

Croydon Council

REPORT TO:	EXTRAORDINARY COUNCIL MEETING 8 February 2021
SUBJECT:	PROPOSAL FOR A CHANGE IN GOVERNANCE REFERENDUM
LEAD OFFICER:	Katherine Kerswell, Interim Chief Executive
CABINET MEMBER:	Councillor Hamida Ali, Leader of the Council
WARDS:	ALL
CORPORATE PRIORITIES 2021 - 2024: The recommendations for the proposal is to support the aim “to become a much more transparent, open and honest Council”. The recommendations detailed in this report, seek to consider a resolution to hold a referendum on the council’s governance model in Autumn 2021, so that residents can choose their preferred model for Croydon.	
FINANCIAL IMPACT There will be additional costs arising from a referendum being held by the Council. Costs are estimated to be anything from £400k to £650k depending on when the Referendum takes place. However, a full breakdown of costs is not possible at this stage due to the level of planning that needs to be undertaken, the lack of any comparator referenda and due to the potential of other costs relating to the Covid-19 Pandemic. The Council is currently operating under a S114 Notice, meaning that only essential expenditure can be incurred. The view of the S151 Officer is that should the council continue to be unable to balance its budget in the 2021/22 financial year and a further S114 notice is therefore issued this would not be essential expenditure and these costs could not be incurred whilst a S114 notice remains in place. This proposed expenditure should also be considered against the expenditure that would have otherwise been required if the Council were meeting its statutory duties of validating a petition and then holding any consequential referendum. Further detail can be seen within the comments of the Chief Finance Officer.	

1. RECOMMENDATIONS TO FULL COUNCIL

- 1.1 That the Council hold a referendum on Thursday 7th October 2021 to allow local electors to decide upon the future governance arrangements of the Council,
- 1.2 To note that should the Greater London Authority and London Mayor election (“GLA election”) 2021 be further postponed to within 28 days of the above date, the Council will have to combine the referendum in 1.1 with that poll.

- 1.3 To agree that the model of governance available for electors to choose from at the referendum will be either;
 - A. The current model of the Executive Leader and Cabinet (“the Leader Model”) OR
 - B. The Mayor and Cabinet Model (“the Mayoral Model”)
- 1.4 To note that a further report be presented at a Council meeting prior to the referendum in order to approve the referendum proposals that must include detailed constitutional changes in the governance arrangements for a Mayoral Model in accordance to the Local Government Act 2000 (LGA 2000) that also requires those proposals to be available for inspection and to be published.
- 1.5 To note the referendum timetable at Appendix 1.

2. EXECUTIVE SUMMARY

- 2.1 The Council moved a debate motion on Monday 25th January 2021 to consider a resolution as to holding a referendum on the council’s governance model in autumn 2021.
- 2.2 This report asks the Council to formally consider and resolve whether it wishes to hold a referendum on Thursday 7th October 2021 or on any revised date of the GLA election should this election be further postponed to a date that is within 28 days of the referendum date proposed by the Council.

3. BACKGROUND AND CURRENT POLICY CONSIDERATIONS FOR CROYDON

Changes in a council’s governance model

- 3.1 In summary, the Council’s model of governance determines how and by whom decisions are made. This is particularly important for major policy and strategic decisions that are reserved to elected councillors.
- 3.2 The Local Government Act 2000 (as amended) (LGA 2000) sets out the statutory process which Councils must follow before they can change their governance arrangements.
- 3.3 A change in governance arrangements can be made by the Council itself or by affording local electors a choice in the governance model that they would prefer by a referendum.
- 3.4 A referendum can arise from either a valid petition being presented to the Council or from the Council resolving to hold a referendum.

