

Town of Oyster Bay

Ethics Oversight

DECEMBER 2020



OFFICE OF THE NEW YORK STATE COMPTROLLER
Thomas P. DiNapoli, State Comptroller

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Report Highlights

Town of Oyster Bay

Audit Objective

Determine whether Town of Oyster Bay (Town) officials used resources to meet certain ethics oversight standards.

Key Findings

Town officials did not meet certain ethics oversight standards. The Board of Ethics (Ethics Board) did not:

- Adequately administer the Town's disclosure system that is intended to foster transparency and help identify conflicts of interests.
 - 98 officer and employee (26 percent) and four other required filer (8 percent) annual statements of financial disclosure (disclosure statements) were not filed.
 - Six officer and employee (2 percent) and seven other required filer (13 percent) disclosure statements were filed late.
- Provide annual reports to the Town Board summarizing its activities.

Key Recommendations

- Ensure that all required annual financial disclosure filers file timely disclosure statements.
- Ensure the Ethics Board prepares and submits annual reports to the Town Board summarizing its activities and making recommended changes to the code of ethics.

Town officials disagreed with certain aspects of our findings and recommendations, but indicated they have initiated or planned to initiate corrective action. Appendix C includes our comments on issues raised in the Town's response letter.

Background

The Town is located in Nassau County in the Long Island region of New York. The Town is governed by an elected Town Board composed of six Council members and the Town Supervisor (Supervisor).

The Supervisor is the chief executive officer (CEO) and is responsible, along with other administrative staff, for day-to-day management.

The Town Board established an Ethics Board responsible for providing ethics oversight. The Town Board obtained special legal counsel to assist with ethics matters.

Quick Facts

| | |
|--------------------------------------|---------|
| Population | 293,214 |
| Officers and Employees | 1,240 |
| Required Disclosure Statement Filers | |
| 2017 | 225 |
| 2018 | 216 |

Audit Period

January 1, 2017 – September 30, 2018

Ethics Oversight

How Can Local Governments Establish Proper Ethics Oversight?

A town's governing body must establish a code of ethics to set forth the standards of ethical conduct reasonably expected of town officers and employees. The code of ethics must address certain provisions including disclosure of interest in legislation before the governing body, holding of investments in conflict with official duties, private employment in conflict with official duties and future employment.

To reduce risk that officers' and employees' actions could violate a town's code of ethics and public assets could be subject to misuse, the governing body should adopt a code of ethics that addresses each of the four required statutory provisions of GML and vigorously enforce the code provisions.¹

Within the code of ethics, the governing body may also set forth other standards of ethical conduct such as provisions addressing nepotism, public disclosures for recusals and abstentions and the proper use of municipal resources.² The town's CEO is responsible for distributing a copy of the code of ethics to every town officer and employee. Although not required, the town could also post the code of ethics on the town website.

In addition to establishing a code of ethics, towns with a population of 50,000 or more are required to have certain individuals annually complete a financial disclosure statement. Filing annual disclosure statements helps increase transparency about the private interests and activities of officers and employees, which may identify potential conflicts of interest.

A board of ethics may be established by the governing body to administer a system to maintain the financial disclosure statement filings.³ The board of ethics, if established, should develop procedures to review and examine the financial disclosure statements filed with the town, to promote compliance with the filing requirement, and verify that officials and employees are impartial and free from conflicts of interest in fulfilling their public responsibilities. A board of ethics can help ensure that the local government operates in a transparent and ethical manner, and local government officers and employees act in the best interests of taxpayers and are not conflicted by personal interests.

The governing body may also develop additional standards of conduct to provide more comprehensive ethical guidance to meet a town's specific circumstances. For instance, the governing body may establish procedures to ensure that town

1 New York State General Municipal Law (GML), Section 806

2 State Comptroller's Model Code of Ethics – Local Governments available at: <https://www.osc.state.ny.us/localgov/pubs/ethics.htm>

3 GML provides that the board of ethics, if established by the governing body, is responsible for receiving the annual financial disclosure statements.

officers and employees receive ethics compliance training, including notifying officers and employees of the whistleblower provisions provided by State Law. In addition, the governing body could require that every officer and employee attest to receiving and reviewing the code of ethics at the time of their election or appointment and at least once every five years.

To help ensure proper ethics oversight, the CEO is responsible for posting a copy of certain provisions of the conflict of interest statute in each town building.⁴ The statute must be posted in a place visible to its officers and employees.

The Town Established an Ethics Board and Adopted a Code of Ethics

The Town established an Ethics Board, which is responsible for receiving the financial disclosure statements. The Town adopted a code of ethics that provides general authority for the Ethics Board to ensure that the financial disclosure statements are filed and complete.

