



STAFF REPORT ACTION REQUIRED

Toronto Municipal Code Chapter 140, Lobbying

Date:	December 3, 2015
To:	The Board of Governors of Exhibition Place
From:	City Solicitor
Wards:	
Reference Number:	

SUMMARY

The purpose of this report is to report for the information of the Board on certain requirements of the City's Municipal Code Chapter 140, Lobbying. As discussed below, this report confirms that the requirement to register with the City's Lobbying Registrar does apply to citizen Board members as well as Councillor Board members. The lobbyist registration requirements could also apply to tenants of the grounds in their communications with Board members and Board staff, subject to the exceptions (e.g. contract administration, complaints, requests for information, responses to written requests, etc.) as set out in Chapter 140.

RECOMMENDATIONS

The City Solicitor recommends that:

1. The Board of Governors of Exhibition Place receive this report for information.

Financial Impact

There is no financial impact beyond what has already been approved in the current year's budget.

DECISION HISTORY

At its meeting of October 23, 2015 staff from the City Manager's office gave an overview presentation on Board governance and the relationship of the Board to the City, which included discussion of the City's Municipal Code Chapter 140, Lobbying.

ISSUE BACKGROUND

During the presentation by staff in the City Manager's office, questions as to the applicability of the City of Toronto's Municipal Code Chapter 140, Lobbying ("Chapter 140") arose. In particular, the Board asked whether the requirement that a lobbyist register with the City's Lobbying Registrar applied to citizen Board members as well as Councillor Board members. This report also considers the issue of whether and to what extent the requirement to register applies to third parties who have a contractual relationship with the Board, including tenants.

The Lobbyist Registrar is currently expected to give a presentation to the Board on the requirements of Chapter 140 in March 2016.

COMMENTS

The City of Toronto Municipal Code Chapter 140, Lobbying, requires that all lobbyists register with the City's Lobbyist Registrar. They must register both themselves and the subject matter they intend to discuss **before** communicating with a public office holder. **After** communication has occurred, they must update their lobbying activities by filing the required forms.

Chapter 140 defines "lobbyist" broadly to include the following:

- A consultant lobbyist, ie someone who is paid to lobby on behalf of a client;
- An in-house lobbyist, ie an employee or partner or sole proprietor who lobbies on behalf of his or her employer or organization;
- A voluntary lobbyist, ie someone who, without payment, lobbies on behalf of a business or organization.

For further information about the definition of "lobbyist", see the OLR Interpretation Bulletin, Types of Lobbyists, <http://www1.toronto.ca/City%20of%20Toronto/Lobbyist%20Registrar/Files/pdf/I/Interpretation%20Bulletin%20-%20Types%20of%20Lobbyists%20-%20Apr24%2015.pdf> at the OLR website, www.toronto.ca/lobbying.

This definition is broad enough to include third parties who have a contractual relationship with the Board, including tenants, and would apply where they are engaged in the type of communications set out in Chapter 140, and as listed below.

A lobbyist must register prior to communicating with a public office holder with respect to certain subject matters. "Public office holder" is defined to include:

- Elected officials, ie all members of City Council;
- All employees of the City of Toronto;

- Members, staff of members and employees of local boards. This means all members of the Board, both elected officials and citizen appointees, their staff, and all Board staff.

Before they lobby, lobbyists must register themselves and the subject matter of communications with public office holders that fall within the definition of lobbying. Subject matters caught by the definition of lobbying include:

- Development, introduction and decisions about by-laws, bills or resolutions by Council or a local board;
- Development and decisions on policies, programs, directives and guidelines;
- Awarding of grants or financial contributions or benefits;
- Procurements and awarding of contracts;
- Decisions about applications for services, permits, licenses or other permission;
- Transfer of assets; and
- Determining the model and method of delivering a service.

In the case of consultant lobbyists, lobbying includes arranging a meeting between a public office holder and any other person. For further information about the definition of lobbying, see the OLR Interpretation Bulletin, What is Lobbying?

<http://www1.toronto.ca/City%20Of%20Toronto/Lobbyist%20Registrar/Files/pdf/I/IB%20-%20What%20is%20Lobbying%20-%20Nov9%2015.pdf>, at the OLR website, www.toronto.ca/lobbying.

Lobbyists must report their lobbying communications as part of the respective subject matter registration within three business days. The lobbyist and subject matter registrations are published online in searchable form in the lobbyist registry at www.toronto.ca/lobbying.

Chapter 140 also restricts former "senior public office holders", the definition of which includes a member of a local board, from lobbying any current public office holders for one year after that individual ceased to hold that position.