Current policy considerations for Croydon

- 3.5 The Council received a petition requesting a change in governance from the campaign group known as DEMOC (Democratically Elected Mayor of Croydon) on 3rd September 2020. However due to regulations brought in as a consequence of the Coronavirus Act 2020 the petition was lawfully deemed as invalid. A [notice](#) was published as to the same on 18th September 2020.
- 3.6 The Council remain of the opinion that due to the regulations that are currently in place any such petition presented to the Council before 5th May 2020 would be lawfully invalid. Given the Council's interpretation on the regulations DEMOC Ltd issued protective Judicial Review proceedings on 18th December 2020. The decision in the Newham matter was made on the 29th January 2021 and the High court dismissed the Judicial Review, hence supporting the Council's interpretation of the regulations.
- 3.7 The Leader recently received a [letter](#) from Luke Hall MP dated 19th January 2021. This correspondence sought to make the Council aware of the new amendment regulations before parliament but not currently in force. These new amendment regulations come into force on 9th February 2021 and will require the Council to consider the petition from that day. These new amendment regulations enable the DEMOC petition, and other such petitions that have been submitted during the period beginning with 16 March 2020 and ending with 5 May 2021, to be treated as lawfully submitted and validated from 9 February.
- 3.8 The consequence of these new amendment regulations is that the Council would have to utilise its limited resources at this difficult time to validate the petition. The Minister outlined in his letter that he expected the petition, which DEMOC claimed contained over 17,000 signatories, to be validated by 12th February 2021.
- 3.9 In essence the Minister was asking that Croydon validate these signatories in three working days contrary to the one month that is allowed in the regulations. Given the restrictions placed by the third lockdown and the health and safety concerns for officers at the present time such a request would have proved an almost impossible challenge. If such a request was to be achieved any potential cost saving of having a combined poll, as suggested by the Minister, would have inevitably been off-set by the additional resourcing of staff that the Council would have encountered in trying to meet such an immediate request.
- 3.10 As such the proposed resolution will prevent officers from being put at avoidable risk of having to validate the petition at this time along with the additional cost in resources of trying to undertake such a process at this stage.
- 3.11 It should be noted that the resolution will also avoid the practical and political difficulties for those wishing to physically campaign at a time which is not permitted under the current lockdown restrictions. It also provides some certainty following a period of mass vaccination that allows and facilitates for a proper campaign to be carried out by any political party or other group that wishes to play an active role in the referendum. It also allows for the council to facilitate a safe and Covid-secure poll.

- 3.12 If Council agrees the recommendations in this Report and resolves that a referendum is to be held, once the referendum takes place a further referendum cannot be held for another 10 years following any such referendum.
- 3.13 If the Council agrees the recommendations in this Report it will also mean any petition that is deemed as being received or is received after the date of this resolution becomes a 'post-announcement petition' and as such no further substantive action needs to be taken in relation to it.

4. KEY CONSIDERATIONS AND THE LEGAL FRAMEWORK

- 4.1 The Council may only adopt a model of governance allowed under the Local Government Act 2000 (LGA 2000). The aim of the legislation was to make council decision-making efficient, transparent and accountable.
- 4.2 The LGA 2000 required most local authorities to change governance arrangements from the committee system to an executive-cabinet model. The Council adopted the leader and cabinet model in May 2001
- 4.3 In 2007 The Local Government and Public Involvement in Health Act ('the 2007 Act') restricted the governance options available to local authorities. The 2007 Act required the Council to introduce a choice of two models: a directly elected mayor or a new style 'strong' council leader model. The Council resolved to introduce the strong leader and cabinet model following the local election in May 2010.
- 4.4 The Localism Act 2011 ('the 2011 Act') increased the governance options for local authorities to include Executive arrangements (leader and cabinet or directly elected mayor and cabinet), a committee system or 'prescribed arrangements' which require approval of the Secretary of State.
- 4.5 The legislation permits the Council to consider the options of governance. The recommendations set-out at 1.3 of this report identifies the two forms of executive governance proposed at the Council meeting on the 25th January 2021.
- 4.6 Further details of the two models of governance contained in the recommendations are outlined in appendix 2.
- 4.7 In summary both models are known as executive models of governance that enable most of the Council's powers to be held by the executive with operational decisions being delegated to officers and only the most significant or high value decisions being reserved to the executive itself. The major difference between the two models being that the Leader Model enables other elected councillors to choose the Leader whereas the Mayoral Model allows the local electorate to decide who the decision maker will be for the executive.
- 4.8 The vast majority of councils in England operate one of the two executive models with the Leader Model being by far the most common form of executive. Executive models must also have one or more scrutiny committee with statutory powers.

