

Implementation of Toronto Public Service By-law

Date: September 7th, 2016
To: Executive Committee
From: City Manager
Wards: All

SUMMARY

In 2014, City Council approved the Toronto Public Service By-law (the "**TPS By-law**") and enacted a new chapter (ch. 192) in the Toronto Municipal Code. The TPS By-law serves as an important foundation for the advancement of the Toronto public service as professional, impartial and ethical.

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 requested by City Council, the City Manager took a whole of government approach in the development and application of the Toronto Public Service By-law including specific provisions applicable to the City's restricted boards, Toronto Atmospheric Fund, City Corporations and Toronto's Accountability Officers within the context of their legal and governance structures.

This report provides an update on the implementation of the TPS By-law, which came into effect as Chapter 192 of the Toronto Municipal Code on December 31, 2015 for the Toronto Public Service and most City agencies. This report also provides a status update of the implementation of City Council's direction to the other components of Toronto's government.

RECOMMENDATIONS

The City Manager recommends that:

1. City Council receive this report for information.

FINANCIAL IMPACT

Implementation costs related to the Toronto Public Service By-law have been absorbed within the approved operating budget for the City Manager's Office.

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

DECISION HISTORY

At its April 2015 meeting, City Council requested the City Manager to report back on the implementation progress of the TPS By-law.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.AU1.6>

At its June 2014 meeting, City Council adopted detailed recommendations brought forward by the City Manager towards the implementation of a public service by-law for the Toronto public service.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.EX42.3>

COMMENTS

Issue Background

In June 2014, City Council unanimously adopted a Toronto Public Service By-law, which is now Chapter 192, Public Service, of the Toronto Municipal Code. The TPS By-law came into effect on December 31, 2015.

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. Toronto is the first municipality in Canada to implement public service legislation.

The Toronto Public Service By-law includes:

- **Objectives** – Broad objectives setting out the employment and ethical framework for the By-law;

- **Public Service Values** – Core public service values that 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 members of the public service;
- **Role, Responsibilities and Authorities of the City Manager and Other City Officials to Manage Human Resources under their authority** – Cross references Toronto Municipal Code Chapter 169, City Officials which sets out the role, responsibilities and authorities for various City officials for the management of human resources under their authority;
- **Role, Responsibilities and Authorities of City Agencies to Manage Human Resources under their authority** - Consolidates existing legislation, by-laws, frameworks, agreements and policies for managing human resources;
- **Human Resource Policy Requirements** – Sets out minimum human resource policy requirements for the City and its Agencies to meet their legislative requirements, set out employee entitlements for clarity and transparency purposes, and effectively manage human resources;
- **Provisions for Conflict of Interest and Confidentiality** – Ensures that a public servant's private interests do not compete with their public service duties and responsibilities;
- **Provisions for Political Activity** – Balances the interest of public servants to engage in certain political activity with the need to maintain the political neutrality of the public service;
- **Provisions for the Disclosure of Wrongdoing and Reprisal Protection** – Provides mechanisms to disclose, investigate and resolve allegations of wrongdoing and establishes reprisal protections for public servants who in good faith disclose government wrongdoing; and
- **Establishment of Ethics Executives** – Formalizes the role of senior managers at the City and its Agencies as Ethics Executives to promote an ethical workplace and to provide employees with advice and guidance on ethical matters.

1. **Implementation of Toronto Municipal Code Chapter 192, Public Service**

The TPS By-law applies to both the Toronto Public Service (employees working in City Divisions) and applicable City Agency employees and came into effect on December 31, 2015. The Toronto Public Service and many City agencies were already compliant with many components of the By-law prior to its in-force date as it consolidates and strengthens existing provisions under an overarching framework in the Toronto Municipal Code.

The City Manager's Office has led the implementation of the TPS By-law through a broad range of initiatives, including integrating ethical matters across the City's systems, procedures and processes; and providing policy support to City Agencies in their

implementation of the TPS By-law. Implementing the By-law and advancing a strong ethical organizational culture is a continuous process through staff education, engagement, communications, and training.

