

TO:	CHAIR AND MEMBERS CIVIC WORKS COMMITTEE MEETING ON APRIL 24, 2017
FROM:	KELLY SCHERR, P.ENG., MBA, FEC MANAGING DIRECTOR - ENVIRONMENTAL & ENGINEERING SERVICES & CITY ENGINEER
SUBJECT	CONFIDENTIALITY AGREEMENT WITH THE ASSOCIATION OF MUNICIPALITIES OF ONTARIO (AMO) TO UNDERTAKE WORK ASSOCIATED WITH THE <i>RESOURCE RECOVERY AND CIRCULAR ECONOMY ACT 2016</i>

RECOMMENDATION

That, on the recommendation of the Managing Director, Environmental & Engineering Services and City Engineer, with the support of the Director, Environment, Fleet and Solid Waste, the attached proposed by-law (Appendix A) **BE INTRODUCED** at the Municipal Council meeting to be held on May 2, 2017 to:

- a) authorize and approve a Confidentiality Agreement with the Association of Municipalities of Ontario (AMO) that is designed to protect, as much as possible, the release of information shared in the Waste Technical Working Group meetings from disclosure under a freedom of information request made to a municipality under the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA), attached as Schedule "A" to the by-law; and
- b) authorize the Mayor and the City Clerk to execute the Confidentiality Agreement authorized and approved in a), above.

PREVIOUS REPORTS PERTINENT TO THIS MATTER

Relevant reports that can be found at www.london.ca under City Hall (Meetings) include:

- Comments on Environmental Bill of Rights Registry – Final Draft Strategy for a Waste Free Ontario: Building the Circular Economy (January 10, 2017 meeting of the Civic Works Committee - CWC, Item #15)
- Comments on Environmental Bill of Rights Registry - Proposed Waste free Ontario Act and Draft Strategy for a Waste Free ON - Building the Circular Economy (February 2, 2016 meeting of the CWC, Item #14)
- Comments on Environmental Bill of Rights Registry – Waste Reduction Act and Waste Reduction Strategy (August 19, 2013 meeting of the CWC, Item #4)

STRATEGIC PLAN 2015-2019

The following report supports the Strategic Plan in the areas of waste diversion, waste management planning, financing, climate change mitigation and adaptation, and job creation. Specifically, the potential changes to waste management locally and provincially address three of the four Areas of Focus from the Strategic Plan:

Building a Sustainable City

- Strong and healthy environment
- Robust infrastructure

Growing our Economy

- Local, regional, and global innovation
- Strategic, collaborative partnerships

Leading in Public Service

- Proactive Financial Management
- Innovative & supportive organizational practices
- Collaborative, engaged leadership
- Excellent service delivery

BACKGROUND

PURPOSE

The purpose of this report is to provide Civic Works Committee and Council with a Confidentiality Agreement from the Association of Municipalities of Ontario (AMO) that is designed to protect, as much as possible, the release of information shared in the Waste Technical Working Group meetings from disclosure under a freedom of information request made to a municipality under the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA).

City of London staff (Jay Stanford) has been asked to represent both the City of London and the Regional Public Works Commissioners of Ontario (RPWCO) in a Waste Technical Working Group dealing with transition matters associated with the Resource Recovery and Circular Economy Act 2016 (e.g., extended producer responsibility, increased payments for recycling, roles and responsibilities, etc.). Other organizations participating with AMO and RPWCO in the Waste Technical Working Group include representatives from the Municipal Waste Association and the City of Toronto.

CONTEXT

In November 2015, the Minister of the Environment and Climate Change introduced a new legislative framework for managing waste in Ontario under Bill 151, *Waste Free Ontario Act (WFOA)*. The legislation is comprised of two Acts, the *Resource Recovery and Circular Economy Act (RRCEA)*, and the *Waste Diversion Transition Act (WDTA)*. Accompanying the proposed legislation was a draft Strategy for a Waste Free Ontario: Building the Circular Economy to support Ontario in achieving its goals.