- 4.9 This report seeks a Council decision on the following questions for a referendum:
- i) Whether or not to hold a referendum to allow electors to decide if they wish to change the governance arrangements;
 - ii) If the Council resolve to hold a referendum to then decide on the following;
 - A. The choice of governance models they wish to make available to the electorate. This being between the current Leader Model and the alternative Mayoral Model, and
 - B. The date of the referendum. With a proposed date of Thursday 7th October 2021 and the timetable for the referendum based on this date. However, this date may be subject to change if the GLA election that is currently scheduled for 6th May 2021 is postponed to a date within 28 days of the suggested referendum date.
 - C. That a further report will be presented to Council before the referendum takes place setting out the referendum proposals. These proposals must include the potential constitutional changes in governance arrangements for the Mayoral Model. The LGA 2000 requires these proposals to be both available for public inspection and to be published in a notice not less than 56 days before the referendum.
- 4.10 The Council has power under section 9K of the LGA 2000 to pass a resolution to change the governance arrangements.
- 4.11 The LGA 2000 sets out the mandatory statutory process that Councils must follow to change governance arrangements and if the referendum is approved it must be conducted in accordance with the amended Local Authorities (Conduct of Referendums) (England) Regulations 2012.
- 4.12 The wording of the referendum question is set by the regulations and cannot be changed. The prescribed question that must be set-out in the ballot paper can be seen at Appendix 3.
- 4.13 Statutory notice requirements and a timetable must be followed. The timetable is based on a referendum taking place on Thursday 7th October 2021 as can be seen at Appendix 1.
- 4.14 Those registered to vote in local elections in Croydon on the eligible date are able to vote in a referendum and the result is determined by a simple majority vote.
- 4.15 If the referendum result is in favour of a change in governance arrangements the council must then resolve to make the change within 28 days of the referendum by putting in place any transitional arrangements before holding the first election for a new Elected Mayor on Thursday 5th May 2022.
- 4.16 The Chief Executive as the Borough's returning officer is responsible for the administration and running of the referendum. For a governance referendum the role is referred to as the 'Counting Officer'.

4.17 The Council is required to determine the date of the referendum and subject to the following limitations this date is at the Council's discretion:

- i) It cannot be held before Thursday 6 May 2021 due to the statutory postponement of all elections as set out in the Local Government and Police and Crime Commissioner (Coronavirus) (Postponement of Elections and Referendums) (England and Wales) Regulations 2020.
- ii) It cannot be held on a weekend or public holiday.
- iii) If the date set is within 28 days of another election, it must be combined with that election and held on the same day.

4.18 The proposed date currently complies with these requirements.

5. CONSULTATION

5.1 A public consultation is not required but to ensure good and transparent governance a notice has been published on the Council's website and within the Croydon Guardian newspaper of the proposals of a referendum along with the date and report to be considered at the meeting. This can be seen at Appendix 4.

