
CITY OF MERCER ISLAND

COMMUNITY PLANNING & DEVELOPMENT
9611 SE 36TH STREET | MERCER ISLAND, WA 98040
PHONE: 206.275.7605 | www.mercergov.org



Notice of Violation & Civil Penalties

Pursuant to MICC 6.10.050, this Notice of Violation and Civil Penalties is issued as follows:

Date of Notice Issuance: November 15th, 2022

Location(s): 5236 West Mercer Way, Mercer Island WA 98040

Subject Property: 5236 West Mercer Way, Mercer Island WA 98040

King County Tax Parcel # 192405-9324

City of Mercer Island Compliance Case#: CE21-0043

Notification is being given to the following responsible person or persons:

1. POLLIE LLC

5355 TALLMAN AVE NW STE 207

SEATTLE, WA, 98107-3954

2. Jason Anderson

5355 Tallman Ave NW STE 207

Seattle WA, 98107-3954

3. Daniel Suciu

36058 21ST LN S

Federal Way WA, 98003

4. ID Build LLC

36058 21ST LN S

Federal Way WA, 98003

One or more of the responsible persons named above are believed to be responsible for the following violations that have occurred or are occurring at the location(s) identified above:

- 1) Violation of MICC 19.07.160(F)(2)- Development standards**—Additional criteria for specific activities. -2. Land clearing, grading, filling, and foundation work within: (a) an erosion hazard area, when 2,000 square feet or more of site disturbance is proposed, and/or (b) a landslide hazard area are not permitted between October 1 and April 1.
 - a. The code official may grant a waiver to this seasonal development limitation if the applicant provides a critical area study for the site concluding that:
 - i. Geotechnical slope stability concerns, erosion and sedimentation impacts can be effectively controlled on site consistent with adopted storm water standards; and
 - ii. The proposed construction work will not subject people or property, including areas off site, to an increased risk of associated impacts.
 - b. As a condition of the waiver, the code official may require erosion control measures, restoration plans, an indemnification, a release agreement and/or performance bond.**
 - c. If site activities result in erosion impacts or threaten water quality standards, the city may suspend further work on the site and/or require remedial action.**
 - d. Failure to comply with the conditions of an approved waiver shall subject the applicant to code compliance pursuant to chapter 6.10, code compliance, including but not limited to civil penalties and permit suspension.**
- 2) Violation of MICC 19.07.080(E)- General Provisions** -E. Seasonal limitations. Land clearing, grading, filling, and foundation work may be limited to only certain times of year, pursuant to section 19.07.160(F)(2).
- 3) Violation of MICC 15.09.080- Administration** –
 - A. The city manager or his/her designee shall have the authority to develop and implement administrative procedures to administer and enforce this chapter and the program. The city manager or his/her designee shall approve, conditionally approve or deny an application for activities regulated by this chapter.
 - B. Prior to the commencement of any construction on a project or "land disturbing activity," the applicant shall obtain a storm water permit from the city. A bond may be required by the city engineer in an amount sufficient to cover cost of construction of the system in accordance with approved plans and anticipated city inspection. Upon completion of the work inspection and approval of the storm water facilities by the city, 70 percent of the bond shall be released. At the one-year inspection, the remaining 30 percent shall be released. A two-year bond may be required for vegetated storm water facilities.

C. All activities regulated by this chapter shall be subject to inspection. Projects shall be inspected at various stages of the work requiring approval to determine that adequate control is being exercised and enforcement actions taken as necessary. These inspections will include, but not be limited to, the following:

1. Prior to site clearing and construction to assess site erosion potential on sites with a high potential for sediment transport;

2. During construction to verify proper installation and maintenance of required erosion and sediment control BMPs;

3. Upon completion of construction and prior to final approval or occupancy to ensure proper installation of permanent storm water facilities and verify that a maintenance plan is completed and responsibility for maintenance is assigned for storm water facilities;

4. All permanent storm water facilities and catch basins in new residential developments that are part of a larger common plan of development or sale, every six months during the period of heaviest house construction (i.e., one to two years following subdivision approval to identify maintenance needs and enforce compliance with maintenance standards as needed).

When required, special inspections and/or testing may be required to be performed at the expense of the applicant.

D. The city manager or his/her designee may order the correction or abatement of any storm and surface water facility or condition thereof, a prohibited discharge, or illicit connection constituting a violation of this Code or of the applicable manual when such facility or condition thereof has been declared to be a public nuisance. Whenever such a public nuisance is declared, a notice by certified mail shall be made to the violator directing abatement within 30 days of the receipt of the notice. If the required corrective work is not completed within the time specified, the city may proceed to abate the violation as a public nuisance. Summary abatement may be commenced without notice or a stop work order issued when the violation is of such a nature that it is an immediate hazard to life and/or property. Notwithstanding the exercise or use of any other remedy, the city manager or his/her designee may seek legal or equitable relief to enjoin any act or acts or practices which constitute a violation of this chapter.

E. **Civil penalty.** In addition to or as an alternative to any other penalty provided herein, or by law, any person who violates the provisions of this chapter, the applicable manual, or an approved storm water management plan shall incur a cumulative civil penalty in the amount of \$50.00 per day from the date set for correction, until the violation is corrected. In lieu of a civil penalty, the city manager or his/her designee may issue a warning notice and provide educational information on discharge practices when the violation is a first violation of this chapter, is not an intentional violation, and the discharge is determined by

the city manager or his/her designee as minor. Any subsequent violation of this chapter by the same person shall not be eligible for a warning notice and shall result in a civil penalty.

