

City of Utica

Ethics Oversight

DECEMBER 2020



OFFICE OF THE NEW YORK STATE COMPTROLLER
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Report Highlights

City of Utica

Audit Objective

Determine whether City of Utica (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:

- Adequately administer the City's disclosure that is intended to foster transparency and help identify conflicts of interests.
 - Four Common Council (Council) member (20 percent), 17 officer and employee (29 percent) and 37 other required filer (41 percent) annual statements of financial disclosure (disclosure statements) were not filed.
 - Nine Council member (45 percent), 16 officer and employee (28 percent) and 29 other required filer (32 percent) disclosure statements were filed late and/or had questions left blank.
- Thoroughly review disclosure statements for conflicts of interest or completeness and file an annual report summarizing its activities and recommending changes to the code of ethics.

The Mayor did not post the conflict of Interest statute, as required.

Key Recommendations

- Ensure the Ethics Board verifies all annual financial disclosure filers file complete and timely disclosure statements that are carefully reviewed for potential conflicts of interest.
- Ensure the Ethics Board prepares an annual report summarizing its activities and recommendations for changes to the code of ethics and that the Mayor posts the conflict of interest statute.

City officials generally agreed with our recommendations and have initiated or indicated they planned to initiate corrective action. Appendix C includes our comment on an issue that was raised in the City's response letter.

Background

The City is located in Oneida County in the Mohawk Valley region of New York. The City is governed by the Council, composed of 10 elected Council members, one of whom serves as President.

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

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

Quick Facts

Population	62,235
Officers and Employees	507
Required Disclosure Statement Filers	
2017	84
2018	84

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 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 example, 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>

³ GML 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, which is responsible for receiving and reviewing the disclosure statements. The City adopted a code of ethics that provides general authority for the Ethics Board and the Corporation Counsel to ensure that the financial disclosure statements are filed and complete.

In addition, the City code of ethics generally provides that the Mayor is to distribute a copy of the code of ethics to each officer and employee before entering upon the duties of their office or employment. However, the code of ethics does not require officers and employees to periodically attest to receiving and reviewing the code of ethics.

The Code of Ethics Complied With GML but the CEO Did Not Post the Conflict of Interest Statute

The Council adopted a code of ethics, which was posted on the City website. The code of ethics included all four statutorily required provisions set forth in GML.⁵ While the CEO was required to visibly post certain sections of GML in each City building, we found that the statutory provisions were not posted in two of the three buildings tested.

For one building tested, the civil service secretary sent a request to the Police Chief to post the statute in the Police Department building. The Police Chief told us that he instructed an employee to post the statute, but the employee failed to do so.

Although the Police Chief received a request to post the statute, it is ultimately the Mayor's responsibility, as CEO, to ensure the statute was posted. For the other building tested, the Mayor told us that he was aware of the requirement to have the statute posted but that it may have been removed in error.

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

The City Did Not Provide Ethics Training

City officers and employees did not receive ethics compliance training, such as an overview of the code of ethics and whistleblower protection. In addition, two Ethics Board members told us that they did not receive similar training. In an effort to help ensure proper ethics oversight, the City may wish to have 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.

While the City provides each new officer and employee a copy of the code of ethics as part of the employee handbook, City officials did not periodically distribute the code of ethics to officers and employees.

Although not required by law, the Council could reinforce code of ethics awareness of officers and employees by periodically distributing the code of ethics, and having officers and employees attest in writing to their review of the code of ethics at the time of their hire, election or appointment and at least once every five years. They could also distribute the code of ethics to all officers and employees whenever the code of ethics is amended.

Unless the Council vigorously enforces the code provisions, reinforces employee awareness of the code of ethics and ensures that the conflict of interest statute is posted in each building, there is a higher risk that officers' and employees' actions 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

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

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.

Although not specifically required by the City code of ethics, the Ethics Board should meet at least once a year to review the filed disclosure statements. As part of its review, the Ethics Board should verify all annual disclosure statements are filed on time, complete and address actual or implied conflicts of interests identified in the disclosure statements, if any.

The City's code of ethics identifies certain individuals and positions that are required to file a financial disclosure statement. For example, the code of ethics lists such positions in an appendix and states that the appendix can be amended by Council resolution, as needed. In addition, the code of ethics provides that the Ethics Board may assist the Council in determining which individuals hold policymaking positions.