Comments on the proposed legislation and draft strategy were approved by Council and submitted to the Environmental Bill of Rights (EBR) Registry in February 2016. Bill 151 received Royal Assent in June 2016 and was proclaimed November 30, 2016.

Under the new framework funding to the City of London will increase to potentially 100% of program costs for residential recycling services. How that funding is administered and what recyclable materials it is applied to is unknown along with many other aspects such as the municipal role in recycling services. As is traditionally done, the operational aspects of legislation are contained in regulations still to be written along with future policy documents.

The MOECC published the final Strategy for a Waste-Free Ontario: Building the Circular Economy in February 2017, a requirement of the WFOA, which outlines a road map for resource recovery and waste reduction for Ontario. It also:

- sets a vision and goals including interim goals for 2020, 2030 and 2050;
- articulates key government actions to support implementation of the vision and goals; and
- identifies performance measures to measure progress towards achieving the vision and goals.

The Strategy focuses on moving Ontario towards a circular economy described as “a system where nothing is wasted and valuable materials destined for landfill are put back into the economy without negative effects on the environment.” This approach – a circular economy – has the potential to reduce greenhouse gas emissions, save and better utilize scarce resources, create jobs and create financial opportunities.

Moving forward, the amount of work for municipalities is very significant. Establishing Waste Technical Working Group is viewed as an important method to share workload and avoid duplication across municipalities. A group of this nature will also be beneficial when negotiations begin with industry stewards on recycling program design, operations and payment. Handling sensitive information and intelligence will be part of the activities of Waste Technical Working Group.

DISCUSSION

The attached Confidentiality Agreement has been prepared by AMO and reviewed by City of London Managing Director of Legal and Corporate Services.

The additional details below which further explain the purpose of the Confidentiality Agreement have been provided by AMO:

The purpose of the Agreement is to protect, as much as possible, the release of information shared in the Waste Technical Working Group meetings from disclosure under a freedom of information request made to a municipality under the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA). AMO itself is not subject to MFIPPA or FIPPA but the information provided by AMO that is the possession of the municipality could be.

Individuals signing the agreement who are sitting on the Waste Technical Working Group are signing in their capacity as an employee/representative of the municipality. There is a relationship between employees and employers that prohibits the release of work product pertaining to municipal business outside of the organization.

To clarify, MFIPPA would apply to the documents being provided by AMO in the possession of the municipality that would be considered third party information. A municipality is required to refuse disclosure of third party information provided the information meets the three part test set out in section 10(1) being: (1) the record must reveal information that is trade secret or scientific, technical, commercial, etc. in nature; and (2) the information must have been supplied in confidence, either explicitly or implicitly; and (3) the prospect of disclosure must give rise to a reasonable expectation of harm. All three parts of the test must be met and there must not be a compelling public interest in the records that outweighs the purpose of the exemption. Generally with respect to third party information a municipality will send the information to the third party directly (in this case AMO) to show how the information meets the 10(1) test.

The confidentiality and non-disclosure provisions in the Agreement assists AMO in meeting part 2 of the third-party test under MFIPPA in showing that the information was supplied to the municipality by a third party with an explicit expectation of confidentiality that was reasonably held based on the confidentiality agreement. To be clear, the purpose of the confidentiality agreement is not to by-pass the obligations of MFIPPA, it is to ensure that there exists an explicit expectation of confidentiality for the documents/information being shared.

With respect to disclosure of the information, section 2 of the Confidentiality Agreement allows the signing party to use the information only for the purpose of the waste discussions (as described in the agreement) and provides that it can be reproduced for such discussions. Also, section 5 does allow the disclosure to employees or representatives who need to know the information, allowing for internal discussions of the issue, who have a similar understanding that the information is confidential.

The goal is to ensure representatives of the task force are not leaving information behind given its confidential nature and to encourage frank and open discussions amongst the parties involved in the Waste Technical Working Group.

