

# Town of Colonie

## Ethics Oversight

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DECEMBER 2020

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

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# Report Highlights

## Town of Colonie

### Audit Objective

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

### Key Findings

Town officials did not meet certain ethics oversight standards:

- The Town's code of ethics did not address one of the four statutorily required provisions within Article 18 of New York State General Municipal Law (GML).
- 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.
  - 113 officer and employee (9 percent), and 21 other required filer (32 percent) annual statements of financial disclosure (disclosure statements) were not filed.
  - Two Town Board member (14 percent), 71 officer and employee (5 percent), and 25 other required filer (38 percent) disclosure statements were filed late and/or had questions left blank.

### Key Recommendations

- Update the code of ethics to address all four statutory requirements.
- Ensure that all annual financial disclosure filers file complete and timely disclosure statements that are carefully reviewed for potential conflicts of interest.

Town 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 Town's response letter.

### Background

The Town is located in Albany County in the Capital District 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 Attorney's office provides legal counsel to the Ethics Board.

#### Quick Facts

Population	81,591
Officers and Employees	933
Required Disclosure Statement Filers	
2017	712
2018	686

### Audit Period

January 1, 2017 – September 30, 2018

# Ethics Oversight

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## 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.<sup>1</sup>

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.<sup>2</sup> 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.<sup>3</sup> 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

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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.

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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.<sup>4</sup> 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 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 generally provides that the Employee Relations Department is to cause a copy of the code of ethics to be distributed to each officer and employee no later than October 31 each year and to newly appointed officers and employees within five days upon entering the duties of his/her office or employment. 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 Did Not Comply With GML but the CEO posted the Conflict of Interest Statute**

The Town Board adopted a code of ethics, which was posted on the Town's website. However, the code of ethics did not include a provision addressing future employment, one of the four statutorily required provisions set forth in GML.<sup>5</sup>

The Town Senior Attorney told us that Town officials were unaware of the requirement to include a provision for future employment.

The CEO visibly posted certain conflict of interest sections of GML in the three buildings we tested, as required.

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

<sup>5</sup> GML, Section 806, refer to Appendix A, Figure 4

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## **The Town Did Not Provide Ethics Training or Distribute the Code of Ethics Annually**

Town officers and employees did not receive ethics compliance training, such as an overview of the code of ethics and whistleblower protection. In addition, the Ethics Board did not receive similar training. In an effort to help ensure proper ethics oversight, the Town 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.

The Supervisor, Town Attorney and Senior Attorney told us that during orientation, the Human Resources Department provides all newly hired or appointed officers and employees the Town employee handbook, which includes the code of ethics, and that these individuals must attest to receiving the handbook.

We reviewed code of ethics attestations for 10 newly hired employees during our audit period to determine whether these employees attested to receiving the code of ethics. We found that one employee did not attest to receiving the code of ethics.

The Human Resources Director (Director) told us that she was unable to locate the attestation statement for this employee. However, the Director provided supporting documentation showing that the employee completed and submitted the disclosure statement during orientation, indicating that the individual was provided the employee handbook containing the code of ethics.

While the Supervisor and Town Attorney told us that any amendments to the code of ethics are usually provided to every department head through email, a copy of the code of ethics is not distributed to all officers and employees by October 31 each year, as required by the code of ethics. 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 reading the code and posting the entire code of ethics visibly in all Town buildings.

Unless the Town Board adopts a code of ethics that addresses each of the four required statutory provisions, vigorously enforces the code provisions and reinforces employee awareness of code of ethics there is a higher risk that officers' and employees' actions may violate the code of ethics and public assets could be subject to misuse.

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## 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.

Although not specifically required by the Town 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

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

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are filed on time, are complete and address actual or implied conflicts of interest identified in the disclosure statements, if any.

The Town code of ethics requires all officers and employees<sup>6</sup> to file an ethics certification (i.e., short form disclosure statement) each year. In addition, the Ethics Board is to identify, by title, which officers and employees are to file a long form disclosure statement each year. The short disclosure statement is a one-page, four-question document, while the long form is a nine-page financial statement disclosure document. Disclosure statement forms are to be supplied by the Employee Relations Department to those individuals required to file.

