

MIDDLESBROUGH COUNCIL	
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Report of:	Director of Legal and Governance Services
Relevant Executive Member:	Executive Member for Finance and Governance
Submitted to:	Council
Date:	22 May 2024
Title:	Statutory Officer Protocol
Report for:	Decision
Status:	Public
Council Plan priority:	Delivering Best Value
Key decision:	Not applicable
Why:	Not applicable
Subject to call in?:	Not applicable
Why:	

Proposed decision(s)
That Council approves the introduction of the Statutory Officer Protocol.

Executive summary
The external audit section 24 recommendations included the introduction of a Statutory Officer Protocol to provide clear guidance on roles and responsibilities and process to ensure continuity for Statutory Officer roles. It is also good practice to have a protocol in place.

1. Purpose

1.1 To seek approval from Council for the introduction of a Statutory Officer Protocol.

2. Recommendations

2.1 That the Council

- Approves the introduction of the Statutory Officer Protocol.

3. Rationale for the recommended decision(s)

3.1 Having a protocol in place was a section 24 recommendation from the external auditor.

3.2 Having a protocol in place is good practice in local government to ensure continuity in the statutory officer roles.

3.3 We currently don't have a protocol in place.

4. Background and relevant information

4.1 The council is required under the Local Government and Housing Act 1989 to have in place the statutory officers of Head of Paid Service, Monitoring Officer and Chief Finance Officer.

4.2 The purpose of the statutory officer protocol is to set out;

- The definitions of the roles included
- Restrictions on those posts
- Appointment process
- Terms and Conditions
- Performance Management
- Disciplinary procedures
- Dismissal
- Sickness Management
- Interim appointments and exit processes

4.3 The aim is always to have permanent appointments in place however there is a recognition that interims may be required at times. These appointments should be time limited and have a plan in place towards permanence.

4.4 A copy of the protocol is attached at Appendix 1.

5. Other potential alternative(s) and why these have not been recommended

5.1 The other option would be to carry on without a protocol in place. This would mean we would not be following external audit recommendations or following good practice. This could also mean that in the event of unexpected circumstances (death, incapacity or departure) this could leave the council in the position of not meeting its obligations under the Local Government and Housing Act 1989 and cause delay in securing a replacement whilst a process is formulated and approved.

6. Impact(s) of the recommended decision(s)

6.1 Financial (including procurement and Social Value)

There are no financial implications of the protocol.

6.2 Legal

The council is required under the Local Government and Housing Act 1989 to have in place the statutory officers of Head of Paid Service, Monitoring Officer and Chief Finance Officer.

6.3 Risk

The proposed protocol will have a positive impact on the risk contained in the Strategic Risk Register as it will ensure that the Council has arrangements in place to enable statutory officer functions to be exercised with minimal interruption and good levels of continuity.

6.4 Human Rights, Public Sector Equality Duty and Community Cohesion

There are no implications arising from the protocol.

6.5 Climate Change / Environmental

There are no implications arising from the protocol.

6.6 Children and Young People Cared for by the Authority and Care Leavers

There are no implications arising from the protocol.

6.7 Data Protection

There are no implications arising from the protocol.

Actions to be taken to implement the recommended decision(s)

Action	Responsible Officer	Deadline
Protocol issued to existing Statutory Officers	Nicola Finnegan	On approval

Appendices

1	Statutory Officer Protocol
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Background papers

No background papers were used in the preparation of this report.

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Appendix 1**Statutory Officer Protocol****Introduction**

This document sets out how the Council will ensure there is continuity within statutory posts to protect corporate governance processes.

Definitions

Under the Local Government and Housing Act 1989 the Authority is required to have the following statutory officers:

- Head of Paid Service
- Monitoring Officer
- Chief Finance Officer

The Council will designate the following posts as shown:

Council Post	Designation	Role
Chief Executive	Head of Paid Service	Responsible for management functions
Director of Legal and Governance Services	Monitoring Officer	Responsible for the lawfulness and fairness of Council decision-making
Director of Finance	Chief Finance Officer	The Council's Responsible Finance Officer

Full Council may designate statutory officer roles to alternative posts as required.

