

CITY OF WEST TORRENS



Council Policy: Expiation Notice Decision Review

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Objective ID:	A4984
Applicable Legislation:	Expiation of Offences Act 1996 Planning, Development and Infrastructure Act 2016 Dog and Cat Management Act 1995 Environment Protection Act 1993 Fire and Emergency Services Act 2005 South Australian Public Health Act 2011 Food Act 2001 Local Government Act 1999 Supported Residential Facilities Act 1992 Road Traffic Act 1961 Private Parking Areas Act 1986 Road Traffic (Miscellaneous) Regulations 2014 Local Nuisance and Litter Control Act 2016 Australian Road Rules
Related Policies or Corporate Documents:	Parking Permits and Exemptions Policy Correspondence Administration Policy Internal Review of Council Decisions Policy By-laws No. 1 - Permits and Penalties By-law No. 2 - Local Government Land By-law No. 3 - Roads By-law No. 4 - Moveable Signs By-law No. 5 - Dogs
Associated Forms:	Review of a Council Decision (To Expiate - Parking and Stopping Offences) Form
Note:	

Responsible Managers:	Manager Compliance and Waste		
	Manager City Development		
	Manager City Assets		
Confirmed by General Manager:	General Manager Natural and Built Environments	Date	03 November 2021
	General Manager Corporate and Compliance	Date	03 November 2021
Endorsed by Council:		Date	01 March 2022

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COUNCIL POLICY - Expiation Notice Decision Review

1. Preamble

- 1.1 This policy provides an avenue for the review of a decision to issue an expiation notice pursuant to provisions of the *Expiation Offences Act 1996* and the requirements of Section 270 of the *Local Government Act 1999*.
- 1.2 This policy acknowledges the right of a person who has been issued with an expiation notice by the Council to request a review of that decision.
- 1.3 This policy is to ensure that all review requests are dealt with consistently, equitably, fairly, and impartially. In all situations, the principles of natural justice will be applied.

2. Scope

- 2.1 The policy clarifies the responsible officer for the management of an application for review against a Council issued expiation notice.
- 2.2 This policy outlines the appropriate matters to be considered in the process of review against a Council issued expiation notice.
- 2.3 This policy is relevant to all expiation notices issued by Authorised Officers on behalf of the Council.
- 2.4 The review mechanism set out in this policy provides a cost effective, just and flexible alternative for both Council and those persons issued with a notice by allowing the matter to be considered and resolved before it is escalated to the courts.

3. Legislation

- 3.1 Expiation notices may be issued by authorised Council officers under the provisions of the *Expiation of Offences Act 1996* for alleged offences under the:
 - *Local Government Act 1999*
 - *Planning, Development and Infrastructure Act 2016*
 - *Local Nuisance and Litter Control Act 2016*
 - *Dog and Cat Management Act 1995*
 - *Environment Protection Act 1993*
 - *Fire and Emergency Services Act 2005*
 - *South Australian Public Health Act 2011*
 - *Food Act 2001*
 - *Supported Residential Facilities Act 1992*
 - *Road Traffic (Miscellaneous) Regulations 2014*
 - *Private Parking Areas Act 1986*
 - *Australian Road Rules*
 - Council's By-laws
- 3.2 The *Expiation of Offences Act 1996* provides details on the procedure to be followed after an expiation notice is issued.

4. Definitions

4.1 Expiation Notice

Expiation notice refers to a notice issued for an alleged offence against one of the Acts listed above. An expiation notice provides the alleged offender with the opportunity to deal with an alleged offence by payment of a fee set by legislation to Council, without having to be summonsed to Court, where they risk a fine and conviction. An expiation notice alleging non-compliance with an Act may only be issued by an Authorised Officer who has been provided the relevant authority to do so under either the *Expiation of Offences Act 1996* or the relevant Act.

4.2 Responsible Officer

Responsible Officer refers to:

- In respect of the Compliance and Waste Department, a team leader, manager or general manager; or
- In respect of the City Assets and City Development Departments, a manager or general manager.

4.3 Trifling

An offence will be regarded as trifling for the purposes of an expiation notice issued under the *Expiation of Offences Act 1996* if, and only if, the circumstances surrounding the commission of an offence were such that the alleged offender ought to be excused from being given an expiation notice on the ground that:

- There were compelling humanitarian or safety reasons for the conduct that allegedly constituted the offence; or
- The alleged offender could not, in all the circumstances, reasonably have averted committing the offence; or
- The conduct allegedly constituting the offence was merely a technical, trivial or petty instance of a breach of the relevant enactment.

5. Policy Statement

5.1 Responsibilities and Authority

- 5.1.1 In the interests of transparency and accountability, neither Elected Members nor independent members of a Section 41 Committee will become involved in the consideration of review against the decision to issue an expiation notice or hear deputations regarding expiation notices.
- 5.1.2 Only those officers with the relevant authority will be able to withdraw or waive an expiation notice.
- 5.1.3 Unless the CEO directs otherwise, reviewing and responding to expiation complaints and requests from Members of Parliament will be the responsibility of the CEO, consistent with the requirements of Council's *Correspondence Administration Policy*.
- 5.1.4 An application for review will otherwise be the responsibility of a Responsible Officer.

- 5.1.5 A Responsible Officer may refuse to consider an application for review if it appears that the application is frivolous or vexatious.
- 5.1.6 Records will be maintained to meet reporting obligations under Section 270(8) of the *Local Government Act 1999*.
- 5.1.7 No fees will be charged for the application for review.

