

Council Policy

Council Policy Name: Compliance and Enforcement

Responsible Directorate: Planning and Development Services

Version: Approved

1. PURPOSE

1.1. The purpose of this Policy is to outline the City’s approach to compliance and enforcement, with the aim of ensuring a transparent, consistent and accountable approach.

2. SCOPE

2.1. This Policy is applicable to all legislation that the City has jurisdiction to administer and enforce.

3. DEFINITIONS

Term	Meaning
Authorised Person	a person appointed under section 9.10 of the <i>Local Government Act 1995</i> (the Act) to issue an infringement, a person acting in the course of their duties as an employee of the City, or a person authorised to commence prosecution under the Act, or otherwise authorised to commence a prosecution or issue an infringement under any other law the City administers.
Policy	this City of Busselton Council policy titled “Compliance and Enforcement”

4. STRATEGIC CONTEXT

4.1. This Policy links to the following themes and strategic priorities of the City’s Strategic Community Plan June 2021:

Strategic Theme	Strategic Priority
Key Theme 2 LIFESTYLE	2.2 Work with key partners to facilitate a safe, healthy and capable community
Key Theme 4 LEADERSHIP	4.2: Deliver governance systems that facilitate open, ethical and transparent decision making.

5. POLICY STATEMENT

5.1. The guiding principles for compliance and enforcement are set out below:

Principle	Approach
Consistency	Ensuring all compliance and enforcement action is implemented consistently and a reasonable response is applied to the circumstances and facts of each matter.
Transparency and Accountability	Decision making for compliance and enforcement activities will be made in accordance with policies and guidelines and demonstrate impartiality, balance and integrity.
Proportionality	Compliance and enforcement will be proportionate to the level of risk and seriousness of the non-compliance.
Risk based and outcome focused	Compliance and enforcement action will be based on risk management and the efficient use of public resources. The pursuit of minor instances of non-compliance with negligible consequences may be deferred or discontinued.
Natural justice	Properly and genuinely considering all relevant submissions and evidence in each case, and by ensuring all parties to the matter have the right to be heard.

Compliance priorities

- 5.2. The City will establish compliance priorities in line with the regulatory principles primarily using a risk based methodology.
- 5.3. The City will prioritise events or activities that represent the greatest level of risk or conduct that is of significant public interest or concern.

Compliance promotion and education

- 5.4. The City is committed to providing information to educate the community on compliance as well as promoting understanding and encouraging compliance.
- 5.5. The City will engage in community education and the provision of information in relation to its regulatory framework as appropriate and as resources allow, to achieve the overall objective of voluntary compliance.

Compliance monitoring

- 5.6. A variety of methods may be used by the City to monitor levels of compliance with relevant legislation, licences and other statutory instruments. These methods include:
- inspections, reviews and audits;
 - assessment as part of an application and approval process;
 - industry reporting – statutory and self-reporting;
 - information from other regulatory authorities; and
 - community reports and complaints.
- 5.7. Complaints about alleged non-compliance with laws administered by the City will generally be investigated, except in cases where, on the basis of the information available to it, the City has formed the opinion that:
- the alleged non-compliance is trivial or inconsequential.
 - the complaint is frivolous, vexatious or unreasonable as described in the Ombudsman Western Australia Managing Unreasonable Complainant Conduct: Practice Manual.
 - the complaint is unsubstantiated or contains insufficient verifiable evidence to enable an investigation to be undertaken.

- d. the complaint is part of a series of complaints made in the course of a known ongoing neighbourhood dispute where the previous complaints have been unsubstantiated, and another investigation may be perceived as harassment of the subject of the complaint.
 - e. the City is not the appropriate authority to investigate the matter.
 - f. investigation or other action would have an unreasonable impact on resources and/or is unlikely to achieve an outcome sufficient to justify the expenditure of resources.
- 5.8. Statutory compliance, organisational and community priorities, and the availability of organisational resources will guide the enforcement of laws and regulations and the operational focus of Authorised Persons. Authorised Persons are expected to use their reasonable judgement and discretion to achieve the objectives of this Policy and the relevant legislation.
- 5.9. Authorised Officers with relevant authority may initiate enforcement action.

