



Committee of the Whole Report

For the Meeting of April 1, 2021

To: Committee of the Whole
From: Chris Coates, City Clerk
Subject: Lobbyist Registry Considerations

Date: March 15, 2021

RECOMMENDATION

That Council refer considerations for creating a lobbyist registry to the Governance Review to evaluate additional methods to strengthen accountability and transparency in local governance.

EXECUTIVE SUMMARY

A 2020 Strategic Plan action item continuing in 2021 is Create a Lobbyist Registry.

This report examines options for creating a lobbyist registry within legal authority granted to municipalities by the Province of British Columbia and considers alternative methods to strengthen accountability and transparency in local governance.

A lobbyist registry is a publicly accessible accountability and transparency tool that involves recording and may involve regulating the activities of those who communicate with public office holders in order to influence decision-making. In Canada, there are four types of municipal lobbyist registries: a provincially-administered registry in Quebec, mandatory or voluntary registries in Ontario, a provincially-mandated mandatory registry in Toronto, and voluntary registries in many provinces. In general, municipal lobbyist registries are not common even in Ontario which enables municipalities to create mandatory lobbyist registries that can require lobbyists to register and to be penalized for violating lobbyist rules. Outside of Ontario, this research identified Edmonton, Surrey, and Winnipeg with some type of voluntary lobbyist registry.

The Province of British Columbia does not extend legal authority to municipalities to require lobbyists to register and report lobbying activities. Surrey administers a municipal lobbyist registry since 2009, but it cannot require lobbyists to register and report their lobbying activities. Instead, Surrey relies on councillors to ensure that lobbyists do not violate Surrey's lobbyist rules. Because municipalities lack the authority to require lobbyist registration, municipalities through UBCM adopted Resolution B74 in 2017 and Resolution B99 in 2019 to request that BC develop a legislative framework to enable a municipality to implement a mandatory municipal lobbyist registry.

While the provincial legislative framework enables a municipality to create a voluntary lobbyist registry, development of a municipal lobbyist registry needs to be considered in the broader governance context. This would require at least the following considerations: who is a lobbyist, who is being lobbied, topics of interest subject to lobbying, how to organize and make accessible registry data, what to implement and maintain a registry, how to ensure that lobbyists register and report,

what other accountability and transparency tools could support or better achieve the desired outcomes, and what would be the impact on lobbyists and elected and unelected officials.

Staff recommend that Council refer this matter to the Governance Review in 2021 to examine the issues and identify solutions to address these specific issues.

Other tools available to address concerns about accountability and transparency, recommended by the Ministry of Municipal Affairs, include accountability frameworks, codes of conduct, and Ethics Commissioners. These options can be implemented within the existing provincial legislative framework. They regulate council members rather than lobbyists.

PURPOSE

The purpose of this report is to inform Council about options for strengthen accountability and transparency in local governance through use of municipal lobbyist registries and other tools.

BACKGROUND

Strategic Plan (2019-2022)

In 2019, Council adopted the Strategic Plan (2019-2022). A 2020 Strategic Plan action item is to promote good governance and civic engagement by creating a lobbyist registry. This action item was deferred to 2021 due to shifting resources to respond to the Covid-19 pandemic and the by-election in Victoria.

What is Lobbying?

Lobbying is generally considered to be a legitimate activity in a free and democratic society. Lobbying is often defined as communication with public office holders to influence decision-making. Although many jurisdictions restrict their definitions of lobbying in the following ways which address concerns in different municipal contexts:

- Define lobbying as communication with public office holders for pay (e.g. a consultant or in-house lobbyist) and exclude communication by unpaid individuals (e.g. voluntary lobbyist).
- Define public office holders as elected and unelected public office holders, including senior management staff.
- Exclude communication by public office holders in other levels of government or First Nations governments.
- Exclude communication by citizens on their own behalf.
- Exclude communication that will form part of the public record (e.g. speaking during a public hearing).
- Only require reporting on communication related to prescribed matters (e.g. land use matters).

Lobbying definitions are included as Attachment A – Definitions of Lobbying from Selected Canadian Jurisdictions.

What is a Lobbyist Registry?

