

CITY OF VAUGHAN

EXTRACT FROM COUNCIL MEETING MINUTES OF MAY 19, 2015

Item 2, Report No. 22, of the Committee of the Whole (Working Session), which was adopted without amendment by the Council of the City of Vaughan on May 19, 2015.

2 CITY OF VAUGHAN ACCOUNTABILITY AND TRANSPARENCY FRAMEWORK

The Committee of the Whole (Working Session) recommends:

- 1) That recommendations 1, 2, 3 and 5 contained in the following report of the Interim Commissioner of Legal & Administrative Services/City Solicitor and the City Clerk, dated May 12, 2015, be approved;

- 2) That the following additional recommendation be 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 it 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; and
- 3) That Communication C3, presentation material, entitled *“City of Vaughan Accountability and Transparency Framework”*, be received.

Recommendation

The Interim Commissioner of Legal & Administrative Services/City Solicitor and the City Clerk, in consultation with Legal Counsel, recommend:

1. That the presentation of the City Clerk be received;
2. That the City's Accountability and Transparency policy be updated to reflect the current accountability and transparency regime in place at the City of Vaughan;
3. That a structured complaints and compliments intake system be established in a prominent place on the City's web site;

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4. That a further report on the establishment of formal lobbying regulation by the City of Vaughan be submitted to Committee of the Whole (Working Session) for discussion; and
5. That the City explore with other York Region and/or other large urban municipalities the establishment of a joint municipal ombudsman.

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. By reviewing and renewing this framework in anticipation of the proclamation of Bill 8, the *Public Sector and MPP Accountability and Transparency Act, 2014*, the City will ensure that the framework remains relevant and in compliance with the new legislative requirements.

Economic Impact

The economic impact of any new initiatives arising from this report are not yet known. Detailed information will be included in future budget submissions, as may be required for initiatives that cannot be accommodated within existing departmental budgets. Further reports related to the establishment of lobbying regulation and a municipal ombudsman will include detailed consideration of economic impacts.

Communications Plan

This report and the accompanying presentation will be made available on the City's web site. In addition, any significant changes to the accountability and transparency framework will be promoted widely.

Purpose

The purpose of this report is to update Council on the accountability and transparency measures in place at the City of Vaughan as well as to provide an overview of Bill 8, the *Public Sector and MPP Accountability and Transparency Act, 2014*. Bill 8 introduces accountability and transparency measures which, once the legislation is fully proclaimed and in force, will apply across a number of sectors, including the municipal sector. This report also describes measures to address any perceived gaps in the City's accountability and transparency framework in preparation for the proclamation of the relevant portions of Bill 8.

Background - Analysis and Options

Synopsis:

This report summarizes the City of Vaughan's accountability and transparency framework to provide context for:

- *A discussion on the implications of the Public Sector and MPP Accountability and Transparency Act, 2014 (Bill 8), in particular the eventual proclamation of Schedule 6 (pertaining to new responsibilities and penalties in MFIPPA to ensure the preservation of the City's paper and electronic records) and Schedule 9 (which would extend the powers of the Ontario Ombudsman to municipalities and their agencies and boards); and*
- *An exploration of the various means to regulate lobbying by municipalities, including the establishment of a formal registry overseen by a Lobbyist Registrar.*

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The report concludes that there is an extensive accountability and transparency framework in place, and that preparations for Bill 8 provide the opportunity to revisit that framework and make any appropriate adjustments and improvements.

The introduction of a structured complaints and compliments tracking system is recommended not only to address the potential of oversight by an ombudsman, but to provide better customer service and track opportunities for continuous improvement. Other recommendations reflect the need for additional study should the City endeavour to retain the services of a municipal ombudsman either directly or jointly with other municipalities, and the mechanisms available to regulate lobbying.

Analysis:

The intent of Bill 8 is to strengthen political accountability, make the business of government more transparent and give certain accountability officers more responsibilities in their roles.

Bill 8, the *Public Sector and MPP Accountability and Transparency Act, 2014* (the 'Bill') received third and final reading on December 9, 2014 and received Royal Assent on December 11, 2014. The Act contains only three sections, with the substantive content contained in a series of 11 schedules. Not all of the schedules have been proclaimed but it is expected that the provisions pertaining to municipalities will be in force some time in late 2015, following consultation with the broader municipal sector.

There are eleven schedules to the Bill amending various acts affecting the legislature and the broader public sector. This report will focus on the two schedules directly impacting municipalities: Schedule 6 - Amendments to the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA) and Schedule 9 - Amendments to the *Ombudsman Act* and Related Amendments. A third schedule relating to amendments to the *Excellent Care for All Act* would apply to the Region of York's long term care facilities.

Current Accountability and Transparency Legislation

Bill 8 builds upon existing accountability provisions already in place in Vaughan

To fully understand the impact of Bill 8, it is useful to begin by reviewing the current legislation pertaining to accountability and transparency at the municipal level. Part V.1 of the *Municipal Act, 2001* (known as Bill 130), which came into effect January 1, 2007, contains provisions to promote greater transparency. These provisions are not mandatory for all municipalities, except for the City of Toronto, and authorize the establishment of an Integrity Commissioner; a lobbyist registry, which may be maintained by a Lobbyist Registrar; an Ombudsman; and an Auditor General. Currently the *Municipal Act* specifies that it is the role of Council to ensure the accountability and transparency of the operations of the municipality, including the activities of the senior management of the municipality. The *Act* also requires that the municipality maintain policies with respect to the following matters:

- Sale and other disposition of land;
- Hiring of employees;
- Procurement of goods and services;
- The circumstances in which the municipality shall provide notice to the public, and if the notice is to be provided, the form, manner and times notice shall be given;
- The manner in which the municipality will try to ensure that it is accountable to the public for its actions, and the manner in which the municipality will try to ensure that its actions are transparent to the public; and

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- The delegation of its powers and duties.

The City of Vaughan has policies in place respecting these matters. Additional reference is made later in this report.

To further promote transparency, the *Municipal Act, 2001* authorized municipalities to appoint a Closed Meeting Investigator to investigate, in an independent manner, complaints from any person in respect of any meeting or part of a meeting that was closed to the public. In the absence of the appointment of a municipal closed meeting investigator, the Ontario Ombudsman is the default investigator.

Of the positions outlined above, the City of Vaughan has appointed an Integrity Commissioner and a Closed Meeting Investigator. The City of Vaughan has also implemented a variety of other mechanisms for ensuring accountability and transparency. These mechanisms are discussed in further detail under the Current Accountability and Transparency Framework section of this report.

Amendments to the *Ombudsman Act* under Bill 8

The amendments to the *Ombudsman Act* under Bill 8 will significantly expand the powers of the Ontario Ombudsman to review decisions, acts or omissions of municipalities, including municipal boards and agencies.

Currently, the role of the Ombudsman in municipal matters is limited to being the default closed meeting investigator where a municipality has not appointed a closed meeting investigator. Bill 8 does not propose any changes to this provision, meaning that the existing closed meeting investigation regime will be maintained. In the case of the City of Vaughan, for example, the City's investigator would continue to handle closed meeting investigations, and the Ontario Ombudsman would have no role.

Assuming the relevant schedules are proclaimed, Bill 8 does introduce significant changes in the investigative powers of the Ontario Ombudsman. For municipalities that do not have a municipal ombudsman, the Ontario Ombudsman will now become the default municipal ombudsman. If a municipality does have its own ombudsman, the Ontario Ombudsman may investigate in those circumstances where a municipal ombudsman has refused to investigate a complaint, the deadline for bringing a complaint to the municipal Ombudsman has passed, or a municipal ombudsman has finished his or her investigation of a specific complaint.

Similarly, the Ontario Ombudsman will now be able to investigate complaints that are within the jurisdiction of a municipal auditor general, lobbyist registrar or integrity commissioner if the municipal auditor general or integrity commissioner refuses to investigate, has completed and concluded his or her investigation, or the time for bringing a complaint has expired.

The Ontario Ombudsman will have a broad mandate to investigate:

any decision, recommendation, act or omission in the course of the administration of a public sector body.

This broad mandate will allow the Ontario Ombudsman to investigate “systemic” administrative matters in a municipality on his own motion. This is the same provision that currently exists at the provincial level. The systemic investigation option is a discretionary power of the Ontario Ombudsman. It is unclear at this point what the scope and breadth of potential systemic investigations might be.

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It is similarly unclear at this time how broadly the term “in the course of administration of a public sector body” will be interpreted. Of most concern is that the Ontario Ombudsman would attempt to assert jurisdiction over the legislative acts of municipal governments and not simply the administrative activities that flow from them. Of note, the Ontario Ombudsman does not possess authority to investigate the proceedings of Cabinet.

