

Committee of the Whole Report

DATE: Tuesday, April 02, 2019

WARD(S): ALL

**TITLE: REGULATION OF NOT-FOR-PROFIT LOBBYING ACTIVITIES
UNDER THE CITY OF VAUGHAN LOBBYING BY-LAW**

FROM:

Suzanne Craig, Integrity Commissioner and Lobbyist Registrar

ACTION: DECISION

Purpose

The purpose of this Report is to respond to the need for clarification observed by the Lobbyist Registrar regarding the application of the mandatory Lobbyist Registry rules. The Lobbyist Registrar recommends that Vaughan City Council adopt the changes to the Lobbying By-Law (No.165-2017) set out in Attachment #1 which defines what constitutes a not-for-profit group or organization under the By-Law and clarifies when not-for-profit groups or organizations will be required to register in the Lobbyist Registry.

Report Highlights

- A healthy democracy requires open and fully transparent communication between the government and the public
- A well-functioning government also needs strong and fair relationships which are facilitated by clearly defined roles, responsibilities and definitions
- Not-For-Profits are a vital part of the community and should not be burdened by excessive administrative requirements to register
- However, where the activities of a not-for-profit operate to benefit private or for-profit interests and are not **ancillary or incidental** to the purpose or operation of the not-for-profit, the group or organization will be subject to the lobbyist registration rules

Recommendation

1. That Council approve the amended By-Law substantially in the form of Attachment #1.

2. That Council approve the definition of Not-For-Profit as:
A group or organization organized and operated exclusively for social welfare, civic improvement, or for any other purpose except profit, no part of the income of which was payable to, or was otherwise available for the personal benefit of, any proprietor, member or shareholder thereof.
3. That Council approve the addition in Attachment #1 of the provisions that:
 - a) The lobbying activities undertaken by the not-for-profit must be ancillary or incidental to the purpose or operation of the not-for-profit for the organization to be exempted from the lobbyist registration rules; and
 - b) Any lobbying activities on behalf of the not-for-profit must be performed by a voluntary unpaid lobbyist for the organization to be exempted from the lobbyist registration rules.

Background

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

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.

Statutory Authority to Establish Lobbyist Registry

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

In particular, Section 223.9(1) of the Act allows for a municipality "to establish and maintain a registry in which shall be kept such returns as may be required by the municipality that are filed by persons who lobby public office holders."

Establishment of Mandatory Lobbyist Registry at the City of Vaughan

At the Council meeting of June 7th, 2016, Council approved the recommendation of the City Clerk [Item 9, Report No. 26, Committee of the Whole (Working Session)] to enact a by-law to establish a voluntary Lobbyist Registry for the City of Vaughan. By-Law 105-2016 was passed on June 28th, 2016 and came into effect on January 1st, 2017. In approving this recommendation, Council also directed that specific mechanisms for the establishment of a mandatory lobbyist registry be developed for implementation in 2018.

After general positive feedback from the lobbyists who have used the system and business stakeholders in the community, on December 11, 2017, City of Vaughan Council passed By-Law 165-2017 to establish a mandatory lobbyist registry. The mandatory regime came into effect on January 1, 2018.

What led up to the Lobbyist Registrar recommending changes to the Lobbying By-Law at this time?

In the first year that the mandatory lobbyist registry was in force (2018) the Office of the Lobbyist Registrar fielded many questions from the business community and City of Vaughan staff with respect to what communications were captured by the Lobbying By-Law and who was required to register their communications.

It became evident that there was a need for this Office to clarify who had to register as a lobbyist under the Lobbying By-Law. With a view to obtaining an understanding of how the new mandatory regime was being implemented “on the ground”, and how best to ensure the spirit and letter of the By-Law, this Office met with several City senior staff to receive suggestions on what content was needed to provide greater clarity. The meetings involved a full and frank discussion of the problems the community sector was experiencing in understanding the registration requirements under the mandatory regime.

Early in the Fall of 2018, this Office developed an Information Bulletin the purpose of which was:

- (i) to provide the Registrar’s interpretation of what constitutes a not-for-profit group or organization under the Lobbying By-Law (No. 165-2017), and,
- (ii) identify when not-for-profit groups or organizations may have to register in the Lobbyist Registry.

Previous Reports/Authority

[Voluntary Lobbyist Registry By-Law 105-2016](#)

[Implementation of the Mandatory Lobbyist Registry](#)

Analysis and Options

“Lobbyist” under the Lobbyist By-Law – Current definitions

Currently, section 1 (e) of the Lobbying By-Law states that “lobbyist: means

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

the individual, business or other organization. If the voluntary unpaid lobbyist arranges a meeting between a public office holder and a third party, that is lobbying.

