

Authority: Executive Committee Item EX1.3, as adopted by City of Toronto Council on January 30 and 31, 2019 and Section 169-5.2C of City of Toronto Municipal Code Chapter 169, Officials, City

CITY OF TORONTO

BY-LAW 250-2019

To amend City of Toronto Municipal Code Chapter 3, Accountability Officers to make updates to enhance readability and to make certain other updates to the Integrity Commissioner's authorities arising, in part, from Bill 68, the Modernizing Ontario's Municipal Legislation Act, 2017.

Whereas Council has appointed an Integrity Commissioner under Part V, Accountability and Transparency, of the City of Toronto Act, 2006; and

Whereas Chapter 3 sets out the policy and administrative framework for the Integrity Commissioner consistent with the Integrity Commissioner's role as an independent officer; and

Whereas Council wishes to recognize and reaffirm the independent role of the Integrity Commissioner by clarifying the roles and responsibilities; and

Whereas Bill 68, the Modernizing Ontario's Municipal Legislation Act, 2017 requires that further amendments to the Integrity Commissioner's duties and authorities; and

Whereas more than two-thirds of the voting members of Council have voted to make the amendments as required in section 12 of Chapter 3;

The Council of the City of Toronto enacts:

1. City of Toronto Municipal Code Chapter 3, Accountability Officers, is amended by replacing Chapter 3 with the updated version attached as Schedule A to this by-law.

Enacted and passed on January 31, 2019.

Frances Nunziata,
Speaker

Ulli S. Watkiss,
City Clerk

(Seal of the City)

Schedule A

Chapter 3

ACCOUNTABILITY OFFICERS

ARTICLE 1

General

§ 3-1.1. 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.

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

§ 3-1.2. Independence and accountability.

- A. An accountability officer carries out in an independent manner the duties and responsibilities of their office as set out in Part V of the Act, this chapter and, in the case of the Lobbyist Registrar, Chapter 140, Lobbying.
- B. An accountability officer is accountable to Council.

§ 3-1.3. Appointment, removal and resignation.

- A. A two-thirds vote of all Council 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 90 days' written notice to the Mayor, unless the notice requirement is waived by both parties.

§ 3-1.4. 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.

§ 3-1.5. 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.

§ 3-1.6. Reports.

- A. An accountability officer shall report annually to Council on the activities of their office and the discharge of their 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).
- D. Despite Subsection B, the Integrity Commissioner may issue public reports without reporting to Council in accordance with Article V of the Act
- E. An accountability officer shall submit policy-related reports to Council through the Executive Committee.
- F. Subject to § 3-3.3D 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.

§ 3-1.7. 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.

§ 3-1.8. 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.

§ 3-1.9. 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 their office and shall manage their 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 their budget request to the City Manager or Chief Financial Officer and Treasurer for review, approval or recommendation.
- F. An accountability officer is responsible for the application to their office of:
 - (1) Chapter 71, Financial Control;
 - (2) Chapter 195, Purchasing;
 - (3) Other City by-laws and policies related to material and financial resources; and
 - (4) Other City by-laws and policies as specified by Council, as this section and § 3-1.10 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.

§ 3-1.10. Office staff.

- A. An accountability officer is responsible for the application of the City's employment-related policies to their 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 their 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 their 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.

§ 3-1.11. Two-thirds vote required for changes.

To pass a motion to amend or repeal this chapter requires a two-thirds vote of all Council members.

ARTICLE 2

Conflict of Interest; Political Activity; Disclosure of Wrongdoing and Reprisal Protection

§ 3-2.1. Definitions.

- A. The definitions contained in Chapter 192, Public Service, are applicable to the terms as used in this article.
- B. As set out in Articles 2, 5, 6 and § 192-47 of Chapter 192, Public Service, apply to Accountability Officers and their staff except insofar as any provision of Chapter 192 is inconsistent with the intent or object of this chapter.

§ 3-2.2. Conflict of interest.

The Accountability Officers and their staff shall comply with Article IV, Conflict of Interest, of Chapter 192, Public Service.

§ 3-2.3. Political activity.

The Accountability Officers and their staff shall comply with the rules for Designated Employees under Article V, Political Activity, of Chapter 192, Public Service, with the same restrictions as the City Manager.