The Ontario Ombudsman is not empowered to investigate decisions, recommendations, acts or omissions where there is a right of appeal or objection, or right to apply for a hearing or review by a tribunal or court until this right has been exercised. This is not limited to rights established by statute or regulation. For greater certainty Bill 8 clarifies that the provision contemplates rights that have been established by by-law. As a result the Ombudsman cannot, for example, review a licensing or permit issuance matter until all rights of appeal established either by statute or by the City have been exhausted. This would also be so for any matter for which a detailed complaint procedure has been established.

In addition, the Ontario Ombudsman is not empowered to investigate decisions, recommendations, acts or omissions of any legal adviser or person acting as legal counsel to the public sector body.

Prior to conducting an investigation, the Ontario Ombudsman must inform the head of the institution before the investigation and give the institution the opportunity to make representations if the Ombudsman has grounds to make a report or recommendations that may adversely affect the institution. The draft report of the Ombudsman must be considered in closed session, but the final outcome of the investigation will be set out in a public report or recommendations.

The legislation also contains a provision whereby an institution or the Ontario Ombudsman may apply to Divisional Court to determine whether the Ombudsman has jurisdiction to investigate a matter.

Amendments to the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)* under Bill 8

Bill 8 also amends the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)* in two significant ways.

There is now a specific obligation for the head of the institution to ensure that records are maintained according to statute, by-laws and policies and that measures are in place to ensure compliance with these requirements. In the City of Vaughan, this obligation would fall to the City Clerk who is the designated head of the institution for the purposes of *MFIPPA*.

The Bill also creates a new personal liability offence for any person who has altered, concealed or destroyed a record in order to deny a right of access to the record or the information contained in it. Bill 8 increases the prosecution provisions under *MFIPPA* so that prosecution can be initiated up to two years after an offence is discovered, an increase from the current six months.

Current Accountability and Transparency Framework

The City of Vaughan has already implemented a wide variety of mechanisms for ensuring accountability and transparency.

The following is a brief description of accountability and transparency mechanisms already in existence at the City of Vaughan.

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Closed Meeting Investigator

The City of Vaughan has retained a closed meeting investigator, Amberley Gavel, to handle closed meeting complaints in accordance with s. 239 of the *Municipal Act, 2001*. As noted, under Bill 8, the City's investigator would continue to handle closed meeting complaints and the Ontario Ombudsman would have no role with respect to specific complaints. It is uncertain whether an expansive interpretation of a systemic concern might encompass consideration of closed meeting practices.

Integrity Commissioner

In April 2008, the City of Vaughan appointed its first Integrity Commissioner. At the time, the City of Vaughan was on the leading edge, with the City of Toronto (which was mandated under the City of Toronto Act to appoint an Integrity Commissioner) as the only other municipality that had appointed an Integrity Commissioner. William Wineglass served as the City's first Integrity Commissioner from April, 2008 to November, 2008. The City's current Integrity Commissioner, Suzanne Craig was appointed in April, 2009, and has been re-appointed to the end of the 2014-2018 Council term.

The Integrity Commissioner is empowered to investigate complaints and make recommendations including sanctions of up to 3 months' pay. More importantly, the Integrity Commissioner serves as an advisor to elected officials, particularly on interpretations of ethical issues and the Code of Ethical Conduct for Members of Council.

Code of Ethical Conduct for Members of Council

The City of Vaughan's Code of Ethical Conduct for Members of Council was adopted by Council in September, 2009 and has been used by several municipalities as a template for their own code in recent years. For example the City of Brampton is in the process of adopting a Code of Conduct modelled after the City of Vaughan's Code. The Code of Ethical Conduct establishes rules that guide Members of Council in performing their diverse roles in representing their constituents and recognize Members' accountability for managing City resources allocated to them. It is structured in a pragmatic, informative way and relies not only on the recitation of rules but the insertion of helpful commentary and examples.

Accountability and Transparency Policy

The City of Vaughan Accountability and Transparency Policy was adopted in 2007 with the enactment of the *Municipal Act* amendments arising from Bill 130. The Policy sets out the manner in which the City will try to ensure that it is accountable to the public for its actions, and the manner in which the City will try to ensure that its actions are transparent to the public. The policy provides guidance for the delivery of the municipality's activities and services in accordance with the principles of accountability and transparency.

Vaughan Accord

The Vaughan Accord is a document through which every Member of Council has committed to serving the City of Vaughan in a manner which reflects a positive image of the City and instills civic pride. The Accord outlines Council's commitment and dedication to the task of city-building, and states that "a vibrant and successful city depends on a Council that is prepared to work together, constructively, and always in the best interest of the City of Vaughan." The Vaughan Accord was signed by the members of the 2010 - 2014 Term of Council, and was signed again on January 10, 2015 by current Members of Council.

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Internal Auditor

Though the City of Vaughan has not appointed an Auditor General it has established an Internal Audit Office that reports directly to Council. Internal Audit assists the City of Vaughan in accomplishing its business objectives by providing a systematic and disciplined approach to help improve the effectiveness of risk management, control and governance processes. The Office provides independent, objective assurance and advisory services that are designed to add value and improve operations.

The Internal Auditor prepares a Term of Council Risk Based Work Plan which focuses priority on audit engagements that can provide the greatest value to the City. To bring greater focus to audit matters, in 2013, the mandate of the Finance and Administration Committee was expanded to include internal audit matters brought forward by the Internal Auditor. At least twice a year, a meeting agenda of the Finance, Administration and Audit Committee is focused on the consideration of audit reports.

Anonymous Reporting System

In November, 2013, Council approved a two year pilot of an anonymous reporting system, co-ordinated by Internal Audit. This system, managed by an independent third party, provides employees the option of anonymously reporting potential code of conduct/ethics issues. An anonymous reporting system supports good governance and control by providing proactive information that can help the City better manage risk and identify emerging issues.

Internal Audit administers the intake from the system, maintains vendor relations with the third-party provider and directs issues to the departments responsible for following up and responding. Internal Audit provides annual reporting to Council on system performance and relevant themes.

Council Member Expense Policy

The Council Member Expense Policy guides the expenditures that support Councillors in performing their diverse roles and in representing their constituents. The approved Councillor budgets allow Councillors to administer their offices and represent the City at functions or events. The policy is based on four guiding principles, Integrity of Council, Accountability, Transparency; and Compliance, and sets out guidelines and accountabilities for the expenditure of funds. The Policy is scheduled to be reviewed as part of the work plan of the Council Budgets Task Force.

Councillors' expenses are published monthly to the City's web site, affording public scrutiny of the expenses supporting Council Office activity.

Delegation Policy

The *Municipal Act* requires that all municipalities adopt and maintain a policy with respect to the delegation of Council's legislative and administrative authority. The purpose of this policy is to set out the scope of the powers and duties which Council may delegate its legislative and administrative authority and to establish principles governing such delegation. The City's Delegation of Powers & Duties Policy sets out the requirements and conditions for delegation, but does not in itself delegate specific powers, nor consolidate a listing of the powers that have been delegated to date.

Employee Code of Conduct

City employees must follow standards of ethical and professional behaviour in the course of their work to ensure that public confidence and trust is maintained. The Employee Code of Conduct establishes standards designed to promote and protect the public interests through honest and

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ethical conduct which enhances public confidence and trust in the integrity, objectivity and impartiality of the City.

Hiring and Nepotism Policy

The Hiring and Nepotism Policy provides guidelines and a process to ensure that employment related decisions concerning existing or potential City employees are free from any real or perceived improper influence or conflict of interest and to maintain confidence in the integrity of the City's hiring and employment practices.

Response by City Staff to Requests for Information from the Public

This policy was developed to clarify and codify the City's processes in responding to the needs of the community for information in a timely and effective manner. It also clarifies the roles and expectations of staff in processing individual requests for information. For example, subject to certain exceptions, such as a request of a complex nature involving multiple departments, or a request that must be dealt with through a statutory process (such as *MFIPPA*), requests for information will be acknowledged or responded to within 5 business days.

Consolidated Purchasing Policy

The Consolidated Purchasing Policy sets out procurement procedures to ensure fairness, objectivity, accountability and transparency in an efficient procurement process. The Policy provides, for example, that all procurement undertaken by the City shall be undertaken in accordance with all applicable City Codes of Conduct and in accordance with the *Municipal Conflict of Interest Act*.

