

Authority: Executive Committee Item 31.1, adopted as amended,
by City of Toronto Council on April 29 and 30, 2009
Enacted by Council: October 27, 2009

CITY OF TORONTO

BY-LAW No. 1098-2009

To adopt City of Toronto Municipal Code Chapter 3, Accountability Officers, and to make related amendments to Chapters: 27, Council Procedures; 71, Financial Control; 140, Lobbying; 169, Officials, City; 195, Purchasing; 217, Records, Corporate (City); and 257, Signing Authority.

WHEREAS under Part V, Accountability and Transparency, of the *City of Toronto Act, 2006*, the City is required to appoint an Auditor General, Integrity Commissioner and Ombudsman and may appoint a Lobbyist Registrar; and

WHEREAS Chapter 3, sets out the policy and administrative framework for these accountability officers consistent with their role as independent officers as outlined in the report (March 20, 2009), “A Policy Framework for Toronto’s Accountability Officers”, as set out in, Executive Committee Item 31.1, as amended and adopted by City Council on April 29 and 30, 2009; and

WHEREAS Executive Committee Item 10.10, “Establishing the Toronto Ombudsperson”, as adopted by City of Toronto Council on October 22 and 23, 2007, authorized the establishment of criteria to guide the Ombudsman in the investigation and resolution of complaints that is modeled on the Ontario *Ombudsman Act*; and

WHEREAS under § 169-26 of Municipal Code Chapter 169, Officials, City, the City Solicitor may process by-laws where an action is authorized by Council and if the recommendation to amend a by-law or introduce a bill has been omitted and technical amendments are required, for example, to reflect the use of the term “Ombudsman”;

The Council of the City of Toronto HEREBY ENACTS as follows:

1. Chapter 3, Accountability Officers.

The City of Toronto Municipal Code is amended by adding Chapter 3, Accountability Officers, as set out in Schedule A at the end of this by-law.

2. Chapter 27, Council Procedures.

Chapter 27, Council Procedures, of The City of Toronto Municipal Code is amended as follows:

A. Section 27-62 is amended as follows:

(1) Subsection A is amended as follows:

(a) By deleting “and C” and inserting “, C and E” after “B”; and

(b) By adding the following:

“(8) The Lobbyist Registrar.”

(2) By adding the following:

“E. Accountability officers’ reports.

Despite Subsection B, the following reports shall be submitted directly to Council:

(1) Annual reports submitted by the Integrity Commissioner, Lobbyist Registrar and Ombudsman on the activities of their offices and the discharge of their duties; and

(2) Reports submitted by the Auditor General, Integrity Commissioner, Lobbyist Registrar and Ombudsman respecting investigations or inquiries conducted by them.”

B. Section 27-99 is amended by adding the following:

“C. Two-thirds vote for accountability officer’s appointment.

A two-thirds vote of all Council members (30 members) is required for the appointment of an accountability officer and related matters, as set out in § 3-3A of Chapter 3, Accountability Officers.”

3. Chapter 71, Financial Control.

Chapter 71, Financial Control, of The City of Toronto Municipal Code is amended as follows:

A. The definition “DIVISION HEAD” in § 71-1 is amended as follows:

(1) By deleting Subsection B and substituting the following:

“B. The City Clerk, the City Solicitor and the Medical Officer of Health.”

(2) By renumbering Subsections C and D as D and E and inserting the following as new Subsection C:

“C. The Auditor General, the Integrity Commissioner, the Lobbyist Registrar and the Ombudsman.”

(3) By amending renumbered Subsection E by deleting “or C” and substituting “, C or D” after “B”.

B. Section 71-11F(1)(c) and (2)(c) are amended by deleting each occurrence of “Ombudsperson” and substituting “Ombudsman” in each case.

4. Chapter 140, Lobbying.

Chapter 140, Lobbying, of The City of Toronto Municipal Code is amended by deleting § 140-33A and B(8) and (10) [to reflect the inclusion of similar provisions in new Chapter 3].

5. Chapter 169, Officials, City.

Chapter 169, Officials, City, of The City of Toronto Municipal Code is amended as follows:

- A. Section 169-5 is amended by deleting “first level of senior management, the Auditor General and staff of the Auditor General’s office and statutory officials.” and substituting the following:

“following:

- A. The first level of senior management;
- B. The Auditor General, Integrity Commissioner, Lobbyist Registrar and Ombudsman and the staff of their offices; and
- C. Other statutory officials.”

