



Hamilton

REPORT 13-004

Accountability and Transparency Sub-Committee

Monday, September 30, 2013

1:30 p.m.

Room 192

Hamilton City Hall

71 Main Street West

Present: Councillors L. Ferguson (Chair), J. Partridge (Vice-Chair),
and T. Whitehead
Mayor Bratina
Citizen Members D. Arbuckle, J. Chapman and D. Broom

**THE ACCOUNTABILITY AND TRANSPARENCY SUB-COMMITTEE
PRESENTS REPORT 13-004 TO THE GENERAL ISSUES COMMITTEE AND
RESPECTFULLY RECOMMENDS:**

1. Lobbyist Registry (FCS13029(b)/LS13006(b)) (City Wide) (Item 6.1)

- (a) That the proposed draft by-law, as amended, being a by-law To Establish and Maintain a Lobbyist Registry, attached hereto as Appendix "A", be considered for enactment;
- (b) That \$114,000 annual operating cost be approved, as follows:
 - (i) One (1) FTE, Policy Analyst, at an estimated cost of \$92,000;
 - (ii) A Lobbyist Registrar position combined with the City's Integrity Commissioner position at an estimated cost of \$22,000.
- (c) That a one-time cost of \$50,000-\$100,000 be approved for the development of a web-based registry.

FOR THE INFORMATION OF COMMITTEE:

(a) CHANGES TO THE AGENDA (Item 1)

The agenda for the September 30, 2013 meeting of the Accountability and Transparency Sub-Committee, was approved.

(b) DECLARATIONS OF INTEREST (Item 2)

None.

(c) APPROVAL OF MINUTES (Item 3)

(i) June 6, 2013

The minutes of the June 6, 2013 Accountability and Transparency Sub-Committee, were approved.

(d) DISCUSSION (Item 6)

(i) Lobbyist Registry (FCS13029(b)/LS13006(b)) (City Wide) (Item 6.1)

Rose Caterini, City Clerk, and Lisa Pasternak, Solicitor, provided an overview of the report.

Discussion involved:

- Adding the City's Senior Management Team to the definition of public office holder;
- Confidentiality between prospective investors and Planning and Economic Development Senior Staff;
- Whether or not if lobbying is part of the normal application process;
- Whether all City staff should be added to the definition of public office holder;

The definition of public office holder in the draft by-law is to read as follows:

- a member of Council and any person on his or her staff
- an employee of the City who is a member of the City's Senior Management Team

The definition of constituent in the draft by-law is to reads as follows:

"constituent" means:

- (a) with respect to the Mayor:
 - (i) an individual who resides in the City; or
 - (ii) an owner or operator of a business or other entity located in the City; and

- (b) With respect to a Councillor:
 - (i) an individual who resides in the Councillor's ward; or
 - (ii) an owner or operator of a business or other entity located in the ward;

Staff were directed to amend sub-section (6)(b)(ii), "other entity", to require the business name.

The draft by-law, Section 6 to Appendix "A" to Report FCS13029(b)/LS13006(b), was amended as follows:

- (a) That Sub-section 6(1)(a) be amended by including language respecting the first lobbying communication;
- (b) That Sub-section 6(1)(a)(ii) be deleted in its entirety and the remaining Sub-sections be renumbered accordingly;
- (c) That Sub-section 6(1)(b) be deleted in its entirety and the remaining Sub-sections be renumbered accordingly;
- (d) That Sub-section 6(1)(b)(iii) be deleted in its entirety and the remaining Sub-sections be renumbered accordingly;
- (e) That Section 6 be amended by adding new sub-sections, as follows:
 - (i) the start and end date of the lobbying activity;
 - (ii) the subject matter of the lobbying activity.
- (f) That Section 6 be amended by adding a time limit on the registration.

The motion CARRIED on the following vote:

Yeas: D. Broom, L. Ferguson, D. Arbuckle, J. Partridge,
R. Bratina

Total: 5

Nays: J. Chapman

Total: 1

Absent: T. Whitehead

Total: 1

The recommendations were amended by adding a new sub-section (d) to read as follows:

- (d) That the lobbyist registry be completed within this term of Council.

