

POLICY DOCUMENT

20.63.2

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| Policy Name | Withdrawal of Expiation Notice |
| Policy No. | 20.63.2 |
| Version: | 1 |
| Strategic Reference: | 3.2 A strategically driven, community aware and accountable Council |
| Responsible Department: | Infrastructure and Environmental Services |
| Policy Adopted: | 14 December 2020 |
| Last revised date: | 21 September 2015 |
| Minute reference: | CO 20/218 |
| Next review date: | Council will review this policy 4 years after the adopted date or following significant change to legislation or where required by relevant public policy considerations. |
| Applicable Legislation: | Expiation of Offences Act 1996 Local Government Act 1999 Local Government (General) Regulations 1999 Australian Road Rules & Regulations. Road Traffic Act 1961 Development Act 1993 and Regulations 2008 Dog and Cat Management Act 1995 & Regulations 2017 Environment Protection Act 1993 Environment Protection (Air Quality) Policy 2016 Expiation of Offences Act 1996 Fire and Emergency Services Act 2005 & Regulations 2005 Food Act 2001 & Regulations 2017 Local Nuisance & Litter Control Act 2016 Planning, Development and Infrastructure Act 2016 & Regulations 2017 Road Traffic Act 1961 SA Public Health Act 2011 (and Regulations) Safe Drinking Water Act 2011 |
| Related Policies: | |
| Related Documents: | Council By-Laws |

1. POLICY

Section 16(1) of the Expiation of Offences Act 1996 (the Act) sets out the circumstances where the issuing Authority may withdraw an expiation notice with respect to all or any of the alleged offences to which the notice relates.

The right of a person who has been issued with an expiation notice by the Council to request a review of that decision is acknowledged.

All requests for review and withdrawal of expiation notices will be dealt with consistently, equitably, fairly and impartially, having regard to the requirements of the Act.

2. DEFINITIONS

2.1. *Expiation notice*

Refers to a notice issued for an alleged offence under legislation. An expiation notice provides the alleged offender the opportunity to expiate the offence by payment of a fee set by legislation to Council, without having to be summoned to court, where the alleged offender risks a fine and/or conviction. An expiation notice alleging non-compliance with an Act may only be issued by an Authorised Officer acting with the relevant authority to do so under the *Expiations of Offences Act 1996* or other relevant Act.

2.2. *Trifling*

An alleged offence will, for the purposes of this Policy, be regarded as trifling if, and only if, the circumstances surrounding the offence were such that the alleged offender ought to be excused from being given an expiation notice on the ground that:

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

4. REVIEW PROCESS

4.1. 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 alleged offence;
- 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.

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- 4.2.** The applicant will be asked to provide all written or pictorial evidence, which may be useful in support of the review application. In certain circumstances, a statutory declaration may be required to accompany the review request.
- 4.2..1. If the person seeks a review of the expiation on the grounds that the offence to which it relates to is trifling, Council may require the review application or the information supporting the application to be verified on a statutory declaration. Council may also request further information to assist in the review.
- 4.2..2. 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 will be invited to submit a statutory declaration nominating the new owner or the driver.
- 4.3.** The review process will be conducted as promptly as possible and should be finalised within 21 days from the date of the receipt of the application.
- 4.3..1. For parking and related expiations, a written request may only be submitted on the Review of Decision Application Form. Requests will not be considered without a form being completed, and a separate form is required for each expiation for which review is requested.
- 4.3..2. For all other expiations, review requests must be submitted in writing, in letter or email form.
- 4.3..3. A review request must be submitted by the expiated person or organisation, or a person acting with the consent of the expiated party. Consent provided must be evidenced in writing and accompany the review request.
- 4.3..4. Any expiation fee and related reminder fee/s will not be sought or due until the review request is determined. If the expiation notice is determined to stand, then extra time will be allowed to pay the expiation fee, any other related prescribed fee and/or associated levies.
- 4.3..5. The Responsible Officer will examine Council records relating to the issue of the expiation notice and may consider an authorised officer's account of any events or the circumstances surrounding the alleged offence.
- 4.3..6. The Responsible Officer will make a determination based on all available relevant evidence, and may remove, waive or confirm the expiation notice.
- 4.3..7. The Responsible Officer will advise the applicant in writing of the determination of the review.
- 4.3..8. Only one review request will be considered, with the determination final. The applicant will be advised that if they do not accept the outcome of the review, they may elect to be prosecuted.
- 4.4.** If at any time a processing or procedural error is identified in relation to expiation notice/s issued, a review will be instigated. If a systematic error is detected, the issuing of expiations will be ceased until the review is completed to ensure that no further fees are incurred or enforcement action taken.
- 4.5.** 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. **ASSESSMENT CRITERIA**

- 5.1. Each application for review will be assessed on its merits and considered on an individual basis.
- 5.2. The Responsible Officer may consider the withdrawal of an expiation notice in the following circumstances:
- 5.2..1. If it is determined 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);
 - 5.2..2. If a processing error, including an oversight of the facts or a procedural error, has occurred and the notice is rendered defective;
 - 5.2..3. If 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);
 - 5.2..4. If it is determined that the alleged offender should be prosecuted for the offence(s); or
 - 5.2..5. If the offence is determined to be trifling.

6. **OUTCOME OF REQUEST TO WITHDRAW EXPIATION**

- 6.1. If the result of a review is that the expiation notice will stand, the applicant must 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; or
 - Elect to be prosecuted, and have the matter determined by a court.
- 6.2. 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.

7. **RELEVANT DELEGATED POWERS AND DUTIES**

Any actions or decisions made regarding this policy, will be taken in compliance with Council's current Delegations Register.