

## **Lobbying During a Procurement Process**

<b>Date:</b>	September 30, 2013
<b>To:</b>	City Council
<b>From:</b>	City Solicitor
<b>Wards:</b>	All
<b>Reference Number:</b>	

### **SUMMARY**

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The purpose of this report, as directed by Council, is to recommend amendments to the City of Toronto Municipal Code Chapter 140, Lobbying (the "Lobbying By-law") to clarify that no lobbying of any kind is permitted at any time during a procurement process and to strengthen the effectiveness of the Lobbying By-law. The report also explains that the issue of requiring City staff to report breaches of the Lobbying By-law to the Lobbyist Registrar will be considered in the context of the development of a Public Service By-law for Toronto. The City Manager anticipates reporting back on the Public Service By-law by the end of 2013.

The Lobbyist Registrar was consulted in the preparation of this report and concurs with the report's recommendation.

### **RECOMMENDATIONS**

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#### **The City Solicitor recommends that:**

1. City Council amend City of Toronto Municipal Code Chapter 140, Lobbying, by adding § 140-41C set out in the draft bill in Appendix "A" of this report.

#### **Financial Impact**

There is no financial impact beyond what has already been approved in the current year's budget.

## DECISION HISTORY

At its meeting on March 8 and 9, 2011, Council requested the City Solicitor, in consultation with the Lobbyist Registrar, to report back to Council on clarifying and strengthening the Lobbying By-law with respect to lobbying during procurement processes. At the same meeting, Council requested the City Solicitor to report back to Council on measures to require City staff to report breaches of the Lobbying By-law to the Lobbyist Registrar.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2011.CC5.1>

## ISSUE BACKGROUND

The Lobbyist Registrar's report on lobbying during a procurement process (the "Lobbyist Registrar's Report"), considered by Council at its meeting on March 8 and 9, 2011, found that some clarification of the Lobbying By-law could assist in avoiding inadvertent breaches of the rules pertaining to lobbying during a procurement process. The Lobbyist Registrar's Report identified the following potential sources of confusion:

- i. The application of the prohibition on lobbying to non-proponents;
- ii. The application of lobbying prohibitions when a procurement goes to committee and Council for decision; and
- iii. The interplay between the prohibition on lobbying during a procurement process and certain communication exemptions under the Lobbying By-law.

The issue identified by the Lobbyist Registrar's Report is that the exceptions to application of the Lobbying By-law may lead to inadvertent breaches of Subsection 140-41A, which specifically prohibits lobbying during a procurement process,. Subsection 140-41A provides as follows:

*Lobbyists shall not communicate in relation to a procurement process except as permitted by applicable procurement policies and procurement documents.*

The Lobbyist Registrar's Report recommended, and Council has requested, that the following actions be taken to clarify and strengthen the effectiveness of the existing prohibitions on lobbying during City procurement processes:

- i. The City Solicitor, in consultation with the Lobbyist Registrar, report to Council on clarifying and strengthening the Lobbying By-law; and

- ii. The City Solicitor report to Council on measures to require City staff to report breaches of the Lobbying By-law to the Lobbyist Registrar.
- iii. City Council request the City Solicitor and the Lobbyist Registrar to develop guidelines and protocols to deal with the procurement process as it relates to the retention of consultants and in particular report on provisions to condition their lobbying activities after working for the city on contract.

## COMMENTS

### *i) Clarify and Strengthen the Lobbying By-law*

As noted above, the Lobbyist Registrar's Report identified potential sources of confusion when exemptions to the Lobbying By-law arguably interplay with subsection 140-41A, the provision that prohibits communication during a procurement process. The concern is that individuals involved in the City's procurement processes may be uncertain as to which provision in the Lobbying By-law prevails when more than one may arguably apply.