- B. Section 169-7 is amended by deleting Subsection B and substituting the following:

- “B. The Integrity Commissioner.
- C. The Lobbyist Registrar.
- D. The Ombudsman.”

- C. By deleting Article VI, Auditor General (§§ 169-29 to 169-32) and Article XIII, Ombudsperson (§§ 169-50 to 169-64) [to reflect the inclusion of similar provisions in new Chapter 3].

6. Chapter 195, Purchasing.

The definition “DIVISION HEAD” in § 195-1 of Chapter 195, Purchasing, of The City of Toronto Municipal Code, is amended as follows:

- A. By deleting Subsection B and substituting the following:

“B. The City Clerk, the City Solicitor and the Medical Officer of Health.”

- B. By renumbering Subsections C and D as D and E and inserting the following as new Subsection C:

“C. The Auditor General, the Integrity Commissioner, the Lobbyist Registrar and the Ombudsman.”

- C. By amending renumbered Subsection E by deleting “or C” and substituting “, C or D” after “B”.

7. Chapter 217, Records, Corporate (City).

The definition of “DIVISION HEAD” in § 217-4A of Chapter 217, Records, Corporate (City), of the City of Toronto Municipal Code, is amended as follows:

- A. By deleting Subsection (2) of the definition and substituting the following:

“(2) The City Clerk, the City Solicitor and the Medical Officer of Health.”

- B. By renumbering Subsections (3) and (4) of the definition as (4) and (5) and inserting the following as new Subsection (3):

“(3) The Auditor General, the Integrity Commissioner, the Lobbyist Registrar and the Ombudsman.”

- C. By amending renumbered Subsection (5) of the definition by deleting “or (3)” and substituting “, (3) or (4)” after “(2)”.

8. Chapter 257, Signing Authority.

The definition of “HEAD” in § 257-1 Chapter 257, Signing Authority, of The City of Toronto Municipal Code is amended as follows:

- A. By deleting Subsection C and substituting the following:

“C. The City Clerk, the City Solicitor and the Medical Officer of Health.”

- B. By renumbering Subsection D as E and inserting the following as new Subsection D:

“D. The Auditor General, the Integrity Commissioner, the Lobbyist Registrar and the Ombudsman.”

- C. By amending renumbered Subsection E by deleting “or C” and substituting “, C or D” after “B”.

9. Transition.

In the event of a conflict between a provision of Chapter 3 respecting an accountability officer's fixed term appointment, renewal of appointment, removal from office, termination or remuneration and a provision in a contract with an accountability officer appointed before April 30, 2009, the provision in the contract prevails to the extent of the conflict.

ENACTED AND PASSED this 27th day of October, A.D. 2009.

SANDRA BUSSIN,
Speaker

ULLI S. WATKISS
City Clerk

(Corporate Seal)

Schedule A**Chapter 3****ACCOUNTABILITY OFFICERS****ARTICLE I****General****§ 3-1. Definitions.**

As used in this chapter, the following terms shall have the meanings indicated:

ACCOUNTABILITY OFFICER — The Auditor General, Integrity Commissioner, Lobbyist Registrar or Ombudsman appointed by Council under Part V, Accountability and Transparency, of the *City of Toronto Act, 2006*.

ACT — The *City of Toronto Act, 2006*.

CITY CONTROLLED CORPORATION — The same meaning as in section 156 of the Act.

CODE OF CONDUCT:

- A. The Code of Conduct for Members of Council.
- B. The Code of Conduct for Members of Local Boards (Restricted Definition).
- C. The Code of Conduct for Members of Adjudicative Boards.

COMPLAINT PROTOCOL:

- A. The Code of Conduct Complaint Protocol for Members of Council.
- B. The Code of Conduct Complaint Protocol for Members of Local Boards (Restricted Definition) including Adjudicative Boards.

LOCAL BOARD (RESTRICTED DEFINITION) — The same meaning as in section 156 of the Act.

§ 3-2. Independence and accountability.

- A. An accountability officer carries out in an independent manner the duties and responsibilities of his or her office as set out in Part V of the Act, this chapter and, in the case of the Lobbyist Registrar, Chapter 140, Lobbying, of the Municipal Code.

- B. An accountability officer is accountable to Council.

