



Accountability Framework

Executive Committee Meeting 31

EX31.1 A Policy Framework for Toronto's Accountability Officers

City Council Decision: City Council on April 29 and 30, 2009, adopted the following:

1. City Council adopt the Policy Framework as summarized in Appendix 1 of the report.
2. The policy provisions related to fixed term, appointment, renewal and removal from office, and remuneration, come into effect for future accountability officer appointments, except where these provisions are already contractually in place for current permanent incumbents.
3. City Council establish a new Toronto Municipal Code Chapter for the accountability officers, reflecting the substance of provisions described in sections 2C and 2D and summarized in Appendix 1 of this report.
4. City Council move Article VI, Auditor General and Article XIII Ombudsperson from Municipal Code Chapter 169, City Officials, to the new Municipal Code Chapter, renaming Article XIII, Ombudsman, for consistency with the wording of the *City of Toronto Act, 2006*.
5. City Council repeal § 140-33A. and B (8) and (10) of Municipal Code Chapter 140, Lobbying, and replace them with the provisions described in section 2D of this report and summarized in Appendix 1.
6. City Council amend § 27-99 of Municipal Code Chapter 27, Council Procedures, to provide for a 2/3 vote of all Members of City Council respecting the appointment and removal of the accountability officers, and amend § 27-62B to enable the accountability officers to submit reports directly to City Council in accordance with the provisions outlined in section 5 of Appendix 1.
7. City Council amend § 169-5 of Municipal Code Chapter 169, City Officials, to provide that the City Manager does not appoint, promote, demote, suspend and dismiss the officials named in Part V of the *City of Toronto Act, 2006* or their staff; and amend § 169-7 to provide that the City Manager shall not recommend the appointment and dismissal to City Council of the officials named in Part V of the *City of Toronto Act, 2006*.
8. City Council amend Municipal Code Chapter 217, Corporate Records, by adding the words "Integrity Commissioner, Lobbyist Registrar, Ombudsman," after the word "Solicitor" in Subsection (2) of the definition of Division Head in § 217-4A.
9. City Council authorize the City Solicitor to prepare and introduce in Council any bills required to enact the Policy Framework, generally in accordance with the report recommendations and policy provisions described in sections 2C and 2D of this report and summarized in Appendix 1.
10. City Council request the accountability officers, in consultation with the City Manager and City Solicitor, to develop a Conflict of Interest Policy and Code of Conduct for the accountability officers and their staff, for Council's approval by the end of 2009; and require

that the City's Conflict of Interest Policy continue to apply until such time as a Conflict of Interest Policy and Code of Conduct for the accountability officers and their staff is approved by Council.

11. City Council authorize the City Manager, in consultation with the City Solicitor, to develop standard terms of employment for Toronto's accountability officers consistent with the provisions outlined in section 2D of this report and summarized in Appendix 1, to give effect to Council's decisions respecting future appointments of its accountability officers.

12. City Council authorize the City Manager, in consultation with the City Solicitor, to bring forward amendments to Council-approved policies as required in order to implement the Policy Framework.

13. City Council authorize the City Manager and Deputy City Manager and Chief Financial Officer, in consultation with the accountability officers, to review and research best practices respecting setting aside a percentage of the City's budget for Toronto's accountability functions and report back to Executive Committee.

14. City Council request the Accountability Officers to inform Council of the requirements, contents and timing of their annual reports.

Background Information (Committee)

A Policy Framework for Toronto's Accountability Officers

(<http://www.toronto.ca/legdocs/mmis/2009/ex/bgrd/backgroundfile-19953.pdf>)

Background Information (City Council)

(April 23, 2009) supplementary report from the City Manager (EX31.1a)

(<http://www.toronto.ca/legdocs/mmis/2009/cc/bgrd/backgroundfile-20619.pdf>)

A Policy Framework for Toronto's Accountability Officers

Date: March 20, 2009
To: Executive Committee
From: City Manager
Wards: All
Reference Number:

SUMMARY

This report recommends a comprehensive policy framework for Toronto's four accountability officers. The recommended framework breaks new ground in Canada. Based on characteristics of independence for comparable officers in other jurisdictions, the framework sets out their features of independence, accountability mechanisms, and the administrative and operational supports for their offices.

A separate Toronto Municipal Code chapter for the accountability officers is recommended to reinforce both their separation from the City administration and their independent status within the City's governance system.

The policy framework supports the appropriate balance of independence in the officers' decision making processes and accountability to Council for the management of their offices, and their performance in fulfilling their mandates.