In my view, a proper interpretation of the Lobbying By-law would find that subsection 140-41A prevails over any other provision in the Lobbying By-law where the subject matter of a communication is in relation to a procurement process. Specifically, the restrictions on application of the Lobbying By-law, the ward constituent exemption for example, do not apply when the subject matter of the communication relates to a procurement process. To make that more clear and strengthen the prohibition on lobbying during a procurement process, the Lobbying By-law could be amended by adding the following new subsection to 140-41:

- C. In the event of a conflict or inconsistency between Subsection A and any other provision of this chapter, Subsection A prevails.

The amendment suggested above ought to resolve any potential confusion identified in the Lobbyist Registrar's Report. Further, it is consistent with the following recommendation of Madam Justice Bellamy in her Report on the Toronto Computer Leasing Inquiry:

*There should be no lobbying of any kind at any time during a City procurement process.*

In conclusion, the suggested amendment noted above is recommended as it will clarify and strengthen the Lobbying By-law.

### *ii) Report on Measures to Require City Staff to Report Breaches of the Lobbying By-law to the Lobbyist Registrar*

City Council has requested a report on measures to require City staff to report breaches of the Lobbying By-law to the Lobbyist Registrar. This matter will be considered in the development of a Public Service By-law which the City Manager anticipates reporting back on by the end of 2013.

iii) *Develop guidelines and protocols to deal with the procurement process as it relates to the retention of consultants and in particular report on provisions to condition their lobbying activities after working for the city on contract*

In response to the concern relating to lobbying during a procurement process by current contract holders, the Lobbyist Registrar published the Interpretation Bulletin which can be found at the following link:

[http://www1.toronto.ca/staticfiles/city\\_of\\_toronto/lobbyist\\_registrar/files/pdf/interpretation\\_bulletin\\_lobbying\\_by\\_contractors\\_22nov2012.pdf](http://www1.toronto.ca/staticfiles/city_of_toronto/lobbyist_registrar/files/pdf/interpretation_bulletin_lobbying_by_contractors_22nov2012.pdf).

The Interpretation Bulletin clarifies the duties and obligations of a current contractor with respect to another procurement process. The Interpretation Bulletin provides examples of where a contractor's actions would be unethical and in breach of the Lobbying By-law.

## **CONTACT**

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## **SIGNATURE**

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Anna Kinastowski  
City Solicitor

## **ATTACHMENTS**

Appendix "A" - Proposed bill to amend Chapter 140, Lobbying.

**Appendix “A”**  
**Draft Bill to Amend City of Toronto Municipal Code Chapter 140, Lobbying**

**CITY OF TORONTO**

**Bill No.**

**BY-LAW No.**

**To amend City of Toronto Municipal Code Chapter 140, Lobbying.**

WHEREAS the following principles apply to the regulation of lobbying the City government’s public office holders:

- A. The City government’s duty to make decisions in the public interest should not be impeded;
- B. Open and unfettered access to City government is a vital aspect of local democracy;
- C. Lobbying public office holders is a legitimate activity;
- D. Public office holders and the public should be able to know who is attempting to influence City government;
- E. Public disclosure of lobbying activity and standards of conduct for lobbyists are important to the integrity of City government decision-making; and
- F. A system for the registration of lobbying activity and the regulation of the conduct of lobbyists should not impede access to the City government; and

WHEREAS under sections 7 and 8 of the City of Toronto Act, 2006 (the “Act”) and the specific powers in sections 165 to 169 of Part V, Accountability and Transparency, of the Act, the City may pass by-laws to regulate lobbying activities, including the appointment of a Registrar; and

WHEREAS Council has enacted a by-law that prohibits lobbyists from communicating in relation to a procurement process except as permitted by applicable procurement policies and procurement documents; and

WHEREAS Council wishes to clarify the application of the prohibition on lobbying during a procurement process;

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

1. Chapter 140, Lobbying, of City of Toronto Municipal Code is amended by adding the following Subsection to § 140-41:

C. In the event of a conflict or inconsistency between Subsection A and any other provision of this chapter, Subsection A prevails.

2. This by-law comes into force immediately.

ENACTED AND PASSED this        day of        , 2013.

Speaker

City Clerk

(Seal of the City)