The code of ethics provides the disclosure statements are to be filed with the Ethics Board by January 31 each year, unless an extension is requested by the filer and granted by the Ethics Board. The code of ethics requires newly appointed officers and employees to file disclosure statements within 45 days after such appointment, and, in general, all candidates for Town elective office to file within 10 days after the last day allowed by law to file certain petitions or the date of nomination of candidacy.

Further, the code of ethics provides that the Ethics Board is to review completed disclosure statements. The Ethics Board is responsible for determining whether required filers failed to file, the disclosure statements contain deficiencies and/or reveal possible or potential violations of the code of ethics. The Ethics Board is to notify individuals in writing of any deficiency and afford them fifteen days to correct such disclosure statement.

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

An Ethics Board member and the Ethics Board Chair told us that the Ethics Board meets at least once a year to review disclosure statements and address any potential conflicts of interest. However, the Ethics Board did not adequately administer the Town's disclosure system by ensuring all required financial disclosure statements were actually filed, filed on time or complete.

We found that 17 percent 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 Town Board has generally assigned responsibility for administering the disclosure statement system to the Ethics Board. However, in 2017 and 2018, the Ethics Board did not ensure that all individuals required to file disclosure

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We found that 17 percent of the required disclosure statements were not filed, filed late and/or had questions left blank.

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<sup>6</sup> The Town code of ethics excludes seasonal employees within its definition of an employee.

