

TO:	CHAIR AND MEMBERS CORPORATE SERVICES COMMITTEE MEETING ON MARCH 19, 2019
FROM:	CATHY SAUNDERS, CITY CLERK AND BARRY CARD, MANAGING DIRECTOR, CORPORATE AND LEGAL SERVICES, CITY SOLICITOR
SUBJECT:	LOBBYIST REGISTRAR AND CLOSED MEETING INVESTIGATOR

RECOMMENDATION

That, on the recommendation of the City Clerk, with the concurrence of the Managing Director, Corporate and Legal Services, City Solicitor, the report dated, March 19, 2019, entitled "Lobbyist Registrar and Closed Meeting Investigator", BE RECEIVED.

PREVIOUS REPORTS PERTINENT TO THIS MATTER
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- Item #24 – Board of Control – December 9, 2009
- Item #21 – Finance and Administration Committee – November 10, 2010
- Item #12 – Finance and Administration Committee – November 14, 2011
- Item #9 – Finance and Administration Committee – January 19, 2011
- Item #9 – Finance and Administration Services Committee – November 26, 2012
- Item # 5 – Corporate Services Committee – April 23, 2013

BACKGROUND

At the April 30, 2013 meeting of Municipal Council, the following resolution was passed with respect to the establishment of a lobbyist registry:

- “f) the City Clerk, in consultation with the City Solicitor BE DIRECTED to report back in one year, after the implementation of the Integrity Commissioner to evaluate the need for the establishment of a Lobbyist Registry;”

At the October 13, 2015 meeting of Municipal Council, the following resolution was passed with respect to the Deferred Matters List:

- “a) the Deferred Matters List BE APPROVED with the following amendments:
 - i) addition of a requirement for a report back one-year after the Integrity Commissioner is in place regarding the advisability of appointing an Ombudsman and Lobbyist Registry for the City of London;”

The Municipal Council passed a By-law to appoint an Integrity Commissioner for the City of London on May 17, 2016.

What are the legislative provisions that pertain to Accountability and Transparency?

In 2007, the *Municipal Act, 2001* was amended to include several provisions to assist municipalities in being more transparent and accountable to the public. In 2018, further amendments were made to the *Municipal Act, 2001* relating to these matters. Many of these amendments arose from the report by Madam Justice Bellamy issued in 2005 on the Toronto Computer Leasing Inquiry and the Toronto External Contract Inquiry.

Section 270 of the *Municipal Act, 2001* requires every municipality to adopt and maintain policies with respect to the following matters:

1. Its sale and other disposition of land.
2. Its hiring of employees.
3. The relationship between members of council and the officers and employees of the municipality.
4. Its procurement of goods and services.
5. The circumstances in which the municipality shall provide notice to the public and, if notice is to be provided, the form, manner and times notice shall be given.
6. The manner in which the municipality will try to ensure that it is accountable to the public for its actions, and the manner in which the municipality will try to ensure that its actions are transparent to the public.
7. The delegation of its powers and duties.
8. The manner in which the municipality will protect and enhance the tree canopy and natural vegetation in the municipality.
9. Pregnancy leaves and parental leaves of members of council.

The City of London's section 270 policies are contained in a number of City of London documents including By-law A.-6151-17, as amended, found at the following link: <http://www.london.ca/city-hall/by-laws/Documents/CouncilPolicy.pdf>

A separate report submitted to the March 19, 2019 meeting of the Corporate Services Committee addresses Item 3, above, by means of a proposed revised Code of Conduct for Members of Council to reflect recent amendments to the *Municipal Act, 2001* and the *Municipal Conflict of Interest Act* which came into effect March 1, 2019. This report also recommends corresponding amendments to the Terms of Reference for the Integrity Commissioner and Complaint Protocol for complaints received under the Code of Conduct for Members of Council.

Item 9, above, is also addressed in the above-noted separate report through a recommended Council Policy.

