



Brian Evans
Metro Auditor

600 NE Grand Ave
Portland, OR 97232-2736
TEL 503 797 1892, FAX 503 797 1831

MEMORANDUM

Date: 8/6/19

To: Andrew Scott, Interim Chief Operating Officer

From: Brian Evans, Metro Auditor

RE: **Out-of-date Lobbyist Registrations – Code of Ethics Audit early communication**

Summary

Stronger controls are needed to increase transparency of lobbying activity and ensure lobbyist requirements are met. Lobbyists are required by Metro Code to register with the Metro Council. We found registrations online were out-of-date for at least 151 days in 2015, 2017 and 2019. Metro's role to ensure the requirements were fulfilled was not clear, and lobbyist registration duties were shared across different areas within Metro.

Our audit of Metro's Code of Ethics was initiated in March 2019. As part of that audit, we reviewed information about lobbyist registrations. Generally accepted government auditing standards state that early communication of control deficiencies is important to allow management to take prompt action. This memo summarizes what we found regarding lobbyist registrations.

Background

Metro's Code of Ethics for Metro Officials and Requirements for Lobbyists (Chapter 2.17) was created in 1999 to "ensure that Metro serves the public and informs the public fully concerning its decision making." The chapter established requirements for ethical behavior of Metro elected officials, employees and lobbyists. Generally, Metro Code parallels state ethics law in areas such as gift limits, prohibited use of position, and conflict of interest. Code and state law diverge on lobbying. Chapter 2.17 establishes requirements for lobbyists while state ethics law does not regulate local government lobbyists.

Chapter 2.17 requires lobbyists to register with the Metro Council. This includes anyone who is paid to lobby and spends more than five hours doing so in a calendar quarter. Lobbyists must register within three working days of meeting that threshold. They are also required to keep registration information up to date. News media, representatives of public agencies acting in their official capacity, and people who only give testimony and are not paid to lobby, are listed as exempt from lobbying registration requirements. Metro is required under state administrative rules to maintain lobbyist registration records.

Chapter 2.17 also requires lobbyists to provide statements of lobbying expenses and prohibits certain conduct. For example, lobbyists are prohibited from attempting to influence the vote of any member of the Metro Council by promising to financially support their candidacy.

Results

Lobbyist registrations were outdated

Lobbyist registration information online has been out-of-date several times since at least 2015. Metro’s website lists the name of each registered lobbyist, their client, issues they lobby on, and their registration expiration date. Per Code, the registrations expire at the end of January in odd-numbered years. We documented the minimum number of days the registrations were out-of-date by comparing the expiration date listed on the website to the date screenshots of the website were taken. We found the registrations were out-of-date each biennium for at least 151 days.

Figure 1: Since 2015, lobbyist registrations online were out-of-date for at least 151 days

Year	Minimum number of days expired
2015*	244
2017	210
2019^	151

Source: Auditor’s Office analysis of Metro’s lobbyist registration website

(<https://www.oregonmetro.gov/regional-leadership/metro-council/lobbyists-registered-metro>)

* In 2015, registrations were listed as being expired as of January 31st, 2014. That date does not match Metro Code or the other years we reviewed and therefore appears to be an error. If the registrations expired in 2014 rather than 2015, the minimum number of days they were expired was 609.

^ As of July 1, 2019

Out-of-date registrations meant several things. First, there was a lack of transparency about who was attempting to influence decision-making. For months, there was no updated information about who was lobbying Metro Officials. Metro Officials include elected officials, department directors, and managers. Second, Metro Officials could not be sanctioned for violating gift limits set in Metro Code if the gifts were made by lobbyists who were no longer registered with Metro. Gift limits set in state law would likely still be applicable however, so this misalignment could create confusion among Metro Officials about what gift limits were in place.

Third, lobbyists may be personally liable if they did not register within three days of meeting the threshold. In this case, they could be subject to a civil penalty of up to \$500 if they spent more than five hours lobbying after their registrations expired. If all of the lobbyists who had expired registrations in 2015, 2017, and 2019 continued to lobby above the threshold, the total sanctions for all of them could be \$15,000.

Controls over lobbyist requirements were not adequate

Controls over lobbyist registrations did not ensure they were kept up-to-date. While Code makes registration the responsibility of the individual lobbyist, Metro’s role to ensure transparent lobbying information is available was not clear. Code allows Metro to issue penalties for violations, but it does

not specify other actions it should take to ensure the registrations are current. We are not aware of any policy or procedure that specifies roles and responsibilities for this provision of Code.

