

NO: **R013**

COUNCIL DATE: **February 10, 2020**

REGULAR COUNCIL

TO: **Mayor & Council**

DATE: **February 6, 2020**

FROM: **General Manager, Corporate Services**

FILE: **3900-02**

SUBJECT: **Ethics Commissioner Establishment Bylaw, 2020, No. 20018**

RECOMMENDATION

The Corporate Services Department recommends that Council:

1. Receive this report for information;
2. Approve the *Ethics Commissioner Establishment Bylaw, 2020, No. 20018*, as documented in Appendix "I" of this report, which proposes to create the position of an Ethics Commissioner and establish the Terms of Reference for an Ethics Commissioner Selection Committee; and
3. Authorize the City Clerk to bring forward the *Ethics Commissioner Establishment Bylaw, 2020, No. 20018* for the required readings.

INTENT

The purpose of this report is to obtain Council's approval to adopt the *Ethics Commissioner Establishment Bylaw, 2020, No. 20018* ("Ethics Commissioner Bylaw") which proposes to create the position of an Ethics Commissioner and set the Terms of Reference ("TOR") for an Ethics Commissioner Selection Committee ("ECSC").

BACKGROUND

At the February 11, 2019 Council meeting, Council unanimously adopted a motion directing staff to bring forward a corporate report identifying the current City policies, as well as Provincial and Federal legislation related to fair and transparent governance. Staff was directed to, among other things, consider additional accountability measures in the form of introducing an independent ethics commissioner.

At the June 10, 2019 Council meeting, Corporate Report R107; 2019, a copy of the Report is attached as Appendix "II", Council authorized staff to commence the process of developing a Council Code of Conduct, and to authorize staff to bring forward for Council's consideration bylaws creating the Council Code of Conduct and the Ethics Commissioner's office.

DISCUSSION

The purpose of the Ethics Commissioner Bylaw is to:

- Establish the position of the Ethics Commissioner and their powers, duties, and functions; and
- Establish the TOR of the ECSC.

Ethics Commissioner

The Ethics Commissioner is an independent officer who will perform advisory and educational functions in relation to administering the Council Code of Conduct and assisting Council Members with meeting their ethical obligations. The Ethics Commissioner will also have 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.

Ethics Commissioner Selection Committee

The Ethics Commissioner Bylaw includes the TOR for the ECSC, which mandates the ECSC to review, evaluate, and ultimately recommend to Council a shortlist of candidates for the appointment of the Ethics Commissioner including a recommendation of the ECSC's preferred candidate for Council's consideration. The TOR set out the qualifications and composition of the ECSC and the ECSC's specific responsibilities. The TOR also specifies the desired qualifications of the Ethics Commissioner for the ECSC to consider when selecting the shortlist of candidates.

As per the TOR, and as previously approved by Council, the ECSC will be comprised of five voting members, as follows:

- 2 – Council Members;
- 3 – Members of the Public; and
- 1 – Legal Professional (non-voting member).

Next Steps

Subsequent to Council's approval of the Ethics Commissioner Establishment Bylaw, the following steps will be undertaken:

- Staff will bring forward the Council Code of Conduct Bylaw for Council's approval;
Council will appoint the members of the ECSC pursuant to the TOR, including two Council Members. Following a recent solicitation for applications from the public, Staff will bring forward for Council's consideration applications from the public to serve on the ECSC as voting members, and legal professional to serve as non-voting member
- The ECSC will retain an external recruitment firm to solicit candidates for the Ethics Commissioner;
- The ECSC will convene and select a shortlist of candidates for the Ethics Commissioner; and

- Council will select the Ethics Commissioner from the shortlist provided by the ECSC.

A roadmap outlining the process to establish a Surrey Ethics Commissioner is attached to this report as Appendix “III”.