Role profiles are outlined at Appendix A.

Restrictions on posts

(a) The Monitoring Officer may not be the Head of Paid Service or the Chief Finance Officer.

(b) The Chief Finance Officer may not be the Monitoring Officer.

Appointment of Statutory Officers

Where the Council proposes to appoint a Head of Paid Service, a Chief Officer, Monitoring Officer, Chief Finance Officer or other statutory or non-statutory Chief Officer and it is not proposed that the appointment be made exclusively from among their existing officers, the Council will:

- (a) draw up a statement specifying: (i) the duties of the Officer concerned; and (ii) any qualifications or qualities to be sought in the person to be appointed;
- (b) make arrangements for the post to be advertised in such a way as is likely to bring it to the attention of persons who are qualified to apply for it;
- (c) make arrangements for a copy of the statement mentioned in (a) above to be brought to the attention of potential applicants.

A “Chief Officer Appointments Committee” of nine Members nominated annually by the Council, plus the Mayor, the Deputy Mayor and the relevant Executive Portfolio holder, shall recommend the appointment of the Head of Paid Service. The appointment shall be approved by Full Council following the recommendation of the Chief Officer Appointments Committee.

Full Council may approve the appointment of the Head of Paid Service provided that no well-founded objection has been received from an Executive Member within three (3) days of notification of the Chief Officer Appointments Committee’s recommendation.

The Chief Officer Appointments Committee will appoint the remaining Chief Officers, including the Monitoring Officer and the Chief Finance Officer, unless such appointment is on an interim basis (six months or less). Interim appointments of Chief Officers are to be made by the Head of Paid Service.

An offer of employment can be made in respect of a Chief Officer post save where an Executive Member provides a well-founded objection to the appointment within the timeframe set out in section above.

Terms and conditions

The Chief Executive will be appointed on the Joint Negotiating Committee for Local Authority Chief Executives terms and conditions.

The Monitoring Officer and the Chief Finance Officer will be appointed on terms outlined in the Joint Negotiating Committee for Local Authority Chief Officers.

Performance management process

The appraisal process for the Chief Executive is outlined at Appendix B.

The appraisal process for the Monitoring Officer and the Chief Finance Officer will follow the standard council employee procedure;

- Review of previous year's performance
- Objectives set – jointly agreed with the Chief Executive
- 6-month review
- 12-month annual review and performance rating

Disciplinary action and investigations

Any disciplinary action contemplated against the Chief Executive will follow the model procedure set out at Appendix 5 of the JNC for Chief Executives handbook.

The Local Authorities (Standing Orders) (England) Regulations 2001 (as amended by the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015) in England, and the Local Authorities Standing Orders (Wales) Regulations 2006 in Wales, provide a degree of protection for the Monitoring Officer and Chief Finance Officer against unwarranted political interference in their statutory role within local authorities.

Any disciplinary action contemplated against the Monitoring Officer or Chief Finance Officer will follow the model procedures set out in the JNC for Chief Executives handbook.

Dismissal

Following the model procedures referenced above a statutory officer can only be dismissed by full Council.

Sickness Management

Statutory Officer sickness absence will be managed in line with the Managing Attendance, Health and Wellbeing Policy.

Interim appointments process

It is the authority's aim to have permanent appointments in place for statutory officer posts and any interim arrangements will be minimised and a road map for permanence identified. However, it is recognised that on occasion it is necessary to

have interim arrangements in place where the timing of the departure of a statutory officer does not allow for permanent recruitment to take place.

The Chief Finance Officer and the Monitoring Officer have nominated deputies in the event they are required to cover.

The Chief Executive can designate an existing member of the Leadership Management Team to cover for absence up to 1 calendar month, any absence longer than this will result in a meeting of the Chief Officer Appointments Committee being convened as soon as practicable to recommend a designation of the Head of Paid Service for full council approval.

In the event of the unexpected death, incapacitation or departure of the Chief Executive a meeting of the Chief Officer Appointments Committee must be convened as soon as practicable to recommend a designation of the Head of Paid Service for full council approval.

Chief Officer Appointments Committee can recommend the appointment of an Interim Chief Executive, though this is a decision reserved for full Council.

