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Subject: Owner-Builders, Permitting, and Licensing Requirements in California

Introduction

This memorandum strives to:

- a) summarize California’s licensing and permitting regulations for “owner-builders”, and
- b) identify which types of relatively small construction activities typically do (and do not) require permits to be issued by local building departments.

The following information is highly general in nature and should not be applied to any specific issue, project or litigation without formal consultation with Richard Avelar & Associates.

Owner-Builders

Here in California, an “Owner-Builder” is defined as any individual, or group of individuals, who owns property (whether residential or commercial) on which they plan to personally construct, alter, repair, improve, renovate, or remodel a building or structure. There are three different methodologies (which can be combined) under which the term Owner-Builder is applicable:

- **Owner-as-Worker** is a type of Owner-Builder where the Owner personally carries out the construction work, the permit(s) are taken out in the Owner’s name and the Owner is personally responsible for the construction management, knowledge, workmanship, and completion of the job. These Owners’ (acting as their own builder) can benefit greatly by not paying others to carry out this work; however, of course, the degree of risk depends on each Owner’s ability to complete the job successfully.
- **Owner-as-Contractor** is a type of Owner-Builder where Owners personally act as their own General Contractor, the permit(s) are taken out in the Owner’s name and the Owner hires California-licensed subcontractors to perform all or part of the construction work. It is highly important to note that the protections provided by law when Owners hire California-licensed subcontractors can turn to serious financial risk if unlicensed contractors are hired.
- **Owner-as-Employer** is a type of Owner-Builder where: i) Owners may hire (as employees) unlicensed individuals to perform construction work valued at more than \$500; ii) the permits are taken out in the Owner’s name; and iii) the Owner is fully responsible for all employee requirements, supervision, performance, safety and welfare while these workers are on the property. Note: perceived cost savings can turn to serious financial risk if an Owner fails to deduct payroll taxes and/or to provide workers compensation insurance for each worker.

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Owner-Builder responsibilities include:

- When an Owner-Builder signs a building permit application, he (or she) is assuming full responsibility for all phases of the project and its integrity. Similar to the role of a licensed General Contractor, an Owner-Builder must pull all appropriate building permits and his project must pass building inspections and must meet all code requirements
- Also similar to the duties of a General Contractor, the Owner-Builder is ultimately responsible for ordering materials and making sure all suppliers are paid. Additionally, the Owner-Builder commonly is responsible for supervising, scheduling, and paying subcontractors.
- If the Owner-Builder uses unlicensed subcontractors for the work, then he/she likely will be considered an “employer” in the event of a dispute. Employers must register with state and federal authorities and are obligated to participate in state and federal income tax withholding, federal Social Security taxes, workers' compensation insurance, disability insurance costs, and to make unemployment compensation contributions.

Construction Permits – Minor vs. Major Repairs

In general, construction permits (i.e., building, electrical, plumbing and/or mechanical permits) are required for any work that substantially *repairs*, alters, modifies, enlarges, constructs, reconstructs or renews any portion of a building or structure.

- Work activities that constitute *maintenance* or *refinishing* and/or *minor repairs* commonly do not require construction permits; however, the difference between what is (or is not) a “minor” repair can be difficult to define in some situations:
 - In general, “repair” can be defined as substantial reconstruction or renewal of an existing material or item that was legally installed under the originally controlling code when the building was constructed.
 - A “minor repair” is work, relatively minimal in nature, which does not substantively affect intended protections of life, limb, health, property, safety and welfare of the building occupants and the general public. For example:
 - i. The application of filler material (or a covering) to a small hole in a wall: a) clearly is minimal in nature; and b) would not, in most cases, substantially impact code-intended protections for life, limb, health, property, safety and welfare of the occupants or the general public. In most California jurisdictions, such “minor repairs” commonly would not require a building permit.
 - ii. On the other hand, even though the simple replacement of several sheets of gypsum drywall at a one-hour fire-rated wall still could be considered relatively minimal in both nature and cost, such work – if not carried out properly – potentially could negatively impact the future life, limb, health, property, safety and welfare of the occupants or the general public. Therefore, most jurisdictions in California would require such work at fire-rated walls to be carried out only by a licensed contractor (or an Owner-Builder, as discussed above) who has pulled a building permit for this repair.
- San Francisco’s Department of Building Inspection (“DBI”) has advised that patching holes or replacing a few sheets of drywall at a non-rated wall are “minor repairs” not requiring a permit. In contrast, replacing drywall at a fire-rated wall would be a “major repair” requiring a permit.
- Similarly, per DBI: while replacement of a built-in desktop within a home office would be “minor” in nature (i.e., no permit required), countertop replacement in a bathroom or kitchen specifically would require a building permit due to potential health impacts to the occupants.