There are 4 key activities related to the implementation of the TPS By-law:

- (1) Communications and Engagement,
- (2) Education and Training,
- (3) Policy Support to City Agencies, and
- (4) A Protocol to Support the Disclosure of Wrongdoing and Reprisal Protection provisions.

A summary of these activities is provided below.

A. Communications and Engagement

Communication and employee engagement activities have been an important part of implementing the TPS By-law. A number of initiatives have taken place to communicate the requirements of the various provisions of the TPS By-law to employees and to reinforce to employees the importance of a strong ethical culture.

A public facing webpage (www.toronto.ca/tpsbylaw) was developed and launched in September 2015 to coincide with Toronto Public Service Week. The website provides plain language information on the provisions of the TPS By-law, background information and key questions and answers. The webpage provides information to City and Agency employees to understand their rights and responsibilities under the TPS By-law. Additional materials will continue to be posted as they are developed.

Other communications and promotion initiatives have been undertaken to raise awareness of the By-law and direct employees to the website for further information. These initiatives include information sessions to staff, a poster circulated to City Divisions and Agencies; Monday Morning news announcements focusing on different provisions of the By-law, and an insert in the pay envelope of over 25,000 City employees.

Ongoing efforts will continue to communicate the importance of the public service values and ethical decision-making to employees. This will be achieved through integrating public service values and ethical concepts in employee engagement and communication activities, and leveraging opportunities such as Toronto Public Service Week, City elections and new employee orientation to raise awareness of employee rights and responsibilities under the By-law. As part of their role as Ethics Executives, Division Heads will also promote ethical behaviour and decision-making through leadership and providing ethical advice to employees.

B. Education and Training

A new e-learning course has been designed and is currently being integrated into the mandatory training required of all employees. The course replaces the learning modules

that focused on the City's previous ethical policies, and will focus on the importance of ethical decision making in the context of the TPS By-law's public service values and ethical provisions.

The provisions of the TPS By-law have also been included in employee orientation and employee recruitment packages as well as executive on-boarding programs.

The TPS By-law designates senior managers at the City and its Agencies as Ethics Executives, a role that comes with the responsibility to uphold the public service values, promote ethical decision-making and provide advice to employees on ethical matters. Orientation and training was provided to Division Heads in partnership with the Ontario Conflict of Interest Commissioner on their roles and responsibilities as Ethic Executives. A tool kit for Ethic Executives has been developed to assist Ethics Executives and other senior management in their responsibilities to provide ethical advice to employees. Ongoing training and support will be provided to Ethic Executives through senior management meetings and peer support networks.

C. Policy Support to City Agencies

The Toronto Public Service By-law applies to employees of the following Agencies:

- Association of Community Centres (10)
- Arenas (8)
- Exhibition Place
- Toronto Transit Commission
- Toronto Zoo
- Toronto Parking Authority
- Yonge-Dundas Square
- Heritage Toronto
- Civic Theatres (Sony Centre for the Performing Arts, St. Lawrence Centre for the Arts and Toronto Centre for the Arts)

The City Manager's Office has been working closely with these Agencies to familiarize them with the requirements of the TPS By-law and promote the public service values and the importance of ethical decision making as members of the public service.

With support and advice from the City Manager's Office, City Agencies have developed policies that meet the minimum requirements of the TPS By-law, including human resource policies, and policies concerning the employment of relatives and the disclosure of wrongdoing and reprisal protection. When requested, the City Manager's Office has also been providing support to Agency Board consideration and approval of required policies under the TPS By-law.

As of writing this report, most applicable Agencies have received their Board's approval, with the others having committed to receiving Board approval before the end of the year, for policies that meet the requirements of the TPS By-law. As the civic theatres are undergoing a transition in governance from three separate Boards to one Board, the

City Manager's office is currently working with the Agency Heads of each of the theatres to ensure they are meeting the requirements of the TPS By-law.

