food stores, delicatessen-type operations, restaurants, catering establishments, commissaries, hotels, beverage rooms, dairy bars, milk bars, ice-cream parlours, canteens, mobile food units and temporary food service establishments, but shall not include private homes where food is prepared or served for individual family consumption, producer markets, food vending machines and food supply vehicles".*

- The By-law states that the Public Health Inspector may:
  - post mandatory notices (now referred to as deficiency orders) related to food inspections in a conspicuous place in the office of the Public Health Inspector. A mandatory notice lists every food service infraction noted during a routine or re-inspection, regardless of the severity of the infraction (minor infraction or high risk infractions).
  - post a copy of the closing notice in a conspicuous place in the office of the Public Health Inspector, where an insanitary condition exists in a food service establishment and a closing notice is served on the operator or person in charge;
  - placard the premises where an insantitary condition exists in a food establishment.

- Since 1999, the City has maintained a list of all food service establishments that have been placarded (closed) and/or charged under the City of Winnipeg Food Services By-law. The public and the media may access this information by attending the Environmental Health Services Office and reviewing the information or have it emailed to them upon request. Although there is the occasional request for more detailed information pertaining to a specific food service establishment beyond the listing of the charges and closures (ie. information contained within a Deficiency Order), the Branch has not experienced any significant demand for this level of information. Persons requesting this information are advised to contact the City Clerk's office and submit a formal access to information request. This ensures that each request is reviewed and that information is provided in accordance with FIPPA legislation.

DISCUSSION:

Survey findings: Current Policy in Winnipeg and other Jurisdictions

Seventeen Canadian jurisdictions were contacted by phone and email and were asked to provide information on any by-laws, policies, procedures and/or guidelines in place to address operational and legal issues regarding the publication or posting of health inspection reports of food establishments. Of the seventeen jurisdictions contacted, a total of seven complete responses were received, including Winnipeg.

Within this report, information from the seven responding jurisdictions is organized and tabulated to:

- Outline the various regulations, by-laws and policies that influence the release and publication of food inspection information (Appendix #1).
- Compare operational similarities and differences related to the release and publication of this information (Appendix #2).

The type of information released by Winnipeg and other jurisdictions can be divided into three major categories:

1. **Summary Information:** Summary information can be defined as very high level information such as the number of premises charged or closed within a given time period. Information pertaining to a specific establishment such as establishment name and address is not provided at this level of release.

2. **Charges/convictions and Closures:** The names, addresses and reason a food establishment is charged, convicted or closed is released at this level.

3. **Inspection Findings:** Inspection findings can be defined as the actual infractions noted during the inspection. This is similar to what Winnipeg defines as a Mandatory Notice (Deficiency Order).

The research indicates that food premise legislation influences the release of food establishment inspection information in five of the seven jurisdictions. All jurisdictions are influenced by FIPPA related legislation.

Survey findings included:

- All seven jurisdictions release summary information related to food inspections without a formal freedom of information request. Two of the seven jurisdictions convey summary results through press releases.
    - Winnipeg does not issue press releases that provide this information to the public. However, it is issued to the media upon request.

- Five of the seven jurisdictions release the names and addresses of food establishments closed or charged/convicted for food service infractions without a formal freedom of information request. The reason for closure or charge is also released.

    - Winnipeg is one of the five jurisdictions that releases this information.

- One of the seven jurisdictions (Toronto) requires the owner of the establishment to provide a copy of the last inspection to anyone who requests it.

- Four of the seven jurisdictions post inspection information on websites.
    - Toronto: includes inspection dates, findings of any establishment that receives a conditional pass or warning, action taken (including legal action) and the outcome of any legal action (fine and amount)
    - Hamilton: premises convicted/ordered closed appear on websites
    - Fraser Health: only closure orders are posted on websites
    - Durham: lists food premises which have been convicted under the Food Premises Regulation.
  - Winnipeg does not currently post any food inspection related information on a website.

- The City of Winnipeg provides summary information, and the names and addresses of establishments charged or closed for food safety infractions, upon request. More detailed information pertaining to specific establishments is released in accordance with FIPPA legislation. This is consistent with the practices of most jurisdictions.

The type of information released by the City of Winnipeg is consistent with most other jurisdictions. Making this information readily available on the City website will also then be consistent with other jurisdictions.

