



STAFF REPORT ACTION REQUIRED

STRENGTHENING PUBLIC SERVICE GOVERNANCE – A PUBLIC SERVICE BY-LAW FOR TORONTO

Date:	May 12, 2014
To:	Executive Committee
From:	City Manager
Wards:	All
Reference Number:	

SUMMARY

This report responds to City Council’s request to bring forward detailed recommendations to enact a public service by-law for the broader Toronto public service, including most of the City’s Agencies. Strengthening public service governance through the enactment of a Toronto Public Service By-law is one of twenty-six Strategic Actions for 2013 to 2018 affirmed by City Council to continue to advance the City’s mission, vision and goals articulated in its Strategic Plan.

A public service by-law is important foundation legislation that strengthens the separation between the administrative and political components of Toronto’s government, and advances Toronto’s public service as professional, impartial and ethical.

The Toronto Public Service By-law includes the following key elements:

- Objectives;
- Public Service Values;
- Role, Responsibilities and Authorities of the City Manager and Other City Officials to Manage Human Resources under their authority;
- Role, Responsibilities and Authorities of City Agencies to Manage Human Resources under their authority;
- Human Resource Policy Requirements;
- Ethical Provisions for Conflict of Interest, Political Activity and Disclosure of Wrongdoing and Reprisal Protection; and
- The Establishment of Ethics Executives.

It works in concert with the Members Code of Conduct and the Code of Conduct for Local Boards to set out the distinct roles that the public service and elected officials play in the effective functioning of Toronto's government. The public service is responsible to serve the Council or Board as a whole and the combined interests of all members as evidenced through their decisions.

As noted by Toronto's Ombudsman in her 2011 Annual Report, the City already has many elements of public service legislation established through a range of legislation, frameworks, by-laws and policies. This report recommends the consolidation and strengthening of these provisions under an overarching chapter in the Toronto Municipal Code and extends these requirements to City Agencies.

Toronto will be the first Canadian municipal government to enact by-law provisions consistent with public service legislation. A public service by-law is appropriate for Toronto given the size and complexity of its government. It will further strengthen the City's capacity to provide good governance within its jurisdiction through a democratically elected, responsible and accountable government.

The City Manager will work closely with the Toronto Public Service and City Agencies to ensure that the provisions of the By-law are implemented by the in-force date of December 31, 2015. Training, resources and tools will be developed to support the implementation of the by-law provisions and reinforce strong public service ethics.

RECOMMENDATIONS

The City Manager recommends that:

1. City Council establish a new Toronto Municipal Code Chapter for the public service reflecting the provisions outlined in section 4 to 12 of this report and summarized in Appendix A including adopting updated provisions for: (1) *Conflict of Interest* attached as Appendix C, (2) *Political Activity* attached as Appendix E, and (3) *Disclosure of Wrongdoing and Reprisal Protection* attached as Appendix F;
2. City Council, subject to the adoption of recommendation 1), rescind the *Conflict of Interest Policy*, *Employee Participation in Municipal Election Campaigns Policy*, *Fraud Prevention Policy* and the *Whistle Blower Protection Policy* previously adopted by City Council and replace with the provisions attached as Appendix C, E and F to this report effective December 31, 2015;
3. City Council extend the application of the public service provisions summarized in Appendix A to the City Agencies listed in Appendix B including provisions related to: (1) *Conflict of Interest* attached as Appendix C and (2) *Political Activity* attached as Appendix E and direct the Agency Boards to implement these provisions;
4. City Council require the City Agencies listed in Appendix B to adopt and implement disclosure of wrongdoing and reprisal protection provisions pursuant to the minimum

requirements outlined in section 11F of this report and summarized in section 8 of Appendix A;

5. City Council authorize the City Solicitor to prepare and introduce in Council any bills required to enact the public service provisions, generally in accordance with the report recommendations and provisions described in section 4 to 12 of this report and summarized in Appendix A, C, E and F;
6. City Council direct that the by-law changes come into force on December 31, 2015 for the Toronto Public Service and the City Agencies listed in Appendix B;
7. City Council authorize the City Manager to amend Relationship Frameworks in place for the City Agencies listed in Appendix B to align with the provisions of the Toronto Public Service By-law as required;
8. City Council amend the Toronto Atmospheric Fund's Relationship Framework to require the Toronto Atmospheric Fund to adopt and implement conflict of interest and political activity provisions consistent with the City of Toronto's, and to adopt and implement disclosure of wrongdoing and reprisal protection provisions meeting the minimum requirements established for City Agencies;
9. City Council request the Toronto Police Service Board and the Toronto Library Board to review their ethical policies pertaining to conflict of interest, political activity and the disclosure of wrongdoing and reprisal protection, and adopt provisions consistent with the City of Toronto;
10. City Council, acting as the Shareholder, direct the City Manager to amend existing Shareholder Directions to include, and ensure all future Shareholder Directions include the following clause:

“Subject to Law, the Corporation shall and shall direct its Subsidiaries to conduct their affairs and govern their operations in accordance with such rules, policies and directives or objectives as directed by City Council from time to time;”
11. City Council, acting as the Shareholder, direct City Corporations to adopt policies related to conflict of interest, political activity and disclosure of wrongdoing and reprisal protection;
12. City Council amend Toronto Municipal Code Chapter 3, Accountability Officers to:
 - a. require the Accountability Officers and their staff to comply with the *Conflict of Interest* provisions attached as Appendix C to this report;
 - b. require the Accountability Officers and their staff to comply with the City's *Political Activity* provisions attached as Appendix E of this report and affirm the right of the Accountability Officers and their staff to vote and attend all-candidates meetings in

- elections, but restrict the Accountability Officers and their staff from engaging in political activity;
- c. extend reprisal protection pursuant to Section 13 of the *Disclosure of Wrongdoing and Reprisal Protection* provisions attached as Appendix F of this report to the Accountability Officer's staff;
 - d. establish a mechanism for the investigation and reporting of allegations of wrongdoing for the Accountability Officer's and their staff pursuant to Section 16 C of the *Disclosure of Wrongdoing and Reprisal Protection* provisions attached as Appendix F of this report; and
13. City Council amend Toronto Municipal Code Chapter 140, Lobbying to require City employees involved in the City's procurement processes to report breaches of the Lobbying By-law to the Lobbyist Registrar for investigation and resolution.

Implementation Points

The Toronto Public Service By-law provisions come into force on December 31, 2015. The Toronto Public Service and many of the in-scope City Agencies are already compliant with many components of the By-law as it consolidates and strengthens existing provisions under an overarching framework in the Toronto Municipal Code.

A longer in-force date provides time for implementation to ensure any gaps in requirements are addressed, particularly relevant for some of the City's smaller Agencies, and to ensure adequate notice is provided to employees about changes to ethical provisions.

The City Manager will work closely with the Toronto Public Service and City Agencies to ensure that the provisions of the By-law are in-place by the in-force date. Tools, communication and education materials will be developed to support the implementation and shared with City Agencies. The City will provide policy and legal support to City Agencies as required in the implementation of the By-law provisions, particularly important for smaller City Agencies that have limited resources and capacity.

In addition, the Auditor General and the City Manager will establish and implement a Protocol with representatives from the Auditor General's Office, Internal Audit, Human Resource and Legal Services to implement a case conference approach to investigate allegations of wrongdoing. Internally, the City Manager will strengthen oversight of allegations of employee misconduct, including implementing a tracking system to identify trends and continuous improvements.

The Public Service By-law provides a good opportunity to not only implement the provisions of the By-law but also reinforce and advance a strong public service and ethical culture generally across the City and its Agencies through integration in employee engagement and communication, onboarding, training and education, and organizational strategies, systems, policies and procedures.

The City Manager has initiated a range of initiatives within the Toronto Public Service to advance a professional, ethical and objective public service over the last number of years including for example:

- Public Service Week, an education and engagement campaign to celebrate public services and accomplishments;
- The Doing it Right Campaign, a staff ethics education and engagement campaign; and
- The City Manager's Award, an annual award for outstanding innovation in City programs and services.

Collaboration on public service initiatives with City Agencies will be strengthened to continue to advance a strong public service culture generally and leverage public service initiatives across the broader public service.

A periodic review of the Toronto Public Service By-law will be undertaken to ensure its continued effectiveness and changes will be brought forward as required for Council's consideration.

Financial Impact

There are no financial implications resulting from the implementation of the recommendations in this report. The Deputy City Manager and Chief Financial Officer has reviewed this report and concurs with the financial impact statement.

Equity Statement

The Toronto Public Service By-law advances the City's equity goals and objectives.

Diversity Our Strength, emblazoned on Toronto's coat of arms, signifies the combined strength of the former seven municipalities and embraces Toronto's cultural diversity as one of its most important attributes. Toronto is home to people from across 216 ethnicities with over half of the City's population born outside Canada. Toronto has one of the world's most diverse populations and diversity is a fundamental part of its civic identity.

The By-law will codify the City's motto – *Diversity Our Strength* as a public service value, which promotes diversity as a key driver for City policies, programs and service delivery. Codifying the City's motto also enables individual City and Agency staff to internalize diversity as a fundamental organizational value.

The Toronto Public Service By-law also includes the objective of recruiting and developing a well-qualified public service that is reflective of Toronto's diversity. This objective is operationalized through the City's *Employment Equity Policy* that provides that the citizens of Toronto are best served by a public service that reflects Toronto's diversity. The City Manager, City Clerk, City Solicitor and Agency Heads are responsible to implement this objective through recruitment and promotion practices and strategies.

The diversity provisions included in the Toronto Public Service By-law contribute to advancing the City's two diversity-related Strategic Actions adopted by City Council in fall 2013. Strategic Action #17 focuses on strengthening the City's internal capacity to deliver policies, programs and services that serve Toronto's diverse populations including by increasing the diversity of the public service at the management level. Strategic Action #11 focuses on integrating diversity into all aspects of policy, program and service delivery.

DECISION HISTORY

Toronto Public Service By-law

At its meeting on November 27, 2012, City Council adopted the key elements of a public service by-law for Toronto and authorized the City Manager to bring forward detailed recommendations on the content of a public service by-law before the end of 2013.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2012.EX25.3>

At its meeting on February 6 and 7, 2012 in considering the 2011 Annual Report of the Ombudsman that recommended that the province enact public service legislation for Toronto, City Council requested the City Manager to report further, until a *Public Service Act* is legislated, on an interim by-law that sets out public servants' obligations and accountabilities.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2012.CC16.4>

Whistle Blower Protection Policy

At its meeting on May 9, 2011, Council adopted a *Whistle Blower Protection Policy* and requested the City Manager to review the *Whistle Blower Protection Policy* with the City's Agencies and report back on the Agencies that have agreed to implement the policy.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2011.EX6.2>

Agency Human Resource Policies

At its meeting City Council on April 12 and 13, 2011, City Council requested the City Manager review board human resources policies and practices and recommend changes to ensure alignment with City objectives and to bring forward a policy framework to apply key City principles, policies and accountabilities.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2011.EX4.6>

Disclosure of Wrongdoing and Reprisal Protection

At its meeting on April 1 and 2, 2014, in considering the Auditor General's Annual Fraud and Waste Hotline Report, City Council requested the City Manager to make available its e-learning ethical training modules to the City's Agencies and Corporations. City Council also requested that the City Manager, in consultation with the Auditor General, provide details of the Disclosure of Wrongdoing Framework in his report pertaining to the Toronto Public Service By-law, and details of the formal management framework to be included in the By-law to govern the handling of employee misconduct that does not meet the proposed definition of wrongdoing.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.AU14.2>

Report Breaches of the Lobbying By-law to the Lobbyist Registrar

At its meeting on March 8, 2011, in considering the Lobbyist Registrar's report, *Report on Lobbying during a Procurement Process*, City Council requested the City Manager and City Solicitor to report 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

Public service legislation reinforces that a public service is a professional body, responsible to provide impartial advice to government that considers evidence based information covering a range of aspects related to the public interest. It advances the objective that citizens deserve government services and policies that place the public interest ahead of the personal and ideological preferences of individual public servants and reinforces that citizens can expect to receive fair, professional and objective treatment from public servants.

