

# SAMPLE DRAFT BY-LAW

## BY-LAW NUMBER XXX

A By-law to permit the establishment of a Lobbyist Registry.

WHEREAS Council desires to establish and maintain a Lobbyist Registry and appoint a Lobbyist Registrar to provide transparency about persons who lobby the City of Markham's Public Office Holders; and,

WHEREAS section 223.9 of the Municipal Act, 2001 authorizes the City of Markham to establish and maintain a Lobbyist Registry in which shall be kept registrations and returns filed by persons who lobby the City of Markham's Public Office Holders; and,

WHEREAS section 223.11 of the Municipal Act, 2001 authorizes the City of Markham to appoint a *Lobbyist Registrar* who is responsible for performing in an independent manner the functions assigned by the City of Markham with respect to the Lobbyist Registry; and,

WHEREAS sections 8, 9 and 11 of the Municipal Act, 2001 authorize the City of Markham to pass by-laws necessary or desirable for municipal purposes, and in particular paragraph 2 of subsection 11(2) authorizes by-laws respecting the accountability and transparency of the municipality and its operations;

NOW THEREFORE the Council of the City of Markham enacts as follows:

### 1) Definitions

- a) "**City**" – means the corporation of the City of Markham;
- b) "**Lobbyist Code of Conduct**" - means the Lobbyist Code of Conduct, attached as Schedule "A" to the Lobbyist Registry By-law.
- c) "**Communication**" - means any form of expressive contact including, but not limited to, a meeting, email, or other electronic messaging, facsimile transmission, letter, phone call or meaningful dialogue or exchange that materially advances a matter that is defined as lobbying, whether in a formal or in an informal setting.
- d) "**Lobby**" - means any communication with a public office holder by an individual who represents a business or financial interest with the goal of trying to influence any legislative action, including, but not exclusively, development, introduction, passage, defeat, amendment or repeal of a by-law, motion, resolution or the outcome of a decision on any matter before Council or a Committee of Council, or staff member acting under delegated authority.
- e) "**Lobbyist**" – means:
  - (1) **Consultant Lobbyist** - an individual who lobbies for payment on behalf of a client (another individual, company, partnership or organization). If the **consultant lobbyist** arranges for a meeting between a public office holder and a third party, that is lobbying.

(2) **In-House Lobbyist** - an individual who is an employee, partner or sole proprietor and who lobbies on behalf of their own employer, business or organization. If the **in-house lobbyist** arranges for a meeting between a public office holder and a third party, that is lobbying.

(3) **Voluntary Unpaid Lobbyist** - an individual who lobbies without payment on behalf of an individual, business or other organization for the benefit of the interests of the individual, business or other organization. If the **voluntary unpaid lobbyist** arranges a meeting between a public office holder and a third party, that is lobbying.

f) **“Lobbyist Registrar”** – means the person appointed as **Lobbyist Registrar** under section 223. 11 of the Municipal Act, 2001.

g) **“Lobbyist Registry”** – means a system of registration in which shall be kept registrations (returns) of persons who lobby public office holders and which shall include such information as determined by the Lobbyist Registrar.

h) **“Local Board”** – means has the same meaning as the definition of a local board in section 223. 1 of the Municipal Act, 2001.

i) **“Public Office Holder”** – means

(1) A Member of Council and any person on their staff.

(2) An employee of the City who is a member of the City’s Senior Management Team.

(3) Employees in management positions that can influence programs and services.

(4) Employees who are not in management positions but have direct contact with Members of Council and whose work includes providing advice to Council

(a) including advice on legal, financial, personnel, policy advice.

(b) including employees who provide planning, building, licensing, inspection and purchasing services.

(5) Employees who have direct contact with Council in the operation of Council and Committees.

(6) Employees who work on municipal elections in a supervising role.

(7) An accountability officer appointed under the *Municipal Act, 2001*, including, but not limited to:

(a) Auditor General

(b) Integrity Commissioner

(c) Lobbyist Registrar

(d) Ombudsman

(e) Closed Meeting Investigator.

## **2) Establishment of a Lobbyist Registry**

- a) The Lobbyist Registry is established pursuant to Section 223.9 of Part V.1 of the *Municipal Act, 2001*.
- b) The Lobbyist Registry shall be available for public inspection through electronic, web-based access at all reasonable times.