In addition, the Town code of ethics provides that the Supervisor is to cause a copy of the code of ethics, including any amendments to the code of ethics, to be distributed to every officer, employee or independent contractor hired by the Town. The Supervisor is to cause a copy of the code of ethics, and any amendments, to be posted conspicuously in each Town building. However, the code of ethics does not require officers and employees to periodically attest to receiving and reading the code of ethics.

The Code of Ethics Complied With GML, the CEO Posted the Conflict of Interest Statute and the Code of Ethics

The Town Board adopted a code of ethics, which was posted on the Town website. The code of ethics included all four statutorily required provisions set forth in GML.⁵ The CEO visibly posted certain sections of GML and the code of ethics in the three buildings we tested, as required.

The Town Provided Ethics Training, the Supervisor Distributed the Code of Ethics

Town officers and employees were provided ethics compliance training twice a year, which included an overview of the code of ethics. In addition, the Ethics Board received similar training.

4 GML, Section 807 requires the posting of GML Sections 800 through 809 in each public building.

5 GML, Section 806, refer to Appendix A, Figure 3

The Supervisor told us the code of ethics is distributed to each newly hired officer and employee during orientation and to all officers and employees during their required ethics compliance training. While all officers and employees are not required to attest to receiving and reviewing the code of ethics, required disclosure statement filers attest to receiving and reading the code of ethics when they sign their completed disclosure statement.

Although not required by law, the Town Board could reinforce code of ethics awareness of officers and employees by periodically having all officers and employees attest to receiving and reading the code.

By enforcing the code provisions, reinforcing employee awareness of code of ethics and ensuring that the conflict of interest statute is posted in each building, the Town Board reduced the risk that the actions of officers and employees may violate the code of ethics and public assets could be subject to misuse.

What Are the Responsibilities of a Board of Ethics for Reviewing the Code of Ethics and Disclosure Statements?

A board of ethics is responsible for making recommendations with respect to drafting, adopting or amending the code of ethics, upon the request of the governing body. Therefore, a periodic review of the code of ethics by the board of ethics may be appropriate to help ensure the code continues to comply with GML. If requested, the board of ethics may also provide recommendations to the governing body as it relates to other ethical considerations that may help ensure ethical awareness for officers and employees.

In addition, the responsibilities of a board of ethics include administering a system to receive annual financial disclosure statements. The board of ethics may also develop procedures to review and examine the financial disclosure statements to help ensure that the filings are complete.

When a board of ethics is established by the governing body to administer an annual financial disclosure system, the board of ethics should establish a process to verify that all required filers have submitted their disclosure statement with the board of ethics. In addition, the board of ethics should ensure that the disclosure statements submitted by the required filers are complete.

To help verify the filing and completeness of the disclosure statements, the governing body could include procedures for an appointed official or support staff to assist the board of ethics in ensuring that each financial disclosure statement is filed, reviewed, all questions are addressed and any inconsistencies or missing information are followed-up on.

In addition, the board of ethics should develop procedures to help ensure that disclosure statements are reviewed to identify transactions that could pose

...[T]he responsibilities of a board of ethics include administering a system to receive annual financial disclosure statements.

conflicts of interest. For example, boards of ethics could maintain a list of filers' outside business interests, and supply the list to appropriate purchasing department personnel for their use in identifying potential interests in contracts that would be prohibited by GML.

Further, the board of ethics could obtain a list of vendors from the accounts payable department to reference during their review of the disclosure statements to help it identify potential conflicts of interest. If local governments' boards of ethics do not ensure compliance with filing requirements or review the information on disclosure statements to identify any conflicts of interest, taxpayers have less assurance that officers and employees in policy-making positions are free from conflicts of interest.

The Town code of ethics requires certain officers and employees to file disclosure statements.⁶ The Supervisor's office is to cause a list of names and offices or positions of all officers and employees required to file disclosure statements to be filed with the Ethics Board, by the last day of March each year, and notify such individuals of their obligation to file. The Ethics Board is to review the list of required filers to determine whether the list is accurate and complete and may add or remove names as it deems appropriate. The disclosure statements are to be filed by May 15 each year, unless that date is extended by the Ethics Board. Candidates for elected positions shall file disclosure statements within 30 days of nomination.

The code of ethics provides that the Ethics Board is responsible for receiving, reviewing and maintaining on file the disclosure statements. The Ethics Board is to review the disclosure statements to confirm all individuals required to file disclosure statements have filed, determine whether any statements are deficient or reveal a possible or potential violation of the code of ethics.

If the Ethics Board determines that a required filer filed a deficient statement, or filed a statement that reveals a possible or potential violation of the code of ethics, they are to notify the individual in writing. The code of ethics indicates that the Ethics Board may obtain legal advice from the Town Attorney or other legal counsel employed by the Town and the services of a confidential secretary employed by the Town.

