

Lobbyist Registry Implementation Considerations

1. Jurisdictional Scan

Currently, ten municipalities in Ontario have a lobbyist registry in place, these include:

- City of Brampton (Peel Region also has a LR but Mississauga and Caledon do not)
- City of Burlington (Halton Region does not have a LR)
- Town of Collingwood (Simcoe County does not have a LR)
- City of Hamilton (single tier)
- Region of Niagara (no area municipality has a LR)
- City of Ottawa (single tier)
- Region of Peel (Brampton has a LR, Mississauga or Caledon do not)
- City of Toronto (single tier)
- City of Vaughan (York Region does not have a LR)
- City of Pickering (Durham Region does not have a LR)

All ten registries have similar frameworks with the exception of minor differences in the deadlines for disclosing lobbying activity, the definition of public office holder, and who carries out the Registrar responsibilities.

With the exception of Burlington, all Ontario municipalities have a mandatory framework with enforcement measures and similar parameters and provisions under this framework. Burlington has a mandatory lobbyist registry framework where public office holders are defined as elected officials only, excluding staff. Unlike other registries, Burlington does not have an enforcement mechanism, and the responsibility for compliance is self-monitored by the elected officials themselves.

2. Program Development: Key Discussion Items for consideration

1. Lobbyist Registry Framework Options

Part V.1 of the *Municipal Act, 2001* (the "Act"), provides parameters pertaining to accountability and transparency for local governments.

- Section 223.9 enables municipalities to establish and maintain a registry
- Section 223.9(2), provides authority for a system of registration of persons who lobby public office holders
- Section 223.9(2) of the legislation enables municipalities several powers regarding lobbyist regulations. These powers include the ability to define the term "lobby," require lobbyists to submit returns and provide information to the municipality, establish deadlines for filing, grant exemptions from filing requirements, specify exempt activities, create a code of conduct for lobbyists, restrict former public office holders from lobbying current office holders, mandate lobbyist registration, impose conditions for registration or renewal, refuse or revoke registrations, and prohibit lobbyists from receiving contingent payment for successful outcomes. These powers empower municipalities to effectively regulate lobbying activities and promote transparency and accountability in their jurisdictions.

The Act allows for a registry to be available for public inspection and the appointment of an independent Registrar. However, the Act does not prescribe the information required on the registry.

Based on the Act requirements and the best practices of other municipalities, the Region could consider three framework models for implementing a lobbyist registry:

1. Voluntary Registry – No Enforcement

- a. A voluntary registry has no formal enforcement and lobbyists may choose to register with the Clerk who then posts the registrations online.
- b. There is no complaint mechanism with this model.

2. Mandatory Registry – Self-Enforcement (self-monitored)

- a. A mandatory registry with no formal enforcement where anyone who wishes to undertake lobbying activities must register their activities.
- b. Elected officials are responsible for enforcement e.g. the onus is on the Member of Council not to meet with someone they consider to be a lobbyist, unless the individual has registered publicly as a lobbyist.
- c. Utilization of the Code of Conduct for Members of Council so that any interactions with unregistered lobbyists or acceptance of gifts from lobbyists can be enforced as breaches of the Code through complaints submitted to the Integrity Commissioner.

3. Mandatory Registry – With Enforcement Measures *most commonly adapted

- a. A mandatory registry with enforcement provisions.
- b. Development of a Code of Conduct for Lobbyists.
- c. Amend the Code of Conduct for Members of Council to codify appropriate interactions with lobbyists.
- d. Development of a complaint protocol wherein individuals may file a complaint with the Registrar (Integrity Commissioner) if they believe that a lobbyist is not following the Lobbyist Code of Conduct.
- e. Enactment of a by-law which includes penalties for contraventions of the Lobbyist Registry By-law.

Based on the draft by-law, under Option 3, lobbyists must register lobbying activity within 10 business days, but public office holders should also proactively check the registry for compliance.

2. Definitions to be determined by the Region of Waterloo

Under the draft by-law (Appendix 1), there are a number of definitions that were determined based on best practices of the other jurisdictions.

Lobbyists

Three categories of Lobbyists, defined as follows:

- a) “Consultant Lobbyist”: an individual who lobbies for payment on behalf of a client (another individual, a business, partnership, organization or other entity);

b) "In-house Lobbyist": an individual who is an employee, partner or sole proprietor and who lobbies on behalf of his or her own employer, business or other entity; and

c) "Voluntary Lobbyist": an individual who lobbies without payment on behalf of an individual, business or any other entity for the benefit of the interests of the individual, business or entity.