SUSTAINABILITY CONSIDERATIONS

The proposed Ethics Commissioner Bylaw supports the objectives of the City’s Sustainability Charter 2.0. In particular, the Ethics Commissioner Bylaw relates to the Sustainability Charter 2.0 theme of Inclusion. Specifically, the Ethics Commissioner 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

This report provides Council with background information on issues related to creating the position of an Ethics Commissioner and establishing an Ethics Commissioner Selection Committee and seeks to obtain Council’s approval of the proposed *Ethics Commissioner Establishment Bylaw, 2020, No. 20018*.

Rob Costanzo
General Manager, Corporate Services

Appendix “I”: *Ethics Commissioner Establishment Bylaw, 2020, No. 20018*

Appendix “II”: Corporate Report R107; 2019

Appendix “III”: Process to Establish a Surrey Ethics Commissioner

CITY OF SURREY

BYLAW NO. 20018

A bylaw to create the position of Ethics
Commissioner and establish the Terms of Reference
for an Ethics Commissioner Selection Committee

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WHEREAS section 154(1)(b) of the *Community Charter* authorizes Council to delegate its powers, duties and functions to an officer or employee of the municipality;

AND WHEREAS section 142 of the *Community Charter* authorizes Council to establish a select committee to consider or inquire into any matter and report its findings and opinion to Council;

AND WHEREAS the Council hereby establishes the Terms of Reference for an Ethics Commissioner Selection Committee;

AND WHEREAS the position of Surrey Ethics Commissioner is hereby established;

NOW, THEREFORE, THE COUNCIL of the City of Surrey ENACTS AS FOLLOWS:

Definitions

1. In this Bylaw:

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

"Commissioner" means the City of Surrey Ethics Commissioner;

"Committee" means the City of Surrey Ethics Commissioner Selection Committee;

"Code of Conduct" means a bylaw adopted by Council to regulate the ethical conduct of Council Members and to establish the process by which the Commissioner may investigate complaints of violations thereof;

"Council Member" means the Mayor or a Councillor;

"Formal Complaint" has the same meaning as in the Code of Conduct.

Selection

2. The purpose and structure of the Committee are as set out in the terms of reference attached to this Bylaw as Schedule A.

3. In accordance with the terms of reference, the Committee will recruit, review, interview, assess and recommend to Council the candidate for the position of the Commissioner.

Creation of Office

4. The position of Commissioner is hereby established.

Appointment

5. Council may by resolution appoint an individual to the position of Commissioner and approve the terms and conditions of the appointment.
6. The Commissioner may be appointed for an initial term of up to two-years.
7. The appointment may be renewed for a maximum of three one-year terms.
8. Where no appointment has been made under section 5, the City Manager may hire a third party to carry out one or more of the duties set out in this Bylaw or in the Code of Conduct.
9. Council may revoke the appointment of the Commissioner by resolution at any time.
10. If the Commissioner is involved in an ongoing investigation pursuant to the Council Code of Conduct when their appointment ends or is revoked, the Commissioner may complete the investigation unless Council passes a resolution directing otherwise.

Role

11. The Commissioner is authorized to:
 - (a) Provide advice to Council Members on behaviour that would be consistent with the Council Members' ethical obligations under the Code of Conduct;
 - (b) Deliver training, as part of orientation or on an annual basis, on any aspects of ethical conduct that the Commissioner determines may be valuable for Council Members, which includes the ability to compel attendance of the Council Members;
 - (c) Receive, review, investigate and adjudicate complaints related to the conduct of a Council Member and violations of the Code of Conduct;
 - (d) Decide whether the matter is within the jurisdiction of the Commissioner;
 - (e) Adopt procedures, policies and protocols designed to ensure that Formal Complaints are fully and fairly investigated;
 - (f) Determine whether to proceed to investigate a Formal Complaint or dispose of the Formal Complaint in a summary manner;

- (g) Subject to the requirements of the Code of Conduct respecting procedural fairness, identify records and documentation received and reviewed during an investigation as confidential; and
- (h) Provide advice and recommendations to Council regarding amendments to the Code of Conduct and any other policies, procedures or protocols governing Council Members' ethical behaviour.

