

NO: R072

COUNCIL DATE: April 11, 2022

REGULAR COUNCIL

TO: **Mayor & Council**

DATE: **April 7, 2022**

FROM: **General Manager, Corporate Services**

FILE: **3900-20-20020**

SUBJECT: **Proposed Amendments to *Council Code of Conduct Bylaw, 2020, No. 20020***

RECOMMENDATION

The Corporate Services Department recommends that Council:

1. Receive this report for information;
2. Approve the proposed amendments to the *Council Code of Conduct Bylaw, 2020, No. 20020*, as summarized in Appendix “I” and reflected within the *Council Code of Conduct Bylaw, 2020, No. 20020*, as documented in Appendix “II” of this report (the “Amendments”);
3. Approve the proposed amendments to Policy No. D-42, “Payment of Reasonable Legal Fees to Respond to Complaints Under Council Code of Conduct” (the “Legal Fees Policy”), in accordance with the recommendations in this report and as documented in Appendix “III”; and
4. Authorize the City Clerk to bring forward the related amendment bylaw for the required readings.

INTENT

The purpose of this report is to obtain Council’s approval to adopt the Amendments to the *Council Code of Conduct Bylaw, 2020, No. 20020* (the “Code of Conduct”), and to approve associated amendments to the Legal Fees Policy.

BACKGROUND

Council adopted the Code of Conduct on May 4, 2020. On July 13, 2020, Council appointed the Surrey Ethics Commissioner. The Code of Conduct provides rules of ethical conduct for Council Members and processes for resolving complaints under the Code of Conduct, either informally or through a formal investigation process.

The Surrey Ethics Commissioner Office (“SECO” or the “Commissioner”) is an independent office that performs advisory and educational functions in relation to administering the Code of Conduct and assisting Council Members with understanding their ethical obligations. The Commissioner also has the power to investigate allegations of ethical misconduct in relation to Mayor and Council; to report their findings to Council; and provide recommendations to Council as to the appropriate sanction or discipline.

Under the *Ethics Commissioner Establishment Bylaw, 2020, No. 20018*, the Commissioner may provide advice and recommendations to Council regarding amendments to the Code of Conduct and related policies and procedures. A review of the Code of Conduct is a normal and beneficial part of the Commissioner’s mandate following the adoption of the Code of Conduct, and accordingly, the Commissioner has worked with staff to develop various proposed amendments (“SECO’s Proposals”).

SECO’s Proposals are intended to improve the Code of Conduct in three areas:

- SECO’s jurisdiction: SECO’s Proposals are intended clarify what the Commissioner can or cannot do in various situations relating to accepting complaints, obtaining records from the City, and invoking the informal resolution process;
- Substantive provisions: SECO’s Proposals are intended to clarify a number of rules of ethical conduct with an eye towards simplification, consistency, and enforceability; and
- Procedural matters: SECO’s Proposals are intended to improve on various procedural matters pertaining to the intake of complaints and the dispute resolution processes, including aligning the Code of Conduct with related policies and procedures.

At the March 28, 2022 Closed Council meeting, Council considered SECO’s Proposals as described in detail in Closed Council Report CCR009; 2022 Proposed Amendments to Council Code of Conduct Bylaw, 2020, No. 20020 (the “Closed Report”), which is attached as Appendix “IV” to this report. At this meeting, Council approved submitting SECO’s Proposals for consideration in a Regular Council meeting, as modified to remove or amend a number of specific proposals. Council further authorized the public disclosure of the Closed Report, along with Council’s proposed changes to SECO’s Proposals.

DISCUSSION

Set out below is a chart listing each of SECO’s Proposals, and details on whether the specific proposal is included in the Amendments and, if so, whether it has been modified:

Summary of Amendments for Council’s Consideration

<u>SECO’s Proposals</u>	<u>Included in Amendments for Council’s Consideration?</u>
<p>A1. SECO’s Ability to Refer a Complaint to the Correct Venue</p> <p>Amend Code of Conduct enabling SECO to refer a complaint to the correct venue where the matter is more properly addressed, such as:</p> <ul style="list-style-type: none"> (a) A police investigation; (b) Human Rights Tribunal; (c) WorkSafeBC; or (d) The Ombudsperson. 	<p>Included</p>
<p>A2. SECO’s Ability for Summary Fact Finding</p> <p>Amend Code of Conduct to allow SECO the right to information from the City upon request, such as closed meeting minutes or other internal documents, in order to determine whether a Formal Review is warranted.</p>	<p>Not Included</p>
<p>A3. SECO’s Authority to Revert to Informal Steps</p> <p>Amend Code of Conduct to allow SECO to revert back to informal steps, or Stage 1 of the Formal Review Policy, either instead of or concurrent with an investigation, where SECO finds it appropriate.</p>	<p>Included</p>
<p>B1. General Conduct Provisions in the Code of Conduct</p> <p>Reframe some of the General Conduct provisions of the Code of Conduct as “Key Principles or Expectations” to clarify that such provisions do not invite complaints, but are rather guidelines that inform the rest of the Code of Conduct.</p>	<p>Included</p>

<p>B.2 Benefits to Family, Friends, or Business Interests (Preamble and Section 32)</p> <p>Amend Code of Conduct to broaden the scope of section 32 to prohibit Council Members from obtaining a benefit for any person, including family members, friends or business interests.</p>	<p>Not Included</p>
<p>B3. Use of Social Media</p> <p>Simplify section 46 of the Code of Conduct by removing subsections 46(c) and (d), which prohibit social media activity that “promotes or constitutes illegal activity” or that “may compromise the safety or security of the public”, because it is unclear what conduct these rules are intended to capture.</p>	<p>Included</p>
<p>B4. Conduct in Personal Life</p> <p>Include a provision at the beginning of the Code of Conduct that clearly states that the Code of Conduct does not apply to a Council Member’s conduct in their personal life, except to the extent that such conduct could reasonably undermine public confidence in Council Members or City governance.</p>	<p>Included, with the exception removed (“except to the extent that such conduct could reasonably undermine public confidence in Council Members or City governance.”)</p>
<p>C1. Closed Meetings and Release of Information</p> <p>Amend Code of Conduct to make clear that investigation reports will be considered in Closed Council only if permitted under the <i>Community Charter</i>. Otherwise, the matter should be considered in Regular Council.</p> <p>Amend Code of Conduct to make explicit that a summary of every investigation report will be made public, in accordance with the <i>Freedom of Information and Protection of Privacy Act</i>.</p>	<p>Not Included</p>

<p>C2. Moratorium on Complaints and Investigations Near Election</p> <p>Amend Code of Conduct to provide for a moratorium on investigations and the processing of new complaints in the period leading up to the local government election:</p> <ul style="list-style-type: none">• Require SECO to suspend the processing of a complaint received regarding a Council member seeking re-election in the period from the first day of the nomination period to the general voting day; and• In the period 90 days prior to the general voting day, SECO may suspend any investigation underway until the day after the general voting day.	<p>Included, except that SECO is required to suspend the processing of all complaints received in the period from April 12 of the year of the general local election until the day after the general voting day.</p>
<p>C3. Alignment with Policy on Payment of Reasonable Legal Fees</p> <p>Amend Code of Conduct in order to make clear enforceability of provisions in the Legal Fees Policy regarding withholding payment/reimbursement by Council Member, and remove requirement of signed acknowledgement from the policy.</p>	<p>Included</p>
<p>C4. “Formal Complaint” vs. “Written Complaint”</p> <p>Amend Code of Conduct by:</p> <ul style="list-style-type: none">• Adopting the definitions of “Complaint Form” and “Formal Complaint” in <i>SECO Complaint Intake Policy No. 2020-01</i>; and• Replacing the term “Formal Resolution” in section 58 of the Code of Conduct with “Formal Review”.	<p>Included</p>

<p>C5. The Informal Resolution Process</p> <p>Amend Code of Conduct to:</p> <ul style="list-style-type: none">• Make clear that SECO is able to proceed directly to an investigation if they believe that informal steps are inappropriate in the circumstances;• Define “written record” to reference the Complaint Form so that the complaint process is standardized; and• Make clear that the public does not have a right to utilize the informal resolution process, but give SECO the discretion to take minimal informal measures with complaints from members of the public before deciding to commence a Formal Review.	<p>Included</p>
<p>C6. Section 70 of the Code of Conduct vs. Formal Review Policy</p> <p>Amend Code of Conduct to remove current section 70 and replace it with a process that is consistent with the Formal Review Policy:</p> <ul style="list-style-type: none">• Within 10 business days of <u>accepting</u> a complaint for Formal Review, SECO shall send written notice to the Complainant that the Formal Complaint has been accepted for Formal Review.• SECO will then determine whether to begin the Formal Review with the informal resolution process under sections 54-63 of the Code of Conduct, or to proceed immediately with a formal investigation.	<p>Included</p>

Housekeeping Amendments

In addition to the above, the Amendments also include a number of housekeeping matters to ensure consistency, clarity, and functionality in the language of the Code of Conduct and Legal Fees Policy and to correct a number of typographical errors.

SUSTAINABILITY CONSIDERATIONS

The *Council Code of Conduct Bylaw* supports the objectives of the City's Sustainability Charter 2.0. In particular, the *Council Code of Conduct Bylaw* relates to the Sustainability Charter 2.0 theme of Inclusion. Specifically, the *Council Code of Conduct Bylaw* supports the following Desired Outcome ("DO"):

- Community Pride and Engagement DO21: All residents have opportunities to be meaningfully engaged in civic issues and to contribute to community life.

CONCLUSION

Based on the above discussion, it is recommended that Council approve bringing forward the noted proposed amendments to the *Council Code of Conduct Bylaw, 2020, No. 20020* for the necessary readings and to approve the proposed amendments to Policy No. D-42, "Payment of Reasonable Legal Fees to Respond to Complaints Under Council Code of Conduct". If so approved, it will then be in order for Council to consider the corresponding Amending Bylaw No. 20586, which is set out in Section H. of the Regular Council Meeting Agenda.

