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September 21, 2015

Mayor John Tory and Members of the Executive Committee of Council
City Hall, Toronto
ON M5H 2N2
Exc@toronto.ca

Dear Mr. Mayor and Councillors,

Re: EX8.2 PAAC Submission on Amendments to Toronto Municipal Code, Chapter 140, Lobbying (“Lobbying By-law”)

On behalf of the Public Affairs Association of Canada, (PAAC) please find below our submission on proposed amendments to the City of Toronto’s Lobbying By-law.

Summary of Submission:

Lobbyist Registrar Proposal	PAAC Position
1. Consultant lobbyist must disclose ultimate client	<ul style="list-style-type: none"> • agree
2. Temporary bans on communication with public office holders	<ul style="list-style-type: none"> • Disagree. Financial penalties sufficient; • Not compliance mechanism, a punishment; • Education and training better compliance mechanisms
3. Conditions on registration	<ul style="list-style-type: none"> • Disagree. Too much power to Registrar, bypassing City Council • Lack of appeal process for lobbyists
4. Administration sanctions to be included in 5-year review of City of Toronto Act	<ul style="list-style-type: none"> • Too much power for Registrar to investigate, judge and rule on violations of lobbying By-law.

	<ul style="list-style-type: none"> • No appeal mechanisms such as judicial review • Violates procedural justice for lobbyists. • Lobbying By-law should be made consistent with Ontario’s Lobbyist Registration Act.

Overview of the Public Affairs Association of Canada

The Public Affairs Association of Canada (“PAAC”) is a national, not for profit organization founded in 1984. Its principal objective is to help public affairs professionals succeed in their work by providing forums for professional development, the exchange of new ideas and networking. PAAC also advocates on issues that directly impact its members.

PAAC’s membership represents a cross section of many disciplines involved in public affairs including: Government relations, lobbying, public relations, policy analysis, and public opinion research. The association’s members come from both the private and public sectors in areas such as energy, finance, small business, charities, government departments, municipalities, law and accounting firms, colleges and universities and trade associations. At the present time PAAC has roughly 185 members many of whom are active in-house, organization and consultant lobbyists.

PAAC and Lobbying Legislation in Canada

PAAC fully supports the policy objective of ensuring lobbying activity is transparent and in the public interest. PAAC is also on the record for supporting federal and provincial lobbying statutes and the need to ensure the highest level of transparency, predictability and accountability for lobbying activity. PAAC has a voluntary ethics code that complements and supplements various federal, provincial and municipal lobbyist codes of conduct. This ethics code directs compliance with the provisions of both the federal *Lobbying Act* as well as

corresponding provincial statutes and the City of Toronto's Lobbyists' code of conduct.

PAAC also assists its members and lobbying regulators by holding frequent educational workshops with the lobbying Registrars at all levels of government. This helps to ensure that PAAC's members understand the legal and ethical requirements involved in lobbying public office holders, while providing lobbying regulators insights into the nature of the lobbying profession.

In addition, a number of PAAC's lobbyist members have been instrumental in advocating for lobbyist registration systems, codes of conduct and other regulatory provisions for many years at all levels of government in Canada. Its members have given testimony into the development of lobbyist registration systems at the City of Toronto as they developed the first mandatory lobbyist registration system for municipalities in Canada. Moreover, PAAC recently made a submission to the federal Standing Committee on Access to Information, Privacy and Ethics on the five year review of the Lobbying Act in an effort to improve the disclosure and compliance requirements for all lobbyists.

Lobbying and its role in the Policy Development Process

Lobbying and Lobbyists serves a critically important function in the development of sound public policy. At a general level, lobbying helps to build the policy and political case for the government to act to address an issue or opportunity that impacts a particular group, say, a region of the country, a citizen's group, a business or an economic sector. More specifically, lobbyists provide government policy makers and decision maker's information key to the development of balanced and fair policy. For example, lobbyists routinely provide impact studies on how a proposed course of action may impact a business group, charitable or industrial sector.

