

DECISION ITEM



REPORT OF	MEETING	DATE	ITEM NO
RESOURCES DIRECTORATE	ENVIRONMENT, HEALTH AND HOUSING COMMITTEE	6 SEPTEMBER 2016	4
THE INTRODUCTION OF A CHARGE FOR FOOD HYGIENE RATING RE-VISITS			

PUBLIC ITEM

This item is for consideration in the public part of the meeting.

SUMMARY

This report recommends the introduction of a charge for re-inspections requested by businesses to re-assess their food hygiene rating under the National Food Hygiene Rating Scheme. Although there was no previous mechanism for charging, legal advice received by the Food Standards Agency (FSA) indicates that powers available to local authorities in England under the Localism Act 2011 allows for the recovery such costs.

RECOMMENDATION

The Environment, Health and Housing Committee is requested to consider and approve the introduction of a fee of £120 for re-inspections under the National Food Hygiene Rating Scheme when requested by the Food Business Operator (FBO).

SUMMARY OF PREVIOUS DECISIONS

At a meeting of the Policy Development Scrutiny Committee on the 3rd February 2011, the Committee RESOLVED to:

1. To recommend that the introduction of the National Food Hygiene Scheme be endorsed
2. To recommend that the National Food Hygiene Rating Scheme policy be adopted

This recommendation was adopted by Cabinet on the 16th February 2011 and the National Food Hygiene Rating Scheme was introduced in Fylde Borough in partnership with the Food Standards Agency.

CORPORATE PRIORITIES	
Spending your money in the most efficient way to achieve excellent services (Value for Money)	✓
Delivering the services that customers expect of an excellent council (Clean and Green)	✓
Working with all partners (Vibrant Economy)	✓
To make sure Fylde continues to be one of the most desirable places to live (A Great Place to Live)	✓
Promoting Fylde as a great destination to visit (A Great Place to Visit)	✓

REPORT

1. Fylde Council operates the National Food Hygiene Rating Scheme in partnership with the Food Standards Agency.
2. The scheme is designed to provide consumers with information about the hygiene standards of food premises which is determined from the most recent food hygiene inspection. The rating reflects the level of compliance with legal requirements.
3. Safeguards are incorporated to ensure fairness to businesses. These include an appeals procedure, a 'right to reply' for publication with the hygiene rating and a mechanism for requesting a re-inspection/re-visit for the purpose of rerating.
4. Previously, the Operator could only request one revisit per programmed inspection which could result in the hygiene score going up, going down or staying the same. In line with the Food Law Code of Practice the reinspection / re-visit must take the form of a full inspection, part inspection or audit to enable the rating to be revised, if deemed appropriate.
5. An inspection / re-visit may not take place within 3 months of the programmed inspection and must be carried out within 3 months of the request being made. Therefore the longest period a food business operator would have to wait for the reinspection / re-visit should be 6 months and the Council were thought to have no statutory powers to charge for the re-inspection.
6. Legal advice received by the Food Standards Agency (FSA) indicates that powers available to local authorities in England under the Localism Act 2011 allows for the recovery of costs for re-inspection requested by businesses to re-assess the food hygiene rating.
7. According to the advice, section 1 of the Localism Act 2011 gives the power to charge for the activity, and this power is limited by section 3(3), which requires the council to secure that, taking one financial year with another, the income from charges allowed does not exceed the costs of provision.
8. This indicates that each local authority will need to set their own costs based on the costs of providing the service. To ensure fairness to businesses local authorities will need to calculate and apply a consistent cost that will cover, but not exceed, the cost of delivery.
9. Fylde Council is one of around 40 local authorities nationally to be approached by the Food Standards Agency to participate in a trial on food hygiene rating (FHRS) rescore charging. The trial will run between August and November 2016 after which the Food Standards Agency will collect information from participating authorities on their experience with a view to rolling-out across England at the end of 2016.
10. The introduction of cost recovery will require early adopters to deviate from some of the current processes set out in the Brand Standard:
 - Requested re-inspections must be carried out within three months of receipt of the request and payment;
 - Limits on the number of requests a business can make will no longer apply. Currently a business can make one request per inspection; and
 - Businesses will need to be notified of the charge for the re-inspection in writing at the same time they are advised of their current rating. The FHRS safeguards information has been amended to reflect that some local authorities will be charging for re-visits from August 2016.
11. The Food Standard Agency has provided guidance on the calculation of indicative costs based on the charge applied for requested re-inspections in Wales, currently set at £160.

