

## Report for Resolution

**Report to** Cabinet  
1 June 2011  
**Report of** Head of City Wide Services  
**Subject** Dog Control Order – fouling of land

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### Purpose

To consider making a dog control order.

### Recommendation

To approve the making of a dog control order which prescribes an offence for a person not to remove the faeces of any dog in their charge within a reasonable period from any land open to the public within the Norwich City Council boundary.

### Financial Consequences

There is minimal financial implication of introducing a dog control order in respect of completing the legal process and providing the appropriate signage.

### Risk Assessment

NPLaw has been consulted on the report and have confirmed their agreement with the report.

The adoption of the dog control order will significantly assist the Council through its front line teams to be more effective in dealing with the issues. The number of reports received by the council about dog faeces shows our communities consider this to be an issue where the council needs to balance the interests of those in charge of dogs against the interests of those affected by the activities of dogs and to be able to show that they are being implemented in a direct response to problems caused by the activities of dogs and those in charge of them.

### Strategic Priority and Outcome/Service Priorities

The report helps to meet the strategic priority “Safe and healthy neighbourhoods – working in partnership with residents to create neighbourhoods where people feel secure, where the streets are clean and well maintained, where there is good quality housing and local amenities and where there are active local communities”

**Executive Member: Councillor Julie Westmacott**

**Ward:** All

### Contact Officers

Adrian Akester, Head of citywide services

01603 212331

## **Background Documents**

The Environmental Protection Act 1990

The Clean Neighbourhoods and Environment Act 2005.

# Report

## Background

1. Dog fouling across the city is a significant problem with in excess of 1000 complaints being received by the Council since 2005 (see appendix 1). Dog fouling is also a public health issue which can lead to incidents of toxocari canis
2. The powers available to the Council currently are persuasion and education which can often resolve problems, but where they do not, the current dog fouling by-law is not a suitable deterrent as the maximum fine for dog owners who allow their dog(s) to foul without removing the faeces is £5.

## Current position

3. A by-law is currently in place in Norwich requiring dog owners to remove dog faeces and which attracts a £5 penalty.
4. The Clean Neighbourhoods and Environment Act 2005 (the Act) gives opportunity to adopt Dog Control Orders. Once in place, these automatically repeal any byelaws that are in place. The Act also repealed the provisions of the Dogs (Fouling of Land) Act 1996 giving local authorities broader powers to make dog control orders.
5. There are transitional arrangements whereby all byelaws and orders made under the 1996 Act continue to have effect, however, no further land can be designated under the 1996 Act.
6. From April 2006 the Act allows local authorities to make orders in respect of any land which is open to the air and to which the public are entitled or permitted to have access (with or without payment). Appendix 2 details the procedure for making a dog control order.
7. There are five offences which may or may not be prescribed in those orders:
  - (a) Failing to remove dog faeces;
  - (b) Not keeping a dog on a lead;
  - (c) Not putting and keeping, a dog on a lead when directed to do so by an authorized officer;
  - (d) Permitting a dog to enter land from which dogs are excluded;
  - (e) Taking more than a specified number of dogs onto land.
8. The penalty for committing an offence is a maximum fine on level 3 of the standard scale (currently £1,000). Alternatively, liability for the offence may be discharged by offering those responsible the opportunity to pay a fixed penalty in lieu of prosecution. (appendix 3)

The council can set its own level of fixed penalty notice and this has previously been set by Cabinet at an £80 fine, with a discounted rate for early payment of £60.

## **Proposal – to introduce a dog control order**

9. The council needs to balance the interests of those in charge of dogs against the interests of those affected by the activities of dogs and to be able to show that the order is proportionate to the level of the issue and is being implemented in a direct response to problems caused by the activities of dogs and those in charge of them.
10. Over the past five years – July 2005 to April 2010 the council had received in excess of a 1,000 complaints regarding indiscriminate dog fouling across the city on both public and private land. Appendix 1 summarises the locations of reported dog fouling complaints. It is based on this evidence that a dog control order requiring dog faeces to be removed is recommended.
11. In relation to the other offences specified above, during the same period the council received 43 reported cases of dogs left off leads and 155 calls regarding dog nuisance such as dogs escaping from homes and gardens, barking dogs and dogs left unattended. This evidence at present would not justify the adoption of further control powers by the council, although the situation will be reviewed on a regular basis.
12. Although the council will continue to promote educational events, the existing by-law requiring dog owners to clean up after their pets is not a sufficient deterrent.
13. The introduction of a dog control order requiring dog owners to remove dog faeces will give broader powers to the council to address the current problems within the city as well as delivering to the corporate priorities of safe and healthy neighbourhoods and one council focussing on our customers and continual improvement.
14. A draft dog control order has been included in Appendix 4 for illustrative purposes.

