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# CITY OF MERCER ISLAND

COMMUNITY PLANNING AND DEVELOPMENT

9611 SE 36TH STREET | MERCER ISLAND, WA 98040

PHONE: 206.275.7605 | [www.mercergov.org](http://www.mercergov.org)

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## Notice of Violation & Civil Penalties

Issued on March 4, 2019

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

This Notice is being issued to the following Persons Responsible for the violations:  
Barcelo Homes, Inc.

Violations of Mercer Island City Code have occurred at the following location:  
Tax Parcel # 4351300106, 9104 SE 50th Street, Mercer Island, WA 98040

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

- MICC 17.14.010 (115.4) – Unlawful Continuance
- MICC 6.10.070 (B) – Violation of a Stop Work Order

The city observed evidence of a continuance of work while a stop work order was in place on the subject property. The continuance of work is a violation of MICC 17.14.010 (115.4) and MICC 6.10.070 (B).

### MICC 17.14.010 SECTION 115 STOP WORK ORDER

115.4 Unlawful continuance. Any person who shall continue any work in or about the structure after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be subject to penalties as prescribed by Chapter 6.10 MICC.

### MICC 6.10.070 Stop Work Order

B. *Effect.* When a stop work order has been issued, posted and/or served pursuant to this section, it is unlawful to conduct the activity or perform the work covered by the order, even if the order has been appealed, until the director has removed the copy of the order, if posted, and issued written authorization for the activity or work to be resumed. Any violation of a stop work order is hereby declared to be a nuisance and the director is authorized to enjoin or abate such nuisance by any legal or equitable means available. The costs, specifically including reasonable attorney and expert witness fees, for the injunction or abatement, shall be recovered by the city from the person responsible for the code violation in the manner provided by law. Failure to comply with the terms of a stop work order subjects the person responsible for the code violation to civil penalties and costs as set forth in this chapter, including a monetary penalty that shall accrue for each day that a violation of a stop work order occurs.

**Supporting facts:**

- On 1/30/19 the City observed that tree protection fencing was not in place, and that excavation for a retaining wall within the tree protection zone had taken place in violation of the approved plans. The City placed a stop work order on the subject property and communicated required corrective actions for lifting the stop work order, including a certified arborist analysis of the impacted trees.
- The City inspected the subject property on 2/7/19 and the required corrective actions had not been taken; the stop work order remained in place
- On 2/8/19 the City followed up to communicate more detailed corrective actions for lifting the stop work to Barcelo Homes via email, based on the results of the project arborist's assessment of the impacted trees.
- The City inspected the subject property on 2/15/19 and the required corrective actions had not been taken; the stop work order remained in place and this was clearly communicated to Nadia Maksimchuk both verbally and in writing (via emails sent on 2/14/19 and 2/15/19).
- On the morning of 2/19/19 the city again inspected the subject property. During the course of this inspection, it was observed that work had occurred on the site since the previous inspection, including the installation of forms, rebar and plastic sheeting for the driveway and front walkway.
- Based on City inspections on 2/15/19 and 2/19/19, the City deduced that construction work took place on the site during a time when the stop work order was still in place. According to neighbors of the subject property, the illegal work took place on Saturday, 2/16/19.

**The Persons Responsible are ordered to pay civil penalties as follows:**

The City finds that an unlawful continuance of work occurred for the duration of 1 day, on 2/16/19. The persons responsible for this violation are required to pay civil penalties pursuant to MICC 6.10.050 (D). These penalties include:

- A civil violation with penalties that accrue at the rate of \$100 per day.
- A priority violation for the continuance of work in violation of the stop work order, with an additional penalty up to \$10,000. MICC 6.10.050 (D)(2) provides 3 criteria for setting the penalty within this range; based on these criteria, the City sets the penalty at \$2,000 for the following reasons:
  1. The significance and severity of the violation: Any violation of a stop work order is considered very significant to the City. That said, the severity of the effects of this violation are relatively minor – there was no environmental damage and only moderate impacts to neighbors.
  2. Difficulty and time to resolve the violation: The work that was in violation of the stop work order was done according to the approved plans, so no work or mitigation is needed to resolve the issue. Substantial city staff time was expended in monitoring/inspecting the stop work order and corresponding with neighbors related to the violation.
  3. Resulting ill-gotten financial benefit to the person responsible: While the persons responsible for this violation certainly did receive a financial benefit, it is difficult to quantify the exact amount of the benefit from performing this work ahead of when it would have otherwise been allowed. Likely it is a modest gain.
- Repeat Violation - The City finds that this violation meets the criteria in MICC 6.10.050 (D)(3) for a repeat violation. Enforcement action was taken on 1/30/19 when a stop work order was issued for violation of the tree protection requirements and for conducting work beyond the

scope of the approved plans. Thus, the continuance of work in violation of the stop work order is a repeat violation, which is subject to double the civil penalties listed above.

- Deliberate Violation - The City finds that this violation meets the criteria in MICC 6.10.050 (D)(4) for a deliberate violation. The continuance of work was a blatant disregard for city direction that the stop work order was to remain in place until the required corrective actions were taken and inspected by the city arborist. Thus, the violation of the stop work order was knowingly committed, and is a deliberate violation. As a result, the civil penalties are doubled.

**Summary of Penalties**

Civil Penalty		\$100
Priority Violation		\$2,000
subtotal		\$2,100
Deliberate Violation	x2	\$4,200
Repeat Violation	x2	\$8,400
<b>Total Penalty</b>		<b>\$8,400</b>

**Payment of the Civil Penalties is Due 14 days from the Service of this Notice.** The date of service by first class mail is 3 business days after the date this notice was issued and mailed.

**Right to Appeal**

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/files/AppealForm.pdf> or by visiting the Permit Center at the Mercer Island City Hall.

**The issuing Code Compliance Officer is Jimmi Serfling.** If you would like to discuss the resolution of this code case or schedule a compliance inspection, please contact me by email at [Jimmi.Serfling@mercergov.org](mailto:Jimmi.Serfling@mercergov.org) or call 206-275-7709. I am available at City Hall **by appointment only.**

Thank you for your prompt attention to this issue,

Jimmi Serfling  
 City of Mercer Island  
 Code Compliance Officer