

## COU0027: COMPLIANCE POLICY

<b>Policy Type:</b>	Council Policy
<b>Responsible Department:</b>	City Services
<b>Responsible Officer:</b>	General Manager City Services Manager Development and Regulatory
<b>Related Policies and Procedures</b>	<ul style="list-style-type: none"> <li>• Building and Swimming Pool Inspection Policy</li> <li>• Footpath Trading Policy</li> <li>• Mobile Food vendor Location Rules</li> <li>• Animal Management Plan</li> <li>• Standard Operating Procedure: Prosecution and Enforcement</li> </ul>
<b>Community Plan Link</b>	<i>Community Living:</i> 1.1 Our Community is active, healthy and feels safe. <i>Civic Leadership:</i> 4.2 Council provides best value services to the community
<b>Date Adopted</b>	27 May 2019: C0008/19
<b>Last review date</b>	-
<b>Next review date</b>	May 2021
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<b>ECM Doc set I.D.</b>	<a href="#">4808602</a>

### 1. PURPOSE

- 1.1. The purpose of this Policy is to establish a framework which guides the Council in education of the community and enforcement with respect to matters of non-compliance. The Policy provides for a common understanding of Council's position in educating the community and considering and actioning enforcement matters.
- 1.2. The Policy provides for consistency and ensures that any action is proportionate to the alleged offence in each case. This policy assists in informing the public and ensuring that transparency and procedural fairness principles are applied in any enforcement action.

### 2. DEFINITIONS

- 2.1. **Authorised Officer** is a person who is authorised to carry out statutory functions or powers as specified within a particular piece of legislation. the decision to appoint an authorised officer may only be made by Council or a delegate of Council.
- 2.2. **Civil Matters** refers to private matters over which Council has no jurisdiction of authority.
- 2.3. **CEO** refers to the Chief Executive Officer (including their delegate) of the City of Unley.

- 2.4. **Compliance** is the act of adhering to and demonstrating adherence to an act, by-law, regulation or similar. compliance may or may not involve the process of enforcement.
- 2.5. **Enforcement** refers to the use of legislative provisions to direct a person or body to make good a breach of an act or council's by-laws and / or otherwise penalise a person for a breach. Enforcement is a tool to ensure compliance and accountability for illegal conduct or other wrongdoing.
- 2.6. **Illegal Activity** is an act or activity which has occurred contrary to legislative obligations contained within legislation and policy.
- 2.7. **Order** is a formal direction(s) issued by Council or Council delegate to a person or entity concerning a breach of a particular piece of legislation.
- 2.8. **Prosecution** is the process of instituting legal proceedings against a person or body in relation to an illegal activity, with the intent of penalising the person/body for illegal activity and making good on the breach.
- 2.9. **SAPOL** is South Australia Police.

### 3. POLICY STATEMENT

- 3.1. Council observes its legislative responsibilities to protect individuals and the community as a whole by applying consistent standards. it is ultimately the responsibility of individuals and other entities to comply with the law. state legislation provides the ability for Council to carry out enforcement action to remedy illegal activities and/or commence proceedings to penalise individuals or entities for such activities.
- 3.2. Council recognises that education is vital to ensuring that the community have the knowledge to achieve compliance with relevant acts or Council by-laws. Council will use education to provide information and advice to individuals and the community in order to encourage compliance with a relevant act or Council by-law. Council considers that prevention of a breach of the act is always preferable to taking action after a breach has occurred. education activities may include:
  - 3.2.1. Signage on Council's streets and reserves
  - 3.2.2. Factsheets, brochures and general information on Council's website
  - 3.2.3. Information provided to individuals or the community from Council officers
  - 3.2.4. Targeted education campaigns
- 3.3. Compliance related activities are performed by Council in the following ways:
  - 3.3.1. By patrolling streets and public places
  - 3.3.2. Inspecting properties either on a routine programmed basis or on an ad hoc or as needed basis
  - 3.3.3. Responding to enquiries and complaints.
  - 3.3.4. Council is committed to the highest ethical and professional standards and strives to apply the most effective and appropriate use of its legislative enforcement powers so as to facilitate achievement of the following in respect of breaches of legislation:
    - 3.3.5. Ensuring that (where appropriate) a breach is rectified in a timely manner and to the reasonable satisfaction of Council

