

# Colchester Borough Council

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## Article 1 – The Constitution

### INTRODUCTION

This Constitution has been produced in accordance with section 9P of the Local Government Act 2000 as amended by the Localism Act 2011. Apart from describing the structure of the Council, it sets out the ways in which it takes the many decisions it makes annually which affect the lives of the citizens of the Borough of Colchester.

This Constitution should be interpreted in the light of all other relevant legislation.

#### 1.01 Powers of the Council

The Council will exercise all its powers and duties in accordance with the law and this Constitution.

#### 1.02 The Constitution

This Constitution is the Constitution of the Colchester Borough Council.

#### 1.03 Purpose of the Constitution

The Constitution provides a framework which:

- (a) enables the Council to provide clear leadership to the community in partnership with citizens, businesses and other organisations;
- (b) supports the active involvement of citizens in the process of local authority decision-making;
- (c) helps Councillors represent their constituents more effectively;
- (d) enables decisions to be taken efficiently, effectively and with transparency;
- (e) creates a powerful and effective means of holding decision-makers to public account;
- (f) ensures that no one will review or scrutinise a decision in which they were directly involved;
- (g) ensures that those responsible for decision making are clearly identifiable to local people and that they explain the reasons for decisions; and
- (h) provides a means of improving the delivery of services to the community.

#### 1.04 Principles of the Constitution

In seeking to reinforce local democracy, the Constitution is founded on the following principles:-

- (a) The creation of an easily understood system of political management which will provide a clear and accountable leadership balanced and challenged in its activities by other Councillors.
- (b) The establishment of an open and streamlined decision making process within which the views of local people are given full consideration.
- (c) The Council as leader in the local community, working on behalf of the citizens of Colchester.

### **1.05 Interpretation and Review of the Constitution**

Where the Constitution permits the Council to choose between different courses of action, the Council will always choose that option which it thinks is closest to the purposes stated above.

The Council will monitor and evaluate the operation of the Constitution as set out in Article 14.

### **1.06 Flexibility and Review**

This Constitution is intended to be sufficiently flexible to meet changing needs, and will be reviewed regularly to ensure that it continues to meet these basic principles, in the light of experience.

The following sections give information on the structure of the Council and a framework of rules to meet the central principles.

### **1.07 Executive Arrangements**

The following parts of this Constitution shall constitute the executive arrangements:

1. Article 6 (Overview and Scrutiny of decisions) and the Overview and Scrutiny Procedure Rules;
2. Article 7 (The Cabinet) and the Cabinet Procedure Rules;
3. Article 9 (Area Working Arrangements);
4. Article 10 (Joint Arrangements);
5. Article 12 (Decision Making) and the Access to Information Procedure Rules;
6. Part 3 (Responsibility for Functions).

# Colchester Borough Council

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## Article 2 – Members of the Council

### INTRODUCTION

This Article sets out the composition of the Council, eligibility to stand for election as a Councillor and the form of election to be used.

The Article contains a section on the roles and functions of Councillors.

The Article also deals with the rights and duties of Councillors (otherwise known as Members), especially as they affect access to land, buildings, documents and information and any confidentiality requirements surrounding the latter.

### 2.01 Composition and Eligibility

- (a) **Composition** - The Council comprises fifty one Councillors. One Councillor will be elected by the voters for each ward in accordance with a scheme drawn up by the Local Government Boundary Commission for England. They serve for four years before coming up for re-election and each represents a particular area or ward of the Borough. As a locally elected representative, the main duty of a Councillor is as a community leader, speaking and acting for all local people, assisting them as individuals and seeing that their area gets fair and proper treatment. As a member of the Council, a Councillor represents the interests of the Borough of Colchester as a whole and, by serving on one or more of the bodies described below, takes decisions on the policies of and services provided by the Council.
- (b) **Eligibility** - Only registered voters of the Borough of Colchester or those living or working, or owning land or premises in the Borough are eligible to hold the office of Councillor.

### 2.02 Election and term of office of Councillors

Regular elections of a third (or as near as may be) of all Councillors will be held annually on the first Thursday in each May (unless Parliament determines otherwise). There will be no regular election when there are elections to Essex County Council. The term of office of Councillors will be four years starting on the fourth day after being elected and finishing on the fourth day after the date of the regular election four years later.

### 2.03 The Mayor

The Mayor is the "First Citizen" of the Borough and a Councillor. The post should not be confused with that of an elected mayor who, under the organisational arrangements adopted in some council's, is the political leader.

In Colchester, the Mayor is the ceremonial head of the Council and is elected by the

other members of the Council at the Annual Meeting to serve for twelve months. The main roles of the Mayor are to represent the Council and the Borough at official functions both at home and abroad and to chair meetings of the full Council.

## **2.04 Roles and Responsibilities of all Councillors**

### **Purpose**

- (a) participate fully in the good governance of the Borough;
- (b) contribute actively to the formation and/or scrutiny of the Council's policies, budgets, strategies and service delivery;
- (c) represent effectively the interests of the Ward for which the Councillor was elected and deal promptly with constituents' enquiries and representations;
- (d) promote Council engagement with all citizens and groups and ensure that there are opportunities for all views to be heard;
- (e) champion the continuous improvement of the quality of life of the community in terms of equity, economy and environment;
- (f) ensure that the Council's resources are used to achieve the maximum benefit for the people of Colchester;
- (g) represent the Council effectively, when appointed to an outside body, such as a charitable trust or association, etc;
- (h) act at all times with probity and propriety in the best interest of the Council and in accordance with the Members' Code of Conduct.

### **Duties and Responsibilities**

Councillors shall be responsible for the following duties and responsibilities:-

- (a) To fulfil the statutory and locally determined requirements of an elected member, including compliance with all relevant codes of conduct, and participation in those decisions and activities reserved to the full Council.
- (b) Participate effectively as a member of any Committee or Panel to which the Councillor is appointed, including related responsibilities for the services falling within the Committee's or Panel's terms of reference, and its liaison with other public bodies to promote better understanding and partnership working.
- (c) Participate in the activities of an outside body to which the Councillor is appointed, providing two-way communication between the organisations and representing the policies and practices of the Council. Also, for this purpose, to develop and maintain a working knowledge of the Council's policies and practices in relation to that body and of the community needs and aspirations in respect of that body's role and functions.

- (d) Participate in the scrutiny or performance review of the services of the Council including, where the Council so decides, the scrutiny of policies and budget, and their effectiveness in achieving the strategic objectives of the Council.
- (e) Participate, as appointed, in consultative processes with the community and with other organisations.
- (f) Provide a link between the Council and the community, through the various forums available.
- (g) Develop and maintain a working knowledge of the Council's services, management arrangements, functions/duties and constraints, and to develop good working relationships with relevant officers of the Authority.
- (h) Develop and maintain a working knowledge of the other organisations and services which serve the Borough.
- (i) Contribute constructively to open government and democratic renewal through active encouragement to the community to participate generally in the democratic process.
- (j) Maintain confidentiality in all relevant Council business.
- (k) Find a suitable substitute and to brief them on the meeting due to be attended, on occasions when personal attendance is not possible and where substitutes are permissible.
- (l) Identify individual learning and development needs and participate fully in training opportunities provided.
- (m) Maintain the highest standards of conduct and ethics in accordance with the Members' Code of Conduct.

## **2.05 Conduct**

Councillors will at all times observe the Members' Code of Conduct and the Member / Officer Protocol contained in Part 5 of this Constitution.

## **2.06 Allowances**

Councillors will be entitled to receive allowances in accordance with the Members' Allowances Scheme set out in Part 6 of this Constitution.

## **2.07 Role of the various meetings of the Council**

Each of the various meetings of the Council has a role to play within the Authority.

## **Full Council**

The main role of the Full Council is to, decide the key policies and plans within which the Council's functions will be carried out, and to set the Council's budget and Council Tax levels and approve the Constitution.

The Committees and Panels are appointed annually by the Council. The Leader is appointed by the Council for a term of four years (or for the remainder of their term in office as a Councillor whichever is the shorter). The Leader appoints the Deputy Leader and the Cabinet. Reports on new or existing policies may be initiated or drawn up by the Cabinet as a whole or by an individual Cabinet member, a Panel of the Cabinet or a Panel.

The Cabinet makes recommendations on policy to the Full Council, although in the case of non-statutory plans and strategies (i.e., those that do not fall within the Policy Framework of the Council), the Panels may report direct to the Full Council. It also receives reports from the Scrutiny Panel and the other Panels on the effectiveness of existing policies and in both cases makes decisions in the light of the actions recommended and the views expressed. Its meetings also provide a forum for Councillors to question the Cabinet on the performance of its duties and for the public to ask questions or make statements on any of the functions of the Council.