Completed disclosure statements are to be filed with Corporation Counsel by May 15 each year, unless an extension is requested by the filer and granted by the Ethics Board. City officers and employees who are hired or promoted into required filer positions after April 15 are to file their disclosure statements within 30 days of the date the change becomes effective.

The City's code of ethics provides for the Ethics Board to make the disclosure statement forms available to required filers, receive and review completed disclosure statements, and act as the repository for completed disclosure

statements. However, the code of ethics specifies that “such duties are to be performed, in the first instance, by Corporation Counsel, as agent to the Ethics Board.”

The Ethics Board may review the procedures and records of the Corporation Counsel related to these functions. If a required filer files a deficient disclosure statement, Corporation Counsel is to notify the individual in writing of the failure to file or detail the deficiency and provide a 15-day period to file or correct any deficiencies. If the individual does not comply, Corporation Counsel is to send a notice of delinquency to the individual, the individual’s appointing authority and the Ethics Board.

Further, the Ethics Board should prepare an annual report to the Mayor and Common Council summarizing its activities and recommending changes to the code of ethics. The Corporation Counsel shall provide legal counsel to the Ethics Board and the Ethics Board can request support staff assistance from the Council or Mayor in furtherance of its duties and responsibilities.

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

The Ethics Board Chair told us that the Ethics Board met twice in 2017 and three times in 2018. However, the Ethics Board Chair was only able to provide us with supporting documentation showing that the Ethics Board met once in 2017. The Ethics Board did not adequately administer the City’s disclosure system by ensuring all financial disclosure statements were actually filed, filed on time or complete.

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

The code of ethics specifies that the Mayor and Council are assigned responsibility for administering the disclosure statement system to “the Ethics Board, generally, and Corporation Counsel, in the first instance.” However, neither the Ethics Board nor Corporation Counsel ensured that all officers and employees required to file a disclosure statement in 2017 and 2018 submitted a timely and complete disclosure statement. In 2017 and 2018, 65 percent of Council member (Figure 1), 57 percent of officer and employee (Figure 2) and 73 percent of other required filer (Figure 3)⁶ disclosure statements were not filed, filed late and/or had questions left blank.

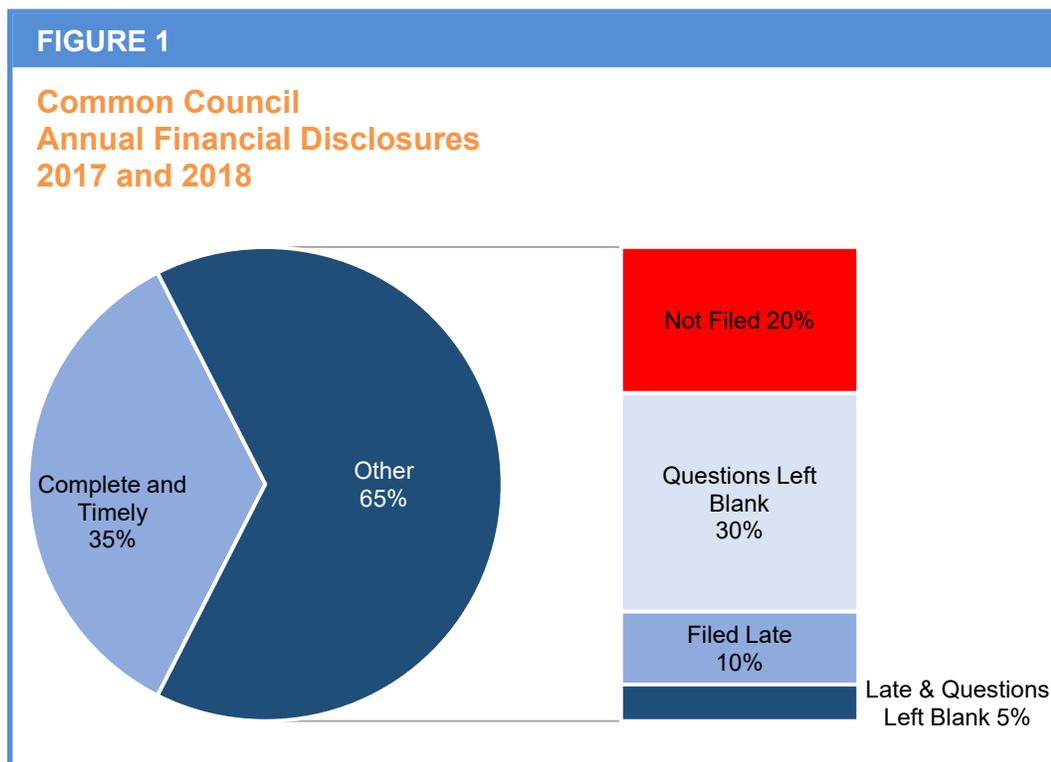
We found that a majority of required disclosure statements were not filed, filed late and/or had questions left blank.