The motion was DEFEATED on the following vote:

Yeas: J. Chapman, D. Broom
Total: 2
Nays: L. Ferguson, D. Arbuckle, J. Partridge, R. Bratina
Total: 4
Absent: T. Whitehead
Total: 1

For disposition on this item, refer to item 1.

(e) NEW BUSINESS

7.1 Integrity Commissioner Time Limits

Discussion included the Integrity Commissioner requirements for report timelines.

(f) ADJOURNMENT (Item 8)

The Accountability and Transparency Sub-Committee adjourned at 2:48 p.m.

Respectfully submitted,

Councillor L. Ferguson
Chair, Accountability and
Transparency Sub-Committee

Vanessa Robicheau
Legislative Coordinator
Office of the City Clerk

- DRAFT BY-LAW

**CITY OF HAMILTON
BY-LAW NO. XX-XXX
To Establish and Maintain a Lobbyist Registry**

WHEREAS Council desires to establish and maintain a Lobbyist Registry and appoint a Lobbyist Registrar to provide transparency about persons who lobby the City of Hamilton's public office holders;

AND WHEREAS section 223.9 of the *Municipal Act, 2001* authorizes the City of Hamilton to establish and maintain a Lobbyist Registry in which shall be kept registrations and returns filed by persons who lobby the City of Hamilton's public office holders;

AND WHEREAS section 223.11 of the *Municipal Act, 2001* authorizes the City of Hamilton to appoint a Lobbyist Registrar who is responsible for performing in an independent manner the functions assigned by the City of Hamilton with respect to the Lobbyist Registry;

AND WHEREAS sections 8, 9 and 10 of the *Municipal Act, 2001* authorize the City of Hamilton to pass by-laws necessary or desirable for municipal purposes, and in particular paragraph 2 of subsection 10(2) authorizes by-laws respecting the accountability and transparency of the municipality and its operations;

AND WHEREAS sections 23.1 and 23.2 of the *Municipal Act, 2001* authorize the City of Hamilton to delegate its powers and duties, including legislative and quasi-judicial powers under the *Municipal Act, 2001*, to an individual who is an officer, employee or agent of the City of Hamilton;

NOW THEREFORE the Council of the City of Hamilton enacts as follows:

Definitions

1. In this By-law:

“**business day**” means any day on which the City's administrative buildings are open for business;

“**City**” means the municipality of the City of Hamilton or the geographic area of the City of Hamilton, as the context requires;

“**communication**” means any type of expressive contact and includes but is not limited to oral, written or electronic communication and “communicate” has a similar meaning;

“**constituent**” means:

(a) with respect to the Mayor:

(i) an individual who resides in the City; or

(ii) an owner or operator of a business or other entity located in the City; and

(b) With respect to a Councillor:

- (i) an individual who resides in the Councillor's ward; or
- (ii) an owner or operator of a business or other entity located in the ward;

"Council" means the City's Council;

"lobby", used as a verb, means to communicate with a public officer holder on any of the following subject matters with the goal of advancing a business or financial interest:

- (a) the development, introduction, passage, defeat, amendment or repeal of a City by-law, bill 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 a 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;
- (g) to arrange a meeting between a public office holder and any other person on any of the subject matters listed in subsections (a) to (f) inclusive.

"lobbyist" means a consultant lobbyist, in-house lobbyist or voluntary unpaid lobbyist and:

- (a) **"consultant lobbyist"** means an individual who lobbies for payment on behalf of a client (another individual, a business or other entity);
- (b) **"in-house lobbyist"** means an individual who is an employee, partner or sole proprietor and who lobbies on behalf of his or her own employer, business or other entity; and
- (c) **"voluntary unpaid lobbyist"** means an individual who lobbies without payment on behalf of an individual, business or other entity for the benefit of the interests of the individual, business or other entity;

"Lobbyist Registrar" means the individual appointed by Council from time in accordance with section 223.11 of the *Municipal Act, 2001*;

"public office holder" means:

- (a) a member of Council and any person on his or her staff; and

(b) an employee of the City who is a member of the City’s Senior Management Team;

“registration” means a first filing by a lobbyist regarding a subject matter he or she intends to lobby on as set out in subsection 6(1); and

“return” means an update of a registration filed by a lobbyist as set out in subsection 6(2).

