



LOBBYIST REGISTRAR'S REPORT INFORMATION ONLY

Ability to Establish a Lobbyist Registry at Toronto Community Housing Corporation (TCHC)

Date:	May 9, 2011
To:	Executive Committee
From:	Lobbyist Registrar
Wards:	All
Reference Number:	

SUMMARY

This report responds to the request of Council, that the Lobbyist Registrar report to Executive Committee, in consultation with the City Solicitor, on the ability to implement a Lobbyist Registry at the Toronto Community Housing Corporation (“TCHC”). The Lobbyist Registrar is responsible for advising Council on lobbying matters under § 140-33B(9) of the Toronto Municipal Code (the “Lobbying By-law”).

The report discusses the following ways in which the City may be able to establish a Lobbyist Registry or regulate lobbying during procurement at TCHC:

1. Request legislative changes to treat TCHC as a “local board (restricted definition)” so that both staff and board members would be “public office holders” under the Lobbying By-law. If a legislative amendment is requested so that TCHC is treated as a local board (restricted definition), the City’s Lobbying By-law would apply to lobbying of both staff and directors at TCHC.
2. Designate the persons Council appoints to the TCHC board as “public office holders” so that the directors would be “public office holders” under the Lobbying By-law. Council may designate persons it appoints to the TCHC board as public office holders under s. 156 of the *City of Toronto Act, 2006*. It is not possible to designate the staff of TCHC as public office holders in this way. Designation of TCHC staff as public office holders would require legislative change.

3. Request legislative changes to require TCHC to establish its own Lobbyist Registry. Legislative changes would be necessary for the TCHC to implement a Lobbyist Registry at the TCHC.
4. Require TCHC to adopt procurement policies and processes that disclose and restrict lobbying during procurements. The TCHC could regulate lobbying during procurements and require disclosure of lobbying during procurements as part of its procurement policies and processes.

The City Solicitor and City Manager have been consulted in the preparation of this report. TCHC is one of several corporations listed in Schedule A to the Toronto Municipal Code, Chapter 140 (the “Lobbying By-law”) where similar issues may arise. This report is issued concurrently with a report by the City Manager that makes recommendations regarding these corporations, including TCHC.

Financial Impact

If Council establishes a Lobbyist Registry at TCHC in one of the first two ways discussed in this report, the City’s lobbyist registration system would need to be amended to accommodate the registration of lobbying activities related to TCHC. The Lobbyist Registrar’s 2011 and subsequent operating budgets will need to accommodate additional staff costs to establish and maintain a TCHC Lobbyist Registry and any other Schedule A corporations that are included in the registry.

If Council requires TCHC to establish its own Lobbyist Registry, capital and operating costs to establish and maintain the registry would need to be assessed. It is assumed that these costs would be borne by TCHC.

It is not possible to estimate the costs to establish and maintain a Lobbyist Registry at TCHC at this time.

DECISION HISTORY

On March 9, 2011, City Council adopted CC6.1 Recommendation 8 as follows:

8. City Council request the Lobbyist Registrar to report to the Executive Committee, in consultation with the City Solicitor, on the ability to implement a Lobbyist Registry at the Toronto Community Housing Corporation.

ISSUE BACKGROUND

On March 9, 2011, City Council held a special meeting concerning the Toronto Community Housing Corporation (“TCHC”) Board of Directors. CC6.1.

Recommendation 8 is one of eight resolutions that were adopted by Council as the shareholder of TCHC.

DISCUSSION

The Status of TCHC under the Lobbying By-law

Currently, the directors and staff of TCHC are not public office holders as defined in § 140-1 of the Lobbying By-law and s. 156 of the *City of Toronto Act, 2006*. As a result, the City's Lobbying By-law does not apply to lobbying activities at TCHC. Lobbyists are not required to register with the City's Lobbyist Registry when they lobby staff or directors of TCHC.

Section 156

"public office holder" means,

- (a) a member of city council and any person on his or her staff,
- (b) an officer or employee of the City,
- (c) a member of a local board (restricted definition) of the City and any person on his or her staff,
- (d) an officer, director or employee of a local board (restricted definition) of the City, and
- (e) such other persons as may be determined by city council who are appointed to any office or body by city council or by a local board (restricted definition) of the City.

Similar to other City corporations, TCHC staff and directors are exempt from the Lobbying By-law under § 140-3C(2). The effect of this exemption is that when acting in their official capacity, staff and directors of TCHC do not need to register in order to communicate with public office holders of the City, such as City staff and members of Council.

§ 140-3

This chapter does not apply to any of the following persons when acting in their official capacity:

...

C. City; other bodies employee representatives.

- (1) Public office holders.
- (2) Members, persons on the staff of the members, or directors, officers or employees of the corporations or other bodies listed in Schedule A, at the end of this chapter.

Ability to Establish a Lobbyist Registry at TCHC

1. *Request legislative changes to treat TCHC as a “local board, restricted definition”.*

TCHC was incorporated as a local housing corporation under Part III of the *Social Housing Reform Act, 2006* (“SHRA”). Under the SHRA, a local housing corporation is specifically deemed not to be a “local board” of a municipality. If a legislative amendment is requested so that TCHC is treated as a local board (restricted definition), the City’s Lobbying By-law would apply to lobbying of both staff and directors at TCHC.

Additional review is needed to consider the effect upon TCHC’s corporate and operational context and its relationship with the City if TCHC were treated as a local board (restricted definition).

Consideration also needs to be given to whether or not TCHC should be treated as a local board (restricted definition) only for the purposes of lobbying and not for the other purposes (for example, code of conduct) set out in Part V of the *City of Toronto Act, 2006*.

2. *Designate the persons Council appoints to the TCHC board as “public office holders”.*

Council may designate persons it appoints to the TCHC board as public office holders under s. 156 of the *City of Toronto Act, 2006*. It is not possible to designate the staff of TCHC as public office holders in this way. Designation of TCHC staff as public office holders would require legislative change.

Without the ability to designate staff as public office holders, full transparency of lobbying at TCHC would not be achieved. Lobbyists would be able to avoid registering their lobbying activities when lobbying staff of TCHC. A particular concern is that lobbying of staff about procurements would be exempt from registration, because staff would not be public office holders.

In addition, this option needs additional review on how a designation of directors as public office holders would operate in the corporate and operational context of the TCHC.

3. *Request legislative changes to require TCHC to establish its own registry.*

Legislative changes would be necessary for the TCHC to implement a Lobbyist Registry at the TCHC. This is the case whether the intent was that TCHC operate its own registry (with any enforcement powers) or be part of the City’s registry in the same manner as the City or a local board (restricted definition) as defined in , s. 156 of the *City of Toronto Act, 2006*. The legislative changes needed would be an amendment to the *City of Toronto Act, 2006*.

4. *Require TCHC to adopt procurement policies and processes that disclose and restrict lobbying during procurements.*

The TCHC could regulate lobbying during procurements and require disclosure of lobbying during procurements as part of its procurement policies and processes. TCHC could adopt and implement lobbyist disclosure and no lobbying (blackout) periods during procurements, mirroring the City's procurement policies that prohibit lobbying during procurement processes.

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SIGNATURE

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