



# City of Middletown

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## Payroll and Leave Benefits

2024M-26 | May 2025

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# Report Highlights

## City of Middletown

### Audit Objective

Determine whether City of Middletown (City) officials accurately paid employees' salaries, wages and benefits and properly accrued leave benefits.

### Key Findings

City officials did not accurately pay employees' salaries, wages and benefits, or properly accrue leave benefits. We reviewed payments and benefits totaling \$1.9 million and found exceptions totaling \$292,205, including potential overpayments totaling \$191,253. As a result, the City paid employees for time they did not work or accrue. For example,

- Two sewer treatment plant (STP) employees received \$91,492 for time they may not have worked because they were working at another municipality.
- City officials made \$99,761 in vacation buyout payments that were not in accordance with City collective bargaining agreements (CBAs).

### Key Recommendations

- Ensure employees worked the hours that they were scheduled to work and were paid for working.
- Establish City-wide payroll processing policies and written procedures that address the audit deficiencies.

City officials disagreed with certain aspects of our findings but indicated they have initiated or plan to initiate corrective action. Appendix B includes our comments on issues raised in the City's response letter.

### Audit Period

January 1, 2017 – November 30, 2018

We extended our audit period back to January 1, 2012 and forward to September 30, 2021 to review payroll payments and retirement benefits for two STP employees.

The release of this report was delayed while the matter was under review by other agencies.

### Background

The City is located in Orange County. The City is governed by a Mayor and a nine-member Common Council (Council). The Council is responsible for providing oversight of the City's financial operations. The Mayor is the chief executive officer and is responsible, along with other administrative staff, for the City's day-to-day administration.

The Treasurer is the chief fiscal officer and is responsible for establishing internal controls over the payroll process. The payroll coordinator is responsible for processing the City's biweekly payrolls. Time records and leave accruals are maintained by payroll clerks within respective departments.

#### Quick Facts

Audit Period	
Employees	350
Payroll	\$36.8 million
Balloon Payments	\$1.14 million

# Payroll and Leave Benefits

City officials made payroll payments totaling \$36.8 million during the audit period. We reviewed payments totaling \$1.4 million (3.9 percent) and determined \$184,114 had exceptions, including payments made to two City employees who also reported working at the Town of Crawford (Town) during the same hours; overpayments due to incorrect employee pay rates; and payments made without adequate documentation (signed timesheets, etc.) to support the wages paid. We also reviewed leave benefits valued at \$15,865 and determined exceptions with a value of \$8,330. These exceptions included overstated leave accrual balances. In addition, we reviewed balloon payments (e.g., payments for unused vacation, retroactive, night detail and legal settlements) totaling \$493,793 and found exceptions totaling \$99,761 with payments for unused leave accruals (Figure 1). As a result, the City paid employees for time they did not work or accrue.

**Figure 1: Payroll, Leave Benefits and Balloon Payments Reviewed**

	Reviewed	Exceptions
<b>Payroll</b>		
Dual Employment Payments	\$1,087,436	\$91,492
Employee Pay Rate Accuracy	168,063	396
Time & Attendance Records		
Supporting Wages Paid	174,089	92,226
<b>Total Payroll</b>	<b>\$1,429,588</b>	<b>\$184,114</b>
<b>Leave Benefits</b>		
Leave Accruals	<b>\$15,865</b>	<b>\$8,330</b>
<b>Balloon Payments</b>		
Payments for Unused Leave Accruals	\$396,322	\$99,761
Retroactive Payments	15,384	0
Night Detail Payout	23,155	0
Legal Settlement Payout	58,932	0
<b>Total Balloon Payments</b>	<b>\$493,793</b>	<b>\$99,761</b>
<b>Total Payroll, Leave Benefits and Balloon Payments</b>	<b>\$1,939,246</b>	<b>\$292,205</b>

## How Do Officials Ensure Employees Are Paid Accurately?

Salaries, wages and benefits typically represent a significant portion of a city's annual expenditures. As such, city officials must ensure employees are only paid for time worked, and compensation is made as set forth in council authorizations, collective bargaining agreements (CBAs) and individual employment contracts.

To ensure employees are paid for only those hours documented and worked, employees should use timesheets or timecards that document actual days and hours worked. Direct supervisors should review and sign the timesheets or timecards to certify the hours were worked. Using timeclocks to record arrival and departure times provides additional control over days and hours worked.

## Employees Were Paid While Working at Another Municipality

We reviewed New York State and Local Retirement System (NYSLRS) records and identified two City employees who were reported as full-time employees in both the City and the Town at each municipality's STP. Specifically, employees A and B both worked 520 days and were paid \$157,412 and

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\$112,244, respectively, between the two municipalities in one year.<sup>1</sup> The Department of Public Works (DPW) Commissioner and STP Chief Operator were responsible for the oversight of the City's STP.

To determine whether it was reasonable for the employees to work full-time at two municipalities, we compared the employees' payroll records at the City and Town from January 1, 2012 through December 16, 2018, which included time worked beginning on December 26, 2011. City STP time records included manual timesheets, shift schedules and leave reports. Time records for the Town varied for each employee due to their position. Town records for employee B included employee punch cards indicating the employee's physical presence at the Town, while time records for employee A included manual timesheets. Employee A was the Chief Operator at the Town and signed off on his own time along with time worked by employee B. In some instances, employee A would manually write-in missing time punches for employee B.