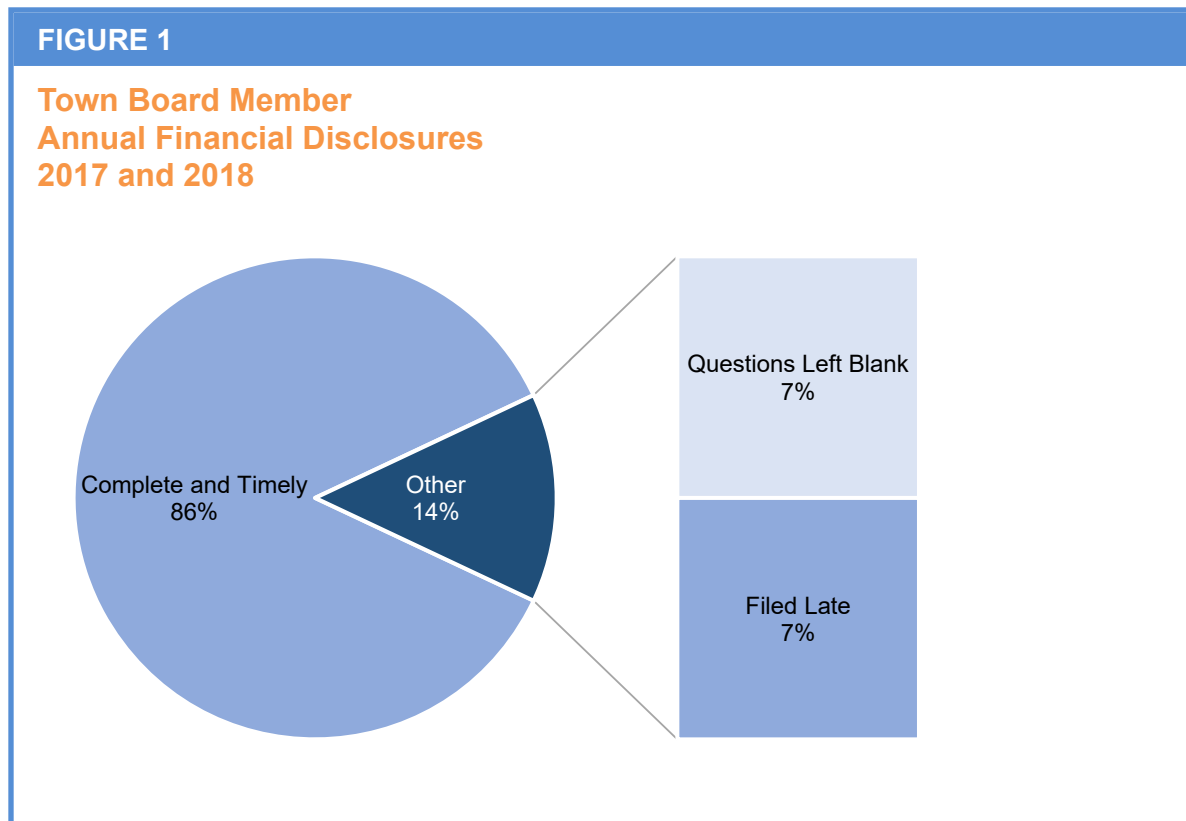


statements pursuant to the code of ethics (including five political candidates) submitted a timely and complete disclosure statement. In 2017 and 2018, 14 percent of Town Board member (Figure 1), 14 percent of officer and employee (Figure 2) and 70 percent of other required filer (Figure 3)<sup>7</sup> disclosure statements were not filed, were filed late and/or had questions left blank.

In 2017 and 2018 all seven Town Board members were required to file disclosure statements. In 2017, one member filed late. In 2018, one member filed a statement with questions left blank.

In 2017, 671 officers and employees were required to file disclosure statements. However, 47 did not file, 10 filed statements with questions left blank, 39 filed late and one filed late with questions left blank. In 2018, 647 officers and employees were required to file. However, 66 did not file, two filed statements with questions left blank and 19 filed late.

In 2017, 34 other individuals associated with the Town were required to file disclosure statements. However, 14 did not file and nine filed late. In 2018, 32 other individuals associated with the Town were required to file. However, seven did not file, 15 filed late, and one filed late with questions left blank.<sup>8</sup>

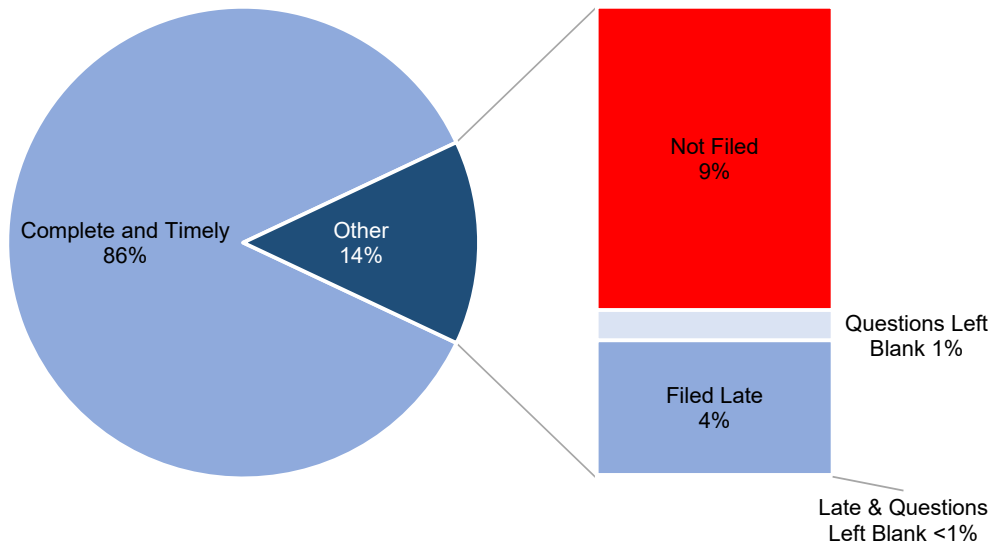


<sup>7</sup> Other required disclosure statement filers included the following individuals associated with the Town: members of the Conservation Advisory Council, Planning Board, Sign Review Board, Significant Environmental Areas Management Appeals Board, and Zoning Board of Appeals.

<sup>8</sup> Refer to Appendix A, Figure 5, for details on individuals who did not file in 2017 and 2018.