5.2 Statutory guidance on holding referendums state that the Returning Officer's views should be taken into account when setting the date. The returning officer's overarching view is that any poll should aim to maximise participation and turnout by all electors and also facilitate an accurate and valid result. The Returning Officer outlines some factors for consideration on setting the date:

- i) Public health factors: currently all elections are postponed until Thursday 6th May 2021 due to the risks created by the Covid-19 pandemic. Significant work across London is taking place to minimise the risks in the London elections but the voting system by its nature creates a risk to public health by requiring non-postal voters to attend in person at polling stations and ordinarily there would be multiple use of equipment, poll booths etc. There is an equivalent risk to staff in stations and also at the count both of which are ordinarily not suited to social distancing or avoiding multiple contact of potential infected equipment, ballot papers, etc. Any change in polling methodology e.g. to a postal vote only ballot, would require changes in primary legislation and there is no such proposal or appetite at present being suggested by the government.
- ii) Upon taking a practical and logical stance the later the date for the referendum, the less likely it is to be affected by the risk of disruption that may affect any earlier date. It is also noted that this may also have a beneficial impact on the democratic participation and campaigning in the run up to polling day although this is a matter outside of the Council's control.
- iii) Notwithstanding that the main risks relate to public health concerns (as identified above) that will be avoided by a later date and thereby allowing a

greater opportunity for a higher turnout to be achieved. The added complexity of voters not having to complete 4 ballot papers (and 5 where there is a by-election) will also be avoided and has an obvious benefit.

- 5.3 The Council is required to have regard to the views set out in the report but is not bound by them.

6. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

- 6.1 There will be an additional cost in holding a referendum. If the Council was to hold the referendum at the same time as the GLA elections there would be some scope for the Council to share some of its costs but nevertheless some costs would still fall on the Council alone.
- 6.2 It is estimated that holding a referendum at the same time as the GLA elections will result in the Council incurring expenditure of at least £400,000 to £500,000 whilst holding a stand-alone election is expected to cost at least £650,000. Some costs will fall to the Council for the referendum that cannot be charged on a shared basis to the GLA. Within these estimates there exists some variables such as the potential for combining poll cards and postal votes along with the final cost of making the election Covid secure.
- 6.3 The Council's Revenue budget this financial year and for 2021/22 currently remains unbalanced and the Council is waiting for confirmation regarding the recent application to MHCLG for a capitalisation direction. Until this confirmation is received the Council must continue to operate under a S114 Notice meaning that only essential expenditure can be incurred.
- 6.4 The view of the Council's S151 Officer is that whilst this is not essential expenditure these costs cannot be incurred when a S114 notice remains in place.
- 6.5 The cost that would have otherwise been incurred by having to undertake the Council's statutory duties to validate a petition would have amounted to a similar, if not, greater spend. This is due to the fact that if the Council was required to validate a petition, the cost would have been around £20,000 and in the event of a valid petition the Council could still be required to hold a stand-alone referendum, the costs of which are outlined at 6.2.
- 6.6 There is currently no budget allocated for the referendum costs and so in developing the Medium Term Financial Strategy (MTFS) a growth allocation of £650k has been included in the draft 2021/22 budget to be considered by Full Council in March 2021. If the budget is agreed this will allocate revenue funds to meet these costs should they be incurred.
- 6.7 In accordance with the Representation of the People Act 1983 the cost of local elections/referendums are met from the local authority's budgets. The local authority is required to appoint a Returning Officer to conduct these elections on their behalf. The Returning Officer is personally (not corporately) responsible for the management of elections. Each local authority is required to place the services of its staff at the disposal of the Returning Officer to help run the polls.

- 6.8 Even though the Returning Officer is an employee of the council, at the time of an election their responsibility is completely separate.
- 6.9 Fees for conducting the election, giving the prescribed notices, preparing and supplying nomination papers where applicable, distributing, filling up, verifying and adjudicating upon the same, appointing Deputy Returning Officers, arranging for or conducting the poll, counting the votes, declaring results and making a return of the same along with generally performing all the duties which a Returning Officer is required to perform under the Act or the Rules and Regulations made under it, including all disbursements and expenses other than those for which there has been special provision, shall be as set out in the adopted and agreed London Scale of Fees and Charges compiled by the London Elections Management Board.
- 6.10 London Boroughs were first empowered to fix their own scales of election fees in 1974 with the London fees and charges scale being reviewed on an annual basis.
- 6.11 Approved by Lisa Taylor, Director of Finance, Investment and Risk and s151 Officer.

