Report to	Cabinet	**Item**
	10 June 2020	11
Report of	Director of resources	
Subject	Constitution Review	

Purpose

To consider the recommendations of the constitution working party.

Recommendation

To:

(1) note the table of changes made by the director of resources under article 15 attached at appendix A; and,

(2) recommend that council adopts the following changes to the constitution:

a) the inclusion of a gifts and hospitality appendix to the member's code of conduct as set out at appendix B to the report.

b) the inclusion of the following on authority to prosecute:

Add the following sentence to the end of Article 14 at paragraph 14.4.1:

> Where legal proceedings are for the prosecution of an offence, the director with the field of responsibility as detailed in Appendix 8 of this constitution or any person authorised by them will sign any documents necessary for those proceedings.

Add the following sub paragraph to paragraph 1 of Appendix 8:

(vii) the instigation of legal proceedings for prosecution of offences for the functions for which they are responsible..

Corporate and service priorities

The report helps to meet the corporate priority a healthy organisation

Financial implications

There are no direct financial implications arising from this report

Ward/s: All Wards

Cabinet member: Councillor Kendrick - Resources

Contact officers

Anton Bull, director of resources	01603 212326
Stuart Guthrie, democratic and elections manager	01603 212055
Lucy Palmer, democratic team leader	01603 212416

Background documents

None

Report

Background

1. The council's constitution is regularly updated with factual changes using the powers delegated to the director of resources in consultation with the chief executive, under Article 15 of the constitution.

2. Any other changes to the constitution must be approved by full council.

3. Updated national guidance on the member's code of conduct will be issued in the summer of 2020 and it is suggested that this model code be discussed at a meeting of the constitution working party.

4. A change to the structure of the constitution was agreed in principle at the last meeting but as there are will be some additional changes, particularly to the member's code of conduct, the amended structure will be implemented at a later date.

5. On 11 February 2020, the constitution working party met and noted the factual changes made by the director of resources under Article 15 of the constitution as set out in appendix A of this report and endorsed the recommended changes to the constitution as set out below.

Factual changes

6. The director of resources has made the following factual changes under article 15 to the constitution which members are asked to note as follows:

    a) the title of the director of regeneration and development has changed to the director of place; and

    b) the updated management structure to reflect recent appointments and changes.

7. A table of these recent changes made by the director of resources under article 15 is attached at appendix A along with the updated management structure. New versions of the documents are available online and will be circulated to group rooms.

Proposed changes to the constitution

Appendix 13 – Gifts and Hospitality

8. Currently, there is no guidance on gifts and hospitality for members in the council's constitution. The Monitoring Officer has drafted some guidance to be included and this can be found at appendix B to this report.

9. This guidance has been considered by the council's standards committee on 4 February 2020. These changes have been incorporated into the attached appendix B.

Authority to prosecute

10. The constitution is currently silent on the authority to prosecute.

11. Article 14 (Finance, Contracts and Legal Matters) and specifically 14.4.1 states:

> "Where any document is necessary to any legal procedure or proceedings on behalf of the Council, it will be signed by the director of resources or other person authorised by them, unless any enactment otherwise authorises or requires, or the council has given requisite authority to some other person."

12. Appendix 8 delegates various matters to the chief executive and corporate leadership team. However, authority to prosecute is not specifically mentioned in Appendix 8.

13. Currently, the working assumption is that for proceedings to be instituted, the director of resources must sign this off in accordance with Article 14. However, this does not appear to be consistent with the delegations within Appendix 8. Therefore, it is suggested that the authority to prosecute is made explicit within Article 14 and Appendix 8 as follows.

14. Add the following sentence to the end of Article 14.4.1:

> Where legal proceedings are for the prosecution of an offence, the director with the field of responsibility as detailed in Appendix 8 of this constitution or any person authorised by them will sign any documents necessary for those proceedings.

15. Add the following sub paragraph to paragraph 1 of Appendix 8:

> (vii) the instigation of legal proceedings for prosecution of offences for the functions for which they are responsible.