Disposal of Real Property By-law

By-law 121-95, the Disposal of Real Property By-law, was adopted in 1995 in accordance with the requirements set out in the *Planning and Municipal Statute Law Amendment Act* (Bill 163) to adopt a by-law establishing procedures in order to dispose of real property. Except where noted in the legislation and in related regulations, municipalities must give notice of any sale of real property and obtain at least one appraisal of fair market value.

Procedural By-law

The City of Vaughan is committed to the principles of open government and the sharing of information which supports the deliberations of City Council and its committees. Council has adopted a procedural by-law which establishes the principles and rules to be used for meetings of the Council of the City of Vaughan, for the Committees that report to it directly or indirectly, and for its local boards which have not adopted separate rules of procedure. All meeting agendas, reports and communications are posted on the City's website and are accessible to the public.

Notice By-law

In accordance with the requirement of Section 251 of the *Municipal Act, 2001*, Council has adopted a Notice By-law which sets out the form and manner in which Council will give notice to the public for various matters under the provisions of the *Municipal Act*. The Notice By-law also states that the City Clerk shall ensure that schedules of meetings as adopted by Council from time to time are posted in the Clerk's Office and on the City's Website, and that the posted schedule may be revised to include additional information at the meetings and any public meetings.

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Records Retention By-law

Section 254(1) of the *Municipal Act, 2001* provides that a municipality shall retain and preserve its records in a secure and accessible manner and further, pursuant to subsection 255 (3) of the Act, that a municipality may establish retention periods during which its records must be retained and preserved. The City of Vaughan has a Records Retention By-law which identifies classes of records and sets out retention periods for records or record series of the City of Vaughan. The by-law is administered by the City Clerk who is responsible for the establishment of archives and records management programs and services to identify, manage and control the creation, maintenance, retention, disposition, and preservation of the City's records. Though scheduled to be updated as part of an Electronic Document Management System (EDMS) project, delays in funding the project have necessitated a program to update retention policies for electronic records.

Other Statutory Requirements

The City of Vaughan works within the broader municipal legislative regime which sets out legislative requirements and regulations governing matters related to accountability and transparency. This includes, for example, requirements under the *Planning Act* for public notification of applications and public meetings, which have been incorporated into the City of Vaughan Official Plan.

Accountability and Transparency Framework – Proposed Enhancements

While the City of Vaughan has established a comprehensive accountability and transparency framework, the imminent enactment of Bill 8 highlights several areas that should be addressed.

Update of Accountability and Transparency Policy

The City's Accountability and Transparency Policy was enacted in 2007 and should be reviewed. The opportunity should be taken to reference the key elements of the City's accountability and transparency framework in the policy, including any updates made as a result of Bill 8.

Municipal Ombudsman Options

The opportunity is presented to adopt one of three options as a result of the enactment of Bill 8:

- a) Recognize the jurisdiction of the Ontario Ombudsman in the absence of the appointment of an alternative;
- b) Retain the services of a municipal ombudsman for the City of Vaughan; or
- c) Jointly retain the services of a municipal ombudsman with other municipalities.

The establishment of an impartial investigator of citizen complaints about access to government or the delivery of government services promotes a positive public perception of local government and good governance. That said, it is important that the investigator understand municipal legislation, practices and operations, and the statutory roles of Council and the municipal administration.

For these reasons staff recommend that the City assess the appointment of its own ombudsman, or an ombudsman appointed jointly with other municipalities. Discussion is underway with the Regional Municipality of York and other York Region and large urban municipalities regarding the establishment of a joint municipal ombudsman and related practices and procedures. The appointment of a municipal ombudsman can best address local issues in the local context.

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Complaints Processes

Given the role played by a municipal ombudsman in responding to complaints from the public, it is important to review the City's current complaint handling processes to identify gaps and opportunities for improvement. Since the jurisdiction of an ombudsman begins only after local complaint processes and procedures have been exhausted, the articulation of such processes and procedures is of fundamental importance.

The City currently maintains various complaint handling processes. As the contact centre for the City, Access Vaughan receives the majority of the public's complaints through various mediums, including:

- By phone (Monday – Friday 8:30 am to 7:30 pm);
- By email (accessvaughan@vaughan.ca);
- By email (webmaster@vaughan.ca);
- In writing to the department's Supervisor and/or Manager; and
- In person at the Information Desk.

Many departments use the Case Tracking System in JD Edwards. If the complaint by phone or email corresponds to a department that uses JD Edwards, Access Vaughan generates a file for the complaint, which includes the resident's name, address, phone number, email address, and complaint. The file is subsequently assigned to the relevant department so that they may address the complaint. In all other circumstances, the complaint is provided to the relevant department directly from Access Vaughan in order to address the complaint.

It is important to note that all departments receive complaints directly by phone, email, writing, and in person, in addition to the complaints redirected from Access Vaughan. Most departments address these complaints informally on an individual basis. However, there are several departments that also maintain formal processes to track and address these complaints.

To strengthen the City's complaint handling process, it is recommended that there be more formal and centralized coordination of complaint tracking and resolution. Not only is it important that the City have complaints processes available for members of the public, it is important that such processes be well documented and accessible. Similarly, a centralized approach can track compliments received by the municipality, and generate metrics useful for continuous improvement.

A successful complaints handling process should minimize the need for complaints to be escalated to an ombudsman.

Lobbyist Regulation

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

It must also be acknowledged that some methods of lobbying regulation can be expensive and administratively burdensome, creating significant demands on human and technological resources. It is therefore appropriate to explore a range of options for the regulation of lobbying activities with the goal of selecting a model best suited for the City of Vaughan.

In the presentation to accompany this report Committee will be provided with a range of options to consider. Lobbying regulation can be as simple as the posting of a code of conduct for those

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participating in lobbying activity (as that term is defined in the document) to a formal registry overseen by a Lobbyist Registrar.

The definition of “lobbying” is the most significant challenge in lobbying regulation. The broad definition of lobbying is “to seek to influence on an issue” but it is impractical to regulate every interaction between a person and a Member of Council or staff. It is therefore necessary to define the term through a series of exceptions, treating some interactions as lobbying, and others as the normal course of business. Whatever the model chosen, lobbying regulation should not be so cumbersome as to include typical interactions between citizens/constituents and their municipal representatives and staff, nor so narrow as to be without meaning.

The *Municipal Act* provides municipalities with the ability to define lobbying, require filings, provide for exemptions, and specify activities where filings are not necessary. Should Council wish to explore the implementation of lobbying regulation, a further report will be required to address such things as:

- The definition of lobbying
- The definition of lobbyist
- A determination as to whether a registry should be voluntary or mandatory
- Identification of which activities should be included and exempted

In addition to these questions, the forms which lobbyist regulation can take are varied. For example, Lobbying regulation might take the form of:

- A Lobbyist Code of Conduct
- Voluntary or Mandatory Registrations
- A Lobbyist Registrar
- Fairness Monitors

which may or may not involve formal investigations, the imposition of sanctions and formal prosecutions.

Fairness Monitor

Another option to be considered to enhance the Accountability and Transparency framework would be the appointment of a fairness monitor. A fairness monitor is an independent party whose role is to monitor a bidding process, from start to finish, ensuring that the process follows the pre-defined procedures and that all parties are treated equally. A report may be produced at the end of the procurement reviewing the process and providing advice on whether the process was properly managed. Use of fairness monitors can help build trust with suppliers and support accountability and transparency with the public.

Update of Records Retention By-law and Electronic Record-Keeping Policy

As noted the amendments to the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA) under Bill 8 place a significant obligation on the City Clerk, as delegated head of the institution, and every person within the corporation who has custody of corporate records, to ensure that records are maintained in accordance with legislative requirements and records retention obligations. While the City of Vaughan has a Records Retention By-law, it was initially written in an era where records were almost exclusively in a paper format. The challenge today is the management of electronic records such as e-mail and other records maintained exclusively in electronic format.

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To address this issue, the City Clerk's Office is currently undertaking a review of the Records Retention By-law to identify how best to incorporate unstructured electronic information, such as email and records/information generated by database applications. Managing the disposition of these electronic records was to have been achieved via the proposed Electronic Document and Records Management System (EDRMS), but this project has been deferred in the Capital Budget to future years. In the absence of an EDRMS, the City Clerk's Office will focus on reviewing and updating policies and the Records Retention By-law to ensure compliance. This will include an educational and training component to advise staff of the increased *MFIPPA* obligations and consequences regarding the improper handling of records.