Rob Costanzo
General Manager, Corporate Services

Appendix "I": Summary of Proposed Amendments to the *Council Code of Conduct Bylaw, 2020, No. 20020*

Appendix "II": Proposed *Council Code of Conduct Bylaw, 2020, No. 20020* Amendments as shown in the *Council Code of Conduct Bylaw, 2020, No. 20020*

Appendix "III": Proposed Amendments to Policy No. D-42, "Payment of Reasonable Legal Fees to Respond to Complaints Under Council Code of Conduct"

Appendix "IV": CCR009; 2022 Proposed Amendments to *Council Code of Conduct Bylaw, 2020, No. 20020*

**Proposed Amendments to
Council Code of Conduct Bylaw, 2020, No. 20020**

1. In the "Definitions" section, add the following new definitions:

"Complaint Form" means a form that is filled out for the purposes of making a complaint to the Commissioner, as provided on the Surrey Ethics Commissioner Office website or as otherwise provided by the Commissioner;

"Formal Complaint" means a complaint, in compliance with sections 66, 68, and 69 of this Bylaw, that the Commissioner has accepted for the purposes of a Formal Review;

"Formal Review" means the Commissioner's review of a Formal Complaint in accordance with section 70 of this Bylaw;"

2. Replace "Board" with "Body" in the definitions of "Advisory Body Member", "Bully and Harass", and "Volunteer".
3. Add the following at the end of section 3: ", but does not apply to a Council Member's conduct in their personal life."
4. Under Part 1 – CONDUCT OF ELECTED OFFICIALS, replace "General Conduct" with "Key Principles and Expectations".
5. Add the following new section 6.1:
 - 6.1. The Key Principles and Expectations are intended to guide a Council Member's general conduct. The Commissioner may dismiss a complaint which alleges solely a contravention of the preamble and/or sections 5, and/or 6 of this Bylaw."
6. Replace "Board" with "Body" in sections 9, 10, 31, 54, and the heading "Conduct at Council and Advisory Board Meetings".
7. In section 23, replace "committee" with "Advisory Body".
8. In section 33, delete the word "is" between "but" and "not".
9. In section 40, replace "member" with "Member".
10. Delete section 46 in its entirety and replace with the following:

"46. Without limiting any other obligation imposed by this Bylaw, a Council Member shall not use or allow the use of their social media account for purposes that include content that:

- (a) Bullies or Harasses another Council Member, an Advisory Body Member, a Volunteer, Staff or a member of the public; or

(b) evidences bias or a reasonable apprehension of bias in relation to a matter that is the subject of a statutory or other public hearing.”

11. In section 57, replace “by filing a written record of the allegation” with “or a Formal Complaint by submitting a Complaint Form”.
12. In section 58, replace “Formal Resolution” with “Formal Review”.
13. In section 63, replace “a written record of the complaint and the resolution” with “a record of the resolution of the complaint”.
14. Add the following new section 64.1:

“Availability of Individual Steps to Resolution and Mutual Resolution Procedures

64.1. The procedures under sections 54 through 64 of this Bylaw are available only to a complainant who is a Council Member, an Advisory Body Member, or Staff.”

15. In section 66, replace “complaint” with “Complaint Form”.
16. Add the following new section 67.1:

“67.1. If a Complaint Form is submitted that, on its face, is not made with respect to a breach of this Bylaw, or if the Commissioner determines that the complaint would be more appropriately addressed through another process, including if the complaint is:

 - (a) an allegation of a criminal nature consistent with the Criminal Code;
 - (b) with respect to non-compliance with a more specific Council policy or bylaw with a separate complaint procedure; or
 - (c) with respect to a matter that is subject to another outstanding process, such as a court proceeding or a human rights complaint,

the Commissioner shall reject the Complaint Form, or part of the Complaint Form, and will notify the complainant in writing that the complaint is not within the jurisdiction of this Bylaw, or that the complaint would be more appropriately addressed through another process, as the case may be, and set out any additional reasons and referrals the Commissioner considers appropriate.”

17. Add the following new section 67.2:

“67.2. The Commissioner shall suspend processing a complaint received in the period from April 12 of the year of the general local election until the day after the general voting day, when the Commissioner may recommence processing the complaint in respect of a Council Member who has been re-elected. Any deadlines applicable to

the complaint will be extended by the number of days in which the processing was suspended.”

18. Add the following new section 67.3:

“67.3. In the period 90 days prior to general voting day, the Commissioner may suspend any investigation underway until the day after the general voting day, when the Commissioner may recommence the investigation in respect of a Council Member who has been re-elected. Any deadlines applicable to the investigation will be extended by the number of days in which the investigation was suspended.”

19. Delete section 68 in its entirety and replace with the following:

“68. The complainant may request to proceed with a Formal Complaint by submitting to the Commissioner a Complaint Form in accordance with section 69 of this Bylaw. The Complaint Form shall contain the particulars of the complaint, including the dates on which the conduct that is the subject of the complaint occurred.”

20. In section 69, replace “deliver the written complaint” with “submit the Complaint Form”.

21. Add the following new section 69.1:

“69.1. Notwithstanding section 64.1, the Commissioner may take reasonable measures to resolve a complaint made by any person before proceeding to a Formal Review.”

22. Delete section 70 in its entirety and replace with the following:

“70. Within ten business days of accepting a Complaint Form as a Formal Complaint, the Commissioner shall send written notice to the complainant that the complaint has been accepted for Formal Review, in accordance with section 71(a) of the Code, and determine the appropriate stage to begin the Formal Review:

- (a) Stage 1 – with the informal steps in accordance with sections 54 through 63 of this Bylaw; or
- (b) Stage 2 – with an investigation.”

23. Add the following new section 70.1:

“70.1. After an investigation has begun, the Commissioner may take steps the Commissioner determines to be suitable to have the matter resolved through the Individual Steps to Resolution or Mutual Resolution processes, or another reasonable process, either concurrently with or upon suspending the investigation.”

24. In subsection 71(a), replace “receipt of the written complaint” with “acceptance of the Formal Complaint”.

25. In section 74, delete “are”.

26. In subsection 76(b) replace “Boards” with “Bodies”.

27. Delete section 81 in its entirety and replace with the following:

“81. The Commissioner may proceed with a Formal Review:

(a) even if the complainant withdraws the complaint; or

(b) at any time the Commissioner considers the Individual Steps to Resolution, Mutual Steps to Resolution, or other informal processes under this Bylaw are inappropriate.”

28. In section 89, replace “complaint” with “Formal Complaint”.

29. Add the following new section 89.1:

“89.1. If, in the opinion of the Commissioner, the Council Member’s lawyer acts in a manner which has unnecessarily and excessively raised costs for the proceedings, the Commissioner may recommend that a portion of the legal fees referred to in section 89 not be paid. The City will withhold payment in accordance with the recommendation of the Commissioner unless Council resolves otherwise.”

30. Add the following new section 89.2:

“89.2. Subject to a Council resolution under section 89(b), if the Commissioner makes a finding that the Council Member acted with dishonesty, gross negligence, or malicious or willful misconduct, then the Council Member will reimburse the City for the legal fees already paid by the City in relation to the matter, and the City will not pay any further legal fees of the Council Member in relation to the matter.”

31. In Section 90 add “:” at the end of the first sentence.

CITY OF SURREY



Council Code of Conduct Bylaw,
2020, No. 20020

Council Code of Conduct Bylaw, 2020, No. 20020

TABLE OF CONTENTS

Definitions1

Interpretation 5

PART 1 – CONDUCT OF ELECTED OFFICIALS..... 5

Key Principles and Expectations~~General Conduct~~ 5

Interactions of Council Members with Staff, Volunteers and Advisory Body Members6

Conduct at Council and Advisory Board Meetings6

Improper Use of Influence6

Election Activities7

Conflicts of Interest8

Conduct Respecting Lobbyists8

Outside Activities and Business Relations8

Council Members’ Use of Municipal Assets and Services10

Employment of Council Family Members10

Gifts10

Collection and Handling of Information..... 11

Council Members’ Use of Social Media12

Communication Protocol13

Interactions with the Public and the Media13

Orientation and Training Attendance.....13

PART 2 – PROCESS FOR COMPLAINTS.....13

Individual Steps to Resolution13

Mutual Resolution14

Other Processes15

Complaints15

Formal Review 16

Council Determination of Measures.....18

Staff Responsibilities in the Complaint Process 19

Fairness Procedures Applicable to Council Determination of Measures 20

Mandatory Training.....21

Obstruction21

Legal Fees.....21

General.....21

Citation 22

SCHEDULE A 23

SCHEDULE B.....26

CITY OF SURREY

BYLAW NO. 20020

A bylaw to regulate the conduct of Council members
.....

WHEREAS Council Members are keepers of the public trust and must uphold the highest standards of ethical behaviour in order to build and inspire the public's trust and confidence in local government;

AND WHEREAS Council Members are expected to:

- (a) make decisions that benefit the community;
- (b) act lawfully and within the authorities of the Community Charter, Local Government Act and other applicable enactments; and
- (c) be free from undue influence and not act, or appear to act, to gain financial or other benefits for themselves, family, friends or business interests;

AND WHEREAS Council wishes to conduct its business in a transparent, efficient, accountable and respectful fashion;

AND WHEREAS it is to the benefit of the community for Council to conduct its business in accordance with the City's values of community, innovation, integrity, service and teamwork;

AND WHEREAS Council Members intend to demonstrate their leadership in ethical behaviour and to promote the principles of transparency, accountability and civility through their decisions, actions and behaviour;

NOW THEREFORE The Council of the City of Surrey ENACTS AS FOLLOWS:

Definitions

1. In this Bylaw

"Advisory Body" means a committee, task force, commission, board or other body established or appointed by Council or by the Mayor;

"Advisory Body Member" means a person sitting on an Advisory Board, and includes a Council Member appointed to the body;

"Bully and Harass" includes:

- (a) any conduct that would be contrary to the City's Respectful Workplace Policy;

(b) any unwelcome or objectionable conduct or comment that would be considered discriminatory under the *Human Rights Code* if the conduct or comment was in respect of any of the following prohibited grounds:

- (i) race,
- (ii) conviction for an offence,
- (iii) colour,
- (iv) ancestry,
- (v) physical disability,
- (vi) place of origin,
- (vii) mental disability,
- (viii) political belief,
- (ix) sex,
- (x) religion,
- (xi) age,
- (xii) marital status,
- (xiii) sexual orientation,
- (xiv) family status;

(c) Sexual Harassment;