Integrated impact assessment

NORWICH City Council

Report author to complete	
Committee:	Cabinet
Committee date:	10 June 2020
Director / Head of service	Director of resources
Report subject:	Constitution review
Date assessed:	19 May 2020

	Impact			
Economic (please add an 'x' as appropriate)	**Neutral**	**Positive**	**Negative**	**Comments**
Finance (value for money)	☒	☐	☐	
Other departments and services e.g. office facilities, customer contact	☒	☐	☐	
ICT services	☒	☐	☐	
Economic development	☒	☐	☐	
Financial inclusion	☒	☐	☐	
Social (please add an 'x' as appropriate)	**Neutral**	**Positive**	**Negative**	**Comments**
Safeguarding children and adults	☒	☐	☐	
S17 crime and disorder act 1998	☒	☐	☐	
Human Rights Act 1998	☒	☐	☐	
Health and well being	☒	☐	☐	

	Impact			
Equality and diversity (please add an 'x' as appropriate)	**Neutral**	**Positive**	**Negative**	**Comments**
Relations between groups (cohesion)	☒	☐	☐	
Eliminating discrimination & harassment	☒	☐	☐	
Advancing equality of opportunity	☒	☐	☐	
Environmental (please add an 'x' as appropriate)	**Neutral**	**Positive**	**Negative**	**Comments**
Transportation	☒	☐	☐	
Natural and built environment	☒	☐	☐	
Waste minimisation & resource use	☒	☐	☐	
Pollution	☒	☐	☐	
Sustainable procurement	☒	☐	☐	
Energy and climate change	☒	☐	☐	
(Please add an 'x' as appropriate)	**Neutral**	**Positive**	**Negative**	**Comments**
Risk management	☒	☐	☐	

Recommendations from impact assessment
Positive
Negative
Neutral
Issues

APPENDIX A

Summary of Amendments to the Constitution – Issued January 2020

Document	Amendment	Reason for change	Document reference		Powers under Article 15
			Document amended	Amended Document	
Article 5	Replace rule 5.1.2 to reflect that all councillors can be nominated to serve as Lord Mayor	Approved at council, 26 November 2019	Article 5 *Lord Mayor, Deputy Mayor and Sheriff* Jan 11 v4	Article 5 *Lord Mayor, Deputy Mayor and Sheriff* Jan 20 v5	Council decision
Appendix 1	Insertion of new rules 64 and 65 relating to the receipt of amendments to motions and subsequent changes to rule numbering and references to paragraphs.	Approved at council, 26 November 2019	Appendix 1 *Council and Committee Procedure Rules Oct 19 v18*	Appendix 1 *Council and Committee Procedure Rules* Jan v19	Council decision
Appendix 8	Amendment of job title from “director of regeneration and development” to “director of place”	To reflect change in job title	Appendix 8 *Scheme of Delegation to Officers* Oct 19 v16	Appendix 8 *Scheme of Delegation to Officers* Jan 20 v17	Article 15
Appendix 9A	Amendment of job title from “director of regeneration and development” to “director of place”	To reflect change in job title	Appendix 9A *Statutory and Proper Officer Appointments* Oct 19 v11	Appendix 9A *Statutory and Proper Officer Appointments* Jan 20 v12	Article 15

Summary of Amendments to the Constitution – Issued January 2020

Document	Amendment	Reason for change	Document reference		Powers under Article 15
			Document amended	Amended Document	
Appendix 11	Insertion of planning applications committee procedure rules and delegations into the constitution	Approved at council, 26 November 2019	N/A	Appendix 11 *Planning Applications Committee Procedure Rules Jan20 v1*	Council decision
Appendix 17	Update to management structure chart to reflect recent appointments/ changes	Update	Management Structure V15 Nov18 & V16 Nov 19 (not issued as)	Management Structure Jan20 V18	Article 15

APPENDIX

GIFTS AND HOSPITALITY – A CODE OF CONDUCT FOR MEMBERS

1. Introduction

1.1 The acceptance of gifts and hospitality by Councillors is not merely an administrative issue. It reflects directly upon the perception of Councillors and of the City Council as acting in the public interest or as acting for the personal advantage or friends and for what personal benefit Councillors can get out of their position.

