

MUNICIPALITY OF ANCHORAGE

DEVELOPMENT SERVICES DEPARTMENT



DATE: March 11, 2020

TO: Three-Member Panel Hearing
Building Board of Regulations Examiners and Appeals
Appellant – Tyson Chang, SMJ

FROM: Robert Doehl, Building Official 

SUBJECT: C19-1407, The Wine House – SMJ General Construction

Synopsis:

Appellant has appealed a Building Official imposition of fines for performing electrical and mechanical work without required permits or licensed contractors. Appellant, in seeking review, has challenged the imposition of fees and fines for all notices issued. Because the fine imposition remains consistent and waiving a fine for multiple offenses is inconsistent with the Building Code, this appeal should be denied.

Background:

The Municipality has fined SMJ construction for Notice of Violation for Permit Requirement 14 times since 2007. The fines associated with these violations total an amount of \$105,000. In addition, the Municipality has also issued Notices of License Requirement on 17 separate instances, totaling \$153,000.

Since 2007 the Municipality has endeavored to achieve compliance by Mr. Chang and has imposed \$41,000 in fines which have been paid. The remaining fines have been waived by previous Administrations, believing that non-compliance had ended. These efforts have consumed a tremendous amount of municipal resources over the years and have become burdensome upon the department to say the least.

Records prior to 2010 are limited in documentation due to retention schedules. The MOA can show that from 2010 forward fines of:

\$7,000 fine paid for NOPR, permit 10 6524

\$8,000 fine paid for NOPR, R11-2061

\$9,000 fine paid for NOPR, C11-2035

\$9,000 fine **owed** for NOPR, C16-1038 (this should have been \$10,000)

\$11,000 fine paid for NOPR, C17-1922

SMJ General Construction applied for a building permit, C19-1407, on 04/18/2019 for the entire roof replacement at 3020 Minnesota Drive, Suite 1 (The Wine House), due to structural collapse of the trussed roof system. The permit was approved and issued on 05/15/2019. At the time of application SMJ General Construction had a valid MOA license. Undisclosed to the permit technician, its State of Alaska license had expired on 12/31/2018. By ordinance, a contractor's

MOA license is invalid to legally perform work within the municipality without both licenses being current. Because the municipal license was valid until 02/14/2020, this lapse was not detected.

On 09/12/2019, Structural Inspector Heath Kahlstrom noted the need for a mechanical permit for the reinstalled rooftop unit. This request was ignored by the contractor and the permit was issued a CO, in error, on 09/19/2019.

Permit E20-1046 to reinstall lights was applied for on 01/15/2020. This permit has not been issued as of this date because the electrical subcontractor does not have a valid MOA license.

No Mechanical permit has been applied for as of this date.

On 01/23/2020, Code Abatement Officer Lucas Cleek issued two notices of violation for permit requirement at 3020 Minnesota Drive, Suite 1, to SMJ Construction. The first notice was issued for installing the rooftop mechanical unit without a permit and the second notice was for installing electrical wiring in the ceiling of the space and providing power to the reinstalled mechanical unit. Two additional Notices of License requirement were also issued for the electrical and mechanical work done without proper endorsement of said licenses. The third notice of license requirement was issued directly to Mr. Chang because his general contractors license had expired with the State of Alaska.

Applicable Code Sections and Comments:

1. **23.10.103.5.1 - Unlawful acts.** It shall be unlawful for any person, firm or corporation to erect, construct, alter, extend, repair, move, remove, demolish or occupy any building, structure or equipment regulated by this code, or cause same to be done, in conflict with or in violation of any of the provisions of this code.

COMMENT – THE CONTRACTOR PERFORMED WORK WITHOUT PROPER PERMITS.

2. **23.10.103.5.2 - Notice of violation.** The building official is authorized to serve a notice of violation or order on the person responsible for the erection, construction, alteration, extension, repair, moving, removal, demolition or occupancy of a building or structure in violation of the provisions of this code, or in violation of a permit or certificate issued under the provisions of this code. Such order shall direct the discontinuance of the illegal action or condition and the abatement of the violation.

