

Authority      Local Government Act 1995 (WA)(CI)  
                    Local Government (Miscellaneous Provisions) Act 1960 (WA) (CI)  
                    Local Government (Functions & General) Regulations 1996  
                    (WA)(CI)

## **AD 2 – ENFORCEMENT OF LEGISLATION**

### **Objective**

- To ensure the effectiveness of laws the Shire is obligated to enforce
- To ensure laws are enforced in a consistent and equitable manner
- To ensure that the Shire, where appropriate, makes all reasonable attempts to find solutions that do not involve persons summonsed to appear in court or liable to pay fines
- To provide guidance to authorised persons

### **Policy**

#### Community Education

Prior to the making of a new local law a full education program is to be put into place to inform the community of the details of the law. The education program is to take place over a period as determined by Council and be the subject of articles in the Islander. Each article is to be translated into Mandarin and Bahasa Malay.

#### Serving of Summons

1. No person is to be served with a summons unless it is authorised by the CEO.
2. In determining whether the summons should be issued, the CEO must be satisfied that:
  - adequate evidence exists that an offence was committed;
  - in the case of infringement notices and notices under the Local Government Act 1995 (WA)(CI) and the Local Government (Miscellaneous Provisions) Act 1960 (WA)(CI), the procedures set out in this policy have been followed; and
  - in other circumstances, every reasonable effort has been made to remedy the situation.
3. All summonses must be delivered to the recipient in accordance with the Justices Act 1902 (WA)(CI).

#### Prescribed Offences and Infringement Notices

1. Infringement notices may only be issued by authorised persons for prescribed offences.
2. Where an infringement notice is not paid within the prescribed period of 28 days, the offender is deemed to have chosen to settle the matter in court. A report is to be presented to the CEO recommending that a summons be issued. Where the fine is

paid before a decision of the CEO, this must be brought to the attention of the CEO so that it may be taken into consideration when making the decision.

3. The sum of the fine shall be decided jointly between the CEO and the Council Officer (if any) who wish to issue the fine upon the member of the public; this sum must be within the range in the relevant local government legislation.

For example, extract from the CI Local Health Laws (2010) Amended, the Shire CEO and the Council Officer wishing to issue a fine for a first offence under (2)(a)(i) must jointly decide on a fine between \$100 and \$1,000.

## **PART 10 - OFFENCES AND PENALTIES**

### *Division 1 - General*

#### **Penalties**

10.1.1 (1) A person who contravenes a provision of these Local-Laws commits an offence.

(2) A person who commits an offence under subsection (1) is liable to -

(a) a penalty which is not more than \$1,000 and not less than -

(i) in the case of a first such offence, \$100;

(ii) in the case of a second such offence, \$200; and

(iii) in the case of a third and subsequent such offence, \$500; and

(b) if the offence is a continuing offence, a daily penalty that is not more than \$100 and not less than \$50 for each day during which, the offence continues.

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4. Infringement notices are not to be issued on a daily basis for continuing offences.

People are to be given 28 days to pay the infringement notices given to them before any daily fines can be incurred (for example under 10.1.1 (2)(b) of above).

The CEO must authorise the Council Officer who issued the original infringement to have the daily fine incur and accrue. Written correspondence must be served unto the infringement notice holder at the end of the 28 day period that daily fines have been approved by the CEO before the daily fines can start accruing.

5. Where an offence continues for 42 consecutive days then the offence must be dealt with by presenting a report to the CEO recommending that a summons be issued. Where the fines are paid and/or the offence ceases before the issue of the summons this must be brought to the attention of the CEO so that it may be taken into consideration when making the decision.

#### Notices under the Local Government Act 1995 (WA)(CI) and the Local Government (Miscellaneous Provisions) Act 1960 (WA)(CI)

1. Where, in the opinion of the Chief Executive Officer, a matter of urgency exists then a notice may be issued immediately without any warning.
2. Where the person does not comply with a notice referred to above and works are required to be carried out, the Chief Executive Officer is authorised to ensure those works are effected and to recover any costs incurred by the Shire as a debt.

