



Chelmsford City Council Governance Committee

31 October 2022

Dispensation Guidance

Report by:
Monitoring Officer

Officer Contact:

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Purpose

To review and update the Council's Dispensation guidance and arrangements.

Recommendations

1. To adopt the updated Dispensation guidance or make appropriate amendments to it as considered necessary.
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1. Background

- 1.1. A review of the current city councillor dispensation guidance and application process has been undertaken. In light of the adoption of the Model Code of Conduct it is considered likely that more applications for dispensation may arise and the policy has not been reviewed for some time.

- 1.2. It is recommended that the current policy is updated to give more information and detail about the process and in particular the considerations that might be necessary to take into account in reaching a decision. A form has been included to help ensure sufficient information is provided from the outset and to help avoid delays in the application process.
- 1.3. Parish tier Councils will have their own arrangements to deal with dispensations which are usually either dealt with by the council or by the clerk as is considered most appropriate by the relevant council. Parish tier Councils are welcome to adopt the city council guidance as they feel appropriate.
- 1.4. Members should note that the existing standing dispensations currently contained in Part 5.1.4 of the constitution which relate to housing, schools/education, payments, ceremonial honours, council tax setting and cabinet members attendance at meetings remain unchanged.

List of appendices:

Appendix 1 – draft Dispensation Guidance and application form

Background papers:

Nil

Corporate Implications

Legal/Constitutional: These are set out in the report and policy referred to in the report.

Financial: None

Potential impact on climate change and the environment: None

Contribution toward achieving a net zero carbon position by 2030: None

Personnel: None

Risk Management: None

Equality and Diversity: None

Health and Safety: None

Digital: None

Other: None

Consultees: none

Relevant Policies and Strategies:

Existing process for dispensations and standing dispensations within the constitution (Part 5.1.3. & 4)

Chelmsford City Council - Dispensation Request Form

Please give full details of the following in support of your application for a dispensation. You should refer to the accompanying guidance relating to dispensations

If you need any help completing this form please contact the Monitoring Officer.

Your name	
Decision-making body in respect of which you require a dispensation	
Details of your membership of that body	
The business for which you require a dispensation (refer to agenda item number if appropriate)	
Details of your interest in that business	
Date of meeting or time period (up to 4 years) for which dispensation is sought	
Dispensation requested to participate, or participate further, in any discussion of that business by that body	Yes/No
Dispensation requested to participate in any vote, or further vote, taken on that business by that body	Yes/No

Full reasons why you consider a dispensation is necessary (use a continuation sheet if necessary)	
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Signed: Dated:

Please send your completed form to:

The Monitoring Officer

by email to: standards@chelmsford.gov.uk

You will normally receive notification of the Monitoring Officer's decision within 5 working days of the decision. Please note that decisions which need to be made by the Governance Committee will usually take 15 working days to be determined

Guidance and Application in relation to dispensations for City Councillors

Dispensation process and application form

1. Introduction – City Council dispensations

The City Council Governance Committee or the Monitoring Officer is responsible for determining dispensations under Section 33(2) of the Localism Act 2011 in relation to City Councillors. This guidance explains :-

The purpose and effect of dispensations

The procedure for requesting a dispensation together with an application form

The criteria which are applied in determining dispensation requests including the terms of the dispensation

Parish (including town, village and community) Councils are responsible for determining dispensations in relation to parish councillors (including town, village and community councillors) and should have in place appropriate arrangements to determine applications. It is a matter for the parish council to decide whether decisions will be made by the parish council or delegate the decision to their clerk. This guidance may be used in helping parish councils to make such decisions. Similarly, in relation to Essex County Councillors these are dealt with by Essex County Council.

2. Purpose and effect of dispensation

In certain circumstances councillors may be granted a dispensation which enables them to take part in Council business where this would otherwise be prohibited under the Code of Conduct or by law. Provided Councillors act within the terms of their dispensation there is deemed to be no breach of the Code of Conduct or the law. However, it should be noted that a dispensation does not authorise a councillor's participation where bias and/or pre-determination arises.

3. Process for making requests

Any councillor who wishes to apply for a dispensation must fully complete the attached Dispensation Application form and submit it to the Monitoring Officer at least 15 working days before the meeting for which the dispensation is required. Applications may be accepted within a shorter period in exceptional circumstances.

In order to avoid delay Councillors must ensure that they give full details of the grounds for their request and submit it to the Monitoring Officer as soon as they become aware that a dispensation is necessary.

A request for a dispensation must be made on an individual basis. Group applications are not permitted. However, the Council can put in place and review standing dispensations where it is considered appropriate.

4. Statutory grounds for dispensation

Section 31 of the Localism Act provides that the City Council can only grant a dispensation if, after having had regard to all relevant circumstances, the authority:

- (a) Considers that without the dispensation the number of persons prohibited from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business
- (b) Considers that without the dispensation the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business
- (c) Considers that granting the dispensation is in the interests of persons living in the authority's area
- (d) If it is an authority operating executive arrangements, considers that without the dispensation each Member of the authority's executive would be prohibited from participating in any particular business to be transacted by the authority's executive, or
- (e) Considers that it is otherwise appropriate to grant a dispensation

5. Consideration by Monitoring Officer

The Monitoring Officer will consider requests for a dispensation in the order in which they are received having regard to the legislative requirements and this guidance.

The Monitoring Officer may grant a dispensation in relation to grounds (a) or (d) if they consider it is appropriate to do so.

The Monitoring Officer will notify the councillor of their decision and reasons in writing at the earliest opportunity and in any event within 5 working days of the decision.

If a dispensation is not fully granted by the Monitoring Officer the Councillor may appeal to the Governance Committee and arrangements to consider such an appeal will be made as soon as reasonably practicable.

6. Consideration by Governance Committee

The Governance Committee will consider requests for a dispensation referred by the Monitoring Officer in the order in which they were received having regard to the law and this guidance.

The Governance Committee has delegated authority to consider dispensations in relation to grounds (b), (c) or (e) but may grant a dispensation in relation to any of the statutory grounds (eg where an appeal against the Monitoring Officer decision is considered).

Meetings of the Governance Committee will usually be open to the public and any councillor who has submitted a request will have the opportunity to attend and make representations in support of their application.

The Monitoring Officer will notify the Councillor of the Committee's decision and reasons in writing at the earliest opportunity and in any event within 5 working days of the decision.

7. Criteria for determination of requests

In reaching a decision on a request for a dispensation the Monitoring Officer or Governance Committee will take into account:-

- (a) Whether the request meets the statutory grounds set out in the Localism Act 2011
- (b) The nature of the Councillor's interest
- (c) The extent to which the request could have been avoided or other arrangements could be made
- (d) The need to maintain public confidence in the conduct of the Council's business
- (e) The extent to which there is some personal benefit by agreeing to a dispensation
- (f) The possible outcome of the proposed vote
- (g) The need for efficient and effective conduct of the Council's business
- (h) Any other relevant circumstances

8. Terms of Dispensations

Dispensations may be granted for one meeting or for a period not exceeding 4 years.

A dispensation may allow the Councillor to

Participate or participate further in any discussion of the matter at the meeting(s): and/or

Participate in any vote, or further vote taken on the matter at the meeting(s)

A dispensation may be subject to a specific condition (eg notification of any change in circumstances)

If a dispensation is granted the Councillor may remain in the room where the meeting considering the business is being held.

9. Disclosure of Decision

Any councillor who has been granted a dispensation must declare the nature and existence of the dispensation before the commencement of any business to which it relates

A copy of the dispensation will be kept on the website with the Register of Councillor's interests.