

## CITY OF PLYMOUTH

**Subject:** Revised City Council Constitution  
**Committee:** City Council  
**Date:** 5 December 2011  
**Cabinet Member:**  
**CMT Member:** Monitoring Officer  
**Author:** Timothy Howes, Assistant Director for Democracy and Governance  
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**Ref:** Review of the Constitution  
**Key Decision:** No  
**Part:** 1

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### **Executive Summary:**

The Council is requested to adopt a revised constitution which has been developed by the five members of the constitution working group. The working group reviewed and agreed the structure of the revised constitution and considered a number of changes to reflect the law, clarify the language and streamline working practices.

Where the document refers to executive functions the allocation is in accordance with the views of the Leader.

Linked to the review, Council is recommended to designate officers as the Council's scrutiny officer under the Local Government Act 2000 and as the proper officer under the Registration Act 1953.

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### **Corporate Plan 2011 – 2014:**

There are no direct implications in relation to the corporate plan. However it is vital to ensure that effective governance arrangements are in place to deliver the corporate plan.

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### **Implications for Medium Term Financial Plan and Resource Implications: Including finance, human, IT and land**

There are no direct implications in relation to the Medium Term Financial Plan and Resources.

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**Other Implications: e.g. Community Safety, Health and Safety, Risk Management and Equality, Diversity and Community Cohesion.**

There are no direct implications.

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**Recommendations & Reasons for recommended action:**

It is recommended that the Council:

- (1) Adopts the revised Constitution and its associated documents as attached, to be effective from the 3 January 2012.
- (2) Designates the following:
  - (a) The Head of Policy, Performance and Partnerships as the Council's Scrutiny Officer
  - (b) The Assistant Director for Democracy and Governance as the Council's proper officer for the registration service
- (3) Set up a standing constitution working group to meet as and when required.
- (4) Instruct the Monitoring Officer to report on the operation of the revised constitution after six months.

The reasons for recommendation (1) are that the present Constitution needs updating following legislative changes.

The reason for recommendation (2) is that the Council is required to designate officers to these roles.

The reason for (3) is that the constitution working group identified a number of additional areas linked to the constitution which required review.

The reason for (4) is the need to consider the impact of changes in the constitution and recommend any further revision.

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**Alternative options considered and reasons for recommended action:**

The present model of the constitution does not reflect the new 'strong leader' model adopted by the Council and parts of it do not reflect the present law. The current constitution could have been replaced in its entirety but instead the working group agreed to recommend the amendment of the present constitution.

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**Background papers:** None.

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**Sign off:**

Fin	MC 111 2.01 9.	Leg	TH0 030	HR		Corp Prop		IT		Strat Proc	
Originating SMT Member TH											

## **1.0 Introduction**

A local authority that is operating executive arrangements must prepare and keep up to date a written constitution that contains such information as the Secretary of State may direct, which includes a copy of the authority's standing orders for the time being, a copy of the authority's code of conduct and such other information as the authority considers appropriate.

The purpose of the constitution is to set out everything anyone who has dealings with the local authority would need to know about how it conducts its business, who takes which decisions and how to work with it.

To comply with this legislative requirement, attached is a revised Council Constitution which has been developed with the Constitution working group comprising Councillor Bowyer, Councillor Lowry, Councillor Nicholson, Councillor Stark and Councillor Stevens. The objective of the review of the constitution was to provide:

1. A constitution written in a familiar format
2. Clear information on the council and executive responsibilities
3. Reduced duplication
4. A common approach to financial regulations, contract standing orders and property rules
5. Compliance with current legislation
6. Improved accessibility and clearer language.

