

CITY OF VAUGHAN

EXTRACT FROM COUNCIL MEETING MINUTES OF DECEMBER 15, 2015

Item 2, Report No. 46, of the Committee of the Whole (Working Session), which was adopted without amendment by the Council of the City of Vaughan on December 15, 2015.

2 **REGULATION OF LOBBYING ACTIVITIES**

The Committee of the Whole (Working Session) recommends:

- 1) That the recommendation contained in the following report of the City Clerk, dated December 8, 2015, be approved; and**
- 2) That Communication C1 from Ms. Carrie Liddy, dated December 3, 2015, be received.**

Recommendation

The City Clerk, in consultation with the Deputy City Solicitor, recommends:

1. That staff be directed to undertake consultations with relevant stakeholders on a mandatory post-lobbying registration system based on Option 3 – Mandatory Registry;
2. That a draft Lobbying Code of Conduct be brought forward for consideration by March, 2016;
3. That a draft by-law be brought forward for consideration by June, 2016;

Contribution to Sustainability

A strong accountability and transparency framework contributes to effective governance by ensuring that the City is accountable to the public for its actions, and by clearly defining the manner in which its governance practices will be made transparent to the public.

Economic Impact

The economic impact will vary, depending on the lobbyist registry model selected by Council. Costs could be negligible for a model that only involves staff's time and resources. A model that is based on the development of an online lobbyist registry managed by a third-party, or a more robust online portal will incur more costs and outside resources.

Communications Plan

This report will be made available on the City's web site. Implementation of a Lobbyist Registry will require that the Registry be promoted through the media and City channels, including the website. Information sessions will be used to educate potential lobbyists as to their roles and responsibilities and to address any questions they may have.

Purpose

The purpose of this report is to respond to Council's request for a report presenting a range of options for the regulation of lobbying activity with the goal of selecting a model best suited for the City of Vaughan.

CITY OF VAUGHAN

EXTRACT FROM COUNCIL MEETING MINUTES OF DECEMBER 15, 2015

Item 2, CW(W) Report No. 46 – Page 2

Background - Analysis and Options

Synopsis:

Lobbying conducted by interested parties is in many respects a positive contributor to debate and is an important part of the governing process. The lobbying of Members of Council and staff on municipal issues can enhance the deliberative process by providing the perspective of stakeholders that might otherwise be lost. Greater transparency of that process, however, will enhance the public's perception that decisions are being made in an accountable way.

Some methods of lobbying regulation can be expensive and administratively burdensome, creating significant demands on human and technological resources. This report explores the various potential components of lobbying regulation and presents three options for the regulation of lobbying activities in Vaughan with reference to the four Ontario municipalities who already have lobbying by-laws in place.

Background:

At the Council meeting of May 19, 2015, through its adoption of Item 2 of Report No. 22 of Committee of the Whole (Working Session) entitled "City of Vaughan Accountability and Transparency Framework", the following recommendation was approved:

"Whereas, a strong accountability and transparency framework contributes to effective governance by ensuring that the City is accountable to the public for its actions, and by clearly defining the manner in which its governance practices will be made transparent to the public;

Whereas, in 2011, the position of Director of Internal Audit, reporting directly to Council, was created to further strengthen our governance structure;

Whereas, at the first meeting of the 2014-2018 term of Council on December 4, 2014, the Inauguration Speech made it a priority to have the city establish a lobbyist registry;

Whereas, Council is committed to good governance and will continue to act in the best interest of our residents;

Whereas, the *Municipal Act, 2001* (known as Bill 130), which came into effect January 1, 2007, contains provisions to promote greater transparency;

Whereas, the forms which lobbyist regulation can take are varied;

It is therefore recommended:

1. That the appropriate Staff bring a report back to a future Committee meeting no later than November 2015 that clearly explores a range of options for the regulation of lobbying activities with the goal of selecting the model best suited for the City of Vaughan; and
2. That each option identify the timeframe to successfully implement the lobbyist registry and the resources required"

Statutory Authority to Establish Lobbyist Registry

The *Municipal Act, 2001* authorizes municipalities to establish lobbyist registries and appoint lobbyist registrars. The City of Toronto is obliged to establish a registry, but it is optional for other municipalities.

CITY OF VAUGHAN

EXTRACT FROM COUNCIL MEETING MINUTES OF DECEMBER 15, 2015

Item 2, CW(WS) Report No. 46 – Page 3

In particular, Section 223.9(1) of the *Municipal Act* allows for a municipality “to establish and maintain a registry in which shall be kept such returns as may be required by the municipality that are filed by persons who lobby public office holders.” Sections 9, 10 and 11 (General Municipal Powers) provide flexibility to municipalities to adopt other approaches to regulate lobbying.

Section 223.9(2) outlines a list of activities that a municipality might undertake in implementing a lobbyist registry. The list is not mandatory and effectively sets out options available to the municipality. Any, or all, of the available options can be considered or implemented by the municipality. The *Act* gives specific authority to the municipality to “provide for a system of registration of persons who lobby public office holders and to do the following things:

1. Define “lobby”.
2. Require persons who lobby public office holders to file returns and give information to the municipality.
3. Specify the returns to be filed and the information to be given 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 former public office holders from lobbying current public office holders for the period of time specified in the by-law.
8. Prohibit a person from lobbying public office holders without being registered.
9. Impose conditions for registration, continued registration or a renewal of registration.
10. Refuse to register a person, and suspend or revoke a registration.
11. Prohibit persons who lobby public office holders from receiving payment that is in whole or in part contingent on the successful outcome of any lobbying activities. 2006, c. 32, Sched. A, s. 98.”

In addition to the above listed tools, the *Municipal Act* also addresses:

- Public access to a Lobbyist Registry [S223.9(3)]
- Prohibition on contingency fees [S.223.10]
- Registrar for lobbying matters, including Powers and Duties, Delegation [S.223.11]
- Inquiry by registrar [S.223.12]

Regulation of Lobbying Activities in Other Municipalities

A review of existing and proposed Lobbyist Registries in other Ontario municipalities was undertaken to better understand the framework that each has established for their own solutions. The cities of Toronto, Ottawa and Hamilton have all implemented their own registries. The City of Brampton recently developed a lobbyist registry, passing a Lobbyist Registry by-law in July 2015 with an in-effect date of January 1st, 2016.

Generally, there is consistency amongst the existing registries, with minor differences in some of the details. The similarities amongst the registries speak to the “newness” of lobbyist registries in Ontario municipalities. It appears as if the City of Toronto registry has served as a model for the other municipalities.

CITY OF VAUGHAN

EXTRACT FROM COUNCIL MEETING MINUTES OF DECEMBER 15, 2015

Item 2, CW(W) Report No. 46 – Page 4

Considerations for the Regulation of Lobbying Activities:

Definitions

Before the regulation of lobbying activities can be implemented, the various activities and roles regulated by a lobbyist registry must be defined. These definitions include:

- What is communication with a public office holder?
- What types of communications will be considered lobbying?
- Who will be considered a lobbyist, and what types of lobbyist are there?
- Who is a public office holder?
- Who and what should be exempt from the lobbyist registry?

Communication

The definition of communication is fairly consistent across the four existing lobbying regulation by-laws. The basic definition is that communication means any form of expressive contact, including oral, written or electronic communication or any other meaningful dialogue that falls within the definition of lobbying. This represents the basic definition of communication and can form the basis of Vaughan's definition, as it adequately covers the common understanding of what communication with public officials consists of.

Both the Ottawa and Brampton by-laws also add that communication can occur in either a formal or an informal setting. This is an important addition as it clarifies, for the public office holders subject to the lobbyist registry, that communication can take place both in formal settings (ie. meetings at their office) and informal settings (ie. Social events, unplanned meetings). This addition to the basic definition is important to demonstrate the transparency and accountability of the registry, as well as creating confidence in the overall lobbyist registry.

Lobbying

The definition of lobbying is another key component to any form of lobbyist regulation. The Brampton and Ottawa definitions of lobbying are straightforward and concise. The City of Brampton lobby definition is "any communication with a public office holder by an individual who represents a business or financial interest with the goal of trying to influence and legislative action." The Ottawa by-law furthers this definition by including a list of specific activities, including "development, introduction, passage, defeat, amendment or repeal of a by-law, motion, resolution or the outcome of a decision on any matter before Council, a Committee of Council, or a Ward Councillor or staff member acting under delegated authority".

