Section 1 - General Principles of the Enforcement Policy

1.1 The purpose of the enforcement policy is to ensure compliance with all aspects of Economic Activity within the Ministry of Tourism, Economic Affairs, Traffic and Telecommunication, such as but not limited to the National Ordinances for Establishment of Companies and the Permit Ordinance, Public Vending, Markets, Games of Chance, Traffic and Public Transportation, Agriculture, Livestock and Fisheries and other economic regulations and to ensure the promotion of the licensing objectives under these ordinances. Where appropriate the Inspection Department of the Ministry of Tourism, Economic Affairs, Traffic and Telecommunications ("The Inspection Department") may use provisions under other Ordinances, Decrees and Policies to ensure the promotion of the objectives. The relevant licensing objectives are:

a) The regulation of economic activities carried out by a legal person providing service to the public

b) Protecting the interests of public order, morality or public tranquility.

c) Regulation of the application process for a business permit

d) Regulate the establishment of companies and their activities.

e) Regulation in the field of traffic and public transportation and the maintenance of public order,

f) Establishing rules on trade in food and drink and the provision of accommodation (hotel, guesthouse etc.) as a service against payment.

g) Supervising effective monitoring of compliance by or pursuant to the Ordinance games of chance and the regulations issued pursuant thereto.

h) Supervising agriculture, livestock and fisheries facilities and activities.
1.2 The enforcement policy also covers other types of economic activity that fall under the responsibility of the Ministry of Tourism, Economic Affairs, Transport Traffic and Telecommunications. The actual controls will be carried out by the Inspection Department TEATT. Which is a department within the Ministry TEATT.

1.3 The following principles underpin this policy in relation to licensing enforcement:

a) Standards: setting clear standards
b) Openness: clear and open provision of information
c) Helpfulness: helping business by advising on and assisting with compliance
d) Complaints: having a clear complaints procedure
e) Proportionality: ensuring that enforcement action is proportionate to the risks involved
f) Consistency: ensuring consistent enforcement practice.

1.4 This Enforcement Policy’s aim is to help to promote efficient and effective approaches to regulatory inspection and enforcement which improves regulatory outcomes without imposing unnecessary burdens.

1.5 In certain instances the Inspection Department TEATT may conclude that a provision in the ordinance is either not relevant or is outweighed by another provision. The Inspection Department will ensure that any decision to depart from the ordinance will be properly reasoned, based on material evidence and documentation.

1.6 The Inspection Department TEATT is concerned with ensuring that there is a safe and trouble free environment at licensed businesses. In most cases the Inspection Department TEATT believes the best way to achieve this is to give guidance and support to license holders. This is because in the Inspection Department’s experience responsible license holders are anxious to stay within the law.

1.7 The Inspection Department TEATT aims to ensure that well run businesses are able to operate successfully on the island. But in all cases the Inspection Department TEATT will seek to balance the needs of businesses against the rights of residents to enjoy their homes and surroundings.

1.8 Formal enforcement action may be appropriate in certain cases, including those where the irregularity is particularly serious or there have been repeated offences.

Enforcement Policy 2015
Enforcement of Other Ordinances

1.9 For the sake of clarity, any enforcement activity undertaken by personnel of the Inspection Department TEATT for purposes other than licensing, will be carried out in accordance with the Enforcement Policy relevant to the legislation. This could include investigations to assist other departments.

2 Section 2 - Organizational Arrangements

2.1 The Inspection Department recognizes the value of the twenty four (24) hour economy that operates on St. Maarten. Therefore, having commitment to the licensing objectives, the Inspection Department TEATT has made the provision to visit businesses outside of normal office hours at times when the business is available, where it is reasonable to do so.

2.2 Along with the Inspection Department TEATT, the responsible authorities and other relevant teams and executing agencies have a role to play in the enforcement of the ordinances, and to work effectively with these authorities.

