

## **Lobbying Control Framework**

<b>Date:</b>	December 21, 2006
<b>To:</b>	Executive Committee
<b>From:</b>	City Manager
<b>Wards:</b>	City-wide
<b>Reference Number:</b>	

### **SUMMARY**

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This report sets out a lobbying control framework for the City, encompassing a lobbyists' code of conduct, lobbyist registry, offence provisions, and responsibilities of the lobbyist registrar. The lobbying control framework brings the City into compliance with the requirements in Part V of the *City of Toronto Act, 2006* and responds to recommendations from Commissioner Denise Bellamy resulting from the Toronto Computer Leasing Inquiry.

### **RECOMMENDATIONS**

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The City Manager recommends that:

1. City Council approve the draft by-law to add Chapter 140, Lobbying, to the Municipal Code as set out in Appendix 1 of this report, and that authority be given to introduce the necessary bill in Council.
2. The appropriate City Officials be authorized and directed to take the necessary action to give effect thereto.

### **FINANCIAL IMPACT**

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Funds in the amount of \$0.241 million have been included in a program budget for a Council-appointed 'Lobbyist Registrar' and form part of the 2007 Recommended Operating Budget to be considered by City Council in April 2007. This provides part year funding for the Lobbyist Registrar and an administrative assistant. The Lobbyist Registrar will report to Council as soon as practical on the staffing requirements and other expenses for an Office of the Lobbyist Registrar, including further funding required in 2007 and full year impacts in 2008. Provision has been made in the non-program account for an in-year budget adjustment, as required.

The Deputy City Manager & Chief Financial Officer has reviewed this report and agrees with the financial impact information.

## **DECISION HISTORY**

A report on the lobbyist regulation was before City Council at its meeting on September 25, 26 and 27, 2006 (refer to Consolidated Clause No. 25 in Policy and Finance Committee Report No. 7 at the following City of Toronto internet web site: <http://www.toronto.ca/legdocs/2006/agendas/council/cc060925/pof7rpt/cl025.pdf> ).

Council directed the City Manger to take the steps necessary to implement the lobbyist registry as soon as possible, and to report back to the Executive Committee in January. Other motions at the September Council meeting and recommendations in the earlier report were considered in preparing the proposed lobbying control framework and draft lobbying by-law.

Council authorized the Mayor to appoint a Lobbyist Registrar Selection Panel. The Selection Panel will submit a separate report directly to Council on the appointment of a Lobbyist Registrar.

## **ISSUE BACKGROUND**

In the final report of the Toronto Computer Leasing Inquiry, Commissioner Bellamy said “the City should treat lobbying as a potentially helpful practice that should be carefully controlled”. Subsequently, the *City of Toronto Act, 2006* was enacted, requiring the City to establish a lobbyist registry. This will be the first such municipal system.

## **COMMENTS**

The attached proposed draft by-law sets out a framework for controlling lobbying that incorporates Commissioner Bellamy’s recommendations and brings the City into compliance with the requirements of Part V of the *City of Toronto Act, 2006*.

### **The main features of the lobbying control framework are as follows:**

1. Everyone who intends to lobby Councillors, staff or local boards must first register.
2. The registry will disclose “who is lobbying whom on what”.
3. Some people will be exempt from the need to register.
4. Some activities will be exempt from the need to register.
5. All lobbyists will be required to follow a code of conduct.
6. A lobbyist registrar will be appointed and will report to Council.
7. There will be penalties for failing to register and for breaching the code of conduct.
8. The voluntary registry maintained by Councillors can be discontinued.

## **Everyone who intends to lobby Councillors, staff or local boards must first register**

### ***Lobbying***

The draft by-law defines lobbying to mean communication for payment with a public office holder on the wide range of decisions made by City Council and local boards, and those made by staff acting under delegated authority.

### ***Lobbyist***

The draft by-law defines three classes of lobbyist:

- Consultant lobbyists
- In-house lobbyists
- Voluntary unpaid lobbyists acting for for-profit enterprises

### ***Public Office Holders***

Public office holders are defined in the City of Toronto Act and cannot be narrowed or restricted by Council. Public office holders include:

- The Mayor and Councillors and their staff
- City staff
- Members of local boards (restricted definition)
- Staff of local boards (restricted definition)

People that Council appoints to some other bodies may be included as public office holders, extending to them the public disclosure benefits of the lobbyist registry. The draft by-law proposes that Council include the following as public office holders:

- Members of the Board of Health
- Members appointed to advisory bodies

## **The registry will disclose “who is lobbying whom on what”**

The draft by-law sets out the structure of the lobbyist registry. Key features of the registry include the following:

- The registry will be open for public inspection through the City’s website
- The onus to register rests with the lobbyist
- Lobbyists will have to register each matter or file on which they intend to lobby
- To provide for effective public disclosure at the municipal level where time frames for decision-making are short:
  - Lobbyists will be required to register before lobbying begins
  - Lobbyists will be required to update the registry promptly when information changes (within two business days)
- Lobbyists will be required to disclose
  - Information about the lobbyist, the client or organization for which lobbying is taking place (depending on the class of lobbyist)
  - Subject matter of the lobbying activity
  - Name of the division or program of the City or local board the lobbyist has lobbied or expects to lobby

- Name of the Member of Council or local board the lobbyist has lobbied or expects to lobby
- Communication techniques the lobbyist has used or expects to use
- Information about any elected, appointed or other senior position previously held

