


**“Just Elected –
What Do You Do Now?”**

New York State Office of the State Comptroller and
the Association of Towns of the State of New York



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THOMAS P. DiNAPOLI

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Welcome



From State Comptroller
Thomas P. DiNapoli



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Welcome



From Gerry Geist
Executive Director
Association of Towns of the State of New York



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Moderator



Janet Hyde, PhD
Assistant Director of Information, Research and Training
Division of Local Government and School Accountability



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Panelists



Lori Mithen-Demasi
General Counsel
Association of Towns
of the State of New York



Mark R. Stevens
Associate Attorney
Division of Legal Services
Office of the State Comptroller



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Town Government



- Towns are considered general purpose local governments.
- General Purpose Local Governments have the authority to regulate conduct, provide services and tax.



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Town Services and Infrastructure

- Towns provide a variety of services and manage a lot of infrastructure including but not limited to:

Services

- Public Safety (Police, Fire, Ambulance)
- Planning and Zoning
- Code Enforcement
- Recreation
- Animal Control
- Water and Sewer
- Permit and Licenses

Infrastructure

- Water and Sewer Filtration Plants
- Highways, Bridges, Culverts
- Parks, Buildings, Cemeteries, Courts

Who Provides Town Services



Town Board

- Executive, Administrative, and Legislative body of the Town (Town Law, §64)
- Comprised of the Supervisor and Town Board Members (2-6) (Town Law, §60)
- Town Board members are elected at large or via wards or districts
- Acts as a body by majority vote at a town board meeting (Town Law, §§60, 63)
- An individual board member may not individually act on behalf of the town board (Town Law, §§60, 63)

Town Board

- **Legislative Body**
 - Adopts local laws, ordinances and resolutions
 - Adopts town's planning and zoning laws
- **General Governing Body**
 - Appoints, oversees, and terminates MOST (not all) town officers and employees
 - Fills vacancies in town offices
 - Management, custody, control of town property
- **General management and control of town finances**
 - Adopts budget and aligns budget year round
 - Designates banks for deposits
 - Sets salaries of officers and employees
 - Generally awards contracts

Town Supervisor

- Elected to a Two or Four-Year Term
- Member of the Town Board (Town Law, §60)
- Presiding Officer of the Town Board (Town Law, §63)
- Fiscal Responsibilities (Town Law, §§29, 125)
- Administrative Responsibilities (Town Law, §§29, 125; Additional Duties via Town Board Resolution)
- Additional Administrative Duties in Suburban Class towns (Town Law §52)
- Representative of the Town (County Board Member in Counties governed by a Board of Supervisors) (County Law, §150)

Town Clerk

- Elected or Appointed
- Two or Four-Year Term
- Records Town Board Meeting Minutes (Town Law, §30)
- Records Management (Town Law, §30; Arts and Cultural Affairs Law, §57.19)
- Issues Licenses (Marriage - DRL, art.3; Hunting/Fishing – ECL, §11-0713; Dog – Ag & MRKTs, art.7)
- Filing (Ordinances – TL, art. 9; Local Laws, MHRL, §27, Resignations, POL, §30; Highway Defects, TL, §65-a)
- Fiscal Duties (Town Law, art. 8)

Tax Collecting Officers

- Tax Collector in towns of the second class and Receiver of Taxes in towns of the first class
 - Many town clerks also collect taxes (Town Law, §36)
- Elected or Appointed to a Two or Four-Year Term
- Collects:
 - Real Property Taxes (Town Law, §§35, 37)
 - Water and Sewer Rents (Town Law, §37)
 - School Taxes (Town Law, §37)



Town Highway Superintendent

- Elected or Appointed
- Two or Four-Year Term
- Care, maintenance, and repair of town bridges and highways (Highway Law §§140, 141, and 142)
- Additional Duties required by the Town Board (Town Law, §32)



Town Justice

- Elected
- Four-Year Term
- Administers Town Justice Court
- Criminal and Civil Proceedings
 - (Town Law, §20; Uniform Justice Court Act)