F. Notice of violation and assessment of penalty. Whenever the city manager or his/her designee has found or determined that a violation is occurring or has occurred he/she is authorized to issue a notice of violation directed to the violator, the property owner, or the occupant. The following provisions shall apply and notice of violation shall contain:

1. The name and address of the violator, if known;
2. The street address when available or a legal description sufficient for identification of the building, construction, premises, or land upon which the violation is occurring;
3. A statement of the nature of such violation(s);
4. A statement of action required to be taken as to be determined by the city manager or his/her designee and a date of correction.

G. The notice shall notify the owner and/or violator that: 1. The owner and/or violator has 14 days to notify the city manager or his/her designee of a proposed schedule of repair or maintenance action; 2. The owner and/or violator has 30 days after the time of notification set forth in subsection (G)(1) of this section to comply with the notice, unless, for good cause shown, the period of compliance is extended.

H. In the event the owners and/or violators fail to comply with the notice, work may be done by and under the authority of the city, at the expense of the owner and/or violator and the expense shall be charged to the owner and/or violator, and shall become a lien on the property.

4) Violation of MICC 6.10.020(A) Declaration of public nuisance- Declaration of public nuisance. All code violations are determined to be detrimental to the public health, safety, welfare and environment and are declared to be public nuisances. All conditions determined to be code violations may be subject to and enforced pursuant to the provisions of this chapter, except where specifically excluded by law or regulation.

5) Violation of MICC 19.15.270(A)4 – Enforcement. It is a violation of the development code for anyone to fail to comply with the requirements of the development code, as set out in the specific sections of the code.

Facts Supporting Violation(s):

- On November 4th, 2022, City Building Official Don Cole deemed the site and project under permit number 1709-196 in non-compliance with approved plans, and/or geotechnical engineer recommendations for erosion control and slope stability measures, as required per the Conditions of Permit Approval. **The failure to follow the**

required recommendations of the project Geotechnical Engineer of Record and the required Building permit conditions under 1709-196 are violation(s) of city code as follows:

- **MICC 19.07.160(F)(2)a** - The person(s) responsible did not obtain the required waiver to the seasonal development limitation, which constitutes a code violation.
- **MICC 19.07.160(F)(2)d** - The person(s) responsible did not comply with the conditions of permit approval or obtain the required waiver, which constitutes a code violation.
- **MICC 6.10.020** – The city has determined that the project as a public nuisance and the violations a potential detriment to public health, safety and welfare.
- **MICC 15.09.080** – **Installed protection measures fail to meet stormwater/ erosion control requirements, which is a violation of Chapter 15.09.**

The Responsible Person(s) are Ordered to Complete the Corrective Actions as Follows:

- 1) The responsible person(s) shall immediately contact the project Geotechnical Engineer of Record and implement all slope stability and erosion control measures per their recommendations. The compliance date for completion of this Corrective Actions is November 15th, 2022.
- 2) The responsible person(s) shall apply for a Deviation to the Seasonal Development Limitation. The compliance date for this Corrective Action(s) is November 15th, 2022.

The compliance date for satisfactory resolution of the Corrective Actions above is November 29th, 2022. If the violation is not corrected on or before this date and this notice is not appealed, the determination is final, and penalties are due and additional daily penalties shall begin to accrue, pursuant to MICC 6.10.050, penalties for noncompliance with this Notice and Order shall be as follows:

MICC 6.10.050(D)1

D. Civil penalties.

1. Civil penalties. A civil penalty for violation of the terms and conditions of a notice of violation, stop work order or voluntary correction agreement shall be imposed at the rate of \$100.00 per day for each violation, accruing for every day after the compliance date listed in the notice of violation. Thirty days after the compliance date, the penalty will increase to a rate of \$250.00 per day for each violation. Sixty days after the compliance date, the penalty will increase to a rate of \$500.00 per day for each violation, up to a maximum total penalty of \$50,000.00 for each violation.

MICC 6.10.050(D)2

D. Civil penalties

2. *Priority Violations.* In addition to the penalties described in subsection (D)(1) of this section, any person that is responsible for a violation of the provisions of the following regulations will be subject to additional penalties. These penalties for priority violations, as described below, will be assessed one time and will not accrue daily.

Violation		Penalty
Ecological damage in violation of Chapter 19.07 MICC		Up to \$25,000.00, plus the cost of remediation.
Failure to meet storm water, erosion control requirements in violation of Chapter 15.09 MICC		Up to \$10,000.00, plus the cost of remediation.
Violation of stop work order or voluntary compliance agreement in violation of MICC 6.10.060 or 6.10.070		Up to \$10,000.00.

Under MICC 6.10.050, the City may suspend, revoke, and/or place a hold on future permit applications and/or file a notice with the King County recorder’s office to notify the public of the presence of an unresolved Notice of Violation on the property if the penalty is not paid. Additionally, unpaid penalties will be sent to a collection agency for the purposes of collecting penalties and costs assessed pursuant to MICC 6.10.100 and RCW 19.16.500. The collection agency may add fees or interest charges to the original amount assigned to collections as allowed by law.

Appeal Procedure:

- Pursuant to MICC 6.10.050(B)(5), you have the right to appeal this Notice of Violation & Civil Penalties before a hearing examiner. An appeal must be filed within 14 days of the service of this Notice. Failure to appeal within 14 days shall render this Notice a final determination that the conditions described therein existed and constitute a code violation, that assessed and accrued civil penalties are due, and that the named party is liable as a person responsible. An Appeal form can be found at: <https://www.mercerisland.gov/cpd/page/appeals>

If you would like to discuss the resolution of this code case or schedule a compliance inspection, please contact me by email at David.Henderson@mercergov.org. Thank you for your cooperation.

Sincerely,
David Henderson
Code Compliance Officer
City of Mercer Island, Community Planning and Development