



POLICY

TITLE:	COMPLIANCE AND ENFORCEMENT	CODE:	SRS235
PURPOSE or OBJECTIVE:	To state the City's objectives and principles that will guide the Planning and Regulation Division's implementation of enforcement action to ensure consistency and good governance.		
REFERENCE DOCUMENTS:	Local Government Act 1995, Health Act 1911, Building Act 2011, Food Act 2008, Planning and Development Act 2005, Environmental Protection Act 1986, Caravan Parks and Camping Grounds Act 1995.		

POLICY STATEMENT

The City's Planning and Regulation Division is responsible for administering a wide range of legislation providing for the safety, health and amenity of the community. This Policy serves to inform the community of Council's position in relation to compliance and enforcement of legislation, including the circumstances which will be taken into account when assessing different compliance and enforcement options. The policy will provide for consistency in decision making and provide for good governance; in particular it will support a fair, transparent and consistent approach to implementing enforcement action in matters of non-compliance.

1. Scope

The policy applies to all compliance and enforcement action where the City's Planning and Regulation Division has a regulatory responsibility under Western Australian legislation, including the:

- Local Government Act 1995;
 - Health Act 1911;
 - Food Act 2008;
 - Building Act 2011;
 - Planning and Development Act 2005;
 - Caravan Parks and Camping Grounds Act 1995;
 - Environmental Protection Act 1986; and
- all subsidiary legislation.

The Policy applies to all land within the City.

2. Definitions

<i>compliance</i>	refers to a corporation or person meeting or taking steps to comply with relevant laws and regulations.
<i>enforcement</i>	means a range of procedures and actions taken by the City to ensure that a person or organisation complies with their statutory obligations.
<i>non-compliance</i>	means a breach of the legislation administered by the City's Planning and Regulation Division.
<i>prosecution</i>	means the institution and conduct of legal proceedings against a person or corporation, as defined in Law, for alleged unlawful activity.
<i>public Interest</i>	means the interests of the community as a whole, or a group within the community or individuals.
<i>trivial</i>	an allegation made without real grounds, of insignificant value or importance.

3. Principles of Enforcement

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

(1) 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 or not in the public interest.

(2) **Consistency**

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 standard operating procedures to ensure fair, equitable and unbiased treatment in every case.

(3) **Accountable and Transparent**

The City will be open and transparent about the manner in which it undertakes 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 timeframe for completing that action. Timeframes set for achieving compliance will be reasonable and may take into consideration individual circumstances.

(4) **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, and by ensuring all parties to the matter have the right to be heard.

4. 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 for Council Policies.
- (2) Adopt a proactive approach to identifying and investigating non-compliance by implementing an annual compliance strategy.
- (3) Refer matters to external agencies, where appropriate, when the allegation falls outside the City's jurisdiction.
- (4) Annually review its compliance and enforcement activities and incorporate lessons learned into policy, operating procedures and broader compliance tools.

5. Responding to Regulatory 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 significant risk to public health, public safety or the environment or a significant impact on the amenity of a locality and there is sufficient information in the complaint to enable an investigation to be undertaken.

6. Enforcement Approach

- (1) 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.
- (2) 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, 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;
 - (h) The public interest.
- (3) The City may take no enforcement action after 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 in nature or would be an unreasonable use of the City's resources;
 - (e) The matter falls outside the City's legal area of authority;
 - (f) Having regard for the legal capacity of the alleged offender, it is determined that an alternative approach to achieving compliance is more appropriate.

7. Acting in Default of Notices, Orders and Directions

- (1) Where under legislation it is authorised to do so, the City may enter on to private land to carry out works in a situation where the owner, occupier or 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 the Notice;
 - (b) The person upon whom the Notice has been issued 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 action does not preclude the City from commencing legal action for non-compliance with the Notice.
- (4) The City will seek to recover its fair and reasonable costs in all cases as a result of undertaking works on private land.

8. Action concerning Premises prescribed under the Environmental Protection Regulations 1987 and licensed or registered under the Environmental Protection Act 1986

- (1) The City will not investigate allegations of pollution incidents from prescribed premises as defined by the Environmental Protection Regulations 1987. These premises are regulated by the Department of Environment Regulation (DER). On receiving an allegation of pollution relating to such premises, the City will advise the complainant to refer the matter directly to the DER.
- (2) The City may investigate matters related to prescribed premises that concern non-compliance with the Health Act 1911, Building Act 2011 and Planning and Development Act 2005, except where the matter is regulated by the DER under the Environmental Protection Act 1986.

GOVERNANCE REFERENCES

Statutory Compliance	Local Government Act 1995
Process Links	N/A

POLICY ADMINISTRATION

Directorate		Officer Title	Authority to Approve
Development & Regulation		Director Planning & Regulation	Council
Version	Decision Reference	Synopsis	Delegation No: N/A
1	September 2015	New draft revised Policy SRS235	
1	OCM 13/10/2015 (PR-060-15)	Adopted	