2. Disclosure of Wrongdoing Protocol

A Protocol between the City Manager and the Auditor General has been developed to guide the implementation of the provisions related to the investigation and reporting of alleged wrongdoing and reprisal as set out in the TPS By-law.

The Protocol sets out the roles and responsibilities of the Auditor General, City Manager and Human Rights Office (in the event that an allegation involves a human rights complaint), and is based on best practice to facilitate dialogue and deal with complex issues concerning allegations of wrongdoing and/or employee misconduct in an efficient and effective manner.

A key element of the Protocol is a quarterly meeting between the Auditor General's Office, the City Manager's Office, the City Solicitor's Office and other senior City staff for case conferences in order to facilitate the implementation of the By-law including:

- Reviewing matters that have been referred to a Division for investigation as misconduct, but which the Division's own investigation suggests are wrongdoing;
- Discussing matters that are, upon initial review, not clear whether they fall within the definition of wrongdoing or misconduct;
- Considering reported wrongdoing on a case by case basis in order to develop an understanding of best practice;
- Coordinating complex and concurrent investigations where there are multiple allegations involving wrongdoing, misconduct and/or human rights violations; and,
- Reviewing allegations the Auditor General's Office has received and would like to discuss.

The Protocol and the process to investigate allegations of wrongdoing will be reviewed regularly to ensure it is working effectively.

3. City Council Directions to Other Components of Toronto's Government

A. City Agencies with Restrictions

City agencies, where Council is limited has limited authority to direct them, include the Toronto Atmospheric Fund, the Toronto Public Library and the Toronto Police Service. City Council requested these boards to review their ethical policies against the TPS By-law provisions to ensure they meet leading practice.

The Toronto Public Library reviewed its ethical policies and updated them for consistency with the TPS By-law provisions.

The Toronto Police Services Board and the Toronto Police Service have comprehensive policies, procedures, and standards of conduct developed in accordance with the Police Services Act, to guide the ethical behaviour of its members. The Toronto Police is currently reviewing its standards, policies and procedures against the provisions in the TPS By-law to assess the extent to which its governance reflects the principles articulated in the By-law.

With respect to the Toronto Atmospheric Fund, City Council directed that their Relationship Framework be amended to require them to adopt ethical policies consistent with the TPS By-law. The Relationship Framework has been amended and the Board has adopted policies consistent with the TPS By-law provisions.

B. City Corporations

City Council directed that Shareholder Directions for City Corporations be amended, where required, to provide Council authority to require the corporation 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. City Council also directed that the Shareholder Directions be amended to require City Corporations to adopt policies related to conflict of interest, political activity and disclosure of wrongdoing and reprisal protection.

The Shareholder Directions have been amended and the requirement to adopt ethical policies has been communicated to City Corporations. All City Corporations either already had these ethical policies in place, or have undertaken to adopt them in response to City Council direction.

C. Toronto's Accountability Officers

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.

City Council therefore directed amendments to Toronto Municipal Code Chapter 3, Accountability Officers to require the Accountability Officers and their staff to comply with the TPS By-law Conflict of Interest and Political Activity provisions and extend reprisal protections to their staff and finally to establish a mechanism for the investigation and reporting of allegations of wrongdoing involving an Accountability Officer and their staff.

These amendments have been made to Toronto Municipal Code Chapter 3, Accountability Officers.

CONCLUSION

The TPS By-law is based on best practice in public service legislation at both the provincial and federal levels of government. As the first municipal public service by-law

in Canada, it has generated significant, positive interest from other municipalities in Canada and internationally.

Implementation of the TPS By-law will be an ongoing initiative, through continued communications, training and support and advice to employees on ethical decision making.

Integrating and reinforcing ethical concepts in all areas of Toronto's government will continue to advance the public service as impartial, professional and ethical.

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