## **3) Exemptions for Specific Persons**

- a) This by-law does not apply to the following persons when acting in their public capacity:
  - i) government or public sector, other than the City,
    - (a) Members of the Senate or House of Commons of Canada, legislative assembly of a province, the council or legislative assembly of a territory, or persons on the staff of those members;
    - (b) Members of a First Nation council as defined in the *Indian Act* or of the council of an Indian band established by an Act of the Parliament of Canada, or persons on the staff of the members;
    - (c) Employees or consultants retained by the Government of Canada, the government of a province or territory, a First Nation council, a federal or provincial crown corporation or other federal or provincial public agency;
    - (d) Members of a council or other statutory body, including a local board, charged with the administration of the civil or municipal affairs of a municipality in Canada other than the City, persons on staff of the members, or officers or employees of the municipality or local board; and,
    - (e) Members of a national or sub-national foreign government, persons on the staff of the members, or officers, employees, diplomatic agents, consular officers or official representatives in Canada of the government.
  - ii) Officials and employees of the City and other municipal bodies, including:
    - (a) Public Office Holders;
    - (b) Officers, directors or employees of a local board of the City and acting in their public capacity; and,
    - (c) A member of an Advisory Committee, acting in their public capacity and appointed by City Council
  - iii) Persons communicating on behalf of the local school boards.
  - iv) Persons communicating on behalf of healthcare institutions.

## **4) Exemptions for Specific Activities**

- a) This by-law does not apply to the following activities:
  - i) Communication that is a matter of the public record;
  - ii) Communication that occurs during a meeting of Council or a Committee of Council;
  - iii) Communication that occurs during a public process such as a public meeting, hearing, consultation, open house or media event held or sponsored by the City or a public office holder or related to any application;

- iv) Communication restricted to a request for information;
- v) Communication restricted to compliments or complaints about a service or program;
- vi) Communication with a public office holder by an individual on behalf of an individual, business or organization regarding:
  - (a) the enforcement, interpretation or application of any Act or by-law by the Public Office Holder and with respect to the individual, business or organization;
  - (b) the implementation or administration of any policy, program, directive or guideline by the Public Office Holder and with respect to the individual, business, or organization;
  - (c) a personal matter of the individual, business or organization unless it is communication that is in respect of a matter that falls under the definition of Lobbying, that is for the special benefit of the individual, business or organization;
- vii) communication by an applicant, an interested party or their representatives with respect to an application for a service, grant, planning approval, permit or other license or permission:
  - (a) with an employee of the City or a Member of Council if the communication is restricted to providing general information on an application, including a proposed or pending application, or to inquire about the application review process,
  - (b) with an employee of the City if the communication is part of the normal course of the approval process,
  - (c) with respect to planning and development applications, if the communication is with an employee of the City who has a role in the processing of a planning application during the formal pre-application consultation, the filing of the application and the application review process, including the preparation of development agreements;
- viii) submitting a bid proposal as part of the procurement process and any communication with designated employees of the City as permitted in the procurement policies and procurement documents of the City;
- ix) communication with a Public Office Holder by an individual on behalf of an individual, business or organization in direct response to a written request from the Public Office Holder;
- x) communication to a Member of Council by a constituent of the Member of Council, or an individual on behalf of a constituent of the Member of Council on a general neighbourhood or public policy issue;
- xi) communications directly related to those City-initiated consultative meetings and processes where an individual is participating as a stakeholder; and,
- xii) communication is by a voluntary unpaid Lobbyist on behalf of a not-for-profit group or organization.

## **5) Prohibitions**

- a) No person, on whose behalf another person undertakes Lobbying activities, shall make a payment for the Lobbying activities that is in whole or in part contingent on the successful outcome of any Lobbying activities.
- b) No person who Lobbies a Public Office Holder shall receive payment that is in whole or in part contingent on the successful outcome of any Lobbying activities.
- c) No former Public Office Holder shall engage in lobbying activities for a period of twelve (12) months after ceasing to be a Public Office Holder at the City.

## **6) Lobbyist Registrar**

- a) X is appointed the Lobbyist Registrar in accordance with Section 223.11 of the Municipal Act, 2001.
- b) The Lobbyist Registrar is independent of the City administration.
- c) The Lobbyist Registrar is responsible for the following:
  - (1) overseeing the administration of the Lobbyist Registry;
  - (2) providing advice, opinions and interpretations pertaining to the administration and application of this by-law;
  - (3) advising Council on Lobbying matters and recommending improvements and amendments to this by-law;
  - (4) providing to Council any periodic reports and information as the Lobbyist Registrar considers appropriate;
  - (5) making the Lobbyist Registry available for public inspection through electronic, web-based access at all reasonable times and in a manner that the Lobbyist Registrar may determine; and,
  - (6) performing other duties as may be assigned by Council.

