

Responsible Directorate	Office of the Chief Executive Officer
Responsible Business Unit/s	Governance
Responsible Officer	Manager Governance
Affected Business Unit/s	All

The amendments reflect a more community minded enforcement approach in response to State of Emergency and Public Health Emergency declaration.

Objective

This policy provides guidance to:

- Ensure there is a consistent approach in the undertaking of compliance and enforcement action.
- Ensure transparency, procedural fairness and the principles of natural justice are followed.
- Assist the members of the public and City's officers in dealing with compliance and enforcement action relating to local government matters.

Scope

The City's approach to compliance and enforcement, including proactive compliance, reflects its responsibilities under relevant Acts of Parliament, Regulations and local laws and conforms to the *Director of Public Prosecutions Act 1991 - Statement of Prosecution and Policy Guidelines*. The City has a duty to investigate all complaints in accordance with the Customer Service Charter and a statutory obligation to enforce compliance within the requirements of various legislation.

This policy reflects the need for compliance action to be carried out in a transparent, efficient, fair and consistent manner having regard to all the circumstances. This policy applies to the investigation and resolution of:

- (a) Offences for breaches of legislation for which the City is responsible for administering; or
- (b) Failure to comply with the terms or conditions of approvals and orders.

It also applies to any appeals arising out of proceedings brought by the City.

Policy

1. Compliance Principles and Approach

- 1.1. The City shall administer its statutory responsibilities under the applicable legislation, in a fair, unbiased and equitable manner in the interest of public health, safety and amenity. Each compliance investigation undertaken by the City will be assessed case by case on its merits. The City's communications with members of the public will be in accordance with the Customer Service Charter.
- 1.2. Where a complaint relates to a breach of Statute, subsidiary legislation or policies, for which the City is responsible for administering, the City may request those complaints to be made in writing and must include:
 - (a) Name, address and phone number or email address of the complainant
 - (b) Address of the property to which the complaint relates

- (c) Details of the alleged breach or offence
 - (d) Details of how the matter is affecting the complainant.
- 1.3. Complaints will be prioritised for investigation based upon the seriousness of the alleged breach or offence when assessed against the criteria prescribed in sub-clause 2.2(b).
- 1.4. The City understands that some complaints received in relation to compliance issues are largely as a result of neighbourhood disputes. The City may discontinue an investigation of a complaint where it can be reasonably ascertained that the complaint is unsubstantiated, or pertains to a civil matter.
- (a) The City may commence proactive compliance investigations and in doing so shall have regard to the following criteria short and long term impact of the issue or activity may be having on the community;
 - (b) Potential benefit created by achieving compliance;
 - (c) Level of public interest on the issue or activity; and
 - (d) The resources available in undertaking the particular compliance program.

2. Enforcement

- 2.1. The enforcement of relevant legislation is an administrative function for which statutory responsibility rests with the Chief Executive Officer or delegated or authorised officer.
- 2.2. The City will apply the following principles in deciding whether enforcement action is appropriate:
- (a) Enforcement action will be commensurate to the seriousness of the alleged breach or offence and consistent with legal requirements.
 - (b) In determining the seriousness of an alleged breach or offence resulting from a complaint or proactive compliance action, the City will have regard to:
 - i. the penalty prescribed in the relevant legislation for the alleged breach or offence,
 - ii. the potential harm caused by, or effect of, the breach/offence on public health and safety, environment (built and natural) or the amenity of the district,
 - iii. whether or not it is in the public interest for the City to take action, **including but not limited to any impact that COVID-19 response and recovery has on the offending or enforcement activity.**
 - (c) The enforcement measures applied will be those considered most appropriate to achieve the desired outcome.
 - (d) Prosecution will only be initiated following consideration of all the available information and circumstances of the individual case.
- 2.3. The City is unable to authorise the continuation of a breach or offence once it has been brought to the City's notice. However, the City's compliance efforts will be targeted at addressing issues that are both unlawful and likely to present a risk to public health and safety, the environment (built and natural) or the amenity of the district. This may mean that the investigation of relatively minor instances of non-compliance are deferred or not pursued.
- 2.4. Decisions on enforcement action may have regard to any or all of the following considerations:
- (a) Whether there has been a failure to comply with any written law, any formal request, lawful direction or notice given by the City.
 - (b) The length of time since the incident
 - (c) Whether the breach or offence was committed deliberately or accidentally.
 - (d) Any mitigating or aggravating circumstances.
 - (e) Any demonstrated history of non-compliance.
 - (f) The potential short and long term consequences of non-compliance.
 - (g) The need for deterrence of further breach or offences.
 - (h) The precedent which may be set by any failure to take enforcement action.

3. Enforcement Options

- 3.1. At the conclusion of an investigation, officers shall use the most appropriate action and may include one or more of the following enforcement options listed below, in order of severity:
- (a) Pursue no further action;
 - (b) Informal action
 - (c) Formal warning
 - (d) Infringements
 - (e) Statutory notices
 - (f) Prosecution
 - (g) Injunctions.
- 3.2. Enforcement action may only be initiated by officers with relevant delegated authority or authorisation relating to enforcement action.
- 3.3. In undertaking the enforcement options outlined in 3.1, the City may become involved in proceedings in the State Administrative Tribunal or a Court of law, in the event that the offender does not comply with or seeks to appeal the enforcement action.

4. Prosecution

4.1. Initiation of Prosecution

4.1.1. Prosecution is one of the enforcement options that may be used when there are reasonable grounds for suspecting that an offence has been committed contrary to an Act, Regulation or Local Law.