⁶ The City code of ethics specifies the following other required filers: members of the Board of Assessment and Review, Civil Service Commission, Electrical Licensing Board, Ethics Board, Examining Board of Plumbers, Golf Commission, Planning Board, Scenic and Historic Preservation Commission, Urban Renewal Agency and the Zoning Board of Appeals.

In 2017, 10 Council members were required to file disclosure statements. However, two did not file, two filed disclosure statements with questions left blank, one filed late and one filed late with questions left blank. In 2018, 10 Council members were required to file. However, two did not file, four filed disclosure statements with questions left blank and one filed late.

In 2017, 28 officers and employees were required to file. However, 10 did not file, two filed disclosure statements with questions left bank, five filed late and one filed late with questions left blank. In 2018, 30 officers and employees were required to file. However, seven did not file, three filed disclosure statements with questions left bank and five filed late.

In 2017, 46 other individuals associated with the City were required to file. However, 20 did not file, three filed disclosure statements with questions left blank, seven filed late and six filed late with questions left blank. In 2018, 44 other individuals associated with the City were required to file. However, 17 did not file, 10 filed disclosure statements with questions left blank, two filed late and one filed late with questions left blank.⁷



⁷ Refer to Appendix A, Figure 5, for details on individuals who did not file in 2017 and 2018.

FIGURE 2

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

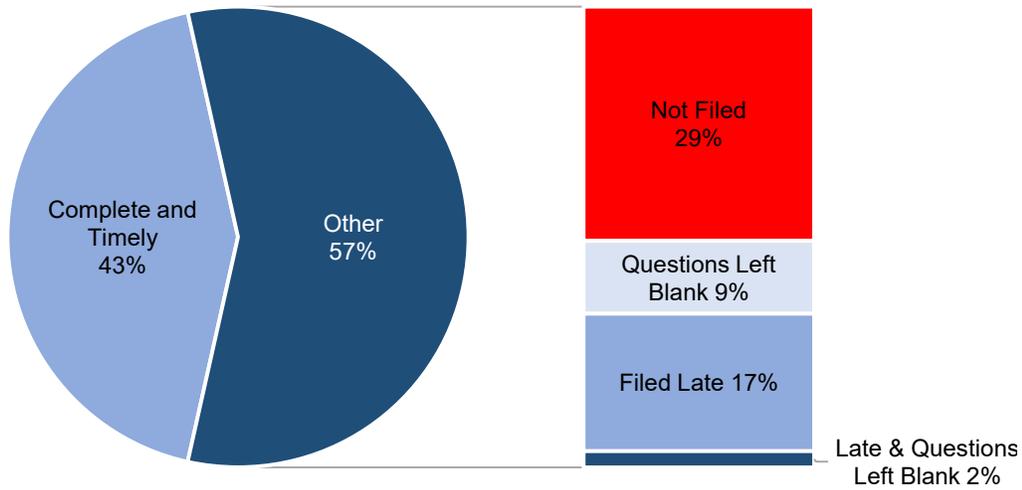
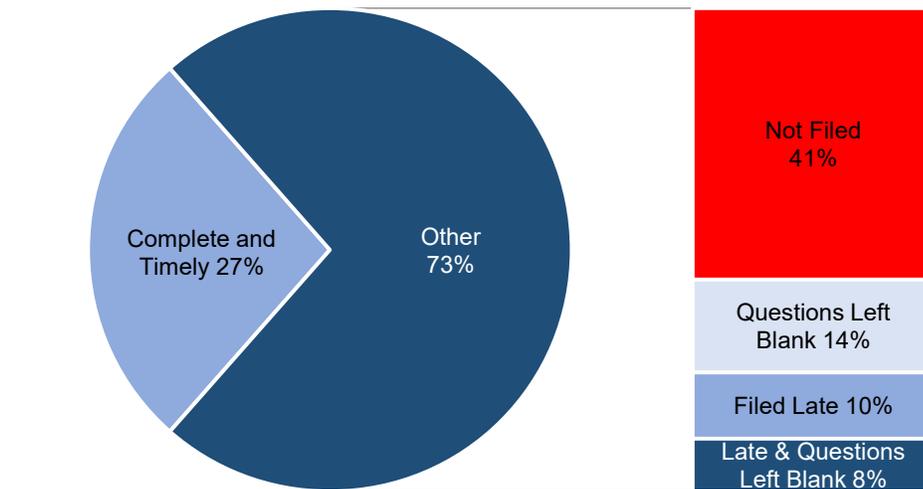