§ 3-2.4. Disclosure of wrongdoing and reprisal protection.

- A. Section 192-47 of Article VII, Reprisal Protection, of Chapter 192, Public Service, shall apply to the Accountability Officer's staff but not the Accountability Officers.
- B. Where it is alleged that an Accountability Officer or their staff has committed wrongdoing as defined in Chapter 192, improperly breached confidentiality or committed a reprisal as defined in Chapter 192, a third party investigator will be used and their findings will be reported to City Council.

ARTICLE 3
Auditor General

§ 3-3.1. Term.

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

§ 3-3.2. Powers, duties and limitations under Part V.

When carrying out the Auditor General's 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.

§ 3-3.3. 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:
 - (1) A perceived breach by Toronto Hydro Corporation of the shareholder direction; or
 - (2) A specific purpose or project where the Auditor General has not been able to obtain the necessary information either:
 - (a) Through the shareholder direction reporting mechanisms; or
 - (b) Through inquiries to senior management of the Toronto Hydro Corporation; or
 - (c) Through a request from Council to the Chair of the Toronto Hydro Corporation.
- D. All reports by the Auditor General on City controlled agencies and City corporations shall be submitted first to the agency or corporation's board of directors.

§ 3-3.4. 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.

§ 3-3.5. 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.

§ 3-3.6. 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.

§ 3-3.7. Office budget.

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

ARTICLE 4
Integrity Commissioner

§ 3-4.1. Term.

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

§ 3-4.2. Powers, duties and limitations under Part V.

When carrying out the Integrity Commissioner's 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.

§ 3-4.3. Responsibilities.

The duties of the Integrity Commissioner are as follows:

- A. To provide advice on the application of the Municipal Conflict of Interest Act, a code of conduct and other City or local board by-laws, policies, and protocols to a member's conduct 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 their 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 or sections 5, 5.1 and 5.2 of the Municipal Conflict of Interest Act.
- 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, including a code of conduct and the Municipal Conflict of Interest Act.
- E. To bring applications to Court pursuant to section 8 of the Municipal Conflict of Interest Act.
- F. To carry out other duties mandated by City policies, including under the Human Rights and Anti-Harassment/Discrimination Policy.

§ 3-4.4. Complaint Procedures.

- A. The Integrity Commissioner is responsible for establishing procedures for:
 - (1) formal requests for investigations and informal complaints about possible contraventions of the code of conduct; and
 - (2) applications pursuant to section 160.1 of the Act.
- B. The Integrity Commissioner shall not participate in an informal complaint about possible contraventions of the code of conduct during the election period described in subsections 160(7) - (9) of the Act.
- C. The Integrity Commissioner may attempt to settle any matter at any stage.
- D. The Integrity Commissioner shall not conduct an investigation if they are of the opinion that, or where it becomes apparent in the course of the investigation that, a request to investigate is frivolous, vexatious, not made in good faith or that there are insufficient or no grounds for an investigation.

- E. The Integrity Commissioner may refuse to conduct, or terminate, an investigation in the following circumstances:
- (1) There has been a substantial delay between the request and the incidents that are the subject matter of the complaint, and because of the delay the inquiry would serve no useful purpose; or
 - (2) The Integrity Commissioner is of the opinion that the inquiry would serve no useful purpose.
- F. The Integrity Commissioner shall not issue a report finding a violation of the code of conduct on the part of any member unless the member of Council or local board (restricted definition) has had notice of the basis for the proposed finding and any recommended sanction or remedial action, and an opportunity either in person or in writing to comment on the proposed findings and any recommended sanction or remedial action.
- G. The Integrity Commissioner shall provide a report to the complainant and the member at the conclusion of the investigation.
- H. Notwithstanding the Integrity Commissioner's general reporting authority and discretion set out in this Chapter, where the complaint is sustained in whole or in part, the Integrity Commissioner shall provide a report to Council outlining the findings, the terms of any settlement, or recommended penalty or remedial action.
- I. Council or a local board (restricted definition) shall consider and respond to any report filed by the Integrity Commissioner that recommends a penalty or remedial action as its first opportunity. In responding to such a report, Council or a local board (restricted definition) may vary a recommendation that it impose a penalty or remedial action but shall not refer the matter other than back to the Integrity Commissioner.
- J. The Integrity Commissioner shall state in a report and recommend that no penalty or remedial action be imposed if the Integrity Commissioner determines that:
- (1) there has been no contravention of the code of conduct;
 - (2) a contravention occurred although the member took all reasonable measures to prevent it; or
 - (3) a contravention occurred that was trivial or committed through inadvertence or an error in judgement made in good faith.