Relationship to Vaughan Vision 2020/Strategic Plan

This report supports the goals established by Council in the Vaughan Vision 2020/Strategic Plan, in particular:

Organizational Excellence – Ensure a High Performing Organization

Regional Implications

There is potential that a municipal ombudsman may be retained jointly with the Regional Municipality of York and other municipalities.

Conclusion

The City currently has an extensive accountability and transparency framework in place. In light of the provisions of Bill 8 it is an appropriate time to update the City's accountability and transparency framework by updating the City's existing Accountability and Transparency policy, implement a structured complaints and compliments intake system, and review and provide a further detailed report on the establishment of formal lobbying regulation. Further, in anticipation of the proclamation of the relevant portions of Bill 8, the exploration of opportunities to retain a municipal ombudsman on a shared basis with other municipalities should be explored in detail.

Attachments

None

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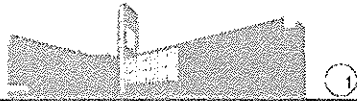
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City of Vaughan Accountability and Transparency Framework

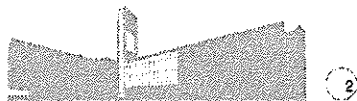
Presentation to
Committee of the Whole (Working Session)
Item 1 - May 12, 2015

Jeffrey A. Abrams, City Clerk
Claudia Storto, Legal Counsel



Presentation Synopsis

- Overview of key elements of the existing City of Vaughan Accountability and Transparency Framework
- Creates the context for discussion on:
 - Bill 8, *the Public Sector and MPP Accountability and Transparency Act, 2014* [S.O. 2014, c. 13], as it applies to the City of Vaughan:
 - Schedule 6 – amendments to *MFIPPA*
 - Schedule 9 – amendments to *Ombudsman Act*
 - *Enhancements to the City's accountability and transparency regime, including policy updates and the contemplation of lobbyist regulation*



The Context

- The intent of Bill 8 is to strengthen political accountability, make the business of government more transparent and give certain accountability officers more responsibilities in their roles.
- Bill 8 does **not** represent the starting line
- Bill 8 adds to accountability and transparency measures added to the *Municipal Act* in 2007.



Accountability and Transparency Framework at the City of Vaughan

- Political Accountability
- Administrative Accountability
- Accountability Officers and Officials
- Policies and Processes
- Records and Information Management, Access and Privacy
- Accompanying report highlights the key components



Accountability and Transparency Policy

Policy CL-010

- Accountability:

"The principle that the municipality will be responsible to its stakeholders for decisions made and policies implemented, as well as its actions or inactions"

- Transparency:

"The principle that the municipality actively encourages and fosters stakeholder participation and openness in its decision making processes. Additionally, transparency means that the municipality's decision making process is open and clear to the public"



Political Accountability

- Code of Ethical Conduct for Members of Council
- Vaughan Accord
- Integrity Commissioner
- Open Meetings (Procedural By-law)
- Closed Meeting Investigator
- Council Member Expense Policy



Administrative Accountability

- Employee Code of Conduct
- Hiring and Nepotism Policy
- Internal Auditor
- Anonymous Reporting System
- Access and Privacy Program
- Consolidated Purchasing Policy
- Records Retention By-law
- And a variety of others...



Accountability Officers and Officials

- Integrity Commissioner
- Closed Meeting Investigator
- Director of Internal Audit
- Director of Purchasing
- City Clerk
- Chief Building Official
- City Manager
- City Solicitor
- Other Professional Staff



Balancing Accountability Frameworks

Municipal thinkers grapple with striking the right balance.

Shirley Hoy, former City Manager, Toronto:

PRO	CON
Clear, transparent vehicle to maintain and foster public trust	Can be costly, especially for smaller municipalities
Councillors/public service more aware of the need for effective service delivery and value for money in implementation of policies	Role of senior managers can be seen to be diminished
Political and administrative leadership must develop skills and capacity to anticipate and respond to issues	"Gotcha" media focus
	More risk-averse organization may result
Acknowledgement: Shirley Hoy, Strategycorp "Proactive Accountability Framework in Municipal Jurisdictions"	

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Accountability Officers

Municipal Act Accountability Officers	City of Vaughan
Integrity Commissioner (s. 223.3)	<input checked="" type="checkbox"/>
Lobbyist Registrar (s. 223.11)	<input type="checkbox"/>
Municipal Ombudsman (s. 223.13)	<input checked="" type="checkbox"/> (Bill 8)
Auditor General (s. 223.19)	<input type="checkbox"/>
Internal Auditor	<input checked="" type="checkbox"/>

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Bill 8 – Public Sector and MPP Accountability and Transparency Act

Schedules to the Act come into force on proclamation

Applicable to the City of Vaughan:

- Schedule 6 – amendments to *MFIPPA*
- Schedule 9 – amendments to *Ombudsman Act*

Applicable to Region of York:

- *Schedule 5 – Patient Ombudsman*



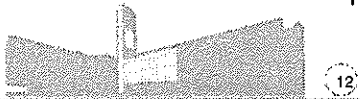
Schedule 6 – FIPPA and MFIPPA: a new imperative respecting the protection of records

Existing obligations

- *Municipal Act, 2001*

“information however recorded or stored, whether in printed form, on film, by electronic means or otherwise, and includes documents, financial statements, minutes, accounts, correspondence, memoranda, plans, maps, drawings, photographs and films” – *Municipal Act, s.1(1)*

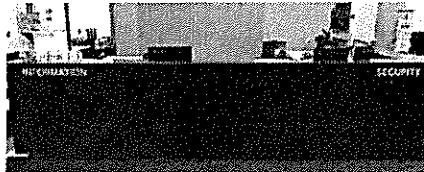
- Retain, Preserve, retrieve within reasonable time
- Establish retention policies



Schedule 6 – MFIPPA (cont'd)

Existing obligations

- *Municipal Freedom of Information and Protection of Privacy Act* [MFIPPA]



- Access to Records
- Protection for Personal Information
- Administered by City Clerk under delegated authority ('Head' of the institution)



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Schedule 6 – MFIPPA (cont'd)

Two specific additions made to MFIPPA:

- 1) A specific obligation for the "head" of the institution to ensure records are maintained according to statute, bylaws and policies
 - The head of the institution is tasked with ensuring there are measures in place for the maintenance of corporate records and there is compliance with these measures



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Schedule 6 – MFIPPA (cont'd)

- 2) Individuals can be found personally liable for offences related to the willful concealment, alteration or destruction of corporate records
 - a) Prosecution can be initiated up to 2 yrs after an offence is discovered
 - b) Maximum fine for such offences is \$5,000.00
 - c) In the event of a prosecution the court may take precautions to avoid disclosure of specific information

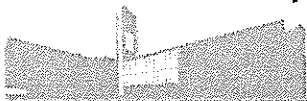


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Ombudsman's New Powers

- Mandate is very broad: may investigate “any decision, recommendation, act or omission in the course of the administration of a public sector body”
- Default Ombudsman if a municipality does not appoint its own ombudsman
- Remains Default Closed Meeting Investigator
- Ability to conduct a systemic investigation even if a municipality has an ombudsman
- Ombudsman's jurisdiction extends to boards & agencies



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Ombudsman's New Powers (cont'd)

- Not empowered to investigate decisions, recommendations, acts or omissions:
 - Where there is a right of appeal or objection, or right to apply for a hearing or review by a tribunal or court until this right has been exercised
 - Of any legal adviser or person acting as legal counsel to the public sector body



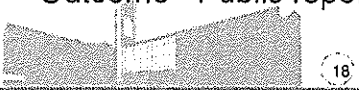
Ombudsman's New Powers (cont'd)

Prior to conducting an investigation the Provincial Ombudsman :

- Must inform the head of the institution before investigating
- Must give the institution an opportunity to make representations if the Ombudsman has grounds to make a report or recommendations that may adversely affect the institution

Draft report must be considered in Closed Session

Outcome - Public report or recommendations



Ombudsman's New Powers (cont'd)

- If a municipality has an ombudsman the Ontario Ombudsman may only conduct an investigation if:
 - A complaint was made to the municipal ombudsman and s/he refused to investigate or has conducted and concluded an investigation; or
 - The time for bringing a complaint to a municipal ombudsman has expired.



