



CHIEF'S FILE CABINET

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Don't Ever Blink in a Gunfight

A stereotypical scene that was often used in the old western was the showdown between two gunfighters. The steely-eyed adversaries would attempt to face down each other in the street, daring the other one to be the first one to draw their gun. Obviously, under that kind of confrontational condition one could not afford to blink.

In the code enforcement field we periodically find ourselves in the modern day version of a gunfight. A case in point: When you have a code provision that is rejected by a property owner and in which they plan on calling your bluff by going over your head. When that happens, you have to be prepared to deal with the political processes. When a person goes over your head to get someone to override your decision or to grant them some form of exemption is a serious situation.

There are at least three different issues that need to be dealt with here. First is the fact that most fire and building codes that allow for alternatives and options and if we have not explored them before the name-calling happens we can be made to look bad in front of our supervisor. The second is long-term liability that a fire official retains for approving and/or exempting code provisions. This merely means that sometimes we cannot allow someone to overturn our decisions without a formal process that shifts the liability. Thirdly there is the issue of professional credibility. Just how many times can you lose gunfights and still be considered a threat to anyone?

The reason we need to initially explore the options and alternatives available in the code process is because it is one of the best tactics to avoid confrontation. In the event that a developer objects to a particular provision, it is incumbent upon a code enforcement official to find out if there is more than one way to interpret the situation. And, if so to try it out.

This particular pathway is fraught with a certain number of potential landmines. Anytime there is a confrontational attitude on the part of a developer or contractor they are usually unlikely to consider anything that is just an equivalent. Rather, they are focusing their time and attention on reducing the requirements. Nonetheless, this option should always be contemplated before you ever allow a set of circumstances to deteriorate to winning and losing over a code provision.

A common sense approach and the use of a few "win-win" techniques can often keep potential conflict down to the level of negotiated resolution. Remember that whenever there is difference of opinion, there is almost always some kind of shared interest. It is very important in the code compliance process that you jointly explore the reasons why you and the other party may both wish to see something achieved. This is the opposite of focusing entirely on the use of power and authority or power and influence to resolve the issue.



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Liability is not something that can be overcome by looking the other way either. Some readers may recall the landmark “Marysville Decision.” This lawsuit resulted in the findings that a fire chief was negligent and financially liable for failure to enforce provisions of the code. It is virtually impossible for a person to do the day to day duties of a fire prevention officer and at the same time try to maintain an eye on all the legal issues and liabilities associated with code enforcement. However, it is appropriate to keep our eye on at least one issue. That issue is: failure to enforce our own codes is a potential source of personal liability downstream. While one should not resort to utilizing this as a threat in any dialogue over a specific code provision, you should at least be prepared to address the fact that if you are told to ignore a particular code requirement, that legal liability has to rest on someone else’s shoulders other than your own.

This leaves us with our last point to ponder - professionalism. Architects and engineers all have professional standards and ethical considerations that they must comply with in order to classify themselves as professionals. It amazes me that other professionals are unwilling to compromise on their principals but are not the least bit shy on asking the members of the fire service to compromise on ours. It is very important to maintain the fire service’s credibility; we have to have a very professional approach to dealing with conflict. Despite the fact you might be extremely upset with an individual who is asking you to compromise on your principals, you must retain a sense of fairness and, at the same time, a degree of firmness based on principle and not on personality.

There are many specific techniques one has to practice in order to maintain this in a confrontational circumstance. One of the best guidelines to follow is that you simply can never allow another person to cause you to lose your temper.

The next concept we have to practice when we get to this level of problem solving is to make sure you don’t go to this type of verbal gunfight with blanks. When you finally meet around a table in an attempt to make a reconciliation, make darn sure that you have checked, checked, and rechecked the validity of the request. Candidly, there are times when organizations find themselves around this reconciliation table and the authority having jurisdiction has been bluffing all along. That is the worst possible set of circumstances for you to maintain your professionalism.

Obviously, one of the best sources of information of code interpretation is the code making groups themselves. In the event that something is controversial and questionable it is a good idea to contact these organizations that published the code and to get an interpretation from them. Whenever possible, you should have this interpretation in writing.

Recently I had a personal experience where this was involved. The fire department had taken a position on an occupancy classification for a senior citizen facility that required certain exiting and



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compartmentalization requirements to be met. The architect who was challenging the validity of the requirement constantly kept quoting individuals within the State Fire Marshal's Office and alluded to the fact that the code was going to change sometime in the "future" relaxing some of the requirements.

During the interchange I asked for a clarification of exactly what the individual was seeking. I had it transcribed by a secretary. The requirements as specified by the architect were then sent by fax machine to the fire marshal's office with a request for a clear-cut interpretation of what this meant. A fax was returned to my office within 15 minutes clearly stating that the fire marshal's office supported the AHJ's (ours) interpretation of the requirement. The argument ceased.

The building owner in this case had been lead by the architect to believe that certain things were going to occur and, therefore, had based some financial decisions upon them. This was unfortunate for the business relationship between the architect and the building owner but the level of professionalism between the building owner and fire department was maintained. He was not upset once he knew what the ground rules were going to be.

Summary

If we go back to our analogy we used at the beginning of the article about not blinking during a gunfight, it also follows that sometimes gunfights turn into standoffs. If no one actually pulls their gun then nobody ends up being hurt. The stronger our codes become and the more rapidly they begin to change, the more likely confrontation situations are going to occur between AHJ's and property and building owners. It becomes very critical to the operating relationship between the various parties that we do everything possible to avoid these verbal gunfights. They are probably going to occur more frequently, but the outcomes do not have to be critical.

Adhering to the concepts explained in this column will not necessarily avoid people being upset and going over your head in an attempt to change a policy at the city council, board of supervisors or fire commissioner level. When that happens, a whole new set of problems occurs.