RECOMMENDATIONS

The City Manager recommends that:

1. City Council adopt the Policy Framework as summarized in Appendix 1 of this report;
2. The policy provisions related to fixed term, appointment, renewal and removal from office, and remuneration, come into effect for future accountability officer appointments, except where these provisions are already contractually in place for current permanent incumbents;
3. City Council establish a new Toronto Municipal Code Chapter for the accountability officers, reflecting the substance of provisions described in sections 2C and 2D and summarized in Appendix 1 of this report;
4. City Council move Article VI, Auditor General and Article XIII Ombudsperson from Municipal Code Chapter 169, City Officials, to the new Municipal Code Chapter, renaming Article XIII, Ombudsman, for consistency with the wording of the *City of Toronto Act, 2006*;
5. City Council repeal § 140-33A. and B (8) and (10) of Municipal Code Chapter 140, Lobbying, and replace them with the provisions described in section 2D of this report and summarized in Appendix 1;
6. City Council amend § 27-99 of Municipal Code Chapter 27, Council Procedures, to provide for a 2/3 vote of all Members of City Council respecting the appointment and removal of the accountability officers, and amend § 27-62B to enable the accountability officers to submit reports directly to City Council in accordance with the provisions outlined in section 5 of Appendix 1;

7. City Council amend § 169-5 of Municipal Code Chapter 169, City Officials, to provide that the City Manager does not appoint, promote, demote, suspend and dismiss the officials named in Part V of the *City of Toronto Act, 2006* or their staff; and amend § 169-7 to provide that the City Manager shall not recommend the appointment and dismissal to City Council of the officials named in Part V of the *City of Toronto Act, 2006*;
8. City Council amend Municipal Code Chapter 217, Corporate Records, by adding the words “Integrity Commissioner, Lobbyist Registrar, Ombudsman,” after the word “Solicitor” in Subsection (2) of the definition of Division Head in § 217-4A;
9. City Council authorize the City Solicitor to prepare and introduce in Council any bills required to enact the Policy Framework, generally in accordance with the report recommendations and policy provisions described in sections 2C and 2D of this report and summarized in Appendix 1;
10. City Council request the accountability officers, in consultation with the City Manager and City Solicitor, to develop a Conflict of Interest Policy and Code of Conduct for the accountability officers and their staff, for Council’s approval by the end of 2009; and require that the City’s Conflict of Interest Policy continue to apply until such time as a Conflict of Interest Policy and Code of Conduct for the accountability officers and their staff is approved by Council;
11. City Council authorize the City Manager, in consultation with the City Solicitor, to develop standard terms of employment for Toronto’s accountability officers consistent with the provisions outlined in section 2D of this report and summarized in Appendix 1, to give effect to Council’s decisions respecting future appointments of its accountability officers;
12. City Council authorize the City Manager, in consultation with the City Solicitor, to bring forward amendments to Council-approved policies as required in order to implement the Policy Framework; and
13. City Council authorize the City Manager and Deputy City Manager and Chief Financial Officer, in consultation with the accountability officers, to review and research best practices respecting setting aside a percentage of the City’s budget for Toronto’s accountability functions and report back to Executive Committee.

Implementation Points

The City Manager, in consultation with incumbent accountability officers, will monitor the implementation of the policy framework and bring forward any necessary changes over time to ensure its continued effectiveness.

The City Manager, in consultation with the accountability officers, will develop protocols to formalize the officers’ authorities in areas where they must utilize corporate processes; and detail the services provided to their offices through the City administration. The City Manager will amend administrative policies, processes, and practices where necessary to implement the protocols across the City organization. Amendments to Council-approved policies and relevant City by-laws will be brought forward as required to ensure they reflect the officers’ independence from the City administration.

The City Manager, in consultation with the City Solicitor, will develop standard terms of employment for Toronto's accountability officers to give effect to Council's decisions respecting future appointments.

Financial Impact

There are no financial implications.

DECISION HISTORY

At its meeting on July 15 and 16, 2008, in considering the End of Term Report from the Integrity Commissioner, City Council directed the City Manager, in consultation with the accountability officers, the City Clerk and City Solicitor, to develop and report to Executive Committee on an overview framework for the accountability positions setting out the legislated provisions and any governance, policy and support mechanisms required to effectively carry out the functions and ensure independence.

<http://www.toronto.ca/legdocs/mmis/2008/cc/bgrd/cc23.2.pdf>

ISSUE BACKGROUND

As an early sign of its commitment to accountable and transparent government, City Council established an Auditor General in 2002 and an Integrity Commissioner in 2004.

In 2006, the Province of Ontario enacted the *City of Toronto Act, 2006* (COTA), effective January 1, 2007, enshrining a number of accountability and transparency requirements in legislation. COTA establishes four mandatory functions including the Auditor General, the Integrity Commissioner, the Ombudsman, a Lobbyist Registry, and authority to appoint a Lobbyist Registrar. COTA sets out the mandates, functions, powers and duties, judicial protections, and confidentiality provisions for these officials. COTA is enabling legislation that provides broad and permissive powers to the City, including the authority to develop its own by-law and policy provisions for its accountability functions, subject to the COTA Part V requirements.

