



Restricted Premises – Enforcement Policy – Number 323

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1. Scope

This Policy applies to Brothels and Related Sex Use premises and should be read in conjunction with the City of Parramatta's Regulatory Services Enforcement Policy.

This Policy has been prepared to facilitate an effective and consistent approach to enforcement of controls on Brothels and Related Sex Use premises under the laws relating to operation of those premises.

This Policy will help align enforcement actions across all arms of Council, namely the Regulatory Services Unit and the Development and Traffic Services Unit, as they monitor and regulate business activities and premises within the City of Parramatta local government area.

This Policy applies to all Council's activities relating to Brothels and Related sex use premises and it sets out the process on how incidents will be escalated between the enforcement arms of Council.

2. Purpose

The purpose of this Policy is to guide regulatory enforcement activity in relation to Brothels and Related Sex Use premises in the City of Parramatta local government area in a manner that aligns with Council's "umbrella" Regulatory Services Enforcement Policy.

In this context, this Policy will:

- Confirm that Council has a minimal tolerance approach to unlawful activity and non-compliance with development consents.

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- Provide consistency in enforcement matters of environmental breaches, development non-compliance, and to ensure transparency, procedural fairness and natural justice.
- Acknowledge an obligation under relevant sections of legislation to ensure that the exercise of its regulatory power is carried out consistently and without bias.
- To set the criteria for the regulation of the types of premises covered by this Policy.

The objectives of this Policy are:

- to inform the public of the principles and measures that Council staff will apply in its compliance and enforcement activities relating to Brothels and Related Sex Use premises;
- to provide guidance to Council staff in pursuing enforcement options;
- to implement a fair and equitable enforcement system consistently across the City of Parramatta local government area; and
- to provide a mechanism to enable Council to recover the costs of regulating and monitoring Brothels and Related Sex use premises.

3. Legislation

The following acts and regulations are the guiding legislation for restricted premises matters. They include and are not limited to:

- Environmental Planning & Assessment Act 1979 and related Regulations
- Local Government Act 1993 and related Regulations
- Restricted Premises Act 1943 and related Regulations

4. Policy

4.1 Principles for Response

Council staff will:

- act in the public interest;
- act consistently, impartially and fairly according to law;
- promote consistency through effective liaison with field staff and the adherence to policies and procedures;

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- not discriminate on the basis of race, religion, sex, national origin or political association;
- ensure that enforcement action is taken against the right person for the right offence;
- ensure that all relevant evidence is placed before Courts or appeal tribunals;
- inform those being regulated of their legal obligations and have relevant personnel available during normal office hours to assist with enquiries about legislative requirements;
- discuss specific compliance failures or problems and provide advice on mechanisms that can be used to improve compliance;
- confirm advice in writing when requested and provide written advice in a clear and simple manner, explaining what and why remedial work is to be undertaken, over what time scale and ensuring legal requirements are explained;
- advise those being regulated of their right of appeal where provided by law, and
- provide alleged offenders with an opportunity to discuss the circumstances of their case.

This Policy aligns with the Council values together with the requirements of any relevant legislation.

4.2 Enforcement Activities

Council will carry out annual inspections of sex service premises (i.e. brothels, sex on premises facilities, therapeutic massage facilities, and massage parlours), to ensure premises conducting those activities comply with development consent and laws relating those activities. Council also receives information about suspected contraventions, illegal uses and non-compliances from members of the public, other agencies and monitoring activities.

Monitoring activities include:

- random inspections;
- intelligence gathering;
- routine patrols; and
- targeted investigations.

4.3 Hierarchy for Response

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The following hierarchy details how incidents escalate from minor offences through to significant offences. To assist Council in determining the appropriate action required, premises are categorised as either Low Risk or High Risk:

4.3.1 Low Risk

For Low Risk premises the hierarchy of actions includes:

(a) Technical Breaches – “Minor Offences” Verbal and Formal (written) warnings.

A technical breach is where a condition of development consent is not being complied with such as the hours of operation or number of persons on the premises.

A verbal direction can be given in circumstances where a technical breach exists and the alleged offender immediately:

- cooperates by proceeding to take steps to comply with the informal request;
- takes action to rectify the problem which is the subject of the verbal direction at the time of the request / inspection;

A verbal direction would also be appropriate in circumstances where a technical breach exists and prosecution is unlikely if the person fails to comply.

