

NO: R059

COUNCIL DATE: MARCH 8, 2021

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## REGULAR COUNCIL

TO: **Mayor & Council**

DATE: **March 4, 2021**

FROM: **General Manager, Corporate Services  
City Solicitor**

FILE: **2210-20-045**

SUBJECT: **Council Procedures for Ethics Commissioner Investigation Reports**

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## RECOMMENDATION

The Corporate Services Department recommends that Council:

1. Receive this report for information; and
2. Endorse the proposed procedures as described in this report and summarized in Appendix "I" for the conduct of Council and staff in receipt of investigation reports from the Ethics Commissioner pursuant to the *Council Code of Conduct Bylaw, 2020, No. 20020*.

## INTENT

The intent of this report is to obtain Council's endorsement of the detailed procedures (the "Procedures") following the submission to the City of the investigation reports of the Surrey Ethics Commissioner Office ("SECO"). These Procedures are described in this report and summarized in the document entitled "SECO Investigation Reports: Summary of Council Procedures", attached as Appendix "I". A quick reference guide entitled "Chart of SECO Procedures" is attached as Appendix "II".

## BACKGROUND

### SECO Investigation Reports

Under the *Council Code of Conduct Bylaw, 2020, No. 20020* (the "Code" or the "Code of Conduct"), any person who has witnessed or experienced conduct by a Council Member which they believe contravenes the Code may submit a complaint to SECO. If SECO proceeds to investigate the complaint, then under section 73 of the Code, once the investigation has been completed, SECO shall prepare a written report and provide a copy of the report to the City Manager and Council. The report will, at a minimum, contain a description of the allegations, a summary of the evidence of the parties and the witnesses, and a determination of whether a contravention occurred. SECO may also provide recommendations with respect to the potential outcome.

Council's role under the Code is to receive the SECO investigation report at a Closed Council meeting and, if there is a SECO determination of a contravention, to determine what if any measures to impose for the contravention. Following Council's deliberations, a summary of the investigation report and Council's decision regarding measures will be disclosed to the public in compliance with the *Freedom of Information and Protection of Privacy Act* ("FOIPPA").

## **DISCUSSION**

### **SECO Investigation Reports**

Generally, the findings and recommendations of an investigation report by SECO will fall into one of four categories:

1. No contravention of the Code found, and no recommendation by SECO to impose any measures;
2. No contravention of the Code, with recommendations;
3. A contravention(s) of the Code found, with recommendations by SECO to impose appropriate measures; or
4. Contravention(s) found, with no recommendations.

There are different procedures for each of the above four scenarios relating to matters such as the materials provided to Council and the conduct of the Closed Council meeting. Nevertheless, the scenarios will share some of the same procedures, as described below:

#### Distribution of Investigation Report

SECO will distribute all investigation reports to the City Manager and to Council through the City Clerk, recognizing that the Code designates the reports to be received in a Closed Council meeting (see sections 74(c), 84, and 85).

The City Clerk will distribute a copy of the investigation report to the Council Member that is the subject of the complaint (*i.e.* the "Respondent") at least 7 business days before the matter is scheduled to be considered by Council (see section 84).

The other Council Members will receive a copy of the investigation report as part of their package for the Closed Council meeting. The package for this agenda item will include a covering report from the City Solicitor, which attaches the investigation report, a summary of the investigation report, and any other relevant material (as described below).

The Complainant will not receive a copy of the investigation report, unless the Complainant is a Council Member, in which case they will receive the report through the Closed Council meeting package.

### Preparation of Investigation Report Summary for Public Disclosure

Absent exceptional circumstances, each investigation report will contain personal information which will preclude the whole report from being disclosed under FOIPPA. Therefore, a summary of each investigation report will be prepared in a form that is disclosable to the public. The summary will be prepared by SECO and approved by the City for compliance with FOIPPA.

### Conflict of Interest Check

Council Members who are concerned about whether they must recuse themselves from participating in the Closed Council meeting due to a conflict of interest should obtain advice before the meeting. Concerns about conflicts of interest may arise particularly where the Council Member may have a monetary or pecuniary interest in the matter, or where the Complainant is a Council Member.

As per s. 22 of the Code, Council members concerned about a conflict of interest may seek the advice of SECO or independent legal advice.

### Attendance at Closed Council Meeting

Generally, all Council Members without a conflict of interest will be in attendance at the beginning of the Closed Council meeting – including the Respondent. The Respondent will leave the meeting in scenarios where Council needs to deliberate on imposing measures following a contravention of the Code.

Staff present at the meeting will be the City Clerk, City Manager and City Solicitor.

SECO will be on standby to answer questions from Council. The questions must be related to clarifying the information contained in the investigation report only. SECO is not legally able to provide any new evidence or findings that are not contained in the report. If SECO is present to answer questions, SECO will be excused from the meeting before Council begins deliberating and voting on any measures or recommendations and will not be available during that portion of the meeting.

The Complainant will not be present at the meeting unless they are a Council Member who is satisfied that they have no conflict of interest and has maintained an open mind concerning voting on any proposed measures.

