



CITY OF BELVEDERE – ADMINISTRATIVE POLICY MANUAL

**POLICY 14.4
VIOLATION OF THE CONSTRUCTION
TIME LIMIT ORDINANCE**

Adoption Date:	1/10/2006	Adopted by:	City Council Motion
Revised Date:	6/14/2010 9/9/2013 3/11/2019	Revised by:	City Council Motion City Council Resolution No. 2013-32 City Council Resolution No. 2019-04
Authority:	City Council		

14.4.1 **TIMELINE**

The following timeline is drawn from the ordinances contained in the Belvedere Municipal Code. This timeline is to be strictly followed by City Staff as they pursue the administrative remedy of a construction time limit violation.

EXAMPLE OF AN OWNER WHO APPEALS, LOSES & FAILS TO PAY								
EVENT	# DAYS	ACTION TAKEN BY:			EVENT DESCRIPTION	MAIL DELIVERY		
		OWNER	COUNCIL	STAFF		REGULAR	PROOF OF SERVICE	HAND DELIVERY
A				B.O.	PENALTY AMOUNT LETTER MAILED TO OWNER. PAYMENT DEADLINE IS "A" + 60 (BMC 20.04.035E3).		X (BMC 20.04.035E3; 1.14.040)	
B		X			TIMELY APPEAL RECEIVED (ON OR BEFORE "C").			
	B OR B + 1			D.C.C.	SET UP REVIEW COMMITTEE MEETING OF BUILDING OFFICIAL, PLANNING DIRECTOR, CITY ENGINEER AND CITY MANAGER TO MEET WITH PROJECT CONTRACTOR, ARCHITECT, & (AT APPLICANT'S DISCRETION) THE APPLICANT &/OR HIS DESIGNATED REP(S). (BMC 20.04.035E4).			
	B OR B + 1			D.C.C.	SET APPEAL HEARING FOR NEXT AVAILABLE REGULAR CITY COUNCIL MEETING THAT ALLOWS 15 DAY'S NOTICE (BMC 1.14.060B).			

EVENT	# DAYS	ACTION TAKEN BY:			EVENT DESCRIPTION	MAIL DELIVERY		
		OWNER	COUNCIL	STAFF		REGULAR	PROOF OF SERVICE	HAND DELIVERY
	B OR B + 1			D.C.C.	MAIL NOTICE TO OWNER RE: APPEAL ACCEPTANCE; DATE OF REVIEW COMMITTEE MTG; DATE OF PUBLIC HEARING;		X	
C	A + 10 CALENDAR DAYS (BMC 20.04.035E4; 1.04.010C-1).				APPEAL DEADLINE.			
	E - 3/10			D.C.C.	MAIL AGENDA & STAFF REPORT TO OWNER.	X		
D	A + 60 (BMC 20.04.035E3).				PAYMENT DEADLINE GIVEN IN PENALTY AMOUNT LETTER.			
E	DATE DETERMINE D BY "B+1"		X		PUBLIC HEARING ON CTL APPEAL.			
	E + 1			D.C.C.	AGENDIZE ADOPTION OF RESOLUTION GIVING CC. DENIAL OF APPEAL FOR NEXT COUNCILL MTG. CONSENT CALENDAR.			
	F - 3/10			D.C.C.	MAIL AGENDA & STAFF REPORT TO OWNER.	X		
F			X		ADOPTION OF RESOLUTION OF DENIAL AS PART OF THE CONSENT CALENDAR (BMC 1.14.070D; 1.14.080). (THIS IS THE DATE THE PENALTY IS FINALLY IMPOSED, FOR THOSE WHO APPEAL, PER BMC 20.04.035E7 & 1.14.160B). RESO MUST INCLUDE FINDINGS OF FACT (BMC 11.14.070D). IT MAY STATE THAT THE PENALTY IS DUE IN FULL WITHIN 60 DAYS OF THE DATE OF PASSAGE OF THE RESOLUTION (BMC 20.04.035E3) & THAT FAILURE TO PAY BY THAT DATE MAY RESULT IN ADDITIONAL CHARGES FOR INTEREST & ADMINISTRATIVE COSTS AND A LIEN BEING FILED AGAINST THE PROPERTY. (BMC 1.14.160B)			
G	F + 1			D.C.C.	FILE NOTICE OF ASSESSMENT OF ADMINISTRATIVE PENALTIES AND OF INTENTION TO RECORD LIEN AGAINST REAL PROPERTY WITH COUNTY RECORDER (BMC 1.14.160C).			X
G	F + 1			D.C.C.	MAIL NOTICE OF COUNCIL ACTION, COPY OF ADOPTED RESOLUTION, & COPY OF NOTICE OF ASSESSMENT OF ADMIN. PENALTIES TO OWNER. THIS ACTION SETS THE 90-DAY CLOCK TICKING FOR OWNER TO FILE A WRIT OF MANDATE.		X	
G1	F + 60				DATE THE PENALTY DUE IN FULL. INTEREST BEGINS ACCRUING ON ANY UNPAID AMOUNT. (BMC 20.04.035E3, 1.14.160B)			