§ 3-3. Appointment, removal and resignation.

- A. A two-thirds vote of all Council members (30 members) is required for the appointment, reappointment, extension of term, removal from office or termination for cause of an accountability officer.
- B. An accountability officer shall be appointed for a fixed term of office.
- C. The term of office for an accountability officer may be extended by Council in exceptional circumstances.
- D. An accountability officer may be removed from office or terminated for cause, before the expiry of the term of office, in accordance with the procedures established by the City.
- E. An accountability officer may resign from office at any time by giving ninety-days written notice to the Mayor, unless the notice requirement is waived by both parties.

§ 3-4. Selection process.

- A. The selection process for an accountability officer shall be conducted by an external recruitment firm.
- B. Appointment of an accountability officer shall be recommended to Council by a selection panel, appointed by the Mayor and chaired by the Mayor or the Mayor's designate.

§ 3-5. Reappointment.

- A. If an accountability officer may be reappointed for a second term, the accountability officer shall notify the Mayor in writing, at least 180 days before the end of his or her first term of office that the accountability officer wishes to be considered for reappointment to an additional term.
- B. The Mayor shall transmit the officer's notification to Council for consideration of reappointment.

§ 3-6. Remuneration.

- A. An accountability officer shall not receive performance progression increases but shall receive the cost-of-living escalators approved by Council for senior managers.
- B. The remuneration for accountability officers shall be reviewed periodically.
- C. Remuneration for an accountability officer will be recommended to the City through an independent external review.

§ 3-7. Reports.

- A. An accountability officer shall report annually to Council on the activities of his or her office and the discharge of his or her duties.
- B. An accountability officer reports directly to Council on investigations and inquiries conducted by the accountability officer.
- C. Despite Subsection B, the Integrity Commissioner may report directly to a local board (restricted definition) on investigations and inquiries respecting a member of the local board (restricted definition) and, if applicable, as provided in the complaint protocol.
- D. An accountability officer shall submit policy related reports to Council through the Executive Committee.
- E. The Auditor General shall submit all audit related reports to Council through the Audit Committee, including the annual report required under Subsection A that shall also include the savings achieved.

§ 3-8. External audit.

- A. The operations of the office of an accountability officer shall be included in the scope of the annual attest audit of the City, which is conducted by an external auditor appointed by and reporting to Council.
- B. An accountability officer's office shall undergo an annual compliance audit by an external auditor appointed by and reporting to Council.

§ 3-9. Mandate review.

- A. Council may periodically review the mandate of an accountability officer to adjust the mandate to changing circumstances.
- B. A periodic review of a mandate shall include consultation with the incumbent appointee to the accountability office, in order to reflect the accountability officer's experience, advice and input.

§ 3-10. Office.

- A. An accountability officer is independent of the City administration, subject to the requirements of this chapter.
- B. An accountability officer has full carriage and control of, and is fully responsible for, the conduct and accountability of his or her office and shall manage his or her office in compliance with applicable laws.
- C. An accountability officer is responsible for submitting an annual budget request to the Budget Committee for consideration and recommendation to Council.

- D. An accountability officer's budget request shall generally follow the corporate budget submission process as it relates to the level of information provided, and the formats used.
- E. An accountability officer is not required to submit his or her budget request to the City Manager or Deputy City Manager and Chief Financial Officer for review, approval or recommendation.
- F. An accountability officer is responsible for the application to his or her office of:
 - (1) Chapter 71, Financial Control;
 - (2) Chapter 195, Purchasing;
 - (3) Chapter 217, Records, Corporate (City);
 - (4) Other City by-laws and policies related to material and financial resources; and
 - (5) Other City by-laws and policies as specified by Council, as this section and § 3-11 do not exempt an accountability officer or the accountability officer's staff from complying with City policies of general application that do not interfere with the accountability officer's performing, in an independent manner, the functions assigned by the Act or Council.

§ 3-11. Office staff.

- A. An accountability officer is responsible for the application of the City's employment-related policies to his or her staff with necessary modifications to reflect the independent nature of these functions
- B. An accountability officer shall work with the City Manager, Human Resources staff and the City Solicitor in areas where there is a staffing issue involving corporate responsibility or liability.
- C. An accountability officer may appoint, promote, demote, suspend and dismiss all employees of his or her office, subject to the provisions of any City employment-related policies applicable to employees of the City.
- D. Subject to Subsections A and B, an accountability officer may authorize the creation of positions and compensation levels in his or her office, within the office's approved budget and generally within the City's salary structure, having regard for comparable compensation levels across the Toronto Public Service for purposes of internal equity.

