

# Town of Clay

## Ethics Oversight

DECEMBER 2020



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

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# Report Highlights

## Town of Clay

### Audit Objective

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

### Key Findings

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

- Meet annually, prepare an annual report summarizing its activities or review the code of ethics.
- Adequately administer the Town's disclosure system that is intended to foster transparency and help identify conflicts of interests.
  - One Town Board member, one employee and one other required filer did not file annual financial disclosure statements (disclosure statements).
  - Seven Town Board member (50 percent), 61 officer and employee (75 percent) and 11 other required filer (44 percent) disclosure statements were filed late and/or had questions left blank.
- Review disclosure statements for conflicts of interest or completeness and ensure ethics training was provided.

### Key Recommendations

- Ensure the Ethics Board meets at least annually and provides an annual report to the Town Board.
- Ensure the Ethics Board verifies all annual financial disclosure filers file complete and timely disclosure statements that are carefully reviewed for potential conflicts of interest.

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

### Background

The Town is located in Onondaga County in the Central 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 the chief financial officer and is responsible, along with other administrative staff, for day-to-day management.

The Town Board established an Ethics Board responsible for ethics oversight. The Town Clerk is an Ethics Board member and serves as the Clerk to the Ethics Board.

#### Quick Facts

Population	58,206
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Officers and Employees	108
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#### Required Disclosure Statement Filers

2017	60
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2018	60
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### 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 New York State General Municipal Law (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.

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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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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 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 portions 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 financial disclosure statements. The Town adopted a code of ethics that provides general authority for the Ethics Board to ensure that the financial statements are filed and complete.

In addition, the Town code of ethics provides that the Supervisor is to cause a copy of the code of ethics to be distributed to each officer and employee and posted conspicuously in each public Town building. However, the code of ethics does not require officers and employees to periodically attest to receiving and reading the code of ethics.

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

The Town Board adopted a code of ethics, which was posted on the Town's website. The code of ethics included all four statutorily required provisions set forth in GML.<sup>5</sup> While the CEO was required to visibly post certain sections of GML and the code of ethics in each Town building, we found that neither the statutory provisions nor the code of ethics were posted in one of the Town's two buildings.

The CEO told us that he was unaware that posting these sections of the conflict of interest statute is a statutory requirement and unaware that the code of ethics was required to be posted, in accordance with the code of ethics.

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

5 GML, Section 806, refer to Appendix A, Figure 4

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## The Town Did Not Provide Ethics Training

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 CEO told us that new employees are provided a copy of the code of ethics upon beginning employment with the Town and sign an acknowledgement attesting to receiving and understanding the code of ethics. We tested attestation statements for 20 employees from our audit period to determine whether these employees attested to having received the code of ethics.

We found no signed acknowledgments for 11 of these employees attesting to receiving and understanding the code of ethics. The Supervisor's information aide (aide) and the secretary to the Supervisor both told us that these individuals were seasonal employees who are not required to attest to receiving and understanding the code. However, seasonal employees do not appear to be exempt from the provisions of the code of ethics.<sup>6</sup>

In addition, the aide told us that individuals who are required to file a disclosure statement are required to attest to having read and understood the code of ethics whenever there is an update. We found that four of the 20 employees tested were required to file a disclosure statement and signed an acknowledgement indicating that they had read and understood the updates made in 2011 to the code of ethics.

Although not required by law, the Town Board could reinforce code of ethics awareness of officers and employees by requiring all officers and employees to attest to receiving and understanding the code of ethics each year. They could also distribute the code of ethics to all officers and employees upon any amendment to the code.

Unless the Town Board vigorously enforces the code provisions, reinforces employee awareness of the code of ethics and ensures that the conflict of interest statute and the code of ethics is posted in each building, there is a higher risk that officers' and employees' actions may violate the code of ethics and public assets could be subject to misuse.

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<sup>6</sup> The code of ethics defines officer or employee as "any officer or employee of the Town... whether serving in a full-time or part-time capacity..."

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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.

The Town code of ethics requires certain officers, employees and appointed officials to file a disclosure statement. For instance, the code of ethics states that the Town Board is to annually determine officers, employees and appointed

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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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officials who are required to file a disclosure statement each year.<sup>7</sup> The Supervisor is to supply a blank disclosure statement to those individuals identified by the code of ethics as required to file a disclosure statement by March 15 each year.