§ 3-4.5. Additional powers, duties and responsibilities.

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

ARTICLE 5
Lobbyist Registrar

§ 3-5.1. Term.

The Lobbyist Registrar shall be appointed for a seven-year non-renewable term of office.

§ 3-5.2. Powers, duties and limitations under Part V.

When carrying out the Lobbyist Registrar's 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.

§ 3-5.3. 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 and sections 168 and 169 of the Act.

§ 3-5.4. 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 6
Ombudsman

§ 3-6.1. Term.

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

§ 3-6.2. Powers, duties and limitations under Part V.

When carrying out the Ombudsman's 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.

§ 3-6.3. 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.

§ 3-6.4. Additional powers, duties and responsibilities.

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

§ 3-6.5. 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.
- B. Despite Subsection A, the Ombudsman's jurisdiction does not include Council and Council Committees, as defined in Chapter 27, Council Procedures.

§ 3-6.6. Complaint initiation.

The Ombudsman may investigate:

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

§ 3-6.7. 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 themselves 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.

§ 3-6.8. 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.

§ 3-6.9. 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.

§ 3-6.10. 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.

ARTICLE 7
Records Retention

§ 3-7.1. Independent management of records.

An accountability officer manages information and records of their office in an independent manner. Nothing in this article shall be construed to limit or interfere with the independence of each officer, including without limitation, the independent management and retention of records for which the accountability officer is responsible.

§ 3-7.2. Definitions.

- A. The definitions contained in Chapter 217, Records, Corporate (City) Service are applicable to the terms as used in this article and in any schedule to this article.
- B. As used in this article, the following term shall have the meaning indicated:

ACCOUNTABILITY RECORD:

- (1) A record created by the accountability officer, or their delegate, in carrying out the duties and responsibilities of their office as set out in Part V of the Act, Chapter 3, Accountability Officers, and in the case of the Lobbyist Registrar, Chapter 140, Lobbying.
- (2) A record designated by an accountability officer as an accountability record pursuant to § 3-7.4A.

§ 3-7.3. Record retention and disposition.

No record shall be destroyed unless:

- A. The retention period established for the record in accordance with this chapter or Chapter 217, Records, Corporate (City), including § 217-4C, has expired and no information hold is applied on the record; or
- B. The record is a copy of the original record.

§ 3-7.4. Applicability of Chapter 217, Records, Corporate (City).

- A. Subject to this article, an accountability officer is responsible for the application of Chapter 217 to records of their office, as appropriate.
- B. A retention schedule contained in Chapter 217 applies to the records of the accountability officers, with any modifications deemed necessary by the accountability officer.
- C. Despite Subsection B, a retention period contained in the schedule to Chapter 217 applies to the records of the accountability officers.
- D. Any retention schedule containing an archival review designation shall be deemed to require review by the accountability officer responsible for the record.
- E. This section does not apply to an accountability record.

§ 3-7.5. Agreement respecting records retention and management.

- A. An accountability officer may seek the provision of services, advice or assistance in the creation and implementation of policies and recommendation of retention schedules as required from the City Clerk.
- B. An accountability officer may establish any guidelines and policies necessary to the implementation of this article.

§ 3-7.6. Accountability record retention schedules.

- A. For the purposes of this article, an accountability officer may designate a record or a class of records as an accountability record.
- B. Subject to Subsection C, an accountability officer may recommend directly to Council the establishment of a retention schedule for an accountability record.
- C. No retention schedule shall be recommended to Council unless the City auditor has approved the retention period, in accordance with the requirements of subsection 201(3) of the Act.
- D. A retention schedule established by Council for each accountability officer shall form a schedule to this chapter.