### **Additional Procedures by Type of Investigation Report**

Below is a discussion of the procedures applicable to each category of investigation report:

#### **1. No Contravention of the Code and No Recommendations**

##### *Conduct of Closed Meeting*

Where SECO has found no contravention of the Code and made no recommendations, Council is not in a position under the Code to either reconsider SECO's findings nor to impose any sanctions against the Respondent. In these circumstances, Council will receive a covering report from the

City Solicitor which attaches (a) the investigation report; and (b) a summary of the investigation report. The recommendation in the Corporate Report will be that Council receive this Corporate Report for information only.

The Chair, or the Acting Mayor if the Mayor is the Complainant or the Respondent, will read SECO's determination that SECO has found no contravention of the Code and made no recommendations for measures against the Respondent.

Council will then have an opportunity to ask SECO appropriate questions, should they wish. Following these questions, SECO will leave the meeting.

The Chair will then ask for a mover and seconder to receive the Corporate Report for information, and then Council can proceed to deliberations and voting.

Both the Complainant and the Respondent may participate in the meeting so long as they are satisfied that they will not be in a conflict of interest under the *Community Charter*. Generally, in these circumstances, the Complainant and the Respondent (if members of Council) may vote on receiving the report if they are prepared to establish they have an open mind and are amenable to persuasion, as they do not have a pecuniary interest on this category of investigative report and there is no hearing procedure.

Neither the Code nor due process allows Council to overturn SECO's finding that there was no contravention. Because there is no contravention, Council is not in a position to impose any measures against the Respondent.

Because SECO has found no breach, there is no hearing, and the Respondent does not need make any representations to Council and will not be permitted to have a lawyer in attendance.

#### *Release of Information Following Meeting*

The fact that the complaint has been dismissed will be communicated to the Complainant either by the City Clerk, or if the identity of the Complainant is confidential then by SECO, within 5 business days of the Closed Council meeting. The summary of the report will also be provided to the Complainant as a courtesy.

The summary of the investigation report will be posted on the SECO page of the City website within 5 business days of the Closed Council meeting.

#### **2. No Contravention of the Code, With Recommendations**

SECO may find that a complaint does not give rise to a violation of the Code, and will therefore not make any recommendations for measures against the Respondent under section 76. Nevertheless, in its educational and advisory role, SECO may make recommendations as per sections 11(a) and (h) of the *Ethics Commissioner Establishment Bylaw, 2020, No. 20018*. The recommendations may be general in nature, and may be directed for all Council Members to conduct themselves so as to avoid conflict situations similar to the ones giving rise to the particular complaint. These recommendations may be provided in relation to any investigation report falling under any of the four categories discussed.

The procedures applicable to this scenario will be the same as in the category above (*i.e.*, where there is no contravention and no recommendation) – except that Council will be asked to consider whether or not to endorse SECO’s recommendations.

*Release of Information Following Meeting*

The fact that the complaint has been dismissed will be communicated to the Complainant either by the City Clerk, or if the identity of the Complainant is confidential then by SECO, within 5 business days of the Closed Council meeting. The summary of the report will also be provided to the Complainant as a courtesy, plus only those recommendations that Council has endorsed.

If Council endorses SECO’s recommendations, then Council’s endorsement along with SECO’s recommendations that have been endorsed by Council will be included on SECO’s page on the City’s website within 5 business days of the Closed Council meeting.

**3. Contravention of Code Found, With Recommendations for Measures**

*Notice of Closed Meeting to Respondent*

The distribution of the investigation report from SECO to the City and then to Council will be the same as discussed above.

Where a contravention of the Code has been found by SECO with measures recommended, the Mayor, or the City Clerk if the Mayor is alleged to have contravened the Code, will notify the Respondent in writing that Council will be considering their conduct at a Closed Council meeting. The notice and form of resolution where a breach is believed by SECO to have occurred are set out in Schedule A of the Code. The notice, form of resolution, and a copy of the investigation report will be delivered **at least 10 business days** in advance of the Closed Council meeting at which Council will consider the measure, if any, that it will impose in accordance with the Code.

*Opportunity for Respondent to Provide Written Submissions*

If the Respondent wishes to provide written submissions and/or other documents for Council’s consideration, the materials must be delivered to the City Clerk **at least 7 business days** before the matter is scheduled for the Closed Council meeting.

The submissions and material must be relevant to Council’s determination of appropriate measures and must not be directed at SECO’s determination of contravention.

At the Closed Council meeting, the Respondent may be represented by legal counsel, whose reasonably incurred legal fees may be paid by the City in accordance with section 89 and City Policy No. D-42, “Payment of Reasonable Fees to Respond to Complaints Under Council Code of Conduct”.

### *Corporate Report*

The package for this agenda item will include a covering report from the City Solicitor which attaches:

- (a) the investigation report;
- (b) a summary of the investigation report;
- (c) a copy of the Schedule A Notice that was delivered to the Respondent;
- (d) a draft of the Schedule A Resolution that was delivered to the Respondent; and
- (e) any relevant documents provided by the Respondent.