COMMENT - A NOTICE OF VIOLATION ISSUED FOR WORK PERFORMED WITHOUT A PERMIT,

3. **23.10.104.1 - Permits required.** Any owner or authorized agent intending to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building, structure or portion thereof, or to erect, install, enlarge, alter, repair, remove, convert or replace any electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be done, shall first make application to the building official and obtain the required permit unless work is specifically exempted by this code.

COMMENT - A PERMIT IS REQUIRED FOR THE ELECTRICAL AND MECHANICAL WORK PERFORMED.

4. **23.10.104.15.4.2 - Fee.** When work is begun without proper permits, an investigation fee at a rate shown in Table 3-O, in addition to the permit fee, may be collected whether or not a permit is then or subsequently issued. The payment of the investigation fee shall not exempt an applicant from compliance with all other provisions of this code nor from the penalty prescribed by law. The building official may waive the investigation fee for a first offense. No individual or company granted a waiver under this section shall be afforded additional waivers for future offenses. When the building official has reasonable cause to believe an inspection fee waiver is requested by a person to avoid payment of the fee by another person or company who was previously granted a first offense fee waiver, the building official may deny the waiver request.

AMC 23.10 TABLE 3-O:

3. Investigation fee for work begun without proper permit(s), in addition to all permit fees required by this code. Double permit fee required by this code, or \$1,000, whichever is greater.

a. First Offense: Investigative fee may be waived by the building official if required permit is obtained within reasonable amount of time agreed to by building official.

b. Subsequent Offenses: \$1,000 investigative fee plus an additional \$1,000 fine applied incrementally for each additional offense occurring within five years of the original offense.

As example, the third offense would be \$3,000 (*\$1,000 investigative fee plus \$2,000*).

4. Fine (Contractor), working without a required contractor's license, civil penalty in addition to all fees required by code as follows:

a. First Offense: \$1,000 fine which may be waived by the building official if required license is obtained within 30 days.

b. Subsequent Offense: \$1,000 and an additional \$1,000 applied incrementally for each additional offense occurring within five years of original offense.

As example, the third offense would be \$3,000 (*\$1,000 fine plus \$2,000 for the 2 prior offenses within 5 years.*)

COMMENT -APPLIES TO FEES AND FINES IMPOSED FOR THE VIOLATIONS NOTED ON THE NOTICE OF VIOLATION AND NOTICE OF PERMIT REQUIREMENT

Section 105 - Licensing requirements.

23.10.105.1 - General provisions.

- A. **General.** Except as allowed under subsections B. and C., no person shall administer or perform work regulated by this code except a person holding a valid, unexpired, and unrevoked contractor's license and/or a certificate of qualification as required by this code and state law.

- B. **Contractor Required:** All work regulated by this code shall be administered by contractors licensed by the State of Alaska and the municipality. This licensing requirement applies regardless of whether the work is exempt from the requirement for a permit.

Exceptions:

1. A property owner may act as a contractor as follows:
 - a. An owner may construct a maximum of one structure every two years. The start date of the two-year time limitation shall be the date of the certificate of occupancy. A permit to construct an additional structure cannot be issued during the two-year time limitation.
 - b. An owner may administer alterations, including additions, to an existing structure.
 - c. An owner of an individual dwelling unit located in a multi-dwelling unit structure may administer alterations within their dwelling unit.
2. A tenant may administer alterations within their lease space.

- 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. 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.
 - b. 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.
- D. It shall be unlawful for any person to conduct, carry on or engage in the business of, or act in the capacity of a contractor in a trade covered by this code without first being issued a valid municipal contractor's license, and when required, a certificate of qualification.
- E. An applicant for a building construction contractor's license may be requested to provide a copy of the construction contractor's bond required by state law with the application and shall show proof the bond is current and in effect.
- F. It shall be unlawful for any person to labor in the capacity of a plumber, gas fitter or sheet metal journeyman without first being issued a valid journeyman certificate of qualification by the municipality.
- G. Any contractor or journeyman doing gas piping, plumbing or sheet metal work covered by this code shall be tested and licensed by the Municipality.
- H. It shall be unlawful to labor as a plumber or sheet metal trainee without first being issued a valid trainee certificate of qualification by the Municipality.