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Figure 1 below (copied from the 2013 San Francisco Building Code) identifies the general types of work that are exempt from San Francisco’s permitting requirements.

- Regarding the DBI discussion above, note that item #10 exempts: “*Minor repairs to existing interior plaster or wallboard, except when part of a fire-resistive assembly.*”
- Similarly, item #16 exempts: “*Installations or replacement of floor coverings in areas other than bathrooms or toilet rooms not requiring the removal of existing required flooring.*”

2013 SAN FRANCISCO BUILDING CODE	106A.2 – 106A.3.1.2
<p>106A.2 Work exempt from permit. Exemptions from the permit requirements of this code shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of this jurisdiction. A building permit shall not be required for the following:</p> <ol style="list-style-type: none">1. One-story detached accessory buildings or structures used as tool and storage sheds, playhouses and similar uses, provided the projected roof area does not exceed 100 square feet (9.29 m²).2. Fences not over 6 feet (1829 mm) high located at the rear and side lot lines at the rear of the property, and all fences not over 3 feet (914.4 mm) in height.3. Amusement devices not on fixed foundations.4. Movable cases, counters and partitions not over 5 feet 9 inches (1753 mm) high.5. Retaining walls that are not over 4 feet (1219 mm) in height measured from the bottom of the footing to the top of the wall, unless supporting a surcharge or impounding Class I, II or III-A liquids.6. Water tanks supported directly upon grade if the capacity does not exceed 5,000 gallons (18 927 L) and the ratio of height to diameter or width does not exceed 2.1.7. Platforms, sidewalks, walks and driveways when not part of an exit, and not more than 30 inches (762 mm) above grade and not over any basement or story below and which, for residential buildings required to be accessible to persons with disabilities, are not part of a required accessible route.8. Painting, papering and similar finish work.9. Temporary motion picture, television and theater stage sets and scenery.10. Minor repairs to existing interior plaster or wallboard, except when part of a fire-resistive assembly.11. Prefabricated swimming pools accessory to a Group R, Division 3 Occupancy in which the pool walls are entirely above the adjacent grade and if the capacity does not exceed 5,000 gallons (18 927 L).12. State-owned buildings under the jurisdiction of the state fire marshal. Unless otherwise exempted, sepa-	<p>rate plumbing, electrical and mechanical permits will be required for the above-exempted items.</p> <ol style="list-style-type: none">13. Reroofing without the installation, repair or removal of roof sheathing, if the total surface area of the roof reroofed in any 12-month period does not exceed 25 percent of the entire surface area of the roof.14. Surface mounting of readily removable materials on interior walls.15. Work performed on structures owned and occupied by the Federal or State government. This exemption shall not apply to privately operated structures erected on government-owned land, or to privately owned land or structures leased to the Federal or State government, or to structures owned and operated by State educational institutions unless such structures are owned and used exclusively for educational purposes or other uses related to the institution’s educational purposes, such as student cafeterias or dormitories.16. Installations or replacement of floor coverings in areas other than bathrooms and toilet rooms not requiring the removal of existing required flooring.17. Repair and replacement of glazing in conformity with this code, and provided wire glass shall be replaced in kind.18. Replacement of doors, except garage doors, in all occupancies, provided they are not part of fire-resistive assemblies required by this code.19. Work performed on structures owned or leased by the City and County of San Francisco where the construction or modification of said structure is financed in whole or in part by the issuance of lease revenue bonds prior to July 1, 1989.20. See Section 3107.1.1 for exempt signs.21. See Section J103.2 for grading permit exemptions.22. See Section 106A.1.10.3 for Elevators regulated by the state exemption.

Figure 1 – Section 106A.2 (‘Work exempt from permit’) of 2013 San Francisco Building Code.

