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<b>REPORT TO:</b>	<b>ENVIRONMENTAL &amp; DEVELOPMENT SERVICES COMMITTEE</b>	<b>AGENDA ITEM: 13</b>
<b>DATE OF MEETING:</b>	<b>13<sup>th</sup> July 2006</b>	<b>CATEGORY: DELEGATED</b>
<b>REPORT FROM:</b>	<b>DIRECTOR OF COMMUNITY SERVICES</b>	<b>OPEN</b>
<b>MEMBERS' CONTACT POINT:</b>	<b>JACK TWOMEY (5856)</b>	<b>DOC:</b>
<b>SUBJECT:</b>	<b>SETTING OF FIXED PENALTY NOTICE CHARGES</b>	<b>REF: ES/JT</b>
<b>WARD(S) AFFECTED:</b>	<b>ALL</b>	<b>TERMS OF REFERENCE:</b>

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## **1.0 Recommendations**

- 1.1 To approve the proposed charges for Fixed Penalty Notices served under the Clean Neighbourhoods & Environment Act 2005, as outlined in sections 3.6 and 3.7 of this report.

## **2.0 Purpose of Report**

- 2.1 To advise members of the need to set charges in relation to new powers to serve fixed penalty notices under the Clean Neighbourhoods & Environment Act 2005 and to propose charges where there is an ability to set it at a local level.

## **3.0 Detail**

- 3.1 The Clean Neighbourhoods & Environment Act 2005 has brought in a number of new powers for local authorities. These powers include the ability to serve fixed penalty notices for environmental offences under the Environmental Protection Act 1990, the Anti-Social Behaviour Act 2003 and a number of other pieces of legislation, as amended and extended by the Clean Neighbourhoods & Environment Act 2005.
- 3.2 The Clean Neighbourhoods & Environment Act 2005 (CN&E Act) makes significant changes to the fixed penalty notice regime. In some cases it widens the scope of persons or bodies that may issue fixed penalties. It also allows, in some cases, for the fixed penalty amount to be specified at a local level.
- 3.3 Discounts may be offered for early payment of fixed penalties. The Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2006 limits the scale of these discounts. The prescribed minimum levels of fine following discount are generally 55-60% of the full amount.
- 3.4 In determining the levels of discount for South Derbyshire District it is recommended that 30% discount be allowed so that, subject to prompt payment, the level of fine to be paid is 70% of the full fixed penalty charge. It is helpful to clear communication if the charges are a round number and the charges proposed have been rounded down, where necessary, to achieve this.

- 3.4 Fixed penalty notices are accepted to be an effective and visible way of responding to low-level environmental crimes, and the Government encourages their use. The Department of the Environment, Food and Rural Affairs (DEFRA) has stated that the public generally welcome the use of fixed penalty notices, provided that they are issued sensibly, enforced even-handedly and are seen as a response to genuine problems.
- 3.5 Fixed penalties can be issued when an enforcing officer believes that an offence has been committed, in order to give the offender the opportunity to avoid prosecution. Fixed penalties will only therefore be served where there is enough evidence to support a prosecution if the notice is not paid.

#### Setting the penalty amount

- 3.6 This table lists the fixed penalty notice issuing powers where the full charge is determined nationally. The level of discount is still determined locally and the recommended levels are shown in the final column. It is recommended that the amount on locally set penalties is left at the default penalty. Additionally, the minimum allowable fine following discount together with the proposed discount for early payment is given.

Description of Offence	Legislative Power	Amount Set by law	Minimum Fine allowed following discount	Proposed Charge following discount for early payment
Nuisance Parking	s.6(1) CN&E Act 2005	£100	£60	£70
Abandoning a vehicle	s. 2A(1) Refuse Disposal (Amenity) Act 1978	£200	£120	£140
Failure to produce authority (waste transfer notes)	s.5B(2) Control of Pollution (Amendment) Act 1989	£300	£180	£210
Failure to furnish documentation (waste carriers licence)	s.34A(2) Environmental Protection Act 1990	£300	£180	£210

- 3.7 This table lists the fixed penalty notices for which the Council can set the charge at its own discretion. The table shows the recommended levels of charge and the recommended level of discount, for member consideration.

Description of Offence	Legislative Power	Range in which charge can be set locally	Proposed Charge	Minimum Fine allowed following discount	Proposed Charge following discount for early payment
Litter	s.88(1) Environmental Protection Act 1990	£50-£80	£75	£40	£50
Street litter control notices and litter control notices	s.92A(2) Environmental Protection Act 1990	£75-£110	£100	£60	£70
Unauthorised distribution of literature	Schedule 3A, para.7(2) Environmental Protection Act	£50-£80	£75	£40	£50

	1990				
Graffiti and flyposting	s.43 Anti-Social Behaviour Act 2003	£50-£80	£75	£40	£50
Offences in relation to waste receptacles	s.47ZA(2) Environmental Protection Act 1990	£75-£110	£100	£60	£70
Offences under Dog Control Orders	s.59(2) Clean Neighbourhoods & Environment Act 2005	£50-£80	£75	£40	£50

3.8 Members should note at this stage that full determination of which Council Service is to enforce each new power has not been completed.

#### **4.0 Financial Implications**

4.1 The various Acts under which fixed penalty notices are served enable local authorities to use their fixed penalty receipts to help meet the cost of certain specified functions only (except in the case of 4.2 below). These functions generally relate to the offence being committed, but in some cases are grouped with other offences. For example, receipts from Graffiti or Flyposting notices can be used to meet the cost of enforcing Street Litter Control Notices.

4.2 Where a local authority is categorised as “excellent” or “good” under the Comprehensive Performance Assessment, and is subsequently categorised accordingly by Order made by the Secretary of State, the authority may spend fixed penalty receipts on any of its functions.

4.3 Notwithstanding the above, it would be prudent to assume that the income generated from the serving of fixed penalty notices will not significantly impact on the services enforcing them.

#### **5.0 Corporate Implications**

5.1 The proposals will enable a high percentage of minor offences to be dealt with expediently and with impact, whilst preventing the need to take the matter to court, thereby saving officer time and ensuring efficiency.

#### **6.0 Community Implications**

6.1 Whilst the implementation of fixed penalty notices for these offences will certainly improve the environment, the actual penalty amounts are considered to achieve a balance between penalising anti-social behaviour and the risk of causing severe financial difficulty to offenders on low income.

#### **7.0 Conclusions**

7.1 The Clean Neighbourhoods & Environment Act 2005 has improved the Council’s ability to serve fixed penalty notices for certain offences. This report is simply to get agreement on the amounts that the fixed penalties should be, where they can be set locally.

#### **10.0 Background Papers**

10.1 None