- I. It shall be unlawful for any person acting in the capacity of a contractor in a trade covered by this code, or as the responsible agent, manager, supervisor, superintendent or foreman, to knowingly or willfully order, instruct, or permit an employee, agent or person under supervision or control to do an act violating the certificate of qualification requirements set forth in subsections F. or H.
- J. The ratio of individuals holding sheet metal or plumber trainee certificate of qualification cards shall not be more than two for every certified journeyman on a job site.

COMMENT – LICENSED CONTRACTORS REQUIRED FOR THE ELECTRICAL AND MECHANICAL WORK PERFORMED AND A GENERAL CONTRACTORS LICENSE FOR THE ROOF TRUSS SYSTEM REPLACEMENT.

FINES AND FEES ASSESSED BY THE MUNICIPALITY BASED ON VIOLATION HISTORY

The fines for working without permits is \$12,000 (violation for no mechanical permit) plus \$13,000 (violation for no electrical permit) for a total of \$25,000.

The license fines are \$3,000 (3rd violation for electrical contractor license) and \$4,000 (4th violation for mechanical contractor license) and \$5,000 (5th violation for no General Contractor license) for a total of \$12,000.

The sum of these fines' equals \$37,000.

Summary of MOA Position:

These fines reflect the magnitude of the egregious behavior exhibited by the owner, Tyson Chang. It is the Department's position that the fees and fines assessed for performing work without permits for the electrical and mechanical not be waived and that the licensing fines remain. The MOA requests the Building Board, find in favor, the fees and fines in the amount of \$37,000 plus the outstanding fine of \$10,000 previously owed (C16-1038), as of the hearing date of March 18, 2020. TOTAL DUE \$47,000.

NOPR AND NOLR HISTORY

Notice of License Requirements

1. 3020 Minnesota Dr, NOLR issued for State of Alaska and M.O.A. contractor's license 5/2/2017.
2. 7830 Old Seward HWY, NOLR issued for M.O.A contractor's license 5/20/2016. SR# 171965.
3. 3020 Minnesota Dr site 8, NOLR issued for M.O.A. Contractor's license 5/24/2016. Permit C16-1221.
4. 9191 Old Seward HWY site 17, NOLR issued for M.O.A. contractor's license 5/24/2016 SR# 171961, Permit C16-1096.
5. 1015 E 6th Ave, NOLR issued for M.O.A. contractor's license SR# 171955, Permit C15-1777. 5/20/2016.
6. 604 Ocean PL (units 1-7) NOLR issued for M.O.A. contractor's license SR# 171954, Permit C13-1901. 5/20/2016.
7. 703 W Northern lights, NOLR issued for M.O.A. contractor's license SR# 171950, Permit C15-1858. 2/24/2016.
8. 901 E 5th Ave, NOLR issued for M.O.A. contractor's license SR# 171953, Permit C15-1451. 10/4/2015.

9. 6700 Jewel Lake Rd site 12, NOLR issued for M.O.A. contractor's license SR# 171964, Permit C13-1809. 5/20/2016.
10. 5011 Arctic Blvd suite D, NOLR issued for M.O.A. contractor's license SR# 171962, Permit C12-1093. 5/20/2016. **FINE PAID 2K**
11. 3901 Raspberry Rd site 1, NOLR issued For M.O.A. contractor's license SR# 171960, Permit C11-1759. 5/20/2016.
12. 4630 Mountain View Dr, NOLR issued for M.O.A. contractor's license Permit C13-1035 5/20/2016.
13. 3020 Minnesota Dr site 7, NOLR issued for M.O.A. contractor's license SR# 171957, Permit C13-1805. 5/20/2016.
14. 703 W Northern Lights Blvd, NOLR issued for M.O.A. contractor's license SR# 171951, Permit C11-2035. 5/20/2016.
15. 3020 Minnesota Dr site A, NOLR issued for M.O.A. contractor's license SR# 171958, Permit C11-2227. 5/20/2016.
16. 7093 Brayton Dr, NOLR issued for M.O.A. contractor's license SR# 171952, Permit C15-1153. 5/20/2016.