7. LEGAL CONSIDERATIONS

- 7.1 The body of the report sets out the legal framework under the LGA 2000 and its associated regulations. This outlines the factors to be taken into account by the Council when making its decisions.
- 7.2 A further report will be brought to a future Council meeting to seek approval for the finalised referendum proposals to enable both an inspection and publication of such proposals. This will not affect the agreed timeline for any referendum.
- 7.3 Approved by: Sandra Herbert, Head of Litigation and Corporate Law on behalf of Doutimi Aseh, Interim Director of Law and Governance.

8. HUMAN RESOURCES IMPACT

- 8.1 There are no direct implications for LBC workforce as a result of this report.
- 8.2 Approved by: Sue Moorman, Director of Human Resources

9. EQUALITIES IMPACT

- 9.1 There are no equalities implications under s.149 of the Equality Act 2010 as to the decision on holding a referendum or for any change in governance arrangements for the Council. Should the Council decide to take this decision it must then follow the mandatory statutory procedure for the referendum.
- 9.2 The returning officer is responsible for ensuring the duty is complied with in administering the election.

9.3 Approved by: Yvonne Okiyo, Equalities Manager

10. DATA PROTECTION IMPLICATIONS

WILL THE SUBJECT OF THE REPORT INVOLVE THE PROCESSING OF 'PERSONAL DATA'?

10.1 There will be no processing of personal data as a direct consequence of this report.

HAS A DATA PROTECTION IMPACT ASSESSMENT (DPIA) BEEN COMPLETED?

10.2 As there is no processing of personal data as a direct consequence of this report, completion of a DPIA was not required.

10.3 Approved by Jacqueline Harris Baker, Monitoring Officer

CONTACT OFFICER:

Jacqueline Harris Baker, Monitoring Officer

Butta Singh, Senior Corporate Solicitor, Resources Directorate

APPENDICES TO THIS REPORT:

Appendix 1 – Referendum timetable

Appendix 2 - Details of the 2 models of governance

Appendix 3 - Prescribed question that is to be set-out in the ballot paper

Appendix 4 – Copy of Notice published on the website and in the Croydon Guardian

BACKGROUND DOCUMENTS: None

Appendix 1 – – Referendum timetable

Timetable of Proceedings for Referendum on Thursday 7th October 2021

Council resolution to consider a change in governance arrangements by way of a referendum	Monday 8 th February 2021
Initial Notice of Proposals (at least 14 days* before the Notice of Referendum)	No later than Wednesday 30 th June 2021
Notice of Referendum with details of proposals (at least 56 days* but no more than 73 days* before the referendum)	No later than Tuesday 20 th July 2021
Publication of Notice of Referendum (at least 25 days* before the referendum)	No later than Thursday 2 nd September 2021
Deadline for applications to register to vote	Tuesday 21 st September 2021
Deadline for new applications to vote by post and cancellation or amendment to existing absent voting arrangements	Wednesday 22 nd September 2021
Deadline for new applications for proxy	Wednesday 29 th September 2021
Publication of notice of poll	Wednesday 29 th September 2021
Polling (7am-10pm)	Thursday 7 th October 2021
<i>Special Full Council Meeting <u>if</u> referendum is in favour of change in governance (within 28 days of the referendum)</i>	<i>No later than Tuesday 16th November 2021</i>
<i>First election for a new Elected Mayor <u>if</u> the referendum is in favour of a DEM</i>	<i>Thursday 5th May 2022</i>

* excluding Saturday, Sunday, Christmas Eve, Christmas Day, Good Friday or a bank holiday

Appendix 2 - Details of the 2 models of governance

The Leader & Cabinet Model

This is one of the two models of executive governance. The executive is a collective term referring to either the leader and cabinet or mayor and cabinet.

The key feature of the executive model of governance is that all of the Council powers are executive powers unless reserved by law to Council.

Executive powers can only be exercised by the executive or delegated to officers. This includes decisions relating to housing, social services, schools, education, leisure, parking, property and procurement.