The Corporate Report will recite SECO's recommendations, and will further recommend that Council receive this Corporate Report for information as part Council's deliberations in considering measures pursuant to s. 85 of the Council Code of Conduct.

### *Fairness Procedure of Closed Council Meeting*

The process at the Closed Council meeting will include the following:

1. The Chair will read SECO's determination that a contravention of the Code has occurred.
2. After the Chair has read SECO's determination, SECO will be available to answer questions from Council. The questions must be related to clarifying the information contained in the investigation report only. SECO is not legally able to provide any new evidence or findings that are not contained in the report. Following answering Council's questions, SECO will no longer be available at the meeting.
3. The Respondent will be given an opportunity to make submissions to Council, with their legal counsel if desired. The submissions, without limitation, may include an admission, explanations for the impugned behavior or suggestions on the measures that Council might impose as a result of the conduct.
4. The Respondent will be limited to a maximum of one hour to make their presentation, except with leave of Council for an extension of time.
  - (a) If the Respondent requests more time, the Chair will ask for a mover and seconder of the motion. Once the motion is on the floor, it will be discussed and voted on by Council.
5. The Respondent is not allowed to have any more than one representative speak on their behalf and is not allowed to bring any other witnesses before Council.
6. All questions and comments will be through the Chair.
7. Neither the Respondent nor their counsel are allowed to question any Council Member regarding the evidence or SECO's findings.
8. After the Respondent has made the submissions to Council, the Council Members may ask questions of the Respondent.

9. Council Members are not otherwise allowed to make comments or provide opinions about the subject matter during the hearing.

#### *Conduct of Closed Council Meeting following fairness hearing*

After answering Council's questions, the Respondent will leave the meeting room along with any Council Members who has a conflict of interest. Those Council Members without a conflict of interest and have kept an open mind will remain and consider what measures, if any, to impose in accordance with the Code.

#### *Measures Available*

The measures that Council may impose include one or more of the following:

- (a) An apology from the Respondent in substantially the same form set out in Schedule B of the Code;
- (b) Removal of the Respondent from appointments such as chairperson, committees, commissions, or Advisory Boards;
- (c) Motion of censure;
- (d) Mandatory training on City Business, the *Community Charter*, or the Code of Conduct;
- (e) Referral to a prosecutor or police;
- (f) Any other action recommended by SECO; and
- (g) Any other measure permitted by the *Community Charter*, the *Local Government Act*, the *Local Elections Campaign Financing Act* and the *Charter of Rights and Freedoms*.

Under section 75, in determining the appropriate measure, Council must consider the following factors:

- (a) The degree and nature of the conduct;
- (b) Whether the contravention was a single or repeated act;
- (c) Whether the Respondent was told that the conduct was unwelcome or offensive, and nonetheless continued the conduct;
- (d) The nature of the work relationship of the Complainant and the Respondent, and whether the Respondent was in a position of authority over the Complainant, such that the degree and nature of the conduct was thereby exacerbated by an abuse of power;
- (e) The impact of the contravention on the Complainant;
- (f) The Respondent's acknowledgment of wrongdoing; and
- (g) The Respondent's history of other contraventions.

#### *Council's Decision*

Council's decision must include the reasons for the decision. Reasons are particularly for the Respondent's benefit to understand Council's decision. Each Council Member may provide separate reasons to explain their vote, including if they vote in dissent. Alternatively, or additionally, Council may include reasons in its resolution. If Council is only adopting SECO's recommendations, then Council may adopt SECO's reasons in the investigation report. If Council makes a different decision, their reasons may refer to one or more of the above factors in s. 75 of the Council Code of Conduct.

Council cannot overturn SECO's decision regarding whether a contravention has occurred or send the matter back to SECO to reconsider its conclusions. Under the Code, Council is only able to decide on whether or not to impose sanctions.

#### *Disclosures Following the Meeting*

Council's decision, including the reasons, will be in writing and provided by the City Clerk to the Complainant and the Respondent within 5 business days of the Closed Council meeting. If the reasons contain confidential information, then the Complainant may receive reasons with the confidential information removed.

A summary of the investigation report will be prepared by SECO and approved by the City for compliance with FOIPPA. The summary of the investigation report and Council's resolution concerning the measures, if any, it is imposing will be released to the public within 5 business days of the Closed Council meeting, including on the SECO page of the City website.

#### **4. Contravention of Code Found, No Recommendations**

There may be instances where SECO has found that the Respondent has contravened the Code, but that given the relatively minor nature of the contravention, the good faith conduct of the Respondent, or other mitigating factors, that no measures are warranted.

In these circumstances, Council will receive a Corporate Report attaching the investigation report and a summary for information only. Because SECO has made no recommendations regarding further measures, the Respondent will not be permitted to make any submissions to Council or to be represented by legal counsel at the meeting.

#### *Following the Meeting*

A summary of the investigation report indicating SECO's findings will be provided to the Complainant by the City Clerk, or if the identity of the Complainant is confidential then by SECO, within 5 business days of the Closed Council meeting.

#### *Release of Information to the Public*

The summary will be posted on the SECO page of the City website within 5 business days of the Closed Council meeting.

