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**Subject:** Considerations for a Mandatory Lobbyist Registry

**Report to:** Corporate Services Committee

**Report date:** Wednesday, May 12, 2021

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## Recommendations

1. That this report **BE RECEIVED** for information.

## Key Facts

- The purpose of this report is to provide information respecting a mandatory lobbyist registry.
- At its meeting held on February 17, 2021, Corporate Services Committee deferred a motion respecting the implementation of a mandatory lobbyist registry to allow consultation with stakeholders.
- A lobbyist registry is considered a publicly accessible accountability and transparency tool.
- Section 223.9(1) of the Municipal Act, 2001, provides authority for establishing and maintaining a lobbyist registry.
- Section 223.11(1) of the Act also permits a municipality to appoint a “registrar who is responsible for performing in an independent manner the functions assigned by the municipality with respect to the registry and the system of registration.”
- Niagara Region has other transparency and accountability measures in place that can address concerns regarding lobbying.

## Financial Considerations

As was noted in Report CLK 2-2021, should Council wish to proceed with establishing any model of Lobbyist Registry, there are initial start-up and annual operating costs that would be required for an online registry system. This would include information technology required, annual expenses required to maintain the registry and additional costs associated with appointing the Lobbyist Registrar and the hiring of additional administrative/policy support staff.

The costs would vary depending on the number of complaints and inquiries received as well as the enforcement model. The City of Vaughan, implemented a mandatory registry

with enforcement and budgeted approximately \$250,000 which included the appointment of a Lobbyist Registrar and administrative staff to maintain the Lobbyist Registry.

## Analysis

At its meeting held on February 17, 2021, Corporate Services Committee considered Report CLK 2-2021 and subsequently considered the following motion:

1. That staff **BE DIRECTED** to provide options, and a recommendation, for the retention of a Lobbyist Registrar and that considerations for the retention of a Lobbyist Registrar form part of the budget proposals for 2022;
2. That specific mechanisms for the establishment of a mandatory Lobbyist Registry with enforcement **BE DEVELOPED** for implementation in 2022;
3. That feedback about the establishment of a mandatory Lobbyist Registry with enforcement for Niagara Region **BE SOUGHT** from Public Affairs Association of Canada; Niagara's chambers of commerce; and other pertinent associations or organizations; and
4. That the report(s) indicated in the first three parts of this motion **BE PROVIDED** at the May 2021 Corporate Services Committee meeting.

The motion was deferred to allow staff to undertake consultation. Staff was further requested to provide information respecting a mandatory registry. Feedback was sought from the local chambers of commerce and the Public Affairs Association of Canada. Only the Niagara Chamber Partnership responded and that feedback is attached as Appendix 1 to this report. The Chamber requested that should Council implement a lobbyist registry, it consider the following:

- That a clear definition of lobbying be established, aligning with definitions used in other jurisdictions
- That thresholds, participation requirements, and administrative requirements be established, facilitating transparency without stifling healthy civic engagement from local businesses
- That a phased implementation approach be taken, starting with a simple and straightforward process (an annual, one-time, online registration, for example) that can be expanded in successive years

The goal of any municipal lobbying registry is to ensure that lobbying is carried out transparently and in a manner that ensures accountability as outlined in Section 223.9 to Section 223.12 of the Municipal Act, 2001, S.O. 2001, c 25 (the “Act”).

There are certain activities that, while they may seek to influence municipal behaviour, are not generally considered lobbying. These may include but are not limited to:

- Municipal staff, in their official capacity, discussing official business with Council members or other public officials;
- Individuals acting in their personal capacity to make representations before Council, Committees of Council or Local Boards;
- Providing information to a public official in response to a request;
- Members of other levels of government communicating with public officials while acting in their official capacity; and,
- Casual conversations with public officials that do not specifically pertain to municipal business.

Section 223.9 (1) of the Municipal Act, 2001, S.O. 2001, c 25 (the “Act”) authorizes 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 officer holders.

Although there is variation in the definition of “public office holder” between established Lobbyist Registry by-laws, generally, a public office holder is a member of Council; an officer or employee of the municipality; a member of a local board or a Committee established by Council and any person on his or her staff; an accountability officer appointed under the Municipal Act, 2001, such as Integrity Commissioner, Lobbyist Registrar, Ombudsman, etc.