(d) any other unwelcome or objectionable conduct or comment by a Council Member toward another Council Member, an Advisory Board Member, Volunteer or Staff that causes that individual to be humiliated or intimidated, including verbal aggression or insults, making derogatory comments, including questioning the professional competence of an Advisory Board Member, Volunteer or Staff, calling someone derogatory names, hazing or initiation practices, vandalizing personal belongings or spreading malicious and untrue rumours;

"Campaign Period" means the period commencing the first of October immediately preceding a general election and ending on the day of the general election;

"Child" means a person toward whom a Responsible Adult has demonstrated a settled intention to treat as a child of his or her family and includes a child born within or outside marriage, an adopted child, step-child or grandchild;

"City" means the City of Surrey;

"City Business" means any City program, activity, policy, process, project or undertaking;

"City Manager" means the Municipal Officer position of the City manager;

"City Solicitor" means the Municipal Officer position of the City solicitor;

"City Record" includes anything on which information is recorded or stored by graphic, electronic, mechanical or other means in any format, but does not include a computer program or any other mechanism that produces records;

"City Record System" means a system used by the City of Surrey to manage City Records from creation through to disposal or long-term preservation;

"Commissioner" means the City of Surrey Ethics Commissioner;

"Complaint Form" means a form that is filled out for the purposes of making a complaint to the Commissioner, as provided on the Surrey Ethics Commissioner Office website or as otherwise provided by the Commissioner;

"Confidential Information" means information or a record that is marked confidential by Council or Staff, that is Personal Information, that could reasonably harm the interests of individuals or organizations including the City if disclosed to persons who are not authorized to access the information, or information or a record to which section 117 of the *Community Charter* applies, including, without limitation, any:

- (a) decisions, resolutions or report contents forming part of the agenda for or from an *in-camera* meeting of Council until a Council decision has been made for the information to become public or otherwise released; and
- (b) details on Council's in camera deliberations or specific detail on whether an individual Council Member voted for or against a matter;

"Corporate Officer" means the Municipal Officer position of City Clerk that has been designated the corporate officer under section 148 of the *Community Charter*;

"Council Member" means the Mayor or a Councillor;

"Family Member" means a Spouse, a Child, a Responsible Adult, and siblings;

"Formal Complaint" means a complaint, in compliance with sections 66, 68, and 69 of this Bylaw, that the Commissioner has accepted for the purposes of a Formal Review;

"Formal Review" means the Commissioner's review of a Formal Complaint in accordance with section 70 of this Bylaw;

"Lobbying" means any communication with a Council Member by an individual who is paid or who represents a business or financial interest with the goal of trying to influence any legislative action including development decisions, business licence decisions, introduction, passage, defeat, amendment or repeal of a bylaw, motion, resolution, or development approval, zoning bylaw amendment, or termination of a City policy, program, directive, guideline, or the outcome of a decision on any matter before Council, an Advisory Body, or Staff;

"Municipal Officer" means a member of staff designated as an officer under section 146 of the *Community Charter* or a bylaw under that section;

"Personal Information" has the same meaning as in the *Freedom of Information and Protection of Privacy Act*;

"Responsible Adult" means a person who has demonstrated a settled intention to treat a Child as a member of his or her family whether or not that person is the biological parent of the Child;

"Sexual Harassment" is any verbal, written or physical conduct, comment, gesture or contact of a sexual nature that may cause offence or humiliation to a Council Member, Staff, Advisory Body Member, Volunteer or a member of the public or that might reasonably be perceived by Staff, an Advisory Body Member or Volunteer as placing a condition of a sexual nature on employment or on any opportunity for training or promotion, and examples of sexual harassment may include but are not limited to:

- (a) unwelcome remarks, questions, jokes, innuendo or taunting, about a person's body or sex, including sexist comments or sexual invitations;
- (b) verbal abuse and threats of a sexual nature;
- (c) leering, staring or making sexual gestures;
- (d) display of pornographic or other sexual materials in the form of degrading pictures, graffiti, cartoons or sayings;
- (e) unwanted physical contact such as touching, patting, pinching, hugging;
- (f) intimidation, threat or actual physical assault of a sexual nature;
- (g) sexual advances with actual or implied work-related consequences;

"Spouse" means a person to whom the person is married or with whom the person is living in a marriage-like relationship, and includes a former spouse;

"Staff" means a Municipal Officer or employee, a contractor, consultant or other service provider;

"Volunteer" means a person serving the City who is not a Council Member, member of Staff or an Advisory Board Member;

"Workplace" includes, but is not limited to, work sites owned, operated or controlled by the City, including the municipal hall, operations centres, fire hall, parks locations and buildings, construction or maintenance sites, business related social functions, work locations away from the foregoing venues, work related conferences and training sessions, work related travel, telephone conversations, voice mail or electronic messaging.

Interpretation

2. In this Bylaw, a reference to the Mayor, a chair, or Staff includes, in the absence of the Mayor, chair or Staff member, a reference to the person appointed as deputy or appointed to act in the place of that person from time to time.
3. Without limitation, this Bylaw applies in respect of the Workplace and elsewhere, and without limitation applies to the use of social media by a Council Member, **but does not apply to a Council Member's conduct in their personal life.**

PART 1 – CONDUCT OF ELECTED OFFICIALS

Key Principles and Expectations~~General Conduct~~

4. A Council Member shall not:
 - (a) contravene this Bylaw, as amended or replaced;
 - (b) contravene any other City bylaw or policy, as amended or replaced;
 - (c) breach their oath sworn upon taking office as a Council Member;
 - (d) contravene a law of British Columbia or Canada, including the British Columbia *Human Rights Code* or the *Freedom of Information and Protection of Privacy Act*;
 - (e) Bully or Harass another person;
 - (f) defame another person;
 - (g) abuse their office.
5. A Council Member shall treat other Council Members, Staff, Advisory Body Members, Volunteers, and the public with respect and dignity.
6. A Council Member shall align their conduct with the City's values of integrity, innovation, service, teamwork and community.
 - 6.1. **The Key Principles and Expectations are intended to guide a Council Member's general conduct. The Commissioner may dismiss a complaint which alleges solely a contravention of the preamble and/or sections 5, and/or 6 of this Bylaw.**

Interactions of Council Members with Staff, Volunteers and Advisory Body Members

7. A Council Member shall not issue instructions or directions to Staff regarding City Business except through the City Manager or the appropriate department manager.
8. Before, during or after a procurement process, a Council Member shall not issue instructions or directions to a contractor, tenderer, proponent, consultant or other service provider. Outside of a Council or committee meeting, a Council Member shall not communicate with a tenderer or proponent regarding the subject matter of the procurement.
9. A Council Member shall not interfere with, hinder or obstruct Staff, a Volunteer or an Advisory Board Member in the exercise or performance of their roles, responsibilities, powers, duties or functions.
10. If a Council Member has information about Staff, a Volunteer or an Advisory Board Member that the Council Member wishes to bring to the attention of the City for the purposes of a review or investigation into the conduct or an omission of the individual, the Council Member may only do so by delivering the information in writing to the City Manager. On receipt of such information, the City Manager shall conduct a review or investigation and address the matter in accordance with the City's employment agreements, bylaws and policies and with the applicable employment law or professional responsibility enactments.

Conduct at Council and Advisory Board Meetings

11. A Council Member must act with decorum at Council and Advisory Body meetings in accordance with the *Council Procedure By-law*, No. 15300, as amended or replaced from time to time.
12. Council Members shall make every effort to participate diligently in the activities of Council and Advisory Bodies or other bodies to which they are appointed by the City or by virtue of being an elected official, including intergovernmental meetings. To "participate diligently" means that a Council Member shall not be absent from meetings of Council or Advisory Body meetings, or from those of other bodies to which they are appointed by virtue of their status as a Council Member, without reasonable justification (such as illness of the Council Member, family circumstance, regional government business) for more than four consecutive scheduled meetings, for a period of 60 consecutive days, or on a regular basis.

Improper Use of Influence

13. A Council Member shall only use the influence of their office in the good faith exercise of their official duties.

Election Activities

14. A Council Member shall not participate in any civic events requiring them to perform official ceremonial duties between the last day of the nomination period and the voting day, as defined in the *Local Government Act*, unless authorized by a resolution of Council.
15. A Council Member shall comply with the *Local Government Act* and the *Local Elections Campaign Financing Act* when undertaking election campaign activities and fundraising.
16. A Council Member shall not use the City's employees, property or resources for election campaign or fundraising activities at any point during a term of office, unless those resources are similarly available to all candidates and the fees associated with the use of the employees, property or resources has been paid for with election campaign funds. Without limiting the generality of the foregoing, this prohibition applies to:
 - (a) data sets and Personal Information collected and maintained by the City;
 - (b) office space; and
 - (c) City websites or external websites paid for by the City.
17. A Council Member may include a link on his or her campaign website to the City's website or an external website paid for by the City.
18. During the Campaign Period, a Council Member shall not:
 - (a) deliver City funded newsletters or conduct open houses funded by the City;
 - (b) distribute mass e-mails from the Council Member's City e-mail address, unless the communication arises from an emergency and the communication is authorized by the City Manager;
 - (c) update websites that are either City hosted or paid for by the City;
 - (d) use social media and internet resources such as Twitter, Facebook or Instagram in the Council Member's personal name, unless those accounts include a disclaimer that they are not City-funded and do not reflect City policy; nor
 - (e) request that City employees work on an election campaign during hours in which the employee receives compensation from the City, unless the work both unavoidably overlaps with the regular duties of the employee and is minor and infrequent, such as coordinating campaign schedules with the Council Member's calendar or redirecting citizens with campaign questions to campaign staff.
19. Council Members and their staff may take unpaid leave from the Council Member's office to work on an election campaign.

Conflicts of Interest

20. A Council Member shall rigorously avoid situations which may result in claims of pecuniary interest, conflict of interest or bias.
21. A Council Member must disclose any conflict of interest in accordance with section 100 of the *Community Charter* and, if conflicted, must refrain from participating in a meeting in accordance with section 101 of the *Community Charter*.
22. In respect of each matter before Council, a Council Member shall:
 - (a) assess whether they have a conflict of interest, if necessary, with the advice of the Commissioner; and
 - (b) determine whether it is necessary to seek independent legal advice, at their own cost except where the City Manager approves the cost if concerned about the validity of an affected bylaw or resolution, with respect to any situation which may result in a conflict of interest.
23. If a Council Member believes they may have or may reasonably be perceived to have a conflict of interest in respect of a matter in a Council or **Advisory Body ~~committee~~** meeting, the Council Member shall:
 - (a) notify the Mayor or the Chair of the meeting that the Council Member has a conflict of interest prior to the matter being considered, and the Council Member shall restate the conflict of interest each time the matter arises before Council;
 - (b) refrain from discussing the matter with any other Council Member publicly or privately; and
 - (c) leave the meeting room if the matter is discussed and not return until discussion has ended or voting on the matter has been concluded.