As many verbal directions as are required can be issued against one site, however a further judgement call will need to be made. If for example a Council staff member requires the premises to close, cease operating as they are open outside of the approved times and they only comply for that day and they are found that this has not ceased the daily operational requirement, this should then escalate to a formal warning and legal enforcement.

Formal warnings will be issued when the operator has complied with the verbal direction but has not show any contrition or the Council staff member considers that the incidence would likely reoccur.

A formal warning will also be used if:

- there has been an unsatisfactory response to an informal request;
- the alleged offender is uncooperative or past experience indicates that the they are unlikely to comply unless a formal notice is issued;

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- the Council staff member requests information or records from a third party who may be concerned about their privacy or confidentiality obligations.
- The statutory requirement to provide the information or documents will protect the addressee against liability for a breach of privacy or confidentiality.

Formal warnings will be formally recorded and kept in Council Records Management system.

A copy of the formal warning will be posted, faxed or emailed to the person who, in the opinion of the officer, is in possession of the approval.

All formal warnings must:

- be addressed to the correct legal entity (e.g. an individual or a corporation);
- state clearly what the warning is being given for and required action;
- give the addressee reasonable time to comply; and
- be signed by an authorised council officer.

If on returning to premises after a formal warning has been issued and the recommended action has not been taken, the Council staff member may elevate the action to appropriate legal enforcement.

(b) Penalty Infringement Notices

Council has the discretion to issue Penalty Infringement Notices for offences under applicable laws (including the Environmental Planning and Assessment Act). This discretion should be exercised in cases where the matter is not considered serious enough to warrant a Court imposed penalty/order however the breach does warrant punitive action.

(c) Notices and Orders

Council has the power to issue a wide range of notices and orders.

Council staff may use the enforcement provisions of the Environmental Planning and Assessment Act and related laws to regulate breaches through notices and orders.

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A notice or order may impose requirements on the addressee which may lead to prosecution if they fail to comply. Therefore, before deciding to issue a notice or order, it is important to consider whether the circumstances merit this course of action or whether an informal request is more appropriate.

Where a person is afforded the right to make representations to a notice, Council will require those representations to be made in writing. This ensures representation documents can be recorded and filed in Council's record system. After written representations are considered, representations in person may be made if Council deems appropriate. Council will respond to all representations in writing.

(d) Brothel Closure Orders

Brothel closure orders shall only be issued on premises where Council is able to prove the existence of unauthorised prostitution. Brothel closure orders may be used to regulate an unauthorised use of a premise or to bring premises into compliance with its development consent. Brothel closure orders shall be issued for serious breaches which are unable to be rectified immediately or where there is a demonstrated pattern of disregard for the conditions of development consent.

4.3.2 High Risk

Council will take a 'zero tolerance' approach to High Risk Premises. The following hierarchy of actions will assist Council staff in the performance of their duties in relation to High Risk premises:

(a) Penalty Infringement Notices

Council has the discretion to issue Penalty Infringement Notices for offences under the Environmental Planning and Assessment Act and related laws. This discretion should be exercised in cases where the matter is not considered serious enough to warrant a Court imposed penalty/order, however, the breach does warrant punitive action.

(b) Notices and Orders

Council has the power to issue a wide range of other notices and orders.

Council staff may use the enforcement provisions of the Environmental Planning and Assessment Act and related laws to regulate breaches through notices and orders.

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A notice or order may impose requirements on the addressee which may lead to prosecution if they fail to comply. Therefore, before deciding to issue a notice or order, it is important to consider whether the circumstances merit this course of action or whether an informal request is more appropriate.

Where a person is afforded the right to make representations to a notice, Council requires those representations to be made in writing. This ensures representation documents can be recorded and filed in Council's record system. After written representations are considered, representations in person may be made if Council deems appropriate. Council will respond to all representations in writing.

(c) Brothel Closure Orders

Brothel closure orders shall only be issued on premises where Council is able to prove the existence of prostitution as defined under legislation. Brothel closure orders may be used to regulate an unauthorised use of a premise or to bring a premise into compliance with its development consent. Brothel closure orders shall be issued for serious breaches which are unable to be rectified immediately or where there is a demonstrated pattern of disregard for the conditions of development consent.

(d) Court Attendance Notice

Court attendance notices will be issued in the most serious of cases, where previous enforcement by other methods have failed to provide a desired outcome.

NOTE: Council can at any time increase the number of times sex premises are inspected every year if operational requirements dictates. Operational requirements include but are not limited to premises being found to regularly breach the applicable legislation and/or development approval, new information indicating breaches may occur at the premises etc.