## **Cabinet**

The Cabinet is appointed by the Leader of the Council and comprises the Leader and up to nine other Councillors. The broad areas of responsibility are as follows:-

Environment	Community Safety	Strategy
Transport	Housing	Regeneration
Employment	Health	Partnerships
Economic Development	Resources	Licensing
Leisure	Customer Services	Young People
Tourism	Planning	Procurement
Communications	Waste	Diversity
Information Technology	Rural Issues	Commercial Activities

The Leader allocates to each member of the Cabinet responsibility for one or more of the broad areas described above (known as a portfolio) and may group those areas by type or similarity of function. The Cabinet therefore forms a readily identifiable body and it will be clearer to the public who is responsible for decisions.

The Leader appoints a Councillor to act as Deputy Chairman of the Cabinet for the forthcoming municipal year. The Deputy Chairman may or may not be responsible for specific functions or areas within the Cabinet.

There is a presumption that delegations to and powers of the Cabinet are to the body as a whole and that decisions are reached collectively. However, in certain circumstances it may be appropriate for the Cabinet to authorise its members to take decisions on their own, within any limits that may be set and having received the necessary Officer advice.

The responsibility of the Cabinet is to take decisions within the budgetary and the

Policy Framework set by the Full Council and must take into account the views of local people, consultees and the Scrutiny Panel. It meets regularly and in public, except for a limited amount of business such as that which is by its nature is commercially sensitive or concerns members of staff, which will be dealt with in confidence. Representatives of the media will be positively encouraged to attend, and details of meetings will be published on the Council's web site.

Meetings of the Cabinet will provide an opportunity for Councillors who are not Cabinet members and the public to ask questions or make statements on any items under discussion.

### **Overview and Scrutiny**

As a balance to the powers and activities of the Cabinet, the Scrutiny Panel has been established to hold the decision-makers to account and to review the Council's policies.

The Scrutiny Panel has the following functions:-

- To review corporate strategies;
- To ensure that actions of the Cabinet accord with the policies and budget of the Council;
- To monitor and scrutinise the financial performance of the Council, initial best value reports and performance reporting, and to make recommendations to the Cabinet particularly in relation to annual revenue and capital guidelines, bids and submissions;
- To link the Council's spending proposals to the policy priorities and review progress towards achieving those priorities against the Strategic and Implementation Plans;
- To scrutinise executive decisions made by Cabinet, the North Essex Parking Partnership Joint Committee and the Colchester and Ipswich Joint Museums Committee which have been made but not implemented referred to the Panel pursuant to the Call-In Procedure;
- To scrutinise executive decisions made by Portfolio Holders and officers taking key decisions which have been made but not implemented referred to the Panel pursuant to the Call-In Procedure;
- To monitor the effectiveness and application of the Call-In Procedure, to report on the number and reasons for Call-In and to make recommendations to the Council on any changes required to ensure the efficient and effective operation of the process;
- To scrutinise the Cabinet's performance in relation to the Forward Plan;
- To monitor the financial performance of the Council and to make recommendations to the Cabinet in relation to financial outturns, revenue and capital expenditure monitors;

Its purpose is to review decisions, those policies of the Council already in place, the work of Cabinet and non-Cabinet bodies and, where appropriate or necessary, to require the Council's decision-makers to account for and justify their decisions and the way in which those decisions are implemented. They may carry out consultations with and receive evidence from the public and local organisations during reviews of those functions for which they are responsible. They may, if they wish, appoint for the duration of a review on a particular matter advisors or specialists from outside the Council who have a particular knowledge of the subject. Members of the Cabinet cannot serve on the Scrutiny Panel, although they are entitled to, and will normally, attend their meetings.

### **Planning Committee**

The Committee deals with all applications for planning permission and other development control matters and other minor highway matters that are not delegated to Officers.

### **Local Plan Committee**

The Committee deals with the Council's responsibilities relating to local planning and neighbourhood planning functions.

### **Licensing Committee**

The Committee deals with the Council's licensing functions that are not delegated to Officers.

### **Governance and Audit Committee**

The Committee deals with the consideration and approval of the Council's Statement of Accounts other regulatory matters and standards issues regarding councillor conduct. In addition, it acts as the shareholder committee for Colchester Commercial (Holdings) Limited.

### **Policy Panel**

The Panel's role is to identify issues and legislative changes and review strategies and policies on behalf of the Cabinet and advise Cabinet accordingly.

### **Environment and Sustainability Panel**

The Panel's role is to primarily to translate the Council's climate emergency aspirations in actions and to identify and take forward environmental issues affecting the Council and the Borough.

### **Officers of the Council**

The Officers are directly employed by the Council in a variety of administrative, professional, technical and operational roles. Depending on their individual roles, they advise the Council on all aspects of its functions, put into effect decisions that are taken by Councillors, and provide to the public the services for which the Council is responsible. The Officers are grouped into service groups and all are ultimately



responsible to the Chief Executive. The Executive Management Team act as co-ordinating managers and perform a strategic operational role. Assistant Directors are responsible for the day to day operation of their services.

### Statutory Officers

The Council is required by law to make certain statutory appointments, which must be held by different individuals:-

- (a) Head of Paid Service – Pamela Donnelly, Chief Executive

The principal officer adviser to the Council, responsible for ensuring that the Council’s resources and procedures are effectively and properly provided and used.

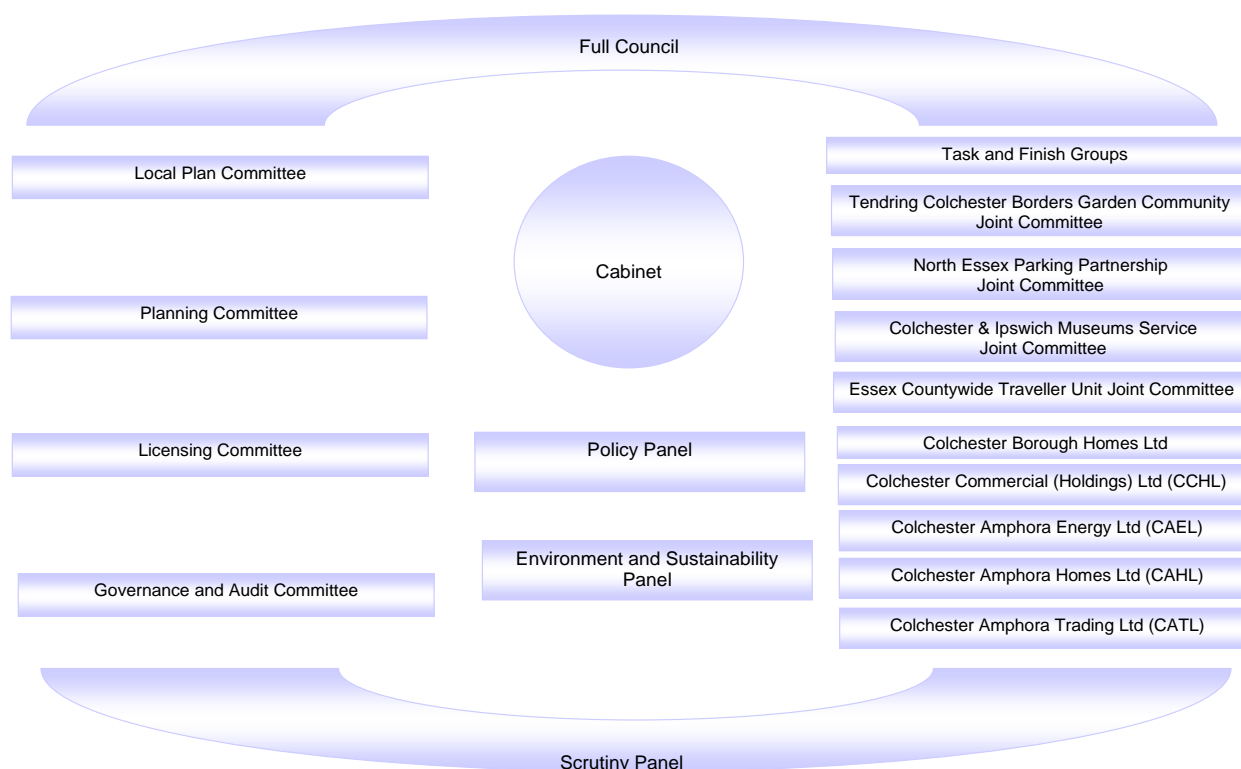
- (b) Monitoring Officer – Andrew Weavers, Strategic Governance Manager

Responsible for ensuring that the decisions and actions of the Council are lawful and in accordance with the adopted Policy Framework.

- (c) Chief Finance Officer (Section 151 Officer) – Paul Cooke, Head of Finance

Responsible for ensuring the proper administration of the Council’s financial affairs and that actions and decisions are in accordance with the Council’s budget.

### The Council’s political governance structure



# Colchester Borough Council

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## Article 3 – The Public and the Council

### INTRODUCTION

This Article sets out what citizens can expect from the Council and what rights they have. The Constitution also shows how the Council expects to be treated by citizens in return.

This Article also sets out what local councils can expect from the Council.

