Policy

Statutory Compliance and Enforcement Policy

Policy Type

Council

Policy Purpose

This Policy provides a framework and guidance for employees who exercise compliance and enforcement discretion on behalf of the City. This policy should be read in conjunction with relevant legislation to ensure alignment with statutory processes.

Policy Statement

The City will endeavour to carry out its statutory compliance and enforcement responsibilities in accordance with the following:

1. Principles of Enforcement

   1.1. Risk-based
   The City, bearing in mind the greatest interest of its residents, will ensure resources are targeted where the risks of harm, unsafe practices or misconduct are the greatest. Matters which are trivial or otherwise deemed not in the public interest will not be pursued.

   1.2. Proportionate
   When determining regulatory response, the City will consider the level of harm or risk involved, as well as the individual's experience and their past behaviour.

   1.3. Effective and Consistent
   The City will apply the appropriate compliance tool to ensure that our regulatory interventions are responsive to the relevant circumstances and will achieve the desired outcomes. The City will aim for consistent enforcement and outcomes for similar conduct.

   1.4. Constructive and Compliance Focused
   The City will provide advice, guidance and support to the community to help them comply with the law. The City will prioritise achieving compliance as the preferred outcome and will only pursue enforcement action or penalties where appropriate or required under relevant legislation.

1.5. Accountable

The City is willing to explain decisions, however must protect the integrity of its investigations. The City will balance confidentiality requirements with the need to inform the community about its regulatory actions.

1.6. Evidence-based

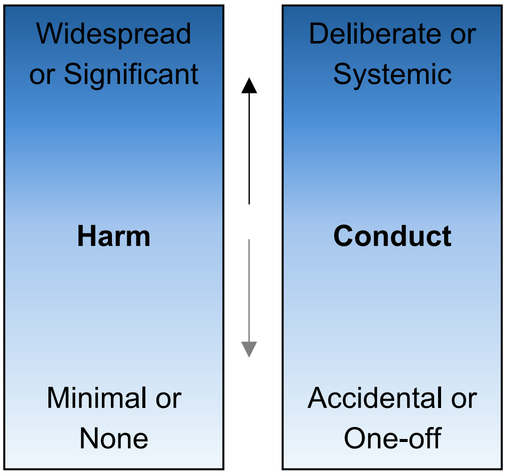
The City will only investigate complaints or attend a property, including exercising powers of entry, where a complaint is supported by sufficient and credible information.

1.7. Transparent and Timely

The City will demonstrate impartiality and act with integrity. The community and those who the City regulates will know what to expect when engaging with the City. Furthermore, the City will strive to conduct investigations, compliance activities and enforcement action as efficiently as possible to limit disruption and to provide certainty about its actions. Unless confidentiality, legal or other constraints apply, the City will endeavour to provide the complainant with an outcome.

2. Prioritisation of Enforcement Matters

The City will endeavour to consider all matters involving a potential breach of the law. However, a formal investigation will not be undertaken for every matter brought to the City's attention. The City will use a risk-based approach to ensure proper targeting of resources towards areas that are most at risk. In doing so, any anonymous, speculative or unsupported complaints may not result in an investigation or response.



The City will prioritise resources towards deliberate or systemic conduct that has the potential to cause widespread or significant harm. The City will apply a common-sense approach based on reasonable judgement and the relevant legislation when prioritising resources and determining enforcement action. Accidental or one-off conduct that creates minimal or no harm will not be investigated unless it represents a breach of a statutory approval.

When determining harm, the City may have regard to factors including, but not limited to:

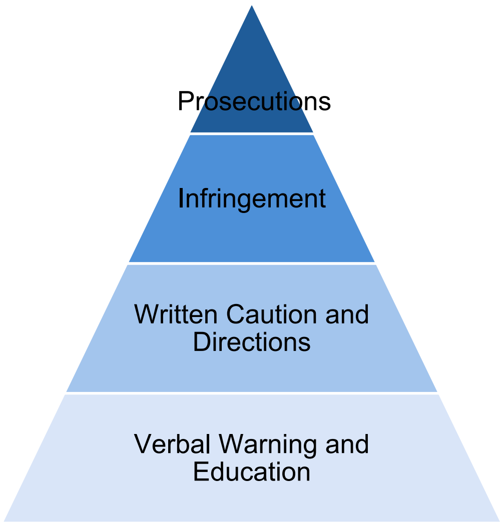
- Cost incurred by the City, including to rectify damage;
- Risk to the safety of the community or any person;

- Extent of injury caused;
- Environmental impacts;
- Victim vulnerability;
- The penalty associated with the action;
- The impact on the amenity of the district; and/or
- Any impact that is reasonably foreseeable as a result of the offending, whether it was actually inflicted or not.

When assessing the nature of conduct, the City may have regard to circumstances beyond the actions of the person subject to the enforcement. Conduct may be considered systematic where it forms part of a recurring pattern of the same or similar contraventions occurring at a particular location or in a particular manner, regardless of whether any individual person has previously committed the contravention.

The ethnicity, gender, religious beliefs, social position, marital status, sexual preference and political opinions or cultural views are irrelevant to the prioritisation of matters.

3. Enforcement Options



3.1. Verbal Warning and Education

An informal caution issued when a person has committed a minor offence or breach. Typically given where immediate compliance is achieved. The aim of a verbal warning should be education on the law and guidance on how to comply in the future.

3.2. Written Caution and Directions

A formal warning or notice issued to a person who has committed an offence, generally used for minor or unintentional conduct and/or where the person demonstrates a cooperative attitude. Written cautions may include a specified timeframe for compliance and threaten enforcement action if the person fails to comply in the future.

