



The Commonwealth of Massachusetts
Executive Office of Public Safety and Security
Fire Safety Commission

Automatic Sprinkler Appeals Board

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Docket # 2023-06
555 Northampton Street
Holyoke, Massachusetts

AUTOMATIC SPRINKLER APPEALS BOARD DECISION

A) Statutory and Regulatory Framework

This is an administrative appeal held in accordance with Massachusetts General Laws Chapter 30A, Chapter 148, s. 26G½, and Chapter 6, s. 201, relative to a decision of the Swansea Fire Department to require Michael Hamel of Hamel's Creative Catering, (hereinafter the "Appellant"), to install automatic sprinklers in an existing building located at 555 Northampton Street, Holyoke, Massachusetts.

B) Procedural History

By written notice dated February 15, 2023, and received by the Appellant on February 15, 2023, the Holyoke Fire Department issued an Order pursuant to the provisions of M.G.L. c. 148, s. 26G½, to the Appellant requiring automatic sprinklers to be fully installed in an existing building owned and/or operated by said Appellant located at 555 Northampton Street, Holyoke, Massachusetts. On March 28, 2023, the Appellant filed a timely appeal of the determination with the Automatic Sprinkler Appeals Board. The Board held a hearing relative to this appeal on May 17, 2023, via video conference.

Appearing at the hearing on behalf of the Appellant was: Chelsea K. Choi, Esq. and Michael Hamel, owner of Hamel's Creating Catering. Notwithstanding notification of the hearing, the Holyoke Fire Department declined to participate.

Present for the Board at the hearing was: Maurice Pilette, Chair; Patricia Berry, Vice Chair; Deputy Chief Patrick Ellis (designee of the Boston Fire Commissioner); Chief Michael Spanknebel; Sandy McLeod; Gary Rogers; and George Duhamel. Rachel E. Perlman, Esq. served as counsel to the Board.

C) Issue(s) Presented

Whether the Board should affirm, reverse or modify the determination of the Holyoke Fire Department requiring sprinklers in the Appellant's proposed building, in accordance with the provisions of M.G.L. c. 148, s. 26G½?

D) Evidence Received

1. Application for Appeal filed by Appellant (dated 3/28/2023)
2. Notice of Appearance on behalf of Appellant, Chelsea K. Choi, Esq. (dated 3/21/2023)
3. Memorandum in Support of Automatic Sprinkler Appeal with accompanying exhibits
 - A. Amended Order of Notice from the Holyoke Fire Department (dated 2/12/2013)
 - B. Withdrawal of Order of Notice from the Holyoke Fire Department (dated 3/20/2013)
 - C. Order of Notice from the Holyoke Fire Department (dated 2/15/2023)
 - D. Copy of Automatic Sprinkler Appeals Board decision in case 2005-23 – 91 Manville Street, Leicester, MA (dated 7/13/2005)
4. Videos submitted by the Appellant of the Summit View Banquet House and hall (2)
<https://clipchamp.com/watch/Ca9fxUTzyc4> (no audio)
<https://clipchamp.com/watch/7jDCQvKsExD> (audio)
5. Holyoke Fire Department's Submission in Support of Order of Notice with accompanying Exhibits
 - A. Photograph of interior with fully stocked bar
 - B. Photograph of interior function room set for an event
 - C. Photographs of patrons at various events
 - D. Screen shot of social media posting regarding an event at the facility
 - E. 2023 ABCC Retail License Renewal Application (Liquor License) (dated 11/4/2022)
 - F. City of Holyoke – Annual All Alcohol License (dated 12/7/2022)
 - G. City of Holyoke – Seasonal Restaurant License (dated 3/1/2023)
 - H. City of Holyoke – Entertainment License (dated 4/5/2023)
 - I. 2023 City of Holyoke ARPA Funds Application filed by Michael Hamel (Undated)
 - J. E-mail to Holyoke Fire Department from Mayor Garcia, City of Holyoke confirming Hamel's ARPA Application (dated 5/3/2023)
 - K. Correspondence to Holyoke Mayor from William J. Page, President, Board of Directors of The Bureau for Exceptional Children and Adults, Inc. in support of ARPA Application (dated 4/13/2023)
 - L. City of Holyoke Property Record Card
 - M. Hydrant Available Fire Flow (GPM) overview for Northampton Street to property