### 3.01 Citizens' rights

Citizens have the following rights. Their rights to information and to participate are explained in more detail in the Access to Information Rules in Part 4 of this Constitution:

- (a) **Voting** Citizens on the electoral roll for the Borough have the right to vote for their local Councillor(s) in local elections.
- (b) **Elected Mayor Petitions** Citizens on the electoral roll in the Borough have the right to sign a petition to request a referendum for an elected mayor form of Constitution. For a petition to be valid to require a referendum, the number of signatures to it must equate to not less than five percent of the electorate of the Borough. (As of February 2022 this amounted to 6879 signatures.)
- (c) **Petitions** Citizens who live, work or study within the Borough have the right to petition the Council on a function within its remit. The Council has approved a petition scheme which is set out at Part 4 of this Constitution in the Petition Procedure Rules.
- (d) **Information** Citizens have the right to:
  - (i) attend meetings of the Council the Cabinet, Committees and Panels except where exempt or confidential information is likely to be disclosed, and the meeting is therefore held in private;
  - (ii) find out from the Forward Plan what Key Decisions will be taken by the Cabinet and when;
  - (iii) see reports and background papers, and any records of decisions made by the Council, Committees, Panels and the Cabinet together with Key Decisions taken by Portfolio Holders and Officers except where these comprise confidential or exempt information; and
  - (iv) request information in the possession of the Council under the Freedom of Information Act 2000 and Environmental Information Regulations 2004, subject to defined exceptions in the Act and the Regulations

- (v) inspect the Council's accounts and make their views known to the external auditor.
- (e) **Participation** Citizens have the right to participate in the public question time ("Have Your Say") at meetings, contribute to investigations by the Panels and to submit a petition in accordance with scheme which is set out in Part 4 of the Constitution.
- (f) **Treatment by the Council** Citizens have the right to be treated impartially and fairly by the Council.
- (g) **Human Rights Act** Citizens have the right to expect the Council to adhere to the Human Rights Act 1998.
- (h) **Complaints** Citizens have the right to complain to:
  - (i) the Council under its own complaints scheme;
  - (ii) the Local Government and Social Care Ombudsman or the Housing Ombudsman, after first raising their complaint using the Council's own complaints procedure and giving the Council a chance to respond. The Ombudsman may, however, get involved earlier in extenuating circumstances;
  - (iii) the Monitoring Officer about a potential breach by a Councillor of the Members' Code of Conduct.

### 3.02 Citizens' responsibilities

Citizens must not be violent, abusive or threatening to Councillors or Officers and must not wilfully harm things owned by the Council, Councillors or Officers.

### 3.03 Local Councils Rights

- (a) The Council believes in the importance of working in partnership with local councils, recognising the important role they play in representing the views of local communities. The Council has agreed a Right to Consultation and Information Charter with the Colchester Association of Local Councils, and this is included in Part 8 of this Constitution.
- (b) The Council has also agreed a Charter on Development Control with the Colchester Association of Local Councils and this is included in Part 8 of the Constitution.

# Colchester Borough Council

## Article 4 – The Full Council

### INTRODUCTION

The Local Government Act 2000 (as amended by the Localism Act 2011) gives the Council responsibility for approving the Policy Framework, the budget and any housing land transfer. A list of the statutory and non-statutory plans which fall within this Policy Framework appear below. The Council as a whole retains responsibility for regulatory functions and has a role in holding the Cabinet to account.

#### 4.01 The Policy Framework

The Policy Framework means the following plans and strategies:

##### (a) Mandatory Plans and Strategies:

- Crime and Disorder Reduction Strategy; (Community Safety Strategy)
- Local Transport Plan;
- Plans and strategies which together comprise the Development Plan;
- Licensing Authority Policy Statements under the Licensing Act 2003 and the Gambling Act 2005

##### (b) Plans and Strategies which the Council has adopted as part of the Policy Framework: -

The Council's Strategic Plan	Risk Management Strategy
Plan and Strategy which comprise the Housing Investment Programme	Local Code of Corporate Governance
Local Agenda 21 Strategy	Anti-Fraud and Corruption Policy
Waste Vision	Whistleblowing Policy
Genetically Modified Crops Policy	Anti-Money Laundering Policy
Homelessness Strategy	Covert Surveillance Policy
Leisure Policy Framework	Data Protection Policy
Economic Development Strategy	Acceptable Use Policy
Information, Communication and Technology Strategy	Information Security Policy
Electronic Service Delivery Strategy	Retention Policy
Personnel Policies	Income and Debt Management Policy
Travellers Policy	Health & Safety Policy
The Corporate Diversity Policy and Plan	
Safeguarding Policy	
Suicide Protocol	

## **4.02 The Budget**

The Budget includes the allocation of financial resources to different services and projects, proposed contingency funds, the Council Tax base, setting the Council Tax and decisions relating to the control of the Council's borrowing requirements, the control of its capital expenditure and the setting of virement limits.

## **4.03 Housing Land Transfer**

Housing Land Transfer means the approval or adoption of applications (whether in draft form or not) to the Secretary of State for approval of a programme of disposal of five hundred or more properties to a person under the Leasehold Reform, Housing and Urban Development Act 1993 or to dispose of land used for residential purposes where approval is required under sections 32 or 43 of the Housing Act 1985.

## **4.04 Functions of the Full Council**

Only the Full Council will exercise the following functions:

- (a) adopting and changing the Constitution;
- (b) approving or adopting the Policy Framework, and the Budget;
- (c) approving any application to the Secretary of State in respect of any Housing Land Transfer;
- (d) subject to the urgency procedure contained in the Access to Information Procedure Rules in Part 4 of this Constitution, making decisions about any matter in the discharge of an executive function which is covered by the Policy Framework or the Budget where the decision maker is minded to make it in a manner which would be contrary to the Policy Framework or contrary to/or not wholly in accordance with the Budget;
- (e) electing the Mayor and Deputy Mayor at the Annual Meeting of the Council;
- (e) appointing the Leader of the Council;
- (f) agreeing and/or amending the terms of reference for Committees and Panels, deciding on their composition and making appointments to them;
- (g) appointing representatives to outside bodies unless the appointment is a Cabinet function or has been delegated by the Council;
- (h) adopting an allowances scheme under Article 2.06;
- (i) changing the name of the area, conferring the title of Honorary Alderman, High Steward or freedom of the Borough;
- (j) confirming the appointment of the Head of Paid Service, Monitoring Officer and Section 151 Officer;

- (k) making, amending, revoking, re-enacting or adopting bylaws and promoting or opposing the making of local legislation or personal Bills;
- (l) all local choice functions set out in Part 3 of this Constitution which the Council decides should be undertaken by itself rather than the Cabinet;
- (m) considering the annual report from the Scrutiny Panel;
- (n) all those functions detailed in Parts C, D,E,F,G,H and I of Schedule 1 of The Local Authorities (Functions and Responsibilities)(England) Regulations 2000 (as amended);
- (o) all other matters which, by law, must be reserved to Council including the making of a Compulsory Purchase Order;
- (p) Local Plan functions:
  - Adoption of Local Plan
  - Adoption of other Local Development Documents
  - Withdrawal of Local Plan
- (r) Community Infrastructure Levy functions;
  - Approval of charging schedule
  - Withdrawal of Charging Schedule.

#### **4.03 Council Meetings**

There are three types of Council meeting:

- (a) the annual meeting;
- (b) ordinary meetings;
- (c) extraordinary meetings.

and they will be conducted in accordance with the Council Procedure Rules in Part 4 of this Constitution.

#### **4.04 Responsibility for Functions**

The Council will maintain the tables in Part 3 of this Constitution setting out the responsibilities for the Council's functions which are not the responsibility of the Cabinet.

#### **4.05 Nominations of Honorary Aldermen**

The Council has delegated to the Leader of the Council in consultation with Group Leaders, authority to determine whether nominated former councillors meet the Council's agreed eligibility criteria for being an Honorary Alderman.

The Leader of the Council in consultation with Group Leaders and the Mayor will agree a date upon which a Special Council meeting can be convened to confer the title on the nominated Honorary Aldermen.

# Colchester Borough Council

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## Article 5 – Chairing the Council

### INTRODUCTION

Meetings of the Council will be chaired by the Mayor.

#### 5.01 ROLE AND FUNCTION OF THE MAYOR

The Mayor and in their absence, the Deputy Mayor will have the following roles and functions:

#### 5.02 CHAIRING COUNCIL MEETINGS

The Mayor shall, if present, take the Chair at meetings of the Council. In the absence of the Mayor, the Deputy Mayor shall take the Chair. In the absence of both the Mayor and the Deputy Mayor, a Chairman for the meeting shall be elected by the Council from amongst the Councillors present.

The Mayor or in their absence, the Deputy Mayor will act as a non-political chairman of the meetings of the Council.

The chairman will have the following responsibilities:

- (a) to uphold and promote the purposes of the Constitution, and to interpret the Constitution when necessary;
- (b) to preside over meetings of the Council so that its business can be carried out efficiently and with regard to the rights of Councillors and the interests of the Borough;
- (c) to ensure that the Council meeting is a forum for the debate of matters of concern to the Borough and the place at which members who are not on the Cabinet are able to hold the Cabinet to account;
- (d) to promote public involvement in the Council's activities; and
- (e) to be the conscience of the Council.

