

By-Law Implementation Report

Strategic Alignment - Our Corporation

Public

Tuesday, 19 November 2024
City Finance and Governance
Committee

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EXECUTIVE SUMMARY

Prior to the commencement of revised by-laws, Council is required to formalise relevant delegations and expiation fees to enable effective administration. This report seeks endorsement on these matters to ensure powers can be exercised appropriately. The recommendations of this report maintain the currently adopted approach.

Following a review, revised City of Adelaide by-laws were endorsed by Council on 27 August 2024. The by-law amendments were minor in nature and largely a result of legislative, interpretive or grammatical factors, or the modernising of language.

Revised by-laws will be effective from 5 January 2025, four months from the date of gazetting as required by the *Local Government Act 1999 (SA)*.

RECOMMENDATION

The following recommendation will be presented to Council on 26 November 2024 for consideration

THAT THE CITY FINANCE AND GOVERNANCE COMMITTEE RECOMMENDS TO COUNCIL
THAT COUNCIL

1. Adopts, in accordance with Section 246(5) of the *Local Government Act 1999 (SA)* and Section 14C of the *Acts Interpretation Act 1915*, the expiation fees for alleged offences against Clause 5.1 of Council's Permits and Penalties By-law 2024 and Clause 8.1 of Council's Rundle Mall By-law 2024. These are included at Attachment A to Item 7.4 on the Agenda for the meeting of the City Finance and Governance Committee held on 19 November 2024 effective on the date the by-laws come into operation.
2. Authorises in exercise of the power contained in Section 44 of the *Local Government Act 1999 (SA)* and Section 14C of the *Acts Interpretation Act 1915*, the powers and functions under the following by-laws and specified in the proposed Instruments of Delegation for by-laws contained in the Attachments B – I to Item 7.4 on the Agenda for the meeting of the City Finance and Governance Committee held on 19 November 2024, to be hereby delegated to the person occupying the office of the Chief Executive Officer, or any person acting in the position of Chief Executive Officer effective on the date on which the by-laws come into operation, subject to the conditions and or limitations specified herein or in the Schedule of Conditions in the proposed Instruments of Delegation for the by-laws:
 - 2.1. Permits and Penalties By-law 2024
 - 2.2. Local Government Land By-law 2024
 - 2.3. Roads By-law 2024
 - 2.4. Waste Management By-law 2024
 - 2.5. Rundle Mall By-law 2024
 - 2.6. Dogs By-law 2024
 - 2.7. Cats By-law 2024
 - 2.8. Lodging House By-law 2024.

3. Authorises the Chief Executive Officer to sub-delegate the powers referred to in paragraph 2 to other employees of the Council:
 - 3.1. As the Chief Executive Officer considers fit; and
 - 3.2. In accordance with the relevant legislation; unless
 - 3.3. Otherwise indicated in this report; or
 - 3.4. Otherwise indicated in the Schedule of Conditions contained in the proposed Instruments of Delegation for the by-laws.
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IMPLICATIONS AND FINANCIALS

City of Adelaide 2024-2028 Strategic Plan	Strategic Alignment – Our Corporation
Policy	By-laws are a legislated function within the <i>Local Government Act 1999 (SA)</i> . The revised by-laws have no material impact on existing policies.
Consultation	All required consultation has been completed.
Resource	Not as a result of this report.
Risk / Legal / Legislative	Legal advice has been sought to ensure the process is legislatively sound.
Opportunities	That CoA has appropriate and applicable by-laws in place to ensure Council continues to be a convenient, safe and comfortable environment for all.
24/25 Budget Allocation	Not as a result of this report.
Proposed 25/26 Budget Allocation	Not as a result of this report.
Life of Project, Service, Initiative or (Expectancy of) Asset	By-laws must be renewed every seven (7) years but can be reviewed at any time within the 7 years.
24/25 Budget Reconsideration (if applicable)	Not as a result of this report.
Ongoing Costs (eg maintenance cost)	Not as a result of this report.
Other Funding Sources	Not as a result of this report.