Responsibilities of the Lobbyist Registrar

2. The Lobbyist Registrar’s responsibilities include:

- (a) overseeing the establishment and maintenance of a lobbyist registry, including determining the lobbyist registry’s form and content, in which shall be kept the registrations and returns filed by lobbyists under section 6;
- (b) making the lobbyist registry available for public inspection through electronic, web-based access at all reasonable times, namely:
 - (i) that a registration or return is on the lobbyist registry not more than three days after it is filed;
 - (ii) that the lobbyist registry is accessible except during regular maintenance or due to circumstances beyond the City of Hamilton’s control;
- (c) providing advice, opinions and interpretation pertaining to the administration, application and enforcement of this By-law;
- (d) conducting inquiries in respect of a request made by Council, a member of Council or a member of the public about compliance with this By-law, which may include requesting that a public office holder gather information concerning lobbying of him or her and provide that information to Lobbyist Registrar;
- (e) suspending, revoking or refusing a registration or return;
- (f) enforcing this By-law;
- (g) advising Council on lobbying matters and recommend improvements to this By-law;
- (h) providing an annual report to Council and any other reports as the Lobbyist Registrar considers appropriate; and
- (i) performing other duties as may be assigned by Council from time to time.

Responsibilities of a Public Office Holder

3.(1) A public officer holder’s responsibilities include:

- (a) responding, in a timely and complete manner, to a request from the Lobbyist Registrar under subsection 2(d) to gather and provide information; and

- (b) ending, as soon as practicable, lobbying by a lobbyist who is prohibited from lobbying and reporting, in a timely manner, such lobbying to the Lobbyist Registrar.
- (2) Except when responding to a request from the Lobbyist Registrar under subsection 2(d), a public officer holder's responsibilities under this By-law do not include gathering or providing information concerning lobbying of him or her.

Lobbying Exemptions

4.(1) Lobbying does not include:

- (a) communication that occurs during a meeting of Council or a Committee of Council;
- (b) communication that occurs during a public process such as a public meeting, hearing, consultation, open house or media event held or sponsored by the City or a public office holder or related to an application;
- (c) communication that is restricted to a request for information;
- (d) communication that is restricted to compliments or complaints about a service or program;
- (e) communication with a public office holder by an individual on behalf of an individual, business or other entity about:
 - (i) the enforcement, interpretation or application of any Act or by-law by the public office holder and with respect to the individual, business or other entity;
 - (ii) the implementation or administration of any policy, program, directive or guideline by the public office holder and with respect to the individual, business or other entity;
 - (iii) a personal matter of the individual, business or other entity unless it is communication that is in respect of a matter that falls under the definition of lobbying, that is for the special benefit of the individual, business or other entity;
- (f) communication by an applicant, an interested party or their representatives with respect to an application for a service, grant, planning approval, permit or other license or permission:
 - (i) with a public office holder if the communication is restricted to providing general information on an application, including a proposed or pending application, or to inquire about the application review process;
 - (ii) with an employee of the City if the communication is part of the normal course of the approval process;

- (iii) with an employee of the City if the communication is with respect to planning or development applications and the officer or employee has a role in the processing of a planning or development application during the formal pre-application consultation, the filing of the application and the application review process, including the preparation of development agreements;
- (g) submitting a bid proposal as part of the procurement process and any communication with designated employees of the City as permitted in the procurement policies and procurement documents of the City;
- (h) communication with a public office holder by an individual on behalf of an individual, business or other entity in direct response to a written request from the public office holder;
- (i) communication directly related to those City-initiated consultative meetings and processes where an individual is participating as a stakeholder;
- (j) communication for or against a policy or program that state a position where the primary focus is a broad community benefit or detriment, whether City-wide or local, and where that position would have no direct, indirect or perceived benefit to a business or financial of the individual, business or other entity on whose behalf the communication is undertaken;
- (k) communication regarding a business or financial interest by not-for-profit businesses or other not-for-profit entity where such business or entity has no paid staff; or
- (l) communication with a public officer holder by their constituent regarding that constituent's business or financial interest.

