

District Council of Peterborough

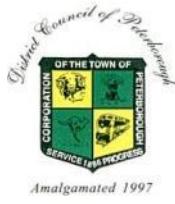


Amalgamated 1997

DISTRICT COUNCIL of PETERBOROUGH

LOCAL NUISANCE & LITTER CONTROL ACT 2016

Expiations Procedure



DISTRICT COUNCIL of PETERBOROUGH

Expiations Procedure

Adoption Reference:	Council Meeting 18/09/2017 Resolution 75/09
Applicable Legislation:	Local Nuisance and Litter Control Act 2016 This procedure is based on a model procedure prepared by the Local Government Association of SA
Version:	The electronic version of this document is the controlled version. Printed copies are considered uncontrolled. Before using a printed copy, verify that it is the current version.
Accessibility:	This procedure, and all policies and By-Laws, are available for viewing, downloading or printing from Council's website: www.peterborough.sa.gov.au Hard copies can be provided in accordance with Council's Fees and Charges at the Council office at 108 Main Street, Peterborough, SA 5422 during ordinary business hours.
Grievances:	Any grievances in relation to this procedure, or its application, should be forwarded in writing addressed to the Chief Executive Officer of Council.
Review Dates:	

1. PURPOSE AND SCOPE

This procedure covers the service of expiation notices for offences under the *Local Nuisance and Litter Control Act 2016* (the Act).

Authorised officers who are properly authorised under the *Expiation of Offences Act 1996* and/or the legislation creating the offence, are able to serve expiation notices.

1.1. Responsibility

This procedure has been written for use by authorised officers when carrying out investigations and compliance activities under the Act.

Officers are required to act reasonably and transparently, demonstrate good customer service, undertake their responsibilities in a proficient manner and use their judgement where necessary to ensure an outcome in line with legal requirements and council's Enforcement Policy.

1.2. Legislation

Refer to the "Powers of Authorised Officers" under the appropriate piece of legislation:

- *Expiation of Offences Act 1996*
- *Expiation of Offences Regulations 1996*
- *Local Nuisance and Litter Control Act 2016*
- *Local Nuisance and Litter Control Regulations 2017*

1.3. Definitions

Expiation notices are a form of enforcement action, which may be appropriate for certain breaches of legislation. The definitions contained are not exhaustive and officers may need to refer to the Act for further applicable definitions.

Trifling is defined in Section 4 (2) *Expiation of Offences Act 1996*. An alleged offence will, for the purposes of the *Expiation of Offences Act 1996*, be regarded as trifling if, and only if, the circumstances surrounding the commission of 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;
- 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.

Verbal warnings are statements to an offender which do not lead to any record of an offence.

Written warnings record the breach, the nature of the breach and the name of the offender in a manner which can be reviewed as past history of a person or property, in the event of repeat offending.

1.1. General Notes

Expiation notices are a form of enforcement action, which allows an alleged offender to ‘expiate’ an offence by the payment of a statutory fee to the council, rather than face prosecution in Court where they could be exposed to a risk of a fine and/or conviction.

An expiation notice should not be issued other than for the purpose of bringing an alleged offender to account for committing an offence.

Expiation notices should not be issued for any other reason (for example to intimidate or harass). Expiation notices cannot be issued unless proper inquiries have been made and the council has sufficient evidence to demonstrate that an offence has occurred. It is improper to issue an expiation notice at the request of another person, such as other officers of council or Elected Members.

An expiation notice can only be issued if an expiation fee is fixed under the Act or Regulation for the relevant offence.

Payment of an expiation fee by an alleged offender is not an admission of guilt or civil liability on the part of the alleged offender.

2. RELEVANT DOCUMENTATION

Refer to council’s Enforcement Policy.

3. RECORD MANAGEMENT

All documents, notes, photographs and correspondence must be stored in accordance with council’s records management protocols as required by Section 125 of the *Local Government Act 1999* and the *State Records Act 1997*.

4. PROCEDURE

A decision on whether to issue an expiation notice involves an exercise of discretion by an authorised officer. That is, an officer must decide, after weighing up all the relevant factors (including the available evidence), whether to issue an expiation notice or take some other form of enforcement action (or to take no further action).

4.1. Factors to Consider

The following must be considered prior to serving an expiation notice:

- is the offence expiable? (refer to Appendix 1 for expiable offences);
- Reference to the council’s or LGA’s Model Enforcement Policy;
- the seriousness of the offence;
- the degree of wilfulness involved;
- the offender’s past history;
- the consequences of non-compliance;
- the likely effectiveness of the various enforcement options;
- the evidence collected is substantial, reliable and admissible and that an identifiable person or organisation has committed the offence (in the case that the offender may elect to be prosecuted) (also see Evidence Collection Procedure);

- whether a verbal or written warning would be more appropriate; and
- whether the offence could be considered ‘trifling’ under the *Expiation of Offences Act 1996*.