In addition, the code of ethics indicates that the Ethics Board is to provide ethics training to Town officers and employees. Moreover, the Ethics Board is to develop educational materials and an educational program on the provisions of the code for Town officers, employees and independent contractors. The Supervisor is to

⁶ The code of ethics specifies the following required filers: elected officials, department heads, deputy department heads, attorneys serving in the Town Attorney's office, compensated employees appointed by the Town Board, Town inspectors, candidates for elective Town office, and Town officials and employees holding a policymaking position.

assist the Ethics Board in the development and presentation of ethics training programs. Such ethics training is to be provided to all officers and employees twice a year.

According to the code of ethics, the Ethics Board should periodically review the code of ethics to determine whether it promotes integrity, public confidence and participation in Town government and whether it sets forth clear, reasonable and enforceable standards of conduct. The Ethics Board is required to meet at least once each quarter and is required to prepare and submit an annual report to the Town Board summarizing its activities and making recommended changes to the code of ethics.

The Ethics Board Did Not Adequately Monitor the Filing of Disclosure Statements

The Ethics Board met nine times in 2017 but only three times in 2018. The counsel to the Ethics Board (Ethics Board Counsel) told us that due to scheduling conflicts⁷ among Ethics Board members during 2018, the Ethics Board was unable to meet quarterly, as required by the code of ethics.

In addition, the Ethics Board did not fully administer the Town's disclosure system by ensuring all financial disclosure statements were actually filed or filed on time.

We found that 26 percent of the required disclosure statements were not filed or filed late. Under these circumstances, there is an increased risk that potential conflicts of interest were not identified and/or not reported to the Ethics Board.

In 2017 and 2018, the Ethics Board did not ensure all individuals, required to file a disclosure statement pursuant to the code of ethics, submitted a timely disclosure statement. In 2017 and 2018, all seven Town Board member disclosure statements were filed on time. However, 28 percent of officer and employee (Figure 1), and 21 percent of other required filer (Figure 2)⁸ disclosure statements were not filed or not filed on time.

In 2017, 189 officers and employees were required to file. However, 51 did not file and one filed late. In 2018, 185 officers and employees were required to file. However, 47 did not file and five filed late.

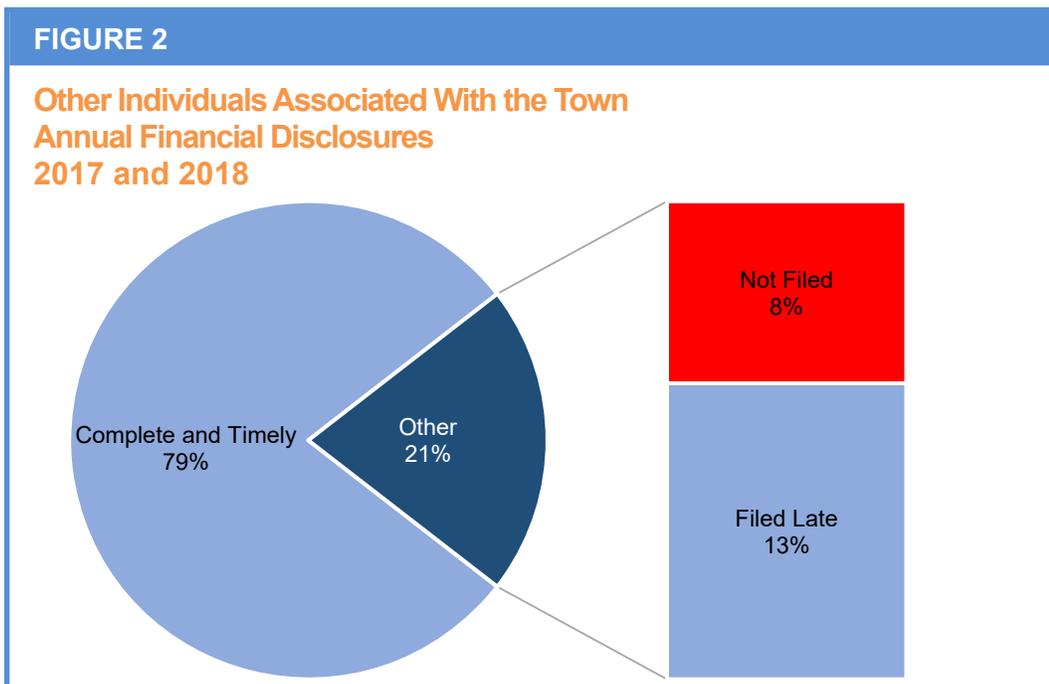
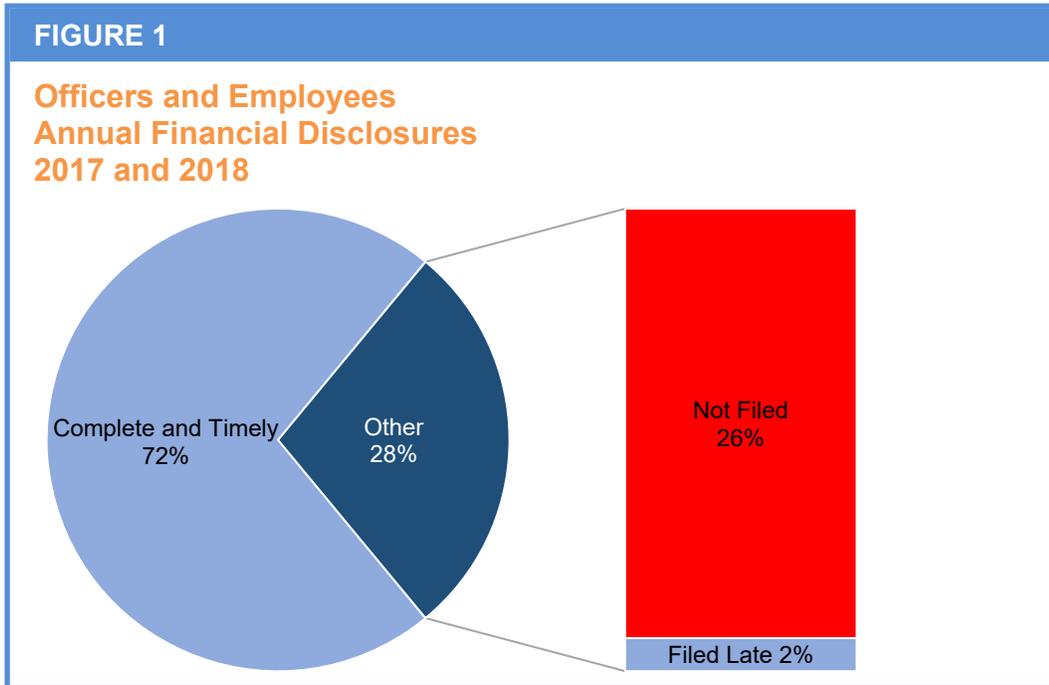
In 2017, 29 other individuals associated with the Town were required to file. However, three did not file and one filed late. In 2018, 24 other individuals