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Ombudsman's New Powers (cont'd)

Hints for avoiding an Ombudsman's Investigation:

From the Toronto Ombudsman's web site:

"Get a hold of the organization's formal complaints procedure and follow each step"

From the Ontario Ombudsman's web site:

"Summarize what steps you have taken to try and resolve your complaint including any grievance, appeals and/or request for reconsideration you have submitted and what response you received"



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Next Steps - *MFIPPA*

- Review and update policies and by-laws governing records and update to ensure compliance
- Advise staff of increased *MFIPPA* obligations and consequences regarding the improper handling of records
- In the absence of EDMS, addressing the retention of electronic records



Next Steps *Ombudsman Act*

- *Municipal Act* empowers municipalities to appoint own Ombudsman
- Exploration of retainer of joint Municipal Ombudsman or City of Vaughan Ombudsman
- Document Complaints / Compliments Processes
- Centralize feedback – Access Vaughan/Web Site

City of Ottawa example



<https://ottawa.ca/en/feedback-2?uri=http%3A%2Fottawa.ca/en>



Next Steps *Ombudsman Act*

- What are the competencies?
 - Familiar with local government environment
 - Assists citizens with navigating red tape
 - Assesses fairness of municipal practices
 - Enhances citizens' perception of local government
 - Plays an educational role
 - Identifies systemic problems



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Other Accountability and Transparency Enhancement Opportunities

- Update Accountability and Transparency Policy
(demonstrates clarity and commitment)
- Update Delegation Policies
(demonstrates structural responsibilities)
- Consider appointment of other accountability officials, or assign roles
 - lobbying regulation, Lobbyist Registrar, Auditor General, Combined Officials
 - Fairness Monitors, Purchasing Officials, Other municipal roles



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Lobbying Regulation

PRO

- Clear, transparent vehicle to maintain and foster public trust

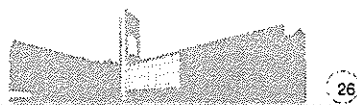
CON

- Can be costly, especially for smaller municipalities
- Additional bureaucracy may limit or impede communication from stakeholders



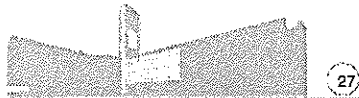
Legislative Framework

- Section 223.9 of the *Municipal Act, 2001*
- Authorizes establishment of a registry of lobbyists and the appointment of a Lobbyist Registrar
- May define lobbyist and lobbying, require filings, provide for exemptions, specify activities where filings not necessary
- May establish a code of conduct for lobbyists
- May impose sanctions and penalties for infractions



Formal Lobbying Programs

- Toronto
- Ottawa
- Hamilton
- Windsor (voluntary)
- Brampton (in progress)



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What is Lobbying?

- No definition in the *Act*
- Toronto – complex definition beginning with “to communicate with a public office holder on any of the following subject matters”...
- Public Office Holder:
 - Councillor, Councillors’ staff
 - Officer or Employee of the municipality
 - Local Board members, and their staff
 - Officer, Director or Employee of a local board
 - Other persons determined by the municipality



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Lobbyists

- “Consultant Lobbyists” are paid to lobby on behalf of clients
- In-house Lobbyists are employed to lobby on behalf of their employer
- Voluntary Unpaid Lobbyists (Toronto model):
 - Individuals or organizations who without payment lobby or cause an employee to lobby on behalf of a for-profit organization; or
 - A director of a for-profit entity, who is not an in-house lobbyist, who lobbies or causes an employee to lobby on behalf of a for-profit organization; or
 - A shareholder of a for-profit entity...etc.



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 VAUGHAN

Toronto model Exceptions and Exemptions

Government or public sector

Communications about enforcement or administration, or a personal matter, on behalf of an individual, business or organization (but not if grant, bid, planning approval, license...)

Requests for information, or a response to request for information

Communications to Council on Items

Not-for-profit organizations (aside from unions, business associations etc., or if funded by a for-profit, and not if using a Consultant Lobbyist)

Communication to public office holder from their own association or not-for-profit

Part of a public process (i.e. forum)

Disclosures that threaten safety

Constituent Communications on neighbourhood or public policy issue (unless special benefit, or through consultant lobbyist)

Deputations

Casual conversation not materially advancing a cause

*Listed bodies:
Hydro,
hospital*

Compliment or Complaint



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 VAUGHAN

Ranges/Configurations

1. Comply with Lobbyists Code of Conduct
2. Voluntary Registrations (Detailed or Simple)
 - By Lobbyists
 - By Public Sector Official
3. Mandatory Registrations (Detailed or Simple)
 - By Lobbyists
 - By Public Sector Official
4. Investigations
5. Sanctions
6. Prosecutions



Ranges (cont'd)

7. Appointment of Registrar
 - Maintains registry
 - Determines adequacy of registrations
 - Provides advice, interpretations
 - Verifications, investigations
 - Suspending, Revoking registrations
8. Identify the particular activities the defined approach applies to (scoped regulation)
 - Dollar value?
 - Pre- and/or Post- application (planning, permits, other)?
 - Procurement matters?



Ranges (cont'd)

9. Fairness Monitors

- Independent
- Specified, or Specified *Types* of bidding processes
- Monitors adherence to procedures
- Submits summary report
- May provide advice for improvements



1. Lobbyists' Code of Conduct (Toronto)

- Compliance with standards of behavior
- Integrity and Honesty
- Disclosure of Identity and Purpose
- Compliance with policies
- Prohibited activities (gifts and favours)(no lobbying at civic or charitable events)
- Information sharing; confidentiality
- Avoidance of competing, conflicting interests
- Avoidance of improper influence



Lobbyist Code of Conduct (cont'd)

- Implications
 - Least costly, least onerous
 - May be assigned to another Accountability Officer or to staff
 - Absent the appointment of a Registrar, difficult to monitor breaches



2. Voluntary Registrations

- Facilitates the voluntary listing of lobbying activity
- Onus:
 - Lobbyists
 - Lobbied Party
- Facilitates the disclosure, but doesn't require it
- Implications:
 - Not costly
 - Structured
 - May be combined with Lobbyist Code of Conduct
 - Provides additional transparency, shows the activity



3. Mandatory Registrations

- Follows Toronto model
- Most transparent
- Cumbersome
- Decisions required as to who is covered, who has onus to report, and what activities are exempt
- Implications:
 - Costly
 - Requires staff to administer
 - Oversight role may be assigned to an Accountability Officer
 - May limit stakeholder input and discourse



4. Investigations

- Empowers an investigator (who may be the Registrar, or the another Accountability Officer, or staff, acting as such) to conduct investigations and report on findings.
- Implications:
 - Requires structured approach, likely a mandatory registry
 - Results in issuance of guidelines, lessons-learned



5. Sanctions

- By-law must establish prohibition against lobbying without registration
- Conditions can be imposed for registration, continued registration, or renewals
- Sanction is refusal to register, or to suspend or revoke a registration
- Implications:
 - Requires Registrar (or an Accountability Officer or staff acting as such) applying rigorous standards
 - Concern for sanctions may discourage legitimate communication



6. Prosecutions

- By-law makes it an offence to breach Lobbying provisions
- Provincial Offences Act prosecution
- Implications:
 - Requires Registrar (or an Accountability Officer or staff acting as such) applying rigorous standards
 - Impacts court resources
 - May lead to delays in resolution of issues



7. Appointment of Registrar

- Appointment of a person to fulfill the role of the Registrar
- May be assigned an Accountability Officer, but may also require administrative support which can be located elsewhere (for example in City Clerk's Office)
- Requires back up when office vacant
- Implications:
 - Most costly model
 - Facilitates transparency, investigations, educational component
 - Lightning Rod
 - Relevancy may depend upon the size of the municipality



8. Particular Activities – Options 1-7

- Restrict application of lobbying regulation to particular activities.
 - Dollar value?
 - Pre- and/or Post- application (planning, permits, other)?
 - Procurement matters?
- Implications:
 - Scalable
 - Provides certainty as to what activities are captured
 - Costly to set up basic infrastructure even if restricted application



9. Fairness Monitors

- Empowered to oversee particular types of procurements
- Oversees inquiries during 'black-out' periods
- Implications:
 - Scalable
 - Focused



Concluding Remarks

Lobbyist Regulation:

- Vaughan would be the smallest municipality to adopt a formal registry, were that done
- The resource impacts are not small, but vary depending upon the option/configuration chosen (if any)
- Next steps?
 - Consultation with Vaughan businesses and residents
 - Consultation with involved departments
 - Identify resource implications
 - Report, with options, to Committee of the Whole (Working Session)



Concluding Remarks (cont'd)

Ombudsman:

- Institute structured complaints and compliments intake system on City's website
- Explore establishment of Joint Municipal Ombudsman with York Region and other municipalities



Concluding Remarks (cont'd)

Generally:

- Update Accountability and Transparency Policy to reflect the current accountability and transparency regime in place at the City of Vaughan
- Records Management refinements underway



CITY OF VAUGHAN ACCOUNTABILITY AND TRANSPARENCY FRAMEWORK

Recommendation

The Interim Commissioner of Legal & Administrative Services/City Solicitor and the City Clerk, in consultation with Legal Counsel, recommend:

1. That the presentation of the City Clerk be received;
2. That the City's Accountability and Transparency policy be updated to reflect the current accountability and transparency regime in place at the City of Vaughan;
3. That a structured complaints and compliments intake system be established in a prominent place on the City's web site;
4. That a further report on the establishment of formal lobbying regulation by the City of Vaughan be submitted to Committee of the Whole (Working Session) for discussion; and
5. That the City explore with other York Region and/or other large urban municipalities the establishment of a joint municipal ombudsman.