- 3.3.6. Ensuring that the safety and well-being of community members is not compromised by any non-compliance issue
  - 3.3.7. Ensuring that the general public are not unduly inconvenienced by Illegal Activities (e.g. unauthorised parking in bicycle lanes and disabled car parks)
  - 3.3.8. Considering the costs that illegal activities and related prosecution or enforcement actions might have on ratepayers and that costs of enforcement are also reasonably proportionate to the matter to be addressed.
- 3.4. Council will adopt the following approach to matters relating to compliance:
- 3.4.1. Consider all customer enquiries concerning Illegal Activities, that are within Council's jurisdiction and investigate and action as deemed appropriate.
  - 3.4.2. Apply a proactive approach to identifying and investigating Illegal Activities.
  - 3.4.3. Refer to SAPOL or other relevant agency, where appropriate, where it falls outside of Council's jurisdiction.
  - 3.4.4. For civil matters, Council will advise the complainant and suggest that independent advice and/or mediation be sought.

#### **4. LEGISLATIVE CONTEXT**

- 4.1. Council is responsible for ensuring that its community and visitors to its area adhere to the various acts of Parliament and Council by-laws which regulate and control the actions of individuals in order to protect the broader community.
- 4.2. Council is responsible for administering and enforcing compliance pursuant to the following legislation:
  - *Local Government Act 1999*
  - *Development Act 1993 and Development Regulations 2008*
  - *Dog and Cat Management Act 1995*
  - *South Australian Public Health Act 2011*
  - *Food Act 2001*
  - *Fire and Emergency Services Act 2005*
  - *Planning Development and Infrastructure Act 2016 and associated regulations)*
  - *Private Parking Areas Act 1986*
  - *Road Traffic Act 1961*
  - *Local Litter and Nuisance Control Act 2016*
  - *Planning Development and Infrastructure Act 2016*
- 4.3. Council may have the power to:
  - Issue orders, notices and directions to individuals or entities requiring them to make good a breach of the relevant Act
  - Commence enforcement action in a court of competent jurisdiction to obtain orders requiring breaches of the relevant Act to be rectified

- Commence criminal prosecutions against individuals or entities who have committed an offence under the relevant Act
  - In some cases, issue an expiation notice where an individual or entity has committed an offence under the relevant Act.
- 4.4. Other references:
- Fees and Charges Register
  - Order Making Policy
  - Animal Management Plan.
  - Standard Operating Procedure: Prosecution and Enforcement
- 4.5. The Council is also authorised under the *Local Government Act 1999* to create by-laws which apply in its area and is also responsible for taking action against individuals who contravene Council's by-laws. the by-laws relevant to this policy are:
- *Council's By-law No. 1 - Permits and Penalties*
  - *Council's By-law No. 2 - Roads*
  - *Council's By-law No. 3 - Local Government Land*
  - *Council's By-law No. 4 - Moveable Signs*
  - *Council's By-law No. 5 - Dogs*
- 4.6. A copy of the Council's By-Laws can be obtained at Council's website: [www.unley.sa.gov.au](http://www.unley.sa.gov.au).
- 4.7. This Policy does not apply to the enforcement of unpaid rates.

## 5. PRINCIPLES OF GOOD ENFORCEMENT

- 5.1. Enforcement actions are taken within the context of both a legal and policy framework. Council will carry out its enforcement related work with due regard to the following principles:

### **Proportionality**

- 5.2. A proportionate response means that the extent of Council's actions will be determined by having regard to the seriousness of the breach; i.e. a measured enforcement approach will be applied.
- 5.3. Council recognises that most individuals comply with the law and believe that people will generally assist Council in respect of enforcement and compliance issues by being truthful, offering information to Council and being available to discuss compliance concerns.
- 5.4. In respect of proportionality, the following criteria will be considered by Council employees in determining the best course of action:
- Whether there are serious safety or other risks
  - Where potential hazards are not well controlled.
  - The perceived level of impact the breach has on the public.

- 5.5. Council's financial resources are finite and should not be used pursuing inappropriate matters. Council's resources should be deployed in pursuing those cases worthy of enforcement or prosecutorial action. The seriousness and nature of the breach, the relevant legislation, the willingness of the individual or entity to cooperate with any investigation, their contrition and the cost to the Council in pursuing the breach, are all relevant considerations to the Council's exercise of discretion.

### **Consistency**

- 5.6. Council will take a similar approach in similar cases to achieve similar outcomes. Decisions on enforcement and compliance require the use of professional judgement and discretion to assess varying circumstances. To assist with this, Council will:
- Establish and follow standard operating procedures wherever possible
  - Ensure fair, equitable and non-discriminatory treatment
  - Provide clear information to the public that outlines the steps involved in more common regulatory matters.