EVENT	# DAYS	ACTION TAKEN BY:			EVENT DESCRIPTION	MAIL DELIVERY		
		OWNER	COUNCIL	STAFF		REGULAR	PROOF OF SERVICE	HAND DELIVERY
H	G + 90	X			DEADLINE TO FILE TIMELY WRIT OF MANDATE.			
	I - 10+ (BMC 1.14.160G)			D.C.C.	NOTICE OF LIEN HEARING TO OWNER.		X (BMC 1.14.160G & 1.14.040)	
	I - 3/10			D.C.C.	MAIL AGENDA & STAFF REPORT TO OWNER. OFFER TO WAIVE INTEREST & ADMINISTRATIVE COSTS IF THEY PAY PENALTY IN FULL BEFORE THE LIEN HEARING.	X		
I			X		LIEN HEARING. COUNCIL ADOPTS LIEN RESOLUTION SETTING FINAL AMOUNT TO BE LIENED AGAINST PROPERTY.			
	I + 1			D.C.C.	NOTICE OF COUNCIL ACTION MAILED TO OWNER WITH COPY OF LIEN RESOLUTION.		X	
J	I + 30 (BMC 1.14.180A).			D.C.C.	LIEN RESOLUTION TO COUNTY RECORDER WITH COPY TO TAX COLLECTOR FOR PLACEMENT ON PROPERTY TAX ROLLS.			X
K	UNKNOWN	X		C.M.	SOME TIME AFTER LIEN RESOLUTION FILED, OWNER PAYS FINE. CITY MANAGER MAILES TO OWNER NOTICE OF RELEASE OF LIEN. RESPONSIBILITY OF OWNER TO RECORD THE NOTICE.		X	

Timeline examples continued on next page.