Both the Toronto and Hamilton registries go well beyond the Brampton and Ottawa definitions by including a more detailed list of activities. The list includes lobbying activities related to the development of City policy, purchasing of goods and services, approval of permits and licenses, financial contributions, and the transfer of the City's interest or asset of any business, enterprise or institution. Hamilton includes lobbying activities related to the hiring, disciplining or terminating of any member of the City's senior management team.

Consultation with the public, business community and public office holders will inform the selection of an appropriate definition for the City of Vaughan.

Lobbyist

There is substantial agreement in the four registries reviewed as to the type of lobbyists regulated, and their definitions. For example, the Ottawa registry uses these definitions:

CITY OF VAUGHAN

EXTRACT FROM COUNCIL MEETING MINUTES OF DECEMBER 15, 2015

Item 2, CW(WS) Report No. 46 – Page 5

- **Consultant Lobbyist** - an individual who lobbies for payment on behalf of a client (another individual, company, partnership or organization). Additionally, if the consultant lobbyist arranges for a meeting between a public office holder and a third party, that is lobbying.
- **In-House Lobbyist** - an individual who is an employee, partner or sole proprietor and who lobbies on behalf of their own employer, business or organization.
- **Voluntary Unpaid Lobbyist** - an individual who lobbies without payment on behalf of a business or for-profit organization for the benefit of the interests of the for-profit entity or organization. Additionally, if the voluntary unpaid lobbyist arranges a meeting between a public office holder and a third party, that is lobbying.

Given the consistencies amongst the definitions of lobbyist, the above definitions offer a foundation upon which to build a Vaughan lobbying framework. A flow chart used by the City of Ottawa has been included as Attachment 1 as an example of a possible framework for the determination of whether a person is a lobbyist.

Public Office Holder

The definition of Public Office Holder is another key component of lobbying regulation. The Public office holders, and their communications with lobbyists, will be subject to the requirements of any lobbying regulation implemented by the City.

The most simple of definitions, as included in the City of Hamilton's lobbyist registry by-law, is that a Public Office Holder means:

1. A member of Council and any person on his or her staff
2. An employee of the City who is a member of the City's Senior Management Team

The definition of Public Office Holder can be greatly expanded beyond this, as is seen in the Ottawa by-law, which includes the following, in part:

- The City Manager, Deputy City Managers, City Treasurer, City Clerk, Solicitor, Integrity Commissioner
- A general manager, director, manager
- Employees in management positions that can influence programs and service
- Employees who are not in management positions but have direct contact with members of Council and whose work includes providing advice to Council
 - including advice on legal, financial, personnel, policy advice
 - including employees who provide planning, building, licensing, inspection and purchasing service
- Employees who have direct contact with Council in the operation of Council and Committees
- Employees who work on municipal elections in a supervising role

The definition of Public Office Holder must be carefully considered as it impacts the breadth and scope of a lobbyist registry should one be established. The definition also plays a role in creating confidence in the registry and contributing to the public's perception of its utility.

Lobbyist and Lobbying Exemptions

Defining lobbying activities, and defining what is not to be considered lobbying activities will provide clarity to stakeholders. The following persons have been exempted in the lobbying regulation by-laws examined:

CITY OF VAUGHAN

EXTRACT FROM COUNCIL MEETING MINUTES OF DECEMBER 15, 2015

Item 2, CW(WS) Report No. 46 – Page 6

- People acting in their official capacity for another government or public sector, including:
 - Members of the Senate or House of Commons of Canada, legislative assembly of a province, the council or legislative assembly of a territory, or persons on the staff of those members
 - Members of a First Nation council as defined in the *Indian Act*, or persons on the staff of those members
 - Employees or consultants retained by another level of government, First Nation, crown corporation or federal/provincial public agency
 - A member of a Council or statutory body
- Officials and employees of the City and other municipal bodies, including
 - Public office holders
 - Officers, directors or employees of a local board of the City
 - A member of an advisory committee appointed by Council
- Persons communicating on behalf of the local school boards
- Persons communicating on behalf of healthcare institutions, such as Mackenzie Vaughan Hospital

In addition to the exemption of lobbyists, various types of communications are typically considered for exclusion:

- Communication that is a matter of public record or occurs during a meeting of Council, Local Board or Committee of Council;
- Communication that occurs during a public process, such as a public meeting, open house or media event held/sponsored by the City or public office holder;
- Communication restricted to a request for information;
- Communication restricted to compliments or complaints about a service/program;
- Communication with a public office holder by an individual on behalf of an individual, business or organization regarding:
 - Enforcement of an Act or by-law
 - Implantation or administration of any policy or program
 - A personal matter;
- Communication by an applicant, interested party or their representatives with respect to an application for service, permit or license, planning approval, permission or other approval, where the communication:
 - is restricted to providing general information on an application;
 - is part of the normal course of an approval process;
 - is in respect of planning and development applications, is with an employee who has a role in the processing of the planning application;
- Submitting a bid proposal as part of a procurement process;
- Communication with a public office holder in response to a written request from the public office holder;
- Communication to a member of Council by a constituent on a general neighbourhood or public policy issue.

Components of Lobbyist Regulation

As noted in the report “City of Vaughan Accountability and Transparency Framework” [Committee of the Whole (Working Session), May 19, 2015] lobbying regulation can be comprised of several distinct components, described below:

CITY OF VAUGHAN

EXTRACT FROM COUNCIL MEETING MINUTES OF DECEMBER 15, 2015

Item 2, CW(W/S) Report No. 46 – Page 7

1. **Lobbyists Code of Conduct**

A Lobbyist Code of Conduct is a foundation piece for a successful lobbyist registry. A Code of Conduct provides guidance to lobbyists, and reinforces accountability and transparency values in the lobbyist registry. A clear Code of Conduct will aid in the understanding of the registry and establishes the expectations of lobbyists and lobbying recipients.

The Cities of Toronto, Ottawa and Brampton have adopted similar Codes of Conduct covering the following topics:

- **Honesty** – lobbyists are expected to conduct themselves with honesty and integrity.
- **Openness** – lobbyists are to be open and frank about their activities.
- **Disclosure of Identity and Purpose** – lobbyists must disclose the identities of the person or organization they are acting on behalf of. They shall register their activities in accordance with the Lobbyist Registry requirements.
- **Information and Confidentiality** – Lobbyists must inform their employer, client or organization of their obligations under the Lobbyist Registry. They must also only provide factual information to public office holders, and not knowingly mislead anyone. Confidential information shall remain confidential unless they receive prior permission of their client, and must never use information to the disadvantage of their client.
- **Competing Interests** – Lobbyists must not represent competing or conflicting interests without receiving permission of those different parties. Lobbyists may also not lobby on a matter regarding which they have also provided advice to the City.
- **Improper Influence** – Lobbyists must avoid the appearance of, and reality of, impropriety. They may not knowingly place public office holders in a conflict of interest, or breach of their own code of conduct.

A Code of Conduct is the basic starting point for a lobbying regulation and should be included in any program established by Council.

2. **Registrations – Voluntary and Mandatory**

The *Municipal Act* provides for registrations of lobbyists, their conditions of registration and their continued or renewed registrations. The Act does not specify if those registrations must be mandatory or voluntary.

Lobbyist registration typically involves providing some basic information about the lobbyist, the subject matter they are lobbying on and the closure of the matter which is the subject of the lobbying activity. In particular, the Brampton registry by-law requires the following:

- **Registration as a Lobbyist**
 - Provide name, title and address
 - Type of lobbyist (consultant, in-house or voluntary unpaid)
 - Name of individual, client or organization they are lobbying on behalf of
- **Subject Matter Registration**
 - Each matter they will lobby on
 - Description of the issue being lobbied
 - Date on which the lobbying will start and finish
 - Names of Council members and public office holders being lobbied

CITY OF VAUGHAN

EXTRACT FROM COUNCIL MEETING MINUTES OF DECEMBER 15, 2015

Item 2, CW(WS) Report No. 46 – Page 8

- **Closure of the Subject Matter Registration**
 - The lobbyist must close the subject matter registration no more than 30 days after the completion of the lobbying activity

Voluntary registrations may have a place during a phase-in of a mandatory lobbyist registry. A voluntary period could be used for educational and training purposes, to assist lobbyists with learning about the lobbyist registry. It could also serve as a test period of any new technological solutions being implemented for the first time, such as an online portal for the registry. New workflows for staff could be tested and refined in the preview period to ensure a smoother implementation of a mandatory registry.