3.3. Infringement

A formal notice imposing a monetary penalty, utilised as an alternative to prosecution. It is a legal enforcement tool to address non-compliance in a timely manner without court proceedings, when the offence is not disputed or escalated. An infringement should be utilised for deliberate offending where there is a moderate risk of harm where a verbal warning or written caution is unsuitable or the person is not cooperative.

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3.4. Prosecution

A formal legal action initiated by the City for an alleged breach. It involves presenting evidence in court to demonstrate that an offence has occurred. Prosecution should be utilised as a last resort, when warnings, cautions or infringements are ineffective or inappropriate. Prosecutions should be utilised for deliberate or systemic conduct that holds a greater risk of harm or where there is a financial benefit for the person not to comply with the law.

Where appropriate, the City will aim to encourage voluntary compliance through education and awareness first, applying escalating enforcement actions to those who demonstrate a disregard for the law or whose conduct is likely to cause harm to the City or its community. In these cases, the City will provide a clear pathway for voluntary compliance. In relation to building and planning disputes, compliance in the first instance may be in the form of a directions notice, proposed building order or building order under relevant legislation.

Nothing in this policy precludes the City from issuing infringements, commencing prosecution or undertaking another enforcement action for non-compliance at any time in the enforcement process. In these circumstances, the City will utilise discretion and consider any demonstrated disregard for the law and potential or actual harm caused by the conduct.

4. Additional Enforcement Actions

Additional enforcement actions will only be undertaken when deemed necessary by authorised City officers or required by legislation. In making this determination, officers will give particular consideration to the potential extent of harm that may be caused by not taking action, the cooperation of the affected person, and whether taking that action is necessary for the compliance and enforcement action. All additional enforcement action taken will be supported by statutory powers.

5. Review and Appeal of Enforcement Actions

5.1. Internal reviews and appeals

Unless otherwise specified, any request for the review or appeal of a compliance or enforcement action must be submitted within 28 days from the date the action was taken. Out of time applications will not be considered by the City.

Enforcement action is an operational matter dealt with by the City’s administration. Unless exceptional circumstances apply, and authorisation in writing is provided to the City, only the person affected by a compliance or enforcement action can appeal or apply for a review of the decision.

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The City relies on officer discretion when conducting internal reviews or appeals. Regard should be given to:

- Whether the City has sufficient evidence to prove each element of an offence;
- Whether the compliance and enforcement action was legally carried out;
- The strength and completeness of the evidence;
- Whether procedural fairness was afforded to the affected person;
- Whether the compliance and enforcement action was proportionate and reasonable;
- Whether the decision to undertake compliance and enforcement action is consistent with how similar cases have been handled;
- Whether the compliance and enforcement action was done in accordance with City policy and procedures;
- Any mitigating or exceptional circumstances; and/or
- The public interest.

5.2. External reviews and appeals

Unless exceptional circumstances apply, requests for the review of development compliance, building or statutory planning decisions must be lodged in the State Administrative Tribunal or the Courts.

The recipient of an infringement may elect to have their matter heard by the Court. When the City receives a valid election, it will lodge a prosecution notice with the relevant Court. The City will not file a prosecution notice if:

- The infringement has already been paid, in line with the *Criminal Procedure Act 2004*;
- The application is not made by the subject of the enforcement action; or
- In any other circumstance where the City determines that the matter is not suitable for referral to the Court.

Unless exceptional circumstances apply, the City will only communicate with and consider external appeal requests made by the person subject to the compliance or enforcement action.

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5.3. <u>City-initiated appeals</u>

The City will not appeal a Court decision without a Council resolution.

In considering whether to appeal a decision, Council will consider:

- The prospects of success;
- The quality of the original case;
- Potential cost to the City to appeal the decision;
- Whether not appealing will set an undesirable precedent for the City; and
- Public interest.

6. Communication with Third Parties about Compliance and Enforcement Action

Unless exceptional circumstances apply, the City will not provide a substantial response to third parties, including Elected Members, on any ongoing or active compliance and enforcement action.

Elected Members play an important role in the governance and strategic direction of the City. They focus on the long-term priorities, objectives and interests of the community as a whole. The *Local Government Act 1995* establishes a clear separation between the governance responsibilities of Elected Members and the administrative and operational functions carried out by the CEO and City officers. Consistent with this framework, the assessment, investigation, review and determination of individual compliance and enforcement matters are administrative functions undertaken by authorised officers.

This approach protects the privacy and confidentiality of individuals involved in enforcement matters, supports procedural fairness and natural justice, and helps ensure that decisions are made independently, impartially and on the basis of relevant facts, legislation, policies and circumstances. It also reduces the risk of actual, potential or perceived bias, undue influence or improper interference in the enforcement process.

This clause does not restrict staff from providing information to auditors, the disclosure of information in any audit or financial statement, or the disclosure of information as required under any written law.

7. Recovery of Legal Costs

In all matters where costs are recoverable, the City will seek to recover its fair and reasonable costs. This will be done either by consent or by order of the Court.

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8. Definitions
    8.1. **Additional enforcement action** includes, but is not limited to, the seizure of goods/animals; property entry; business closure and building evacuation.
    8.2. **Third party** means any person who is not the individual named in the enforcement action. When a company is the subject of enforcement action, a third party is any person who has not been appointed the corporation's representative under section 152 of the *Criminal Procedure Act 2004* (WA). Prior to the appointment of a corporation's representative, the City will consider anyone who is not a director to be a third party.

Policy Information

Strategic Link:	Privacy Management Policy
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