In addition, the Town code of ethics establishes certain procedures for the Ethics Board to administer the annual financial disclosure system. For instance, the code of ethics requires that individuals, who are required to file a disclosure statement, file the statement with the Ethics Board. The disclosure statements are to be filed by May 15 each year, unless an extension is requested by the filer and granted by the Ethics Board. Individuals hired or promoted into required filer positions after the May 15 filing deadline are required to submit disclosure statements within 30 days.

According to the Town code of ethics, the Ethics Board is to meet annually to review the filed disclosure statements for completeness. As part of this review, the Ethics Board should verify all annual disclosure statements are filed on time, are complete and address actual or implied conflicts of interests identified in the disclosure statements, if any.

The code of ethics provides that the Ethics Board inspect all disclosure statements to determine whether any required filers failed to file, filed a deficient statement or filed a statement that reveals a possible violation of the code of ethics. Furthermore, the code of ethics generally states that if a required filer fails to file or files a deficient disclosure statement, the Ethics Board is to notify the individual in writing of the failure to file or detail the deficiency and provide a 15-day period to allow the individual to file or correct any deficiencies. If the individual does not file or correct the deficiencies, the Ethics Board is to send a notice of delinquency to the individual and the individual's appointing authority.

Further, the code of ethics provides for the Ethics Board to prepare an annual report to the Supervisor and the Town Board summarizing its activities and recommending changes to the code of ethics. The Ethics Board may request support staff and assistance from the Town Board or Supervisor in furtherance of its duties and responsibilities.

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

The Ethics Board did not meet during our audit period and did not adequately administer the Town's disclosure system by ensuring all financial disclosure statements were actually filed, filed on time or complete.

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<sup>7</sup> The Town code of ethics specifies that certain "reporting officers, employees or appointed officials" are to file a disclosure statement. Such individuals include the following: elected officials, heads of any agency, department or office, members of any commission or board of the Town, and officers or employees whose duties involve negotiations, authorization or approval.

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

The Town Board assigned certain responsibilities 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 a disclosure statement, submitted a timely and complete disclosure statement. In 2017 and 2018, 57 percent of Town Board member (Figure 1), 76 percent of officer and employee (Figure 2), and 48 percent of other required filer (Figure 3)<sup>8</sup> disclosure statements were not filed, not filed on time and/or had questions left blank.

In 2017, seven Town Board members were required to file. However, one did not file and three filed disclosure statements with questions left blank. In 2018, seven Town Board members were required to file. However, one filed a disclosure statement with questions left blank and three filed late with questions left blank.

In 2017, 40 officers and employees were required to file. However, one did not file and 29 filed disclosure statements with questions left blank. In 2018, 41 officers and employees were required to file. However, 32 filed disclosure statements with questions left blank.

In 2017, 13 other individuals associated with the Town were required to file. However, six filed disclosure statements with questions left blank. In 2018, 12 other individuals associated with the Town were required to file. However, one did not file, four filed disclosure statements with questions left blank and one filed late.<sup>9</sup>

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

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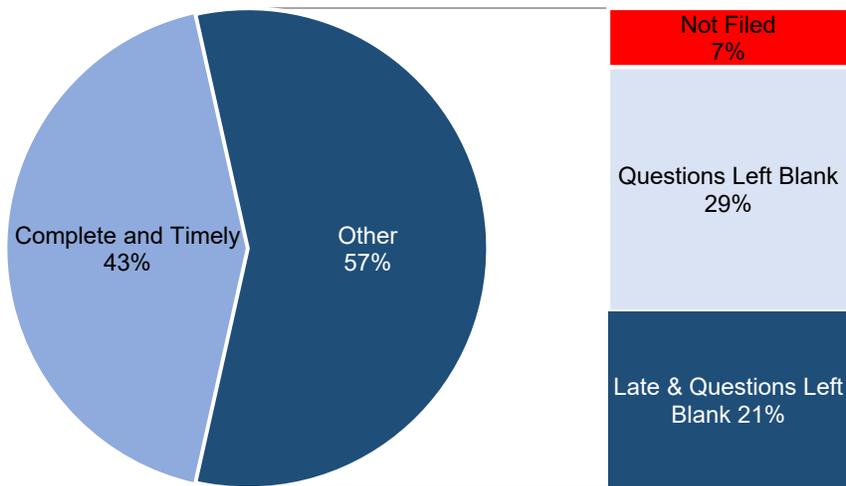
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8 Other required disclosure statement filers included the following individuals associated with the Town: Planning Board and Zoning Board of Appeals members.