Considered vital for the effective functioning of a fair and democratic system of government – public service legislation is a cornerstone of the 'machinery of government' across international federal and provincial governments, many in place for over a hundred years.

Public service legislation codifies in law the employment framework and ethical framework for a public service. The employment framework sets out the roles, responsibilities and authorities of government officials and entities for the management of government human resources under their authority and separates political considerations from the appointment, promotion and removal of public servants. The employment framework ensures that the public service is neutral and impartial and protects a public service from inappropriate politicization.

The ethical framework establishes provisions related to conflict of interest, political activity and wrongdoing including:

- Conflict of interest provisions that ensure a public servant's private interests do not compete with their public service duties and responsibilities.
- Political activity provisions that affirm the constitutional right of public servants to engage in political activity as long as it does not impair the impartiality of the public service in carrying out their official duties, set out requirements for public servants when they seek political office and establish political activity limitations for some public servants.
- Mechanisms to disclose, investigate and resolve allegations of government wrongdoing and reprisal protection for public servants who in good faith disclose government wrongdoing.

Toronto will be the first Canadian municipal government to enact by-law provisions consistent with public service legislation. A public service by-law is appropriate for Toronto given the size and complexity of its government. It will further strengthen the City's capacity to provide good governance within its jurisdiction through a democratically elected, responsible and accountable government.

COMMENTS

The Ombudsman, in her 2012 annual report, expressed concern that it was increasingly difficult for staff to provide their best advice to decision-makers. The Ombudsman observed that there was not an adequate separation between legislator and public servant, potentially jeopardizing good governance.

While noting that the duties and expectations for public servants are outlined in a variety of City documents, the Ombudsman recommended that the Province of Ontario enact public service legislation for Toronto to set out in law:

- the roles, responsibilities in the administration of the public service;
- a framework for the leadership and management of the public service; and
- the rights and duties of public servants concerning ethical conduct and political activity.

The City Manager shares the Ombudsman's concern about the increasing distrust between elected officials and public servants and the erosion of the separation between the role of elected officials and public servants. Ensuring a professional, impartial and ethical public service is a fundamental component for the continued effective governance of Toronto.

As directed by City Council, the City Manager is pursuing discussions with the Province of Ontario with respect to public service legislation for Toronto through the 5-year *City of Toronto Act, 2006* review. In the interim, City Council requested that the City Manager bring forward detailed recommendations on a public service by-law for Toronto.

A public service by-law for Toronto is important foundation legislation that strengthens the separation between the administrative and political components of Toronto's government, and continues to advance Toronto's public service as professional, impartial and ethical. As noted by Toronto's Ombudsman, the City already has many elements of public service legislation established through a range of legislation, frameworks, by-laws and policies. This report recommends the consolidation and strengthening of these provisions in the Toronto Municipal Code and extends these requirements to most City Agencies.

1. Codes of Conduct for Members of City Council and Members of Local Boards

Council and Agency Board Members are also responsible for preserving public trust and confidence in the integrity of the public service and for upholding a professional, objective and impartial public service. Members play a critical role in supporting public servants' responsibility to provide professional and frank advice. The effectiveness of the Toronto Public

Service By-law works in concert with the Members Code of Conduct and the Code of Conduct for Local Boards ("Codes") to reinforce the separation between the Council or Agency board and the administration and to set out the distinct roles that each play in the effective functioning of Toronto's government.

The public service is responsible to serve the Council or Board as a whole and the combined interests of all members as evidenced through their decisions. The Codes establish specific provisions that advance a professional, impartial and ethical Toronto public service including that City Council and City Board Members:

- Have a duty to treat staff appropriately and without abuse, bullying or intimidation, and to ensure that their work environment is free from discrimination and harassment. The *Ontario Human Rights Code* applies and if applicable, the City's *Human Rights and Anti-Harassment/Discrimination Policy*, and *Hate Activity Policy*;
- Shall not use, or attempt to use, their authority or influence for the purpose of intimidating, threatening, coercing, commanding, or influencing any staff member with the intent of interfering with that person's duties, including the duty to disclose improper activity;
- Shall not maliciously or falsely injure the professional or ethical reputation, or the prospects or practice of staff, and all members shall show respect for the professional capacities of staff;
- Shall be respectful of the role of staff to provide advice based on political neutrality and objectivity and without undue influence;
- Shall not compel staff to engage in partisan political activities or be subjected to threats or discrimination for refusing to engage in such activities; and
- Shall not use the services of public servants for election-related purposes during work hours.

The Codes also prohibits reprisals or the threat of reprisals against a complainant or anyone for providing relevant information to the Integrity Commissioner.

The Integrity Commissioner investigated three formal complaints related to public servants this term involving five Members, and found that Members had violated provisions of the Code of Conduct respecting the public service. In these cases, the Member(s) issued an apology to the public servant. It is critical that Members abide by the Code of Conduct provisions that uphold a professional, objective and impartial public service, a fundamental element for effective decision-making and good governance.

2. Application of a Public Service By-law

As requested by City Council, the City Manager considered the application of the public service provisions to the City's Agencies and this report recommends that the Toronto Public Service By-law include most of the City's Agencies.

The City Manager also viewed the Toronto Public Service By-law as an opportunity to review the application of these provisions to other components of Toronto's government, not just the

public service including Restricted Boards (Toronto Police Service and Toronto Public Library), Toronto Atmospheric Fund (TAF), Toronto's Accountability Officers, and City-Controlled Corporations within the context of their legal and governance frameworks.

A. City Agencies

City Agencies provide important public services and should be part of the broader public service with similar requirements. The application of public service provisions to staff of City Agencies is consistent with their legal and governance frameworks.

Toronto Public Health and the Association of Community Centres are City employees and therefore, in addition to the public service by-law provisions, are already subject to many other City policies. The City's Quasi-Judicial Bodies have no staff as they are supported by City staff that are already included in the jurisdiction of Toronto Public Service By-law.

Business Improvement Areas (BIAs) are not included in the jurisdiction of the Toronto Public Service By-law as their purpose and operating framework is unique from other Agencies. BIAs are designated by the City and its members consist of commercial and industrial property owners and business tenants within a specific geographic area. The main purpose of a BIA is to advance the business and economic interests of their area by overseeing the improvement, beautification and maintenance of City-owned land, buildings and structures, and promoting the area as a business or shopping area. BIAs do not provide a direct service to the public, and their operating budgets are funded through a levy on all commercial and industrial properties within the BIA boundary. The City does not fund a BIA's operating costs. As City boards, BIAs are governed by the *City of Toronto Act, 2006* and Toronto Municipal Code Chapter 19, Business Improvement Areas.

B. Restricted Boards

The Toronto Library Board and Toronto Police Board are restricted boards under the *City of Toronto Act, 2006* and have their own specific legislation that sets out their authority to manage the human resources under their authority. City Council has limited authority to direct the Toronto Library Board and Toronto Police Board.

Both Agencies have already adopted policies related to conflict of interest, political activity and disclosure of wrongdoing but should review them against the City's provisions to ensure they are meeting leading practice. This report recommends that City Council request the Boards to review and adopt provisions consistent with the City's.

Public Health is also a Restricted Board under the *City of Toronto Act, 2006* but given public health staff are City employees, are required to follow a range of City policies including the ethical provisions included in the Toronto Public Service By-law.

C. Toronto Atmospheric Fund (TAF)

Under the *City of Toronto Act, 2006*, O. Reg. 589/06, Toronto Atmospheric Fund (TAF) is a local board of the City. Under the *Toronto Atmospheric Fund Act, 2005*, the City has certain governance, investment and management authority over TAF. TAF is subject to the provisions of the *Toronto Atmospheric Fund Act, 2005* and TAF's Relationship Framework with the City. The Relationship Framework provides that TAF may develop and comply with its own policies that are consistent with the spirit and intent of the City's policies in these matters.

This report recommends that City Council amend the Relationship Framework with TAF to require TAF to adopt and implement conflict of interest and political activity provisions consistent with the City of Toronto's and to adopt and implement disclosure of wrongdoing and reprisal protection provisions meeting the minimum requirements established for City Agencies.

D. City-Controlled Corporations

City Council has also established corporations to deliver specific services or operate certain services and activities. Corporations are established under the *Ontario Business Corporations Act*, own assets, approve their own positions and operate independently from the City. City corporations are responsible for their own employment and ethical frameworks established through applicable legislation, collective agreements, employment agreements and corporation policies.

However, City corporations should also have strong ethical policies in place. Council has authority under the Toronto Hydro and Toronto Community Housing Corporation Shareholder Directions to require these corporations to conduct their affairs and govern their operations in accordance with certain rules, policies and directives as directed by City Council from time to time. This report recommends that City Council direct the City Manager to amend the Shareholder Directions for the remaining and future City Corporations to include this provision to ensure that City Council has authority, as the Shareholder, to provide certain direction to the City Corporations as appropriate. The remaining City Corporations include Build Toronto, Invest Toronto, Casa Loma, Lakeshore Lions and Toronto Port Lands.

This report further recommends that City Council, as the Shareholder, direct the City's Corporations to adopt policies related to conflict of interest, political activity and disclosure of wrongdoing and reprisal protection. Many of the City Corporations already have these provisions in place and this recommendation will ensure that City Corporations address gaps in their ethical provisions as required.

E. Accountability Officers

Accountability officers are independent statutory positions required under the *City of Toronto Act, 2006* that play a unique role in Toronto's governance system and serve a government oversight and accountability role. They are not members of the public service; their roles, responsibilities and authorities, including for managing employees under their authority, are established through a separate Municipal Code Chapter, Chapter 3, Accountability Officers to

reinforce their separation from the City administration and their independent status within Toronto's governance system.

Independent officers provide oversight of government administration, management, and finances, while also representing the interests of individual citizens in their interactions with government. As advocates of excellence in public sector management and administration and good government, independent officers are by their very function expected to uphold the highest public sector values; and exemplify the standards they use to measure the government entities against, under their jurisdiction.

While Toronto's Accountability Officers are not included in the Toronto Public Service By-law, they should have similar ethical requirements in place as the public service, particularly related to conflict of interest and political activity. They are already subject to the City's ethical related policies with the exception of the *Whistle Blower Protection Policy* that Council determined does not apply to the accountability officers but applies to the accountability officers' staff.

