

To: City Executive Board

Date: 8 December 2010 **Item No:** 15

Report of: Head of Environmental Development

Title of Report: Proposed Licensing Scheme for the distribution of free printed matter

Summary and Recommendations

Purpose of report: To seek approval to commence the process to introduce a licensing scheme to control the distribution of free literature.

Key decision? No

Executive lead member: John Tanner

Policy Framework: Improve the local environment, economy and quality of life

Recommendation(s):

the Board is recommended to:

1. Make a declaration that the Board is satisfied that the area highlighted in appendix 4 is being defaced by the distribution of free printed matter
2. Approve the proposal to make an order designating relevant land of the authority and all relevant highways for which the authority is responsible, as set out in paragraph 4.4 and the map attached as appendix 4, to control the distribution of free printed matter within the areas highlighted in this report.
3. Request a further report from the Head of Environmental Development for the City Executive Board meeting in March that contains:
 - (a) the details of any objections duly made in response to the proposed order, and
 - (b) a fully costed scheme should the recommendation be to confirm the order to control the distribution of free printed matter.

Appendix 1	Consent conditions
Appendix 2	Equalities Impact Assessment
Appendix 3	Risk Register
Appendix 4	Map of areas proposed to be designated

1 Introduction

- 1.1 In November 2009 the Council launched the Cleaner Greener Oxford campaign in order to clean up Oxford. Initially the campaign focused on litter and waste in the City Centre and a number of steps were put in place including increased numbers of litter bins, enhanced street cleaning and more active enforcement.
- 1.2 The result has been a noticeable improvement in the appearance of the City Centre and Oxford was voted the cleanest city in the UK by a Conde Nast Travellers poll of 40,000 people.

2 Current Situation

- 2.1 However, leafleting in the City has been recognised for some time as an issue. Street Scene officers report that there is a regular defacement of the area caused by leaflets and flyers being left on the streets. The litter problems with leaflets occur widely, but are most noticeable in the Park End Street area in the City Centre; around Headington Hill Campus in Headington (particularly around Fresher's Week) and in and around Cowley Road in East Oxford.
- 2.2 The extent of the litter created by leafleting is not always evident to the public because it is often connected with the night time economy and the streets are cleaned by Street scene before the daytime economy starts. However, discarded leaflets and flyers are extremely difficult to clear up, especially in wet weather and Street Scenes dedicate a significant amount of resource to cleaning areas on a daily basis.
- 2.3 Leaflets are cleaned up using an automated machine in dry conditions, but in wet conditions the machine is ineffective on leaflets and they have to be picked up by hand, greatly adding to the time and expense of cleaning the streets.
- 2.4 In an attempt to address the problems caused by leafleting a byelaw was introduced in 2004.
- 2.5 The bye law allows authorised officers to control the manner in which leaflets are distributed but it does not prevent leafleting or provide a way to control the environmental impact it has on the City. Officers believe that there is a need for further action.

3 Further Powers

- 3.1 Schedule 3A of the Environmental Protection Act 1990 provides powers that allow local authorities to designate areas in which the distribution of free printed matter is illegal without the consent of the Council.

- 3.2 Printed matter includes any materials produced for distribution which have been subject to a printing process, and includes flyers, self adhesive stickers, leaflets, cards, papers, containers and any similar items.
- 3.3 Investigations have revealed that these powers have been introduced in Leeds, Leicester, Solihull and Manchester and have been used to deal successfully with problems caused by leafleting.

Exemptions

- 3.4 There is a specific exemption where the distribution of material is for political, charitable or religious purposes (so as not to inhibit the right to freedom of expression enshrined in the Human Rights Act 1998)

Offences

- 3.5 If someone distributes free printed matter in a designated area without consent they commit an offence, punishable by a fine of up to £2500 or a fixed penalty notice of £80. The Council may also seize all or any of the material. This may be reclaimed by the person purporting to be its owner on application to the magistrate's court
- 3.6 It is also an offence to commission or pay for the distribution of free printed matter in a designated area without the necessary consent.

4 Designation of Land

- 4.1 Land can only be designated under Schedule 3A of the Environmental Protection Act 1990 if the Council is satisfied that the discarding of free printed matter is causing defacement.
- 4.2 The land that is designated must consist of:
- (a) relevant land of the authority;
 - (b) all or part of any relevant highway for which the litter authority is responsible; or
 - (c) both.
- 4.3 It is proposed that the Council designates both its own land and the relevant highway so that the licensing controls are extended as far as possible. This will also provide a consistent approach to enforcement in all public areas. Section 86(9) of the Environmental Protection Act 1990 provides that every highway maintainable at the public expense is a relevant highway. It also provides that a district council is the responsible authority.
- 4.4 The areas proposed to be designated in this report are broadly
- (a) The City Centre

- (b) Cowley Road and surrounding streets
- (c) Headington Hill Road and surrounding streets

4.5 A map of the areas proposed to be designated by this report is attached as appendix 4.

5 What will be controlled?

5.1 To “distribute” printed matter means to give it out to, or offer or make it available to, members of the public and includes placing it on or affixing it to vehicles, but does not include putting it inside a building or letter-box. In addition it does not include printed matter distributed on public service vehicles. Printed matter is “free” if it is distributed without charge to the persons to whom it is distributed.

