

City of Rochester

Ethics Oversight

DECEMBER 2020



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

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Report Highlights

City of Rochester

Audit Objective

Determine whether City of Rochester (City) officials used resources to meet certain ethics oversight standards.

Key Findings

City officials did not meet certain ethics oversight standards.

- The Board of Ethics (Ethics Board) did not receive ethics training.
- City officials did not adequately administer the City's disclosure system that is intended to foster transparency and help identify conflicts of interest.
 - 10 City Council (Council) member, 75 officer and employee and 81 other required filer annual statements of financial disclosure (disclosure statements) were not filed or were filed late.
- Neither the Secretary, the Mayor nor the Council President compared disclosed business interests to vendor payments or compiled a list of filers' outside business interests for the purchasing department to identify potential interests in contracts that would be prohibited by New York State General Municipal Law (GML).
- The Council did not have adequate procedures in place to ensure the list of required disclosure statement filers was complete or to identify individuals hired or promoted into required filer positions during the year.

Key Recommendation

- Ensure that all annual financial disclosure filers file timely disclosure statements that are carefully reviewed for potential conflicts of interest.

City officials generally agreed with our recommendations and have initiated or indicated they planned to initiate corrective action.

Background

The City is located in Monroe County in the Finger Lakes region of New York. The City is governed by the Council composed of nine elected Council members, one of whom serves as the President.

The Mayor is the City's chief executive officer (CEO) and is responsible, along with other administrative staff, for day-to-day management under the Council's direction.

The Council established an Ethics Board responsible for providing ethics oversight. The City's Corporation Counsel provides legal counsel to the Council and the Ethics Board.

Quick Facts

Population 210,565

Officers and Employees 3,709

Required Disclosure Statement Filers

2017 222

2018 199

Audit Period

January 1, 2017 – September 30, 2018

Ethics Oversight

How Can Local Governments Establish Proper Ethics Oversight?

In most circumstances, a city's governing body must establish a code of ethics to set forth the standards of ethical conduct reasonably expected of city 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 city'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 city's CEO is responsible for distributing a copy of the code of ethics to every city officer and employee. Although not required, the city could also post the code of ethics on the city's website.

In addition to establishing a code of ethics, cities 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 city, 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 city's specific circumstances. For instance, the governing body may establish procedures to ensure that city officers

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>

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

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 portions of the conflict of interest statute in each city building.⁴ The statute must be posted in a place visible to its officers and employees.

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

The City established an Ethics Board and designated the Ethics Board Secretary (Secretary) to be responsible for receiving and reviewing the disclosure statements for timeliness and completeness. The City adopted a code of ethics that provides general authority for the Secretary to ensure that the disclosure statements are filed and complete.

The City code of ethics does not address distribution of the code of ethics to officers and employees, or require officers and employees to periodically attest to reading the code of ethics.

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

The City Council adopted a code of ethics, which was posted on the City's website. The code of ethics included all four statutorily required provisions set forth in GML.⁵ The Mayor visibly posted certain sections of GML in the three buildings tested, as required by GML.

The Ethics Board Did Not Receive Ethics Training

Some City officers and employees received ethics compliance training, such as an overview of the code of ethics and whistleblower protection. The Secretary provided newly hired employees ethics training at mandatory new-hire orientation, which included an overview of the code of ethics and whistleblower protections. In addition, the Secretary told us he provides ethics compliance training to employees when such training is requested by a department Commissioner. The Secretary provided ethics training in June 2017 to paid interns and also provided two training sessions in May 2018 to the IT Department.

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 4.

However, the Ethics Board did not receive similar training. The Secretary told us that he provided fellow Ethics Board members with the code of ethics and the City charter upon their appointment to the Ethics Board. The Secretary also told us he attended ethics presentations in March and April 2018. In an effort to help ensure proper ethics oversight, the City may wish to have all Ethics Board members complete training on the provisions of law relating to conflicts of interest and ethics. For example, training could relate to the provisions of Article 18 of GML, codes of ethics, annual financial disclosure and decisional law relating to conflicts of interest and ethics.

The Secretary, who is also the Director of the Office of Public Integrity, told us that newly hired or appointed officers and employees are provided a copy of the code of ethics during new-hire orientation. Furthermore, the Training Coordinator told us that newly hired or appointed officers and employees are required to attest in writing to receiving and understanding the code of ethics.

