



**STAFF REPORT
ACTION REQUIRED**

Amendments to *Toronto Municipal Code, Chapter 140, Lobbying* (“Lobbying By-law”)

Date:	September 4, 2015
To:	Executive Committee
From:	City Manager
Wards:	All

SUMMARY

This report responds to City Council’s direction which requested the City Manager, in consultation with the City Solicitor and the Lobbyist Registrar, to report back to City Council on: (1) clarifying and strengthening *Toronto Municipal Code, Chapter 140, Lobbying* (“Lobbying By-law”) to explicitly require that consultant lobbyists disclose their ultimate client, and (2) amendments to the Lobbying By-law to permit the Lobbyist Registrar to impose conditions for registration, continued registration or renewal of registration as permitted by section 166 of the *City of Toronto Act, 2006* (“COTA”).

Council also directed the City Manager report back on requesting legislative amendments to COTA to: (3) enable the Lobbyist Registrar to impose administrative sanctions, including administrative monetary penalties and prohibiting a lobbyist who has been found in breach of the by-law from lobbying, and (4) that these administrative sanctions be included in the next opportunity for review of COTA.

This report recommends amendments to the Lobbying By-law to require that consultant lobbyists disclose their ultimate client and proposes amendments to permit the Lobbyist Registrar to impose conditions for registration. The report also recommends amendments to allow the Lobbyist Registrar to impose temporary bans on communication for Lobbyists in breach of the Lobbying By-law, as is permitted under section 166 of COTA.

The *Five-Year Review of the City of Toronto Act* report is being considered by Executive Committee at the same meeting as this report. The ability for the Lobbyist Registrar to impose administrative sanctions, including administrative monetary penalties, has been included in the City’s COTA amendment requests for Executive Committee's consideration.

RECOMMENDATIONS

The City Manager, in consultation with the City Solicitor and the Lobbyist Registrar, recommends that:

1. City Council enact amendments to *Toronto Municipal Code, Chapter 140, Lobbying*. Specific wording for these amendments are outlined in Attachment 1 of this report and will explicitly:
 - a. Require that consultant lobbyists disclose their ultimate client.
 - b. Enable the Lobbyist Registrar to impose a temporary ban against a lobbyist who has been found in breach of the by-law from communicating with public office holders for a specified period of time, as permitted by section 166 of the *City of Toronto Act, 2006*.
 - c. Permit the Lobbyist Registrar to impose conditions for registration, continued registration or renewal of registration as permitted by section 166 of the *City of Toronto Act, 2006*.
2. City Council authorize the City Solicitor to make technical and minor amendments to the Lobbying By-law as necessary to give effect to the recommendations contained herein.

Financial Impact

The proposed amendments to the Lobbying By-law have no financial impact beyond what has already been approved in the current year's budget.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

City Council on April 1, 2 and 3, 2014 directed the City Manager, in consultation with the City Solicitor and the Lobbyist Registrar, to report back to City Council on: (1) clarifying and strengthening the Lobbying By-law to explicitly require that consultant lobbyists disclose their ultimate client, and (2) amendments to the Lobbying By-law to permit the Lobbyist Registrar the explicit authority to impose conditions for registration, continued registration or renewal of registration as permitted by section 166 of COTA. Council also directed the City Manager to report back on: (3) requesting legislative amendments to COTA to enable the Lobbyist Registrar to impose administrative sanctions, and (4) that those sanctions be included in the COTA 5-year review.
<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.CC50.2>

ISSUE BACKGROUND

The duties of the Lobbyist Registrar are outlined in COTA and the *Toronto Municipal Code, Chapter 3* (Accountability Officers) and *Chapter 140* (Lobbying). COTA requires the City to establish and maintain a lobbyist registry and permits the City to appoint a registrar. The accountability provisions in COTA are essential to the effectiveness of the City's accountability framework and to maintaining public trust in government.

In 2007, Council enacted the Lobbying By-law and appointed its first Lobbyist Registrar. The Toronto Lobbyist Registrar is one of four Accountability Officers and plays a key role in Toronto's robust accountability framework. It is the role of this office to promote the transparency and integrity of City government by maintaining a public online registry, regulating the conduct of lobbyists at the City, conducting investigations or inquiries, and enforcing the Lobbying By-law.

