

CITY SAFETY ENFORCEMENT GUIDELINES

12 April 2022

Administration

PARENT DOCUMENT: Order Making Policy

PURPOSE

Council's Authorised Officers are entrusted with legislative responsibilities which protect individuals and the community. Our customers include both the people the law places a duty on and those the law protects. While it is ultimately the responsibility of individuals and businesses to comply with the law, we are required to carry out activities which promote and enforce compliance.

In addition to formal enforcement, a range of activities designed to raise awareness of safety practices and legislative requirements are also carried out, e.g. individual, community, or industry education sessions.

This guideline provides:

- guidance on the use of compliance and enforcement options available to the City Safety Team
- consistency of enforcement action in instances of non-compliance
- a commitment to ensure transparency, procedural fairness, and natural justice principles are applied
- a basis to ensure that enforcement action is proportionate to the alleged offence in each case

This guideline may also assist our community to understand responses from the City Safety Team to compliance and enforcement matters.

The guideline aims to support and not limit the discretion of our Officers to act under the legislation.

OPERATION

Enforcement activities can include:

- attending public realm locations, public spaces, and private spaces
- inspecting premises either on a scheduled or random basis
- responding to enquiries and requests

Our Values

We undertake enforcement activities with our values in mind.

customer commitment:

- provide information and advice in plain language about the legislation, codes, standards, and any other policies which apply and will publicise and promote them where possible
- discuss general issues and specific concerns with anyone experiencing difficulties
- provide timely and helpful service

- seek the views of those who receive our services and use this information to continuously develop and improve our service

integrity:

- identify ourselves by name and provide details for further contact with us
- identify ourselves as Authorised Officers regardless of any legislative requirement to do so

innovation:

- commit to participating in best practice methodology
- commit to participating in appropriate trials of new systems, technology, or processes
- regularly review, reflect upon, and update our methodology
- show courage in discussing tough matters often and freely

collaboration:

- work with other teams, programs, and authorities towards effective enforcement activities
- exchange information so far as lawfully possible and participate in joint working initiatives
- ensure that our enforcement actions are effectively co-ordinated to minimise unnecessary delays or backlogs of work

fairness and risk:

- risk assess each matter on its individual circumstances
- prioritise activities according to the seriousness of the issue and the degree of benefit to our customers as a result of successful resolution
- take account of the circumstances and attitude of offenders when considering action, so far as the law allows
- minimise the cost of enforcement by ensuring that any action required is proportionate to the seriousness of the breach of legislation

Enforcement

Enforcement in the context of the City Safety Team means a combination of the provision of advice, together with the possible actions that can be taken, after a breach of legislation has been identified. Enforcement decisions must be fair, consistent, balanced and be effectively prioritised to ensure the public is adequately protected.

In coming to a decision on the most appropriate means of enforcement, an Officer should consider, amongst other relevant factors, the following:

- the seriousness of the offence
- the consequences of continued non-compliance
- the degree of wilfulness involved (including comprehension level, language barrier, cultural differences)
- the offender's history
- individual circumstances (facts of the matter)
- the likely effectiveness of the various enforcement options
- deterrence (both for an individual and community)

- consistency of approach to similar breaches/offences
- the person affected by the breach's history and potential for hyper or hypo sensitivity or (e.g. previous unrelated dealings with the alleged offender, ill health not caused by the issue being investigated)

Factors to be ignored when choosing an enforcement strategy:

- any element of discrimination or bias against the person based on ethnicity, nationality, political association, age, religion, appearance, gender, physical or mental disability, sexuality or beliefs
- personal or professional association or relationship with the alleged offender or any other person involved (if association or relationship discovered, discuss resourcing suitability with team leader)
- possible political advantage or disadvantage to any party involved or any Elected Member

Proportionality - a staged approach

A proportionate response means that our actions will be scaled to the seriousness of a breach and will generally escalate over time if breaches of the law are not corrected.

We understand that most people do not seek to deliberately breach the law and we are most often able to achieve compliance by being open and helpful, offering advice, and providing the chance to discuss and correct compliance issues.

Our attention will be focussed on issues which carry the most serious risks, or where potential hazards are least well controlled.

Notwithstanding the above, we will take immediate action when required (for example to ensure public health and safety or to protect the environment) and take firm action against those who act flagrantly and repeatedly breach the law when circumstances warrant it.

Enforcement options include:

No Action

It may be appropriate to take no action when:

- the alleged offence is outside of our jurisdiction or is trivial in nature
- on investigation, breaches of the legislation are not found
- taking action may prejudice more major considerations
- insufficient facts/evidence/information exist to determine that an offence has been committed or that the responsible person/business can be identified

Education

We use education to enhance compliance by informing businesses and people about legislative and other requirements and by guiding them to relevant sources of information. This is achieved by various means including:

- site meetings
- single point of contact (SPOC) construction management meetings
- information on our website
- information on other agency websites

- fact sheets
- discussion during patrols of areas with predicted high concentrations of potential unwitting offenders (Rundle Mall - smoking, dog parks)
- presentations at business/public events
- one on one discussion with customers

Training

Training is often associated with food business inspections to raise the skills and knowledge of food handlers to improve compliance with relevant food safety standards. When trends emerge, we may implement workshops and training opportunities to achieve improvement in areas of poor performance. Training may also be used to update community groups or businesses on any changes to any other legislative requirements.