Town Attorney

- Town Attorney (Town Law, §20)
 - Appointed by Town Board
 - Two-Year Term
 - Provides Legal Services to the Town
- Attorney for the Town (Town Law, §20)
 - Contract for Legal Services Approved by Town Board
 - No Term of Office
 - Provides Legal Services Pursuant to Terms of Retainer Agreement

Assessing

Assessor

- Elected or Appointed
- Four or Six-Year Term (Town Law, §24; RPTL, §310)
- Sole Appointed (RPTL, §§310, 328)
- Single Elected (RPTL, §329)
- Board of Three Elected (Town Law, §§20, 22-b)
- Responsible for assessing real property in the Town for purposes of taxation (Real Property Tax Law)

Board of Assessment Review

- Appointed
- Five-Year Term (RPTL, §523)
- The board of assessment review consists of at least three but not more than five members appointed by the town board (RPTL, §523)
- Hears complaints of property owners on grievance day and may make adjustments to assessments
- Real Property Tax Law §§102 (3), (4), and 523.

Planning Board



- Appointed
- Terms Track Number of Members (Town Law, §271)
- Subdivision Review (Town Law, §§276-279)
- Site Plan Review (Town Law, §274-a)
- Special Use Permits (Town Law §274-b)

Zoning Board of Appeals

- Appointed
- Terms Track Number of Members on the Board (Town Law, §267)
- Use Variances (Town Law, §267-b)
- Area Variances (Town Law, §267-b)
- Interpretations of Land Use Code (Town Law, §267-b)



Code Enforcement Officer

- Appointed
- No Term of Office (Town Law, §§24; 138)
- Administers the State Uniform Fire Prevention and Building Code (Executive Law, §381)
- Issues Building Permits (Town Law, §138)
- Enforces Compliance with Town Land Use Code (Town Law, §138)





Animal Control Officer



- Appointed
- No Term of Office (Agriculture & Markets Law, §114)
- Administers Article 7 of the State Agriculture & Markets Law
- Administers Local Leash Laws (Agriculture & Markets Law, §124)


Qualifying for Office




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Oaths of Office

- All Town officers are required to take and file in the Town Clerk's office an "oath of office" within 30 days of taking office.
- Town Justices must also file with the Office of Court Administration & County Clerk
- Registrars of Vital Statistics must also file with the County Clerk
- Town Clerk notifies Town Board when an officer fails to timely take and file their oath of office
- Good for term of office or length of appointment


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Oaths Of Office (cont'd)

- Oaths may be administered by:
 - Town Clerk
 - Notary Public
 - Court of Appeals or Supreme Court Justice
 - Town Supervisor, but only to Town Board members
 - Town Justice


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Official Undertakings

- A pledge by the town official and a third party that the official will faithfully discharge the duties of his or her office, and promptly account for and pay over all moneys or property received by him or her.
- Guarantees that, if the town official defaults on this obligation, the third party will pay all expenses resulting from the default, up to an amount specified in the undertaking.

Official Undertakings

- Required for certain Town offices
- **Individual** (covers individual office or person) or **Blanket** (covers all designated offices and persons)
- Form and amount determined by governing board
- Failure to file within 30 days of taking office vacates office by operation of law
- Town Clerk notifies Town Board when undertaking is about to expire

Official Undertaking (cont'd)

- Town officers required to file official undertaking:
 - Town Clerk
 - Town Supervisor
 - Highway Superintendent
 - Tax Collector/Receiver
 - Constable
 - Town Justice
 - Anyone else the Town Board requires

Oaths and Undertakings

- Failure to properly take and file your oath of office and/or your official undertaking results in vacating your office by operation of law (POL, §30)



Eligibility

- Every officer shall be an “elector” at the time of election or appointment and throughout his term (Town Law, §23; POL, §3).
- “Elector” means one who if they wished, could register to vote in the Town.
- Residence equates with domicile not property ownership.
- Domicile is a question of fact rather than law to be ultimately resolved in court.

Conflicts of Interests

- General Municipal Law, Article 18 (§§800-812)
- Town’s Code of Ethics

Structure and Scope of Article 18

- Establishes State-wide rules outside of NYC.
 - State-wide rules do not address every type of conflict of interest.
 - Focused mainly on business relationships with municipalities.
 - Addresses several other ethical issues.
 - Requires disclosure/prohibits activities in certain instances

Application of Article 18 (GML §§ 800[4], [5])

- Applies to “municipalities” including:
 - counties, cities, **towns**, villages, school districts, BOCES, public libraries, district corporations (e.g. fire districts), town and county improvement districts, consolidated health districts, and IDAs.
- Does not apply to New York City or to most local public authorities.
- Does apply to Industrial Development Agencies (IDAs).

