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DEALING WITH AUTHORITIES - LOCAL COUNCILS

USEFUL THINGS
TO KNOW ABOUT:
COUNCIL PEOPLE
IDENTIFICATION
RIGHTS OF ENTRY
INSPECTIONS
AND QUESTIONING

Councils are responsible for monitoring compliance with various laws and by-laws, including those relating to planning schemes and building/planning permits (i.e. does a building have permission to be used as a brothel). You may encounter them when your workplace is having issues relating to its building, the way the building is being used, and/or permits.

It is important to mention that council laws change from council to council. Because of this, we can only provide general information.

COUNCIL PEOPLE

Examples of a person who might be allowed to inspect a property on behalf of council include, but are not limited to:

- » council planners¹;
- » building surveyors²;
- » compliance auditors³; or
- » plumbing inspectors⁴.

For the purpose of this information sheet, any reference to “Authorised Officer” means someone that can inspect a premises from, or on behalf of, a council⁵.

IDENTIFICATION

If a premises or land is being inspected by an Authorised Officer, “it is good practice for the officer to provide a business card. Formal identification, such as proof of authorisation, a warrant or notice, should be made available if requested”⁶.

Authorised Officers must carry an identity card that has:

- » a photo of the Authorised Officer;
- » the signature of the Authorised Officer; and
- » the signature of a member of the relevant Council⁷.

It is important that you know the relevant council you are working in. For example, if you are working in St Kilda, you are covered by the City of Port Phillip. Any Authorised Officer’s ID should then include the relevant council logo.

If it is a member of the Department of Environment, Land, Water and Planning that is carrying out the investigation, their logo might look like this:



You may cooperate with the officer and allow immediate entry to the property, but can insist on being given two clear days’ notice unless the officer has a warrant⁹. This does not apply where the premises is being inspected by police for being an unlicensed brothel.

RIGHTS OF ENTRY

Authorised Officers can enter a property at any reasonable time (for example, during work hours) to carry out actions under the *Planning and Environment Act 1987* (Vic) (i.e. to make sure permit conditions are being complied with)¹⁰. Before entering, the Authorised Officer must do one of the following¹¹:

- » get consent of the occupier (this can be done on the day and preferably should be documented in writing)¹²;
- » give the occupier two days' notice; or
- » get a warrant.

Police officers may accompany Authorised Officers to assist them in entering your workplace¹³.

Any warrant or notice should be carefully inspected.

It is an offence to obstruct¹⁴ an Authorised Officer (or a member of the police assisting an Authorised Officer) and a person who does so could be subject to a penalty of up to 60 penalty units¹⁵.

If a premises is under investigation for being an unlicensed sex work premises, it will be investigated by Victoria Police not by an Authorised Officer from any council. This can be done by police either with or without a search warrant¹⁶.

For more information on interactions with Police, please see the information sheet, 'Dealing with Authorities – Police'¹⁷.

INSPECTIONS

Most council-related investigations are commenced because of a complaint from a member of the public. There are a large number of reasons why councils may commence investigations. The following might be reasons a council officer would want to inspect a brothel/escort agency. **Please remember that this is not a complete list and there may be other reasons:**

- » No building or planning permit – There are changes being made to the building without proper permission. This may include demolition or extension, or even signage in certain cases¹⁸.
- » Non-compliance with building or planning permit conditions – This relates to when a building itself (i.e. its physical appearance), or the way it is being used, doesn't comply with a council permit¹⁹. Specific examples include:
 - a. The building: window screenings that are not installed as required²⁰; or
 - b. How the building is being used: operating outside pre-approved hours (i.e. a building might have a planning permit to be used as a brothel on the condition that it only operates from the hours of 12pm-12am. Anything outside these hours would be inconsistent with the planning permit).
- » Nuisance – this is when a council has received a complaint from neighbours that something in the area is “offensive” to health and could be causing injury or discomfort²¹. Often this relates to noise (people/music/traffic/animals), but can also relate to smells, smoke or even rubbish being left around. Councils are required to investigate complaints relating to nuisances.
- » Illegal use – if a premises is being used to provide sex services for money, but doesn't have a permit to be used as a “brothel”, this would be considered an illegal use of land²². Most illegal uses are investigated by councils. However, there are special provisions under the *Sex Work Act 1994* (Vic)

LOOKING FOR MORE SPECIFIC INFORMATION?