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

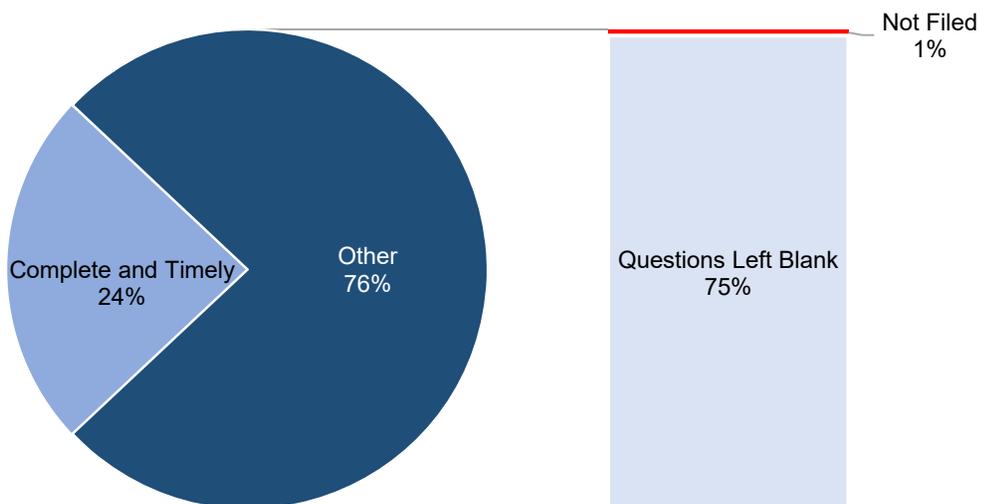
**FIGURE 1**

**Town Board Member  
Annual Financial Disclosures  
2017 and 2018**



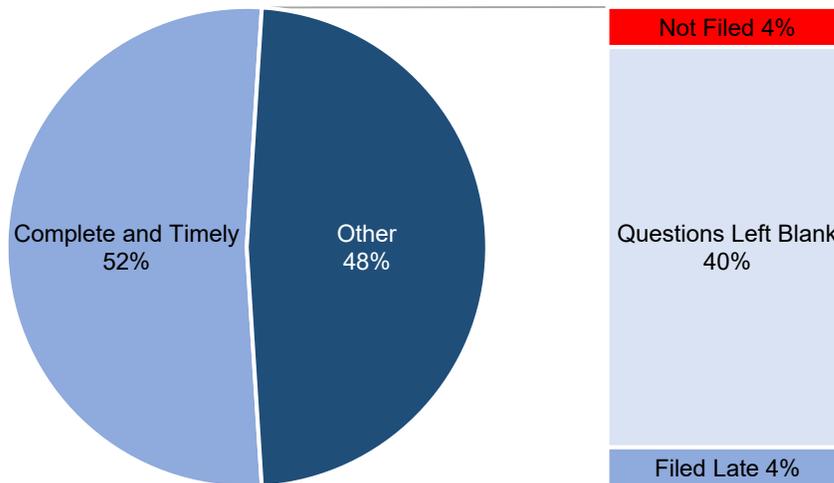
**FIGURE 2**

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



**FIGURE 3**

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



We found that the procedures in place were inadequate to ensure that disclosure statements submitted by individuals required to file were collected and verified for completeness. The aide, Supervisor and one Ethics Board Member told us that the aide maintains a list of all required disclosure statement filers, referred to as a mailing list.

The aide told us that she received the mailing list from her predecessor, after she started working for the Town in 2007. The Supervisor and the aide both told us that they were unaware of where the list originated. Also, the aide told us that her job duties require her to know when new employees or officers are hired, appointed, promoted or elected and she updates the mailing list, accordingly.

However, the code of ethics indicates that the Town Board, is responsible for annually determining which officers, employees or appointed officials are required to file a disclosure statement. We found that the Town Board did not make any such annual determination.