#### 5.03 CEREMONIAL ROLE

The Mayor is the "First Citizen" of the Borough and a member of the Council. The Mayor is the ceremonial head of the Council and is elected by the other members of the Council at the Annual Meeting to serve for twelve months.

The Mayor will attend civic and ceremonial functions as the Council, and the Mayor determines appropriate. The Deputy Mayor will attend in the absence of the Mayor.

The Mayor and the Deputy Mayor shall ensure that they always act in a non-political manner.

# Colchester Borough Council

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## Article 6 – Overview and Scrutiny of decisions

### INTRODUCTION

The overview and scrutiny function is a central element to this Constitution. The Scrutiny Panel will meet in public to discuss and scrutinise and review corporate strategies, policies and the development of policies holding the Cabinet to account for its actions, budgetary and financial performance matters. It also has a key role in considering other matters of local concern.

Overview and scrutiny apply to policies of the Council and performance of Executive functions by the Cabinet. It cannot review quasi-judicial decisions taken by the Planning Committee, the Licensing Committee and the Governance and Audit Committee.

### 6.01 Terms of Reference

The Council has appointed the Scrutiny Panel to discharge the functions conferred by section 9F of the Local Government Act 2000 (as amended by the Localism Act 2011) in relation to the matters set out in the table below.

- To ensure that the actions of the Cabinet accord with the policies and budget of the Council;
- Monitor the financial performance of the Council and link spending proposals to the Council's policy priorities and review progress;
- To review decisions of the Cabinet, the North Essex Parking Partnership Joint Committee and the Colchester and Ipswich Joint Museums Committee via the Call-In Procedure;
- To deal with any Councillor Call for Action matter;
- To act as the Council's Crime and Disorder Committee under the Police and Justice Act 2006;
- To review budgetary priorities;
- To review decisions by Cabinet and Portfolio Holders via the Call-in Procedure.

The terms of reference for the Panel are included in the Overview and Scrutiny Procedure Rules contained at Part 4 of the Constitution.

### 6.02 Functions of the Scrutiny Panel

(a) **Overview (policy development and review)** The Scrutiny Panel may:

- (i) assist the Council and the Cabinet in the development of its budget and the Policy Framework;
- (ii) conduct research, community and other consultation in the analysis of policy issues and possible options of the functions of the Council;
- (iii) consider and implement mechanisms to encourage and enhance



community participation in the development of policy options of the functions of the Council;

- (iv) liaise with other external organisations operating in the area, whether national, regional or local, to ensure that the interests of local people are enhanced by collaborative working;
- (v) make recommendation to the Cabinet arising from the review of policies within the Panel's terms of reference.

(b) **Scrutiny** The Scrutiny Panel may:

- (i) review and scrutinise the decisions made by and performance of the Cabinet and/or committees both in relation to individual decisions and over time;
- (ii) review and scrutinise the performance of the Council in relation to its policy objectives, performance targets and/or particular service areas;
- (iii) make recommendations to the Cabinet and/or appropriate committee and/or Council arising from the outcome of the scrutiny process;
- (iv) review and scrutinise the performance of other public bodies in the area and invite reports from them by requesting them to address the Scrutiny Panel and local people about their activities and performance;
- (v) question and gather evidence from any person (with their consent);
- (vi) question members of the Cabinet, Cabinet Members and/ or Committees and Officers about their views on issues and proposals affecting the Borough of Colchester;
- (vii) assist the Council and the Cabinet in the development of its budget and the Policy Framework;
- (viii) review and scrutinise the decisions made by Cabinet Members and officers both in relation to individual decisions;
- (ix) question members of the Cabinet and/or committees and officers about their decisions and performance, whether generally in comparison with service plans and targets over a period of time, or in relation to particular decisions, initiatives or projects;
- (x) consider any “local government matter” referred to the Panel by any councillor in the context of the Councillor Call for Action regime in accordance with the provisions of the Local Government and Public Involvement in Health Act 2007 and to make recommendations to the Council, Cabinet and or partners as appropriate .

(c) **Crime and Disorder Committee** The Scrutiny Committee shall act as the Councils’ designated Crime and Disorder Committee in accordance with the provisions of the Police and Justice Act 2006 and may:

- (i) review and scrutinise decisions made, or other action taken, in connection with the discharge by the responsible authorities of their crime and disorder functions;
  - (ii) make reports and recommendations to the Council or the Cabinet with respect to the discharge of those functions.
- (d) **Annual Report** The Scrutiny Panel shall report annually to the Full Council on its workings and make recommendations for future work programmes and amended working methods if appropriate.
- (e) **Officers** To exercise overall responsibility for the work programme of any Officers employed to support its work.

### **6.03 Proceedings of the Scrutiny Panel**

The Scrutiny Panel will conduct its proceedings in accordance with the Overview and Scrutiny Procedure Rules set out in Part 4 of this Constitution.

# Colchester Borough Council

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## Article 7 – The Cabinet

### INTRODUCTION

The Cabinet (or Executive) is at the heart of the day-to-day decision-making process. It also has a key role in proposing the budget and the Policy Framework to the Council. Colchester Borough Council's Executive comprises the Leader and Cabinet Executive (England) model in accordance with section 9C (3) of the Local Government Act 2000 (as amended by the Localism Act 2011).

#### 7.01 Role

The Cabinet will lead the implementation of Council policy within the Council's budget and the Policy Framework. In doing this the Cabinet will carry out all of the local authority's functions which are not the responsibility of any other part of the local authority, whether by law or under this Constitution.

#### 7.02 Form, Appointment and Composition

The Cabinet will consist of the Leader of the Council together with, at least two, but not more than nine, additional Councillors (including the Deputy Leader) as the Leader shall determine from time to time.

#### 7.03 Appointment of the Leader of the Council

The Leader will be a Councillor appointed by the Council at the Annual Meeting for a term of four years (or for the remainder of their term of office as a Councillor if that is a shorter period) and holds office for that period ending with the day of the post-election Annual Meeting, unless the Leader within that period:

- (a) resigns from the office of Leader by giving notice in writing to the Mayor, copied to the Chief Executive; or
- (b) ceases to be a member of the Council; or
- (c) is removed from the office as Leader by resolution of the Council following a vote upon which at least two thirds have voted in favour of the Leader being removed from office. If such a resolution is passed, a new Leader may be elected:
  - (i) at the meeting at which the Leader was removed from office; or
  - (ii) at a subsequent meeting.

The person appointed to fill the vacancy shall hold office for the remainder of the original term subject to earlier termination as provided for above.

If the Council fails to appoint a Leader the Chief Executive, in consultation with the Group Leaders, shall discharge the functions of the Leader in the interregnum until the Council appoints a Leader.

#### **7.04 Appointment of the Deputy Leader of the Council**

The Leader will appoint a member of the Cabinet to act during any period of absence, to be known as the Deputy Leader who will carry out the role and duties of the Leader until the new Leader is elected by the Council.

The Deputy Leader will hold office for the duration of the Leader's term of office unless within that period they:

- (a) resign from the office of Deputy Leader by giving notice in writing to the Leader, copied to the Chief Executive; or
- (b) ceases to be a member of the Council; or
- (c) is removed from office by the Leader.

Where a vacancy occurs in the office of Deputy Leader, the Leader must appoint another person in their place.

If for any reason:

- (a) the Leader is unable to act or the office is vacant; and
- (b) the Deputy Leader is unable to act or the office of Deputy Leader is vacant

the Cabinet must act in the Leader's place or arrange for a Cabinet Member to act in their place.

#### **7.05 Appointment of Cabinet Members**

The Leader shall appoint the members of the Cabinet who will hold office for the duration of the Leaders term of office unless within that period:

- (a) they resign from office by giving notice in writing to the Leader, copied to the Chief Executive; or
- (b) they cease to be Members of the Council; or
- (c) are removed from office by the Leader.

#### **7.06 Vacancies**

Upon the occurrence of a vacancy in the office of a member of the Cabinet the vacancy shall be filled by the Leader.

## **7.07 Roles and Responsibilities of the Leader of the Council**

The following duties and responsibilities are in addition to the functions and duties of Councillors as set out in Article 2.04 and are in addition to the role of a Cabinet Member contained in Article 7.

### **Purpose**

- (a) Provide effective political leadership and strategic direction for the Council;
- (b) Ensure effective corporate governance;
- (c) Provide effective stewardship of the Council and its resources;
- (d) Be an advocate of the Council;
- (e) Chair the Cabinet and ensure that it achieves its terms of reference;
- (f) Ensure that the Council delivers high quality, value for money services;
- (g) Ensure that the Council delivers on its Strategic Plan objectives; and
- (h) Promote the benefits of partnership working.

