

Audit Report

Lobbyist Compliance

February 2019



Registered lobbyists are generally in compliance with the lobbying provisions in City Code. We found one issue related to nonprofit registration fees that is an apparent violation. We also found that the City does not have a proactive process in place to ensure reported information provided by registered lobbyists is valid or to monitor the activities by potential lobbyists that have not registered. The Code places the duty of registering and providing accurate and timely information on the lobbyists, which creates challenges for the City to conduct efficient and effective monitoring and enforcement activities.

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Objective

The objective of this audit was to determine whether lobbyists are complying with City Code provisions.

Background

Lobbyists may register as an individual, an employee of a business entity, or as an employee of a nonprofit organization.

The quarterly reports document a registrant's lobbying activities during the previous calendar quarter.

The City Auditor must test at least 5% of all registrants.

On September 22, 2016, the Austin City Council passed ordinance number 20160922-005, which repealed and replaced Chapter 4-8 (Regulation of Lobbyists) of the City Code. The ordinance took effect on June 1, 2017.

The new lobbyist provisions require a person to register as a lobbyist with the City Clerk and pay the applicable registration fee if the person meets the following requirements:

- receives, or is entitled to receive, compensation or reimbursement of \$2,000 or more in a calendar quarter to lobby and spends 26 hours or more of compensated time in a calendar quarter lobbying; or
- spends \$500 or more in a calendar quarter to lobby, excluding personal travel, food, and lodging expenses.

Registered lobbyists are required to file reports with the City Clerk, including quarterly activity reports no later than the tenth day of each month in April, July, October, and January, as well as a notice of termination upon terminating their lobbying activities. If the City Clerk determines that a report is late, the lobbyist is liable to the City for payment of a late filing fee. Examples include a report that is not filed timely and a registration that is filed without the required fee paid timely.

The ordinance requires the City Auditor to conduct an annual audit of a statistically representative random sample of lobby registrants to ensure that their filings are in compliance. The City Auditor is also directed to notify the City Clerk, City Attorney, and the Ethics Review Commission after finding an "apparent violation."

We conducted this audit according to these requirements, but also included observations related to the administration and enforcement of the ordinance and Code provisions.

As part of this audit and in response to a request from the City Council Audit and Finance Committee, we obtained the number of registered lobbyists with the state of Texas and the City of Austin as of July 2018. We compared these lists and found that 23 City of Austin registered lobbyists were also registered with the state. We updated this analysis as of January 2019 and that number was 18 (see Exhibit 1).

Exhibit 1: Approximately Twenty Percent of City of Austin Registered Lobbyists are also Registered Lobbyists with the State of Texas

| Registered as a Lobbyist | Number in July 2018 | Number in January 2019 |
|--------------------------|---------------------|------------------------|
| State of Texas | 1,531 | 1,427 |
| City of Austin | 107 | 95 |
| Both State & City | 23 | 18 |

SOURCE: Office of the City Auditor analysis of registered lobbyists in the state of Texas and the City of Austin, January 2019.

Finding

Lobby registrants are generally in compliance with City Code provisions, but we found one issue related to nonprofit registration fees that is an apparent violation.

As noted in the Background section and shown in Exhibit 2, we selected a statistically representative random sample from each of the three registration categories and tested eight lobby registrants. We tested each of the registrant’s filings for compliance with City Code requirements and found that all were in compliance except for one. According to the ordinance, the \$25 annual lobby registration fee applies to a “regular employee of a 501(c)(3) nonprofit organization, whose only lobbying activity is for the person’s regular employer.” One nonprofit organization lobbyist in our sample paid the \$25 nonprofit registration fee, but reported three nonprofit clients on whose behalf the person will lobby, which constitutes an apparent violation.

Exhibit 2: Most of the Registered Lobbyist Filings Were in Compliance With City Code Provisions

| Registration Category | Annual Registration Fee | Sample of Registrants Tested | Results |
|------------------------|----------------------------|------------------------------|---------|
| Individual | \$300 | | |
| Business Entity | \$100/bus. + \$50/employee | | |
| Nonprofit Organization | \$25 | | |

SOURCE: Office of the City Auditor analysis of required filings for registered lobbyists, November 2018.

