

CITY SAFETY COMPLIANCE AND ENFORCEMENT GUIDELINE

November 2024

administrative

PURPOSE

This guideline supports the City Safety Compliance and Enforcement Policy in providing a clear framework for approaching City of Adelaide's community safety compliance and enforcement activities in a fair, balanced and consistent manner.

The guideline encompasses Council's approach to both proactive monitoring activities and undertaking investigations into concerns raised by members of the public.

The intent of the guideline is to support the Council's Authorised Officers to exercise judgement and act in accordance with the legislation, taking into account their professional expertise and the unique circumstances of each case. The scope of this guideline reflects community safety functions across a large number of Acts, Regulations, Guidelines, Codes and Standards, including but not limited to:

- *Planning Development Infrastructure Act 2016*
- *Local Government Act 1999 (SA)*
- *Local Nuisance & Litter Control Act 2016 (SA)*
- *Public Health Act 2011*
- *Food Act 2001*
- National Construction Code
- Council By-Laws, Policies and Guidelines

This guideline does not address our approach to enforcing breaches relating to on-street parking.

PRINCIPLES

The intent of Council's approach to compliance and enforcement is to undertake our legislated and regulatory obligations with due diligence – and in doing so to keep the city safe, clean and accessible for all.

The City of Adelaide is committed to the following principles in all compliance and enforcement activities:

- Acting in accordance with the principles of natural justice and the rule of law.
- Deploying a risk-based prioritisation to the allocation of compliance and enforcement resources.
- Delivering a proportionate response to compliance matters, scaling our actions to the seriousness of a breach.

- Seeking voluntary compliance and using education first, undertaking formal action only when necessary and appropriate to do.
- Collecting, using and storing all investigative information and data sensitively and appropriately.
- Seeking inter-agency cooperation with other compliance and enforcement agencies at a Local, State and Federal level to achieve community outcomes.

TYPES OF ENFORCEMENT ACTION

Enforcement

Enforcement means a combination of advice together with possible actions that can be taken after a breach has been identified. Enforcement action may follow the investigation of a concern raised by the public or from proactive monitoring activities undertaken by City of Adelaide.

When determining appropriate means of enforcement, City of Adelaide will consider, amongst other relevant factors:

- the seriousness of the offence
- the consequences of continued non-compliance
- the degree of wilfulness involved
- the offender's history
- individual circumstances (facts of the matter)
- the likely effectiveness of the various enforcement options
- consistency of approach to similar breaches/offences.

Factors not considered include:

- the alleged person's ethnicity, nationality, political association, age, religion, appearance, gender, physical or mental ability, sexuality or beliefs
- personal or professional associations with the alleged offender or any other person involved.

No Action

While all requests will be considered, there may be occasions when it is appropriate to take no action. This includes circumstances such as:

- the alleged offence is outside City of Adelaide's jurisdiction or considered trivial
- upon investigation, breaches are not found
- taking action may prejudice larger considerations or outcomes
- insufficient facts/evidence/information exist to determine that an offence has been committed or that the responsible person/business can be identified
- when considering best use of resources, there are higher priorities to deliver.

Informal Action

Informal action is the most common response to minor or first-time alleged offences and is often effective in efficiently achieving compliance. This may include:

- offering verbal or written advice
- education through meetings, references to websites/material or on-site meetings
- verbal warnings and requests for action
- written warnings
- mediation.

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
- past history reasonably suggests that informal action will achieve compliance
- confidence in the ability and willingness to achieve compliance is high.

Statutory Notices, Orders or Actions in Default

Statutory Notices, Orders or Actions in Default are formal instruments governed by Council's Order Making Policy that will be issued when required and/or when the matter cannot be resolved through informal action. There are a wide range of such instruments available, and their use will be in accordance with the relevant legislation, the Policy, and individual authorisations.

Statutory Notices/Orders generally require actions to be carried out by the offending party in a specific timeframe, or that activities must be modified/ceased. Should this not occur, legal action of further escalated penalties will usually apply.

Issuing a Statutory Notice/Order requires a certain threshold of admissible evidence to be obtained. In most cases, anyone receiving a Statutory Notice can appeal to the appropriate Court.

Expiation Notices

Expiation Notices attract a legislated fee to be paid due to the breach identified. Expiations can be issued at the same time as a Statutory Notice/Order or independently. This form of enforcement action may be appropriate in the following circumstances:

- failure to correct an identified problem or the requirements of a Statutory Notice or Order having been given a reasonable opportunity to do so
- severity of the breach identified and the risk to public safety
- failure to comply with a specific regulation or requirement
- confidence of the Authorised Officer of the ability to achieve compliance without an Expiation being issued.

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

Prosecution

Prosecutions and legal proceedings will rarely be used to respond to minor breaches. Prosecution will only proceed where there is a reasonable prospect of a conviction being secured, and other enforcement options have been exhausted.

The following circumstances may warrant consideration for prosecution:

- a flagrant breach(es) of the law such that the health, safety, and welfare of members of the public have been put at risk
- a failure to correct an identified serious problem having been given a reasonable opportunity to do so
- a history of repeat behaviour and/or similar offences
- an unwillingness 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.

Prosecutions often incur large costs and require a significant investment of time and resources. This can involve City of Adelaide resources, and other parties involved or impacted by the alleged offence. As such, a decision to prosecute must be in the public interest. In considering whether prosecution is in the public interest, the following factors are considered:

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

PRIORITISATION FRAMEWORK

The Prioritisation Framework, provided in Attachment A, is provided for the purpose of community transparency in how compliance resources are deployed.