#### **Alternative Process Under Section 65 of the Code**

In addition to the above four categories, under section 65 of the Code, there is an alternative process where the Respondent may admit to a contravention and/or agree to an appropriate measure in lieu of a formal and complete SECO investigation.

Where there is an agreement with the Respondent concerning the appropriate measure to deal with a complaint or a contravention of the Code, then Council will be provided with a report from SECO for information only, following the processes under category #1 (*i.e.* where SECO has made no determination of a contravention and no recommendation). A summary of the report will be

made available on the SECO page of the City website within 5 business days of the Closed Council meeting where the report was considered by Council.

Where there is no agreement with the Respondent concerning an appropriate measure to deal with an admitted contravention, the matter will follow the process under category #3 (i.e. with notice to the Respondent of a fairness hearing in a Closed Council meeting to determine an appropriate measure).

### **Multiple Respondents**

There may be unusual circumstances where a single complaint is made against multiple Council Members. In such cases, SECO will issue a separate report pertaining to each Respondent and each report will be treated by Council as a separate matter.

The manner of distribution of each investigation report by SECO to the City will be the same as previously described. The distribution of each investigation report to the individual Respondents will depend on whether SECO has recommended measures against them, and will fall into one of the four categories. Respondents where no measures have been recommended will receive a copy of the report at least 7 business days before the Closed Council meeting. Those Respondents with measures recommended against them will receive a notice of the fairness hearing along with the report at least 10 business days in advance in order to allow them an opportunity to provide written submissions, as per the process in category #3.

Although it may be possible to deal with each investigation report at the same Closed Council meeting, each investigation report will be treated as a separate agenda item with its own Corporate Report. For example, if SECO has recommended sanctions against two Respondents, then a separate fairness hearing will be provided to each Respondent. The fairness hearings for all Respondents will be conducted before Council deliberates and decides on any measures for any Respondent. This is a similar process to Regular Council Public Hearing, where all the public hearings for all applications are conducted before Council deliberates and votes on the associated bylaws later in the meeting. All Respondents may attend the fairness hearings of each Respondent.

Once all the fairness hearings for all Respondents have been completed, then Council (absent all Respondents and any other Council Member with a conflict) shall deliberate and vote on each complaint against each Respondent as an individual agenda item, and provide separate reasons for each decision.

Note that quorum is five members of Council. If there is no quorum, then under section 129 of the *Community Charter*, the City must obtain a court order to proceed with a vote with less than quorum.

### *Following the meeting*

Council's decisions including the reasons, if applicable, will be provided to the Complainant within 5 business days of the Closed Council meeting where the respective investigation report was considered. Each Respondent will only receive the decision and reasons that pertain to the Respondent's investigation report within 5 business days of the Closed Council meeting where the Respondent's report was considered.

### *Summary and Public Disclosure*

A summary of each investigation report will be prepared by SECO and approved by the City for compliance with FOIPPA. The summary of each investigation report and Council's resolution concerning the measures, if any, it is imposing will be released to the public, including the SECO page of the City website within 5 business days of the Closed Council meeting.

### **Legal Services Review**

The Legal Services Division has reviewed the report and has no concerns.

### **SUSTAINABILITY CONSIDERATIONS**

The contents of this report support the objectives of the City's Sustainability Charter 2.0. In particular, this report supports the Sustainability Charter 2.0 theme of Inclusion. Specifically, this report supports the following Desired Outcome ("DO"):

- Community Pride and Engagement DO<sub>21</sub>: All residents have opportunities to be meaningfully engaged in civic issues and to contribute to community life.

### **CONCLUSION**

This report is provided to Council for its information and adoption concerning the procedures pertaining to Council's receipt of SECO investigation reports.

Rob Costanzo  
General Manager, Corporate Services

Philip Huynh  
City Solicitor

Appendix "I": SECO Investigation Reports: Summary of Council Procedures

Appendix "II": Chart of SECO Procedures

### SECO Investigation Reports: Summary of Council Procedures

This Summary sets out the procedures endorsed by Council for the distribution of the Surrey Ethics Commissioner’s (“SECO”) investigation reports, and for Council’s deliberations on these reports and SECO’s findings and recommendations.

Under the *Council Code of Conduct Bylaw, 2020, No. 20020* (the “Code” or the “Code of Conduct”), any person who has witnessed or experienced conduct by a Council Member which they believe contravenes the Code may submit a complaint to SECO. If SECO proceeds to investigate the complaint, then under section 73 of the Code, once the investigation has been completed, SECO shall prepare a written report and provide a copy of the report to the City Manager and Council. The report will, at a minimum, contain a description of the allegations, a summary of the evidence of the parties and the witnesses, and a determination of whether a contravention occurred. SECO may also provide recommendations with respect to the potential outcome.

Council’s role under the Code is to receive the SECO investigation report and, if there is a SECO determination of a contravention, to determine what if any measures to impose for the contravention. Following Council’s deliberations, a summary of the investigation report and Council’s decision regarding measures will be disclosed to the public in compliance with the *Freedom of Information and Protection of Privacy Act* (“FOIPPA”).