Part V.1 of the *Municipal Act, 2001* authorizes a municipality to appoint four types of integrity officers. The power to appoint any of these officers is discretionary, with the exception of the Integrity Commissioner:

1. Integrity Commissioner
2. Ombudsman
3. Auditor General
4. Lobbyist Registrar

Integrity Commissioner

As noted previously in this report, the Municipal Council appointed an Integrity Commissioner on May 16, 2017. In accordance with section 223.3(1) of the *Municipal Act, 2001*, the Integrity Commissioner shall carry out the following functions:

1. The application of the code of conduct for members of council and the code of conduct for members of local boards.

2. The application of any procedures, rules and policies of the municipality and local boards governing the ethical behaviour of members of council and of local boards.
3. The application of sections 5, 5.1 and 5.2 of the *Municipal Conflict of Interest Act* to members of council and of local boards.
4. Requests from members of council and of local boards for advice respecting their obligations under the code of conduct applicable to the member.
5. Requests from members of council and of local boards for advice respecting their obligations under a procedure, rule or policy of the municipality or of the local board, as the case may be, governing the ethical behaviour of members.
6. Requests from members of council and of local boards for advice respecting their obligations under the *Municipal Conflict of Interest Act*.
7. The provision of educational information to members of council, members of local boards, the municipality and the public about the municipality's codes of conduct for members of council and members of local boards and about the *Municipal Conflict of Interest Act*.

As also noted above, as a result of recent amendments to the *Municipal Act, 2001* and the *Municipal Conflict of Interest Act*, through a separate staff report, amendments to the Code of Conduct for Members of Council, the related Complaint Protocol and the Terms of Reference for the Integrity Commissioner are recommended.

It should also be noted that the *Municipal Act, 2001* now requires that all municipalities appoint an Integrity Commissioner or make arrangements for that role to be carried out by an Integrity Commissioner of another municipality.

Lobbyist Registry and Registrar

Sections 223.9 and 223.11 of the *Municipal Act, 2001* authorize a municipality to establish and maintain a registry to keep returns filed by persons who lobby public office holders and to appoint a registrar who is responsible for performing, in an independent manner, the functions assigned by the municipality with respect to its lobbyist registry.

Section 223.9(2) of the *Municipal Act, 2001*, where a registry is established, authorizes a municipality to do the following things:

1. Define "lobby".
2. Require persons who lobby public office holders to file returns and give information to the public.
3. Specify the returns to be filed and the information to be given to the municipality by persons who lobby public officer holders and specify the time within which the returns must be filed and information provided.
4. Exempt persons from the requirement to file returns and provide information.
5. Specify activities with respect to which the requirement to file returns and provide information does not apply.
6. Establish a code of conduct for persons who lobby public office holders.
7. Prohibit former public office holders from lobbying current public office holders for the period of time specified in the by-law.

8. Prohibit a person from lobbying public office holders without being registered.
9. Impose conditions for registration, continued registration or a renewal of registration.
10. Refuse to register a person, and suspend or revoke a registration.
11. Prohibit persons who lobby public office holders from receiving payment that is in whole or in part contingent on the successful outcome of any lobbying activities.

The registry is to be available for public inspection.

A Lobbyist Registrar, appointed by Municipal Council, performs in an independent manner and may conduct an inquiry in respect of a request made by council, a member of council or a member of the public about compliance with the system of registration noted above and may make a report to the municipality in respect of an inquiry.

A Lobbyist Registrar:

- oversees the establishment and maintenance of a lobbyist registry;
- provides advice, opinions and interpretation to the administration, application and enforcement of the provisions set out in a by-law to establish a registry;
- conducts inquiries in respect to a request made by Council, a member of Council or a member of the public about compliance with the municipal by-law, which may include requesting that a public office holder gather information concerning lobbying of them and provide that information to the Lobbyist Registrar; and
- advises Council on lobbying matters

What other municipalities have a Lobbyist Registry or Registrar?