The framework is a guide and does not encompass all possible requests, nor does it detract from City of Adelaide using discretion in responding to individual circumstances and context-specific issues, which may differ from the framework.

Prioritisation is undertaken based on considerations of the requirements of each piece of legislation, in addition to a risk assessment of the broad categories of activities listed.

OTHER USEFUL DOCUMENTS

Related documents

- City Safety Compliance and Enforcement Policy
- Corporate Complaint Handling Operating Guideline
- Council Member Behavioural Support Policy
- Council Member Staff interaction Policy
- Council By-laws and Guidelines
- Order Making Policy

Relevant legislation

- *Planning Development Infrastructure Act 2016*
- *Local Government Act 1999 (SA)*
- *Local Nuisance & Litter Control Act 2016 (SA)*
- *Public Health Act 2011*
- *Food Act 2001*
- *National Construction Code*

GLOSSARY

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

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.

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 Guideline will be reviewed every **3** years unless legislative or operational change occurs beforehand. The next review is required in **2027**.

Review history:

Trim Reference	Authorising Body	Date/ Decision ID	Description of Edits
ACC2024/98716	Associate Director Regulatory Services	12 November 2024	Amended to provide clarity in relation to compliance and enforcement approach
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

Contact:

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Attachment A: City Safety Compliance and Enforcement Prioritisation Framework

The framework supports Council's City Safety Compliance and Enforcement Guideline in outlining the risk and prioritisation approach under core pieces of legislation. The framework provides community transparency in how resources are deployed.

The framework provides a guide for prioritisation of response and does not encompass all possible requests, nor does it detract from City of Adelaide exercising judgement to respond to individual circumstances and context-specific issues as required.

	Community Safety <i>(e.g. Local Govt Act; Local Nuisance and Litter Control Act, permits, by-laws etc)</i>	Environmental Health <i>(e.g. Public Health Act, Food Act, PDI Act)</i>	Development Compliance <i>(e.g. PDI Act, National Construction Code, by-laws)</i>
Priority Category	Example activities/matters included within each priority category	Example activities/matters included within each priority category	Example activities/matters included within each priority category
Priority 1	<p>Dog attacks</p> <p>Wandering dogs (Dangerous and or menacing)</p> <p>Public realm hazards (major)</p> <p>Illegal dumping and litter (hazardous litter) as outlined in Section 22(5) <i>Local Nuisance and Litter Control Act 2016</i></p>	<p>Monitoring of Food Safety audits for businesses serving high-risk foods to vulnerable populations</p> <p>Provision of public immunisation services</p> <p>Annual inspection regime of cooling towers and warm water systems</p> <p>Inspection and monitoring of food businesses in line with SA Health risk classification and associated frequency</p>	<p>Dangerous/hazardous structures</p> <p>Unauthorised works/land uses with potential life safety impacts</p> <p>Building fire safety defects</p> <p>Swimming pool safety defects</p> <p>Unauthorised works to heritage places</p> <p>Excavation near listed or significant trees</p>
Priority 2	<p>Local nuisances: Noise, dust, odour, smoke, vibration</p> <p>Wandering dogs (Not dangerous, and or menacing)</p> <p>Barking dogs</p>	<p>Inspection and monitoring of tattoo parlours and body piercing studios</p> <p>Inspection and monitoring of public swimming pools and spas (water quality)</p> <p>Inspection and monitoring of wastewater and contaminated land</p>	<p>Annual legislated building inspection regime:</p> <ul style="list-style-type: none"> • 66% of Class 1 buildings • 90% of Class 2-9 buildings • 100% of swimming pools <p>Class 10 buildings – complaint based</p>

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	<p>Illegal dumping and litter (non-hazardous litter and general litter)</p> <p>Vacant blocks (fire prevention)</p>	<p>Customer requests based on risk to public safety (e.g. instances of communicable disease, reported insanitary conditions etc.)</p>	<p>Unnotified, but approved, development</p> <p>Maintenance of Essential Safety Provisions</p> <p>Scheduled Building Fire Safety inspections</p> <p>Unauthorised land use/building work – no life safety risks present</p> <p>Condition audits of Heritage Buildings</p> <p>Squatter activity</p>
Priority 3	<p>Problem owned/unowned cats</p> <p>Public realm hazards (minor)</p> <p>Bins on street</p> <p>Unattractive laneways</p> <p>Non-compliant busking, smoking, use of wheeled recreation devices</p> <p>Non-compliant outdoor dining areas/ moveable signs</p>	<p>Non-commercial insanitary condition e.g. severe domestic squalor</p> <p>Supported residential facilities</p> <p>Education and health promotion (general)</p>	<p>Compliance with Development Approvals – no life safety risk present</p> <p>Development condition compliance audits</p> <p>Lodging House licence audits</p> <p>Proactive Joint Task Force inspections</p> <p>Compliance for temporary events/structures</p> <p>Proactive audits of fire safety/ accessibility</p>
Priority 4		<p>Hoarding and squalor (not severe)</p> <p>Vermin reports in commercial/private premises</p> <p>Hairdressers</p>	<p>Neighbour fencing disputes</p> <p>Private stormwater runoff</p> <p>Encroachments on private land</p> <p>Requests regarding non-life safety issues e.g. information requests, Certificates of Occupancy, building classifications etc.</p>