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Automatic Sprinkler Appeals Board

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MEMORANDUM

TO: Interested persons

FROM: Kristin M. Kelly, Board Chair

DATE: January 25, 2024

RE: Advisory regarding M.G.L. c. 148, s. 26H

Introduction

Under M.G.L. c. 148, s. 26H, this Board has jurisdiction to hear appeals from orders issued by heads of the fire department who are charged with enforcing the law. Under authority of M.G.L. c. 30A, s. 8, the Board is issuing this advisory guidance document to assist heads of fire departments and building owners to under the basic requirements of this law.

In developing this document, the Board has used its best efforts in developing guidance consistent with the language of the statute, legislative intent, related cases and common sense. This document is not intended to be the final word on this matter or meant to be a substitute for a good faith, reasonable interpretation of the statute by the head of the fire department. In determining whether a building is subject to this law, the head of the fire department should make fair, consistent and well-reasoned determinations, based upon the reading of the law and the specific factors that exist for a particular building.

1. Where does the law apply?

The law applies to all municipalities who have accepted the provisions of M.G.L. c. 148, s. 26H. To determine if your community has adopted the provisions of 26H, please contact your City Clerk and/or Town Clerk.

2. In what instances will sprinklers be required?

The law requires the installation of sprinklers in certain buildings that are considered lodging or boarding houses. Section 26H states, in pertinent part: "For the purposes of this section "lodging house" or "boarding house" shall mean a house where lodgings are let to six or more persons not within the second degree of kindred to the person conducting it, but shall not include fraternity

houses or dormitories, rest homes or group residences licensed or regulated by agencies of the commonwealth.”

3. Does the law apply to all buildings?

While the law applies to residential buildings that are considered “lodging houses” or “boarding houses”, the statute contains some exceptions if certain conditions or circumstances exist. They include:

- Buildings or structures, or certain areas of such buildings or structures, where the discharge of water would be an actual danger in the event of a fire, the head of the fire department shall permit the installation of such other fire suppressant systems as are prescribed by the state building code in lieu of automatic sprinklers; and
- No such sprinkler system shall be required unless sufficient [access to] water and water pressure exists.

The distinction drawn between the lodging houses and other congregate living arrangements in Section 26H preserves the regulatory authority granted to State agencies and municipalities over licensed group homes, dormitories, or fraternities, but does not generally exempt them from fire safety regulation.

The relevant language encompasses “rest homes or group residences licensed or regulated by agencies of the Commonwealth.” “Rest homes” are licensed by the Department of Public Health. See G. L. c. 111, § 71. Group mental health residences, for example, are licensed by the Department of Mental Health. See G. L. c. 19, § 19. Both rest homes and group mental health residences are subject to fire safety standards that are set either by statute, see G. L. c. 111, § 71, tenth par. (rest homes), or by regulation. See 104 Code Mass. Regs. § 28.13(1)(i)–(j) (group mental health residences); 104 Code Mass. Regs. § 28.14.

Sober homes, for example, are not licensed by the Commonwealth. Instead, they are subject to a voluntary State accreditation and training program, G. L. c. 17, § 18A and are not exempt from the provisions of Section 26H.

4. Does the Massachusetts State Building Code or the International Building Code mandate whether sprinklers will be required?

No. The installation of sprinklers is mandated only by M.G.L. c. 148 s. 26H. The portion of the statute that states “in accordance with the provisions of the state building code” applies to the design and method of installation of the sprinkler system as prescribed by the State Building Code. The case of *Pinecrest Village, Inc. v. Richard J. MacMillian*, states that “the building code in fact has a lengthy section governing the design and installation of sprinkler systems, and it is to this the Legislature wanted to refer” when it included the language in s. 26G. *Pinecrest Village, Inc. v. Richard J. MacMillian*, 425 Mass. 70 at 74 (1997).

5. Does the law apply retroactively to all existing buildings, which are within the scope of the law?

Yes, the law applies to all buildings that are used as a lodging or boarding house. The building(s) shall be equipped with automatic sprinklers within five years after the acceptance of M.G.L. c. 148, s. 26H by the municipality.

6. What is a lodging or boarding house?

The statute specifically states that for the purposes of this law, a “lodging house” or “boarding house” is a house where lodgings are let or rented to six or more persons not within the second degree of kindred to the person conducting it. There is an exception for fraternity houses or dormitories, rest homes or group residences licensed or regulated by agencies of the commonwealth.

7. Is a sprinkler system always required for buildings where there are lease agreements for six or more people?

No. This depends on the nature and characteristics of the lease agreement and the building itself and whether it is being occupied as a “lodging house” or “boarding house”. The Board realizes that the determination to install sprinklers, is often difficult and should be decided on a case-by-case basis. However, the Board suggests that such decisions be made in a predictable and consistent manner throughout the Commonwealth. Therefore, the Board suggests that in deciding if a building is being used as a “lodging house” or “boarding house” that a fire department and or building owner review the Court’s decision in City of Worcester v. College Hill Properties, LLC, & another, 465 Mass. 134 (2013).