We reviewed code of ethics attestations for 20 individuals hired during our audit period and found that nine did not attest to receiving the code of ethics. The City's Benefits Manager told us that these individuals were seasonal workers and were not required to attend new-hire orientation. However, seasonal employees are not exempt from the provisions of the code of ethics or GML. As such, the City should impose the same attestation policies on its seasonal employees as the rest of its officers and employees.

Although not required by law, the Council could reinforce code of ethics awareness of officers and employees by periodically having all officers and employees attest to reading the code (after their new-hire orientation) and requiring the posting of the entire code of ethics visibly in all City buildings. They could also distribute the code of ethics to all officers and employees whenever the code of ethics is amended.

Unless the Council reinforces employee awareness of the code of ethics, there is a higher risk that officers' and employees' actions may violate the City's 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 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 City code of ethics requires certain officers and employees to file disclosure statements. For example, the code of ethics includes specific job titles required to file disclosure statements. The code of ethics also provides for the Mayor to determine additional individuals holding policy-making positions who shall also be required to file disclosure statements. The Mayor is to make such determinations in a document transmitted to the Secretary by December 31 each year.

The Secretary is required to advise required filers of their filing obligation and the deadline for filing at least 15 days before the filing deadline.⁶ Disclosure

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

⁶ Except for individuals required to file as political candidates, who the Secretary must notify at least five days before their respective filing deadline, which is dependent on the deadline for filing or designating nominating petitions.

statements are to be filed with the Secretary by April 15 each year unless an exemption or extension is requested by the filer and granted by the Secretary.⁷ City officers and employees who are hired into required filer positions between March 15 and December 31 are to file their disclosure statements within 30 days of the date of employment.

The code of ethics requires the Secretary to review the filed disclosure statements within 30 days to determine whether a required filer has failed to file or if a filed disclosure statement is deficient. The Secretary is to notify individuals in writing of their failure to file or any deficiency and afford them fifteen days to file, correct such statement or explain the deficiency.

Subsequently, if the individual fails to file or fails to correct or explain the deficiency, the Secretary is to send a notice of delinquency to the required filer, the Ethics Board and the filer's appointing authority.⁸ The Corporation Counsel is to provide legal advice and assistance to the Ethics Board and the Secretary regarding the interpretation and enforcement of the code of ethics, including the review of disclosure statements.

In addition, the code of ethics states that the Mayor and the Council President shall review, or cause to be reviewed by their designees, the disclosure statements submitted by persons under their jurisdiction to ascertain possible violations of ethical standards set forth in the code of ethics.

While not specifically stated in the code of ethics, the Ethics Board should periodically review the code of ethics to ensure it complies with GML and, if appropriate, recommend to the governing body to include other ethical considerations that may help ensure ethical awareness for officers and employees. The Ethics Board's rules and procedures provide that it may make recommendations to the Mayor and the Council with respect to amendments to the code of ethics.

City Officials Did Not Adequately Monitor the Filing of Disclosure Statements

The Ethics Board met four times in 2017 and eight times in 2018. However, the City's disclosure system lacked sufficient procedures to ensure that all required financial disclosure statements were actually filed and filed on time.

We found that more than one-third of required disclosure statements were not filed or were filed late. Under these circumstances, there is an increased risk that

We found that more than one-third of required disclosure statements were not filed or were filed late.

⁷ In 2018, the filing deadline was extended due to a change in the format of the required forms. It was extended to September 12, 2018.

⁸ The notice of delinquency must also be sent to the Mayor for individuals subject to the Mayor's jurisdiction, or the Council President for persons subject to the jurisdiction of the Council.

potential conflicts of interest were not identified and/or not reported to the Ethics Board.

The Council assigned certain responsibilities for administering the disclosure statement system to the Secretary. However, despite the Secretary generally carrying out those administrative responsibilities, City officials had inadequate procedures in place to ensure all officers and employees required to file in 2017 and 2018 submitted a timely disclosure statement.⁹ In 2017 and 2018, 56 percent of Council member (Figure 1), 34 percent of officer and employee (Figure 2) and 45 percent of other required filer (Figure 3)¹⁰ disclosure statements were not filed or were filed late.

In 2017 and 2018, nine Council members were required to file disclosure statements. However, in 2017 seven filed late. In 2018, three Council members filed late.

In 2017, 113 officers and employees were required to file. However, 20 did not file and 16 filed late. In 2018, 108 officers and employees were required to file. However, five did not file and 34 filed late.

