## Enforcement Policy

*This policy is set by Council for use by the community and council administration*

<table>
<thead>
<tr>
<th>ECM Document Set No.:</th>
<th>3513541</th>
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<tbody>
<tr>
<td>Version No.:</td>
<td>1</td>
</tr>
<tr>
<td>Date of Current Version</td>
<td>25 June 2019</td>
</tr>
<tr>
<td>Responsible Team</td>
<td>Health, Environment &amp; Regulatory Services</td>
</tr>
<tr>
<td>Other Key Internal Stakeholders</td>
<td>Development Services, Governance</td>
</tr>
<tr>
<td>Initial Date of Adoption</td>
<td>25 June 2019</td>
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<tr>
<td>Last Reviewed</td>
<td>N/A – New policy</td>
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<tr>
<td>Authorised By</td>
<td>Ordinary Council</td>
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<tr>
<td>Resolution No.:</td>
<td>3607</td>
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<tr>
<td>Legal Requirement</td>
<td><em>Local Government Act 1999</em></td>
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<tr>
<td>Date of Next Review</td>
<td>June 2021</td>
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1. Purpose

Council is charged with legislative responsibilities which protect individuals and the community as a whole. Council’s customers include both those on whom the law places a duty and those whom the law protects. While it is ultimately the responsibility of individuals and other bodies to comply with the law, Council staff are required to carry out activities which enforce compliance.

This policy is an “umbrella” policy which outlines the City of Playford’s approach to enforcement matters and provides staff with direction about the manner in which enforcement activities are to be undertaken.

This Policy recognises that prevention of behaviours to avoid a breach of legislation is optimal; therefore education is a critical component in our roles. It is also recognised that prevention may not always be achievable, which is where encouragement and enforcement may take the lead role. This Policy aims to ensure the right balance of education, encouragement and enforcement is achieved.

In addition to setting the principles for good enforcement overall within our City, this Policy also covers our legislative requirement under Section 259 of the Local Government Act 1999 for Council to establish a policy regarding the making and issuing of Orders.

2. Scope

This Policy is relevant to all enforcement actions undertaken under all legislation delegated to Council and Council staff, and its authorised contractors, for and on behalf of the City of Playford.

Departmental decision making frameworks and processes are not within the scope of this document.

It is incumbent on individual teams within Council to develop appropriate decision making processes and procedures in line with this Policy and their legislative duties relevant to their area of responsibility.

3. Legislation and References

This Enforcement Policy regards to the following legislation:
City of Playford By-Laws
Development Act 1993 and Development Regulations
Dog and Cat Management Act 2005 and Regulations
Environment Protection Act 1993 and Regulations
Expiration of Offences Act 1996 and Regulations
Fire and Emergency Services Act 2005 and Regulations
Food Act 2001, Regulations and Codes
Housing Improvement Act 2016 and Regulations
Local Government Act 1999 and Regulations
Local Nuisance and Litter Control Act 2016 and Regulations
Private Parking Areas Act 1986 and Regulations
Road Traffic Act 1961, Regulations and Codes
South Australian Public Health Act 2011 and Regulations, Standards and Policies
Supported Residential Facilities Act 1992 and Regulations

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4. Definitions

4.1. Council adopts a broad definition of “enforcement” which combines the provision of advice and assisting compliance with formal action where necessary. This is intended to encourage higher levels of voluntary compliance with legal requirements by individuals, businesses and other bodies.

4.2. **Authorised Officer** – a person whom is authorised under legislation to undertake tasks pursuant to that legislation.

4.3. **Council** – The City of Playford

4.4. **Order/Notice** – A written formal request to refrain or undertake works to ensure compliance with legislation

4.5. **Expiation** – The act of reparation for non-compliance with a notice/order or a breach of legislation, for which a relevant ‘Expiation fee” is applied.