Overall, we identified days where hours worked at the City overlapped with hours worked at the Town, resulting in payments to these employees for time that they did not work. During the time reviewed, the City paid employee A \$552,942 and employee B \$534,494. We estimated that the City may have paid these employees \$91,492 for hours not worked (\$89,624 for employee A and \$1,868 for employee B). Specifically:

- Employee A's time records at the City and Town indicated that he worked 424.50 hours over 75 separate days from January 1, 2017 through December 16, 2018 at the same time in both municipalities. For example, on January 27, 2017, employee A's City time records indicated time worked from 7:00 AM to 3:00 PM; concurrently, employee A's Town time records indicated time worked from 8:00 AM to 6:00 PM, signifying seven hours of overlapping hours worked between the two municipalities. As a result, City officials paid employee A \$14,460 for time also paid for by the Town.
- Employee B's time records at the City and Town indicated that she worked 20 hours over five separate days at the same time in both municipalities from March 14, 2017 through November 14, 2018. For example, on November 8, 2017, employee B's City time records indicated time worked from 3:00 PM to 11:00 PM; concurrently, employee B's Town time records indicated time worked from 8:00 AM to 6:07 PM, signifying approximately three hours of overlapping time worked between the two municipalities. As a result, City officials paid employee B \$627 for time also paid for by the Town.
- City STP shift schedules were not available between December 26, 2011 through December 31, 2016. Based on City and Town time records (work schedules, timesheets and leave requests), interviews of City officials and employees, and City Council minutes, we conservatively estimated<sup>2</sup> the overlapping time worked between the two municipalities. We estimated that employees A and B worked 2,342 and 42 hours totaling \$75,163 and \$1,241, respectively, at the same time in both municipalities. As a result, City officials may have paid employees A and B for time also paid for by the Town.

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<sup>1</sup> According to NYSLRS records as of July 13, 2018. The report did not specify the time period for the days worked and wages paid.

<sup>2</sup> See *Appendix C – Methodology and Standards* for further details.

- On April 12, 2017, employees A and B attended a training seminar and were compensated by both the Town and City to attend. Additionally, the employees submitted a voucher for seminar reimbursement, mileage and phone fees to the Town totaling \$153.

The DPW Commissioner and former STP Chief Operator were aware that both employees also worked at the Town. However, the City’s former STP Chief Operator told us that attendance was based on the “honor system.” By not implementing a formal timekeeping system, City officials could not be certain that these employees were physically present for the hours paid. In addition, City officials did not retain all time and attendance records (e.g., work schedules) for December 26, 2011 through December 31, 2016 to allow for a comparison between schedules and reported time worked.

Due to the lack of oversight and poor record keeping by City officials, it was unclear whether employees A and B performed work at the Town or at the City on those days when they reported working at both municipalities. This failure of oversight and record-keeping created an increased risk that discrepancies in attendance and timekeeping would go undetected. Indeed, City officials may have paid these employees \$91,492 for time during which they performed no work for the City, insofar as the Town also paid the employees for performing work for the Town at the same time.

Further, employee A retired on March 30, 2019, and collected retirement benefits totaling \$242,456 through September 2021. We also found other instances of payments made to or time accrued by these employees, as discussed throughout this report. Figure 2 includes all instances of exceptions we found with these employees’ payroll payments and leave benefits.

**Figure 2: Questionable Payments/Leave Benefits**

Payroll Payments Potentially Not Entitled to	Employee A	Employee B
Time Not Worked	\$89,624	\$1,868
Unauthorized Vacation Buyout Payment	14,143	10,780
Total	\$103,767	\$12,648

## Employees Were Not Always Accurately Paid

City officials did not ensure that employee pay rates were properly authorized and that employees were paid in accordance with CBA and/or Council-approved pay rates. We reviewed payments made to 75 employees totaling \$168,063 and identified five instances where employee pay rates were not paid in accordance with approved hourly pay rates, resulting in incorrect hourly rates ranging from \$.14 per hour to \$3 per hour. This resulted in incorrect payments totaling \$396 during the pay periods reviewed, or \$7,099 annually for the salaried employees reviewed. Examples include:

- The DPW Commissioner’s pay rate exceeded the employee agreement rate by \$1.41 per hour, resulting in \$112 in excess wages per pay period, or \$2,924 annually.
- The Payroll Coordinator received a \$200 monthly stipend, or \$2,400 annually, that was not authorized or approved by the Council.

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- A firefighter's pay rate exceeded the union contract rate by \$0.72 per hour, resulting in \$58 in excess wages per pay period, or \$1,494 annually.

Employees' pay rates were not properly authorized or paid in accordance with agreements and contracts because payroll personnel were unfamiliar with the calculation of employee step/longevity pay rates in the various CBAs. In addition, payroll personnel did not properly maintain Council-approved resolutions for employee salary increases or stipends. Finally, certain union employees were not assigned grades under CBAs, so the pay rate they were entitled to was unclear. Compensating employees at unauthorized or improperly calculated pay rates resulted in employees not receiving the pay that they were entitled to.