12. In order to calculate the costs it is necessary to consider the processes involved, who performs them and the time expended for each process when carrying out requested re-visits. The FSA advises that authorities retain the basis/calculation of costs in case they are queried in the future e.g. by a food business operator or their legal representatives.
13. Using the guidance provided by the FSA it is estimated that the average costs of a revisit by the Fylde Council Food Safety Team to be in the region of £120. This charge will cover administration and officer inspection time and will only apply if the business requests the revisit, not if we decide to revisit to check on essential works to make improvements to food safety standards. A breakdown of the calculation is attached at Appendix 1.
14. The FSA intend to collect information from early adopters for the twelve weeks from 15th August – 7th November 2016 (inclusive). This information will be reviewed and used to inform the wider roll-out, anticipated to take place in early 2017. Authorities that are only able to introduce cost recovery near to, or even some time after 7th November 2016, are still encouraged to take part in the trial. Early adopters would not be expected to pause or stop cost recovery at the end of October so any efforts to adopt this approach policy would certainly not be lost.
15. Taking part in the trial would give Fylde the advantage of being ahead of the game, to overcome any initial challenges before the scheme becomes mandatory, while recouping some of the costs towards re-inspections.
16. Until the charging mechanism is introduced it is not possible to accurately assess the level of income that will be generated from the new fees. However income levels will be within the limits of the delegated authority of this Committee to introduce new fees during the financial year (i.e. less than £25,000 in any financial year).

IMPLICATIONS	
Finance	A charge of £120 for re-inspection requested by businesses to re-assess the food hygiene rating will cover the administration and officer costs and generate unbudgeted income for the Food Safety Team. Until the charging mechanism is introduced it is not possible to accurately assess the level of income that will be generated from the new fees.
Legal	Section 1 of the Localism Act 2011 gives the power to charge for the activity, and this power is limited by section 3(3), which requires the council to secure that, taking one financial year with another, the income from charges allowed does not exceed the costs of provision. Any challenges to the set charges would have to be made by judicial review.
Community Safety	There are no direct community safety implications arising from the report
Human Rights and Equalities	There are no direct human rights and equalities implications arising from the report
Sustainability and Environmental Impact	There are no direct sustainability and environmental impact implications arising from the report
Health & Safety and Risk Management	There are no direct health and safety and risk management implications arising from the report

LEAD AUTHOR	TEL	DATE	DOC ID
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LIST OF BACKGROUND PAPERS		
Name of document	Date	Where available for inspection
National Food Hygiene Rating Scheme	3 rd February 2011	www.fylde.gov.uk
Guidance on the Food Hygiene Rating Scheme: the 'Brand Standard'	August 2016	www.food.gov.uk/enforcement

Attached documents

Appendix 1 – Cost of Recovery for Re-Inspections

Appendix 1 – Cost of Recovery for re-inspections

Re-Inspection Process		Average Cost
1.	Time to print/enter on system and calculate date/verify request/contact FBO	6.70
2.	Carry out re-visit. Explain & leave receipt	60.34
3.	Travel to and from site	26.82
4.	Travel mileage	4.80
5.	Enter on system	7.45
6.	Administration - print letter / sticker	6.70
7.	Any other Admin Function or actions resulting	17.88
8.	Postage / stationery	0.85
9.	Re-visit Cost*	131.55

* The average re-visit cost has been calculated across a small sample of recent re-visits, ranging from £86.10 to £179.97, depending on the complexity of the visit. The average re-visit charge has been rounded down to a standard £120 for the trial period. This will be monitored over subsequent re-visits and adjusted as part of the fees and charges process if required.