

AO 2021-88S

Assembly revisions to 23.10.105.1 (C) Performing work:

**AN OMNIBUS ORDINANCE AMENDING ANCHORAGE MUNICIPAL CODE TITLE 23 TO PROVIDE CLARITY FOR IMPLEMENTATION OF CODE AND RELATED MATTERS.**

**Submitted by:** Assembly Members Weddleton, Zaletel and Kennedy

**PROPOSED AMENDMENT**

**Purpose/Summary of Amendment:** Revise the requirements to allow the owner of a residential building to be exempt from Contractor licensing regardless of whether they live on the property or not for existing structures to match the licensing requirements of the State of Alaska. Add new Section to AO 2021-88(S).

**TEXT OF AMENDMENT**

*(adding new language, [DELETING CURRENT CODE LANGUAGE] and [Deleting words proposed by the unamended AO or AO(S) that are not in current code])*

**AO p. 9, adding new AO Section 11**, to read as follows (changes to the AO 88(S) not show, legislative drafting below shows amendments to current Code):

**Section 11.** Anchorage Municipal Code subsection 23.10.105.1 is hereby amended to read as follows (the remainder of the section is not affected and therefore not set out): **23.10.105.1 - General provisions.**

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C. Performing Work: All work regulated by this code shall be performed by individuals appropriately licensed in the relevant trade in accordance with state law and this code.

Exceptions:

1. A property owner may perform work as follows:

a. A person working on an existing structure on that person's own property, whether occupied by the person or not, and a person working on that person's own existing residence, whether owned by the person or not;

b. An owner or tenant of commercial property who uses the owner's or tenant's own employees to do maintenance, repair, and alteration work on that property.

[ A. THE OWNER OF A DETACHED SINGLE-FAMILY HOME MAY PERFORM ANY TYPE OF WORK REGULATED BY THIS CODE ON THE STRUCTURE AS LONG AS THEY RESIDE IN THE HOME. THE OWNER OF A DETACHED DUPLEX (TWO DWELLING UNITS) MAY PERFORM ANY TYPE OF WORK REGULATED BY THIS CODE ON THE STRUCTURE AS LONG AS THEY RESIDE IN ONE OF THE UNITS.

C. THE OWNER OF A COMMERCIAL BUILDING AND THEIR EMPLOYEES MAY PERFORM MAINTENANCE, REPAIR AND ALTERATION WORK (EXCLUDING ELECTRICAL, MECHANICAL AND PLUMBING WORK THAT REQUIRES A PERMIT IN ACCORDANCE WITH THIS CODE) ON SAID STRUCTURE.] \*\*\* \*\*

## State statutes:

The two exemptions added by the Assembly are exemptions (9) and (10) under AS 08.18.161. These are exemptions to the construction contractor provisions in AS 08.18. They are not exemptions from certificate of fitness requirements (AS 18.62).

In regards to performing electrical and plumbing work in the state there are 3 required components: Construction contractor, administrator and certificate of fitness. These components appear to be loosely coordinated at best. Below is an attempt to simplify/understand the state requirements.

## Performing electrical work regulated by the NEC:

- AS 08.18.161 construction contractor exemptions (9), (10) and (11):
  - (9) a person working on an existing structure on that person's own property, whether occupied by the person or not, and a person working on that person's own existing residence, whether owned by the person or not;
  - (10) an owner or tenant of commercial property who uses the owner's or tenant's own employees to do maintenance, repair and alteration work on that property;
  - (11) an owner who acts as the owner's own contractor and in doing so performs the work independently or hires workers or subcontractors, purchases materials, and, as such, sees to the paying for all labor, subcontractors, and materials; in this case the owner shall be limited to construction of one home, duplex, triplex, four-plex, or commercial building every two years;...
- AS 08.40.190 electrical administrator exclusions (3) and (11):
  - (3) electrical installation on a residential property that is owned by the installer or a member of the installer's immediate family and not intended for sale at the time of making the installation.
  - (11) electrical maintenance or repair work if the work is performed by the person as an employee of an owner or tenant of commercial property as part of the employee's work duties with respect to the property but is not offered or performed as a service to the public.
- Certificate of fitness:
  - AS 18.62.010 Certificate of fitness required. In connection with work performed subject to the standards established in AS 18.60.580 and AS 18.60.705, a person may not be employed without a certificate of fitness to perform the work, except that a certificate of fitness may not be required of employees of an electric utility...
  - AS 18.62.070 Persons required to obtain certificate. A person engaged in one of the following trades shall first obtain from the department the appropriate certificate of fitness in that trade:

- (1) electrical wiring subject to the standards established in AS 18.60.580;
  - AS 18.60.640 Scope of work covered.
    - (a) AS 18.60.580 – 18.60.660 cover only new installations and alterations to existing installations.
    - AS 18.60.580 – 18.60.660 adopts the NEC. Note the Scope does not include maintenance and repair.
  - 8 AAC 70.035 Electrical Maintenance – Defines electrical maintenance and distinguishes maintenance from new installs.
- To be an electrical contractor one must be or employ an electrical administrator (AS 08.18.026).
- State Division of Labor Standards and Safety interpretations (Will Harlan Director, Scott Damerow, Chief of Mechanical Inspection):
  - Because an owner is not considered to be *engaged in the trade* of wiring (per AS 18.62.070), they can perform the work.
    - According to Will and Scott, the statement “*engaged in the trade*” means performing electrical work for compensation. Hence it does not apply to an owner performing work on their own property.
    - A worker that receives any type of compensation is considered as *engaged in the trade*.
    - Per my correspondence with Will and Scott, they appear to interpret this *engaged in the trade* exemption as applying to only single-family homes; however there is nothing in the certificate of fitness statutes that distinguish between a single family home and everything else. The logical conclusion would be that an owner can perform electrical work on any type of building; however see the Supreme Court ruling below.
  - A tenant, their employees and an owner’s employees cannot perform new install and alteration work.
  - An owner, tenant and their employees can perform maintenance and repair work.
- Supreme Court of Alaska - Allison v. State, No. 3716, August 25, 1978:
  - Appellants received a cease/desist order from the state for performing wiring on a 41 unit apartment building under construction. The appellants owned the building and were not licensed as an electrical contractor.
    - AS.40.090: No person may act as an electrical contractor in the state without a license issued by the board.
    - AS.40.100 Exclusion: A person making an electrical installation on a residential property which is owned by the installer or a member of his

immediate family and not intended for sale at the time of making the installation is not required to obtain a license.

- Note the code language and section numbers have changed over the years.
- The superior court, in entering partial summary judgment for the state, held the exclusion of AS 08.40.100 inapplicable to the defendants. The court found that, although the rental property was residential and owned by the defendants who performed the installation and did not intend to sell the property, the public safety purpose of the act precludes a literal reading of the exemption. The exclusion was held applicable only when "the electrician or family members reside in the individual residential unit". Having concluded that AS 08.40 is a chapter concerned with safety, we believe that the exemptions therein should be narrowly construed to effect this purpose. We hold that the exemption in question is applicable only to residential property, or a unit thereof, actually occupied by the owner or a member of his immediate family and not intended for sale at the time of making the installation. The wiring of rental units for the occupancy of others is a "set stage for tragedy;" and, like the superior court, we find "little logic in exempting so large a segment of electrical installations from the licensing requirements as defendants' view would allow." We conclude that the legislature did not intend the term "residential property" to include leased property unless occupied by a member of the immediate family of the owner.

- **Conclusions – tenants, owners, and employees performing electrical work:**

- An owner can perform electrical work on their dwelling unit as long as they or immediate family members reside in the unit. This includes alterations and new construction.
- Electrical maintenance and repair work can be performed by an owner or tenant or their employees because it is not included under AS 18.60.640.
- Our conclusion is the Assembly's amendment conflicts with state law as interpreted by the courts in regards to performing electrical work.