To meet its statutory obligations and round out Toronto's accountability system, City Council established a lobbyist registry and appointed a Lobbyist Registrar in 2007 and an Ombudsman in 2008.

Various approaches have been taken in establishing these positions over the past several years. It is time now for a more formalized, comprehensive and up-to-date policy framework for the accountability officers, and a consistent approach to their description and standing within the Municipal Code. For example, Chapter 169, City Officials of the Municipal Code establishes the Ombudsman and Auditor General in by-law and includes provisions respecting appointment, term, compensation, powers and duties, and reporting requirements. Chapter 140, Lobbying, generally sets out the duties, accountability, and reporting requirements of the Lobbyist Registrar. The office of Integrity Commissioner is not currently addressed in a stand-alone City by-law but was established by Council through the adoption of policy reports.

The City's accountability officers, the City Solicitor, the City Clerk, and other key internal divisions were consulted in the development of this policy framework.

COMMENTS

1. Independent Officers—A Balance of Independence and Accountability

Background research guided the development of a policy framework for Toronto's accountability officers. The background research included:

- a review of literature and preferred practice with regard to independent officers;
- an examination of seven jurisdictions including the Federal Government, Governments of Ontario and British Columbia, the City of Montreal, the Central United Kingdom Government, the Australian Commonwealth Government and the Central Government of New Zealand;
- interviews with independent officers or their staff in Canadian jurisdictions; and
- interviews with Toronto's former and current accountability officers.

A. Definition

Independent officers provide oversight of government administration, management, and finances, and represent the interests of individual citizens in their interactions with government. They ensure stewardship of public funds and value for money in government operations, uphold and promote government openness and transparency, and provide a variety of independent checks on government activities on behalf of the legislature.

As independent officers of government, they are expected to uphold and exemplify the public sector standards and values they use to measure the government entities under their jurisdiction. Some independent officers, such as Auditors General and Ombudsman, are also required to adhere to standards of relevant professional associations and licensing bodies, also based on the highest principles, guidelines, and values of public service.

In most jurisdictions, independent officers are directly accountable to the legislative body, and work autonomously from both the head of government (e.g., the Premier or Prime Minister) and the government administration (the civil service).

Independence is essential to their effectiveness and credibility; and ensures they are not constrained, undermined, or fettered in the fulfillment of their statutory duties. Independent officers must be sufficiently separate from both elected officials and government administrators to be able to review, evaluate, and investigate effectively; to report publicly without fear of losing their budgets, of legal challenges, or other forms of reprisal; and their operating environment should reflect and reinforce this independence.

B. Characteristics of Independence

Although enabling legislation and operating frameworks for independent officers vary across governments, depending on their specific parliamentary or legislative context, characteristics of independence generally include the provisions outlined below.

Authority Established by Law

The establishment, mandate, authority, and powers of independent officers are established by law to reflect their accountability directly to the legislature and independence from government administration.

Investigative Powers and Judicial Protections

Officers with investigative responsibilities require appropriate powers. These may include the ability to require the disclosure of information or relevant materials, to inspect premises or to hold hearings and compel testimony under oath.

Provisions are usually in place to afford protections for officers from civil action or subpoena stemming from their reporting.

Confidentiality Provisions

Independent officers are required to maintain confidentiality in the course of their duties and must not disclose information provided to them in confidence. Confidentiality engenders trust in the accountability function, and ensures the offices are a safe place to turn to for resolution.

Appointment by and Accountability to the Legislative Body

Independent officers have a direct accountability to the legislative body rather than the administration. Independent officers often submit reports and information directly to the legislative body as a mechanism of direct accountability. In governance structures where officers report through a parliamentary or legislative standing committee, preferred practice is that the committee be formally constituted, and composed of members from all political parties.

Appointment and removal should ideally be by the legislative body itself. In many jurisdictions, depending on the size of the legislative body, a majority or super majority is required to affirm an appointment, with the same threshold usually required for removal. Appointment by the legislative body ensures that there is full confidence in the appointee throughout their tenure in the position.

Appointment, Renewal and Removal Processes are Defined and Transparent

To safeguard independent officers from retaliation, appointment, renewal and removal processes should be defined and transparent. Appointment and removal is usually by the legislative body; removal is often for cause or incapacity only and through a resolution of the legislature. Fixed term lengths are preferable, both to provide protection of tenure and as an accountability mechanism back to the appointing body.

Carriage and Control of Offices

Considered a key factor of independence, officers have responsibility and authority for the carriage and control of their offices, and as much budgetary and staffing freedom as is reasonably possible.

- Budgetary Independence

Budgets are submitted directly to legislative bodies for oversight or approval, or both across most jurisdictions. Some officers also have delegated sign-off powers for expenses and general budget envelopes that allow them to spend as they see fit, within budgets approved by the legislative body.