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. By reviewing and renewing this framework in anticipation of the proclamation of Bill 8, the *Public Sector and MPP Accountability and Transparency Act, 2014*, the City will ensure that the framework remains relevant and in compliance with the new legislative requirements.

Economic Impact

The economic impact of any new initiatives arising from this report are not yet known. Detailed information will be included in future budget submissions, as may be required for initiatives that cannot be accommodated within existing departmental budgets. Further reports related to the establishment of lobbying regulation and a municipal ombudsman will include detailed consideration of economic impacts.

Communications Plan

This report and the accompanying presentation will be made available on the City's web site. In addition, any significant changes to the accountability and transparency framework will be promoted widely.

Purpose

The purpose of this report is to update Council on the accountability and transparency measures in place at the City of Vaughan as well as to provide an overview of Bill 8, the *Public Sector and MPP Accountability and Transparency Act, 2014*. Bill 8 introduces accountability and transparency measures which, once the legislation is fully proclaimed and in force, will apply across a number of sectors, including the municipal sector. This report also describes measures to address any perceived gaps in the City's accountability and transparency framework in preparation for the proclamation of the relevant portions of Bill 8.

Background - Analysis and Options

Synopsis:

This report summarizes the City of Vaughan's accountability and transparency framework to provide context for:

- *A discussion on the implications of the Public Sector and MPP Accountability and Transparency Act, 2014 (Bill 8), in particular the eventual proclamation of Schedule 6 (pertaining to new responsibilities and penalties in MFIPPA to ensure the preservation of the City's paper and electronic records) and Schedule 9 (which would extend the powers of the Ontario Ombudsman to municipalities and their agencies and boards); and*
- *An exploration of the various means to regulate lobbying by municipalities, including the establishment of a formal registry overseen by a Lobbyist Registrar.*

The report concludes that there is an extensive accountability and transparency framework in place, and that preparations for Bill 8 provide the opportunity to revisit that framework and make any appropriate adjustments and improvements.

The introduction of a structured complaints and compliments tracking system is recommended not only to address the potential of oversight by an ombudsman, but to provide better customer service and track opportunities for continuous improvement. Other recommendations reflect the need for additional study should the City endeavour to retain the services of a municipal ombudsman either directly or jointly with other municipalities, and the mechanisms available to regulate lobbying.

Analysis:

The intent of Bill 8 is to strengthen political accountability, make the business of government more transparent and give certain accountability officers more responsibilities in their roles.

Bill 8, the *Public Sector and MPP Accountability and Transparency Act, 2014* (the 'Bill') received third and final reading on December 9, 2014 and received Royal Assent on December 11, 2014. The Act contains only three sections, with the substantive content contained in a series of 11 schedules. Not all of the schedules have been proclaimed but it is expected that the provisions pertaining to municipalities will be in force some time in late 2015, following consultation with the broader municipal sector.

There are eleven schedules to the Bill amending various acts affecting the legislature and the broader public sector. This report will focus on the two schedules directly impacting municipalities: Schedule 6 - Amendments to the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA) and Schedule 9 - Amendments to the *Ombudsman Act* and Related Amendments. A third schedule relating to amendments to the *Excellent Care for All Act* would apply to the Region of York's long term care facilities.

Current Accountability and Transparency Legislation

Bill 8 builds upon existing accountability provisions already in place in Vaughan

To fully understand the impact of Bill 8, it is useful to begin by reviewing the current legislation pertaining to accountability and transparency at the municipal level. Part V.1 of the *Municipal Act, 2001* (known as Bill 130), which came into effect January 1, 2007, contains provisions to promote greater transparency. These provisions are not mandatory for all municipalities, except for the City of Toronto, and authorize the establishment of an Integrity Commissioner; a lobbyist registry, which may be maintained by a Lobbyist Registrar; an Ombudsman; and an Auditor General.

Currently the *Municipal Act* specifies that it is the role of Council to ensure the accountability and transparency of the operations of the municipality, including the activities of the senior management of the municipality. The *Act* also requires that the municipality maintain policies with respect to the following matters:

- Sale and other disposition of land;
- Hiring of employees;
- Procurement of goods and services;
- The circumstances in which the municipality shall provide notice to the public, and if the notice is to be provided, the form, manner and times notice shall be given;
- The manner in which the municipality will try to ensure that it is accountable to the public for its actions, and the manner in which the municipality will try to ensure that its actions are transparent to the public; and
- The delegation of its powers and duties.

The City of Vaughan has policies in place respecting these matters. Additional reference is made later in this report.

To further promote transparency, the *Municipal Act, 2001* authorized municipalities to appoint a Closed Meeting Investigator to investigate, in an independent manner, complaints from any person in respect of any meeting or part of a meeting that was closed to the public. In the absence of the appointment of a municipal closed meeting investigator, the Ontario Ombudsman is the default investigator.

Of the positions outlined above, the City of Vaughan has appointed an Integrity Commissioner and a Closed Meeting Investigator. The City of Vaughan has also implemented a variety of other mechanisms for ensuring accountability and transparency. These mechanisms are discussed in further detail under the Current Accountability and Transparency Framework section of this report.

Amendments to the *Ombudsman Act* under Bill 8

The amendments to the *Ombudsman Act* under Bill 8 will significantly expand the powers of the Ontario Ombudsman to review decisions, acts or omissions of municipalities, including municipal boards and agencies.

Currently, the role of the Ombudsman in municipal matters is limited to being the default closed meeting investigator where a municipality has not appointed a closed meeting investigator. Bill 8 does not propose any changes to this provision, meaning that the existing closed meeting investigation regime will be maintained. In the case of the City of Vaughan, for example, the City's investigator would continue to handle closed meeting investigations, and the Ontario Ombudsman would have no role.

Assuming the relevant schedules are proclaimed, Bill 8 does introduce significant changes in the investigative powers of the Ontario Ombudsman. For municipalities that do not have a municipal ombudsman, the Ontario Ombudsman will now become the default municipal ombudsman. If a municipality does have its own ombudsman, the Ontario Ombudsman may investigate in those circumstances where a municipal ombudsman has refused to investigate a complaint, the deadline for bringing a complaint to the municipal Ombudsman has passed, or a municipal ombudsman has finished his or her investigation of a specific complaint.

Similarly, the Ontario Ombudsman will now be able to investigate complaints that are within the jurisdiction of a municipal auditor general, lobbyist registrar or integrity commissioner if the municipal auditor general or integrity commissioner refuses to investigate, has completed and concluded his or her investigation, or the time for bringing a complaint has expired.

The Ontario Ombudsman will have a broad mandate to investigate:

any decision, recommendation, act or omission in the course of the administration of a public sector body.

This broad mandate will allow the Ontario Ombudsman to investigate “systemic” administrative matters in a municipality on his own motion. This is the same provision that currently exists at the provincial level. The systemic investigation option is a discretionary power of the Ontario Ombudsman. It is unclear at this point what the scope and breadth of potential systemic investigations might be.

It is similarly unclear at this time how broadly the term “in the course of administration of a public sector body” will be interpreted. Of most concern is that the Ontario Ombudsman would attempt to assert jurisdiction over the legislative acts of municipal governments and not simply the administrative activities that flow from them. Of note, the Ontario Ombudsman does not possess authority to investigate the proceedings of Cabinet.

The Ontario Ombudsman is not empowered to investigate decisions, recommendations, acts or omissions where there is a right of appeal or objection, or right to apply for a hearing or review by a tribunal or court until this right has been exercised. This is not limited to rights established by statute or regulation. For greater certainty Bill 8 clarifies that the provision contemplates rights that have been established by by-law. As a result the Ombudsman cannot, for example, review a licensing or permit issuance matter until all rights of appeal established either by statute or by the City have been exhausted. This would also be so for any matter for which a detailed complaint procedure has been established.