FIGURE 3

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



An Assistant Corporation Counsel (Assistant Counsel), an Ethics Board member and the Ethics Board Chair told us that the Assistant Counsel and a Corporate Counsel secretary (secretary) maintained a list of individuals required to file disclosure statements each year.⁸ The Assistant Counsel provided a copy of the list to the City Clerk, who notified the Assistant Counsel of any individuals hired, appointed, promoted or elected into a required filer position during the year. The secretary mails disclosure forms to all required filers identified on the list and the completed disclosure statements are submitted to the Corporation Counsel's office.

The secretary told us that she relies on the Assistant Counsel to notify her of any individuals who did not submit their disclosure statements. Upon such notification, the secretary mails notices to those individuals who did not file, reminding them of their obligation to file a disclosure statement, and emails department heads notifying them of those individuals who did not file. The Assistant Counsel told us that certain required filers still do not file a disclosure statement after being notified and thus not all required filers filed disclosure statements.

We identified 58 individuals who did not file disclosure statements in 2017 and 2018.⁹ In 2017, 32 individuals did not file disclosure statements. Of those who did not file, 25 individuals were included on the Corporation Counsel's list of required filers and notified of their requirement to file. Seven individuals were not included on the Corporation Counsel's list and not notified of their requirement to file. The Assistant Corporation Counsel told us that three individuals were accidentally excluded from Corporations Counsel's list of required filers, and four were intentionally excluded because the Ethics Board and Assistant Counsel proposed having them removed from the list of required filers.

In 2018, 26 individuals did not file disclosure statements. Of those that did not file, 17 individuals were included on the Corporation Counsel's list of required filers and were notified of their requirement to file. Nine were not notified of their requirement to file because they were not included on the Corporation Counsel's list. Of the nine who were not notified, three were accidentally excluded from Corporations Counsel's list filers, and six were intentionally excluded because the Ethics Board and Assistant Counsel proposed having them removed from the list of required filers.

The Ethics Board Chair and the Assistant Counsel told us that all individuals on the Corporation Counsel's list were notified of their responsibility to file a disclosure statement but certain individuals did not file even after being sent letters reminding them of their obligation to file. However, we found that not all

⁸ Corporation Counsel designated an Assistant Corporation Counsel who is responsible for providing legal counsel to the Ethics Board.

⁹ Including 14 individuals who did not file a disclosure statement in both years

individuals holding positions listed in the code of ethics appendix were included on the Corporation Counsel's list of required filers and not notified of their requirement to file.

In addition, the Ethics Board Chair and Assistant Counsel told us that they submitted recommended changes to appendix to the Council during our audit period, but Council had not yet acted on these proposed changes.¹⁰ The Assistant Counsel told us that they provided the Ethics Board with the filed disclosure forms. The Ethics Board Chair told us that Ethics Board members, as a group, reviewed the disclosure statements for completeness and potential conflicts of interests and that they discuss the contents of individual disclosure statements, as deemed necessary.

Our review of all 110 disclosure statements filed in 2017 and 2018 by required filers revealed that 33 (30 percent) of those filed had questions left blank.

The City's annual statement of financial disclosure requires the filer to sign a declaration that states "I hereby certify, under penalties of perjury, that the information disclosed on this form is true and complete."

We recognize that an individual who leaves one or more questions blank on the disclosure statement, may have done so because the question was not applicable to that individual. However, without a definitive response to each question, it remains unclear to a reviewer of the disclosure whether that particular section was not applicable or the filer chose not to provide the information.