Toronto:

Toronto publicly posts the most food inspection information. It is important to note that these new systems of disclosing food inspection information are in part the result of the "Dirty Dining" expose that took place in one of the local Toronto newspapers. The expose commented negatively on Toronto's inspection, food handler education and inspection procedures.

In reaction to this expose, Toronto has significantly changed their overall food establishment inspection program and procedures. This included improving enforcement processes and inspection frequencies, changing disclosure policies and investing significantly in automated public information systems.

All food service establishments are now posted with a rating that is based on the last inspection. The three ratings are green, yellow and red. A green is a pass, yellow is a conditional pass and red means that the premises have been closed.

- When an inspection/re-inspection results in a Pass (Green Notice) the only information posted on the website is that the premises passed the inspection and the date the inspection was completed. A pass notice means that either no infractions or only minor infractions were identified. Any minor infraction identified is not posted on the website

where the result is a Pass. However such detail would be found on the Food Safety Inspection Report (FSIR).

- Where an establishment is issued with a Conditional Pass (Yellow Notice) or a Closed (Red Notice) all infractions are posted on the website (Minor, Significant, Crucial). The owner is also required to provide the most recent inspection report upon request. This is the food inspection report completed by the PHI and has all the details of the inspection (findings, required corrective actions and any enforcement actions).

Recommendation regarding the level of information to be posted on the web site:

Posting of convictions and closures on the website:

The posting of food establishments convicted or closed on a website is consistent with the direction most other jurisdictions have taken or are beginning to take. Posting of this information on a website makes this information more readily available to the public. Knowing that such information will be easily available to the public also encourages food service establishments to achieve high food safety standards.

By searching a particular establishment, the public could conveniently determine whether the premises are closed and if the premises have been convicted for an offence. The reason for the conviction or closure would also be provided. Much of this information is already available to the public, however this same information would now be conveniently available on a website.

The annual number of charges under the Food Service By-law is minimal (approximately 50 per year). The limited number of closures and convictions would make it relatively easy for the public to sort through and utilize this information provided.

The report recommends that convictions would be posted on the website for one year following the conviction. Closures would remain posted for one year after the closure is removed. The website would also be updated as to when the closure was removed. A period of one year provides the public with a reasonable food safety history of an establishment. This is in line with other jurisdictions. One jurisdiction keeps information on the web-site for a 3 month period, however all others surveyed have information posted for at least a one to two year period, some indefinitely. Should the restaurant change ownership all information will be removed from the website upon request of the new owner.

Posting a placard at the front entrance of establishments closed for insanitary conditions:

The City placards and closes approximately twenty-five food services establishments annually. These premises are closed for a variety of public health reasons ranging from fire damage to gross filth and insanitary conditions. An establishment closed for fire damage or lack of water may not be the fault of the owner as opposed to other closures which are the result of negligence. Posting the reason for closure on the web provides additional information to the public.

Placing a placard at the front entrance of an establishment closed for insanitary conditions provides street level information to patrons. If the establishment is not placarded for insanitary conditions, then the establishment could be considered satisfactory. If an establishment is placarded, access to the establishment by the public is denied and patrons are advised of the reason for closure.

Information contained in Mandatory Notices released upon request, in accordance with FIPPA:

This report recommends the posting of closures and convictions, however it does not recommend that the detailed information contained within Mandatory Notices (Deficiency Orders) be routinely posted on the web site for the following reasons:

- Over ninety percent of all food service establishments receive a Mandatory Notice at the time of inspection due to deficiencies being noted, resulting in approximately 5000 mandatory notices annually. Establishments are issued orders for all infractions noted, regardless of severity, with many of the infractions listed being minor in nature. The number of infractions received by an establishment during an inspection does not indicate the level of risk posed to patrons, nor indicate that these premises are poorly maintained. In order to ensure that the posting of information is consistent and non-biased, either all or no mandatory notices would need to be posted.

- The large number of food inspections conducted annually and the number of infractions noted increases the probability of the website containing inaccuracies. Substantial investment into an automated system and ongoing maintenance would be required to post this large amount of information on the website and ensure that it is accurate and current. Legal Services has cautioned that the posting of inaccurate or untimely information will put the City in a liable position. The potential of inaccurate or untimely information increases with the amount of information posted.

