



**A Report to the  
Audit Committee**

**Mayor**  
John Cooper

**Metropolitan Clerk**  
Elizabeth Waites

**Audit Committee Members**

Kevin Crumbo  
Thom Druffel  
Charles Frasier  
Brackney Reed  
Jim Shulman  
Zulfat Suara

# Audit of the Metropolitan Clerk Lobbyist Registration & Disclosure Process

October 18, 2019

Metropolitan  
Nashville  
Office of  
Internal Audit

# Audit of the Metropolitan Clerk Lobbyist Registration and Disclosure Process

## EXECUTIVE SUMMARY

October 18, 2019



### Why We Did This Audit

The Metropolitan Clerk requested this audit to review the lobbyist registration and disclosure practice as a proactive measure.

### What We Recommend

- Work with Metropolitan Department of Law and the Metropolitan Nashville Council to assess and assign responsibility for handling lobbyist related complaints and enforcement.
- Develop formal written policies and procedures for the lobbyist administration process.
- Make lobbyist reports available online for public access and monitoring purpose.

## BACKGROUND

Lobbyists making contributions to legislative or executive branch officials within the Metropolitan Nashville Government are required to formally register with the Metropolitan Clerk's Office. Lobbyists are also required to submit annual reports "detailing the extent of any direct business arrangement or partnership with any candidate for public office, and any official in the legislative or executive branch."

The registration and reporting requirements apply to any person engaging in lobbying that would directly or specifically benefit the economic, business, or professional interest of such person or his employer.

## OBJECTIVES AND SCOPE

The audit objectives of this audit are to determine if:

- The Metropolitan Clerk's Office has developed and implemented controls to provide assurance that lobbyists are in compliance with the reporting requirements set forth in Metropolitan Code of Ordinances, Chapter 2.196, and
- Information submitted by lobbyists to the Metropolitan Clerk's Office is consistent with information on campaign disclosure forms filed with the Davidson County Election Commission.

The scope of this audit covers the calendar years of 2016, 2017, and 2018.

## WHAT WE FOUND

The Metropolitan Clerk's Office has controls in place to track and monitor the registration and submission of annual reporting requirements for lobbyists. However, formal written policies and procedures need to be developed.

The Metropolitan Code of Ordinances is ambiguous in the context of which Metropolitan Nashville Government entity is responsible for handling non-compliance and complaints. Lobbyist's financial disclosures should be made available on the Metropolitan Clerk's website for greater transparency.

## GOVERNANCE

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The Metropolitan Code of Ordinances, Chapter 2.196, “Lobbyist Registration and Disclosure” requires lobbyists to register and file annual reports with the Metropolitan Clerk’s Office. A staff member within the Metropolitan Clerk’s Office oversees this process and is under the direct supervision of the Metropolitan Clerk. The Metropolitan Department of Law serves as legal counsel to render opinions to the Metropolitan Clerk upon request.

## BACKGROUND INFORMATION

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Persons qualifying as a lobbyist under Chapter 2.196 of the Metropolitan Code of Ordinances must register with the Metropolitan Clerk’s Office within five days of engaging in lobbying activities. Lobbying activities are defined as any means “to communicate, directly or indirectly, with any official in the legislative branch or executive branch for pay or any consideration, for the purposes of influencing any legislative action or administrative action.” The registration year runs from January through December. Lobbyists must re-register annually. Once a person is no longer engaged in lobbying activities, he is required to submit a withdrawal notice to the Metropolitan Clerk within 14 days following the termination of a lobbying employment agreement.