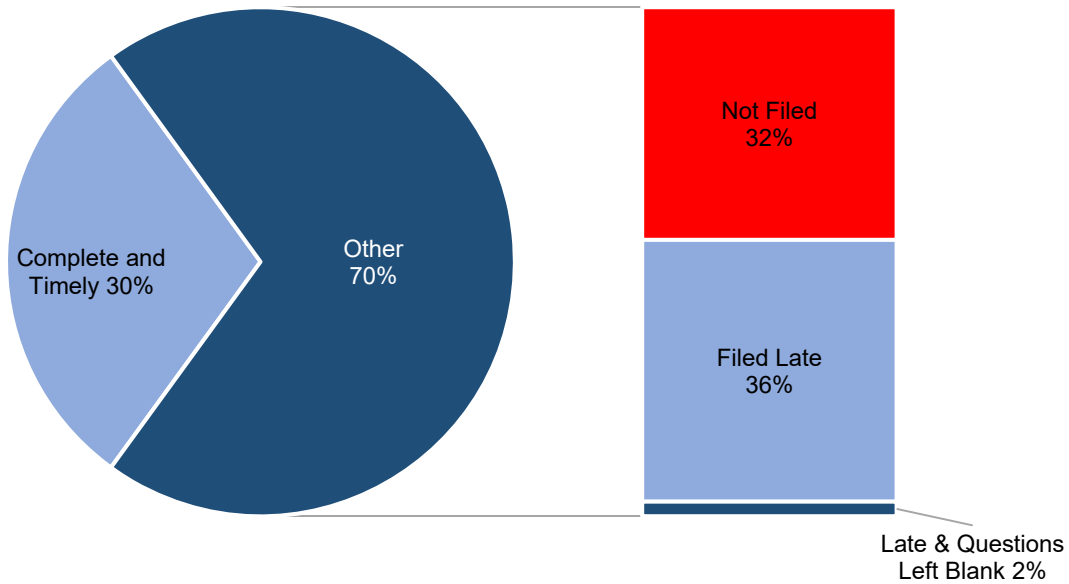
**FIGURE 2**

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



**FIGURE 3**

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



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We found that the procedures in place were inadequate to ensure that all required disclosures were submitted, collected and verified for completeness. The Town Attorney and the Senior Attorney told us that the Town Attorney's office maintains a list of the employees, by department, indicating the type of disclosure statement (short form or long form) each employee is required to file.

In addition, they told us that the Town Attorney's office uses the list to provide the appropriate disclosure statement forms to each department head to disburse to their employees. The disclosure statement forms state that the forms are to be completed and sent to the Town Attorney's office by January 31.

Ethics Board members told us that they rely on the Town Attorney's office to collect the disclosure statements and ensure all individuals have filed the appropriate disclosure statement. However, during our review, we found that 134 disclosure statements were not filed in 2017 and 2018.

Of the 134 disclosure statements not filed, 54 (40 percent) were for individuals included on the list of required filers, 31 (23 percent) were hired before the January 31 filing deadline and not included on the list of required filers and 49 (37 percent) were for newly hired or appointed individuals who assumed their duties after the January 31 deadline and not added to the list of required filers.

The Senior Attorney told us that the list of employees and the respective type of disclosure required had not been updated during our audit period and was not reviewed by anyone to ensure the list of required filers was accurate and complete. Therefore, the individuals who were not added to the list were not notified of their obligation to file a disclosure statement.

Ethics Board members told us they were unaware that required filers had not submitted statements until the statements were compiled for our audit. The Human Resources Director told us that some newly hired employees completed their disclosure statements immediately after orientation and submitted the disclosure statements to the Town Attorney's office. Newly hired employees who choose not to complete the disclosure statement during orientation were told that they have the responsibility to complete and submit the statement to the Town Attorney's office within 45 days.

In addition, the Ethics Board members told us that the Town Attorney's office distributes the filed disclosure statements equally among Ethics Board members for the Ethics Board's review and they review disclosure statements for completeness and return any incomplete statements to the Town Attorney's office for follow-up. Further, the Ethics Board members told us that the Town Attorney's office forwards incomplete statements received from the Ethics Board to the filers' respective department heads, so they can complete the disclosure statements.

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Our review of all 1,264 disclosure statements filed in 2017 and 2018 revealed that most disclosure statements submitted did not have questions left blank. However, 15 filers submitted disclosure statements with questions left blank. 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 statements whether that particular section was not applicable or the filer chose not to provide the information.