COMMENTS

1. Requiring consultant lobbyists to disclose their ultimate client

The Lobbying Commissioner of Canada's updated report *Administering the Lobbying Act: Observations and Recommendations Based on the Experience of the Last Five Years*, dated December 13, 2011, recommended the explicit requirement for consultant lobbyists to disclose the ultimate client of the undertaking, as opposed to the firm hiring them. That report states:

“A new trend is emerging with respect to the disclosure of information about clients in registrations. Some consultant lobbyists are being ‘sub-contracted’ by lobbying firms to undertake lobbying activities and represent a specific client.”

The Toronto Lobbyist Registrar noted a similar trend at the City. The Lobbying By-law currently does not clearly indicate that lobbyists should disclose the actual interest they ultimately represent. An amendment to the Lobbying By-law to require a lobbyist to disclose their ultimate client serves to make lobbyists and their activities more transparent and accountable. The proposed amendment is included as Attachment 1, Amendment 1 to this report.

2. Mechanisms to achieve compliance with the Lobbying By-law

The Lobbyist Registrar uses a range of strategies to ensure and enforce compliance with the Lobbying By-law, ranging from advice and training to inquiries, reports to Council and prosecutions under the *Provincial Offences Act*, currently subject to a limitation period of six months.

Under the Lobbying By-law, the Lobbyist Registrar's mechanisms to enforce and to achieve compliance include the refusal to accept, and the ability to suspend, revoke, or remove a registration, when the lobbyist fails to comply with the by-law or where the lobbyist fails to provide required or requested information.

In most cases, lobbyists comply voluntarily with their obligations. However, there are instances when a lobbyist refuses to comply with the Lobbying By-law even after being advised and requested to do so. In these situations, the Lobbyist Registrar's ability to enforce and achieve compliance with the Lobbying By-law are limited.

a. Temporary ban on communications

Under the proposed amendment included as Attachment 1, Amendment 2 to this report, the Lobbyist Registrar may impose a temporary ban on communication, in accordance with the following scheme, if the Lobbyist Registrar finds that the requirements of the by-law have not been met:

- (1) First breach: the lobbyist is banned from communicating with public office holders for one month;
- (2) Second breach: the lobbyist is banned from communicating with public office holders for three months; and
- (3) Third breach: the Lobbyist Registrar may ban the lobbyist from communicating with public office holders for a period of not more than two years.

A temporary ban on lobbying is a potentially effective mechanism to maintain compliance with the Lobbying By-law and is consistent with the powers given to the Lobbyist Registrar in section 166 of COTA, which states the Lobbyist Registrar may refuse to register a person, and suspend or revoke a registration.

Some lobbyist registries and commissions in Canada have the authority to impose a temporary ban on communication. Jurisdictions, including the provinces of British Columbia and Alberta, have legislation permitting a temporary ban. The Province of Ontario has passed similar legislation permitting their Lobbyist Registrar the same authority, although this legislation has yet to come into force.

In determining whether to impose a temporary ban on communication and the duration of a temporary ban on communication, the Lobbyist Registrar shall have regard to whether the temporary ban on communication will promote compliance with the Lobbying By-law. The Lobbyist Registrar will be required to notify the individual of the suspension and reason and establish a suitable process to facilitate adequate notice and submissions made. Once a temporary ban is imposed, the Lobbyist Registrar shall post notice of the temporary ban on the Lobbyist Registrar's website and notify the City Manager, City Clerk, City Solicitor, Members of Council, and any public office holder who the Lobbyist Registrar determines appropriate to notify.

b. Impose conditions for registration, continued registration or renewal of a registration

Section 166 of COTA authorizes the City to include in the Lobbying By-law conditions for registration, continued registration and renewal of registration. The Lobbying By-law currently does not grant this authority to the Lobbyist Registrar. Permitting the Lobbyist Registrar the ability to impose these conditions expands the Lobbyist Registrar's ability to regulate the conduct of lobbyists at the City when other enforcement tools are unavailable and/or inappropriate for the nature of the breach to the Lobbying By-law.

Under the proposed amendment included as Attachment 1, Amendment 3 to this report, the Lobbyist Registrar may impose conditions for registration, continued registration or a renewal of registration of a lobbyist, such as requiring a lobbyist to: (1) attend training and other educational courses; (2) respond to communications from the Lobbyist Registrar in a specified time period; (3) refrain from communication with specified public office holders on specified topics; or (4) any other condition that the Lobbyist Registrar determines appropriate.

3. Administrative Sanctions to be included in the COTA 5-year review

The Province of Ontario launched a 5-year mandatory review of COTA and other municipal legislation in June 2015. The *Five-Year Review of the City of Toronto Act* report is being considered by Executive Committee at the same meeting as this report.