Mandatory registrations have been implemented in the cities of Toronto, Ottawa, Hamilton and Brampton. The requirement for the information to be submitted is very similar amongst the municipalities, the difference being the timing around the registrations. In Toronto and Hamilton, the registration must occur prior to the lobbying activity, while in Ottawa and Brampton, the registration can occur after the lobbying activity. In the case of the City of Ottawa, registration can occur up to 15 business days after the lobbying activity.

Registrations that occur after the lobbying activity recognize the potential for lobbying activities to occur outside of formal, pre-set meetings. For example, a public office holder at a community event may have an unplanned interaction with a lobbyist. Allowing for after-the-fact registrations allows for the registry to record these activities while accepting that not all lobbying activities occur in a pre-planned manner.

3. **Appointment of Lobbyist Registrar**

Section 223.11(1) of the *Municipal Act* permits a municipality to appoint a Lobbyist Registrar; more specifically, it states that a municipality is authorized “to appoint a registrar who is responsible for performing in an independent manner the functions assigned by the municipality with respect to the registry”. No further guidance or direction is given by the Act with respect to the type of person who can be appointed or their necessary background, except that the Registrar is not required to be an employee of the municipality.

Generally, the responsibilities of the Registrar include:

- Overseeing the administration of the lobbyist registration system
- Providing advice, opinions and interpretations regarding the lobbyist registry
- Conducting investigations or inquiries to determine if the lobbyist registry by-law has been contravened
- Suspending or revoking a registration
- Enforcing the lobbyist registry by-law

The Lobbyist Registrar may be given the authority to conduct inquiries, impose sanctions and where necessary refer inquires to the appropriate authorities for investigation. A Lobbyist Registrar should have the appropriate background, skills and experience to undertake these activities. Recognizing these needs, the Cities of Ottawa and Hamilton appointed their Integrity Commissioners as their Lobbyist Registrars. This is an option that can be further explored to determine if this is a suitable solution for the City of Vaughan, along with other potential options, including the appointment of another third party or staff member as the Lobbyist Registrar.

CITY OF VAUGHAN

EXTRACT FROM COUNCIL MEETING MINUTES OF DECEMBER 15, 2015

Item 2, CW(WS) Report No. 46 – Page 9

4. **Inquiries**

Section 223.12(1) of the *Municipal Act* permits the Lobbyist Registrar to conduct an inquiry when requested to do so by Council, a member of Council or a member of the public. The inquiry would be related to compliance with the requirements of the lobbyist registry, or the lobbyist's Code of Conduct. Inquiries must be conducted confidentially.

The Registrar may report the findings back to Council and any report received by Council must be made publically available. All four Ontario municipalities with a lobbyist registry by-law have assigned the powers for inquiry to their Lobbyist Registrar.

5. **Sanctions**

Section 223.9(1) of the *Municipal Act* allows for a municipality, in part, to "Impose conditions for registration, continued registration or a renewal of registration" and to "Refuse to register a person, and suspend or revoke a registration". Through these tools, a municipality may develop their own sanctions or penalties when the registry by-law is contravened.

Each of the existing lobbyist registries contains sections on penalties. Generally, those penalties involve a ban on lobbying activities for a period of time, based on the number of contraventions. The cities of Ottawa, Hamilton and Brampton all have penalties that prohibit a person found in contravention of the lobbyist by-law from lobbying a public office holder for a period of 30 days for a first offence. Second offence penalties range, depending on the municipality, from 60 to 90 days. A third, and any subsequent contraventions, can be penalized with a minimum ban of 60 days or a period of time determined by the Lobbyist Registrar, again depending on the municipality. The City of Toronto uses monetary penalties with a maximum \$25,000 fine for a first conviction and up to \$100,000 for each subsequent conviction.

Sanctions can be a powerful tool for enforcing a lobbyist registry, as well as an opportunity to further educate any lobbyist found in contravention of the registry by-law.

6. **Prosecutions**

Where the Lobbyist Registrar is conducting an inquiry, and the Registrar "determines that there are reasonable grounds to believe that there has been a contravention of any other Act or of the Criminal Code", the Registrar must immediately refer the matter to the appropriate authority. The inquiry must also be suspended until any police investigation and charge is disposed of. The suspension of the inquiry must be reported to Council. This is a requirement of the *Municipal Act* and not subject to any municipal requirements. The Registrar would need to be aware of this requirement and it should be included in any Lobbyist Registry by-law that may be implemented.

7. **Other Tools**

The *Municipal Act* contains other tools not already discussed that may be implemented through a lobbyist registry by-law. These tools may add to the accountability and transparency of the lobbyist registry, and help build trust that the registry is effective in enhancing those traits. These tools are:

- Prohibiting Lobbyists from receiving payment that is contingent upon the successful outcome of any lobbying activity

CITY OF VAUGHAN

EXTRACT FROM COUNCIL MEETING MINUTES OF DECEMBER 15, 2015

Item 2, CW(WS) Report No. 46 – Page 10

- Prohibiting former public office holders from lobbying current public office holders for a specified period of time

These tools have been implemented, to varying degrees in the existing lobbying regulation by-laws in Ontario. The suitability of including these in a Vaughan Lobbyist Registry will be further reviewed through the development of a registry.

8. **Fairness Monitors**

Fairness Monitors have been mentioned in the past as a possible component of, or related to, a lobbyist registry. Existing lobbyist registries do not include Fairness Monitors as a tool to regulate lobbying activities, as they are more typically linked to the purchasing and bidding activities or processes of the municipality. The implementation of Fairness Monitors is more appropriately considered through an evaluation of the City's bidding process. It is not recommended that Fairness Monitors be incorporated into a lobbyist registry, but they could be considered as an alternative or supplemental to any lobbying regulation adopted in Vaughan.

Implementation of Lobbying Regulation - Options

Three options for the implementation of lobbying regulation are proposed. Not all of the components discussed are required, as Council may choose to implement only certain components of a lobbyist registry. The options have been designed with this in mind. Option 1 could be implemented on its own, with no further steps, and this would represent simple lobbyist regulation. Options 2 and 3 build upon each previous option, increasing the complexity and scope of the registry, and based upon post-lobbying registration.

1. **Option 1 – Code of Conduct**

The first option involves the development of a Lobbyist Code of Conduct. This would be accomplished through public consultation with various stakeholders, including residents, lobbyists and Council, to solicit input on the Code of Conduct, the definition of lobbying, the list of lobbying activities (to be included and excluded) and identification of the public office holders to be included. From the public consultation, a draft Code of Conduct, along with definitions, list of activities and Public Officer Holders will be presented to a future Committee meeting for consideration and approval.

With Option 1, there would be no Registrar appointed, and no sanctions to apply. The regulation of lobbying activity would simply be subject to a voluntary Code that lobbyists would be expected to adhere to. Information sessions would be held to educate residents and lobbyists about the Code of Conduct, and their responsibilities.

The timeline for completing Option 1 would be:

- Late January/early February 2016 – hold public consultation sessions
- March 2016 – Report and Draft Code of Conduct submitted to Committee
- June 2016 – Draft Lobbyist Registry By-law

Costs for Option 1 would be absorbed by existing budgets, as the work will be completed using existing staff and resources.

CITY OF VAUGHAN

EXTRACT FROM COUNCIL MEETING MINUTES OF DECEMBER 15, 2015

Item 2, CW(WS) Report No. 46 – Page 11

2. Option 2 – Voluntary Registry

Option 2 includes the public consultation and Code of Conduct described in Option 1, but adds post-lobbying voluntary registrations as a key piece. Further exploration of options and costs associated with administering the voluntary registry would be undertaken. For example, administration of the Registry could be handled by a Lobbyist Registrar or possibly delegated to staff. Sanctions or penalties will not be included in this option.

A simple online portal for lobbyists to register their activities would need to be developed. An online form would be available for lobbyists to complete, and would include the collection of information regarding the identity of the lobbyist, who they are lobbying for, the lobbying subject matter and which public office holders they are lobbying. A method of posting that information, in a searchable format, would also be developed. Presenting the information in a searchable PDF document online would satisfy this requirement.