The distinction between the different types of lobbyists is important when determining what lobbying activities may be exempt from the reporting requirements of the registry. However, it has become evident in the year during which the mandatory regime has been in force, that there is a need to clarify what constitutes a not-for-profit for the purposes of apply the rules of the Lobbying By-Law.

What changes are being recommended by the Lobbyist Registrar?

Section 4 of the Lobbying By-Law identifies various activities to which the provisions do not apply. Section 4(xii) confirms the By-Law does not apply where “communication is by a voluntary unpaid lobbyist on behalf of a not-for-profit group or organization”. During 2018, many individuals in the community and staff at the City have queried the Office of the Lobbyist Registrar to obtain clarification on what constitutes a not-for-profit that is exempted from the rules of the Lobbying By-law.

In order to provide clarity to the public and City staff, the Lobbyist Registrar is recommending that a change be made to the Lobbying By-Law that:

- a) Includes a definition of a Not-For-Profit, and
- b) Sets out that in order for the Not-For-Profit exemption to apply, all of the following three conditions must be met:
 - A. The group or organization must be a **not-for-profit** group or organization as defined by the By-Law;
 - B. The lobbying activities undertaken by the not-for-profit must be **ancillary or incidental** to the purpose or operation of the not-for-profit; and
 - C. Any lobbying activities on behalf of the not-for-profit must be performed by a **voluntary unpaid lobbyist**.

The Lobbyist Registrar is recommending a change to the Lobbying By-Law so that if any of the above conditions are not met, the not-for-profit exemption would not apply.

With the recommended change to the Lobbying By-Law, when will the Not-For-Profit exemption apply?

A. The group or organization must be a not-for-profit group or organization

The term **not-for-profit** will be defined to mean the following:

A group or organization organized and operated exclusively for social welfare, civic improvement, or for any other purpose except profit, no part of the income of which was payable to, or was otherwise available for the personal benefit of, any proprietor, member or shareholder thereof.

Not-for-profit groups or organizations include, without limitation, ratepayers' associations, charities, and public interest groups, so long as the above definition is met. If a group or

organization operates to benefit private or for-profit interests, the group or organization does not qualify as a not-for-profit for the purposes of the By-Law, and the not-for-profit exemption does not apply.

B. The lobbying activities undertaken by the not-for-profit must be ancillary or incidental to the purpose or operation of the not-for-profit

For lobbying to be **ancillary or incidental** to the purpose or operation of the not-for-profit, the lobbying must provide necessary support for the primary purpose or operation of the organization or group. Lobbying that is outside the scope of the primary purpose or operation of the not-for-profit is not ancillary or incidental, and the not-for-profit exemption does not apply.

Similarly, where the purpose of lobbying is to benefit private or for-profit interests, this lobbying does not qualify as ancillary or incidental to a not-for-profit, even if performed by an organization or group that otherwise meets the definition of not-for-profit.

C. Any lobbying activities on behalf of the not-for-profit must be performed by a voluntary unpaid lobbyist

The Lobbying By-Law includes three types of lobbyists:

- (1) A Consultant Lobbyist - an individual who lobbies for payment on behalf of a client;
- (2) An In-House Lobbyist - an individual who is an employee, partner, or sole proprietor and who lobbies on behalf of their own employer, business or organization; and
- (3) A Voluntary Unpaid Lobbyist - an individual who lobbies without payment on behalf of an individual, business or other organization for the benefit of the interests of the individual, business or other organization.

Of the three types of lobbyists, only voluntary unpaid lobbyists may qualify for the not-for-profit exemption. Where an individual receives any payment for their lobbying work (e.g., the individual is an employee that receives a salary from the not-for-profit, or the individual receives compensation for their work by the not-for-profit), the not-for-profit exemption does not apply.

Financial Impact

The recommended revision to the mandatory lobbyist registry Lobbying By-Law will not require any additional resources.

Broader Regional Impacts/Considerations

NA

Conclusion

The Lobbyist Registrar will continue to provide outreach and education to groups and City staff with a view to a broad understanding of the intent and functioning of the mandatory regime. Upon approval of Attachment #1, the Lobbyist Registrar will develop an Interpretation Bulletin to be made available to the public.

Attachments

1. Amended Lobbying By-Law

Prepared by

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