5. Policy

5.1. Principles of Good Enforcement

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

<table>
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<tr>
<th>Consistency</th>
<th>Council will endeavour take a similar approach in similar cases to achieve similar outcomes. While decisions of enforcement require the use of professional judgement and discretion to assess varying circumstances, Officers will:</th>
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<tr>
<td></td>
<td>• Follow standard operating procedures</td>
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<td></td>
<td>• Ensure fair, equitable and non-discriminatory treatment; and</td>
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<td></td>
<td>• Record any deviation from standard operating procedures and the reasons.</td>
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<tr>
<th>Outcome Driven</th>
<th>Council will provide support, advice and guidance to assist compliance with relevant legislation and build on community capability.</th>
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<tr>
<th>Transparency</th>
<th>Council will demonstrate impartiality, balance and integrity when it undertakes enforcement activities.</th>
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<tr>
<th>Accountability</th>
<th>Council is willing to explain their enforcement decisions and make available avenues for complaint or appeal. (see Complaints Handling Policy, and the <em>Expiation of Offences Act 1996</em>)</th>
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<th>Proportionality</th>
<th>Enforcement measures are proportionate to the seriousness of the conduct.</th>
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Responsiveness

Enforcement responsiveness is proportionate to the particular circumstances in line with current service standards, and the risk to community.

Targeted

Enforcement activities are focused on the areas of assessed highest risk and the Service Standard of each relevant team.

Cross functional

We will work with other teams, portfolios and authorities towards effective enforcement activity. We will do this by means of exchanging information and joint working initiatives.

Notwithstanding the above, Council 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 unlawfully when circumstances warrant.

Based on Councils assessment of the alleged offence and the principles outlined in this Enforcement Policy, an impartial and professional judgement on an effective enforcement strategy will be made. The following Criminal Champion Scale will help officers decide which enforcement options are most appropriate.

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<th>Intent / Motivation</th>
<th>Examples / Scenarios</th>
<th>Possible Enforcement Response</th>
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<tr>
<td><strong>Criminal</strong> – as defined by the relevant legislation in each case, but generally a behaviour associated with intentional or serious negligence leading to harm or injury.</td>
<td>Serious and repeated public health risk regarding a long term non-compliant food businesses; dog owner not complying with a Dangerous Dog Order</td>
<td>Prosecution, Referral to appropriate authority (e.g. Police)</td>
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<tr>
<td><strong>Chancer</strong> – someone who is reasonably expected to know the laws but is willing to risk it</td>
<td>Illegal dumping; Non-compliant long term food business proprietor; parking breaches</td>
<td>Notice, Expiation, Prosecution through election or repeated offences</td>
</tr>
<tr>
<td><strong>Careless</strong> – someone who is reasonably expected to know the laws but has not given sufficient attention or thought to avoiding non-compliance</td>
<td>Dog owner failing to micro chip their dog; Poor stock rotation causing food to be sold after its use-by date; Noise or odour issues causing a nuisance</td>
<td>Education, Warning, Expiation for repeated offences</td>
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<tr>
<td><strong>Confused</strong> – someone who has little experience or</td>
<td>A new food proprietor has commenced operation and has</td>
<td>Enable compliance, Education, Warning</td>
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Encourage Improvement

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| Knowledge of the laws or someone who lacks clear distinction of the elements of the law and has accidentally breached it. | Not supplied a food business notification form; Putting out hard waste on council verge | Food premises meeting the minimum requirements 3 stars; Placing hardwaste in their property in the front yard adjacent the boundary days before the collection; Dog owners having their dogs registered within the registration time. | Enable compliance, Positive Compliance reports, Council data and reporting |
| Compliant – someone who is reasonably expected to know the laws and displays such knowledge, skills and experience to meet the requirements of laws. | Food premises attaining consistent 5 star rating; Residents who properly separate their refuse into the various waste streams; Dog owners that not only have their dogs registered but are obedience trained, microchipped and desexed. | Positive Compliance Reports, Recognition of attainment, reward with reduced fees where possible. |
| Champion – someone who understands the laws and displays knowledge, skills and experience, and is willing to educate and demonstrate to others. |

5.2 Responsibilities

Only Officers who are competent by training, qualification and/or experience will be authorised to undertake enforcement activities. Officers will also have sufficient training and understanding of Council’s policies and procedures to ensure a consistent approach to their duties. Any decision to act other than in accordance with this policy must have approval from the relevant Manager and the reasons for action recorded in accordance with Council’s Records Management protocols. Officers are required to show their authorised officers identification card when requested to do so.