In 2017, 100 other individuals associated with the City were required to file. However, 17 did not file and 22 filed late. In 2018, 82 other individuals associated with the City were required to file. However, eight did not file and 34 filed late.¹¹

9 The number of officers and employees includes 17 political candidates required to file disclosure statements.

10 Other required disclosure statement filers included the following individuals associated with the City: Board of Assessment Review, Board of Stationary Engineers, Civil Service Commission, Downtown Enhancement District Advisory Committee (2017 only), Electrical Examining Board, Elevator Examining Board, Environmental Commission (2017 only), Ethics Board, Planning Commission, Plumbers Examining Board, Project Review Committee, Rochester Preservation Board, Rochester Public Library and Zoning Board of Appeals.

11 Refer to Appendix A, Figure 5 for details on individuals who did not file in 2017 and 2018.

FIGURE 1

**City Council
Annual Financial Disclosures
2017 and 2018**

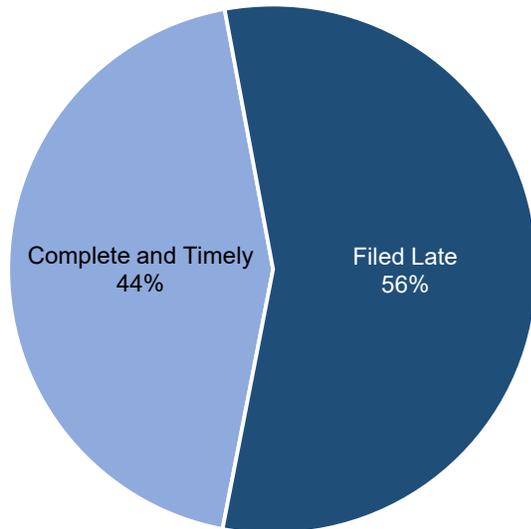


FIGURE 2

**Officers and Employees
Annual Financial Disclosures
2017 and 2018**

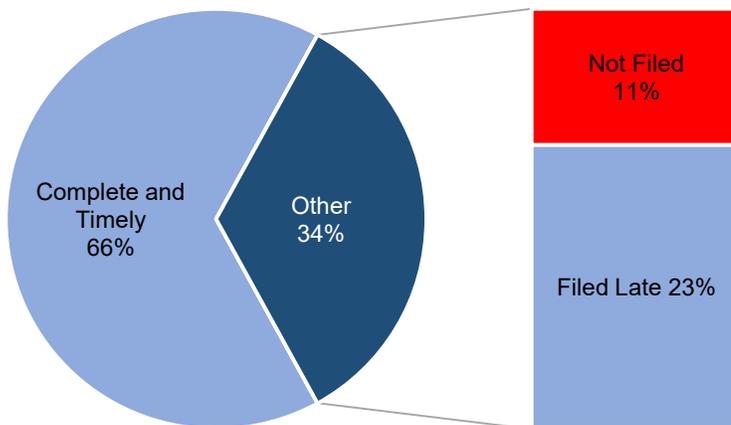
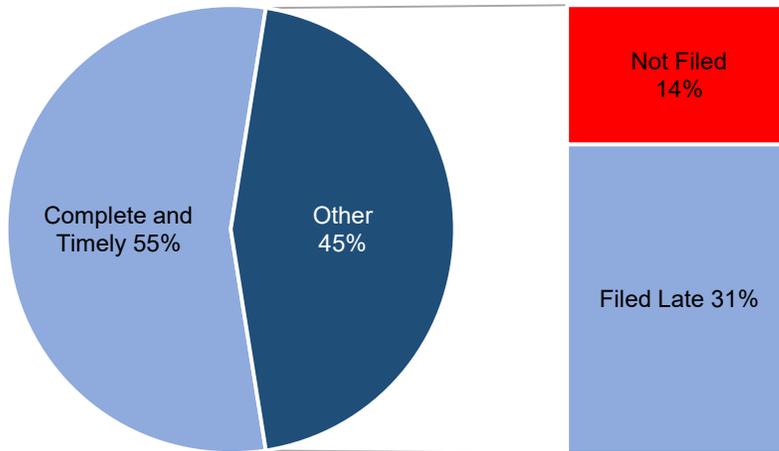


FIGURE 3

**Other Individuals Associated With the City
Annual Financial Disclosures
2017 and 2018**



While the code of ethics states the Mayor should provide a list of additional required filers to the Secretary by December 31 each year, the Secretary told us that he did not receive any lists from the Mayor during our audit period. Additionally, City officials had no procedures in place to identify individuals hired or promoted into required filer positions between March 15 and December 31 each year so that they may be notified of the requirement to file within 30 days. The Office of Public Integrity’s executive assistant (assistant) assisted the Secretary by compiling a list of officers and employees holding positions required to file disclosure statements in accordance with the code of ethics and provided the list to the Secretary.