## **Financial/management implications**

15. There is minimal financial implication of introducing a dog control order in respect of completing the legal process and providing the appropriate signage.
16. There is no legal requirement to provide separate dog waste bins and currently most of the litter bins accept bagged dog faeces except enclosed children's play areas which exclude dogs. Therefore separate dog waste bins will not be provided.
17. The enforcement of the dog control order will be managed through the front line staff including wardens, contract officers, private sector housing, ABATE team, neighbourhood housing officers, civil enforcement officers, operations team, environmental protection and EPA crew, within the community enforcement model who in the main will use fixed penalty notices (FPN) as the sanction for contraventions.
18. Where FPN's are not effective further legal action may be taken by the public protection enforcement team.

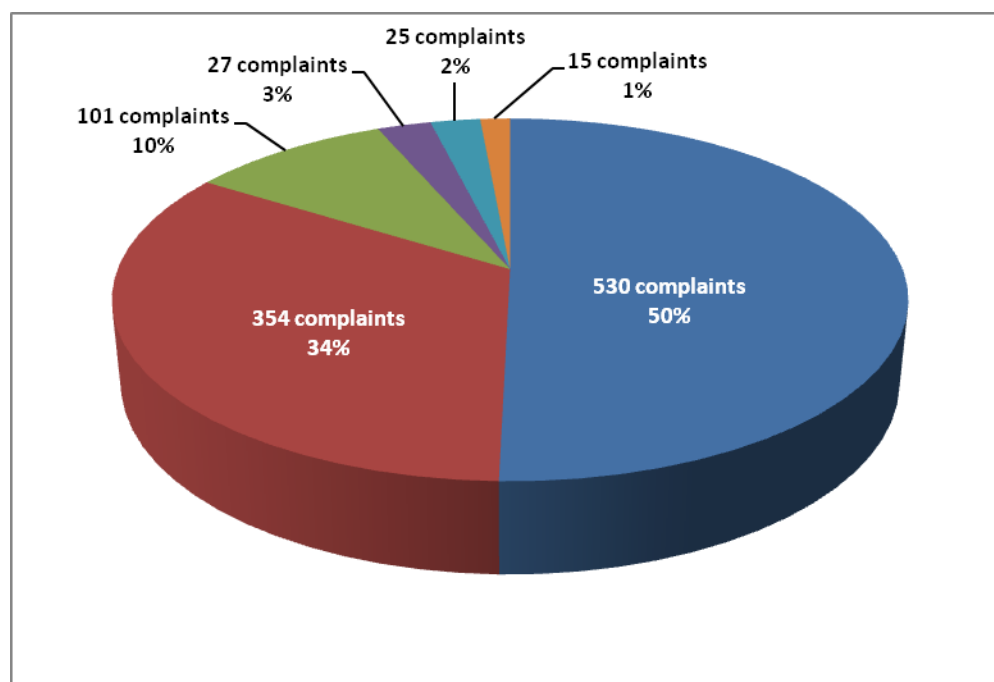
## **Recommendation to Cabinet**

19. Cabinet approves the making of a dog control order which prescribes an offence for a person not to remove the faeces of any dog in their charge within a reasonable period from any land open to the public within the Norwich City Council boundary. Appendix 4 specified the areas to be designated.

## Summary of dog fouling complaints in Norwich

LOCATIONS	NO'S OF REPORTED INCIDENTS April 2005 – July 2010	% OF COMPLAINTS
STREET	530	49.4%
HOUSING LAND	354	33.0%
PRIVATE LAND	101	9.4%
OPEN SPACES	27	2.5%
PARKS	25	2.3%
PLAY AREA	15	1.4%
MIS-INDEXED (NON-DOG FOULING ISSUES)	21*	2.0%
<b>TOTALS</b>	<b>1073</b>	<b>100.0%</b>

**Table 1:** Locations of reported dog fouling incidents in Norwich from April 2005 to July 2010 (\* not used in figure 1 below).



**Figure1:** Locations of reported dog fouling incidents in Norwich from April 2005 to July 2010.

## The Procedure for Making a Dog Control Order

1. The Dog Control Orders (Procedures) Regulations 2006 require that, before it can make a dog control order, an authority must consult any other primary or secondary authority within the area in which the order is being made. In England, parish councils constitute secondary authorities. There are no secondary authorities in Norwich.
2. Authorities must also publish a notice describing the proposed order in a local newspaper circulating in the same area as the land to which the order would apply, and invite representations on the proposal. The notice must:
  - a) identify the land to which the order will apply
  - b) summarise the order
  - c) if the order will refer to a map, say where the map can be inspected. This must be at an address in the authority's area, be available free of charge and at all reasonable hours during the consultation period
  - d) give the address to which, and the date by which, representations must be sent to the authority. The final date for representations must be at least 28 days after the publication of the notice.
3. At the end of the consultation period, the authority must consider any representations that have been made. If it then decides to proceed with the order, it must decide when the order will come into force. This must be at least 14 days from the date upon which it was made.
4. Once an order has been made, the authority must publish at least 7 days before it comes into force a notice in a local newspaper circulating in the same area as the land to which the order applies stating;
  - c) That the order has been made and
  - d) Where the order may be inspected and copies obtained.
5. Where practicable a copy of the notice must also be published on the authority's web site.
6. If an authority decides significantly to amend its proposal after considering representations, it must start the procedure again, publishing a new notice describing the amended proposal.
7. It is a legal requirement, where practical, where a dog control order is made, that signs should be placed summarising the order on land to which the new order applies, thereby informing the public that the land is subject to a dog control order.