For example, the Water Maintenance Supervisor's disclosure statement did not include answers to the following questions:

- If you have any public employment, other than employment with the Town, list the employer, address and description of such employment.
- If your spouse is an appointed or elected member of any public board, committee or agency, list the public entity, its address and description of position held.
- If your spouse is an appointed or elected member of any public board, committee, commission or agency, list the public entity, its address and description of position held.
- Describe the terms of, and the parties to, any contract, promise, or other agreement between you and any person, firm, corporation, or other entity with respect to employment after you leave your current employment with the Town of Colonie.
- List each source of gifts in excess of \$1,000 received by you or your spouse or unemancipated child during the reporting period for which the statement is filed.

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. To avoid an incomplete filing or misunderstanding, when a question does not apply, the filer should be required to write "none", "not applicable" or check the "N/A" box, if provided, on the disclosure statement.

Ethics Board members told us that they review the filed disclosure statements for possible or potential conflicts of interest. 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

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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**

The code of ethics does not require the Ethics Board to conduct a review of the code of ethics and the Ethics Board did not review the code of ethics during our audit period. Had the Ethics Board reviewed the code of ethics, the Board may have become aware that the code of ethics did not address future employment, one of the four statutory requirements set forth in GML.

As a best practice, a review of the code of ethics, at least every five years or when deemed necessary, would help 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 Town Board should:

1. Adopt a code of ethics that addresses each of the four statutory requirements as set forth in GML and, if appropriate, include other ethical considerations and best practices.
2. Require ethics compliance training for all officers and employees, including an overview of the code of ethics and whistle-blower protections.
3. Have Ethics Board members complete training on the provisions of law relating to conflicts of interest and ethics.
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 Town building.
6. Have all officers and employees attest in writing to the receipt and review of the code of ethics at least every five years and upon any amendment to the code of ethics.
7. Review or request the Ethics Board to review the code of ethics, at least every five years or sooner, if deemed necessary.

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The code of ethics does not require the Ethics Board to conduct a review of the code of ethics...

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The Employee Relations Department should:

8. Ensure a copy of the code of ethics is distributed to each officer and employee no later than October 31 each year and to newly appointed officers and employees within five days upon entering the duties of his/her office or employment.

The Ethics Board should:

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. Verify that all individuals covered by annual financial disclosure requirements file a complete and timely disclosure statement.
11. Carefully review the information contained on the disclosure statements to identify interests that could pose a conflict of interest.

# Appendix A: Town Code of Ethics Information

**Figure 4: Required Code of Ethics Provisions<sup>a</sup> and Other Ethical Considerations<sup>b</sup>**

Required Provisions	Included in the Town's Code of Ethics?
Disclosure of Interests in Legislation Before the Local Governing Body	Yes
Future Employment	No
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	No
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 <sup>c</sup>	Yes

<sup>a</sup> GML, Section 806

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

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

**Figure 5: Town Officers and Employees and Other Individuals Associated With the Town Who Did Not File Annual Financial Disclosure Statements**

Job Title	2017	2018
<b>Officers and Employees</b>		
Administrative Aide	Not Filed	Not Filed
Animal Control Officer (2)		Not Filed
Animal Control Officer II		Not Filed
Assistant Vehicle & Traffic Prosecutor (2)		Not Filed
Building Inspector	Not Filed	Not Filed
Building Inspector Aide – part-time	Not Filed	
Buildings & Grounds Maintenance Worker (2)		Not Filed
Building Department Manager		Not Filed
Civil Engineer		Not Filed
Clerical Aide – part-time	Not Filed	Not Filed
Clerk to Town Justice		Not Filed
Code Safety Inspector (3)	Not Filed	
Confidential Administrative Aide to Supervisor – part-time		Not Filed
Custodial Worker	Not Filed	
Custodial Worker (2)		Not Filed
Custodial Worker – part-time (2)	Not Filed	
Emergency Medical Tech (3)	Not Filed	Not Filed
EMS Assistant Chief		Not Filed
Farmers Market Coordinator	Not Filed	
Heavy Equipment Coordinator	Not Filed	Not Filed
Highway Maintenance Worker (2)	Not Filed	
Highway Maintenance Worker (4)		Not Filed
Laborer	Not Filed	Not Filed
Legal Secretary		Not Filed
Library Clerk	Not Filed	
Library Aide – part-time		Not Filed
Library Receptionist	Not Filed	
Librarian		Not Filed
Librarian – part-time		Not Filed
Library Tech Assistant		Not Filed
Municipal Training Center Operator		Not Filed
Page – part-time		Not Filed
Page – part-time (2)	Not Filed	
Paramedic		Not Filed
Paramedic (4)	Not Filed	
Personnel Clerk	Not Filed	
Police Officer (5)	Not Filed	