1.2. Collecting Evidence

See also: Evidence Collection Procedure

General Evidence

The following examples of evidence may be collected as part of your investigation:

- name, address and contact details for the alleged offender and all witnesses;
- time and date of the offence;
- the location of the offence and surrounding details (e.g. neighbouring premises or activities);
- details relevant to ascertaining the level of risk, e.g. people affected, level of exposure to the risk, temperatures recorded, environmental or microbiological test results, results of risk assessment undertaken;
- notes of interviews with the person suspected to have committed the offence, members of the public affected, or other witnesses;
- details or records of any known effects, e.g. illness, injury or disability (e.g. disease records);
- samples, articles or substances;
- evidence as to whether the person is aware of the risks caused (reckless?); and
- officer notes of examinations, measurements, document review findings.

Photographic Evidence

- Ensure the photograph captures all the relevant details and is clearly visible, as per below;
- the photographer should start with a wide angle shot (shop front, business name, street signs, food preparation area, defective equipment);
- filter the following photographs to show close-ups of the specifics you wish to capture in detail (foreign material, defective equipment, pollutant);
- photographs can be digital or 35mm;
- if using a digital camera, the correct time and date must be displayed and, if not, that an appropriate notation is made by the officer; and
- when printing from the digital camera, ensure the time and date appear.

4.3 Drafting an Expiation Notice

Any expiation notice issued by an officer of the council must be in the manner and form prescribed by the *Expiation of Offences Act 1996* and must include all the information and particulars required by that Act.

Reference should be made to Section 6(1) of the *Expiation of Offences Act 1996* and Schedule 1 of the *Expiation of Offences Regulations 2011* to ensure that council’s expiation notices comply with all current statutory requirements.

It is important to note that an expiation notice must be issued before six months from the date of the alleged offence have elapsed.

Because a person who receives an expiation notice may elect to be prosecuted for the alleged offence, an expiation notice should not be issued in circumstances where the council has insufficient evidence to establish that an offence has taken place.

4.4 Serving an Expiation Notice

Once a decision has been made to issue an expiation notice, serve the Notice by one of the following methods:

- by post addressed to the last known residence or place of business of the person/organisation involved (preferably by registered mail) or;
- personally; and/or
- by service on an employee or agent of the alleged offender.

4.5 Revoking an Expiation Notice

An expiation notice may be withdrawn with respect to all or any of the alleged offences to which the expiation relates, under certain circumstances. For example, if the council is of the opinion that the alleged offender did not commit the offence, that the Notice should not have been given with respect to the offence, or the notice is defective.

If an issued expiation notice bears the incorrect expiation fee amount, the notice may be withdrawn and a new expiation notice may be issued with the correct fee.

Note: Refer to the council's Delegations Manual for the officers with delegated authority to withdraw an expiation notice.

APPENDIX 1 - LEGISLATION (ACTS, REGULATIONS, GUIDELINES)

Appendix 1 lists expiable offences that may be enforced by local government Authorised Officers under the Local Nuisance and Litter Control Act 2016

Types of Offences (short description of offence)	Legal and Additional Text	expiation fee Amount
A person who carries on an activity that results in local nuisance	Section 18(2) - A person who carries on an activity that results in local nuisance is guilty of an offence	\$500
Failure to cease causing local nuisance if asked	Section 20 - Failure to cease causing local nuisance on request by an Authorised Officer	\$210
Disposal of litter on to land or in to water	Section 22 - A person must not dispose of litter onto any land or into any waters <ul style="list-style-type: none"> • above 50 litres of class B hazardous litter • up to 50 litres of class B hazardous litter • up to 50 litres of general litter 	\$1000 \$500 \$210
Posting a bill on property without consent	Section 23 - A person must not post a bill on property without the consent of the owner or occupier of the property	\$315
Litterer must remove litter if asked	Section 24 - A person must, on request by an authorised officer, remove a bill posted on property, or any other litter disposed of	\$210
Failure to comply with notice	Section 30 - A person to whom a notice is issued under this section must not, without reasonable excuse, fail to comply with the notice	\$500
Failure to pay costs associated with a contravention	Section 48 - A person who fails to pay an amount payable to the Minister or council in accordance with this section is guilty of an offence	\$500