

<b>To:</b>	Finance and Administration Committee	<b>Item:</b>	FA-07-54	<b>Date of Report:</b>	August 20, 2007
<b>From:</b>	Rick Stockman Commissioner, Corporate Services	<b>File:</b>	D-1100	<b>Date of Meeting:</b>	September 4, 2007
<b>Subject: <i>Accountability and Transparency - New Bill 130 Requirements</i></b>				<b>Ward:</b>	All
<b>PUBLIC MEETING</b>					

## 1.0 PURPOSE

As a result of the coming into force of Bill 130, which implements substantial amendments to the *Municipal Act*, the Province has inserted a new Part V.1 to the *Act* entitled Accountability and Transparency. The purpose of this report is to review options and opportunities for the consideration of Council as a result of the creation of this new Part, as well as advise on a strategy to address certain mandatory provisions of Bill 130 relating to Accountability and Transparency.

## 2.0 RECOMMENDATION

That the Finance and Administration Committee recommend to City Council:

1. That based on Report FA-07-54, an Accountability and Transparency Sub-Committee composed of the Mayor and 4 members of City Council be established to review Bill 130 and make recommendations to Council on Accountability and Transparency in accordance with the Terms of Reference attached to Report FA-07-54;
2. That the Terms of Reference of the Accountability and Transparency Sub-Committee attached to Report FA-07-54 as Appendix "A" be approved; and
3. That Council appoint four (4) members of City Council to sit on the Accountability and Transparency Sub-Committee.

## 3.0 EXECUTIVE SUMMARY

Recent additions to Part VI of the Municipal Act, 2001 create a mandatory requirement for an accountability and transparency policy. Part VI provides that Council shall adopt and maintain a policy with respect to:

*The manner in which the municipality will try to ensure that it is accountable to the public for its actions, and the manner in which the municipality will try to ensure that its actions are transparent to the public.*

Part VI also provides that Council can appoint a Meetings Investigator to investigate closed-meeting procedural compliance upon complaint by any person. If Council does not appoint a Meeting Investigator, on January 1, 2008 the Ontario Ombudsman will have the power to investigate the closed meeting procedures of Council.

Part V.1 of the *Municipal Act, 2001*, as amended by Bill 130, creates new options for municipalities regarding accountability and transparency. The changes provide the authority, but not the requirement, for City Council to:

- Establish a code of conduct for Council
- Appoint an Integrity Commissioner
- Appoint a Meetings Investigator (per above Provincial Ombudsman can be utilized)
- Appoint an Auditor General
- Appoint an Ombudsman
- Establish a Lobbyist Registry and appoint a Lobbyist Registrar

While Part V.1 is now in force, the Province has delayed proclamation of the mandatory policy and the meetings investigator provisions to allow municipalities time to complete the process required to comply with these sections. The Province has announced that these provisions will be proclaimed in force on January 1, 2008.

It is recommended that Council establish a Sub-Committee initially composed of the Mayor and four members of Council to conduct a review leading to a recommended Accountability and Transparency Policy prior to the end of 2007, including making a decision on the appointment of a Meetings Investigator. The proposed Terms of Reference for an Accountability and Transparency Sub-Committee are appended to this report as Appendix "A" and are consistent with the recommended action.

After ensuring that a mandatory policy is in place and a decision respecting a Meetings Investigator is made before January 1, 2008, further work is anticipated to take place in 2008 with respect to reviewing the optional provisions of Bill 130 relating to potential guidelines for councillor conduct and consideration of the desirability to appoint one or more accountability officers, either directly, or jointly with one or more municipalities.

#### **4.0 INPUT FROM OTHER SOURCES**

- Legal Services has reviewed this report. The City Manager has been consulted with respect to matters of policy reviewed in this report and concurs with the contents and recommendations.

#### **5.0 ANALYSIS**

- Part V.1 provides for a number of mandatory policies, a new provision regarding the investigation of the propriety of closed meetings and the ability to appoint one or more accountability officials with broad powers.

- Subsection 5.1 of this report addresses the mandatory policy and Subsection 5.2 relates to the requirement to make a decision regarding the appointment of a Meetings Investigator.
- Subsection 5.3 of this report speaks to guidelines for councillor conduct as authorized by the *Municipal Act*. In February of this year at the Leadership Roundtable (Education and Training Session), Council members voiced a desire to look at guidelines for councillor conduct. This matter had been earlier referred to the City Manager but, as it relates to Accountability and Transparency, should be reviewed together with the changes to Bill 130.
- Subsection 5.4 of this report discusses the optional accountability officers which Council may wish to consider appointing in the future.

