

## CITY OF SURREY ETHICS COMMISSIONER OFFICE

### POLICY NO. 2020-02

### FORMAL REVIEW POLICY

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#### **Purpose**

This Policy provides guidelines for how the Ethics Commissioner will review, process and investigate a Formal Complaint.

#### **Citation**

This Policy may be cited for all purposes as the “SECO Formal Review Policy No. 2020-02”.

#### **Scope**

This Policy applies to all Formal Reviews carried out by the Ethics Commissioner.

#### **Definitions**

For the purpose of this Policy:

“**Code**” means the *Council Code of Conduct Bylaw, 2020, No. 20020*;

“**Complainant**” means the person who submitted the Formal Complaint;

“**Formal Complaint**” means a complaint, in compliance with sections 66, 68 and 69 of the Code, that the Ethics Commissioner has accepted for the purposes of a Formal Review in accordance with the Intake Policy;

“**Formal Review**” means the Ethics Commissioner’s review of a Formal Complaint in accordance with section 70 of the Code;

“**Intake Policy**” means the SECO Complaint Intake Policy No. 2020-01;

“**Investigation**” means an investigation initiated by the Ethics Commissioner under section 70(c) of the Code as part of a Formal Review; and

“**Respondent**” means the Council Member who is alleged in the Formal Complaint to have acted in contravention of the Code or another City policy.

## Policy Statement

1. Within 10 business days of accepting a Formal Complaint under the Intake Policy, the Ethics Commissioner shall send written notice to the Complainant that the Formal 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 section 70(a) of the Code; or
  - b. Stage 2 – with an Investigation in accordance with section 70(c) of the Code.
2. In making a decision under section 1, the Ethics Commissioner shall:
  - a. consider the following factors:
    - i. whether informal steps would be appropriate in the context of the Formal Complaint;
    - ii. whether the Complainant and the Respondent have previously undertaken any informal steps with respect to the Formal Complaint; and
    - iii. the Complainant's desired outcome; and
  - b. give preference to beginning the Formal Review at Stage 1 wherever possible and appropriate.
3. If a Formal Review begins at Stage 1 and the Ethics Commissioner determines that the informal steps have been unsuccessful, then the Ethics Commissioner may proceed to an Investigation.
4. The informal steps or Investigation will be deemed to have begun on the date the Ethics Commissioner sends the written notice in section 1.
5. The written notice in section 1 will include statements that:
  - a. the Ethics Commissioner has determined a Formal Review is warranted, including whether the Formal Review will begin with informal steps or an Investigation;
  - b. the Respondent will be notified in writing of the allegations in the Formal Complaint;
  - c. any attempts at retaliation or interference with the Formal Review will not be tolerated and must be reported immediately to the Ethics Commissioner; and
  - d. if an Investigation is warranted, that:

- i. the Complainant may be accompanied to any proceedings by a representative of their choice, except that the representative must not be a participant in the Investigation;
  - ii. the Complainant must keep the allegations under investigation, and the Investigation itself, confidential; and
  - iii. the Complainant is expected to cooperate with the Investigation and be truthful and forthright.
6. After the Ethics Commissioner provides notice to the Complainant under section 1, the Ethics Commissioner will provide written notice of the Formal Review to the Respondent in accordance with section 71(b) of the Code. The notice will include the following:
  - a. a copy of the Formal Complaint;
  - b. a copy of the Code; and
  - c. statements that:
    - i. the Ethics Commissioner has determined a Formal Review is warranted, including whether the Formal Review will begin with informal steps or an Investigation;
    - ii. the Respondent must not contact the Complainant in regards to the Formal Complaint or Formal Review;
    - iii. any attempts at retaliation or interference with the Formal Review will not be tolerated and must be reported immediately to the Ethics Commissioner; and
    - iv. if an Investigation is warranted, that:
      1. the Respondent must keep the allegations under investigation, and the Investigation itself, confidential;
      2. the Respondent may be accompanied to any proceedings by a representative of their choice, except that the representative must not be a witness in the Investigation; and
      3. the Respondent has a duty to cooperate with the Investigation and be truthful and forthright, and may be compelled to present as a witness under section 134 of the *Community Charter*.

### Investigations

7. The purpose of an Investigation will be to:

- a. determine whether the allegations in the Formal Complaint are well-founded; and
  - b. determine whether the Respondent has breached the Code or another City policy.
8. The Ethics Commissioner has full discretion regarding the Investigation processes, and will be guided by the principles of procedural fairness in determining process.
9. The scope of the Investigation includes matters within the Formal Complaint, but the Ethics Commissioner has discretion to consider related matters that arise in the course of the Investigation.
10. The determination of what witnesses to interview and what documents to consider is solely within the discretion of the Ethics Commissioner.
11. The Ethics Commissioner may determine whether the Formal Complaint was frivolous, vexatious, or made in bad faith.
12. At the conclusion of the Investigation, the Ethics Commissioner will prepare a written report to the City Manager and Council. That report will include the following:
  - a. a description of all allegations in the Formal Complaint, and all other allegations that arose in the course of the Investigation that were considered;
  - b. a summary of evidence provided in interviews;
  - c. a determination of whether the allegations were well-founded; and
  - d. a determination of whether the Code or another City policy was breached.
13. If the Ethics Commissioner determines there was a breach of the Code or another City Policy, the written report may include:
  - a. a determination of how the misconduct has affected the City, its employees, or Council Members; and
  - b. recommendations on how the City should address the misconduct.

DATE OF ADOPTION: November 5, 2020.

DATE OF REVISION: January 27, 2021.<sup>1</sup>



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Ethics Commissioner

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<sup>1</sup> Please contact SECO at [ethicsoffice@surrey.ca](mailto:ethicsoffice@surrey.ca) if you would like to review previous versions of this Policy.