Additionally, lobbyists are required to submit annual reports detailing contributions made to applicable officials. Applicable officials are any Metropolitan Nashville Government officials within the executive or legislative branches. A table of reports filed by registered lobbyists over the past three calendar years is presented below:

### Exhibit A – Lobbyist Report Filing by Year

Year	# of Registered Lobbyists	# of Reports Filed	Percentage Filed
2016	83	51	61
2017	86	65	76
2018	73	70	96

*Source: Metropolitan Clerk’s Office*

The Metropolitan Clerk’s Office maintains a listing of all registered lobbyists. Lobbyist financial reports are due by January 30<sup>th</sup> for activity occurring in the previous year. The Metropolitan Clerk’s Office emails renewal notices to each active lobbyist on the list. Lobbyists can submit their registration requirements via email, mail, or in person at the Metropolitan Clerk’s Office. Currently, there are no late fees assessed for registering or filing annual reports late. The Metropolitan Clerk’s Office reconciles the annual reports received to the registered lobbyist list. Notifications are sent when annual reports are not received.

Prior to 2018 established policies and procedures were not present to monitor and track the registration or annual reporting requirements. New management in 2018 implemented additional controls and added steps to administer the lobbyist registration and disclosure process. It should be noted that filing requirements are the sole responsibility of the lobbyist. These added processes are intended to assist the lobbyist comply with the self-reporting requirements of the Metropolitan Code.

## OBJECTIVES AND CONCLUSIONS

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1. *Has the Metropolitan Clerk's Office developed and implemented controls to provide assurance that lobbyists are in compliance with reporting requirements set forth in the Metropolitan Code of Ordinances, Chapter 2.196?*

**Generally, yes.** The Metropolitan Clerk's Office has controls in place to record and track registered lobbyists and submitted financial reports. The Metropolitan Clerk's Office also has methodologies to identify and communicate to existing lobbyists who are not in compliance with required registration and annual financial filing requirements.

Opportunities exist to strengthen controls within the lobbyist filing process. Formal written policies and procedures should be developed. Annual lobbyist financial reports should be made available on the Metropolitan Clerk website for greater transparency. Chapter 2.196 of the Metropolitan Code of Ordinances is ambiguous on handling of complaints and non-compliance related to lobbyist filing and disclosure requirements. (See Observations A, B).

2. *Is information submitted by lobbyists to the Metropolitan Clerk's Office consistent with information on campaign disclosure forms filed with the Davidson County Election Commission?*

**Generally, yes.** Both the lobbyist disclosure and the elected official's campaign candidate finance disclosure are sworn reports. A sample of campaign candidate disclosure reports revealed one instance where a contribution was not filed on the applicable lobbyist disclosure report in the amount of \$300. (See Observation C).

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## AUDIT OBSERVATIONS

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Internal control helps entities achieve important objectives and sustain and improve performance. The Committee of Sponsoring Organizations of the Treadway Commission, *Internal Control – Integrated Framework (COSO)*, enables organizations to effectively and efficiently develop systems of internal control that adapt to changing business and operating environment, mitigate risks to acceptable levels, and support sound decision making and governance of the organization. The audit observations listed are offered to assist management in fulfilling their internal control responsibilities.

### **Observation A – Enforcement Challenges**

The Metropolitan Code of Ordinances, Chapter 2.196 does not specify who is responsible for enforcing compliance and handling citizen complaints. The Metropolitan Clerk’s Office relies on registered lobbyists to self-report their activities for a given period. Lobbyists are required to sign a form confirming the accuracy of the information reported. Lobbyists are also responsible for the integrity of the information contained in their respective filings. However, there are no clear lines of responsibility in terms of who investigates complaints and who enforces penalties related to violations. In calendar years 2016 and 2017, only 61% and 76%, respectively, of registered lobbyists submitted annual financial reports. The low filing rates indicate compliance with the Metropolitan Code of Ordinances is not always present.

The Metropolitan Code of Ordinances 2.196 states that violations shall be punishable by a fine and upon conviction the Metropolitan Clerk has the authority to suspend a lobbyist registration for up to two years. However, there are no clear lines of responsibility on who investigates and/or makes the determination that a lobbyist is not in compliance. Additionally, it was noted that there were no established policies or procedures related to assessing late penalties against lobbyist who do not file within established due dates.

