

## 1. RATIONALE

The City of Marion is charged with legislative responsibilities which protect individuals and the community as a whole. This includes responsibilities for the safety and amenity of the community's environment under various laws and by-laws as referenced in Section 7 of this Policy.

Breaches or potentially unlawful activity under relevant laws and by-laws may be brought to Council's attention via complaints or public enquiries or detected by Authorised Officers during compliance activity such as patrols or inspections. Council then undertakes enforcement activity and action in accordance with relevant laws, by-laws and this Policy. This may involve informal action such as verbal or written advice or warnings, and formal action such as issuing orders or expiation notices and/or initiating prosecution proceedings, where appropriate.

## 2. POLICY STATEMENT

Enforcement activity is underpinned by the principles of fairness and impartiality and transparent and accountable decision-making. Authorised Officers undertake enforcement activity in a fair, equitable, transparent, timely and consistent manner. Any conflicts of interest (e.g. personal association with an alleged offender) must be disclosed in accordance with the *Code of Conduct* and managed accordingly.

Enforcement action undertaken by Council will be proportionate to the alleged offence and comply with legislative requirements, where applicable.

Council may prioritise enforcement activity and action according to the seriousness of the offences and the degree of risk to the community.

Any individual or business aggrieved by a decision of Council under this Policy may follow the steps set out in Council's *Complaint and Grievance Policy*.

## 3. OBJECTIVES

The primary objectives of this Policy are:

- To provide a decision-making framework for Authorised Officers to undertake enforcement activity and action.
- To set criteria for enforcement or other action.
- To ensure enforcement activity is undertaken in a fair, equitable, transparent, timely and consistent manner, and enforcement action is proportionate to the alleged offence in each case.

## 4. POLICY SCOPE AND IMPLEMENTATION

### Scope

This policy applies to all enforcement activity and action undertaken by Authorised Officers.

### Implementation

Enforcement action will be considered if an Authorised Officer:

- receives an allegation that an offence is being committed or is about to be committed or has been committed
- observes or believes an offence is being committed or is about to be committed or has been committed
- otherwise acquires evidence an offence is being committed or is about to be committed.

Enforcement action must comply with the options and requirements in this Policy and any legislative requirements, where applicable.

Authorised Officers keep adequate records of all enforcement activity, decisions and actions. This will include but is not limited to a record of:

- the complaint or alleged offence
- observations and any evidence collected
- verbal responses or written submissions received from the alleged offender and others
- decisions made and action taken or recommended by the Authorised Officer (or reasons for taking no action)
- any written warnings, notices, orders or directions issued by Council.

### 4.1 No Action

Authorised Officers may determine to take no action in a matter if:

- no offence has been committed
- the alleged offence is trivial in nature
- the complaint is vexatious
- there is insufficient evidence that an offence or wrong has been committed or the offender can't be identified
- taking action may prejudice more significant considerations or investigations by Council.

### 4.2 Informal Action

Despite a law or by-law being contravened, Authorised Officers have discretion to take informal action in a matter if:

- the act or omission is not serious enough to warrant formal action

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- it is reasonably believed that informal action will achieve compliance
- the consequences of non-compliance will not pose a significant risk to the community
- informal action may prove more effective than a formal approach.

Authorised Officers may undertake informal action by:

- offering verbal or written advice
- requesting a lawful action be undertaken within a specified time-frame
- issuing a verbal or written warning.

Every verbal advice and warning must be noted by the Authorised Officer.

Where a written warning is issued, it must:

- specify what needs to be done to comply with legal requirements, the time limit for remedial action if not immediately and, where necessary, the reasons for the warning
- specify the law or by-law contravened, measures necessary to ensure compliance, and consequences of continued non-compliance
- clearly differentiate between legal requirements and recommendations of good practice.

## 4.3 Formal action

### 4.3.1 Expiation Notices, Orders and Directions

An expiation notice, formal order, notice or direction may be issued to stop the offending, minimise the impact of the offending, or otherwise remedy the situation if an Authorised Officer:

- is reasonably satisfied on the available evidence that offending has occurred and that the offender has been identified; and
- considers that none of the factors set out under 4.1 No Action and 4.2 Informal Action apply.

Where the applicable legislation includes the right of review/appeal, reference to this right is included in any order or notice issued by Council.

### 4.3.2 Prosecution

Prosecution will be recommended where warranted and provided there is admissible evidence that an offence has been committed beyond reasonable doubt under the relevant legislation and there is a reasonable prospect of a conviction being secured against the offender.

Examples of situations where prosecution may be warranted include, but are not limited to:

- a blatant breach of the law such that significantly risks or impacts the health and safety of the community

- a failure to correct an identified problem after having been given reasonable opportunity to do so
- a failure to comply with the requirements of a statutory notice
- where the serving of an expiation notice for the breach is considered to be inadequate (where this is provided for in the relevant legislation)
- a history of similar serious offences
- an unwillingness of the offender to prevent a recurrence of the problem.

Chief Executive Officer (or delegate) approval is required to commence prosecution proceedings. Legal advice may be sought when determining whether to prosecute.

## 4.5 Mediation

Depending upon the severity of the breach, Council may make mediation available as an alternative to formal action. Authorised Officers may suggest mediation as a dispute resolution mechanism if there is a reasonable prospect of all relevant parties coming to an agreed resolution regarding the alleged breach or offending behaviour. Mediation services may also be appropriate where a positive outcome for Council is possible and in the interests of the broader community in order to minimise the costs to both Council and the offender.

## 4.6 Education and awareness

In addition to enforcement, Council may promote compliance by informing the community about legislative requirements, sensible behaviour and best practice. Communication mechanisms include media releases, publications, social media, City of Marion's website, and information and advice from Council officers.

## 4.8 Recovery of costs

Council will seek to recover enforcement action costs and expenses. A notice will be served in accordance with applicable legislation requiring the offender to pay Council the reasonable costs and expenses incurred by Council in taking such action.

## 5. DEFINITIONS

<i>Term</i>	<i>Definition</i>
<i>Order / Notice</i>	A written direction of Council requiring specific action to be taken to secure legislative compliance

## 6. ROLES AND RESPONSIBILITIES

<i>Role</i>	<i>Responsibility</i>
<i>Authorised Officers</i>	<ul style="list-style-type: none"><li>• Undertake enforcement activity and action in accordance with this Policy</li></ul>

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<i>Role</i>	<i>Responsibility</i>
	<ul style="list-style-type: none"><li>• Suggest mediation as an alternative to formal action</li><li>• Recommend prosecution, where warranted</li></ul>
<i>Chief Executive Officer (or delegate)</i>	<ul style="list-style-type: none"><li>• Approve the commencement of prosecution proceedings</li></ul>

## 7. REFERENCES

### City of Marion

- *Code of Conduct*
- *Complaint and Grievance Policy*
- *Order Making Policy*

### Other

- *Australian Road Rules*
- *City of Marion By-Laws*
- *Development Act 1993*
- *Dog and Cat Management Act 1995*
- *Environment Protection Act 1993 - Water Quality Policy*
- *Expiation of Offences Act 1996*
- *Fire and Emergency Services Act 2005*
- *Food Act 2001*
- *Local Government Act 1999*
- *Local Nuisance and Litter Control Act 2016*
- *Planning, Development and Infrastructure Act 2016*
- *Road Traffic Act 1961*
- *South Australian Public Health Act 2011*

## 8. REVIEW AND EVALUATION

The Governance Department reviews this Policy every four years (or earlier if required) in accordance with the City of Marion Policy Framework. Council approves this Policy.

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