This report therefore recommends amendments to Toronto Municipal Code Chapter 3, Accountability Officers to:

- Require the Accountability Officers and their staff to comply with the City's *Conflict of Interest* provisions attached as Appendix C to this report;
- Require the Accountability Officers and their staff to comply with the City's *Political Activity* provisions attached as Appendix E to this report and affirm their right to vote and attend all-candidates meetings and restrict the Accountability Officers and their staff from engaging in all other political activity;
- Extend reprisal protection pursuant to Section 13 of the City's *Disclosure of Wrongdoing and Reprisal Protection* provisions attached as Appendix F to this report to the Accountability Officers' staff; and
- Establish the mechanism for the investigation and reporting of allegations of wrongdoing involving an Accountability Officer and their staff pursuant to Section 16 C of the City's *Disclosure of Wrongdoing and Reprisal Protection* provisions attached as Appendix F to this report.

3. A Toronto Public Service By-law

City staff undertook extensive research and analysis in developing a public service by-law for Toronto including:

- jurisdictional research across national, provincial and municipal governments and a literature review to benchmark the City's provisions with leading practice;
- consultation with the Province of Ontario and other governments to better understand their regimes, lessons learned and opportunities for improvement;
- an update and review of case law and legal considerations; and

- an inventory and review of City and Agency human resource and ethical policies.

The City Manager also consulted with the City's senior management, Toronto's accountability officers, City Agencies, unions and associations in the development of these provisions.

This report recommends a public service by-law for Toronto including the following components:

- Objectives;
- Public Service Values;
- Role, Responsibilities and Authorities of the City Manager and Other City Officials to Manage Human Resources;
- Role, Responsibilities and Authorities of City Agencies to Manage Human Resources;
- Human Resource Policy Requirements;
- Provisions for Conflict of Interest;
- Provisions for Political Activity;
- Provisions for the Disclosure of Wrongdoing and Reprisal Protection; and
- Establishment of Ethic Executives.

4. Objectives

The objectives of the proposed Toronto Public Service By-law include:

- Advance the public service as a professional body that is objective, impartial and ethical, with consistent public service requirements.
- Affirm City Agencies as part of the broader public service with authority to manage their own affairs.
- Ensure the public service is effective in serving the public, the Toronto government and the City as a whole through excellence in service, stewardship and commitment.
- Establish the roles, responsibilities and authorities for the administration of the public service.
- Recruit and develop a well-qualified, public service that is reflective of Toronto's diversity, through an impartial, merit-based system that fosters career development.
- Set out the rights and duties of the public service concerning ethical conduct, including political activity and conflict of interest.
- Establish procedures for the disclosure and investigation of wrongdoing in the public service and protect public servants who disclose wrongdoing from reprisals.

5. Public Service Values

Enshrining public service values strengthens the overall ethical culture and contributes to public confidence in the integrity of public institutions. Public service values provide an important foundation for the public service, operationalized through activities and infrastructure to maintain an ethical culture, including policies, processes and systems. Public service values also enable individual public servants to internalize these values so they become habit and guide actions and decisions in the discharge of their professional duties.

The Toronto Public Service has values articulated in its Charter of Expectations related to service, stewardship and commitment. The City also has the motto – *Diversity Our Strength*. These values collectively serve to foster an organizational culture that sets the highest standard of integrity, professionalism and ethical behaviour, and informs the public about what they can expect from City employees.

City staff benchmarked Toronto’s core public service values against other governments and confirmed that they are consistent, as many of these values are universal. Some governments have included public service values in their public service legislation to help guide public servants in activities related to their professional duties and to emphasize the importance of these values. This report recommends including Toronto’s public service values in the Toronto Public Service By-law to ensure common values underpin both the Toronto Public Service and City Agencies.

This report also recommends including *Diversity Our Strength* as a core public service value. Toronto is home to people from across 216 ethnicities with over half of the City's population born outside Canada. Toronto has one of the world’s most diverse populations and diversity is a fundamental part of its civic identity.

Codifying that the public service must uphold the City’s motto, *Diversity Our Strength* contributes to the advancement of the City’s two diversity-related strategic actions adopted by City Council in fall 2013. Strategic Action #17 focuses on strengthening the City’s internal capacity to deliver policies, programs and services that serve Toronto’s diverse populations. Strategic Action #11 focuses on integrating diversity into all aspects of service delivery.

The values include that public servants will:

- Serve the public well;
- Serve Council and/or their Board well;
- Act with integrity;
- Maintain political neutrality;
- Uphold Toronto’s motto – *Diversity Our Strength*;
- Use City property, services and resources responsibly;
- Apply judgement and discretion; and

- Serve the public service well.

City Agencies may have operational values specific to their organization in addition to these public service values. The City Manager and Agency Heads are responsible for implementing and reinforcing public service values within their own organizations through continuous activities including staff orientation and onboarding, training and education, communication and engagement and workforce strategies, policies, procedures and systems.

6. Roles, Responsibilities and Authorities of the City Manager and Other City Officials to Manage Human Resources

The employment framework sets out the role, responsibilities and authorities for government officials and entities for the management of human resources under their authority (and by extension the role of management staff to lead and manage staff under their authority). The role, responsibilities and authorities are already formally set out in Toronto Municipal Code Chapter 169, City Officials for the City Manager, City Clerk, City Solicitor and Executive Director of Human Resources and this report does not recommend any changes.

The City Manager is the head of the administrative and operational aspects of Toronto's government and is responsible for providing effective advice and support to the Mayor and Council in developing and implementing the operational policies, plans and programs of Council.

The *City of Toronto Act, 2006* and the Toronto Municipal Code both recognize that the City Manager is responsible to manage the human, fiscal and physical resources of the City, including establishing appropriate human resource policies and procedures, and has authority (with some exceptions) to appoint, promote, demote, suspend and dismiss employees, subject to personnel regulations or collective agreements. City Council retains the authority to appoint the first level of management, Toronto's accountability officers and other statutory officials. The role of the Executive Director, Human Resources is also set out in the Toronto Municipal Code Chapter 169, City Officials with respect to human resources and labour relations.

Toronto Municipal Code Chapter 169, City Officials also sets out that the City Clerk and City Solicitor have full charge and control of their offices as they report directly to City Council and administratively to the City Manager.

7. Role, Responsibilities and Authorities of City Agencies to Manage Human Resources

The roles, responsibilities and authorities for City Agencies for the management of human resources are established through a range of legislation, by-laws, frameworks, agreements, and policies. This report recommends consolidating these provisions in the Toronto Public Service By-law for increased clarity, transparency and accountability.

The proposed provisions are consistent with their legal status and governance structures and include:

- Affirming the authority of in-scope City Agencies to appoint, promote, demote, suspend and dismiss Agency employees subject to the provisions of any personnel policies adopted by the board or collective agreements applicable to Agency employees;
- Requiring in-scope City Agencies to appoint an administrative head responsible to provide organizational leadership to staff and for the efficient and effective delivery of services; and
- Requiring in-scope City Agencies to delegate the authority to appoint, promote, demote, suspend and dismiss Agency employees to the administrative head with such limitations as the Board determines appropriate.

One of the objectives of the Toronto Public Service By-law is to ensure a policy framework that enables the City to recruit, develop and retain a well-qualified public service that fosters career development, is reflective of Toronto's diversity and is merit-based. An impartial, merit-based system for recruitment and appointment are fundamental components for a competent and impartial public service, free from political influence. City Council adopted the *Employment Equity Policy* on July 4, 2000 and requested City Agencies to adopt similar provisions. The Policy affirms that the citizens of Toronto are best served by a public service that reflects the diversity of the community it serves and that employees will be hired based on merit and potential.

The City Manager, City Clerk, City Solicitor and Agency Heads are responsible to develop and implement recruitment and promotion policies and procedures that advance the principle of merit and consider diversity in addition to other recruitment objectives such as seniority, professional development and succession planning for example.

8. Human Resource Policy Requirements

It is important that the City and its Agencies adopt and implement human resource policies to meet their legislative requirements, set out employee entitlements for clarity and transparency purposes, and effectively manage the human resources under their authority. Many human resource policies implement various legislative requirements through work place procedures specific to each operating environment. Under the *City of Toronto Act, 2006*, City Board is an agent of the City, accountable to City Council and City Council may require City Boards to follow City policies. The *Act* also requires the City and its Agencies to adopt and maintain policies with respect to hiring employees.

City Council requested that the City Manager undertake a review of Agency human resource policies and bring forward a framework to apply key City principles, policies and accountabilities as appropriate for Agency governance. The City Manager undertook a review of human resource policies for the Toronto Public Service and City Agencies across the following five key categories:

- **Absence from Work Policies** to set out conditions for various leaves from work (for example, vacation, bereavement, pregnancy, parental leave);

- **Pay and Benefits Policies** to outline remuneration or reimbursement for employees (for example, lieu time and mileage);
- **Hiring and Promotion Policies** to outline the processes governing the appointment and promotion of staff as required by the *City of Toronto Act, 2006*;
- **Health and Safety Policies** to fulfill requirements under the *Occupational Health and Safety Act* including maintaining a safe work environment; and
- **Access, Equity and Human Rights Policies** to fulfill requirements under various legislation and promote access and equity in their organization.

The review confirmed that the Toronto Public Service and the City's larger Agencies have the necessary policies to effectively manage their human resources and meet their legal and operational requirements. There are some policy gaps in some of the City's smaller Agencies.

This report recommends that the City Manager and City Agencies be required to maintain human resource policies in the above noted categories to ensure the City and its Agencies are meeting their legislative obligations as the employer and have appropriate policies in place to manage the human resources under their authority. The City Manager will work closely with the smaller City Agencies as required to ensure that the minimum policy requirements are in place by the in-force date using existing City policies as a base with necessary modifications for their operating environments.

9. Conflict of Interest Provisions

City Council approved the City's *Conflict of Interest Policy* in August 2000 and requested the City's Agencies to adopt similar provisions. Most of the City's Agencies have adopted Conflict of Interest provisions consistent with the City's Policy.

The City's *Conflict of Interest Policy* defines conflict and sets out rules of conduct to ensure that an employee's personal interests do not conflict with their public service responsibilities and obligations in areas such as:

- Receipt of fees and gifts
- Special treatment for family, friends and business associates
- Outside work or business
- Use of City property and resources, including confidential information

This report recommends that City Council approve the updated *Conflict of Interest* provisions attached as Appendix C and include these provisions in the Toronto Municipal Code, applicable to the City and the Agencies listed in Appendix B.

Proposed amendments to the conflict of interest provisions include:

- Providing clearer guidance in situations where a public servant’s interests may compete with their public service duties and responsibilities;
- Establishing a requirement that the City Manager and City Agencies maintain policies that govern the employment of relatives and outline the rules restricting supervisory relationships between relatives and the recruitment and appointment of relatives; and
- Extending obligations related to the use and disclosure of confidential City and Agency information post-employment. The Policy continues the requirement that a City or Agency employee may not directly or indirectly use or disclose confidential information unless required by law or authorized by the City or Agency and extends this requirement to employees after they leave the public service.

10. Political Activity Provisions

City Council adopted the *Employee Participation in Municipal Election Campaigns Policy* in August 2000 and requested City Agencies to adopt similar provisions. The Policy sets out what political activities employees may engage in related to municipal elections and establishes restrictions to engage in political activity for some positions. The City Manager also approved the administrative policy *Employees Seeking Election to Political Office* that sets out requirements for employees running for political office including operationalizing provisions set out in the *Municipal Elections Act, 1996*.