Self-reported information increases the risk of inaccurate submissions. Additionally, the process to convict someone for purposefully giving false information is time consuming and complicated. Establishing clear lines of responsibilities regarding handling citizen complaints and enforcement of penalties decreases this risk.

#### *Criteria:*

- *Metropolitan Code of Ordinances, Chapter 2.196, “Lobbyist Registration and Disclosure Ordinance”*
- *COSO, Control Activities—Principle 10—The organization selects and develops control activities that contribute to the mitigation of risks to the achievement of objectives to acceptable levels.*

#### *Assessed Risk Rating:*

**Medium**

#### *Recommendations for management of the Metropolitan Clerk’s Office to:*

Work with the Metropolitan Department of Law and the Metropolitan Nashville Council to clarify roles and responsibilities on enforcement and investigation of violations of the Metropolitan Code of Ordinances.

### ***Observation B – Formal Policies and Procedures***

The Metropolitan Clerk’s Office lacks formal written policies and procedures for the lobbyist registration and disclosure process. Prior to 2018, lobbyists’ annual disclosure report filings were not monitored specifically for purposes of determining filing compliance by all lobbyists who had registered in the applicable calendar year. As a result, self-reporting by lobbyists was the sole mechanism for timely compliance with the Metropolitan Code of Laws governing lobbyist registration.

The current Clerk commenced in this position in 2017, and has identified and made efforts toward increasing, facilitating, and addressing compliance with annual reporting requirements to the Metro Code. The Clerk also requested this audit to assist with identifying any additional or continued shortcomings that may be improved upon in the ongoing assessment process. Detailed written procedures help retain and transfer knowledge to future office staff as well as help ensure full compliance with the Metropolitan Code of Ordinances.

#### *Criteria:*

COSO, Control Activities–Principle 12–The organization deploys control activities through policies that establish what is expected and procedures that put policies into action.

#### *Assessed Risk Rating:*

**Medium**

#### *Recommendation for Management of the Metropolitan Clerk’s Office to:*

Develop written procedures for each critical process and task related to the lobbyist administration process and other core requirements. These procedures should be periodically reviewed and updated.

### ***Observation C – Inconsistent Information Between the Lobbyist Disclosure Form and the Campaign Candidate Financial Disclosure Form***

Donations to elected officials were not always reported on applicable lobbyist disclosure forms. A list of campaign candidate financial disclosures was compiled for each calendar year during the audit period. A sample of 20 out of 85 campaign contributions, as listed on candidates’ financial disclosures filed with the Election Commission, from calendar years 2016 through 2018 were reviewed to ascertain contributions made by lobbyist groups. Eleven lobbyists made contributions to campaign candidates during this time period. One lobbyist donated \$1,500 to one candidate and \$300 to another candidate. The lobbyist did not report the \$300 donation in his 2018 lobbyist report. Another lobbyist did not disclose a \$299 contribution.

Lobbyist reports are currently not available on the Metropolitan Clerk’s website for public review. Public records requests must be made to obtain any lobbyist filed document. The ability of the public to access lobbyist reports online increases transparency.

Complete and accurate disclosure provides useful information to the public as well as improves transparency in the government.

*Criteria:*

- *Metropolitan Nashville Code of Ordinance Chapter 2.196 Lobbyist Registration and Disclosure Ordinance.*
- *COSO, Control Activities—Principle 10—The organization selects and develops control activities that contribute to the mitigation of risks to the achievement of objectives to acceptable levels.*

*Recommendations for management of the Metropolitan Clerk's Office to:*

Make all lobbyist reports available online for easy public access and monitoring.

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## **GOVERNMENT AUDITING STANDARDS COMPLIANCE**

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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 observations and conclusions based on our audit objectives.