***License fines were not tracked prior to January 1,2020.**

Notice of Permit Requirements

1. 7521 Brayton Dr, NOPR issued for Construction on going without permits for mechanical, structural, and electrical. 11/3/2016. Permit C16-1038. **OWES 9K**
2. 5011 Arctic Blvd unit J, NOPR issued for structural work being performed (Building full Hight partitions) without permits. SR# 179399 6/1/2017. Permit C17-1922. **PAID 11K NOPR AND 2K NOLR**
3. 3901 Taft Dr, SR 154669, Permit C12-2548. **NOT SUBSTANTIATED**
4. 703 W Northern Lights, NOPR issued for a ramp on the exterior of the building 30" above grade. See permit # C11-2035. 10/7/2011. **PAID 9K**
5. 7928 Chaimi Cir., NOPR issued for plumbing, mechanical, electrical, and structural work performed without permits. Permit R11-2061. 9/28/2011. **PAID 8K**
6. 1303 W. 23rd Ave, NOPR issued for structural, electrical, and mechanical work performed without required permits. SR# 133052. Permit 10 4923. 9/16/2010. **NOT SUBSTANTIATED**
7. 3020 Minnesota Dr, NOPR issued for signs on outside of building replaced without permit. 5/5/2010. Permit 10 4844. **NOT SUBSTANTIATED**
8. 3210 Turnagain St, NOPR issued for structural, mechanical, and electrical work performed without permits. 2/4/2010. Permit 10 6524, **PAID7K**
9. 521 (523) W Tudor Rd, NOPR issued for construction ongoing without permits (structural, plumbing/mechanical, and electrical) 6/5/2009 Permit 09 5072. **PAID 1K**
10. 2632 Shepherdia Dr., NOPR issued for construction ongoing without permits and construction requiring licensed contractors. 5/13/2009. Permit 09 0285. **PAID 2K**
11. 3651 Hazen, NOPR issued for fire rehab without permits (plumbing/mechanical, structural, and electrical) 4/17/2009. Permit 09 0188 **PAID 1K**
12. 2631 Glenwood, NOPR issued, largely gutted remodel with approximately 18' X 8' addition bearing wall opened and altered. 3/17/2008. Permit 08 0247 **NO FINES NOTED TO BE PAID**
13. 2031 Lore Rd, NOPR issued for Fire rehab work performed without inspections (structural, plumbing/mechanical, and electrical). Permit 08 4366. **NOT SUBSTANTIATED**
14. 1310 Ingra, NOPR issued for not having a change of use permit. Building changed from 2 units to five units. 2/23/2007. Permit 09 4638 **NOT SUBSTANTIATED**

***NOT SUBSTANTIATED** – MOA staff cannot directly link party to parcel or permit for enforcement due to records retention and documentation even though the notice was issued to the party.

List of violations for The Wine House

1. 3020 Minnesota Dr site 1, NOLR issued for State of Alaska contractor's license SR# 196833, Permit C19-1407. 1/23/2020
2. 3020 Minnesota Dr site 1, NOLR issued for electrical administrators license SR# 196833, Permit C19-1407. 1/23/2020.
3. 3020 Minnesota Dr site 1, NOLR issued for mechanical administrators license SR# 196833, PermitC19-1407. 1/23/2020.
4. 3020 Minnesota Dr site 1, NOPR issued for failure to obtain an electrical permit SR# 196833, Permit C19-1407. 1/23/2020
5. 3020 Minnesota Dr site 1, NOPR issued for failure to obtain a mechanical permit SR# 196833, Permit C19-1407. 1/23/2020.
6. 3020 Minnesota Dr site 1, NOLR issued for failure to obtain a MOA contractor's license. SR# 196833, Permit C19-1407. 1/23/2020