- This issue is further complicated by the appeal process established by the City of Winnipeg Charter Act. If a deficiency order (mandatory notice) is issued and posted, and the order is appealed, the City may be accused of posting inaccurate information if the appeal is granted.

- It is very important to understand that any inspection report is only a "snapshot" of what was noted at the time of the actual inspection. Conditions in a food service establishment can change quickly for a number of reasons. Therefore, the posted inspection findings may not be an accurate depiction of the present food establishment conditions. Conversely, when an establishment is inspected and found insanitary, the closure is most often immediate. The premises are kept under regular observation to ensure closure remains in place. The closure or placard is then removed when the premises are brought to compliance and the public risk eliminated. This process ensures timely reporting of information.

- Posting only those premises convicted or closed would effectively meet the informational needs of the public and bring attention to those establishments that pose unreasonable risk to patrons or have a history of not complying with food handling legislation.

Stakeholders:

Subject to executive approval, Manitoba Conservation Operations has agreed in principle to make available to the City of Winnipeg for posting on the City website, the convictions and closures of food service establishments within their Winnipeg public health inspection jurisdiction (suburban Winnipeg). As a result, consistent information for all food service establishments throughout Winnipeg will be available to the public. This is critical from a customer service and business fairness perspective.

Environmental Health Services administration has discussed with stakeholders such as the Manitoba Food Service Association, Canadian Council of Grocery Distributors and the Manitoba Hotel Association, the issue of publishing inspection information with respect to food service establishments. Food establishment stakeholders have indicated that they support the publication of food establishments that pose significant health risk to the public or have not been cooperative in complying with inspection requirements. Posting closures and convictions provides this level of information. Some stakeholders suggest that posting the information on the website for longer than 3 months may be regarded as punitive. However, based on public interest regarding the food safety history of an establishment, most jurisdictions across Canada have this information available on the web for 1-3 years, some indefinitely.

- Generally speaking, the City of Winnipeg has a good working relationship with the food service industry. This relationship has been established over many years and is supported on an inspection platform that is based on the three "Es" (Education, Evaluation, and Enforcement). Education and onsite evaluation (inspection) are the most proactive and cooperative methods of maintaining reasonable food service standards. Enforcement is usually the last action taken to ensure compliance with food service regulations. Environmental Health Services strives to maintain this positive working relationship. The type of information posted may affect this collaborative working relationship with the food service industry. The industry may interpret the posting of every inspection infraction (deficiency orders) as a punitive action. For example, if posting deficiency orders on the website, relatively minor infractions that are quickly and easily rectified would be posted. This may affect the business while having posed minimal risk to the public. The posting of closures and convictions for a one year period provides a reasonable history with respect to serious infractions.

Summary:

There is increasing public expectation for the provision of information systems that provide easier access to this type of information and allow citizens to make informed decisions. The

policy recommendation contained within this report will ensure that Winnipeg citizens have easy access to relevant food inspection information in a manner consistent with most other larger Canadian cities. It will also encourage food service establishments to achieve high food safety standards.

Financial Impact Statement

Date: January 30, 2006

Project Name: **First Year of Program 2006**

Access to Food Inspection Information

	2006	2007	2008	2009	2010
Capital					
Capital Expenditures Required	$ -	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	-	-	-	-	-
Additional Capital Budget Required	$ -	$ -	$ -	$ -	$ -
Funding Sources:					
Debt - Internal	$ -	$ -	$ -	$ -	$ -
Debt - External	-	-	-	-	-
Grants (Enter Description Here)	-	-	-	-	-
Reserves, Equity, Surplus	-	-	-	-	-
Other - Enter Description Here	-	-	-	-	-
Total Funding	$ -	$ -	$ -	$ -	$ -
Total Additional Capital Budget Required	$ -	$ -	$ -	$ -	$ -
Total Additional Debt Required	$ -	$ -	$ -	$ -	$ -
Current Expenditures/Revenues					
Direct Costs	$ -	$ -	$ -	$ -	$ -
Less: Incremental Revenue/Recovery	-	-	-	-	-
Net Cost/(Benefit)	$ -	$ -	$ -	$ -	$ -
Less: Existing Budget Amounts	-	-	-	-	-
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Comments: There are no financial impacts associated with this report.