## **2.0 Main Changes**

The main changes to the present constitution are set out as bullet points below:

- Clear information about the delegation of executive responsibility and an explanation of which decisions are the responsibility of cabinet and which are the responsibility of cabinet members.
- Removing the reporting of the forward plan from Council; this is because the forward plan is a document from the Leader (and an executive function) and is published elsewhere. The questions on the forward plan are therefore also removed, but general question time has been extended as a result.
- The requirement setting out which group has the chair of the scrutiny panels has been removed.
- The rules on motions on notice and the procedure to be followed have been reviewed to make them easier to understand.
- Changes arising from the new executive arrangements and the adoption of the strong leader model have been incorporated. It also includes the provision whereby the Leader can be removed by Council.

- The statutory standing orders relating to the employment and dismissal of chief officers are now set out in the constitution.
- The council tax setting meeting is now primarily limited to recommendations from cabinet relating to the budget and corporate plan.
- The process for members to refer planning applications to committee has been simplified, with no need for member or officer 'approval' of that request.
- The chief executive can call a council meeting and present a report, in line with the similar powers of the monitoring officer and chief finance officer.
- Clerical amendments can more readily be made, to make the constitution follow or clarify the law or to comply with full council decisions which amend the constitution.
- The section describing who carries out executive responsibilities and the roles of cabinet members can be readily amended to reflect the wishes of the leader.
- The power to reject questions from members of the public or councillors is now limited to specific grounds, however the monitoring officer is encouraged to assist in the re-drafting of questions where required.
- The finance regulations and contract standing orders have been re-drafted to reflect statutory and administrative changes and to review and amend the delegations and levels of responsibilities.
- In addition to the general and statutory standing orders, the constitution includes:
  - a. Contract standing orders
  - b. Councillor call for action guidance
  - c. Employment rules
  - d. Financial regulations
  - e. Glossary
  - f. Index
  - g. Legal rules
  - h. Member code of conduct
  - i. Member's ICT code
  - j. Officer code of conduct
  - k. Petitions guidance
  - l. Property disposal rules

### **3.0 Consultation**

In July 2011, Council agreed that they defer consideration of a new constitution to allow the time for more detailed consideration by a working group of five councillors with three from the Conservative Group and two from the Labour Group to work with the Monitoring Officer on the further development of the constitution. The outcome of that working group will then form part of the recommendations to Council.

That working group of Cllr Lowry (substitute Cllr Mrs Aspinall); Cllr Bowyer, Cllr Stark, Cllr Nicholson and Cllr Stevens met on five occasions, the 20 September, 21 September, 27 October, 31 October and 7 November 2011.

The working group initially considered whether the new format of the constitution (as previously provided to all members) should be used or whether instead we should stick to the present format. On balance it was felt that the present format was both familiar and understandable, and it was agreed that the revised constitution should follow that format.

The working group then considered a number of specific issues including:

1. Whether some planning applications from staff could be dealt with under delegated powers rather than going to committee (in accordance with our planning code). It was agreed that for the sake of openness and transparency, all planning applications from staff should go to the committee. In this matter, the working group considered specific representations from the assistant director for development.
2. The working group were concerned at the present limitations on the ability for a Councillor to refer a planning application to the committee. Consideration was given to the present system, alternatively, permitting any application to be referred without reasons or alternatively, permitting any application to be referred with reasons.

Having considered written representations from the assistant director for development, it was recommended that any planning matter can be referred with a requirement that reasons are given, to enable the planning committee to be aware of those reasons.

There was a concern that this may unnecessarily slow the planning process and therefore the working group felt that the operation of this provision should be reviewed after 6 months.

3. The removal of the forward plan from council on the basis that members have the opportunity to consider the forward plan on its publication. Further, matters on the forward plan can be raised in 'general questions' at council. It was recommended that the forward plan be removed with the 15 minutes of questions being transferred to general questions at council.
4. The anomaly in the constitution regarding the requirement as to which group should hold the chairs and vice-chairs of scrutiny panels. This was considered and it was recommended that the requirement was removed to bring the panels into line with other council committees. However, potentially this could be dealt with by the adoption of a convention to the same effect.