Generally, the findings and recommendations of an investigation report by SECO will fall into one of four categories:

1. A finding of no contravention of the Code, and no recommendations;
2. A finding of no contravention of the Code, with recommendations;
3. A finding of a contravention(s) of the Code, with recommendations by SECO to impose appropriate measures; or
4. A finding of a contravention(s) of the Code, with no recommendations for Council to take any measures.

In addition to these four categories, under section 65 of the Code, the Council Member that is subject to the complaint may admit to a contravention and/or agree to an appropriate measure in lieu of a formal SECO investigation.

There may also be unusual circumstances where there are multiple Respondents for one complaint.

Below are the applicable procedures endorsed by Council for each of the above categories of investigation report:

## 1. NO CONTRAVENTION OF THE CODE AND NO RECOMMENDATIONS

### Distribution of Investigation Report by SECO to the City

- SECO will provide a copy of the investigation report to the City Manager and to Council through the City Clerk. [s. 73]

### Distribution of Investigation Report to the Respondent

- The City Clerk will distribute a copy of the investigation report to the Council Member that is the subject of the complaint (*i.e.* the “Respondent”) at least 7 business days before the matter is scheduled to be considered by Council. [s. 84]

### No Distribution of Investigation Report to the Complainant

- The Complainant will not receive a copy of the investigation report (unless the Complainant is a Council Member, in which case they will receive it through the Council package – see below).

### Distribution of Investigation Report to Council

- All of Council will receive a copy of the investigation report as part of the package at the meeting of Closed Council.

### Preparation of Summary of Investigation Report

- A summary of the investigation report will be prepared that will be disclosed to the public in compliance with FOIPPA. The summary will be prepared by SECO and approved by the City for compliance with FOIPPA.

### Corporate Report

- The package for this agenda item will include a covering report from the City Solicitor which attaches:
  - (a) the investigation report; and
  - (b) the summary of the investigation report for public disclosure.
- The recommendation in the Corporate Report will be that Council receive this Corporate Report for information only.

### Conflict of Interest Check

- Council Members who are concerned about whether they must recuse themselves from participating in the Closed Meeting due to a conflict of interest should obtain advice before

the meeting. As per s. 22 of the Code, Council members concerned about a conflict of interest may seek the advice of SECO or independent legal advice.

#### Attendance at Closed Council meeting

- All of Council, including the Respondent and the Complainant, subject to any conflict of interest as determined by the individual Council Member.
- Staff (Clerk, City Manager, City Solicitor).
- SECO – on standby to answer questions from Council. The questions must be related to clarifying the information contained in the investigation report only. SECO is not legally able to provide any new evidence or findings that are not contained in the report. If SECO is present to answer questions, SECO will be excused from the meeting before Council begins deliberating and voting on any measures or recommendations and SECO will not be available during that portion of the meeting.

#### Not in attendance at meeting

- Complainant (unless Complainant is a Council Member without a conflict of interest and has maintained an open mind concerning voting on any proposed measure)

#### Conduct of Meeting

- The Chair, or the Acting Mayor if the Mayor is the Complainant or the Respondent, will read SECO's determination that SECO has found no contravention of the Code and made no recommendations for measures against the Respondent.
- Council will then have an opportunity to ask SECO appropriate questions, should they wish. Following these questions, SECO will leave the meeting.
- The Chair will then ask for a mover and seconder to receive the Corporate Report for information, and then Council can proceed to deliberations and voting.
- The Complainant and the Respondent (if members of Council) may generally vote on receiving the report if they are prepared to establish they have an open mind and are amenable to persuasion, as they do not have a pecuniary interest in this category of investigative report and there is no hearing procedure.
  - Neither the Code nor due process allows Council to overturn SECO's finding that there was no contravention. Because there is no contravention, Council is not in a position to impose any measures against the Respondent.
  - As stated, both the Complainant and the Respondent may participate in the meeting and the vote to receive the Corporate Report, so long as they are satisfied that they will not be in a conflict of interest under the *Community Charter* and have an open mind and are amendable to persuasion.

- Because SECO has found no breach, there is no hearing, and the Respondent does not need make any representations to Council and will not be permitted to have a lawyer in attendance.

#### Following the meeting

The fact that the complaint has been dismissed will be communicated to the Complainant either by the City Clerk, or if the identity of the Complainant is confidential then by SECO, within 5 business days of the closed meeting. The Complainant will also be provided with the summary of the investigation report as a courtesy.

#### Public Disclosure

The summary of the investigation report will be posted on the SECO page of the City website within 5 business days of the closed meeting.

## 2. NO CONTRAVENTION OF THE CODE, WITH RECOMMENDATIONS

### Distribution of Investigation Report by SECO to the City

- Same as #1 above.

### Distribution of Investigation Report to the Respondent

- Same as #1 above.

### No Distribution of Investigation Report to the Complainant

- Same as #1 above

### Distribution of Investigation Report to Council

- Same as #1 above.

### Preparation of Summary of Investigation Report

- Same as #1 above, with the addition that SECO's recommendations that are endorsed by Council will also be included. Recommendations not endorsed by Council will not be included.