Budgetary independence is at the core of independence for officers. Principles and processes must be in place to ensure that independent officers cannot be controlled or fettered either by a government of the day, or by the administration, in their ability to carry

out their duties through the denial or unreasonable control of funding, staffing, or other resources. A lack of budgetary independence can also potentially deny an officer the capacity to criticize those very sources of funding. Not only does this represent a potential conflict of interest, but also limits the ability of officers to be perceived as independent of government – a critical factor in building credibility with the public.

To support and reinforce budgetary independence, some jurisdictions set aside a percentage of the government's budget to provide more budgetary certainty for these functions. Most commonly used for government auditors, this practice reduces the potential politicization of the budget development and approval process. For example, the Quebec Cities and Towns Act requires that, "the budget of the municipality shall include an appropriation to provide for payment of a sum to the chief auditor to cover the expenses relating to the exercise of the chief auditor's duties." The amount legislated for audit services in municipalities with a budget in excess of \$1 billion is 0.11 per cent of the total City budget. The City of San Francisco also provides a dedicated source of revenue for their government audit function equivalent to two-tenths of one per cent of their City budget.

Examples of setting aside a percentage of the government budget for accountability functions, other than Auditors General, has not yet been identified through the jurisdictional research. This report recommends the City Manager and Deputy City Manager and Chief Financial Officer, in consultation with the accountability officers, review and research best practices respecting setting aside a percentage of the City's budget for Toronto's accountability functions and report back to Executive Committee.

- **Authority to Appoint and Dismiss Staff**

Officers should have discretion to select, direct, and discharge staff. Restrictions with regard to their ability to appoint and dismiss staff may compromise their operational independence or may give rise to perceptions of influence.

- **Discretion to Establish Operational Protocols, Processes and Practices**

Officers should have discretion to prescribe how their work is conducted, including the scope and manner of their reviews or investigations, in compliance with relevant association or licensing standards, including government auditing standards for Auditors General. To ensure neutrality and impartiality, officers often have the authority to manage the internal business of their office, free from external interference or influence.

C. Accountability to the Legislative Body

Independent officers must also be held to account for the management of their offices, the administration of the services they provide, for their performance in fulfilling their mandates and for their use of public funds. A range of checks and balances are in place in other jurisdictions that hold independent officers accountable to the legislative body. Checks and balances often include the provisions outlined below.

Appointment and Renewal Processes

Appointment and renewal processes are considered both a characteristic of independence and a check and balance to the legislature, as fixed terms enable legislators to reappoint effective officers and remove ineffective ones.

Annual Report

An annual report to the legislative body on the activities of their office is usually required and provides legislators with an opportunity to monitor the performance of their officers.

Annual Attest Audit

An annual attest audit conducted by an external auditor, to review their accounts and financial transactions is a standard check and balance used across jurisdictions.

Budget Review by the Legislative Body

In many jurisdictions, budget review is by a parliamentary or legislative committee to ensure legislative, rather than administrative, oversight of officer's budgets and as a means of holding officers accountable for their management and performance.

Statutory Oath of Office

A statutory oath of office, administered by the Speaker or the Clerk of the House, provides the officer will faithfully and impartially perform their mandate of office and preserve secrecy in the course of their duties. Oaths are most often required for Ombudsman and in a number of jurisdictions, required for Auditors General. Some jurisdictions require a statutory oath for all independent officers.

Periodic Review of Mandate

A periodic review of mandates provides an opportunity to adjust mandates to changing circumstances, compels legislators to take an active role in ensuring the proper functioning of independent officers, and reinforces the principle of accountability back to the legislative body.

2. Recommended Policy Framework

The recommended framework includes key characteristics of independence and accountability that will be the foundation of a separate Toronto Municipal Code chapter for the accountability officers. A separate chapter will reinforce both their separation from the City administration and their independent status within Toronto's governance system. The framework details the City's corporate roles and responsibilities respecting the accountability functions; and recommends the development of protocols to outline services provided to their offices through the City administration and clarify their authorities in areas where they interface with corporate processes. The report also recommends the development of standard terms of employment for Toronto's accountability officers to give effect to Council's future appointment decisions respecting these officers.

The recommended policy framework is set out below with key characteristics of independence and accountability summarized in Appendix 1. Although characteristics of independence and accountability are in place for some of these functions, there is a need to harmonize by-law provisions across the four functions where appropriate. New by-law provisions are required for the Integrity Commissioner and amendments are required in some areas to the by-laws for the Auditor General and Ombudsman. The current Lobbying By-law includes a few provisions related to the position of Registrar and these will be incorporated into the new Municipal Code chapter.

Amendments are required to Chapter 217 Corporate Records and Chapter 169 City Officials to give effect to the policy provisions summarized in Appendix 1. Additionally,

amendments to Chapter 27, Council Procedures, are required to provide for a 2/3 vote of all Members of City Council respecting the appointment and removal of the accountability officers, and to enable the accountability officers to submit reports directly to City Council as outlined in section 5 of Appendix 1. The report also recommends renaming Article XIII, from Ombudsperson to Ombudsman, to employ language consistent with that of the *City of Toronto Act, 2006*.