This report recommends that City Council approve the updated *Political Activity* provisions attached as Appendix E and include these provisions in the Toronto Municipal Code applicable to the City and Agencies listed in Appendix B.

Proposed amendments include:

- Update the definition of political activity in line with other jurisdictions;
- Clarify permitted and restricted political activity for some public service positions; and
- Affirm the right for City and Agency staff to engage in political activity as long as it does not impair or is not perceived to impair their ability to perform their duties in a politically neutral manner and if uncertain, to disclose the political activity and seek guidance.

A. Update the Definition of Political Activity

The *Political Activity* provisions include an updated definition of political activity that is in line with other governments and includes municipal, provincial and federal elections and Toronto referendum questions. The City’s current policy, *Employee Participation in Municipal Election Campaigns Policy*, only applies to municipal elections and needs to be broader.

The updated definition defines political activity as:

- supporting or opposing a political party and/or candidate before or during an election;
- seeking nomination or being a candidate in an election;

- seeking appointment to a municipal council or school board; or
- canvassing or campaigning on a Toronto municipal referendum question.

B. Clarify Permitted and Restricted Political Activity

Restrictions to political activity of public servants must weigh the importance of an impartial public service against the right of public servants to participate in a free and democratic society under Canada's Charter of Rights and Freedoms.

Public servants are entitled to engage in political activity but the activity must be balanced with the City's interest in maintaining a public service that is and appears to be politically neutral. Restrictions to political activity should not be overly inclusive in terms of range of prohibited activities and the employees upon which they are imposed. Restrictions should have regard to an employee's role, level and function, visibility and the nature of the political activity.

This report recommends updating and clarifying the permitted and restricted political activities of some public service positions with due regard to the constitutional issues, while recognizing that all employees have the right to vote and attend all-candidates meetings. A summary of the permitted and restricted activities is also attached as Appendix D to this report.

Proposed Restrictions from Engaging in All Political Activity in All Elections:

- The City Clerk and Elections Employees should be restricted from engaging in all political activity in municipal, provincial and federal elections to ensure impartiality and confidence in the electoral process; and
- The City Manager, City Solicitor, and Deputy City Managers should be restricted from engaging in all political activity in municipal, provincial and federal elections given their level and position, high degree of responsibility, visibility, and interface with other governments as part of their official duties.

The recommended changes represent an expansion of the City's current restrictions for these positions to include political activity in provincial and federal elections, and Toronto municipal referendum questions.

Proposed Restrictions from Engaging in Some Political Activity in All Elections:

- Division Heads; and
- Heads of Large Agencies (including Exhibition Place, Toronto Parking Authority, Toronto Public Health, Toronto Transit Commission, and Toronto Zoo).

These positions exercise considerable influence, visibility, discretion and delegation of authority in carrying out their official duties; and should be restricted from supporting or opposing a political party or candidate in municipal, provincial and federal elections and restricted from canvassing or campaigning on a Toronto municipal referendum question.

The proposed provisions provide that these positions may contribute financially to a campaign (except to a Toronto municipal election or referendum question), be a member of a political party, and run for political office subject to the employer and statutory leave requirements.

Proposed Restrictions from Engaging in Political Activity in Toronto Municipal Elections

- Designated Directors and Similar Positions;
- Heads of Small Agencies (including the City's theatres, Heritage Toronto, Yonge-Dundas Square, AOCCs and Arenas);
- Employees who routinely provide governance and procedural advice directly to City Council, Agency Boards and their Committees or in the operation of the offices of the Mayor or Members of City Council (including for example, some positions in the City's Clerk's Office, Legal Services, Strategic and Corporate Policy and City Planning);
- Employees responsible for enforcing and/or prosecuting City by-laws and Provincial statutes (including for example by-law enforcement officers and prosecution staff); and
- Employees recruited by the City Clerk to support a Toronto election or referendum question.

In order to effectively carry out their official duties, employees in these positions must be impartial and perceived to be impartial in Toronto municipal elections and should be restricted from engaging in activities in support or against a candidate in a Toronto municipal election or from canvassing or campaigning on a Toronto municipal referendum question.

Employees in these positions may run for political office in Toronto (or any other election) subject to statutory and employer leave requirements (with the exception of staff recruited by the City Clerk to support a Toronto election or referendum question). These positions as a general rule have no restrictions from engaging in political activity in other municipal, provincial and federal elections as long as it does not impair or is not perceived to impair their ability to perform their duties in an impartial manner.

An assessment tool to identify Designated Directors and Similar Positions will be developed based on a range of factors including role, discretion, delegation of authority, visibility and function. These factors may not be consistent across the broader public service and will need to be determined through a more detailed assessment balancing relevant considerations.

C. Require Public Servants to Disclose Political Activity in Some Circumstances

The proposed *Political Activity* provisions recognize that while most public servants are free to engage in political activity, activities often need to be examined on a case-by-case basis to ensure that political activity does not diminish the neutrality or appearance of political neutrality of the public service.

The determination of whether political activity may impair or be perceived to impair the discharge of public service duties is often case specific, weighing a range of individual factors

including level and function, visibility of position, level of discretion and delegation of authority and political activity contemplated.

City and Agency employees will be required to reflect on whether political activity that they are contemplating may impair or be perceived to impair their ability to perform their duties in a politically neutral manner. In trying to assess the appropriateness of a political activity, an employee may always seek guidance and advice from their supervisor, manager or Ethics Executive. In instances, where an employee believes that the political activity they are contemplating engaging in may conflict with or be perceived to conflict with their duties and responsibilities, they will be required to disclose their intended political activity and seek guidance from their supervisor, manager or Ethics Executive. In most cases they will be able to work together to minimize the conflict and safeguard the employee's impartiality.

Similar to the *Conflict of Interest* provisions, this disclosure requirement creates a shared obligation for employees to identify political activity that may give rise to a conflict or a perception of a conflict and for Ethics Executives to provide guidance, but ultimately it is the individual employee's responsibility to ensure that their actions do not compromise and are not perceived as compromising their neutrality. The disclosure requirement also provides management with the opportunity to adjust an employee's work activities so that the individual may be able to engage in political activity and eliminate any conflict with their professional duties.

Guidance documents and an online assessment tool will be developed to assist employees in assessing whether their intended political activity may impair or be perceived to impair their ability to perform their duties in a politically neutral manner and whether they should seek guidance from their supervisor, manager or Ethics Executive.

11. Disclosure of Wrongdoing and Reprisal Protection Provisions

Research attests to the fact that the most effective way to address wrongdoing in an organization is to prevent it from happening in the first place through an ethical organizational culture. Wrongdoing provisions in public service legislation are often a component of a broader ethical program to advance and promote an ethical organization and ethical decision-making. For wrongdoing policies to be effective, they need to be rooted in an organizational culture that promotes ethical conduct and values. Expected conduct and values must be embedded in staff orientation and onboarding, staff training and education, staff communication and engagement and workforce strategies, policies, procedures and systems.

Wrongdoing provisions in public service legislation are a vital component of a government's ethical framework to facilitate disclosures of government wrongdoing, ensure disclosures are investigated and resolved; and to protect individuals making a disclosure from reprisal. Governments at the federal, provincial and municipal level vary greatly in terms of their wrongdoing schemes including their definition of wrongdoing, mechanisms for disclosure and the role of legislative officers in their wrongdoing regimes.

City Council adopted a *Fraud Prevention Policy* in 2000 to provide guidance to employees when misuse or misappropriation of City resources and assets are suspected and to outline the responsibilities of the Auditor General and management for investigating and resolving allegations. In November 2002, after a six-month pilot, City Council also authorized the Auditor General to establish and operate a fraud and waste hotline pursuant to the Council approved *Fraud Prevention Policy*. City Council adopted the *Whistle Blower Protection Policy* in June 2011 to provide reprisal protection to employees who disclose fraud, waste and wrongdoing in good faith. The *Whistle Blower Protection Policy* introduced two new definitions, ‘waste and wrongdoing’ but did not identify mechanisms for the disclosure and investigation of these activities.

The City Manager benchmarked the City’s current policies against a range of federal, provincial and municipal jurisdictions and the literature and consulted extensively with the Auditor General and with the Integrity Commissioner.

This report recommends that the two policies be consolidated and updated as attached in Appendix F, and codified in the Toronto Public Service By-law, and apply to the Toronto Public Service. The proposed changes will result in Toronto having one of the strongest wrongdoing disclosure and reprisal schemes in governments across the world.

Proposed amendments include:

- Consolidate the City’s two policies including a single integrated definition of wrongdoing, for a unified wrongdoing framework;
- Strengthen the requirement for City employees to report wrongdoing and provide multiple channels for reporting including through the Fraud and Waste Hotline;
- Formalize the Auditor General’s authority to review, resolve and report out on allegations of wrongdoing so that systemic issues can be identified and addressed;
- Strengthen reprisal protection for public servants; and
- Affirm the role of the Integrity Commissioner to investigate allegations of wrongdoing involving Members of City Council.

At its meeting on April 1 and 2, 2014 in considering the Auditor General’s Annual Fraud and Waste Hotline Report, City Council requested that the City Manager, in consultation with the Auditor General, provide details of the Disclosure of Wrongdoing Framework in his report pertaining to the Toronto Public Service By-law. This report responds to this direction.

A. Consolidate *Fraud Prevention and Whistle Blower Protection Policies* into an Overarching Wrongdoing Framework

There is a need to consolidate these two policies and clarify the requirements to disclose, investigate and resolve wrongdoing. A unified disclosure framework will be easier for staff to understand, implement and apply and a single definition is standard across most other governments. The consolidated provisions include an updated single definition of wrongdoing that consolidates the City’s definitions of fraud, waste and wrongdoing.

The proposed definition is:

Wrongdoing refers to serious actions that are contrary to the public interest and include but are not limited to:

- Fraud;
- Theft of City assets;
- Waste: mismanagement of City resources or assets in a wilful, intentional or negligent manner that contravenes a City policy or direction by Council;
- Violations of the City's Conflict of Interest Provisions; and
- Breach of public trust.

B. Strengthen the Requirement to Report Wrongdoing and Provide Multiple Channels

The proposed provisions strengthen the requirement that City staff must disclose suspected wrongdoing or reprisals and continues the multiple internal channels that are available to City staff including through their supervisor, manager, or Division Head. The Auditor General continues to operate the City's Fraud and Waste Hotline that provides an independent and confidential channel for City staff, vendors and the public to disclose allegations of wrongdoing. An independent and confidential channel, in addition to internal channels, is leading practice.

C. Formalize the Role of the Auditor General to Investigate Wrongdoing

The proposed provisions formalize current practice that the Auditor General provides oversight related to the investigation, resolution and reporting of wrongdoing. Updated roles and responsibilities of the Auditor General and the City Manager are also included.

The Auditor General continues to operate the City's Fraud and Waste Hotline and the revised provisions consolidate the lead responsibility to investigate allegations of wrongdoing and reprisals with the Auditor General. The provisions also affirm that if the allegation is not wrongdoing, the Auditor General will refer the allegation to the appropriate City official or Accountability Officer for review and resolution.

The City Manager continues to be responsible to investigate and resolve employee misconduct. Employee misconduct that appears systemic in nature will be referred to the Auditor General for review and investigation.

