

Proposal #5: Residential Permits

October 25, 2006

Requiring Responsible Party to Obtain Permit

1. Background

Building permits serve as a means of alerting the local building department of construction work occurring in the jurisdiction. Currently, a building owner or a contractor may secure a building permit. Owners may also choose to obtain a permit to act as their own general contractor. The duty to ensure compliance with the state building code – e.g., making required corrections – rests with the permit applicant.

During its presentation to the Task Force meeting on January 25, 2006, Mark Long, Administrator of the Building Codes Division, recommended to the Task Force that the contractor performing the work take out the permit.¹ In the May 24, 2006 meeting, the Task Force moved to have staff draft a proposal that would address two main points: (1) require the party responsible for constructing a building to obtain any necessary permits for the work, and (2) require the person that obtains any necessary permits for construction work to designate on the permit the party that is actually responsible for the work.²

2. Current Oregon Law

Oregon law regulating the issuance of building permits only requires that a person obtain a permit. The law does not specify that a contractor is the only eligible party available to obtain building permits. In terms of content, Oregon statute requires permits contain three items of information: first, that the permit list the name and address of the owner of the building or structure; second, the permit lists the name and address of the builder or contractor, “if known”; and finally, the permit lists the street address and tax lot number of the property.³

3. Who May Obtain a Permit in Other States

Generally speaking, the states surveyed that retained central authority over administration of the building code and also centrally licensed contractors placed conditions on who may obtain a permit. Permit regulations in other states, like in Oregon, generally relate to whether a person must possess a valid contractor license. The nuances that lie in the various exceptions across the surveyed states allow staff to compare regulatory models.

For example, Florida provides an exemption from contractor licensing laws for owners of property electing to act as their own general contractor.⁴ An owner claiming this exemption must provide “direct, onsite supervision themselves of all work not performed by licensed contractors” and may not “delegate the owner’s responsibility to directly supervise all work to any other person” unless the person is a licensed contractor.⁵ An owner must appear at the local building department’s office to request and sign the building permit; the building department is directed by state law to provide a disclosure statement describing the rights and responsibilities of the owner on the construction project.⁶

¹ Minutes, Construction Claims Task Force 4 (January 25, 2006).

² Minutes, Construction Claims Task Force 10 (May 24, 2006).

³ ORS 455.050.

⁴ FLA. REV. STAT. § 489.103(7).

⁵ Id.

⁶ FLA. REV. STAT. § 489.103(7).

In Hawaii, county and city building departments must ensure that prior to issuing a permit, “each applicant and all specialty contractors are licensed...or, if the applicant is exempt from [contractor licensing laws], the basis for the claimed exemption.”⁷ In order to qualify for an exemption, the applicant must read and sign a disclosure statement that explains the owner’s responsibility to supervise the construction work and hire licensed subcontractors.⁸ If the owner does not read and sign the disclosure, the building department may not issue a permit to the owner.⁹

Under New Jersey regulations, if a contractor obtains a building permit, then they must show their “current validated State builder registration card” and record their registration number on the permit.¹⁰ If the residence will be built by the owner “in whole or in part,” then the permit must also contain an affidavit that states the work undertaken by the owner or a “subcontractor working under his supervision” is not covered by the New Home Warranty and Builders Registration Act.¹¹ The affidavit must also state that the owner will disclose the warranty coverage status to “any person purchasing the property within 10 years of the date of issuance of a certificate of occupancy.”¹² Regardless of who undertakes construction, all permits must list the responsible person that will be in charge of construction and is responsible to the owner for ensuring compliance with regulations.¹³

North Carolina law prohibits the issuance of a building permit for any construction work unless “the applicant has furnished evidence that he is either exempt from the provisions of [the contractor licensing laws] or is duly licensed...to carry out or superintend the work for which permit has been applied.”¹⁴ Like North Carolina, Virginia statute requires a person applying for a building permit to show “satisfactory proof” of licensure or to file a written statement demonstrating that the person is exempt from contractor licensing laws.¹⁵

4. Staff Analysis and Recommendations

A few common thread run through the states that did tie the issuance of permits to the applicant’s license status. No state prohibited owners from undertaking construction work on their own residences, so long as they built the properties to occupy. When an owner elected to work as their own general contractor, other states generally required the local building department required them to read and acknowledge a statement that defined their rights and responsibilities in the construction process.