Important powers are reserved for decision by Council, including setting the budget and council tax, approval of specified major policies and decisions relating to regulatory decisions (such as planning and licensing) and key governance matters.

Like an executive, Council can delegate those powers to committees and officers.

The Council currently operate under this model. The executive is comprised of a leader and cabinet. It is the model adopted in most councils. The model is almost identical to the mayor and cabinet, except for the position of a directly elected mayor.

The leader is a councillor who is elected by full Council for up to 4 years. A leader stays in office except for death, disqualification, resignation or after being removed by a vote in full Council. If a leader is removed, they must be replaced by another councillor by a vote at full Council.

The leader must appoint a deputy leader, who acts when the leader is unable to act or on death, disqualification or resignation until a new leader is appointed by full council.

The leader must appoint a Cabinet of between 2 to 9 councillors including the deputy leader. The Cabinet does not need to be politically balanced.

The leader holds all executive powers but may delegate them to the cabinet, cabinet committees, individual cabinet members and officers.

Council can only exercise powers reserved to it by law, including approval of the budget, major policies, regulatory and governance/constitutional powers.

This model must have at least one overview and scrutiny committee appointed by Council.

The Mayor & Cabinet Model

This is the other model of executive governance.

In the Mayoral model, the executive is comprised of the elected mayor and cabinet.

Executive powers are held by the Mayor who may delegate powers to the executive collectively, or to individual cabinet members or a committee of cabinet members or to officers.

The mayor is directly elected every 4 years and is not a councillor.

The mayor cannot be removed by Council but only on resignation, disqualification or death, when a by-election is held.

The mayor must appoint a deputy mayor, who acts when the mayor is unable to act or on death or resignation until a by-election is held.

The mayor must appoint a Cabinet of between 2 to 9 councillors including the deputy mayor.

The Cabinet does not need to be politically balanced. This model must have at least one overview and scrutiny committee appointed by Council.

Appendix 3 - Prescribed question that is to be set-out in the ballot paper

The format and wording of the ballot paper is prescribed by law. As such this is what the front of the ballot paper would look like:

<p>Referendum on how the London Borough of Croydon is run</p>
<p>Vote only once by marking a cross (X) in the box next to your choice</p>
<p>How would you like the London Borough of Croydon to be run?</p> <p>By a leader who is an elected councillor chosen by a vote of the other elected councillors. This is how the council is run now. <input type="checkbox"/></p> <p>By a mayor who is elected by voters. This would be a change from how the council is run now. <input type="checkbox"/></p>

Appendix 4 – Copy of Notice published on the website and in the Croydon Guardian

The London Borough of Croydon

Notice of Proposals to consider a change in governance referendum – Pursuant to section 9MA of the Local Government Act 2000

1. Following a requisition by Council Members there will be an Extraordinary Council Meeting (ECM) on Monday 8th February 2021 at 6.30pm.
2. The ECM will consider proposals to hold a referendum of local electors on Thursday 7th October 2021 or on any revised date if it is to combine the poll with another election to be held within 28 days of this date. The referendum is to determine the future governance model of the Council.
3. The Council currently operates with an Executive Leader and Cabinet model and the ECM will determine whether local electors should be given a choice at a referendum to consider the current model or that of a Directly Elected Mayor and Cabinet.
4. Details of the proposals to consider a change in governance, with a timetable as to the implementation of any change can be seen within the report that is to be considered at the ECM.
5. The report can be accessed from the Council's website or by clicking on this [link](#). Should members of the public wish to attend the Council Offices to inspect the proposals they can do so by visiting the Clock Tower reception, Katharine Street, Croydon, CR9 1ET between the hours of 9am to 5pm.
6. It should be noted that a further Notice will be published in due course setting out the potential constitutional changes in the governance arrangements for the Council as to the option for a directly elected mayor. This Notice will be published no less than 56 days before the referendum is due to be held.