E) Subsidiary Findings of Fact

- 1) By written notice dated February 15, 2023, and received by the Appellant on February 15, 2023, the Holyoke Fire Department issued an Order pursuant to the provisions of M.G.L. c. 148, s. 26G½, to the Appellant requiring automatic sprinklers to be fully installed in an existing building owned and/or operated by said Appellant located at 555 Northampton Street, Holyoke, Massachusetts.
- 2) The property at issue is Hamel's Creative Catering, a full-service catering and event planning company which operates the Summit View Banquet and Meeting House and Pavilion at 555 Northampton Street, Holyoke, MA. Hamel's provides off-site catering for many social events but also hosts on site events such as weddings, showers, Jack n Jill parties, anniversary parties, business meetings and post funeral receptions.
- 3) A Certificate of Occupancy entered into the record indicates that the building is approximately 7,516 s.f. in size, with an occupancy of 220 people with an A-2 use group classification.

- 4) The Appellant testified that any functions held at the facility must have meals as part of the rental contract and that food is always the primary attraction. Furthermore, every event is held by contract, with defined start and end times, and confirmed headcount for food and seating planning purposes. The Appellant advised that they are not open for any events or walk-in service of any kind.
- 5) Counsel for the Appellant stated that while there may be dancing or live or recorded music, that is not the primary attraction and that dancing activity is limited to guests who are attending the facility for the purposes of eating a meal.
- 6) Counsel indicated that in 2005, the Holyoke Fire Department had ordered the facility to install sprinklers. However, the Appellants were later informed by the Fire Chief that this establishment was exempt from the provisions of 26G ½ following a more thorough review of the facility and its events, in conjunction with the *Leicester case* (ASAB Case 2005-93, 91 Manville Road, Leicester, MA) issued by the Board.
- 7) Counsel stated that in the *Leicester case*, the Board identified seven (7) key characteristics that distinguished fraternal organizations and their events, from other facilities and events that were more typical of bars, nightclubs, dancehalls or discothèques. In 2005 and again in this specific instance, the activities of the Appellant cannot be described as bar, nightclub, dancehall or discothèque-like activities based upon the criteria laid out in the *Leicester* decision.
- 8) The Holyoke Fire Department was properly noticed regarding the scheduled hearing on May 17, 2023 and declined to appear or testify in support of the issued Order of Notice.

F) Ultimate Findings of Fact and Conclusions of Law

- 1) The subject building is considered a public assembly with a capacity of 100 persons or more.
- 2) The provisions of the 2nd paragraph of M.G.L. c. 148, s. 26G½, in pertinent part states: “every building or structure, or portions thereof, of public assembly with a capacity of 100 persons or more, that is designed or used for occupancy as a night club, dance hall, discothèque, bar, or similar entertainment purposes... (a) which is existing or (b) for which an approved building permit was issued before December 1, 2004, shall be protected throughout with an adequate system of automatic sprinklers in accordance with the state building code”. The law was effective as of November 15, 2004 and required all systems to be installed within 3 years of the effective date of the act (by November 15, 2007).
- 3) In a memorandum dated January 10, 2005, this Board issued an interpretive guidance document relative to the provisions of this new law found in c.148, s. 26G½. This law was a portion of a comprehensive legislative initiative undertaken as the result of a tragic Rhode Island nightclub fire which took place in February 2003. In said memorandum, this Board noted that the statute did not contain a definition of the words “nightclub, dance hall, discotheque, bar or similar entertainment purposes”. This Board reviewed the legislative intent and background of the statute and concluded that there were certain characteristics typical of nightclubs, dancehalls and discotheques. The board indicated that such occupancies are characterized, but not limited to, the following factors:
 - a) No theatrical stage accessories other than raised platform;

- b) Low lighting levels;
- c) Entertainment by a live band or recorded music generating above normal sound levels;
- d) Later-than-average operating hours;
- e) Tables and seating arranged or positioned so as to create ill-defined aisles;
- f) A specific area designated for dancing;
- g) Service facilities primarily for alcoholic beverages with limited food service; and
- h) High occupant load density.

It was the interpretation of this Board that such characteristics are typical of the “A-2 like” occupancy (which was a general reference to the A-2 use group referenced in 780 CMR, The State Building Code) and that these are the type of factors that heads of fire departments should consider in enforcing the sprinkler mandates of M.G.L. c.148, s. 26G½. It was noted that the list of characteristics was not necessarily all-inclusive. Additionally, the factors may be applied individually or in combination depending upon the unique characteristics of the building at the discretion of the head of the fire department.