In all, we tested the compliance of 10 registered lobbyists which is 9% of all registrants.

As a result of this finding, we expanded our testing to include two additional lobbyists who had registered under the nonprofit provision. We did not find any further apparent violations. We met with representatives from the Office of the City Clerk and the Law Department and determined that it had not been anticipated that a nonprofit registrant could have multiple regular employers. Also, the Office of the City Clerk indicated that they focus on the timeliness and completeness of information reported by registrants and do not verify the accuracy of the information.

We did not determine whether this apparent violation was caused by a misunderstanding of the ordinance requirements or done intentionally.

The Law Department determined that the best approach would be to require a nonprofit registrant to disclose all regular employers who are §501(c)(3) nonprofit organizations. Our understanding is that the Office of the City Clerk will revise the lobbyist registration form to clarify a registrant's "regular employer" and require that relevant information be provided. Because there may be some confusion about this provision, the City Council may wish to revisit the ordinance to clarify its intent, that is, whether a nonprofit registrant is allowed to register and lobby on behalf of more than one nonprofit organization. Lobbyists who continue to improperly register (paying the \$25 annual non-profit organization fee instead of a higher fee) would cause a loss of revenue to the City.

City Code §4-8-5 notes that a registrant shall pay the City an annual registration fee on the day of registering and the anniversary of that date each year.

In addition, one lobbyist in our original sample was not charged a late fee despite paying their annual registration fee approximately three months after their renewal date. We noted that City Code §4-8-11(B)(2) notes that a "registration is not properly filed without the required fee being paid timely. Accordingly, a registration filed without the required fee being paid timely is late." We originally thought that this was an apparent violation.

However, according to the Law Department, this provision is only applicable to first-time registrants who file a registration report without paying the fee. They noted that no report is required for each subsequent (renewal) registration fee, so a late fee would not apply in the case we identified. The Office of the City Clerk noted that they only impose late filing fees when a lobbyist does not submit required reports on time and they do not charge a late fee for renewals that are paid late.

Additional Observations

Registered lobbyists are required to self-report information about their activities to the City.

Some City Code provisions in the Regulation of Lobbyist chapter may not be clear or fully contribute to the effective enforcement of its requirements.

Duty on Lobbyist

In conducting our compliance work, we noted that the Code language could be somewhat hard to interpret and fully understand. Several Code provisions place the duty of interpreting its requirements and taking appropriate action on the potential lobbyist or a person acting on their behalf. For example, a person must determine whether they meet the compensation, hours, or expenditure conditions that require them to register as a lobbyist. They also determine whether certain compensated actions do not apply for lobbyist purposes if, according to several Code provisions, the person is not "seeking to influence or persuade," which goes to their intent.

The Law Department noted that the lobbyist ordinance presumes the nature of enforcement to be voluntary.

Enforcement Challenges

We noted that self-reported information, including someone's intent, can be difficult to verify. While our office conducts an annual compliance audit of lobby registrants, we are directed to notify other City-related entities if there are any issues. The Code defines certain roles for the Office of the City Clerk and the Law Department, among others, but does not clearly identify who is accountable or responsible for ensuring and enforcing compliance. The Law Department may conduct investigations based on referrals or complaints, but neither they nor the Office of the City Clerk play a proactive investigative role in enforcing lobbyist regulations. The Law Department indicated that the Office of the City Clerk should remain neutral and not play an investigative role because of their administrative duties in the Code.

Administration and Limited Oversight

While the Office of the City Clerk administers lobbyist registrations and reported information from registrants, they do not have processes in place to review or validate whether the reported information is true and correct. During this audit, we learned that the Office of the City Clerk is in the process of implementing a new electronic system to manage several areas of responsibility, including their duties related to lobbyists. It appears that this system has the capability to improve and automate some of the administration and oversight issues noted above.

However, under the current enforcement and oversight structure, it is possible that there are people who meet the lobbyist registration conditions that are not registered as lobbyists. Also, some of the self-reported information from lobbyists may be incomplete, unreliable, or incorrect. These situations could cause a loss of revenue to the City and impact the City's credibility.