Conduct Respecting Lobbyists

24. Lobbying is a permitted but regulated activity in the City.
25. A Council Member shall follow the City's rules respecting Lobbying.
26. A Council Member shall report any such violation or attempted violation of the City's rules respecting Lobbying to the Municipal Official responsible for Lobbying or to the Commissioner, unless the Council Member believes in good faith that the violation or attempted violation was inadvertent or insignificant.

Outside Activities and Business Relations

27. A Council Member who engages in another profession, business or occupation concurrently with holding office shall not allow such outside employment to affect the Council Member's integrity, independence or competence. Without restricting the scope of this duty, the following shall be a contravention of this part of the Code of Conduct:

- (a) acting as an officer or director for a business that receives municipal funds in the form of grants or payments for goods or services;
- (b) acting as an officer or director for a business that lobbies the City;
- (c) allowing the prospect of future employment by a person other than the City to affect the Council Member's performance of his or her duties to the City;
- (d) borrowing money from any person who regularly does business with the City, unless such person is an institution or company whose shares are publicly traded and who is regularly in the business of lending money, such as a credit union;
- (e) acting as a paid agent before Council or an Advisory Body;
- (f) receiving compensation for referrals to a specific business;
- (g) receiving compensation that is dependent on the business being awarded a contract with the City;
- (h) subject to sections 40 through 43, providing advice for remuneration to any person who is involved in litigation or lobbying against the City, unless the Council Member first gives written notice of the relationship to the Commissioner.

28. A Council Member may obtain advice from the Commissioner on whether a new profession, business or occupation is compatible with their obligations under section 27 of this Bylaw. Provided that the Council Member made full and frank disclosure to the Commissioner at the time they sought advice, the Commissioner's opinion shall be the final determination of whether a Council Member has contravened section 27 of this Bylaw.

Council Members' Use of Municipal Assets and Services

29. A Council Member shall not use, or permit the use of, City land, facilities, equipment, supplies, services, property, employees or other resources for activities other than City Business unless the use or the permission is on the same terms and conditions that the land, facilities, equipment, supplies, services, property, employees or other resources are available to the general public. Accordingly, a Council Member shall not obtain personal gain from the use or sale of City-developed intellectual property, including all discoveries, inventions, know-how, improvements, developments, processes, technology, compositions, designs, techniques, methods, industrial designs, compositions, prototypes, models, literary work, research, drawings, software and trade secrets whether or not capable of patent, industrial design, copyright or trademark protection, or any other type of protection. Council Members acknowledge and do not dispute that all such property that a Council Member may prepare, use or encounter while holding office will be and remains the City's exclusive property.
30. A Council Member shall not request Staff to undertake personal or private work on behalf of the Council Member, nor shall a Council Member accept such work from Staff.

Employment of Council Family Members

31. A Council Member shall not attempt to influence personnel decisions regarding the decision to hire, transfer, promote, demote, discipline, or terminate an Advisory Board Member, a Volunteer or Staff. This prohibition includes giving references to any person applying for a position at the City and forwarding copies of an applicant's resume to any person hiring for any position at the City.
32. A Council Member shall not attempt to obtain a benefit from the City for a Family Member.

Gifts

33. For the purpose of sections 33 through 39 of this Bylaw, a gift or benefit is an item or service of value that is received by a Council Member for their personal use, including, but ~~is~~ not limited to money, gift cards, tickets to events, clothing, jewelry, pens, food or beverages, discounts/rebates on personal purchases, free or subsidized drinks or meals, entertainment, participation in sport and recreation activities, and invitations to social functions.
34. A Council Member must comply with the restrictions on accepting gifts in section 105 of the *Community Charter* and must disclose any permitted gifts over \$250 in accordance with section 106 of the *Community Charter*.
35. A gift or benefit provided to a Council Member's Family Member or staff in relation to City Business is deemed to be a gift or benefit to that Council Member.

36. If a Council Member is required to disclose to a Municipal Officer the nature of the gift or benefit, the Council Member shall also include a description of its source, including if the gift is from a corporation, the full names and addresses of at least two individuals who are directors of the corporation; when it was received; and the circumstances under which it was given and accepted.
37. The Municipal Officer shall provide a copy of this disclosure under section 36 to the Commissioner.
38. On receiving the disclosure statement, the Commissioner shall examine it to ascertain whether the receipt of the gift or benefit might, in her or his opinion, create a conflict between a private interest and the public duty of the Council Member. If the Commissioner makes that preliminary determination, the Commissioner shall call upon the Council Member to justify the receipt of the gift or benefit.
39. If the Commissioner considers the receipt was in contravention of this Bylaw or the *Community Charter*, the Commissioner may direct the Council Member to return the gift, reimburse the donor for the value of any gift or benefit already consumed, or forfeit the gift.

Collection and Handling of Information

40. A Council Member shall not release any Confidential Information unless the Council ~~member~~ **Member** is specifically authorized to release it by:
 - (a) a resolution of Council to use or release the Confidential Information, and then only to the extent of the Council authorization;
 - (b) authorized discussion of the Confidential Information at a meeting that is open to the public; or
 - (c) lawful authorization under separate legal authority.
41. A Council Member must not discuss or disclose Personal Information of others to any person, except in a manner that complies with the duty to protect Personal Information under the *Freedom of Information and Protection of Privacy Act*.
42. A Council Member shall take reasonable care to prevent unauthorized access to Confidential Information or Personal Information by unauthorized persons. If a Council Member learns of unauthorized access to Confidential Information or Personal Information, the Council Member shall report this information to the City Manager as soon as possible.
43. A Council Member shall comply with the directions of the Corporate Officer respecting the use of the City Record System.

Council Members' Use of Social Media

44. A Council Member shall not publish Confidential Information on social media, unless authorized in accordance with the provisions of section 40 of this Bylaw.
45. A Council Member shall not publish information or an opinion on social media about City Business, unless the publication republishes the information that has been released by the City without alteration or the opinion includes a statement to the effect that the "opinion expressed is my own and does not necessarily reflect the view or opinions of the City of Surrey or other members of Surrey Council".
46. **Without limiting any other obligation imposed by this Bylaw, a Council Member shall not use or allow the use of their social media account for purposes that include content that:**~~Without limiting any other obligation imposed by this Bylaw, a Council member shall not use or allow the use of their social media account for purposes that include content that:~~
- (a) Bullies or Harasses another Council Member, an Advisory Body Member, a Volunteer, Staff or a member of the public; or**
 - (b) evidences bias or a reasonable apprehension of bias in relation to a matter that is the subject of a statutory or other public hearing.**
- ~~(a) — Bullies and Harasses another Council Member, an Advisory Board Member, a Volunteer, Staff or a member of the public;~~
- ~~(b) — evidences bias or a reasonable apprehension of bias in relation to a matter that is the subject of a statutory or other public hearing;~~
- ~~(c) — promotes or constitutes illegal activity;~~
- ~~(d) — may compromise the safety or security of the public.~~
47. A Council Member shall take steps to remove from their social media account any publication by another person of content that violates this Bylaw.

Communication Protocol

48. Council may appoint the spokesperson on City Business. Once a spokesperson has been appointed, a Council Member that is not appointed as the spokesperson shall ensure that inquiries from the public and media on the City's position are directed to the spokesperson. A Council Member communicating their own opinion shall ensure that the communication clearly indicates that it is the Council Member's own position. Nothing in this section prevents Council from appointing multiple spokespersons or changing the appointed spokesperson. Where no spokesperson has been appointed, the Mayor shall act as the spokesperson.

Interactions with the Public and the Media

49. A Council Member shall accurately communicate the decisions of the Council, even if they disagree with the majority decision of Council.
50. When discussing the fact that they did not support a decision, or voted against the decision, or that another Council Member did not support a decision or voted against a decision, a Council Member shall refrain from making disparaging comments about other Council Members or about Council's processes and decisions.
51. Nothing in this Bylaw is intended to affect rights under the *Charter of Rights and Freedoms*.

Orientation and Training Attendance

52. After first being elected, a Council Member shall attend all sessions of orientation training on City Business that are identified as mandatory by the Commissioner unless doing so is not practically possible.
53. A Council Member shall attend any sessions of training on City Business that are identified as mandatory by Council, the City Manager, the City Solicitor, the Corporate Officer or the Commissioner, unless doing so is not practically possible.

PART 2 – PROCESS FOR COMPLAINTS

Individual Steps to Resolution

54. If a Council Member, an Advisory Board Member or Staff considers that they have been subjected to a contravention of this Bylaw by a Council Member and if they are comfortable discussing the matter directly with the Council Member, they may inform the Council Member of the alleged contravention and request an apology and, if applicable, that the contravention cease immediately.

55. If the complainant is unable to discuss the matter directly with the Council Member, or if after discussion the contravention continues, the complainant may inform the City Manager of the allegation. The City Manager may then agree to act as an advisor to aid the complainant or appoint an advisor as the City Manager deems suitable.
56. The advisor acting under section 55 shall assist the complainant, including discussing the alleged contravention with the Council Member to resolve the complaint.
57. If the complainant is not satisfied with the outcome after the advisor has finished assisting the complainant under section 56, the complainant may proceed to Mutual Resolution ~~by filing a written record of the allegation~~ or a **Formal Complaint by submitting a Complaint Form** with the Commissioner within 10 days of being informed by the advisor of the outcome.
58. Nothing in this Bylaw precludes the complainant from making reasonable efforts in good faith to address the complaint internally and informally without resort to the Mutual Resolution or Formal ~~Review~~**Resolution** procedures set out in this Bylaw.
59. Nothing in this Bylaw precludes the complainant from taking measures that the complainant is entitled to take under law, including but not limited to filing a human rights complaint, a grievance or other applicable process under a collective agreement, a complaint with WorkSafe BC, or other proceedings, as applicable.
60. Discussions regarding the complainant's concerns are confidential, advisory and informal in nature. The only exception to the Commissioner or an advisor maintaining confidentiality is if they deem the complaint to indicate a possible physical threat to any person. In that case, the advisor must immediately inform the City Solicitor of the complaint and inform the complainant of this requirement to do so. The City Solicitor must then promptly request the Commissioner to initiate an investigation and inform the complainant of this request and may take any additional steps deemed appropriate to deal with the possible physical threat.

