

REPORT TO THE BUILDING STANDARDS APPEALS BOARD

March 31, 2026

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SUBJECT

..Title

Actions pertaining to Fresno Code Enforcement case number E23-01585, concerning 4816 E. Fillmore Ave., and the First Administrative Citation issued on December 17, 2025:

1. HEARING on the Appeal of the First Administrative Citation.
2. Take one of the following actions:
 - i. CONFIRM the First Administrative Citation issued December 17, 2025, and ORDER Appellant to repair the confirmed violations within thirty days; OR
 - ii. CONFIRM certain violations but DISMISS other violations in the First Administrative Citation issued December 17, 2025, and ORDER Appellant to repair the confirmed violations within thirty days; OR
 - iii. DISMISS the First Administrative Citation issued December 17, 2025.

...Body

RECOMMENDATION

Staff recommends that, after holding the appeal hearing, the Building Standards Appeals Board (BSAB) **CONFIRM** the First Administrative Citation issued to property owners JCH Family LP, DBH Family LP, and JHS Family LP (Property Owners or Appellants) on December 17, 2025, and **ORDER** Appellants to repair the remaining violations within thirty days, pursuant to Fresno Municipal Code (FMC) sections 11-319 and 11-324, and California Health and Safety Code section 17920.3.

EXECUTIVE SUMMARY

On January 28, 2025, case E23-01585 was reassigned to Community Revitalization Specialist Brad Morgan (Inspector Morgan). He inspected the property at 4816 E. Fillmore Ave. (the Property), confirmed the presence of five violations, and on August 29, 2025, issued a corresponding Notice & Order based on his observations. (Appeal Packet, pg. 44) After multiple extensions and attempts to work with Appellant, on December 17, 2025, Inspector Morgan issued a First Administrative Citation for \$250 for the five violations that were still uncorrected. (Appeal Packet, pg. 61)

BACKGROUND

The BSAB was established by Resolution number 2025-149 passed May 22, 2025, in order to hear various appeals, including Code Enforcement appeals related to building standards under FMC Chapter 11, Articles 3 and 4.

To perform this duty, the BSAB must review the Appeal Form received by the appellant, any other information provided by the appellant, the staff report, and all attachments. Pursuant to FMC section 1-408, the scope of the hearing “shall be limited to the order, citation, decision, or determination being appealed, the grounds for relief raised in the notice of appeal, and any specific requirements of this Code.” (FMC § 1-408(e).) The BSAB may admit any relevant evidence, “if it is the type of evidence on which responsible persons are accustomed to rely on in the conduct of serious affairs,” and “hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.” (FMC § 1-408(d)(3).) The City has the burden of proof and production of evidence, and the burden of proof shall be preponderance of the evidence. (FMC § 1-408(f).) Preponderance of the evidence means the evidence shows a fact is more likely true than not true, or over a 50% probability.

If the BSAB finds that any of the violations set forth in the appealed notice or citation is continuing and remains as of the time of the hearing, the determination must include an order for the Appellant to correct the violations within thirty days, and a progress hearing must be set to occur thirty to sixty days later. (FMC § 1-409(f).)

Summary of Facts

On February 27, 2023, this case was opened after a tenant at 4816 E. Fillmore Ave. (the Property) complained that her roof had caved in, and the issue was not being fixed correctly or with permits obtained. In the intervening two and a half years, the case was open and actively worked by Code Enforcement inspectors as they attempted to gain compliance. (Appeal Packet, pgs. 7-30) On January 28, 2025, the case was reassigned to Inspector Brad Morgan (Inspector Morgan), who reviewed the case file. On August 13, 2025, Inspector Morgan observed the exterior of the Property and conducted a search of City permit records. (Appeal Packet, pgs. 31-32) The violations he found included multiple HVAC units installed without permits or inspections on three separate buildings, a permit (B23-13816) for building and electrical work on a carport that expired without being finalized, and a permit (B23-14018) for replacing of one HVAC unit that expired without being finalized. (Appeal Packet, pgs. 31-32)

Based on those findings, on August 29, 2025, Inspector Morgan issued a Notice and Order (Notice), listing five identified violations, as well as the code sections implicated, potential corrections, and supporting photographs. (Appeal Packet, pgs. 44-60) The deadline to cure the violations listed on the Notice was September 16, 2025. (Appeal Packet, pgs. 44, 48)

On September 16, 2025, a representative with Appellants’ property management company reached out to Inspector Morgan asking for an extension, and Inspector Morgan granted it, as well as an additional extension after that. (Appeal Packet, pgs. 36-38)

On December 5, 2025, Inspector Morgan conducted another search of City permit records, and found that the preliminary steps to apply for a permit had been taken for one HVAC unit (Apartment #102, the same one as expired permit B23-14018). (Appeal Packet, pgs. 33, 100-115) This permit was not issued as there was a balance due, which Appellants were notified of via email two days after they submitted the preliminary information. (Appeal Packet, pgs. 109-115)

As two extensions had already been granted, Appellants had made no effort to proactively communicate any hardships to Inspector Morgan or request further extensions, and no permits had been issued for the work, Inspector Morgan issued a First Administrative Citation (Citation) for \$250 for the five outstanding violations on December 17, 2025. (Appeal Packet pgs. 40, 61)

Scope of Hearing

FMC section 1-408(e) establishes two pertinent limitations to the scope of a hearing: (1) the order, citation, decision, or determination that was appealed; and (2) the grounds for relief raised by the Appellant.