2.3 To enable effective communication between the Inspection Department and the responsible authorities, a joint working group called the ‘Multidisciplinary Control Group’, including Inspection Department’s enforcement team, the Police Department and other relevant teams within St. Maarten has been established.

2.4 Between each of the partners in the Multidisciplinary Control Group, there is a very wide range of enforcement options available. The options available to other partners are outside the scope of this policy as they are not functions of Inspection Department TEATT.

3 Section 3 - Enforcement Options

3.1 The Inspection Department recognizes the importance of ensuring consistency of approach and effective use of resources by targeting those premises where problems have occurred. The procedures set out below are designed to ensure that enforcement is proportionate and that education and support is given where necessary but that firm action is taken against irresponsible premises owners/operators. It is also transparent in that the policies are published so that businesses and residents can be aware of the enforcement strategy of Inspection Department TEATT. The procedures set out below reflect these general principles.

3.2 To ensure consistency in the control, more detailed internal procedural guidance notes and standard letters are produced and updated as required. This will be done because the policy cannot Enforcement Policy 2015
address or foresee every situation where an infringement may or might occur. As such, it is expected that controllers will follow these procedures in the majority of cases. There may be occasions where controllers need to deviate from these procedures to deal with individual cases in an effective and efficient manner. These procedures and standard letters may also be updated from time to time to meet the needs of the service, changes to legislation or guidance from relevant authoritative bodies.

3.3 The main enforcement actions include, without limitation:

Verbal Warning

Written warning

Fine (levied by Public Prosecutor or Court of First Instance).

Closure for a defined period of time (via Ministerial mandate).

Permit revocation

However, mandatory detail reporting is necessary for the infringement and all of the enforcement actions given. Thus, giving proportionality in the way the enforcement action is delivered; example: one cannot move from giving a Verbal Warning to the Closure of an establishment if only two controls have been carried out. A justification of the infringement has to match the enforcement.

3.4 When considering which course of action is appropriate, the factors that Inspection Department TEATT will take into account include:

i. The gravity/seriousness of the infringement. (example driving without a seat belt, automatic Fine).

ii. The nature of the alleged infringement.(example: infringement - operating without a Business License. Enforcement action = Closure via Ministerial mandate)

iii. The status, circumstances and previous history of the alleged offender. (documented reports will show the infringement occurrences and previous enforcement actions.)

3.5 When a violation is detected by an investigating officer of the Inspection Department it is obligatory for a formal report/proces verbaal to be created based on the investigation carried out by the investigating officer to collect the facts surrounding the unlawful act that was committed.

3.6 Any and all enforcement action decided upon must be progressive in terms of the sanctions imposed upon the violator(s).
3.7 Any and all enforcement action is documented in writing by Inspection Department TEATT in the form of a formal report/process verbaal.

3.8 The formal report/proces verbaal shall contain:

a. The personal information of the perpetrator(s).

b. The time and place where the violation(s) was detected.

c. All facts and circumstances that have been detected during the course of the investigation of the violation(s).

d. A statement of the perpetrator(s).

e. Witness statements (if available)

f. Pictures of the violation(s)

3.8 All enforcement decisions and actions will be made with due regard to the provisions of relevant ordinances, policies and authoritative advices.

3.9 In the public’s interest, information and data concerning non-compliance will be shared, where appropriate, with other enforcement agencies. Where this takes place, due regard will be paid to privacy and confidentiality concerns of the respective parties.

3.10 Inspection Department TEATT may pursue enforcement action where it has not investigated offences. This will be as a result of evidence, information and requests brought to our attention from the carried out control where this happens, Inspection Department TEATT will consider the case under this policy, and take into account any recommendation by the investigating team.

4 Section 4 – Enforcement Approaches

4.1 The section details the enforcement steps to be taken when addressing violations. These enforcement steps are applicable to all ordinances, unless stated otherwise.