The City Manager will strengthen oversight of allegations of employee misconduct, including implementing a tracking system to identify trends and continuous improvements through enhanced training and education, stronger day-to-day management oversight, improvements to internal controls, and policy or procedural amendments. The City Manager already tracks and reports quarterly to City Council, through the Employee and Labour Relations Committee, on work place injuries, grievances and arbitrations, and human rights complaints. Other employee misconduct, not currently tracked, will be so that continuous improvements can be identified and

implemented. The City Manager may report to City Council as required on employee misconduct matters as he or she determines appropriate.

To guide the implementation of the investigation of wrongdoing provisions, a case conference approach will be used. This approach will include the Auditor General and the City Manager establishing and implementing a Protocol with representatives from the Auditor General's Office, Internal Audit, Human Resources and Legal Services. A case conference approach is particularly important for allegations of wrongdoing that may also involve a human rights complaint. Pursuant to the City's *Human Rights and Anti-Harassment/Discrimination Policy*, the City's Human Rights Office is responsible to provide impartial advice and investigate alleged breaches of the City's Policy, the Ontario Human Rights Code and the *Occupational Health and Safety Act* as it relates to harassment. The protocol will assist in clarifying the process related to allegations of wrongdoing that also have an element of a human rights breach and coordinate any resulting investigations.

D. Strengthen Reprisal Protections

City Council established reprisal protections for City staff in adopting the City's *Whistle Blower Protection Policy*. The reprisal protections are generally in line with other governments however there are a few areas related to reprisal protections that can be strengthened.

Building on the City's current definition of reprisal, the provisions strengthen the definition of reprisal to include, in addition to harassment, intimidation, dismissal, suspension, demotion, discipline or the threat of any of these:

- Any punitive measure that adversely affects the employment or working conditions of the employee; and
- Directing or counselling someone to commit a reprisal.

The provisions also extend reprisal protection to City staff that co-operate in an investigation of wrongdoing in addition to City staff who disclose wrongdoing. Lastly, the provisions also consolidate the investigation of allegations of reprisal with the Auditor General. It is appropriate to consolidate this role with the Auditor General to ensure an objective and independent investigation.

E. Affirm the Role of the Integrity Commissioner to Investigate and Report on Allegations of Wrongdoing Involving Members of City Council and Local Boards

The provisions affirm the authority of the Integrity Commissioner, pursuant to the *City of Toronto Act* and the Codes of Conduct for Members of City Council and Members of Local Boards, to investigate and report on allegations of wrongdoing involving Members of Council or Local Boards.

F. Require City Agencies to Adopt and Implement Disclosure of Wrongdoing and Reprisal Protection Policies

The review of Agency human resource policies identified that some of the City Agencies have established wrongdoing policies including establishing independent mechanisms for employees to report wrongdoing. The TTC for example recently retained a third party firm to operate their hotline to report wrongdoing. Some Agencies do not have a disclosure of wrongdoing policy or reprisal protections for their employees.

This report recommends that City Agencies be required to have a disclosure of wrongdoing and reprisal protection policy that meets the following minimum policy requirements:

- Define wrongdoing;
- Establish mechanisms for employees to disclose wrongdoing;
- Establish a clear investigative process to investigate allegations of wrongdoing;
- Establish reprisal protection for employees who make an allegation of wrongdoing in good faith; and
- Report annually to their Board on allegations of wrongdoing and their resolution.

The minimum policy requirements address the key elements of an effective wrongdoing policy based on leading practice. The City will assist Agencies as required with policy support to meet these provisions.

12. Establish Ethics Executives

This report recommends formalizing the role of senior managers at the City and its Agencies as Ethics Executives. A number of other jurisdictions embed an ethics executive role in their organization as a key mechanism to support a strong ethical culture.

Establishing ethics executives across the public service strengthens the informal role that senior staff already play in promoting an ethical workplace and provides an additional channel for employees to seek advice and guidance on ethical matters in addition to their immediate managers.

Ethics executives will be responsible to:

- promote ethical conduct and decision-making;
- ensure staff are familiar with the ethical provisions included in the Toronto Public Service By-law and provide guidance on their application; and
- provide advice and guidance to staff on situations involving conflict of interest, political activity and other ethical matters.

The following positions will be formally designated as Ethics Executives:

Position	Designated Ethic Executive
City employees	Division Head
Division Heads	Relevant reporting authority (DCM, City Manager, Chief Corporate Officer)
Deputy City Managers and Deputy City Manager/Chief Financial Officer	City Manager
City Solicitor and City Clerk	City Manager and/or Integrity Commissioner
City Manager	City Solicitor and/or Integrity Commissioner
Agency Employees	Agency Head and other senior position(s) designated by the Agency Head
Agency Head	City Manager, Integrity Commissioner and/or Board Chair

Ethics Executives provide a first line for advice and guidance for senior staff and reinforce the role that all senior leaders play in the ethical health of their organizations.

The City Clerk, in addition to being an Ethics Executive for the City Clerk's Office, also acts as an Ethics Executive to the organization with respect to election related policies, information management, confidentiality and other statutes and policies under the authority of the City Clerk. The City Solicitor also may provide advice to senior City staff, although not legal advice, related to conflict of interest or the perception of conflict. Lastly, the Integrity Commissioner is also available to provide guidance to senior staff with respect to ethical matters.

13. Accountability and Transparency

As an early sign of its commitment to accountable and transparent government, City Council established an Auditor General in 2002 and an Integrity Commissioner in 2004 and requested authority from the Province to establish empowered Integrity Commissioner, Lobbyist Registrar and Ombudsman functions. The Province of Ontario subsequently included a requirement in the *City of Toronto Act, 2006*, to establish an Auditor General, an Integrity Commissioner, an Ombudsman, a Lobbyist Registry and authority to appoint a Lobbyist Registrar (collectively the "Accountability Officers"). As in other jurisdictions, it is the Accountability Officers' role to be objective and independent checks on the City's activities and hold the City administration and legislative arm of the City government accountable.

City services and programs, including most services and programs delivered through City Agencies, are subject to oversight of the Accountability Officers including:

- The **Auditor General**, responsible for assisting City Council in holding itself and its administration, accountable for public funds and for the achievement of value for money in

City operations including all City divisions, Agencies, and the offices of the Mayor and Members of Council.

- The **Lobbyist Registrar**, responsible to promote and enhance the transparency and integrity of City government decision making through public disclosure of lobbying activities and regulation of lobbyists' conduct.
- The **Ombudsman**, responsible to investigate in an independent manner any decision or recommendation made or act done or omitted in the course of the administration of the City, its local boards (restricted definition) and such City-controlled corporations as City Council may specify.

Although the Integrity Commissioner does not provide an oversight role of City services and programs, the Integrity Commissioner provides ethical education and advice on ethical matters to senior City and Agency staff as required.

The Auditor General also operates the City's Fraud and Waste Hotline and has responsibility to investigate, resolve and report out on allegations of fraud and waste reported through the hotline. This report recommends the adoption of consolidated *Disclosure of Wrongdoing and Reprisal Protection* provisions that strengthens the role of the Auditor General in this regard including reporting all allegations of wrongdoing (not just allegations received through the hotline) annually to City Council, through the Audit Committee.

The Toronto Public Service By-law also requires City Agencies to adopt and implement a disclosure of wrongdoing and reprisal protection policy including reporting wrongdoing allegations and their resolution annually to their boards.

The City of Toronto and its Agencies also report out on many aspects of their workforce to City Council in the case of the City Manager and Agency Boards in the case of City Agencies. The City Manager reports quarterly on work place injuries, grievances and complaints pursuant to the City's *Human Rights and Anti-Harassment/Discrimination Policy*. Many City Agencies report similarly to their boards. The City Manager will also report twice per Council term on the progress of achieving the Strategic Actions 2013 to 2018 including Strategic Action 18, *Develop and Implement a Workforce Plan, Talent Blueprint*, to ensure an engaged, diverse, high-performing, adaptive and productive workforce to meet current and future needs.

In some governments, the head of the public service provides a consolidated report on the state of the public service to the legislative body, including challenges and accomplishments and future directions and priorities related to the work force. The City Manager will consider this idea further and report to City Council as required.

14. Requirement to Report Breaches to the Lobbyist Registrar

The Lobbyist Registrar in her report, *Report on Lobbying during a Procurement Process*, reported out on an investigation into lobbying where it was determined that lobbying had

occurred during the RFP for professional services for the operation of beach volleyball at Ashbridge's Bay Park and Woodbine Beach Park.

The Lobbyist Registrar recommended clarifying and strengthening Toronto Municipal Code, Chapter 140, Lobbying related to the City's procurement process and recommended that City Council request the City Manager and City Solicitor to report back on measures to report breaches of the Lobbying By-law to the Lobbyist Registrar.

This report recommends that Toronto Municipal Code Chapter 140. Lobbying be amended to require all City staff directly involved in procurement processes to report breaches of the Lobbying By-law to the Lobbyist Registrar. This requirement places a positive obligation on City staff that are most likely to have interaction with lobbyists, particularly during procurement processes. City staff are required to have a general understanding of the Lobbying By-law and policies.

The proposed By-law amendment has been reviewed with the Lobbyist Registrar and the Lobbyist Registrar concurs with this approach. The City Manager's Office will work closely with the Lobbyist Registrar to improve information and education for staff related to lobbying and to communicate the requirement to report breaches to the Lobbyist Registrar for investigation and resolution.

CONCLUSION

This report recommends the establishment of a Toronto Public Service By-law for the Toronto Public Service and most City Agencies. The Toronto Public Service By-law consolidates and strengthens current provisions under an overarching chapter in the Toronto Municipal Code.

A public service by-law is important foundation legislation that strengthens the separation between the administrative and political components of Toronto's government, and advances Toronto's public service as professional, impartial and ethical.

The City Manager will work closely with the Toronto Public Service and City Agencies to ensure that the provisions of the By-law are implemented by the in-force date of December 31, 2015. Training, resources and tools will be developed to support the implementation of the By-law provisions and reinforce strong public service ethics.