**Performing plumbing work regulated by the UPC:**

- AS 08.18.161 construction contractor exemptions (9), (10) and (11):
  - (9) a person working on an existing structure on that person's own property, whether occupied by the person or not, and a person working on that person's own existing residence, whether owned by the person or not;

- (10) an owner or tenant of commercial property who uses the owner's or tenant's own employees to do maintenance, repair and alteration work on that property;
- (11) an owner who acts as the owner's own contractor and in doing so performs the work independently or hires workers or subcontractors, purchases materials, and, as such, sees to the paying for all labor, subcontractors, and materials; in this case the owner shall be limited to construction of one home, duplex, triplex, four-plex, or commercial building every two years;...
- AS 08.40.390 mechanical administrator exclusions (3) and (5):
  - (3) mechanical installation on a single-family residence or a two-family residence that is not intended for sale at the time of making the installation.
  - (5) mechanical maintenance or repair work if the work is performed by the person as an employee of an owner or tenant of commercial property as part of the employee's work duties with respect to the property but is not offered or performed as a service to the public.
- Certificate of fitness:
  - AS 18.62.010 Certificate of fitness required. In connection with work performed subject to the standards established in AS 18.60.580 and AS 18.60.705, a person may not be employed without a certificate of fitness to perform the work, except that a certificate of fitness may not be required of employees of an electric utility...
  - AS 18.62.070 Persons required to obtain certificate. A person engaged in one of the following trades shall first obtain from the department the appropriate certificate of fitness in that trade:
    - (2) plumbing subject to the uniform plumbing code; in this paragraph, "uniform plumbing code" means the minimum plumbing code adopted for the state under AS 18.60.705.
  - AS 18.60.715 Administration (Plumbing Code).
    - (a) The code applies to all new construction, all new work in relocated buildings, and to any alteration, repairs, or reconstruction of buildings except as provided otherwise under AS 18.60.705 – 18.60.740.
    - (c) Nothing in AS 18.60.705 – 18.60.740 prohibits a person from performing plumbing work on a person's own property.
- To be a plumbing contractor one must be or employ a mechanical administrator (AS 08.18.028).

#### Conclusions for tenants, owners, and employees performing plumbing:

- Unlike the statutes adopting the NEC, the statutes adopting the UPC have a specific exemption for property owners (AS 18.60.715 c).

- Property owners can do their own plumbing.
- Note that the *engaged in the trade* provision makes no reference to *owner*. Hence the logical interpretation would be that it applies to anyone who can reasonably be considered as not *engaged in the trade* of plumbing.
- Since a tenant or owner is exempt from the contractor provisions to perform alteration work, there is no code path to require they employ a mechanical administrator.
- One could argue that a tenant can do plumbing alteration work on their tenant space per the contractor exceptions as long as the tenant is not *engaged in the trade* of plumbing.
- One could argue a tenant's employees can do plumbing alteration work on the tenant space per the contractor exceptions as long as the employee is not *engaged in the trade* of plumbing.
- One could argue an owner's employees can do plumbing alteration work per the contractor exceptions as long as the employee is not *engaged in the trade* of plumbing.
- We have not received interpretations from the state on these questions.
- Our conclusion is the Assembly's amendment does not conflict with state law as written. As interpreted and enforced by the state may be another matter.

#### Performing mechanical work regulated by the International Mechanical Code:

There is no requirement for a certificate of fitness to perform mechanical work. This work does however require a licensed contractor with mechanical administrator.

#### Conclusions for tenants, owners, and employees performing mechanical work (other than plumbing):

- Property owners can do their own new mechanical work per the contractor exceptions.
- Since a tenant or owner is exempt from the contractor provisions to perform alteration work, there is no code path to require they employ a mechanical administrator.
- Since there is no requirement for a certificate of fitness, a tenant and their employees can do mechanical alteration work on their tenant space per the contractor exceptions.
- Since there is no requirement for a certificate of fitness, an owner's employees can do mechanical alteration work on the owner's property per the contractor exceptions.
- We have not received interpretations from the state on these questions.
- Our conclusion is the Assembly's amendment does not conflict with state law as written. As interpreted and enforced by the state may be another matter.