## **Employees' Salaries and Wages Were Not Adequately Supported**

We reviewed time and attendance records for five pay periods within the audit period for a sample of 75 employees from five departments: Finance, DPW, Fire, Police and Recreation.<sup>3</sup> These employees received pay totaling \$174,089 during the pay periods reviewed. Four of these departments did not have a consistent process for maintaining time and attendance records, resulting in 43 instances totaling \$92,226 in gross pay where employees' timesheets were not properly reviewed or approved by supervisors. In addition, department heads did not maintain timesheet documentation to support salaries and wages paid to six employees totaling \$18,462. Specific weaknesses for each department included:

- Finance Department employees did not complete timesheets and only reported time they did not work. As a result, no time records contained evidence of supervisory review or approval.
- DPW employees completed individual timesheets; however, they did not include the employees' time in or time out, only total hours worked. Additionally, 13 of the 20 DPW employee timesheets reviewed (65 percent) did not have evidence of supervisory review or approval.
- Although Fire Department employees sign in for regular 12-hour shifts and overtime in a time book, employee time in and time out was not recorded. There also was no supervisory review or approval of time records prior to entry into the City's financial application.
- Recreation Department employees did not complete individual timesheets; instead, supervisors completed timesheets for all employees within the department. Additionally, there was one instance where a supervisor signed a timesheet certifying his own hours worked.
- Although the Police Department utilized a standalone time and attendance system where employees electronically recorded time worked and required employees to physically sign in and out for each shift on the department's daily blotter, we detected 12 instances totaling \$41,747 in gross pay in which employees did not record time in, time out or both on the daily sign-in blotter.

The City's timekeeping process is decentralized and not administered uniformly. City officials have not developed written procedures for the type of time and attendance records to be maintained or guidelines for the review of time records and approval of overtime shifts. As a result, each department

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<sup>3</sup> See Appendix C for details on all of our sampling methodology.



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has its own processes for employee timekeeping and overtime approval. Departmental payroll clerks are responsible for recording time records directly into the City's financial application. When employee pay is not supported by time and attendance records, the risk increases that employees are receiving pay for time not actually worked or for unauthorized absences.

### **What Is the Proper Accrual of Leave and Payment of Unused Leave?**

Accrued leave represents paid time off earned by employees, pursuant to a CBA or individual employment contract, and provides eligibility criteria for employees to earn vacation time, sick time, personal time and, in some circumstances, receive payment for unused vacation leave in lieu of carrying it forward to the following year. City officials should periodically verify the accuracy of employee leave records including leave time earned and used. Sufficient records should be kept to ensure employees accrue, use and receive pay only for the time to which they are entitled. Procedures should ensure that leave used is properly deducted from leave accrual balances.

City officials also should ensure employees receiving unused leave and separation payments are paid the amounts to which they are entitled, and that each payment is accurate, adequately supported and authorized pursuant to a council-approved CBA or individual employment contract. Adequate supporting documentation, such as accrual balance reports and contracts, should be attached to payment calculations. Calculated amounts should be independently reviewed and approved before payments are made to ensure they were accurately calculated, and eligibility requirements were met. If not specifically authorized by the council, a CBA or contract, a city should not make separation payments or payments for unused leave accruals.

### **Leave Accruals Were Not Properly Monitored**

We reviewed leave records for five pay periods for a sample of 50 employees from five departments: Finance, DPW, Fire, Police and Recreation. These employees used 517.5 hours of leave valued at \$15,865 during the pay periods tested. Three of these departments did not have a consistent process for monitoring leave accruals, resulting in 15 instances totaling 220.5 hours of leave worth \$6,922 in gross pay where employees' leave requests were not properly approved by supervisors. Not approving leave requests creates the risk that employees could take leave without having sufficient leave accrual balances, or that leave balances are not properly adjusted to reflect the use of leave accruals.

In addition, four departments did not maintain adequate records of employees' leave accruals, resulting in three instances totaling 12 hours of leave worth \$501 in gross pay in which employee leave balances were not properly adjusted to reflect the use of leave, and two instances totaling \$907 in gross pay in which employees were granted leave requests despite having insufficient leave accrual balances. For example, a police lieutenant was granted eight hours of vacation leave valued at \$517 despite having insufficient leave accrual balances.

The City's leave accrual process is decentralized and not administered uniformly. City officials have not developed written procedures for the type of leave records to be maintained or guidelines for requesting, approving, using and recording leave time. As a result, City officials cannot ensure that



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leave accrual records are accurate. Because leave accrual records were not properly monitored, employees received payment for leave time that they were not entitled to.

## **Payments for Unused Vacation Leave Were Not Authorized**

We reviewed 30 balloon payments totaling \$493,793 made to employees for unused leave and retroactive pay. While we did not identify any exceptions for retroactive payments or payments for unused sick leave, on an annual basis, City officials allowed all DPW shift workers to elect to receive a payout for all unused vacation accruals remaining at the end of each fiscal year that were not authorized by current CBAs.

Specifically, 10 DPW shift workers received 19 payments totaling \$99,761 for unused vacation leave during the audit period without any form of documented supervisory review. Among the 19 unused vacation payouts were two payouts made to employees who were simultaneously working at neighboring municipalities (employee A and employee B discussed in the *Employees Were Paid While Working At Another Municipality* section of this report). Employee A received vacation buyouts totaling \$14,143 for 416 unused vacation hours, while employee B received vacation buyouts totaling \$10,780 for 352 unused vacation hours. It is unlikely that employee A or B would have received any significant unused vacation accrual buyout had they used their vacation accruals to work hours at the neighboring municipality.

City officials did not establish policies or procedures for the preparation, authorization and review of payments for unused vacation leave. As a result, employees received payments for unused vacation leave accruals which they were not entitled to, including two employees who were paid for time that they did not work or charge leave accruals.