### **Duties and Responsibilities**

- (a) Provide political leadership to the Council, including proposing the Policy Framework within which the Council will operate and to take such executive action as may be delegated by the Council;
- (b) ensure effective Corporate Governance;
- (c) lead the Cabinet and be responsible for the Council's corporate and resource strategy;
- (d) appoint or dismiss Cabinet Members and to determine the allocation of portfolios for subsequent notification to the Council;
- (e) ensure that the Cabinet achieves its terms of reference both collectively and as individual portfolio holders;
- (f) chair Cabinet meetings and to prepare the Forward Plan;
- (g) exercise Executive functions not allocated to either the Cabinet or to Cabinet Members, or to delegate such functions to another Cabinet Member or Committee;
- (h) ensure the effective integration of executive roles, responsibilities and functions within the Cabinet membership;
- (j) be the key contact for outside organisations (including Central Government, Local Authority Associations and Council partners);

- (k) be the key interface between Councillors and the Chief Executive, and the Senior Management Team for the strategic management of the Council;
- (l) be the representative voice of the Council, for example, in its dealings with Central Government, other Local Authorities and their Associations and positively to promote the Council as a whole in the media;
- (m) act as the political spokesperson for the Council;
- (n) promote the long term financial, business and economic stability of the Council;
- (o) encourage the highest standards of probity, ethical and corporate governance for the wellbeing of the Borough;
- (p) communicate the Administration's policies and priorities to the Senior Management Team and to receive their advice; and
- (q) to exercise the Executive functions of any Cabinet Member in their absence.
- (r) to appoint and dismiss Councillors as Champions to act in an advisory capacity to Cabinet Members in relation to specified topics.

## **7.08 Roles and Responsibilities of the Deputy Leader of the Council**

The following duties and responsibilities are in addition to the role as a Councillor as set out in Article 2.04 and in addition to their role as a Cabinet Member contained in Article 7.

### **Purpose**

- (a) To assist and work with the Leader of the Council to provide effective political leadership and strategic direction for the Council;
- (b) assist the Leader of the Council with his other responsibilities such as ensuring effective Corporate Governance and stewardship of the Council and to ensure the Council delivers high quality, value for money services; and
- (c) where appropriate and permissible under the Constitution, to act in the absence of the Leader of the Council.

### **Duties and Responsibilities**

- (a) To assist and work with the Leader of the Council in delivering his responsibilities to the Council within his role profile as set above;
- (b) deputise for the Leader of the Council in his absence from Council meetings and to deputise in the Leader's absence at Cabinet meetings;
- (c) in the Leader of the Council's absence, to carry out the requirements of his role profile as set out above so far as legally possible and permissible; and

- (d) carry out such other duties and undertake portfolio responsibility as delegated by the Leader of the Council.

## **7.07 Roles and Responsibilities of All Cabinet Members**

The following duties and responsibilities are in addition to the role as a Councillor contained in Article 2.04.

### **Purpose**

- (a) To provide collective and individual leadership as part of the Cabinet;
- (b) undertake lead responsibility for allocated portfolios contained in Part 3 of this Constitution; and
- (c) to contribute effectively towards the strategic direction of the Council.

### **Duties and Responsibilities**

- (a) To participate effectively as a Member of the Cabinet, take joint responsibility with colleague Cabinet Members for all actions and to be accountable collectively. Challenge issues prior to making decisions if felt appropriate to do so. Ensure appropriate regard to the community's interests and to any equality and diversity issues. Encourage openness and honesty.
- (b) exercise delegated Executive powers in accordance with Part 3 of this Constitution.
- (c) shape and develop the strategic priorities and vision of the Council, participating in debates and discussion about policy issues across the range of services provided by the Council.
- (d) recognise the differing roles of Councillors and officers within the Council's Constitution.
- (e) act as the Lead Member for a particular portfolio as may be determined by the Leader of the Council but, in doing so, have regard to the overall collective responsibilities of the Cabinet and the Council's Strategic Plan objectives. Champion the portfolio concerned within that strategic context.
- (f) represent the Council on external bodies, as appointed and feed back to the Cabinet on issues of relevance/importance.
- (g) facilitate a corporate leadership role where appropriate to do so and foster links through partnerships.
- (h) be responsible for continuous personal development, to take advantage of learning opportunities to build on understanding and knowledge and to develop relevant skills.

- (i) promote positively the portfolio and where appropriate to act as the spokesperson with the media for that portfolio area only.
- (j) In connection with their portfolio:
  - (i) to build good relationships with appropriate senior officers and work with them in developing policy or strategic issues prior to formal reporting. Be supportive in dealing with problems at a strategic level;
  - (ii) keep abreast of related developments and policies at national, regional and a local level;
  - (iii) enhance the Council's reputation through taking the national stage where possible and participating in regional and national networks;
  - (iv) aim for the Council to be at the forefront of service development and provision where possible; take an active interest in related performance indicators and rankings;
  - (v) represent the Cabinet at a Scrutiny Panel meeting in connection with any related matter that may be 'called in' (contained in the Overview and Scrutiny Procedure Rules in Part 4 of the Constitution); similarly, attend the Scrutiny Panel at their request in connection with any issues associated with the portfolio that are being scrutinised;
  - (vi) be aware of issues of importance to the community and other stakeholders concerning portfolio services; and
  - (vii) be aware of key budgetary issues affecting the portfolio of the Cabinet Member.

## **7.05 Proceedings of the Cabinet**

Proceedings of the Cabinet shall take place in accordance with the Cabinet Procedure Rules set out in Part 4 of this Constitution.

## **7.06 Responsibility for Functions**

The Council shall maintain the list in Part 3 of this Constitution setting out which individual members of the Cabinet, Committees of the Cabinet, Officers or joint arrangements are responsible for the particular exercise of particular Executive functions.

## **7.07 Advisory Panels**

The Council has created:

- (a) the Policy Panel to review strategies and policies and issues at the request of Cabinet or Portfolio Holders and to identify issues and legislative changes that should be examined.
- (b) the Environment and Sustainability Panel to review the Council's response to the climate emergency and to promote environmental sustainability and biodiversity within the Council and its partners.



# Colchester Borough Council

## Article 8 – Regulatory and Other Committees

### INTRODUCTION

The Council is required to establish committees to undertake non-executive functions under powers delegated from Full Council. By way of example planning and licensing are not executive functions and cannot be discharged by the Cabinet.

### 8.01 Regulatory and Other Committees

The following committees will be appointed by the Full Council. Delegated powers will be given to these committees to discharge their relevant functions

Committee	Functions
<b>Planning Committee</b>	<p><b>Planning and conservation</b></p> <ul style="list-style-type: none"><li>• Functions relating to town and country planning and development control as specified in Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended) ("the Functions Regulations")</li></ul> <p><b>Highways use and regulation</b></p> <ul style="list-style-type: none"><li>• The exercise of powers relating to the regulation of the use of highways as set out in Schedule 1 to the Functions Regulations</li></ul> <p><b>Tree Preservation and Hedgerows</b></p> <ul style="list-style-type: none"><li>• The exercise of powers as set out in Schedule 1 to the Functions Regulations</li></ul>
<b>Licensing Committee</b>	<p><b>Hackney carriage &amp; private hire, liquor, gaming, entertainment, food and miscellaneous licensing</b></p> <ul style="list-style-type: none"><li>• Functions relating to licensing and registration as set out in Schedule 1 to the Functions Regulations</li><li>• Licensing regime under the Licensing Act 2003 including liquor licensing.</li><li>• Gambling regime under the Gambling Act 2005</li></ul>

Committee	Functions
<b>Governance and Audit Committee</b>	<ul style="list-style-type: none"> <li>• To consider and approve the Council’s Statement of Accounts</li> </ul> <p><b>Health and safety</b></p> <ul style="list-style-type: none"> <li>• Functions relating to health and safety under any “relevant statutory provision” within the meaning of Part 1 of the Health and Safety at Work Act 1974, to the extent that those functions are discharged otherwise than in the council’s capacity as employer.</li> </ul> <p><b>Safety at Sports Ground</b></p> <ul style="list-style-type: none"> <li>• Functions relating to safety of sports grounds.</li> </ul> <p><b>Standards</b></p> <ul style="list-style-type: none"> <li>• Promoting and maintaining high standards of conduct by Councillors and co-opted members;</li> <li>• assisting Councillors, and co-opted members to observe the Members Code of Conduct;</li> <li>• advising the Council on the adoption or revision of the Members’ Code of Conduct;</li> <li>• monitoring the operation of the Members’ Code of Conduct;</li> <li>• granting dispensations to Councillors and co-opted members from requirements relating to interests set out in the Members Code of Conduct;</li> <li>• determination of complaints made against Councillors in accordance with the arrangements made under the Localism Act 2011;</li> <li>• the exercise of the above in relation to the Parish and Town Councils wholly or mainly within the Borough of Colchester and the members of those Parish or Town Councils;</li> <li>• advising, training or arranging to train Councillors and co-opted members on matters relating to the Members Code of Conduct.</li> </ul> <p><b>Other functions</b></p> <ul style="list-style-type: none"> <li>• overview of the Council's whistleblowing policy</li> <li>• overview of the Council's complaints handling procedure.</li> </ul>

