

Strengthening Public Service Governance – A Public Service By-Law For Toronto

Presentation to Executive Committee

Council Direction

City Council at its meeting on November 27, 2012 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 by-law that included City divisions and City Agencies within its jurisdiction.

Key Elements of Public Service Legislation

- The **employment framework** which sets out the roles, responsibilities and authorities of government officials and entities for the management of human resources.
- The **ethical framework** which establishes provisions in the areas of conflict of interest, political activity and the disclosure of wrongdoing and reprisal protection.

A Public Service By-Law for Toronto

- Toronto will be the first Canadian municipal government to enact by-law provisions consistent with public service legislation.
- The City already has many elements of public service legislation in place including strong ethical policies. The By-law will consolidate and codify these public service elements in Toronto's Municipal Code.

Toronto Public Service By-Law - Application

In-Scope

- All City Divisions
- Arena Boards
- Association of Community Centres
- Exhibition Place
- Heritage Toronto
- Sony Centre for the Performing Arts
- St. Lawrence Centre for the Arts
- Toronto Centre for the Arts
- Toronto Parking Authority
- Toronto Public Health
- Toronto Transit Commission
- Toronto Zoo
- Yonge-Dundas Square

Not In-Scope

- Toronto Atmospheric Fund
- Toronto Polices Service Board
- Toronto Public Library Board
- City-Controlled Corporations
- Toronto's Accountability Officers

Objectives of the TPS By-Law

- Advance the public service as a professional body.
- 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.
- 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.
- 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 and protect public servants who disclose wrongdoing from reprisals.

Council and Agency Board Members Codes of Conduct

- The Toronto Public Service By-law will work in concert with the Members Code of Conduct and the Code of Conduct for Local Boards.
- The Public Service serves Council or a Board as a whole and the combined interests of all members as evidenced through their decisions.
- Members of Council and Agency boards are also responsible for preserving public trust and confidence in the integrity of the public service and for supporting public servants' responsibility to provide professional and frank advice.

Research and Consultation

The development of the Toronto Public Service By-law was informed by jurisdictional research that included a review of the following jurisdictions:

- **Federal:** Government of Canada, New Zealand
- **Provincial:** Alberta, British Columbia, Ontario
- **Municipal:** Calgary, Edmonton, Hamilton, Vancouver

Toronto Public Service By-Law

Overview of Key Recommendations and Provisions

Key Components of the By-Law

Public Service Values

Role, Responsibilities and Authorities of the City Manager and City Agencies to Manage Human Resources under their Authority

Provisions for Conflict of Interest, Political Activity and Disclosure of Wrongdoing and Reprisal Protection

Establishment of Ethics Executives

Public Service Values

- **The proposed Public Service Values** support a strong ethical culture across the public service and include:
 - 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
 - Serve the public service well

Conflict of Interest Provisions

- **Conflict of Interest Provisions** ensure that public servants' private interests are not in conflict with their public service duties and responsibilities.
- Council adopted a *Conflict of Interest* Policy in 2000 and requested City Agencies to adopt similar provisions.
- Minor changes are proposed to ensure that the provisions are in line with leading practice including an updated definition, clearer guidance to employees, and obligations regarding the use or disclosure of confidential information.

Political Activity Provisions

- **Political Activity Provisions** balance the need to preserve the neutrality of the public service with an employee's constitutional right to engage in political activity.
- The proposed provisions include an updated definition of political activity, updates existing requirements for public servants when they seek political office, and clarifies permitted and restricted political activity for some public servants.

Disclosure of Wrongdoing and Reprisal Protection Provisions

- **Disclosure of Wrongdoing and Reprisal Protection Provisions** set out mechanisms to disclose, investigate and resolve allegation of government wrongdoing and reprisal protection for public servants who in good faith disclose wrongdoing.
- Proposed updates include:
 - Consolidate the City's *Fraud Prevention and Whistle Blower Protection* Policies, including a single definition of "wrongdoing".
 - Formalize the Auditor General's authority to review, resolve and report out on allegations of wrongdoing.
 - Strengthen the requirement for City employees to report wrongdoing and provide multiple channels for reporting including through the Fraud and Waste Hotline.
 - Strengthen reprisal protection for public servants.
 - Affirm the role of the Integrity Commissioner to investigate allegations of wrongdoing involving Members of City Council.

Disclosure of Wrongdoing and Reprisal Protection Provisions for Agencies

- The TPS By-law will require Agencies to adopt and implement disclosure of wrongdoing and reprisal protection provisions which:
 - Define wrongdoing;
 - Establish disclosure mechanisms;
 - Establish a process to investigate allegations;
 - Establish reprisal protections for employees who disclose wrongdoing in good faith; and
 - Report annually to their Board on allegations of wrongdoing and their resolution.

Ethics Executives

Position	Designated Ethics Executive
City employees	Division Heads
Division Heads	Relevant reporting authority (City Manager, DCM)
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 position(s) designated by the Agency Head
Agency Head	City Manager, Integrity Commissioner and/or Board Chair

Recommendations For Not In-Scope Boards, Corporations and Accountability Officers

- Restricted Boards - The Toronto Library Board and Toronto Police Services Board
- Toronto Atmospheric Fund
- City-Controlled Corporations
- Toronto's Accountability Officers

Next Steps

Report to Council

- June 10, 2014

By-Law Readiness

- July 1, 2014 –
December 30, 2015

By-Law in force

- December 31, 2015

Toronto Public Service By-Law

Staff Report Recommendations

Report Recommendations

1. Establish a new Toronto Municipal Code Chapter for the public service reflecting the provisions outlined in the report, including adopting updated provisions for: (1) *Conflict of Interest* (2) *Political Activity*, and (3) *Disclosure of Wrongdoing and Reprisal Protection*.
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 updated provisions contained in the report effective December 31, 2015.
3. Extend the application of the public service provisions to in-scope City Agencies including provisions related to: (1) *Conflict of Interest* and (2) *Political Activity*, and direct the Agency Boards to implement these provisions.

Report Recommendations

4. Require in-scope City Agencies to adopt and implement disclosure of wrongdoing and reprisal protection provisions pursuant to the minimum requirements outlined in the report.
5. 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 the report.
6. Direct that the By-law changes come into force on December 31, 2015 for the Toronto Public Service and in-scope City Agencies.
7. Authorize the City Manager to amend Relationship Frameworks in place for in-scope City Agencies to align with the provisions of the Toronto Public Service By-law as required.

Report Recommendations

8. 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's, and to adopt and implement disclosure of wrongdoing and reprisal protection provisions meeting the minimum requirements established for City Agencies.
9. 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's.
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."

Report Recommendations

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. 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 included in the report;
 - b. require the Accountability Officers and their staff to comply with the City's *Political Activity* provisions 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; (*con't on next page*)

Report Recommendations

- c. extend reprisal protection pursuant to the *Disclosure of Wrongdoing and Reprisal Protection* provisions contained in the report to the Accountability Officer's staff; and
 - d. establish a mechanism for the investigation and reporting of allegations of wrongdoing for the Accountability Officer's and their staff pursuant to the *Disclosure of Wrongdoing and Reprisal Protection* provisions contained in the report.
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.