For example, the Commissioner of Urban and Economic Development's 2017 and 2018 disclosure statements did not include the following:

- Other income received including teaching income, lecture fees, consultant fees, contractual income, or income which you continued to receive from past employment or any other income of any nature for you, your spouse and dependent children.
- Third-party reimbursements, gifts and honoraria for travel related expenditures in excess of \$250 for any matter that relates to your official duties.
- Interest in contracts of you, your spouse or your dependent children involving the City or any City Agency.

The City's annual statement of financial disclosure requires the filer to sign a declaration that states "I hereby certify, under penalty of perjury, that the information disclosed on this form is true and complete."

¹⁰ Proposed changes to the appendix included the removal of the following positions required to file disclosure statements: Development Administrator, Disbursement Officer, Registrar of Vital Statistics and the Deputy Registrar of Vital Statistics and Board of Estimate and Apportionment members. The City Council passed a resolution in June 2019 omitting the titles Registrar of Vital Statistics and Deputy Registrar of Vital Statistics from the requirement to file a disclosure statement. However, the resolution did not omit the Development Administrator, Disbursement Officer or Board of Estimate and Apportionment members.

-
- Debts of you, your spouse and dependent children in excess of \$5,000. (inclusion exceptions are listed on the statement).
 - Any outside employment, occupation, trade, business, or profession held by the individual, spouse or dependent children. (for 2018 only).

Not completing a disclosure statement in its entirety could be a misrepresentation to the Ethics Board and creates a risk that potential conflicts could go undetected. Although filers certify to disclosure statement completeness, to avoid an incomplete filing or misunderstanding, when a question does not apply, the filer should be required to write “none” or “not applicable” on the disclosure statement and clarify on the form such requirement.

Ethics Board members told us that during their review of disclosure statements they identify any potential or actual conflicts of interests using their general knowledge of each individual and City operations and that Ethics Board members discuss any potential or actual conflicts noted. The Ethics Board Chair told us that Ethics Board members do not make notations on the disclosure statements during their review because they do not want to mark up a legal document.

Although not required to do so, the Ethics Board did not compare disclosed business interests to vendor payments or compile 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 Did Not Review the Code of Ethics or Prepare an Annual Report

The Ethics Board did not review the code of ethics or prepare an annual report to the Mayor and Council summarizing its activities and recommending changes to the code of ethics during our audit period. The Ethics Board prepared an annual report in May 2016 summarizing the Ethics Board’s activities in 2015 but there was no indication that they reviewed the code of ethics. The Ethics Board Chair did not provide a specific reason why the Ethics Board did not review the code of ethics or prepare an annual report in 2017 or 2018.

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

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

conduct for all officers and employees including the required standards stipulated by law.

What Do We Recommend?

The Common 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 once every five years, and upon amendment to the code.
2. Have Ethics Board members complete training on the provisions of law relating to conflicts of interest and ethics.
3. Require ethics training for all officers and employees, including an overview of the code of ethics and whistle-blower protections.
4. Visibly post the code of ethics in each City building.
5. Develop procedures to provide for a more thorough and meaningful review of the contents of financial disclosure statements in an effort to better identify transactions that could pose conflicts of interest.
6. Review or request the Ethics Board to review the code of ethics, at least every five years or sooner, if deemed necessary.

The Mayor should:

7. Visibly post GML Sections 800-809 of the conflict of interest statute in each City building.

The Ethics Board should:

8. Verify that all individuals covered by annual financial disclosure requirements file a complete and timely disclosure statement and monitor the performance of individuals acting on its behalf.
9. Obtain a list of vendors from the accounts payable department to reference during its 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 for their use in identifying potential interests in contracts that would be prohibited by GML.

-
10. Carefully review information contained on the disclosure statements to identify interests that could pose a conflict of interest.
 11. Prepare an annual report for the Mayor and Council summarizing its activities and recommending changes to the code of ethics.

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	No
Establishing a Board of Ethics	Yes
Gifts	Yes
Interests in Contracts	Yes
Nepotism	No
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	No
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: Common Council Members, Officers and Employees, and Other Individuals Associated With the City Who Did Not File Annual Financial Disclosure Statements