The City of Toronto

The City of Toronto established the Office of the Lobbyist Registrar in 2007. The City of Toronto Lobbyist Registrar is supported by a staff that is independent of the Civic Administration of the municipality.

The City of Toronto By-law establishing the Lobbyist registry is found at the following link:

http://www.toronto.ca/legdocs/municode/1184_140.pdf

The Toronto By-law provides for a registry to be overseen by a registrar. It uses terms similar to the provincial and federal systems. Lobbyists are required to register (by filing a return) prior to undertaking any lobbying activity. Registration requirements vary depending upon the class or category of lobbyist. The by-law includes a Lobbyists Code of Conduct. Enforcement is through the provincial courts.

The City of Ottawa

The City of Ottawa enacted a Lobbyist Registry By-law on September 1, 2012 which can be found at the following link:

<https://ottawa.ca/en/city-hall/accountability-and-transparency/accountability-framework/lobbyist-registry/bulletins-and#lobbyist-registry-law>

The Ottawa By-law uses similar terminology and definitions as found in the provincial legislation and the City of Toronto By-law. There are some differences, including that the by-law does require that not for profit corporations, with paid staff, register. As well, the Ottawa By-law does not require registration prior to lobbying. Instead, lobbyists are required to register within 15 days of a specific lobbying communication. Enforcement of the by-law rests with the City's Integrity Commissioner who is cross appointed to act

as Lobbyist Registrar. The By-law authorizes the Integrity Commissioner to investigate complaints and to impose sanctions on persons who do not comply with the By-law, including the imposition of temporary bans on lobbying and the suspension or revocation of a lobbyist's registration. The By-law also includes a Lobbyist Code of Conduct.

The enforcement of the Ottawa By-law appears to be limited in its application. Ottawa is considering amending its codes of conduct for council members and employees to include a provision that prohibits communications with a banned or unregistered lobbyist where such person is undertaking a lobbying activity as defined in the by-law. Some consideration would have to be given to the practical aspects of enforcing such a mechanism noting that employees and council members would be under an obligation to conduct a search of the registry before communicating with the lobbyist to ensure compliance with the applicable code.

The City of Hamilton

The City of Hamilton established a Lobbyist Registry on August 1st, 2015. The Registrar is an independent office from the Civic Administration of the municipality and reports direct to Council. The City of Hamilton By-law can be found at the following link:

<http://www2.hamilton.ca/NR/rdonlyres/20D2A3FB-1FE5-4903-A2A2-D2B9C8E04D06/0/14244.pdf>

The City of Vaughan

The City of Vaughan established a Lobbyist Registry as of January 1, 2018. The City of Vaughan's Office of the Registrar operates in a similar fashion to that of the City of Toronto with a fully separate office to the Civic Administration of the municipality.

The City of Vaughan By-law can be found at the following link:

<http://www.vaughan.ca/cityhall/lobbyistregistry/General%20Documents/By-law%20165-2017%20-%20Lobbyist%20Registry%20By-law.pdf>

The City of Brampton

The City of Brampton established a Lobbyist Registry in 2016. The Integrity Commission acts as the Registrar. The City of Brampton By-law can be found at the following link:

https://www.brampton.ca/EN/City-Hall/Bylaws/2015_/149-2015.pdf

The Region of Peel

The Region of Peel established a Lobbyist Registry in 2016. The Region of Peel By-law can be found at the following link:

<https://www.peelregion.ca/council/bylaws/2010s/2016/bl-47-2016.pdf>

Of the municipalities listed above, all but two have appointed their Integrity Commissioner as their Lobbyist Registrar.

What are the best practices for a municipal Lobbyist Registry and Lobbyist Registrar?