C. Wightman, Manager
Finance & Administrative Services

IN PREPARING THIS REPORT THERE WAS CONSULTATION WITH, AND CONCURRENCY BY:

- Legal Services

THIS REPORT SUBMITTED BY:

Community Services Department
Prepared by: Kelly Goldstrand, Manager
Community Resource, Protection & Safety Services

Peter Parys, Administrative Coordinator
Community Health and Environmental Protection
File No.

Appendix #1 Regulations And By-laws Influencing The Release And Publication Of Food Establishment Inspection Information

Manitoba Conservation	Regulated by: • FIPPA	• Any release of information falls under FIPPA. For specific requests under FIPPA, Manitoba Conservation will not release a copy of the report but will release a summary of the inspection.
Winnipeg	Regulated by: • Food Services By-law 5160/89 • Section 35.1 • Section 36.4 • FIPPA	• Public Health Inspector may serve a mandatory notice on the operator or the person in charge, to correct violations listed in or attached to said notice within the period specified and may cause a copy of said mandatory notice to be posted in a conspicuous place in the office of the Public Health Inspector. • where an unsanitary condition exists in a food service establishment; and o (i) serve a closing notice on the operator or the person in charge; o (ii) placard the premises; o (iii) post a copy of said closing notice in a conspicuous place in the office of the Public Health Inspector; *(note) Although permitted by the By-law, The City of Winnipeg does not post mandatory notices or closing notices in a conspicuous location within the office of the Public Health Inspector. However, information related to closing notices is made available upon request. • "**Disclosure deemed to be an unreasonable invasion of privacy** o 17(2) A disclosure of personal information about a third party is deemed to be an unreasonable invasion of the third party's privacy if o (b) the personal information was compiled and is identifiable as part of an investigation into a possible violation of a law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;" • "**Disclosure harmful to law enforcement or legal proceedings** o 25(1) the head of a public body may refuse to disclose information to an applicant if disclosure could reasonably be expected to o (a) harm a law enforcement matter; (f) deprive a person of the right to a fair trial or impartial adjudication; (n) be injurious to the conduct of existing or anticipated legal proceedings."
Toronto	Regulated by: • Food Premises Regulation-Municipal By-law Code 545 • Internal policies • FIPPA	• Requires the posting of inspection notices which are issued after each inspection. The owner/operator is required to post one of three inspection notices at a conspicuous place at or near the entrance of the premise. A pass notice (green sign), Conditional Pass Notice (yellow sign) or Closed Notice (red sign) will be issued based on the inspection findings. There is a penalty for failing to post the notice and keep it posted. In addition, The Dinesafe Web site provides information to the public concerning the Toronto Public Health Food Premises Inspection and Disclosure system. Information contained on Dinesafe is available for a period dating back two years. An establishment is removed from the website only if the name of the establishment changes. • Owners/ operators are also required to provide a copy of the latest inspection report issued by the Public Health Department to anyone requesting to see that report. • Prohibits the disclosure of personal information. FOI requests are required for the release of any information pertaining to inspection of food establishments which do not fall under the requirements of Municipal Code 545. In general, a FOI request is required for the release of any inspection results not posted on

		the Dinesafe website.
Hamilton	Regulated by: • Food Premises Regulation (02-037) • FIPPA	• Requires food premise operators to post Certificates of Inspection (indicates that the premise has successfully met the conditions for safe food handling on the date of its last inspection) at the entrance of their establishments. • Provided there is no personal information or other exemptions under FIPPA, inspection reports are released through FOI requests to the public (many of them come from the media). Also, premises convicted/ ordered appear on a website for a period of three months and are published one time in the local daily newspaper. Any past convictions/orders will be removed from the website upon request if the establishment changes ownership. These measures are supported by a City council resolution
Halifax	Regulated by: • FIPPA	• Routine summary reports are released
Fraser Health	Regulated by: • BC Health Act • FIPPA	• Requires all closure orders to be posted at the entrance doors to the establishment and made available to the public on request during business hours. • Allows the release of information such as charges and closures as found on website. High-level summary reports can be released without going through formal FOI requests, however, inspections conducted as a result of a complaint or follow-up are not routinely released and have to go through formal requests under legislation.
Durham	Regulated by: • Policy Health & Social Services Committee • MFIPPA	• Requires a press release every six months listing food premises which have been convicted under the Food premises regulation during that time. They are also listed on a website. Information contained on the website is available dating back to January 1, 2003. • Releases the results of high-level summary reports only.