A lobbyist registry ensures public disclosure of lobbying activities that involves recording the lobbying activities of those who try to influence public office holders.

A lobbyist registry typically discloses a lobbyist's name (individual and organization), lobbyist's position or title, subject matter of lobbying, individual lobbied, and date of lobbying. Municipalities with registries commonly limit the reporting to lobbying activities related to specific subject matter (e.g. land use matters). In most jurisdictions, lobbyists are responsible for registering as a lobbyist and reporting lobbying activities. However, some municipalities which lack the authority to require lobbyists to register and report lobbying activities instead require councillors to report violations of lobbyist rules (e.g. Surrey).

A registrar establishes and maintains a registry in which a record of all registration is kept. It is best practice for a lobbyist registry to be free to search and accessible to the public. Municipalities with mandatory lobbyist registries in Ontario maintain accessible and searchable lobbyist activity information online. Municipalities with voluntary lobbyist registries use less expensive forms. In Surrey, a lobbying activities report is published on the City website each month which is the form chosen by the registrar who under the policy has the authority to determine how the information is organized and what form it is kept in.

A lobbyist registry is often embedded in a broader accountability framework that often includes a Code of Conduct for public officials and lobbyists, which may set general expectations such as honesty, openness, disclosure of identity and purpose, confidentiality, conflict of interest, and proper communication. This framework upholds and strengthens lobbyist rules especially when a municipality does not have the authority to require a lobbyist to register and report lobbying activities. For example, Surrey adopted the Council Code of Conduct Bylaw in 2020, which supports the effectiveness of a voluntary lobbyist registry by requiring a councillor to follow the City's rules respecting lobbying and to report any violation or any attempted such violation.

Under a mandatory lobbyist registry, the registrar is able to investigate lobbying activities and to impose penalties. For example, a penalty could be imposed on a lobbyist who failed to register a lobbying activity. A penalty can be a temporary communication ban with public office holders or monetary. Under a voluntary lobbyist registry, the registrar cannot penalize lobbyists who violate lobbyist registration rules. Instead, under a voluntary lobbyist registry, an independent officer, such as an Ethics Commissioner, would observe that councillors report lobbying activities.

Municipal Lobbyist Registries in Canada

There are four basic approaches to municipal lobbyist registries in Canada:

- a provincial registry for municipalities (Quebec);
- mandatory or voluntary municipal registries established under enabling authority in provincial legislation (some Ontario municipalities);
- voluntary municipal registries (Winnipeg, Edmonton, Surrey); and
- Provincially-mandated mandatory lobbyist registries (Toronto, Ontario)

Municipal lobbyist registries are not common. In Ontario, where municipalities have the authority to require lobbyists to register and report lobbying activities, approximately 5 municipalities have a municipal lobbyist registry. Other municipalities in Ontario investigated the adoption of municipal lobbyist registries but chosen not to adopt them. There were several reasons for not establishing a lobbyist registry, including:

- Lack of significant issues related to lobbyists
- Other safeguards related to the conduct of public officers and open and transparent government including internal policies and by-laws

- Uncertainty surrounding the potential costs and other resource requirements
- Unclear impact on staff
- Lack of Council support for establishing a registry

This research identified three municipalities outside of Ontario that have voluntary registries, which are Edmonton, Surrey, and Winnipeg. Although in Edmonton, the Mayor's Office established a registry maintained by staff and only during the current Mayor's term (2017-2021). In 2018, Calgary also examined the possibility of a municipal lobbyist registry following reports by Ethics Commissioner that councillors were circumventing code of conduct rules that require them to report any visitors to their offices.

Municipal Lobbyist Registries in BC

In BC, the provincial legislative framework enables a municipality to establish a municipal lobbyist registry. However, it does not extend legal authority to require lobbyists to register and report lobbying activities in a municipal lobbyist registry.

In response to this limited legal authority, municipalities through the Union of British Columbia Municipalities passed Resolution B99 in September 2017 and Resolution B74 in September 2019. These resolutions requested for the Province to change this restriction on municipal legal authority.