Lobbying activity

Lobbying is defined as "any communication with a Public Office Holder by an individual who is paid or who represents a business or financial interest with the goal of trying to influence any legislative action including development, introduction, passage, defeat, amendment or repeal of a by-law, motion, resolution or the outcome of a decision on any matter before Council, a Committee of Council, or a staff member acting under delegated authority."

Under Section 1 of the draft By-law "communication" is defined as any substantive form of communication including a formal meeting, email, letter, phone call or meaningful dialogue or exchange, that materially advances a matter that is defined as lobbying, whether in a formal or an informal setting.

Public Office Holder

- a) A member of Council;
- b) An officer or employee of the Region

Under the draft by-law, anyone who lobbies a Public Office Holder must register themselves on the lobbyist registry and must also register any lobbying activity that will or has occurred. Lobbying activity must be registered within 10 business days of the initial communication. Under the provisions of the draft By-law, the Registration shall include:

- a) the name, address and contact information of the Lobbyist;
- b) if they are a Consultant Lobbyist, In-house Lobbyist or Voluntary Lobbyist;
- c) the name of the individual, client or other entity, including all business names under which the individual, client or other entity is operating, and on whose behalf they are Lobbying;
- d) the name of the individual or individuals being Lobbied;
- e) the subject matter and date on which the Lobbying will start and finish, with the date on which the Lobbying finishes being no more than one year after the date on which the Lobbying began; and,
- f) such further information as the Lobbyist Registrar may require.

3. Lobbyist Registrar Appointment & Enforcement Measures

In accordance with Section 223.11(1) of the Act, the municipality may appoint a lobbyist registrar who is responsible for performing, in an independent manner, the functions assigned by the municipality with respect to the registry. As outlined in Section 6 of the draft By-law, these responsibilities have been shared between the Regional Clerk and the Integrity Commissioner.

Lobbyists who violate the by-law would face a temporary ban from communicating with any

public office holders in a lobbying capacity.

The length of the ban will depend on the number of times the lobbyist has violated the by-law: 30 days for the first contravention, 60 days for the second, and a longer period determined by the Lobbyist Registrar for the third. If a lobbyist is banned, they will receive a written notice, which will also be copied to all Members of Council and relevant staff. Public office holders would be responsible for ensuring they do not meet with lobbyists who are temporarily banned.

These penalties are consistent with the majority of lobbyist registry by-laws in Ontario.

Exempted Persons and Organizations:

The following organizations and individuals would be exempt from the provisions of the by-law when acting in their public capacity:

- a) Government or public sector, excluding the Region:
 - (i) Members of the Senate or House of Commons of Canada, provincial legislative assembly members, territorial council members, or their staff.
 - (ii) Members of First Nation councils or their staff.
 - (iii) Employees or consultants working for the Government of Canada, provincial or territorial governments, First Nation councils, federal or provincial crown corporations, or other public agencies.
 - (iv) Members of councils, statutory bodies, or local boards responsible for municipal affairs in municipalities outside the Region, as well as their staff or employees.
 - (v) Members, staff, diplomatic agents, consular officers, or official representatives of national or sub-national foreign governments in Canada.
- b) Officials and employees of the Region and other municipal bodies:
 - (i) Public office holders.
 - (ii) Members or employees of local boards within the Region.
 - (iii) Appointed members of Council-established committees.
- c) Other public sector:
 - (i) Individuals communicating on behalf of local school boards.
 - (ii) Individuals communicating on behalf of healthcare institutions.

Exempted Activities:

The following activities would not be considered lobbying:

- a) Communication occurring during Council or Committee meetings.
- b) Communication taking place during public processes such as meetings, hearings, consultations, open houses, or media events organized or sponsored by the Region, a Public Office Holder, or related to an application.
- c) Communication limited to requesting information.
- d) Communication limited to compliments or complaints about a service or program.
- e) Communication between an individual and a Public Office Holder on behalf of an individual, business, or entity, regarding matters such as enforcement, interpretation, application of Acts

or by-laws, policy implementation or administration, or personal matters, unless it falls under the definition of lobbying and provides special benefits to the individual, business, or entity.

f) Communication by an applicant, interested party, or their representatives related to applications for services, grants, planning approvals, permits, or licenses, as long as it is general information, inquiries about the application process, or within the normal course of the approval process.

g) Submission of bid proposals in the procurement process and permitted communication with designated employees following procurement policies and documents.

h) Communication with a Public Office Holder in direct response to a written request from the Public Office Holder.

i) Communication to a Public Office Holder by a constituent or on behalf of a constituent regarding general neighborhood or public policy issues.

j) Communication directly related to Region-initiated consultative meetings and processes where an individual participates as a stakeholder or communication advocating for or against policies or programs for broad community benefit or detriment, without direct, indirect, or perceived benefits to the individual, business, or entity undertaking the communication.