4.1.2. The objects of prosecution include but are not limited to:-

- (a) Enforcing Local Government legislation;
- (b) Protecting the public from loss, harm, injury or damage;
- (c) Satisfying the public interest that Local Government legislation is properly enforced;
- (d) Acting as a deterrent to others who might consider committing the same or similar offences.

4.1.3. A decision on whether or not to initiate a prosecution for an alleged offence will have regard to any or all of the following considerations:-

- (a) The prospects of conviction including prima facie evidence to prove the case beyond reasonable doubt including but not limited to written or verbal admissions and witness statements;
- (b) Whether the prosecution is in the public interest;
- (c) The seriousness and the type of the offence;
- (d) Any evidence of contempt or disregard for the law;
- (e) Any prior convictions or history of the alleged offender relevant to the offence;
- (f) The statutory timeframes relating to the relevant legislation;
- (g) When and by whom the offence was committed;
- (h) Whether the alleged offender had prior knowledge or industry experience relating to the offence;
- (i) Any ongoing amenity and social impacts resulting from the offence;
- (j) Any public health and public safety impacts resulting from the offence;
- (k) The potential legal consequences or reputation impact on the City if no action is taken;
- (l) The City's statutory and ethical responsibilities to enforce legislative provisions under its administrative control;
- (m) Whether there is any other reasonable alternative to prosecution;
- (n) The age, state of physical health and/or mental health of the alleged offender;

- (o) The likelihood of recovery of fines and costs from the offender;
- (p) Legal advice received by the City's Legal representatives.

4.1.4. The City may also become involved in prosecution proceedings if the alleged offender elects to go to court in relation to an infringement or if the matter is escalated to the Supreme Court in response to a court or State Administrative Tribunal decision.

4.2. Discontinuance of a Prosecution

4.2.1. A prosecution is only to be discontinued—

- (a) Should the prosecution complaint be wrong at law or there is an error in the charges;
- (b) Should the prosecution involve a mistake of fact;
- (c) Should the alleged offender be deceased, cannot be located or is declared bankrupt;
- (d) Upon legal advice;
- (e) Where the age, state of physical health and/or mental health of the alleged offender is a determining factor;
- (f) In consultation with or following comments made by the court; or
- (g) After consultation with the legal representative of the defendant or personally with the defendant if the defendant is unrepresented.

4.2.2. The decision to discontinue a prosecution shall be made by an officer with relevant delegated authority or authorisation and registered in the City's corporate document management system.

4.2.3. If, following the commencement, but prior to the conclusion of prosecution action, an alleged offender complies with any prior order that gave rise to the prosecution, or submits any application for approval; the City will not discontinue the prosecution.

5. Injunctions

5.1. In instances of serious non-compliance with legislation and where efforts to resolve that non-compliance have proven ineffective, the City may seek an injunction requiring a person not to breach, or to cease breaching, a statute.

5.2. Decisions on whether to seek an injunction shall be made in accordance with the Chief Executive Officer's statutory responsibilities in relation to legal proceedings.

6. Recovery of Legal Costs & Penalties

6.1. The City will seek to recover its fair and reasonable costs in all matters where costs are recoverable, either by consent or by order of the Court.

6.2. The City is unable to assist third parties in the recovery of legal costs.

7. Disclosure of Information

7.1. Requests for information from members of the public in relation to compliance or enforcement matters will be handled in accordance with the City's [Freedom of Information Statement](#)

7.2. Requests for information relating to compliance or enforcement matters made pursuant to the *Freedom of Information Act 1992* (FOI Act) will be handled in accordance with the processes set out in the FOI Act. Any decision to release or refuse to release information will be considered on a case-by-case basis in accordance with the provisions of the FOI Act.

7.3. Officers shall not release information on specific compliance and enforcement activities, such as active investigations, to the public. The City may provide a press statement if it is absolutely

necessary or required through the investigative process. Information may be shared with co-regulators and police.

Definitions

Amenity means the same as defined in Local Planning Scheme No 3.

Officer means an employee of the City.

Public Interest means action and/or conduct which is to be for the good of society and for the well-being of its members. The interest is therefore the interest of the public as distinct from the interest of an individual or individuals. (Reference: DPP v Smith [1991] 1 VR 63). In the local government context, it specifically relates to the general function of the City to provide for the good governance of persons in its district (see section 3.3(1) of the *Local Government Act 1995*).

Public Safety means the welfare and protection of the general public.

Proactive Compliance means the commencement of compliance investigations into an activity without a written complaint.

Relevant management practices/documents

The following may be relevant in dealing with development compliance and enforcement matters and include but not limited to:

- 1) City of Stirling Customer Service Charter
- 2) City of Stirling State Administrative Tribunal Management Practice
- 3) Freedom of Information Statement

Legislation/local law requirements

The following Acts and instruments are the guiding legislation for compliance and enforcement matters, and include, but are not limited to:

- 1) *Building Act 2011* & Regulations
- 2) *Bush Fires Act 1954* and Regulations
- 3) City of Stirling Local Laws
- 4) *Control of Vehicles (Off-road areas) Act 1979* and Regulations
- 5) *Cat Act 2011* and Regulations
- 6) *Dog Act 1976* and Regulations
- 7) *Director of Public Prosecutions Act 1991* - Statement of Prosecution and Policy Guidelines
- 8) *Freedom of Information Act 1992*
- 9) *Health Act 1911* and Regulations
- 10) *Litter Act 1979* and Regulations
- 11) *Local Government Act 1995* and Regulations
- 12) *Local Planning Scheme No 3*
- 13) *Planning and Development Act 2005* & Regulations

Office use only				
Relevant delegations	Instruct Legal Action			
Initial Council adoption	Date	17 November 2015	Resolution #	1115/042
Last reviewed	Date	26 May 2020	Resolution #	0520/027
Next review due	Date	2021		