Resolution B99 requested that the Province of BC provide municipalities with the ability to register lobbyists, create rules for lobbyist's conduct in their interactions with elected officials and public servants, and the ability to enforce those rules. The Ministry of Municipal Affairs responded that municipalities may establish voluntary lobbyist registries. Further, that if municipalities through UBCM express interest in a mandatory lobbyist registry that it would be willing to discuss the matter.

Similarly, Resolution B74 requested a lobbying regulation system for municipalities, similar to the provincial BC Lobbyists Registration Act, be established. The Ministry of Municipal Affairs responded that it is willing to discuss a municipal lobbyist registry and other initiatives to promote openness and transparency. In moving forward, the Province would need a clearer understanding of what local governments hope to achieve through a municipal lobbyist registry.

In discussions this year, Ministry staff confirmed that the Ministry of Municipal Affairs is continuing to explore approaches for establishing enabling legislation to allow municipalities to set up lobbyist registries and also encourages consideration of a voluntary lobbyist registry such as in Surrey, BC.

Surrey administers a voluntary lobbyist registry. Surrey adopted the Lobbyist Registration Policy in 2008 requiring paid lobbyists who intend to advocate on behalf of applicants for a rezoning, development permit, or an official community plan amendment to register with the City and report any lobbying activities. Registrants do not need to provide information such as the elected or unelected public office holder who are the subject of lobbying activities. Although Surrey cannot require lobbyists to register and report lobbying activities, the Council Code of Conduct Bylaw requires councillors to following lobbying rules and to report any violation or attempted violation of lobbying rules, which supports lobbyist compliance with the voluntary lobbyist registry. The number of lobbyists who register increased from 54 registrants in 2009 to 260 registrants in 2020, although the total number of registrants has fluctuated with up to 308 registrants in 2017.

See Attachment B for a copy of Surrey's Lobbyist Registration Policy and Attachment C for a copy of Surrey's Council Code of Conduct Bylaw.

Gift Registries

In addition to a lobbyist registry, a municipality may establish a gifts registry which records gifts or personal benefits received by public office holders from lobbyists.

Under the Community Charter, a council member must not directly or indirectly accept a fee, gift, or personal benefit that is connected with their performance of the duties of office, with limited exceptions. In relation to those exceptions, if a gift exceeds \$250 or exceeds \$250 from one source in a 12 month period, then the council member must disclose this to the corporate officer. Municipalities may establish more strict reporting requirements. For example, Vancouver's code of conduct policy requires mayor and councillors to disclose when they receive a gift or personal benefit worth \$50 or more, or to relinquish it to the City Clerk without disclosure.

The City has no specific policy around gifting and defaults to the Community Charter requirements.

ISSUES AND ANALYSIS

Designing an Effective Voluntary Lobbyist Registry

Only a voluntary lobbyist registry is possible under the current provincial legislative framework. Under provincial legislation, municipalities cannot investigate or levy and enforce fines or impose other penalties on lobbyists for non-compliance. A municipality may create a voluntary lobbyist registry and encourage lobbyists to record lobbying activities or give responsibility to councillors to report lobbying activities or at least monitor lobbyist compliance with a voluntary lobbyist registry.

A voluntary lobbyist registry may create new issues for accountability and transparency. A key concern would be that some lobbyists would register and others would not. Those who register may face heightened public scrutiny which could discourage adherence to lobbyist rules. A lobbyist registry design would need to consider how to ensure compliance by all those who are defined as lobbyists. Without additional measures, it would not be possible to evaluate the success of a registry because the number of actual registrants could not be known.

Despite this limitation, how lobbying is defined and who is responsible for reporting lobbying activities could support the desired outcomes. One way to achieve accurate information about lobbying in a voluntary lobbyist registry is to make elected officials and non-elected officials responsible for reporting lobbying activities. This is the model in Calgary, Edmonton, and Surrey.

A voluntary lobbyist registry can vary in form and therefore vary in costs. The best practice is to establish and maintain an online database that is free to access and use, and searchable which enables easier data analysis. However, municipalities in Canada with voluntary lobbyist registries tend to favor a list or report format (e.g. Surrey). A list or report format discloses data in a timely way and requires less resources than a database.

