



**STAFF REPORT  
ACTION REQUIRED**

**Supplementary Report: Strengthening Public Service Governance – a Public Service By-law for Toronto**

<b>Date:</b>	June 6, 2014
<b>To:</b>	City Council
<b>From:</b>	City Manager
<b>Wards:</b>	All
<b>Reference Number:</b>	

**SUMMARY**

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At its meeting on May 27, 2014, Executive Committee in considering the report EX 42.3, *Strengthening Public Service Governance – a Public Service By-law for Toronto*, Executive Committee requested the City Manager to consult further with CUPE Local 79 and COTAPSA and report directly to City Council with any resulting proposed changes.

The City Manager consulted further with CUPE Local 79 and COTAPSA and this report recommends amendments to the Executive Committee recommendations subsequent to these discussions.

The key amendments include:

- Adding a purpose statement to the Toronto Public Service By-law to clarify the intent of the by-law and reinforce the role of the public service and separation between the administrative and political components of Toronto's government;
- Revising the *Political Activity* provisions to remove by-law enforcement officers from the list of Designated Positions with political activity restrictions with the exception of staff responsible to enforce Article II, Election Signs of Toronto Municipal Code Chapter, 693, Signs and to clarify language in some areas; and
- Revising the *Disclosure of Wrongdoing and Reprisal Protection* provisions to clarify language in some areas and strengthen the section related to reprisal protection.

## RECOMMENDATIONS

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### The City Manager recommends that:

1. City Council amend the Executive Committee recommendations contained in the report, EX 42.3, *Strengthening Public Service Governance – A Public Service By-law for Toronto* considered at its meeting on May 27, 2014 to replace Appendix A, E and F with the revised Appendix A, E and F attached to this report.

### DECISION HISTORY

At its meeting on May 27, 2014 in considering the City Manager's report, *Strengthening Public Service Governance – A Public Service By-law for Toronto*, the Executive Committee requested the City Manager to pursue further consultation with representatives of CUPE Local 79, and with the COTAPSA prior to the City Council meeting of June 10 and 11, 2014, and to report directly to City Council as to any proposed amendments to the Toronto Public Service By-law arising from these consultations.

### COMMENTS

The City Manager consulted further with the Canadian Union of Public Employees (CUPE), Local 79 and with the City of Toronto Administrative, Professional, Supervisory Association Inc.(COTAPSA) as requested by Executive Committee.

The key issues raised by the consultations include:

- Adding a purpose statement to the Toronto Public Service By-law;
- Concerns related to the political activity restrictions;
- Suggested changes to the *Disclosure of Wrongdoing and Reprisal Protection* provisions particularly related to reprisal protections;
- Pursuing public service legislation for Toronto.

#### **1. Add a Purpose Statement to the Toronto Public Service By-law**

COTAPSA and some Councillors at Executive Committee suggested that a purpose statement be added to the Toronto Public Service By-law to clarify the intent of the by-law, reinforce the role of the public service and the separation between the administrative and political components of Toronto's government.

This report recommends amending Appendix A - Summary of Key Provisions for the Toronto Public Service By-law to add a purpose statement. A revised Appendix A is attached to this report.

The recommended purpose statement added to the revised Appendix A is:

*The public service plays a unique and important role within Toronto's government and works to serve the public, the Toronto government and the City as a whole through excellence in service, stewardship and commitment.*

*The Toronto Public Service By-law strengthens the separation between the administrative and political components of Toronto's government and advances the Toronto Public Service as objective, professional, impartial and ethical.*

*The Toronto Public Service By-law defines the roles and responsibilities of the public service including providing impartial advice to government that considers evidence based information covering a range of aspects related to the public interest and sets out the ethical rights, duties and protections for the public service.*

## **2. Amend the Political Activity Provisions**

Concerns were raised by both CUPE Local 79 and COTAPSA related to the proposed political activity restrictions. City staff reviewed the proposed political activity restrictions including undertaking further research and a scan to identify the specific positions that would be impacted by the proposed restrictions.

As a result of further research and consultation with CUPE Local 79, the restriction pertaining to by-law enforcement officers is too broad as it would capture approximately 500 positions across a range of City divisions responsible to enforce City by-laws and Provincial statutes.

This report therefore recommends amending Appendix E – *Political Activity* provisions and replace with the revised Appendix E attached to this report. The revised *Political Activity* provisions remove by-law enforcement officers from the list of Designated Positions that are restricted from campaigning or canvassing in a Toronto municipal election or related to a Toronto referendum question, with the exception of staff responsible to enforce Article II, Election Signs of the Toronto Municipal Code Chapter, 693, Signs. By-law enforcement officers will continue to be responsible to reflect on their intended political activity (particularly in a Toronto election) and disclose any intended activity that gives rise to a conflict of interest or the perception of a conflict of interest in the discharge of their professional duties and responsibilities.

With this change, the City Manager is confident that the proposed restrictions balance the need for an impartial public service with considerations with respect to the Charter of Rights and Freedoms. A copy of Appendix D – Summary of Permitted and Restricted Political Activity for Some Public Servants which reflects the revised political activity provisions outlined in Appendix E is attached.

The revised *Political Activity* provisions attached as Appendix E to this report also incorporate several edits proposed by COTAPSA for clarification purposes particularly related to the disclosure requirement outlined in Section 6 for employees not designated.

### **3. Amend the Disclosure of Wrongdoing and Reprisal Protection Provisions**

COTAPSA proposed some amendments to the *Disclosure of Wrongdoing and Reprisal Protection* provisions particularly related to Section 13: Reprisal Protections.

As a result of this input, this report recommends amending Appendix F – *Disclosure of Wrongdoing and Reprisal Protection* and replace with the revised Appendix F attached to this report. In addition to several amendments for clarity of language, the revised Political Activity provisions include the revised Section 13: Reprisal Protection as follows:

No person shall take a reprisal against a City employee because the employee:

- has sought information or advice about making a disclosure about wrongdoing;
- has made a disclosure about wrongdoing in good faith;
- has acted in compliance with the Disclosure of Wrongdoing and Reprisal Protection provisions;
- has initiated or co-operated in an investigation or other process related to a disclosure of wrongdoing;
- has appeared as a witness, given evidence or participated in any proceeding relating to the wrongdoing, or is required to do so;
- has alleged or reported a reprisal; or
- is suspected of any of the above actions.

### **4. Pursue Public Service Legislation for Toronto**

COTAPSA raised concerns with the timing and strategy related to discussions with the Province of Ontario to pursue public service legislation for Toronto as requested by City Council during consideration of the 2011 Annual Report of the Ombudsman.

In the meantime, and as directed by City Council, the City Manager developed the Toronto Public Service By-law which achieves similar objectives. Following City Council approval, the Toronto Public Service By-law will be implemented over the next term of City Council and the City Manager will pursue public service legislation for Toronto through upcoming reviews of the *City of Toronto Act, 2006*.

## **CONTACT**

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## **SIGNATURE**

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Joseph P. Pennachetti  
City Manager

## **ATTACHMENTS**

Appendix A – Revised Summary of Key Provisions for Toronto's Public Service By-law  
Appendix D – Revised Summary of Permitted and Restricted Political Activity for Some Public Servants  
Appendix E – Revised Political Activity Provisions  
Appendix F – Revised Disclosure of Wrongdoing and Reprisal Protection Provisions