In order to ensure that contractors are ensuring compliance with the building code – especially in terms of correcting problems that arise on inspection or when the project is complete – an owner should not obtain a building permit without either acting as their own general contractor or performing their own construction work. If an owner is not arranging for the work to be done or doing the work themselves, the entity contracted to undertake construction should obtain the permit. An owner is still free to employ contractors to complete construction projects, but they may not obtain a permit on the contractor’s behalf. Essentially, the business or individual that performs the work must obtain the permit.

Staff also recommends changes to current the Information Notice to Property Owners About Construction Responsibilities. After comparing the Oregon-required statement¹⁶ with statements

⁷ HAW. REV. STAT. § 444-9.1(a).

⁸ HAW. REV. STAT. § 444-9.1(c).

⁹ Id.

¹⁰ N.J. ADMIN. CODE § 5:23-2.15(b)(1)(i).

¹¹ Id.

¹² Id.

¹³ N.J. ADMIN. CODE § 5:23-2.15(b)(3).

¹⁴ N.C. GEN. STAT. § 87-14.

¹⁵ VA. CODE. ANN. § 54.1-1111.

¹⁶ See ORS 701.055(4) (form and content of the acknowledgment form).

required in Florida and Hawaii, staff recommends that the contents of the statement should at least include (1) the owner's duty to comply with building codes, (2) the responsibility of the owner to supervise construction work, if the owner is acting as their own general supervisor, and (3) the owner's responsibility to make corrections after inspection.

Alternatively, Oregon could adopt New Jersey regulation concerning the content of the permit application – that is, require the permit to record the name of the person charged with oversight over construction work and responsibility to ensure construction meets applicable code. If this proposal is preferred, staff recommends that the responsible person should only be a homeowner undertaking their own construction work or a licensed contractor hired to undertake work. Second, the local building departments should cross-check the names of responsible parties with CCB records to ensure that the licensed contractor is eligible to work on the project – similar to Hawaii's permit process.¹⁷

Certificates of Occupancy to Verify Compliance with Building Requirements

1. *Background*

In the April 11, 2006 Task Force meeting, staff presented a concept that contained an option to require certificates of occupancy for residential structures.¹⁸

2. *Current Oregon Law*

In Oregon, the structural provisions of the state building code prohibit the use or occupancy of a structure without receiving a certificate of occupancy from the local building department.¹⁹ A building official authorizes the issuance of the certificate of occupancy after satisfactory inspection.²⁰ In contrast, the residential provisions of the state building code specifically exempt “one- and two-family dwellings, townhouses and rowhouses” from receiving a certificate of occupancy.²¹

3. *Certificates of Occupancy in Other States*

Staff found that twenty-one states out of the twenty-five surveyed either required a certificate of occupancy statewide, or had at least one major jurisdiction that required certificates of occupancy. Out of the twenty-one that required certificates of occupancy, fifteen states required a certificate of occupancy on a statewide basis, whether as part of the state's building code or part of statute.²² Statutory requirements for a certificate of occupancy occur in Michigan and North Carolina. In Michigan, buildings may not be used or occupied “in whole or in part” without receiving a certificate of occupancy.²³ A certificate of occupancy may be issued when “the work covered by a building permit has been completed in accordance with the permit, the [state building] code and other applicable laws and ordinances.”²⁴ North Carolina regulates the matter differently – the state requires “certificates of compliance” issued by either county or city building departments.²⁵ Certificates of compliance are

¹⁷ See HAW. REV. STAT. § 444-9.1(b) (“The county shall verify the license against a list of licensed contractors provided by the state contractors licensing board.”)