The Supervisor told us that he and the other Town Board members were unaware that the Town Board was responsible for annually determining which officers, employees or appointed officials were to file a disclosure statement under the code of ethics. Therefore, although the aide updates the mailing list, it is unclear whether the updates would reflect who the Town Board believes are the appropriate individuals to file a disclosure statement.

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Individuals who are required to file a disclosure statement submit their disclosure statements to the aide. The aide told us that she telephones them in an attempt to obtain disclosure statements from required filers who did not file by the deadline.

Three individuals who were required to file disclosure statements in 2017 (a Town Board member and a typist) and 2018 (a Planning Board member) did not file. The aide said the Town Board member did not file because he was leaving office at the end of that year, the typist did not file because she was on extended medical leave and the Planning Board member, who was appointed at the end of April (after the March 15 deadline), was accidentally not notified.<sup>10</sup>

The aide said that after she collected the disclosure statements, she provided them to the Town Clerk (Clerk), who served as an Ethics Board member and the Ethics Board Clerk. According to the Clerk, she and another Ethics Board member typically reviewed the disclosure statements but they had not reviewed the 2018 filings – nearly 10 months after the filing deadline.

Also, the Clerk said the disclosure statement reviews were limited to seeing whether the filer listed a second job and identifying the employers listed for the filer’s spouse, if any, to identify potential conflicts of interest. However, the Clerk said they have not identified any potential conflicts of interest and if they did, they would notify the Town Board and Supervisor.

Further, the Clerk told us that she does not make any notes on the filed disclosure statements to show that they have been reviewed, whether information is lacking or the disclosure statement contains a potential conflict of interest. Another Ethics Board member told us that he was unaware of the process used for reviewing the disclosure statements because he was not involved in the review of any disclosure statements.

Our review of all 117 disclosure statements filed in 2017 and 2018 revealed that 67 percent were filed with questions left blank. The Town’s annual statement of financial disclosure requires the filer of a disclosure statement to sign a certification that states “I certify under penalty of perjury, that the information disclosed on this form is true and complete.”

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

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The Town’s annual statement of financial disclosure requires the filer of a disclosure statement to sign a certification that states “I certify under penalty of perjury, that the information disclosed on this form is true and complete.”

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<sup>10</sup> The Town Board member left office December 31, 2017 and the typist retired in August 2017.

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In 2017 and 2018, seven Town Board member disclosure statements were submitted with questions left blank. For example, one Town Board member's 2017 disclosure statement did not include the following:

- Future Employment – Describe any contract, promise or other agreement with respect to your employment after leaving your Town office or position.
- Past Employment – Identify the source and nature of any income in excess of \$1,000 per year from any prior employer, including deferred income, contributions to a pension or retirement fund, profit sharing plan, severance pay or payments under a buy-out agreement.
- Investments – Itemize and describe all investments in excess of 5 percent of the value in any business, corporation, partnership, or other assets, including stocks, bonds, loans, pledged collateral and other investments, for you and your spouse and dependent children, if any. List the locations of all real estate within the Town or within five miles thereof, in which you, your spouse or dependent children, if any, have an interest, regardless of its value.
- Trusts – Identify each interest in a trust or estate or similar beneficial interest in any assets in excess of \$2,000, except for IRS eligible retirement plans or interests in an estate or trust of a relative, for you and your spouse and dependent children.
- Gifts and Honorariums – List the source of all gifts aggregating in excess of \$250 received during the last year by you, your spouse or dependent child, excluding gifts from a relative. The term “gifts” includes gifts of cash, property, personal items, payments to third parties on your behalf, forgiveness of debt, honorariums and any other payments that are not reportable as income.
- Third Party Reimbursements – Identify and describe the source of any third-party reimbursement for travel related expenditures in excess of \$250 for any matter that relates to your official duties. The term “reimbursement” includes any travel related expenses provided by anyone other than the Town for speaking engagements, conferences, or fact-finding events that relate to your official duties.
- Interest in Contracts – Describe any interest you, your spouse, or your dependent children have in any contract involving the Town or any municipality located within the Town.

In addition to the questions above, another Town Board member's 2018 disclosure statement did not include the following:

- Business Interests – List any office, trusteeship, directorship, partnership or other position in any business, association, proprietary or not-for-profit organization held by you and your spouse and dependent children, if any,

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and indicate whether these businesses are involved with the Town in any manner.