4.4 Managing Complaints

4.4.1 Access to Information

Council staff have access to a wide range of information concerning Brothels and Related Sex Use premises both during and after normal office hours. Council will manage all data and will ensure that it is accessible after hours to Council staff who require such access to adequately carry out their duties.

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4.4.2 Customer Request Management System (CRMS)

People involved in the receipt of complaints must have good quality guidance as to where those complaints are to be directed.

As a guide:

- All verbal complaints shall be registered in Council's Customer Service Management System (Pathway).
- All written complaints shall be registered by Council's electronic records management system (TRIM).

4.4.3 Council Staff Conducting Inspections High Risk Premises

Council staff will inspect all complaints and routine random inspections of High Risk Premises with a minimum of 3 staff. The Council staff shall include an officer with the relevant qualifications and skills, and at least one female staff shall be part of the 3-person team.

4.4.4 Low Risk Premises

Council staff will inspect all complaints and routine random inspections of Low Risk Premises with a minimum of 2 staff. The staff shall include at least one officer with the relevant qualifications and skills.

4.4.5 Matters for Consideration

During an inspection of a Brothel or a Related Sex Use premises Council staff may take a holistic approach to the investigation. This may include, but is not limited to, the following:

- Fire Safety Issues;
- Public Health Issues;
- Compliance with Conditions of Consent; and
- Inter-agency joint operations.

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4.4.6 Inspection Records

All inspections shall be recorded in a format determined by the relevant approved procedures to capture the method of entry and for staff records.

A written file note shall also be undertaken for each inspection and all information shall be electronically stored in a secure location within Councils Record's Management system.

4.4.7 Reporting

Complaints or information about suspected premises can be lodged with the Council's Customer Service Centre on:

Telephone: 9806 5050

Facsimile: 9806 5903

E-mail: Council@cityofparramatta.nsw.gov.au

Anonymous complaints will be investigated where there is the potential for a serious risk to health, safety or the environment and sufficient details of the incidence and address are provided to identify and investigate the matter.

All reports of investigations are strictly confidential. However, information may generally be made available about the outcome of investigations and the reasons for decisions provided the information will not cause harm to an informant, witness, or the alleged offender; or significantly prejudice the administration of justice.

4.4.8 Authorisations

Council will delegate authority and authorise certain Council staff under relevant legislation in order for them to carry out their investigative duties and take necessary action.

All authorised Council staff who carry out inspections on private land will:

- Have delegation to enter the premises and carry out investigations as specified in Councils delegations; and
- Be authorised by Council where this is required by specific legislation to permit inspections on private property; and
- Carry photographic identification demonstrating authorisation to enter private property under the relevant legislation; and

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- Be conscious of any requirements relating to work, health and safety.

4.4.9 Fees

Section 608 of the Local Government Act allows Council to charge and recover an approved fee for providing a service in connection with the exercise of the Council's regulatory functions (including receiving an application for approval, granting an approval, making an inspection and issuing a certificate).

Where inspections of premises are reasonably necessary to determine if an approval has been complied with:

- a. an approved fee may be charged for such an inspection;
- b. an approved fee may not be charged for such an inspection before the approval is granted; and
- c. an approved fee may not be charged for the inspection of anything for which the council relies on a certificate under section 93 of the Local Government Act that the thing has been done in compliance with the approval.

Council has the ability to charge an administration fee or a fee for service (that is, an inspection fee for each inspection undertaken). In the interest of providing a fair and equitable service which delivers value for money, fees will only be charged for each inspection undertaken. Council may charge either a Monitoring Fee or an Enforcement Fee.

Council will only charge the Monitoring Fee for inspections of premises undertaken on a routine basis as part of Council's Restricted Premises Monitoring program.

Where breaches of the development consent, or any other matters requiring follow up action are identified, the subsequent follow up inspection(s) will be subject to the Enforcement Fee. These actions may include: following up on Notices and Orders, issuing Penalty Infringement Notices or instigating legal action.

The quantum of the Monitoring Fee and the Enforcement Fee are set out in Council's Fees and Charges that form part of the operational plan adopted by Council on an annual basis.

4.5 Legal Process

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4.5.1 Civil Proceedings

Civil proceedings may be brought in the Land and Environment Court or the Local Court to remedy or restrain serious breaches of law, including threatened or anticipated breaches.

4.5.2 Prosecution Procedures

Criminal proceedings may be commenced where there is sufficient evidence to prove beyond reasonable doubt that a serious offence has been committed.