Section 223.9(2) of the Act also authorizes the municipality to provide for a system of registration of persons who lobby public office holders and to do the following things:

- Define lobby.
- Require persons who lobby public officer holders to file returns and give information to the municipalities.
- Specify the returns to be filed and the information to be given to the municipality by persons who lobby public officer holders and specify the time within which the returns must be filed and the information provided.
- Exempt persons from the requirement to file returns and provide information.

- Specify activities with respect to which the requirement to file returns and provide information that does not apply.
- Establish a code of conduct for persons who lobby public officer holders.
- Prohibit former public office holders from lobbying current public office holders for the period of time specified in the by-law.
- Prohibit a person from lobbying public office holders without being registered.
- Impose conditions for registration, continued registration or a renewal of registration.
- Refuse to register a person, and suspend or revoke a registration.
- Prohibit persons who lobby public office holders from receiving payment that is in whole or in part contingent on the successful outcome of any lobbying activities.

A review of the definition of “lobby” and “lobbying” from various lobbyist registries suggests a common view that lobbying is any communication with a public office holder about the following things:

- a by-law, bill or resolution that requires a decision by Council, a committee or other decision maker acting under municipal authority;
- the development, approval or termination of policies or programs;
- the purchase of goods and services, construction procurement, and the awarding of contracts;
- applications for planning approval, permits, service, grants and other licences or permissions;
- the award of financial contributions, grants or other financial benefits; and
- the transfer from the Region of any interest in or asset of an institution, enterprise or business.

Most Lobbyist Registry By-laws identify the following three types of lobbyists:

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

A Lobbyist Registry is an accountability and transparency tool that involves the registration and regulation of lobbying activities. The Lobbyist Registry would apply to anyone who wishes to lobby a public office holder outside of a public forum and the Region's normal procedures and processes. Section 223.9 (3) of the Act states that the registry shall be available for public inspection in the manner and during the time that the municipality may determine.

There are two options for consideration should Council wish to implement a mandatory lobbyist registry.

#### Mandatory Registry – Self Enforcement (Self-Monitored)

- Develop a mandatory registry with no formal enforcement wherein anyone who wishes to undertake lobbying activities must register with the Clerk who then posts the registrations online
- Council members are responsible for enforcement i.e. the onus is on the member of Council not to meet with someone they consider to be a lobbyist, unless the individual has registered as a lobbyist
- Amend the Code of Conduct for Members of Council so that any interactions with un-registered lobbyists or acceptance of gifts from lobbyists can be breaches of the Code
- Any complaints regarding lobbying activity are reported to the Integrity Commissioner

#### Mandatory Registry – With Enforcement Measures

- Develop a mandatory registry with formal enforcement
- Develop a Code of Conduct for Lobbyists
- Amend the Code of Conduct for Members of Council to codify appropriate interactions with lobbyists
- A complaint regime is developed wherein individuals may file a complaint with the Registrar (could be the Integrity Commissioner) if they believe that a lobbyist is not following the Lobbyist Code of Conduct
- A by-law is enacted and offences and penalties for by-law contraventions are established

Should a mandatory registry with enforcement be established, a Lobbyist Registrar would need to be retained and processes would need to be formalized including the process for registering; reporting on lobbying activities after registering; creating and maintaining a web page with a searchable online registry; and, developing a Code of Conduct for lobbyists and a Registry by-law.

## **Lobbyist Registrar**

Section 223.11 of the Act authorizes a municipality to appoint a registrar who is responsible for performing in an independent manner the functions assigned by the municipality with respect to the registry as described in Section 223.9 (1) and the system of registration and other matters described in Section 223.9 (2). Brampton, Ottawa, Vaughan and Peel have appointed their Integrity Commissioners as their Lobbyist Registrar.