- Outside Employment – Describe any outside occupation, employment, trade, business or profession providing more than \$1,000 per year for you and your spouse and dependent children, if any, and indicate whether such activities are regulated by any State or local agency.
- Other Income – Identify the source and nature of any other income in excess of \$1,000 per year from any source not described above, including teaching income, lecture fees, consultant fees, contractual income or other income of any nature, for you and your spouse and dependent children, if any.
- Debts – Describe all debts owed by you, your spouse, and dependent children in excess of \$5,000.

Not completing a disclosure statement in its entirety could be a misrepresentation to the Ethics Board and creates a risk that potential conflicts could go undetected. Although the code of ethics requires that the filer certify to its completeness, to avoid an incomplete filing or misunderstanding, when a question does not apply, the filer should be required to write “none” or “not applicable” on the disclosure statement. In addition, the form should clearly state the filer must answer each question, noting “none” or “not applicable” when appropriate.

Although not required to do so, the Ethics Board did not compare disclosed business interests to vendor payments or compile a list of filers’ outside business interests for the purchasing department to identify potential interests in contracts that would be prohibited by GML. Lack of procedures that require reviewing the submitted information reduces its usefulness.

Without careful review of the information reported on disclosure statements, and procedures to identify transactions that could pose a conflict of interest, taxpayers have less assurance that the Town has a strong stance on transparency and can identify conflicts of interest of officers and employees that could compromise impartiality in decision-making.

### **The Ethics Board Did Not Review the Code of Ethics or Prepare an Annual Report**

The Ethics Board did not review the code of ethics or provide an annual report during our audit period and could not tell us when the code of ethics was last reviewed. While the code of ethics does not specifically require the Ethics Board to review the code of ethics, it does require the Ethics Board to prepare an annual report to the Supervisor and Town Board summarizing its activities and recommending changes to the code of ethics.

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The Ethics Board did not review the code of ethics or provide an annual report during our audit period...

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Two Ethics Board members told us that they were unaware that preparing an annual report was a requirement under the code of ethics. Neither Ethics Board member was aware of the last time the Ethics Board conducted a review of the code of ethics and told us that due to scheduling conflicts the Ethics Board has never met.

The Supervisor told us that he was aware that the Ethics Board is required to provide an annual report, but has never received one. Because the Ethics Board did not prepare the required annual reports summarizing its activities, the Town Board was unaware of any concerns or questions raised with the filed disclosure statements. Further, 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. Require ethics training for all officers and employees, including an overview of the code of ethics and whistle-blower protections.
2. Have Ethics Board members complete training on the provisions of law relating to conflicts of interest and ethics.
3. Amend the code of ethics to require all officers and employees attest in writing to the receipt and review of the code of ethics at the time of their elections or appointment, at least once every five years, and upon amendment to the code.
4. Develop procedures to provide for a more thorough and meaningful review of the contents of financial disclosure statements in an effort to better identify transactions that could pose conflicts of interest.
5. Review or request the Ethics Board to review the code of ethics, at least every five years or sooner, if deemed necessary.
6. Ensure the Ethics Board provides an annual report summarizing its activities to the Supervisor and Town Board, as required by the code of ethics.
7. Annually determine employees who hold policy making positions and are required to file disclosure statements.

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The Supervisor should:

8. Visibly post GML Sections 800-809 of the conflict of interest statute and copies of the code of ethics in each Town building.

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 information contained on the disclosure statements to identify interests that could pose a conflict of interest.
12. Review the code of ethics, at least every five years or sooner, if deemed necessary.
13. Meet at least annually and submit annual reports to the Supervisor and Town Board summarizing its activities and recommending changes to the code of ethics.