4.2 The penalty structure of the Enforcement Policy is listed in Section 3.3 above:

The possibility exists that depending on facts and circumstances the department may/can deviate from the sequence of enforcement steps outlined in Section 3.3.

Unlicensed businesses/persons
4.3 For the purposes of this policy, businesses or persons providing unauthorized activities will be sanctioned according to the relevant ordinances. Unauthorized licensable activity includes activity not permitted on the license, or activity that is provided in breach of conditions.

4.4 The underlying principle is that all businesses and persons must have a valid business license to operate and must operate in accordance with the law.

4.5 When dealing with unlicensed businesses or persons, Inspection Department TEATT will take the provisions in Section 3 (Enforcement Options) into consideration, paying particular regard to the following matters:

i. Levels of crime and disorder, public nuisance and public safety in and around unlicensed businesses will be key priorities.

ii. If the business has any license at all, and the history of the establishment.
Per article 15 Vestigingsregeling voor Bedrijven (VRB) the Minister shall close a business which is operated without a permit.

The steps a business has taken to become licensed.

Noise from establishments

4.6 Definitions (pertaining to places capable of being a source of noise nuisance)

1. Hotel, restaurant, or bar establishment: the closed space accessible to the public where lodging is provided or beverages are served or smoker’s requisites or food for direct consumption are prepared or served in the conduct of a business or of a scope as if it were a business. A hotel, restaurant or bar establishment shall be understood to be in any event: a hotel, restaurant, bar, snack bar, discotheque, community center or clubhouse. A hotel, restaurant or bar establishment shall also be understood to be a terrace belonging to this establishment and other adjacent territory.

2. Establishment: an establishment in the sense of Article 4.6.1

3. Terrace: a part of the hotel, restaurant or bar establishment outside the closed space of the establishment where one can stand or sit and where beverages can be served or food for direct consumption can be prepared or served against payment.

4.7 The American National Standards Institute (ANSI) Standard S1.4-1983, “Specifications for Sound Level Meters” sets performance and accuracy tolerances according to three levels of precision: Types 0, 1 and 2. Type 0 is used in laboratories, Type 1 is used for precision measurements in the field, and Type 2 is used for general-purpose measurements. Sound level meters used for compliance purposes can also use the international standard IEC 61672 for measurement of sound pressure levels.
4.8 All sound level meters used for compliance purposes shall meet Type 1 precision level.

4.9 Sound level measurements from smart phone applications are not reliable and shall not be considered for review for any purposes.

4.10 Sound level meters response settings must be set in accordance with the specific noise that is measured. The sound level meter shall be set to slow response for continuous noise sources and fast response for noise with rapid onset and decline.

4.11 Compliance for establishments providing entertainment or limited live performances shall be assessed using the C-weighted relative sound pressure level which includes more lower audio frequencies.

4.12 To ensure measurement accuracy, all sound level meters shall be calibrated according to the manufacturer’s instructions. In addition, field calibration shall be performed prior to and after each use and whenever temperature and/or relative humidity changes significantly. An objective, certified third party capable of calibrating the sound level meter according to a traceable international standard will perform all calibration of noise measuring devices at a maximum every two (2) years. A calibration certificate will be provided for each and every sound meter that is calibrated.

4.13 Measurements shall always be taken at a location safe for the official of Inspection Department TEATT.

4.14 It is not required that noise investigations and sound measurements be conducted at the exact same time of noise complaint. In addition, except when approved by management, the evaluation of noise sources relatives to standards and limits shall be conducted during regular working hours.

4.15 Third Party Acoustical Reports performed by experienced acoustical consultants may be submitted for inclusion in an enforcement file. However, measures made by a third party may not be used for enforcement purposes.

4.16 Noise generated from a source located on a establishment’s property or within or serving a commercial use in a mixed use establishment must not exceed 8dBA above the ambient at any point outside of the property plane. This is the maximum allowable cumulative level of exterior noise, produced from an implied sound system(s) originating from any establishment or serving a commercial use located within a mixed use establishment. This standard applies to both A-weighted and C-weighted measures.