Police Officer (8)		Not Filed
Police Officer – Detective		Not Filed
Police Officer – TSU		Not Filed
Principle Clerk		Not Filed
Principle Library Clerk		Not Filed
Public Safety Dispatcher (2)		Not Filed
Public Safety Dispatcher (3)	Not Filed	
Real Property Assessor		Not Filed
Recreational Maintenance Worker	Not Filed	Not Filed
Safety Assistant	Not Filed	
Sanitary Engineer		Not Filed
School Crossing Guard	Not Filed	
Senior Account Clerk Typist	Not Filed	
Senior Sewer Maintenance Worker		Not Filed
Senior Real Property Appraiser	Not Filed	
Sewer Maintenance Worker (2)		Not Filed
Sewer Treatment Plant Operator		Not Filed
Sewer Treatment Plant Operator Trainee (2)		Not Filed
Town Clerk		Not Filed
Typist (3)	Not Filed	Not Filed
Typist – part-time (4)	Not Filed	Not Filed
Water Treatment Plant Operator		Not Filed
<b>Other Individuals Associated With the Town</b>		
Conservation Council Advisory (8)	Not Filed	
Conservation Council Advisory (1)		Not Filed
Planning Board (2)	Not Filed	Not Filed
Sign Review Board (1)		Not Filed
Significant Environmental Areas Management Appeals Board (2)	Not Filed	
Significant Environmental Areas Management Appeals Board (1)		Not Filed
Zoning Board of Appeal (2)	Not Filed	Not Filed
<b>( ) represents the number of individuals who did not file a disclosure statement</b>		

# Appendix B: Response From Town Officials

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Paula A. Mahan  
Town Supervisor

## TOWN OF COLONIE

### TOWN ATTORNEY'S OFFICE

Memorial Town Hall  
534 New Loudon Road  
Latham, New York 12110

Phone (518) 783-2704 Fax (518) 786-7324  
Service by Facsimile Not Accepted  
*An Equal Opportunity Employer*

Michael C. Magguilli  
Town Attorney

October 7, 2020

Office of New York State Comptroller  
Division of Local Government and  
School Accountability  
110 State Street, 12<sup>th</sup> Floor  
Albany, NY 12236

**Re: Town of Colonie Ethics Audit, Report of Examination / S9-19-15**

Dear Sir or Madam:

Thank you for the opportunity to comment on the Draft Audit Report ("Report") submitted to our office. The Town of Colonie Attorney's Office ("Attorney's Office") welcomes the audit by the Office of New State Comptroller (OSC) and acknowledges the areas for improvement identified in the Report and appreciates the opportunity to provide our understanding of these items.

The Key Findings of the Report states that the Town's Code of Ethics does not address one of the four statutorily required provisions within Article 18 of New York State General Municipal Law (GML): the requirement to include a provision for future employment. The second item states the Board of Ethics did not adequately administer the Town's disclosure system. In the Audit Report, your office provided the Town with statistical numbers of Town employees/officers that either failed to file the disclosures, filed late and/or had questions left blank. We would like the opportunity to discuss these findings, as our records, compared to what is stated in the Report, has some discrepancies.

See Note 1 Page 19
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The Town agrees with the core Audit findings but would like to provide an explanation for its omission. First, the Town agrees that the Town Ethics Code does not address the provision within Article 18 of New York State General Municipal Law regarding future employment. The Town did not include a provision for future employment in its Ethics Code since the Town did not believe that such a provision was mandatory under the General Municipal Law.

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Office of New York State Comptroller  
Division of Local Government and  
School Accountability

**Re: Town of Colonie Ethics Audit, Report of Examination / S9-19-15**

October 7, 2020

Page Two.

Regardless of the foregoing, the Town of Colonie intends to follow the advice of the Comptroller's Office and intends to amend its Ethics Code to include a provision regarding limiting future employment by former Town employees.