§ 3-12. Two-thirds vote required for changes.

A two-thirds vote of all Council members (30 members) is required to pass a motion to amend or repeal a provision in the following articles, as the provision applies to the Auditor-General or Ombudsman:

- A. In Article I, if on October 26, 2009 there was a corresponding provision in:
 - (1) Article VI, Auditor General (§§ 169-29 to 169-32) of Municipal Code Chapter 169, Officials, City, in the case of the Auditor General.
 - (2) Article XIII, Ombudsperson (§§ 169-50 to 169-64) of Municipal Code Chapter 169, Officials, City, in the case of the Ombudsman.
- B. In Article II or V.

**ARTICLE II
Auditor General**

§ 3-13. Term.

The Auditor General shall be appointed for a seven-year non-renewable term of office.

§ 3-14. Powers, duties and limitations under Part V.

When carrying out his or her duties under Part V of the Act, the Auditor General has the general powers and duties and is subject to the limitations set out in sections 178 to 182 of the Act.

§ 3-15. Responsibilities.

- A. The Auditor General is responsible for carrying out financial (excluding attest), compliance and performance audits of all programs, activities and functions of all City departments, the offices of the Mayor and members of Council, local boards (restricted definition) and City-controlled corporations.
- B. Despite Subsection A, the Auditor General may undertake financial (excluding attest), compliance and performance audits and provide recommendations to the board, upon request by the following boards.
 - (1) Toronto Police Services Board.
 - (2) Toronto Public Library Board.
 - (3) Toronto Board of Health.
- C. The Auditor General shall only undertake an audit of the Toronto Hydro Corporation and its subsidiaries upon specific direction from Council in relation to a perceived breach by Toronto Hydro Corporation of the shareholder direction.

- D. Despite § 3-7, the Auditor General shall report on audits of City-controlled corporations as follows:
- (1) To the Executive Committee for recommendations regarding shareholder issues.
 - (2) To the City-controlled corporation's board of directors for recommendations regarding operations or other responsibilities of the board, with a copy to the City Manager.

§ 3-16. Annual audit plan.

- A. The Auditor General shall submit an annual audit plan to Council.
- B. No deletions or amendments to the annual audit plan shall be made except by the Auditor General.
- C. Despite Subsection B, Council may add to the annual audit plan by a two-thirds vote of all Council members (30 members).

§ 3-17. Additional powers, duties and responsibilities.

- A. The Auditor General shall perform such other duties respecting audit matters as assigned by Council.
- B. The Auditor General shall disclose to Council any attempts at interference with the work of the Auditor General's office.

§ 3-18. Peer review.

- A. The Auditor General shall undergo an external peer review once every three years to ensure compliance with Government Auditing Standards.
- B. The results of the external peer review shall be reported to Council through the Audit Committee.

§ 3-19. Office budget.

The Auditor General shall submit his or her annual budget request to the Audit Committee for consideration and recommendation to Council.

ARTICLE III
Integrity Commissioner

§ 3-20. Term.

The Integrity Commissioner shall be appointed for a five-year non-renewable term of office.

§ 3-21. Powers, duties and limitations under Part V.

When carrying out his or her duties as assigned by Council under Part V of the Act, the Integrity Commissioner has the general powers and duties and is subject to the limitations set out in sections 159 to 164 of the Act.

§ 3-22. Responsibilities.

The duties of the Integrity Commissioner are as follows:

- A. To provide advice on the application of a code of conduct and other City or local board by-laws, policies, and protocols to a member's conduct, and general advice with respect to a member's obligations under the *Municipal Conflict of Interest Act* to:
 - (1) Council and local boards (restricted definition).
 - (2) A member of Council or a local board (restricted definition) subject to a code of conduct on his or her own situation, and includes a member of Council's staff when he or she is acting as the member's agent.
- B. To conduct inquiries under the Act on whether a member of Council or a local board (restricted definition) has contravened a code of conduct.
- C. To provide opinions on policy matters and make other reports to Council or a local board (restricted definition) on issues of ethics and integrity.
- D. To provide educational programs to members of Council, local boards (restricted definition), and their staff on issues of ethics and integrity.