5.2 Review Process

- 5.2.1 If a person believes an expiation notice should not have been issued, or was issued without relevant or adequate evaluation of the circumstances surrounding the alleged offence, a written application for review of the decision to issue an expiation notice must be submitted to Council on the appropriate form. A person may seek to have the expiation notice withdrawn or set aside on the basis that:
 - they did not commit the offence the subject of the notice;
 - an expiation notice should not have been given with respect to the offence;
 - they were not (in the case of motor vehicle related offences) the owner or driver of the vehicle at the time of the alleged offence;
 - the expiation notice is defective; or
 - the alleged offence to which the notice relates is trifling.
- 5.2.2 The applicant will be asked to provide all written or pictorial evidence which may be useful in support of their review application. In certain circumstances, a statutory declaration may be required to accompany the review request.

NB: If a person seeks review of the expiation notice on the grounds that the offence to which the notice relates is trifling, Council may *require* the application, or information supporting the application, to be verified on statutory declaration. Council may also *require* the applicant to provide further information to assist it in undertaking the review.

In the case of motor vehicle related offences, a person who was not the driver or owner of a vehicle at the time the notice was issued is invited to submit a statutory declaration nominating the new owner or the driver (as the case may be).

- 5.2.3 The following review process will be conducted and completed within a reasonable timeframe:
 - For parking and related expiations, a written request will only be submitted on the *Review of a Council Decision (To Expiate - Parking and Stopping Offences) Form*.
 - For all other expiations, review requests must be submitted in writing which may be in letter or email form.
 - A review request must be submitted by the expiated person or organisation, or a person acting with the consent of the expiated party. Consent so provided must be evidenced in writing and accompany the review request.
 - The Responsible Officer will place the expiation notice on hold in relation to the fee and any reminder fees until such time as the review request is completed. If the notice is to stand, suitable time will be allowed to pay

the expiation fee, any other prescribed fee (being a reminder or enforcement warning notice fee) and/or associated levies.

- The Responsible Officer will examine Council records which relate to the issue of the expiation notice and may contact the officer who issued the notice to request an account (if possible) of any events or the circumstances surrounding the alleged offence.
- The Responsible Officer will make a determination based on this evidence as to the removal, waiving or reinstatement of the expiation notice.
- The Responsible Officer must advise the applicant in writing of the results of the review and the subsequent decision.
- Only one review will be considered with Council's determination final. The applicant will be advised that if they are unhappy with the outcome of the review, they may elect to be prosecuted in accordance with clause 5.2.5, seek legal advice or contact the Ombudsman.

5.2.4 If at any time the Administration discovers a processing or procedural error, a review will be instigated. If a systematic error is detected, a hold on the issuing and processing of all expiation notices of that class (e.g. parking) will be implemented until the process is adequately reviewed to ensure that no further fees are incurred or enforcement action is taken.

5.2.5 The recipient of an expiation notice may elect to be prosecuted under Section 8 of the *Expiation of Offences Act 1996*. If this election is made, a summons may be issued setting out when and where the person is required to attend court to answer the allegation.

5.2.6 Nothing in this policy prevents a person from making a complaint to the Ombudsman at any time under the *Ombudsman Act 1972*.

5.3 Circumstances for Review

5.3.1 Each application for review will be assessed on its own merits and considered on an individual basis.

5.3.2 An authorised Council officer may consider withdrawing an expiation notice in the following circumstances:

- If a reviewing officer is of the opinion that the alleged offender did not commit the offence(s), or that the notice should not have been given with respect to the offence(s);
- A processing error, including an oversight of the facts or a procedural error has occurred and the notice is rendered defective;
- The alleged offender was not (in the case of a motor vehicle related offence) the owner or driver of the vehicle at the time of the alleged offence and has provided Council with a statutory declaration nominating the new owner or driver (in such cases, the expiation notice will be reissued to the nominated owner/driver who will be advised of the receipt of the statutory declaration by Council);
- It is decided that the alleged offender should be prosecuted for the offence(s); or

- If a reviewing officer is satisfied that the offence is trifling.

- 5.3.3 A person's inattention to their circumstances, or ignorance of the law, will not be considered sufficient reason to withdraw an expiation notice.
- 5.3.4 A declaration of financial hardship is not sufficient grounds for the expiation to be waived by Council. However, in these circumstances, the applicant can apply to the Fines Enforcement and Recovery Unit of the Department of Treasury and Finance to enter into a payment plan in respect of the notice.
- 5.3.5 With the exception of Council By-laws, expiation fees, together with any prescribed fee and associated levies are set by the State Parliament under legislation and/or the State Government under Regulation, and not by Council. Council is required to issue expiation notices containing the fees prescribed by State law, and cannot reduce the fee payable.

5.4 Completion of Review

- 5.4.1 If the result of a review is that the expiation should stand, the applicant will be required to either:
- Pay in full the prescribed fee and any associated levies, in accordance with the procedures outlined in the *Expiation of Offences Act 1996*; Enter into a payment plan with the Fines Enforcement and Recovery Unit;
 - Contact the Ombudsman;
 - Seek legal advice; or
 - Elect to be prosecuted, and have the matter determined by a court.
- 5.4.2 Failure by the alleged offender to take any action will result in the expiation notice being referred to the Fines Enforcement and Recovery Unit for enforcement.