The effectiveness of a voluntary lobbyist registry depends entirely on the desired lobbyist regulations. A system that encourages lobbyists to register will create a new requirement for lobbyists, so a voluntary lobbyist registry may be more effective if it is free to register, easy to access and use, and supported by education and clear lobbyist rules and instructions. Further, without significant resources to support a voluntary lobbyist registry, it would be helpful to limit the scope of who is defined as a lobbyist and what topics of lobbying should be reported.

If Council wishes to move forward with creating a municipal lobbyist registry, staff recommend moving this discussion to the Governance Review. This will not only help to identify what factors and issues to consider when designing a registry while considering the Governance Review findings. This will support the broader conversation around accountability and transparency that typically takes place when such tools are under consideration.

Promoting Accountability and Transparency

Given the challenges of a voluntary lobbyist registry, staff have examined the current legislative context to analyse the issues and other potential opportunities to implement other tools to promote accountability and transparency. Council may wish to consider specific issues that underpin a desire for lobbyist registration system in order to identify other potential options that may better address these concerns. Therefore, staff recommend referring this matter to the discussions during the Governance Review in 2021 where there will be comprehensive look at governance systems.

Others tools that Council may wish to consider is the adoption of a code of conduct for elected officials. The Province offers a guide and a model code of conduct, which has been attached as Attachment – Getting Started on a Code of Conduct for your Council/Board. A Code of Conduct would be drafted to include provisions for communication with lobbyists, as it is in Surrey's Council Code of Conduct Bylaw. A code of conduct could be adopted together with a municipal lobbyist registry to improve compliance with lobbyist rules.

Instead of a municipal lobbyist registry, Calgary has a code of conduct for councillors which requires them to register a visitor to their offices. This is one way to document lobbying activities that a municipal council can impose on itself. However, in 2018, the Calgary Ethics Commissioner found that some councillors were circumventing this code of conduct by taking meetings by phone. At this point, the Integrity Commissioner suggested the possibility of creating a municipal lobbyist registry.

Another part of accountability and transparency frameworks could include an Integrity Commissioner (also known as Ethics Commissioner). While more common with municipalities in Ontario, Calgary, Surrey, and Winnipeg have created this position in recent years.

Surrey became the first BC municipality establish an Office of the Ethics Commissioner. In February 2020, Council adopted the Ethics Commissioner Establishment Bylaw which establishes the role of an ethics commissioner who would have the authority to investigate allegations of ethical misconduct in relation to Mayor and Council; to report their findings to Council; and provide recommendations to Council as to the appropriate sanction or discipline. On July 14, 2020, Surrey hired an Ethics Commissioner.

OPTIONS AND IMPACTS

Option 1 – Refer to Governance Review (*Recommended*)

This option would refer the creation of a lobbyist registry to Governance Review to identify issues underlying this Strategic Plan action item, and consider options for supporting accountability and transparency in decision-making.

Option 2 – Establish voluntary lobbyist registry

This option would direct staff to report back separate from the Governance Review with design options and resource implications for a voluntary lobbyist registry.

Option 3 – Postpone decision until after Governance Review

This option would direct staff to report back with design options and resource implications for a voluntary lobbyist registry after the completion of the Governance Review.

Accessibility Impact Statement

The recommended option has no accessibility implications.

2019 – 2022 Strategic Plan

The recommended option is related to a Strategic Plan action item.

Impacts to Financial Plan

The recommended option has no financial implications.

Official Community Plan Consistency Statement

This issue has no specific Official Community Plan implications.

CONCLUSION

There are many tools that can strengthen accountability and transparency in local decision-making. They often come together as a part of a larger accountability framework that includes registries, codes of conducts, and ethics commissioners. Since municipalities in BC have limited enforcement tools, staff recommend bringing this discussion to the Governance Review to identify the issues so that tools can be selected to address those.

Respectfully submitted,

Monika Fedyczkowska
Legislative and Policy Analyst

Chris Coates
City Clerk

Susanne Thompson
Deputy City Manager

Report accepted and recommended by the City Manager.

List of Attachments

Attachment A: Definitions of Lobbying from Selected Canadian Jurisdictions
Attachment B: Surrey's Lobbyist Registration Policy
Attachment C: Surrey's Council Code of Conduct Bylaw
Attachment D: Getting Started on a Code of Conduct for your Council/Board