Exceptions

There are exceptions to who must register as a lobbyist, and the communications that must be registered as lobbying. Firstly, Chapter 140 exempts the following people and organizations from registering as lobbyists when acting in their official capacity:

- Government or public sector, members of the Senate or House of Commons, any provincial legislative assembly, any territorial council or legislative assembly, or any of the staff of those members;
- Members of a First Nation council or their staff;
- Federal, provincial or territorial government and First Nation council employees;

- Members of a council or body, including a local board but not including a municipally controlled corporation, of a different municipality in Canada;
- Members, their staff, and employees of foreign governments;
- Members, their staff, and employees of an international or domestic not-for-profit that represents its government or public sector members;
- Members, their staff, and employees of listed school boards;
- Other City of Toronto public office holders;
- Members, their staff, or directors, officers or employees of listed bodies, including the Canadian National Exhibition Association;
- Listed employee or labour groups, when representing employees of the City or the Board and communicating about labour relations matters;
- Listed Crown corporations;
- Members, their staff, or employees of not-for-profit corporations and organizations, as long as certain requirements are met. In particular, the communication must not be related to a grant application, award or other financial benefit outside of the normal administrative process.

Additionally, certain communications are exempt from the application of Chapter 140. Notable exemptions include communication that is:

- Part of a meeting of Council or local board or other public process related to the subject matter;
- A request for information;
- Restricted to compliments or complaints about a service or program;
- Regarding a personal matter that is not for the special benefit of the individual, business or organization that the individual represents;
- In direct response to a written request from the public office holder;
- Casual communication at a public gathering, including a charitable event or cocktail party.

Communication about contract administration between third parties in a contractual relationship with the Board and Board staff/Board members responsible for the administration of the contract in question (including a lease), would not be considered "lobbying", unless it is about the awarding of the contract. However, that type of communication between a third party contractor and Board staff/Board members who do not have responsibility for the administration of the contractual relationship might be considered lobbying, depending on the facts of the situation. A lobbyist or public office holder may seek advice from the Lobbyist Registrar on whether a particular communication is registerable.

Communication about a personal matter with no special benefit to the contractor would be exempt. This will be a question of fact to be determined by the Lobbyist Registrar, should the question arise whether the communication needs to be registered. The Office of the Lobbyist Registrar has issued an interpretation bulletin that addresses this situation:

5. A communication on behalf of an individual, business or organization about the enforcement, interpretation or application of a by-law; the implementation or administration of a policy or guideline; a personal matter with no special benefit. § 140-5E

These exemptions apply to communications with a public office holder who is the person applying the by-law, policy guideline to the individual, business or organization. The communication must be solely to the public office holders tasked with such matters. Any communications to public office holders other than to the ones charged with implementing or enforcing the policy, guideline or by-law must be registered.

OLR Interpretation Bulletin, Exempt Communications,
<http://www1.toronto.ca/City%20of%20Toronto/Lobbyist%20Registrar/Files/pdf/IB%20-%20Exempt%20Communications%20-%20Nov9%2015.pdf>

Relevant excerpts of Chapter 140 are attached as Appendix 1. The full Chapter can be found at the following link and has been included in members Briefing Binders.

<http://www.toronto.ca/legdocs/bylaws/lawmcode.htm>

Useful information including answers to commonly asked questions can be found on the Lobbyist Registrar's website:

<http://www1.toronto.ca/wps/portal/contentonly?vnextoid=cf1fb7537e35f310VgnVCM10000071d60f89RCRD>

As well, the Lobbyist Registrar can be contacted for advice on specific concerns or questions at 416-338-5858 or lobbyistregistrar@toronto.ca.

Conclusions:

All lobbyists are required to register with the City's Lobbyist Registrar as per Chapter 140 of the Municipal Code. Both the lobbyist and the subject matter she/he intends to discuss with a public office holder must be registered **before** the communication occurs. Afterwards, the lobbyist must update her/his registration by adding a description of their lobbying activities. The definition of "public office holder" includes all members of the Board, both elected officials and citizen appointees, their staff, and all staff of the Board.

When determining whether an individual is required to register as a lobbyist, the actions of that person provide more guidance than their position or title. If someone communicates with a public office holder about one of the listed subject matters in Chapter 140, that person will likely be considered to be lobbying. Consequently, third parties who have a contractual relationship with the Board, including tenants, would be required to register as lobbyists if the content of the intended communication falls within the listed subject matters.

Additionally, "senior public office holders", including former members of a local board of the City, cannot lobby any current public office holders until one year after ceasing to hold that position.

The comments in this report were reviewed by the Lobbyist Registrar prior to submission.

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SIGNATURE

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Appendix 1
Excerpts from Municipal Code Chapter 140, Lobbying

ARTICLE I
General

§ 140-1. Definitions.

COMMUNICATION - Any form of expressive contact, and includes oral, written or electronic communication.