Mutual Resolution

61. If the Individual Steps to Resolution process is unsuccessful in resolving the complaint, at the request of the complainant and with the agreement of the Council Member, a third party will be selected under section 62 to act as a mediator to assist the individuals in resolving the complaint through mediation. If the parties cannot agree to resolve the complaint through Mutual Resolution, then the complainant may elect to proceed to Formal Review.
62. The role of the mediator is to help the complainant and the Council Member come to an agreement, and not to advocate a position or impose a decision. The mediator will be selected by agreement of the complainant and the Council Member, with the

Commissioner retaining the right to select a mediator if the complainant and the Council Member are unable to agree.

63. Both the complainant and the Council Member may be accompanied by a representative of their choice, including a lawyer or if the complainant is a member of a union, a union representative or a lawyer on behalf of the union, or both. If the complaint is resolved through Mutual Resolution, ~~a written record of the complaint~~ **a record of the resolution of the complaint and the resolution** will be given to the complainant, the Council Member and the Commissioner. If the mediator has recommendations for the City to consider, the mediator will forward these recommendations to the Commissioner and the City Solicitor. The resolution and recommendations must be kept in confidence by the Commissioner, City Solicitor and the parties, unless the parties agree in writing to disclose the information.
64. If Mutual Resolution is not successful in resolving the complaint, the complainant may pursue other options by confirming in writing his or her election to the Commissioner within ten working days of receiving the mediator's report.

Availability of Individual Steps to Resolution and Mutual Resolution Procedures

- 64.1. The procedures under sections 54 through 64 of this Bylaw are available only to a complainant who is a Council Member, an Advisory Body Member, or Staff.**

Other Processes

65. Failing Mutual Resolution, a breach of this Bylaw can be determined for the purposes of proceeding with a Council measure under section 74 by way of:
 - (a) an admission by the Council Member;
 - (b) an agreement with the Council Member;
 - (c) a report from a standing or select committee invested with investigation powers under section 134 of the *Community Charter*;
 - (d) a Formal Review.

Complaints

66. Any person who has witnessed or experienced conduct by a Council Member which they believe to be in contravention of this Bylaw, or another City policy governing conduct of a Council Member may submit a **Complaint Form** to the Commissioner in accordance with sections 68 and 69 of this Bylaw.
67. If a Designated Management Employee, as defined in the City's Respectful Workplace Policy, receives a complaint under the Respectful Workplace Policy, the Designated

Management Employee may elect to refer the complaint to the Commissioner for resolution pursuant to this Bylaw.

67.1. If a Complaint Form is submitted that, on its face, is not made with respect to a breach of this Bylaw, or if the Commissioner determines that the complaint would be more appropriately addressed through another process, including if the complaint is:

- (a) an allegation of a criminal nature consistent with the Criminal Code;**
- (b) with respect to non-compliance with a more specific Council policy or bylaw with a separate complaint procedure; or**
- (c) with respect to a matter that is subject to another outstanding process, such as a court proceeding or a human rights complaint,**

the Commissioner shall reject the Complaint Form, or part of the Complaint Form, and will notify the complainant in writing that the complaint is not within the jurisdiction of this Bylaw, or that the complaint would be more appropriately addressed through another process, as the case may be, and set out any additional reasons and referrals the Commissioner considers appropriate.

67.2. The Commissioner shall suspend processing a complaint received in the period from April 12 of the year of the general local election until the day after the general voting day, when the Commissioner may recommence processing the complaint in respect of a Council Member who has been re-elected. Any deadlines applicable to the complaint will be extended by the number of days in which the processing was suspended.

67.3. In the period 90 days prior to general voting day, the Commissioner may suspend any investigation underway until the day after the general voting day, when the Commissioner may recommence the investigation in respect of a Council Member who has been re-elected. Any deadlines applicable to the investigation will be extended by the number of days in which the investigation was suspended.

Formal Review

68. The complainant may request to proceed with a Formal Complaint by submitting to the Commissioner a Complaint Form in accordance with section 69 of this Bylaw. The Complaint Form shall contain the particulars of the complaint, including the dates on which the conduct that is the subject of the complaint occurred.

~~After the invocation of the procedures under sections 54 through 63 of this Bylaw, the complainant may elect to proceed with a formal complaint, which must be delivered in writing to the Commissioner in accordance with sections 64 and 69 of this Bylaw. This~~

~~written complaint shall contain the particulars of the complaint, including the dates on which the conduct that is the subject of the complaint occurred.~~

69. The complainant must ~~deliver~~ **submit** the ~~written complaint~~ **Complaint Form** within six months of the date of the alleged contravention of this Bylaw, unless the parties have agreed in writing to postpone this deadline in order to pursue another resolution process.

69.1. Notwithstanding section 64.1, the Commissioner may take reasonable measures to resolve a complaint made by any person before proceeding to a Formal Review.

70. **Within ten business days of accepting a Complaint Form as a Formal Complaint, the Commissioner shall send** ~~Upon receipt of the written complaint, the Commissioner shall:-~~

~~(a) — take whatever steps the Commissioner considers reasonable with the complainant and the Council Member to resolve the matter informally under sections 54 through 63 within ten working days, if they have not already done so; or~~

~~(b) — confirm in writing to the complainant and the Council Member that the City Manager or other advisor has terminated attempts to resolve the matter informally; and then~~

~~(c) — begin an investigation within ten working days of the request being filed.~~ **written notice to the complainant that the complaint has been accepted for Formal Review, in accordance with section 71(a) of the Code, and determine the appropriate stage to begin the Formal Review:**

(a) **Stage 1 – with the informal steps in accordance with sections 54 through 63 of this Bylaw; or**

(b) **Stage 2 – with an investigation.**

70.1. After an investigation has begun, the Commissioner may take steps the Commissioner determines to be suitable to have the matter resolved through the Individual Steps to Resolution or Mutual Resolution processes, or another reasonable process, either concurrently with or upon suspending the investigation.

71. In keeping with the principles of procedural fairness, the Commissioner shall:

(a) confirm ~~receipt of the written complaint~~ **acceptance of the Formal Complaint** to the complainant;

(b) notify the Council Member of the allegation, provide the Council Member with a copy of this Bylaw and advise the complainant of this notification;

- (c) receive information from any witnesses who the Commissioner believes may have information relevant to the complaint, and this information may be received through written documentation, interviews, or informal hearings;
 - (d) keep both the complainant and the Council Member aware of any allegations made against them and ensure that they are given a reasonable opportunity to respond; and
 - (e) inform the complainant and the Council Member that they may be accompanied by a representative, including a lawyer, of their choice during the Formal Review process, including the closed meeting described in sections 84 and 85 of this Bylaw.
72. If the Council Member fails to respond, the Mayor at the request of the Commissioner may compel witnesses under section 134 of the *Community Charter*.
73. The Commissioner shall ensure all details, dates, conversations and meetings are documented. These working records created by the Commissioner are confidential. Once the investigation has been completed, the Commissioner shall prepare a written report and provide a copy of the report to the City Manager and Council. The report must, 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. The report may also provide recommendations with respect to the potential outcome.

Council Determination of Measures

74. Council shall decide on the appropriate measures, if any, ~~are~~-warranted by a contravention of this Bylaw and shall take such action as Council considers appropriate in the circumstances, after:
- (a) reviewing the report of the Commissioner;
 - (b) considering the factors described in section 75 and the measures enumerated in section 76; and
 - (c) conducting a closed meeting in accordance with the process described in sections 84 and 85 of this Bylaw.
75. In determining the appropriate measure, Council shall 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 Council Member 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 Council Member 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 Council Member's acknowledgment of wrongdoing; and
 - (g) the Council Member's history of other contraventions.
76. Council may impose the following measures after considering the factors described in section 75, including, but not limited to:
- (a) an apology from the Council Member in substantially the form set out in Schedule B;
 - (b) removal of the Council Member from appointments such as chairperson, committees, commissions or Advisory ~~Bo~~ardies;
 - (c) motion of censure;
 - (d) mandatory training on City Business, the *Community Charter*, or this Bylaw;
 - (e) referral to a prosecutor or police;
 - (f) any other action recommended by the Commissioner; 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*.
77. The Council decision under section 74 will be in writing and provided to the complainant and Council Member within ten working days of the closed meeting conducted in accordance with sections 84 and 85 of this Bylaw.

Staff Responsibilities in the Complaint Process

78. If the Commissioner concludes that a contravention has occurred, the City Manager shall consider reasonable action to protect the complainant from any subsequent action or reprisal. The City Manager shall also consider reasonable action to protect the rights of the subject Council Member and to see that no reprisal takes place beyond the measure determined by Council.
79. If the Commissioner finds that the original complaint was initiated in bad faith, with willful misconduct or intent to harm, where the complainant is a Council Member,

Council may consider appropriate measures in respect of the complainant and where the complainant is Staff, the City Manager may consider appropriate measures in respect of the complainant.

80. A copy of the Commissioner's report and the Council decision will be retained in a confidential file maintained by the City Manager, except when all or part of the decision is disclosed to the public in accordance with the *Freedom of Information and Protection of Privacy Act*.

81. **The Commissioner may proceed with a Formal Review:**

(a) **even if the complainant withdraws the complaint; or**

(b) **at any time the Commissioner considers the Individual Steps to Resolution, Mutual Steps to Resolution, or other informal processes under this Bylaw are inappropriate.**

~~The Commissioner may proceed with a Formal Review even if the complainant withdraws the complaint.~~

82. If approved by Council, the City Manager shall consider implementing administrative changes to City policies or procedures recommended by the Commissioner's report.

Fairness Procedures Applicable to Council Determination of Measures

83. Sections 84 and 85 only apply if the complaint is not resolved under sections 54 through 63 of this Bylaw and if Council is considering measures under section 74.