If Council staff consider prosecution to be the most appropriate course of action preliminary advice should be sought from Council's Legal Services and, if sufficient evidence has been gathered, a report should be prepared and submitted to the Council.

Where prosecution has been selected as the appropriate option, Council will not necessarily proceed against all those who may be potentially liable under the legislation.

The general principles that will be applied are that proceedings will be instituted against those who are primarily responsible for the offence and where offences are committed by employees, agents or officers of a corporation in the course of their employment, proceedings will usually be instituted against the corporation.

In taking action against employees their compliance with management procedures or directions will be taken into consideration. Action will normally only be taken against the directors of corporations where there is a failure to exercise due diligence or where there is evidence linking a director or manager with the corporation's illegal activity.

For some offences, legal proceedings must be commenced no later than 2 years after the alleged offence occurs. However, all matters will be prepared for hearing as soon as possible.

The charge or charges laid will appropriately reflect the nature and extent of the alleged offences.

Legal proceedings may be conducted in the Local Court or the Land and Environment Court. The maximum fines that can be imposed by the local Court is less than those

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which can be imposed by the Land and Environment Court. This issue is a consideration in deciding which Court legal proceedings may be taken.

4.5.3 Penalty Infringement Notices

A Penalty Infringement Notice can be issued for a breach under the Environmental Planning and Assessment Act or other relevant laws depending on the circumstances of the incident.

4.5.6 Grievances

Any person who is aggrieved by a decision can contact Council staff to discuss the decision.

Formal complaints can be lodged with Council by mail, fax or e-mail:

Mail: The Chief Executive Officer
City of Parramatta
Council
PO BOX 32
PARRAMATTA NSW
9806 5903
Facsimile: 9806 5903
E-mail: Council@cityofparramatta.nsw.gov.au

4.6 Privacy

Council must observe the Information Protection Principles set out in the *Privacy and Personal Information Protection Act 1998*.

Personal information may be shared with other agencies for law enforcement purposes and Council will share such information where appropriate.

4.7 Audit and Probity

Regular audits will be undertaken on a random sample of complaints investigated. These audits are to be carried out by an independent person/agency including, but not limited to, Council's internal audit and review section, and/or independent officers from other local government areas.

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Regular meetings shall also be conducted with Council's Senior Management, Internal Audit and Review and Legal Services Manager regarding the inspection program for premises covered by this Policy.

5. Definitions

In this Policy:

Brothel means premises:

- (a) habitually used for the purposes of prostitution; or
- (b) that have been used for the purposes of prostitution and are likely to be used again for that purpose; or
- (c) that have been expressly or implicitly;
 - (i) advertised (whether by advertisements in or on the premises, newspapers, directories or the internet or by other means), or
 - (ii) represented, as being used for the purposes of prostitution, and that are likely to be used for the purposes of prostitution (and premises may constitute a Brothel even though used by only one prostitute for the purposes of prostitution).

Enforcement Fee means the fee charged by Council in connection with the inspections of premises that are undertaken for the purposes of taking enforcement action as a result of non-compliance with development consent or offence under laws relating to the use and occupation of the premises or both.

High Risk Premises means any premises that Council staff consider have a high risk of non-compliance with development consent, laws relating to occupation of the premises or both and such premises may include (without limitation):

- (a) Brothels; or
- (b) premises that conduct massage parlour operations in relation to which:
 - (i) there are genuine concerns of unauthorised sex related activities occurring on the site; or

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- (ii) there exists evidence of a pattern of unauthorised sex related activities; or
 - (iii) complaints have been received from the public alleging unauthorised sex related activities; or
- (c) premises that are identified as potentially having occupational health and safety risks.

Low Risk Premises means all premises that are not considered High Risk Premises.

Monitoring Fee means the fee charged by Council in connection with the inspections of premises that are undertaken for the purposes of assessing compliance with development consent or any laws relating to the use and occupation of the premises or both.

Related Sex Use means the following:

- (a) the use of premises for the provision of sexual acts or sexual services in exchange for payment;
- (b) the use of premises for the provision of massage services (other than genuine remedial or therapeutic massage services) in exchange for payment;
- (c) the use of premises for the provision of adult entertainment involving nudity, indecent acts or sexual activity if the entertainment is provided in exchange for payment or if the entertainment is ancillary to the provision of other goods or services.

For the purpose of this Policy, the definitions included in the Regulatory Services Enforcement Policy also apply where applicable.

Associated documents

Regulatory Services Enforcement Policy - 306

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