

**WASTE & STREET SCENE PUBLICITY PLAN 2011-2013 – UPDATE
REPORT**

Relevant Portfolio Holder	Cllr Mike Webb
Portfolio Holder Consulted	Yes
Relevant Head of Service	Guy Revans
Wards Affected	All
Non-Key Decision	

1. SUMMARY OF PROPOSALS

- 1.1 Cabinet received a report on the Waste and Street Scene Publicity Plan at its meeting on 07 September. One of the recommendations approved by Members related to the use of Fixed Penalty Notices for dog fouling and littering offences. Since the meeting officers have given further consideration to the legal implications arising from the recommendation that was agreed. The purpose of this report is to update Cabinet on the legal implications and to ask Members to approve a change in wording for the recommendation on Fixed Penalty Notices.

2. RECOMMENDATIONS

- 2.1 That the wording of the recommendation agreed on 07 September regarding the issuing of Fixed Penalty Notices be amended to read as follows:-

That whenever possible and when considered appropriate, Fixed Penalty Notices are issued for all dog fouling and littering offences during campaign periods where an enforcement officer is present. If it is considered that a Fixed Penalty Notice is not appropriate, then the environmental enforcement officer will take an appropriate level of action in accordance with the guidance contained in the Joint Environmental Enforcement Strategy.

3. KEY ISSUES

Financial Implications

- 3.1 The costs of delivering the Waste and Street Scene Publicity Plan will be met through existing budgets.

Legal Implications

- 3.2 Under the Environmental Protection Act (EPA) 1990, the Council has a duty to keep street and public spaces clean and clear of litter and refuse and to collect municipal waste. Government guidance recognises the importance of awareness raising and campaign work in delivering street scene and waste collection services.
- 3.3 At the meeting on 7th September the wording of the recommendation as approved was “that Fixed Penalty Notices are issued for all dog fouling and littering offences during campaign periods where an enforcement officer is present”. Whilst it is acknowledged that Members in supporting the original wording were wanting to see the profile of dog fouling and littering offences raised during campaign periods in order to have a deterrent effect, since the wording was approved some further legal issues have arisen. One of the legal implications of the original wording is that it could create an uneven playing field. By way of illustration in a campaign period a customer who allows their dog to foul the pavement would be given a Fixed Penalty Notice. A week later outside a campaign period for the same incident the customer might receive say a verbal or written warning. This would in turn have the potential to cause problems in the court process which has to be followed to enforce unpaid FPNs particularly if a relatively minor infringement had attracted a FPN by virtue only of the incident having happened in a campaign period. The reverse situation could also arise that a customer who would have received a verbal warning outside a campaign period goes completely unchallenged as the infringement is not serious enough to meet the minimum standard for issuing a Fixed Penalty Notice. Secondly, the original wording of the recommendation does not fully dovetail with the Joint Environmental Enforcement Strategy which provided for officers to have a complete discretion as to severity of penalty and placed emphasis on the importance of a flexible approach.
- 3.4 Overall, because of the legal process that has to be applied in relation to court action for an unpaid FPN there is a need to be very careful about guidance issued to officers who are enforcing the scheme. The key is to ensure that a sufficient level of discretion is retained in order to overcome the potential difficulties which may arise as referred to above. Officers are anxious to ensure that the overall policy is not undermined and as a compromise would suggest an amendment to the original recommendation to use the wording set out at 2.1.

Service/Operational Implications

- 3.6 Members are referred to the previous report dated 07 September setting out the Service/ Operational implications a copy of which is attached at Appendix 1.

Customer / Equalities and Diversity Implications

- 3.11 As set out in the original report at Appendix 1.

4. RISK MANAGEMENT

- 4.1 As set out in the original report at Appendix 1

5. APPENDICES

Appendix 1 – Report to Cabinet dated 07 September 2011 titled “Waste and Street Scene Publicity Plan”

6. BACKGROUND PAPERS

Street Scene and Waste Communications Strategy Plan
Joint Environmental Enforcement Strategy

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