5.2 Examples of what would be covered are given below:

- (a) a promoter for a nightclub giving out flyers to passing members of the public promoting an event at a venue
- (b) the owner of a shop giving out leaflets to passing members of the public promoting the sale of goods at their premises
- (c) an estate agent who leaves a box of property newspapers on the street at the entrance to their premises
- (d) a board left outside a college promoting a theatre production that has a pocket containing leaflets attached to it
- (e) a pile of flyers left on top of a piece of street furniture or a window ledge for passing members of the public to pick up
- (f) a promotional stand set up in the street from which free leaflets are available promoting tourist activities such as bus rides or walking tours
- (g) a promoter placing leaflets under the windscreen wipers of parked cars in a park and ride car park

6 How will the scheme work?

6.1 Consents will be granted subject to conditions. Appendix 1 contains detailed consent conditions to be applied to all consents and authorisation badges issued under them.

6.2 Two conditions of note are:

- All places in which free printed matter is being distributed must be kept free from discarded matter so that the area does not fall below grade B of the Government’s “Code of Practice on Litter and Refuse” at any time. If an authorised officer of the council considers that the standard has been breached as a consequence of the distribution of free printed matter, his/her assessment will be definitive at the time. Challenges to the assessment will only be accepted through the formal appeals process.

- No free printed matter that encourages irresponsible consumption of alcohol can be issued. This includes irresponsible drinks promotions, such as all-inclusive drinks offers when paying for entry, or drink all you can for a fixed amount. All promotions for alcohol must also carry the Drink Aware message.
- 6.3 Annual consents will run from the start date applied for until the corresponding date the following year. Monthly consents are also available.
 - 6.4 Failure to comply with the consent conditions set out in Appendix 1 could result in the revoking of an applicant's badge.
 - 6.5 An applicant will be able to apply for as many authorisation badges as they need, but each person distributing at any one time will need to possess a valid authorisation badge.
 - 6.6 An applicant can apply for further badges during the consent period, but, if an applicant's badge has been revoked due to a breach of the consent conditions, then no further applications can be made by that person for a minimum period of 1 year starting from the date on which the badge was revoked. Any monies paid by the applicant are non-refundable in the event of consent being revoked.
 - 6.7 If an original consent holder has badges revoked, and investigations suggest that he or she attempts to replace them by using a 'nominee', consideration will be taken to revoking all badges held by that consent holder and the nominee.
 - 6.8 Paragraph 3(5) of Schedule 3A provides that a consent can be subject to such conditions as the authority consider necessary or desirable for protecting designated land from defacement or the effective operation and enforcement of the designation. It will be a condition of any consent that an applicant must apply from an address within the City or provide a statement detailing how he/she intends to ensure that the distribution of the free printed matter is adequately managed.
 - 6.9 Payment must be made with the application. Should the payment fail (e.g. bounced cheque) after the consent has been issued, the consent will be deemed to be automatically revoked.
 - 6.10 There is no requirement for the Council to grant consent to an applicant, but at the same time the Council must be able to justify its refusal based on the likelihood of the distribution causing defacement of the local environment.
 - 6.11 The Council may also refuse consent if the applicant has been convicted of an offence, or has paid a fixed penalty notice for the distribution of free literature without consent in a designated area, within five years preceding the date of the application.

6.12 Any person aggrieved by a decision of the Council to:

- a) refuse consent;
- b) impose any limitation or condition subject to which consent is given;
- c) to revoke consent

may appeal against the decision to a Magistrates' Court.

7 Consultation

7.1 Prior to designating any land the Council must:

- a) publish notice of its proposal in at least one newspaper circulating in the area which includes the land; and,
- b) post such a notice on the land

The notice must specify:

- a) the land proposed to be designated;
- b) the date on which the proposed order is to come into force; and,
- c) the fact that objections may be made to the proposal, how they can be made and the period in which they must be made.

7.2 Subject to giving notice and taking into account any objections the Council can make an order in respect of any or all the land in respect of which notice was given. It is then required to give notice of its decision in similar fashion to the consultation set out above.

7.3 All representations will be considered and the final proposals will be brought back in a report to the City Executive Board at the earliest opportunity, which is currently the March 2011 meeting. It is therefore proposed that the scheme commences on the 1st April 2011.

8 Staffing implications

8.1 There will need to be proactive and reactive enforcement of the scheme and it is intended to carry this out within existing resources.

8.2 A flexible approach to the work will need to be taken to ensure that resources are available when required, which will often be in the evenings and at weekends. Where possible this will be linked up with other licensing and enforcement activities as well as including streetscene supervisors and managers.

9 Financial Implications

9.1 The Council may charge a fee for issuing a consent. The amount of this fee is for the Council to determine but it must not be more than is reasonable to cover the costs of operating and enforcing the consent

scheme. It will therefore be possible to introduce the scheme at no net cost to the Council.

- 9.2 The full costs for the implementation of the proposed scheme have not been calculated prior to the publicity process. The financial calculations will be produced once the publicity period has been completed and a clearer picture of the likely demand for consents has been obtained.
- 9.3 It is proposed that the full costs and consent fees be included in the further report to the City Executive Board in March should the recommendation be to confirm the order to control the distribution of free printed matter.

10 Climate Change / Environmental Impact

- 10.1 The proposed consent scheme is designed to reduce the adverse environmental impact of the distribution of free literature in the City by reducing the costs of dealing with the defacement by litter by such activities.

11 Equalities Impact

- 11.1 No impacts have been identified. An Equalities Impact Assessment is attached as appendix 1.

12 Level of Risk

- 12.1 A full risk register is attached as appendix 2.
- 12.2 One risk of note is that there may be an initial increase in leafleting activity should the scheme be implemented. However strict conditions can be attached to consents to control any activity and therefore the recommendations are to accept this risk.

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List of background papers:

None

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