In addition, the Ontario Ombudsman is not empowered to investigate decisions, recommendations, acts or omissions of any legal adviser or person acting as legal counsel to the public sector body.

Prior to conducting an investigation, the Ontario Ombudsman must inform the head of the institution before the investigation and give the institution the opportunity to make representations if the Ombudsman has grounds to make a report or recommendations that may adversely affect the institution. The draft report of the Ombudsman must be considered in closed session, but the final outcome of the investigation will be set out in a public report or recommendations.

The legislation also contains a provision whereby an institution or the Ontario Ombudsman may apply to Divisional Court to determine whether the Ombudsman has jurisdiction to investigate a matter.

Amendments to the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)* under Bill 8

Bill 8 also amends the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)* in two significant ways.

There is now a specific obligation for the head of the institution to ensure that records are maintained according to statute, by-laws and policies and that measures are in place to ensure compliance with these requirements. In the City of Vaughan, this obligation would fall to the City Clerk who is the designated head of the institution for the purposes of *MFIPPA*.

The Bill also creates a new personal liability offence for any person who has altered, concealed or destroyed a record in order to deny a right of access to the record or the information contained in it. Bill 8 increases the prosecution provisions under *MFIPPA* so that prosecution can be initiated up to two years after an offence is discovered, an increase from the current six months.

Current Accountability and Transparency Framework

The City of Vaughan has already implemented a wide variety of mechanisms for ensuring accountability and transparency.

The following is a brief description of accountability and transparency mechanisms already in existence at the City of Vaughan.

Closed Meeting Investigator

The City of Vaughan has retained a closed meeting investigator, Amberley Gavel, to handle closed meeting complaints in accordance with s. 239 of the *Municipal Act, 2001*. As noted, under Bill 8, the City's investigator would continue to handle closed meeting complaints and the Ontario Ombudsman would have no role with respect to specific complaints. It is uncertain whether an expansive interpretation of a systemic concern might encompass consideration of closed meeting practices.

Integrity Commissioner

In April 2008, the City of Vaughan appointed its first Integrity Commissioner. At the time, the City of Vaughan was on the leading edge, with the City of Toronto (which was mandated under the City of Toronto Act to appoint an Integrity Commissioner) as the only other municipality that had appointed an Integrity Commissioner. William Wineglass served as the City's first Integrity Commissioner from April, 2008 to November, 2008. The City's current Integrity Commissioner, Suzanne Craig was appointed in April, 2009, and has been re-appointed to the end of the 2014-2018 Council term.

The Integrity Commissioner is empowered to investigate complaints and make recommendations including sanctions of up to 3 months' pay. More importantly, the Integrity Commissioner serves as an advisor to elected officials, particularly on interpretations of ethical issues and the Code of Ethical Conduct for Members of Council.

Code of Ethical Conduct for Members of Council

The City of Vaughan's Code of Ethical Conduct for Members of Council was adopted by Council in September, 2009 and has been used by several municipalities as a template for their own code in recent years. For example the City of Brampton is in the process of adopting a Code of Conduct modelled after the City of Vaughan's Code. The Code of Ethical Conduct establishes rules that guide Members of Council in performing their diverse roles in representing their constituents and recognize Members' accountability for managing City resources allocated to them. It is structured in a pragmatic, informative way and relies not only on the recitation of rules but the insertion of helpful commentary and examples.

Accountability and Transparency Policy

The City of Vaughan Accountability and Transparency Policy was adopted in 2007 with the enactment of the *Municipal Act* amendments arising from Bill 130. The Policy sets out the manner in which the City will try to ensure that it is accountable to the public for its actions, and the manner in which the City will try to ensure that its actions are transparent to the public. The policy provides guidance for the delivery of the municipality's activities and services in accordance with the principles of accountability and transparency.

Vaughan Accord

The Vaughan Accord is a document through which every Member of Council has committed to serving the City of Vaughan in a manner which reflects a positive image of the City and instills civic pride. The Accord outlines Council's commitment and dedication to the task of city-building, and states that "a vibrant and successful city depends on a Council that is prepared to work together, constructively, and always in the best interest of the City of Vaughan." The Vaughan Accord was signed by the members of the 2010 - 2014 Term of Council, and was signed again on January 10, 2015 by current Members of Council.

Internal Auditor

Though the City of Vaughan has not appointed an Auditor General it has established an Internal Audit Office that reports directly to Council. Internal Audit assists the City of Vaughan in accomplishing its business objectives by providing a systematic and disciplined approach to help improve the effectiveness of risk management, control and governance processes. The Office provides independent, objective assurance and advisory services that are designed to add value and improve operations.

The Internal Auditor prepares a Term of Council Risk Based Work Plan which focuses priority on audit engagements that can provide the greatest value to the City. To bring greater focus to audit matters, in 2013, the mandate of the Finance and Administration Committee was expanded to include internal audit matters brought forward by the Internal Auditor. At least twice a year, a meeting agenda of the Finance, Administration and Audit Committee is focused on the consideration of audit reports.

Anonymous Reporting System

In November, 2013, Council approved a two year pilot of an anonymous reporting system, co-ordinated by Internal Audit. This system, managed by an independent third party, provides employees the option of anonymously reporting potential code of conduct/ethics issues. An anonymous reporting system supports good governance and control by providing proactive information that can help the City better manage risk and identify emerging issues.

Internal Audit administers the intake from the system, maintains vendor relations with the third-party provider and directs issues to the departments responsible for following up and responding. Internal Audit provides annual reporting to Council on system performance and relevant themes.

Council Member Expense Policy

The Council Member Expense Policy guides the expenditures that support Councillors in performing their diverse roles and in representing their constituents. The approved Councillor budgets allow Councillors to administer their offices and represent the City at functions or events. The policy is based on four guiding principles, Integrity of Council, Accountability, Transparency; and Compliance, and sets out guidelines and accountabilities for the expenditure of funds. The Policy is scheduled to be reviewed as part of the work plan of the Council Budgets Task Force.

Councillors' expenses are published monthly to the City's web site, affording public scrutiny of the expenses supporting Council Office activity.

Delegation Policy

The *Municipal Act* requires that all municipalities adopt and maintain a policy with respect to the delegation of Council's legislative and administrative authority. The purpose of this policy is to set out the scope of the powers and duties which Council may delegate its legislative and administrative authority and to establish principles governing such delegation. The City's

Delegation of Powers & Duties Policy sets out the requirements and conditions for delegation, but does not in itself delegate specific powers, nor consolidate a listing of the powers that have been delegated to date.

Employee Code of Conduct

City employees must follow standards of ethical and professional behaviour in the course of their work to ensure that public confidence and trust is maintained. The Employee Code of Conduct establishes standards designed to promote and protect the public interests through honest and ethical conduct which enhances public confidence and trust in the integrity, objectivity and impartiality of the City.

Hiring and Nepotism Policy

The Hiring and Nepotism Policy provides guidelines and a process to ensure that employment related decisions concerning existing or potential City employees are free from any real or perceived improper influence or conflict of interest and to maintain confidence in the integrity of the City's hiring and employment practices.

Response by City Staff to Requests for Information from the Public

This policy was developed to clarify and codify the City's processes in responding to the needs of the community for information in a timely and effective manner. It also clarifies the roles and expectations of staff in processing individual requests for information. For example, subject to certain exceptions, such as a request of a complex nature involving multiple departments, or a request that must be dealt with through a statutory process (such as *MFIPPA*), requests for information will be acknowledged or responded to within 5 business days.

Consolidated Purchasing Policy

The Consolidated Purchasing Policy sets out procurement procedures to ensure fairness, objectivity, accountability and transparency in an efficient procurement process. The Policy provides, for example, that all procurement undertaken by the City shall be undertaken in accordance with all applicable City Codes of Conduct and in accordance with the *Municipal Conflict of Interest Act*.

Disposal of Real Property By-law

By-law 121-95, the Disposal of Real Property By-law, was adopted in 1995 in accordance with the requirements set out in the *Planning and Municipal Statute Law Amendment Act* (Bill 163) to adopt a by-law establishing procedures in order to dispose of real property. Except where noted in the legislation and in related regulations, municipalities must give notice of any sale of real property and obtain at least one appraisal of fair market value.

Procedural By-law

The City of Vaughan is committed to the principles of open government and the sharing of information which supports the deliberations of City Council and its committees. Council has adopted a procedural by-law which establishes the principles and rules to be used for meetings of the Council of the City of Vaughan, for the Committees that report to it directly or indirectly, and for its local boards which have not adopted separate rules of procedure. All meeting agendas, reports and communications are posted on the City's website and are accessible to the public.