The timeline for completing Option 2 would be:

- Late January/early February 2016 – hold public consultation sessions
- March 2016 – Report and Draft Code of Conduct submitted to Committee, with consideration of a process for appointment of the Lobbyist Registrar and more detailed review of costs
- June 2016 – Draft Lobbyist Registry By-law
- Summer 2016 – develop and implement a simple online portal for lobbyists and posting of lobbying activities
- Fall 2016 – introduce voluntary lobbyist registry to serve as an educational period, without sanctions or penalties. Soft launch of the online portal to test functionality during the voluntary period. Public information/education sessions
- Fall 2016 – First Quarter 2017 budget submissions for establishment of Registrar's Office, if required; lobbyist registry comes into force, Public Information/Education Sessions conducted.

Most of the costs for the Option 2 lobbyist registry would be absorbed by existing budgets, as the work will be completed using existing staff and resources. This assumption is based on the leveraging of existing technology and the City's website for the online lobbyist portal, along with a simple posting of a lobbying activity document on a periodic basis.

Additional costs may be incurred with the appointment of a Lobbyist Registrar, should one be appointed.

3. Option 3 – Mandatory Registry

The Option 3 lobbyist registry would build upon the components of Options 1 and 2, with the addition of a more robust online presence and a requirement for mandatory post-lobbying registrations. Sanctions and penalties will be examined and reported on.

An online portal for both lobbyists and residents would be developed, possibly with technology not currently available to staff. The portal for lobbyists would include the ability for lobbyists to set-up secure online accounts. Lobbyists would be required to provide information regarding the identity of the lobbyist, who they are lobbying for, the lobbying subject matter and which public office holders they are lobbying. The portal for residents would allow for the searching of lobbyists, their activities and the public office holders who are lobbied.

CITY OF VAUGHAN

EXTRACT FROM COUNCIL MEETING MINUTES OF DECEMBER 15, 2015

Item 2, CW(WS) Report No. 46 – Page 12

Exploring the options for appointing a Lobbyist Registrar, along with associated costs, will be further researched and reported on to Council. Appointment of a Registrar with investigative experience would be essential in order to credibly impose sanctions and penalties, and to advise on lobbying practice.

The timeline for completing Option 3 would be:

- Late January/early February 2016 – hold public consultation sessions
- March 2016 – Report and Draft Code of Conduct submitted to Committee, with consideration of who to appoint as the Lobbyist Registrar and what penalties/sanctions to have and a more detailed review of costs
- June 2016 – Draft Lobbyist Registry By-law
- Summer and Fall 2016 – develop and implement an online portal for lobbyists and residents
- Fall 2016 – introduce voluntary lobbyist registry to serve as an educational period, without sanctions or penalties. Soft launch of the online portal to test functionality during the voluntary period. Public information/education sessions
- End of 2016/Early 2017 – budget submissions for establishment of Registrar's Office; lobbyist registry comes into force, Public Information/Education Sessions conducted, full online portal available

Costs and timing for the Option 3 registry have the greatest variables compared to Options 1 and 2, due to the potential use of new technology (and the costs associated with acquiring and implementing it) and the use of an outside resource as the Lobbyist Registrar. Budget submissions will be required to support the operations of the Registry and the Registrar.

Relationship to Term of Council Service Excellence Strategy Map (2014-2018)

This report supports the goals established by Council in the Term of Council Service Excellence Strategy Map by facilitating the establishment of a lobbyist registry, a specified priority of Council in the Term of Council Service Excellence Strategy Map (2014-2018).

Regional Implications

None

Conclusion

A lobbyist registry is a tool that the *Municipal Act* provides to a municipality, as part of an overall accountability and transparency framework. This report identifies the possible components of a lobbyist registry, as well as three options for lobbyist regulation.

Attachments

1. Flow Chart – “Are you a Lobbyist?” – City of Ottawa
2. Summary Table of Existing Lobbyist Registries

CITY OF VAUGHAN

EXTRACT FROM COUNCIL MEETING MINUTES OF DECEMBER 15, 2015

Item 2, CW(WS) Report No. 46 – Page 13

Report prepared by:

Todd Coles, Manager of Development Services and
Secretary Treasurer to Committee of Adjustment, ext. 8332

Jeffrey A. Abrams, City Clerk, ext. 8281

(A copy of the attachments referred to in the foregoing have been forwarded to each Member of Council and a copy thereof is also on file in the office of the City Clerk.)

Subject: FW: Lobby registry
Attachments: CW(WS)1208_15_2.pdf; ATT00001.txt

CW (WORKING SESSION)
December 8/15
ITEM - 2

-----Original Message-----

From: Carrie.liddy@gmail.com [mailto:carrie.liddy@gmail.com]
Sent: Thursday, December 03, 2015 9:53 AM
To: Iafrate, Marilyn; Rosati, Gino; Ferri, Mario; DeFrancesca, Rosanna; Craig, Suzanne; Wallis, Paul; rlorello@rogers.com; Ciampa, Gina
Cc: amartinrobbins@yrmg.com; njaved@thestar.ca
Subject: Lobby registry

Councillor Iafrate

Please accept this as a deputation with regards to the Clerk's report.

Thank you for forwarding the recommendations from staff regarding one piece of the accountability framework.

The recommendations and timeline from staff run counter to what I believe is the actual principles behind accountability and are self-serving.

In May, Staff was instructed by Council by way of a resolution, to bring a comprehensive report to Council by November at the latest. The report, in my opinion, does not address the resolution of Council but rather are a negative response to the public concerns and proposed solutions already raised in your task force meetings.

There are multiple ways to protect the public interest in the Municipal Act and the resolution of Council in May outlined a few and instructed staff to respond. The Lobbyist Registry is one of the pieces, however the recommendations from "clerk and solicitor" do not address transparency nor do they address the serious problems facing Vaughan .

There are three issues that Vaughan needs to address:

- 1) public accountability and public participation that results (Recent health report outlined the significantly negative participation levels of residents) from inability of the public to gain access to records
- 2) the gap between staff and council codes of conduct and lack of transparency and accountability of senior staff
- 3) the only avenue available to address staff wrong doings is the police and courts (when serious matters are dismissed without input from the public)

The accountability aspects of the lobbyist registry, ombudsman, and auditor general positions of the Municipal Act are particularly important for Vaughan, given the gap in the existing controls and the already identified problems.

The Integrity Commissioner has built a code of conduct that addresses many accountability issues, however her current jurisdiction does not include staff and lobbyists. The jurisdiction can be easily expanded which is cost effective and builds on established public confidence.

The lobbyist registry provides a legal basis for prosecution of offenders. It is noted that there is an ongoing police investigation into senior staff and resulting from publicly identified gap in accountability of senior staff and refusal to address.

The lack of proper analysis, extremely excessive timeLines, no cost models and recommendation that senior staff implement the lobbyist registry is obvious in its potential for conflicts and obvious in its purpose as a self-serving solution. The recommendations do not address the public accountability that the implementation of one of the multiple accountability tools in the MA (registry) is intended to address. A fox guarding the hen house scenario.

Should these recommendations proceed as in the report, it will be a step backwards for Vaughan.

The lobbyist registrar needs to be implemented by an independent office(r) with a legal background and someone that will ensure the public is protected and that will RESTORE PUBLIC CONFIDENCE.

The report doesn't address the cost effective and timely solution the Clerk is quite aware was already proposed and that is : appoint the Integrity Commissioner as the Lobbyist Registry Commissioner position (in addition to IC) and assign the task of implementing the office to her. Using existing lobby registry models and codes (Ottawa already has a joint Integrity Commissioner/Lobbyist Registry office and Toronto has a well established Registry) will not only be cost effective, but allow immediate implementation.

The Integrity Commissioner successfully undertook this same process when she wrote and implemented the Code of Conduct. Commissioner Craig has the support of the public and can build on her support to implement the Lobbyist Registry.

The Integrity Commissioner can modify the Ottawa /Toronto process and policies and bring the changed code and policies to Council in a very short period of time. The costs will be minimal and the Ottawa historic experience can be used to address any shortfalls or changes.

There is no reason for a year or more delay and huge costs to implement the much needed accountability position now. Vaughan doesn't need a full time Registry position and doesn't need to

reinvent an existing process. (Ottawa is a much larger municipality and functions with a joint Commission)

I propose Council NOT implement the recommendations in the report noted above.

