

Expiation notice review guidelines



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Introduction

The City of Marion reviews a large number of expiation notices every year.

This document has been developed to provide transparent information to the public about the review policies and practices of the City of Marion. These guidelines also assist a notice holder to understand the evidence required to support a review claim.

A person (or company) issued an expiation notice is entitled to apply to have that notice reviewed on the grounds that the offence may be trifling. Upon application the Expiation Review Officer will undertake one complete review of an expiation notice, but not multiple reviews.

If that review is rejected the legal framework provides the notice holder with the other options of paying the notice, electing to be prosecuted or doing nothing. The notice holder will then need to consider one of these other options.

Every effort is made to ensure notice reviews are consistent, fair, impartial, and objectively assessed.

Where an expiation has not been paid on time the matter will be transferred to the Chief Recovery Officer at the Fines Enforcement recovery Unit (FERU). The City of Marion cannot consider an appeal once the matter has been transferred to FERU.

Any enquiries after this stage will need to be referred to the Fines Recovery & Recovery Unit by phoning 1800 659 538.

This document is accurate at the time of publication. The information and processes described within can change without notice to meet legislative requirements or enhance enforcement strategies.

Review of an expiation notice

A review on trifling grounds is not permitted by law if the notice has been paid, a payment arrangement has commenced or it is enforced with the fines unit.

The purpose of an expiation notice is to allow the payment of a fee to avoid a Court hearing.

The purpose of a review is to allow a notice holder to provide additional information so that the Issuing Authority may consider whether they want to continue with the notice. Each review is dealt with on its own merits. Reviews are point-in-time considerations that consider evidence provided at that point in time. Where reviews result in a dispute over the facts, then the rightful place for the allegations in the notice to be determined is a Court.

Notice holders are advised of the decision resulting from their review submission. The review process is not the platform to resolve factual disputes. In accordance with the Expiation of Offences Act 1996, a notice holder can apply for a review on the grounds that the offence to which the notice was issued was trifling. To be trifling the circumstances surrounding the offence must be that:

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

Reviews are also considered where the offence is not trifling and:

- the notice is incorrect, or a mistake has been made in issuing the notice
- there has been a mistake of identity
- there is additional information that may suggest a caution or withdrawal of the notice is more appropriate
- there are exceptional circumstances surrounding the alleged offence.

Under the Expiation of Offences Act 1996, an issuing Authority may withdraw an expiation if the matter is deemed to be trifling.

Sec 4(2) of the Act states: “An alleged offence will, for the purposes of this Act, 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:

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

Not every request for review will be successful.

Review guidelines

The City of Marion review guidelines have been prepared to ensure consistent decision making by the Expiations Review Officer. These guidelines also assist a notice holder to understand the evidence required to support a review claim.

These guidelines are not exhaustive and do not cover every possible circumstance. They are designed to provide information about the most common circumstances.

It is advisable that notice holders read these guidelines before submitting a review request and provide as much information as possible. If sufficient supporting information is not provided further information may be requested, or the review may be rejected.

Generally, the legislation only permits the person given an expiation notice to seek a review, however a review can be sought from a person with the legal authority to act for the person given the notice.

If a person given a notice authorises someone to make the review application on their behalf, the outcome of the review will be sent to the notice holder (or legal representative) and not the person authorised to make the application.

If you dispute the allegation that you committed the offence and elect to be prosecuted, you are required to fill in the back of the original expiation or reminder notice.

If you elect to be prosecuted, you may receive a summons which will set out when and where to attend court



How reviews are conducted

Receipt of the review

When the request for review is received:

- the review form will be recorded and electronically scanned for record keeping purposes
- the expiation notice will be placed 'on hold' pending an investigation
- a review will usually be undertaken within 28 days
- the expiation notice holder will be advised by council of the outcome once a decision has been made.

Conduct of the review

The review will be conducted by the Expiations review officer. Regardless of the grounds seeking review, all notices will be assessed to ensure that the notice is:

- **Lawful:** issued for an expiable offence in accordance with the Expiation of Offences Act 1996.
- **Valid:** issued under the correct legislation.
- **Not trifling:** assessment of the trifling provisions of the Expiation of Offences Act 1996.

The review officer may also consider:

- the gravity of the offence
- the circumstances outlined by the notice holder
- any supporting evidence
- the notes and views of the issuing officer
- any available photographic evidence
- the personal circumstances of the notice holder.

Review outcomes

Possible outcomes of a review are as follows:

- **Not Waived (or not be withdrawn).** The review finds that the notice is not trifling or cannot be withdrawn and there is no evidence that warrants an alternative course of action. The notice holder should decide whether to pay the notice, enter into a payment arrangement or elect to be prosecuted.
- **Not Waived (or not be withdrawn) and waive reminder fee.** The review finds that the notice is not trifling and there is no evidence that warrants an alternative course of action, however, the application of a reminder fee (where applicable) is not appropriate so that fee will be waived. The notice holder should decide whether to pay the notice, enter into a payment arrangement or elect to be prosecuted.
- **Be regarded as a caution.** The review finds the notice was lawfully issued and valid, however, given the evidence provided in the review submission, the notice will be withdrawn and regarded as a caution. Payment is not required.
- **Waived (Be withdrawn).** The review finds that the notice should not stand, and it is withdrawn outright. No payment is required.

Review notification

The notice holder will be advised of the outcome of a review in writing. Where the decision is made that a notice will stand the due date of the notice will be extended.

How to request a review

An application for review can be submitted on one occasion only. Appeals against expiation notices must be submitted in writing using the Review of Decision Application Form ensuring the attached Statement of Appeal section is completed, detailing the reason for seeking review.

- Evidence must be provided to substantiate the information provided on the Statement of Appeal. Please note that the City of Marion may request a Statutory Declaration or additional evidence to be provided if necessary.

An application for review must:

- explain the grounds for the review in the Statement of Appeal
- provide your current address (or e-mail address)
- give details of the notice
- be sent so it is received by the due date on the expiation notice or reminder notice.

Review of Decision forms are available from Council upon request, or can be downloaded at Parking Expiation Payments and Appeals online. Once you have filled the form in, you can then submit your form via the **My Marion Customer Portal** at report or request a service, **marion.sa.gov.au**.

Review applications and any relevant supporting documentation can also be submitted by post to:

City of Marion
PO Box 21
OAKLANDS PARK SA 5046

To view photographs related to your expiation please visit:

comweb.data.com.au/PinForceOnline/Home/Search/Parking

You cannot ignore an expiation notice. It will not just go away.

Contact us

Customer service business hours:

8.30am – 5pm

Monday to Friday

(excluding public holidays)

Administration Centre:

 **245 Sturt Rd, Sturt SA 5047**

 **8375 6600**

 **PO Box 21, Oaklands Park SA 5046**

marion.sa.gov.au