## **METHODOLOGY**

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

- Studied applicable laws and regulations.
- Interviewed key personnel within the Metropolitan Clerk’s Office.
- Evaluated internal controls currently in place.
- Performed analytics on registration and report filing data from the Metropolitan Clerk’s Office.
- Reviewed sample selections to determine the effectiveness of internal controls.
- Considered risk of fraud, waste, and abuse.

## **AUDIT TEAM**

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Nan Wen, CPA, In-Charge Auditor

Bill Walker, CPA, CIA, Principal Auditor

Gina Pruitt, CPA | CITP, CISA, CHFP, CQA, CEMB, CGMA, CRISC, CCSFP, CHCO, Interim Metropolitan Auditor

DAVID BRILEY  
MAYOR



**METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY**

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September 23, 2019

Ms. Gina Pruitt  
Interim Metropolitan Auditor  
Office of Internal Audit  
404 James Robertson Parkway  
Nashville, TN 37219

Re: Audit of the Metropolitan Nashville Government's Lobbyist Registration and Reporting Procedures

Dear Ms. Pruitt:

This letter acknowledges the Metro Clerk's Office receipt of the interim draft report for the above referenced project. We have reviewed your observations and implemented your recommendations as indicated in the Management Response.

We appreciate the methodology used in reviewing the Lobbyist Registration and Reporting Procedures.

Regards,

A handwritten signature in blue ink, appearing to read "Elizabeth Waites", written over a circular stamp or seal.

Elizabeth Waites

## APPENDIX A – MANAGEMENT RESPONSE AND ACTION PLAN

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We believe that operational management is in a unique position to best understand their operations and may be able to identify more innovative and effective approaches and we encourage them to do so when providing their response to our recommendations.

	Recommendations	Concurrence and Action Plan	Proposed Completion Date
<i>Risk</i>	<i>Recommendation for management of the Metropolitan Clerk's Office to:</i>		
<b>M</b>	<b>A.1</b> Work with the Metropolitan Department of Law and the Metropolitan Nashville Council to clarify roles and responsibilities on enforcement and investigation of violations of the Metropolitan Code of Ordinances.	<b>Accept</b>	August 15, 2020
<b>M</b>	<b>B.1</b> Develop written procedures for each critical process and task related to the lobbyist administration process and other core requirements. These procedures should be periodically reviewed and updated.	<b>Accept</b>	March 31, 2020
<b>M</b>	<b>C.1</b> Make all lobbyist reports available online for easy public access and monitoring.	<b>Accept</b>	February 28, 2020

## APPENDIX B – ASSESSED RISK RANKING

Observations identified during the course of the audit are assigned a risk rating, as outlined in the table below. The risk rating is based on the financial, operational, compliance or reputational impact the issue identified has on the Metropolitan Nashville Government. Items deemed “Low Risk” will be considered “Emerging Issues” in the final report and do not require a management response and corrective action plan.

Rating	Financial	Internal Controls	Compliance	Public
<b>HIGH</b>	Large financial impact >\$25,000  Remiss in responsibilities of being a custodian of the public trust	Missing, or inadequate key internal controls	Noncompliance with applicable Federal, state, and local laws, or Metro Nashville Government policies	High probability for negative public trust perception
<b>MEDIUM</b>	Moderate financial impact \$25,000 to \$10,000	Partial controls  Not adequate to identify noncompliance or misappropriation timely	Inconsistent compliance with Federal, state, and local laws, or Metro Nashville Government policies	Potential for negative public trust perception
<b>LOW/ Emerging Issues</b>	Low financial impact <\$10,000	Internal controls in place but not consistently efficient or effective  Implementing / enhancing controls could prevent future problems	Generally complies with Federal, state, and local laws, or Metro Nashville Government policies, but some minor discrepancies exist	Low probability for negative public trust perception
<b>Efficiency Opportunity</b>	An efficiency opportunity is where controls are functioning as intended; however, a modification would make the process more efficient			