Informal Action

Informal action to achieve compliance with legislation may include the following:

- offering verbal or written advice
- verbal warnings and requests for action
- written warnings

Advice from Officers will be clear, simple and where appropriate, be confirmed in writing.

This written documentation will:

- include all the information necessary to make clear what needs to be done to comply with legal requirements and within a specified timeframe
- include the legislation contravened (including section or clause), measures necessary to ensure compliance and the consequences of non-compliance
- clarify what information is a legal requirement and what is simply a recommendation of good practice

The circumstances in which informal action may be appropriate include:

- the breach is not serious enough to warrant formal action
- the consequences of non-compliance will not pose a significant risk
- the person or businesses past history reasonably suggests that informal action will achieve compliance
- confidence in the individual/businesses ability and willingness to achieve compliance is high
- informal action may prove more effective than a formal approach.

Mediation

Mediation is an alternative option where, following investigation, an Officer believes that the matters at hand could be potentially resolved through discussion and action planning. This may mean bringing several areas of council, other agencies or authorities, the alleged offender and the person impacted by the breach together to discuss the matter. Council meeting rooms are available for this purpose, as are libraries and community centres. It may be appropriate to undertake mediation at the

site of the matters as well. The use of formal mediation services may also be appropriate.

Formal Action

Service of Statutory Notices

Statutory Notices will be issued where we have a duty to do so or when the matter cannot be resolved through voluntary action. There are a wide range of Statutory Notices available and the use of these will be in accordance with this guideline and each Officer's individual authorisation:

- *Food Act 2001* – Improvement Notice, Prohibition Order, Emergency Order
- *South Australian Public Health Act 2011* – Preliminary Notice, General Notice, Emergency Notice
- *Dog and Cat Management Act 1995* – Control Orders
- *Local Nuisance and Litter Control Act 2016* – Abatement Notices
- *Local Government Act 1999* – Directions and Orders
- *Fire and Emergency Services Act 2005* – Fire Hazard Notices

Notices generally require work, actions, or other steps to be carried out. Some Notices direct that activities be modified, or to cease.

Notices generally require compliance with the terms of the Notice within a set timeframe. Example: *Food Act 2001* Improvement Notice - cleaning up to 1 week, structural 2-4 weeks, pest control 6 weeks.

Some Notices require immediate action to resolve a matter.

Some Notices require a preliminary Notice advising the offender of Council's intention to issue a Notice, usually with a set time frame for the offender to submit other information or reasoning to Council. This process can also be initiated on a voluntary, non-prescribed basis and should be considered for breaches which are less serious in nature.

In most cases the person receiving a Notice has a right of appeal to the appropriate Court or Tribunal. For Notices which carry an appeal provision, the Officer must advise the recipient in writing of their right to appeal and the relevant legal provisions at the time the Notice is served.

We may issue an Expiation Notice together with a Statutory Notice. We will generally do this where

- the conduct at hand is repeated or blatant in nature
- the breach has not been repeated, however the offender has received previous Notice(s) for similar offences
- the breach is serious in nature and has, or likely to have, impacted the health and safety of others

Failure to comply with a Notice usually allows Council to consider issuing an Expiation Notice, initiating prosecution proceedings, or taking action in default. Utilising

multiple options will only be considered in circumstances where the conduct of the offender and the facts of the matter justifies taking those steps, such as:

- giving false or misleading information
- obstruction of council staff
- harm or risk of harm caused by the matter not being addressed by the offender within specified time frames

Action in Default

Action in default will only be considered in order to secure compliance with the requirements of Statutory Notices in circumstances where the requirements have not been carried out in the time allowed without good reason. Before undertaking works in default, consideration will be given as to whether there is a realistic prospect that the person responsible will complete the works within a reasonable time. Where works are carried out by Council, recovery of all costs over a fair period, using all statutory means available, will be sought.

The decision to carry out action in default will be made by the Associate Director, Regulatory Services.

