



COMPLIANCE AND ENFORCEMENT GUIDELINES

(Relating to Council Policy 5.4.41)

Custodian	Manager Governance	
Date Revised	12/06/2012	New guideline attached to Council Policy 5.4.41
	23/07/2012	Minor amendments in line with minor amendments made to the compliance and Enforcement Policy 5.4.41
	3/1/2014	New text added in line with amendments made to the Compliance and Enforcement Policy regarding rectification works.



1. PURPOSE

These guidelines set out the principles adopted by the City in relation to compliance and enforcement matters and provide clear guidance for staff when dealing with unlawful activity.

2. SCOPE

These guidelines apply to staff appointed as an Authorised Officer under the *Local Government Act 1995*, or another Act or Regulation of Parliament, to enforce that legislation.

3. DECISION TO TAKE ACTION

A decision to take action must not be influenced by:

- The race, religion, national origin or political associations, activities or beliefs of the alleged offender or any other person involved
- Personal feelings concerning the alleged offender or their legal representative
- Possible advantage or disadvantage to any group or party
- The possible effect of the decision on the personal or professional circumstances of those responsible for authorising or enforcing the decision.

4. COMPLIANCE

The City provides information and support to the community to promote voluntary compliance through targeted communication and education activities.

This helps to:

- Raise awareness of the benefits of complying with the legislation and the potential consequences of non-compliance
- Remove barriers to compliance (e.g. lack of knowledge regarding legislative requirements, or how to comply)
- Promote the objectives of legislation
- Overcome factors that encourage non-compliance (e.g. lack of public support for, or misunderstanding of, legislative objectives).

5. ENFORCEMENT

Enforcement is a valuable tool in regulating activities and obtaining compliance with statutory requirements. A range of enforcement mechanisms are available to manage compliance, depending on the circumstances. The compliance options available to the City are:

- Informal action
- Formal warnings
- Infringements
- Statutory notices and injunctions
- Prosecution.



5. INFORMAL ACTION

The City uses a variety of informal actions to ensure compliance prior to taking further action. This includes offering advice, verbal warnings and the use of letters.

Informal action is appropriate in the following circumstances:

- The act is not serious enough to warrant formal action
- From the individual's past history it is reasonable to expect that informal action will achieve compliance
- Confidence in the individual to manage the situation
- Consequences of non-compliance will not pose a significant issue to the City.

Even when some of the above criteria are not met, there may be circumstances in which informal action may be more effective than a formal approach.

6. FORMAL WARNING

A formal warning is a written notice given to a person who has contravened legislation, local laws or City policy. Formal warnings are recorded and may be taken into consideration in any future investigation and in any future decision concerning prosecution.

Formal warnings should only be issued if the following preconditions have been met:

- There must be sufficient evidence to establish a prima facie case
- The allegation must be put to the person and the person must be afforded an opportunity to respond to the allegation
- The public interest must be protected sufficiently by the issuing of a formal warning.

It is appropriate to use formal warnings in the following circumstances:

- There has been a contravention of legislation
- There is a lack of confidence in the individual to respond to an informal approach
- There is a history of non-compliance with informal action
- A written warning is likely to be a sufficient deterrent.

A formal warning can only be issued if there is sufficient evidence to support a prosecution as failure to comply with a formal warning may result in the implementation of a more serious enforcement option. Where there are a number of offences on one occasion or a series of offences within a relatively short period of time, formal warnings may not be appropriate. The totality of the offences should be considered in deciding the appropriate course of action. Where significant non-compliance is evident, a more severe enforcement action is appropriate.

Warning letters are to be followed up within 48 hours of the time specified for compliance to ensure the required action has been undertaken.



7. INFRINGEMENTS

An Infringement Notice is a written notice that attracts a modified penalty and is issued to people or companies under State Acts or local laws. Infringement Notices require the payment of a fine or alternatively, the offender may elect to have the matter heard in court. If an Infringement Notice is deemed appropriate, it should be issued promptly.

The payment of an Infringement Notice is not to be regarded as an admission of liability for the purpose of any civil claim, action or proceeding arising out of the same occurrence. Additionally, they do not result in criminal convictions being recorded against alleged offenders.

However, if an alleged offender fails to pay the fine, the Infringement Notice will be registered with Fines Enforcement Registry and their drivers licence, or vehicle licence may be suspended until the amount is paid in full.

If the alleged offender elects to have the matter heard in court, the matter will be prosecuted and heard in a Magistrates Court.

Infringement Notices cannot be issued nor allowed to proceed unless:

- The legislation or local law prescribes that an Infringement Notice may be Issued for the alleged offence
- There is *prima facie* case that the offence was committed
- It is likely that a court will find the alleged offender guilty of an offence if the matter proceeds to trial.