Application of Article 18 (cont'd)

- Applies to “municipal officers and employees”:
 - Paid or unpaid
 - Members of administrative boards, commissions, or other municipal agencies
 - Fire chiefs and assistant fire chiefs
- Does **not** apply solely by reason of status as a volunteer firefighter or civil defense volunteer

Prohibition on Interests in Contracts

- Unless a statutory exception applies, municipal officers and employees are prohibited from having an “interest” in a “contract” with the municipality for which they serve when they have certain official powers or duties in relation to the contract.

Prohibited Interests: How to Determine

- Must examine four issues:
 - “Contract”
 - “Interest”
 - Powers and Duties
 - Exceptions

“Contract” (GML § 800[2])

- Contract:
 - “Claim, account or demand” against a municipality
 - “Agreement” with a municipality
 - Can be express or implied
- Contract also includes:
 - Designation of depository of public funds
 - Designation of newspaper for publication of official notices, etc.

Not a “Contract”

- Contract does not include:
 - Land use actions (e.g. zoning changes, variances, site plan or subdivision approvals, building permits)
 - Inter-municipal agreements

“Interest” (GML § 800[3])

- Interest:
 - Direct or indirect pecuniary (monetary) or material benefit as a result of a municipal contract.
- Deemed interests:
 - Contracts of spouse, minor children or dependents, except employment contracts
 - Contracts of firm, partnership or association of which municipal officer or employee is a member or employee
 - Contracts of a corporation of which municipal officer or employee is an officer, director or employee, or directly or indirectly owns or controls any stock

Powers and Duties (GML § 801[1])

- Section 801 Powers and Duties:
 - Individually or as a member of a board:
 - Negotiate, prepare, authorize, or approve the contract;
 - Authorize or approve payment under the contract;
 - Audit bills or claims under the contract; or
 - Appoint an officer or employee having any of these functions

Exceptions (GML §§ 801,802)

- Statutory Exceptions include:
 - Lawful compensation and necessary expenses
 - “Duties and Remuneration”
 - Pre-existing contracts (but not renewals)
 - Stockholdings of less than 5%
 - Contracts with not-for-profits
 - Contracts aggregating less than \$750 in a fiscal year

Exceptions (cont'd)

- Purchases and public work by municipalities in counties with a population ≤ 200,000 under certain circumstances
- Purchase of real property with court approval
- Acquisition of real property by condemnation
- Certain private sales of bonds or notes
- Designation of a newspaper for publication of official notices, etc
- Designation of bank or trust company as depository, paying agent, registration agent, or for the investment of funds exception (not usually applicable to CFOs, treasurers, and their staff)

Not Exceptions

- No Exceptions for:
 - Competitive Bidding/Request for Proposal;
 - Disclosure;
 - Abstention or Recusal; or
 - Emergencies

Disclosure of Interests in Contracts (GML § 803)

- **Written** disclosure of nature and extent of interest generally required when municipal officer or employee (or spouse) has, will have, or later acquires an interest in any actual or proposed contract.
- Disclosure must be made as soon as individual has knowledge of an actual or prospective interest.

Disclosure (cont'd)

- Disclosure must be made publicly to:
 - The individual's **immediate supervisor**; and
 - The municipal **governing body**, which must include the disclosure in the official record of its proceedings.
- Disclosure **not** required when exceptions in § 802(2) apply. (e.g. Stockholdings of less than 5%; Contracts aggregating less than \$750 in a fiscal year)
- Disclosure does not cure a prohibited interest.