We found that 26 percent of the required disclosure statements were not filed or filed late.

7 While the Ethics Board was scheduled to meet in the first quarter of 2018, three Ethics Board members resigned before the meeting. Due to the Ethics Board not having enough members to constitute a quorum, the meeting was postponed.

8 Other required disclosure statement filers included the following individuals associated with the Town: members of the Ethics Board, Examining Board of Electricians, Landmark Preservation Committee, Planning Advisory Board, the Plumber's Examining Board, and the Zoning Board of Appeals and the counselor to the Ethics Board.

associated with the Town were required to file. However, one did not file, and six filed late.⁹



⁹ Refer to Appendix A, Figure 4 for specific details on employees who did not file in 2017 and 2018.

The Town Board assigned responsibility for administering the disclosure statement system to the Ethics Board and hired outside legal counsel to assist with ethics matters. The Ethics Board Counsel told us that all department heads review and update a list of required filers each year.

The Ethics Board Counsel provides department heads with the list of required filers from the previous year and criteria to provide guidance in identifying policymaking positions within their respective departments. Once the department heads make any necessary changes and approve the list for their respective department, the Ethics Board Counsel reviews the list for accuracy and completeness, and provides the list to the Town Board. The Town Board annually passes a resolution listing the names of all individuals required to file a disclosure statement. We identified individuals required to file disclosure statements in accordance with the code of ethics adopted in 2016 and Town Board resolutions.

Of the 441 required disclosure statements in 2017 and 2018, 102 (23 percent) – 98 officer and employee and four other required filer disclosure statements – were not filed.

In 2017, 54 individuals who held positions identified as required filer positions by the code of ethics did not file disclosure statements. Four of these individuals were listed in the Town Board resolution of required filers. An additional 50 individuals were not listed in the Town Board resolution but are required to file disclosure statements according to the code of ethics, including 43 inspectors, six candidates for elective office and an attorney serving in the Town's Attorney office.

In 2018, 48 individuals in positions identified as required filer positions by the code of ethics did not file disclosure statements. Three of these individuals were listed in the Town Board resolution of required filers. An additional 45 individuals who held inspector positions were not listed in the Town Board resolution but are required to file disclosure statements according to the code of ethics.

The Ethics Board Counsel told us that he was unsure why those listed in the resolution did not file disclosure statements. He also told us that the 88 inspectors, an attorney and six political candidates did not file because they were not included in the Town Board resolution.