Notice By-law

In accordance with the requirement of Section 251 of the *Municipal Act, 2001*, Council has adopted a Notice By-law which sets out the form and manner in which Council will give notice to the public for various matters under the provisions of the *Municipal Act*. The Notice By-law also states that the City Clerk shall ensure that schedules of meetings as adopted by Council from time to time are posted in the Clerk's Office and on the City's Website, and that the posted schedule may be revised to include additional information at the meetings and any public meetings.

Records Retention By-law

Section 254(1) of the *Municipal Act, 2001* provides that a municipality shall retain and preserve its records in a secure and accessible manner and further, pursuant to subsection 255 (3) of the Act, that a municipality may establish retention periods during which its records must be retained and preserved. The City of Vaughan has a Records Retention By-law which identifies classes of records and sets out retention periods for records or record series of the City of Vaughan. The by-law is administered by the City Clerk who is responsible for the establishment of archives and records management programs and services to identify, manage and control the creation, maintenance, retention, disposition, and preservation of the City's records. Though scheduled to be updated as part of an Electronic Document Management System (EDMS) project, delays in funding the project have necessitated a program to update retention policies for electronic records.

Other Statutory Requirements

The City of Vaughan works within the broader municipal legislative regime which sets out legislative requirements and regulations governing matters related to accountability and transparency. This includes, for example, requirements under the *Planning Act* for public notification of applications and public meetings, which have been incorporated into the City of Vaughan Official Plan.

Accountability and Transparency Framework – Proposed Enhancements

While the City of Vaughan has established a comprehensive accountability and transparency framework, the imminent enactment of Bill 8 highlights several areas that should be addressed.

Update of Accountability and Transparency Policy

The City's Accountability and Transparency Policy was enacted in 2007 and should be reviewed. The opportunity should be taken to reference the key elements of the City's accountability and transparency framework in the policy, including any updates made as a result of Bill 8.

Municipal Ombudsman Options

The opportunity is presented to adopt one of three options as a result of the enactment of Bill 8:

- a) Recognize the jurisdiction of the Ontario Ombudsman in the absence of the appointment of an alternative;
- b) Retain the services of a municipal ombudsman for the City of Vaughan; or
- c) Jointly retain the services of a municipal ombudsman with other municipalities.

The establishment of an impartial investigator of citizen complaints about access to government or the delivery of government services promotes a positive public perception of local government and good governance. That said, it is important that the investigator understand municipal legislation, practices and operations, and the statutory roles of Council and the municipal administration.

For these reasons staff recommend that the City assess the appointment of its own ombudsman, or an ombudsman appointed jointly with other municipalities. Discussion is underway with the Regional Municipality of York and other York Region and large urban municipalities regarding the establishment of a joint municipal ombudsman and related practices and procedures. The appointment of a municipal ombudsman can best address local issues in the local context.

Complaints Processes

Given the role played by a municipal ombudsman in responding to complaints from the public, it is important to review the City's current complaint handling processes to identify gaps and opportunities for improvement. Since the jurisdiction of an ombudsman begins only after local complaint processes and procedures have been exhausted, the articulation of such processes and procedures is of fundamental importance.

The City currently maintains various complaint handling processes. As the contact centre for the City, Access Vaughan receives the majority of the public's complaints through various mediums, including:

- By phone (Monday – Friday 8:30 am to 7:30 pm);
- By email (accessvaughan@vaughan.ca);
- By email (webmaster@vaughan.ca);
- In writing to the department's Supervisor and/or Manager; and
- In person at the Information Desk.

Many departments use the Case Tracking System in JD Edwards. If the complaint by phone or email corresponds to a department that uses JD Edwards, Access Vaughan generates a file for the complaint, which includes the resident's name, address, phone number, email address, and complaint. The file is subsequently assigned to the relevant department so that they may address the complaint. In all other circumstances, the complaint is provided to the relevant department directly from Access Vaughan in order to address the complaint.

It is important to note that all departments receive complaints directly by phone, email, writing, and in person, in addition to the complaints redirected from Access Vaughan. Most departments address these complaints informally on an individual basis. However, there are several departments that also maintain formal processes to track and address these complaints.

To strengthen the City's complaint handling process, it is recommended that there be more formal and centralized coordination of complaint tracking and resolution. Not only is it important that the City have complaints processes available for members of the public, it is important that such processes be well documented and accessible. Similarly, a centralized approach can track compliments received by the municipality, and generate metrics useful for continuous improvement.

A successful complaints handling process should minimize the need for complaints to be escalated to an ombudsman.

Lobbyist Regulation

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

It must also be acknowledged that some methods of lobbying regulation can be expensive and administratively burdensome, creating significant demands on human and technological

resources. It is therefore appropriate to explore a range of options for the regulation of lobbying activities with the goal of selecting a model best suited for the City of Vaughan.

In the presentation to accompany this report Committee will be provided with a range of options to consider. Lobbying regulation can be as simple as the posting of a code of conduct for those participating in lobbying activity (as that term is defined in the document) to a formal registry overseen by a Lobbyist Registrar.

The definition of “lobbying” is the most significant challenge in lobbying regulation. The broad definition of lobbying is “to seek to influence on an issue” but it is impractical to regulate every interaction between a person and a Member of Council or staff. It is therefore necessary to define the term through a series of exceptions, treating some interactions as lobbying, and others as the normal course of business. Whatever the model chosen, lobbying regulation should not be so cumbersome as to include typical interactions between citizens/constituents and their municipal representatives and staff, nor so narrow as to be without meaning.

The *Municipal Act* provides municipalities with the ability to define lobbying, require filings, provide for exemptions, and specify activities where filings are not necessary. Should Council wish to explore the implementation of lobbying regulation, a further report will be required to address such things as:

- The definition of lobbying
- The definition of lobbyist
- A determination as to whether a registry should be voluntary or mandatory
- Identification of which activities should be included and exempted

In addition to these questions, the forms which lobbyist regulation can take are varied. For example, Lobbying regulation might take the form of:

- A Lobbyist Code of Conduct
- Voluntary or Mandatory Registrations
- A Lobbyist Registrar
- Fairness Monitors

which may or may not involve formal investigations, the imposition of sanctions and formal prosecutions.

Fairness Monitor

Another option to be considered to enhance the Accountability and Transparency framework would be the appointment of a fairness monitor. A fairness monitor is an independent party whose role is to monitor a bidding process, from start to finish, ensuring that the process follows the pre-defined procedures and that all parties are treated equally. A report may be produced at the end of the procurement reviewing the process and providing advice on whether the process was properly managed. Use of fairness monitors can help build trust with suppliers and support accountability and transparency with the public.

Update of Records Retention By-law and Electronic Record-Keeping Policy

As noted the amendments to the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)* under Bill 8 place a significant obligation on the City Clerk, as delegated head of the institution, and every person within the corporation who has custody of corporate records, to ensure that records are maintained in accordance with legislative requirements and records retention obligations. While the City of Vaughan has a Records Retention By-law, it was initially written in an era where records were almost exclusively in a paper format. The challenge today is

the management of electronic records such as e-mail and other records maintained exclusively in electronic format.

To address this issue, the City Clerk's Office is currently undertaking a review of the Records Retention By-law to identify how best to incorporate unstructured electronic information, such as email and records/information generated by database applications. Managing the disposition of these electronic records was to have been achieved via the proposed Electronic Document and Records Management System (EDRMS), but this project has been deferred in the Capital Budget to future years. In the absence of an EDRMS, the City Clerk's Office will focus on reviewing and updating policies and the Records Retention By-law to ensure compliance. This will include an educational and training component to advise staff of the increased *MFIPPA* obligations and consequences regarding the improper handling of records.

Relationship to Vaughan Vision 2020/Strategic Plan

This report supports the goals established by Council in the Vaughan Vision 2020/Strategic Plan, in particular:

Organizational Excellence – Ensure a High Performing Organization

Regional Implications

There is potential that a municipal ombudsman may be retained jointly with the Regional Municipality of York and other municipalities.

Conclusion

The City currently has an extensive accountability and transparency framework in place. In light of the provisions of Bill 8 it is an appropriate time to update the City's accountability and transparency framework by updating the City's existing Accountability and Transparency policy, implement a structured complaints and compliments intake system, and review and provide a further detailed report on the establishment of formal lobbying regulation. Further, in anticipation of the proclamation of the relevant portions of Bill 8, the exploration of opportunities to retain a municipal ombudsman on a shared basis with other municipalities should be explored in detail.

Attachments

None

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