Proposed Amendments to the City of Toronto's Lobbyist By-law

Summary:

Overall, PAAC is concerned with the tone of the proposed recommendations. As noted in the Report on this item, the vast majority of lobbyists at City Hall are in

full compliance with the By-law and lobbyist code of conduct. Those who tend to fall short do so because of a lack of awareness of the rules, and once informed become fully compliant. The recommendations seem to focus on hypothetical cases and suggest harsh penalties without the benefit of due process of law for lobbyists, all of which seems to be a violation of natural justice. There is no mention, for example, of the right to request reconsideration of a proposed penalty or a judicial review of a finding, rights which exist in both the federal *Lobbyist Act* and the Ontario *Lobbyists' Registration Act, 1998*.

PAAC also believes that if the Lobbyist Registrar would like the authority to administer administrative and monetary penalties, then Council should consider a wholesale review of the Lobbyist By-law and make it more consistent with the Province's *Lobbyist's Registration Act, 1998*.

Specific Comments:

On the first proposed amendment that requires **a consultant lobbyist to disclose his or her ultimate client**, PAAC takes no issue with this since we are committed to transparency and the legitimacy of lobbying public office holders in the development of sound public policy for our clients.

The second proposed amendment on **mechanisms to achieve compliance with the Lobbying By-law**: PAAC does not support the proposed changes that would impose temporary bans on communication with public office holders. The proposed temporary bans on lobbyists communicating with public office holders are penalties and not compliance mechanisms. Penalties can only be imposed by a court of law after a fair trial, in public, consistent with procedural fairness and the *Canadian Charter of Rights and Freedoms*. The current By-law already contemplates a penalty for a contravention of the By-law if convicted in a court of law of \$25,000 for a first offence and \$100,000 for subsequent offences. We think the spectre of those penalties provides sufficient incentive to enforce compliance with the By-law. If the goal is compliance, then education and training of lobbyists are the most effective compliance mechanisms.

The third proposed amendment that would **impose conditions on registration, continued registration or renewal of a registration**: PAAC does not support this proposed change. It gives too much power to the Lobbyist Registrar and allows the

office to bypass the City Council decision making processes. As it stands, the Lobbyist Registrar must make recommendations to City Council for their decision making on conditions for lobbyist registration. This serves as a check on the powers of the Lobbyist Registrar and preserves some form of democratic accountability. The proposed By-law amendments on conditions of registration of lobbyists does not have any appeal mechanism and is thus, lacking in terms of basic fairness for lobbyists. Moreover, the proposal lacks any specificity because it permits the Lobbyist Registrar to impose “any other condition that the Lobbyist Registrar determines appropriate.” This gives no certainty or guidance required of an accountability officer. Quite the opposite, it vests unlimited discretion in the office to create any conditions it deems fit without any oversight by City Council.

The fourth proposed amendment regarding **Administration Sanctions to be included in COTA 5-year review**: PAAC does not believe that the City of Toronto By-law governing lobbyists needs to include administrative and monetary penalties. This would again give the Lobbyist Registrar too much power to investigate, judge and rule on the alleged violations of the Lobbying By-law and Code of Conduct. And without any substantive provision for appeal, or judicial review of the Lobbyist Registrar’s decisions (unlike the amendments to the Ontario *Lobbyist Registration Act, 1998*), this simply denies basic legal fairness for lobbyists. The Lobbying By-law already contains provisions for monetary penalties, which are to be applied by the courts after a fair trial, in public, consistent with procedural fairness and the *Canadian Charter of Rights and Freedoms*. To permit the Lobbyist Registrar to unilaterally impose monetary penalties without any procedural fairness is simply wrong.

Conclusion:

PAAC believes that the proposed amendments will not achieve the goals for full compliance with the Lobbying By-law and Code of Conduct. Education, awareness building and consultation are the key. Harsh additional penalties not subject to oversight by City Council or the courts and open ended powers for the Lobbyist Registrar will not encourage greater compliance.

PAAC fully supports lobbyist disclosure legislation and the adoption of fair codes of conduct in the regulation of lobbying activity. We fully believe that professional



lobbying activity is a key to the development of sound public policy and thus not only legitimate but necessary for a healthy democracy.

Sincerely,

PUBLIC AFFAIRS ASSOCIATION OF CANADA

John Capobianco
Chair

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