### **Transparency**

- 5.7. Council will be open and transparent about the manner in which it undertakes enforcement activities and the laws it enforces. Council will also be clear and open about what functions it does and does not perform and redirect enquiries to other appropriate agencies as relevant.
- 5.8. when remedial action is needed, Council will explain clearly and in plain language why the action is necessary. Where relevant, Council will advise what action is required to achieve compliance by remedying the breach and the timeframe for undertaking that action. Advice will be provided on the process for seeking a review of, or how to appeal, against a decision.
- 5.9. Complainants will be advised of what action has been taken and the reason for such action.

### **Conflicts of Interest**

- 5.10. Where a Council employee or contractor has a personal association or relationship, or a perceived association or relationship, with an individual or entity who may have breached a law (or with any other individual or entity involved):
- An alternate Council employee or contractor will make decisions where possible
  - The facts about the conflict/relationship will be reported and recorded in accordance with relevant Council Policies and procedures.

## **6. ENFORCEMENT OPTIONS**

- 6.1. Council administers and enforces a broad range of legislation. As a result, enforcement options can vary with the Act being enforced. In some circumstances, the issuing of enforcement notices may be appropriate, as opposed to the commencement of prosecution proceedings or the issuing of expiation notices. The

range of legislation enforced by Council ensures that a range of enforcement options are available.

### **No Action**

- 6.2. No action will be taken where, after investigation, no breaches of the legislation are discovered.
- 6.3. It may also be appropriate to take no action where:
  - The complaint is deemed by Council to be frivolous, vexatious or trivial in nature
  - The individual or entity who may have breached a law has, or has committed to, making good the breach
  - The alleged breach is outside of Council's jurisdiction and/or a civil matter
  - Taking action may prejudice other more significant investigations
  - Having regard to the principles of proportionality and consistency, Council has determined that the breach is of such a minor nature that action would be an unreasonable use of Council resources.
  - Council deems there is limited substantiated or admissible evidence to justify further action.

### **Informal Action**

- 6.4. Informal action to achieve compliance with legislation may include:
  - Offering an individual or entity who may have breached a law with verbal or written warning
  - Verbal or written warnings that may include requests for remedial action.
- 6.5. Advice from Council will be conveyed clearly and simply and any verbal advice or requests for action will be confirmed in writing, as determined by procedures.
- 6.6. The circumstances in which informal action may be appropriate include:
  - The act or omission is not considered by Council to be serious enough to warrant formal action
  - The past history of the individual or entity who has committed the breach reasonably suggests that informal action will secure compliance
  - Council's confidence in the individual or entity is high
  - The consequences of non-compliance will not pose a significant risk of harm or nuisance to other persons or property
  - Where informal action may prove more effective than a formal approach.
- 6.7. In circumstances where statutory action is not possible but it would be beneficial in a wider public safety context to urge a particular outcome, informal action may be undertaken and the reasons recorded in accordance with Council's Records Management Policy and procedure. The recipient will be made aware that the requested action(s) are not legally enforceable.

## **Mediation**

- 6.8. There may be instances, such as in civil matters, where Council deems the most appropriate course of action is mediation; and Council will suggest the complainant privately engages the services a mediator to assist with resolution.
- 6.9. Mediation is a recommended alternative where, after investigation, Council considers that the issues are unlikely or incapable of resolution through either formal or informal means. The use of mediation services may also be appropriate where an aggrieved individual has no wish to pursue action to resolve a civil complaint by legal means.

## **Formal Action**

- 6.10. Council will use professional judgement and discretion to assess the particulars relating to each matter under consideration, including the reasonableness of the actions required by Council and the timeframe to comply.

## **Formal Warnings**

- 6.11. Prior to proceeding with the issue of an order or expiation, Council may issue a formal warning (verbal or written) to request the remedy of a breach.

## **Service of Orders**

- 6.12. Depending on the nature of the breach and the legislation relevant to the breach, formal orders may be issued by Council or by a relevant court of competent jurisdiction. Orders to address matters of non-compliance will only be used or sought from a court where:
- An Order is required to prevent further Illegal Activities
  - The breach is of such a serious nature so as to warrant immediate action
  - The breach has resulted in a threat to life or an immediate threat to public health or safety
  - Where informal action has failed to achieve compliance.
- 6.13. Formal orders issued verbally will be recorded in accordance with the relevant legislation and Council Policies and procedures. Such orders will also be confirmed in writing within a timeframe prescribed by the relevant legislation.
- 6.14. In most cases, an individual or entity receiving an Order has a right of appeal to an appropriate court. If an Order is served for which an appeal is possible, Council will advise the recipient in writing of the right of appeal and the relevant legal provisions at the time of serving the Order.
- 6.15. Failure to comply with orders will result in further enforcement action.