This deputation proposes the following:

- 1) The Integrity Commissioner be appointed to implement the lobbyist registry now, based on the existing (modified according to Vaughan needs) models.
- 2) The Integrity Commissioner present the recommendations for a Vaughan specific Lobbyist Registry and implement by March 2016, at the latest
- 3) The Integrity Commissioner operate both offices for a period of 10-12 months and report to Council with recommendations for changes.

Thank you

[http://www.vaughan.ca/council/minutes_agendas/AgendaItems/CW\(WS\)1208_15_2.pdf](http://www.vaughan.ca/council/minutes_agendas/AgendaItems/CW(WS)1208_15_2.pdf)

REGULATION OF LOBBYING ACTIVITIES

Recommendation

The City Clerk, in consultation with the Deputy City Solicitor, recommends:

1. That staff be directed to undertake consultations with relevant stakeholders on a mandatory post-lobbying registration system based on Option 3 – Mandatory Registry;
2. That a draft Lobbying Code of Conduct be brought forward for consideration by March, 2016;
3. That a draft by-law be brought forward for consideration by June, 2016;

Contribution to Sustainability

A strong accountability and transparency framework contributes to effective governance by ensuring that the City is accountable to the public for its actions, and by clearly defining the manner in which its governance practices will be made transparent to the public.

Economic Impact

The economic impact will vary, depending on the lobbyist registry model selected by Council. Costs could be negligible for a model that only involves staff's time and resources. A model that is based on the development of an online lobbyist registry managed by a third-party, or a more robust online portal will incur more costs and outside resources.

Communications Plan

This report will be made available on the City's web site. Implementation of a Lobbyist Registry will require that the Registry be promoted through the media and City channels, including the website. Information sessions will be used to educate potential lobbyists as to their roles and responsibilities and to address any questions they may have.

Purpose

The purpose of this report is to respond to Council's request for a report presenting a range of options for the regulation of lobbying activity with the goal of selecting a model best suited for the City of Vaughan.

Background - Analysis and Options

Synopsis:

Lobbying conducted by interested parties is in many respects a positive contributor to debate and is an important part of the governing process. The lobbying of Members of Council and staff on municipal issues can enhance the deliberative process by providing the perspective of stakeholders that might otherwise be lost. Greater transparency of that process, however, will enhance the public's perception that decisions are being made in an accountable way.

Some methods of lobbying regulation can be expensive and administratively burdensome, creating significant demands on human and technological resources. This report explores the various potential components of lobbying regulation and presents three options for the regulation of lobbying activities in Vaughan with reference to the four Ontario municipalities who already have lobbying by-laws in place.

Background:

At the Council meeting of May 19, 2015, through its adoption of Item 2 of Report No. 22 of Committee of the Whole (Working Session) entitled "City of Vaughan Accountability and Transparency Framework", the following recommendation was approved:

"Whereas, a strong accountability and transparency framework contributes to effective governance by ensuring that the City is accountable to the public for its actions, and by clearly defining the manner in which its governance practices will be made transparent to the public;

Whereas, in 2011, the position of Director of Internal Audit, reporting directly to Council, was created to further strengthen our governance structure;

Whereas, at the first meeting of the 2014-2018 term of Council on December 4, 2014, the Inauguration Speech made it a priority to have the city establish a lobbyist registry;

Whereas, Council is committed to good governance and will continue to act in the best interest of our residents;

Whereas, the *Municipal Act, 2001* (known as Bill 130), which came into effect January 1, 2007, contains provisions to promote greater transparency;

Whereas, the forms which lobbyist regulation can take are varied;

It is therefore recommended:

1. That the appropriate Staff bring a report back to a future Committee meeting no later than November 2015 that clearly explores a range of options for the regulation of lobbying activities with the goal of selecting the model best suited for the City of Vaughan; and
2. That each option identify the timeframe to successfully implement the lobbyist registry and the resources required"

Statutory Authority to Establish Lobbyist Registry

The *Municipal Act, 2001* authorizes municipalities to establish lobbyist registries and appoint lobbyist registrars. The City of Toronto is obliged to establish a registry, but it is optional for other municipalities.

In particular, Section 223.9(1) of the *Municipal Act* allows for a municipality "to establish and maintain a registry in which shall be kept such returns as may be required by the municipality that are filed by persons who lobby public office holders." Sections 9, 10 and 11 (General Municipal Powers) provide flexibility to municipalities to adopt other approaches to regulate lobbying.

Section 223.9(2) outlines a list of activities that a municipality might undertake in implementing a lobbyist registry. The list is not mandatory and effectively sets out options available to the municipality. Any, or all, of the available options can be considered or implemented by the municipality. The *Act* gives specific authority to the municipality to "provide for a system of registration of persons who lobby public office holders and to do the following things:

1. Define "lobby".
2. Require persons who lobby public office holders to file returns and give information to the municipality.

3. Specify the returns to be filed and the information to be given 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 former public office holders from lobbying current public office holders for the period of time specified in the by-law.
8. Prohibit a person from lobbying public office holders without being registered.
9. Impose conditions for registration, continued registration or a renewal of registration.
10. Refuse to register a person, and suspend or revoke a registration.
11. Prohibit persons who lobby public office holders from receiving payment that is in whole or in part contingent on the successful outcome of any lobbying activities. 2006, c. 32, Sched. A, s. 98.”

In addition to the above listed tools, the *Municipal Act* also addresses:

- Public access to a Lobbyist Registry [S223.9(3)]
- Prohibition on contingency fees [S.223.10]
- Registrar for lobbying matters, including Powers and Duties, Delegation [S.223.11]
- Inquiry by registrar [S.223.12]

Regulation of Lobbying Activities in Other Municipalities

A review of existing and proposed Lobbyist Registries in other Ontario municipalities was undertaken to better understand the framework that each has established for their own solutions. The cities of Toronto, Ottawa and Hamilton have all implemented their own registries. The City of Brampton recently developed a lobbyist registry, passing a Lobbyist Registry by-law in July 2015 with an in-effect date of January 1st, 2016.

Generally, there is consistency amongst the existing registries, with minor differences in some of the details. The similarities amongst the registries speak to the “newness” of lobbyist registries in Ontario municipalities. It appears as if the City of Toronto registry has served as a model for the other municipalities.

Considerations for the Regulation of Lobbying Activities:

Definitions

Before the regulation of lobbying activities can be implemented, the various activities and roles regulated by a lobbyist registry must be defined. These definitions include:

- What is communication with a public office holder?
- What types of communications will be considered lobbying?
- Who will be considered a lobbyist, and what types of lobbyist are there?
- Who is a public office holder?
- Who and what should be exempt from the lobbyist registry?

Communication

The definition of communication is fairly consistent across the four existing lobbying regulation by-laws. The basic definition is that communication means any form of expressive contact, including oral, written or electronic communication or any other meaningful dialogue that falls within the definition of lobbying. This represents the basic definition of communication and can

form the basis of Vaughan's definition, as it adequately covers the common understanding of what communication with public officials consists of.

Both the Ottawa and Brampton by-laws also add that communication can occur in either a formal or an informal setting. This is an important addition as it clarifies, for the public office holders subject to the lobbyist registry, that communication can take place both in formal settings (ie. meetings at their office) and informal settings (ie. Social events, unplanned meetings). This addition to the basic definition is important to demonstrate the transparency and accountability of the registry, as well as creating confidence in the overall lobbyist registry.

Lobbying

The definition of lobbying is another key component to any form of lobbyist regulation. The Brampton and Ottawa definitions of lobbying are straightforward and concise. The City of Brampton lobby definition is "any communication with a public office holder by an individual who represents a business or financial interest with the goal of trying to influence and legislative action." The Ottawa by-law furthers this definition by including a list of specific activities, including "development, introduction, passage, defeat, amendment or repeal of a by-law, motion, resolution or the outcome of a decision on any matter before Council, a Committee of Council, or a Ward Councillor or staff member acting under delegated authority".

Both the Toronto and Hamilton registries go well beyond the Brampton and Ottawa definitions by including a more detailed list of activities. The list includes lobbying activities related to the development of City policy, purchasing of goods and services, approval of permits and licenses, financial contributions, and the transfer of the City's interest or asset of any business, enterprise or institution. Hamilton includes lobbying activities related to the hiring, disciplining or terminating of any member of the City's senior management team.