<b>Committee</b>	<b>Functions</b>
<b>Governance and Audit Committee</b>	<ul style="list-style-type: none"> <li>• overview of Local Government and Social Care Ombudsman investigations</li> <li>• monitoring the Member/ Officer Protocol</li> <li>• To act as the Council's shareholder committee for Colchester Commercial (Holdings) Limited</li> </ul>
<b>Local Plan Committee</b>	<ul style="list-style-type: none"> <li>• Dealing with the Council's responsibilities in relation to local planning and neighbourhood planning functions</li> <li>• Preparation of the Community Infrastructure Levy charging schedule, including consultations, submission and examination, and subsequent monitoring requirements.</li> </ul>
<b>Appointments Committee</b>	<ul style="list-style-type: none"> <li>• Recommend to Council the appointment of the Chief Executive (Head of Paid Service)</li> <li>• Appointment of the Deputy Chief Executive, Strategic Director and Assistant Directors in accordance with the Officer Employment Rules</li> <li>• Appeals against dismissal by the Chief Executive, Deputy Chief Executive and Strategic Director.</li> </ul>

# Colchester Borough Council

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## Article 9 – Area Working Arrangements

### INTRODUCTION

The Council has discretion in deciding whether it wishes to introduce Area Working arrangements. It recognises however that a key part of the modernisation process is to strengthen the engagement of the community with the Council. One of the means to achieving this is by way of Area Working arrangements.

#### 9.01 Area Working Arrangements

No final decisions have yet been taken by the Council in respect of Area Working arrangements. The Council has however recognised the need to engage the community in Area Working which in its early stages will involve listening and communicating better at the local level; identifying, reporting and representing the needs of the locality; community planning at the local level; and monitoring the local delivery of services.

Area Working arrangements will also need to engage the parishes and other existing local arrangements.

The approach to Area Working arrangements will be evolutionary whilst building upon partnerships and structures already established.

The Council may introduce Area Working arrangements as it sees fit, if it is satisfied that to do so will ensure improved service delivery in the context of best value and more efficient, transparent and accountable decision making.

#### 9.02 Form, Composition and Function

Decisions will be made at a future date, and after due consultation.

# Colchester Borough Council

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## Article 10 – Joint Arrangements

### INTRODUCTION

The Local Government Act 2000 (as amended by the Localism Act 2011) and regulations enable local authorities to make use of joint arrangements with other authorities and delegate to other local authorities.

#### 10.01 Arrangements to Promote Well Being

The Council or the Cabinet, in order to promote the economic, social or environmental well-being of its area, may:

- (a) enter into arrangements or agreements with any person or body;
- (b) co-operate with, or facilitate or co-ordinate the activities of, any person or body; and
- (c) exercise on behalf of that person or body any functions of that person or body.

#### 10.02 Joint Arrangements

- (a) In accordance with Section 101 of the Local Government Act 1972, the Council may establish joint arrangements with one or more local authorities and/or their Cabinets to exercise functions which are not executive functions in any of the participating authorities.
- (b) The Cabinet may establish joint arrangements with one or more local authorities to exercise functions which are executive functions. Such arrangements may involve the appointment of joint committees with these other local authorities.
- (c) Details of any joint arrangements including any delegations to joint committees will be found in the Council's Schemes of Delegation in Part 3 of this Constitution.

#### 10.03 Access to Information

- (a) The Access to Information Rules contained in Part 4 of this Constitution apply to functions of the Cabinet and to functions of a joint committee provided all the members of the joint committee are members of the Cabinet within each participating authority.
- (b) If the joint committee contains members who are not on the Cabinet of any participating authority then the access to information rules in Part VA of the Local Government Act 1972 will apply.

#### **10.04 Delegation to and from other Local Authorities**

- (a) The Council may delegate non-cabinet functions to another local authority or, in certain circumstances, the Cabinet of another local authority.
- (b) The Cabinet may delegate Cabinet functions to another local authority or the Cabinet of another local authority in certain circumstances.
- (c) The decision whether or not to accept such a delegation from another local authority shall be reserved to the Council meeting.

#### **10.05 Contracting Out**

The Council for functions which are not executive functions and the Cabinet for executive functions, may contract out to another body or organisation functions which may be exercised by an officer and which are subject to an order under Section 70 of the Deregulation and Contracting Out Act 1994, or under contracting arrangements where the contractor acts as the Council's agent under usual contracting principles, provided there is no delegation of the Council's discretionary decision making.

#### **10.06 The Colchester and Ipswich Joint Museums Committee**

On 24 January 2007 the Cabinet agreed to join with Ipswich Borough Council in the formation of the Colchester and Ipswich Joint Museums Committee. The Constitution of the Joint Committee sets out its membership and terms of reference etc. The purpose of the Joint Committee being to develop and implement a joint museum service for Colchester and Ipswich. This Joint Committee has been formed under Sections 101 and 102 of the Local Government Act 1972 and the Local Authorities (Arrangement for the Discharge of Functions) (England) Regulations 2000 (as amended). The Cabinet has agreed the delegations to the joint committee contained in Part 3 of this Constitution.

#### **10.07 The North Essex Parking Partnership Joint Committee**

On 1 April 2011 the Council entered into a Joint Committee Agreement with Essex County Council, Braintree District Council, Epping Forest District Council, Harlow District Council, Tendring District Council and Uttlesford District Council whereby the Council would act as the Lead Authority for the delivery of on street parking services in north Essex. The Joint Committee Agreement sets out its membership and terms of reference etc. Partner authorities may also opt to delegate their off street parking management to the Joint Committee. This Joint Committee has been formed under Sections 101 and 102 of the Local Government Act 1972 and the Local Authorities (Arrangement for the Discharge of Functions) (England) Regulations 2000 (as amended). The Cabinet has agreed the delegations to the Joint Committee contained in Part 3 of this Constitution.

## **10.08 The Essex Countywide Traveller Committee**

On 1 November 2012 the Council entered into a Joint Committee Agreement with Essex County Council , Essex County Fire and Rescue Service, Maldon District Council, Rochford District Council, Basildon Borough Council, Uttlesford District Council, Thurrock Council and the Chief Constable of Essex Police to manage the Essex Countywide Traveller Unit in accordance with the provisions contained in sections 101 and 102 of the Local Government Act 1972, section 20 of the Local Government Act 2000, the Local Authorities (Arrangements for the Discharge of Functions)(England) Regulations 2012; the Local Authorities (Committee System) (England) Regulations 2012 (as amended) and any other enabling legislation. The Cabinet has agreed the delegations to the Joint Committee contained in Part 3 of this Constitution.

## **10.11 Tendring Colchester Borders Garden Community Joint Committee**

On 17 November 2021 the Cabinet and on 2 December 2021 the Council agreed to form a joint committee with Tendring District Council and Essex County Council in order to discharge executive and non-executive functions in relation to the Tendring Colchester Borders Garden Community regarding the preparation of a joint Development Plan Document and development control functions in accordance with sections 101(5), 102(1)(b) and 102(2) of the Local Government Act 1972 and the Local Authorities (Arrangements for the Discharge of Functions)(England) Regulations 2012. The Cabinet and the Council have agreed the delegations to the Joint Committee contained in Part 3 of this Constitution.

# Colchester Borough Council

## Article 11 – Officers

### INTRODUCTION

This Article describes the structure of the Senior Management of the Council and the roles of the Head of Paid Service, Monitoring Officer and Chief Finance Officer (section 151 Officer).

#### 11.01 Management Structure

- (a) The Senior Management structure of the Council comprises the Executive Management Team and Assistant Directors. Each member of the Executive Management Team has a portfolio of responsibilities which may include statutory responsibilities, service areas, corporate themes and strategies and specific projects.
- (b) The composition of each portfolio may change from time to time to reflect the needs of the Council and the skills and experience of individual members of the Executive Management Team.
- (c) The number of the Executive Management Team and Assistant Directors may vary from time to time.
- (e) The Council is required to designate the following statutory posts: Head of Paid Service, Monitoring Officer and Chief Finance Officer.

The distribution of portfolios and statutory responsibilities is as follows:

Post	Functions and areas of responsibility
Chief Executive (and Head of Paid Service)	Strategic managerial leadership Act as the key political interface A focal point for the Council Provide community leadership, according to the political situation Have ultimate accountability within the Council
Deputy Chief Executive and Strategic Director	Strategic priorities and management Developing the vision Leading the cultural change Developing partnerships Assisting Councillors with their community leadership role
Assistant Directors	Accountable to the Deputy Chief Executive / Strategic Director Strategic managerial remit for their Group Developing and implementing service plans for their Groups that contribute to the achievement of corporate outcomes Direct interface with Councillors on day to day issues relating to their Group Responsibility for all the resources within their Group



<b>Post</b>	<b>Functions and areas of responsibility</b>
Monitoring Officer	Maintaining the Constitution Ensuring lawfulness and fairness of decision making Supporting the Standards Committee Conducting investigations Act as Proper Officer for Access to Information Advising whether Cabinet decisions are within the Budget & Policy Framework Providing advice
Section 151 Officer	Ensuring lawfulness and financial prudence of decision making Administration of financial affairs Provide professional financial advice Provide financial information

The above table is descriptive only and full details of delegations will be made available as referred to in Part 3 of this Constitution.