EXAMPLE OF AN OWNER WHO DOES NOT APPEAL & WHO FAILS TO PAY

EVENT	# DAYS	ACTION TAKEN BY:			EVENT DESCRIPTION	MAIL DELIVERY		
		OWNER	COUNCIL	STAFF		REGULAR	PROOF OF SERVICE	HAND DELIVERY
A				B.O.	PENALTY AMOUNT LETTER MAILED TO OWNER. (NOTE: THIS IS THE DATE THE PENALTY IS FINALLY IMPOSED, FOR THOSE WHO DO NOT FILE AN APPEAL, FOR PURPOSES OF BMC 1.14.160C & 20.04.035E6.)		X	
B	A + 10 CALENDAR DAYS (BMC 20.04.035E4; 1.04.010C1)	X			APPEAL DEADLINE.			
C	A + 60 (BMC 20.04.035E3)	X			PAYMENT DEADLINE THAT WAS GIVEN IN PENALTY AMOUNT LETTER. (PAYMENT PUT IN ABEYANCE UNTIL AFTER THE CITY COUNCIL APPEAL HEARING.)			
	C + 1			D.C.C.	FILE NOTICE OF ASSESSMENT OF ADMINISTRATIVE PENALTIES AND OF INTENTION TO RECORD LIEN AGAINST REAL PROPERTY WITH COUNTY RECORDER.	X		
	C + 1			D.C.C.	SET DATE FOR LIEN HEARING "D" (NEXT REGULAR COUNCIL MEETING THAT WILL ALLOW AT LEAST 10 DAYS NOTICE TO OWNER - BMC 1.14.160G). PROPOSED LIEN TOTAL INCLUDES: 1) ORIGINAL PENALTY; 2) INTEREST FROM DATES "C" THROUGH "D"; 3) COST FOR STAFF TIME IN PREPARING LIEN HEARING REPORT, 4) COST OF NOTICE OF HEARING.			
	C-1, WHICH MUST BE D - 10+ (BMC 1.14.160G)			D.C.C.	MAIL NOTICE OF LIEN HEARING & COPY OF NOTICE OF INTENT TO FILE LIEN TO OWNER.		X (BMC 1.14.160G & 1.14.040)	
	D - 3/10			D.C.C.	MAIL AGENDA & STAFF REPORT TO OWNER. OFFER TO WAIVE INTEREST & ADMINISTRATIVE COSTS IF THEY PAY PENALTY IN FULL BEFORE THE LIEN HEARING.	X		
D	Date based on "C+1".		X		LIEN HEARING. COUNCIL ADOPTS LIEN RESOLUTION SETTING FINAL AMOUNT TO BE LIENED AGAINST PROPERTY. INCLUDES INTEREST & ADMIN COSTS FOR PERIOD FROM "C" THROUGH "E."			
E	D + 1			D.C.C.	NOTICE OF COUNCIL ACTION MAILED TO OWNER WITH COPY OF LIEN RESOLUTION.		X	
F	D + 30 (BMC 1.14.180A, 1.14.160A).			D.C.C.	LIEN RESOLUTION TO COUNTY RECORDER WITH COPY TO TAX COLLECTOR FOR PLACEMENT ON PROPERTY TAX ROLLS.			X
G	UNKNOWN	X		C.M.	AT SOME POINT AFTER LIEN FILED, OWNER PAYS FINE. CITY MANAGER MAELS TO OWNER NOTICE OF SATISFACTION OF LIEN. RESPONSIBILITY OF OWNER TO RECORD THE NOTICE.		X	

14.4.2 PROJECT FINAL APPROVALS RELATIVE TO THE C.T.L. ORDINANCE

Background

Belvedere Municipal Code (BMC) Section 20.04.035, Time Limits for Construction, provides for a maximum amount of time for completion of a construction project without incurring a penalty. The time varies, based on valuation, and can be either, 6-months, 12-months or 18-months. There are provisions within the Code to provide for time extensions, under certain circumstances, of up to 6-months.

Belvedere experiences a continuous stream of large numbers of construction projects on private property. The Time Limits for Construction Ordinance was developed as a result of the adverse impacts on neighborhoods, as well as the community, that construction projects often create. Besides the visual impact of the construction site, other deleterious effects of construction projects include, creating long-term noise disturbances to neighbors and the loss of on-street parking in the area of the project.

Section 20.04.035, sometimes referred to as the CTL Ordinance, (Construction Time Limit) only applies to projects that have received design review. Even a minor project that has received design review, such as new windows, is subject to the provisions of Section 20.04.035. Penalties for violating the CTL Ordinance can be significant, up to \$200,000.

For reference, Building Department Policy Number 1, Ancillary & Repair Permits, Regarding CTL Ordinance & Final Approval, discusses and defines what kind of projects are not subject to the CTL Ordinance. Building Department Policy Number 4, Minor Serial Permits Subject to the CTL Ordinance, presents the criteria by which all permits issued for a single project are considered to be subject to the CTL Ordinance.

Comments

Building Department Policy Number 7 describes when CTL start time is triggered. A significant problem for staff in enforcing the CTL Ordinance, however, has been, under what circumstances is a project considered completed and the assigned CTL time for a project should no longer apply.

