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Democratic and Member Support

Chief Executive's Department
Plymouth City Council
Ballard House
Plymouth PL1 3BJ

Please ask for Nicola Kirby
T 01752 304867
E nicola.kirby@plymouth.gov.uk
www.plymouth.gov.uk/democracy
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CITY COUNCIL

Monday 22 June 2015

2.00 pm

Council House (Next to the Civic Centre), Plymouth

Members:

The Lord Mayor, Councillor Dr. Mahony, Chair

The Deputy Lord Mayor, Councillor Ball, Vice Chair

Councillors Mrs Aspinall, Mrs Beer, Bowie, Bowyer, Mrs Bowyer, Mrs Bridgeman, Churchill, Coker, Damarell, Dann, Darcy, Philippa Davey, Sam Davey, Deacon, Downie, Drean, Evans, Fletcher, K Foster, Mrs Foster, Fox, Fry, Hendy, James, Jarvis, Jordan, Kelly, Martin Leaves, Michael Leaves, Sam Leaves, Lowry, McDonald, Morris, Murphy, Nicholson, Mrs Nicholson, Parker-Delaz-Ajete, Penberthy, Mrs Pengelly, Rennie, Ricketts, Riley, Dr. Salter, Singh, Smith, Sparling, Stevens, Storer, Jon Taylor, Kate Taylor, Tuffin, Tuohy, Vincent, Wheeler and Wigans.

Please find attached a revised appendix to the report on Amendments to the Constitution.

Tracey Lee

Chief Executive

CITY COUNCIL

II. AMENDMENTS TO THE CONSTITUTION

(Pages 1 - 10)

David Shepperd (Head of Legal Services) will submit a report proposing revisions to the Constitution following the senior management restructure; to create a separate part of the Constitution concerning delegations to officers; to include additional information about access to information for ease of reference; to update the Policy Framework to reflect changes in practice; and to include information about the Leader's scheme of delegation.

APPENDIX

REPLACEMENT COUNCIL AGENDA PAGES 111 – 120
The changes are highlighted in red

PLYMOUTH CITY COUNCIL CONSTITUTION

PART H

OFFICER SCHEME OF DELEGATION STANDING ORDERS AND REGULATIONS

OFFICER SCHEME OF DELEGATION OF FUNCTIONS AND PROPER OFFICERS

I The scheme of delegation to Officers

- I.1** The intention of the scheme is to authorise the Chief Executive or a first tier officer, to carry out responsibilities for
- (i) All Council functions which the Council has not reserved to itself or delegated to a Committee or Sub Committee in this constitution and which Council has not authorised an officer to carry out.
 - (ii) All Executive functions where the Leader has not reserved the decision to himself or herself or delegated it to Cabinet, a committee of Cabinet, or a Councillor in this constitution, or in his or her scheme of delegation of functions, and which the Leader, the Cabinet, that Committee of Cabinet or Councillor has not authorised an officer to carry out.

- 1.2 The fact that an Officer is authorised to carry out a function does not require that Officer to give the matter his or her personal attention and the Officer may authorise an officer of suitable skills and experience to carry out that function. Any such authorisation must be set out in writing, kept by the Strategic Director and notified to the Monitoring Officer.
- 1.3 Where an Officer is authorised to carry out a function he or she will authorise another officer or officers to carry out that function in his absence, or as required by him or her.
- 1.4 Officers do not have to deal with all matters where they have authority to do so: they can refer the matter back to the Council a Committee or a Sub Committee or to the Leader the Cabinet a Committee of Cabinet or a Councillor.

2 Interpreting these rules

- 2.1 The scheme delegates functions of the Council or the Cabinet to officers and should be interpreted widely rather than narrowly. In cases of dispute as to the interpretation of this scheme the interpretation of the Monitoring Officer shall apply.
- 2.2 In the scheme “officer” means the holder of any post named in this scheme.
“Council functions” means those functions which are prescribed as Council functions by regulation
“Executive functions” means those functions which are prescribed as the responsibility of the Executive by regulations
“First tier officer” means an officer who reports directly to the Chief Executive and who does not carry out a role which has the primary function of carrying out an administrative or secretarial support role
“Second tier officer” means an officer who reports directly to a First Tier officer and who does not carry out a role which has the primary function of carrying out an administrative or secretarial support role.
- 2.3 This scheme operates under the Local Government Act 1972, the Local Government Act 2000, the National Health Service Act 2006, the Localism Act 2011 and all other legislation conferring powers and responsibilities on the Council as amended consolidated or re-enacted from time to time.
- 2.4 Any reference to a statute, statutory provision or statutory instrument includes a reference to that statute, statutory provision or statutory instrument together with all rules and regulations made under it as from time to time amended, consolidated or re-enacted.
- 2.4 Where an Officer is authorised to carry out a function within this scheme of delegation or elsewhere in the Constitution, he or she has authority to do anything necessary to carry it out that function (unless it was forbidden when the responsibility was delegated).