In 2017, our office notified the COO and the Metro Attorney about out-of-date lobbyist registrations. In response, a plan was proposed to update the registrations and to keep them current in the future. The plan was to send out renewal letters to formerly registered lobbyists, determine who else may need to register and then send those individuals a letter instructing them to do so.

To its credit, Metro planned to take an active role to ensure the lobbyist registrations were kept current in 2017. The plan treated registration as a dual responsibility, shared between Metro and individual lobbyists. However, the approach did not result in more timely registration information in 2019.

In 2017, duties to maintain registrations were proposed to be shared across different areas of Metro, with different lines of reporting. This may have lessened clarity about who was ultimately in charge. The plan to update registrations involved employees from Metro's Government Affairs section, the Council Policy Coordinators assigned to the Council Office and an employee that was later transferred to the Planning Department. Clarity about who is ultimately responsible for the registrations could help ensure the work gets done.

Recommendations

In order to ensure that lobbyist registrations are kept up to date, Metro should:

1. Strengthen controls to ensure lobbyist registrations are kept up-to-date; and
2. Clearly assign responsibilities to
 - a. ensure lobbyist requirements are being followed; and
 - b. maintain updated lobbyist information online.

Methodology

The audit objective was to determine which controls to prevent, detect and correct unethical conduct Metro should strengthen to promote an ethical culture. This memo is an early communication to management, following generally accepted government auditing standards.

To complete the work for this memo, we reviewed communications about lobbyist registrations. We also reviewed Metro Code and a portion of Metro's website that included lobbyist registrations. To determine whether registrations had expired, we reviewed screenshots of Metro's website dating back to October 2015. Our work did not include direct review of lobbyist registration records or expense statements.

The Code of Ethics audit was included in the FY 2018-19 audit schedule. Although we have not yet completed the audit, we conducted our work in accordance with applicable generally accepted government auditing standards. Those standards require that we obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for the findings and conclusions in this memo.

Memo



Metro

600 NE Grand Ave.
Portland, OR 97232-2736

Date: August 26, 2019
To: Brian Evans, Metro Auditor
From: Andrew Scott, Interim Chief Operating Officer 
Cc: Andy Shaw, Director, Government Affairs and Policy Development
Subject: Management Response to Lobbyist Registration – Code of Ethics Audit

Thank you for your August 6th memo regarding out-of-date lobbyist registrations. Metro code clearly requires individuals who are paid to lobby and spend more than five hours in a calendar quarter doing so to register with Metro. Although responsibility for registering lies solely with the lobbyist, Metro posts that information so that we can be transparent about who is lobbying Metro officials. I agree that the lobbyist registrations have been out-of-date since January 2019 and also may not capture individuals who have lobbied Metro since the last updates.

You have made two recommendations on this issue and I agree with both:

1. Strengthen controls to ensure lobbyist registrations are kept up-to-date;
2. Clearly assign responsibilities to
 - a. ensure lobbyist requirements are being followed; and
 - b. maintain updated lobbyist information online.

In response, management will be moving promptly to update the existing lobbyist information and assess whether any other entities may need to register. Our plan is to complete that update by September 16th. In addition, the responsibility for this program will be assigned to the coordinator position in the Government Affairs and Policy Development (GAPD) once that position is filled permanently. The coordinator will, on a quarterly basis, review the “Metro Council External Meetings” list and contact other Metro officials to determine if it is likely that any individual may have spent more than five hours lobbying and, if so, make sure that individual is aware of the lobbying registration requirement. Every other year, the GAPD coordinator will work with lobbyists to update their registration.

On a related note, I would value your input on whether it is appropriate and/or best practice for the lobbyist registration function to reside under the COO’s authority. Since the COO is one of the officials named in the code, anyone lobbying the COO for more than five hours a calendar quarter must register as a lobbyist. This creates a potential conflict of interest if the COO were to fail to notify those entities of the lobbying requirement or fail to include them on the list. I would note that the City of Portland’s lobbyist registration program is located in the independently elected Auditor’s office to avoid this conflict.

I appreciate the early communication on this issue so that we are able to address it as quickly as possible.