A. Toronto's Context

The policy framework for the accountability officers considers the practice and experience in other jurisdictions but also reflects the Toronto-specific context in which the officers will function. The characteristics of independence for comparable officers in other jurisdictions are appropriate and applicable in Toronto, and guided the development of this policy framework. The framework incorporates practices used in parliamentary or legislative models where feasible and reflects modifications for City Council's governance structure where required.

The accountability officers have distinct roles, powers, and protections that differentiate them from other City statutory officials. The City's other statutory officials, such as the Treasurer and Chief Building Official, are responsible to implement the City's business under various Provincial statutes. The City Clerk has a dual role, carrying out the City's business under various Provincial statutes and performing independently the functions related to municipal elections. The accountability officers' role is to hold the City administration and legislative arm of the City government accountable. As objective and independent checks on the City's activities, the accountability offices must be established with clear principles of independence, balanced with direct accountability to City Council.

In other parliamentary governments, independent officers may sometimes be employed by the legislative assembly, appointees under Orders in Council, or sometimes established as separate corporate entities. In the absence of specific legislative authority, these arrangements are not available for these functions in the Toronto municipal government or administration. Consequently, the officers and their staff are employees of the City. The recommended framework will support the independence of the offices in their decision making, and ensure separation from the City administration, while balancing the need for internal equity in some employment-related areas and matters related to the City's responsibilities as the employer.

B. Guiding Principles

Guided by the characteristics of independence in other jurisdictions, and considered in Toronto's context, the framework is based on the following key principles:

- The offices will be established by by-law in Toronto's Municipal Code.
- The officers are appointed by and have direct accountability to City Council.
- The appointment, renewal, and removal processes will be defined and transparent.
- The officers will have fixed terms of office.
- The officers will have budgetary, operational, and staffing independence.

C. Responsibilities of the Accountability Officers

The responsibilities of Toronto's accountability officers, approved by City Council, are described in the respective sections in Chapter 169, City Officials, for the Auditor General and Ombudsman, and in Chapter 140, Lobbying, for the Lobbyist Registrar.

The responsibilities of the Integrity Commissioner, approved by City Council, need to be set out in the Municipal Code. These responsibilities include providing advice, complaint resolution and education to Members of Council and Members of local boards on the application of the City's Codes of Conduct, and other by-laws, policies and legislation governing ethical behaviour.

The responsibilities of all four officers will be incorporated into the new Municipal Code chapter.

D. Characteristics of Independence and Accountability

(a) Appointment and Removal by City Council

The accountability officers will be appointed and removed, as described below, by a 2/3 vote of all Members of City Council (currently 30 Members). Appointment and removal by City Council ensures that there is full confidence in the appointee throughout their tenure in the position and is required by the *City of Toronto Act, 2006* for all but the Lobbyist Registrar.

The *City of Toronto Act, 2006* sets out a direct accountability reporting relationship of officers to City Council, rather than through the City administration.

(b) Fixed Term of Office

Accountability officers will have a fixed term of office. A seven-year non-renewable term has already been established by City Council for future Auditors General and a five-year, once renewable term for the Ombudsman.

Consistent with comparable positions in other jurisdictions a five-year, once renewable term is recommended for the Lobbyist Registrar. A five-year non-renewable term is recommended for the Integrity Commissioner given the nature of the function and degree of interface with Members of Council.

Terms for all officers may be extended by Council in exceptional circumstances by a 2/3 vote of all Members of City Council. Moving to fixed terms of office for the Lobbyist Registrar and Integrity Commissioner will commence with future appointments to these offices.

(c) Appointment, Renewal, and Removal Processes

Appointment: The selection process will be conducted by an external recruitment firm; appointment will be recommended to City Council by a selection panel, appointed by the Mayor and chaired by the Mayor or the Mayor's designate.

Renewal: The Ombudsman and Lobbyist Registrar will notify the Mayor (as head of Council) in writing, at least 6 months before the end of their first term if they wish to be considered for reappointment to an additional term. The Mayor will transmit the officer's notification to City Council for consideration of reappointment. The reappointment of the Ombudsman and Lobbyist Registrar to an additional term of office will require a 2/3 vote of all Members of City Council.

Removal: Removal will be for cause by a 2/3 vote of all Members of City Council. This provision is included to provide security of tenure and to ensure officers are not removed from office for political reasons or because the result of an investigation is unfavourable.

This removal provision means that an officer, once appointed, can only be removed for cause, following a hearing by Council that may in turn be subject to judicial review. The process of removal will be public and may be contentious. If the judicial review determines that no cause existed, an officer may be returned to their position or Council may be prohibited from removing the officer from their position. The removal for cause provision also means that Council will not have the ability to remove the accountability officers without cause. Generally, an employer has the ability to terminate employment without cause but is required to provide reasonable notice of termination or pay damages in lieu of notice. Removal without cause will no longer be available to Council for its accountability officers.