In 2017, of the 222 individuals required to file in accordance with the code of ethics, we found that six were not notified of their requirement to file. Of these six required filers, three were not on the list of required filers prepared by the assistant and three were promoted into required filer positions after the list was prepared. The assistant and the Secretary were not aware of individuals who were promoted into required filer positions during the year. Therefore, the Secretary was unaware that he should notify them of their requirement to file a disclosure statement.

Similarly, in 2018, four of 199 required filers were not notified of the filing requirement. Of the four, three were not on the list prepared by the assistant and one was promoted into a required filer position after the list was prepared. The

Secretary was unable to provide an explanation for the remaining 40 disclosure statements that were not filed. He adhered to the administrative requirements imposed upon him by the Council and Ethics Board.

The Secretary notified required filers of their obligation to file a disclosure statement each year via email and mail. Required filers submitted their completed forms to the Office of Public Integrity. The Secretary told us that if a required filer has not filed by the deadline, or filed a disclosure statement that did not answer all the questions, the assistant follows up via email, mail or telephone. We obtained and reviewed examples of these correspondences.

The Secretary told us that they do not have many deficient forms filed each year. The Secretary's belief that disclosure statements were mostly complete appeared to be, in part, due to the forms having yes or no check boxes for individuals to indicate applicability for each category of questions in the form. The Secretary said that he reviews the forms for completeness and conducts a basic review of filed disclosure statements to identify potential conflicts of interest based on his general knowledge of individual filers and City operations.

The other Ethics Board members did not review disclosure statements. The code of ethics requires the Mayor and Council President, or their designees, to review the content of disclosure statements from individuals under their jurisdiction to determine possible violations of ethical standards set forth in the code of ethics. The Secretary told us that, as the Mayor's designee, he is responsible for reviewing disclosure statements for possible violations of the code of ethics, including conflicts of interest.

The Secretary said that he reviews all disclosure statements, including those under the Council President's jurisdiction, and discusses any concerns with the Council President, who is an Ethics Board member. The Council President told us that the Secretary receives and reviews all disclosure statements and that other Ethics Board members, including herself, do not review disclosure statements.

The Secretary's disclosure statement was reviewed by Corporation Counsel, rather than the Mayor or the Council President. In addition, the disclosure statements of required filers did not include any notations, or other documentation, to show that they were reviewed. Furthermore, City officials did not establish or implement any procedures for reporting a summary of the filed disclosure statements or their contents to the Mayor, the Council President or other Ethics Board members.

Neither the Secretary, the Mayor, nor the Council President compared disclosed business interests to vendor payments or compiled a list of filers' outside business interests for the purchasing department to identify potential interests in contracts that would be prohibited by GML. Lack of procedures that require reviewing the submitted information reduces its usefulness.

Without careful review of the information reported on disclosure statements, and procedures to identify transactions that could pose a conflict of interest, taxpayers have less assurance that the City 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 Reviewed the Code of Ethics

In 2017, the Ethics Board reviewed and suggested changes to the code of ethics. Furthermore, in December 2017 the City Council amended sections of the code of ethics, including the list of required disclosure statement filers.

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

What Do We Recommend?

The City Council 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 every five years, and upon amendment to the code.
2. Have all Ethics Board members complete training on the provisions of law relating to conflicts of interest and ethics.
3. Require ethics compliance training for all officers and employees, including an overview of the code of ethics and whistle-blower protections.
4. Define expectations and responsibilities for the administration of the disclosure statement system, including identifying individuals hired or promoted into required filer positions mid-year, and the careful review of contents reported in the disclosure statements to identify interests that could pose a conflict of interest.
5. Visibly post the code of ethics in each City building.

The Mayor and City Council President, or their designees, should:

6. Obtain a list of vendors from the accounts payable department to reference during their review of the disclosure statements to help identify potential conflicts of interest and maintain a list of filers' outside business interests to supply to appropriate purchasing department personnel

...[A] review of the code of ethics... helps to ensure it adequately addresses the expected conduct for all officers and employees including the required standards stipulated by law.

for their use in identifying potential interests in contracts that would be prohibited by GML.