## **What Do We Recommend?**

The DPW Commissioner and STP Chief Operator should:

1. Provide direct oversight of STP operations to ensure employees are working hours that they are scheduled to work. Examples of direct oversight could include periodic visits, review of cameras and review of gate access reports.
2. Require employees to document days and hours worked through the use of timesheets or other time and attendance systems.
3. Require supervisory review of time and attendance records to confirm employees' attendance.

City officials should:

4. Communicate the terms and conditions of CBAs and other employee agreements to payroll personnel to ensure officials and employees are paid accurately.
5. To the extent possible, centralize and unify the time and attendance process within departments or City-wide.

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6. Establish City-wide policies and written procedures documenting the type of records to be maintained for time worked, as well as for requesting, approving, using and recording leave time, and requiring employees and supervisors to sign timesheets certifying that hours reported on timesheets are accurate.
  7. Ensure employees' hours worked as reported by departmental payroll clerks are reviewed and approved for accuracy by a designated supervisor of each department before time reports are submitted to central payroll for processing.
  8. Ensure that department supervisors review and approve employees' leave accruals, verify that adequate documentation is maintained, and ensure that departmental payroll clerks record charges to employee accrual balances.
  9. Designate an individual from each department, who is independent of maintaining leave accrual and compensatory time records, to periodically review the records and balances for accuracy.
  10. Work with the City's corporation counsel to determine whether they should seek recovery of overpayments.

# Appendix A: Response From City Officials

Joseph M. DeStefano  
Mayor



Tel 845-346-4100  
Fax 845-343-7439  
mayor@middletown-ny.com

**City of Middletown**  
16 James Street, Middletown, New York 10940  
Established 1888

**February 14, 2025**

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

**Re: Response to Payroll Audit Examination for the Period January 1, 2017 – November 30, 2018**

Dear Sir/Madam,

The City's position regarding the comments in the Payroll Audit Examination Report is as follows:

**Employees Paid While Working at Another Municipality:**

The City disputes the auditors' findings that states that "two Sewer Treatment Plant employees received \$91,492 for time they may not have worked because they were working at another municipality." While the City appreciates the OSC findings that two State Licensed Sewage Treatment Plant Operators, referred to in the OSC as Employee A and Employee B, have reported concurrent time working for the City and a town that is 25 minutes away by car, we do not believe that the information relied on by the auditors to reach its findings conclusively evidences that the City and not the Town paid employees for time that they were not entitled to.

See  
Note 1  
Page 16

The City maintains that based on the work requirements, safety concerns, job responsibilities, opportunity and the location of the two facilities, it is more likely that the identified employees A and B were paid for their time when they did not work at the Town STP and not as suggested at the City STP.

The City Sewage Treatment Plant (STP) is located within a fenced and gated enclosed area with one access point/road that is continuously monitored by security camera and the recording kept for 30 days. Further, employees are required to enter a pass code to enter the gate to STP. Gate remained open during early morning hours to facilitate Sanitation Department frequent trips to Transfer Station. This practice was modified to keep the gate closed at all times with access via pre-registered card, numeric code or permission from Control Room.

See  
Note 2  
Page 16

Employee A had the highest-level NYSDEC license 4A; to operate the STP and employee B has second highest license, 3A. Both employee A and employee B were required to perform certain tasks to complete throughout their respective shifts.

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Starting with employee A, the auditors claim that the City paid employee A for time he did not work in the City because the hours he worked at the City overlapped with those hours employee A worked for the Town is simply not feasible.

Employee A holds the highest level NYSDEC license 4A; to operate the STP and was mostly assigned to work the day shift, 7:00 AM to 3:00 PM at the City STP. Employee A's comings and goings at the City STP are monitored both by camera and the entry logs of his assigned access code to enter the STP. Not monitored by Gate access code if Gate was left open or allowed access from STP Control Room

See Note 2 Page 16
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During the shift, employee A was part of a team consisting of three to five workers who were under the direction and observation of the City STP Licensed Chief Operator. Due to the potentially hazardous working conditions at STP, a safety and buddy-team system is an integral part of STP Operation. This means that the operators collectively ensure each other's safety, including noting when an operator is absent for a period of time. Further, some tasks require two or three people to perform. Even if we were to assume that employee A had disappeared, unauthorized, from the City STP to go to the Town STP, he might have been able to disappear for an hour to travel to the Town to sign in and then return to the City. But his disappearance for hours or an entire shift would not have gone unnoticed for safety reasons alone. Moreover, extended leave from the workplace, as suggested by the auditors, would require complicity among all of the operators working the shift, including the Chief Operator, and would require those employees to do employee A's work without complaint. A highly unlikely scenario.

Whereas when working for the Town, as the auditors noted, employee A was the Chief Operator and in that capacity was in charge of the Town's STP operation. As Chief Operator, employee A reported only to the DEC and a part-time Town Supervisor. Further, as Chief Operator, employee A was in the perfect position to manipulate his own time records and those of employee B. In fact, the auditors noted that employee A did just that when he changed employee B's time records. Moreover, both employee A and employee B worked the same hours at the Town STP of 8:00 AM to 6:00 PM. Therefore, employee B had an ample opportunity to sign in for employee A to the Town STP at the start of his shift. And more importantly because employee B held a NYSDEC 3A license, she could easily operate the Town's STP in employee A's absence, including communicating directly with him if there was an issue.

