



STAFF REPORT ACTION REQUIRED

Designation of Certain Officials under New Statutory Accountability Requirements

Date:	January 2, 2007
To:	Executive Committee
From:	City Manager
Wards:	All
Reference Number:	

SUMMARY

The purpose of this report is to bring the City into compliance with new accountability provisions that come into effect with the *City of Toronto Act, 2006*.

RECOMMENDATIONS

The City Manager recommends:

1. City Council deem the current Auditor General, Mr. Jeffrey Griffiths, to be the auditor general for the purposes of Part V of the *City of Toronto Act, 2006*.
2. City Council authorize the Auditor General's mandate be expanded to permit undertaking reviews of operations of City agencies at the request of their boards and any resulting recommendations be submitted to the respective board;
3. City Council designate the Auditor General to be the City representative under the shareholder directions for Toronto Hydro Corporation, Toronto Community Housing Corporation, and their subsidiaries; such representative to be permitted full access to the corporations' records for audit purposes;
4. City Council direct the Auditor General to report on audits of City and partnered corporations as follows:
 - a. to the City Executive Committee for recommendations regarding shareholder issues; and

- b. to the corporation's board of directors for recommendations regarding operations or other responsibilities of the board, with a copy submitted to the City Manager;
5. City Council deem the current Integrity Commissioner, Mr. David Mullan, to be the integrity commissioner for the purposes of Part V of the *City of Toronto Act, 2006* to carry out the duties in Appendix A.
 6. City Council deem the Members' Code of Conduct originally adopted in 1999 and as amended in September 2006 to be the code of conduct as required under Part V of the *City of Toronto Act, 2006*.

FINANCIAL IMPACT

There are no material financial impacts arising from the recommendations. The financial impact of establishing a lobbyist registry and an ombudsman will be reported separately.

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

DECISION HISTORY

City Council is required to take the recommended actions as a result of the coming into force of the *City of Toronto Act, 2006* on January 1, 2007.

ISSUE BACKGROUND

Part V of the *City of Toronto Act, 2006* requires the City to establish five accountability and transparency measures:

- an auditor general
- an integrity commissioner
- a code of conduct for Members of Council and Members of Local Boards (restricted definition)
- a lobbyist registry
- an ombudsman.

COMMENTS

The City needs to take a number of steps to bring itself into compliance with the new mandatory accountability provisions of the *City of Toronto Act, 2006*. These steps are summarized in Table 1.

Table 1 - Summary of Implementation Steps

New Mandatory Legislative Requirement	Implementation Status/Steps
1. Appoint an independent auditor general for the City and its local boards (restricted definition) and	<ul style="list-style-type: none"> • City Council appointed an independent auditor general in 2002. • This report recommends Council officially deem

New Mandatory Legislative Requirement	Implementation Status/Steps
any corporations Council sees fit.	<p>the incumbent to be the auditor general for purpose of the <i>Act</i>.</p> <ul style="list-style-type: none"> It also recommends Council exercise its discretion to assign certain duties and responsibilities to the Auditor General.
2. Adopt a code of conduct for Members of Council and local boards (restricted definition)	<ul style="list-style-type: none"> City Council originally adopted a Members' Code of Conduct in 1999 City Council approved amendments to the Code in September, to come into effect after the Integrity Commissioner reports on appeal and defence mechanisms for Members. This report recommends Council deem it to be the code required under the <i>Act</i>.
3. Appoint an independent integrity commissioner to perform functions assigned by Council with respect to the conduct of members of Council and local boards (restricted definition).	<ul style="list-style-type: none"> City Council appointed an independent integrity commissioner in 2004 This report recommends Council officially deem the incumbent to be the Integrity Commissioner for purpose of the <i>Act</i>. In addition, it formally sets out the functions assigned to the IC by Council to make it consistent with the <i>Act</i>.
4. Register all people who lobby public office holders (and appoint a lobbyist registrar if deemed necessary)	<ul style="list-style-type: none"> Separate reports recommending a lobby control framework and the appointment of a lobbyist registry will be before Committee and Council at the same time as this report.
5. Appoint an Ombudsman to handle complaints about the administrative actions of the City and its local boards (restricted definition)	<ul style="list-style-type: none"> Planning and research is underway and the City Manager will be recommending implementation in April or May 2007

Some local boards are excluded

The *Act* generally extends the five accountability measures to the City's local boards. Significantly, however, it limits the range of the applicable local boards by excluding certain bodies including the Toronto Police Services Board, the Toronto Public Library Board and the Toronto Board of Health. The remaining boards are defined in the *Act* as "local boards (restricted definition)".

Auditor General

Sections 177 through 182 of the *Act* require the City to appoint an Auditor General and grant powers and impose duties on the Auditor General. Under the *Act* the Auditor General is responsible for assisting city council in holding itself and city administrators

accountable for the quality of stewardship over public funds and for achievement of value for money in city operations. The *Act* enhances the independence of the Auditor General by providing new powers of inquiry, excluding his records from certain provisions of the *Municipal Freedom of Information and Protection of Personal Privacy Act (MFIPPA)*, and providing immunity from compellability in certain court proceedings.

Local Boards and the Auditor General

Generally the *Act* includes the City's local boards in the scope of the Auditor General. Arguably however, the *Act* narrows the Auditor General's scope by excluding the Toronto Police Services Board, the Toronto Public Library Board and the Board of Health from the range of local boards over which the Auditor General has statutory authority. This means that City Council cannot direct the Auditor General to conduct audits of these local boards.