(2) The Lobbyist Registrar may exempt lobbying from some or all the requirements of this By-law if he or she is satisfied in advance by a lobbyist that registration could reasonably be expected to prejudice the economic interests of the City of Hamilton or the competitive position of the City of Hamilton.

Lobbyist Exemptions

5. Lobbyist does not include the following individuals when acting in their public capacity:

government or public sector not including the City and other municipal bodies

- (a) members of the Senate or House of Commons of Canada, the legislative assembly of a province, the council or legislative assembly of a territory, or persons on the staff of the members;
- (b) members of a First Nation council as defined in the Indian Act or of the council of an Indian band established by an Act of the Parliament of Canada, or persons on the staff of the members;

- (c) employees or consultants retained by the Government of Canada, the government of a province or territory, a First Nation council, a federal or provincial crown corporation or other federal or provincial public agency;
- (d) members of a council or other statutory body, including a local board, charged with the administration of the civil or municipal affairs of a municipality in Canada other than the City, persons on staff of the members, or officers or employees of the municipality or local board;
- (e) members of a national or sub-national foreign government, persons on the staff of the members, or officers, employees, diplomatic agents, consular officers or official representatives in Canada of the government;

the City and other municipal bodies

- (f) public office holders;
- (g) members or employees of a local board of the City; or
- (h) members of an advisory committee appointed by Council.

Registrations and Returns

6.(1) A lobbyist shall file a registration for each subject matter he or she intends to lobby on at least 15 business days before the first lobbying communication occurs and the registration shall include:

- (a) his or her name, address and contact information;
- (b) if he or she is a consultant lobbyist, in-house lobbyist or voluntary unpaid lobbyist;
- (c) the name of the individual, client or other entity, including all business names under which the individual, client or other entity is operating, on whose behalf he or she is lobbying;
- (d) the name of the individual or individuals he or she is lobbying;
- (e) the subject matter and date on which the lobbying will start and finish, with the date on which the lobbying finishes being no more than one year after the date on which the lobbying starts; and
- (f) such further information as the Lobbyist Registrar may require.

(2)(a) A lobbyist shall file a return updating any change to his or her registration immediately.

- (b) If lobbying continues for more than one year, a lobbyist shall file a new registration for each year the lobbying continues.

Enforcement

- 7.(1) The Lobbyist Registrar may prohibit an individual from lobbying, as follows, if the Lobbyist Registrar finds that the individual has contravened any of the provisions of this By-law:
 - (a) for 30 days for a first contravention;
 - (b) for 60 days for a second contravention;
 - (c) for a period of time longer than 60 days as determined by the Lobbyist Registrar for a third or subsequent contravention.
- (2) When the Lobbyist Registrar prohibits an individual from lobbying, the Lobbyist Registrar shall:
 - (a) notify the individual and all public office holders of the prohibition and the reason for the prohibition in such manner as the Lobbyist Registrar determines; and
 - (b) post the prohibition and the reason for the prohibition on the City's website.
- 8.(1) The Lobbyist Registrar may remove a registration or return from the lobbyist registry if the Lobbyist Registrar finds that the individual who filed the registration or return has contravened this By-law.
- (2) When a registration or return is removed from the lobbyist registry, the individual who filed the registration or return is deemed, for the purposes of his or her existing and future obligations under this By-law, not to have filed the registration or return.
9. In accordance with subsection 223.12(7) of the *Municipal Act, 2001*, should the Lobbyist Registrar determine, when conducting an inquiry, that there are reasonable grounds to believe that an individual has contravened a provincial Act of the Criminal Code of Canada, the Lobbyist Registrar shall immediately refer the matter to appropriate authorities and suspend the inquiry pending the outcome of any resulting police investigation.

Short Title

10. This By-law may be referred to as the "Lobbyist Registry By-law".

Enactment

11. This By-law comes into force on [date].