### Corporate Report

- Same as #1 above, with the addition of SECO's recommendations. The recommendations in the Corporate Report will be that:
  - (a) Council receive this Corporate Report for information; and
  - (b) Council approve the recommendations included in the investigation report.

### Conflict of Interest Check

- Same as #1 above.

### Attendance at Closed Council meeting

- Same as #1 above.

### Not in attendance at meeting

- Same as #1 above.

### Conduct of Meeting

- Same as #1 above, with the following additions:
  - The Chair will bring to Council's attention the additional recommendations in the investigation report and recommend that Council endorse the recommendations.
  - Council will then include SECO's recommendations in their deliberations and voting.

Following the meeting

Same as #1 above, but only those recommendations endorsed by Council will be provided to the Complainant.

Public Disclosure

Same as #1 above, with the addition that any SECO recommendations that have been endorsed by Council will also posted on the SECO page of the City website, along with a copy of Council's decision to make the endorsement.

### 3. CONTRAVENTION OF CODE FOUND, WITH RECOMMENDATIONS FOR MEASURES

#### Distribution of Investigation Report by SECO to the City

- Same as #1 above

#### Notice of Closed Meeting to the Respondent

- Where a contravention of the Code has been found by SECO, the Mayor, or the City Clerk if the Mayor is alleged to have contravened the Code, will notify the Respondent in writing that Council will be considering their conduct at a closed meeting.
- The notice and form of resolution where a breach is believed by the SECO to have occurred are set out in Schedule A of the Code. [s. 84]
- The notice, form of resolution, and a copy of the investigation report will be delivered at least 10 business days in advance of the closed meeting at which Council will consider the measure, if any, that it will impose in accordance with the Code.

#### No Distribution of the Investigation Report to the Complainant

- Same as #1 above.

#### Distribution of Investigation Report to Council

- Same as #1 above.

#### Preparation of Summary of Investigation Report

- Same as #1 above.

#### Opportunity for Respondent to Provide Written Submissions

- If the Respondent wishes to provide written submissions and/or other documents for Council's consideration, the materials must be delivered to the City Clerk at least 7 business days before the matter is scheduled for the Closed Council meeting.
- The submissions and material must be relevant to Council's determination of appropriate measures and must not be directed at SECO's determination of contravention.

#### Corporate Report

- The package for this agenda item will include a covering report from the City Solicitor which attaches:

(a) the investigation report;

- (b) a summary of the investigation report;
- (c) a copy of the Schedule A Notice that was delivered to the Respondent;
- (d) a draft of the Schedule A Resolution that was delivered to the Respondent; and
- (e) any relevant documents provided by the Respondent.

- The Corporate Report will recite the SECO recommendations, and will further recommend that Council receive this Corporate Report for information as part Council's deliberations in considering measures pursuant to s. 85 of the Council Code of Conduct.

#### Conflict of Interest Check

- Same as #1 above.

#### Attendance at "Fairness Hearing" portion of Closed Council meeting

- Council, including the Respondent and the Complainant.
- Staff (Clerk, City Manager, City Solicitor).
- SECO (on call).

#### Not in attendance at Fairness Hearing

- Complainant (unless Complainant is a Council Member).

#### Conduct of Fairness Hearing

Under s. 84-85 of the Code:

1. The Chair will read SECO's determination that a contravention of the Code has occurred.
2. At the closed meeting the Respondent may be represented by legal counsel, whose reasonably incurred legal fees may be paid by the City in accordance with section 89 and City Policy No. D-42, "Payment of Reasonable Fees to Respond to Complaints Under Council Code of Conduct". [s. 84]
3. After the Chair has read SECO's determination, SECO will be available to answer questions from Council. The questions must be related to clarifying the information contained in the investigation report only. SECO is not legally able to provide any new evidence or findings that are not contained in the report. Following answering Council's questions, SECO will no longer be available at the meeting.
4. The Respondent will be given an opportunity to make submissions to Council, with their legal counsel if desired. The submissions, without limitation, may include an admission, explanations for the impugned behavior or suggestions on the measures that Council might impose as a result of the conduct.

5. The Respondent will be limited to a maximum of one hour to make their presentation, except with leave of Council for an extension of time.
  - (a) If the Respondent requests more time, the Chair will ask for a mover and seconder of the motion. Once the motion is on the floor, it will be discussed and voted on by Council.
6. The Respondent is not allowed to have any more than one representative speak on their behalf and is not allowed to bring any witnesses before Council.
7. All questions and comments will be through the Chair.
8. Neither the Respondent nor their counsel are allowed to question any Council Member regarding the evidence or SECO's findings.
9. After the Respondent has made the submissions to Council, the Council Members may ask questions of the Respondent. Council Members are not otherwise allowed to make comments or provide opinions about the subject matter during the hearing.

#### Conduct of Closed Council Meeting following fairness hearing

1. After answering Council's questions, the Respondent will leave the meeting room along with any Council Member who has a conflict of interest.
2. Those Council Members without a conflict of interest and have kept an open mind will remain and consider what measures, if any, to impose in accordance with the Code.