The scope of the BSAB hearing is limited to the Citation issued on December 17, 2025, as that is what Appellant filed an appeal for. (Appeal Packet pg. 134) The Notice that preceded the Citation was not appealed, and is therefore a “final order” not at issue for the hearing. (FMC § 11-333(a).) The grounds for relief raised by Appellants are that they are working on completing “CFRI” forms. (Appeal Packet pg. 134).

Staff Analysis

In order to confirm the Citation, the BSAB must be satisfied by a preponderance of the evidence that: (1) violations of the FMC existed on the Property; (2) proper notice was served on the property owner; and (3) after the Notice deadline passed, the violations remained.

A. Standard of Proof – Preponderance of the Evidence

FMC section 1-408(f) establishes that the burden of proof in administrative hearings is “preponderance of the evidence”. The Supreme Court of the United States has established that preponderance of the evidence is met when the trier of fact believes “the existence of a fact is more probable than its nonexistence.” (*Concrete Pipe and Products of California, Inc. v. Construction Laborers Pension Trust for Southern California* (1993) 508 U.S. 602, 622; citing *In re Winship*, (1970) 397 U.S. 358, 371–372, (Harlan, J., concurring) (brackets in original).) In quantifiable terms, if the BSAB is 51% sure that a fact is true, the City has met that burden and the BSAB should find in favor of the City for that fact.

B. Violations of the FMC Existed on the Property

Between August 13, 2025, and December 17, 2025, Inspector Morgan inspected the Property multiple times and conducted multiple searches of City permit records, and each time observed the HVAC units replaced without permits and carport building and electrical work done without permits – the five violations from the Notice that were then included in the Citation. (Appeal Packet pgs. 31-40) Each of these violations is supported by evidence in the Appeal Packet and violates the FMC. Additionally, it is important to note that in their appeal form, Appellants do not deny that the violations have existed through the time of this case as grounds for relief. (Appeal Packet pg. 134)

1. *“Building #1 (APT 101-105 & 201-205) has multiple heating, ventilation, and air conditioning systems (HVAC) that were installed without the required permits and inspections.”*

FMC section 11-105 adopts the California Mechanical Code (CMC), and FMC sections 11-307 and 11-308 state that it is unlawful to construct or repair buildings or structures without first obtaining any necessary permits. CMC section 104.1 states that it is unlawful to construct or repair any mechanical systems without first obtaining any necessary permits, and CMC section 105.1 states that any mechanical system for which a permit is required shall be inspected and approved by the local authority before being put into use.

Inspector Morgan’s observations and searches of City permit records show that the HVAC units on Building #1 were replaced without permits. (Appeal Packet, pgs. 31-33, 37-40, 50-53, 64-67)

2. *“Building #2 (APT 110-114 & 210-214) has multiple heating, ventilation, and air conditioning systems (HVAC) that were installed without the required permits and inspections.”*

FMC section 11-105 adopts the CMC, and FMC sections 11-307 and 11-308 state that it is unlawful to construct or repair buildings or structures without first obtaining any necessary permits. CMC section 104.1 states that it is unlawful to construct or repair any mechanical systems without first obtaining any necessary permits, and CMC section 105.1 states that any mechanical system for which a permit is required shall be inspected and approved by the local authority before being put into use.

Inspector Morgan’s observations and searches of City permit records show that the HVAC units on Building #2 were replaced without permits. (Appeal Packet, pgs. 31-33, 37-40, 50-53, 64-67)

3. *“Building #3 (APT 106-109 & 206-209) has multiple heating, ventilation, and air conditioning systems (HVAC) that were installed without the required permits and inspections.”*

FMC section 11-105 adopts the CMC, and FMC sections 11-307 and 11-308 state that it is unlawful to construct or repair buildings or structures without first obtaining any necessary permits. CMC section 104.1 states that it is unlawful to construct or repair any mechanical systems without first obtaining any necessary permits, and CMC section 105.1 states that any mechanical system for which a permit is required shall be inspected and approved by the local authority before being put into use.

Inspector Morgan’s observations and searches of City permit records show that the HVAC units on Building #3 were replaced without permits. (Appeal Packet, pgs. 31-33, 37-40, 50-53, 64-67)

4. *“Permit #B23-13816, acquired for (replace fascia board, replace damage carport metal post like to like, replace damage carport metal roof sheets as needed like to like, and replace exterior carport light fixtures) building and electrical work performed at the subject property, has not received final inspection approval and has expired and/or has been cancelled. Per the California Building Code, every permit issued shall become invalid unless the work on the site authorized by such permit is commenced within 180 days after its issuance, or if the work authorized on the site by such permits is suspended or abandoned for a period of 180 days after the time the work is commenced. A final inspection and approval is required before the use or occupancy of the improvements covered by this permit is allowed.”*

FMC section 11-101 adopts the California Building Code (CBC), FMC sections 11-307 and 11-308 state that it is unlawful to construct or repair buildings or structures without first obtaining any necessary permits, and FMC section 11-310 states any building or structure subject to a permit must be inspected by the Building Official. CBC sections 105.1, 105.4, 105.5, and 105.6 provide that permits are required prior to construction or repair of buildings or structures, and that permits expire if abandoned for 180 days.