7. Carefully review the information contained on the disclosure statements to identify interests that could pose a conflict of interest.

The Mayor should:

8. Provide the Secretary with a list of additional required filers by December 31 each year.

The Ethics Board Secretary should:

9. Verify that all individuals covered by annual financial disclosure requirements file a timely disclosure statement.

Appendix A: City Code of Ethics Information

Figure 4: Required Code of Ethics Provisions^a and Other Ethical Considerations^b

Required Provisions	Included in the City'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	No
Political Solicitations	No
Posting and Distributing the Code of Ethics	No
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 5: Officers and Employees and Other Individuals Associated With the City Who Did Not File an Annual Financial Disclosure Statement

Job Title	2017	2018
Officers and Employees		
Application Services Manager	Not Filed	
Assistant Director of Parking	Not Filed	
Assistant Library Director III		Not Filed
Candidate for Mayor (4)	Not Filed	
Candidate for City Council (6)	Not Filed	
Chief of Police		Not Filed
Deputy Fire Chief (3)	Not Filed	
Legislative Aide – part-time (2)		Not Filed
Manager of Code Compliance	Not Filed	
Manager of Environmental Quality	Not Filed	
Manager of Planning	Not Filed	
Police Commander	Not Filed	Not Filed
Senior Property Clerk	Not Filed	
Other Individuals Associated With the City		
Board of Assessment Review (3)	Not Filed	
Board of Ethics	Not Filed	Not Filed
Downtown Enhancement District Advisory Committee	Not Filed	
Electrical Examining Board	Not Filed	Not Filed
Elevator Examining Board	Not Filed	
Elevator Examining Board (3)		Not Filed
Environmental Commission (4)	Not Filed	
Planning Commission	Not Filed	Not Filed
Rochester Public Library Board (2)	Not Filed	
Rochester Public Library Board		Not Filed
Zoning Board of Appeals (3)	Not Filed	
Zoning Board of Appeals		Not Filed

() represents the number of individuals that did not file a disclosure statement

Appendix B: Response From City Officials



City of Rochester

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Corporation Counsel

October 19, 2020

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Dear Ms. Landcastle,

The City of Rochester has reviewed the draft Report of Examination (S9-19-10) titled, *City of Rochester, Ethics Oversight*, which was issued by the Office of the State Comptroller (OSC) on September 2, 2020.

We appreciate the review of the City's ethics oversight and the opportunity to identify areas of improvement that will strengthen the City's ethics program. We share your view that strong ethics oversight protects against potential conflicts of interest, provides transparency, and build the public's confidence in local government and its leaders.

Please find below the City's response to the four findings as described in the *Report Highlights* section of the report. The City's Corrective Action Plan (CAP) in response to OCS's recommendations for improvement will be forthcoming no later than 90 days after the issuance of the final report as set forth in OSC guidance titled "Responding to an OSC Audit Report".

Finding 1: The Board of Ethics (Ethics Board) did not receive ethics training.

The City recognizes the importance of ethics training which is demonstrated by the City having an established ethics training program for new and current City employees. This training includes an overview of the City's code of ethics and Whistleblower protection policy. During the scope period the City provided regular monthly ethics training sessions to its employees.

As noted in the audit report, since the majority of the Board of Ethics members are volunteers, not City employees, this training was not made available to the board members during the audit scope period. It should be noted, however, that each new board member is provided a package of relevant materials by the Secretary of the Board which includes Section 2-18 of the City Charter and the board's adopted rules and

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EEO/ADA Employer



procedures. This information includes the City's Code of Ethics, the duties and responsibilities of the Board, and protocols on the administration of the City's financial disclosure process. In addition, the Chair, Secretary, and Corporation Counsel provide guidance and clarification to new board members as they begin their term of service and participate in the review and evaluation of incoming ethics complaints.

The City is confident that each board member is afforded the proper guidance and resources to effectively carry out their responsibilities. This is demonstrated by the fact the board is very active and responsive to matters brought before the board. The board reviewed numerous complaints and issued multiple advisory opinions on complex issues during the audit's scope period.

In response to this finding, the Secretary in coordination with the Law Department will design and deliver a formal training session to the current Board prior to December 31, 2020. Upon the appointment of new members, the Secretary will provide this training to each new member within 30 days of their appointment to the board.

Finding 2: City officials did not adequately administer the City's disclosure system that is intended to foster transparency and help identify conflicts of interest.