Officers must ensure they have the appropriate delegation and/or authorisation to undertake any enforcement matters.

5.3 Decision making process

The decision making process for each team may vary depending on the legislation that is being managed, and the community outcomes to be achieved. Appropriate and relevant decision making frameworks may be developed by individual teams or departments. Decision making frameworks will be developed in-line with, and make reference to, this Policy.

5.4 Enforcement Options

A number of enforcement options are available which will be dependent on the merits of each matter being considered. These options are as follows:

5.4.1 No Action

No action may be taken when, after investigation, no breaches of the legislation are discovered, or where the breach is insignificant or inconsequential with regard to community

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impact. Where a decision is made to take no action, this decision will be forwarded to the person/s making a complaint in the form of written communication.

5.4.2 Mediation

Where appropriate, dependent upon the severity of the breach, Council will make mediation available.

5.4.3 Informal Action

Education and encouragement tools may be utilised in accordance with relevant team level Standard Operating Procedures, Policies and the Customer Guarantee. Other forms of informal action the officer may choose to utilise include:

- offering verbal advice;
- provision of information (e.g. Guidelines/ Fact sheets)
- corrective action requests;
- verbal warnings and requests for action; or
- written warnings.

5.4.4 Service of Orders/Notices

An Order/Notice is a written direction of Council requiring specific action to be taken to secure legislative compliance. A range of legislation administered across the organisation provides Authorised Officers with the ability to issue an Order/Notice and specific requirements as detailed in the relevant Act that the officer is authorised.

Notwithstanding the provisions of other legislation, Section 254 of the *Local Government Act 1999* gives Council Order Making Powers that allows Authorised Officers to order a person to do, or to refrain from doing, a specified activity.

The process of issuing an order under the Order Making Power is defined in Section 255 of the *Local Government Act 1999*.

5.4.5 Action regarding Default of Order/Notice

Failure to comply with Orders/Notices may incur further enforcement action such as Council taking action on default of the Order or Notice, or the issuing of an Expiation Notice, or the commencement of prosecution proceedings.

5.4.6 Service of an Expiation Notice

If an expiation fee is fixed by or under an Act, regulation or By-Law in respect of an offence, an Expiation Notice may be given under the *Expiation of Offences Act 1999*.

A person receiving an Expiation Notice is entitled to elect to be prosecuted for the alleged offence. Hence there must be substantial, reliable and admissible evidence that an identifiable person or organisation has committed the alleged offence. (There must be sufficient *prima facie* evidence to enable a conclusion to be reached that there is a reasonable prospect of being able to prove an offence).

Council Officers will use professional judgement and discretion to assess the variables relating to each matter under consideration. Where an Expiation Notice is issued for non-compliance with an Order, this will include the reasonableness of the actions required by the Order and the timeframe to comply.
5.4.7 Prosecution

A prosecution will only proceed where there is a reasonable prospect of a successful outcome being upheld in the relevant court.

Where circumstances warrant a prosecution all relevant evidence and information will be considered to enable a consistent, fair and objective decision to be made. Before a prosecution is recommended there must be substantial, reliable and admissible evidence that an identifiable person or organisation has committed the offence.

The final decision to prosecute will be made by the Chief Executive Officer or their delegate.

6.0 Responsibilities

The Health, Environment & Regulatory Services department will be responsible to implement the policy. However it is appreciated that this policy may impact other departments that are responsible for managing other pieces of legislation.

7.0 Relevance to Strategic Plan

This policy links to: Strategy 1 Our Foundations – Services, City Presentation and Community Pride.

8.0 Accessibility

This Policy will be located on Council’s website.

9.0 Feedback

We invite your feedback on this policy which can be directed to ‘Senior Manager Health, Environment and Regulatory Services’ to playford@playford.sa.gov.au.

10.0 Approval and Change History

<table>
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<tr>
<th>Version</th>
<th>Approval Date</th>
<th>Approval by</th>
<th>Change</th>
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<tr>
<td>1</td>
<td>25/06/2019</td>
<td>Ordinary Council (Resolution No. 3607)</td>
<td>N/A – New policy (Revoke Order Making Policy)</td>
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