DISCUSSION

Background

1. The *Local Government Act 1999 (SA)* allows councils to make by-laws.
2. By-laws are a form of legislation designed to provide good governance, convenience, safety and public amenity to the community.
3. City of Adelaide (CoA) has nine by-laws:
 - 3.1. By-law 1 – Permits and Penalties
 - 3.2. By-law 2 – Moveable Signs
 - 3.3. By-law 3 – Local Government Land
 - 3.4. By-law 4 – Roads
 - 3.5. By-law 5 – Waste Management
 - 3.6. By-law 6 – Rundle Mall
 - 3.7. By-law 7 – Dogs
 - 3.8. By-law 8 – Cats
 - 3.9. By-law 9 – Lodging Houses.
4. There are no delegable powers under By-law No. 2 - Moveable Signs, which is why it does not appear in the list referred to in recommendation 2.

City of Adelaide By-law Review Journey – 2024

5. The *Local Government Act 1999 (SA)* requires by-laws to be renewed every seven years.
6. CoA adopted revised by-laws at its meeting on 27 August 2024 ([Link 1](#)).
7. Following Council adoption, the by-laws were tabled in Parliament for review by the Legislative Review Committee for a 14-day period. This process has now concluded, with no objections made or received.
8. The revised by-laws will commence on 5 January 2025, four months from the date they were gazetted as required by Section 249(5) of the *Local Government Act 1999 (SA)*.
9. In enacting the new by-laws, certain decisions need to be formalised as per the requirements of the *Acts of Interpretation Act 1915*. This will ensure the by-laws are legally enforceable and administered appropriately.
10. These decisions relate to Council's authority to:
 - 10.1. Set expiation fees for alleged offences, and
 - 10.2. Delegate authority to the CEO (and for the CEO to sub-delegate to appropriate staff members) to issue permits and permission for activities requiring permission and to approve or authorise other Council powers and requirements under the by-laws.
11. The recommended decisions in this report maintain the currently adopted approach. If endorsed, they will not alter Council's approach with the community, enabling a smooth transition to the new by-laws.

Expiation of Offences and Associated Expiation Fees

12. In certain circumstances it may be necessary to issue expiation notices for alleged breaches of the by-laws.
13. Section 246(5) of the *Local Government Act 1999 (SA)* provides that expiation fees may be fixed for alleged offences against by-laws by Council, but an expiation fee fixed by the Council cannot exceed 25 per cent of the maximum fine for the offence to which it relates.
14. As CoA's expiation fees have not been set within the by-laws themselves, it is necessary for Council to set expiation fees by separate resolution, via this report.
15. The maximum penalty for offences against general by-laws is \$1,250, as outlined in *the Local Government Act 1999 SA*. Therefore the maximum expiation fee Council can set is \$312.50 (25%).
16. The maximum penalty against breaches for the Rundle Mall By-law is \$250, as outlined in *the City of Adelaide Act 1998*. Therefore the maximum expiation fee Council is able to set is \$62.50 (25%).
17. The by-laws provide for a number of offences which may be expiated when necessary. Proposed fees are set out in **Attachment A**.

18. The proposed expiation fees are consistent with 2024/25 fees and charges in place for breaches. Consistency in expiation amounts across breaches enables easier education and understanding in the community, as well as administrative benefits.
19. Use of the maximum fee is reflective of the nature of the impact of a proven breach, and that expiations are not the only method used to obtain compliance.
20. As outlined in Council's City Safety Compliance & Enforcement Policy, an expiation is generally only issued following a failure to act or correct a breach following informal advice and education. The fee is therefore reflective of this and the resourcing required to issue an expiation.

Delegations

21. By-laws provide that a number of powers and functions of an operational nature be vested in the Council.
22. This includes matters such as the issuing of permits, granting of approvals and authorisations, and the issuing of licences.
23. In accordance with Section 44 of the *Local Government Act 1999 (SA)*, Council may delegate powers and functions to the Chief Executive Officer. Those powers and functions may also be further delegated by the Chief Executive Officer.
24. **Attachments B-I** set out the proposed delegations as are necessary to efficiently administer the by-laws.
25. In the interest of effectively administering those operational functions, it is recommended that the Council delegate the relevant powers and functions as set out in recommendations 2 and 3.
26. The proposed delegations mirror the current framework and will not impact current operations.

Next Steps

27. By-laws come into effect on 5 January 2025.
28. By-laws must be reviewed and made every seven years, however there is an opportunity to review, edit or create new by-laws on a more frequent basis.

DATA AND SUPPORTING INFORMATION

Link 1 – Council Report 27 August 2024: By-law Review – Consultation Feedback and Endorsement

ATTACHMENTS

Attachment A – By-law Expiation Fees 2024

Attachments B – I – Proposed Instruments of Delegation under By-laws

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