

Subject:	Environmental Enforcement Framework Update		
Date of Meeting:	29 September 2020		
Report of:	Executive Director, Economy, Environment & Culture		
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Ward(s) affected:	All		

FOR GENERAL RELEASE**1. PURPOSE OF REPORT AND POLICY CONTEXT**

- 1.1 Fly-tipping, littering, graffiti, fly-posting, uncontrolled distribution of leaflets, inappropriate containment of business waste and the illegal disposal of business waste are all examples of environmental offences. These activities can have a significant and detrimental impact on the city, increasing the waste produced and reducing recycling. They also have a cost implication in terms of cleansing, collection and disposal.
- 1.2 To tackle this anti-social and illegal behaviour, the Environment Transport & Sustainability Committee approved the Environmental Enforcement Framework on 27 November 2018. A further update was approved on 25 June 2019. This report is seeking approval to update the Environmental Enforcement Framework.

2. RECOMMENDATIONS:

- 2.1 That the Environment, Transport & Sustainability Committee approves the updated Environmental Enforcement Framework as detailed in Appendix 1 (tracked changes version) and Appendix 2 (clean version).
- 2.2 That the Environment, Transport & Sustainability Committee approve the £80 Fixed Penalty Notice for Dog Control Orders.
- 2.3 That the Environment, Transport & Sustainability Committee approves for a public consultation to take place for the introduction of Public Space Protection Orders to manage environmentally anti-social behaviour as outlined in paragraph 3.18 – 3.20 below.
- 2.4 That the Environment, Transport & Sustainability Committee grants delegated authority to the Executive Director, Environment, Economy & Culture to enforce the offences included in the updated Environmental Enforcement Framework.

3. CONTEXT/ BACKGROUND INFORMATION

- 3.1 The purpose of environmental enforcement is to:
 - enforce certain environmental legislation

- improve the cleanliness of the city
 - issue Fixed Penalty Notices (FPNs) in the city for the offences detailed in section 5 of the Framework in Appendix 1
 - enable the council to be more responsive to commercial waste offences and to incidents of fly-tipping
 - encourage behavioural change to reduce environmental crimes
 - minimise waste clean-up and disposal
- 3.2 The Environmental Enforcement Framework is reviewed on a regular basis to consider additional offences to be included to address anti-social and illegal behaviour and to minimise waste clean-up and disposal costs. This update includes additional offences for inclusion following the public consultation on graffiti enforcement and conversations with other council officers regarding the enforcement of Dog Control Orders. It also includes some further information for residents, visitors and businesses on the standards that will be applied when issuing Fixed Penalty Notices (FPN), Community Protection Warnings (CPW) and Community Protection Notices (CPN) for environmental offences.
- 3.3 The receipts from fines paid are used to cover the costs of the environmental enforcement service. Any surplus income is ring-fenced to spend on Environmental Improvement projects in line with legal requirements.
- 3.4 As new enforcement activity is introduced to the Environmental Enforcement Framework consideration will need to be given to increasing the number of Environmental Enforcement Officers. As the service is self-funding this needs to be balanced against the generation of fine income.

Community Protection Notices and Community Protection Warnings

- 3.5 The Graffiti Reduction Strategy Report on today's agenda seeks the approval to introduce CPNs and CPWs to enforce the removal of graffiti from private property.
- 3.6 The Anti-Social Behaviour, Crime and Policing Act 2014 allows for a CPN to be issued to an individual aged 16 or over, or a body, if satisfied on reasonable grounds that:
- a) The conduct if the individual or body is having a detrimental effect, of a persistent or continuing nature, on the quality of life in the locality, and
 - b) The conduct is unreasonable
- 3.7 Subject to the approval of the report, it is requested that CPNs and CPWs are added to the Environmental Enforcement Framework as per Appendix 1 and Appendix 2.

Dog Control Orders

- 3.8 In 2017, existing Dog Control Orders transitioned into Public Space Protection Orders (PSPO), which are designed to deal with a particular nuisance or problem in an area that is detrimental to the local community's quality of life, by imposing consultation on that use of that area that apply to everyone.
- 3.9 The Dog Control Orders relate to:

- Removal of dog faeces (Appendix 3)
- Dogs on leads (Appendix 4)
- Dogs on lead by direction (Appendix 5)
- Dog exclusion areas (Appendix 6)

3.10 On 24 September, Tourism, Equalities, Communities & Culture (TECC) Committee received a Public Spaces and Protection Orders Report presenting the outcomes of a recent public consultation on the continuation of the existing PSPO. Subject to TECC Committee endorsing the continued use of the PSPO relating Dog Control Orders, it is requested that FPNs for breach of Dog Control Orders are added to the Environmental Enforcement Framework as per Appendix 1 and Appendix 2.