It may be appropriate to issue an Infringement Notice when:

- The alleged offence is minor in nature and is able to be remedied within a short time frame
- The alleged offence is a “one off” occurrence
- The alleged offence resulted from an oversight and/or
- The Infringement Notice is likely to deter the recipient from engaging in similar conduct again.

Infringement notices should be issued as soon as possible with no more than two infringement notices being issued at any one time. For more than two offences, prosecution action should be commenced.

8. STATUTORY NOTICES AND INJUNCTIONS

8.1 Statutory notices

Some legislation provides for a statutory notice, such as an improvement notice or direction notice, requiring a particular action to be undertaken. Failure to comply with such a notice constitutes an offence, or if an offence has already been committed, a further offence.

The date of compliance in a notice may be extended at the discretion of an authorised officer in consultation with their immediate manager. However, it is



recommended that extensions are only provided when the date of compliance has not expired and there are exceptional circumstances to do so.

Follow up inspections are to occur at the timeframe nominated in a notice. In the event that full compliance is not achieved within the period stipulated by the notice, the City will initiate legal action against the alleged offender. Legal action is to be commenced after any relevant review period in the State Administrative Tribunal has ended.

8.2 Injunctions

Where urgent action is required, or in instances of serious non-compliance with legislation and efforts to resolve that non-compliance have proved ineffective, an injunction may be obtained from a Court ordering an individual or business to undertake or refrain from a certain action. An injunction does not prevent the City from taking further enforcement action in relation to the same incident. The decision whether to seek an injunction shall be at the discretion of the Chief Executive Officer.

9 USING MULTIPLE ENFORCEMENT OPTIONS

Unless legislation prevents otherwise, an infringement notice and a statutory notice directing an alleged offender to cease the activity and/or make good any activity undertaken without approval, can be issued simultaneously.

10. PROSECUTION

Prosecution is an enforcement tool to be employed where it is the appropriate response in the circumstances and is not an enforcement option to be applied only as a last resort. A decision to prosecute should only be taken when there is sufficient evidence to support the prosecution.

In deciding to prosecute, the following two elements need to be considered:

1. Whether sufficient evidence exists to justify the prosecution, that is the existence of a *prima facie* case in conjunction with a reasonable prospect of securing a conviction
2. Whether the prosecution is in the public interest.

Consideration of the second element is not necessary until the first element has been satisfied.

Generally, decisions to prosecute are made in cases where the conduct giving rise to the offence is serious (or has serious consequences) and/or in cases where the City wishes to target an undesirable practice.

10.1 Prima facie case

A *prima facie* case is where, on the available material, there is sufficient evidence to conclude beyond a reasonable doubt, that all the elements of the offence have been established. Where the available material does not support a *prima facie* case, the prosecution should not proceed under any circumstances.



10.2 Reasonable prospect of a conviction

It is not in the public interest to proceed with a prosecution which has no reasonable prospect of a conviction. If, on the available admissible evidence, there is no reasonable prospect of conviction, then unless further investigation will remedy any deficiency in the prosecution case, the matter should be discontinued.

10.3 Public interest

Despite the existence of a prima facie case and reasonable prospect of conviction, it may not be in the public interest to proceed if other factors, singly or in combination, render the prosecution inappropriate. These factors include:

- The trivial or technical nature of the alleged offence in the circumstances
- The age, physical or mental health or special infirmity of the victim, alleged offender or a witness
- The alleged offender's antecedents
- The staleness of the alleged offence including delay in the prosecution process
- The degree of culpability of the alleged offender in connection with the offence
- Whether the alleged offence is of minimal public concern
- The attitude of the victim of an alleged offence to a prosecution
- The likely length and expense of a trial if disproportionate to the seriousness of the alleged offending
- The likely effect on public order and morale.

These factors may be weighed against the following when determining whether to proceed in the public interest:

- The need to maintain the rule of law
- The need to maintain public confidence
- The entitlement of a person to criminal compensation, reparation or forfeiture
- The need for punishment and deterrence
- The circumstances in which the alleged offence was committed
- The need to ensure consistency in the application of the law.
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11. Rectification Works

Upon successful prosecution of an offender, the City may complete the rectification works required to gain compliance if the person responsible has not completed the required work within a set timeframe, and where relevant legislation enables the City to complete the rectification work.

When the City utilises this option the City will seek to recover costs in a court of competent jurisdiction. Where a Court order is issued in favour of the City to complete the works, the City will lodge a caveat over the land to which the costs relate. This will only be withdrawn when payment has been received by the City in accordance with the court order.