Also, neither AMO nor RWPCO are subject to the FIPPA (or MFIPPA) and because of the sharing of information with the municipal representatives it is important that there exists an explicit expectation that the information being shared is confidential.

The Confidentiality Agreement requires that a “Receiving Party” be listed. Jay Stanford, Director, Environment, Fleet & Solid Waste, has been assigned that responsibility on behalf of the Corporation of the City of London.

PREPARED AND SUBMITTED BY:	RECOMMENDED BY:
JAY STANFORD, M.A., M.P.A. DIRECTOR, ENVIRONMENT, FLEET & SOLID WASTE	KELLY SCHERR, P.ENG., MBA, FEC MANAGING DIRECTOR, ENVIRONMENTAL & ENGINEERING SERVICES & CITY ENGINEER

\\Y:\Shared\Administration\Committee Reports\CWC 2017 4 - AMO.docx

c Barry Card, Managing Director of Legal and Corporate Services

Appendix A A by-law to authorize and approve a Confidentiality Agreement between the Association of Municipalities of Ontario and The Corporation of the City of London and to authorize the Mayor and the City Clerk to execute the Confidentiality Agreement

Schedule A Confidentiality Agreement

Appendix A

Bill No.
2017

By-law No. A.- _____

A by-law to authorize and approve a Confidentiality Agreement between the Association of Municipalities of Ontario and The Corporation of the City of London and to authorize the Mayor and the City Clerk to execute the Confidentiality Agreement.

WHEREAS section 5(3) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that a municipal power shall be exercised by by-law;

AND WHEREAS section 9 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS it is deemed appropriate for The Corporation of the City of London (the "City") to enter into a Confidentiality Agreement with the Association of Municipalities of Ontario ("AMO") that is designed to protect, as much as possible, the release of information shared in the Waste Technical Working Group meetings from disclosure under a freedom of information request made to a municipality under the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA), attached as Schedule "A" to the by-law;

AND WHEREAS it is deemed appropriate to authorize the Mayor and the City Clerk to execute the Confidentiality Agreement on behalf of the City and naming the Managing Director, Environment, Fleet & Solid Waste, Environmental & Engineering Services, as the designated Receiving Party;

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. The Confidentiality Agreement between The Corporation of the City of London and the Association of Municipalities of Ontario, attached as Schedule "A" to this by-law, is hereby authorized and approved.
2. The Mayor and the City Clerk are hereby authorized to execute the Confidentiality Agreement authorized and approved under section 1 of this by-law.
3. The Managing Director, Environment, Fleet & Solid Waste, Environmental & Engineering Services is designated as the Receiving part to the agreement authorized and approved under section 1 of this by-law.
4. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council May 2, 2017

Matt Brown
Mayor

Catharine Saunders
City Clerk

First Reading – May 2, 2017
Second Reading – May 2, 2017
Third Reading – May 2, 2017

Schedule A

CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is made and entered into as of the date last signed below (the "Effective Date"), by and between

ASSOCIATION OF MUNICIPALITIES OF ONTARIO
(hereinafter referred to as the "AMO")

and

•
(hereinafter referred to as "Receiving Party")

IN CONSIDERATION OF, (i) the Receiving Party understands that AMO may disclose or be provided access to the Receiving Party sensitive and confidential information relating to the AMO'S trade secrets or scientific, technical, commercial, financial or labour relations information, and other proprietary and confidential information relating to resource recovery and the transition to the new requirements under the *Resource Recovery and Circular Economy Act, 2016* (collectively referred to as "**Confidential Information**") and (ii) other good and valuable consideration (the receipt and sufficiency of which are hereby irrevocably acknowledged), the undersigned agrees as follows:

NOW, THEREFORE, the parties agree as follows:

1. The undersigned acknowledges that AMO is not obligated to disclose any such information to it. The undersigned agrees to treat all such information confidentially, whether furnished orally or in writing, and whether or not specifically identified as "confidential" or "proprietary", and whether obtained before or after the date of this Agreement. Such information shall include all information, in whatever form or medium (and includes any copies of such information), concerning the AMO and its business and affairs, including, without limitation, trade secrets, proprietary information, confidential information, intellectual property, technical expertise, and scientific, technical, commercial, financial or labour relations information as such information specifically relates to the Confidential Information.
2. The Receiving Party shall use the Confidential Information only for the purpose of achieving the stated mandate of the project or discussion between the parties as it relates to resource recovery and transition to the new requirements under the *Resource Recovery and Circular Economy Act, 2016*; reproduce the Confidential Information only to the extent necessary for the above purpose and as agreed upon by the AMO; and not disclose the Confidential Information to any third party without prior written approval of AMO.
3. The undersigned acknowledges and agrees that the information shall be maintained securely at all times.
4. The undersigned agrees that all of AMO's right, title and interest in and to such information shall remain AMO's exclusive property and shall be held in trust and confidence by the undersigned for AMO. The undersigned acknowledges that, except as expressly set out herein, no interest, licence or any right respecting such information is granted to the undersigned by this Agreement, by implication or otherwise.

- 2 -

5. The undersigned agrees to use all reasonable efforts to protect AMO's interest in such information and keep it confidential using a standard of care no less than the degree of care that the undersigned would be reasonably expected to employ for its own similar confidential information. In particular, the undersigned will not directly or indirectly disclose, allow access to, transmit or transfer any such information to any person (other than to its employees and representatives who have a need to know such information and who are bound by an obligation of confidentiality substantially the same or greater than the obligation created by this Agreement), without AMO's prior written consent or as otherwise required by law. The undersigned agrees to be responsible for any breach of this Agreement by any of such employees and representatives, or any other person to whom such information is disclosed by it to the same extent and in the same manner if such breach were its own under this Agreement. The undersigned agrees to notify AMO in writing of any misuse or misappropriation of such information that may come to the undersigned's attention.
6. Notwithstanding anything herein to the contrary, the restrictions on the use or disclosure of Confidential Information shall not apply to any Confidential Information that is:
 - a. independently developed by or for the Receiving Party or its affiliated companies or agents outside the mandate of the project or discussion, or
 - b. already in the public realm, or
 - c. after it has become generally available to the public without breach of this Agreement by the Receiving Party or its affiliated companies or agents, or
 - d. which at the time of disclosure to the Receiving Party was known to that party or its affiliated companies or agents free of restriction as evidenced by documentation in that party's possession, or
 - e. AMO agrees in writing is free of such restrictions.

The Receiving Party may only disclose the Confidential Information as required by law or court order provided the Receiving Party uses diligent reasonable efforts to limit disclosure and to obtain confidential treatment or a protective order and allows AMO to participate in the proceeding(s) at AMO's expense.

7. The undersigned acknowledges and agrees that AMO is not providing any representation, warranty or guarantee to the undersigned with respect to the accuracy or completeness of such information and that AMO will not be liable or responsible for any errors or omissions in such information or for any costs, losses or damages resulting from the use of such information.
8. This Agreement shall be in full force upon its execution by the undersigned and shall be in effect indefinitely. For greater clarity and certainty, the obligations herein with respect to the disclosure of information as it relates to the Confidential Information continue indefinitely.
9. This Agreement will enure to the benefit of and be binding upon the respective heirs, executors, administrators, successors and permitted assigns of the parties.

- 3 -

10. This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario. The undersigned agrees that the courts of the Province of Ontario will have jurisdiction to entertain any action arising under this Agreement and hereby irrevocably attorns to the jurisdiction of such courts.

IN WITNESS WHEREOF, the parties have caused their respective duly authorized representatives to execute this Agreement on the respective dates entered below.

Association of Municipalities of Ontario

Receiving Party:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

I/We have the authority to bind the Corporation.

I have the authority to bind the Corporation.