Issues for Consideration

We engaged with the Office of the City Clerk and the Law Department about possible areas for improvement in the Code that may warrant consideration for changes. The Law Department indicated that it had communicated areas for consideration in other forums.

The Office of the City Clerk noted two issues with Code requirements related to late filing fees (§4-8-11) that impact its current duties. First, subsection (C) notes that the City Clerk shall use registered mail to notify and charge the person responsible for the late filing with a fee. The City Clerk noted that registrants have experienced inconsistent delivery or receipt of the registered mail notices and this method has been difficult for staff to track. The City Clerk noted that electronic mail would be a quicker and more reliable way to communicate and it would be more convenient for registrants, as well. Second, the City Clerk noted an instance where a lobbyist was impacted by a natural disaster which resulted in them incurring a late fee. The lobbyist requested that the fee be waived, but the Code does not allow the City Clerk to waive fees for any reason, even in exceptional circumstances.

From our perspective, we noted two areas for consideration in the Audit section (§4-8-10). First, the subject of our annual audit is limited to current lobby registrants. Our normal audit process is to assess the relative risk of a number of factors and audit the highest risks. Following this methodology, people who may be required to register, but are not, is a higher risk than people who have voluntarily registered and submitted required reports. Second, we are directed to provide notice within 14 business days of finding an apparent violation to, among others, the Ethics Review Commission. This does not track with our normal audit process of reporting our findings through the Council Audit and Finance Committee first. Also, an apparent finding may change to a non-finding based on additional work and we are hesitant to release apparent findings outside of the full audit process.

The City does not have a proactive process to use the lobbyist information it collects and track lobbying activities, especially by people who may meet the lobbyist registration conditions, but are not registered as lobbyists.

Visitor Sign-In Sheets

City Code §4-8-8(C) requires a “person who communicates in person with a City official for compensation on behalf of another person during a scheduled meeting on a municipal question shall disclose in writing to the [C]ity department, or office:

- (1) the name and address of the person;
- (2) the name of the City official with whom they are meeting;
- (3) the name of the client or person on whose behalf the appearance or contact is made; and
- (4) a statement regarding whether the person has received or expects to receive compensation for the appearance or contact.”

City Code §4-8-8(E) requires that “[e]ach City department or office shall provide a reasonably practicable method for recording the information required by subsection (C).” It also states that a “sign-in sheet at the receptionist’s desk that is designed to elicit the information” may satisfy this requirement.

We collected and analyzed the information from Mayor and Council Member sign-in sheets from January to March 2018. We attempted to obtain another City department’s sign-in sheets from the same period, but only received information for part of March. The department indicated that the paper sheets were converted to an electronic format and recycled. However, only the records for the last three weeks of March were captured in the conversion, so we did not use this partial data. We also noted that this practice is not consistent with the City’s records retention policy.

We notified the Office of the City Clerk of this loss of records.

As noted above, the visitor sign-in sheets are used to collect the required information from lobbyists or other individuals communicating with City officials. We noted that the information provided on the sheets is handwritten and was often difficult to read or not legible, at all. We also

noted that a number of people, including lobbyists registered with the City, provided incomplete or inconsistent information, including:

- Visitors did not always provide their complete or actual names. For registered lobbyists, this made it difficult to match the name on the sheet to their name as recorded in the lobbyist registration system. For example, some visitors provided nicknames, others provided a shortened or alternate version of their name, and others provided a first or last name only.
- The City official being visited was sometimes blank.
- Visitors did not always provide client or address information. Several visitors provided acronyms for the client, while others provided different versions of the same client's name. This made it difficult to determine who the client was and how often that client was represented.
- Visitors did not always provide a consistent answer to whether they were being compensated for the visit. We saw instances where the same person visited multiple Council offices and responded "Yes" on some sign-in sheets and "No" on other sheets. Sometimes, this information was not provided, at all.

The City Does Not Appear to Use or Analyze the Information it Collects
Our analysis indicates that people who communicate with City officials may not always provide information required by Code. We did not find any City processes in place related to reviewing the accuracy or correctness of the sign-in sheet entries or how that information will be used. The Code is silent on what to do with this information. Council staff noted that their sheets are not combined with sheets from other offices. Rather, they are kept in each individual office for a time, then archived for records retention purposes. The Office of the City Clerk noted that this was the current practice and is likely what other City departments are doing with their sheets, as well.