84. The Mayor, or the Corporate Officer if the Mayor is alleged to have contravened this Bylaw, will notify the affected Council Member in writing that Council will be considering their conduct at a closed meeting. The notice and form of resolution where a breach is believed to have been proved are set out in Schedule A. The notice must be delivered at least seven business days in advance of the closed meeting at which Council will consider the measure, if any, that it will impose in accordance with section 74 of this Bylaw. The Corporate Officer will ensure that the matter is placed on the agenda of the closed meeting. At the closed meeting, the affected Council Member may be represented by legal counsel, which may be reimbursed in accordance with section 89 of this Bylaw.

85. The process at the closed meeting may vary depending on the situation, but the following elements will be incorporated:

(a) Council will read the Commissioner's determination of whether a contravention of this Bylaw occurred;

(b) the affected Council Member will be provided with reasonable notice in accordance with section 71(b) and given the opportunity to make submissions to

Council, with legal counsel if the Council Member desires, which submissions, without limitation, may include explanations for the impugned behavior or suggestions on the measures that Council might impose as a result of the conduct;

- (c) after the affected Council Member has made the submissions to Council, the Council Member will leave the meeting room and those Council Members without a conflict of interest will consider the measures, if any, to impose in accordance with section 76 of this Bylaw; and
- (d) written notice of the decision will be given in accordance with section 77 of this Bylaw.

Mandatory Training

86. If the Commissioner recommends mandatory training for a Council Member, and if Council resolves to accept the recommendation pursuant to section 76(d) of this Bylaw, then the Council Member shall attend the training.

Obstruction

87. It is a contravention of this Bylaw to obstruct the Commissioner in the carrying out of their responsibilities, as for example, by the destruction of documents or the erasing of electronic communications relevant to a complaint.

Legal Fees

88. If a member of Staff is a complainant under this Bylaw, the City Manager may authorize the member of Staff to be reimbursed for legal fees reasonably incurred if the complaint was meritorious and a written request for reimbursement is filed with the City Manager within three months of any final disposition of a complaint under this Bylaw.
89. The City will pay the reasonably incurred legal fees of a Council Member who is subject to a **Formal Ce**omplaint under this Bylaw, provided that:
- (a) the Commissioner ultimately does not determine that the Council Member acted with dishonesty, gross negligence, or malicious or willful misconduct; or
 - (b) in any event, if Council so resolves after considering all the circumstances.
- 89.1. If, in the opinion of the Commissioner, the Council Member's lawyer acts in a manner which has unnecessarily and excessively raised costs for the proceedings, the Commissioner may recommend that a portion of the legal fees referred to in section 89 not be paid. The City will withhold payment in accordance with the recommendation of the Commissioner unless Council resolves otherwise.**
- 89.2. Subject to a Council resolution under section 89(b), if the Commissioner makes a finding that the Council Member acted with dishonesty, gross negligence, or**

malicious or willful misconduct, then the Council Member will reimburse the City for the legal fees already paid by the City in relation to the matter, and the City will not pay any further legal fees of the Council Member in relation to the matter.

General

- 90. The Corporate Officer will cause:
 - (a) this Bylaw to be visible and accessible on the City’s website, and
 - (b) electronic copies of this Bylaw to be made available to all Staff and Council Members in easily accessible locations, including the City’s intranet.

- 91. If any portion of this Bylaw is inconsistent with a binding collective agreement with the City or federal or provincial legislation, that portion and only that portion of this Bylaw will have no application to the extent of that inconsistency and all other portions of the Bylaw will continue in full force and effect.

Citation

- 92. This Bylaw may be cited as the "Council Code of Conduct Bylaw, 2020, No. 20020".

PASSED FIRST READING on the 6th day of April, 2020.

PASSED SECOND READING on the 6th day of April, 2020.

PASSED THIRD READING, as amended, on the 20th day of April, 2020.

RECONSIDERED AND FINALLY ADOPTED, signed by the Mayor and Clerk, and sealed with the Corporate Seal on the 4th day of May, 2020.

_____MAYOR

_____CLERK

SCHEDULE A

NOTICE TO COUNCIL MEMBER OF COUNCIL CONSIDERATION OF BREACH OF THE COUNCIL MEMBER CONDUCT BYLAW

CONFIDENTIAL

Date

Dear [*Insert Name of Subject Council Member*],

Please be advised that the City of Surrey Ethics Commissioner (the "Commissioner") believes that you may have breached **COUNCIL CODE OF CONDUCT BYLAW, 2020, NO. 20020**. I am placing this matter on the agenda of the Council closed meeting to be held on [*Insert date - must be at least seven business days from date this is delivered to member*].

The reason for the meeting is to consider the Commissioner's report and recommendations, and to consider a resolution in relation to this breach.

Enclosed is a copy of the Resolution that will be considered at the meeting for discussion, debate and a vote. Note that one of the possible ultimate outcomes of the process described in the Resolution is that Council may be considering imposing sanctions flowing from the breach, including removing you from your appointment to committees or other appointments, censuring you, requiring an apology, requiring training, referral to a prosecutor or police, seeking damages, releasing a public statement, or following any other recommendation of the Ethics Commissioner.

I wish to expressly notify you that you may retain legal counsel to represent your interests in this matter. Prior to Council voting at the in-camera meeting to determine which sanction they wish to invoke, if any, you will be provided with the opportunity to address Council regarding the contents of the draft form of resolution and any other documents that Council may have before it.

Following any submissions, you (or your legal counsel) make at the in camera meeting, Council will retreat and consider this matter. We will attempt to decide what measure or measures (if any) are appropriate under the bylaw.

Regarding any Council decisions, we will provide you with written reasons for our decision(s).

Sincerely,

(Mayor)

Encls

SCHEDULE A (Continued)
RESOLUTION (IN CAMERA)

CONFIDENTIAL

Whereas Council has concluded that [*Insert name*] has breached **COUNCIL CODE CONDUCT BYLAW, 2020, NO. 20020**, by [INSERT];

And Whereas [*Insert name*] has been afforded procedural fairness with respect to Council's consideration of this matter, and in particular [*Insert name*] was notified at least seven business days in advance:

- (a) that Council would be considering the matter of the breach of and was given a copy of this draft Resolution and any documents that may be considered by Council, including the report and recommendations of the City of Surrey Ethics Commissioner;
- (b) that Council may consider, subject to continuing procedural fairness, sanctions including an in-camera motion of censure, removal from any appointment to committee or external entity, referral to law enforcement or a prosecutor, seeking damages, reduction or elimination of remuneration, or public notification of any sanctions;

Whereas [*Insert name*] was expressly informed of their right to retain legal counsel and for their legal counsel to be present at the Council meeting in which this Resolution would be discussed and voted on;

Whereas [*Insert Name*] was given the opportunity to personally, or via their legal counsel, make submissions to the rest of Council regarding their conduct in this matter;

Whereas Council has considered the submissions made by [*Insert Name*] and/or their legal counsel;

Whereas Council has attempted to reach a consensus as to the appropriate measures;

Whereas Council has provided united or separate written reasons so that [*Insert name*] understands the basis for the decision to address the concern that [*Insert name*] is alleged to have breached the bylaw;

Be it Resolved as follows:

1. That Council shall address what it has concluded to be a breach of **COUNCIL CODE OF CONDUCT BYLAW, 2020, NO. 20020**, by way of (as applicable):
 - (a) A motion of censure;
 - (b) Removal from [*insert name*] committee or [*Insert outside appointment*];

- (c) Revocation of appointment to [insert external agency or entity];
 - (d) Referral to a crown prosecutor;
 - (e) Public notification of sanctions;
 - (f) Seeking damages;
 - (g) Referral to police for an investigation under the Criminal Code or [*Insert provincial statute*];
 - (h) Mandatory training;
 - (i) Requirement for apology.
2. That Council will consider pursuing all legal options available with respect to any potential future breaches of the bylaw on the part of [*Insert name*];
3. That the Corporate Officer be directed to publish a media release containing the information concerning this matter that may be released in keeping with the City's obligations pursuant to the *Freedom of Information and Protection of Privacy Act*, substantially with the content of the following: [*Insert wording*].

SCHEDULE B

[DATE]

PERSONAL AND CONFIDENTIAL

[Name of Recipient]

[Title]

City of Surrey

[Address]

[City, Province Postal Code]

Dear [title] [last name]:

Re: Apology [subject]

As you know, on [date], I [*Briefly set out the nature of the offending conduct. It is recommended you provide dates, times and a description of the conduct at issue as you understand it.*]

On [date], you confronted me about my behaviour/conduct and expressed [*describe briefly the conduct complained of and how it affected the offended person.*]

I acknowledge that my conduct / actions made you feel [*describe how it affected the offended person*] and I admit that my [*actions / conduct*] were [*reformulate why your actions were wrong in your own words – ex: offensive, derogatory, belittling, in poor taste, defamatory, wrong, discriminatory, callous, harmful to your reputation etc.*].

Having reflected on [*your complaint / our conversation/ the decision of Council*], I take full responsibility for my [*actions / conduct*] and wish to apologize for the harm that I have caused you. My behaviour was not in keeping with the key principles of our Council's Code of Conduct. In particular, I acknowledge that my conduct was in violation of [*identify the section(s) of the Code of Conduct breached*].

(ALTERNATIVELY, IF HELD BY COUNCIL TO HAVE BEEN A VIOLATION OF THE CODE OF CONDUCT REPLACE WITH THE BELOW:

In light of Council having concluded that my conduct constituted a violation of the City's Council Code of Conduct, I acknowledge that my conduct / actions made you feel [*describe how it affected the offended person*] and I admit that my [*actions / conduct*] were [*reformulate why your actions were wrong in your own words – ex: offensive, derogatory, belittling, in poor taste, defamatory, wrong, discriminatory, callous, harmful to your reputation etc.*])

Going forward, I commit to being more careful in my [**words / actions**] and to making better efforts to respect and abide by my obligations set out in the Code of Conduct.

Please accept my heartfelt apology.

Sincerely,

[name]

[title]

For Your Information: British Columbia's **Apology Act** provides that an "apology" made by or on behalf of a person in connection with any matter does not constitute an express or implied admission or acknowledgement of fault or liability.

