



Brighton Council

POLICY NAME: ENFORCEMENT POLICY

POLICY No: 7.2

PURPOSE:

The purpose of the policy is to assist Council staff to act promptly, consistently, and effectively in response to regulatory matters including allegations of unlawful activity and to ensure:

- consistency in enforcement action in matters of non-compliance;
- transparency, procedural fairness, and natural justice principles are applied; and
- that enforcement action is proportionate to the alleged offence in each case.

DEFINITIONS:

In this policy:

Authorised Officer means a person appointed by the Chief Executive Officer, Minister, or the Council for the purposes of administering and enforcing legislation.

Council means the Brighton Council.

Enforcement means to make people obey something, or to compel obedience to a law, regulation, or command.

SCOPE:

This policy provides guidance and applies to all compliance and enforcement activities undertaken by Council.

POLICY:

1. BACKGROUND

Local Government is charged with legislative responsibilities which protect individuals and the community as a whole. Council's customers include both those on whom the law places a duty and those whom the law protects. While it is ultimately the responsibility of individuals and other bodies to comply with the law, Council staff are required to carry out activities which enforce compliance.

This policy is an "umbrella" policy which outlines Council's approach to enforcement matters and provides staff with direction about the way enforcement activities are to be undertaken.

In addition to enforcement, Council conducts a range of activities to ensure compliance such as community education programs to encourage conformance.

Enforcement activities include:

- patrolling streets and public places;
- inspecting premises either on a routine programmed basis or on a random basis; and
- responding to enquiries and complaints.

2. DEFINING ENFORCEMENT

Council adopts a broad definition of “enforcement” which combines the provision of advice and assisting compliance with formal action where necessary. This is intended to encourage higher levels of voluntary compliance with legal requirements by individuals, businesses, and other bodies.

Notwithstanding the above, Council will take immediate action when required (for example to ensure public health and safety or to protect the environment) and take firm action against those who act unlawfully when circumstances warrant.

3. PRINCIPLES OF GOOD ENFORCEMENT

Enforcement actions are taken within the context of both a legal and policy framework. Council staff will carry out their enforcement related work with due regard to the following principles.

Proportionality

A proportionate response means that Council's actions will be scaled to the seriousness of the breach.

Council recognises that most individuals want to comply with the law and will assist compliance by being open and helpful, offering informal advice and providing the chance to discuss compliance problems.

Attention will be focussed on those whose activities give rise to the most serious risks, or where potential hazards are least well controlled. Depending on the seriousness and persistence of the infringement, Council will minimise the costs to the person or body infringing the law by enforcing the minimum action necessary to secure future compliance.

Prosecution will generally be used as a last resort, or for continuous serious offences.

Consistency

Council 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, Authorised Officers will:

- follow standard operating procedures wherever possible;
- ensure fair, equitable and non-discriminatory treatment; and
- record any deviation from standard operating procedures and the reasons.

Transparency

Council will be open and transparent about the way it undertakes enforcement activities and the laws it enforces. It will consult on and provide ready access to published standards and levels of service and performance that can be expected and be clear and open about what is expected from those on whom the law places a duty (duty holders).

In educating the community at large and dealing with duty holders, Council will make a clear distinction between what is legally required and what is desirable but not compulsory.

Staff will be open to discussing potential and actual compliance failures, before, during and after formal action has been taken.

When remedial action is needed Council will explain clearly and in plain language why the action is necessary. Where practicable, it will give notice of its intent to commence formal action. It will point out what action is required to achieve compliance and the timeframe for undertaking that action. Advice will be provided on the process for seeking a review of, or how to appeal against that decision.

Where it is not practical to give notice, the reasons why will be recorded in accordance with Council's Records Management protocols.

Complainants will be advised of what action has been taken and why that action has been taken.

4. AUTHORISATION OF OFFICERS

Only officers who are competent by training, qualification and/or experience will be authorised to take enforcement action. Authorised Officers will also have sufficient training and understanding of Council's policies and procedures to ensure a consistent approach to their duties. Any decision to act other than in accordance with this policy must have approval from the relevant Director and the reasons for action recorded in accordance with Council's Records Management protocols. Officers are required to show their authorisations on demand.