Job Title	2017	2018
Common Council		
Council Member (2)	Not Filed	Not Filed
Officers and Employees		
Budget Director	Not Filed	Not Filed
Chief Building Inspector	Not Filed	
Deputy City Clerk		Not Filed
Deputy City Engineer	Not Filed	
Deputy Commissioner of Parks		
Deputy Commissioner of Public Works	Not Filed	
Deputy Registrar of Vital Statistics	Not Filed	Not Filed
Development Administrator	Not Filed	Not Filed
Disbursements Officer	Not Filed	Not Filed
Fire Chief		Not Filed
First Assistant to Corporation Counsel	Not Filed	
Police Chief	Not Filed	
Registrar of Vital Statistics	Not Filed	Not Filed
Other Individuals Associated With the City		
Board of Assessment Review		Not Filed
Board of Contract and Supply		
Board of Estimate and Apportionment (2)		Not Filed
Board of Ethics (3)	Not Filed	
Board of Ethics (2)		Not Filed
Civil Service Commission	Not Filed	
Civil Service Commission (2)		Not Filed
Electrical Licensing Board (3)	Not Filed	
Electrical Licensing Board (2)		Not Filed
Golf Commission (4)	Not Filed	
Golf Commission (3)		Not Filed
Planning Board Member (4)	Not Filed	
Planning Board Member (2)		Not Filed
Scenic and Historic Preservation Commission (3)	Not Filed	
Scenic and Historic Preservation Commission		Not Filed

Urban Renewal Agency

Not Filed

Zoning Board of Appeals

Not Filed

Zoning Board of Appeals (2)

Not Filed

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

Appendix B: Response From City Officials



CITY OF UTICA

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APPENDIX B: RESPONSE FROM CITY OF UTICA OFFICIALS

The following response to the Ethics Oversight for the City of Utica is also being submitted as a Corrective Action Plan.

FINDING: THE CITY DID NOT PROVIDE ETHICS TRAINING.

Audit recommendation:

Best practice requires all public officers and employees to attest in writing to the receipt and review of the Code of Ethics at the time of their elections or appointments, and at least once every five years and upon amendment to the Code.

Response:

Presently, every employee of the City of Utica receives the Employee Handbook which is provided by Civil Service, and which contains the Code of Ethics and Whistleblower Protection in Section 500.18. Each employee signs an acknowledgment that they received the handbook and has read, and/or will read the contents.

Presently all members of the Common Council take an oath of office when he/she is sworn in which he/she swears to uphold the Constitution of the United States and the Constitution of New York State and receives Code of Ethics training upon taking office.

Each Public Officer/Board Member takes an Oath of Office to uphold the Constitution of the United States and the Constitution of the State of New York and swears to the same upon signing the Book of Oaths before the City Clerk.

Corrective Plan of Action:

The City of Utica Code of Ethics will be amended through the City's Board of Estimate Apportionment to require all public officers/board members and employees attest in writing to the receipt and review of the Code of Ethics at the time of their election and appointment and at least once every five years, and upon any amendment to the Code.

The City will incorporate Code of Ethics training into their annual training presently provided to all employees each calendar year in October to ensure all employees are provided Ethics training every five-years.

Audit recommendation:

Have Ethics Board members complete training on the provisions of law relating to conflicts of interest.

Response:

Training was provided to the Ethics Board members, along with the Common Council members in 2016 by NYCOM, New York Conference of Mayors, at which time the information provided to the Board Members was utilized to create a packet for oncoming members to provide them with Ethics training. Each new board member is provided this packet for review as to the City Code of Ethics and provisions of law associated therewith.

See Note 1 Page 21

Corrective Plan of Action:

In-coming Ethics Board appointments will be required to take the on-line Municipal Ethics training provided by NYCOM and participate in the City Code of Ethics annual training provided by the City of Utica which will include an overview of ethics and whistle-blower protections.

FINDING: THE CODE OF ETHICS COMPLIED WITH GML BUT THE CEO DID NOT POST THE CONFLICT OF INTEREST STATUTE.

Audit recommendation:

Visibly post New York State General Municipal Law, Sections 800-809 in each municipal building.

Corrective Plan of Action:

Section 800-809 has been posted in all of the City of Utica municipal buildings and proof of posting has been required, including a photograph of the postings throughout the 13 municipal buildings.

Photographs documenting the postings have been submitted to the Mayor's Assistant's e-mail for documentation.

Annually, the Civil Service Office updates several postings in the City of Utica municipal buildings and will include this Section with their annual mandatory postings to ensure that this Section is posted.

FINDING: IT IS THE RESPONSIBILITIES OF THE BOARD OF ETHICS FOR REVIEWING THE CODE OF ETHICS AND DISCLOSURE STATEMENTS. THE ETHICS BOARD DID NOT ADEQUATELY MONITOR THE FILING OF DISCLOSURE STATEMENTS.