The Building & Planning staffs held a series of meetings for the specific purpose of developing the criteria by which a project was considered complete to the degree that it should no longer be subject to Construction Time Limits. The central focus while developing the criteria was the determination of what elements of a project, once completed, would largely eliminate the negative effects of the project on a neighborhood, and the community. One example of eliminating a negative effect of a construction project is when major concrete elements have been completed, no longer requiring cement trucks and pumpers at the site. Excessive noise, parking and traffic impacts no longer occurs when this activity ceases. Taking this approach in developing the CTL completion criteria harmonizes the Policy with the intention of the Ordinance, thereby achieving a major reduction, or the elimination, of the adverse effects of construction projects.

This Building Department Policy has been reviewed & approved by the City Council. It is also recorded in the City's Administrative Policy manual in Part 14, Building Department Procedures, as City Policy No. 302.06.

Policy

BUILDING INTERIOR ELEMENTS SUBJECT TO CTL FINAL APPROVAL

- All residential dwelling units, including second units & second kitchens, must comply with the latest edition of the International Property Maintenance Code in terms of habitation requirements. (These buildings must have a completed kitchen, including permanent food preparation and preservation equipment, at least one completed bathroom, conforming bedroom & additional habitable room of at least 120 sq. ft.);
- All life/safety features must be installed and functional throughout the building, including smoke detectors, permanent guardrails, permanent handrails, required tempered glazing and exit system components;
- Electrical systems are to be fully completed, including all permanent light fixtures, receptacles and switches being in place. (In lieu of a permanent light fixture an approved cover plate may be installed at the location of the fixture mounting box, except in the case where the light fixture in question provides the code required room lighting.);
- Permanent plumbing fixtures in other than the required bathroom are required to be in place at the time of the landscape final approval; and
- In rooms other than the required kitchen, bathroom, conforming bedroom & 120 sq. ft. habitable room, finish materials including paint, architectural trim, tile, marble, finish wooden floor and carpeting must be completed at the time of landscape final approval.

PROJECT CONSTRUCTION ELEMENTS SUBJECT TO CTL FINAL APPROVAL

- Project main structure, including decks and accessory buildings greater than 50 sq. ft. (These buildings must have all exterior finishes completed, including lighting fixtures, final painting and/or power washing. Accessory buildings include, but are not limited to, detached garages, carports, guesthouses, pool houses, potting, sheds and tool sheds. Exterior finishes of one accessory building less than 50 sq. ft. qualifies as a decorative elements to be completed as part of landscape approval.);
- Accessory structures, including site-built features such as detached decks, patio covers, outdoor fireplaces, hillside elevators, docks, outdoor kitchens, including operable plumbing, electrical and mechanical fixtures;
- Poured in place, thus considered permanent, spas, pools and fountains (Tile and finish surface materials above the water line are considered part of the landscape element.);
- Permanent equipment, including mechanical and auxiliary power systems such as solar photovoltaic and generators, mechanical boat lifts or boat storage equipment;
- Mechanical and plumbing enclosures related to permanent spas, pools and fountains (This relates to typical conditions of approval regarding sound attenuation requirements.);
- All concrete flat work, including patios, driveways and walkways;
- Exterior finish materials on doorway landings, verifying compliance with the latest edition of the California Residential Code, as adopted by the City, relative to floor elevations at the required exit doors and other exterior doors.
- All concrete, masonry or stonewalls greater than 18" in height;
- Entry columns, trellises, arbors and walkway covering;

- Permanent guardrails and all other permanent life safety features;
- All perimeter fencing; and
- Chimney spark arrestors.

PROJECT ELEMENTS CONSIDERED LANDSCAPING AND NOT SUBJECT TO CTL FINAL APPROVAL

- Tile and finish surface materials for spas, pools and fountains at surface areas above the water line;
- Portable, cord connected, spas and fountains;
- Surface finish materials on all cement patios, driveways and walkways;
- Surface finish materials on concrete or masonry walls greater than 18” in height;
- All concrete, masonry or stone walls less than 18” in height;
- Irrigation systems and lighting associated with landscaping;
- External security features, including cabling and cameras; and
- All softscape improvements, including approved plant materials and trees.