Appendix #2 Operational Practices Related To The Publication Of Food Services Establishment Inspection Information.

Manitoba Conservation	Information is reviewed and released in accordance with FIPPA legislation
Winnipeg	Environmental Health Services maintain a list of all food services establishments that have been placarded (closed) and/or charged under the City of Winnipeg Food Services By-law. This information is made available to the public and media at their request. Persons interested in this information can attend the Environmental Health Services and review this information or have it emailed to them.
Toronto	Inspection results are disclosed as follows: • Onsite posting of inspection notices with a summary of the inspection including infractions found; • Posting of inspection findings on the DineSafe website. The information on the website includes: inspection dates, findings, action taken (including legal action) and the outcome of any legal action (fined and amount). Information contained on Dinesafe is available for a period dating back two years. An establishment is removed from the website only if the name of the establishment changes; • Provisions of a detailed inspection report after every inspection. The owner/operator is required to keep this report and provide a copy for anyone requesting to see it; • Provisions of a Food Safety Hotline to disclose inspection results to members of the public requesting such results. • NOTE: owners names and addresses are not disclosed.
Hamilton	Inspection reports are released through FOI requests to the public. NOTE: no consideration will be given to the release of inspection reports on a website for the following reasons: • There is no measurable local public demand to do so and; • Reporting errors could pose a large liability issue for the City. • Premises convicted/ ordered appear on a website for a period of three months and are published one time in the local daily newspaper. Any past convictions/orders will be removed from the website upon request if the establishment changes ownership. These measures are supported by a City council resolution.
Halifax	Only summary reports are made available. Inspections reports on restaurants are not posted or released on a website.
Fraser Health	Currently a data base is being compiled. Once a single data base is in place, then a decision will be made as to what information will be posted in view of all relevant legislation. At present, all Closure Orders are posted on a website. The information being posted includes: Name of Restaurant; Address of Restaurant; Date of Closure; Reasons for Closure; Date of Closure Order Rescinded. Information contained on the website is available for a period of 12 months. Establishments are not removed from the website if ownership changes.
Durham	Only the results of routine summary reports are released. Currently, no rating system is in place, but the development of one in addition to a formal disclosure system is under review and will be made available online. Food premises which have been convicted under the Food premises regulation are listed on a website. Information contained on the website is available dating back to January 1, 2003.

ADMINISTRATIVE REPORT

RE:	**Access to Food Inspection Information – Provision of Inspection Reports**
FOR SUBMISSION TO:	**Standing Policy Committee on Protection and Community Services**
ORIGINAL REPORT SIGNED BY:	**Ursula Stelman, Director Community Services Department**
REPORT DATE:	**March 23, 2006**

RECOMMENDATION(S):

1. That food establishments not be compelled to produce health inspection reports upon request of customers.

REPORT SUMMARY:

Key Issues:

- As per the request of the Standing Policy Committee on Protection and Community Services, this report provides information relative to compelling food establishments to produce a copy of health inspection reports upon the request of customers.

- Contact with other Canadian jurisdictions showed that Toronto and Ottawa have a requirement for food establishments to provide a copy of the last food inspection report upon request.
    - Both jurisdictions reported that there are very few requests by customers for this information.
    - One of the jurisdictions indicated that it may be necessary to invest in public awareness initiatives if this were to be utilized by the public.

- Food establishment stakeholders (such as the Manitoba Restaurant and Food Services Association and the Manitoba Hotel Association) do not support the requirement to compel food establishments to produce inspection reports upon request of customers. Their concerns include:
    - difficulty for patrons to interpret the report accurately. In addition, there may be pressure on the establishment owners to explain the report and this may be difficult for the staff person on site due to lack of knowledge, language barriers or other related issues;

- the number of violations noted on a report are not indicative of the level of risk or the sanitary conditions associated with the establishment.
- reports which serve as a positive educational tool for operators may now be viewed as punitive.

