

Council Policy

Compliance and Enforcement



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| Legislation/local law requirements | <p>Acts/Regulations as amended from time to time</p> <ul style="list-style-type: none"> • <i>Local Government Act 1995;</i> • <i>Building Act 2011;</i> • <i>Building Regulations 2012</i> • <i>Planning and Development Act 2005;</i> • <i>Dog act 1976;</i> • <i>Cat Act 2011;</i> • <i>Bush Fire Act 1954;</i> • <i>Litter Act 1979</i> • <i>Hope Valley Wattleup Re Development Act 2000</i> • <i>Caravan Parks and Camping Grounds Act 1995;</i> • <i>Food Act 2008;</i> • <i>Health (Miscellaneous Provisions) Act 1911;</i> • <i>Public Health Act 2016;</i> • <i>Tobacco Products Control Act 2006;</i> • <i>Biosecurity and Agriculture Management Act 2007;</i> • <i>Waste Avoidance and Resource Recovery Act 2007;</i> • <i>Environmental Protection Act 1986;</i> • <i>Building Services (Complaint Resolution and Administration) Act 2011;</i> • <i>Local Government (Uniform Local Provisions) Regulations 1996;</i> and • All-subsidary legislation as amended. |
| Relevant Delegation | As per City's Delegated Authority Register |
| Related policy procedures and documents | |

Purpose

To state the City's objectives and principles that will guide the City of Kwinana's Authorised Officers implementation of compliance and enforcement action to ensure consistent and good governance.

Policy Statement

Authorised Officers are responsible for administering a wide range of legislation providing for the safety and amenity of the community. This Policy serves to inform the community of the Council's position in relation to compliance with legislation, including the circumstances which will be considered when assessing different compliance and enforcement options.

The policy will provide guidance to:

- ensure consistency in decision making and provide for good governance;
- ensure transparency, procedural fairness and that the principles of natural justice are preserved;
- use compliance and enforcement strategies in such a way as to best achieve legislative objectives and provide for the good governance of the City of Kwinana.

Scope

The policy applies to all of the City's Authorised Officers, who have regulatory responsibility within the Kwinana district for implementation of compliance and enforcement action in the *Local Government Act 1995* and all other relevant legislation including the legislation mentioned in the table at this end of this policy document.

This Policy is made subject to existing State policies and legislation, as amended from time to time, and applies to all land within the City of Kwinana.

Policy Provisions

Definitions

compliance - refers to a corporation or person meeting or taking steps to comply with relevant legislation in place.

enforcement - means procedures and actions taken by the City's Authorised Officers to ensure that a person or organisation complies with their statutory obligations.

Authorised Officer- a City of Kwinana employee or contractor, other than a Councillor, appointed by council to carry out compliance functions or an enforcement function under relevant legislation.

non-compliance - means a breach of relevant legislation administered by the City's Authorised Officers.

prosecution - means of the taking of legal proceedings against a person (s) or corporation, as defined in Law, for alleged unlawful activity.

public interest - means the interests of the community as a whole, or a group within the community or individuals.

trivial - an allegation made without real grounds, of insignificant value or importance.

remedial - means an intent to correct something that is wrong or to improve a bad situation

Principles of enforcement

The City will carry out its enforcement-related work with due regard to the following principles:

i. Graduated and proportionate

The City's actions will be scaled to the seriousness of the non-compliance.

Prosecution will generally be used as a last resort, or for serious offences. The City's financial resources are finite and will not be used to pursue cases that are trivial and/or not in the public interest.

ii. Consistency, unbiased and equitable

The City will take a similar approach in similar cases to achieve similar outcomes.

While decisions on enforcement require the use of professional judgement and discretion to assess varying circumstances, the City will follow listed standard operating procedures to ensure fair, equitable and unbiased treatment in every case.

iii. Accountable and transparent

The City will be open and transparent about the manner in which it undertakes its compliance and enforcement activities. When remedial action is needed, the City will explain clearly why the action is necessary, identify the action required to achieve compliance, and the time frame for completing that action. Time frames set for achieving compliance will be reasonable and may take into consideration individual circumstances.

iv. Natural justice

The City will follow the principles of natural justice in every investigation by properly and genuinely considering all relevant submissions and evidence in each case without bias, by ensuring that all parties to the matter have the right to be heard, and that any decision is based on relevant evidence.