In addition, the Ethics Board Counsel told us that all required filers file their completed disclosure statements with the Ethics Board secretary, who then provides the completed statements to Ethics Board Counsel. The Ethics Board delegated responsibility for reviewing the disclosure statements to the Ethics Board Counsel who reviewed all disclosure statements.

Further, the Ethics Board Counsel told us that he determines whether all required filers submitted a disclosure statement, ensures the filed disclosure statements are complete and reviews the disclosure statements to determine whether any

outside employer or investment reported poses a potential or actual conflict of interest. The Ethics Board Counsel also told us that he compares information reported in the disclosure statements to a list of Town vendors to determine whether any reported information warrants follow up.

If the Ethics Board Counselor does not receive a disclosure statement from a required filer or identifies a potential conflict of interest reported on a disclosure statement, the Ethics Board sends a follow-up letter requesting the individual to file a disclosure statement or notifying the required filer of a potential conflict of interest.

Without receiving disclosure statements from all required filers, taxpayers have less assurance that the Town has a strong stance on transparency and can identify conflicts of interest of officers and employees that could compromise impartiality in decision-making.

The Ethics Board Did Not Review the Code of Ethics or Submit Annual Reports

The Ethics Board did not review the code of ethics during our audit period. The Town Board adopted a new code of ethics in 2016. During our audit period, the Ethics Board did not submit an annual report to the Town Board summarizing its activities or making recommended changes to the code of ethics, as required by the code of ethics.

Ethics Board members did not provide us with a specific reason for not reviewing the code of ethics and not preparing an annual report. The Ethics Board Counsel told us that a review of the code of ethics by the Ethics Board during our audit period would have been premature because an entirely new code of ethics was adopted in 2016 and Ethics Board members were newly appointed in 2017 and inexperienced.

As a best practice, a review of the code of ethics, at least every five years or when deemed necessary helps ensure it adequately addresses the expected conduct for all officers and employees including the required standards stipulated by law.

What Do We Recommend?

The Town Board should:

1. Amend the code of ethics to require all officers and employees attest in writing to the receipt and review of the code of ethics at the time of their elections or appointment, at least once every five years, and upon amendment to the code.

...[T]he
Ethics Board
did not submit
an annual
report to the
Town Board...
as required
by the code
of ethics.

The Ethics Board should:

2. Verify that all individuals covered by annual financial disclosure requirements file a timely disclosure statement.
3. Submit annual reports to the Town Board summarizing its activities and recommending changes to the code of ethics.

Appendix A: Town Code of Ethics Information

Figure 3: Required Code of Ethics Provisions^a and Other Ethical Considerations^b

| Required Provisions | Included in the Town's Code of Ethics? |
|--|--|
| Disclosure of Interests in Legislation Before the Local Governing Body | Yes |
| Future Employment | Yes |
| Holding of Investments in Conflict With Official Duties | Yes |
| Private Employment in Conflict With Official Duties | Yes |
| Other Ethical Considerations | |
| Applicability | Yes |
| Confidential Information | Yes |
| Definitions | Yes |
| Enforcement | Yes |
| Effective Date | Yes |
| Establishing a Board of Ethics | Yes |
| Gifts | Yes |
| Interests in Contracts | Yes |
| Nepotism | Yes |
| Political Solicitations | Yes |
| Posting and Distributing the Code of Ethics | Yes |
| Prohibition on Use of Municipal Position for Personal or Private Gain | Yes |
| Purpose of the Code of Ethics | Yes |
| Recusal and Abstention | Yes |
| Ethics Board Members Term Limits ^c | Yes |

a GML, Section 806

b Refer to OSC's Model Code of Ethics for Local Governments available at: <https://www.osc.state.ny.us/localgov/pubs/ethics.htm>.

c Not included within OSC's Model Code of Ethics for Local Governments but should be considered as a best business practice

Figure 4: Officers and Employees and Other Individuals Associated With the Town Who Did Not File Annual Financial Disclosure Statements