Lobbyist Registries and Registrars were discussed extensively at the Toronto and Mississauga Inquires and both reports contain recommendations regarding them. Justice Bellamy recommended that the City of Toronto establish a lobbyist registry and appoint a registrar to oversee it. The Toronto system was reviewed extensively by experts who testified at the Mississauga Inquiry. These witnesses opined that the Toronto registry was too costly and complex.

Witnesses at the Mississauga Inquiry discussed different types of lobbyist registries including a voluntary registry system that only requires lobbyists to register what the nature of their business is and a disclosure system which would include more detailed information in terms of the lobby activities undertaken.

Also raised at the Inquiry were alternate models including a lobbyist code of conduct regulated through an accountability framework and overseen by an Integrity Commissioner similar to the provincial model. The Surrey B.C. model which uses guidelines in the city's code of conduct for council members and employees was raised at the Inquiry and in Justice Cunningham's Report as an example for regulating lobbying activity other than through a registry.

Justice Cunningham did not recommend that Mississauga establish a lobbyist registry. Instead, he recommended that the City amend its Code of Conduct for Council Members to incorporate guidelines for how council members should deal with lobbyists particularly in the context of development issues.

What options are available for Council when considering a Lobbyist Registry or Lobbyist Registrar?

At this time, it is not recommended that a Lobbyist Registry be established as much of the work undertaken by an Integrity Commissioner is to educate and provide advice to Members of Council. In addition, recent amendments to the *Municipal Act, 2001* and the *Municipal Conflict of Interest Act* have resulted in an enhanced Code of Conduct with more emphasis on the disclosure of pecuniary interests, disclosures of gifts and hospitality and a greater role for the Integrity Commissioner to investigate and decide on such matters.

If Council wishes to implement a system with respect to regulating lobbying activities, the following options could be considered:

1. Establish a lobbyist registry system that requires defined classes of lobbyists to register either before or after they undertake a lobbying activity with no enforcement provisions.
2. Establish a lobbyist registry system to be overseen by a Registrar that requires defined classes of lobbyists to register either before or after they undertake a lobbying activity with enforcement provisions which could include offences under the *Provincial Offences Act* (Toronto model), a ban system to be imposed by the Registrar (Ottawa model), or enforcement through the application of the Council Member and Employee Codes of Conduct (currently under review in Ottawa).
3. Amend the Code of Conduct for Council Members to include guidelines as to how elected officials may communicate with lobbyists.
4. Maintain the status quo and rely on the Employee Code of Conduct, the City's Procurement Policy, the Council Members Code of Conduct and the *Criminal Code*.
5. Cross appoint an individual to perform accountability and transparency duties for the City including holding the office of Closed Meeting Investigator, Integrity Commissioner and/or Lobbyist Registrar.

Ombudsman

Section 239.1 of the *Municipal Act, 2001* requires a municipality to appoint a closed meeting investigator to investigate complaints as to whether a municipality has complied with the requirements of section 239 (discretionary exceptions to the open meeting requirements) and its section 238 procedure by-law in respect of a meeting or part of a meeting that is closed to the public. Where a municipality does not appoint a

closed meeting investigator, the Act provides that the Ombudsman of Ontario shall act as the closed meeting investigator. Municipal Council at its meeting of December 3, 2007 confirmed the selection of the Ombudsman of Ontario as the City's closed meeting investigator.

The City of London has not appointed a closed meeting investigator and therefore the Ontario Ombudsman has acted as the City's closed meeting investigator. The City's experience with the Ontario Ombudsman's Office has been positive. We have found the staff to be professional and the process to be respectful and cooperative.

The Civic Administration recommends that we continue with the current process to have the Ontario Ombudsman act as the closed meeting investigator for the City of London and not appoint a closed meeting investigator..

PREPARED AND SUBMITTED BY:	PREPARED AND SUBMITTED BY:
CATHY SAUNDERS CITY CLERK	BARRY CARD, MANAGING DIRECTOR, CORPORATE SERVICES AND CITY SOLICITOR