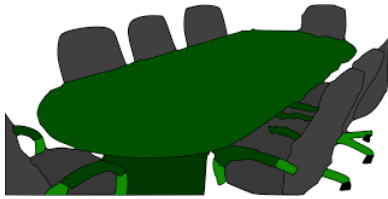
Local Codes of Ethics (GML § 806)

- Mandatory for counties, cities, **towns**, villages, school districts, and fire districts.
- Discretionary for other municipalities

Compatibility of Office

- Generally, two offices are incompatible if:
 - (a) one is subordinate to the other, or
 - (b) there is an inherent inconsistency between the positions

Town Board Meetings



Town Board Meetings

- Location
 - All meetings of the Town board must be held within the territorial limits of the Town (Town Law, §62).
- Handicapped Accessible
 - All reasonable efforts to hold meetings in facilities that permit barrier-free access to the physically handicapped (POL, §103)

Frequency of Meetings

- Regularly Scheduled Meetings
- First Class Towns
 - Meeting schedule set by board resolution
 - Must meet at least once a month
 - May by local action decide to meet more than once a month
- Second Class towns
 - Meeting schedule set by board resolution
 - No statutory mandated meeting schedule
 - Must meet periodically to address town business and audit claims
- Special Meetings
 - Additional meetings of town boards may be required from time to time to accomplish specific acts necessitated by statutory provisions or to deal with emergencies or other unanticipated exigencies.
 - Set by board resolution
 - Called by Supervisor upon own initiative or within 10 days of written request of two or more board members

Rules of Procedure

- Statutory
 - Town Supervisor presides
 - Quorum needed to conduct business
 - A majority constitutes a quorum
 - Votes taken by Ayes and Nays
 - Names of members and their vote must be entered in the minutes
- Compliance with Local Rules of Procedure
 - Motions, seconds, agendas and public comments

Appointment of Town Officers and Employees

- General rule:
 - All nonelected town officers and employees are appointed by the Town Board (Town Law, §§20; 64)
 - Compliance with Civil Service Rules, Collective Bargaining, and Employment laws and rules apply

Exceptions

- Deputies (Appointed by Principal)
- Bookkeeper and/or Confidential Secretary (Appointed by Supervisor)
- Budget Officer (Appointed by Supervisor)
- Local Historian (Appointed by Supervisor)
- Director of Finance in Suburban Towns (Appointed by Supervisor)
- Highway Department Employees (Hired by Highway Superintendent)
- Planning Board Staff (Appointed/Hired by Planning Board)

Designations, Policies & Renewals

- Official Newspaper
- Depositories
- Investments
- Check Signing
- Purchasing
- Personnel Leave
- Contracts and Insurance
- Mileage Rates
- Training & Education
- Retirement System
- Administrative Oversight by Supervisor

Sunshine Laws

- Open Meetings Law
 - Public Officers Law, article 7
- Freedom of Information Law
 - Public Officers Law, article 6



Freedom of Information Law (FOIL)

- FOIL governs public access to municipal records.
- Town records are subject to FOIL.
- Records are accessible under FOIL unless an exception applies.
- The law defines "record" as "any information kept, held, filed, produced, or reproduced by, with, or for an agency or the State Legislature, in any physical form whatsoever..."
 - POL, §86(4)

Freedom of Information Law (cont'd)

Common Exempt Records:

- Personal information (e.g., social security numbers)
- Records that would impair collective bargaining negotiations
- Trade secrets
- Certain law enforcement records
- Inter-agency or Intra-agency documents
 - Except –
 - Statistical or factual data
 - External audits
 - Final policies or determinations
 - Instructions to staff

Freedom of Information Law (cont'd)

- Town Board adopts local FOIL policy which must be in accordance with State Law.
- Town Board designates local Record Access Officer.
- Town Board sets fees within limits provided by statute.
- FOIL requires records to be provided within statutory timeframes.

Open Meetings Law

- Every meeting of a public body must be open to the general public.
 - Regular meetings
 - Special meetings
 - Emergency meetings
 - Workshop meetings
 - Budget sessions

Open Meetings Law (cont'd)

- Common Exceptions to Open Meetings:
 - Social gatherings
 - Training sessions
 - Conversations with Town Attorney to get legal advice
 - Executive sessions

Open Meetings Law (cont'd)

Executive Sessions -

When Can an Open Meeting Be Closed:

- (a) matters which will imperil the public safety if disclosed;
- (b) any matter which may disclose the identity of a law enforcement agency or informer
- (c) information relating to current or future investigation or prosecution of a criminal offense which would imperil effective law enforcement if disclosed;
- (d) discussions regarding proposed, pending, or current litigation;
- (e) collective negotiations pursuant to Article 14 of the Civil Service Law (the Taylor Law);
- (f) the medical, financial, credit, or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal, or removal of a particular person or corporation;
- (g) the preparation, grading, or administration of examinations; and
- (h) the proposed acquisition, sale, or lease of real property or the proposed acquisition of securities, or sale or exchange of securities held by such public body, but only when publicity would substantially affect the value thereof.