## Exemptions

8. It should be noted that any measures contained within the dog control order are not applicable to guide dogs and other assistance dogs.
9. There are defences/exemptions in all dog control orders of:
  - a) Having a reasonable excuse for failing to comply with an order; or
  - b) Acting with the consent of the owner or occupier of the land, or of any other person or authority which has control of the land.
10. Being unaware of a dog's defecation, or not having a device or other suitable means of removing the faeces is specifically excluded from the definition of reasonable excuse under the regulations. There is no requirement to provide bins for the disposal of dog faeces.



## Enforcement by fixed penalty notice

1. While the powers to prosecute persons remain unchanged this will only be pursued in the event of non payment of a fixed penalty notice or for repeat offenders.
2. Fixed penalties for breaching dog control orders can be issued by authorised officers, including:
  - i Employees of primary and secondary authorities who are authorised for this purpose but employees of secondary authorities must first satisfy certain conditions linked to training before they can be so authorised.
  - ii Any person authorised (including employees of that person) in writing by a primary or secondary authority in pursuance of arrangements made by that person and the relevant authority
  - iii Police Community Support Officers and other persons accredited by the Chief Police Officers under the Police Reform Act 2002

## Order: Failing to remove dog faeces

It will be an offence for a person not to remove the faeces of any dog in their charge immediately from any land open to the public within Norwich City Council land designated will be:

- a) All streets and pavements throughout Norwich City Council
- b) All Norwich city council owned land including parks, gardens, recreation and sports grounds, cemeteries, open spaces, car parks and parking places.
- c) All other land in the open air to which the public have access to with or without payment.

Draft Dog Control Order



**NORWICH**  
City Council

**NORWICH CITY COUNCIL**  
**ORDER 2010**

**The Clean Neighbourhoods & Environment Act 2005**

**Dog Control Order (The Fouling of Land by Dogs)**

**(Prescribed Offences and Penalties, etc.) Regulations 2006**

**NOTICE IS HEREBY GIVEN** that Norwich City Council has made the above order in accordance with the legislation as stated in the title. The effect of the order is as specified below.

1. This order comes into force on the 25<sup>th</sup> December XXXX
2. This order applies to the land specified in the schedule below.

**Offence**

3. If a dog defecates at any time on the land to which this order applies and a person who is in charge of the dog at the time fails to remove the faeces from the land forthwith, that person shall be guilty of an offence unless:
  - (a) they have a has reasonable excuse for failing to do so; or
  - (b) the owner, occupier or other person or authority having control of the land has consented (generally or specifically) to their failing to do so

Nothing in this article applies to a person who:

- (a) is registered as a blind person in a register compiled under section 29 of the National Assistance Act 1948; or
- (b) has a disability which affects his mobility, manual dexterity, physical coordination or ability to lift, carry or otherwise move everyday objects, in respect of a dog trained by a prescribed charity and upon whom he relies for assistance

For the purpose of this article:

- (a) a person who habitually has a dog in their possession shall be taken to be in charge of the dog at any time unless at that time some other person is in charge of the dog;
- (b) placing the faeces in a receptacle on the land which is provided for the purpose, or for the disposal of waste, shall be sufficient removal from the land;
- (c) being unaware of the defecation (whether by reason of not being in the vicinity or otherwise), or not having a device for or other suitable means of removing the faeces shall not be a reasonable excuse for failing to remove the faeces;

### **Penalty**

- 4. A person who is guilty of an offence as specified in Article 3 above shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**A COPY** of the order may be at main reception, Norwich City Council, City Hall, St. Peter's Street, Norwich, NR2 1NH between the hours of 9.00 am and 5.00 pm Mondays to Fridays.

Any queries regarding the order should be made to Adrian Akester on (0344) 980 3333.

Dated this XX day of XXXX XXXX

Mr Philip Hyde  
Legal Services  
Norwich City Council  
City Hall  
St. Peter's Street  
Norwich, NR2 1NH

### **Schedule** (description of land to which order applies)

This order applies to all land which is within the administrative area of Norwich City Council and which is:

- i. open to the air (which includes land that is covered but open to the air on at least one side); and
- ii. to which the public are entitled or permitted to have access with or without payment