### **5.1 Mandatory Accountability and Transparency Policy**

- The Act provides for 6 mandatory policies as follows:
  1. The sale and other disposition of land.
  2. The hiring of employees.
  3. The procurement of goods and services.
  4. The circumstances in which the municipality shall provide notice to the public and, if notice is to be provided, the form, manner and times notice shall be given.
  5. The delegation of Council's powers and duties.
  6. The manner in which the municipality will try to ensure that it is accountable to the public for its actions, and the manner in which the municipality will try to ensure that its actions are transparent to the public.
- Items 1, 2 and 3: Oshawa already maintains by-laws regarding the sale and disposition of land, the procurement of goods, and services, as well as policies with respect to the hiring of employees. It remains for Council to review these by-laws and policies and, if satisfied with their content, to adopt the existing by-laws and policies as its policies pursuant to these new requirements.
- Item 4 - Providing Notice: staff will be bringing forward a report in the near future regarding a proposed notice by-law, which will serve as the required policy in this regard.
- Item 5 - Delegation of Powers: Council has, over time, delegated various powers (road closures, execution of various agreements, licensing issuance and revocation powers) including powers under the *Planning Act* (final subdivision approval and site plan approval). The Act contains expanded powers for delegation which requires Council to establish how delegated powers will be exercised. This will be the subject of a future report.
- Item 6 - Accountability and Transparency: To develop the required Accountability and Transparency Policy, staff recommends that a Sub-Committee of Council review the options available and recommend a new mandatory policy prior to January 1, 2008.

## **5.2 Meetings Investigator**

- Bill 130 has added the right for any person to request an investigation of whether a municipality has complied with the *Act* or its own procedural by-law in respect of a meeting or part of a meeting closed to the public. This provision will be proclaimed in force on January 1, 2008.
- The investigation may be carried-out by a Meetings Investigator, appointed by Council. In the absence of Council appointing a meetings investigator, the *Act* provides that Ontario's Ombudsman has the power to conduct the investigation.
- Council will need to determine if it wishes to appoint a meetings investigator, either on its own or jointly with one or more neighbouring municipalities, or if it is content to have Ontario's Ombudsman perform this role.
- There are also third-party service providers who may be willing to provide this service to municipalities. AMO is already pursuing this opportunity.
- A decision regarding the appointment of a Meetings Investigator should be made prior to January 1, 2008 and is recommended to be one of the first tasks of the Council Sub-committee.

## **5.3 Guidelines for Councillor Conduct**

- Section 223.2(1) of the *Municipal Act* authorizes Council to establish one or more codes of conduct for the members of the City Council, as well as the members of the local boards of the City, but not including the Library Board.
- Currently, the City of Oshawa does not have conduct guidelines for the members of Council or its local boards.
- A set of guidelines is intended to provide members of Council and other City Board appointees with assistance in determining appropriate behaviour and conduct that meet the highest ideals of public service. It provides guidelines on ensuring openness, transparency and equity in the City's processes and may provide for a complaint protocol. Such guidelines also serve to distinguish the roles and responsibilities as between Council and staff and determine a benchmark for optimal council/staff relations.

## **5.4 Optional Accountability Officers**

- The *Act* provides for four new officials who may be endowed with substantial authority to determine and demonstrate the accountability and transparency of the actions of both the City administration and the members of Council.
- None of the accountability officers is required to be a City employee and their appointment is entirely optional for the City of Oshawa.

- It may be possible for one person to perform more than one of the following roles (i.e. the Integrity Commissioner could also act as a Meetings Investigator, as both concern the conduct of Council and no conflict is inherent in the roles).
- It may be possible to partner with one or more municipalities within Durham to contract for one or more of the services provided by the accountability officers as well as the meetings investigator. Preliminary discussions with other local municipalities within Durham Region indicate a potential interest in jointly appointing a Meetings Investigator.
- As the appointment of these officers is discretionary, given time constraints the Council Sub-committee would likely consider the necessity of these roles after January 1, 2008, as the initial focus will be on establishing the mandatory policy and making a recommendation on the appointment of a Meetings Investigator.
- The following subsections provide a brief outline of the powers and authority for the optional accountability officers.

#### **5.4.1 Integrity Commissioner**

- The *Act* allows the City to appoint an Integrity Commissioner and grants powers and imposes duties upon the Integrity Commissioner.
- The Integrity Commissioner is responsible for performing, in an independent manner, the functions assigned by Council regarding the conduct of Members of Council and local boards (restricted definition).
- If the Integrity Commissioner reports to Council that, in his or her opinion, a member of Council or a member of a local board has contravened the Code of Conduct, Council may impose either a reprimand on the member or suspend the remuneration paid to the member for a period of up to 90 days.
- The role of the Integrity Commissioner is designed to review the conduct of the members of Council and the local boards, but not staff persons. Conduct of staff in the performance of their duties is intended by the Province to be the role of the Ombudsman (see below).

#### **5.4.2 Lobbyist Registry/Registrar**

- The *Act* allows the City to establish a lobbyist registry “in which shall be kept such returns and as may be required by the City that are filed by persons who lobby public office holders”.
- Council has the authority to establish the definition of “lobby” and may exempt certain groups or certain activities from the scope of the registry scheme.
- The lobbyist registry may be voluntary or mandatory and could possibly be managed through existing resources.