Compliance approach to implementing regulatory responsibility

The City will adopt the following approach to ensure appropriate implementation of its regulatory responsibilities:

- 1) Respond to all regulatory complaints received having regard to the City's policies.
- 2) Adopt a proactive approach to identifying and investigating non-compliance by implementing an enforcement work plan as required.
- 3) Refer matters to external agencies, where appropriate, when the allegation falls outside the City's jurisdiction.
- 4) Review its compliance and enforcement activities and incorporate lessons learned into policy, operating procedures and broader compliance tools.

Responding to complaints

All complaints concerning unlawful activity that are within the City's jurisdiction will be investigated except in the following circumstances where discretion may be used:

- 1) The allegation is trivial.
- 2) The complaint has been made primarily as a result of a neighbourhood dispute.
- 3) The City is not the appropriate authority to investigate the matter.
- 4) Where the complainant is anonymous, unless the matter is considered to be:
 - a) a significant risk to public health;
 - b) a significant risk to public safety or the environment; or
 - c) a significant impact on the amenity of a locality, and there is sufficient information in the complaint to enable an investigation to be undertaken.

Enforcement approach to implementing regulatory responsibility

Where an investigation has been undertaken and it is considered that sufficient evidence exists to determine non-compliance, the City will take the most appropriate enforcement action based on the specific circumstances of each case.

The decision to take enforcement action and the type of action taken will be at the discretion of the City and will be made having due regard to this Policy.

i. Key considerations when making this determination will include:

- a) the type of offence (first, second, third);
- b) voluntary action by the offender to remedy the non-compliance;
- c) cooperation given to the City by the offender and willingness to commit to remedial actions;
- d) failure to comply with informal requests, lawful directions or notices given by the City;
- e) the seriousness of the incident having regard to the potential impacts on the community, safety, amenity, the environment and the impacts on people;
- f) issues of public concern, including the need for specific and general deterrence;
- g) legal precedents and statutory time limits; and
- h) the public interest and the financial risk to the City.

ii. The City may take no enforcement action, discontinue or withdraw after an investigation where:

- a) the individual or entity has made good the non-compliance;
- b) having considered the nature of the non-compliance, an educative approach to preventing the matter from re-occurring is considered most appropriate;
- c) there is insufficient evidence to prove non-compliance after reasonable attempts have been made by the City to investigate the matter;
- d) the matter is considered trivial or;
- e) does not align with the Strategic intent or objectives of the City;
- f) the matter falls outside the City's legal area of authority; or
- g) having regard for the legal capacity of the alleged offender, it is determined that an alternative approach to achieving compliance is more appropriate.

Acting in default of notices, orders and directions

- 1) Where under legislation an Authorised Officer is authorised to do so, an officer may enter on to private land to carry out works in a situation where the owner, occupier or some other person has failed to commence or complete remedial works specified in a written notice, and the non-compliance with the notice has been verified beyond reasonable doubt.
- 2) The City may undertake works on private property where:
 - a) there is a significant risk to a person's health, to public safety, the natural environment or local amenity as a result of the continued non-compliance with a notice;
 - b) the person upon whom the notice has been served has significant health issues that are considered to be preventing the person from complying with the notice; or
 - c) the works required to be undertaken are minor and the estimated costs associated with completing the remedial works are minimal.
- 3) Should works be undertaken by the City on private property as a result of non-compliance with a notice, this does not preclude the City from commencing legal action for non-compliance with a notice.
- 4) The City may seek to recover its fair and reasonable costs in all cases if it undertakes works on private land.

Taking enforcement action

- 1) The City's Authorised Officer with relevant delegated authority or authorisation may initiate enforcement action.
- 2) The City will use the most appropriate action necessary, which may include one or more of the following options:
 - a) pursue no further action;
 - b) informal action;
 - c) formal warning;
 - d) infringements;
 - e) prohibition orders;
 - f) seizures;
 - g) written directions and orders;
 - h) formal notices; or
 - i) prosecutions and or injunctions.
- 3) Nothing in this policy precludes the City from commencing prosecution in respect of a non-compliance at any time.

OFFICER USE ONLY

Officers may amend this section without council approval

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