3. Where the circumstances are not of an urgent nature, the following steps must be taken before issuing a notice;
  - a. other remedies, if they exist, must be pursued to a reasonable extent;
  - b. an initial, if possible verbal, request to do whatever is necessary in the circumstances is to be made to the relevant person;
  - c. if the person takes no action within 7 days then prior to 14 days elapsing since the initial request, the person is to be handed with a formal request in writing to take appropriate action;
  - d. if the person again takes no action within 7 days of the written request then prior to 14 days elapsing since the formal request, the person is to be handed with a written warning requiring appropriate action;
  - e. if after a further 7 days the person takes no action then a notice may be issued.
4. Should the person not comply with the requirements of the notice then a report is to be presented to the CEO recommending that a summons be issued. The report should also identify whether any works necessary should be carried out by the Shire and the costs recovered for the relevant person. Where the person complies with the notice before the issue of the summons this must be brought to the attention of the CEO so that it may be taken into consideration when making the decision.
5. Wherever possible, the Chief Executive Officer is to ensure the Shire President is informed of any intention to serve a notice. Where this is not possible the Shire President is to be informed at the earliest opportunity after the notice is issued.

#### Offences Other than Prescribed Offences

1. Prior to preparing a report to the CEO recommending a summons be served on a person found committing an offence the following steps must be taken;
  - a) other remedies, if they exist, must be pursued to a reasonable extent;
  - b) an initial, if possible verbal, request to do or refrain from doing whatever is necessary in the circumstances to ensure the offence does not continue or is repeated is to be made to the relevant person;
  - c) if the person takes no action or does not refrain or repeats the offence then the person is to be handed a formal request in writing to do whatever is necessary in the circumstances to ensure the offence does not continue or is repeated;
  - d) if the person again takes no action or does not refrain or repeats the offence then the person is provided with a written warning requiring to do whatever is necessary in the circumstances to ensure the offence does not continue or is repeated
  - e) should the person not comply with the requirements of the written warning then a report is to be presented to CEO at its next meeting recommending that a summons be issued.
2. Where more than twelve (12) months elapses between a repeat of an offence, the process above is to begin from the first step.

3. At least fourteen (14) days must elapse between the steps detailed in point 1 above to allow the person reasonable time to remedy the situation.
4. Where the circumstances warrant it, other means to remedy the situation, such as involving the social worker, the police or the offender's peers, should be considered and used if considered appropriate. This may occur at any time during the above process.

### Impounding

1. Impounding may only take place in accordance with the provisions of Subdivision 4 of the Local Government Act 1995 (WA)(CI).
2. Impounding may only be arranged by an employee authorised to do so.
3. Animals are only to be impounded where they pose a threat to public health or safety (eg: wandering the street/public places unattended).
4. Vehicles may only be impounded in the following circumstances:
  - a. Where the vehicle is parked in a public place contrary to a local law or regulation; and either
    - (i) the location of the vehicle creates or is likely to create an unsafe situation or the vehicle is causing an obstruction; or
    - (ii) the vehicle has been issued with an infringement notice and the offence has continued for at least 42 days; and
    - (iii) the vehicle appears to be abandoned or is in a poor state of repair; or
    - (iv) the vehicle has no discernible means of identification; and
    - (v) the owner of the vehicle is not able to be located after using reasonable efforts to do so.

and
  - b. Where suitable facilities exist for the transportation and holding of the vehicle.
5. Goods other than animals and vehicles may only be impounded with the approval of the CEO and where suitable facilities exist for the transportation and holding of the goods.

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Key Performance Indicators

The number of infringement notices issued  
 The number of notices issued  
 The number of summonses served  
 The number of repeat offenders  
 The extent to which the Shire observes the policy and procedures

Key Words

Law, enforcement, summons, infringement, impounding

Related Policies

Parking Local Law

Related Procedures/ Documents	Health Local Law Dog and Cat Local Law
Delegation Level	CEO, authorised persons
First Adopted by Council Resolution No.	24 April 2004 34/04
Adoption Conditions Consultation	Adopted in principle subject to public notice Public notice inviting comment
Reviewed by Council Resolution No.	26 September 2017 88/17
Adoption Conditions	A six month education program is put in place to inform the community of the laws the Shire is empowered to enforce and detailing the common offence types.
Changes to Policy as a Result of Review	The CEO report to Council on a quarterly basis about the number and type of summons issued and any issues arising. Amendments after community consultation reduced Council Role in deciding issue of notices and summons
Date Document Updated	4 <sup>th</sup> September 2017
Next Review Date	September 2021
FILE REFERENCE NO	2.11.24

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