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SIGNATURE

Joseph P. Pennachetti
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Attachments

- Appendix A – Summary of Key Provisions for Toronto's Public Service By-law
- Appendix B – City Agencies within the Jurisdiction of the Toronto Public Service By-law
- Appendix C – Conflict of Interest Provisions
- Appendix D – Summary of Permitted and Restricted Political Activity for Some Public Servants
- Appendix E – Political Activity Provisions
- Appendix F – Disclosure of Wrongdoing and Reprisal Protection Provisions

Summary of Key Provision for Toronto’s Public Service By-law

No.	By-law Provisions	Description
1.	Objectives	<p>The By-law includes the following objectives:</p> <ul style="list-style-type: none"> • Advance the public service as a professional body that is objective, impartial and ethical, with consistent public service requirements. • Affirm City Agencies as part of the broader public service with authority to manage their own affairs. • Ensure the public service is effective in serving the public, the Toronto government and the City as a whole through excellence in service, stewardship and commitment. • Establish the roles, responsibilities and authorities for the administration of the public service. • Recruit and develop a well-qualified public service that is reflective of Toronto’s diversity, through an impartial, merit-based system that fosters career development. • Set out the rights and duties of the public service concerning ethical conduct, including political activity and conflict of interest. • Establish procedures for the disclosure and investigation of wrongdoing in the public service and protect public servants who disclose wrongdoing from reprisals.
2.	Public Service Values	<p>The By-law will codify the core public service values that public servants will:</p> <ul style="list-style-type: none"> • Serve the public well; • Serve Council and/or their Board well; • Act with integrity; • Maintain political neutrality; • Uphold Toronto’s motto – <i>Diversity Our Strength</i>; • Use City property, services and resources responsibly;

No.	By-law Provisions	Description
		<ul style="list-style-type: none"> • Apply judgement and discretion; and • Serve the public service well.
3.	Role, Responsibilities and Authorities of the City Manager and Other City Officials to Manage Human Resources	<p>The By-law will cross- reference the role, responsibilities and authorities of the City Manager set out in Sections 169 – 1 to 169 – 10 in Toronto Municipal Code Chapter, 169, City Officials.</p> <p>The By-law will cross- reference the roles, responsibilities and authorities of the City Clerk as set out in Sections 169 – 12 to 169 – 15 and the City Solicitor as set out in Sections 169 – 25 to 169 - 27 in Toronto Municipal Code Chapter 169, City Officials.</p>
4.	Roles, Responsibilities and Authorities of City Agencies to Manage Human Resources	<p>The By-law will affirm the authority of in-scope City Agencies to appoint, promote, demote, suspend and dismiss Agency employees subject to the provisions of any personnel policies adopted by the board or collective agreements applicable to Agency employees.</p> <p>The By-law will require in-scope City Agencies to appoint an administrative head responsible to provide organizational leadership to staff and for the efficient and effective delivery of services.</p> <p>The By-law will require in-scope City Agencies to delegate the authority to appoint, promote, demote, suspend and dismiss Agency employees to the administrative head and with such limitations as the Board determines appropriate.</p>
5.	Human Resource Policy Requirements	<p>The By-law will require that at a minimum the following human resources policies be established by the City Manager and in-scope City Agencies to effectively manage human resources and meet legislative and operational requirements including:</p> <ul style="list-style-type: none"> • Absence from Work Policies to set out conditions for various leaves from work (for example, vacation, bereavement, pregnancy, parental leave); • Pay and Benefits Policies to outline remuneration or reimbursement for employees (for example, lieu time

No.	By-law Provisions	Description
		<p>and mileage);</p> <ul style="list-style-type: none"> • Hiring and Promotion Policies to outline the processes governing the appointment and promotion of staff as required by the <i>City of Toronto Act, 2006</i>; • Health and Safety Policies to fulfill requirements under the <i>Occupational Health and Safety Act</i> including maintaining a safe work environment; and • Access, Equity and Human Rights Policies to fulfill requirements under various legislation and promote access and equity in their organization.
6.	Conflict of Interest Provisions	<p>The By-law will codify the Conflict of Interest provisions attached as Appendix C to this report.</p> <p>The By-law will apply the conflict of interest provisions to the Toronto Public Service and the in-scope City Agencies.</p>
7.	Political Activity Provisions	<p>The By-law will codify the Political Activity provisions attached as Appendix E to this report.</p> <p>The By-law will apply the political activity provisions to the Toronto Public Service and the in-scope City Agencies.</p> <p>The By-law will confirm the authority of in-scope City Agencies to identify additional Agency positions that may be restricted from political activity.</p>
8.	Disclosure of Wrongdoing and Reprisal Protection Provisions	<p>The By-law will codify the Disclosure of Wrongdoing and Reprisal Protection provisions attached as Appendix F to this report and will apply the provisions to the Toronto Public Service.</p> <p>The By-law will require in-scope City Agencies to adopt a disclosure of wrongdoing and reprisal protection policy meeting the following minimum requirements:</p> <ul style="list-style-type: none"> • Define wrongdoing; • Establish mechanisms for employees to disclose wrongdoing; • Establish a clear investigative process to investigate allegations of wrongdoing; • Establish reprisal protection for employees who make

No.	By-law Provisions	Description
		<p>an allegation of wrongdoing in good faith; and</p> <ul style="list-style-type: none"> • Report annually to their Board on allegations of wrongdoing and their resolution.
9.	Ethics Executives	<p>The By-law will designate the following senior City and Agency employees as Ethics Executives:</p> <ul style="list-style-type: none"> • City Manager; City Clerk and City Solicitor; • Deputy City Managers and Deputy City Manager/Chief Financial Officer; • Division Heads; and • Agency Heads and other senior position(s) designated by the Agency Head. <p>Ethic Executive are responsible to:</p> <ul style="list-style-type: none"> • Promote ethical conduct and decision-making; • Ensure staff are familiar with the ethical provisions included in the Toronto Public Service By-law and provide guidance on their application; and • Provide advice and guidance to staff on situations involving conflict of interest, political activity and other ethical matters. <p>The By-law will provide authority for Agency Heads of in-scope City Agencies to designate other senior Agency staff as Ethics Executives.</p>

City Agencies within the Jurisdiction of the Toronto Public Service By-law

Service Agencies

1. Exhibition Place
2. Heritage Toronto
3. Sony Centre for the Performing Arts
4. St. Lawrence Centre for the Arts
5. Toronto Centre for the Arts
6. Toronto Parking Authority
7. Toronto Public Health
8. Toronto Transit Commission
9. Toronto Zoo
10. Yonge-Dundas Square

Association of Community Centres

11. 519 Church Street Community Centre
12. Applegrove Community Complex
13. Cecil Street Community Centre
14. Central Eglinton Community Centre
15. Community Centre 55
16. Eastview Neighbourhood Community Centre
17. Harbourfront Community Centre
18. Ralph Thornton Community Centre
19. Scadding Court Community Centre
20. Swansea Town Hall

Arenas

21. George Bell Arena
22. Larry Grossman Forest Hill Memorial Arena
23. Leaside Memorial Community Gardens Arena
24. McCormick Playground Arena
25. Moss Park Arena
26. North Toronto Memorial Arena
27. Ted Reeve Community Arena
28. William H. Bolton Arena

Conflict of Interest Provisions

1. Policy Statement

City and Agency employees are expected to conduct themselves with personal integrity, ethics, honesty and diligence in performing their duties. City and Agency employees are required to support and advance the interests of the City or Agency and avoid placing themselves in situations where their private interests may be in conflict with, or be perceived to be in conflict with the interests of the City or Agency.

In certain circumstances, the duties and obligations imposed by this Policy will continue after the employee leaves the City or Agency including that a City or Agency employee will not directly or indirectly use or disclose confidential information unless required by law or authorized by the City or Agency after the employee leaves the public service.

2. Definitions

Conflict of Interest

A conflict of interest refers to a situation in which a public servant has private interests that could compete with or that may be perceived to compete with their duties and responsibilities as an employee.

A conflict of interest can also be a situation where an employee can use their position for private gain or expectation of private gain, non-monetary or otherwise. A conflict may also occur when the private interest benefits an employee's family, friends or organizations in which the employee or his or her family or friends have a financial interest.

Private Interest

Private (or personal) interest means a relationship, obligation, duty, responsibility or benefit unique to the employee or a person related to the employee.

Confidential Information

Confidential information includes, but is not limited to, privileged information, draft by-laws or staff reports, third party information, personal information, technical, financial or scientific information and any other information collected, obtained or derived for or from City records that must or may be kept confidential under the *Municipal Freedom of Information of Privacy Act, 1990*, the *Personal Health Information Protection Act, 2004* or the *City of Toronto Act, 2006*.

3. Requirement to Report Conflict of Interest

Employees of the City or Agency may seek advice in relation to the application of this Policy from, and must report any conflict of interest or perceived conflict of interest to their immediate supervisor/manager or their Ethics Executive.

4. Conditions

The rules and examples that follow do not exhaust the possibilities for conflict of interest, but they identify obvious situations covered by these provisions. The obligations and duties applicable to an employee resulting from these provisions do not replace, remove or supersede the duties and obligations required by applicable professional designations or regulatory bodies.

5. Preferential Treatment

City or Agency employees are not allowed to use their positions to give any one preferential treatment that would advance their own interest or that of any party where such advance is contrary to the interests of the City or Agency, or would be otherwise contrary to the expectations set out in these provisions.

6. Gifts

A City or Agency employee will not accept, arrange to accept, give or request to be given a reward, gift, advantage or benefit of any kind from any person or entity that influences or could be perceived to influence the performance of the employee's duties.

A City or Agency employee, who receives a gift in the performance of their duties, will immediately notify his or her manager/supervisor or Ethics Executive.

A City or Agency employee may accept a gift of nominal value given as an expression of courtesy or hospitality if doing so does not influence, or would not be perceived to influence, the performance of the employee's duties. The head of a City or Agency department or division may pre-determine that no gift may be accepted under any circumstance.

7. Employment of Relatives

The City and Agencies will maintain policies that govern the employment of relatives. The Policy at a minimum must outline the rules restricting supervisory relationships between relatives, and the recruitment and appointment of a relative.

8. Use of City or Agency Property

A City or Agency employee may not use, or permit the use of, City or Agency property, including facilities, equipment, supplies or other resources, for activities not associated with the proper performance of their duties. Any exceptions must be approved by the City or Agency department or division head.

9. Use or Disclosure of Confidential Information

A City or Agency employee may not, during the term of his or her employment or any time thereafter, directly or indirectly use or disclose any confidential information obtained by him

or her during the course of his or her employment with the City or Agency to another person or entity unless the employee is required by law, or authorized by the City or Agency. The obligation to maintain confidentiality, except as required or permitted by law or the City or Agency, continues after the employee leaves the public service.

10. Disclosure of Financial Interests

A City or Agency employee involved in a decision-making process related to a contract, sale, or business transaction who knowingly has a financial interest in the City or Agency contract, sale or business transaction, or has family members, friends or business associates with such interests, must disclose their interest to their immediate supervisor/manager or their Ethics Executive and remove themselves from any decision-making process.

11. Participating in Decision-Making

A City or Agency employee will not participate in a decision-making process with respect to a matter that they are able to influence in the course of his or her duties if they could benefit from the decision, unless they are authorized by the City or Agency department or division head.

12. Engaging in Outside Work or Business Activities

A City or Agency employee may not engage in any outside work or business activity that conflicts with his or her duties to the City or City Agency; or could benefit from confidential information obtained during the course of his or her employment.

13. Appearing Before City or Agency Committees

A City or Agency employee may not appear before a City or Agency committee on behalf of a private citizen or third party other than for themselves or a family member.

City and Agency employees must identify themselves as such if they are making a deputation to a City or Agency committee, unless they appear as a private citizen on matters that do not relate to their employment.

14. Conduct Respecting Lobbyists

All City and Agency employees should be familiar with the requirements and expectations for dealing with lobbyists as outlined in Toronto Municipal Code Chapter 140, Lobbying.

15. Failure to Comply with the Policy

Individuals who fail to comply with the conflict of interest provisions may be subject to disciplinary action up to and including dismissal and, where warranted, legal proceedings.

