

1. RATIONALE AND POLICY STATEMENT

The City of Marion is opposed to unlawful conduct within the community and will initiate enforcement action in accordance with relevant legislation and this policy as required.

2. OBJECTIVES

The objective of this policy is to:

- Provide a decision making framework for Council officers to take enforcement action.
- Set criteria for enforcement or other action.
- Ensure that enforcement action is proportionate to the alleged offence in each case.
- Ensure that enforcement action is carried out in a fair, equitable, transparent, timely and consistent manner

PRINCIPLES

2.1 The City of Marion is responsible for administering various legislation and regulations within the community. Enforcement of the applicable legislation or regulation must be fair, consistent, balanced and ensure the public is adequately protected.

2.2 When considering enforcing a legislative requirement, the following principles will be considered:

- Seriousness of the offence
- Degree of wilfulness involved
- Past history
- Consequences of non-compliance
- Likely effectiveness of the various enforcement options
- Deterrence
- Consistency of approach to similar breaches/offending.

2.3 Factors that will not be taken into consideration include:

- Any element of discrimination or bias against the person such as ethnicity, nationality, political association, religion, gender, sexuality or beliefs
- Personal association or relationship with the alleged offender or any other person involved
- Possible political advantage or disadvantage to a government or any political group or party.

2.4 Prioritising

Council will prioritise its enforcement activities according to the seriousness of the problem and the degree of risk to the community.

2.5 Procedural Fairness

Prior to taking enforcement action Council officers will take reasonable steps (in the circumstances) to listen to and consider the views of the person who is subject of the enforcement action.

In the event that a third party is aggrieved by the decision of Council, they may follow the steps set out in the Council's Complaint and Grievance Policy.

3. POLICY SCOPE AND IMPLEMENTATION

When a Council Officer receives an allegation of offending behaviour, observes or otherwise acquires evidence of offending behaviour, the Council officer shall consider the following options. In all cases, the Council officer shall ensure that Council has a record of the allegation, observations and any other evidence. The Council officer shall also ensure that Council has a record of the Council officer's response to the allegation/offending behaviour.

3.1 No action

Council officers may determine to take no action in a matter if:

- The alleged offence is trivial in nature
- Taking action may prejudice more significant considerations
- There is insufficient evidence that an offence or wrong has been committed or that the responsible person can be identified.

3.2 Informal action

Council officers may determine to take informal action by:

- Offering verbal or written advice
- Verbal warnings and requests for action
- Written warnings.

Council officers must record all instances of informal action being taken.

If a written warning is given, 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 legislation or by-law contravened, measures necessary to ensure compliance and the consequences of non-compliance

- Clearly differentiate between legal requirements and recommendations of good practice.

Despite a law or by-law being contravened, Council officers have discretion to take informal action if:-

- The act or omission is not serious enough to warrant formal action
- The offender's past history reasonably suggests that informal action will achieve compliance
- The consequences of non-compliance will not pose a significant risk
- Informal action may prove more effective than a formal approach.

3.3 Mediation

If a Council officer suspects that offending behaviour has occurred but considers that it does not, at least initially, warrant prosecution, the Council officer 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 offending behaviour. Mediation may be appropriate where an aggrieved individual does not wish Council to prosecute an alleged offender.

3.4 Education

Council officers may promote compliance by informing the community about legislative requirements, sensible behaviour and best practice. This could be by media releases, publications, social media and the City of Marion Website.

3.5 Expiation Notices, Orders and Directions

If a Council 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 the headings "No Action" and "Informal Action" apply;
- has power to issue an Expiation Notice, or give a formal Order or Direction to stop the offending or minimise the impact of the offending;

then the Council officer shall give such an Order or Direction if appropriate and either issue an Expiation Notice or consider prosecuting the offender.

3.6 Prosecution

Council will only prosecute when, in the opinion of the responsible Council officer, there is a reasonable prospect of a conviction being secured.

Any of the following circumstances are likely to warrant prosecution; -

- A blatant breach of the law such that health, safety and welfare have been put at risk
- 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
- A history of similar offences
- An unwillingness, on the part of the individual or business, to prevent a recurrence of the problem

Where circumstances warrant a prosecution all relevant evidence must be considered.

3.7 Appeals/Review

The Council Customer Service team (on 8375 6600 or Council@marion.sa.gov.au) shall, upon inquiry, and after consulting with the Council officers responsible for enforcement if necessary, advise in general terms the appeal or review options available in respect of any enforcement action.

3.8 Recovery of Costs

The Council will recover costs in accordance with various legislation. This will occur by written notice served on the person, requiring the person to pay the Council the reasonable costs of and expenses incurred by the council in taking such action.

4. REFERENCES

Complaint and Grievance Policy

5. REVIEW AND EVALUATION

This policy will be reviewed within four years of operation.