## **Expiation Notices**

- 6.16. An expiation notice alleges that an individual or entity has committed an offence and sets out an expiation fee, which can be paid to expiate the offence rather than the individual or entity being prosecuted. The evidence obtained to substantiate the issuing of expiation notice must be sufficient to prove that the offence occurred.
- 6.17. Expiation notices may be issued by Council for (amongst other things):

- Parking offences under the *Road Traffic Act 1961*, *Australian Road Rules* and the *Private Parking Areas Act 1986*
  - Dog management offences pursuant to the *Dog and Cat Management Act 1995*
  - Development related offences pursuant to the *Development Act 1993* and Regulations
  - *Planning Development and Infrastructure Act 2016*
  - Food safety offences under the *Food Act 2001*
  - Public realm use and management offences under the *Local Government Act 1999*
  - Public health offences under the *South Australian Public Health Act 2011*
  - Supported residential facility management offences under the *Supported Residential Facilities Act 1992*
  - Nuisance and litter offences under the *Local Litter and Nuisance Control Act 2016*;
  - Breaches of Council's By-laws.
- 6.18. An individual or entity that receives an expiation notice has a right to elect to be prosecuted for their alleged offence instead of paying the expiation fee. Payment of an expiation fee does not constitute an admission of guilt or civil liability.
- 6.19. Additionally, an individual or entity that receives an expiation notice has a right to formally appeal an expiation, which will be reviewed as per Council's expiation review process.

### **Prosecution**

- 6.20. A decision to prosecute must be in the public interest. Council may initiate prosecution proceedings in the following instances:
- The breach is of a serious nature so as to warrant prosecution
  - A person who receives an expiation notice does not expiate the offence by payment or otherwise elects to instead be prosecuted
- 6.21. In considering whether prosecution is in the public interest, the following factors will be considered:
- The prevalence of the alleged offence and the need for deterrence, both personal and general
  - Whether the individual or entity has committed a similar offence in the past
  - Whether the individual or entity has shown remorse or contrition
  - Whether the alleged offence was premeditated
  - The effect on the physical or mental health of the individual or persons comprising an entity or witness, balanced against the seriousness of the alleged offence
  - The availability, competence and credibility of witnesses and their likely impression on the Court



- The admissibility of any alleged confession or other evidence
  - Consistency and procedural fairness relating to the offence
  - Any lines of defence
  - The need to maintain confidence in the Council as a prosecuting authority.
- 6.22. Prosecution proceedings should not be commenced in circumstances where there is not a reasonable prospect of success in securing a finding of guilt against the alleged offender.
- 6.23. The likely length and expense of a trial is a relevant (but not decisive) consideration when deciding whether to prosecute for Illegal Activities. Similarly, the implications and financial burden on an individual or entity will not be a decisive consideration when determining whether to proceed with a prosecution.
- 6.24. As a matter of practical reality, the proper decision in most cases will be to proceed with a prosecution if there is sufficient evidence available to justify a prosecution.
- 6.25. Although there may be mitigating factors present in a particular case, often the proper decision will be to proceed with a prosecution and for those factors to be put to the sentencing court in mitigation. Nevertheless, where the alleged offence is not deemed by Council to be as serious as plainly to require prosecution, Council as the prosecuting authority, may apply its mind to whether the public interest requires a prosecution to be pursued.

### **Cost Recovery**

- 6.26. Council may incur significant costs (legal and / or otherwise) when enforcement action is taken to rectify Illegal Activities. In the interest of reducing the financial burden of pursuing enforcement and compliance matters on ratepayers, where possible, Council will seek to recover those costs incurred in attempting to rectify the breach through the relevant court.

## **7. AVAILABILITY OF POLICY**

- 7.1. The Policy is available for public inspection during normal office hours at:

The Civic Centre,  
181 Unley Road, Unley SA 5061.

A copy may be purchased for a fee as determined annually by Council.

It is also available for viewing, download and printing free of charge from the Council's website [www.unley.sa.gov.au](http://www.unley.sa.gov.au).

## **8. DOCUMENT HISTORY**

<b>Date</b>	<b>Ref/Version No.</b>	<b>Comment</b>
27 May 2019	C0008/19: V1	New Policy