You can find and contact your local council and their contact information on knowyourcouncil.vic.gov.au/councils. If you want to make a complaint about the conduct of an Authorised Officer, please see the relevant council website for more information.

CONTACTS

If you have further questions about your rights, please contact the following organisations:

VIXEN COLLECTIVE

Vixen Collective promote the cultural, legal, human, occupational and civil rights of all sex workers. You can phone them on Vixen Collective's peer support line 0414 275 959 or email vixencollectivemelbourne@gmail.com.

RHED

Resourcing health & Education in the sex industry (RhED) provides site based and outreach services in collaboration with relevant programs and agencies. You can contact RhED by email sexworker@sexworker.org.au, via their website sexworker.org.au or call them on 1800 458 752.

ST KILDA LEGAL SERVICE (SKLS)

SKLS receives referrals for legal assistance from sex worker organisations. It provides free legal assistance to residents in the cities of Port Phillip, Stonnington and Bayside, and runs specialist programs including a Community Outreach Program, Family violence Program, and LGBTIQ Legal Service. You can contact them via email info@skls.org.au or phone on (03) 8598 6635.

REFERENCES

1. *Planning and Environment Act 1987* (Vic) s 3.
2. *Building Act 1993* (Vic) s 228(1).
3. *Ibid.*
4. *Ibid.*
5. Under the *Planning and Environment Act 1987* (Vic), inspections can be carried out by anyone authorised by the Department of Environment, Land, Water and Planning, an authorised officer of council or any person the Minister for Planning has authorised. See s133 of the *Planning and Environment Act 1987* (Vic)
6. Using Victoria's Planning System , accessed online on 15 April 2019 at planning.vic.gov.au/_data/assets/pdf_file/0017/95012/Using-Victorias-Planning-System-2015.pdf Part 7.
7. *Local Government Act 1989* (Vic) s224(3)
8. Department of Environment, Land, Water and Planning, accessed online on 23 April 2019 at delwp.vic.gov.au.
9. *Planning and Environment Act 1987* (Vic) s 134, 135 & 137.
10. *Planning and Environment Act 1987* (Vic) s133
11. *Ibid* s134(1).
12. Using Victoria's Planning System, accessed online on 15 April 2019 at planning.vic.gov.au/_data/assets/pdf_file/0017/95012/Using-Victorias-Planning-System-2015.pdf, Part 7.
13. *Planning and Environment Act 1987* (Vic) s 136.
14. *Ibid* s137.
15. Penalty units are used to define the amount payable for fines in relation to an offence. It is a monetary value that changes each financial year. At the date of publishing this information sheet, one penalty unit is \$161.19 (1 July 2018 to 30 June 2019).
16. *Sex Work Act 1994* (Vic) ss78A-78B
17. St Kilda Legal Service, 'Dealing with Authorities – Police', (2019) accessible via skls.org.au/
18. City of Stonnington, Enforcing Permits, (last updated 5 July 2018), accessed online on 16 April 2019 at stonnington.vic.gov.au/Development/Planning/Understanding-Planning/Enforcing-Permits.
19. *Ibid*
20. *Ibid*
21. *Public Health and Wellbeing Act 2008* (Vic) s58
22. City of Stonnington, Enforcing Permits, (last updated 5 July 2018), accessed online on 16 April 2019 at stonnington.vic.gov.au/Development/Planning/Understanding-Planning/Enforcing-Permits.
23. Consumer Affairs Victoria, How to register as a small owner-operator, accessed online on 30 April 2019 at consumer.vic.gov.au/licensing-and-registration/sex-work-service-providers/small-owner-operators/how-to-register-as-a-small-owner-operator.
24. *Ibid* s135.
25. *Ibid* s12(3).
26. *Local Government Act 1989* (Vic) s224(6).



The information in this booklet is of a general nature. **For detailed and up-to-date advice contact a lawyer.**

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