Making Orders

The following options will be considered individually or collectively with other enforcement action as each particular circumstance warrants:

- prohibition orders, e.g.
 - To limit the handling of food on specified (food) premises, within a specified vehicle or in a specified way or to limit the use of specified equipment
 - To prevent the ownership of a dog for a specified time frame
- other orders, e.g.
 - To manage dog behaviour through a Nuisance, Menacing, Dangerous and Barking Dog Control
 - To achieve compliance with the *Local Government Act 1999* or City of Adelaide By-Laws
- directions, e.g.
 - To prevent occupation of a premises not fit for human habitation
 - To prescribe what steps are required to comply with an Order under the *Dog and Cat Management Act 1995*

Expiation Notices

Expiation Notices may be appropriate for breaches of legislation and the following circumstances are likely to warrant an Expiation Notice:

- a failure to correct an identified problem after having been given reasonable opportunity to do so
- a failure to comply with the requirements of a statutory notice without good reason
- a failure to comply with a specific regulation or requirement

- confidence in the willingness of the individual/business to achieve compliance is low
- a warning has previously been given for a similar offence.

A person receiving an Expiation Notice is entitled to elect to be prosecuted for the alleged offence, therefore there must be substantial, reliable, and admissible evidence that an identifiable person or business has committed the alleged offence.

Prosecution

Prosecutions will not be used as a punitive response to minor breaches of legislation. A prosecution must only proceed where there is a reasonable prospect of a conviction being secured.

The following circumstances are likely to warrant a prosecution:

- a flagrant breach of the law such that health, safety, and welfare have been put at risk
- a failure to correct an identified serious problem after having been given reasonable opportunity to do so
- a failure to comply with the requirements of a statutory notice
- a strong history of similar offences
- an unwillingness, on the part of the individual or business, to prevent a recurrence of the problem

Before prosecution proceedings are initiated, there must be substantial, reliable, and admissible evidence that an identifiable person or business has committed an offence.

A decision to prosecute must be in the public interest. In considering whether prosecution is in the public interest, the following additional factors should be considered:

- whether the offence was deliberate or premeditated
- the need to influence the offender's future behaviour
- the availability and efficacy of any unexhausted alternatives to prosecution
- the prevalence of the alleged offence and the need for deterrence, both personal and community
- the likely length and expense of a trial

The final decision to initiate prosecution proceedings will be made by the Associate Director, Regulatory Services*, together with Council's legal consultant and solicitors.

**except in the case of breaches of the Australia Road Rules which is managed by the Parking & Information Team through a separate enforcement process*

OTHER USEFUL DOCUMENTS

related documents

- **Order Making Policy**

relevant legislation

- *Food Act 2001*
- Food Regulations 2017
- Australia New Zealand Food Standards Code

Food Safety Standard (FFS) 3.2.2 – Food Safety Practices and General Requirements

FSS 3.2.3 – Food Premises and Equipment

FSS 4.2.1 – Primary Production and Processing Standard for Seafood

FSS 4.2.3 – Production and Processing Standard for Meat

FSS 4.2.5 – Eggs and Egg Product

- *Supported Residential Facilities Act 1992*
- *South Australian Public Health Act 2011*
- Guidelines for the Control of Legionella in manufactured water systems in SA
- Standard for the Operation of Swimming Pools and Spa Pools in SA
- Guidelines on the Safe and Hygienic Practice of Skin Penetration
- Guidelines on the Public Health Standards of Practice for Hairdressing
- *SA Public Health (Legionella) Regulations 2013*
- *SA Public Health (General) Regulations 2013*
- *Local Government Act 1999*
- City of Adelaide By-Laws 2018
- *Local Nuisance and Litter Control Act 2016*
- *Dog and Cat Management Act 1995*
- *Expiation of Offences Act 1996*
- *Fire and Emergency Services Act 2005*
- *Environment Protection Act 1993*

GLOSSARY

Throughout this document, the below terms have been used and are defined as:

key word: explanation

transparency: activities are undertaken and decisions are made in an open manner (so far as lawfully possible), so that our community can trust that we are fair and honest.

procedural fairness: procedures used by a decision-maker requiring a fair and proper process be used when making a decision. A decision-maker who follows a fair procedure is more likely to reach a fair and correct decision.

natural justice: basic or fundamental judicial rights extended to a person involved in a dispute. Proceedings should be unbiased and undertaken in good faith, and each party should have equal access and should be aware of the facts.

Authorised Officer: a person appointed by a council as an authorised person

SPOC: Single Point of Contact development facilitator (City of Adelaide staff position)

public realm: areas of the City of Adelaide which are publicly accessible and not privately owned.

ADMINISTRATIVE

As part of Council's commitment to deliver the City of Adelaide Strategic Plan, services to the community and the provision of transparent information, all policy documents are reviewed as per legislative requirements or when there is no such provision a risk assessment approach is taken to guide the review timeframe.

This Policy document will be reviewed every **3** years unless legislative or operational change occurs beforehand. The next review is required in April **2025**.

Review history:

Trim Reference	Authorising Body	Date/ Decision ID	Description of Edits
ACC2021/182239	CEO	12 April 2022	Minor amendments made to illustrate a change in organisation structure
ACC2019/15637	ELT	20 February 2020	Full review and amendments made to include all enforcement processes

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