12. The Commissioner may:

- (a) Prepare and deliver an annual report to Council containing a summary of the Commissioner's activities during the calendar year;
- (b) Prepare forms, guidance documents and other resources related to the Commissioner's power, duties and functions; and
- (c) Approve more detailed complaint and investigation procedures to supplement those set out in the Code of Conduct.

13. The Commissioner may delegate any or all of their powers, duties or functions.

Citation

14. This Bylaw may be cited as the "Ethics Commissioner Establishment Bylaw, 2020, No. 20018".

PASSED FIRST READING on the ____ day of February, 2020.

PASSED SECOND READING on the ____ day of February, 2020.

PASSED THIRD READING on the ____ day of February, 2020.

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

_____MAYOR

_____CLERK

SCHEDULE A

Surrey Ethics Commissioner Selection Committee Terms of Reference

Authority The Ethics Commissioner Selection Committee (the "Committee") is established by Council pursuant to section 142 of the *Community Charter*.

Mandate The purpose of the Committee is to recommend to Council an individual to serve as the Commissioner to advise and assist Council in furthering its objectives in regard to enhancing the openness, transparency and accountability of its decision making. The City Manager may establish relevant qualifications for members of the Committee, including the following:

- Residence and/or business interests in Surrey;
- Willingness to submit to a criminal record review and personal interview;
- Knowledge about, and interest in, the community;
- Commitment to protecting fairness, avoiding conflict of interest and maintaining neutrality and objectivity; and
- Willingness, ability and availability to meet the time commitments related to Committee duties.

Specific responsibilities of the Committee include:

- Reviewing and evaluating external recruitment firms to develop a recruitment process for the Commissioner;
- Retaining an external recruitment firm to execute the recruitment process, and confirming the detailed selection criteria for the Commissioner position;
- Reviewing and considering a short list of applications from the external firm's recruitment process;
- Creating list of applicants to interview who meet the minimum established selection criteria;
- Interviewing applicants, and assessing the results of the recruitment process; and
- Recommending to Council a short list for the appointment of the Commissioner, prior to the end of the Term of the Committee.

The desired qualifications of the Commissioner are:

- proven impartiality, neutrality and high ethical standards;
- senior-level management, municipal, legal, judicial or quasi-judicial experience;

- knowledge of municipal or other administrative law;
- knowledge of municipal governance;
- ability to interpret and apply the provisions of various statutes, regulations, policies and other enabling frameworks;
- knowledge of investigatory procedures and applicable legal principles, particularly as they relate to evidence, legal interpretation and natural justice; and
- an ability to provide services on an as-needed basis.
- The preferred candidate will not have previously been elected to Council, employed by the City of Surrey, nor involved in the political campaigns of any elected Council Member.

Composition The Committee is composed of 5 Members appointed by a resolution of Council, as follows:

- Three Members of the Public;
- Two City of Surrey Council Members; and
- One Legal Professional (non-voting member).

Term Members are appointed for a term set to expire on the day of the appointment of the Commissioner.

Quorum 3 Members

Meetings The Committee will meet as required.

Agenda & Minutes The Committee is not required to prepare an Agenda nor record for its meetings. Any records created by the Members are for their benefit in conducting its business.

City Resources Administrative resources including meeting space, use of City equipment, devices and supplies, staff time, including one legal professional.

Reports to Council



CORPORATE REPORT

NO: R107

COUNCIL DATE: June 10, 2019

REGULAR COUNCIL

TO: Mayor & Council

DATE: June 4, 2019

FROM: General Manager, Corporate Services

FILE: 2210-20-16

SUBJECT: Creation of an Ethics Office

RECOMMENDATION

The Corporate Services Depart recommends that Council:

1. Receive this report for information;
2. Authorize staff to commence the process to facilitate the selection of an independent expert who will assist Council in the development of a Council Code of Conduct, as well as coordinate all anticipated workshops and prepare a final draft for Council's endorsement;
3. Authorize staff to bring forward in due course a corporate report with bylaws creating:
 - a) a Council Code of Conduct;
 - b) an independent Ethics Commissioner's office; and
4. Authorize staff to bring forward a corporate report in due course that outlines enhancements to the City's Lobbyist Registry as outlined in this report.