4.17 This policy defines “ambient” as the lowest sound level repeating itself during a minimum ten-minute period. The minimum level shall be determined with the noise source at issue silent, and in the same location as the measurement of the noise level of the source or sources at issue.
4.18 The measurement of ambient shall not require all potential noise sources in the vicinity to be not-operational. However, ambient measurements shall be performed with all major and contributing mechanical noise sources in the control of the owner or operator of the establishment disabled or otherwise silent. The ambient sound level measured may include regularly reoccurring noises such as traffic noise, construction or other sounds from nearby sources not in the control of the owner or operator of the establishment.

4.19 Under no circumstances shall the ambient level be considered to be less than 45dBA for exterior measurements.

4.20 Noise standards – Noise standards shall apply to establishments, exceeding which shall absolutely be qualified as noise nuisance.

<table>
<thead>
<tr>
<th>Type of Regulation</th>
<th>Commercial Establishment Noise</th>
</tr>
</thead>
<tbody>
<tr>
<td>Location of Noise Source(s)</td>
<td>Any commercial use within a commercial or mixed-use establishment</td>
</tr>
<tr>
<td>Measurement location for evaluation of standards</td>
<td>Outdoors, at the exterior property plane of the origin of noise source</td>
</tr>
<tr>
<td>Threshold</td>
<td>8 dBA over the ambient</td>
</tr>
<tr>
<td>Minimum ambient</td>
<td>45dBA 55dBC</td>
</tr>
</tbody>
</table>

**Unlicensed Alcohol Sales (Vestigingsregeling voor bedrijven/ Vergunninglandverordening)**

4.21 Establishments without a permit to sell alcoholic beverages will be treated as a serious breach by Inspection Department TEATT.

4.22 Where it has been proven that the sale of unlicensed alcohol has taken place the Minister TEATT will serve a closure order.

4.23 Unlawful sales of alcohol to children will be treated as a serious breach under the Vergunninglandsverordening. Where Inspection Department TEATT has evidence that proves alcohol has been sold to children, prosecution may be considered in the first instance without prior warning. This does not prevent other forms of action being taken, either separately or in addition to prosecution and each case will be assessed on its own merits.

4.24 All premises have to comply with the various requirements under the ordinances with respect to keeping and displaying of the license.

4.25 The starting principle is that all establishment and persons must comply with these requirements, and Inspection Department TEATT will seek to ensure this is the case. Reasons for Enforcement Policy 2015
these requirements not being met could include administrative issues such as the license not having been issued or a delay in the license holder’s representative in forwarding the license to the establishment.

4.26 Where appropriate, rather than seeking a closure order or prosecution, Inspection Department TEATT will issue an Official Warning in the first instance.

4.27 Exceptions to this will be where there are multiple breaches of legislation that merit formal action; the establishment is unlicensed or there is unauthorized activities occurring. In such instances a closure order shall be issued immediately.

4.28 Where there has been a persistent problem and no action has been taken by the offender to comply, then referring the case to the Public Prosecutor’s Office may be considered.

License Review

4.29 Inspection Department TEATT may request for a review of a license as a member of the Multidisciplinary Control Task Group. A review application may be made on the grounds of violation of license conditions, along with concern over the promotion of the licensing objectives. The decision to request for a review may be brought about by any visits to the establishment by those tasked with such responsibilities, any intelligence received from other teams or agencies or by complaints that are made about the establishment.

4.30 Where Inspection Department TEATT makes a review application, those tasked with such responsibilities will make recommendations to the various Ministers on what course of action may be appropriate in individual cases. The decision on what course of action to take rests with the responsible Minister. The recommendations to the various Ministers could include:

a. add, remove or amend a license condition imposed by the Minister TEATT;

b. suspension of the business; and

c. revoking of the business license.

