

Background

At the August 12, 2020 City Council meeting, Council passed [Resolution CC2020-213](#) directing staff to prepare a report and draft by-law regarding the establishment of a Lobbyist Registry.

This report and accompanying draft by-law provide the requested information regarding the establishment of a Lobbyist Registry and provides additional information to Council regarding the implementation process of the registry including the appointment of a Lobbyist Registrar.

Legislation

Under section 223.9 of the *Municipal Act (the Act)*, municipalities are authorized to establish a public system for the registration of persons who lobby public office holders. The *Act* also sets out provisions for the appointment of a Lobbyist Registrar who is responsible for performing in an independent manner the functions assigned by the municipality with respect to the registry including, without limitation, provisions for investigation, reporting and enforcement.

Pursuant to the legislation, a Lobbyist Registrar is considered to be an “Accountability Officer”, in the same way as an Integrity Commissioner, Closed Meeting Investigator or Auditor General.

The legislation authorizes municipalities to:

1. Define “lobby”;
2. Require persons who lobby public office holders to file returns and provide information to the municipality;
3. Specify the returns to be filed and the information to be provided to the municipality by persons who lobby public office holders and specify the time within which the returns must be filed and the information provided;
4. Exempt persons from the requirement to file returns and provide information;
5. Specify activities with respect to which the requirement to file returns and provide information does not apply;
6. Establish a code of conduct for persons who lobby public office holders;
7. Prohibit persons from lobbying current public office holders for the period of time specified in the by-law;
8. Prohibit persons from lobbying public office holders without being registered;
9. Impose conditions for registration, continued registration or a renewal of registration;
10. Refuse to register persons, and suspend or revoke registrations; and
11. Prohibit persons who lobby public office holder from receiving payment that is in whole or in part contingent on the successful outcome of any lobbying activities.

While the legislation offers guidance and provides municipalities with the authority to establish a registry, by-law, code of conduct and Office of the Registrar, they are ultimately responsible for the composition of these procedural pieces.

Very few municipalities across Ontario have established Lobbyist Registries and staff are aware of seven examples. Those municipalities, for the most part include the larger centres such as Toronto and Ottawa and others that are experiencing rapid and extensive development in their communities, such as Vaughan and Brampton, which would support the need to regulate lobbying through the implementation of a registry system. To assist with the drafting of a by-law and to ensure that best practices are applied, staff have reviewed the Lobbyist Registry By-laws from those municipalities. Of note is that the examples of Lobbyist Registry By-laws in the

Province are very similar but for small exceptions. The following sections will provide additional information regarding some of the more significant concepts in the draft Lobbyist Registry By-law which is attached as Appendix A.

Definition of Lobbying

The first step in the establishment of a Lobbyist Registry is determining what constitutes lobbying activity. Similar to the other Ontario examples, lobbying is proposed to include any communication with a public office holder by any individual who is paid or represents a business or financial interest with the goal of trying to influence any legislative action on:

- a) The development, introduction, passage, defeat, amendments or repeal of a City by-law, or resolution on any matter;
- b) The development, approval, amendment or termination of a City policy, program, directive, guideline, including but not limited to a service delivery model;
- c) The purchase of goods, services or construction and the award of a contract by the City;
- d) The approval, approval with conditions, or refusal of an application for the service, grant, planning approval, permit or other licence or permission by the City;
- e) The award of any financial contribution, grant or other financial benefit by the City;
- f) The transfer to or from the City of any interest in or asset of any business, enterprise or institution; and
- g) To arrange a meeting between a public office holder and any other person on any of the subject matters listed above.

The activities above which form part of the Lobbyist Registry By-laws of other municipalities demonstrate the breadth of activities which would be captured as lobbying should Council choose to implement a registry for the City of Greater Sudbury. In order to avoid an adverse impact on the day to day activities of their municipalities, other communities created a list of standard exemptions from lobbying. While these can be reviewed in more detail in the draft by-law document, they can be summarized as follows:

- a) Communications during meetings of Council or Committees of Council or public processes such as public meetings, hearings, open house or media events;
- b) Requests for information;
- c) Compliments or complaints about a service or program;
- d) Enforcement, interpretation or application of any Act or by-law;
- e) Implementation or administration of any policy, program, directive, or guideline;
- f) Communications with City staff regarding applications for services, grants, planning approvals, permits or other licences, permissions or approvals, when that communication is part of the normal application and approval process;
- g) Submitting a bid proposal as part of the approved process for procurement;
- h) Response to a written request from the public office holder;
- i) Constituents communicating about a general neighbourhood or public policy issue;
- j) Communications by not-for-profit entities where such entity has no paid staff;
- k) Input/comments received as part of a stakeholder consultation; and
- l) For or against viewpoints on a policy or program where the primary focus is broad community benefit or detriment.

Persons Involved in the Lobbying Process / Exemptions

Public Office Holders

The term “Public Office Holder” is a key term in the Lobbyist Registry By-law and refers to a defined group of persons that could be the subject of lobbying activities. In other words, where a lobbyist wishes to engage in communications with a public office holder regarding activities that constitute lobbying under the by-law, the lobbyist will be obligated to register and comply with the applicable requirements.