To our knowledge, this audit was the first effort to combine the sign-in sheet information into a central repository for analysis purposes. While City offices collect this information, it exists in isolation and does not appear to be used to determine whether there are people who may meet the lobbyist registration conditions, but are not registered as lobbyists. We spoke with the Office of the City Clerk and the Law Department about the possibility of offices using a tablet device to electronically collect this information. Such an effort should improve the consistency of the information collected and would allow for the information to be stored in a central repository for analysis purposes. The Office of the City Clerk indicated that Council had previously discussed the creation of an electronic visitor's registration system, but it was not pursued based on the impact to staff, cost, and the varying needs of multiple departments (and separate offices within those departments).

In specific circumstances, a person communicating with a City official has the duty to provide required information.

Centralized analysis could identify people for follow-up based on lobbyist registration conditions.

Indications That Some Unregistered Visitors May Meet the Lobbyist Registration Conditions

In order to analyze the combined visitor information for a calendar quarter, we looked for indications that a visitor may have met the Code conditions that require a person to register as a lobbyist. The sign-in sheets did not provide any indications about expenditure information, but we did identify unregistered visitors who indicated receiving compensation and visitors who attended multiple meetings. We also looked to see if visitors were registered lobbyists with the state of Texas.

Someone who receives at least \$2,000 of compensation or reimbursement and spends 26 hours in a calendar quarter lobbying or spends \$500 in the same time frame meets the conditions to register as a lobbyist.

For these visitors, we do not know several things, including whether they visited other City offices during the calendar quarter or the amount of their actual compensation and the hours they spent lobbying, which would determine whether they met the conditions to register as a lobbyist. In our limited analysis of the visitors not registered as a lobbyist, we identified indications that approximately 10% of those visitors could possibly meet the registration conditions. However, additional information would be required to make a determination.

City Code relies on the people subject to the Code to voluntarily make these determinations and register as a lobbyist. The Office of the City Clerk noted that there may be some people registered as City lobbyists who do not meet the conditions, but do so out of an abundance of caution. As noted above, the City does not have an established process in place to ensure that every person required to register as a lobbyist does so, largely because of the amount of resources such an effort would involve.

Next Steps

We intend to issue a memorandum to the City Clerk, City Attorney, and the Ethics Review Commission to provide notice of the apparent violation noted in this report. We will issue this notice within 14 days of the acceptance of this report by the Council Audit and Finance Committee.

As noted above, the Office of the City Clerk is in the process of implementing an online filing system which is intended to improve the accuracy and compliance of filings. In addition to implementing this new system, we encourage the Office of the City Clerk to partner with the Law Department to identify and document improvements to the Regulation of Lobbyist chapter in City Code and present them to City Council for consideration, as needed.

These improvements could include issues noted in this report related to clarifying requirements, responsibilities, and oversight as well as enforcement efforts or other issues that may emerge after the new online filing system has been implemented.

Scope

The audit scope included registered lobbyist filings and potential lobbying activities from January to March 2018. We considered registered lobbyists as of July 2018 and updated some of this information in January 2019.

Methodology

To accomplish our audit objectives, we performed the following steps:

- reviewed the Regulation of Lobbyists Ordinance;
- interviewed staff and management with the Office of the City Clerk;
- interviewed staff in the Law Department involved with the ordinance;
- selected and tested a statistically representative random sample of lobby registrants as of July 2018;
- reviewed and analyzed Council office visitor sign-in sheets from January to March 2018;
- reviewed and analyzed boards and commissions scheduled meeting sign-in system data as of July 2018;
- identified the number of registered lobbyists in both the City of Austin and the state of Texas;
- evaluated the risk of fraud, waste, and abuse with regard to lobbyists who may not be registered; and
- evaluated internal controls related to the lobbyist registration and administration process.

Audit Standards

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards. Those standards require that we plan and perform the audit to 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 our findings and conclusions based on our audit objectives.

The Office of the City Auditor was created by the Austin City Charter as an independent office reporting to City Council to help establish accountability and improve City services. We conduct performance audits to review aspects of a City service or program and provide recommendations for improvement.

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