4.31 A recommendation for the license to be revoked will only be made where no other option is considered suitable to address the individual or cumulative problems. This could occur as a result of a history of non-compliance where enforcement action, including previous reviews, has failed to resolve the problems, or where the nature of the problems is considered serious enough to merit the license being revoked.

5 Section 5 - Complaints
5.1 Inspection Department TEATT will keep a record of all complaints it receives that are relevant to licensed and unlicensed businesses in a database.

5.2 Any complaints may be brought to the attention of other appropriate authorities.

Where appropriate Inspection Department TEATT will:

a. notify the license holder, Department of Economic Licenses and request that steps are taken to resolve the issues made in the complaint.

b. keep the complainant routinely updated with the progress of the complaint until resolution.

5.3 When Inspection Department TEATT investigates a complaint, it may do so by way of correspondence, an announced inspection, or a covert visit depending of the circumstances. The action that can be taken is detailed in the sections for inspections and investigation of unlicensed businesses and persons.

5.4 In some cases, Inspection Department TEATT will not investigate complaints it receives. The reasons for this may be due to the nature of complaint not being relevant to the department, or where one of the members of the Multi-Disciplinary Control Group may be better placed to deal with the complaint. In these cases, the complaint will be referred to the appropriate department and the complainant notified of the reasons.

5.5 After the investigation of a complaint, further action may be taken in line with this Enforcement Policy where appropriate.

6 Section 6 - Inspections and Visits to Businesses

6.1 The underlying principle of the policy is that all businesses should be inspected.

6.2 Inspection Department TEATT is responsible for ensuring that the licenses issued by the Department of Economic Licenses are fully compliant with purpose of license. To enable Inspection Department TEATT to assess whether licenses are complied with and the objectives are met, Inspection Department TEATT will visit and inspect premises.

6.3 There are a range of circumstances that will result in Inspection Department TEATT needing to visit a premises, these are:

a. Businesses identified as high risk.
b. Inspections during the consultation period for an application, which can include new, variation, renewal and review applications.

c. Business identified as a problem by other authorities.

d. Where complaints have been made that need investigation.

e. Businesses where other information suggests there is cause for concern.

f. Inspections as part of a wider project to ensure compliance at a particular class of business or businesses in a particular area.

6.4 To ensure that unnecessary burdens are not placed upon businesses and resources are targeted effectively, Inspection Department TEATT will endeavor to work closely with and the Multidisciplinary Control Group when determining inspections of all businesses. This means that Inspection Department TEATT may not inspect every businesses that requires a licensing inspection, and that a member of the Multidisciplinary Control Group may include licensing checks as part of another inspection.

6.5 Where it is necessary for more than one enforcing body or team to inspect a business, joint inspections will be planned whenever possible.

**Frequency of Inspections**

6.6 Inspection Department TEATT believes that the proper management of the business is a key consideration to the impact an establishment will have on the immediate vicinity and the promotion of the licensing objectives. As such, this will be a principle factor to determine the enforcement escalation steps when a business is inspected.

6.7 Wherever possible, information will be shared with relevant authorities to identify high risk premises which are premises that have been identified to have a violation(s) that fall outside the authority of Inspection Department. High risk premises will be inspected by Inspection Department TEATT when appropriate, or by MDCG.

6.8 The standard grace period allowed for corrective action on the majority of detected violations and recommendations issued by the department is (5) five business days from the date of issue of the 1st warning). **Noise hindrances shall be addressed immediately.**

6.9 A follow-up inspection can be conducted by the Inspection Department to determine if the violation has been addressed. If during the follow-up inspection the violation(s) has not been addressed a second and final warning will be issued to the license holder/operator granting an additional (5) five business days from the follow-up inspection date to correct the violation.
6.10 If the license holder/operator has taken no corrective action(s) or the action(s) taken to remedy the violation(s) is not to the satisfaction of the department then, more stringent enforcement tools and steps as detailed in Sections 3.3, 3.4 and 3.6 can be used to stop the violation. **Pre-arranged Inspections**

6.11 Inspections may be carried out during normal office hours when the business is likely to be quiet by means of a pre-arranged appointment, to ensure that the appropriate person at the premises is available. The inspection may include a comprehensive check to ensure the approved arrangements at the premises are being properly maintained, which may be impractical to check when the premises is busy. Pre-arranged evening or night time visits may also be made if required so that activity provided at the premises may be assessed.