Examples of this are the authority to sign all necessary documents, determine applications, authorise payments, authorise prosecutions, implement national agreements, issue and serve statutory and other notices, authorise entry to land in pursuance of statutory powers, and take statutory action if:
 - a) the Officer has management or budget responsibility for the function concerned, and

- b) the law or the Council's standing orders do not require the action to be taken by someone else and
- c) the decision maker has had regard to any advice from the Chief Financial Officer under Section 114 of the Local Government Finance Act 1988 and the Monitoring Officer under section 5 of the Local Government and Housing Act 1989.

2.5 Limitations

This scheme does not delegate to officers:-

- Any matter which by law may not be delegated to an officer;
- Any matter reserved to full Council and which Council has not authorised an officer to carry out;
- Any decision that has been delegated to a Committee or sub Committee of Council and which that Committee or subcommittee has not authorised an officer to carry out;
- Any decision that has been reserved to the Leader or delegated to the Cabinet a committee of Cabinet or a Councillor; and which the Leader, Cabinet, Committee of Cabinet, or Councillor has not authorised an officer to carry out;
- Any matter which is a new policy or is a departure from the existing and agreed policy framework of the Council.
- Any decision that is not in accordance with the budget.
- Any matter in which the officer has a personal interest.

2.6 Any exercise of delegated powers shall be subject to:-

Any statutory restriction

The Council's Constitution

The Council's budget and policy framework

Any other policies

2.7 In exercising delegated powers officers shall keep Members properly informed of activity arising within the scope of these delegations.

2.8 Any delegations or authorisations will remain in place until superceded.

APPOINTMENT OF PROPER OFFICERS

1.1 The Chief Executive, and all first and second tier officers are designated Proper Officers of the Council pursuant to Section 234 of the Local Government Act 1972, and empowered to sign, pursuant to Section 270(3) of the Local Government Act, 1972, any notice, order or other document required to be made, given or issued to give effect to the powers delegated to them if:

- (a) they one of their staff has budgetary or management responsibility for that function; and

- (b) the officer appointed is qualified to carry out the functions of a proper officer; and
- (c) the Councils standing orders or the law does not require the function to be carried out by someone else.

Legislation		Responsibility	Proper officer
Local Government Act 1972	Section 83(1) to (4)	Witnessing and receiving declarations of acceptance of office	Monitoring Officer
	Section 84(1)	Receiving a Councillor's resignation	Monitoring Officer
	Section 88 (2)	Calling a Council meeting to elect a chair if there is a casual vacancy	Monitoring Officer
	Section 89(1)	Giving notice of a casual vacancy	Monitoring Officer
	Section 100 except 100(d)	Opening meetings to the public	Monitoring Officer
	Section 100(d)	Listing background papers for reports and making copies available for the public to look at	All Assistant Directors
	Section 115(2)	Receiving money due from officers	Responsible Finance Officer
	Section 146(1)(a) and (b)	Making declarations and certificates about transferring securities	Responsible Finance Officer
	Section 191	Receiving applications under Section 1 of the Ordnance Survey Act	Head of Legal Services
	Section 225	Depositing documents	Head of Legal Services
	Section 228(3)	Making accounts available for Councillors to look at	Responsible Finance Officer

	Section 229(5)	Certifying photocopies of documents	Head of Legal Services
	Section 234	Authenticating documents	Head of Legal Services and all Assistant Directors
	Section 238	Certifying byelaws	Head of Legal Services
	Section 248	Keeping a list of freemen of the city	Monitoring Officer
	Schedule 12, paragraph 4(2)(b)	Signing the summons to Council	Chief Executive
	Schedule 12, paragraph 4(3)	Being told where to send summonses to Council meetings	Monitoring Officer
	Schedule 14, paragraph 25	Certifying resolutions passed under this paragraph	Head of Legal Services
Local Government Act 1974	Section 30(5)	Giving notice that copies of an ombudsman's report are available	Strategic Director for Transformation and Change
Local Government (Miscellaneous Provisions) Act 1976	Section 41(1)	Certifying copies of resolutions and minutes	Monitoring Officer
Local Authorities Cemeteries Order 1977	Regulation 10 and schedule 2	Signing exclusive burial rights	Assistant Director for Street Scene Services Head of Public Protection Service
Local Elections (Principal Area) Rules 1986	Rule 46	Keeping documents after an election and making them available for the public to look at	Electoral Registration Officer
Local Government and Housing Act 1989	Section 2(4)	Keeping the list of politically restricted posts	Assistant Director for Human Resources, Organisational Development and ICT