| Job Title | 2017 | 2018 |
|---|-----------|-----------|
| Officers and Employees | | |
| Building Inspector I (4) | Not Filed | Not Filed |
| Building Inspector II (3) | Not Filed | Not Filed |
| Building Inspector Trainee (3) | Not Filed | |
| Building Inspector Trainee (4) | | Not Filed |
| Code Enforcement Inspector (4) | Not Filed | Not Filed |
| Construction Inspector I (5) | Not Filed | Not Filed |
| Deputy Town Attorney | Not Filed | |
| Engineering Aide I | | Not Filed |
| Fire Inspector | Not Filed | Not Filed |
| Laborer II | | Not Filed |
| License Inspector I | Not Filed | Not Filed |
| Multiple Residence Inspector I | Not Filed | Not Filed |
| Plumbing Inspector I (4) | Not Filed | Not Filed |
| Plumbing Inspector II | Not Filed | Not Filed |
| Political Candidates (6) | Not Filed | |
| Sanitation Inspector I (8) | Not Filed | Not Filed |
| Store-yard Supervisor | Not Filed | |
| Zoning Inspector I (4) | Not Filed | Not Filed |
| Zoning Inspector II (2) | Not Filed | Not Filed |
| Zoning Inspector Trainee (2) | Not Filed | |
| Zoning Inspector Trainee (3) | | Not Filed |
| Other Individuals Associated With the Town | | |
| Counselor to the Board of Ethics** | Not Filed | |
| Examiner Board of Electricians | Not Filed | |
| Planning Advisory Board | Not Filed | Not Filed |
| () represents the number of individuals that did not file a disclosure statement | | |
| ** Not a volunteer or an employee of the Town but classified under volunteer members for purpose of this report because the position is counselor to a volunteer Town board | | |

Appendix B: Response From Town Officials



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TOWN SUPERVISOR

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TOWN OF OYSTER BAY RESPONSE TO AUDIT REPORT AND ACTION PLAN

I. THE TOWN OF OYSTER BAY'S ETHICS PROGRAM

The Supervisor and Town Council members are committed to integrity and transparency in government. A strong and effective ethics program is one of the Town's highest priorities.

- In response to a well-publicized scandal under the prior administration, the Town engaged ethics counsel to draft an entirely new, comprehensive code of ethics. The new code of ethics was adopted in 2016. Among other things, the new code of ethics established an independent, bi-partisan Board of Ethics and included a new annual disclosure form for Town officers, employees, and candidates for elective office.
- A new administration took office in January 2017, the first year of the audit period. One month later, on February 28, 2017, the new administration appointed an entirely new, independent, bi-partisan Board of Ethics comprised of volunteers with no other connection to Town government. The new administration also appointed an Inspector General, adopted new disclosure requirements for vendors, and appointed a Certified Public Accountant to serve as Comptroller.

The Town of Oyster Bay Ethics program is strong and effective.

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- During the audit period, all elected and appointed Town officers and employees received ethics training.
 - The Board of Ethics prepared a conflict of interest booklet that includes the Code of Ethics and a plain language guide. The conflict of interest booklet was distributed to all Town officers and employees, is provided to newly hired employees, and is posted on a dedicated Board of Ethics page of the Town website.
 - Other useful materials are posted on the Board of Ethics page of the Town website, including frequently asked questions, a form for submitting an ethics complaint, a form for requesting ethics advice, and rules of procedure for conducting ethics investigations.
 - During the holiday season, the Board of Ethics prepared and distributed a special flyer reminding Town officers and employees of the rules that regulate gifts.
 - During the audit period, the Board of Ethics held 12 public meetings (four more than the Code of Ethics requires) and responded to 31 ethics complaints and requests for ethics advice.
 - The Board of Ethics reviewed all disclosure statements filed by elected and appointed Town officers and employees, and by candidates for town elective office to ensure that they were complete; compared the disclosures of secondary employers and investments to a list of Town vendors as a check against potential conflicts of interest; and followed-up on disclosed relationships and activities that appeared to present a potential for conflicts of interest.
 - The Board of Ethics responded to requests for inspection and copying of the disclosure forms filed pursuant to the Freedom of Information Law.

See
Note 1
Page 19

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- In each year, the Board of Ethics prepared a summary of its activities that was incorporated in the report submitted to the Town Board by the Town's independent auditors. The year 2021 will be the fifth year since adoption of the new Code of Ethics and, consistent with the best practices referred to in the Comptroller's audit report, the Board of Ethics will review the Code of Ethics and, if it deems that changes are warranted, will recommend those changes for consideration by the Town Board.

II. THE COMPTROLLER'S AUDIT METHODOLOGY AND FINDINGS

The Town of Oyster Bay appreciates the constructive efforts of the Comptroller to help identify ways in which the Town can improve its ethics program. However, it notes that certain audit procedures and conclusions may tend to mislead some readers.

- The audit report is primarily a statistical analysis and, therefore, does not emphasize the context of events that transpired immediately prior to, and during the audit period.
- In response to a scandal during the prior administration that seriously undermined public confidence in Town government, a new administration moved quickly and effectively to establish a new and robust ethics program. One month after taking office, the new administration appointed an entirely new bi-partisan Board of Ethics comprised of volunteers with no connections to Town government.
- The new Board of Ethics received ethics training, developed procedures for conducting its business, provided training and educational materials to elected and appointed Town officers and employees, developed a dedicated page on the Town's web site, met 12 times during the two year audit period (four times more often than required by the Code of Ethics), and responded to 31 requests for ethics advice and complaints.