## **7) Registrations**

- a) A person with the intent to lobby shall register as a lobbyist prior to the first Lobbying communication with a Public Office Holder and shall do so no later than five (5) business days after the Lobbying communication takes place.
- b) The Lobbyist shall set out in the Lobbyist Registry the following information:
  - (1) Name, title, and business address (where applicable);
  - (2) Whether the Lobbyist is a consultant lobbyist, in-house lobbyist or voluntary unpaid Lobbyist;
  - (3) The name of the individual, client or other organization, including all business names under which the individual, client or other organization is operating, on whose behalf the Lobbyist is Lobbying; and,
  - (4) Such further information as the Lobbyist Registrar may require.

- c) The Lobbyist be required to set out in the registration the subject matter in respect of which the Lobbyist intends to Lobby the Public Office Holder on:
- (1) Each subject matter that the Lobbyist will Lobby on;
  - (2) Description of the issue being lobbied, including particulars of any relevant City proposal, by-law, motion, resolution, policy, program, directive, grant, or guideline;
  - (3) Date on which the Lobbying will start and finish, with the date on which the Lobbying finishes being no more than twelve (12) months after the date on which the Lobbying starts;
  - (4) Names of public office holders being Lobbied; and (5) Such further information as the Lobbyist Registrar may require.
- d) A Lobbyist shall update any changes to his or her registration within ten (10) business days of the change taking place.
- e) The subject matter shall be closed once Lobbying is complete or within twelve (12) months of Lobbying commencing, whichever is sooner.
- f) The Lobbyist shall close the subject matter registration he or she has filed not later than thirty (30) days after the completion or termination of the Lobbying activity.
- g) A subject matter registration may be extended beyond twelve (12) months at the sole discretion of the Lobbyist Registrar.
- h) The Lobbyist Registrar will approve or refuse the registration in accordance with the requirements of the Lobbyist Registry By-law.

## **8) Investigations**

- a) The Lobbyist Registrar has the authority to conduct inquiries in respect of a request made by Council, a member of Council or by a member of the public about compliance with the Lobbyist Registry By-law of the Lobbyist Code of Conduct, as set out under section 223.12 of the *Municipal Act, 2001*.
- b) In accordance with section 223.12(7) of the *Municipal Act, 2001*, if the Lobbyist Registrar determines, when conducting an inquiry, that there are reasonable grounds to believe that there has been a contravention of any other Act or of the *Criminal Code* (Canada), the Lobbyist Registrar shall immediately refer the matter to the appropriate authorities and suspend the inquiry until any resulting police investigation and charge have been finally disposed of, and shall report the suspension to Council.

## **9) Penalties and Sanctions**

- a) The Lobbyist Registrar may impose penalties on communication in accordance with the following scheme if the Lobbyist Registrar finds that the requirements of this by-law have not been met:
- i) First Offence: Prohibition of Lobbying activities until an information and education meeting with the Lobbyist Registrar is held;
  - ii) Second Offence: 3 month prohibition of Lobbying activities; and,

- iii) Third Offence: Prohibition of Lobbying activities as determined by the Lobbyist Registrar.
- b) If the Lobbyist Registrar decides to impose a temporary ban on communication, the Lobbyist Registrar shall inform the individual of the suspension and the reason for the suspension in writing and provide the reason for the suspension in a manner determined by the Lobbyist Registrar.
- c) If the Lobbyist Registrar imposes a temporary ban on Lobbying, the Lobbyist Registrar shall notify all Public Office Holders in a manner determined by the Lobbyist Registrar.
- d) The Lobbyist Registrar may remove a registration or return from the Lobby Registry if the individual who filed the registration or return is found by the Lobbyist Registrar to have not complied with the requirements of this by-law.
- e) When a registration is removed from the Lobbyist Registry, the individual who filed it shall be deemed, for the purposes of his or her existing and future obligations under this by-law, not to have filed the registration.

#### **10) Responsibilities of the Lobbyist**

- a) All Lobbyists are responsible for complying with the requirements of the Lobbyist Registry By-law;
- b) Lobbyists shall disclose if they have held a Public Office Holder position at the City and the date the individual ceased to hold the position;
- c) Lobbyists shall disclose if they hold a position on a local board of the City; and,
- d) Lobbyists shall adhere to the Lobbyist Code of Conduct, attached as Schedule "A" to the Lobbyist Registry By-law, during the conduct of lobbying activities with Public Office Holders.