# 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	Yes
Holding of Investments in Conflict With Official Duties	Yes
Private Employment in Conflict With Official Duties	Yes
Other Ethical Considerations	
Applicability	Yes
Confidential Information	Yes
Definitions	Yes
Enforcement	Yes
Effective Date	Yes
Establishing a Board of Ethics	Yes
Gifts	Yes
Interests in Contracts	Yes
Nepotism	Yes
Political Solicitations	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	No
Ethics Board Members Term Limits <sup>c</sup>	Yes

a GML, Section 806

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

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

**Figure 5: Town Board Member, Employee and Other Individual Associated With the Town Who Did Not File Annual Financial Disclosure Statements**

Job Title	2017	2018
Town Board Member	Not Filed	
Typist	Not Filed	
Planning Board Member		Not Filed

# Appendix B: Response From Town Officials

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The Town's response letter refers to an attachment that supports the response letter. Because the Town's response letter provides sufficient detail of its actions, we did not include the attachment in Appendix B.

Damian M. Ulatowski  
Supervisor

Joseph A. Bick  
Deputy Supervisor

Office of the Supervisor  
**Town of Clay**



"One of America's 100 Best Places to Live"

Councillors:

Brian E. Hall  
David J. Hess  
Kevin J. Meaker  
Ryan A. Pleskach  
Eugene B. Young

Julie Landcastle, Chief Examiner  
Statewide Audit Unit  
New York State Office of the State Comptroller  
Binghamton State Office Building  
44 Hawley Street-Room 1702  
Binghamton, New York 13901

September 21, 2020

Re: Response to Ethics Oversight Audit S9-19-8 Preliminary Report  
Audit Period January 2017 to September, 2018  
Implementation of Recommendations and Corrective Action Plan  
Request for Additional Training of Municipal Officials

Dear Julie Landcastle:

### Introduction

Thank you for conducting a comprehensive review and oversight audit of our Ethics law, policy and practices here in the Town of Clay for above referenced time period. Kindly allow this letter to serve as both our response to your preliminary report as well as our Corrective Action Plan.

The Town of Clay takes ethical issues very seriously, and we would like to engage in additional training on point. Accordingly, please consider this letter a formal request for training of our municipal officials in addition the corrective actions contained in this response.

The Town of Clay is considered a leading municipality in Onondaga County, and we greatly appreciate your input and findings with regard to our ethics policy and practice. We believe most of the recommendations contained in the report can be adequately addressed with a comprehensive education and training program for the members of both the Town Board and the Board of Ethics. Furthermore, we also understand the need to incorporate the recommendations into our daily practice of good government.

We intend to immediately implement suggested remedial measures to better comply with the letter and spirit of ethical governmental practice.

### Audit Recommendations

**Board of Ethics Issues:** The audit revealed several issues related to the Town Board of Ethics. The Town has since appointed a Town employee tasked with tracking Ethics Board membership including but not limited to office requirements, availability for meetings and continued training. We believe better tracking, training and communication with the Board members will help alleviate some of the audit concerns as well as ensure the Board is fully constituted and prepared to deal with issues in the future.

4401 State Route 31, Clay, New York 13041-8707

Phone: (315) 652-3800 ❖ Website: [www.townofclay.org](http://www.townofclay.org) ❖ E-Mail: [supervisor@townofclay.org](mailto:supervisor@townofclay.org) ❖ Fax: (315) 622-7259

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The Town of Clay is in the process of taking the following remedial steps to address each of the below listed issues:

**Finding:** The Board of Ethics did not meet annually to review the code and create an annual report.

**Resolution:** The Town of Clay Town Board will take steps to ensure the Ethics Board meets at least once annually, and require the Chairman to provide a full in-person report to the Town Board at or immediately after the annual Organizational meeting of the Town. The Board will review all financial disclosure forms for completeness and shall have access to the below explained “inquiry procedure” and Town counsel to help guide them regarding potentially difficult issues. A list of active Town vendors will be supplied to the Board of Ethics annually for conflict screening review and maintained by the Board for consultation on a case-by-case basis.

The Board shall also adopt a working mechanism to be incorporated into the proposed “checklist” identified below to make sure all disclosure forms are complete and fully filed by May 15<sup>th</sup> of each year.

With regard to Code review, we intend to follow the recommendation to adopt a Local Law to amend the Code to require all officers and employees to attest in writing to the receipt, review and understanding of the Code provisions. This procedure will be followed for all new employees upon hiring, and we will obtain a conforming receipt from all employees upon acknowledging the results of this audit with renewals periods of at least every five (5) years.