3.11 It is also requested that the FPN amount is set at £80 to be consistent with the existing FPN for dog fouling which is set at £80. Under the Anti-Social, Crime and Policing Act 2014, the maximum fine available for a breach of a PSPO is £100 as a Fixed Penalty Notice, or £1000 if it goes to Court.

CCTV

3.12 The Environmental Enforcement Team has recently purchased eight re-deployable CCTV/ANPR camera kits (including two solar camera kits) to be placed at fly-tipping 'hot spots' around the city. The cameras have the capability to be redeployed to other 'hot spot' locations when required. The cameras will be running 24 hours a day within the perimeter set around the hot spot area to detect offenders on foot and/or vehicle registration number plates.

3.13 To procure the CCTV cameras, a Data Protection Impact Assessment (DPIA) was completed to identify and minimise the privacy risks associated with the introduction of CCTV. City Environment has also committed to adhering to the government's 12 guiding principles in the Surveillance Camera Code of Practice. These principles have been added to the Framework to detail how and when the Environmental Enforcement Team will use and access CCTV footage.

3.14 It is requested that the CCTV updates are added to the Environmental Enforcement Framework as per Appendix 1 and Appendix 2.

Further updates

3.15 Following completion of the DPIA, the Equalities Team advised that the Environmental Enforcement Framework be updated to include relevant text.

3.16 Following feedback from City Parks, it was requested that the Environmental Enforcement Framework be updated to make clear that FPNs will be issued in parks in Brighton & Hove.

3.17 It is requested that these changes are added to the Environmental Enforcement Framework as per Appendix 1 and Appendix 2.

Public Space Protection Orders (PSPOs)

- 3.18 Following feedback over the last few months, officers are seeking permission to explore options for:
- Banning the use of disposable barbeques on the seafront and in council owned open spaces and introducing appropriate enforcement measures
 - Banning the release of lanterns and balloons on the seafront and in open spaces and introducing appropriate enforcement measures
- 3.19 In discussions with Legal on the options for barbeques, based on the initial evidence, the conclusion is that the primary issue relates to disposable barbeques. The problems are: in part, that they are damaging the parks; in part, that they pose a not insubstantial fire risk in their disposal; in part, that they present a risk of injury to people (especially on the beach); but, primarily it is the environmental impact of people leaving them behind or disposing of them in an unsafe way. Together, this brings additional and substantial costs to the council. While it is possible to use CPNs, which have the advantage that remedial action can be taken, it is felt that for clarity and tone-setting, a PSPO linked to specific areas (mainly parks and the seafront) is the most effective tool. It is hoped that when confronted with a FPN, that this will have a deterrent impact. Clear signage will have to be in place to enable enforcement, and this will build on the deterrent impact.
- 3.20 The issue with lanterns and balloons is well known. They create environmental problems and are a risk to wildlife. There is also a detrimental impact to the community. Firstly, as they will land within our local authority area and so it makes this our issue. Secondly, they are also likely to land in adjacent areas including the sea and this has an indirect consequence on the community. Were people to use biodegradable, the problem is lessened but not entirely extinguished. It is considered that it is very important to set out a very clear message that lanterns have a damaging impact on the environment of the city and that there should be a city-wide ban. However, it is felt that we would be limited at this stage to prohibiting their use in our public spaces. If evidence were to emerge that people were setting them off from their own property, that might be better dealt with by a CPN. It is proposed that, subject to evidence around biodegradable lanterns showing they are not an environmental nuisance, that there be a total ban of lanterns being used in any public space under the control of Brighton & Hove City Council via a PSPO.
- 3.21 Proposals will be subject to a public consultation, with the results brought to a future committee for approval on how to proceed.

4. SERVICE DELIVERY

- 4.1 Since the beginning of the calendar year, the following have been issued by the Environmental Enforcement Team (to 31 August):

	FPNs issued	FPNs Paid	Prosecution
Littering	444	291	9
Littering from vehicles	3	1	0
Spitting, urinating or defecating	19	8	4

Dog fouling	1	1	0
Graffiti	5	2	2
Fly posting	5	2	0
Unauthorised flyering	8	6	1
Disposing of commercial waste illegally	123	63	0
Fly tipping	141	53	6
Failure of business to produce a waste transfer note	34	14	0
Non-compliance with duty of care certificate	87	52	1