5. DECISION MAKING

Where non-compliance is discovered because of enforcement activities, options available to the Council to seek or promote compliance include:

- explaining legal requirements and, where appropriate, the means to achieve compliance;
- providing an opportunity to discuss points of issue where appropriate;
- allowing reasonable timeframes to achieve compliance
- facilitating mediation between affected parties;
- issuing a verbal or written warning; or
- enforcement actions such as issuing an infringement, issuing an order/direction or prosecution.

Enforcement decisions must be fair, consistent, balanced and relate to common standards that ensure the public is adequately protected. Where a decision is made not to investigate a complaint, the decision, and reasons, will be recorded in accordance with Council's Records Management protocols and the complainant will be advised in writing.

In coming to a decision on the most appropriate means of enforcement, the Authorised Officer shall consider, amongst other relevant factors:

- the seriousness of the offence;
- the degree of wilfulness involved;
- past history;
- the consequences of non-compliance;
- the likely effectiveness of the various enforcement options;
- deterrence;
- the effect on the community and other people; and

- consistency of approach to similar breaches/offences.

The following factors are to be ignored when choosing an enforcement strategy:

- any element of discrimination or bias against the person such as ethnicity, nationality, political association, religion, gender, sexuality, or beliefs; and
- possible political advantage or disadvantage to a government, person holding (or a candidate for) public office, or any political group or party.

Where a personal association or relationship with the alleged offender or any other person involved exists:

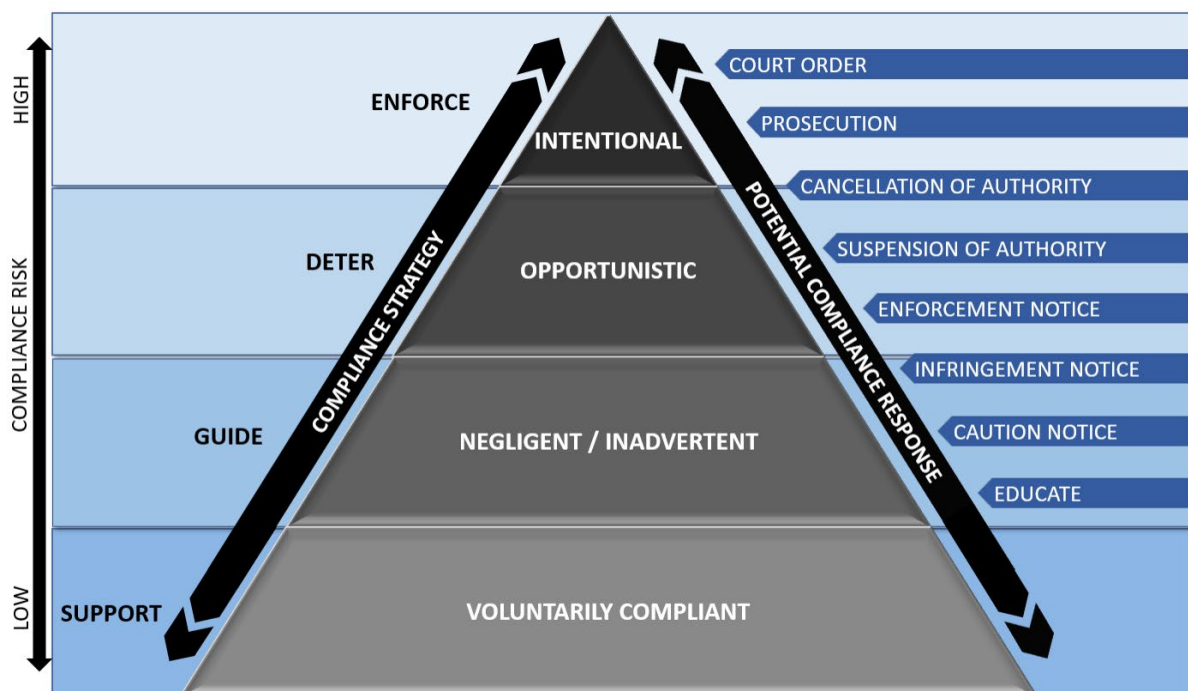
- an alternative person will make decisions where possible; and
- the facts about any conflict/relationship will be recorded in accordance with Council's Records Management protocols.

Written documentation will:

- include all the information necessary to make clear what needs to be done to comply with legal requirements, the required time frame and if necessary, the reasons for these actions and potential penalties for failing to comply with the request;
- include the legislation contravened, measures necessary to ensure compliance and the consequences of non-compliance; and
- clearly differentiate between legal requirements and recommendations of good practice.