Notice regarding resignation: The accountability officers may resign from office at any time by giving 3 months' written notice to the Mayor.

(d) Remuneration

Consistent with current practice, compensation will be recommended through an independent, external review at arms length from the City administration. Officers will not receive performance progression increases but will receive the same cost-of-living escalators approved by Council for the City's senior managers (i.e., City Manager, Deputy City Managers, and Division Heads).

Officers' remuneration will be reviewed periodically.

(e) Submitting reports to the Council/Committee System

An annual report on the activities of their office and discharge of their duties will be submitted directly to City Council. Consistent with current practice, the Auditor General will report annually to City Council through Audit Committee on the work conducted, and savings achieved, and other matters.

Reports respecting investigations or inquiries or both from the Integrity Commissioner, Lobbyist Registrar and Ombudsman will be submitted directly to City Council. The Auditor General will continue to submit all audit-related reports to City Council through Audit Committee.

Consistent with Council's governance structure, policy-related reports will be reported to Council through its Executive Committee in a timely and transparent manner. Policy related reports may include such matters as operational protocols, amendments to the Members' Code of Conduct, and amendments to the Lobbyist Code of Conduct or Lobbying Registration System. Reporting policy-related matters through the committee structure ensures public transparency and provides an opportunity for public input through Council's deputation process.

(f) Carriage and Control of Offices

The accountability officers will have responsibility and authority to manage their own offices in compliance with applicable laws including, but not limited to, the Ontario Employment Standards Act, 2000, the Occupational Health and Safety Act, and the Ontario Human Rights Code.

Key aspects of carriage and control are outlined below to clarify the accountability officers' authorities in the areas where they must utilize corporate processes. Protocols will be required to clarify and clearly outline the interaction between the accountability officers and the City administration with respect to these matters to ensure their independence and confidentiality. Amendments to applicable Council-approved policies and City by-laws will be brought forward as required to ensure they reflect the officers' independence from the City administration.

- Budgetary Independence:

To ensure clear budgetary independence and separation from the City administration, accountability officers will submit their annual budget requests directly to Budget Committee for consideration. Budget Committee will consider and recommend the annual budget allocations for the accountability officers to City Council. Consistent with current practice, the Auditor General's annual budget request will be submitted to Audit Committee for consideration and recommendation to City Council, prior to review by Budget Committee.

The accountability officers' budgets will not be subject to administrative budget review and oversight. The City Manager and Deputy City Manager and Chief Financial Officer will not approve or recommend their annual budget requests. The officers will be responsible for submitting, explaining, and defending their budget requests through the Council process. For consistency purposes, the officers will generally follow the corporate budget submission process as it relates to the level of information provided, and the formats used. Any required modifications to the corporate budget submission process to reflect the independence of the accountability officers will be done in consultation with the Deputy City Manager and Chief Financial Officer, with appropriate protocols put in place as required.

- Spending Authority:

Spending authority for the accountability officers is currently set at the level of a division head, and this will continue. To ensure consistency with regard to the City's financial and procurement framework, officers will be responsible for the application of City by-laws and policies within their own environments related to material and financial resources.

- Staffing Authority:

The accountability officers will have responsibility and authority to staff and manage their offices. Given that their staff are City employees, the accountability officers will be responsible for the application of the City's employment-related policies to their staff with necessary modifications to reflect the independent and unique nature of these functions. The accountability officers will authorize the creation of positions and compensation levels in their offices, within approved budget levels and generally within the City's salary structure, having regard for comparable compensation levels across the Toronto Public Service for purposes of internal equity. The accountability officers will follow best practices respecting human resource management, meeting or exceeding the City's human resource standards.

Officers will be required to work with the City Manager, Human Resources, and the City Solicitor in areas where there is a corporate responsibility or liability.

- Conflict of Interest Policy and Code of Conduct:

A Conflict of Interest Policy and Code of Conduct for officers and their staff is recommended to recognize their unique status in Toronto's government. The City's Conflict of Interest

Policy will continue to apply to officers and their staff in the interim until a Conflict of Interest Policy and Code of Conduct for the officers and their staff is approved by Council.

(g) Accountability to City Council

The accountability officers must be held to account for the administration of the services they provide, for their performance in fulfilling their mandates and for their use of public funds. In addition to policy provisions related to fixed terms, appointment, renewal, and removal, the officers' accountability to City Council is achieved through the following mechanisms:

- Annual Report to City Council

The officers will report annually to City Council on the activities of their office and discharge of their duties. Consistent with current practice, the Auditor General will report annually to City Council through Audit Committee on the work conducted, savings achieved, and other matters.