- From a public health inspection and enforcement perspective:
  - Establishments are issued orders for all infractions noted, regardless of severity, with many of the infractions listed being minor in nature. The number of infractions received by an establishment during an inspection does not indicate the level of risk posed to patrons, nor does it indicate that these premises are poorly maintained. The food inspection report can mislead customers if there is not a very good understanding by the customer of the level of health risk associated with specific violations.
  - Inspection reports are not necessarily indicative of the condition of the establishment at the time the report is provided to the customer.
  - Other jurisdictions, who have this requirement, report very minimal use of this tool. Significant financial resources would be required to develop and implement a public awareness campaign that educates the public about this initiative and how to properly interpret this type of report. This is a significant expenditure for what appears to be little benefit.
  - There are privacy concerns created by both Provincial (FIPPA) and Federal (PIPEDA) legislation. Requiring release of the report may violate either or both of those acts.

- The Administrative Report of January 30, 2006 entitled Access to Food Inspection Information recommends that all convictions and closures be posted on the City of Winnipeg web-site. This information would remain posted for one year from the time of the conviction or the lifting of the closure. In addition, the front entrance of all food establishments closed for insanitary conditions would be posted with a placard. This information is also available by contacting the EHS Branch. This approach provides the public with information regarding significant food handling infractions or insanitary conditions. Specific information as contained within a Mandatory Notice (Deficiency order) relating to a particular establishment is presently provided upon request to members of the public, as permitted by the Food Services By-law and FIPPA legislation. Requiring owners to produce their last inspection report upon the request of customers does little to provide the public with further helpful information.

- In addition the Standing Policy Committee on Protection and Community Services requested that the administration consider in this report the potential unfairness to establishments who have had to close for reasons beyond their control, being grouped with establishments who have had to close for unsanitary reasons of their own doing. In order to ensure that the public is provided with

accurate information and at the same time to ensure fairness and a consistent approach for all operators, all establishments ordered closed by the public health inspector will be listed on the web-site, and the specific reason for the closure will also be clearly stated. This factual approach will ensure that it is clear to the public the reason for the closure.

Implications of the Recommendation(s):

General implications:

None

X **For the organization overall and /or for other departments**

X **For the community and/or organizations external to the City of Winnipeg**

Involves a multi-year contract

Comment(s):

It is questionable whether the requirement to compel owners to provide inspection reports to customers adds any value to the inspection process, or the health conditions of establishments. Inspection reports are not necessarily indicative of the condition of the establishment at the time the report is provided to the customer. Specific information as contained within a Mandatory Notice (Deficiency order) relating to a particular establishment is presently provided upon request to members of the public, as permitted by the Food Services By-law and FIPPA legislation.

Policy implications:

X **No**

Yes

Comment(s):

Environmental implications:

X **No**

Yes

Comment(s):

Human resources implications:

X **No**

Yes

Comment(s):

There are no HR implications associated with the recommendation contained within this report. However, the jurisdictions contacted indicate that where there is a requirement to compel food establishments to produce inspection reports on request, there is a resource requirement associated with ensuring compliance with the bylaw. Although this resource requirement is difficult to quantify, resources would be redirected from other important services areas to ensure compliance if the bylaw was amended.

Financial implications:

X **Within approved current and/or capital budget**

Current and/or capital budget adjustment required

Comment(s):
There are no financial implications associated with the recommendation contained with this report. However, if establishments were compelled to provide inspection reports on request a public awareness campaign would be necessary to ensure the initiative is sufficiently used and understood by the public. There are no funds available in the operating budget for a public awareness campaign.

REASON FOR THE REPORT:

On November 17, 2004, Executive Policy Committee directed the Administration to conduct a review of current policy in this area (access to health inspection information), analyze how other jurisdictions publicize the results of health inspection of food establishments, and present options the City of Winnipeg could consider for implementation.

Further, the Executive Policy Committee requested the Administration to report back to the Standing Policy Committee on Protection and Community Services within 120 days in this regard.

Moved by Councillor Steeves,

WHEREAS concerns regarding health inspections of food establishments have been featured prominently in the media recently;

AND WHEREAS many Winnipeggers do not now how to easily access the information regarding health inspections of food establishments;

AND WHEREAS other jurisdictions make this information readily available to citizens by posting it on the internet requiring food establishments to post notices of health violations;

THEREFORE BE IT RESOLVED THAT the Administration be directed to: a) conduct a review of current policy in this area; b) analyze how other jurisdictions publicize the results of health inspection of food establishments; and c) present options the City of Winnipeg could consider for implementation.

On July 11, 2005 an extension to October 13, 2005 for submission of the report was granted. Further extensions were granted to December 6, 2005 and February 6, 2006.