The duties of the Deputy Chief Executive and the Strategic Director include the delivery of effective corporate and strategic management of the Council through collaborative working with Councillors, the Senior Management Team and partners, including the pursuit of the Council's vision, goals and core values.

Such posts will have the functions described in Article 11.02–11.04 below.

**Structure** The Head of Paid Service will determine and publicise a description of the overall management structure of the Council. This is set out at Part 7 of this Constitution.

## **Functions of the Statutory Officers**

### **11.02 Head of Paid Service**

The Head of Paid Service shall undertake all duties designated under Section 4 of the Local Government and Housing Act 1989. These are personal functions and must be undertaken by the Head of Paid Service personally. Where the Head of Paid Service is also the Chief Executive, other functions which are not included in Section 4 may be delegated.

- (a) **Discharge of functions by the Council** The Head of Paid Service will report to full Council on the manner in which the discharge of the Council's functions is co-ordinated, the number and grade of Officers required for the discharge of functions and the organisation of Officers.
- (b) **Restrictions on functions** The Head of Paid Service may not be the Monitoring Officer but may hold the post of Chief Finance Officer if a qualified accountant.

### 11.03 Monitoring Officer

- (a) **Maintaining the Constitution** The Monitoring Officer will maintain an up-to-date version of the Constitution and will ensure that it is widely available for inspection by members, employees and the public.
- (b) **Ensuring lawfulness and fairness of decision making** After consulting with the Head of Paid Service and Chief Finance Officer, the Monitoring Officer will report to the full Council (or to the Cabinet in relation to a executive function) if the Monitoring Officer considers that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to maladministration. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered.
- (c) **Supporting the Governance and Audit Committee** The Monitoring Officer will contribute to the promotion and maintenance of high standards of conduct by Councillors through provision of support to the Governance and Audit Committee.
- (d) **Conducting investigations** The Monitoring Officer will conduct investigations into allegations the Councillors have breached the Councillors Code of Conduct and report to the Governance and Audit Committee where appropriate.
- (e) **Proper Officer for Access to Information** The Monitoring Officer will ensure that Cabinet decisions, together with the reasons for those decisions and relevant officer reports and background papers are made publicly available as soon as possible.
- (f) **Advising whether Cabinet decisions are within the Budget and the Policy Framework** The Monitoring Officer will advise whether decisions of the Cabinet are in accordance with the Budget and the Policy Framework.
- (g) **Providing advice** The Monitoring Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and Budget and the Policy Framework issues to all Councillors. The Monitoring Officer shall also provide advice to Councillors and Officers in relation to personal and prejudicial interests.
- (h) **Appointment of a Deputy** The Monitoring Officer shall appoint a deputy to act in their absence and when the Monitoring Officer is unable to act as defined in Section 5 of the Local Government and Housing Act 1989.
- (i) **Restrictions on posts** The Monitoring Officer cannot be the Chief Finance Officer or the Head of Paid Service.

#### **11.04 Section 151 Officer (Chief Finance Officer)**

- (a) **Ensuring lawfulness and financial prudence of decision making** After consulting with the Head of Paid Service and the Monitoring Officer, the Chief Finance Officer will report to the Full Council (or to the Cabinet in relation to an executive function) and the Council's external auditor if Chief Finance Officer considers that any proposal, decision or course of action will involve incurring unlawful expenditure, or is unlawful and is likely to cause a loss or deficiency or if the Council is about to enter an item of account unlawfully.
- (b) **Administration of financial affairs** The Chief Finance Officer will have responsibility for the administration of the financial affairs of the Council.
- (c) **Contributing to corporate management** The Chief Finance Officer will contribute to the corporate management of the Council, in particular through the provision of professional financial advice.
- (d) **Providing advice** The Chief Finance Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and Budget and the Policy Framework issues to all Councillors and will support and advise Councillors and Officers in their respective roles.
- (e) **Give financial information** The Chief Finance Officer will provide financial information to the media, members of the public and the community.

#### **11.05 Duty to provide sufficient resources to the Monitoring Officer and Chief Finance Officer**

The Council will provide the Monitoring Officer and Chief Finance Officer with such officers, accommodation and other resources as are in their opinion sufficient to allow their duties to be performed.

#### **11.06 Conduct**

Officers will comply with the Officers' Code of Conduct and the Member / Officer Protocol set out in Part 5 of this Constitution.

#### **11.07 Employment**

- (a) The recruitment, selection and dismissal of officers will comply with the Officer Employment rules set out in Part 4 of this Constitution.
- (b) All Officers shall be appointed on merit in accordance with Section 7 of the Local Government and Housing Act 1989.

# Colchester Borough Council

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## Article 12 – Decision Making

### INTRODUCTION

The Council is required to keep up to date a record of what part of the Council or which individual has responsibility for particular types of decisions or decisions relating to particular areas or functions. This record is referred to in Part 3 of this Constitution.

#### 12.01 Responsibility for decision making

One of the purposes of the executive structure is to expedite the decision making process. It is the intention of the Council that decision taking should be delegated in the interests of speed where that is consistent with the democratic process in terms of accountability and openness.

The various levels of decision making are:-

- (a) Council - Panels / Committees - delegations to Officers
- (b) Cabinet - Cabinet Members - delegations to Officers

Whilst specific functions are reserved to full Council by statute and the Council and the Leader determine that certain executive functions be taken in full meetings of the Cabinet, a purpose of this Constitution is to encourage delegation of decision making to Cabinet Members and to Officers. Where such decisions have been delegated it remains open to the person making the delegation to call the matter back for their own decision. Alternatively, a person to whom a decision has been delegated may decide that the decision should be referred back to the person or body to whom the delegation originated from, i.e. an Officer to a Cabinet Member and a Cabinet Member to the Cabinet. This would usually be on issues of significance or sensitivity and for the decision maker to refer matters upwards for determination.

As a matter of principle all Key Decisions at least initially shall be taken at full meetings of the Cabinet.

The separation of powers between the Council and the Cabinet (the Executive) is fundamental to the operation of modernised local government.

The Local Authorities (Functions and Responsibilities) Regulations 2000 (as amended) set out what decisions the Council must make itself and these are detailed in Article 4. The following function under Schedule 2 of the Regulations is a function in relation to which the Full Council itself will make decisions:

- the determination of any appeal against a decision made by, or on behalf of the Full Council as opposed to appeals against decisions of the Cabinet.

The determination of any appeal against a decision made by, or on behalf of the full Council as referred to above shall not in any way affect or remove the statutory rights of the individual.

Decisions which the Full Council have delegated to Committees are identified in Article 8.

The Leader will exercise all powers including the power of delegation to individual Cabinet Members and/or Officers. Decisions are made by the Cabinet collectively, or individual Cabinet Members in respect of matters relating to the range of responsibilities which have been delegated to them.

Decisions in relation to the Budget and the Policy Framework are exclusively reserved to the Full Council.

## **12.02 Principles of decision making**

In order that decision making is efficient, transparent and accountable, all decisions of the Council (whether taken by Full Council, the Cabinet, Panels and Committees and those under delegated powers) shall have regard to the following principles :-

- (a) consideration of all options available;
- (b) having regard to due consultation;
- (c) consideration of professional advice from officers;
- (d) clarity of aims and desired outcomes;
- (e) the action proposed must be proportionate to the desired outcome;
- (f) having respect and regard for human rights;
- (g) presumption for openness;
- (h) only relevant matters taken into account;
- (i) due weight to all material considerations;
- (j) proper procedures will be followed.

## **12.03 Types of decision**

- (a) Decisions reserved to the Full Council.

Decisions relating to the functions listed in Article 4 will be made by the Full Council and not delegated.

- (b) Key Decision

A “Key Decision”, as set out in the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000) (as amended) is a decision, which is likely to either:

- result in the Council incurring expenditure or the making of savings which are significant having regard to the Council's budget for the service or function to which the decision relates. The Council has determined that the level of expenditure or savings for these purposes is £500,000; or
- to be significant in terms of its effects on communities living or working in

an area comprising two or more wards within the Borough of Colchester;

A Key Decision will relate to a decision on a matter identified in the Forward Plan, except in cases of urgency when the provisions contained in the Budget and the Policy Framework Procedure Rules will apply.

In accordance with Section 9Q of the Local Government Act 2000 (as amended by the Localism Act 2011), in determining the meaning of "significant" the Council shall determine thresholds above which items are significant and will ensure these limits are published. The Council has determined that the threshold shall be £500,000.

Any decisions involving expenditure or saving above the published threshold for the service or function concerned will be a Key Decision. A Key Decision may not necessarily involve significant expenditure or savings but may however be significant in terms of its effect on communities in two or more wards with the Borough.