¹⁸ See CONSTRUCTION CLAIMS TASK FORCE, CONCEPT PAPERS 18 (April 11, 2006), available at http://www.oregon.gov/DCBS/CCTF/docs/CCTF_Concept_Papers_Master_Document_v2.pdf.

¹⁹ ORE. STRUCT. SPEC. CODE § 110.1 (2004).

²⁰ ORE. STRUCT. SPEC. CODE § 110.2 (2004).

²¹ ORE. RES. SPEC. CODE § 110.1 (2005).

²² The states that require a certificate of occupancy are Alaska, Connecticut, Florida, Georgia, Idaho, Louisiana, Michigan, Minnesota, Montana, New Jersey, North Carolina, Ohio, Pennsylvania, Virginia, and Washington.

²³ MICH. COMP. LAWS. § 125.1513.

²⁴ Id.

²⁵ See N.C. GEN. STAT. §§ 153A-363 (counties), 160A-423 (cities).

issued after completion of a successful final inspection that finds the “work complies with all applicable State and local laws and local ordinances and regulations and with the terms of the permit.”²⁶

4. *Staff Analysis and Recommendations*

Staff recommends that a certificate of occupancy requirement applies to all work conducted under the residential specialty code. Under this recommendation, the certificate of occupancy acts as a final mechanism through which to gather all required information contained in the “checklist” recommended in Proposal #6, *Building Envelope Certification*. Before issuing a certificate of occupancy, a local building department could verify the presence and adequacy of envelope design details, track whether envelope work is completed by a properly-certified individual or firm, track the distribution of consumer protection information, and other pertinent information. Under this recommendation, a contractor would signify that they met any particular criteria required by the certificate during the various stages of construction. The building department reviews the work and, if necessary, issues a list of corrections to the permit holder. Provided all requirements are met after inspection, a local jurisdiction issues a certificate of occupancy. Normally, dwelling owners would not be allowed to occupy a structure, although staff recommends that the current ability to issue temporary certificates remain to meet varying circumstances.

The date the certificate of occupancy is issued could act as a “bright line” date of occupancy. A definite starting point could assist other consumer protection processes, such as warranties, recovery fund claims, and the one year period in which a person can file a claim with the Construction Contractors Board. Staff recommends statutory change to ensure that the roughly 130 local building departments in the state uniformly require the issuance of a certificate of occupancy for a residential structure.

Standardized Inspection Checklist

During several Task Force meetings, members discussed how to clarify consumer expectations of the inspection process, which included providing a standard inspection checklist that details the inspecting jurisdiction's scope of responsibilities. For example, during the April 11, 2006 Task Force meeting, members suggested developing an inspection checklist for local building departments to use when conducting permit inspections.²⁷ It follows that with enhancements to the permitting process, the public should be well informed as to what inspections accompany the issuance of the permit. Therefore, staff recommends that the Task Force consider approving the concept of a standard inspection checklist, utilized by all jurisdictions administering and enforcing the state building code, as part of the draft legislative report.

²⁶ Id.

²⁷ Minutes, Construction Claims Task Force 4 (April 11, 2006).

Proposal # 5: Staff recommends the following changes to the CCB licensing exemptions to ensure contractors obtain permits:

1. *Require a contractor to obtain the permit whenever the contractor is retained to complete construction work.*
2. *Revise the Information Notice to Property Owners About Construction Responsibilities to include at a minimum (1) the owner's duty to comply with building codes, (2) the responsibility of the owner to supervise construction work, if the owner is acting as their own general supervisor, and (3) the owner's responsibility to make corrections after inspection.*
3. *[Alternatively] Codify the requirement that a permit must list the responsible person that will be in charge of construction and is responsible to the owner for ensuring compliance with regulations.*
4. *Responsible parties of record should only be a homeowner or a licensed contractor.*
5. *CCB should make records available to local building departments to cross-check license numbers with responsible persons of record.*
6. *Require a certificate of occupancy requirement for all work conducted under the residential specialty code.*
7. *Amend statutes to require certificates of occupancy to ensure consistency between local building departments.*