

Memorandum

Date: June 27, 2017

To: Elevator Unit Safety Engineers

Via: Debra Tudor, Principal Safety Engineer

From: Nathan Schmidt, Assistant Chief Counsel

Subject: Permitting of New Conveyances with Permanent Variance Errors

This memo provides legal guidance on the permitting of new conveyances in cases where the conveyance would pass inspection but for a non-safety related discrepancy in a permanent variance that was granted for the conveyance. In most cases, such discrepancies involve errors in the address of the building where the conveyance was installed or the number of conveyances expressly covered by the variance. These problems can result from a variety of causes such as a jobsite not having an address when the variance application was submitted, an address change during construction, or human error by the elevator company when completing the variance application on behalf of the building owner. In these cases, an application to modify the permanent variance must be submitted by the elevator company or building owner and approved by the Occupational Safety and Health Standards Board.

In the past, you may have been asked to write a “conditional permit” pending issuance of a modified permanent variance. We have researched this practice and determined that there is no legal support in either the Labor Code or Elevator Safety Orders for the issuance of “conditional permits.” On that basis, we have advised you that this practice must cease.

If the new conveyance passes inspection but for a non-safety related discrepancy in the permanent variance such as an error in the address or number of conveyances, you should confirm the following:

- An application for modification of the permanent variance to correct the discrepancy has been filed with the Standards Board;
- The builder owner or representative has notified the affected employees and the applicable IUEC local union regarding the discrepancy, and the IUEC local union has confirmed that they do not object to the conveyance being permitted pending issuance of the modified variance;
- No employee has objected to the conveyance being permitted pending issuance of the modified variance; and
- The building owner or representative has posted a notice in the conveyance machine room, or a control space if there is no machine room, verifying that the above notice was given and no objection received.

Next, promptly notify Principal Safety Engineer Debra Tudor by email at dtudor@dir.ca.gov, with a copy to me at nschmidt@dir.ca.gov, of the following:

- Building address;
- Permanent variance number;
- Nature of the discrepancy between the installation and the permanent variance and other relevant facts;
- Whether the new conveyance would pass inspection but for the discrepancy in the permanent variance;
- Whether the owner or representative has applied to the Standards Board for a modification of the permanent variance to correct the discrepancy; and
- Whether a notice by the building owner or representative has been posted in the conveyance machine room, or a control space if there is no machine room, verifying that the affected employees and IUEC local union were properly notified of the discrepancy and that they have not objected to the conveyance being permitted pending issuance of the modified variance. If a notice has been posted, attach a photograph of it.

The Legal Unit will review the facts and legal issues and advise the Elevator Unit as soon as possible on whether the new conveyance may be permitted pending the Standards Board's issuance of a modified permanent variance. After you receive advice from the Legal Unit that the conveyance may be permitted and approval from the Principal Safety Engineer to permit the conveyance, a permit for the new conveyance may be issued with the following language written at the bottom of the permit:

“A Modified Permanent Variance is pending to change the address of this elevator, and the employee representative does not object to the permit being issued.”

or

“A Modified Permanent Variance is pending to change the number of conveyances at this address, and the employee representative does not object to the permit being issued.”

If the non-safety related discrepancy is something other than an erroneous address or the number of conveyances covered by the variance, the Legal Unit will provide appropriate language to be added to the permit. The same language should be included in the documentation in the N1 Report that you prepare for the conveyance inspection.