Response:

The City of Utica does have a procedure in place with the Corporation Counsel's Office and the Ethics Board for distributing the financial disclosure statements. The distribution is completed in February of each year. The distribution list is monitored by the Corporation Counsel's Office and the receipt of completed financial disclosure statements is also monitored by Corporation Counsel staff. A list of received disclosures is disseminated to the Ethics Board for review.

The Ethics Board does review the financial disclosure statements.

Corrective Plan of Action:

The Ethics Board has taken notice that these forms will not be accepted with blanks, non-applicable or n/a should be placed in the appropriate spaces. Corrective action is that upon disseminating the forms, the cover letter will indicate that the Ethics Committee will not accept and will reject any and all disclosures that contain any blanks.

The Common Council by Resolution dated June 5, 2019, Appendix A to §2-86 of the Utica City Code, struck and eliminated from the City of Utica Table of Organizations and Article IV of the New York Public Officer's Law certain positions that were required to file the annual Statement of Financial Disclosure. This Resolution has been distributed to the Ethics Board and the Corporation Counsel's Office for future distribution of the annual Statement of Financial Disclosures. This requires 43 Officers and Employees and Members of the following Boards:

Board of Assessment and Review,
Golf Commission,
Planning Board,

Zoning Board of Appeals,
Scenic and Historic Preservation Commission,
Examining Board of Plumbers,
Civil Service Commission,
Board of Contract and Supply,
Board of Estimate & Apportionment,
Electrical Board, and
Board of Ethics.

Also the following Officers and Employees of Local Agencies are required to file:

Utica Renewal Agency,
Utica Industrial Development Agency, and
Municipal Housing Authority.

A “more user-friendly” form of the Financial Disclosure Statement will be drafted and distributed as a pdf to those required to complete. The forms will be made available on the City of Utica Website to download and complete. Presently the 2020 Financial Disclosure Statement is available on the City of Utica website under Government/Board of Ethics.

A list of the appointed Boards will be circulated to the Ethics Committee and the Law Department upon each appointment/reappointment by the Mayor’s Office to ensure completion of the required Financial Disclosure form.

Audit recommendation:

Develop procedures to provide for a more thorough and meaningful review of the contents of financial disclosure statements in an effort to better identify transactions that could pose conflicts of interest.

Response:

Presently, the Board reviews any potential conflicts of interest disclosed on all financial disclosure statements, however they have not had any reference materials for assistance.

As a follow up measure, a reminder that the form is outstanding is mailed to all person(s) required to file if their disclosures and have not done so.

Corrective Plan of Action:

All financial disclosures submitted to the Board of Ethics will be reviewed with a list of the City of Utica Vendors for that year. The Comptroller’s office will provide the vendor to the Corporation Counsel’s Office annually in February.

FINDING: THE ETHICS BOARD DID NOT REVIEW THE CODE OF ETHICS OR PREPARE AN ANNUAL REPORT.

Corrective Plan of Action:

The Ethics Board shall prepare an annual report for the Mayor and the Common Council summarizing its activities and recommending changes to the Code of Ethics, if appropriate. This report shall be prepared and submitted for the Council's first meeting in December, annually.

This report will be disseminated via e-mail to the Mayor and all Common Council members by the Ethics' Board Chair and to the Corporation Counsel's office, who is responsible for maintaining the Ethics' Board files.

Sincerely,

Mayor Robert M. Palmieri

Appendix C: OSC Comment on the City's Response

Note 1

Although the Mayor indicates in the response that Ethics Board members receive ethics training upon taking office, the Ethics Board members we spoke with said they did not receive ethics training or an information packet.

Subsequent to our exit discussion, we requested that City official provide us with supporting documentation for ethics training attendance and the packet provided to new Ethics Board members. Officials only provided us with an agenda for an upcoming training in 2020.

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 City officials, employees and Board members to gain an understanding of the governing and ethics oversight.
- We reviewed policies, procedures, City Common Council and Board minutes related to ethics.
- We reviewed all 110 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 consist of submitting complaints with the Corporation Counsel's office, which forwards the complaint to the Board.
- We used our professional judgment to select a sample of three buildings from a list of 55 City buildings provided by the Deputy Comptroller. 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 Common Council 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 Common Council to make the CAP available for public review in the City 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

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

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

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