#### *Measures Available*

1. The measures that Council may impose include one or more of the following:
  - An apology from the Respondent in substantially the same form set out in Schedule B of the Code;
  - Removal of the Respondent from appointments such as chairperson, committees, commissions, or Advisory Boards;
  - Motion of censure;
  - Mandatory training on City Business, the *Community Charter*, or the Code of Conduct;
  - Referral to a prosecutor or police;
  - Any other action recommended by SECO; and
  - Any other measure permitted by the *Community Charter*, the *Local Government Act*, the *Local Elections Campaign Financing Act* and the *Charter of Rights and Freedoms*.
2. Under section 75, in determining the appropriate measure, Council must consider the following factors:
  - The degree and nature of the conduct;
  - Whether the contravention was a single or repeated act;

- Whether the Council Member was told that the conduct was unwelcome or offensive, and nonetheless continued the conduct;
  - The nature of the work relationship of the Complainant and the Respondent, and whether the Respondent was in a position of authority over the Complainant, such that the degree and nature of the conduct was thereby exacerbated by an abuse of power;
  - The impact of the contravention on the Complainant;
  - The Respondent's acknowledgment of wrongdoing; and
  - The Respondent's history of other contraventions.
3. Council's decision must include the reasons for the decision. Reasons are particularly for the Respondent's benefit to understand Council's decision. Each Council Member may provide separate reasons to explain their vote, including if they vote in dissent. Alternatively, or additionally, Council may include reasons in its resolution. If Council is only adopting SECO's recommendations, then Council may adopt SECO's reasons in the investigation report. If Council makes a different decision, their reasons may refer to one or more of the above factors in s. 75 of the Council Code of Conduct.
  4. Council cannot overturn SECO's decision regarding whether a contravention has occurred or send the matter back to SECO to reconsider its conclusions. Under the Code, Council is only able to decide on whether or not to impose sanctions.

#### Following the meeting

Council's decision, including the reasons, will be in writing and provided by the City Clerk to the Complainant and the Respondent within 5 business days of the closed meeting. If the reasons contain confidential information, then the Complainant may receive reasons with the confidential information removed.

#### Summary and Public Disclosure

A summary of the investigation report will be prepared by SECO and approved by the City for compliance with FOIPPA. The summary of the investigation report and Council's resolution concerning the measures, if any, it is imposing will be released to the public, including on the SECO page of the City website within 5 business days of the closed meeting.

#### 4. CONTRAVENTION OF CODE FOUND, NO RECOMMENDATIONS

##### Distribution of Investigation Report by SECO to the City

- Same as #1 above.

##### Distribution of Investigation Report to the Respondent

- Same as #1 above.

##### No Distribution of the Investigation Report to the Complainant

- Same as #1 above.

##### Distribution of Investigation Report to Council

- Same as #1 above.

##### Preparation of Summary of Investigation Report

- Same as #1 above.

##### Corporate Report

- Same as #1 above.

##### Conflict of Interest Check

- Same as #1 above.

##### Attendance at “Fairness Hearing” portion of Closed Council meeting

- No Fairness Hearing required, because SECO has recommended no measures. The investigation report is being distributed for Council’s information only.

##### Attendance at Closed Council Meeting

- Same as #1 above.

##### Not in Attendance at Closed Council Meeting

- Same as #1 above.

### Conduct of Closed Meeting

- Same as #1 above, except that the Chair will note that although a contravention was found, no measures are recommended. Council will only deliberate and vote on receiving the corporate report for information.

### Following the meeting

A summary of the investigation report indicating SECO's findings will be provided to the Complainant by the City Clerk, or if the identity of the Complainant is confidential then by SECO, within 5 business days of the closed meeting.

### Public Disclosure

The summary will be posted on the SECO page of the City website within 5 business days of the closed meeting.

## **5. OTHER PROCESSES (S. 65): ADMISSION OR AGREEMENT BY RESPONDENT**

- Section 65 of the Code contemplates other processes to determine and resolve a breach of the Code for the purposes of proceeding with a Council measure by way of an admission by the Respondent of a contravention and/or an agreement with the Respondent as to the appropriate measures to deal with the complaint.
- Where there is an agreement with the Respondent concerning the appropriate measure to deal with a complaint or a contravention of the Code, then Council will be provided a report from SECO for information only, following the processes under category #1. A summary of the report will be made available on the SECO page of the City website within 5 business days of the Closed Council meeting.
- Where there is no agreement with the Respondent concerning an appropriate measure to deal with an admitted contravention, the matter will follow the process under category #3.

## 6. MULTIPLE RESPONDENTS

- A single complaint may be made against multiple Council Members pertaining to the same matter, and SECO will issue a separate investigation report for each Respondent.

### Distribution of Investigation Report by SECO to the City

- Same as #1 above.

### Distribution of Investigation Report to the Respondents

- Same as #1 above to the Respondents for whom no recommendations for measures were made by SECO.
- Same as #3 above for the Respondents (*i.e.* with Notice of Closed Meeting) for whom SECO has recommended measures.

### No Distribution of the Investigation Report to the Complainant

- Same as #1 above.