Of all the examples of by-laws enacted in other communities, the definition of Public Office Holder is an element that represents the greatest level of variability. While members of Council are always included, there are examples such as the Regional Municipality of Peel and the City of Vaughan that are very broad and include all municipal staff, accountability officials, members of local boards, consultants and municipal election officials. There are other examples, such as in Hamilton, where a much more restricted definition of Public Office Holder applies including only members of Council, the staff of members of Council and members of the executive leadership team. For the purposes of the draft by-law, the proposed definition of Public Office Holder follows the more restrictive Hamilton approach. This approach would have the effect of reducing the training required and limit the significant administrative resources required for the ongoing administration and enforcement of the Lobbyist Registry by the Lobbyist Registrar and the Clerk.

Lobbyists

Lobbyists are defined similarly in other municipalities and are broken down into three categories to cover all possible situations: Consultant Lobbyist, In-House Lobbyist and Voluntary Unpaid Lobbyist.

Consultant lobbyists are individuals who lobby for payment on behalf of a client, whereas in-house lobbyists are individuals who are employees, partners or sole proprietors and lobby on behalf of their own employer, business or other entity. Finally, voluntary unpaid lobbyists are individuals who lobby without payment on behalf of an individual, business or other entity for the benefit of the interests of the individual, business or other entity.

Exempted Persons and Organizations

Lobbyist Registry By-laws generally contains exemptions that specifically identify organizations or persons that would not be subject to the application of the by-law. These exemptions relate mainly to other levels of government, public institutions or related entities, while acting in their official capacity, with which municipalities regularly communicate.

Similar to other by-laws, the draft proposes to exempt:

- Public officials, elected officials, employees and consultants from other levels of government and within the public sector i.e.: Federal, Provincial, Municipal, First Nations, educational and healthcare institutions;
- Municipal associations i.e.: AMCTO, AMO, FONOM
- Public Office Holders; and
- Officers, directors/members or employees of local boards, advisory panels or related corporations of the City i.e.: GSU, CGSCDC, SACDC, Downtown Sudbury.

Lobbyist Registry

Any individual that meets the definition of a lobbyist would be required to register their lobbying activities on the public lobbyist registry, update them as required and would be subject to the provisions of the Lobbyist Registry By-law and Code of Conduct.

It is not a requirement for a lobbyist to register prior to the commencement of their lobbying activities and they would have five business days from the commencement of the lobbying activity to complete their registration. Staff would create the required forms that would allow lobbyist to submit the following information:

- Their name and contact information;
- Whether or not they are a consultant, in-house or voluntary unpaid lobbyist;
- The name of the individual, client or other entity on whose behalf they are lobbying;
- Name of the individual or individuals whom they are lobbying; and
- The subject matter and the date that they lobbying activities will start and finish.

Filed registrations would be publicly available on the City's website and lobbyists may change or update this information as required.

Oversight of the Lobbyist Registry and Activities

If Council chooses to proceed with a Lobbyist Registry, the *Act* provides for the establishment of an additional municipal Accountability Official referred to as the Lobbyist Registrar. The Lobbyist Registrar is generally responsible for oversight of the Lobbyist Registry and performs assigned duties in an independent manner.

Similar to other accountability officials, the Lobbyist Registrar has investigative powers and may conduct inquiries into violations of the Lobbyist Registry By-law and the Lobbyist Code of Conduct. As a result of an investigation, the Registrar may also prohibit an individual from lobbying for a period of time and remove a registration from the registry. If necessary and if there are reasonable grounds to do so, the Registrar may also report any activity that has contravened a provincial Act of the Criminal Code of Canada to the appropriate authorities.

A number of municipalities that have implemented Lobbyist Registries have assigned the responsibilities of the Lobbyist Registrar to their Integrity Commissioners. The role is complimentary to the duties and responsibilities already overseen by an Integrity Commissioner.

This issue has been discussed with Mr. Swayze, the City's Integrity Commissioner and he has agreed to act as the City's Lobbyist Registrar should Council wish to appoint him as such. He has prior experience acting as a Lobbyist Registrar for other municipalities. In order to formalize this change, Council would pass an appointing by-law and would authorize an amendment to the service agreement with the Integrity Commissioner to include the Lobbyist Registrar responsibilities. Rates charged for the new services would be the same as those currently being charged for Integrity Commissioner services. While it is difficult to anticipate the level of activity and cost for the City regarding the Lobbyist Registrar, staff believe that the current annual budget of \$100,000 for Integrity Commissioner services in the Legal and Clerk's Services Division would be sufficient to address both the Integrity Commissioner services as well as the new services.

In order to avoid unnecessary external costs, it is proposed that the Clerk be responsible for the administrative responsibilities related to the Lobbyist Registry. These duties, which would include tasks such as the creation of necessary forms and website content, the receipt and posting of registrations and returns and the ongoing maintenance of the public registry, would be carried out by staff in the Clerk's Section under the oversight of the Lobbyist Registrar. The Registrar's role would therefore be scoped to essentially include oversight, advice, education and enforcement.

Next Steps

Staff have prepared the necessary resolutions should Council wish to proceed with the implementation of a Lobbyist Registry for the City of Greater Sudbury. If carried, staff will present two by-laws on subsequent agendas to implement the Lobbyist Registry and to appoint the City's Integrity Commissioner as the City's Lobbyist Registrar.

The by-laws are proposed to come into effect for April 1, 2021 to permit sufficient time for staff to develop formal procedures, offer training to public office holders, and to create the necessary forms and the required online registry. In addition, with the assistance of staff in Communications, a communication strategy would be put in place to ensure that the public and potential lobbyists are aware of the implementation of the registry.