1.2 A Member must within 28 days of receiving any gift or hospitality over the value of £25 in their capacity as a City Councillor, provide written notification to the Monitoring Officer of the existence and nature of that gift or hospitality. Failure to comply with this requirement is a breach of the Code reportable to the Standards Committee.

1.3 In addition, the Bribery Act 2010 provides an offence of bribing another person or being bribed. This could apply to the holder of a public office where the intention is to bring about an improper performance of a relevant function or an activity by another person or to reward such improper performance. Conviction could result in a fine or imprisonment.

1.4 If you are uncertain whether you are being offered a gift or hospitality as a councillor or in your private capacity then raise this with the Monitoring Officer.

1.5 Against this background, the purpose of this Code is to set out -

(a) the principles which a Councillor should apply whenever they have to decide whether it would be proper to accept any gift or hospitality;

(b) a procedure for obtaining consent to accept a gift or hospitality, when a Councillor considers that it would be proper to accept it;

(c) a procedure for declaring any gift or hospitality which a Councillor receives and for accounting for any gift to the authority.

This Code does not apply to the acceptance of any facilities or hospitality which may be provided by the City Council itself.

In addition, the Code only applies to offers of gifts or hospitality made to a Councillor in their role as such. However, in this respect, there may be circumstances where a Councillor needs to be cautious as to the basis on which an offer is made.

2. General Principles

In deciding whether it is proper to accept any gift or hospitality, the following principles should be applied. Even if the gift or hospitality comes within one of the general consents set out below, it should not be accepted if to do so would be in breach of one or more of these principles:

(a) Never accept a gift or hospitality as an inducement or reward for anything done as a Councillor.

A Councillor must act in the public interest and must not be swayed in the discharge of their duties by the offer, prospect of an offer, or the non-offer of any inducement or reward for discharging those duties in a particular manner.

As already explained the acceptance of such an offer amounts to a criminal offence.

Councillors must act in the public interest, serving the authority and the whole community, rather than acting in the interests of any particular individual or section of the community. It is a breach of the Code improperly to confer any advantage or disadvantage on any person, including oneself.

(b) A gift or hospitality should only be accepted if there is a commensurate benefit to the authority.

The only proper reason for accepting any gift or hospitality is that there is a commensurate benefit for the authority which would not have been available but for the acceptance of that gift or hospitality.

Acceptance of hospitality can confer an advantage on the authority, such as an opportunity to progress the business of the authority expeditiously through a working lunch, or to canvass the interests of the authority and its area at a meeting. Acceptance of a gift is much less likely to confer such an advantage. But unless the benefit to the authority is clear and is commensurate with the value of the gift or hospitality, the presumption must be that the gift or hospitality is purely for Councillor's personal benefit.

Councillors must not improperly confer any advantage on anyone, including themselves. Acceptance as a Councillor of a gift or hospitality for their own benefit or advantage, rather than for the benefit to the authority, would be a breach of the Council’s Code of Conduct.

(c) Never accept a gift or hospitality if acceptance might be open to misinterpretation.

The appearance of impropriety can be just as damaging to the authority and to a Councillor as actual impropriety. The Council's ability to govern rests upon its reputation for acting fairly and in the public interest. Councillors must therefore consider whether the acceptance of the gift or hospitality is capable of being interpreted as a sign that they or the authority favours any particular person, company or section of the community or as placing themselves under any improper obligation to any person or organisation. If there is any possibility that it might be so interpreted, a Councillor must either refuse the gift or hospitality or take appropriate steps to ensure that such a misunderstanding cannot arise.