See
Note 2
Page 19

See
Note 1
Page 19

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- In its assessment of the Town’s ethics program, the Comptroller combined the two years under audit to develop statistics that may tend to mislead some readers. For example, if one employee failed to file a disclosure statement in each of the two years, the Comptroller counted that as two non-disclosures.

See
Note 3
Page 19

- In developing its statistics, the Comptroller combined non-disclosures with late disclosures, possibly misleading some readers to conclude that the number of non-disclosures was higher than it actually was.

See
Note 3
Page 19

- Statistics tend to mislead readers when the sample is small. For example, one member of a five member board represents 20% of the board, but is still just a single person.

See
Note 3
Page 19

- No disclosure form requested for inspection was unavailable due to late filing. While timely filing is administratively desirable, and while further efforts will be made to ensure that all disclosure statements are timely filed, the goal of transparency was unaffected by late filing.

See
Note 3
Page 19

- Each year the Town Board adopted a list of officers and employees required to file disclosure statements. The Board of Ethics used the list to administer the program and monitor compliance.

- The Comptroller deemed that an officer or employee was required to file if they were listed in the resolution adopted by the Town Board or if they held a title listed in the earlier adopted Code of Ethics, expanding the list to a number greater than listed in either the Code of Ethics or the Town Board resolution. The Comptroller even included one person that was listed in error on the Town Board resolution. This may tend to lead some readers to conclude that the number of non-disclosures was higher than it actually was.

See
Note 4
Page 19

- The Comptroller correctly noted that certain candidates for Town elective office failed to file required disclosure statements. However, those

candidates were not elected to Town office. The Board of Ethics lacks the jurisdiction to compel unsuccessful candidates for Town office to file disclosure statements. It is important to note that non-filing by an unsuccessful candidate for office does not undermine the integrity of Town government. Media coverage ensured that the public was informed of the identity of the candidates that failed to file disclosure statements.

III. COMPTROLLER RECOMMENDATIONS AND TOWN CORRECTIVE ACTION PLAN

Comptroller Recommendation:

1. The Town Board should amend the code of ethics to require all officers and employees attest in writing to the receipt and review of the code of ethics at the time of their elections or appointment, at least once every five years, and upon amendment to the code.

Response:

1. All officers and employees attest in writing to the receipt and review of the Code of Ethics at regularly conducted ethics training programs. Newly hired employees attest in writing to the receipt and review of the Code of Ethics at the time of orientation. The annual statement of financial disclosure includes an attestation to receipt and review of the Code of Ethics. The Town Board thanks the Comptroller for this recommendation and will consider its implementation.

Comptroller recommendation:

2. The Board of Ethics should verify that all individuals covered by annual financial disclosure requirements file a timely disclosure statement.

Response:

2. While the Board of Ethics achieved substantial compliance by officers and employees during the audit period it will continue to strive for perfection in the administration of the Town's financial disclosure law.

Comptroller recommendation:

3. The Board of Ethics should submit annual reports to the Town Board summarizing its activities and recommending changes to the Code of Ethics.

Response:

3. The Board of Ethics filed an annual report with the Town Board summarizing its activities in 2019, and will continue to file annual reports with the Town Board. It should be noted that:

- In each year of the Comptroller’s audit, the Board of Ethics prepared a summary of its activities that was incorporated in the report submitted to the Town Board by the Town’s independent auditors.
- The Comptroller’s audit report recommends that as a best practice, the Code of Ethics should be reviewed at least every five years or when deemed necessary (see Audit Report, p. 11). Consistent with best practices, the Code of Ethics will be reviewed by the Board of Ethics in its fifth year, 2021.
- Review of Code during the audit period, 2017 and 2018, would have been premature because the Code of Ethics was entirely new, and the newly appointed Board of Ethics did not yet have experience in administering the newly adopted Code of Ethics.

See
Note 5
Page 20

See
Note 6
Page 20

Steven G. Leventhal, Esq.

cc: Joseph Saladino, Town Supervisor

Appendix C: OSC Comments on the Town's Response

Note 1

The Town's code of ethics requires the Ethics Board to meet at least once each quarter, or four times per year. While it met nine times in 2017, it only met three times in 2018.

Note 2

Our audit report presents our conclusions based on the criteria set forth in GML and the Town's code of ethics in effect during our audit period.

Note 3

Filers are required to file an annual disclosure statement. Therefore, our findings are based on the number of annual disclosure statements officials were required to obtain and review each year.

The audit period included two annual filings. The average rate of noncompliance was reported to provide a perspective on overall performance for the audit period. Further, disclosure statement deficiencies (i.e., not filed or filed late) are clearly reported in the report highlights, report body and Figures 1 and 2.