Consultation with the public, business community and public office holders will inform the selection of an appropriate definition for the City of Vaughan.

Lobbyist

There is substantial agreement in the four registries reviewed as to the type of lobbyists regulated, and their definitions. For example, the Ottawa registry uses these definitions:

- **Consultant Lobbyist** - an individual who lobbies for payment on behalf of a client (another individual, company, partnership or organization). Additionally, if the consultant lobbyist arranges for a meeting between a public office holder and a third party, that is lobbying.
- **In-House Lobbyist** - an individual who is an employee, partner or sole proprietor and who lobbies on behalf of their own employer, business or organization.
- **Voluntary Unpaid Lobbyist** - an individual who lobbies without payment on behalf of a business or for-profit organization for the benefit of the interests of the for-profit entity or organization. Additionally, if the voluntary unpaid lobbyist arranges a meeting between a public office holder and a third party, that is lobbying.

Given the consistencies amongst the definitions of lobbyist, the above definitions offer a foundation upon which to build a Vaughan lobbying framework. A flow chart used by the City of Ottawa has been included as Attachment 1 as an example of a possible framework for the determination of whether a person is a lobbyist.

Public Office Holder

The definition of Public Office Holder is another key component of lobbying regulation. The Public office holders, and their communications with lobbyists, will be subject to the requirements of any lobbying regulation implemented by the City.

The most simple of definitions, as included in the City of Hamilton's lobbyist registry by-law, is that a Public Office Holder means:

1. A member of Council and any person on his or her staff
2. An employee of the City who is a member of the City's Senior Management Team

The definition of Public Office Holder can be greatly expanded beyond this, as is seen in the Ottawa by-law, which includes the following, in part:

- The City Manager, Deputy City Managers, City Treasurer, City Clerk, Solicitor, Integrity Commissioner
- A general manager, director, manager
- Employees in management positions that can influence programs and service
- Employees who are not in management positions but have direct contact with members of Council and whose work includes providing advice to Council
 - including advice on legal, financial, personnel, policy advice
 - including employees who provide planning, building, licensing, inspection and purchasing service
- Employees who have direct contact with Council in the operation of Council and Committees
- Employees who work on municipal elections in a supervising role

The definition of Public Office Holder must be carefully considered as it impacts the breadth and scope of a lobbyist registry should one be established. The definition also plays a role in creating confidence in the registry and contributing to the public's perception of its utility.

Lobbyist and Lobbying Exemptions

Defining lobbying activities, and defining what is not to be considered lobbying activities will provide clarity to stakeholders. The following persons have been exempted in the lobbying regulation by-laws examined:

- People acting in their official capacity for another government or public sector, including:
 - Members of the Senate or House of Commons of Canada, legislative assembly of a province, the council or legislative assembly of a territory, or persons on the staff of those members
 - Members of a First Nation council as defined in the *Indian Act*, or persons on the staff of those members
 - Employees or consultants retained by another level of government, First Nation, crown corporation or federal/provincial public agency
 - A member of a Council or statutory body
- Officials and employees of the City and other municipal bodies, including
 - Public office holders
 - Officers, directors or employees of a local board of the City
 - A member of an advisory committee appointed by Council
- Persons communicating on behalf of the local school boards
- Persons communicating on behalf of healthcare institutions, such as Mackenzie Vaughan Hospital

In addition to the exemption of lobbyists, various types of communications are typically considered for exclusion:

- Communication that is a matter of public record or occurs during a meeting of Council, Local Board or Committee of Council;
- Communication that occurs during a public process, such as a public meeting, open house or media event held/sponsored by the City or public office holder;
- Communication restricted to a request for information;
- Communication restricted to compliments or complaints about a service/program;
- Communication with a public office holder by an individual on behalf of an individual, business or organization regarding:
 - Enforcement of an Act or by-law
 - Implantation or administration of any policy or program
 - A personal matter;
- Communication by an applicant, interested party or their representatives with respect to an application for service, permit or license, planning approval, permission or other approval, where the communication:
 - is restricted to providing general information on an application;
 - is part of the normal course of an approval process;
 - is in respect of planning and development applications, is with an employee who has a role in the processing of the planning application;
- Submitting a bid proposal as part of a procurement process;
- Communication with a public office holder in response to a written request from the public office holder;
- Communication to a member of Council by a constituent on a general neighbourhood or public policy issue.

Components of Lobbyist Regulation

As noted in the report “City of Vaughan Accountability and Transparency Framework” [Committee of the Whole (Working Session), May 19, 2015] lobbying regulation can be comprised of several distinct components, described below:

1. **Lobbyists Code of Conduct**

A Lobbyist Code of Conduct is a foundation piece for a successful lobbyist registry. A Code of Conduct provides guidance to lobbyists, and reinforces accountability and transparency values in the lobbyist registry. A clear Code of Conduct will aid in the understanding of the registry and establishes the expectations of lobbyists and lobbying recipients.

The Cities of Toronto, Ottawa and Brampton have adopted similar Codes of Conduct covering the following topics:

- **Honesty** – lobbyists are expected to conduct themselves with honesty and integrity.
- **Openness** – lobbyists are to be open and frank about their activities.
- **Disclosure of Identity and Purpose** – lobbyists must disclose the identities of the person or organization they are acting on behalf of. They shall register their activities in accordance with the Lobbyist Registry requirements.
- **Information and Confidentiality** – Lobbyists must inform their employer, client or organization of their obligations under the Lobbyist Registry. They must also only provide factual information to public office holders, and not knowingly mislead anyone. Confidential information shall remain confidential unless they

receive prior permission of their client, and must never use information to the disadvantage of their client.

- **Competing Interests** – Lobbyists must not represent competing or conflicting interests without receiving permission of those different parties. Lobbyists may also not lobby on a matter regarding which they have also provided advice to the City.
- **Improper Influence** – Lobbyists must avoid the appearance of, and reality of, impropriety. They may not knowingly place public office holders in a conflict of interest, or breach of their own code of conduct.

A Code of Conduct is the basic starting point for a lobbying regulation and should be included in any program established by Council.

2. **Registrations – Voluntary and Mandatory**

The *Municipal Act* provides for registrations of lobbyists, their conditions of registration and their continued or renewed registrations. The Act does not specify if those registrations must be mandatory or voluntary.

Lobbyist registration typically involves providing some basic information about the lobbyist, the subject matter they are lobbying on and the closure of the matter which is the subject of the lobbying activity. In particular, the Brampton registry by-law requires the following:

- **Registration as a Lobbyist**
 - Provide name, title and address
 - Type of lobbyist (consultant, in-house or voluntary unpaid)
 - Name of individual, client or organization they are lobbying on behalf of
- **Subject Matter Registration**
 - Each matter they will lobby on
 - Description of the issue being lobbied
 - Date on which the lobbying will start and finish
 - Names of Council members and public office holders being lobbied
- **Closure of the Subject Matter Registration**
 - The lobbyist must close the subject matter registration no more than 30 days after the completion of the lobbying activity

Voluntary registrations may have a place during a phase-in of a mandatory lobbyist registry. A voluntary period could be used for educational and training purposes, to assist lobbyists with learning about the lobbyist registry. It could also serve as a test period of any new technological solutions being implemented for the first time, such as an online portal for the registry. New workflows for staff could be tested and refined in the preview period to ensure a smoother implementation of a mandatory registry.

Mandatory registrations have been implemented in the cities of Toronto, Ottawa, Hamilton and Brampton. The requirement for the information to be submitted is very similar amongst the municipalities, the difference being the timing around the registrations. In Toronto and Hamilton, the registration must occur prior to the lobbying activity, while in Ottawa and Brampton, the registration can occur after the lobbying activity. In the case of the City of Ottawa, registration can occur up to 15 business days after the lobbying activity.

Registrations that occur after the lobbying activity recognize the potential for lobbying activities to occur outside of formal, pre-set meetings. For example, a public office holder at a community event may have an unplanned interaction with a lobbyist. Allowing for

after-the-fact registrations allows for the registry to record these activities while accepting that not all lobbying activities occur in a pre-planned manner.