On February 7, 2006, The Standing Policy Committee on Protection and Community Services laid over the Access to Food Inspection Information Report and requested the Administration to report back within sixty (60) days on amending the Food Service Establishment By-law to also allow the possibility of compelling food establishments to produce their Health Inspection Report upon the request of the customer.

Furthermore, on March 6, 2003 the Standing Policy Committee on Protection and Community Services directed that the Administration also be requested to consider in its report, the potential unfairness of establishments who have had to close for reasons beyond their control, being grouped with establishments who have had to close for unsanitary reasons of their own doing.

HISTORY:

The current City of Winnipeg Food Services By-law was enacted in 1989, with amendments being made since that time.

- Within the By-law, a food service establishment *"means any place where food is kept, handled, manufactured, packaged, stored or prepared. The term shall include any such place regardless of whether consumption is on or off the premises and regardless of whether there is or is not a charge for the food, in includes bakeries, institutions, retail food stores, delicatessen-type operations, restaurants, catering establishments, commissaries, hotels, beverage rooms, dairy bars, milk bars, ice-cream parlours, canteens, mobile food units and temporary food service establishments, but shall not include private homes where food is prepared or served for individual family consumption, producer markets, food vending machines and food supply vehicles".*

- The By-law states that the Public Health Inspector may post mandatory notices (now referred to as deficiency orders) related to food inspections in a conspicuous place in the office of the Public Health Inspector. A mandatory notice lists every food service infraction noted during a routine or re-inspection, regardless of the severity of the infraction (minor infraction or high risk infractions).

- Although there is the occasional request for health inspection reports (Deficiency Orders), the Branch has not experienced any significant demand for this level of information. Persons requesting this information are advised to contact the City Clerk's office and submit a formal access to information request. This ensures that each request is reviewed and that information is provided in accordance with FIPPA legislation.

- There is no Branch record of anyone recommending a system where food services establishments should be compelled to provide a copy of the last inspection report to customers who request the report.

DISCUSSION:

Findings: Current Policy in Winnipeg and other Jurisdictions

Seven Canadian jurisdictions were contacted by phone and email and were asked to provide information on operational and legal issues on the requirement to compel food establishment to produce a copy of the last inspection upon request of customers.

Of the seven jurisdictions contacted, a total of five responses were received. Two of the jurisdictions (Toronto and Ottawa) with the requirement to compel food establishment to provide food inspection reports were contacted specifically. Both jurisdictions that have a requirement to compel food establishment to provide inspection reports to customers indicated that there are very few requests for this information. One of the jurisdictions indicated that it may be necessary to invest in public awareness initiatives to improve the utility of this requirement.

The type of information released by the City of Winnipeg is consistent with most other jurisdictions.

Toronto:

- Toronto has a Food Inspection and Disclosure System whereby the operator is required to provide a copy of the latest Food Safety Inspection Report to anyone requesting same. The operator is NOT required to post the Inspection Report but must post the most recent Inspection Notice (Red, Yellow, or Green).
- Establishment managers are required to provide a copy of the last routine inspection report on request of the customer.
- A pubic opinion poll that was conducted to receive feedback on the Toronto food inspection disclosure system indicated that few people (21%) are aware that they have the right to ask to see inspection reports and only 7% of those have asked to do so.
- Few people (11%) are aware of the DINE SAFE web site and only 21% of those have visited the site.

The above information does indicate that when food inspection information initiatives of this type are implemented, this information is not extensively used by the public

Recommendation regarding the Requirement to Compel Food Establishments to Produce Health Inspection Reports:

The report recommends that food establishments not be compelled to produce health inspection reports to customers upon request for the following reasons:

- Over ninety percent of all food service establishments receive a Mandatory Notice at the time of inspection due to deficiencies being noted, resulting in

approximately 5000 mandatory notices annually. Establishments are issued orders for all infractions noted, regardless of severity, with many of the infractions listed being minor in nature. The number of infractions received by an establishment during an inspection does not indicate the level of risk posed to patrons, nor does it indicate that these premises are poorly maintained. The food inspection report can mislead customers if there is not a very good understanding by the customer of the level of health risk a violation could pose to the public.