The Chief Executive can make an interim appointment for a Chief Officer including the Monitoring Officer and Chief Finance Officer for a period up to 6 months. Any extension to such appointment must be approved by Chief Officer Appointments Committee.

On the engagement of an interim appointment there should be clear expectations and objectives set to cover the assignment including a monitoring process.

Exit process for interim appointments

Interim arrangements should be time limited with plans in place to move to permanence in a planned way with adequate time for a full handover to be in place.

Unexpected departures of an interim will be covered by the deputising arrangements outlined above.

Appendix A

STATUTORY OFFICER PROFILES

This sets out the roles and responsibilities of the Council's Statutory Officers.

HEAD OF PAID SERVICE

What are the Head of Paid Services individual statutory and constitutional responsibilities?

It shall be the duty of the Head of Paid Service, where they consider it appropriate to do so, to prepare a report to the Council setting out their proposals on certain matters. Those matters are:

- (a) the manner in which the discharge by the Council of its different functions is co-ordinated;
- (b) the number and grades of staff required by the Council for the discharge of its functions;
- (c) the organisation of the Council's staff; and
- (d) the appointment and proper management of the Council's staff.

A copy of the report should be sent to each Member of the Council.

Who may be the Head of Paid Service?

The Head of Paid Service may not be the Monitoring Officer but may hold the post of Chief Finance Officer if a qualified accountant.

What is the Head of Paid Service's role?

The Head of Paid Service will:

- (a) have responsibility for the Council's management functions;
- (b) be responsible for establishing a framework for management direction, style, and standards, and for monitoring the performance of the organisation;
- (c) determine and publicise a description of the overall structure of the Council showing the management structure and deployment of officers;
- (d) 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;
- (e) be responsible for the Council's corporate and overall strategic management;

- (f) be responsible for establishing a framework for management direction, style and standards, and for monitoring the performance of the organisation;
- (g) represent the Council on partnership and external bodies, in accordance with the Scheme of Delegations; and
- (h) publish once a year a notice in at least one local newspaper regarding the Forward Work Programme.

CHIEF FINANCE OFFICER

What are the Chief Finance Officer's statutory and constitutional responsibilities in ensuring lawfulness and financial prudence of decision making?

The Chief Financial Officer will:

- (a) be responsible for the administration of the financial affairs of the Council;
- (b) be responsible for all financial elements of the corporate governance of the Council;
- (c) after consulting with the Head of Paid Service and the Monitoring Officer, the Chief Finance Officer will report to Full Council or to the Executive in relation to an Executive Function, and to the Council's external auditor, if they consider 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;
- (d) be responsible for setting and monitoring standards and reserve the right to be involved in the appointment of all staff employed in posts designated as requiring a qualified accountant or auditor;
- (e) in compliance with section 114 of the Local Government Finance Act 1998, report to the full Council, Executive and external auditor if the Authority or one of its officers has made or is about to make a decision which involves or would involve the Council in incurring expenditure which is unlawful; has taken or is about to take a course of action which, if pursued to its conclusion would be unlawful and likely to cause a loss or deficiency is on the part of the Council; is about to enter an item of account, the entry of which is unlawful;
- (f) produce a report if it appears that the expenditure proposed by the Council in a financial year is likely to exceed the resources available to meet that expenditure;

(g) report to the Executive each year on the general financial situation of the Council and upon future financial scenarios in relation to the coming year's budget prospects and long term trends;

(h) be responsible for ensuring that a revenue budget is prepared on an annual basis for consideration by the Executive, before full submission to the Council. Each Strategic / Assistant Director shall prepare annually a forward revenue budget in accordance with the criteria specified by the Chief Finance Officer;

(i) report to the Executive not less than twice in each financial year on the activities of the treasury management operation and on the exercise of his delegated treasury management powers;

What are the Chief Finance Officer's statutory and constitutional responsibilities in relation to the administration of financial affairs?

