

DECISION-MAKER:	CABINET		
SUBJECT:	PROVISION OF AN ENVIRONMENTAL ENFORCEMENT SERVICE		
DATE OF DECISION:	11 FEBRUARY 2020		
REPORT OF:	CABINET MEMBER FOR PLACE AND TRANSPORT		
<u>CONTACT DETAILS</u>			
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STATEMENT OF CONFIDENTIALITY			
None			
BRIEF SUMMARY			
<p>To introduce the provision of an Environmental Enforcement Service to tackle littering within the City Boundary. The service would be authorised to issue and process Fixed Penalty Notices (FPNs) (within agreed terms and conditions and meet the Code for Crown Prosecutor's requirements) to members of the public who drop litter and cigarette ends on the ground.</p> <p>It is proposed that we authorise East Hampshire District Council (EHDC) to provide this service on our behalf using the powers of delegation set out in the Local Government Act 1972.</p> <p>They will provide the trained officers who will patrol agreed hot spot areas within the City and issue an on the spot FPN to a member of the public who is seen to discard litter inappropriately. It is proposed that each FPN will cost the offender £75.00 unless it is paid within 10 days from the issuing date of the FPN when it will be reduced to £55.00.</p> <p>SCC shall pay EHDC a flat rate of £55.00 per correctly issued FPN. This fee will cover EHDC being responsible for the provision of suitably qualified staff, the processing of all FPNs including final reminders, representations, preparation of court packs, and phone calls. EHDC will provide the single justice procedure processing service free of charge to SCC recovering its costs from the courts.</p> <p>SCC will collect the penalties payable pursuant to the issue of FPNs in the course of performance of their functions. EHDC shall invoice SCC in respect of the FPNs following the end of each calendar month.</p> <p>EHDC will provide the enforcement officers with their training, uniforms and IT equipment.</p>			
RECOMMENDATIONS			
	(i)	To approve the delegation of functions under s.101 Local Government Act 1972 to East Hants District Council to authorise the provision of an Environmental Enforcement Service to tackle	

		littering within the SCC boundary for a twelve month initial period, renewable annually by agreement.
	(ii)	To delegate authority to the Head of Consumer Protection and Environmental Services following consultation with the Cabinet Member for Place and Transport and the Head of Legal Partnerships to conclude and enter into a s.101 Deed of Delegation with East Hampshire District Council (EHDC) to deliver the service for an initial 1 year period and to determine annually whether the service should be renewed on the terms set out in the Deed.
	(iii)	To note that any proposal for early termination of the arrangement or any changes to the terms of the Deed of Delegation will be reported to Cabinet for further decision.

REASONS FOR REPORT RECOMMENDATIONS

1.	<p>To promote a clean and tidy city and demonstrate that SCC have a zero tolerance regarding littering.</p> <p>To help create cleaner place, improve residents feelings of safety and satisfaction relating to where they live and work and protect the environment within SCC's administration.</p> <p>To assist to change the public perception that the Council is not using the powers available to them to deal with littering.</p>
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ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

2.	<p>Not to deliver the enforcement function (current position) unless existing in-house resources allow within existing priorities. This has been rejected because it would not deliver the environmental improvements required to improve residents satisfaction.</p> <p>To deliver the function entirely in house using new resources – this has been rejected because it would require an increase to the existing establishment along with training, equipment and other associated costs that would require additional funding over and above the proposed option.</p>
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DETAIL (Including consultation carried out)

3.	<p>An Inter Authority Deed of Delegation between Southampton City Council and East Hampshire District Council will be drawn up and signed by both parties.</p> <p>This Deed of Delegation is currently in draft format but if the proposal is approved it will be presented to legal for final checking and signing.</p> <p>The Deed of Delegation provides specific details of what will be carried out.</p> <p>Schedule 1 Part A- provided details of the specification for provision of service and enforcement</p> <p>Schedule 1 part B- provides details of the specification for prosecutions if agreed.</p> <p>Schedule 2 part B- provides details of fees</p> <p>Schedule 3 part B- provides details of when a FPN would be subject to cancellation. There are eleven reasons when this would occur.</p>
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	<p>Schedule 4 part B- provides details of the Exit Management plan from the deed of delegation</p> <p>Schedule 5 part B- provides details of Variation notices.</p>
4.	It is proposed that EHDC will use its own staff or those of its wholly owned company, EH Commercial Services (company number 09990286) to perform the delegated functions.
5.	EHDC shall provide an average of 4 enforcement officers to patrol 4 days per week including weekends to patrol SCCs area (save for any weeks during which EHDC is closed for the Christmas break).
6.	EHDC will not issue FPNs to offenders who appear to the reasonable satisfaction of the enforcement officers to be under 18, lack capacity to understand the offence due to mental illness, learning difficulties or other condition.
7.	Areas to be patrolled will be identified and agreed by both parties. These areas will be within SCC's administrative area and will be reviewed and changed as required to respond to changing trends in offences.