CITY REQUIREMENTS AT COMPLETION OF LANDSCAPING ELEMENT

- Removal of porta potties;
- Removal of temporary barriers or fencing; and,
- Removal of all construction & landscaping equipment from the site.
- Reevaluation of building permit

Required signatures for final approval for CTL purposes shall be sequential; a Fire District’s representative shall be first, the Building Inspector’s approval, second and a Planning Department representative’s final approval shall be last. The Planning Department representative’s signature shall determine the completion of the project for CTL purposes.

14.4.3 ESTABLISHING PROJECT START DATE FOR CONSTRUCTION TIME LIMIT

Background

How the date of completion regarding the CTL is determined for a project is a crucial element in the administration of the Ordinance. The current practice for establishing the date of required completion is based on the assumption that construction begins on the date of the permit issuance.

However, a number of issues may occur which could, and often do, interfere with a contractor commencing work on a project at the time of permit issuance. Some examples are unanticipated rains, a delay in a property owner’s ability to vacate an existing residence or contractor mobilization difficulties. Therefore, it is inequitable to expect that construction begin immediately after permit issuance on all occasions.

Comments

A practice of allowing a contractor to request a new start date, for CTL purposes, has been successfully established in that the contractor is required to submit a letter to the Building Official stating that he was unable to start construction at the time of permit issuance and

indicate the proposed starting date. The letter must be received prior to any construction activity and allow enough time for the Building Official, or his representative, to visit the construction site for the purposes of verifying that no construction activity has occurred.

Policy

A contractor may petition in writing for a CTL completion date other than what is stated on the Building Permit due to inactivity immediately after the permit issuance. A new CTL start date will be assigned on the following basis:

1. The request must be made in writing.
2. The request must be received well enough in advance of actual construction so as to allow the Building Official the opportunity to verify that no construction activity has occurred.
3. The Building Official will respond in writing within 15-days of receipt of the request, noting the verification of construction inactivity and assign a new start date. This assumes that no construction activity has occurred.
4. If any evidence of construction activity, such as partial demolition, has occurred the request for a new start date must be denied.
5. Should a new CTL start date be assigned:
 - a. The notification letter is to be attached to the permit;
 - b. The new CTL completion date, based on the new CTL start date, is to be written on the permit, referencing the attached notification letter.
 - c. The completion date is to be revised in the Building Official's Outlook calendar, deleting the old date and recording the new date, for purposes of sending out the CTL Compliance letter.

14.4.4 MID-PROJECT CONSTRUCTION TIME LIMIT ASSIGNMENT

Background

Belvedere Municipal Code (BMC) Section 20.04.035, Time Limits for Construction, provides for a maximum amount of time for completion of a construction project without the imposition of a penalty. The time varies, based on valuation, and can be six months, 12 months, or 18 months. There are provisions within the Code to provide for time extensions, under certain circumstances, of up to six months.

Belvedere experiences a continuous stream of construction projects on private property. The Construction Time Limit Ordinance (Section 20.02.035 BMC) was developed as a result of the adverse impacts on neighborhoods, as well as the community, that construction projects often create. Besides the visual impact of the construction site, other deleterious effects of construction projects include the creation of long-term noise disturbances to neighbors and the loss of on-street parking in the area of the project.

The Construction Time Limit (CTL) Ordinance applies only to projects that have received design review. Even a minor project that has received design review--such as installation of new windows--is subject to the provisions of Section 20.04.035. Penalties for violating the CTL Ordinance can be substantial: up to \$200,000.

For reference, Building Department Procedure No. 008.1, “Ancillary & Repair Permits, Regarding CTL Ordinance & Final Approval” discusses and defines what kind of projects are not subject to the CTL Ordinance. Building Department Procedure No. 008, “Minor Serial Permits Subject to the CTL Ordinance,” presents the criteria by which all permits issued for a single project are considered to be subject to the CTL Ordinance.