### **Some people will be exempt from the need to register**

Any communication by any person can constitute lobbying, but it is inappropriate to require every person to register. The Act allows the City to exempt certain people from the need to register. Several exemptions, consistent with those made in the federal and provincial registries, are proposed based on the following principles:

#### ***Principles***

- Councillors, City staff, members of local boards and staff of local boards should not have to register to communicate with each other
- Participants in intergovernmental or international relations should not have to register to communicate with the City
- Employee and labour groups representing employees of the city and local boards should not have to register on matters related to labour relations
- Not-for-profit community and volunteer groups in most cases should not have to register to engage with the City

#### ***Exemptions***

The draft by-law exempts the following people from the need to register, when acting in their official capacity:

- MPs, Senators, MPPs, school trustees, other municipal councillors, members of a First Nations council
- Staff of the federal, a provincial or other municipal government, a school board or a First Nations council
- Representatives of a national or sub-national foreign government
- Representatives of provincial, national or international associations which represent their government and public sector members (e.g., FCM, Metropolis Association, ICLEI, World Health Organization, GTMA, Big City Mayors, Regional CAOs)
- Representative of employee and labour groups representing employees of the city and local boards when communicating about labour relations matters such as collective bargaining, compensation, HR policies, employer-employee committees, work place issues, grievances, mediation and arbitration
- Employees of not-for-profit organizations, except for:
  - Organizations representing a profession, trade, business, industry, for-profit entity
  - Not-for-profit organizations funded by for-profit entities to advance the financial or commercial interests of the for-profit entity (i.e., so-called “fronts” for certain interests)
  - Not-for-profit organizations that engage a consultant lobbyist to act on their behalf, in which case the consultant lobbyist is required to register
  - Communications about a grant outside the grant approval or appeal process

## **Some activities will be exempt from the need to register**

Just as it is inappropriate to require every person to register, it is inappropriate to subject every type of communication to the registration requirement. The Act allows the City to exempt certain types of communications from the need to register, and the draft by-law proposes several exemptions:

- Communications that are otherwise part of the public record, e.g., communication during a meeting of Council or a local board or their committees, a public meeting, hearing, open house, consultation or media event
- Requests for information or complaints or compliments about services or programs
- Responding directly to a written request from a public office holder
- Communication by a person about the application of a by-law or the administration of a policy or program with respect to the person
- Making applications for services, grants, planning approvals, permits or licence or taking part in the formal application or approval process
- Submitting a bid or proposal as part of the procurement process and any permitted communication with designated officials

## **All lobbyists will be required to follow a code of conduct**

Article VI of the draft by-law contains a lobbyists' code of conduct. Such a code was recommended by Commissioner Bellamy and has been provided for in the *City of Toronto Act, 2006*. The code requires lobbyists to conduct themselves with integrity in dealing with the City, and contains provisions related to the following:

- Standards of behaviour and honesty
- Disclosure of identity and purpose
- Restricted and prohibited activities
- Confidentiality
- Competing interests and improper influence

In addition to the code, the draft by-law includes two key restrictions on lobbyists recommended by Commissioner Bellamy:

- Lobbyists may not lobby on a commission basis (i.e., "success fees" are banned)
- There is a 12-month cooling-off period for Councillors and senior staff after leaving the City (i.e., the City will not register such a person as a lobbyist during this period).

The draft by-law does not contain provisions pertaining to the following matters as the City lacks the specific authority in the *City of Toronto Act, 2006* or in other enabling legislation:

- The City is unable to prohibit a lobbyist from fundraising for the same person they have lobbied, are lobbying, or intend to lobby
- The City is unable to regulate lobbyists by requiring lobbyists to file information on their fundraising activities and disclosing that information to the public through a lobbyist registry

## **A lobbyist registrar will be appointed and will report to Council**

The Act permits the City to appoint a registrar to oversee and enforce the lobbyist control framework, including the registry and the lobbyists' code of conduct. Article V of the draft by-law establishes the registrar and assigns certain powers and duties consistent with the Act. The registrar reports and is directly accountable to City Council. The registrar is responsible for:

- Maintaining the registry
- Providing advice on the administration, application and maintenance of the lobbying control framework
- Ensuring compliance with the by-law including the registry and the code of conduct
- Conducting inquiries to determine if the by-law has been contravened
- Refusing, suspending or revoking a registration
- Providing an annual report to Council and any periodic reports as required

## **There will be penalties for failing to register and for breaching the code of conduct**

Anyone who lobbies without registering, lobbies while under suspension, or contravenes the code of conduct will be committing an offence. Subject to investigation and prosecution by the Lobbyist Registrar, and upon conviction, a person committing an offence is liable to a fine of up to \$25,000 for a first offence and up to \$100,000 for a subsequent offence.

## **The voluntary registry maintained by Councillors can be discontinued**

Implementation of the lobbyist registry will replace the voluntary registry that is currently in place. There will be no need for Councillors to maintain their own records of lobbyist contact, as the onus transfers to the lobbyist to register with the centralized system maintained by the Lobbyist Registrar.

## **CONTACT**

Martin Herzog, Strategic & Corporate Policy (416-392-5491; mherzog@toronto.ca)  
Chris Cameron, Legal Services (416-392-7235; ccameron@toronto.ca)

## **SIGNATURE**

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City Manager

## **ATTACHMENTS**

1. Draft Lobbying By-law