However, the Auditor General could conduct reviews at the request of these boards, as he has done for the Toronto Police Services Board in the past, provided that Council authorizes him to do so and his subsequent reporting is to the requesting board and not Council. (Because this function is outside the statutory duties of the Auditor General, he will not enjoy the full range of powers of inquiry and immunity from MFIPPA and legal compellability.) It is recommended that City Council so authorize the Auditor General.

Corporations and the Auditor General

The *Act* leaves it up to Council to decide if the Auditor General's mandate should be extended to city controlled corporations. The City currently has shareholder directions in force for the Toronto Community Housing Corporation and the Toronto Hydro Corporation and their subsidiaries permitting the City to name a representative to conduct audits. It is recommended that Council designate the Auditor General as the City's representative under the respective shareholder directions.

In doing so, City Council should establish reporting guidelines for the Auditor General when conducting audits of these corporations. For those matters relating to the interest of the City as a shareholder, the Auditor General should be directed to report to Council through the Executive Committee. For those matters relating to the ongoing operations or other responsibilities of the board of directors, the Auditor General should report to the board with a copy to the City Manager.

Code of Conduct:

Section 157 of the *Act* requires the City to establish a code of conduct for councillors and members of local boards (restricted definition). Council adopted a code of conduct for councillors in 1999 and has requested that members of local boards comply with it with necessary modifications for their circumstances. City Council approved changes to the Code in September 2006 on the recommendation of the Integrity Commissioner. It is recommended that the City officially deem the existing code of conduct to be the code for the purposes of Part V of the *Act*.

Integrity Commissioner

The *Act* requires the City to appoint an Integrity Commissioner who reports to City Council and grants powers and imposes duties upon the Integrity Commissioner. The Integrity Commissioner is responsible for performing in an independent manner the functions assigned by Council regarding the conduct of Members of Council and local boards (restricted definition). If the Commissioner reports to city council that, in his or her opinion, a member of council or a member of a local board has contravened the code of conduct, the council may impose either of two specified penalties on the member: (a) a reprimand or (b) suspension of 90 days pay.

The *Act* broadens the scope of the Integrity Commissioner to include the application of codes of conduct to members of local boards (restricted definition). City Council approved the expansion of the code of conduct to Members' staff when it approved changes to the code in September 2006. Accordingly, the duties of the Integrity Commissioner have been amended to reflect both changes in scope and presented in Appendix A for adoption.

Lobbyist Registry:

Sections 165 through 169 of the *Act* require the City to establish a lobbyist registry "in which shall be kept such returns and as may be required by the City that are filed by persons who lobby public office holders". The new legislation will also permit the City to appoint a registrar and will grant the registrar various powers including the power to conduct an inquiry. A separate report has been prepared and submitted to the Executive Committee on the establishment of the registry.

Ombudsman:

Sections 170 through 176 of the *Act* require the City to appoint an Ombudsman who reports to City Council and investigates decisions, actions or omissions of the City which affect persons or bodies of persons in their personal capacity. The City does not currently have an Ombudsman and is required to take steps to appoint one. The City Manager is currently developing a proposal for Council to establish the Ombudsman and a report will be submitted to Council by May 2007.

CONTACT

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SIGNATURE



Appendix A – Duties of the Integrity Commissioner

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The duties of the Integrity Commissioner are:

1. To provide written and oral advice to individual members of Council about their own situation under the Members' Code of Conduct and other by-laws, policies and protocols governing the ethical behaviour of members and providing general advice with respect to their obligations under the *Municipal Conflict of Interest Act*.
2. To provide written and oral advice to members of local boards (restricted definition) and the staff of members of Council about their own situation under the [Members' Code of Conduct] and other by-laws, policies and protocols regulating the conduct of staff of members of Council and members of local boards (restricted definition).
3. To provide City Council with specific and general opinions and advice on the City's statutes, by-laws, policies and protocols regulating the conduct of members of Council, their staff, and members of local boards (restricted definition), and issues of compliance with those statutes, by-laws, policies and protocols.
4. To provide local boards (restricted definition) with specific and general opinions and advice respecting compliance by board members with the City's statutes, by-laws and policies respecting their members.
5. To conduct inquiries into a request made by City Council, a member of Council, or a member of the public into whether a member of Council or his or her staff, or a member of a local board (restricted definition) has contravened any applicable code of conduct.
6. To conduct inquiries into a request made by a local board (restricted definition) or a member of a local board (restricted definition) into whether a member of that local board (restricted definition) has contravened any applicable code of conduct.
7. To determine whether a member of Council or a member of a local board (restricted definition) has in fact violated a City by-law, policy or protocol governing their ethical behaviour and report any violation with any recommendation for sanction to Council or the local board, respectively, in accordance with the *City of Toronto Act, 2006* and any prevailing City protocols or policies.
8. To publish an annual report on the work of the office of Integrity Commissioner including examples in general terms of advice rendered and complaints received and disposed of.
9. To provide outreach programs to members of Council, their staff, members of local boards, and City of Toronto staff on issues of ethics and integrity including relevant statutes, codes of conduct, City by-laws, policies, protocols and office procedures,

and emphasizing the importance of ethics for public confidence in municipal government.