LOBBY - To communicate with a public office holder on any of the following subject matters:

- A. Development, introduction, passage, defeat, amendment or repeal of a by-law, bill or resolution on any matter, by Council, a local board (restricted definition), the Board of Health, or a committee, another body or individual under delegated authority.
- B. Without limiting Subsection A, the following:
 - (1) Development, approval, amendment or termination of a policy, program, directive or guideline.
 - (2) Procurement of goods, services or construction and awarding a contract.
 - (3) Approving, approving with conditions, or denying an application for a service, grant, planning approval, permit or other licence or permission.
 - (4) Awarding any financial contribution, grant or other financial benefit by or on behalf of the City, a local board (restricted definition) or the Board of Health.
 - (5) Transferring from the City, a local board (restricted definition) or the Board of Health any interest in or asset of any business, enterprise or institution.
 - (6) Determining the model and method of delivering a service.
- C. The matters noted in Subsections A and B with necessary modifications, if considered by a local board (restricted definition), the Board of Health or another body or individual under delegated authority.
- D. In relation to a consultant lobbyist referred to in Article II or an individual as referred to in § 140-28B, to arrange a meeting between a public office holder and any other person.

LOBBYIST:

- A. A consultant lobbyist as defined in § 140-11.
- B. An in-house lobbyist as defined in § 140-20.
- C. A voluntary unpaid lobbyist as defined in § 140-27.

ORGANIZATION:

- A. A government, other than the City.
- B. An organization related to professions, labour groups, business, industry or for-profit entities as defined in § 140-27.
- C. A not-for-profit organization that is not included in Subsection B.

PUBLIC OFFICE HOLDER:

- A. The same meaning as a public office holder as defined in section 156 of the *City of Toronto Act, 2006*.
- B. A member of the Board of Health.
- C. Individuals appointed by Council, a Standing Committee or a Community Council under delegated authority, or a local board (restricted definition) to an advisory body to provide advice to Council, the Standing Committee, the Community Council or the local board (restricted definition) or to employees of the City or local board (restricted definition).

§ 140-3. Restriction on application (persons and organizations).

This chapter does not apply to any of the following persons when acting in their official capacity:

- A. Government or public sector, other than the City.
 - (1) Members of the Senate or House of Commons of Canada, the legislative assembly of a province, the council or legislative assembly of a territory, or persons on the staff of the members.
 - (2) Members of a First Nation council as defined in the *Indian Act* (Canada) or of the council of an Indian band established by an Act of the Parliament of Canada, or persons on the staff of the members.

- (3) Employees of the Government of Canada, the government of a province or territory, or a First Nation council.
 - (4) Members of a council or other statutory body, including a local board, charged with the administration of the civil or municipal affairs of a municipality in Canada other than the City, persons on the staff of the members, or officers or employees of the municipality or local board, but excluding a statutory body that is:
 - (a) A municipally controlled corporation as defined in section 223.1 of the *Municipal Act, 2001*; and
 - (b) With necessary modifications, a similar municipally controlled corporation for a municipality that is not located in Ontario.
 - (5) Members of a national or sub-national foreign government, persons on the staff of the members, or officers, employees, diplomatic agents, consular officers or official representatives in Canada of the government.
 - (6) Subject to the exceptions in § 140-4B, C, D and E, members of a not-for-profit international organization that represents its government or public sector members, persons on the staff of the members, or officers or employees of the organization.
 - (7) Subject to the exceptions in § 140-4B, C, D and E, members of a not-for-profit national or sub-national domestic organization in Canada that represents its government or public sector members, persons on the staff of the members, or officers or employees of the organization.
 - (8) Subject to the exceptions in § 140-4B, C, D and E, members of a quasi-governmental or broader public sector organization that provides services to the public, persons on the staff of the members, or officers or employees of the organization.
- B. Without limiting the generality of Subsection A, members, persons on the staff of the members, or officers or employees of the following school boards:
- (1) Conseil scolaire de district catholique Centre-Sud.
 - (2) Conseil scolaire de district du Centre Sud-Ouest.
 - (3) Toronto Catholic District School Board.
 - (4) Toronto District School Board.
- C. City; other bodies; employee representatives.

- (1) Public office holders.
 - (2) Members, persons on the staff of the members, or directors, officers or employees of the corporations or other bodies listed in Schedule A, at the end of this chapter.
 - (3) Persons making representations on behalf of or on the staff of the employee or labour groups listed in Schedule B, at the end of this chapter, when representing employees of the City or a local board (restricted definition) and communicating about labour relations matters, including, but not limited to, collective bargaining, compensation, human resources policies, employer-employee committees, work place issues, grievances, mediation and arbitration.
- D. Members, persons on the staff of the members, or officers or employees of provincial or federal crown corporations, crown-controlled corporations or agencies, except for those listed in Schedule C, at the end of this chapter, that are required, or, to the extent the corporation or agency would be exempt as a crown agency, are requested to comply with this chapter.