3. **Appointment of Lobbyist Registrar**

Section 223.11(1) of the *Municipal Act* permits a municipality to appoint a Lobbyist Registrar; more specifically, it states that a municipality is authorized “to appoint a registrar who is responsible for performing in an independent manner the functions assigned by the municipality with respect to the registry”. No further guidance or direction is given by the Act with respect to the type of person who can be appointed or their necessary background, except that the Registrar is not required to be an employee of the municipality.

Generally, the responsibilities of the Registrar include:

- Overseeing the administration of the lobbyist registration system
- Providing advice, opinions and interpretations regarding the lobbyist registry
- Conducting investigations or inquiries to determine if the lobbyist registry by-law has been contravened
- Suspending or revoking a registration
- Enforcing the lobbyist registry by-law

The Lobbyist Registrar may be given the authority to conduct inquiries, impose sanctions and where necessary refer inquiries to the appropriate authorities for investigation. A Lobbyist Registrar should have the appropriate background, skills and experience to undertake these activities. Recognizing these needs, the Cities of Ottawa and Hamilton appointed their Integrity Commissioners as their Lobbyist Registrars. This is an option that can be further explored to determine if this is a suitable solution for the City of Vaughan, along with other potential options, including the appointment of another third party or staff member as the Lobbyist Registrar.

4. **Inquiries**

Section 223.12(1) of the *Municipal Act* permits the Lobbyist Registrar to conduct an inquiry when requested to do so by Council, a member of Council or a member of the public. The inquiry would be related to compliance with the requirements of the lobbyist registry, or the lobbyist’s Code of Conduct. Inquiries must be conducted confidentially.

The Registrar may report the findings back to Council and any report received by Council must be made publically available. All four Ontario municipalities with a lobbyist registry by-law have assigned the powers for inquiry to their Lobbyist Registrar.

5. **Sanctions**

Section 223.9(1) of the *Municipal Act* allows for a municipality, in part, to “Impose conditions for registration, continued registration or a renewal of registration” and to “Refuse to register a person, and suspend or revoke a registration”. Through these tools, a municipality may develop their own sanctions or penalties when the registry by-law is contravened.

Each of the existing lobbyist registries contains sections on penalties. Generally, those penalties involve a ban on lobbying activities for a period of time, based on the number of contraventions. The cities of Ottawa, Hamilton and Brampton all have penalties that prohibit a person found in contravention of the lobbyist by-law from lobbying a public office holder for a period of 30 days for a first offence. Second offence penalties range,

depending on the municipality, from 60 to 90 days. A third, and any subsequent contraventions, can be penalized with a minimum ban of 60 days or a period of time determined by the Lobbyist Registrar, again depending on the municipality. The City of Toronto uses monetary penalties with a maximum \$25,000 fine for a first conviction and up to \$100,000 for each subsequent conviction.

Sanctions can be a powerful tool for enforcing a lobbyist registry, as well as an opportunity to further educate any lobbyist found in contravention of the registry by-law.

6. **Prosecutions**

Where the Lobbyist Registrar is conducting an inquiry, and the Registrar “determines that there are reasonable grounds to believe that there has been a contravention of any other Act or of the Criminal Code”, the Registrar must immediately refer the matter to the appropriate authority. The inquiry must also be suspended until any police investigation and charge is disposed of. The suspension of the inquiry must be reported to Council. This is a requirement of the *Municipal Act* and not subject to any municipal requirements. The Registrar would need to be aware of this requirement and it should be included in any Lobbyist Registry by-law that may be implemented.

7. **Other Tools**

The *Municipal Act* contains other tools not already discussed that may be implemented through a lobbyist registry by-law. These tools may add to the accountability and transparency of the lobbyist registry, and help build trust that the registry is effective in enhancing those traits. These tools are:

- Prohibiting Lobbyists from receiving payment that is contingent upon the successful outcome of any lobbying activity
- Prohibiting former public office holders from lobbying current public office holders for a specified period of time

These tools have been implemented, to varying degrees in the existing lobbying regulation by-laws in Ontario. The suitability of including these in a Vaughan Lobbyist Registry will be further reviewed through the development of a registry.

8. **Fairness Monitors**

Fairness Monitors have been mentioned in the past as a possible component of, or related to, a lobbyist registry. Existing lobbyist registries do not include Fairness Monitors as a tool to regulate lobbying activities, as they are more typically linked to the purchasing and bidding activities or processes of the municipality. The implementation of Fairness Monitors is more appropriately considered through an evaluation of the City's bidding process. It is not recommended that Fairness Monitors be incorporated into a lobbyist registry, but they could be considered as an alternative or supplemental to any lobbying regulation adopted in Vaughan.

Implementation of Lobbying Regulation - Options

Three options for the implementation of lobbying regulation are proposed. Not all of the components discussed are required, as Council may choose to implement only certain components of a lobbyist registry. The options have been designed with this in mind. Option 1 could be implemented on its own, with no further steps, and this would represent simple lobbyist regulation. Options 2 and 3 build upon each previous option, increasing the complexity and scope of the registry, and based upon post-lobbying registration.

1. **Option 1 – Code of Conduct**

The first option involves the development of a Lobbyist Code of Conduct. This would be accomplished through public consultation with various stakeholders, including residents, lobbyists and Council, to solicit input on the Code of Conduct, the definition of lobbying, the list of lobbying activities (to be included and excluded) and identification of the public office holders to be included. From the public consultation, a draft Code of Conduct, along with definitions, list of activities and Public Officer Holders will be presented to a future Committee meeting for consideration and approval.

With Option 1, there would be no Registrar appointed, and no sanctions to apply. The regulation of lobbying activity would simply be subject to a voluntary Code that lobbyists would be expected to adhere to. Information sessions would be held to educate residents and lobbyists about the Code of Conduct, and their responsibilities.

The timeline for completing Option 1 would be:

- Late January/early February 2016 – hold public consultation sessions
- March 2016 – Report and Draft Code of Conduct submitted to Committee
- June 2016 – Draft Lobbyist Registry By-law

Costs for Option 1 would be absorbed by existing budgets, as the work will be completed using existing staff and resources.

2. **Option 2 – Voluntary Registry**

Option 2 includes the public consultation and Code of Conduct described in Option 1, but adds post-lobbying voluntary registrations as a key piece. Further exploration of options and costs associated with administering the voluntary registry would be undertaken. For example, administration of the Registry could be handled by a Lobbyist Registrar or possibly delegated to staff. Sanctions or penalties will not be included in this option.

A simple online portal for lobbyists to register their activities would need to be developed. An online form would be available for lobbyists to complete, and would include the collection of information regarding the identity of the lobbyist, who they are lobbying for, the lobbying subject matter and which public office holders they are lobbying. A method of posting that information, in a searchable format, would also be developed. Presenting the information in a searchable PDF document online would satisfy this requirement.

The timeline for completing Option 2 would be:

- Late January/early February 2016 – hold public consultation sessions
- March 2016 – Report and Draft Code of Conduct submitted to Committee, with consideration of a process for appointment of the Lobbyist Registrar and more detailed review of costs
- June 2016 – Draft Lobbyist Registry By-law
- Summer 2016 – develop and implement a simple online portal for lobbyists and posting of lobbying activities
- Fall 2016 – introduce voluntary lobbyist registry to serve as an educational period, without sanctions or penalties. Soft launch of the online portal to test functionality during the voluntary period. Public information/education sessions

- Fall 2016 – First Quarter 2017 budget submissions for establishment of Registrar's Office, if required; lobbyist registry comes into force, Public Information/Education Sessions conducted.

Most of the costs for the Option 2 lobbyist registry would be absorbed by existing budgets, as the work will be completed using existing staff and resources. This assumption is based on the leveraging of existing technology and the City's website for the online lobbyist portal, along with a simple posting of a lobbying activity document on a periodic basis.

Additional costs may be incurred with the appointment of a Lobbyist Registrar, should one be appointed.

3. **Option 3 – Mandatory Registry**

The Option 3 lobbyist registry would build upon the components of Options 1 and 2, with the addition of a more robust online presence and a requirement for mandatory post-lobbying registrations. Sanctions and penalties will be examined and reported on.

An online portal for both lobbyists and residents would be developed, possibly with technology not currently available to staff. The portal for lobbyists would include the ability for lobbyists to set-up secure online accounts. Lobbyists would be required to provide information regarding the identity of the lobbyist, who they are lobbying for, the lobbying subject matter and which public office holders they are lobbying. The portal for residents would allow for the searching of lobbyists, their activities and the public office holders who are lobbied.