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In like manner, Section 89.108.4.1 of the 2013 California Electrical Code serves to distinguish between substantive repairs that require a permit and minor repairs and maintenance that do not:

- *“(a) Except as exempted in paragraph (b) of this subsection, a written construction permit shall be obtained from the enforcing agency prior to the erection, construction, reconstruction, installation, movement, or alteration of any electrical system.*
“(b) Consistent with the requirements of Section 17960 of the Health and Safety Code, the local enforcing agency shall enforce the requirements of this code, but shall exempt the following activities from the requirement for a permit or inspection.
 1. *Listed cord and plug connected temporary decorative lighting.*
 2. *Reinstallation of attachment plug receptacles, but not the outlets therefore.*
 3. *Repair or replacement of branch circuit overcurrent devices of the required capacity in the same location.*
 4. *Installation or maintenance of communications wiring, devices, appliances, apparatus or equipment.”*

Similarly, Section 103.1 of the 2013 California Plumbing Code states:

- *“It shall be unlawful for a person, firm, or corporation to make an installation, alteration, repair, replacement, or remodel a plumbing system regulated by this code except as permitted in Section 103.1.1, or to cause the same to be done without first obtaining a separate plumbing permit for each separate building or structure.*
“103.1.1 Work. A permit shall not be required for the following:
 - 1) *The stopping of leaks in drains, waste, or vent pipe, provided, however, that a trap, drain pipe, soil waste, or vent pipe become defective and it becomes necessary to remove and replace the same with new material, the same shall be considered as new work and a permit shall be procured and inspection made as provided in this code.*
 - 2) *The clearing of stoppages, including the removal and reinstallation of water closets, or the repairing of leaks in pipes, valves, or fixtures, provided such repairs do not involve or require the replacement or rearrangement of valves, pipes, or fixtures.”*

Additional Definitions of Maintenance and Minor Repairs Not Requiring a Permit

Based upon professional experience and expertise, *maintenance* and *minor repairs* typically not requiring issuance of construction permits additionally can be defined as:

- a. Routine, recurring and usual work for the preservation, protection and keeping building components and systems for their intended purposes in a safe and continually usable condition for which they previously have been improved, constructed, altered or repaired under required construction permits.
- b. Minor carpentry, electrical, plumbing, glazing, painting and other craft work designed to preserve building components and systems in a safe, efficient and continuously usable condition for which they were intended, including minor repairs, cleaning and other operations on machinery and equipment permanently attached to the building as fixtures.
- c. Any maintenance activities or minor repairs that have been required in a formal “notice of violation” (“NOV”) issued by a local housing inspector under authority of maintenance requirements of the State Housing Law or local Housing Code --- unless the housing inspector specifically has also required (within the NOV) separate inspections and approvals by local building, electrical and plumbing code inspectors.

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Cost Threshold Licensing Requirement of the Contractors State Licensing Board

Any person, entity or firm in California that contracts for, or bids upon, or carries out any type of construction work (whether *major* or *minor* or *maintenance* in nature) valued at \$500 or more in combined labor and material costs must be licensed by California’s Contractors State License Board (“CSLB”) unless, as discussed above, the work is being carried out personally by an Owner-Builder and/or a legitimate hourly employee for whom the Owner-Builder is participating in all required income tax withholding, federal Social Security, workers' compensation insurance, and disability insurance programs, and for whom the Owner-Builder is making unemployment compensation contributions.

Is There a Cost Threshold for What Is (or Is Not) Considered to be “Maintenance” Work?

As reported above, all work activities valued at \$500 or more (combined labor and material costs) must be carried out by a licensed contractor or by an Owner-Builder and/or his legitimate hourly employee for whom the Owner-Builder is participating in all required state and federal income tax withholding, federal Social Security, workers' compensation insurance, and disability insurance programs, and for whom the Owner-Builder is making unemployment compensation contributions.

However, it is important to emphasize that in most jurisdictions there is no specific cost threshold for determining what is (or is not) a “maintenance” activity not requiring a permit. In other words, building professionals should not confuse the CSLB’s \$500 cost threshold for licensing as a threshold for determining when a building permit is required. Consider the following examples:

- a. Within the City and County of San Francisco, as documented at item #13 of Figure 1 above, maintenance reroofing activities not requiring a building permit (no matter the actual cost of the labor and materials) are defined as: “*Reroofing **without the installation, repair or removal of roof sheathing**, if the total surface area of the roof reroofed in any 12-month period does not exceed 25 percent of the entire surface area of the roof.*” [Bold emphasis added.]
 - o Assume: i) no repair, removal or installation of roof sheathing will be required; and ii) the total labor and materials cost of the reroofing will be \$2,500 --- while no building permit is required, the work must be carried out by a licensed contractor or an Owner-Builder.
 - o Alternately, assume: i) no repair, removal or installation of roof sheathing will be required; and ii) the total labor and materials cost of the reroofing will be \$400 --- no building permit is required and the work may be carried out by an unlicensed handyman.
 - o Alternately, assume: i) repair of damaged roof sheathing will be required; and ii) the total labor and materials cost of the reroofing will be \$2,500 --- a building permit is required and the work must be carried out by a licensed contractor or an Owner-Builder.
 - o Alternately, assume: i) repair of damaged roof sheathing will be required; and ii) the total labor and materials cost of the reroofing will be only \$400 --- a building permit still must be pulled by a licensed contractor or an Owner-Builder (however, this relatively minor reroofing work still may be carried out by an unlicensed handyman operating under the direct control of the Owner-Builder).
- b. In like manner, consider window and glazing maintenance and repair in San Francisco. We see at item #17 at Figure 1 that “*repair and replacement of glazing*” does not require a permit. Still, if the total cost (labor and materials) of this re-glazing exceeds \$500, then – per CSLB regulations – a licensed contractor or Owner-Builder must do the work.