The Court in the College Hill case noted that there is a distinction between “lodgings” and apartments. In deciding a case, The Board will consider several factors established in the College Hill case, to determine whether to require installation of sprinklers throughout a building in accordance with M.G.L. c. 148, s. 26H. Some of the factors include:

- Is there a long-term lease agreement in place or is the living arrangement transitional or transient in nature?
- Is the property leased to a single commercial enterprise which then let rooms to individual unrelated occupants?
- Is the type of occupancy different from that which is ordinary and expected in a single, two, or three-family structure?
- Do the occupants of the building abide by house rules or is there a house manager?
- Do individual bedrooms contain locking mechanisms?
- Does each unit have a separate living, dining, kitchen, and bathroom area?
- Is the agreement for a specific room within a house or apartment or to occupy the entirety of the property?

While there is an exemption for rest homes or group residences licensed or regulated by agencies of the commonwealth, this exemption includes only group home situations that are directly licensed and regulated by a state agency with reasonably clear and direct oversight jurisdiction through specific regulations promulgated by a state agency.

The Board is aware that buildings, lease agreements, and circumstances vary from one case to another and that it would be unreasonable to expect that a single set of criteria could reasonably apply to all situations. Therefore, this list of described factors is not necessarily all-inclusive, but is meant to provide a commonsense guideline for fire departments and building owners to determine if a sprinkler system is probably required under the provisions of this particular law.

8. Is a sprinkler system required if a home or building is rented on a hosting platform such as Air B n B or VRBO?

Yes. If the home or units can be let to six or more persons not within the second degree of kindred to the person conducting it. Specifically for these types of rentals, they fit within the definition of a “lodging house” or “boarding house” as the platform allows lessors to advertise, list or offer the use of the property, to collect the payment of rent (typically in a single payment) on an accommodation and allows a person or people to arrange, book, reserve, or rent space at the subject property for short or long terms.

9. The statute states that “no such sprinkler system shall be required unless sufficient water and water pressure exists”. How is it determined if there is a lack of sufficient water and water pressure?

This language, creating an apparent exemption for situations involving lack of sufficient water and water pressure, has remained unchanged in the new amendments. In determining cases in which this issue has been raised, the Board has been guided by the Massachusetts Appeals Court case of Chief of the Fire Department of Worcester v. John Wibley, et al. 24 Mass. App. Ct. 912 (1987).

In that case the court concluded that:

“The term “sufficient water and water pressure exists” means that the owner of a building or addition to which the statute applies must have access to a source of water sufficient to operate an adequate system of sprinklers, or the exemption applies. The source may be either on the land on which the new building or addition is constructed or off the land, provided that it is legally available to the owner of the building or addition.”

In the Wibley case, the court, in agreeing with the fire chief, concluded that sufficient water and water pressure existed, notwithstanding the fact that the source of water was not on the owner’s land, but was legally available by means of a connection requiring the excavation to a legally available water main located 500 yards away.

10. Who has the responsibility to enforce the sprinkler installation requirements of this law?

The head of the fire department is given the statutory authority to enforce the law. Once the head of the fire department determines that a building is being used as a lodging house or boarding house subject to s. 26H, the building owner should be informed of the determination and the reasons for it by a written notice signed by the head of the fire department. The notice should also contain the information about the ability to appeal such determination to the Commonwealth's Automatic Sprinkler Appeals Board within forty-five (45) days of the receipt of such notice.

11. How are appeals filed with the Board?

The law allows for any person aggrieved by an interpretation, order, requirement or direction of the head of the fire department, (or the failure to so act) to file an appeal with the Automatic Sprinkler Appeals Board. Such appeals must be filed ***within 45 days*** after receiving service of notice of the head of the fire department's determination. The Board has a formal application form that must be completed by the person seeking the appeal. In addition to the application form, a detailed statement of the basis for the appeal, a copy of the chief's determination and an appeal application fee (\$100.00) must accompany each application. Automatic Sprinkler Appeals Board application forms may be obtained by calling: 978-567-3181 or on the web at <https://www.mass.gov/doc/automatic-sprinkler-appeals-board-application-fillable-2023/download>

12. What are the Board hearings like?

Members of the Commonwealth's Fire Safety Commission hold hearings of the Automatic Sprinkler Appeals Board. The hearings are informal and the strict rules of evidence used in a court of law are not used. The hearings require the presence of the appellant and the head of the fire department or their agent or attorney. The parties should be fully prepared to present their positions at the hearing. All plans, drawings, photographs expert findings/analysis or any other documents, information and testimony and arguments should be presented at the hearing to assist the Board in making its findings and determination.

13. Where can I review prior Automatic Sprinkler Appeals Board decisions?

Prior decisions of the Automatic Sprinkler Appeals Board can be found on the web at: <https://www.mass.gov/service-details/massachusetts-fire-safety-commission-and-automatic-sprinkler-appeals-board> under the heading "*Recent Decision of the Automatic Sprinkler Appeals Board*" or can be provided by calling 978-567-3181.

****This document is meant to serve as an advisory regarding M.G.L. c. 148, s. 26H and is meant to incorporate and serve as an update to the Board's August 1, 2023 advisory. The information contained herein is advisory in nature and does not bind the Automatic Sprinkler Appeals Board.*