- The new legislation also permits the City to appoint a Lobbyist Registrar and grants the Registrar various powers including the power to conduct an inquiry.

#### **5.4.3 Ombudsman**

- The *Act* permits the City to appoint an Ombudsman who reports to City Council and investigates decisions, actions or omissions of the City which affect persons or bodies of persons in their personal capacity.
- The role of the Ombudsman is designed to assist citizens who interact with the administration to obtain timely and appropriate responses for service, but who is independent of the administration itself for the purpose of investigating and reporting on improvements to the way in which the administration delivers services and programs, not from a perspective which concerns value for money (see Auditor General) but from a fairness/equity and customer service perspective.

#### **5.4.4 Auditor General**

- The *Act* allows the City to appoint an Auditor General and grant powers and impose duties on the Auditor General.
- Under the *Act* the Auditor General is responsible for assisting City Council in holding itself and City administrators accountable for the quality of stewardship over public funds and for achievement of value for money in City operations.
- As the City has already appointed an Auditor General and there is a committee whose function it is to review the role of the position, further consideration of this role would not be within the mandate of the Accountability and Transparency Sub-Committee.

### **6.0 FINANCIAL IMPLICATIONS**

- There are no financial implications at this time.

## 7.0 RESPONSE TO THE COMMUNITY STRATEGIC PLAN

- The recommendations in Report FA-07-54 support objective C3 of the Community Strategic Plan, Taking Action and Ensuring Accountability.

***Original Signed By***

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Lon Knox  
Director, Legislative Services

***Original Signed By***

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Sandra Kranc  
City Clerk

***Original Signed By***

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Rick Stockman  
Commissioner, Corporate Services

(LK/SK/RS)

## Appendix "A"

### Accountability and Transparency Sub-Committee

#### Terms of Reference

##### Preamble

The content of these Terms of Reference may change as the Sub-Committee consults and gathers information that prompt Oshawa City Council to change the Terms of Reference.

##### Mandate

The Accountability and Transparency Sub-Committee (ATSC) will report to City Council in Committee of the Whole and will advise and assist Oshawa City Council in developing and facilitating strategies, actions and policies to ensure open, accessible, accountable and transparent local government. Specifically, the ATSC will, prior to January 1, 2008:

- Review Part V.1 of the *Municipal Act*
- Review current policies/practices and by-laws of the City pertaining to accountability and transparency, including the Procedural By-law
- Review current policies and practices of other municipalities on this matter
- Seek input from members of the public with respect to the fulfillment of its mandate
- Develop a recommended Accountability and Transparency policy for Council's consideration
- Make recommendations on how an investigation may take place under Section 239 of the *Municipal Act* or the Procedural By-law, including recommendations regarding the potential appointment of a Meetings Investigator

Following January 1, 2008 and, no later than December 31, 2008, the ATSC shall:

- Continue consultation with, and seek input from, members of the public on its continuing mandate
- Recommend any necessary adjustments to the Council approved Accountability and Transparency policy for Council's further consideration
- Research and review guidelines for conduct of councillors established by other municipalities and other initiatives undertaken by municipalities comparable in size to Oshawa with respect to the establishment of lobbyist registries, the appointment of accountability officers and changes to procedural by-laws relating to accountability and transparency
- Develop recommended guidelines for councillor conduct for Council's consideration
- Make recommendations to Council relating to the potential appointment of an Integrity Commissioner and Ombudsman
- Make recommendations on the need for a lobbyist registry and Registrar
- Make recommendations to Council regarding any amendments to the Procedural By-law

## **Organization**

The ATSC shall be comprised of five (5) members consisting of the Mayor and four (4) members of City Council.

The ATSC will be supported by staff lead by the Director, Legislative Services, who will act as administrator and primary resource person. The Departments of the City will be expected to participate when requested by the ATSC.

The ATSC will receive administrative support from the City Clerk Services Branch similar to the support provided for other committees of Council. This will include the recording of minutes, staff support with meeting preparation and other required support.

## **Working Groups**

The ATSC may form working groups as may be necessary to address specific issues. These working groups shall draw upon members from the ATSC as well as outside resources as deemed necessary.

The chairperson of a working group shall be a voting member of the ATSC.

## **Length of Term**

The length of term for ATSC members will end on the earlier of the submission of a final report to Council on Accountability and Transparency or December 31, 2008.

Notwithstanding the foregoing, Oshawa City Council may remove and appoint replacement members of the ATSC from time to time, at its pleasure.

## **Chairperson**

A chairperson will be elected from the Sub-Committee members at the first meeting of the ATSC to preside over meetings and ATSC business.

## **Frequency of Meetings**

The ATSC should meet as frequently as necessary to achieve its mandates within the timeframes established by Council.

## **Absences**

If a Sub-Committee member is absent for three consecutive meetings, they have forfeited their membership unless their absences are excused by Oshawa City Council.