Inspector Morgan’s observations and searches of City permit records show the carport work that permit B23-13816 was for expired due to abandonment, and no action was taken to reactivate or replace that permit. (Appeal Packet, pgs. 31-33, 37-40, 50-53, 64-67)

5. *“Permit #B23-14018, acquired for (replace HVAC unit at APT #102) mechanical work performed at the subject property, has not received final inspection approval and has expired and/or has been cancelled. Per the California Building Code, every permit issued shall become invalid unless the work on the site authorized by such permit is commenced within 180 days after its issuance, or if the work authorized on the site by such permits is suspended or abandoned for a period of 180 days after the time the work is commenced. A final inspection and approval is required before the use or occupancy of the improvements covered by this permit is allowed.”*

FMC section 11-101 adopts the CBC, FMC sections 11-307 and 11-308 state that it is unlawful to construct or repair buildings or structures without first obtaining any necessary permits, and FMC section 11-310 states any building or structure subject to a permit must be inspected by the Building Official. CBC sections 105.1, 105.4, 105.5, and 105.6 provide that permits are required prior to construction or repair of buildings or structures, and that permits expire if abandoned for 180 days.

Inspector Morgan's observations and searches of City permit records show the HVAC work that permit B23-14018 was for expired due to abandonment. (Appeal Packet, pgs. 31-33, 37-40, 50-53, 64-67) Appellants made a negligible effort to replace the permit by submitting the initial information, but did not respond to City's multiple emails requesting clarification and payment of fees. (Appeal Packet, pgs. 108-114)

C. Proper Notice was Served on the Property Owner

On August 29, 2025, the Notice was posted at the Property and mailed by both first class and certified mail. (Appeal Packet, pgs. 57-58) The Notice contained all information required by FMC section 11-327, including identification of the Property, clear descriptions of the violations and reference to all code sections violated, photographs, a statement of the required actions to correct the violations, and information concerning appellants' right to appeal. (Appeal Packet, pgs. 44-53)

On December 17, 2025, the Citation was mailed by both first class and certified mail. (Appeal Packet, pg. 69.) The Citation contained all information required by FMC section 1-308(b), including the date and location of the violations, clear descriptions of the violations and reference to all code sections violated, a statement of the required actions to correct the violations, a statement explaining the consequences of continued failure to correct the violations, the amount of the penalty owed, and information concerning appellants' right to appeal. (Appeal Packet pgs. 61-62)

D. After the Notice Deadline Passed, the Violations Remained

The Notice's deadline was September 16, 2025. Inspector Morgan confirmed the continued existence of the five violations in early October, then again in early December immediately prior to issuing the Citation. (Appeal Packet, pgs. 37-40) As a courtesy, and in light of the progress Appellants had made in October to apply for permit B25-13001, Inspector Morgan two separate extensions. (Appeal Packet, pgs. 36-38) However, as Inspector Morgan saw no evidence of other actions taken after that point, and was not notified of any hardships by Appellants or their representatives, Inspector Morgan had to issue the Citation in December. Of note, Appellants still have not corrected the violations at this time, over seven months after receiving the Notice. (Appeal Packet, pgs. 7, 42)

Appellant's Grounds for Relief

As provided above, Appellant cited that they were working on "CFRI" forms as the reason why relief should be granted. (Appeal Packet, pg. 134) The City cannot determine what Appellants meant by this, thus cannot provide more context.

Of note, US case law firmly establishes that the burden is on Appellants to prove the facts necessary for an affirmative defense. (Smith v. Sac County (1870) 78 U.S. 139, 147; see also Cunningham v. Cornell University (2025) 604 U.S. 693, 704; Schaffer v. Weast, 546 U.S. 49, 57) An affirmative defense is Appellants' assertions that, if true, "will defeat the plaintiff's or prosecution's claim, even if all the allegations in the complaint are true." (DEFENSE, Black's Law Dictionary (12th ed. 2024).)

This means once the City meets its own burden of proof that each condition set forth in the citation or notice (1) was present at that time and (2) was indeed a legal violation, a *prima facie* case is established, and the burden shifts to Appellants to prove their affirmative defense.

CONCLUSION

Staff has demonstrated that violations existed on the Property at the time of the properly issued Notice and Order, and remained after the Notice's deadline to correct had passed. The Citation was properly issued, and the BSAB should **CONFIRM** the Citation and all violations thereon, and **ORDER** Appellant to repair the remaining violations within thirty days.

ENVIRONMENTAL FINDINGS. Pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15378, the Commission's consideration of the Application is not a CEQA "project".

LOCAL PREFERENCE Not applicable.

FISCAL IMPACT Not applicable.

Attachments: Code Enforcement Appeal Packet
Findings Matrix
Presentation