6. ENFORCEMENT OPTIONS

The following graphic demonstrates Brighton's approach to the nature of non-compliance. Compliance risk is addressed through a graduated enforcement response that matches the seriousness of the offence.



Source: Queensland Government

No Action

No action will be taken when, after investigation, no breaches of the legislation are discovered.

It may also be appropriate to take no action when:

- the complaint is frivolous, vexatious, or trivial in nature;
- the alleged offence is outside Council's area of authority; or
- taking action may prejudice other major investigations.

Informal Action

Informal action to achieve compliance with legislation may include:

- offering verbal or written advice;
- verbal warnings and requests for action; or
- written warnings.

Advice from Authorised Officers will be put clearly and simply and will be confirmed in writing. The circumstances in which informal action may be appropriate include:

- the act or omission is not serious enough to warrant formal action;
- the duty holder's past history reasonably suggests that informal action will secure compliance;
- confidence in the individual/other body is high;
- the consequences of non-compliance will not pose a significant risk; or
- where informal action may prove more effective than a formal approach.

Mediation

Where practical, Council will make mediation available. Mediation is a viable alternative where, after investigation, an Authorised Officer determines that the problems being complained of are incapable of resolution through other formal or informal means. The use of mediation services may also be appropriate where an aggrieved individual has no wish to pursue action to resolve a complaint by legal means.

Formal Action

Service of Notices, Orders and Directions

Various pieces of legislation require a Notice, Order or Direction to be issued to remedy a breach. When legally required, Council will provide an opportunity to make representations concerning a Notice, Order or Direction.

Penalty Infringement Notices

Infringement Notices will be served in accordance with this policy for any contravention of Council's By-laws or any Legislation that Council is authorised to enforce, in instances where prosecution has not commenced.

Prosecution

A prosecution will only proceed where there is a reasonable prospect that an offence can be proved beyond reasonable doubt.

The following circumstances are likely to warrant a prosecution:

- a flagrant breach of the law such that public health, safety and welfare have been put at risk;
- the alleged breach is too serious or the risks too great to be dealt with by means of an infringement;
- a failure to correct an identified serious problem after having been given reasonable opportunity to do so;
- a failure to comply with the requirements of an Order;
- an established and recorded history of similar offences;
- an unwillingness, on the part of the individual or other body, to prevent a recurrence of the problem; or
- the recovery of the costs of the investigation or remedial work or financial compensation that are required by Council or an aggrieved party.

Where circumstances warrant a prosecution all relevant evidence and information will be considered to enable a consistent, fair, and objective decision to be made.

Before a prosecution is recommended there must be substantial, reliable, and admissible evidence that an identifiable person or organisation has committed the offence.

A decision to prosecute must be in the public interest. In considering whether prosecution is in the public interest, the following additional factors will be considered:

- whether the offence was pre-meditated;
- the need to influence the offender's future behaviour;
- the effect on the offender's or witness's physical or mental health, balanced against the seriousness of the offence;
- the availability and efficacy of any alternatives to prosecution;
- the prevalence of the alleged offence and the need for deterrence, both personal and general; and
- the likely length, expense, and outcome of a trial.

The final decision to prosecute will be made by the Chief Executive Officer.

7. DISCLOSURE AND CONFIDENTIALITY

Details of Council's enforcement action will remain confidential in accordance with the provisions of Council's Privacy Policy, the *Personal Information Protection Act 2004*, and the *Right to Information Act 2009*. However, Council reserves the right to disclose enforcement information when it is in the public interest to do so and will provide disclosure in accordance with common legal practices.

REFERENCES:

Local Government Act 1993

Building Act 2016 and associated regulations

Dog Control Act 2000 and associated regulations

Environmental Management and Pollution Control Act 1994 and associated regulations

Food Act 2003 and associated regulations and guidelines

Land Use Planning and Approvals Act 1993

Local Government (Highways) Act 1982

Public Health Act 1997

Litter Act 2007

Weed Management Act 1999

Traffic Act 1925

Road Rules 2019

Council By-laws

ADMINISTRATIVE DETAILS:

Policy compiled: June 2025

Adopted by Council: 17 June 2025

To be reviewed: June 2029

Responsibility: Director Development Services



CHIEF EXECUTIVE OFFICER