Certain occasions are particularly sensitive and require the avoidance of any opportunity for such misunderstanding. These include: -

(i) occasions when the authority is going through a competitive procurement process, in respect of any indication of favour for a particular tenderer;

(ii) determinations of planning applications or planning policy, in respect of any person or organisation which stands to gain or lose from the determination;

(iii) funding decisions, when the authority is determining a grant application by any person or organisation.

(d) Never accept a gift or hospitality if that places a Councillor under an improper obligation.

It is important to recognise that some commercial organisations and private individuals see the provision of gifts and hospitality as a means of buying influence. If a Councillor accepts a gift or hospitality improperly, it is possible that they may seek to use this fact to persuade the Councillor to determine an issue in their favour. Equally, if others note that a Councillor has been prepared to accept a gift or hospitality improperly, they may feel that they will no longer be able to secure impartial consideration from the Council.

(e) Never solicit a gift or hospitality.

Councillors must never solicit or invite an offer of a gift or hospitality in connection with their position as a Councillor unless the acceptance of that gift or hospitality would be permitted under this Code. Councillors should also take care to avoid giving any indication that they might be open to such an improper offer.

3. Consent Regimes

(a) General consent provisions

For clarity, the authority has agreed that Councillors may accept gifts and hospitality in the following circumstances: -

(i) civic hospitality provided by another public authority;

(ii) modest refreshment in connection with any meeting in the ordinary course of their work, such as tea, coffee, soft drinks and biscuits;

(iii) tickets for sporting, cultural and entertainment events which are sponsored by the authority;

(iv) small gifts of low intrinsic value of £25 or less, branded with the name of the company or organisation making the gift, such as pens, pencils, mouse pads, calendars and diaries. However, care should be taken not to display any such branded items when this might be taken as an indication of favour to a particular supplier or contractor, for example in the course of a procurement exercise;

(v) a modest alcoholic or soft drink on the occasion of an accidental social meeting, such as a pint of beer from an employee of a contractor or party with whom a Councillor has done business on behalf of the Council if that person is met accidentally in a public house, café or bar. In such cases, reasonable efforts should be made to return the offer where this is practicable;

(vi) a modest working lunch or dinner not exceeding £25 a head in the course of a meeting in the offices of a party with whom the Council has an existing business connection where this is required in order to facilitate the conduct of that business. Councillors should not make such arrangements themselves, but request officers to settle the detailed arrangements, and officers are under instruction, when arranging any such meeting, to make it clear to the other party that such a lunch must not exceed a value of £25 a head;

(vii) modest souvenir gifts with a value of £25 or less from another public authority given on the occasion of a visit by or to the authority;

(viii) hospitality received in the course of an external visit or meeting which has been duly authorised by the authority. Councillors should not make such arrangements themselves, but request officers to settle the detailed arrangements, and officers are under instruction to make it clear that any such hospitality for Councillors and officers is to be no more than commensurate with the nature of the visit;

(ix) other unsolicited gifts, where it is impracticable to return them to the person or organisation making the gift, provided that the Councillor deals with the gift strictly in accordance with the following procedure: The Councillor must, as soon as practicable after the receipt of the gift, pass it to the Lord Mayors office together with a written statement identifying the information set out in Paragraph 3(b) below. The Lord Mayors office will then write to the person or organisation making the gift thanking them on your behalf for the gift and informing them that the Councillor has donated the gift to the Lord Mayors charity, on whose behalf it will be raffled or otherwise disposed of in due course, the proceeds being devoted to a charitable cause chosen by the Lord Mayor.

(b) Special consent provisions

Councillors who wish to accept any gift or hospitality which is in accordance with the General Principles set out in Paragraph 2, but is not within any of the general consents set out in Paragraph 3(a), may only do so if they have previously obtained specific consent in accordance with the following procedure:

A written application must be made to the Monitoring Officer, setting out:

(i) the nature and an estimate of the market value of the gift or hospitality;

(ii) who the invitation or offer has been made by or on behalf of;

(iii) the connection which the Councillor has with the person or organisation making the offer or invitation, such as any work which the Councillor has undertaken for the authority in which they have been involved;

(iv) any work, permission, concession or facility which the Councillor is aware that the person or organisation making the offer or invitation may seek from the authority;

(v) any special circumstances which lead the Councillor to believe that acceptance of the gift or hospitality will not be improper.