With respect to the number of Town employees who either failed to file Disclosure Statements, filed them late, or filed the Statements with missing information, the Town believes it necessary to explain the process it employs to obtain compliance with the Financial Disclosure requirements of the Code.

First, the collection of Financial Disclosure Statements is a duty of the Town Attorney's Office. Each year, the Town Attorney's Office strives to obtain 100% compliance with the Ethics Code in a timely manner. The Town Attorney's Office sends out disclosure forms to all employees and appointees of each Town Department, Board and Committee in November of each calendar year, with a return date of January 31<sup>st</sup> of the following year. After January 31<sup>st</sup> of each calendar year, a review is performed by the Attorney's Office of outstanding forms, and notification is sent to the appropriate departments and/or individual employees, officers and appointees reminding them of the requirement to file the Disclosure Statement. This additional attempt is repeated in March of each year.

The Town of Colonie is somewhat unique in its Financial Disclosure requirements in that it seeks to obtain Disclosure Statements from each and every Town employee and appointee regardless of their position and regardless of whether they serve with or without pay and regardless of whether they serve on an active or inactive Board or Committee. As noted in the Audit Report, for 2018 this resulted in the Town sending out 686 Financial Discloser Long or Short Disclosure forms. Many of the forms that were not returned were from individuals who are volunteers who serve on Town Committees that meet only on occasion, if at all. Further, Town records show that 70 of the forms that were not returned were from employees who left Town service in the year in question.

Regarding the Audit Report's finding that some Disclosure forms are missing information, the following is the Town practice with respect to returned Financial Disclosure Forms. The Board of Ethics reviews all forms for a calendar year and meets to discuss their findings. If any forms need clarification, (ex: question left blank) the Attorney's Office is charged with notifying the appropriate persons that their form needs further information. It is the Attorney's Office practice to send a notice directly to the individuals in question either by inter-office mail, U.S. mail or email requesting the additional information. In the event this request for additional information goes unanswered, if the respondent is a Town employee the Attorney's Office then sends another copy of the Disclosure Form together with a copy of the

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Office of New York State Comptroller  
Division of Local Government and  
School Accountability

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October 7, 2020

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letter detailing the missing information, directly to the appropriate departments for the Administrative Aide to provide to the designated employee/officer; if the respondent is a Board or Committee member, a letter is sent directly to the individual in question followed by an attempt to reach the person by telephone.

Regardless of the foregoing, the Town of Colonie intends to follow the advice of the Comptroller's Office and intends to attempt to improve compliance with the Disclosure Form reporting requirements by amending the Town Ethics Code to reduce the number of appointees required to file Disclosure Forms to those appointed to essential or active Boards or Committees and by strengthening the consequences of failing to file a report or failing to file a complete report.

We look forward to further discussion regarding the Draft Audit Report findings, and to resolve the discrepancies found. We also will appreciate the chance to submit a corrective audit report (CAP) in response to the final audit report.

Thank you.

Sincerely on behalf of the Town  
Supervisor,

Michael C. Magguilli  
Town Attorney

cc.: Town Supervisor  
Town Board

## Appendix C: OSC Comment on the Town's Response

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### Note 1

We discussed our audit findings and methodology with the Town Attorney's office throughout our audit and during our exit discussion. Following our exit discussion, the Town Attorney's office contacted us to go over the list of individuals we identified as not filing a required disclosure statement. During that discussion, no discrepancies were identified.

## Appendix D: Audit Methodology and Standards

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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 members of the Ethics Board to gain an understanding of the governing and ethics oversight.
- We reviewed policies, procedures and Town Board and Ethics Board minutes related to ethics.
- We reviewed all 1,264 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 procedures to receive ethical complaints from the public.
- We used our professional judgment to select a sample of 10 of 82 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 seven Town buildings with offices provided by the Accounting Supervisor. 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.

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

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### **Regional Office Directory**

[www.osc.state.ny.us/sites/default/files/local-government/documents/pdf/2018-12/regional\\_directory.pdf](http://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](http://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](http://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](http://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](http://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](http://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](http://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](http://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](http://www.osc.state.ny.us/local-government/academy)

## Contact

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

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