Similarly, we dispute the auditor's conclusion that because employee B's time records in both the City and the Town indicated she worked overlapping hours on five separate occasions, it was the City and not the Town that paid the employee for hours she did not work. This finding is not conclusive evidence that employee B was not physically present at the City workplace.

The auditors rely on the flawed conclusion that because the Town used a punch card system, employee B had to be physically present at the Town work site. As the auditor's should have noted, employee B's work hours for the Town from 8:00 AM to 6:07 PM coincide with employee A work hours for the Town from 8:00 AM to 6:00 PM. Clearly, as documented, employee B did not have to be physically on site to punch in. Employee A could easily have punched in for employee B and has a track record of manipulating employee B's time records. Further, after his shift with the City

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ended at 3PM, employee A could easily have arrived at the Town STP in time to punch out employee B at 6PM.

Moreover, employee B was also required to enter the same monitored gate at STP and enter her assigned access code. Further, because of the shift employee B was assigned to work at the City from 3:00 PM to 11:00 PM it is almost impossible for employee B to abandon the City STP and leave it unattended. During that shift, employee B was responsible for taking samples, running lab tests, monitoring all manners of operating pumps, motors, sophisticated air blowers, furnaces, pressurized anaerobic digester; the generation of explosive methane gas pumped/recycled and used to run furnaces, and flares off and much more. Many of these systems are alarmed to warn of potential system failures. Furthermore, employee B was required to be physically present at 3:00 PM at the City STP for the handoff of the STP operations from the day shift. If anything, it was more likely that employee B would leave Town STP, 3 hours before the end of her shift to report to work for the City, especially when employee A could and did cover for her.

See  
Note 2  
Page 16

The coinciding work schedules of employee A and employee B at the Town STP, the lack of direct daily oversight by the Town of employee A as Chief Operator and employee B to monitor their performances and tasks enabled employee A and employee B to exploit the system so that it appeared at times that they were working for the Town when they were actually working at the City STP. Add to this, both employee A and employee B knew of the continuously recording security cameras and access code required at the main STP gate, we submit that if there were any overlapping time charges, it would have been on the town books, not the City's. Especially, as employee A is the one that prepares and approves the Town timesheets and is proven to have manipulated employee B's time sheet.

See  
Note 3  
Page 16

Based on this information and the examples given by the OSC, while we agree that employee A and employee B abused their work time, respectfully, at the very least there is no conclusive evidence that the employees' time was abused working at the City STP versus the Town STP. Notwithstanding, the information outlined herein, the mere fact that "the Town also paid the employees for performing work for the Town at the same time" those employees worked for the City does not support the auditor's findings. Moreover, by qualifying its findings with the phrase "may have," clearly the auditors also cannot conclusively validate that the employees were paid for time they did not work at an STP by either the Town or the City.

Therefore, we respectfully request that the auditor modify the findings accordingly at the very least note that it is not clear whether it was the town or the City officials "that may have paid these employees \$91,492 for time during which they performed no work for the City, or no work for the Town.

As discussed with the OSC, since the period of the audit from 2018 to current, the City DPW has advanced and streamlined its operations to address accountability, including creating individual timesheets, requiring operators to initialize and sign off on each task the operator completed on a daily basis and the employees of DPW are now initiated the requirement to use the time clock system to track their hours worked.

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### **Employees Were Not Paid Accurately**

The City disagrees with this statement. After reviewing the matter, we found that the Commissioner's base pay was incorrectly cited in the contract. However, the salary increase for the Commissioner was properly approved by the Common Council per his base pay in the system in 2015. As such, the Commissioner's pay was not inaccurately paid. Furthermore, the Payroll Coordinator's stipend is a contractual obligation under the CBA's "Out of Grade Pay" clause. The City was not able to verify any discrepancies in firefighters pay, it is noted that salary changes during CBA negotiation may require a retroactive pay causing a difference in pay in the year a contract is settled upon.

See  
Note 4  
Page 16

### **Employee Salaries and Wages Were Not Adequately Supported**

Since 2020, the City has maintained proper documentation to support payroll processing and personnel files. The Police Department utilizes a time-in/time-out system that aligns with the Police Departments' time clock policy and procedure established. Timekeeping is administered based on the applicable CBAs. As the City operates under three distinct CBAs, the process has been tailored to each agreement. Additionally, timesheet submissions have been uniformed since 2020. While the City maintains different processes based on departmental needs, this information should be considered outdated.

### **Leave Accruals Were Not Properly Monitored**

Regarding the scheduling and pre-authorization of vacation time, this issue primarily concerns our sworn officers. Due to the scheduling and vacation pick procedures unique to police work, there is no alternative approach. Sworn staff selects vacation time based on seniority during the fall of the previous year. This often results in officers taking vacation time before accruing sufficient hours. However, as the year progresses, their accrued time balances even out. Officers receive between two to five weeks of vacation, depending on seniority, and once vacation is selected, no additional time off may be requested. If an officer separates from the department with a negative vacation balance, we prorate their accruals to avoid undue compensation and adjust their final paycheck accordingly. Due to shift work and scheduling needs, sworn officers must take vacation in week-long blocks, which may lead to minor discrepancies in accruals, particularly when vacations are scheduled outside the accrual cycle. This policy is standard in law enforcement, given the operational requirements. A positive change is that, for the past several years, new sworn officers are not permitted to take vacation during their first year of employment, which should resolve future concerns, with a few exceptions based on hire date and scheduling. However, the CBA Article 9 states "Police Officers in their first (1st) year of employment may borrow up to two (2) weeks' vacation on their following year's entitlement upon the approval of the Chief of Police. Said approval shall not be unreasonably withheld."