- The provision of food inspection reports at this level is further complicated by the fact that there is and appeal process established by the City of Winnipeg Charter Act. The By-law would require an owner of an establishment to produce a deficiency order (mandatory notice) to the public, which may later be successfully appealed.

- It would be difficult to ensure that inspection reports provided to customers at this level are FIPPA compliant. Although the City is not directly providing this information to the public, the City is compelling the food establishments to provide this information. Presently, specific information as contained within a Mandatory Notice (Deficiency order) relating to a particular establishment is provided upon request to members of the public, as permitted by the Food Services By-law and FIPPA legislation. Each requested report is carefully reviewed prior to releasing any information.

- It is very important to understand that any inspection report is only a "snapshot" of what was noted at the time of the actual inspection. Conditions in a food service establishment can change quickly for a number of reasons. Therefore, the inspection report provided to a customer (which may be as much as a year old) may not be an accurate depiction of the conditions of the food service establishment at the time the report is made available to the customer. The report therefore could mislead the customer. Compelling an owner to provide a copy of an inspection report that is not current may be negligent on the part of the City.

- It is difficult for the Branch to determine resource requirement to enforce the Bylaw amendment. Existing staff resources would be diverted from other important public health duties. It is questionable whether the benefits outweigh the cost of enforcing the Bylaw amendment.

- The contact information suggests that without a public education campaign to raise awareness that customers can request a copy of the last inspection report, there would be little utilization of this tool. Only a small percentage of the public who are aware of the program ask to review food inspection reports. Consideration may also be necessary to repeat the awareness campaign over time. Significant costs are always associated with a public awareness campaign.

- If an establishment is charged, the media may request a copy of the last inspection report from the operator and publish this information as part of a story prior to the offence being heard by the courts. This may interfere with the court process.

- The intent of an inspection report is in part to act as a record of what is discussed with the operator during the inspection of the establishment. At the time of the initial inspection, the report is considered an educational tool. Only when there is repeated or blatant non-compliance does the inspection report become part of the enforcement process. Compelling food establishments to make the report available to the public upon request would cause operators to prematurely perceive the food inspection report as punitive. This may cause unnecessary strain between the business community and the City for very little net benefit to the public.

Stakeholders:

Food establishment stakeholders (such as the Manitoba Food Service Association, Canadian Council of Grocery Distributors and the Manitoba Hotel Association) do not support the requirement to compel food establishments to produce inspection reports upon request of customers.

- The associations feel that many of the patrons may not have the skills or ability to interpret the report. The number of violations noted on a report may not be indicative of the level of risk or the sanitary conditions associated with the establishment.
- If establishments were required to provide a copy of the last inspection report, the City would need to implement an educational campaign that educates the public on the significance of the different types of violations. It is questionable whether this is a realistic goal.
- There may be pressure on the establishment owners to explain the report and there are concerns that the operator may not be present, or may not have the skills to explain the report due to language barriers or other related issues.
- Criteria may need to be established that dictate under what conditions a report can be requested. Often there may not be anyone available in the establishment to responsibly provide the report.
- The report may cause unnecessary conflict between patrons and operators and some patrons may ask the operator to justify the report or ensure the violations are corrected.
- An education awareness campaign would be required to ensure operators are aware of the Bylaw amendment and their duty to comply.
- Patrons may now be calling Environmental Health Services asking why an establishment is operating given the last inspection report. Again, this may be because the patron does not understand the risks associated with particular violations.
- Report may be viewed as punitive and not educational and proactive.

Summary:

There is increasing public expectation for the provision of information systems that provide easier access to food inspection information that allows citizens to make informed decisions. Any initiative to provide information to the public should be scrutinized to ensure that it provides value to the public at reasonable costs. It should also ensure that it is not counter productive to the delivery of the service it is intended to support. It does not appear that the costs of compelling food establishment owners to provide inspection reports justify the benefit of providing this information. Based on the experience of other jurisdictions and the information compiled while researching this report, there would be very little benefit in compelling food establishment owners to provide inspection reports to customers and the cost of implementing and maintaining such a system may be substantial.

Financial Impact Statement **Date:** March 23, 2006

COMMENTS: There are no financial impacts associated with this report.

Clive Wightman
Manager of Finance & Administration

IN PREPARING THIS REPORT THERE WAS CONSULTATION WITH, AND CONCURRENCY BY:

- Legal Services

THIS REPORT SUBMITTED BY:

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