INTENT

The purpose of this report is to provide Council with information on the City's existing framework for ethical conduct. This information is intended to inform Council and identify best practices for establishing an independent Surrey Ethics Commissioner's office and enhanced Lobbyist Registry Policy.

BACKGROUND

At the February 11, 2019 Regular Council Public Hearing meeting, Council unanimously adopted a motion directing staff to bring forward a corporate report identifying current City policies, as well as Provincial and Federal legislation related to fair and transparent governance. In particular, staff was directed to consider additional accountability measures in the form of introducing an independent ethics commissioner and an enhanced lobbyist registry.

Current Trends in Canadian Provinces

Canada is experiencing a trend of increasing codification of ethical conduct at the local government level. Provincial governments have the constitutional responsibility for local governments whereas the Federal government has responsibility over the Criminal Code and the Canadian Charter of Rights and Freedoms. Consequently, the rules for ethical conduct at the local government level are set by the Provincial government, except for criminal conduct and violations of the Charter of Rights and Freedoms. At present, there is no legislation in British Columbia mandating a specific type of ethical framework for municipalities.

The public expects a high standard of ethical conduct from elected officials and municipal staff. These expectations have been incorporated into a variety of rules at the Federal, Provincial and local levels of government. A number of Provincial governments across Canada have stepped in to impose mandatory ethical frameworks on municipalities.

- As of March 1, 2019, all municipalities in Ontario are legislated by the Ontario Provincial government to adopt Council Codes of Conduct policies within their respective municipal organization and to appoint an integrity commissioner (in each municipality) to oversee these policies.
- As of July 23, 2018, all municipalities in Alberta are required, at a minimum, to implement a Councillor Code of Conduct within their respective municipal organization.

Existing Surrey Policies Related to Fair and Transparent Governance

In addition to Provincial and Federal legislation, the City has several well-established fair and transparent governance policies and practices that pertain to both staff and Council, while certain policies pertain strictly to either staff or Council.

The key policies, their description, regulators, and intended subject (staff and/or Council) are provided in Table 1 of Appendix "I".

Absent from this list is a Council Code of Conduct with oversight from an independent ethics commissioner, including the necessary municipal bylaws required to establish an ethics commissioner's office. In the absence of Provincial legislation, the City of Surrey has an opportunity to lead by example by establishing an ethical framework that creates the most value for the organization, rather than reacting to a future Provincial mandate, as was the case in Ontario.

DISCUSSION

Best practices in governance encourage municipalities to establish a framework to deal with matters of ethical conduct. This framework includes both setting standards of expected behaviour and creating processes to determine whether behaviour has fallen short of these standards.

Surrey's Existing Practice

The City's policies have been developed to ensure the highest level of compliance with external legislation and in a manner that appropriately conforms to the City's values of Community, Innovation, Integrity, Service, and Teamwork.

The City's practice has been to ensure that updates to internal policies reflect any changes to pertinent legislation that may be integral to each policy. The City is also obligated to appropriately communicate its policies to staff and Council (as well as volunteers, contractors, and other external representatives under certain policies). This obligation includes the provision of staff training for any major new policy, or when significant changes are made to existing internal policies and/or external legislation.

It is recommended that the City maintains its current practice on managing its internal policies.

Establishing an Independent Surrey Ethics Commissioner's Office

Based on a strategic review of large progressive municipalities across Canada, the common requirements for an independent ethics commissioner's office include the following:

- The establishment of a Council Code of Conduct; and
- A municipal bylaw to appoint an ethics commissioner

Table 2 within Appendix "II" compares four major cities across Canada that have established an independent ethics commissioner's office (Toronto, Winnipeg, Regina, and Calgary).