**Finding:** The Town Ethics Board did not adequately administer the Town’s required disclosure statements and system.

**Resolution:** We identify compliance with this recommendation to be a training and educational initiative. We intend to hold comprehensive training sessions for the Board of Ethics members and interested Town Board members. The training will begin by educating members about their responsibility with regard to meeting attendance, code review and updates, and collection and screening of financial disclosure forms. In order to properly administer these tasks, the board members must be trained regarding General Municipal Law Section 800, Comptroller Opinions regarding conflict of interest cases and practical ways to help screen financial disclosure documents for compliance.

The Town intends to employ our Town Attorney to conduct comprehensive training regarding the General Municipal Law and Comptroller Opinions. Furthermore, we intend to provide “real world” examples of prohibited conflicts of interest to the trainees to better help them identify potential issues and possible approved resolutions such as recusal and refusal to contract. We also intend to train all parties with regard to a four-step municipal screening process for potential conflicts and what questions must be asked and answers reviewed.

In the future the Board of Ethics will also understand they are responsible for the screening of all financial disclosure statements. We intend to establish an Ethics Board policy whereby all responses will be collected and screened by no less than three (3) members. No blank responses will be permitted, and a procedure will be implemented whereby Board members will be allowed to contact disclosure filers to ask additional questions for clarity. We also intend to appoint a support staff member to assist the Board of Ethics with these tasks and employ a “compliance checklist” to help compile and track completed disclosure forms and/or open issues.

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We also identified the need for a support/referral mechanism in the event filed disclosures revealed open issues or issues which may need to be further explored and vetted prior to signing off. For example, if a potential conflict is raised by a disclosure response, the Ethics Board will have a solid methodology and procedure to follow to request additional information and/or refer the matter to the Town Board for further action. Further action may include obtaining an Opinion of Counsel, a recusal recommendation or resignation of membership. In response, we are developing an “inquiry procedure” to be added to the Code by amendment (Local Law Process). The town Board should also consider amendment of the Code to include provisions for political solicitations and recusal and absenteeism.

**Finding:** The Town did not provide a copy of the Code of Ethics to all officers and employees, nor did the Town post a copy of the Code in a conspicuous place in a Town Building.

**Resolution:** The Town Supervisor’s office will provide a copy of the Code to all officers and employees, and the Town will post a copy of the document and a copy of the General Municipal Law Section 800-809 on the bulletin boards at Town Hall and the Highway Building. The Town will also post an additional copy of the Code on our main website page.

**Finding:** The Town of Clay did not provide Ethics Training

**Resolution:** The Town will conduct comprehensive CE style training of all Ethics Board members and interested members of the Town Board utilizing our Town Attorney. We note our Town Attorney is a recognized expert in the field and often conducts conflict screenings and Continuing Legal Educational seminars regarding Article 10, Section 806, 807 and Comptroller Opinions in New York State.

We will also obtain the remaining signatures of employees for whom no written attestation of the receipt of the Code copy was on record. We will also collect current attestations from all officers and employees that the Code was received, read and understood consistent with our accepted form.

#### Board Resolution

In the interest of transparency, we intend to present the draft Resolution attached hereto and labeled “Exhibit A” for consideration and passage by the Town Board with future posting on the Town website.

#### Conclusion

As recommended, the Town of Clay intends to comprehensively train our people regarding our updated Code provisions. Furthermore, we intend to vigorously enforce our Code and stress the importance of solid ethical behavior within our town government.

~~Very~~ Truly Yours,

Damian M. Ulatowski  
~~Town of Clay Supervisor~~

Cc: Town Board Members  
Board of Ethics Chairman and Members  
Town Clerk

## 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. To achieve the audit objective and obtain valid audit evidence, our audit procedures included the following:

- We interviewed Town officials, employees and Ethics Board members to gain an understanding of the governing and ethics oversight.
- We reviewed policies, procedures, Town Board and Ethics Board minutes related to ethics.
- We reviewed all 117 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, which consist of submitting complaints with the Ethics Board.
- We used our professional judgment to select a sample of 20 of 224 employees during our audit period, to determine whether they attest to having received and reviewed the code of ethics, with no expectations of greater or lesser results.
- We examined both the town buildings and walked through these buildings to determine whether the conflict of interest statute and code of ethics was posted.

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

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

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

## Appendix D: 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

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)

[www.osc.state.ny.us/local-government](http://www.osc.state.ny.us/local-government)

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

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