A decision taker may only make a Key Decision in accordance with the requirements of the Cabinet Procedure Rules set out in Part 4 of this Constitution.

(c) Decisions made by Panels and Committees

Decisions made by Panels and Committees appointed by the Council -power to make such decisions is delegated by the Council in accordance with Part 4 of this Constitution; (Section 101, Local Government Act 1972).

#### **12.04 Decision making by the Full Council**

Subject to Article 12.09, when considering any matter, the Full Council meeting will follow the Council Procedure Rules set out in Part 4 of this Constitution.

Reasons for decisions shall be recorded

#### **12.05 Decision making by the Cabinet**

Subject to Article 12.09, when considering any matter, the Cabinet any committee of Cabinet, individual Cabinet Member or Officer exercising delegated powers will follow the Cabinet Procedure Rules set out in Part 4 of this Constitution.

Reasons for decisions shall be recorded.

#### **12.06 Decision making by the Scrutiny Panel**

When considering any matter, the Scrutiny Panel will follow the Meetings General Procedure Rules and the Overview and Scrutiny Procedure Rules set out in Part 4 of this Constitution.

Reasons for decisions shall be recorded.

**12.07 Decision making by the Planning Committee, Licensing Committee, Local Plan Committee, Governance and Audit Committee, Policy Panel and the Environment and Sustainability Panel.**

Subject to Article 12.08, other Council Committees will follow the Meetings General Procedure Rules and where appropriate the Planning Committee, Licensing Committee and Governance and Audit Committee Procedure Rules set out in Part 4 of this Constitution.

Reasons for decisions shall be recorded.

**12.08 Decision making by Council bodies acting as tribunals**

The Council, a Councillor or an Officer acting as a tribunal or in a quasi-judicial manner or determining/considering (other than for the purposes of giving advice) the civil rights and obligations or the criminal responsibility of any person will follow a proper procedure which accords with the requirements of natural justice and the right to a fair trial contained in Article 6 of the European Convention on Human Rights.

Reasons for decisions shall be recorded.

# Colchester Borough Council

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## Article 13 – Finance, Contracts and Legal Matters

### INTRODUCTION

This Article refers to the Council's Financial and Contract Rules, which are contained in Part 4 of this Constitution.

#### **13.01 Financial Management**

The management of the Council's financial affairs will be conducted in accordance with the Financial Regulations set out in Part 4 of this Constitution.

#### **13.02 Contracts**

Every contract made by the Council will comply with the Contract Procedure Rules set out in Part 4 of this Constitution. Individual Cabinet Members will not be able to authorise the entering into contracts beyond the value of £500,000.

#### **13.03 General Emergency Powers**

The Chief Executive shall, having as far as possible conferred with the Leader of the Council in the event of civic disasters or other issues of extreme emergency, have power to make decisions for the protection of the Borough of Colchester and its citizens and which cannot be dealt with in accordance with the normal decision making processes of the Council.

#### **13.04 Legal Proceedings**

The Proper Officer is authorised to institute, defend or participate in any legal proceedings in any case where such action is necessary to give effect to decisions of the Council or in any case where the Proper Officer considers that such action is necessary to protect the Council's interests.

#### **13.05 Authentication of Documents**

The Proper Officer shall be authorised to sign on behalf of the Council all documents and other papers which are intended to give formal legal effect to decisions of the Council, the Cabinet, a Panel or Committee or Officer acting under delegated powers and which are not required to be under seal.



### **13.06 Common Seal of the Council**

The Common Seal of the Council shall be kept in a safe place in the custody of the Proper Officer.

The Common Seal of the Council shall not be affixed to any document unless the sealing has been authorised:

- (a) by a resolution of the Council, or
- (b) by a resolution of the Cabinet, a Panel or Committee to which the Council has delegated its powers in that behalf; or
- (c) upon the written authority of an Officer to whom the Council has delegated its powers in that behalf such resolution of the Council, the Cabinet, a Panel or Committee or written authority of an Officer shall be sufficient authority for sealing any document necessary to give effect to the resolution or exercise of delegated powers.

The Common Seal of the Council shall be attested by the Chief Executive or the Strategic Governance Manager or the Legal Services Manager & Deputy Monitoring Officer who shall sign as an Authorised Signatory or in their absence the Mayor or in their absence the Deputy Mayor

The Proper Officer shall keep a book called the "Seal Register" in which shall be entered the date on which every document is sealed and brief particulars of such document. The attester shall sign their name against such entry.

### **13.07 Custody of Deeds etc**

The Proper Officer shall be responsible for the maintenance of the Register of Properties giving full details of land and property owned by the Council.

The Proper Officer shall be responsible for the custody of all title deeds and similar securities relating to property owned by the Council.

### **13.08 Inspection of Lands, Premises, etc**

Unless specifically authorised to do so by the Council, the Cabinet, a Panel or a Committee, a Councillor shall not issue or purport to issue, any order respecting any works which are to be carried out by or on behalf of the Council or claim, by virtue of being a Councillor, any right to inspect or to enter upon any lands or premises which the Council has the power or duty to inspect or enter.

# Colchester Borough Council

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## Article 14 – Review and Revision of the Constitution

### INTRODUCTION

This Article places a duty to monitor and review the constitution on a particular body or person.

#### **14.01 Duty to Monitor and Review the Constitution**

The Council is required to keep the Constitution under review and this task is to be undertaken by the Monitoring Officer.

The Council is also required to keep the Constitution up to date, and to reflect changes which may be made from time to time by the Council or the Cabinet.

The first review will consist of a complete review of the Constitution. Thereafter the review will consist of a systematic review of the Constitution on a rolling programme; the programme to be agreed by Full Council on an annual basis.

The results of the review will be reported to Full Council, who can approve and adopt any necessary changes to the Constitution.

The Monitoring Officer will monitor and review the operation of the Constitution to ensure that the aims and principles of the Constitution are given full effect and will report at least on an annual basis to the Full Council.

#### **Protocol for Monitoring and Review of Constitution by Monitoring Officer**

A key role for the Monitoring Officer is to be aware of the strengths and weaknesses of the Constitution adopted by the Council, and to make recommendations for ways in which it could be amended in order better to achieve the purposes set out in Article 1. In undertaking this task, the Monitoring Officer may:

- (a) observe meetings of different parts of the Councillor and Officer structure;
- (b) undertake an audit trail of a sample of decisions;
- (c) record and analyse issues raised with him/her by Councillor, Officers, the public and other relevant stakeholders; and
- (d) compare practices in this Authority with those in other comparable authorities, or national examples of best practice.

## **14.02 Changes to the Constitution**

Changes to the executive arrangements must be approved by the Full Council. Where the proposed change involves a change from a Leader and Cabinet model to a Mayoral form, the Council must take steps to consult with local electors and other interested persons and take the results of the consultation into account before taking a final decision on such a change. A change to a Mayoral form could not be implemented unless endorsed by a local referendum.

# Colchester Borough Council

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## Article 15 – Suspension, Interpretation and Publication of the Constitution

### INTRODUCTION

This Article ensures that the Articles of the Constitution may not be suspended. This provides certainty and stability to the fundamental aspects of the Council's governance. However, it does provide for Rules of Procedure to be suspended in certain circumstances.

#### 15.01 Suspension of the Constitution

- (a) **Limit to suspension** The Articles of this Constitution may not be suspended. The Rules specified below may be suspended by the relevant meeting in accordance with the extent permitted within those Rules and the law.
- (b) **Procedure to suspend** A motion to the Full Council to suspend any rules will not be moved without notice unless at least one half of the whole number of Councillors are present. For all other meetings, no rules shall be suspended by the meeting unless at least one half of the members of the meeting are present. The extent and duration of suspension will be proportionate to the result to be achieved, taking account of the purposes of the Constitution set out in Article 1.
- (c) **Rules capable of suspension** The following Rules may be suspended in accordance with Article 15.01:
- Council Procedure Rules
  - Cabinet Procedure Rules
  - Meetings General Procedure Rules
  - Overview & Scrutiny Procedure Rules
  - Planning Committee Procedure Rules
  - Licensing Committee Procedure Rules
  - Governance and Audit Committee Procedure Rules

#### 15.02 Interpretation

The ruling of the Mayor as to the construction or application of this Constitution or as to any proceedings of the Full Council shall not be challenged at any meeting of the Full Council. Such interpretation will have regard to the purposes of this Constitution contained in Article 1.

### **15.03 Keeping the Constitution up to date**

The Full Council has delegated the power under Section 9P of the Local Government Act 2000 to prepare and keep up to date the Constitution to the Monitoring Officer who shall make appropriate arrangements to ensure the Constitution is kept up to date and is made available in accordance with paragraph 15.04 below.

### **15.04 Publication**

- (a) The Proper Officer will familiarise each Councillor following that individual's declaration of acceptance of office upon the Councillor first being elected to the Council with the Constitution.
- (b) The Constitution is published on the Council's website:  
[www.colchester.gov.uk](http://www.colchester.gov.uk)