The Chief Finance Officer will:

(a) have statutory responsibility for the financial administration and stewardship of the Council;

(b) be responsible for: the proper administration of the Council's financial affairs; setting and monitoring compliance with financial monitoring standards; advising on the corporate financial position and on the key financial controls necessary to secure sound financial management; providing financial information; preparing the revenue budget and the capital programme; treasury management, pension and trust funds; and advice on the safeguarding of assets including risk management and insurance;

(c) be responsible for maintaining a continuous review of the financial regulations and submitting any additions or changes necessary to the Executive and for approval to Full Council. Also responsible for reporting, where appropriate, breaches of the financial regulations to the Council and/or the Executive;

(d) nominate a properly qualified member of staff to deputise should they be unable to perform their duties to make statutory reports;

(e) approve all financial procedures, records, systems and accounts operated through the Council including any changes which are subsequently proposed;

(f) be responsible for keeping the principal accounting records for all Services of the Council; that the accounts and accompanying reconciliations are properly prepared and presented for audit in accordance

with relevant guidelines and statutes; undertake the day-to-day management of the financial work of the Council; provide advice on the retention and safe custody of all accounting records; produce and circulate to relevant officers a set of guidance notes for the production of final accounts; present the Statement of Accounts for the year in question to the Council's external auditors; and retain copies of the Statement of Accounts;

(g) be informed of the existence of all 'unofficial funds' and issue and update accounting instructions for them where necessary. An 'unofficial fund' is any fund where the income and expenditure does not form part of the Council's accounts but which is controlled wholly or in part by an Officer by reason of their employment by the Council or other employment, e.g. the Governors of a school or other semi-autonomous body;

(h) be authorised to pay all amounts to which the Council is legally committed;

(i) make imprest advances to Officers for the purpose of defraying petty cash expenses and issue instructions on the control and operation on the imprest account;

(j) have the final approval to authorise arrangements for payments to be automatically debited from the Council's bank account;

(k) set out the arrangements necessary to ensure that all monies due are received and banked promptly;

(l) along with the Monitoring Officer, take all reasonable steps to obtain recovery of debts;

(m) be responsible for all Executive decisions on borrowing, investment or financing delegated to the Chief Finance Officer, acting in accordance with CIPFA's Code of Practice for Treasury Management in Local Authorities;

(n) be responsible for the administration and day-to-day operation of the Council's borrowings for all purposes and raise, repay or vary the terms of loans as necessary;

(o) be the registrar for all stocks, bonds and mortgages of the Council and maintain records of all transactions relating thereto, and of all borrowings of money by the Council;

(p) be responsible for ensuring that secure arrangements are made for the preparation and holding of pre-signed cheques, stock certificates, bonds and other financial documents;

- (q) ensure that adequate insurance protection is maintained for the Council's assets and operations where it is considered to be cost effective and appropriate;
- (r) be responsible for the negotiation of all the Council's insurance contracts and have delegated responsibility for the maintenance of an adequate and effective internal audit;
- (s) ensure that the accounting arrangements to be adopted relating to partnerships and joint ventures are satisfactory and that the risks have been fully appraised before agreements are entered into with external bodies;
- (t) ensure that exemptions to Financial Procedure Rules and/or the Contract Procedure Rules must be recorded, signed by the relevant Strategic / Assistant Director and countersigned by the Chief Finance Officer. All exemptions must be monitored;
- (u) consult, and take advice from, the Monitoring Officer and Strategic Commissioning and Procurement where contracts to work for organisations other than the Council are contemplated; and
- (v) ensure that Best Value and Partnership Arrangements comply with all applicable procurement legislation and follow the principles set out in the Contract Procedure Rules. The advice of the Monitoring Officer, and Strategic Commissioning & Procurement must be taken.

The Chief Finance Officer shall have the power to make technical amendments to the Financial Procedure Rules and the Contract Procedure Rules to make them consistent with legal requirements.

What are the Chief Finance Officer's statutory and constitutional responsibilities in 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.

What are the Chief Finance Officer's statutory and constitutional responsibilities in providing advice / information?