See  
Note 5  
Page 16

### **Employees' Accrued Vacation Leave Exceeded the Limit Set in the CBA (Judy)**

We have asked the City's attorney to respond on behalf of the City. See response below:

"You have asked me to review and prepare a response to a draft audit finding from the New York State Comptrollers specifically regarding the accrual of vacation under the 2015-2021 Collective Bargaining Agreement Article VI (A) (paragraphs 2 and 3 between the City and the Civil Service Employees Association Inc., ("CSEA").

See  
Note 6  
Page 17

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The Comptrollers draft audit finding states in part as follows:

“According to the Civil Service CBA in effect for 2017 and 2018, employees covered under the CBA were permitted to accumulate up to a maximum of six weeks (240 hours) of “personal cap” from year to year, as well as an additional six weeks (240 hours) of additional “personal cap” to take prior to retirement or separation. Furthermore, the CBA suggests [emphasis added], that if an employee maintained more than 12 weeks (480 hours) of “personal cap,” the employee must use the additional vacation time or, in the alternative, forfeit the additional hours. It is the department heads’ responsibility to help ensure that CBA conditions are consistently followed and to supervise the scheduling and approval of vacation leave within their respective departments.

City officials did not follow the vacation leave limits outlined in the CBA. We identified 101 employees who, pursuant to the terms of the CBA, were permitted to accumulate up to maximum of six weeks (240 hours) of “personal cap” from year to year, as well as an additional six weeks (240 hours) of additional “personal cap” to take prior to retirement or separation. However, in 2017, we identified six employees who carried over vacation leave in excess of the 12week (480 hour) vacation accrual limit. The hours exceeding the 12week (480 hour) vacation accrual limit by employee ranged from 66 to 596 additional hours of vacation. According to the terms of the CBA, these additional hours should have been used by the employees through vacation leave, or such time would be forfeited. Instead, we determined that the six employees, in total, carried over 4,672 of additional vacation hours with an estimated value of \$145,839. As a result, it appears that the City

allowed the six employees to exceed the vacation leave limit by 1,792 hours valued at \$55,817 as of December 31, 2017.”

In reaching their finding, the auditors are relying on the following language in the CBA VI (A) (paragraphs 2 and 3):

“2. Upon separation from service, an employee or their beneficiary, as the case may be, shall be compensated in cash for all unused vacation credits.

No employee may have an accumulation of more than thirty (30) vacation days at the end of each year. Employees who have more than thirty (30) days accumulation as of 12/31/88 will not lose any days. However, they cannot accumulate any additional leave.

3. Effective January 1, 1996, the practice of payment for unused vacation will be modified as follows:

Employees can accumulate six (6) weeks or their personal cap for payment purposes and six (6) weeks additional or their personal cap additional to take prior to retirement or separation.

After the twelve (12) weeks or double personal cap, the vacation time must be taken or lost.

The entire accumulation would be paid to an estate, if required.



Requests for vacation time will not be unreasonably denied.

Shift workers may work their vacation at the current rate of pay with prior written approval by their Department Head.”

The auditors are clearly unsure of how the language in the CBA for vacation accrual should be interpreted when they write that the language only “suggests” “that if an employee maintained more than 12 weeks (480 hours) of “personal cap,” the employee must use the additional vacation time or, in the alternative, forfeit the additional hours.”

See  
Note 6  
Page 17

Additionally, the auditors have erroneously relied on the undocumented conjecture of a payroll clerk to conclude that City officials were aware that “... employee vacation accruals were not maintained in accordance with the vacation leave accrual limits set forth in the CBA. The payroll clerk told us that the payroll department relied on the previous practices when maintaining employee vacation balances, which allowed employees to maintain vacation leave accruals in excess of the 12 week (480 hours) limit set forth in the CBA.”

See  
Note 6  
Page 17

The city payroll clerk is only instructed on the process to follow when imputing the accrual of an employee’s vacation time into the payroll system. The reason why and how much vacation is accrued is the responsibility of the City Administration and clearly far beyond the knowledge of the payroll clerk.

The auditor’s reliance on the mere conjectures of a payroll clerk and their uncertainty as to the application of the disputed language is not dispositive of their claim that the City incorrectly applied the language of the CBA and allowed employees to accrue vacation in excess of the 12 weeks.

As noted by the Courts in New York, the court may not substitute its judgment for that of the agency responsible for making the determination, but must ascertain only whether there is a rational basis for the determination or whether it is arbitrary and capricious (see, *Flacke v. Onondaga Landfill Sys.*, 69 N.Y.2d 355, (1987); see, also, *Sasso v. Osgood*, 86 N.Y.2d 374 (1995). This is true even where the court would have reached a different result (see, *Matter of Terrace Ct., LLC v. New York State Div. of Housing & Community Renewal*, 18 N.Y.3d 446 (2012).

“[W]here, as here, the judgment of the agency involves factual evaluations in the area of the agency’s expertise and is supported by the record, such judgment must be accorded great weight and judicial deference.” (see, *Flacke v. Onondaga Landfill Sys.*, *supra* at 363).