Exploring the options for appointing a Lobbyist Registrar, along with associated costs, will be further researched and reported on to Council. Appointment of a Registrar with investigative experience would be essential in order to credibly impose sanctions and penalties, and to advise on lobbying practice.

The timeline for completing Option 3 would be:

- Late January/early February 2016 – hold public consultation sessions
- March 2016 – Report and Draft Code of Conduct submitted to Committee, with consideration of who to appoint as the Lobbyist Registrar and what penalties/sanctions to have and a more detailed review of costs
- June 2016 – Draft Lobbyist Registry By-law
- Summer and Fall 2016 – develop and implement an online portal for lobbyists and residents
- Fall 2016 – introduce voluntary lobbyist registry to serve as an educational period, without sanctions or penalties. Soft launch of the online portal to test functionality during the voluntary period. Public information/education sessions
- End of 2016/Early 2017 – budget submissions for establishment of Registrar's Office; lobbyist registry comes into force, Public Information/Education Sessions conducted, full online portal available

Costs and timing for the Option 3 registry have the greatest variables compared to Options 1 and 2, due to the potential use of new technology (and the costs associated with acquiring and implementing it) and the use of an outside resource as the Lobbyist Registrar. Budget submissions will be required to support the operations of the Registry and the Registrar.

Relationship to Term of Council Service Excellence Strategy Map (2014-2018)

This report supports the goals established by Council in the Term of Council Service Excellence Strategy Map by facilitating the establishment of a lobbyist registry, a specified priority of Council in the Term of Council Service Excellence Strategy Map (2014-2018).

Regional Implications

None

Conclusion

A lobbyist registry is a tool that the *Municipal Act* provides to a municipality, as part of an overall accountability and transparency framework. This report identifies the possible components of a lobbyist registry, as well as three options for lobbyist regulation.

Attachments

1. Flow Chart – “Are you a Lobbyist?” – City of Ottawa
2. Summary Table of Existing Lobbyist Registries

Report prepared by:

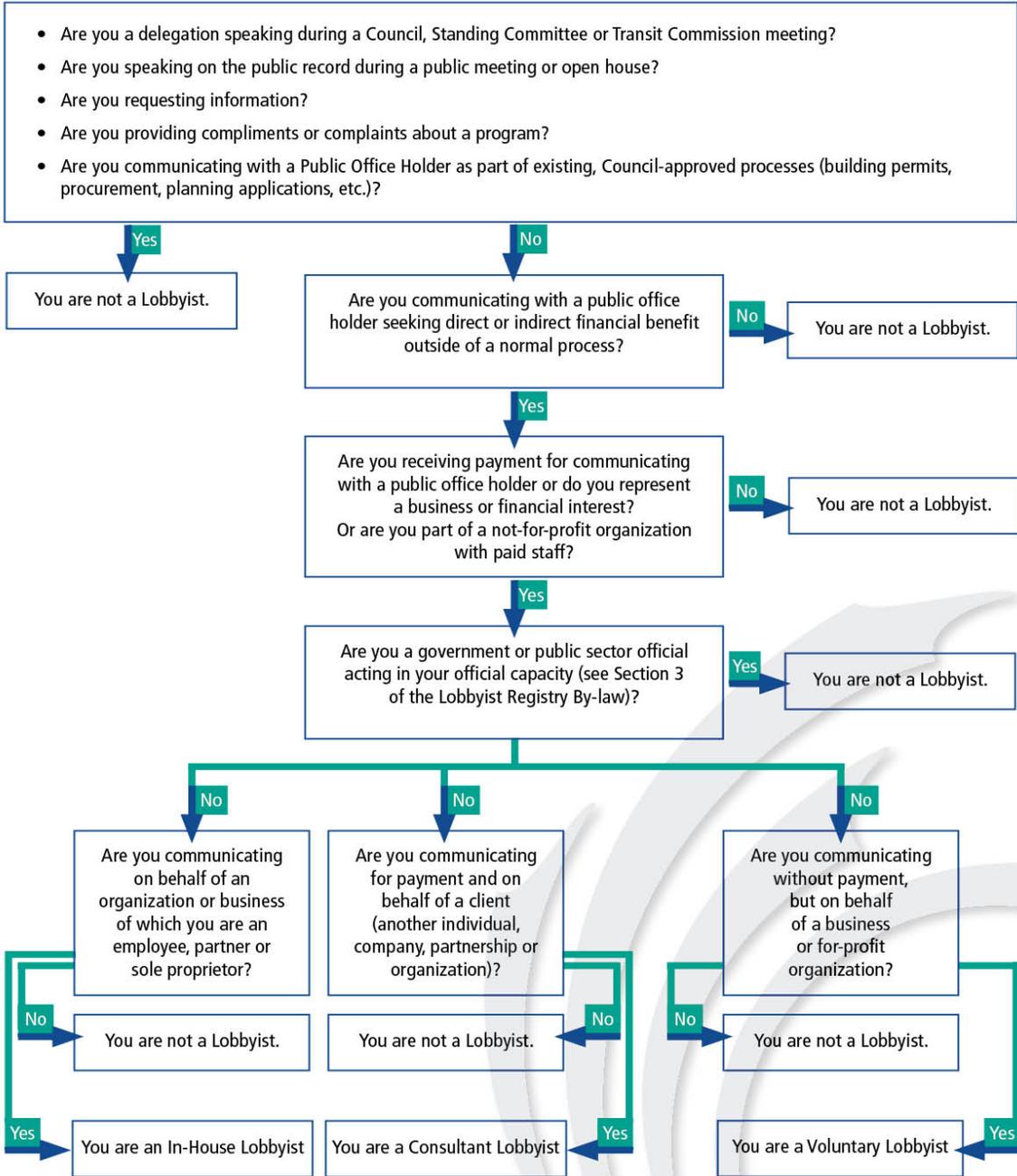
Todd Coles, Manager of Development Services and
Secretary Treasurer to Committee of Adjustment, ext. 8332

Jeffrey A. Abrams, City Clerk, ext. 8281

Respectfully submitted,

Jeffrey A. Abrams,
City Clerk

ATTACHMENT #1: Are You a Lobbyist?



2012076032_03

Source: City of Ottawa,
http://ottawa.ca/sites/ottawa.ca/files/images/field_image/authenticated%20user%2C%20administrative%20user%2C%20content%20manager/chart_eng_web.jpg

Attachment #2: Summary Table of Existing Lobbyist Registries

City of Ottawa	City of Toronto	City of Hamilton	City of Brampton
1. Lobbyist Code of Conduct			
<ul style="list-style-type: none"> Lobbyist by-law 2012-309 includes, as Appendix 'A' a "Lobbyists' Code of Conduct" Includes sections on Honesty, Openness, Disclosure of Identity and Purpose, etc. By-law requires lobbyist to adhere to Code of Conduct 	<ul style="list-style-type: none"> Toronto Municipal Code Chapter 140, Lobbying includes "Lobbyists' Code of Conduct" Includes sections on Honesty, Behaviour, Disclosure of Identity, Prohibited Activity 	<ul style="list-style-type: none"> No lobbyist Code of Conduct 	<ul style="list-style-type: none"> Code of Conduct is Schedule "A" to Lobbyist Registry By-law 149-2015 Includes sections on Honesty, Disclosure of Identity and Purpose Improper Influence By-law requires lobbyist to comply with code of conduct
2. Voluntary Registrations			
<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> None
3. Mandatory Registrations			
<ul style="list-style-type: none"> All lobbyists must file a return Must be done within 15 business days of the communication occurring 	<ul style="list-style-type: none"> Lobbyists must register Toronto Municipal Code Chapter 140, Lobbying states: "No person shall lobby a public office holder without being registered...." Registration must occur before contacting the public office holder 	<ul style="list-style-type: none"> By-law 14-244 states "A lobbyist shall file a registration for each subject matter..." Lobbyists are required to register Registration must occur at least 1 business day before contacting the public office holder 	<ul style="list-style-type: none"> By-law requires that lobbyists be registered Must register no later than 5 business days after the communication takes place
4. Appointment of Registrar			
<ul style="list-style-type: none"> Integrity Commissioner appointed as Lobbyist Registrar 		<ul style="list-style-type: none"> Integrity Commissioner appointed as Lobbyist Registrar Advertised as a dual role 	