

Order Making Policy

Purpose

The City of Burnside is responsible for the governance and management of its Local Government Area. In particular, it is the function of the Council to provide for the welfare, wellbeing, and interests of the members of our community, take measures to protect our area from hazards and improve amenities.

To fulfil its functions, the Council has a range of statutory powers. These powers enable Council to exercise its regulatory functions by making policies, orders and by-laws. The Council has resolved to develop an Order Making Policy in relation to the exercise of the Council's powers pursuant to Part 2 of *Chapter 12 of the Local Government Act 1999* to promote the health, safety and wellbeing of our community. This Policy sets out the matters about which orders will be made. The relevant principles, procedures and penalties that will be applied are also established by this Policy.

Policy Statement

1. Introduction

- 1.1 The City of Burnside is responsible for the governance and management of its Local Government Area. In particular, it is the function of the Council to provide for the welfare, wellbeing, and interests of the members of our community, take measures to protect our area from hazards and improve amenities.
- 1.2 To fulfil its functions, the Council has a range of statutory powers. These powers enable Council to exercise its regulatory functions by making policies, orders and by-laws. The Council has resolved to develop an Order Making Policy in relation to the exercise of the Council's powers pursuant to Part 2 of Chapter 12 of the *Local Government Act 1999* to promote the health, safety and wellbeing of our community. This Policy sets out the matters about which orders will be made. The relevant principles, procedures and penalties that will be applied are also established by this Policy.

2. Our Approach

- 2.1 Remain compliant with all relevant legislation, standards and codes.

3. Legislative Requirements and Corporate Policy Context

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- 3.1 Section 259 of *the Local Government Act 1999* requires the Council to prepare and adopt a policy to operate its order-making power. The Policy is subject to public consultation, review and evaluation.
- 3.2 This Policy will apply to the matters set out in the *Local Government Act 1999* at sections 216, 218 and 254-258, which empower Council to order a person to do or refrain from doing a thing under certain circumstances.
- 3.3 This Policy does not apply to other circumstances provided for in the *Local Government Act 1999* and other South Australian Statutes, which specifically empower Council to make orders when appropriate and as the need arises.
- 3.4 The exercise of Council's order-making power, in accordance with this Policy and relevant statutes, co-exists with Council's other regulatory powers. For example, the Council has the power to make and enforce By-Laws in certain circumstances and to enforce compliance with the requirements of the *Local Government Act, 1999* and a range of other statutes.

4. Policy

Matters to which this Policy applies

- 4.1 The matters to which this Policy applies are set out in Sections 216, 218 and 254 of the *Local Government Act 1999*. These matters are:
- Power to order the owner of a private road to carry out specified roadwork: Section 216
 - The Council may, by order in writing to the owner of a private road, require the owner to carry out specified roadwork to repair or improve the road.
 - Power to require the owner of adjoining land to carry out specified work: Section 218
 - The Council may, by order in writing to the owner of land adjoining a road, require the owner to carry out specified work to construct, remove or repair a crossing place from the road to the land.
 - Hazards on Land Adjoining a Public Place: Section 254

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- The Council may make an order against the owner or occupier of land to take action to deal with hazards on lands adjoining a public place.
 - Inappropriate Use of a Vehicle: Section 254
 - The Council may make orders against an owner or occupier of land or a person apparently occupying a caravan or vehicle that is used as a place of habitation.

Emergency

4.2 In accordance with Section 255, if a Council considers that in the circumstances of a particular case:

- An activity constitutes or is likely to constitute a threat to life or an immediate threat to public health or public safety; or
- That an emergency otherwise exists;

The Council may proceed immediately to make an order under this section without giving notice and require immediate compliance with the order.

Principles

4.3 In each situation in which the Council is considering making an order to require a person to act or to refrain from acting within its powers to do so, the Council will investigate and consider (to the extent that is relevant and necessary) the following circumstances:

- the severity of the incident or circumstance;
- the hazard or danger posed to the community;
- the risk to the health and safety of the community;
- detraction from the amenity of the locality;
- the number of occurrences of the activity or incident;
- the impact of any previous actions to deal with the activity or incident;
- the significance of the breach, any other public interest or wellbeing considerations; and
- the availability of a more appropriate response by the Council.

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- 4.4 Council will apply the procedures in accordance with Section 255 of the *Local Government Act 1999* in its order-making activities.
- 4.5 Those subject to Order Making will have the Right of Review in accordance with Section 256 of the *Local Government Act 1999*. The operation of the order continues pending the determination of an application for review unless the District Court or the Council makes an interim order suspending the operation of the order.
- 4.6 Non-compliance will be dealt with in accordance with Sections 257 and 258 of the *Local Government Act 1999*. This may include recovery of costs and imposition of a fine under the *Local Government Act 1999*.

5. Review and Authority

- 5.1 This Policy will be reviewed every four years at a maximum in line with Council's Policies and Protocols Framework.

6. Availability

- 6.1 The Policy is available to be downloaded, free of charge, from Council's website www.burnside.sa.gov.au.
- 6.2 The Policy will be available for inspection, free of charge, at the Civic Centre during ordinary business hours, and a copy may be purchased at a fee set annually by the Council.

Other Useful Documents

Related Documents

Relevant Legislation

- *Local Government Act 1999*
- *South Australian Public Health Act 2012*

Glossary

There are no defined terms in this policy.

Administrative

As part of Council's commitment to deliver the City of Burnside Strategic Community Plan, services to the community and the provision of transparent information, all policy documents are reviewed as per legislative requirements or when there is no such provision a risk assessment approach is taken to guide the review timeframe.

This Policy document will be reviewed every 4 years unless legislative or operational change occurs beforehand.

Adoption Date: 16 July 2024

Review Date: June 2028

Strategic Plan Reference **Principles:** Governing with Integrity

Theme: Spans all themes

Goals: Spans all goals

Priorities: Spans all priorities

Review History

ECM Reference:	Authorising Body:	Date/Decision ID	Description of changes
987885	Council	25/09/2012, C8876	
		12/11/2013, C9479	
		24/02/2015, C10050	
		12/12/2017, C11537	
		12/05/2020, C12547	
		16/07/2024 C72024/13730	Updates to: <ul style="list-style-type: none">• Strategic Community Plan• Legislation• Responsibilities• Minor editorial and format changes• References to unsightly premises and animals removed

Contact

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