For 31 years, the City has correctly interpreted the suddenly in question language in the CBA on vacation accrual “[a]fter the twelve (12) weeks or double personal cap, the vacation time must be taken or lost” to mean that an employee can continue to accrue vacation beyond the 12 weeks, but at the time of retirement any accrued vacation beyond the 12 weeks will be lost if not taken.

The City was at the negotiation table with the CSEA when this language was written and the parties fully understood the intent of the language. The location of the language following the

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application of the 12 weeks of vacation in retirement further bolsters the City's interpretation. Moreover, in the 31 years since that language was negotiated, not once has the CSEA filed an improper practice charge or an Article 78 alleging that the City's application of this provision is wrong.

I note that under Taylor Law, any changes to this language and its interpretation is subject to mandatory negotiation with the CSEA. To do otherwise would most certainly result in the CSEA filing an Improper Practice Charge against the City.

While the auditors may have an alternate suggestion on the interpretation of the CBA that suggestion and conjecture of the payroll clerk is not conclusive in this matter. There is simply no factual evidence to support the auditor's contention that the City has incorrectly interpreted and applied the CBA language on vacation accrual.

It is the City's rationale interpretation of the language in the CBA at Article VI, (paragraphs 2 and 3) "After the twelve (12) weeks or double personal cap, the vacation time must be taken or lost" to mean that an employee can continue to accrue vacation beyond the 12 weeks, but at the time of retirement any accrued vacation beyond the 12 weeks will be lost if not taken that was negotiated with is unchallenged by the CSEA for 31 years that prevails in this matter.

**Payment of Unused Vacation Leave Was Not Authorized**

The City does not require shift workers to plan vacation at the start of the year. If an employee chooses not to take their vacation, they are compensated for the unused leave. Approval for this payout is handled through the payroll process and authorized by the respective department as mentioned in the CBA contract Article "

**Recommendations**

Many of the practices outlined in the audit are already in place. The City has digitizing its time and attendance system, transitioning from manual to electronic timekeeping. This upgrade will address several of the issues identified in the audit. The City has also adopted a City-wide time clock policy. However, several concerns raised in the audit report have already been addressed and are outdated. Additionally, the City Treasurer, who was in office during this period, is no longer available to provide clarification or defend the accuracy of these findings. We also question the timeliness of submitting these audit findings, nearly six years after the period in question. It is also noted there are interpretation disagreements from the City's CBA. The City will address these issues during contract negotiation upon expiration of the contracts.

We appreciate your attention to this matter and look forward to resolving any outstanding issues.

Sincerely,

Joseph DeStefano  
Mayor  
City of Middletown

## Appendix B: OSC's Comments on the City's Response

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### Note 1

City officials agreed that employees A and B abused their work time, and due to the lack of oversight at the STP, there is an increased likelihood that employees A and B were paid for time they did not work at the City. Our audit findings provided a conservative estimate of the potential financial impact on the City. The employees received \$91,492 for time they may not have worked because they were working at another municipality.

### Note 2

These identified discrepancies occurred largely because of poor recordkeeping and a lack of oversight. While the audit team reviewed the gate logs for the 23-month period of January 1, 2017 through November 30, 2018, there was no record of either employee A or employee B accessing the STP using their gate access codes during that timeframe. As noted in the City's response, the City only recently modified its practice of leaving the gate open and the video is only kept for 30 days; therefore, there were no videos or other records available to substantiate the physical location of employees A and B during the audit period.

### Note 3

While there may have been opportunities at the Town for the employees to abuse their time worked, opportunities for time abuse also existed at the City's STP. For example, employees A and B worked together on the 3:00 PM to 11:00 PM shift during part of the period reviewed. This shift was previously staffed by only one employee (employee B) until May 2017. In May 2017, employee A was assigned to work the 3:00 PM to 11:00 PM shift with employee B. The lack of oversight at the STP coupled with employees A and B working the same shift created an additional opportunity for them to abuse time at the City.

### Note 4

We are not contesting the DPW Commissioner's eligibility to receive annual salary increases. Rather, the audit team relied on the contract approved by the Council and signed by the DPW Commissioner himself in establishing his base pay rate, as well as the Council approved resolutions which indicated the salary increase amounts. Moreover, City officials were unable to provide any supporting documentation to demonstrate that the base pay rate the DPW Commissioner was receiving was accurate, in light of the different rate of base pay set forth in the DPW Commissioner's contract.

Similarly, City officials provided an email from the former Treasurer regarding the stipend for serving as the EAP coordinator. However, City officials were unable to provide documentation that the Council had approved the rate or even the stipend itself. Moreover, although language in the CBA does address employees receiving additional compensation for "Out of Grade Pay," the City provided no additional documentation to support that the payment of the stipend was pursuant to this provision of the CBA.

### Note 5

The article of the police CBA cited by City officials is not applicable to our findings, as none of the individuals we identified were first-year officers.

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## Note 6

Despite numerous attempts both during and after the audit field work to obtain documentation to help clarify the language set forth in the Civil Service CBA relating to accrual of vacation, auditors were not provided with any additional documentation to support the City's interpretation of the Civil Service CBA. In response to receiving our draft report, it is our understanding that City officials sought legal guidance to respond to our concerns. In light of the additional information provided in the City's response from the legal advisor, we have removed this section from the report. However, for future collective bargaining negotiations, we recommend that City officials consult with legal counsel to help ensure that contract terms are clear and unambiguous as it relates to employees' vacation leave accruals.