- 4.2 It should be noted that the Environmental Enforcement Service was suspended during lockdown to reduce social interactions. Also, some of the FPNs issued will still be within the 28-day payment period and some will have payment plans established due to people's financial hardship as a result of the pandemic, so are not marked as paid; all unpaid FPNs are sent to Legal to take to the Magistrate Court.
- 4.3 A new hotline has been established for residents to phone the Environmental Enforcement Team directly to report incidents of fly-tipping and graffiti as they happen.
- 4.4 Additional signage has been placed along the seafront to remind people to take their litter home or face a £150 fine. Signs are also being installed within the city centre over the next few months as well as 'no fly-tipping signs' at hotspots across the city.
- 4.5 Environmental Enforcement Officers are working with other Cityclean officers and colleagues from other council teams on a coordinated approach and action plan to tackle the waste issues along the seafront, including encouraging businesses and the public to manage their waste more responsibly. The amount of rubbish left behind (11 tonnes in one day) on 25 June 2020, highlights that it not something the council can tackle alone and requires collaboration with others for any measures introduced to prove successful.

5. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

- 5.1 Not updating the Environmental Enforcement Framework will mean offences will be carried out, but no enforcement measures in place.
- 5.2 The public consultation will seek views on managing and enforcing barbeques on the seafront and in parks, cycling along the promenade, nitrous oxide cannisters, Chinese lanterns and balloons.

6. COMMUNITY ENGAGEMENT & CONSULTATION

- 6.1 Internal BHCC stakeholders have been consulted on the development of the Framework to date. The Framework complements the Highways Policy and the

Delegated Powers assigned to Field Officers, which both deal with other areas of environmental enforcement.

- 6.2 The introduction of Dog Control Orders in the Framework has been subject to a public consultation on PSPOs. Community engagement on further aspects of environmental enforcement will be completed via the public consultation.
- 6.3 The Framework will continue to be regularly reviewed to consider stakeholder feedback and any changes will be brought back to Committee for approval.

7. CONCLUSION

- 7.1 The Environmental Enforcement Service delivers the objectives as detailed in section 3.1. To enhance this, additional offences have been identified for inclusion in the Framework to further improve the cleanliness of the city and enable the council to be more responsive to graffiti vandalism.
- 7.2 The outcomes of the public consultation on the new PSPOs will be brought back to Committee for Members to approve the preferred approach and incorporate into the Environmental Enforcement Framework.

8. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 7.1 The updated Environmental Enforcement Framework allows the introduction of offences not previously enforced (specifically, as set out in the recommendations of this report, Dog Control Orders and Public Space Protection Orders). Any surplus income from Fixed Penalty Notices, as set in paragraph 3.3 of this report, are legally ring fenced to support specific environmental purposes.
- 7.2 Additional spend is expected to be funded from additional income and any significant variation to budget will be reported as part of the council's monthly budget monitoring process.

Finance Officer Consulted: Jess Laing

Date: 15/09/2020

Legal Implications:

- 7.3 The legal basis for the proposed updates to the Environmental Enforcement Framework and approach are set out in the report. The Framework includes the statutory references and background to the various offences contained within in it.
- 7.4 The income from fixed penalties can only be used in accordance with the relevant legislation. For example, fixed penalty income from litter, graffiti, dog control, fly-posting, and unauthorised distribution of free printed material in a designated area can be spent on functions relating to litter, dog control, graffiti and flyposting. Defra guidance is clear that fixed penalties should only be issued when it is in the public interest and proportionate to do so.

Lawyer Consulted: Hilary Woodward

Date: 28/08/2020

Equalities Implications:

- 7.5 Equalities considerations are addressed within the Environmental Enforcement Framework.

Sustainability Implications:

- 7.6 Environmental enforcement activity improves the environment by reducing littering, dog fouling, fly-tipping, graffiti, fly-posting and littering associated with flyers. Enhancing the Environmental Enforcement Framework allows the council to further protect the environment from these detrimental activities.

Crime & Disorder Implications:

- 7.5 Environmental enforcement addresses illegal and anti-social behaviour and has a beneficial impact on crime and disorder.

Corporate / Citywide Implications:

- 7.6 Environmental enforcement activities will make the city a more attractive place for residents and visitors and support the visitor economy.

SUPPORTING DOCUMENTATION

Appendices:

1. Updated Environmental Enforcement Framework (tracked changes)
2. Updated Environmental Enforcement Framework (clean)
3. Removal of dog faeces
4. Dogs on leads
5. Dogs on lead by direction
6. Dog exclusion areas

Background Documents

1. [Environmental Enforcement Report](#) presented to Environment, Transport & Sustainability Committee on 27 November 2018 (item 46)
2. [Environmental Enforcement Update](#) presented to Environment, Transport & Sustainability Committee on 25 June 2019 (item 11)