16. Related Policies

- City and Agency Policies Governing the Employment of Relatives
- Toronto Municipal Code Chapter 140, Lobbying

Summary of Permitted and Restricted Political Activity for Some Public Servants

Public Servant	Permitted Political Activity ¹	Restricted Political Activity
City Manager, City Solicitor, Deputy City Managers	None	<ul style="list-style-type: none"> • May not support or oppose a political party or candidate in a municipal, provincial and federal election. • May not seek appointment or election to public office. • May not canvass or campaign on a Toronto municipal referendum question.
City Clerk and employees that support the City Clerk to administer a Toronto election	None	<ul style="list-style-type: none"> • May not support or oppose a political party or candidate in a municipal, provincial and federal election. • May not seek appointment or election to public office. • May not canvass or campaign on a Toronto municipal referendum question.
Division Heads and Heads of Large Agencies ²	<ul style="list-style-type: none"> • Contribute financially to a campaign (except to a Toronto election campaign or referendum question). • Be a member of a political party. • Seek appointment or election to public office in accordance with employer and statutory leave requirements. 	<ul style="list-style-type: none"> • May not support or oppose a political party or candidate in a municipal, provincial and federal election. • May not canvass or campaign on a Toronto municipal referendum question.
Designated Directors and Similar Positions ³ , and Heads of Small Agencies ⁴	<ul style="list-style-type: none"> • Contribute financially to a campaign (except to a Toronto election campaign or referendum question). • Be a member of a political party. • Seek appointment or election to public office in accordance with 	<ul style="list-style-type: none"> • May not support or oppose a candidate in a Toronto municipal election. • May not canvass or campaign on a Toronto municipal referendum question.

¹ All employees have the right to vote and attend all-candidates meetings.

² Large Agencies include Exhibition Place, Toronto Parking Authority, Toronto Public Health, Toronto Transit Commission, and Toronto Zoo.

³ Designated directors and similar positions will be identified through an assessment tool that has regard for function and role, discretion, delegation of authority and a range of other considerations.

⁴ Small Agencies include the Arena Boards, AOCCs, Heritage Toronto, Sony Centre for the Performing Arts, St. Lawrence Centre for the Performing Arts, Toronto Atmospheric Fund, Toronto Centre for the Arts, and Yonge-Dundas Square.

Public Servant	Permitted Political Activity ¹	Restricted Political Activity
	<p>employer and statutory leave requirements.</p> <ul style="list-style-type: none"> • Support a candidate and/or political party in federal, provincial and municipal elections, except Toronto's. 	
Employees who enforce and/or prosecute City by-laws or Provincial statutes	<ul style="list-style-type: none"> • Contribute financially to a campaign (except to a Toronto election campaign or referendum question). • Be a member of a political party. • Seek appointment or election to public office in accordance with employer and statutory leave requirements. • Support a candidate and/or political party in federal, provincial and municipal elections, except Toronto's. 	<ul style="list-style-type: none"> • May not support or oppose a candidate in a Toronto municipal election. • May not canvass or campaign on a Toronto municipal referendum questions.
Employees who routinely provide governance and procedural advice directly to City Council, Agency Boards and their Committees or in the operation of the Office of the Mayor and Members' Offices	<ul style="list-style-type: none"> • Contribute financially to a campaign (except to a Toronto election campaign or referendum question). • Be a member of a political party. • Seek appointment or election to public office in accordance with legal and employer policy requirements. • Support a candidate and/or political party in a federal, provincial and municipal election, except Toronto's. 	<ul style="list-style-type: none"> • May not support or oppose a candidate in a Toronto municipal election. • May not canvass or campaign on a Toronto municipal referendum questions.
Employees recruited by the City Clerk to support a Toronto election or referendum question	None in the Toronto municipal election that they are working.	<ul style="list-style-type: none"> • May not support or oppose a candidate in a Toronto municipal election that they are working. • May not canvass or campaign on a Toronto municipal referendum questions during the Toronto municipal election that they are working.

Political Activity Provisions

1. Policy Statement

The City recognizes the right of City and Agency employees to participate in political activity balanced against the City's legitimate interest in having a public service that both is and appears to be impartial. All public servants have the fundamental right to vote and attend all-candidates meetings.

The political activity By-law provisions set out restrictions on the use City or Agency resources while engaging in political activity and while at work; and establish requirements for City and Agency employees when they seek appointment or election to public office. These provisions also set out limitations for some public servants.

The political activity provisions address the need for a balance between an employees' right to engage in political activity and the requirement for the public service to be politically impartial.

2. Right to Engage

All City and Agency employees are entitled to vote and attend all-candidate meetings and engage in political activity subject to the political activity provisions.

3. Definition of Political Activity

Political activity includes:

- supporting or opposing a political party and/or candidate before or during an election;
- seeking nomination or being a candidate in an election;
- seeking appointment to a municipal council or school board; or
- canvassing or campaigning on a Toronto municipal referendum question.

Political activity is applicable to municipal, school board, provincial and federal elections and Toronto municipal referendum questions.

4. Prohibited Political Activities

A City or Agency employee will not:

- Use City or Agency resources, including facilities, equipment or supplies while engaging in political activity.
- Engage in political activity during working hours.
- Engage in political activity while wearing his or her uniform.

- Wear clothing or buttons that advertise any candidate, political party or referendum issue while at work or while wearing a City or Agency uniform.
- Use his or her title or position within the City or Agency in a way that would lead a member of the public to infer that the City or Agency is endorsing a candidate, political party or referendum question.

5. Designated Positions

The following City and Agency positions are "Designated Employees" and have limitations on the political activity they may engage in:

- City Manager
- City Solicitor
- Deputy City Managers
- City Clerk and staff that support the City Clerk to administer a Toronto election
- Division Heads
- Agency Heads of Large and Small Agencies⁵
- Designated Directors and Similar Positions
- Employees who routinely provide governance and procedural advice directly to City Council, Agency Boards and their Committees or in the operation of the Office of the Mayor and Members' Offices;
- Employees who enforce and/or prosecute City by-laws or Provincial statutes; and
- City and Agency employees that support the City Clerk in the administration of a Toronto election or referendum question.

The City Manager, Deputy City Managers, City Solicitor, City Clerk and Elections staff may not engage in political activity in any election.

Division Heads and Heads of Large Agencies are permitted to run for elected office, seek appointment to a municipal council or school board, be a member of a political party, and contribute to a candidate (except in a Toronto municipal election). These positions are restricted from campaigning or canvassing for a political party or candidate before or during municipal, provincial and federal elections or related to a Toronto referendum question.

Heads of Small Agencies, Designated Directors and Similar Positions, employees who routinely provide governance and procedural advice directly to City Council, Agency Boards

⁵ Large agencies include Exhibition Place, Toronto Parking Authority, Toronto Public Health, Toronto Transit Commission, and Toronto Zoo. Small Agencies include the Arena Boards, AOCCs, Heritage Toronto, Sony Centre for the Performing Arts, St. Lawrence Centre for the Performing Arts, Toronto Atmospheric Fund, Toronto Centre for the Arts, and Yonge-Dundas Square.

and their Committees or in the operation of the Office of the Mayor and Members' Offices, and employees who enforce and/or prosecute City by-laws or Provincial statutes are restricted from campaigning or canvassing to support or oppose a candidate before or during a Toronto municipal election or campaigning or canvassing on a Toronto referendum question.

City and Agency employees that support the City Clerk in the administration of a Toronto election or referendum question may not engage in political activity in the Toronto election that they are working.

6. Employees Not Designated

City and Agency employees not identified as 'Designated Employees' in section 5 are required to disclose intended political activity and seek guidance in cases where the employee is uncertain of whether the political activity may impair or be perceived to be impairing their ability to perform their duties in a politically impartial manner. In such cases, the employee should seek guidance from their immediate supervisor, manager or Ethics Executive.

7. Seeking Election or Appointment to Political Office

City or Agency employees may seek election or appointment to political office, subject to the requirements set out below.

A. City or Agency Employees Seeking Election to Toronto City Council

A City or Agency employee is eligible to be a candidate for and to be elected as a member of Toronto City Council. In accordance with the *Municipal Elections Act, 1996*, a City or Agency employee:

- Must take an unpaid leave of absence to become a candidate for Toronto City Council. The leave will begin on the day the employee files his or her nomination papers and will end on voting day.
- Must provide written notice, in advance, of his or her intentions to take unpaid leave pursuant to City or Agency procedures.
- Is entitled to be paid out any vacation pay or overtime pay owing during the period of the unpaid leave of absence.

If the City or Agency employee who takes a leave of absence is not elected, the leave will not be counted in determining the length of his or her service for any purpose and the service before and after the leave shall be deemed to be continuous for all purposes.

B. City or Agency Employees Seeking Appointment to Toronto City Council

A City or Agency employee is eligible to seek appointment to and be appointed as a member of Toronto City Council. Any City or Agency employee seeking appointment must:

- Take an unpaid leave of absence. The leave will begin on the day the employee files his or her declaration of qualification and consent papers with the City Clerk and will end when City Council determines who will be appointed.
- Provide written notice, as soon as reasonably possible, of his or her intentions to take unpaid leave to seek appointment pursuant to City or Agency procedures.

If the City or Agency employee is elected or appointed to Toronto City Council, he or she will be deemed to have resigned from employment with the City or Agency immediately before making the declaration of office referred to in section 186 of the *City of Toronto Act, 2006*.

C. City or Agency Employees Seeking Election or Appointment to Other Municipal Councils or School Boards

A City or Agency employee is eligible to be a candidate for and to be elected as a member of any municipal council or school board or seek appointment to and to be appointed as a member of any municipal council or school board.

To become a candidate or seek appointment, a City or Agency employee may take an unpaid leave of absence. If the employee intends to take unpaid leave, he or she must provide written notice to request an unpaid leave pursuant to City or Agency procedures.

If a City or Agency employee is elected or appointed to another municipal council or school board, the employee is not required to resign, but is subject to the *Conflict of Interest* policy, other applicable employment policies and performance expectations.

D. City or Agency Employees Seeking Election to Provincial and Federal Office

A City or Agency employee is eligible to be a candidate for and to be elected as a member of Provincial parliament or Federal parliament. To become a candidate, a City or Agency employee must take an unpaid leave of absence and provide written notice to request an unpaid leave pursuant to City or Agency procedures.

If a City or Agency employee is elected to provincial or federal office, they shall be deemed to have resigned from employment with the City or Agency.

8. Use of Corporate Resources

A City or Agency employee who is on a leave of absence while seeking election or appointment to any elected office cannot use any City or Agency resources during that time or act in a manner that could reasonably give rise to a presumption that they are using City or Agency resources during the leave period. All access to City or Agency resources, including security, parking, voice-mail, and computer access will be temporarily disabled during the employee's leave.

9. Employee Time to Vote

The City and its Agencies will ensure that every employee who is qualified to vote will have three consecutive hours available to vote while the polls are open on election day.

10. Seeking Guidance and Advice

If a City or Agency employee is unsure about the appropriateness of his or her participation in political activity, they should consult with their immediate supervisor/manager or their Ethics Executive.

11. Failure to Comply with the Policy

A City or Agency employee who fails to comply with the political activity provisions may be subject to disciplinary action up to and including dismissal.

12. Related Policy

City of Toronto Policy on Use of City Resources during an Election (adopted by City Council July 11, 2012)

Disclosure of Wrongdoing and Reprisal Protection Provisions

1. Policy Statement

The purpose of the disclosure of wrongdoing and reprisal protection provisions is to facilitate the disclosure of wrongdoing that is contrary to the public interest, ensure that all disclosures are investigated, and to protect from reprisal, those employees who in good faith report wrongdoing.