- 4) Based upon the testimony provided and documentation submitted into the record, this building is used for many different types of events. However, a majority of the functions described appear to be organized private dining events that feature a meal as the main attraction. In most instances the guests who attend such organized dining events are present as the result of written invitation or limited ticket purchase. Such “organized” private dining events, by their very nature, have pre-arranged limitations on attendance and seating because a meal is being prepared and served. They tend to have a fixed starting and ending times and do not have later than average operating hours. Whether the meal is buffet style or sit-down, each guest has a chair and a table to sit down and eat. The tables and chairs are not positioned as to create ill-defined aisles. Although there may be dancing to live or recorded music during some portion of the event, the entertainment is not the main feature of the event. The dancing activity is limited to those persons who are attending for the purposes of eating a meal. Each guest has a seat at a table. In such situations the occupant load is not typically concentrated or crowded. According to the testimony, the characteristics of such events are within the strict control of an on-site manager and are established by a written agreement.
- 5) Notwithstanding the incidental appearance of live or recorded music for dancing purposes, the Board concludes that under certain circumstances, a place of assembly which provides facilities for organized private dining events may not necessarily be subject to the retroactive sprinkler installation requirements of M.G.L. c.148, s. 26G½. The existence of the following characteristics in certain facilities is distinguishable from the “A-2 like” characteristics that this Board concluded were typical of nightclubs, dancehalls and discotheques and within the legislative intent of this law. The characteristics are as follows:
 - 1. The facility is used for events that feature a meal as the primary attraction.
 - 2. The facility is used for events that are organized for the purpose of a private function.
 - 3. Attendance for each specific event is limited and pre-arranged between the facility operator and the private event organizers. The number of guests is limited by written invitation or limited ticket availability and does not exceed the agreed upon attendance limit. Each event has a definite starting and ending time.

4. Tables and chairs are arranged in well-defined aisles in such a manner to not impede easy egress, and
5. There are no significantly low lighting levels, and
6. The maximum documented legal capacity, based upon the available floor space, is not less than 15 feet (net) per occupant. The Board notes that this formula is consistent with the definition of the “unconcentrated” Assembly Occupancy found in 780 CMR, The State Building Code (6th Edition), table: 780 CMR 1008.1.2.
7. The characteristics of the event, as referenced above, are strictly controlled by an on-site manager and are made part of a written function event contract. Examples of organized private dining events may include organized banquets, private parties, fund raisers, wedding receptions and ceremonial banquet events, as long as all the aforementioned characteristics exist. This determination does not preclude such a facility from ever hosting an event that features music by a live band or recording, dancing or similar entertainment as the main attraction. Under the provisions of M.G.L. c.148, s. 26G½, 4th paragraph, such a facility may be used as a nightclub, dance hall, discotheque or similar entertainment purposes on a temporary basis without the need to install an adequate system of automatic sprinklers under said section. However, such temporary use is allowed only if a permit is issued for such use by the head of the fire department in consultation with the local building inspector. The issuance of such a permit is a matter within the sole discretion of the head of the fire department who may set the terms and conditions to protect against fire and preserve public safety.

6) Accordingly, the Board finds that said the facility, as currently used, meets the seven (7) characteristics as stated above and is not subject to the sprinkler requirements of s. 26G½, as long as the characteristics stated in section F, paragraph (3), items (a) through (g) are met for all events that feature music or entertainment.

G) Decision and Order

Based upon the evidence presented to the Board and for the reasons stated herein, the Board **reverses** the Order of the Holyoke Fire Department to require adequate sprinkler protection in the subject building in accordance with the provisions of M.G.L. c. 148, s. 26G.

H) Vote of the Board

Maurice Pilette, Chair	Abstained
Patricia Berry, Vice Chair	In Favor
Deputy Chief Patrick Ellis, designee	In Favor
Chief Michael Spanknebel	In Favor
Gary Rogers	In Favor
Sandy McLeod	In Favor
George Duhamel	In Favor

I) Right of Appeal

You are hereby advised you have the right, pursuant to section 14 of chapter 30A of the General Laws, to appeal this decision, in whole or in part, within thirty (30) days from the date of receipt of this order.

SO ORDERED,



Patricia Berry, Vice Chair

Dated: June 8, 2023

A COPY OF THIS DECISION AND ORDER WAS FORWARDED BY E-MAIL AND CERTIFIED MAIL, RETURN RECEIPT REQUESTED TO:

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