§ 3-23. Additional powers, duties and responsibilities.

The Integrity Commissioner shall perform such other duties respecting ethical matters as assigned by Council.

ARTICLE IV
Lobbyist Registrar

§ 3-24. Term.

The Lobbyist Registrar shall be appointed for a five-year term that may be renewed once for an additional term of five years.

§ 3-25. Powers, duties and limitations under Part V.

When carrying out his or her duties as assigned by Council under Part V of the Act, the Lobbyist Registrar has the general powers and duties and is subject to the limitations set out in sections 168 and 169 of the Act.

§ 3-26. Responsibilities.

The Lobbyist Registrar has the powers and duties with respect to the lobbyist registry and registration system as set out in Chapter 140, Lobbying, of the Municipal Code and sections 168 and 169 of the Act.

§ 3-27. Additional powers, duties and responsibilities.

The Lobbyist Registrar shall perform such other duties respecting the lobbyist registry and registration system as may be assigned by Council.

**ARTICLE V
Ombudsman**

§ 3-28. Term.

The Ombudsman shall be appointed for a five-year term that may be renewed once for an additional term of five years.

§ 3-29. Powers, duties and limitations under Part V.

When carrying out his or her duties under Part V of the Act, the Ombudsman has the general powers and duties and is subject to the limitations set out in sections 171 to 176 of the Act.

§ 3-30. Responsibilities.

The Ombudsman is responsible for:

- A. Determining procedures related to the function.
- B. Investigating public complaints about decisions, actions or recommendations made or omitted in the course of implementing City policies and administering City services.

§ 3-31. Additional powers, duties and responsibilities.

The Ombudsman shall perform such other duties respecting the Ombudsman's function as assigned by Council.

§ 3-32. Jurisdiction; limitation.

- A. The Ombudsman may investigate any matter where the Ombudsman believes on reasonable grounds that a person or body of persons has been adversely affected in his, her or its personal capacity by a decision, recommendation, act or omission made in the course of implementing City policies and administering City services by:
 - (1) A City division.
 - (2) A contracted service provider.

- (3) A local board (restricted definition).
 - (4) A City-controlled corporation identified by Council.
- B. Despite Subsection A, the Ombudsman's jurisdiction does not include Council and Council Committees, as defined in Chapter 27, Council Procedures, of the Municipal Code.

§ 3-33. Complaint initiation.

The Ombudsman may investigate:

- A. In accordance with this article.
- B. At the request of Council.
- C. On the Ombudsman's initiative.

§ 3-34. Right to refuse.

- A. The Ombudsman may refuse to investigate a complaint or to continue an investigation of a complaint when the Ombudsman believes on reasonable grounds that:
- (1) The complainant has not availed himself or herself of other adequate remedies under the law or existing administrative practices.
 - (2) The subject matter of the complaint is trivial.
 - (3) The complaint is frivolous, vexatious or not made in good faith.
 - (4) The complainant cannot demonstrate sufficient personal interest in the subject matter of the complaint.
 - (5) Having regard to all of the circumstances of the case, no further investigation is necessary.
 - (6) More than one year has elapsed since the complainant learned of the facts on which the complaint is based, unless the complainant establishes exceptional circumstances that justify the delay to the satisfaction of the Ombudsman.
- B. If the Ombudsman determines not to investigate, or to discontinue an investigation, the Ombudsman shall inform the complainant in writing of the decision and the reasons for the decision.

§ 3-35. Notification of complaint.

Before commencing an investigation the Ombudsman shall:

- A. Notify the affected parties.
- B. Allow the affected parties to be heard.
- C. Provide the affected parties with an opportunity to rectify.

§ 3-36. Investigation criteria.

In undertaking an investigation, the Ombudsman shall have regard to whether the decision, recommendation, act or omission in question may have been:

- A. Contrary to law;
- B. Unreasonable, unjust, oppressive or improperly discriminatory;
- C. Based wholly or partly on a mistake of law or fact;
- D. Based on the improper exercise of a discretionary power; or
- E. Wrong.

§ 3-37. Procedures after an investigation.

Upon completion of an investigation the Ombudsman shall:

- A. Inform the complainant in writing of the results of the investigation.
- B. Inform the other affected parties in writing of the results of the investigation.
- C. Recommend any measures the Ombudsman deems necessary to rectify the matter.