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- c. Further, let's assume that this work also will require removal/replacement of the window's operable "sash" (i.e., the moveable framework that holds these glazing pieces). Because this sash piece is not a structural load-bearing component of the building, most jurisdictions would not require a building permit to replace this sash in like kind. Again, if the total cost of this sash replacement exceeds \$500, then a licensed contractor or Owner-Builder must do the work.
- d. Now, let's assume that this window work also would entail partial repair or replacement of its structural load-bearing frame. Then, no matter the actual cost, a building permit always must be pulled by the building Owner (or the Owner's agent) or a licensed contractor.
 - o Note again that if the total cost (combined labor and materials) of this remediation work is less than \$500, then it can be carried out by an unlicensed handyman operating under the direct control of the Owner (or the Owner's agent) who pulled the building permit.

Who Is Authorized by State Law to Pull a Construction Permit?

Under California law, the Owner (and Owner-Builder) and his/her licensed architect, engineer, or contractor are allowed to pull a construction permit from the local jurisdiction. Further, designated "agents" for the Owner or contractor (but not for the architect or engineer) also are entitled to obtain a permit; however, the "enforcing agency" (e.g., the building department) must be provided sufficient information to confirm that this unlicensed agent is properly authorized to act in behalf of the Owner or the contractor.

Summary Discussion

In summary:

1. All work (of any type) for which the total cost combined cost (labor and materials) is greater than \$500 must be carried out by a licensed contractor or by an Owner-Builder and/or his hourly employees and licensed subcontractors.
2. Similarly, all work (of any total cost) for which a formal construction permit is required must be carried out by a licensed contractor or by an Owner-Builder and/or his hourly employees and licensed subcontractors. (Except: if the total combined cost is less than \$500, then the work can be carried out by an unlicensed handyman operating under the direct control of the Owner-Builder who pulled the permit.)
3. Maintenance activities (of any total cost) and minor repairs typically do not require formal building permits; however, the definition and determination of "minor repairs" that would not require issuance of such permits can vary widely between local jurisdictions throughout California. In all cases, the local building department should be consulted.
4. Completion of maintenance activities or minor repairs that have been required in a formal notice of violation issued by a local housing inspector (under the authority of maintenance requirements of the State Housing Law or local Housing Code) typically do not require building permits unless the housing inspector specifically has also required (within the NOV) separate inspections and approvals by local building, electrical and plumbing code inspectors. In other words, local housing inspectors – when working under authority of their jurisdiction's Housing Code – have broad power to interpret which portions of the remediation work being mandated by their Notice of Violation constitute maintenance or minor repairs that would not trigger issuance of construction permits requiring separate inspections by local building, electrical and plumbing code inspectors.

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Note: housing code inspectors typically do not have authority to “final” (approve and accept) repair activities that has been carried out under construction permits issued by their brethren in the building, electrical and plumbing code divisions of the local building department.

5. The Owner (and Owner-Builder) and licensed architect, engineer, or contractor are allowed to pull a construction permit. Further, formally designated “agents” for the Owner or contractor (but not for the architect or engineer) also are entitled to obtain the building permit if the enforcing agency has been provided sufficient information to confirm that this unlicensed agent is properly authorized to act in behalf of the Owner or the licensed contractor.

Disclaimer: this educational brief is highly general and introductory in nature and is neither intended nor authorized for any project-specific use by any attorney or building professional in the construction, design, or litigation fields. There are certain aspects of State and local construction and housing codes and associated permitting and licensing requirements that may be inconsistently interpreted/implemented by some jurisdictions. This memorandum may contain unintended errors. Further, various State and local laws and regulations have been revised and amended since this educational brief was first issued. Richard Avelar & Associates disclaims liability for any use of this memorandum not explicitly authorized in writing by the undersigned.

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