- Annual Attest Audit

Section 139 of the *City of Toronto Act, 2006* requires the appointment of an external auditor to conduct an annual attest audit of the corporation's finances, including its agencies, boards, and commissions. The City's annual attest audit will include the accountability offices.

- Annual Compliance Audit

Consistent with the current audit requirement for the Auditor General, the accountability officers will undergo an annual compliance audit by an external auditor, appointed by and reporting to City Council. The annual compliance audit will provide Council assurance the officers are carrying out their operations within delegated authorities and in compliance with applicable City by-laws and policies.

The City Manager's Office will facilitate the request for proposals process to recommend appointment of an external auditor to City Council.

- External Peer Review of the Auditor General

Required once every three years to ensure compliance with Government Auditing Standards, the external peer review of the Auditor General includes an evaluation of internal quality control policies and procedures, related monitoring procedures, audit reports, and other documentation to determine compliance with Government Auditing Standards. The results of the external peer review will be reported to City Council through Audit Committee.

- Periodic Review of Mandate

Council may periodically review the mandates of the accountability officers to adjust mandates to changing circumstances. Periodic reviews of mandates will include consultation with incumbent appointees to reflect their experience, advice and input.

E. Corporate Roles and Responsibilities

City Manager

The City Manager's Office plays a central corporate policy and governance function in the

City government. Similar to a Cabinet Office in provincial governments, the City Manager's Office has an overarching interface with the Mayor and Council, and corporate policy responsibility across the City organization including ensuring compliance with Part V of COTA.

The City Manager supports Council by developing policy reports and frameworks to create the accountability functions that result in establishing by-laws in the Toronto Municipal Code. The accountability officers are responsible for policy reports related to their operations as described in Section 2D (e). These policy reports may result in by-laws governing operations or amendments to existing operational by-laws. The Lobbying By-law is one such example.

The City Manager's responsibilities also include:

- supporting Council in conducting periodic reviews of the officers' mandates to adjust to changing circumstances as required;
- supporting the Council process respecting the selection, recommendation and appointment of accountability officers including the execution of agreements consistent with the Council approved Policy Framework and related by-law provisions;
- providing guidance to City divisions, agencies, boards, commissions and other bodies within jurisdiction of the accountability officers with regard to their mandates, authority, role and powers;
- maintaining an overview of developments and changes across the City's divisions, agencies, boards, commissions and other bodies to ensure the jurisdiction of the City's accountability officers is kept up-to-date in the City's by-laws; and
- maintaining ongoing liaison with the City's accountability officers as good business practice.

The City Manager is responsible to bring forward any by-law amendments to Council regarding the new Toronto Municipal Code Chapter for these functions, in consultation with the City Solicitor and incumbent appointees.

City Solicitor

The City Solicitor is responsible for preparing any and all bills to be adopted by City Council including bills that establish the accountability positions and the framework in which they operate, and those that appoint individuals to the offices. The City Solicitor also provides legal advice interpreting the *City of Toronto Act, 2006* including Part V, Accountability and Transparency.

The City Solicitor provides legal support on matters deemed appropriate by the officers, with external legal counsel procured generally for investigative and complaint-based matters.

City Clerk

Similar to the services provided to Members of Council and the Office of the Mayor, the City Clerk's Office supports a number of administrative and operational activities of the Offices of the Ombudsman, Lobbyist Registrar and Integrity Commissioner. These include budget development, monitoring, and variance reporting; accounts payable; purchasing and contract management coordination; administrative-related data management

support; and desktop and applications systems support and development. Administrative and operational support for the Auditor General is provided through his existing office complement.

The City Clerk's Office also provides records management support to the City organization. In addition to the accountability officer's responsibilities as provided for in Part V of COTA, all officers have responsibility to manage their records subject to sections 200 and 201 of COTA. The City Clerk's Office, in consultation with the City Solicitor and accountability officers, will review whether the City's records management services can be extended to the accountability offices to meet their legislative records management responsibilities while maintaining confidentiality.

Standard Terms of Employment for Toronto's Accountability Officers

The report recommends the City Manager, in consultation with the City Solicitor, develop standard terms of employment for the accountability officers to ensure clarity with incoming appointees. Similar to the Order in Council process used in provincial and federal governments for appointments of independent officers, standard terms of employment will give effect to Council's decisions with regard to appointments of its accountability officers, consistent with the approved policy provisions outlined in this report.

F. Service Protocols

In addition to policy provisions related to carriage and control of their offices, and the need for protocols outlined in section 2D (f), many day-to-day supports are provided to the accountability offices from within the City administration. These services may include communications, human resources, information technology, multi-media, photocopying and offset printing, to name a few. These services must be provided in a way that supports independence and ensures confidentiality. The City Manager and accountability officers, in consultation with relevant internal services, will develop service protocols to clearly outline the services provided through the City administration.

