

# CITY OF MERCER ISLAND

COMMUNITY PLANNING & DEVELOPMENT  
9611 SE 36TH STREET | MERCER ISLAND, WA 98040  
PHONE: 206.275.7605 | [www.mercergov.org](http://www.mercergov.org)



## Notice of Violation & Order to Correct

Issued on April 2, 2019

**Pursuant to MICC 6.10.050, this Notice of Violation and Order to Correct is issued as follows:**

This Notice is being issued to the following Persons Responsible for the violation(s):  
Barcelo Homes Inc.

Violation(s) of Mercer Island City Code (MICC) is occurring at the following location:  
9104 SE 50<sup>th</sup> St, Mercer Island, WA 98040, Tax Parcel # 435130-0106

The persons identified above are responsible for the following violations that are occurring at the location identified above:

**MICC 6.10.070(A)(2) – Stop Work Orders. *Issuance.***

The permittee is not complying with the terms or conditions of the permit or approved plans, including storm water management and erosion control requirements, conditions of a seasonal development deviation, tree protection, construction impact mitigation plan.

**MICC 6.10.070(A)(7) – Stop Work Orders. *Issuance.***

The permittee otherwise materially impairs the director's ability to secure compliance with the MICC. The City believes the construction activity on the property was impeding the City's enforcement of the tree protection plan.

**Supporting facts:**

- Arbor Options provided an Arborist Report on March 19, 2019 outlining several recommendations regarding Landscape Installation Best Management Practices.
  - Section (6)(F) in the report states, "if machinery or equipment is utilized, it must be "mini" sized, and be less than 1000 lbs."
- City Arborist John Kenney accepted the conditions outlined in the Arbor Options Arborist Report and attached the report to Tree Permit #1509-005.
- City staff and complainant photos confirm an excavator weighing approximately 3990 Kg was located within the dripline of a protected tree(s).

**The Persons Responsible are Ordered to Complete the Corrective Actions as Follows:**

- Submit an Arborist Report regarding the impacts of the work performed within the Tree Protection Area.
  - The Arborist Report shall be completed by a certified arborist and include findings, conclusions and recommendations.
  - For all trees: identify potential damage to trees from construction and landscaping work within the tree protection areas. Investigate whether the limits of disturbance established in the original Arborist Report have been maintained, or whether they have been encroached upon with grading and fill.

- The limits of disturbance for trees #24 and #25 and other trees appear to have been impacted by grading and/or fill.
- Tree #47 had tree protection at 19' and a cut was made to the root zone at 16' to the west, this excavation was not approved.
- For any trees that have potentially been damaged by construction or landscaping activities: evaluate and assess each tree for damage, investigate how the trees were damaged and provide an appraisal of the tree value. This process will rely on comparison of the original and subsequent Arborist reports comparing the pre-construction condition with the current condition.
- Submit a Mitigation Plan, prepared by a certified arborist, detailing how the impacts of the work performed in the tree protection areas will be mitigated.
  - The mitigation plan shall provide appropriate measures to mitigate damage to trees, as identified in the Arborist Report.
  - If grading or fill has encroached on tree protection areas, the mitigation plan shall require fill to be removed by hand and provide other mitigation measures to address the impacts of the grading/fill on tree health.
  - The mitigation plan shall require application of mulch for all trees within or adjacent to the area of disturbance. The mulch shall be installed by hand within the dripline of each tree to at least 4" in depth. No machinery shall be used.
  - The installation of grass/turf and pavers/patios shall be addressed in the mitigation plan. Grading, fill and the installation of grass/turf or pavers/patios shall not encroach into tree driplines. A certified arborist is required onsite to monitor installation and ensure this requirement is adhered to.
- After review and approval by the City, the mitigation plan must be implemented under the direction of a certified arborist. The certified arborist should be onsite to monitor implementation of the mitigation measures and any grading or fill as well as installation of grass/turf and pavers/patios.
- Provide a letter from a certified arborist confirming the mitigation plan was properly implemented under their supervision, and as directed in the plan.

**The compliance date for completion of the Corrective Action(s) is April 16, 2019.**

If the violation is not corrected on or before April 16, 2019 and this Notice has not been appealed, the determination of this violation is final and monetary penalties shall begin to accrue.

**Pursuant to MICC 6.10.050, penalties for noncompliance of this Notice and Order shall be as follows:**

- Civil penalty in the amount of One Hundred dollars (\$100) per day for each violation listed herein is hereby imposed and shall begin to accrue if Corrective Actions are not completed and the violations are not abated by the compliance date established above.
- Thirty days after the compliance date, civil penalty will increase to a rate of Two Hundred Fifty dollars (\$250) per day for each unabated violation.
- Sixty days after the compliance date, civil penalty will increase to a rate of Five Hundred dollars (\$500) per day for each unabated violation, up to a maximum total penalty of \$50,000 for each violation.
- Pursuant to MICC 6.10.050(B)(5), you have the right to appeal this Notice of Violation 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 <http://www.mercergov.org/page.asp?navid=2881>.

If you would like to discuss the resolution of this code case or schedule a compliance inspection, please contact me by calling me at (206) 275-7712 or by email at [Anthony.Myers@mercergov.org](mailto:Anthony.Myers@mercergov.org). Thank you for your cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read 'Anthony Myers', written in a cursive style.

Anthony Myers  
Code Compliance Officer  
City of Mercer Island