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Item 2

City of Vaughan Accountability and Transparency Framework

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

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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*



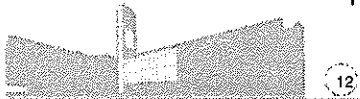
Schedule 6 – FIPPA and MFIPPA: a new imperative respecting the protection of records

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)*

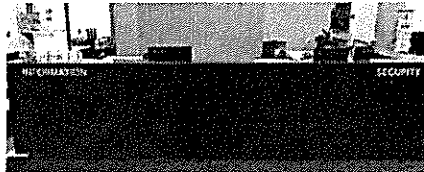
- Retain, Preserve, retrieve within reasonable time
- Establish retention policies



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



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



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



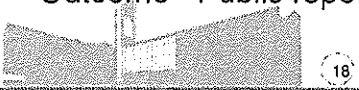
Ombudsman's New Powers (cont'd)

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.



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"



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-27?url=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)

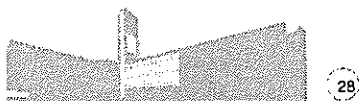


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What is Lobbying?

- 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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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

Deputations

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

Casual conversation not materially advancing a cause

Compliment or Complaint

*Listed bodies:
Hydro,
hospital*



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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



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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



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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



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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



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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

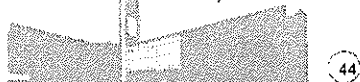
- Empowered to oversee particular types of procurements
- Oversees inquiries during 'black-out' periods
- Implications:
 - Scalable
 - Focused



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



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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



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