CONTACT

Lynda Taschereau, Strategic and Corporate Policy (392-6783), ltascher@toronto.ca

Fiona Murray, Strategic and Corporate Policy (397-5214), fmurray@toronto.ca

Wendy Walberg, Legal Services (392-8078), wwalberg@toronto.ca

ATTACHMENTS Appendix 1 – Summary of Key Provisions

A Policy Framework for Toronto's Accountability Officers

Summary of Key Provisions
1. Appointment and Removal by City Council
A. The accountability officers will be appointed and removed by a 2/3 vote of all Members of City Council.
2. Fixed Term of Office
A. The Auditor General will have a 7-year, non-renewable term.
B. The Ombudsman will have a 5-year, once renewable term.
C. The Lobbyist Registrar will have a 5-year, once renewable term.
D. The Integrity Commissioner will have a 5-year, non-renewable term.
E. Terms for all officers may be extended by Council in exceptional circumstances by a 2/3 vote of all Members of City Council.
3. Appointment, Renewal and Removal Processes
A. The selection process will be conducted by an external recruitment firm; appointment will be recommended to City Council by a selection panel, appointed by the Mayor and chaired by the Mayor or the Mayor's designate.
B. The Ombudsman and Lobbyist Registrar will notify the Mayor in writing, at least 6 months before the end of their first term if they wish to be considered for reappointment to an additional term. The Mayor will transmit the officer's notification to City Council for consideration of reappointment. The reappointment of the Ombudsman and Lobbyist Registrar to an additional term of office will require a 2/3 vote of all Members of City Council.
C. Removal will be for cause by a 2/3 vote of all Members of City Council.
D. The accountability officers may resign from office at any time by giving 3 months written notice to the Mayor.
4. Remuneration
A. Compensation will be recommended through an independent, external review.

Summary of Key Provisions

B. The accountability officers will not receive performance progression increases but will receive cost-of-living escalators approved by Council for senior managers.

C. Compensation will be reviewed periodically.

5. Submitting Reports to the Council/Committee System

A. The Ombudsman, Lobbyist Registrar and Integrity Commissioner will submit their annual report on the activities of their office and discharge of their duties directly to City Council.

B. The Auditor General will report annually to City Council through Audit Committee on the work conducted, savings achieved, and other matters.

C. The Ombudsman, Lobbyist Registrar and Integrity Commissioner will submit reports respecting investigations or inquiries directly to City Council.

D. The Auditor General will submit all audit-related reports to City Council through Audit Committee.

E. Policy-related reports will be reported to Council through its Executive Committee.

6. Carriage and Control of Office

(i) Budgetary Independence

A. The Ombudsman, Lobbyist Registrar and Integrity Commissioner will submit their annual budget requests directly to Budget Committee for consideration and recommendation to City Council.

B. The Auditor General will submit his or her annual budget request to Audit Committee for consideration and recommendation to City Council, prior to review by Budget Committee.

C. The City Manager or Deputy City Manager and Chief Financial Officer shall not review, approve or recommend the accountability officers' annual budget requests.

D. The accountability officers will generally follow the corporate budget submission process as it relates to the level of information provided, and the formats used.

Summary of Key Provisions

(ii) Spending Authority

- A. The accountability officers will have spending authority set at the level of a division head.
- B. The accountability officers will be responsible for the application of City by-laws and policies within their environments related to material and financial resources.

(iii) Staffing Authority

- A. The accountability officers will have responsibility and authority to staff and manage their offices.
- B. The accountability officers will authorize the creation of positions and compensation levels in their offices, within approved budget and generally within the City's salary structure, having regard for comparable compensation levels across the Toronto Public Service for purposes of internal equity.
- C. The accountability officers will be responsible for the application of the City's employment-related policies to their staff with necessary modifications to reflect the independent and unique nature of these functions.
- D. The accountability officers will work with the City Manager, Human Resources and the City Solicitor in areas where there is a corporate responsibility or liability.

iv. Conflict of Interest Policy and Code of Conduct

- A. The accountability officers will be bound by the City's Conflict of Interest Policy until a Conflict of Interest Policy and Code of Conduct for the officers and their staff is approved by City Council.

7. Accountability to City Council

- A. The accountability officers will report annually to City Council on the activities of their office and discharge of their duties. The Auditor General will report annually to City Council through Audit Committee on the work conducted, savings achieved and other matters.
- B. The accountability officers will undergo an annual attest audit as part of the City's attest audit, by an external auditor appointed by and reporting to City Council.

Summary of Key Provisions

- C. The accountability officers will undergo an annual compliance audit by an external auditor appointed by and reporting to City Council.
-
- D. The Auditor General will undergo an external peer review once every three years to ensure compliance with Government Auditing Standards. The results of the external peer review will be reported to City Council through Audit Committee.
-
- E. Council may periodically review the mandates of the accountability officers to adjust mandates to changing circumstances. Periodic reviews of mandates will include consultation with incumbent appointees to reflect their experience, advice and input.