Open Meetings Law (cont'd)

Notice Required

- The time and place of all meetings be given prior to every meeting.
- Notice to the public must be accomplished by posting in one or more designated public locations and on the Town's website (if available). Legal notice in a newspaper is not required.
- Notice to the news media is required – means is determined locally (e.g. fax, email, call local media).
- If a meeting is scheduled at least a week in advance, notice must be given to the public and the news media not less than 72 hours prior to the meeting.
- When a meeting is scheduled less than a week in advance, notice must be given to the public and the news media "to the extent practicable" at a reasonable time prior to the meeting.

Open Meetings Law (cont'd)

Minutes

- Historical Record of Board Meeting
- Town Clerk Records
- Format Determined Locally
- Minutes Must Include:
 - Names of Board Members present
 - Actions
 - Motions
 - Proposals
 - Resolutions
 - Vote thereon recorded by ayes and nays
- Minutes May Include:
 - Statements for the Record
 - Debate & Discussion (verbatim or summarized)
 - Correspondence
 - Presentation Materials
 - Public Comment

Questions?

Town Law, Article 8 (§§ 100-125)

- Provisions of Article 8 generally may not be superseded by local law.
- Fiscal Year: January 1 – December 31

Real Property Tax Levy Limit

- Towns are to calculate tax levy limit and report data elements to the State
 - Use OSC’s form to report
 - Forms are to be submitted prior to budget adoption
- Reports are to be submitted even if override is adopted

Budget Schedule

- September 20th: head of “administrative unit” (e.g. department heads) submit estimates of revenues and expenditures to budget officer (Town Law § 104)
 - October 20th for Towns in Westchester and Monroe counties
- September 30th: budget officer files tentative budget in clerk’s office (Town Law § 106)
 - October 30th for Towns in Westchester and Monroe counties

Budget Schedule (cont'd)

- October 5th: clerk presents tentative budget to town board for review, alteration & revision
 - November 10th for Towns in Westchester and Monroe counties

Budget Schedule (cont'd)

- As altered and revised, tentative budget becomes preliminary budget - filed in clerk's office (Town Law § 106)
- Town board must hold public hearing (on notice) on the preliminary budget (Town Law § 108)
- Hearing must be held on or before the first Thursday following Election Day; however, in Towns in Westchester and Monroe counties, hearing must be on or before December 10th (Town Law § 108)

Salaries -Town Law § 27(1)

- NOTE: Salaries of Town Board, elected Clerk, and elected Highway Superintendent may **NOT** exceed amounts specified in notice of hearing on the preliminary budget
 - UNLESS: Local law subject to permissive referendum authorizing higher salaries (Town Law §27)

Town Supervisor

- Town Law § 29 - treasurer of Town
- Town Law § 125 - unless function transferred by the Town Board to Town Comptroller, Supervisor must make monthly reports to Town Board on receipts and disbursements
- Town Law §§ 29(10), (10-a) – file annual financial report
- General Municipal Law § 30 - must prepare and file annual financial report with Office of the State Comptroller

Annual Financial Report – Statutory Requirements

- Responsibility of chief fiscal officer - Town Supervisor
 - Unless that function has been transferred to a Town Comptroller

Annual Financial Report

- Towns with population of less than 5,000 must file within 60 days of the close of the fiscal year (usually by March 1)
 - possible 60 day extension upon written request
- Towns with population of 5,000-19,999: required to be filed within 90 days of close of fiscal year (usually by March 31)
 - possible 30 day extension upon written request
- Towns with a population of 20,000 or more: required to be filed within 120 days of close of fiscal year (usually by April 30)
- Make report accessible to the public via its official website, if any