§ 140-4. Restriction on application (not-for-profit organizations); exceptions.

- A. This chapter does not apply to members, persons on the staff of the members, or officers or employees of a not-for-profit corporation or other not-for-profit organization when acting in their official capacity, subject to the exceptions in Subsections B, C, D and E.
- B. Subsection A does not apply to an organization referred to in Subsection B of the definition of organization in § 140-1.
- C. Subsection A does not apply if the not-for-profit corporation or other not-for-profit organization is funded by a for-profit entity as defined in § 140-27 to advance the financial or commercial interests of the for-profit entity.
- D. If the not-for-profit corporation or other not-for-profit organization engages a consultant lobbyist as defined in § 140-11 to act on its behalf, the consultant lobbyist is still required to comply with the requirement to file a return in Article II.
- E. Subsection A does not apply if the not-for-profit corporation or other not-for-profit organization is communicating with public office holders with respect to a grant application, award or other financial benefit outside of the established administrative review, approval or appeal processes for the grant application, award or other financial benefit, and Article III must be complied with.

- F. Subsection E does not apply to an organization as defined in Subsection C of the definition of "organization" in § 140-1 that is a not-for-profit community services sector organization and, for greater certainty, is not a not-for-profit organization described in Subsection C.

§ 140-5. Restriction on application (communication).

This chapter does not apply in respect of:

- A. A communication that occurs as part of a meeting of Council, a local board (restricted definition), the Board of Health or their committees, for example:
 - (1) A written communication that is filed with the meeting administrator (for example the City Clerk) before or during the meeting, and includes a communication received after the meeting that is processed for consideration at another meeting.
 - (2) An oral communication to Council, a board or a committee that in the case of the City is usually referred to as a "deputation."
- B. A communication on a subject matter that is submitted to or occurs during a public process related to the subject matter as follows:
 - (1) A public meeting, hearing, consultation, presentation, open house or media event held or sponsored by the City, a local board (restricted definition), the Board of Health or a public office holder with respect to the subject matter.
 - (2) A public meeting, hearing, consultation, presentation, open house or media event that is part of the administrative review process with respect to an application or approval under § 140-5F.
- C. A communication that is restricted to a request for information.
- D. A communication that is restricted to compliments or complaints about a service or program.
- E. Subject to Subsections F and G, a communication to a public office holder by an individual on behalf of an individual, business or organization, about:
 - (1) The enforcement, interpretation or application of any Act or by-law by the public office holder and with respect to the individual, business or organization.

- (2) The implementation or administration of any policy, program, directive or guideline by the public office holder and with respect to the individual, business or organization.
 - (3) A personal matter of the individual, business or organization, unless the communication is in respect of a matter, described in Subsection A of the definition of lobby in § 140-1, that is for the special benefit of the individual, business or organization.
- F. A communication by the applicant, an interested party or their representatives with respect to an application for a service, grant, planning approval, permit or other licence or permission:
- (1) With an employee of the City, a local board (restricted definition) or the Board of Health (including a City employee when working for a board), or a member of Council, a local board (restricted definition) or the Board of Health; if the communication is restricted to providing general information on an application, including a proposed or pending application, or to inquire about the application review process. \
 - (2) With an employee of the City, a local board (restricted definition) or the Board of Health (including a City employee when working for a board), if the communication is for the purposes of filing an application or part of the administrative review process for an application.
- G. Submitting a bid or proposal as part of the procurement process, and any communication with designated employees of the City, a local board (restricted definition) or the Board of Health (including a City employee when working as a designated employee for a board), as permitted in the procurement policies and procurement documents of the City, local board (restricted definition) or Board of Health.
- H. A communication to a public office holder by an individual on behalf of an individual, business or organization in direct response to a written request from the public office holder.
- I. A member service or member communication by an organization or a not-for-profit corporation to a public office holder who is a member of the organization or not-for-profit corporation.
- J. Casual communication at a public gathering such as a charitable event, community or civic event, or festival, in keeping with protocol for the event and if the communication does not materially advance a matter as referred to in Subsection B of the definition of lobby in § 140-1.

§ 140-9. Restriction on former senior public office holders.

- A. Former senior public office holders shall not lobby current public office holders during the 12 months after the date he or she ceased to hold office or ceased to be employed as a senior public office holder by the City or a local board (restricted definition), or ceased to hold office as a member of the Board of Health.
- B. Subsection A applies to any senior public officer holder who ceased to hold office or ceased to be employed as a senior public office holder by the City or a local board (restricted definition), or ceased to hold office as a member of the Board of Health on or after February 11, 2008.

§ 140-10. Registration requirement.

No person shall lobby a public office holder without being registered as required under Articles II, III or IV, unless otherwise exempted under this chapter.