"Apology" is defined as "an expression of sympathy or regret, a statement that one is sorry or any other words or actions indicating contrition or commiseration, whether or not the words or actions admit or imply an admission of fault."

The Act further provides that an apology does not void, impair or otherwise affect any insurance coverage that is available, or that would, but for the apology, be available to the person in connection with the matter.

Evidence of an apology made by or on behalf of a person in connection with any matter is not admissible in any court as evidence of the fault or liability of the person in connection with that matter and must not be taken into account in any determination of fault or liability.



City of Surrey Policy

No. D-42

Policy Title:	PAYMENT OF REASONABLE LEGAL FEES TO RESPOND TO COMPLAINTS UNDER COUNCIL CODE OF CONDUCT
Approval Date:	February 8, 2021
History:	2021-R023; 02/08/21
Department:	FINANCE and CORPORATE SERVICES

Policy Statement

This Policy provides governance and direction for the payment of legal fees for Council Members responding to complaints under the Council Code of Conduct Bylaw, 2020, No. 20020 (the “Code”).

1. Reason for Policy

Under the Code, any person may make a complaint to the Ethics Commissioner if they have witnessed or experienced conduct by a Council Member which they believe to be in contravention of the Code. The Ethics Commissioner may commence an investigation of the complaint, and a Council Member subject to the complaint may seek legal representation.

Under section 89 of the Code, the City will pay the reasonably incurred legal fees of a Council Member who is subject to a complaint under the Code, provided that:

- (a) the Commissioner ultimately does not determine that the Council Member acted with dishonesty, gross negligence, or malicious or willful misconduct; or
- (b) in any event, if Council so resolves after considering all the circumstances.

The following policy is intended to provide requirements on retaining legal counsel, definition to what are “reasonably incurred legal fees” that the City will pay under section 89 of the Code, and to set out a process for payment of these fees.

2. Retaining Legal Counsel

The Council Member must consult with the City’s Risk Manager before retaining a lawyer to assist them with responding to a complaint under the Code. Although Council Members have the discretion to retain a legal counsel of their choice, staff must confirm that the lawyer’s rates are reasonable based on the nature of the complaint before the Council Member is entitled to have legal fees paid, based on the following guidelines:

- the lawyer must be based in British Columbia and be a member of good standing with the Law Society of British Columbia;

- the hourly rate of the lawyer should not exceed \$400/hour. The Council Member may obtain an opinion from the City's Risk Manager concerning whether a particular situation justifies retaining legal counsel at a rate in excess of \$400/hour;
- fees will only be paid in relation to responding to (i.e. defending) a complaint under the Code of Conduct. Fees will not be paid for pursuing a complaint or if the advice is otherwise unrelated to responding to the complaint;
- if in the opinion of the Ethics Commissioner, the Council Member's lawyer acts in a manner which has unnecessarily and excessively raised costs for the proceedings, the Ethics Commissioner may recommend that a portion of the fees not be paid. Staff will withhold payment in accordance with the recommendation of the Ethics Commissioner **(unless Council resolves otherwise)**; and
- if the Ethics Commissioner makes a finding that the Council Member acted with dishonesty, gross negligence, or malicious or willful misconduct, then the Council Member will reimburse the City for the legal fees already paid by the City, and the Council Member will not have their legal fees relating to the complaint paid on a going-forward basis by the City (unless Council resolves to waive such repayments by the Councillor and/or to continue such payments for legal fees). ~~Before the City makes any payment under this Policy, the Council Member must provide to the City a written agreement in a form satisfactory to the Risk Manager which acknowledges their agreement with this Policy and their obligation to reimburse the City if these circumstances arise.~~

3. **Payment of Reasonable Legal Fees and Reimbursement by Council Member:**

- to assist in managing costs and administration, the external legal counsel shall follow the External Legal Counsel Guidelines (Council) as provided by the Risk Management Division (Attached as Schedule 1);
- legal invoices must be submitted to the Risk Management Division for processing as soon as practicable after they are incurred; and
- travel expenses for legal counsel retained outside the lower mainland must be pre-approved by the City's Risk Manager.



**City of Surrey
External Legal Counsel Guidelines
(Council)**

Overhead Expenses

Hourly rates for professional services (Legal, Certified Paralegal) are intended to encompass overhead which will not be separately reimbursed. A few examples of overhead include the following but this does not represent a comprehensive list of overhead items. Please discuss any items with the City of Surrey Risk Manager.

- Legal Assistant functions (regardless of who performs them)
- Time charges for legal assistant or clerical staff
- Domestic telephone charges
- Facsimile charges

Billing

The City of Surrey requests that billing be provided in the following manner.

- A cover invoice with;
 - Your and our file numbers
 - Our file name (plaintiff or defendant – depending)
 - Fees & Disbursements
 - Taxes
 - Total Bill
- The cover invoice should also contain the File Number, Invoice Number, GST number and billing address. This is the copy that will be sent to accounts payable for payment. If requested, the invoice will not contain information specific to the matter.
- A time accounting of the file management with the date, detailed description of the work completed, time required and initials of the person that performed the work.
- A table containing the list of those who worked on the file and their hourly rate shall appear at the bottom of the detailed file work.

CORPORATE REPORT

NO: CC009

COUNCIL DATE: March 28, 2022

CLOSED COUNCIL

TO: **Mayor & Council**

DATE: **March 24, 2022**

FROM: **City Solicitor**

FILE: **3900-20-20020**

SUBJECT: **Proposed Amendments to Council Code of Conduct Bylaw, 2020, No. 20020**

RECOMMENDATIONS

The Corporate Services Department recommends that Council:

1. Receive this report for information;
2. Instruct Staff to bring forward at an open meeting a Corporate Report with the proposed amendments (the "Proposed Amendments") to the Council Code of Conduct Bylaw, 2020, No. 20020 (the "Code of Conduct") and to Policy No. D-42, "Payment of Reasonable Legal Fees to Respond to Complaints Under Council Code of Conduct" (the "Legal Fees Policy"), in accordance with the contents of this report; or
3. Provide staff with any proposed changes to the Proposed Amendments that Council wishes to be considered at an open meeting;
4. Authorize staff to make public this report in whole or in part as staff determines appropriate; and
5. Authorize staff to make public all proposed changes to the Proposed Amendments that Council wishes to be considered at an open meeting.

INTENT

The purpose of this report is to obtain Council's direction to bring forward the Proposed Amendments to an open meeting, including any proposed changes to the Proposed Amendments that Council wishes to be considered at an open meeting.

BACKGROUND

Council adopted the Code of Conduct on May 4, 2020. On July 13, 2020, Council appointed the Surrey Ethics Commissioner. The Code of Conduct provides rules of ethical conduct for Council Members and processes for resolving complaints under the Code of Conduct, either informally or through a formal investigation process.

The Surrey Ethics Commissioner Office ("SECO" or the "Commissioner") is an independent office who performs advisory and educational functions in relation to administering the Code of

Conduct and assisting Council Members with understanding their ethical obligations. The Commissioner also has the power to investigate allegations of ethical misconduct in relation to Mayor and Council; to report their findings to Council; and provide recommendations to Council as to the appropriate sanction or discipline.

Between July 2020 and January 2022, the Commissioner has drafted and adopted five policies and procedures to assist with the intake of complaints, complaint reviews, and confidentiality and records management. The Commissioner has also received 63 filed formal complaints as of March 22, 2022. Attached to this report as Appendix "I" is SECO's Annual Report for the period July 2020 to July 2021.

Meanwhile, Council has adopted a policy and procedures in furtherance of the Code of Conduct, namely:

- Policy No. D-42, "Payment of Reasonable Legal Fees to Respond to Complaints Under Council Code of Conduct", which was approved by Council on February 8, 2021 (the "Legal Fees Policy"); and
- "Council Procedures for Ethics Commissioner Investigation Reports", which was approved by Council on March 4, 2021 (the "Procedures").

Under the *Ethics Commissioner Establishment Bylaw, 2020, No. 20018*, the Commissioner may provide advice and recommendations to Council regarding amendments to the Code of Conduct and related policies and procedures. A review of the Code of Conduct is a normal and beneficial part of the Commissioner's mandate following the adoption of the Code of Conduct, and accordingly, the Commissioner has worked with staff to develop the Proposed Amendments.

The Proposed Amendments improve the Code of Conduct in three areas:

- SECO's jurisdiction: the Proposed Amendments clarify what the Commissioner can or cannot do in various situations relating to accepting complaints, obtaining records from the City, and invoking the informal resolution process;
- Substantive provisions: the Proposed Amendments clarify a number of rules of ethical conduct with an eye towards simplification, consistency, and enforceability; and
- Procedural matters: the Proposed Amendments improve on various procedural matters pertaining to the intake of complaints and the dispute resolution processes, including aligning the Code of Conduct with related policies and procedures.

Staff is now seeking direction from Council on whether to bring the Proposed Amendments for consideration at a Regular Council meeting and/or to consider any changes to the Proposed Amendments as may be determined by Council.

DISCUSSION

The Proposed Amendments are summarized below:

A. SECO's Jurisdiction

A1. SECO's Ability to Refer a Complaint to the Correct Venue

SECO may receive complaints that are properly addressed in another forum, such as a criminal, human rights, or other matter that is subject to another dispute resolution process. However, it is unclear under the Code of Conduct whether SECO is able to refer such complaints elsewhere.

Accordingly, the Proposed Amendments make clear that SECO may refuse to accept a complaint that is more properly addressed in another forum.

A2. SECO's Ability for Summary Fact Finding

Once SECO receives a complaint, additional information may be necessary for SECO to appropriately determine whether a Formal Review is required or whether the complaint should be summarily dismissed. For example, the City may have a document that is not readily available to SECO, and which may shed light on whether the complaint should proceed or is outside the Commissioner's jurisdiction. Similarly, SECO may wish to speak to someone with relevant information to clarify matters at an early stage. Presently, SECO does not have the explicit authority under the Code of Conduct to request documents from the City or to speak to someone until after a Formal Review has begun, and SECO may have to proceed with an investigation even though it is determined later to be unnecessary.

Therefore, the Proposed Amendments allow SECO the right to information from the City upon request, such as closed meeting minutes or other internal documents, in order to determine whether a Formal Review is appropriate. The Proposed Amendments also allow SECO to speak to any person that the Commissioner reasonably deems necessary for the Commissioner to determine whether to proceed to a Formal Review.