The ability for the Lobbyist Registrar to impose administrative sanctions, including administrative monetary penalties, has been included in the City's COTA amendment requests for Executive Committee's consideration.

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SIGNATURE

Peter Wallace
City Manager

ATTACHMENTS

Attachment 1 - Proposed amendments to the *Toronto Municipal Code, Chapter 140, Lobbying* (“Lobbying By-law”)

Proposed amendments to the *Toronto Municipal Code, Chapter 140, Lobbying* ("Lobbying By-law")

Amendment 1

1. Clarifying and strengthening the Lobbying By-law to explicitly require that a consultant lobbyist disclose their ultimate client.

1. Add to § 140-1. Definitions

PERSON WITH SIGNIFICANT CONTROL:

A. Any person who holds, directly or indirectly, 25 percent or more of the shares of a corporation, partnership, coalition or organization;

B. Any person who holds, directly or indirectly, 25 percent or more of the voting rights of a corporation, partnership, coalition or organization;

C. Any person who holds the right, directly or indirectly, to appoint or remove a majority of the board of directors of a corporation, partnership, coalition or organization;

D. Any person who has the right to exercise or actually exercises significant influence or control of a corporation, partnership, coalition or organization; or

E. Any person who is a trustee of a trust that holds, directly or indirectly, 25 percent or more of the shares of a corporation, partnership, coalition or organization;

F. Any person who is a trustee of a trust that holds, directly or indirectly, 25 percent or more of the voting rights of a corporation, partnership, coalition or organization;

G. Any person who is a trustee of a trust that has the right to exercise or actually exercises significant influence or control of a corporation, partnership, coalition or organization; or

H. Any person who has the right to exercise, or actually exercises, significant influence or control over the activities of a trust that meets any of the requirements of subsections E to G.

2. Add as a new subsection § 140-15 H:

H. The name and business address of any person with significant control of a client.

Amendment 2**2. Clarifying and strengthening the Lobbying By-law to enable the Lobbyist Registrar to impose a temporary ban against a lobbyist who has been found in breach of the Lobbying By-law from communicating with public office holders, as permitted by section 166 of the *City of Toronto Act, 2006*.**

Add § 140-36.1. Temporary ban on communications

A. The Lobbyist Registrar may impose a temporary ban on communication in accordance with the following scheme if the Lobbyist Registrar finds that the requirements of this by-law have not been met:

- (1) First breach: the lobbyist is banned from communicating with public office holders for one month;
- (2) Second breach: the lobbyist is banned from communicating with public office holders for three months; and
- (3) Third breach: the Lobbyist Registrar may ban the lobbyist from communicating with public office holders for a period of not more than two years.

B. In determining whether to impose a temporary ban on communication and in determining the duration of a temporary ban on communication under subsection A(3) the Lobbyist Registrar shall have regard to whether the temporary ban on communication will promote compliance with this chapter.

C. If the Lobbyist Registrar decides to impose a temporary ban on communication, the Lobbyist Registrar shall inform the individual of the suspension and the reason for the suspension in the manner that the Lobbyist Registrar determines.

D. The Lobbyist Registrar shall establish suitable processes to facilitate adequate notice and consideration of any submissions made by the lobbyist.

E. If the Lobbyist Registrar imposes a temporary ban on communication, the Lobbyist Registrar shall post notice of the temporary ban on the Lobbyist Registrar's website and notify:

- (1) the City Manager;
- (2) the City Clerk;
- (3) the City Solicitor;
- (4) Members of Council; and
- (5) any public office holder who the Lobbyist Registrar determines appropriate to notify.

Amendment 3

3. Clarifying and strengthening the Lobbying By-law to permit the Lobbyist Registrar to impose conditions for registration, continued registration or renewal of a registration as permitted by section 166 of the *City of Toronto Act, 2006*.

Add § 140-36.2. Conditions for registration, continued registration or a renewal of registration.

A. The Lobbyist Registrar may impose conditions for registration, continued registration or a renewal of registration of a lobbyist.

B. Without limiting the generality of § 140-36.2A, conditions for registration, continued registration or a renewal of registration of a lobbyist may include:

- (1) a requirement to attend training and other educational courses;
- (2) a requirement to respond to communications from the Lobbyist Registrar in a specified time period;
- (3) a requirement to refrain from communication with specified public office holders on specified topics; or
- (4) any other condition that the Lobbyist Registrar determines appropriate.