**Un-announced Inspections**

6.12 Un-announced inspections will usually be carried out for high risk premises in addition to any other inspection.

6.13 Other premises will be visited as required, and may be where concerns are raised by the tasking group, a complaint being received or officers witnessing a problem.

6.14 These inspections will be made at the most relevant time for licensable activity, mainly at night, but officers will identify themselves upon arrival at the premises.

Where problems/violations are found, such as unlicensed activity, it may be necessary to carry out frequent inspections until compliance is achieved. In these cases the steps described in 6.8 – 6.10 will be followed.

**Other Visits to Premises and Observations**

6.15 Enforcement Officers routinely work at night when the majority of licensing related problems are likely to occur.

6.16 Officers will therefore seek to make observations of any problems that are seen whilst they are working at night. Officers will also make observations on premises or areas that have current or historical cause for concern. All observations will be recorded whenever possible for future reference, including occasions when no problems have been witnessed at individual premises.

6.17 Officers may enter premises covertly as members of the public where they suspect offences may be occurring. This can include making test purchases to establish if licensable activity is being provided. On these occasions officers will generally not identify themselves at the time unless the problems are particularly serious. This serves to reduce the length of time officers spend in a
presents, and avoids diverting the premises staff away from dealing with customers at what is often their busiest time.

6.18 Where violations are found the License Holder and other relevant parties shall always be notified in writing as soon as practicable after the event.

6.19 This method of visiting premises may be used in addition to, or instead of, other types of inspection when investigating complaints, depending on the circumstances.

6.20 Collecting information in this manner serves several purposes for the Inspection Department. The information may be used:

   a. to determine current problems, enabling better targeting of resources by the Inspection Department and other enforcing agencies.

   b. to determine what action is appropriate in individual cases, particularly where a history of observations helps establish if an offence has been committed on an isolated occasion, or if there are ongoing problems.

   c. to be used as evidence in future enforcement action.

7   Section 7 - Status and Review

7.1 The Ministry of Tourism, Economic Affairs, Traffic and Telecommunication adopted this policy in 2015.

7.2 This is a public document and is available at official website of the Government of Sint Maarten at http://www.sintmaartengov.org or by email IDEZ.Inquiries@sintmaartengov.org

7.3 Complaints concerning the application of this enforcement policy should be submitted in writing to:
Inspection Department of Ministry Tourism, Economic Affairs, Traffic and Telecommunication
Tamarindeesteg 16, Philipsburg
Sint Maarten
idez.inquiries@sintmaartengov.org

8   Section 8 - References

8.1 Vestigingsregeling voor bedrijven

8.2 Vergunningslandsverordening

8.3 Ijkverordening
Enforcement Policy 2015
8.4 Landsverordening Personenvervoer
8.5 Landsverordening Hazardspelen
8.6 Landsverordening Openbare straathandel
8.7 Algemene Politiekeur
8.8 Wegenverkeersverordening (Ministry TEZVT is executing and administering the Driving Exams using this legislation)
8.9 Kreeftenverordening
8.10 Landsbesluit visserijproducten
8.11 Landsverordening keuring motorrijtuigen
8.12 Landsverordening winkelsluiting
8.13 Uitvoeringsbesluit rijbewijzen
8.14 Landsbesluit Visserij op volle zee
8.15 Visserij landsverordening
8.16 Prijzenverordening
8.17 All other legislation which falls under the Ministry TEATT that is not mentioned above.