The City concurs with the importance of timely compliance by all City Council members, City officers and employees, and City boards and commission members. As noted in your report, notification procedures are in place and carried out by the Secretary of the Board to provide timely notice and reminders to those who are required to file. Once received, it then becomes the responsibility of the filer to comply within the established time frame. As noted in your audit, the City recognizes there is a percentage of filers who, for unknown reasons, submit their filings after the April 15 deadline. Although this isn't optimal, it is often times outside the control of the Board. Also, it should be noted for perspective, late filings were much more common than those who did not file.

As it relates to the small percentage of required filers who did not file during the scope period, the City recognizes the need for improvement and the importance of full compliance to properly adhere to the City Charter and minimize the risk of potential conflicts of interests. Further analysis of the filing data for the scope period determined the following:

- *Those employees that did not file were generally employees hired or promoted into filing positions after the April 15 deadline and not reported to the Secretary or employees that resigned or retired before submitting the required disclosure. Also, these filers included employees who filled newly created position titles not reported to the Secretary. It should be noted that although these filers were missed on the year of their hiring or promotion they were identified as required filers on the following year's updated filer list. This fact minimizes the risk of long term non-compliance by any specific filer.*

- *As it relates to volunteer Board and Commission members who did not file, this historically has always presented a challenge since these filers are not employed by the City and enforcement of compliance is more difficult. It should be noted that the majority of these boards are advisory with no binding authority which does reduce the risk of material conflicts of interest. Despite this fact, the City recognizes the importance of all groups adhering to the filing requirements and will continue its efforts to encourage compliance from this group of filers.*

In response, during 2019, the City amended its procedures to identify required filers by coordinating more closely with the Department of Human Resources Management which now generates a monthly report to the Secretary identifying employees who have been hired or promoted into required filing positions during each respective month. This change has improved the Secretary's ability to maintain a rolling updated filer list throughout the year thereby reducing the risk of required filers not filing.

Finding 3: Neither the Secretary, the Mayor nor the Council President compared disclosed business interests to vendor payments or compiled a list of filers' outside business interests for the purchasing department to identify potential interests in contracts that would be prohibited by New York State

The City acknowledges the importance of the financial disclosure statement in providing transparency and minimizing the risk of potential conflicts of interest. Historically, the review of required filer statements by the Secretary has been focused on ensuring the timely submission of properly completed financial disclosure statement as noted in the report. In addition, the disclosure statements have been made available to Council upon request and to the public through the Freedom of Information Law process. Any further analysis regarding business interests would be predicated on third party information that established a reasonable concern that a potential conflict of interest may have existed. In those instances, the filer's disclosure statement would be reviewed more closely by Corporation Counsel, City Council or the Board and the filer contacted for further clarification. As in all financial disclosure reviews, there exists a balance between transparency, protecting against conflicts of interest and the filer's financial privacy rights. The City's review process attempted to address all three of these issues in a prudent manner.

Based on this finding, the City will implement the recommended practice of comparing disclosed business interests to the City's vendor list to identify potential interests in contracts that may be prohibited by GML. If such contracts are identified, further inquiry will be made to determine if the contracts meet one of the one of the exceptions as set forth in the City Charter, Section 2-18(C)(2).

Finding 4: The Council did not have adequate procedures in place to ensure the list of required disclosure statement filers was complete or to identify individuals hired or promoted into required filer positions during the year.

Julie Landcastle, Chief Examiner
October 19, 2020
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As described in the City's response to Finding 2, additional procedures to identify individuals hired or promoted into required filer positions were implemented after the audit scope period and are currently followed each year to improve the real time accuracy of the City's required filer database.

In closing, the City would like to extend our appreciation to your staff for their dedication and professionalism throughout the audit process.

Very truly yours,

Timothy R. Curtin

Appendix C: 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 City officials, employees and Board members to gain an understanding of the governing and ethics oversight.
- We reviewed policies, procedures and City Council and Ethics Board minutes related to ethics.
- We reviewed all 371 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 Board during the audit period.
- We reviewed procedures to receive ethical complaints from the public, which are filed with the Ethics Board.
- We used our professional judgment to select a sample of 20 of 883 newly hired employees during our audit period, with no expectations of greater or lesser results, to determine if they attest to having received and reviewed the code of ethics.
- We used our professional judgment to select a sample of three buildings from a list of 50 City buildings. 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 City 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 City Council has the 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 City Clerk's office.

Appendix D: 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

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Division of Local Government and School Accountability
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