### Distribution of Investigation Report to Council

- Same as #1 above, and each investigation report will be considered as a separate agenda item.

### Preparation of Summaries of Investigation Report

- Same as #1 above, with one summary for each report.

### Opportunity for Respondents to Provide Written Submissions

- Only Respondents where measures have been recommended against them may provide written submissions, as per #3 above.

### Corporate Report

- Same as #1, 2, 3, or 4 above, as applicable. Each investigation report will have its own Corporate Report.

### Conflict of Interest Check

- Same as #1 above.

### Conduct of Closed Council meeting(s)

- Although it may be possible to deal with each investigation report at the same closed meeting, each investigation report will be treated as a separate agenda item with its own corporate report. For example, if SECO has recommended sanctions against two Respondents, then a separate fairness hearing will be provided to each Respondent. The fairness hearings for all Respondents will be conducted before Council deliberates and decides on any measures for any Respondent. This is a similar process to Regular Council Public Hearing, where all the public hearings for all applications are conducted before Council deliberates and votes on the associated bylaws later in the meeting. All Respondents may attend the fairness hearings of each Respondent.
- Once all the fairness hearings for all Respondents have been completed, then Council (absent all Respondents and any other Council Member with a conflict) shall deliberate and vote on each complaint against each Respondent as an individual agenda item, and provide separate reasons for each decision.
- Note that quorum is five members of Council. If there is no quorum, then under section 129 of the *Community Charter*, the City must obtain a court order to proceed with a vote with less than quorum.

### Following the meeting

Council's decisions, including the reasons, will be provided to the Complainant within 5 business days of the closed meeting where the respective investigation report was considered. Each Respondent will only receive the decision and reasons that pertain to the Respondent's investigation report within 5 business days of the closed meeting where the Respondent's report was considered.

### Public Disclosure

A summary of each investigation report will be prepared by SECO and approved by the City for compliance with FOIPPA. The summary of each investigation report and Council's resolution concerning the measures, if any, it is imposing will be released to the public, including the SECO page of the City website within 5 business days of the Closed Council meeting.

**Chart of SECO Procedures**

	<b>Category 1</b> <b>No Contravention, No Recommendations</b>	<b>Category 2</b> <b>No Contravention, Recommendations</b>	<b>Category 3</b> <b>Contravention, Measures Recommended</b>	<b>Category 4</b> <b>Contravention, No Recommendation</b>
<b>Distribution of Investigation Report (“IR”) to:</b>				
• City	SECO distributes to City Manager and Clerk.	Same as #1.	Same as #1.	Same as #1.
• Respondent	Clerk delivers IR at least 7 business days before closed Council meeting.	Same as #1.	Schedule A Notice of Contravention along with IR at least 10 business days before meeting.	Same as #1.
• Complainant (non-member)	IR not delivered to Complainant.	Same as #1.	Same as #1.	Same as #1.
• Council	IR part of Council package before closed Council Meeting.	Same as #1.	Same as #1.	Same as #1.
<b>Summary of IR Prepared?:</b>				
	Yes	Yes, plus SECO’s recommendations endorsed by Council.	Yes	Yes
<b>Written Submissions Allowed from Respondent?:</b>				
	No	No	Yes, at least 7 business days before closed meeting.	No
<b>Corporate Report (“CR”) contents:</b>				
	IR and Summary.	IR and Summary plus SECO recommendations.	- IR - Summary	Same as #1.

			- Schedule A Notice and Resolution - documents from Respondent (if any)	
<b>Attendance at Closed Meeting:</b>				
	All of Council Staff SECO	Same as #1.	Same as #1.	Same as #1.
<b>Not attending Closed Meeting:</b>				
	Complainant (unless a Member)	Same as #1.	Same as #1.	Same as #1.
<b>Conduct of Meeting:</b>				
• Fairness hearing?	No.	No.	Yes.	No.
• Decisions for Council to make	To receive CR for information only.	To receive CR for info only.  To endorse SECO recommendations.	To consider what measures, if any, to impose per the Code.  Reasons for decision to be provided.	Same as #1.
<b>Disclosures Following Meeting:</b>				
	Dismissal and Summary delivered to Complainant within 5 business days after closed Council meeting.  Summary posted on SECO webpage.	Dismissal and Summary delivered to Complainant within 5 business days after closed Council meeting.  Summary posted on SECO webpage, plus Council endorsement of SECO recommendations.	Council's decision and reasons provided in writing to Complainant and Respondent within 5 business days after closed Council Meeting.  Summary posted on SECO webpage, including Council resolution concerning measures.	Summary delivered to Complainant within 5 business days after closed Council meeting.  Summary posted on SECO webpage.

<b>Section 65 (Other Processes)</b>				
	Admission of Contravention/Measures Agreed to.	Admission/No Measures Agreed to.	No Admission/Measures Agreed to.	No Admission/No Measures.
Applicable Process	Same as when no contravention and no recommendation (#1).	Same as where there are contraventions and recommendations (#3).	Same as when no contravention and no recommendation (#1).	Investigation proceeds as usual per #1, 2, 3, or 4 as applicable.