

Lobbyist Registrar & Lobbyist Registry

Presentation to Special General Committee Meeting

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by General Committee on June 25, 2012)

Introduction

- Council requested staff provide an update on the following accountability tools now contained within the Municipal Act:
 - The Integrity Commissioner Position
 - The Lobbyist Registrar Position & Associated Registry System
- This presentation deals with the Lobbyist Registrar Position & Associated Lobbyist Registry

Background

- The Municipal Act was amended in 2007 to address a number of issues largely resulting from the Bellamy & Sills inquiries.
- The changes addressed growing public concerns for ensuring accountability & transparency in municipal administration

Background (Cont'd)

- The legislative amendments included the creation of a new Part 6 of the Act dealing solely with “Accountability & Transparency”.
- Among other things, Part 6 of the Act now permits Ontario municipalities to:
 1. Establish a Lobbyist Registry
 2. Appoint a Lobbyist Registrar
- Exception: City of Toronto Act stipulates that Toronto must have a Lobbyist Registrar, as well as an Integrity Commissioner, a Code of Conduct & an Auditor General.

Lobbyist Registry - System

- The Act specifically allows any Ontario Municipality to establish a Registry to maintain 'Returns' filed by those who lobby Public Office Holders
- The Act provides that if a Registry is established it must be public
- The Registry would serve to regulate the practice of lobbying Public Office Holders while ensuring it does not impede access to the government

Lobbyist Registry – System (Cont'd)

- The Act provides that a municipality can establish a Registry System that:
 1. Defines what constitutes “Lobbying”
 2. Prohibits a person from lobbying Public Office Holders without being registered
 3. Imposes conditions on registrations, continued registrations or renewals of registration

Lobbyist Registry – System (Cont'd)

4. Requires a lobbyist to file 'returns' and provide information to the municipality
5. Establishes a Code of Conduct for Lobbyists
6. Prohibits former Public Office Holders from lobbying current Public Office Holders for a specified period of time

Lobbyist Registry – System (Cont'd)

7. Prohibit lobbyists from receiving payment that is in whole or in part contingent on the successful outcome of any lobbying activities
8. Prohibit persons on whose behalf another undertakes lobbying activities from making payment for lobbying activities that are contingent on the successful outcome of any lobbying activities

Lobbyist Registrar

- The Act permits a municipality to appoint a Lobbyist Registrar to perform, in a independent manner, those duties assigned by the municipality with respect to:
 1. The administration & enforcement of the Registry system
 2. Provision of advice
 3. Education (internal & external)
- The Registrar is *not* required to be a municipal employee

Lobbyist Registrar- Powers

- In conducting an inquiry into compliance with the registration requirements or with a code of conduct, the Registrar may elect to exercise the powers under the Public Inquiries Act
- The municipality & its local boards are required to give the Registrar any information the Registrar believes is necessary to conduct the inquiry
- Any Registrar report regarding an inquiry, must be made public

Lobbyist Registry's & Registrars in other Jurisdictions

- The Canadian Federal Government has had a Lobbyist Registry since 1989 (on-line since 1997)
- 7 of 10 Canadian Provinces have established Lobbyist Registries
 - 3 other Provinces are pursuing the implementation of a Lobbyist Registry
- Ontario was the first province to establish a registry in 1999

Lobbyist Registry's & Registrars in other Jurisdictions (Cont'd)

- Toronto is the only Ontario Municipality with an established Lobbyist Registry & Registrar
- In July 2012, City of Ottawa Council passed a motion to establish a Lobbyist Registry:
 - Ottawa's Integrity Commissioner, once hired, will also be the Lobbyist Registrar
- The City of St. John's, NFLD, is covered under Provincial legislation since 2009

Lobbyist Registry's & Registrars in other Jurisdictions (Cont'd)

- All Quebec municipalities are covered under Provincial legislation.
- A list of all Canadian jurisdictions with Lobbyist Registry systems has been provided in the presentation handout package

Toronto Model - General

- Toronto Lobbyist Registry & Registrar System was established in 2007
- The City enacted a By-law to establish the Registry (Ch. 140 “Lobbying” of the Municipal Code)

Toronto Model - Principles

- The principles of the Toronto Lobbyist Registry are:
 - The City's duty to make decisions in the public interest should not be impeded
 - Open & unfettered access to City government is a vital aspect of local democracy
 - Lobbying Public Office Holders is a legitimate activity

Toronto Model – Principles (Cont'd)

- Public Office Holders & the public should be able to know who is attempting to influence City government
- Public disclosure of lobbying activities & standards of conduct for lobbyists are important to the integrity of City government decision making

Toronto Model – By-law

- The City enacted a By-law that:
 - Defines Lobbying
 - Defines who is a Lobbyist
 - Defines who is a Public Office Holder
 - Establishes a Code of Conduct for Lobbyists
 - Establishes Offences & penalties for By-law contraventions

Toronto Model – Lobbying

- Toronto defines “lobbying” as:
 - Communicating with a Public Office Holder (via oral, written or electronic means) on any of the following subject matters:
 1. Development, introduction, passage, defeat, amendment or repeal of any by-law or resolution on any matter, including approval, amendment or termination of a policy, program, directive or guideline

Toronto Model – Lobbying (Cont'd)

2. Procurement of goods or services
3. Approving or denying an application for a service, grant, planning approval, permit or other license or permission
4. Awarding any financial contribution, grant or other financial benefit

Toronto Model – Lobbying (Cont'd)

5. Transferring from the City any interest in or asset of any business, enterprise or institution
6. Determining the model or method of delivering a service

Toronto Model – Lobbyist

- The By-law provides extensive definitions as to who qualifies as a Lobbyist:
 1. Consultant Lobbyist : someone who, for payment, lobbies on behalf of a client or arranges for a meeting between a Public Office Holder & a third party.