## Appendix C: 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. We obtained an understanding of internal controls that we deemed significant within the context of the audit objective and assessed those controls. Information related to the scope of our work on internal controls, as well as the work performed in our audit procedures to achieve the audit objective and obtain valid audit evidence, included the following:

- We interviewed City officials and reviewed the City's policies and written procedures to gain an understanding of internal controls over the payroll process, including overtime and leave accruals.
- We reviewed NYSLRS records to identify any employees who worked at another municipality. For the employees identified, we assessed the days and salaries reported for reasonableness and investigated further any employees who had reported days worked that may not have been reasonable (e.g., an employee who worked two full-time jobs).
- For the two employees who were reported to have worked full-time at two municipalities, we compared the employees' payroll records at the City and Town from January 1, 2012 through December 16, 2018 to determine whether it was reasonable for them to maintain two full-time jobs. Specifically, we reviewed City and Town time records (work schedules, timesheets and leave requests) and compared the time worked in each location to identify any instances where time worked at the City overlapped with the time worked at the Town. Because City STP shift schedules were not available from December 26, 2011 through December 31, 2016, we conservatively estimated the overlapping time worked between the two municipalities using City officials' and employee statements, leave records, and City Council minutes to determine the employees' work schedule at the City's STP.
- We calculated the number of days and hours of overlap between time worked at the City and Town for the two employees. We then calculated the value of the hours of overlap by multiplying the number of hours by the employees' pay rate at the City based on the year in which overlap occurred.
- We examined Town fuel card logs, City and Town daily STP lab reports, and training attendance records to identify the employees' physical location on some of the days when hours reported at each municipality conflicted.
- We reviewed NYSLRS records to determine the amount of retirement benefits received by employee A. We recalculated employee A's monthly benefit by reducing the salary reported by the value of the time we estimated as overlap between the two municipalities. We then recalculated employee A's three-year final average salary and revised monthly benefit using the employee's tier, service credit and retirement option chosen. Last, we compared the revised monthly benefit to the benefits received since his retirement to estimate the excess retirement benefits received.
- We randomly selected five pay periods (March 17, 2017, May 26, 2017, July 21, 2017, March 2, 2018, and July 6, 2018) to review the time and attendance records of selected employees from the five departments selected for review. We randomly selected 75 out of 350 employees to review the time and attendance records for the five pay periods selected. For the 75 employees selected within the five departments, we reviewed employees' timesheets for completeness, and traced hours worked to payroll reports to determine whether hours paid were authorized and supported.

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We reviewed CBAs, Council-approved resolutions and/or individual employee agreements to determine whether each employee's pay rate was accurate.

- We randomly selected 50 out of 350 employees from the five departments selected to review the leave accrual records for the five pay periods. We traced accruals and leave used, as reported on the payroll reports, to leave request forms and leave calendars to determine whether adequate documentation existed. We also traced instances of leave used from source documents, including time off request forms and leave calendars, to employee accrual balances and determined whether employee accrual balances were accurately maintained.
- We reviewed the City's CBAs and the opinion from the City's labor counsel. We also reviewed the 2016 and 2017 ending balance and 2017 and 2018 beginning balance of vacation accruals for each employee selected to determine whether leave accrual balances were consistent with City policies, CBAs and labor counsel opinion.
- We used our professional judgment to select a sample of 30 balloon payments processed throughout the audit period based on type of balloon payment, date of payment, employee's job title, applicable CBA or individual employee agreement, and payment amount. We reviewed the payments for legitimacy, accuracy, and compliance with City policy, CBA, and/or individual employee agreement.
- We randomly selected 50 employees within the five departments to review the overtime records for the five pay periods selected. For the 50 employees selected within the five departments, we traced overtime worked as reported on the financial application to employee time records, and if available, overtime pre-approval/authorization forms. We reviewed CBAs, Council-approved resolutions and/or individual employee agreements to determine whether each employee's overtime pay was accurate.
- We reviewed the biweekly payroll deductions of all employees who had the ability to make employee changes in the City's financial application for the audit period. We also reviewed personnel files to determine whether appropriate documentation was on file to support any changes to employee deductions.
- We obtained direct deposit bank files for all pay periods within the audit period. For each direct deposit file, we compared the direct deposit account numbers of all employees to determine whether any employees shared a bank account. If any exceptions were detected, we reviewed the employees' records to determine whether payments were made to a legitimate employee.

We conducted this performance audit in accordance with GAGAS (generally accepted government auditing standards). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit 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 size of the relevant population and the sample selected for examination.

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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 District Clerk's office.



## Appendix D: Resources and Services

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### **Regional Office Directory**

[www.osc.ny.gov/files/local-government/pdf/regional-directory.pdf](http://www.osc.ny.gov/files/local-government/pdf/regional-directory.pdf)

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

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

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[www.osc.ny.gov/files/local-government/publications/pdf/cyber-security-guide.pdf](http://www.osc.ny.gov/files/local-government/publications/pdf/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.ny.gov/local-government/required-reporting](http://www.osc.ny.gov/local-government/required-reporting)

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## 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](mailto:localgov@osc.ny.gov)

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

**NEWBURGH REGIONAL OFFICE** – James L. Latainer, Chief of Municipal Audits

33 Airport Center Drive, Suite 102 • New Windsor, New York 12553-4725

Tel (845) 567-0858 • Fax (845) 567-0080 • Email: [Muni-Newburgh@osc.state.ny.us](mailto:Muni-Newburgh@osc.state.ny.us)

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