Comments

The imposition of a construction time limit is predicated on the project being subject to design review. It follows that if a construction project is not subject to design review, no construction time limit is assigned at the time of building permit issuance. This is not an unusual occurrence, typical examples being kitchen and bathroom remodels.

Often, however, projects which begin as interior work expand to exterior elements of the building. When this occurs, design review of the proposed expanded work is usually required. Sometimes the expanded work is the result of construction defects discovered during the interior work, or the desire of the property owner for a more extensive project. On most occasions, an application for design review is received prior to the expanded work.

At other times, the progression of the construction work to unapproved exterior elements of a building, whether deliberate or accidental, is concealed or a permit application is delayed in order to avoid design review, or the property owner intends to apply for design review at a later date, or believes that the work does not require design review. Unfortunately, staff has also encountered construction projects where a small interior project is proposed and permitted and the applicant later, near the end of the project, deliberately expands the project to the exterior of the building in an effort to "game" the system and escape construction time limit issues. Regardless of the motive or lack thereof, when applicants deliberately or accidentally circumvent design review and the requisite construction time limit, there can be long-term negative neighborhood impacts. In essence, a property owner may conduct work on an extensive construction project without the imposition of a construction time limit until the project is nearly complete.

Based on these scenarios, staff has developed policy criteria for assigning construction time limits to on-going projects which previously were not subject to design review and consequently were not assigned a construction time limit.

Policy/Procedure

UNAPPROVED EXTERIOR WORK SUBJECT TO DESIGN REVIEW--STOP WORK ORDER

When non-approved exterior work, subject to design review, is discovered by staff, a Stop Work Order shall be issued. The Stop Work Order shall apply to the unapproved work exterior work only.

PERMIT ISSUANCE

A new building permit shall be issued only after the on-going project, originally not subject to a construction time limit, has received a design review approval.

1. The purpose of the new building permit is to memorialize the inception of a project construction time limit and the scope of the expanded work.
2. The assigned construction time limit applies to the entire project, including project elements that previously were not subjected to a construction time limit.
3. For purposes of the permit, the valuation shall be for the entire project, including the new exterior element/s which are the subject of the design review approval, and the previously permitted interior work. Permit fees previously paid for the interior work shall be deducted from the new permit fee liability. For accounting purposes, this fee transaction shall be referenced on the new permit.
4. The valuation shown on the new building permit shall establish the length of the assigned construction time limit for the entire project.
5. For the purpose of establishing a Construction Time Limit deadline for the project, the project start date shall be recorded as the date that the initial construction permit was issued.

CONSTRUCTION TIME LIMIT EXTENSIONS

Applicants who have received a construction time limit based on the criteria contained in this policy, and who object to the construction time limit assigned to the project because of insufficient time to complete their project without incurring penalties, are encouraged to make application for an extended construction time limit period through the City's Construction Time Limit Review Committee, as referenced in Municipal Code Section 20.04.035D3.

14.4.5 POLICY REGARDING SUCCESSIVE MINOR CONSTRUCTION ACTIVITY

Building permits which are subject to design review, yet are minor in scope may be issued with independent CTL dates of completion based on the following criteria:

- Building permits that are to be considered under this policy must be minor in scope.
 - For purposes of this policy minor in scope means a maximum valuation of \$25,000 for each permit.
 - No more than three trades may be required in the scope of work of each permit.
- No more than three building permits, which are subject to the CTL Ordinance time for completion requirements, may be issued in a one-year period, based on the date of issuance of the first permit.
- Building permits issued under this Policy may be subject to only administrative design reviews and not Planning Commission approvals in whole or in part.
- In the opinion of the Building Official the issuance of successive building permits under this policy will not create conditions which violate the *Purpose* Section of Ordinance 20.04.035:
 - Long-term adverse noise disturbances to neighbors.
 - Loss of inadequate parking in the immediate vicinity of the project.
 - Frequent road closures.
- Each of the permits under consideration must meet all of the criteria contained in this policy.