The Chief Finance Officer will:

- (a) provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and Budget and Policy Framework issues to all Members and the Mayor and support and advise the Mayor, Members and Officers in their respective roles;

- (b) be responsible for issuing advice and guidance to underpin the financial regulations that the Mayor, Members and Officers and others acting on behalf of the Council are required to follow;
- (c) be responsible for advising on effective systems of internal control. Those arrangements need to ensure compliance with all applicable statutes and regulations, and other relevant statements of best practice;
- (d) provide advice on risk with every Chief Officer and Budget Holder having a responsibility to support these initiatives; and
- (e) provide financial information to the media, members of the public and the community

MONITORING OFFICER

What are Monitoring Officer's statutory and constitutional responsibilities?

Unless the Council determines otherwise, the Monitoring Officer shall be the Council's Chief Legal Officer.

The Monitoring Officer shall be responsible for all non-financial elements of the corporate governance of the Council.

It is the duty of the Monitoring Officer to prepare a report to the Council with respect to any proposal, decision or omission by the Council, committee, or Officer that could give rise to unlawfulness, maladministration or injustice.

In preparing the report there is a duty to consult with the Head of Paid Services and the Chief Finance Officer and then arrange for a copy of it to be sent to each Member.

The Monitoring officer cannot be the Chief Finance Officer or the Head of Paid Service.

What are the Monitoring Officers responsibilities in relation to the Constitution?

The Monitoring Officer will:

- (a) provide access to an electronic copy of the Constitution for all Members, Officers and the public via the Council's website, and ensure that any updated version of the Constitution is made available within a reasonable period;
- (b) maintain an up-to-date version of the Constitution;

(c) monitor and review the operation of the Constitution to ensure that the aims and principles of the Constitution are given full effect;

(d) be aware of the strengths and weaknesses of the Constitution and make recommendations for ways in which it could be amended including observing meetings; undertaking audit trails of a sample of decisions; recording and analysing issues raised by Members, Officers, members of the public and stakeholders; compare practices with other comparable authorities or national examples of best practice;

(e) give notice to the public of the time and place of any meeting in accordance with the Access to Information Procedure Rules; and

(f) be responsible for the system of record keeping in relation to all decisions made by Full Council.

What are the Monitoring Officer's responsibilities in relation to Standards and governance?

The Monitoring Officer will:

(a) after consulting with the Head of Paid Service and the Chief Finance Officer, the Monitoring Officer will report to Full Council or to the Executive in relation to an Executive Function if they consider 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;

(b) contribute to the promotion and maintenance of high standards of conduct through the provision of support to the Standards Committee;

(c) conduct investigations into complaints against Members and Co-Opted Members, which after consultation with an Independent Person appointed for such purposes, are felt to have breached the Members' Code of conduct and make reports or recommendations in respect of them to the Standards Committee;

(d) conduct such other investigations as it appears to the Monitoring Officer are necessary to ensure appropriate corporate governance;

(e) ensure that Executive decisions, together with the reasons for those decisions and relevant Officer reports and background papers are made publicly available as soon as possible;

(f) advise on whether decisions of the Executive are in accordance with the Budget and Policy Framework;

- (g) provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and Budget and Policy Framework issues to all Members and the Mayor;
- (h) be responsible for corporate complaints, Ombudsman cases, reviewing the Constitution and whistleblowing;
- (i) be responsible for reporting any actual or potential breaches of the law or maladministration to Full Council and/or to the Executive, and for ensuring that procedures for recording and reporting Key Decisions are operating effectively;
- (j) ensure that Executive decisions, and the reasons for them, are made public;
- (k) be responsible for advising the Mayor, all Members and Officers about who has authority to take a particular decision;
- (l) be responsible for referring to Full Council any proposed variations to approved budgets, plans and strategies and which form part of the Policy Framework;
- (m) be responsible for promoting and maintaining the same high standards of conduct with regard to financial administration in partnerships that apply throughout the Council; and
- (n) receive written notice from the Mayor on amendments to the Scheme of Delegations of Executive Functions.

JOINT STATUTORY AND CONSTITUTIONAL RESPONSIBILITIES

What are the Statutory Officers' joint statutory and constitutional responsibilities?