Council Code of Conduct

Based on staff's review, municipal Council Codes of Conduct across Canadian municipalities have established consistent standards of behaviour for members of a municipal Council, and rules following a finding of misconduct.

Council codes of conduct are typically additional rules to supplement existing conflict of interest rules set out in Provincial legislation. In the City of Surrey's case, the *Community Charter* establishes the rules for a financial conflict of interest. The intention of these rules is to prevent Council members from having divided loyalties when spending public money. In most cases, with few specified exceptions, a Council member is disqualified from voting on a matter in which he or she has a conflict of interest as defined in the *Community Charter*.

Codes of conduct typically contain rules related to different behaviour than the *Community Charter*. Examples of rules in codes of conduct include accepting gifts, misuse of insider information, abuse of office and misuse of staff time. Some codes of conduct include rules about activities deemed to be incompatible with public office, contact with lobbyists, disclosure of business relations, or maintaining respect for Council, the municipal organization and its processes. Codes may include rules regarding enforcement, alternatively, the rules may only reference the by-law establishing the ethics commissioner, which itself would set out in more detail the specific powers of the commissioner to enforce the provisions of the code of conduct.

Based on the best practices review, it is recommended that a Council Code of Conduct be established for the City of Surrey and that Council lead its development, facilitated by a third-party expert.

Independent Ethics Commissioner

As indicated in Appendix II, independent ethics commissioner offices are becoming common in large progressive cities across Canada. In order to appoint an ethics commissioner, Council must adopt a bylaw. The bylaw must establish the roles, responsibilities and powers of the ethics commissioner.

Generally, an ethics commissioner is an independent officer who will perform one, some or all of the following four functions:

1. **Advisory:** An ethics commissioner may give practical advice on ethical situations to Council as a whole or an individual Council member. The goal of this function is to avoid more serious problems or to mitigate a problem that has already arisen.
2. **Investigative:** An ethics commissioner may be given the power to investigate allegations of misconduct in relation to Mayor and Council. Through this process, the goal is to verify the facts surrounding any allegation of wrong doing.
3. **Educational:** An ethics commissioner may provide ongoing training to Council on proper ethical conduct. Training is meant to give individuals and institutions the ability to make good decisions when confronted with an ethical dilemma.
4. **Sanction/Discipline:** Typically, commissioners are given the power to report their findings and make recommendations to Council.

The details of the City of Surrey's ethics commissioner, including his or her roles, responsibilities and powers will be further detailed during the development of the by-law as described above. Based on the summary in Appendix II, it is common for an ethics commissioner to have the following:

- A fixed term;
- The ability to maintain confidential records; and
- An independent budget.

As is done in other municipalities across Canada, it would also be appropriate for a bylaw to set out an impartial process for selecting an ethics commissioner. Table 2 in Appendix "II" reflects the selection processes used by the Cities of Toronto, Winnipeg, Regina, and Calgary.

At this time, the City of Calgary's approach is recommended as the selection committee includes member(s) of the public. Given that a major objective of establishing an ethics commissioner's office is to demonstrate fair and transparent governance, the inclusion of Surrey citizen(s) ensures an additional layer of transparency in establishing such an office.

Estimated Cost

The cost of maintaining a municipal ethics commissioner's office varies based on the size of the city, the size of the municipal organization, the scope of the commissioner's mandate, and the number of complaints received. Table 2 in Appendix "II" provides comparisons of cost between four Canadian cities (Toronto, Winnipeg, Regina, Calgary).

Given the size of Surrey's population and the number of City staff, it is suggested that a Surrey ethics commissioner be compensated by retainer as is done in most Canadian municipalities.

While it is difficult to ascertain Surrey's annual cost at this time, it is roughly estimated that the cost may be upwards of \$200,000 per year. This cost will be brought forward into the base 2020 budget, should the recommendations of this report be approved by Council.

