

## Council Policy

**Council Policy Name:** Compliance

**Responsible Directorate:** Finance and Corporate Services

**Version:** Adopted

### 1. PURPOSE

- 1.1. The City applies a range of regulatory powers in providing for the good governance of the people in the District of Busselton. This includes enforcing laws that provide for offences.
- 1.2. The City's Compliance Policy is directed at:
  - a. supporting widespread understanding of minimum standards of conduct, and conduct that may render a person liable to prosecution;
  - b. applying legislation in accordance with the principles of timeliness, fairness, consistency and proportionality;
  - c. promoting a high level of voluntary compliance with the requirements of legislation, in particular by property owners;
  - d. supporting the Separation of Powers doctrine, under which the City's role is to take action to enforce laws and the court's role is to determine questions of fact and culpability;
  - e. taking enforcement action against persons who commit offences;
  - f. deterring persons from committing offences and protecting the community; and
  - g. promoting public confidence in the City's administration and exercise of regulatory powers.

### 2. SCOPE

- 2.1. This Policy is applicable to all offence (criminal law) provisions of legislation that the City has jurisdiction to enforce.

### 3. DEFINITIONS

Term	Meaning
Policy	this City of Busselton Council policy titled "Compliance"

### 4. STRATEGIC CONTEXT

- 4.1. This Policy links to Strategic Theme 4. LEADERSHIP - A Council that connects with the community and is accountable in its decision making, of the City's Strategic Community Plan June 2021 and specifically the following Strategic Priority:
  - a. 4.2: Deliver governance systems that facilitate open, ethical and transparent decision making.

## 5. POLICY STATEMENT

- 5.1. The City respects the fundamental value under our legal and political system of the inherent right of each citizen to freedom of action.
- 5.2. The City's role is to provide for good governance. This necessitates establishing and enforcing laws (rules) that necessarily impact on the freedom of the individual, where this is considered to be for the greater good of the community.
- 5.3. The City has the responsibility for taking action to ensure that regulatory (offence) laws are complied with. In carrying out this function, the City expressly acknowledges and respects the presumption of innocence in law, under which all citizens are presumed innocent until proven guilty in a competent court.
- 5.4. Where the City has information that indicates a potential contravention by a person of a regulatory law, the first principles to apply are as follows:
  - a. Information about alleged unlawful behaviour may come to the attention of City officers in a number of ways. In the first instance, City officers are to consider whether the information has sufficient substance to warrant further investigation and consideration and undertake any additional preliminary enquiries as may be considered appropriate;
  - b. Where there is sufficient information to form a preliminary view that a person has engaged in unlawful behaviour, City officers are to consider whether reasonable endeavours to communicate with the person, for the purpose of educating and achieving voluntary compliance, will be sufficient and appropriate to resolve the matter. This may include issuing a statutory notice requiring action to be taken by the person.
- 5.5. Where City officers form the view that education and negotiation to achieve voluntary compliance is not, or is unlikely to be, either sufficient or appropriate to properly resolve the matter, then consideration is to be given to whether to issue a letter of warning, issue an infringement notice, undertake prosecution action or refer the matter to another jurisdiction.
- 5.6. The consideration of the alternative courses of action under sub-clause 5.5 is entirely independent of any action taken to carry out remedial work where a statutory notice has been issued but not complied with, including the recovery by the City of costs of carrying out that work. In each case:
  - a. City officers are to consider the relative merits of the alternative courses of action; and
  - b. City officers are to provide information where reasonably possible to promote the objectives of education and future voluntary compliance.
- 5.7. Where the legislation provides for an offence relating to property, City officers are to ensure that the potential liability of any property owner is given consideration. Property includes land, vehicles and animals. Property owners have a primary and continuing responsibility for ensuring that their property is lawfully held, used and maintained.
- 5.8. The City's compliance actions are to be applied, having regard to the circumstances of each case and the resources available to the City, in accordance with the principles of timeliness, fairness, consistency and proportionality. The City's compliance actions are to be directed at promoting public confidence in the City's administration. Accordingly:
  - a. Prosecution action is not a 'last resort'; and
  - b. Prosecution action is to be undertaken whenever the circumstances warrant that action being taken.

- 5.9. Prior to commencing a prosecution, the City is to determine that the prosecution is in the ‘public interest’. This requires the proper consideration of whether there are reasonable prospects of conviction, whether there are any relevant factors that support or do not support the taking of prosecution action, the relative merits of those factors, and not taking into account any irrelevant factors. Regard is to be given to the factors identified in the Director of Public Prosecutions’ **‘Statement of Prosecution Policy and Guidelines 2018’**.
- 5.10. Given the basis on which a prosecution is to be commenced, once a decision to prosecute has been made and a prosecution action has commenced, the prosecution action should only be discontinued where there is a sound persuasive basis for doing so.
- 5.11. Where the City prosecutes a person and the court convicts that person, the City is to give consideration to whether there is benefit in publishing notice of that conviction. Public notice of a conviction may serve to promote the general deterrent effect of prosecution action. Public notice of a conviction may also maintain community confidence that laws made for regulatory purposes will be actively and effectively applied.
- 5.12. Where the City has determined that it is in the public interest to take prosecution action in any matter, the CEO is to inform the Council of that decision at the next reasonable opportunity. The CEO is also to inform Council upon prosecution action being commenced in court and if, in any case, the prosecution action is withdrawn. Information in respect of prosecution decisions and actions is to be provided to Council on a confidential basis.
- 5.13. The CEO may make appropriate Staff Management Procedures relating to the processes to be followed, types of considerations to be taken into account and standards to be applied in order to deliver outcomes in accordance with the principles in this Policy.

## 6. RELATED DOCUMENTATION / LEGISLATION

- 6.1. Local Government Act 1995
- 6.2. Planning and Development Act 2005
- 6.3. Building Act 2011
- 6.4. Public Health Act 2016
- 6.5. Dog Act 1976 and Cat Act 2011
- 6.6. Bush Fires Act 1954
- 6.7. Criminal Procedure Act 2003
- 6.8. Ranger & Emergency Services Approach to Regulatory Functions, December 2018
- 6.9. Director Of Public Prosecutions - Statement of Prosecution Policy and Guidelines 2018

## 7. REVIEW DETAILS

Review Frequency		3 yearly		
Council Adoption	DATE	10 June 2020	Resolution #	C2006/045
Previous Adoption	DATE	12 September 2018	Resolution #	C1809/182