While we separated our conclusions for required disclosure statements by category (Town Board members who set policy including the code of ethics, paid officers and employees, and other individuals who voluntarily serve on various Town boards), they are based on our 100 percent testing of all individuals required to file disclosure statements.

Note 4

We identified the required disclosure statement filers for our audit period in accordance with the Town's code of ethics and any adopted Town Board resolutions that identified required disclosure statement filers.

We acknowledge that the annual Town Board resolutions, which identified required filers, did not include all individuals holding titles specified as required filers in the code of ethics. However, we found no indication in any Board resolutions that the resolution superseded the code of ethics. Therefore, based on our interpretation of the code of ethics and Board resolutions, we appropriately identified the required filer positions that were included in our testing. Moreover, if the Town wishes to modify who, or which titles or positions, are subject to filing a disclosure statement, we recommend revising or providing clarification in its code of ethics or future Board resolutions.

Note 5

On separate occasions, in February 2019, the Ethics Board Chair and another Ethics Board member told us that annual reports summarizing the Board's activities were not prepared during our audit period. The Ethics Board Counsel was present during both of these discussions. Following our exit discussion, the Ethics Board Counsel provided us with letters (dated June 2017 and June 2018) that he prepared and addressed to an independent auditing firm. We requested but were not provided supporting evidence that these letters were provided to the Town Board, as required by the code of ethics.

Note 6

We amended our report to acknowledge that a review of the code of ethics by the Ethics Board during our audit period would have been premature because a new code of ethics was adopted in 2016 and Ethics Board members were newly appointed in 2017 and inexperienced.

Appendix D: Audit Methodology and Standards

We conducted this audit pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the New York State General Municipal Law. To achieve the audit objective and obtain valid audit evidence, our audit procedures included the following:

- We interviewed Town officials, employees and Ethics Board members to gain an understanding of the governing and ethics oversight.
- We reviewed policies, procedures, Town Board and Ethics Board minutes related to ethics.
- We reviewed all 339 disclosures for the audit period to determine whether they were completely and properly filed on time and any potential conflict of interests were reported to the Ethics Board.
- We reviewed all advisory opinions issued by the Ethics Board during the audit period.
- We reviewed procedures to receive ethical complaints from the public, which consist of submitting complaints with the Secretary to the Ethics Board.
- We used our professional judgment to select a sample of three buildings from a list of 12 Town buildings containing offices, obtained from the Town website. We walked through these buildings to determine whether the conflict of interest statute was posted. For our sample, we selected the building where we conducted a majority of our fieldwork and two additional nearby Town buildings, with no expectations of greater or lesser results.

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). 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 objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Unless otherwise indicated in this report, samples for testing were selected based on professional judgment, as it was not the intent to project the results onto the entire population. Where applicable, information is presented concerning the value and/or relevant population size and the sample selected for examination.

The Town Board has a responsibility to initiate corrective action. A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and provided to our office within 90 days, pursuant to Section 35 of General Municipal Law. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. We encourage the Board to make the CAP available for public review in the Town Clerk's office.

Appendix E: Resources and Services

Regional Office Directory

www.osc.state.ny.us/sites/default/files/local-government/documents/pdf/2018-12/regional_directory.pdf

Cost-Saving Ideas – Resources, advice and assistance on cost-saving ideas

www.osc.state.ny.us/local-government/publications?title=&body_value=&field_topics_target_id=263196&issued=All

Fiscal Stress Monitoring – Resources for local government officials experiencing fiscal problems

www.osc.state.ny.us/local-government/fiscal-monitoring

Local Government Management Guides – Series of publications that include technical information and suggested practices for local government management

www.osc.state.ny.us/local-government/publications?title=&body_value=&field_topics_target_id=263206&issued=All

Planning and Budgeting Guides – Resources for developing multiyear financial, capital, strategic and other plans

www.osc.state.ny.us/local-government/resources/planning-resources

Protecting Sensitive Data and Other Local Government Assets – A non-technical cybersecurity guide for local government leaders

www.osc.state.ny.us/sites/default/files/local-government/documents/pdf/2020-05/cyber-security-guide.pdf

Required Reporting – Information and resources for reports and forms that are filed with the Office of the State Comptroller

www.osc.state.ny.us/local-government/required-reporting

Research Reports/Publications – Reports on major policy issues facing local governments and State policy-makers

www.osc.state.ny.us/local-government/publications?title=&body_value=&field_topics_target_id=263211&issued=All

Training – Resources for local government officials on in-person and online training opportunities on a wide range of topics

www.osc.state.ny.us/local-government/academy

Contact

Office of the New York State Comptroller
Division of Local Government and School Accountability
110 State Street, 12th Floor, Albany, New York 12236

Tel: (518) 474-4037 • Fax: (518) 486-6479 • Email: localgov@osc.ny.gov

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Local Government and School Accountability Help Line: (866) 321-8503

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