The Head of Paid Service, in consultation with the Chief Finance Officer, shall produce and circulate to all relevant Officers a set of guidance notes for the production of the Capital Programme

The Monitoring Officer and the Chief Finance Officer will:

- (a) give advice to the Executive, Committees of the Executive, individual executive Members and any Officers or Joint Arrangements discharging Executive Functions on making decisions outside the Budget or the Policy Framework;
- (b) provide advice to the Overview and Scrutiny Board or a Scrutiny Panel on the process of Call-in of decisions, which if made, would be contrary to the Policy Framework or not in accordance with the Budget; and

(c) be responsible for advising the Executive or Full Council whether a decision is likely to be considered contrary to or not wholly in accordance with the Budget.

The Head of Paid Service and the Monitoring Officer will be responsible for the system of record keeping in relation to all Full Council decisions.

Appendix B

Chief Executive Appraisal Process

Introduction

1. The job summary, main duties and responsibilities of the Chief Executive are set out in the job description.
2. The Chief Executive's objectives are agreed on an annual basis as part of the appraisal process and these objectives will form the basis for the ongoing performance management of the Chief Executive.

Aims of the appraisal

3. The aims of the appraisal are to:
 - agree key objectives and strategic priorities and targets for the next 12 months
 - provide a retrospective review of the targets set in the preceding 12 months
 - identify and agree any development needs

Objective Setting

4. The Council's appraisal process enables staff at all levels to see their contribution to the Mayor's Vision, the Council's strategic priorities and living Our Values. The Chief Executive's appraisal is the starting point for the annual appraisal cycle. The Chief Executive's objectives as agreed during the appraisal process will reflect the Mayor's Vision and the priorities of the Strategic Plan. These in turn will inform the strategic priorities of the Directorates and Service Areas and will inform the objectives set as part of the appraisal process for their staff.
5. The setting of objectives should be by agreement between the Chief Executive and the Mayor and the result should be to identify objectives which are measurable, relevant, challenging but achievable. In addition to reflecting the Mayor's Vision and Strategic Plan, the objectives also need to be clearly aligned with the Values of the organisation.

Process

6. The actual appraisal of the Chief Executive will be undertaken by the most senior elected member of the Council; the directly elected Mayor.

7. As part of the Council's appraisal process, it is expected that members of staff have a quarterly frequent feedback meeting to review their progress against objectives. Similarly is expected that as a matter of course the Mayor will have regular one-to-one meetings with the Chief Executive to review progress.
8. It is proposed that the appraisal process is facilitated with assistance from an external body such as the North East Regional Employers' Organisation (NEREO), Local Government Association (LGA) or Society of Local Authority Chief Executives (SOLACE). The provider of the external facilitator is subject to the agreement of both parties.
9. Consistent with the arrangements for all Council employees, the Chief Executive's appraisal will be carried out on an annual basis.
10. Preparation for the formal appraisal meeting and objective setting will be supported by the external facilitator who will provide impartial advice to both parties.
11. To conduct the appraisal effectively adequate preparation is required. This should involve collating key documents relating to the Mayor's Vision for 2025 and the Council's priorities, as well as the objectives from the previous appraisal.
12. To prepare for the appraisal a series of short meetings or conversations will need to take place:
 - An initial meeting/conversation between the independent facilitator and the Mayor to outline the objectives of the organisation, gather initial views on progress against the previous cycle targets, demonstration of the Values, any development needs and to start to shape the future appraisal objectives.
 - An initial meeting/conversation between the independent facilitator and the Chief Executive who will be asked to provide a brief report of progress against previous appraisal objectives and any new activities agreed throughout the year as circumstances dictate. The Chief Executive will also be asked to provide an initial set of proposed objectives for further discussion at the appraisal.
13. Once these preparatory meetings/conversations have taken place the formal appraisal meeting will then take place with the Mayor, Chief Executive and the external facilitator.

14. If further discussion is needed in order to reach agreement on the objectives and targets for the next 12 months, separate short meetings will take place to allow for further consideration, these will be between:
 - The Mayor and facilitator
 - The Chief Executive and facilitator
15. The formal appraisal meeting will then be re-convened for final agreement of the objectives and targets.
16. A confidential record of the outcomes of the appraisal meeting will be recorded by the independent facilitator and will be retained by the Mayor.