Toronto Model – Lobbyist (Cont'd)

2. In-house Lobbyist: an employee, partner or sole proprietor who lobbies on behalf of their own employer, business or organization.
3. Voluntary Unpaid Lobbyist: someone who, without payment, lobbies, or causes someone else to lobby, on behalf of a business or organization.

Toronto Model – Lobbyist (Cont'd)

- The By-law specifically exempts the following from the definition of Lobbyist:
 1. Municipal, Provincial, and Federal governments
 2. First Nations Councils
 3. Foreign Governments
 4. School Boards

Toronto Model – Lobbyist (Cont'd)

5. Not-for-profit community service organizations
6. A constituent communicating with a Public Office Holder on a personal matter or on general neighbourhood or public policy issues unless it concerns a proposal or decision for the specific benefit of the constituent

Toronto Model – Lobbyist (Cont'd)

- The By-law defines the following as “Public Office Holder”
 1. Elected official, such as the Mayor or a member of City Council, and anyone on their staff
 2. All employees of the municipality
 3. Members, staff of members and employees of local boards
 4. Anyone appointed to an advisory body by City Council, one of its committees or a local board (restricted definition), if the body gives advice to Council, a committee or a local board.

Toronto Model – Code of Conduct

- The City By-law establishes a Lobbyist Code of Conduct that:
 1. Requires Lobbyists to observe & comply with the highest ethical & professional standards
 2. Requires Lobbyists to act with integrity & honesty when dealing with Public Office Holders, clients, employees, the public & other Lobbyists

Toronto Model – Code of Conduct (Cont'd)

3. Require Lobbyists to disclose the identity of the person, corporation, etc., on whose behalf they are lobbying, & the reason for the communication
4. Prohibits communication in respect to the procurement process (except as permitted in procurement policies)

Toronto Model – Code of Conduct (Cont'd)

5. Prohibits lobbying that includes providing gifts, trips, favours, etc.
6. Prohibits lobbying at a charitable, community or civic event

Toronto Model – Code of Conduct (Cont'd)

7. Requires Lobbyists to provide factual & accurate information
8. Prohibits knowingly misleading anyone
9. Requires Lobbyists to be open & frank about the lobbying activities, while not divulging confidential information

Toronto Model – Code of Conduct (Cont'd)

10. Requires Lobbyists to avoid both the deed & appearance of impropriety
11. Require Lobbyists to not place Public Office Holders in a conflict of interest situation

Toronto Model – Offenses & Penalties

- Article VII of Ch.140 “Lobbying” of the Municipal Code, makes the violation of any provisions an offence
- Fines for violations are:
 - On first conviction, a fine of up to \$25,000
 - On subsequent convictions, a fine of up to \$100,000

Toronto Model – Decisions by Registrar

Date	Issue	Recommendation
April, 2012	Improper interpretation of the TTC's procurement policy	The TTC should review its procurement policy, documents and procedures. The TTC should seek advice from the Lobbyist Registrar before giving advice about the Lobbying By-law.
February, 2011	Lobbying during a procurement process	Staff report back to Council on clarifying and strengthening the Lobbying By-law. Staff report back on measures to require City staff to report breaches of the Lobbying By-law to the Lobbyist Registrar.
April, 2009	Lobbyist had failed to provide accurate information to Registry staff about the person whom they represented.	Lobbyist was charged under the <u>Provincial Offences Act</u> , the charge was later withdrawn when the prosecutor determined that there was not a reasonable prospect of conviction. The Lobbyist withdrew his registration.

Toronto Model – Duties of the Lobbyist Registrar

- The City of Toronto has an appointed a Lobbyist Registrar, who reports directly to Council & is responsible for:
 1. Maintaining the Registry System
 2. Enforcing the Lobbying By-Law
 3. Providing advice, opinions, & interpretation of the Lobbying By-Law
 4. Conducting inquiries & investigations into possible contraventions of the Lobbying By-law

Toronto Model - Costs

- The 2012 approved operating budget for the Toronto Lobbyist Registrar Office is \$211,000
- During the first 3 years of operation the approved budgets for the Toronto Lobbyist Registrar totalled approximately \$1.3 million (which included costs to set-up the office & Registry system)

Mississauga Judicial Inquiry

- In 2009, Mississauga City Council adopted a resolution to appoint a judge to conduct an inquiry into 2 matters.
- Justice J. Douglas Cunningham was appointed as Commissioner to the Inquiry.
- Inquiry Report “Updating the Ethical Infrastructure” (Oct. 2011) recommended that:
 1. Mississauga not establish a Lobbyist Registry (due to cost),
 2. Mississauga should establish a Lobbyist Code of Conduct, to be overseen by the Integrity Commissioner

Recommendation & Next Steps

- Markham staff do not recommend the retaining of a Lobbyist Registrar or the establishment of a Lobbyist Registry at this time due to:
 1. The relative immaturity of Lobbyist frameworks in Ontario & Canada
 2. The potential for changes to the legislation as a result of the Municipal Act Review.
 3. The costs associated with establishing & maintaining a Lobbyist registry

Recommendation & Next Steps (Cont'd)

- Staff are recommending that a report be presented to Council in the Winter 2013, to make recommendations on proposed policy improvement in the areas of:
 - Lobbying of Markham's Public Office Holders by potential vendors
 - Lobbying by former Public Office Holders or current Markham Public Office Holders