The gift or hospitality must not be accepted until consent has been given by or on behalf of the Standards Committee.

The Monitoring Officer will enter details of any approval in a register which will be available for public inspection on the occasion of the public inspection of the authority's accounts for the relevant year. But note that this does not relieve the Councillor of the obligation to register the receipt of gift or hospitality in accordance with Paragraph 4 below.

4. Reporting

Where a Councillor accepts any gift or hospitality which is estimated to have a market value or cost of provision of more than £25, the Councillor must, as soon as possible after receipt of the gift or hospitality, make a declaration in writing to the Monitoring Officer, setting out the information set out in Paragraph 3(b) above. The Monitoring Officer will retain a copy of any such declaration in a register which will be available for public inspection until the approval of the authority's accounts for the year in question.

Even if the value of the gift or hospitality is £25 or less, if the recipient is concerned that its acceptance might be misinterpreted, and particularly where it comes from a contractor or tenderer, they may make a voluntary declaration in the same manner to ensure that there is nothing secret or underhand about the gift or hospitality.

5. Gifts to the Authority

Gifts to the authority may take the form of the provision of land, goods or services, either to keep or to test with a view to future acquisition, an offer to carry out works or sponsorship of a function which is organised or supported by the authority. A Councillor should not solicit any such gift on behalf of the authority except where the authority has formally identified the opportunity for participation by an external party and how that participation is to be secured, for example in relation to sponsorship of public musical and theatrical performances developers' contributions under Section 106 Agreements. A Councillor who receives such an offer on behalf of the authority, must first consider whether it is appropriate for the authority to accept the offer (in terms of whether the acceptance of the gift might be seen as putting the authority under any improper obligation, whether there is a real benefit to the authority which would outweigh any dis-benefits). A Councillor who does not have delegated authority to accept the gift, should report the offer directly to the Monitoring Officer who, together with a recommendation as to whether the gift should be accepted. The Monitoring Officer will then write back to the person or organisation making the offer, to record the acceptance or non-acceptance of the gift, record the gift for audit purposes and ensure that the gift is properly applied for the benefit of the authority. A Councillor who has concerns about the motives of the person or organisation making the offer, or whether it would be proper for the authority to accept the gift, you should consult the Monitoring Officer directly.

6. Refused Offers

As a result of this protocol, there will be a number of circumstances when offers of gifts and hospitality must be refused. In addition, there will be circumstances where a Member wishes to refuse an offer even though the protocol allows its acceptance. Whilst it is not considered necessary in every case that such offers are recorded there will be circumstances when it is in the public interest that they should be. These are: -

(a) when the offer appears to be an inducement or reward for something expected from the Councillor (see paragraph 2(a));

(b) offers from commercial organisations or private individuals over £25 in value.

In these circumstances, details should be passed to the Monitoring Officer within 28 days of the offer being made.

7. Definitions

(a) "Councillor" includes outside appointments to Committees.

(b) "Gift or hospitality" includes:

(i) the free gift of any goods or services;

(ii) the opportunity to acquire any goods or services at a discount or on terms which are more advantageous than those which are available to the general public;

(iii) the opportunity to obtain any goods or services which are not available to the general public;

(iv) the offer of food, drink, accommodation or entertainment, or the opportunity to attend any cultural, sporting or entertainment event.

(c) References to the "value" or "cost" of any gift or hospitality are references to the higher of:

(i) the estimate of the cost to the person or organisation of providing the gift or consideration;

(ii) the open market price which a member of the public would have to pay for the gift or hospitality, if it were made available commercially to the public, less the cash sum of any contribution which the Councillor would be required to make towards that price to the person or organisation providing or offering the gift or hospitality.