



Office of the City Manager

October 7, 2015

To: Honorable Mayor and Members of the City Council

From: *Dee* Dee Williams-Ridley, Interim City Manager

Subject: Illegal Construction

On September 30, 2014, the City Council adopted a referral from Councilmember Worthington, in which he asked the City Manager to consider creating “a new, stricter fine structure against illegal construction,” in order to protect the public from the safety risks posed from such activity.

The Berkeley Municipal Code (BMC Chapter 19.28.020 Section 109.4) specifies that: “Any person who commences any work on a building, structure, electrical, gas, mechanical or plumbing system before obtaining the necessary permit shall be subject to a fee as set forth by resolution of the City Council equal to and in addition to the permit fees.”

City Council adopted the [Master Fee Schedule](#) for FY16 for the Planning and Development Department by [Resolution 67,046-N.S.](#) on May 26, 2015. Pursuant to BMC 19.28.020 Section 109.4, an Investigation Fee is charged for work performed without a permit and/or inspections “equal to and in addition to the permit fee (permit fee doubled),” as specified in Chapter A – Building and Safety Fee X of the Master Fee Schedule.

Pursuant to BMC 19.28.020 Section 114, the Building Official is authorized to serve a notice of violation or order on the person responsible for an illegal construction and direct the discontinuance of the illegal action and abatement of a violation, including obtaining the necessary permits. Any person who fails to comply with any of the requirements thereof shall be subject to penalties as prescribed by law. Violations of this Code are misdemeanors, but may be cited or charged, at the election of the Enforcing Officer, Building Official, or City Attorney, as infractions subject to administrative citations per BMC Chapter 1.28. Pursuant to BMC Section 1.28.040.A, the maximum fines per violation were established by the City Council in [Resolution 61,763-N.S.](#) on September 17, 2002. Unless the violation results in an injury to a person or impacts health, safety or environmental quality, the Resolution limits the maximum administrative citation fine for this type of violation to \$1,000, which may be reduced further based on the criteria specified in the Administrative Citation Handbook

published by the City Attorney's Office. However, the fine for second and subsequent violations within 36 months of the first citation can be increased to 150% of the base fine imposed.

The Administrative Citation Handbook published by the City Attorney in October 2008 recommends the following penalties:

- \$100 for the first violation;
- \$200 for the second violation;
- \$500 for the third and subsequent violation.

The handbook advises consulting with the City Attorney's office before imposing penalties greater than \$500.

Pursuant to City Council [Resolution 61,763-N.S.](#), the administrative penalties for illegal work which results in unsafe conditions affecting public health and safety can be as much as \$2,500 per violation, or \$10,000 per violation if an injury results. It is important to note that pursuant to BMC Section 1.20.010B, a new violation occurs for each day a violation is present. Each day that illegal construction remains in place beyond the timeframe specified in the Building Official's Order to Correct is considered a separate violation.

The Code Enforcement Unit and Building and Safety Division prioritize situations where unsafe or substandard conditions are present. When staff learns of work done without a permit, they issue a Notice of Violation, giving property owners multiple opportunities to correct. Staff attempts to use education and persuasion first. Property owners face double permit fees when they obtain permits for work done without a permit. When property owners fail to comply with Notices of Violation or a Notice and Order to abate illegal work within the prescribed time frame, staff will often initiate administrative citations. Citation penalties in most cases would begin at \$100 - \$250 per day, increasing in amount to as much as \$500 per day until such time that the illegal work is abated. Thus, if a property owner continues to maintain illegal work in the violation of the Building Code and the Building Official's Order to Correct, on ten separate days, that would constitute ten separate violations for which fines can be imposed. If there are other violations at the property, the citation may be combined with other penalties for additional amounts.

In determining the amount of the daily citation, staff considers the seriousness of the violation, the degree to which the violation was intentional, the extent of the hazards presented by the illegal work, the violator's prior history of such conduct and other similar factors. Staff uses citations to get the attention of the violator and stimulate compliance. The ultimate goal is for property owners to use their financial resources to obtain the necessary permits and perform the required work and not to incur penalties that cost more than the cost of compliance. If penalties are so onerous they do not correspond to the seriousness of the violation, the person cited will likely appeal either

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the citation or a subsequent lien and win a dismissal. The City's philosophy behind citations is to give violators a strong financial incentive to cure their violations. The schedule of fines in [Resolution 67,046-N.S.](#) is more than adequate for violations to be punished.

cc: Gil Dong, Interim Deputy City Manager
Ann-Marie Hogan, City Auditor
Mark Numainville, City Clerk
Eric Angstadt, Planning & Development Director
Matthai Chakko, Assistant to the City Manager
Alex Roshal, Building Official