The Lobbyist Registrar is an independent person or body that performs duties as assigned by Council such as regulating lobbying activity by overseeing public disclosure of lobbying activity and ensuring adherence to a Lobbyist Code of Conduct. The Registrar may also enforce the by-law; review, verify and approve registrations; and, deliver information and training materials. Generally, the following are duties of a Lobbyist Registrar:

- Establish and maintain a registry of Lobbyists with a record of all returns and documents filed;
- Verify information contained in any documents filed;
- Refuse to accept a filing or document that does not comply with the Lobbyist Registry;
- Remove a filing if the person who filed does not comply with their duty to provide clarifying information;
- Issue interpretation bulletins and advisory opinions with respect to enforcement, interpretation or application of the by-law to Council;
- Investigate and report to Council on investigations and make recommendations to Council on punitive measures related to Code of Conduct violations or other applicable policies; and,
- Other duties and parameters to the position as assigned by Council.

There are many considerations regarding administering a Lobbyist Registry such as responsibility for maintaining the Registry, the registration process, the process for reporting lobbyist activities, and creation and maintenance of a searchable online registry for public access. Typically, the Lobbyist Registry would include information on individuals who lobby such as:

- name and business address;
- employer, organization or association;
- who the individual is lobbying on behalf of;
- the public office holders they are lobbying;
- the general nature of the subject matter of their lobbying; and,
- the dates on which their lobbying will start and finish.

One common component of online Lobbyist Registries is a 'Frequently Asked Questions' webpage to help determine if an activity is defined as lobbying. In addition to this feature, significant public education would need to take place to ensure the public is aware of what a Lobbyist Registry is and how it may affect them.

A mandatory registry would also include provisions for inquiries and significant sanctions and penalties for Lobbyists not in compliance. The Lobbyist Registrar may be given a range of enforcement powers including the ability to suspend or revoke a registration, impose conditions on the registration, and implement sanctions or penalties on a sliding scale dependent on the number of violations.

The Lobbyist Registrar may conduct an inquiry when requested to do so by Council as a whole, by a single member of Council or by a member of the public, and may provide a public report back to Council regarding any inquiry conducted. Provisions set out in the City of Toronto model provide that the Lobbyist Registrar may prosecute breaches of the by-law under the Provincial Offences Act with fines ranging from \$25,000 up to \$100,000. Any report from a Lobbyist Registrar must be made public.

There may also be a requirement for an administrative system to allow for management of registrations as well as staff to oversee the registry. It is helpful to note that in the City of Toronto, seven full-time staff make up the Office of the Lobbyist Registrar, not including the Lobbyist Registrar; however, the City of Toronto has a dynamic Lobbyist Registry office that has been in place over a decade.

There are a number of factors to consider when reviewing the options to establish a Lobbyist Registry, in particular, balancing the costs and benefits of such an approach. There are financial and staffing implications with respect to implementing and maintaining a Lobbyist Registry as the registry would require ongoing staff and financial resources including initial and annual operating costs, appointment of a Lobbyist

Registrar, creation and maintenance of an online registration system, and potential hiring of staff to administer the registry.

## **Alternatives Reviewed**

This report has been provided for information purposes only, as Council has the option to consider if it would like to implement a mandatory lobbyist registry. Council could:

- a) consider not establishing a Lobbyist Registry and instead rely on existing policies and legislation which address concerns regarding contracting and relations with third parties such as the Procurement By-law, Accountability and Transparency Policy, Code of Ethics/Conflict of Interest Policy, Municipal Conflict of Interest Act and the Code of Conduct for Members of Council to ensure accountability and transparency.
- b) if it wishes to implement a mandatory lobbyist registry (mandatory – self enforcement or mandatory with enforcement) and direct staff to provide a report on the costs of the proposed model, including staffing, technology requirements, processes, necessary by-law and code of conduct and options for a Lobbyist Registrar.

## **Relationship to Council Strategic Priorities**

This report aligns to Council's strategic priority of sustainable and engaging government including promoting an organizational culture that values continuous improvement, collaboration, and innovation and enhancing communication.

## **Other Pertinent Reports**

CLK 2-2021 Considerations for a Lobbyist Registry

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**Prepared by and Recommended by:**  
Ann-Marie Norio  
Regional Clerk

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**Submitted by:**  
Ron Tripp, P.Eng.  
Acting Chief Administrative Officer

## **Appendices**

Appendix 1            Correspondence from Niagara Chamber Partnership