Annual Financial Report (cont'd)

Can be filed electronically or in paper form

Town Board

- Town Law § 64: "general management and control" of Town finances
- Town Law § 123: annual accounting by officers/employees
- Town Law §§ 118, 119: audit & approval of claims (if no town comptroller)
- Budget Process

Town Clerk

- Town Law § 30:
 - Issue licenses, permits, and collect fees
 - Generally, collect water rates/sewer rents, unless Town has receiver of taxes
 - Keep daily record of moneys received and deposit all moneys within 3 business days after total exceeds \$250
- Town Law § 27(1) – generally, by the 15th of each month, pay moneys to supervisor
- Public Health Law §§ 4121, 4124 - may be appointed by town board as registrar of vital statistics

Highway Law

- Moneys levied and collected for repair and improvement of highways

Highway Law § 284

- A 284 Agreement must be in writing and signed in duplicate by a majority of the town board and the highway superintendent
 - Must be filed with town clerk and county highway superintendent

Tools of the Town Board

- Motions
- Resolutions
- Ordinances
- Local Laws



Tools of the Town Board

Resolutions

- Generally considered a non-legislative act
- Primarily serve as the "workhorse" of the town board
- Used for routine actions
- Examples include:
 - Making appointments
 - Approving contracts
 - Expressing praise or mourning
 - Approving claims
 - Budget transfers

Ordinances

- An ordinance is a legislative act.
- An ordinance prescribes some permanent rule of conduct to continue in force until the ordinance is repealed.
- AKA Rule or Regulation
- Requires a specific grant of authority found in State law
- Examples
 - Town Law, article 9 (licensing, peace and good order, unsafe structures etc.)
 - Town Law, article 16 (land use)

Local Law

- A Legislative Act
- Local laws have status equivalent with a law enacted by the Legislature.
- Local laws do not require a specific grant of legislative authority which is required for an ordinance.
- Local laws may supersede certain articles of the Town Law (cannot supersede articles 8,12, 12a of the Town Law).
- Local laws must be consistent with General State Laws.
- Subjects addressed in local laws may include:
 - Property and Affairs of Town Government
 - Terms of Office of Town Officers
 - Zoning and Land Use
 - Business Licensing
 - Peace and Good Order (e.g. noise, leash laws)
 - Speed Limits, Parking, Vehicle, and Traffic Rules
 - Applies within the Town outside any village boundaries unless otherwise provided by law

Association of Towns of the State of New York

- The Association of Towns was established by town officers in 1933 to help towns obtain greater economy and efficiency.



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AOT Services and Resources

- Legal and Technical Assistance
- Representation with State and Federal Government
 - Insurance (liability, property, workers' compensation)
- Training
 - Annual Meeting
 - Finance School
 - Highway School
 - Planning and Zoning School
 - New Officials School

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AOT Publications

- Directory of Town Officials - Published bi-annually, it contains names, addresses, phone, and fax for over 15,000 Town Officials. Information on all 932 Towns in New York State.
- Talk of the Towns/Topics - the Association magazine for Town officials about town government and related issues. Published bi-monthly.
- Laws Digest - the annual summary of new laws affecting town government.
- Training Manuals - written by our technical and legal staff and designed to keep town officials updated and informed about the responsibilities of their offices. These comprehensive "how-to" manuals are a resource for new and veteran town officials alike.
 - The Town Law Manual (2016)
 - The Office of Town Highway Superintendent (2017)
 - The Office of Town Clerk (2013)
 - Tax Collection in Towns (2008)
 - Forms and Outline of Criminal Procedure for Town Justices and Police (2006)
 - Suggestions for Procedures at the First Meeting of the New Town Board (2010)
 - Small Claims Guide for Towns & Village Courts (2006)
- Content-Driven Website and Twitter Feed - A new website and Twitter feed that is focused on current news and training for town officials: www.nytowns.org and twitter.com/nytowns

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New York State Office of the State Comptroller

- Academy for New York State's Local Officials
 - User-friendly website
 - Training calendar
- Audit services
- Regional offices
 - Technical assistance
- www.osc.state.ny.us/localgov



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Questions?

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Thank You

Office of the State Comptroller

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