

CAUSE NOS. 09-07, 09-30, 10-04
NAME: CHILDREN'S MUSEUM
ADMINISTRATIVE LAW JUDGE: GARY W. BIPPUS
DATE: FEBRUARY 23, 2010
COMMISSION ACTION: AFFIRMED

FINDINGS OF FACT

Fire Alarm

1. The initial Children's Museum building at the current location was first built in 1976. That first building has been added on to in 1983, 1988, 1996, 1998, 2000, and 2004 prior to 2009 and was being added on to in 2009. In 1976 the building had a fire alarm system which delivered appropriate audible and visual alarms to the entire building and to the Indianapolis Fire Department immediately upon being activated by a pull station.
2. Because a large number of the Museum's visitors are children the Museum experienced a large number of false alarms during the first few years of use of that system.
3. Museum staff observed the potential for injuries to all Museum visitors and staff during a panic evacuation and also observed the potential for children to be separated from the adults with whom they came to the Museum, and the resulting risk of child abduction, during a panic evacuation.
4. In response to these observations the Children's Museum installed an alarm with a pre-signal feature in 1982 that would only deliver an initial audible and visual alarm to the Museum's control room and then would allow a specified amount of time for Museum staff to confirm the existence, or lack thereof, of a real emergency before delivering an audible and visual alarm to the entire building.
5. The Museum provided un rebutted evidence that the control room to which the initial signal is sent is staffed 24 hours a day 7 days a week.
6. Inspector(s) for the City of Indianapolis issued Notices of Violation because the Museum could not produce written approval of the pre-signal feature of the Museum's fire alarm system given by either the City of Indianapolis or the State of Indiana.
7. There was no proof that the Children's Museum ever had any type of written approval for the use of an alarm system with a pre-signal feature.

8. There was no proof that the Museum did not obtain the appropriate design release-type documentation for each of its additions to its building in 1983, 1988, 1996, 1998, 2000 and 2004.

9. There was no allegation and no proof that the alarm system is broken, defective or malfunctioning in the sense of not functioning in the way intended by the manufacturer(s), installer(s) and owner(s).

10. Each of the listed additions to the Museum building was an addition and not a modification to earlier built structure and did not involve modification to the alarm system but rather, addition to the alarm system.

11. The Division of Compliance of the City of Indianapolis and the Indianapolis Fire Department are aware of the status and mode of functioning of the subject alarm system.

Exit Width/Load Capacity

12. The City of Indianapolis introduced evidence that the 2009 addition to the building decreased the total exit width of exit routes which existed prior to that addition to the Museum building but there was no evidence that this reduction reduced the amount of exit width below the applicable required standard.

13. The Museum introduced evidence in the form of an exhibit attached to its response argument consisting of a copy of a Notice of Violation/Order to Correct form signed by an official of the Indianapolis Fire Department which provides, in pertinent part, "Over crowding-Contacted Security. Security informed me that an accurate count has been kept. This facility was found to be under Maximum Load Capacity." That document is dated January 18, 2010 which was Martin Luther King Day. That is a day upon which the Museum does not charge a fee for admission.

14. The Children's Museum provided evidence, in the form of a January 28, 1998 letter from then-State Building Commissioner Gerald E. Dunn, that 30 square feet is the correct divisor into the total number of square feet of the buildings museum and exhibit areas to determine occupant load for those areas.

15. Any item which is denominated a Finding of Fact which should be considered a Conclusion of Law is hereby incorporated by reference into the Conclusions of Law.

CONCLUSIONS OF LAW

1. The Department of Homeland Security is an agency within the meaning of I.C. 4-21.5.
2. The Agency is the state entity charged with building safety within the State of Indiana.
3. I.C. 4-21.5, I.C. 22-12 and 675 IAC apply to this proceeding.
4. The Fire Prevention and Building Safety Commission is the ultimate authority within the meaning of IC 4-21.5 with respect to Agency actions taken, violations, or alleged violations of the Indiana Building Code.

Fire Alarm

5. As found and concluded in the stay of enforcement order issued in the 09-30 case,
 - The building had a fire alarm system installed at the time of initial construction in 1976 and that due to problems with children pulling the manual alarm boxes; the fire alarm system was modified in 1982 to provide for a pre-signal function.
 - The National Fire Protection Standard 72A, Standard for the Installation, Maintenance and Use of Local Protective Signaling Systems for Watchman, Fire Alarm and Supervisory service, 1975 edition was the applicable fire alarm system standard adopted in Indiana in 1982 (“1975 edition”).
 - Section 2033 of the 1975 edition provides for a “Pre-signal Feature”.
 - The Pre-Signal Feature was contained in all versions of NFPA 72A and its successor NFPA72, adopted in Indiana through the current version, the 2002 version.
 - The reason to use the Pre-Signal Feature is to limit evacuations of large groups, including those with young children, because of the potential for injuries during evacuation in the event that there is no fire emergency.
6. All subsequent editions of NFPA 72 or 72A have required approval of the use of the, “pre-signal feature” or “positive alarm sequence” by the, “authority having jurisdiction”.
7. No party has argued or produced evidence that the subject, “pre-signal feature” or “positive alarm sequence” has malfunctioned or will malfunction in the future, is in a state of disrepair or broken, can never be used in the type of occupancy

involved here or is not being staffed as required. Rather, the Notices of Violation issued by the City of Indianapolis Division of Compliance and the Indianapolis Fire Department appear to be based solely on the idea that the Children's Museum has not produced written evidence of approval of the use of pre-signal, or positive alarm, conditions.

8. No party has argued nor cited to authority specifying that such approval had to take any particular form or be written in any way. No party has argued or cited to authority providing an exclusive definition of who or what is the, "the authority having jurisdiction".

9. No party has argued or produced evidence to show that the Children's Museum never applied for approval of use of the pre-signal or positive alarm function; applied for approval and was denied such approval; or refused to apply for such approval.

10. One reason to have an approval requirement is to make sure that local fire and building officials have knowledge of the system's functions and can inspect and monitor that alarm appropriately.

11. No party has argued against nor cited to authority prohibiting the tacit granting of approval through years of inspections by the Division of Compliance of the City of Indianapolis or the Indianapolis Fire Department or through several different reviews and design releases of plans by the State of Indiana.

Exit Width/Load Capacity

12. The City of Indianapolis proved that the total exit width in building exit routes which existed prior to the 2009 building project was decreased with the 2009 building project.

13. No party argued or cited to any authority suggesting that such reduction in total exit width caused the total exit width to drop below legally required limits.

14. The Children's Museum proved through the letter from former State Building Commissioner Dunn that 30 square feet is the proper factor to be divided into to the total number of square feet in the building's museum and exhibit areas to determine occupant load for those areas.

15. The Occupant Use/Egress exhibit introduced at the hearing on this matter used a 30 square feet divisor in reaching the conclusion contained in that document that there was more egress width provided in the building than required by Building Code. That conclusion is accepted.

16. Any item which is denominated a Conclusion of Law which should be considered a Finding of Fact is hereby incorporated by reference into the Findings of Fact.

DECISION AND NONFINAL ORDER

The Notices of Violation in each of the three consolidated cases are dismissed and treated as though never issued.

A copy of the foregoing has been sent to the following:

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