RESOURCE IMPLICATIONS

Capital/Revenue

8	<p>SCC would be expected to either pay upfront £5,000.00 to cover the procurement and setup of the IT equipment required to be provided to carry out the issuing of FPNs, or alternatively, to recover this cost from the first 250 higher rate PCNs. It is proposed to pay this up front and this has been incorporated into the budget proposals for 2020/21.</p> <p>Lower rate fines have been set to cover EHDC's fees. Income of £20 per fine is receivable at the higher rate. However, SCC bears the risk for non-payment of correctly issued fines, and a default rate of 15% is assumed in the costings. This will mean that income generated from the higher rate fines would effectively ensure EHDC continues to be paid without impacting on SCC's financial position.</p> <p>Therefore no income assumption has been made in the budget and this will be reviewed once we have 12 months experience under our belt.</p> <p>SCC would be required to provide Enforcement Officers with a permit to park in one of our MSCPs, at a cost of £4,080.00 per year. This cost has also been incorporated into the 2020/21 budget proposals.</p>
9	SCC income will be limited to those cases where payment is not made within 10 days. That would amount to a small income stream of £20.00 per FPN.
10	SCC shall be responsible for collecting payments in full for FPNs

Property/Other

11	<p>SCC will provide a photographic Identity card of authority for each individual enforcement officer employed by EHDC to issue FPNs on behalf of SCC.</p> <p>SCC will provide car park season tickets to park within the MSCPs that falls within the agreed patrol period.</p>
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	<p>SCC will provide access to an interview room on an as requested occasional basis for showing of CCTV/BWC footage to offenders.</p> <p>SCC will provide an area where documentation can be stored securely and an area where electronic equipment can be charged.</p>
LEGAL IMPLICATIONS	
<u>Statutory power to undertake proposals in the report:</u>	
12.	<p>The proposals will be delivered via an Inter Authority Deed of Delegation relating to the provision of Environmental Enforcement Services by East Hants District Council in the administration area of Southampton City Council under section 101-103, 111 and 113 of the Local Government Act 1972 and sections 9EA, 19 and 20 of the Local Government Act 2000 together with Regulation 5 of the Local Authorities(arrangements for the discharge of functions) (England) Regulations 2012.</p>
<u>Other Legal Implications:</u>	
13.	<p>At the cessation of the service it is expected that East Hants will redeploy staff to other contracts or service uses, however there is a small risk that the Council will become liable under TUPE legislation to employ those staff in the event that SCC chooses to bring the service in house for delivery in the same or similar form. It is not legally possible to 'contract out' of TUPE legislation and this consideration will be reviewed throughout the delegation period and through any decisions relating to the future of the service in due course.</p>
RISK MANAGEMENT IMPLICATIONS	
14.	<p>The charge is based on a fee for each correctly issued FPN. Therefore SCC will carry the risk for non-payment. However based on the other Local Authority areas where this is currently being implemented the average payment rate is running at 84% so it is expected that the payment rate here would be around that level.</p> <p>There could be potential reputational risk for SCC if best endeavours are not used whilst issuing FPNs in situations where issuing FPNs is likely to generate significant negative publicity. There are safeguards built into the Deed of Delegation to minimise this risk. These safeguards measures are listed at appendix 1 (attached) which set out our expectations of when FPNs will and will not be issued. Further, there is a complaints and appeals procedure that will ensure that those FPNs issued correctly are upheld and payments pursued.</p>
POLICY FRAMEWORK IMPLICATIONS	
15.	<p>The provision of an Environmental Enforcement Service to tackle littering supports the delivery of the Health and Wellbeing Strategy 2017-2025 outcomes "People in Southampton live active, safe and independent lives" and "Inequalities in health outcomes are reduced".</p>
16.	<p>The Green City Charter and associated Delivery Plan is consistent with the principles outlined in the Government's Environment Strategy, 'A Green</p>

	Future: Our 25 Year Plan to Improve the Environment' and their Clean Air Strategy.	
KEY DECISION	No	
WARDS/COMMUNITIES AFFECTED:	All wards across the City.	
<u>SUPPORTING DOCUMENTATION</u>		
Appendices		
1.	Cancellation Codes	
2.	Equality and Safety Impact Assessment	
3.	Data Protection Impact Assessment	
Documents In Members' Rooms		
1.	None	
Equality Impact Assessment		
Do the implications/subject of the report require an Equality and Safety Impact Assessments (ESIA) to be carried out?		YES
Data Protection Impact Assessment		
Data Protection Impact Assessment Do the implications/subject of the report require a Data Protection Impact Assessment (DPIA) to be carried out?		YES
Other Background Documents - Equality Impact Assessment and Other Background documents available for inspection at:		
Title of Background Paper(s)		Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)
1.	None	