The City of Toronto will not tolerate wrongdoing and all employees have a duty to report suspected wrongdoing. Disclosures of wrongdoing will be investigated in accordance with these provisions in order to maintain public confidence in the delivery of City services and the use of City resources.

These provisions address only those matters that are in the public interest and for which there are no established mechanisms for consideration and investigation. For example, it is not intended to address matters that can be dealt with through existing procedures, established through Collective Agreements or City policies such as health and safety and human rights and anti-harassment.

2. Definitions

Wrongdoing

Wrongdoing refers to serious actions that are contrary to the public interest including but not limited to:

- Fraud;
- Theft of City assets;
- Waste: mismanagement of City resources or assets in a wilful, intentional or negligent manner that contravenes a City policy or direction by Council;
- Violations of the City's Conflict of Interest provisions; and
- Breach of public trust.

Reprisal

Reprisal is any measure taken or threatened as a direct result of disclosing or being suspected of disclosing an allegation of wrongdoing or co-operating in an investigation into an alleged wrongdoing.

Reprisal includes but is not limited to:

- Disciplinary measures;

- Demotion of the employee;
- Suspension of the employee;
- Termination of the employee;
- Intimidation of the employee;
- Any punitive measure that adversely affects the employment or working conditions of the employee; and
- Directing or counselling someone to commit a reprisal.

3. Responsibilities of the Auditor General

The Auditor General's Office is responsible to:

- Operate the Fraud and Waste Hotline, undertake preliminary review of allegations of wrongdoing and apply the *Disclosure of Wrongdoing and Reprisal Protection* provisions (and definition);
- Investigate or refer responsibility for investigations of alleged wrongdoing to the City Manager or designate;
- Provide oversight to ensure investigations led by the City Manager or designate are appropriately conducted;
- Inform the City Manager of allegations of wrongdoing in a timely manner;
- Refer allegations that do not constitute wrongdoing under these provisions to the appropriate City official or Accountability Officer for investigation and appropriate action; and
- Investigate allegations of reprisals under the *Disclosure of Wrongdoing and Reprisal Protection* provisions, in consultation with the City Manager or designate.

4. Responsibilities of the City Manager

The City Manager is responsible to:

- Lead and advance a culture rooted in the highest ethical standards for City employees;
- Ensure City employees understand their ethical rights and responsibilities, including their responsibilities under the *Disclosure of Wrongdoing and Reprisal Protection* provisions;
- Investigate or refer responsibility to City staff to investigate alleged wrongdoing, as referred by the Auditor General, and ensure these investigations are appropriately conducted;
- Report the results of investigations of alleged wrongdoing to the Auditor General;
- Investigate and resolve allegations of employee misconduct that do not constitute wrongdoing as defined in the *Disclosure of Wrongdoing and Reprisal Protection* provisions;

- Ensure comprehensive tracking of employee misconduct to identify trends, and improvements; implement corrective actions to strengthen management oversight and make improvements to internal control systems and procedures based on findings; and ensure regular reporting of these matters; and
- Ensure recommendations made by the Auditor General in his reports addressing wrongdoing are implemented on a timely basis including systemic issues identified by the Auditor General.

5. Responsibilities of Managers

Managers are responsible to:

- Promote ethical conduct and support ethical decision-making in their areas of responsibility;
- Undertake investigations of alleged wrongdoing appropriately;
- Report the results of investigations of alleged wrongdoing to the Auditor General;
- Investigate and resolve allegations of employee misconduct that do not constitute wrongdoing as defined in the *Disclosure of Wrongdoing and Reprisal Protection* provisions;
- Establish and maintain a system of internal controls to detect and prevent wrongdoing; and
- Be familiar with the types of wrongdoing that could occur within their area of responsibility and be proactive in taking steps to guard against such activities.

Managers will support and co-operate with the Auditor General's Office, other involved Divisions, and law enforcement agencies in the detection, disclosure and investigation of wrongdoing, including the prosecution of offenders.

6. Disclosure of Wrongdoing

All City employees who are aware that a wrongdoing has occurred will immediately notify his or her manager, their Division Head, or the Auditor General's Office. Employees who report wrongdoing in good faith will be protected from reprisal as described in Section 13 to 15.

Any employee who knowingly makes a false complaint in bad faith or who knowingly makes a false or misleading statement that is intended to mislead an investigation of a complaint, may be subject to disciplinary or legal action as determined by the City Manager in consultation with the City Solicitor and Human Resources.

City employees who disclose wrongdoing will fully co-operate with the Auditor General's Office, other involved Divisions and law enforcement agencies during the course of an investigation and will make all reasonable efforts to be available to assist the above noted persons with the investigation.

a. Allegations received by City Management

Allegations of wrongdoing received by City management must be immediately reported to their Division Head or the Deputy City Manager or City Manager if the Division Head is implicated in the allegation. Allegations of wrongdoing received by Division Heads, Deputy City Managers or the City Manager will be immediately reported to the Auditor General.

b. Allegations Received by the Auditor General

When an allegation of wrongdoing is received by the Auditor General's Office that will be investigated, the Auditor General's Office will inform the City Manager in a timely manner. Reported allegations to the Auditor General that do not constitute wrongdoing as defined in the *Disclosure of Wrongdoing and Reprisal Protection* provisions, will be referred to the appropriate City official or Accountability Officer for investigation and appropriate action.

7. Confidentiality

The identity of individuals involved in an investigation, including the identity of an individual alleging wrongdoing and the identity of an individual alleged to have committed wrongdoing, will be protected to the extent possible.

The Auditor General's Office and all City employees and officials, aware of or participating in an investigation of wrongdoing shall treat all information received confidentially. All reasonable efforts will be made to maintain confidentiality. Investigation results will not be disclosed or discussed with anyone other than those who have a legitimate need to know and such disclosures shall be restricted to what must be disclosed to ensure a thorough, effective and complete investigation or as otherwise required by law.

Individuals who improperly breach confidentiality will be subject to disciplinary action up to and including dismissal as determined by the City Manager in consultation with the City Solicitor and Human Resources.

8. Anonymous Reporting

Employees may remain anonymous when reporting suspected wrongdoing.

9. Investigations

All disclosures of alleged wrongdoing as defined in the *Disclosure of Wrongdoing and Reprisal Protection* provisions will be investigated by the Auditor General who may refer responsibility to the City Manager or designate for the investigation depending on the nature and scope of the wrongdoing.

The Auditor General's Office will provide oversight to ensure investigations of alleged wrongdoing led by the City Manager or his or her delegate are appropriately conducted. The City Manager or designate will periodically report on the status of any ongoing investigation of alleged wrongdoing to the Auditor General and will report the outcome of the investigation to the Auditor General.

Decisions to prosecute or refer the investigation results to the Toronto Police Service or other regulatory agencies for independent investigation will be made through a consultative process between the Auditor General, City Manager, City Solicitor and the Executive Director of Human Resources.

a. Expectations of Employees

It is expected that employees will fully co-operate with the Auditor General's Office, the City Manager, other involved Divisions and law enforcement agencies during the course of an investigation and will make all reasonable efforts to be available to assist the above noted persons with the investigation.

City employees contacted by the media with respect to a wrongdoing investigation shall refer the media to the Director of Strategic Communications or their designate.

b. Access to Information

Within the scope of an investigation, the Auditor General and the City Manager or his or her delegate(s) will have:

- Free and unrestricted access to all City records, employees and premises, whether owned or rented; and
- The authority to examine, copy, or remove all or any portion of the contents of electronic or hard copy files, desks, cabinets, and other City facilities when undertaking all other investigations without prior knowledge or consent of any individual who might use or have custody of any such items in accordance with applicable City policies.

10. Right to Respond

The individual against whom allegations are being made will be given the opportunity to respond to those allegations as part of the investigation. This requirement is subject to any collective agreement provisions respecting the rights of employees in the disciplinary process.

11. Following an Investigation of Alleged Wrongdoing

a. Minimizing Future Risk

Upon conclusion of an investigation, recommendations may be made by the Auditor General to the City Manager in order to minimize future risk.

b. Disciplinary Action for Wrongdoing

If alleged wrongdoing by an employee is substantiated through an investigation, the employee will be subject to disciplinary action up to and including dismissal as determined by the City Manager in consultation with the City Solicitor and the Executive Director of Human Resources.

12. Tracking and Reporting

The Auditor General will track and report annually to City Council through the Audit Committee on the disclosure, investigations and resolution of allegations of wrongdoing.

13. Reprisal Protection

No person shall take a reprisal against a City employee because he or she has:

- sought advice about making a disclosure about wrongdoing;
- made a disclosure about wrongdoing in good faith;
- co-operated in an investigation or other process related to a disclosure of wrongdoing; or
- is suspected of any of the above actions.

Reprisal protection may not be able to be extended to employees whose identity cannot be confirmed.

14. Reporting and Investigating Reprisal

A City employee who believes that they are the subject of a reprisal following a disclosure of wrongdoing shall notify the Executive Director of Human Resources, City Manager or the Auditor General immediately. If the reprisal involves a Member of City Council or a Member of a Local Board, the employee shall notify the Integrity Commissioner immediately.

A City employee informed of, or who becomes aware of a reprisal against an employee, has a duty to notify the Executive Director of Human Resources, City Manager, the Auditor General or the Integrity Commissioner. The Executive Director of Human Resources and City Manager who receive such disclosures will notify the Auditor General or Integrity Commissioner immediately.

Allegations of reprisal will be the subject of investigation. The Auditor General will lead the investigations of alleged reprisals involving staff in consultation with the City Manager. The Integrity Commissioner will lead the investigations of alleged reprisals involving Members of City Council or Members of Local Boards.

15. Following an Investigation of Reprisal

Where the investigation substantiates the allegations of reprisals, the Auditor General will inform the City Manager and the employee(s) involved will be subject to disciplinary action up to and including dismissal as determined by the City Manager in consultation with the City Solicitor and Executive Director of Human Resources.

The City Manager will consult with the Executive Director of Human Resources and the City Solicitor to determine and take appropriate actions to stop, reverse or remedy a reprisal against an employee.

16. Special Investigations

a. Members of City Council and their Staff

Where it is alleged that a Member of City Council or their staff has committed wrongdoing, improperly breached confidentiality under these provisions or committed a reprisal, the Integrity Commissioner is responsible for receiving, reviewing, investigating and reporting pursuant to the *City of Toronto Act, 2006* and *Code of Conduct for Members of City Council*.

Members of City Council and their staff will cooperate with the Integrity Commissioner during investigations of wrongdoing and provide the Integrity Commissioner with access to information.

b. Senior Employees

Where it is alleged that the City Manager, City Clerk or City Solicitor has committed wrongdoing, improperly breached confidentiality under these provisions or committed a reprisal, the Auditor General will retain a third party investigator and transmit their findings to City Council.

c. Accountability Officers and their Staff

Where it is alleged that an Accountability Officer or their staff has committed wrongdoing, improperly breached confidentiality under these provisions or committed a reprisal, a third party investigator will be used and their findings will be reported to City Council.

17. Related Policies

- Code of Conduct for Members of Council, City of Toronto
- Toronto Municipal Code, Conflict of Interest Provisions