Next Steps – Ethics Commissioner's Office

Based on the above, from a sequencing perspective, the following approach is suggested:

1. Staff to facilitate the selection of an independent expert that will assist Council in the development of a Council Code of Conduct, as well as coordinate all anticipated workshops and prepare a final draft for Council's endorsement;

Followed by:

2. The bylaw required for the selection of an independent Surrey Ethics Commissioner be presented to Council for approval that includes:
 - a. a fixed term; and
 - b. the establishment of a panel, for the selection of an Independent Ethics Commissioner, comprised of:
 - i. Council members;
 - ii. Legal counsel;
 - iii. Recruitment firm; and
 - iv. Member(s) of the public.

Strengthening the City of Surrey's Lobbyist Registry

On February 11, 2019, Council also adopted a second motion that directed staff to explore an enhanced Lobbyist Registry that is more expansive and includes senior staff.

The City's current Lobbyist Registry Policy was adopted by Council in 2008. The City's existing Lobbyist Registry is voluntary and limited to the City's development application process. The purpose of the Lobbyist Registry Policy is to foster transparency in the lobbying of City staff and Council through public disclosure. The list of existing registered lobbyists who have agreed to participate in the City's Lobbyist Registry program is available to the public. While the voluntary Lobbyist Registry does increase transparency, it is difficult to assess its efficacy in curtailing unethical conduct.

A best practice approach to a municipal Lobbyist Registry is one that promotes and enhances the integrity of a City's decision making by displaying lobbying activities to the public and regulating lobbyists' conduct. It includes the following functions and activities:

1. A Lobbyist Registry Bylaw that regulates Lobbyist activities based on the following principles:
 - a. The City government's duty to make decisions in the public interest should not be improperly influenced by paid lobbyists;
 - b. Open and unfettered access to City government is a vital aspect of local democracy;
 - c. Lobbying Councillors and staff is a legitimate activity;
 - d. Public office holders and the public should be able to know who is attempting to influence City government;
 - e. Public disclosure of lobbying activity and standards of conduct for lobbyists are important to the integrity of City government decision making; and
 - f. A system for the registration of lobbying activity and the regulation of the conduct of lobbyists should not impede access to the City government.
2. A Lobbyist Code of Conduct that requires Lobbyists to be open, honest, ethical and professional while dealing with public office holders and staff; and
3. Maintain an online registry of lobbyists and lobbying activities that may be searched by anyone at any time.

In British Columbia, there is no express authority in the *Community Charter* or the *Local Government Act* for the City to require businesses to register their lobbying activities. If Council wishes to make it mandatory for any lobbyist to identify themselves in the Lobbyist Registry, Council must rely on its general bylaw making powers for the authority to create this program. In this regard, under Section 8 of the *Community Charter*, Council may by bylaw regulate in relation to business, which includes lobbying. Accordingly, staff recommends that Council authorize staff to bring forward a by-law that makes registration with the City's Lobbyist Registry mandatory for more types of lobbying. The exact exercise of these powers will be carefully considered in the preparation of the bylaw to ensure it is consistent with the requirements of the *Community Charter*.

Next Steps – Lobbyist Registry

To ensure that an expanded Lobbyist Registry resonates with the public and achieves effective compliance, it is recommended that the City engage with key stakeholders, including Council, staff, lobbyists and members of the public to obtain helpful feedback on improving the system, including the development of a Lobbyist Registry bylaw and a Lobbyist Code of Conduct.

Such an expansion of the policy would require clarifying the definition of lobbying, developing guidelines, training staff and Council, and communicating pertinent information to the public.

There are also cost implications associated with an expanded Lobbyist Registry associated with its administration and the regulation of its associated policies.

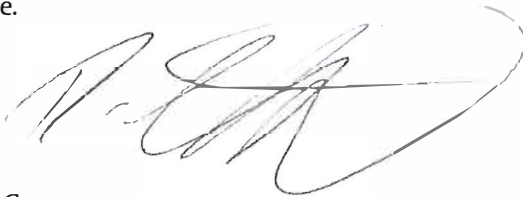
Staff will develop a plan for Council's consideration that carefully sets out the requirements of an expanded Lobbyist Registry with estimated cost to administer and regulate the program as well as a timeline for implementation that coincides with the introduction of an Ethics Commissioner bylaw as outlined in this report.