Enforcement and types of enforcement action

- 5.10. The City will undertake enforcement related work with due regard to the compliance and enforcement principles.
- 5.11. Where an inspection or investigation reveals evidence of an alleged breach, the City will consider what enforcement action, if any, should be taken. Enforcement actions may include any one or more of the following:
- a. informal action (for example offering advice or education, issuing verbal warnings and requesting action etc.);
 - b. formal warning;
 - c. infringements;
 - d. prohibition orders;
 - e. seizures;
 - f. written directions and orders;
 - g. formal notices;
 - h. prosecutions or injunctions.
- 5.12. Factors that the City will consider in making decisions concerning the choice of enforcement tool to respond to a particular incident or compliance issues include:
- a. the seriousness of the matter, having regard to the actual or potential impact on the health, safety and amenity of others or on the environment;
 - b. the accessibility and adequacy of public information concerning the relevant compliance requirements;
 - c. the length of time since the occurrence of the incident and any statutory time limits;
 - d. whether the breach or offence was committed deliberately or inadvertently;
 - e. the previous compliance history of the alleged offender with respect to similar types of offences, and whether the alleged offender has been educated, requested to comply, issued warnings or notices to comply and has failed to do so without reasonable excuse;
 - f. the cooperation of the offender with the City in rectifying or committing to rectify the non-compliance when advised of it;
 - g. whether the offender belongs to a recognised category of vulnerable persons with limited legal capacity or communication difficulties;
 - h. any aggravating or mitigating circumstances;
 - i. the likelihood that the enforcement action will provide an adequate incentive to remedy the non-compliance and deter subsequent non-compliance, considering the level of financial or other benefit that the alleged offender could expect to derive from the non-compliance;
 - j. other issues of public concern, including precedents regarding similar non-compliance within the City and the precedent that may be set by any perceived failure of the City to take appropriate enforcement action.
- 5.13. Attempts by any person to improperly influence the compliance and enforcement process will not be tolerated.

- 5.14. Prosecution is not a 'last resort' and is to be undertaken whenever the circumstances warrant that action being taken.
- 5.15. Prior to deciding whether to commence prosecution the City will consider the information provided by the investigating officer, the presence of a *prima facie* case, the likelihood of securing a conviction and deterrent penalty, and other matters of public interest. Regard is to be given to the factors identified in the Director of Public Prosecutions' *Statement of Prosecution Policy and Guidelines 2018*.
- 5.16. Where the City has determined that it is in the public interest to take prosecution action in any matter, the Chief Executive Officer is to inform the Council of that decision at the next reasonable opportunity.
- 5.17. Information in respect of prosecution decisions and actions are to be provided to Council on a confidential basis.

Publishing enforcement actions and outcomes

- 5.18. The City may publish information about enforcement action and outcomes in order to raise awareness of relevant laws and the consequences of non-compliance, with the aim of deterring people from engaging in similar conduct and promoting better practices.
- 5.19. The City may publicise information about enforcement actions and outcomes through a variety of methods including, but not limited to:
 - a. its website;
 - b. media statements and interviews;
 - c. conferences and public forums;
 - d. publications; and
 - e. research.

6. RELATED DOCUMENTATION / LEGISLATION

- 6.1. The relevant legislation associated with this Policy includes, but is not limited to, the following:
 - a. *Local Government Act 1995 and associated Regulations*
 - b. *Planning and Development Act 2005*
 - c. *Building Act 2011*
 - d. *Public Health Act 2016*
 - e. *Health Act 1911*
 - f. *Environmental Protection Act 1986*
 - g. *Food Act 2008*
 - h. *Criminal Procedure Act 2004*
 - i. ?
 - j. *Bush Fires Act 1954 and associated Regulations*
 - k. *Caravan Parks and Camping Grounds Act 1995 and associated Regulations*
 - l. *Cat Act 2011 and associated Regulations*
 - m. *Control of Vehicles (Off-road Areas) Act 1978 and associated Regulation*
 - n. *Dog Act 1976 and associated Regulations*
 - o. *Litter Act 1979 and associated Regulations*
 - p. *Activities in Thoroughfares and Public Places and Trading Local Law 2015*
 - q. *Dogs Local Law 2023*
 - r. *Jetties Local Law 2014*
 - s. *Keeping and Control of Cats Local Law 2014*
 - t. *Local Government Property Local Law 2010*
 - u. *Parking Local Law 2020*
 - v. *Waste Local Law 2016*
- 6.2. Other guidelines: *Director of Public Prosecutions – Statement of Prosecution Policy and Guidelines 2018*

7. REVIEW DETAILS

Review Frequency		3 yearly		
Council Adoption	DATE	18 October 2023	Resolution #	C2310/125
Previous Adoption	DATE	N/A	Resolution #	N/A