5. General consideration was given to how we run council meetings in general at the city council. Should we for example, identify particular topics in advance for discussion? Should we limit the number of motions to be considered at any council meeting?

It was agreed that further research should be undertaken on the future role of council meetings with for example discussions with other councils. This matter could be considered by a future 'standing' constitution working group.

6. The requirement in the present constitution which says 'scrutiny chairs should not accept other roles in their political group which could conflict with carrying out the role of the chair in a non-party political way'. It was felt that this was difficult to enforce and should be removed. Further, it was probably unnecessary if 4 above were accepted.
7. Is the preamble as presently drafted still appropriate and relevant? On balance it was felt that it should remain as drafted.
8. The use of the role title 'monitoring officer', it was felt that whilst the title does have 'big brother' connotations, it is a recognised statutory role. It was agreed that the use of the title in the constitution should remain.
9. It was agreed that the reference to a delegation to Birmingham City Council needed further explanation to avoid confusion.
10. The power of the monitoring officer to reject questions appeared draconian. It was agreed that this should be 'softened' by the monitoring officer offering assistance to amend questions to make them acceptable.
11. The inclusion of the statutory provision which gives the council authority to remove the leader.
12. The current constitution is unclear over whether the council or the committees themselves appoint chairs and vice-chairs. On balance it was felt that where this was permissible, chairs and vice-chairs would be appointed at the annual council.
13. Do we still need the prohibition on the use of speech and video recordings? It was felt that this could be considered again by the working group at a future meeting.

14. The protocol on member/officer relations should also be reviewed in the coming year.
15. We need to make reference to localities and neighbourhood working in the constitution. This has been done in the appendix.

In addition to the specific issues set out above, the working group went through the constitution page by page and line by line. That involved checking, challenging and amending as we worked.

The result of that work is the revised constitution which is attached and recommended for adoption today.

#### **4.0 Standing Constitution Working Group**

In the detailed review of the present constitution, the working group identified areas of the constitution that required further more detailed consideration. These areas included the future role of council meetings, the prohibition on video and voice recordings, streamlining reporting processes in scrutiny, the planning protocol the protocol on member/officer relations and the officer's code of conduct (in particular the question of publishing the receipt of any gifts and hospitality by officers). It was felt that these were not so vital as to delay the adoption of the revised constitution, but did require additional work.

The working group therefore wanted Council to authorise the continuance of their work as and when required, and to that end, recommended a 'standing' working group be created.

#### **5.0 Proper officer changes**

##### **Scrutiny officer**

The Local Government Act 2000 requires the Council to designate one of our officers to discharge the following functions:

- (a) To promote the role of the authority's overview and scrutiny committee or committees;
- (b) To provide support to the authority's overview and scrutiny committee or committees and the members of that committee or those committees;
- (c) To provide support and guidance to—
  - (i) Members of the authority,
  - (ii) Members of the executive of the authority, and
  - (iii) Officers of the authority,



in relation to the functions of the authority's overview and scrutiny committee or committees.

It is recommended that the Head of Policy, Performance and Partnerships be designated as the council's scrutiny officer.

### **Registration service proper officer**

The Registration Service Act 1953 requires the Council to designate a "proper officer" to be responsible for the administration of services in relation to the registration of births, marriages and deaths.

In general terms the council has the responsibility for administering the funding of the service, together with the provision of "support" staff, accommodation and any other requirements for the efficient delivery of the service. The relationship between the local authority and the service is "managed" by the proper officer.

Currently, the Director for Corporate Support is the 'proper officer' however it makes sense to align the function with the line management of the service. Consequently it is recommended that the Assistant Director for Democracy and Governance be designated as the Council's proper officer.

## **6.0 Process**

I would like to take this opportunity to thank the members of the working group for their patient and diligent work and to thank the staff in Legal and Democratic Support in particular Linda Torney and Judith Shore for their efforts in preparing the constitution.