Funding

Any financial impacts within the 2019 fiscal year pertaining to the initiatives outlined in this report will be absorbed by the Corporate Services Department through operational savings. As part of the 2020 budgeting process, staff will put forward recommendations for permanent funding on a go forward basis.

CONCLUSION

There is a growing interest in municipal ethics regimes across Canada. This report provides background information on the existing ethical framework at the City and is intended to inform Council and identify best practices for establishing a Code of Conduct, a Surrey Ethics Commissioner's Office and an enhanced Lobbyist Registry. If approved by Council, Surrey would be the first municipality in British Columbia to create an independent ethics commissioner's office.



Rob Costanzo
General Manager, Corporate Services

Appendix "I": Existing City of Surrey Policies and Provincial and Federal Legislation Related to Fair and Transparent Governance

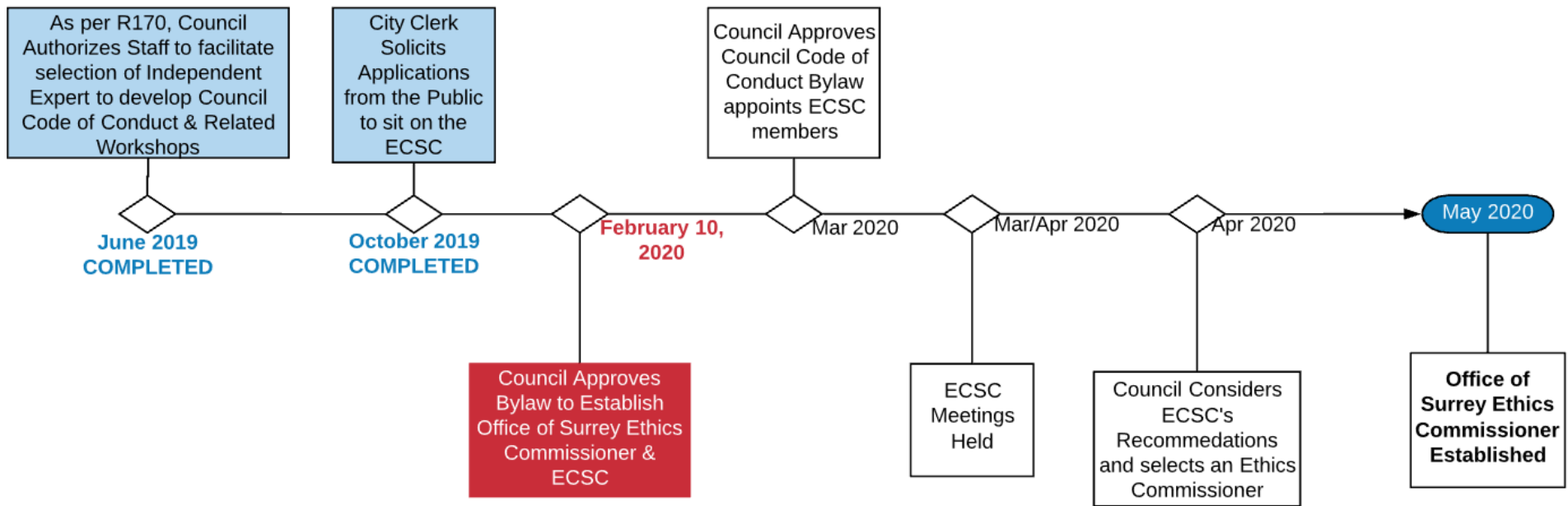
Appendix "II": Comparison of Major Canadian Cities that have established an Independent Ethics Commissioner Office

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*** Appendices Available Upon Request**

Process to Establish Surrey Council Code of Conduct →



Process to Establish Surrey Ethics Commissioner →