A3. SECO's Authority to Revert to Informal Steps

There may be circumstances where after starting a formal investigation, SECO may find it suitable to stay the investigation to allow the parties to pursue an informal resolution of the complaint. SECO, however, does not currently have the authority to revert back to informal steps once a Formal Review has been commenced. Having this authority would offer SECO greater flexibility in resolving complaints and provide more opportunity to utilize the informal steps to resolution.

The Proposed Amendments allow the Commissioner to revert back to informal steps, or Stage 1 of the Formal Review Policy, either instead of or concurrently with an investigation, where the Commissioner finds it appropriate.

B. Substantive Provisions

B1. General Conduct Provisions in the Code of Conduct

General conduct provisions at the beginning of the Code of Conduct (i.e., broadly-worded values or aspirational statements) are not readily enforceable as standalone prohibitions. This includes the values expressed in the preamble of the Code of the Conduct, along with sections 5 and 6, which state respectively:

Section 5: “A Council Member shall treat other Council Members, Staff, Volunteers, and the public with respect and dignity”; and

Section 6: “A Council Member shall align their conduct with the City’s values of integrity, innovation, service, teamwork and community.”

These provisions are by their nature broad concepts that are not readily enforceable in and of themselves. They should be reframed as interpretative aids or aspirational statements, as opposed to specific grounds for complaints.

The Proposed Amendments reframe some of the General Conduct provisions of the Code of Conduct as “Key Principles or Expectations” to clarify that such provisions do not invite complaints, but are rather guidelines that inform the rest of the Code of Conduct.

B.2 Benefits to Family, Friends, or Business Interests (Preamble and Section 32)

Subsection (c) of the Preamble states that Council Members are expected to “be free from undue influence and not act, or appear to act, to gain financial or other benefits for themselves, family, friends, or business interests”. This is not entirely consistent with section 32 of the Code, which prohibits Council Members from acting to gain a financial or other benefit only for family members.

The Proposed Amendments broaden the scope of section 32 to prohibit Council Members from obtaining a benefit for any person, including family members, friends or business interests.

B3. Use of Social Media

The rules under section 46 pertaining to the use of social media should be simplified. Subsections 46(c) and (d) prohibit social media activity that “promotes or constitutes illegal activity” or that “may compromise the safety or security of the public”, but it is unclear what conduct these rules are intended to capture. The Proposed Amendments remove these subsections.

B.4 Conduct in Personal Life

The Code of Conduct is unclear whether a Council Member’s conduct in their personal life may be subject to a complaint. A Council Member’s “personal life” is generally conduct outside the scope of a Council Member’s regular duties which do not engage either Council’s or the City’s interests.

The Proposed Amendments include a provision at the beginning of the Code of Conduct that clearly states that the Code of Conduct does not apply to a Council Member’s conduct in their

personal life, except to the extent that such conduct could reasonably undermine public confidence in Council Members or City governance.

C. Procedural Matters

C1. Closed Meetings and Release of Information

The requirement that Council must consider investigation reports automatically in a closed meeting is problematic. It is uncertain whether in every case there will be a basis to close a meeting under section 90 of the *Community Charter*. Further, considering investigation reports in open Council promotes transparency, accountability, and openness from Council, especially in cases where the Commissioner has found no contravention and/or recommended no measures. Further, on March 8, 2021, Council endorsed Procedures for receiving investigation reports, which allows public disclosure of a summary of the investigation report in all cases.

The Proposed Amendments make clear that investigation reports will be considered in Closed Council only if permitted under the *Community Charter*. Otherwise, the matter should be considered in Regular Council. The Proposed Amendments also make explicit that a summary of every investigation report will be made public, in accordance with the *Freedom of Information and Protection of Privacy Act*.

C2. Moratorium on Complaints and Investigations Near Election

Several other codes of conduct suspend investigations and/or the processing of new complaints in the period leading up to the local government election. Doing so helps ensure that complaints and the work of the Commissioner do not influence the election.

The following chart lists the period of the election moratorium for codes of conduct for the cities of Vancouver, Calgary, Regina, Winnipeg, and Toronto:

<u>City</u>	<u>Moratorium Period</u>
Vancouver	Complaints will be rejected between last day of the nomination period to the general voting day (i.e. in the 36 days leading up to the October 15 general voting day). Investigations may be suspended in the period of 90 days prior to the general voting day of October 15.
Calgary	Investigations may be suspended or not commenced in the period of 90 days prior to the date of a municipal election (held on 3 rd Monday in October).
Regina	Investigations of complaints received on or after August 1 in a municipal election year shall be deferred until after the inaugural meeting of the new Council (December 2).
Winnipeg	Complaints will not be received and investigations will be suspended between May 1 (for mayoral candidates) or June 30

	(other candidates) until first Tuesday of November of an election year.
Toronto	No new complaints will be received after the third Friday in August in a regular election year. All open inquiries will be suspended on that date until at least the voting day on the fourth Monday in October. Parties must request resumption of suspended inquiries by Commissioner.

The Proposed Amendments provide for a moratorium on investigations and the processing of new complaints in the period leading up to the local government election by:

- Requiring SECO to suspend the processing of a complaint received regarding a Council member seeking re-election in the period from the first day of the nomination period to the general voting day (i.e., a period of approximately 46 days); and
- In the period 90 days prior to the general voting day, SECO may suspend any investigation underway until the day after the general voting day.

The deadlines for each of these matters is extended by the number of days comprising this moratorium period.

C3. Alignment with Policy on Payment of Reasonable Legal Fees

On February 8, 2021, Council endorsed the Legal Fees Policy. The Legal Fees Policy gives SECO decision-making authority and imposes on Staff and Council Members certain obligations which are not explicit in the Code of Conduct, including requirements that:

- (a) Staff withhold payment if, in the opinion of the Commissioner, the Council Member's lawyer acts in a manner which has unnecessarily and excessively raised costs for the proceedings;
- (b) Council Members reimburse the City for the legal fees already paid by the City, if the Commissioner makes a finding that the Council Member acted with dishonesty, gross negligence, or malicious or willful misconduct; and
- (c) Council Members must sign an agreement acknowledging their agreement with the policy and their obligation to reimburse the City.

The Proposed Amendments incorporate into the Code of Conduct the first two requirements ((a) and (b)), to remove any doubt of their enforceability by being absent from the Code of Conduct. Council will retain the discretion to waive these requirements by resolution.

Having these provisions in the Code of Conduct will make the signing of the agreement in (c) unnecessary, and so this requirement will be removed from the Legal Fees Policy.

C4. “Formal Complaint” vs. “Written Complaint”

The Commissioner has noted some confusion over the meaning of “formal complaint” versus “written complaint”, as the terms are used interchangeably in the Code of Conduct. Further, both the terms “Formal Resolution” and “Formal Review” appear in the Code of Conduct interchangeably.

In order to avoid confusion, the Proposed Amendments standardize the language used in the Code of Conduct by:

- adopting the definitions of “Complaint Form” and “Formal Complaint” in *SECO Complaint Intake Policy No. 2020-01*; and
- replacing the term “Formal Resolution” in section 58 of the Code of Conduct with “Formal Review”.

C5. The Informal Resolution Process

The informal resolution process under sections 54-63 of the Code of Conduct allows parties to resolve the complaint without requiring the Commissioner to complete a formal investigation. The Code of Conduct is unclear on several aspects of this process, namely:

- whether or not SECO is required to utilize informal steps to resolution prior to conducting a formal investigation;
- the standard procedure to begin the complaint process, including what is meant by the requirement that the complainant file a “written record” of the allegation under section 57; and
- whether or not members of the public may utilize the informal resolution process, or whether or not the process is intended solely for complainants who are Council Members, Advisory Body Members, and Staff.

The Proposed Amendments clarify these issues by:

- making clear that SECO is able to proceed directly to an investigation if he believes that informal steps are inappropriate in the circumstances;
- defining “written record” to reference the Complaint Form so that the complaint process is standardized; and
- making clear that the public does not have a right to utilize the informal resolution process, but gives the Commissioner the discretion to take minimal informal measures with complaints from members of the public before deciding to commence a Formal Review.

C6. Section 70 of the Code of Conduct vs. Formal Review Policy

The process under section 70 following SECO’s receipt of the written complaint has provided some difficulties for SECO. Section 70(a) requires informal steps, including mutual resolution, to

take place within 10 working days of SECO receiving the complaint – which is an insufficient amount of time.

SECO has adopted a Formal Review Policy that provides a workable process for complaint intake, informal steps, and formal review. Accordingly, the Proposed Amendments remove the current process in section 70 and replace it with a process that is consistent with the Formal Review Policy. For example, within 10 business days of accepting (i.e., not just receiving the Complaint Form, but accepting it as a proper complaint not to be summarily dismissed) a complaint for Formal Review, SECO shall send written notice to the Complainant that the Formal Complaint has been accepted for Formal Review. SECO will then determine whether to begin the Formal Review with the informal resolution process under sections 54-63 of the Code, or to proceed immediately with a formal investigation.

CONFIDENTIAL INFORMATION AND PUBLIC RELEASE

This matter pertains to privileged legal advice. Should Council approve bringing forward the Proposed Amendments to an open meeting, staff will disclose this report including any potential changes to the Proposed Amendments that Council wishes to further consider.

SUSTAINABILITY CONSIDERATIONS

The *Council Code of Conduct Bylaw* supports the objectives of the City’s Sustainability Charter 2.0. In particular, the *Council Code of Conduct Bylaw* relates to the Sustainability Charter 2.0 theme of Inclusion. Specifically, the *Council Code of Conduct Bylaw* supports the following Desired Outcome (“DO”):

- Community Pride and Engagement DO21: All residents have opportunities to be meaningfully engaged in civic issues and to contribute to community life.

CONCLUSION

Based on the above, it is recommended that Council approve bringing forward for consideration at an open meeting the noted amendments to the Council Code of Conduct Bylaw, 2020, No. 20020, along with amendments to Policy No. D-42, “Payment of Reasonable Legal Fees to Respond to Complaints Under Council Code of Conduct” including any potential changes to the Proposed Amendments that Council wishes to further consider.



Philip Huynh,
City Solicitor

Appendix available upon request.

Appendix “I”: SECO’s Annual Report for the period July 2020 to July 2021