Local Government (Committees and Political Groups) Regulations 1990		Dealing with political balance on committees	Monitoring Officer
Local Authorities (Standing Orders) (England) regulations 2001		Giving notice of appointments and dismissals of officers in accordance with the regulations	Assistant Director for Human Resources, Organisational Development and ICT
Local Government Act 2000		Acting as proper officer for all the responsibilities in the Local Government Act 2000 and subordinate legislation	Monitoring Officer
Public Health Act 1936	Section 84	Cleansing of filthy and verminous articles	Director of Public Health Consultant in Communicable Disease Control (CCDC), and any equivalently medically qualified officer as designated by the Devon, Cornwall and Somerset Public Health England Centre or by any successor agency or unit
Public Health Act 1936	Section 85(2)	Cleansing of filthy and verminous persons and their clothing	Director of Public Health Consultant in Communicable Disease Control (CCDC), and any equivalently medically qualified officer as designated by the Devon, Cornwall and Somerset

			Public Health England Centre or by any successor agency or unit
Public Health Act 1961	Section 37	Controlling verminous things	<p>Assistant Director for Street Scene Services Director of Public Health</p> <p>Consultant in Communicable Disease Control (CCDC), and any equivalently medically qualified officer as designated by the Devon, Cornwall and Somerset Public Health England Centre or by any successor agency or unit</p>
Public Health (Aircraft) Regulations 1979	Regulation 5 and including all subsequent reference to medical officers		<p>Director of Public Health</p> <p>Consultant in Communicable Disease Control (CCDC), and any equivalently medically qualified officer as designated by the Devon, Cornwall and Somerset Public Health England Centre or by any successor agency or unit (as Medical Officer of Health)</p>

Public Health (Ships) Regulations 1979	Regulation 5 and including all subsequent reference to medical officers		<p>Director of Public Health</p> <p>Consultant in Communicable Disease Control (CCDC), and any equivalently medically qualified officer as designated by the Devon, Cornwall and Somerset Public Health England Centre or by any successor agency or unit (as Medical Officer of Health)</p>
Public Health (Control of Disease Act) 1984 as amended	Section 61 and 62	Powers to enter premises for health protection purposes, and supplementary powers of entry	<p>Director of Public Health</p> <p>Consultant in Communicable Disease Control (CCDC), and any equivalently medically qualified officer as designated by the Devon, Cornwall and Somerset Public Health England Centre or by any successor agency or unit</p> <p>Environmental Health Practitioners employed within Public Protection Service</p>
Public Health (Control of Disease Act) 1984 as amended	Section 48	Certification for removal of bodies to mortuary or for burial.	<p>Director of Public Health</p> <p>Consultant in Communicable Disease Control (CCDC), and any equivalently</p>

			medically qualified officer as designated by the Devon, Cornwall and Somerset Public Health England Centre or by any successor agency or unit
Health Protection (Local Authority Powers) Regulations 2010	Regulations 8 (1) and 8 (2)		Director of Public Health Consultant in Communicable Disease Control (CCDC), and any equivalently medically qualified officer as designated by the Devon, Cornwall and Somerset Public Health England Centre or by any successor agency or unit
Health Protection (Notification Regulations) 2010	Regulations 2, 3, and 6	Receipt and disclosure of notification of suspected notifiable disease, infection or contamination in patients and dead persons	Director of Public Health Consultant in Communicable Disease Control (CCDC), and any equivalently medically qualified officer as designated by the Devon, Cornwall and Somerset Public Health England Centre or by any successor agency or unit Assistant Director for Environmental Services
Health Protection (Part 2A Orders) regulations 2010		Preparation of application for Part 2A Order	Director of Public Health

Registration Services Act 1953		Power to act as proper office for the registration service	Assistant Director for Customer Services
National Assistance Act 1948	Section 47	Taking people in need of care and attention to a suitable place	Head of Strategic Co-operative Commissioning
National Assistance (Amendment) Act 1951	Section 1	Certifying the need for immediate action	Head of Strategic Co-operative Commissioning
Money Laundering Regulations 2003	Regulation 7	Being told about suspected money laundering	Responsible Finance Officer
Local government data handling guidelines under the Data Protection Act		Manage information risk within the Council's risk management framework	Responsible Finance Officer
Local Democracy, Economic Development and Construction Act 2009	Sections 31 and 32	Promote the role of and provide support to the overview and scrutiny panels and management board; provide support and guidance to members and officers in relation to the scrutiny function.	Assistant Chief Executive
Registration Services Act		Proper officer for registration of births, marriages and deaths	Assistant Director for Customer Services

Legislation in these tables includes any amendments, re-enactments and subordinate legislation.