#### **11) Responsibilities of the Public Office Holders**

- a) The Public Office Holder is responsible for:
  - i) Ceasing Lobbying-related communication with a Lobbyist who is prohibited from Lobbying; and,
  - ii) Responding and providing information in a timely manner to Lobbyist Registrar with regards to an inquiry conducted under Section 8(a) of the Lobbyist Registry By-law.

#### **12) General**

- a) This by-law shall be known as the Lobbyist Registry By-law.
- b) The Lobbyist Code of Conduct is attached hereto as Schedule "A".
- c) This by-law shall come into effect on X

Enacted by the City of Markham on this X day of X, 20xx.

## Schedule "A"

### LOBBYIST CODE OF CONDUCT

#### PRINCIPLES

##### **A. Respect for Democratic Institutions**

Lobbyists should act in a manner that demonstrates respect for democratic institutions, including the duty of public office holders to serve the public interest.

##### **B. Integrity and Honesty**

Lobbyists shall conduct with integrity and honesty all relations with public office holders, clients, employers, the public and other lobbyists.

##### **C. Openness**

Lobbyists should be open and frank about their lobbying activities, while respecting confidentiality.

##### **D. Professionalism**

Lobbyists should observe the highest professional and ethical standards. In particular, lobbyists should conform fully with the letter and the spirit of the City of Markham's Lobbyists' Code of Conduct as well as with all relevant laws.

#### RULES

##### **1. Disclosure of Identity and Purpose**

- a. A lobbyist shall, when communicating with a public office holder, disclose the identity of the person, organization or corporation on whose behalf the communication is made and the nature of their relationship with that person, organization or corporation, as well as the reasons for the communication.
- b. A lobbyist communication with a public office holder on a duly registered and disclosed subject matter shall not use that opportunity to communicate on another subject matter, unless first having registered as requirement and disclosing the identity and purpose.



## **2. Information and Confidentiality**

- a. A lobbyist shall avoid misleading public office holders by taking all reasonable measures to provide them with information that is accurate and factual.
- b. A consultant lobbyist shall inform each client of their obligations as a lobbyist under the City of Markham's Lobbyist Code of Conduct.
- c. The responsible officer (the most senior paid employee) of an organization or corporation shall ensure that employees who lobby on the organization's or corporation's behalf are informed of their obligations under the City of Markham's Lobbyist Code of Conduct.
- d. A lobbyist shall use and disclose information received from a public office holder only in the manner consistent with the purpose for which it was shared.
- e. Lobbyists shall not divulge confidential information unless they have obtained the informed consent of their client, employer or organization, or disclosure is required by law.
- f. Lobbyists shall not use any confidential or other insider information obtained in the course of their lobbying activities to the disadvantage of their client, employer or organization.
- g. If a lobbyist obtains a government document they should not have, they shall neither use nor disclose it.

## **3. Conflict of Interest**

- a. A lobbyist shall not propose or undertake any action that would place a public officer holder in a real or apparent conflict of interest.

## **4. Preferential Access**

- a. A lobbyist shall not arrange for another person a meeting with a public office holder when the lobbyist and public office holder share a relationship that could reasonably be seen to create a sense of obligation.
- b. A lobbyist shall not lobby a public office holder with whom they share a relationship that could reasonably be seen to create a sense of obligation.

## **5. Improper Influence**

- a. Lobbyists shall avoid both the deed and the appearance of impropriety.

## **6. Political Activities**

- a. When a lobbyist undertakes political activities on behalf of a person which could reasonably be seen to create a sense of obligation, they may not lobby that person for a specified period if that person is or becomes a public office holder. If that person is an elected official, the lobbyist shall also not lobby staff in their office(s).

## **7. Gifts**

- a. To avoid the creation of a sense of obligation, a lobbyist shall not provide or promise a gift, favour, or other benefit to a public office holder, whom they are lobbying or will lobby, which the public office holder is not allowed to accept.

## **8. Restriction on Communication**

- a. Lobbyists shall not communicate in relation to a procurement process except as permitted by the City's procurement policies and procurement documents.
- b. Lobbyists shall not engage in lobbying activities where the Lobbyist Registrar has prohibited them from lobbying for a specified time period.