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KERRY HEALEY
LT. GOVERNOR

EDWARD A. FLYNN
SECRETARY

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

Automatic Sprinkler Appeals Board

P.O. Box 1025 ~ State Road

Stow, Massachusetts 01775

(978) 567-3180 Fax:(978) 567-3121

MAURICE M. PILETTE
CHAIRMAN

PAUL DONGA
VICE CHAIR

MEMORANDUM

TO: Interested persons

FROM: Commonwealth of Massachusetts, Fire Safety Commission's Automatic Sprinkler Appeals Board
Maurice M. Pilette, Chair

DATE: January 10, 2005

RE: Advisory regarding certain provisions of Ch. 304, of the Acts and Resolves of 2004 (M.G.L. c.148, s.26G1/2) relating to the installation of automatic sprinklers in certain existing places of public assembly.

The Department of Fire Services has requested that the Fire Safety Commission's Automatic Sprinkler Appeals Board issue some guidance regarding the new law, M.G.L. c.148, s.26G1/2, which requires an adequate system of automatic sprinklers to be installed in certain places of public assembly on a retroactive basis. Under the new law, this board has jurisdiction to hear appeals from orders issued by heads of the fire department who are charged with enforcing the law. Additionally, this board, pursuant to the provisions of MGL. C. 6, s 201, may issue reasonable interpretations of section 26G1/2. Accordingly, this board is issuing this advisory in Question and Answer format to assist heads of fire departments and business owners in understanding the basic requirements of this law.

In developing this document, the Board has attempted to directly quote the statute as much as possible. In interpreting the meaning of terms not defined by the statute, the board has used its best effort in developing guidance consistent with the legislative intent of the law and the common meaning and usage of such terms as used in the regulatory field. The Board wants to emphasize that the head of the fire department, is given the sole statutory authority to enforce the provisions of this law which are within the jurisdiction of this board. This document is not intended to be the final word on this matter or 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

chief should make fair, consistent and well-reasoned determinations based upon the reading of the law and specific factors that exist for a particular building.

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

Under the new law, c.148, s.26G1/2, the head of the fire department is given the statutory authority to enforce the law for those particular buildings or structures (a) which exist as of the effective date of the Law (11-15-04) or (b) for which an approved building permit was issued before December 1, 2004.

The construction or substantial alteration of buildings or structures, approved by building permit *on or after December 1, 2004*, are subject to the provisions of the State Building Code and are within the enforcement authority of the building inspector.

2. In general, what buildings are subject to the new law?

Every building or structure, or portions thereof, of a public assembly, which existed as of the effective date of the Law (11-15-04) or for which an approved building permit was issued before December 1, 2004, with a capacity of **100 persons or more**, that is *designed* or *used* for occupancy as a nightclub, dance hall, discotheque, bar, *or for similar entertainment purposes* shall be protected throughout with an adequate system of automatic sprinklers, in accordance with the state building code. (emphasis added)

3. If the public assembly, as described, is located in a mixed-use building, what portions of the building must be protected?

The law requires not only that portion of the building used or designed as a nightclub, dance hall, discotheque, bar, or for similar entertainment purposes to be protected, but also includes such protection in all rooms, lobbies, and other spaces connected to said portion, including all means of egress and entrances.

4. What is meant by “an adequate system of automatic sprinklers”, in accordance with the state building code?

Under the provisions of M.G.L. c. 148, s.26G1/2, it is more than just a sprinkler system. The law defines the term “adequate system of automatic sprinklers” to include: (1) a working automatic sprinkler system; (2) fire alarm system control equipment which provides notice of an emergency within a place of assembly; and (3) adequate monitoring of and reporting of any activation of the automatic sprinkler system and fire alarm equipment, in accordance with the state building code in effect at the time of the installation of such system and equipment.

As of this date, all new installations shall be made in accordance with the standards referenced in 780 CMR, The 6th Edition of the State Building Code. Said code incorporates by reference (National Fire Protection Association) NFPA-13, 2002 Edition, entitled “Installation of Sprinkler Systems” and NFPA-72, 2002 Edition, entitled “National Fire Alarm Code”. All necessary

approvals and permits to install such systems, as required by 780 CMR, Chapter 1, "Administration" and 527 CMR sections 1.00 and 10.00 shall be acquired.

Existing automatic sprinkler and fire alarm systems should meet, at a minimum, all requirements of the design and installation methods, as required by NFPA-13 and NFPA-72 (2002 Editions). The head of the fire department should cause existing systems to be evaluated to verify compliance.

In unique building situations, the head of the fire department may accept alternative or modified design and installation methods other than the minimum requirements of NFPA-13 and NFPA-72, if facts and circumstances support a determination that such alternatives are "adequate" and meet the public safety purposes of the law.

5. When will the sprinkler systems have to be installed in these buildings?

An adequate system of automatic sprinklers shall be installed within 3 years of the effective date of the law, **November 15, 2007**. However, the law requires that plans and specifications for a required installation shall be submitted to the head of the fire department and the local building inspector within 18 months of the effective date, **May 15, 2006**. (see Section 11, St. 2004, c.304)

6. What action should be taken by the head of the fire department at this time.

It is recommended that heads of fire departments, as soon as possible, determine which buildings within their jurisdiction may be subject to the new law. Once this determination has been made a written notice should be sent out as soon as possible to the owner of the buildings, informing them of the Chief's determination and the owner's obligations to submit plans by May 15, 2006 and to complete the installation by November 15, 2007. The head of the fire department should certainly issue an Order of Notice to any owner who has failed to comply with the plan submission deadline and/or has not completed the installation as required by law.

7. Are there any provisions for an extension of time within which to comply with the installation?

Yes, a limited extension may be granted. The head of the fire department may allow a reasonable extension of time, not to exceed 1 year to comply **but only if** the owner has: (1) timely submitted the required plans and specifications, (2) has entered into an existing contract for the installation and (3) clearly documents or shows that said owner did not cause the delay of installation. (see Section 11, St. 2004, c.304)

8. Are there any financial incentives that may assist the owner to comply with the sprinkler system requirements?

Yes. For owners who install an automatic sprinkler system under the provisions of M.G.L. c148, s.26G1/2, the law allows for an accelerated tax depreciation deduction allowance from Massachusetts income taxes (see Sections 3 and 4 of St. 2004, c.304). Additionally, The Secretary of the Executive Office of Economic Affairs is required, (by 6-1-05) to submit a plan to reduce the

costs associated with such installation, including possible low interest loans and tax credits (see Section 10, St.2004, c.304).

9. What is the definition of a nightclub, dance hall, discotheque or bar under the provisions of M.G.L. c. 148, s. 26G1/2 ?

The statute does not provide specific definitions for these terms. In absence of such definitions heads of fire departments who are charged with enforcing the law should use their best and reasonable discretion in carrying out their enforcement responsibilities. Determinations should be made consistently and fairly based upon specific factors that exist for the particular building. The common and usual meaning of these terms and the legislative intent of the new statute should be considered.

In carrying out its appellate functions, the Sprinkler Appeals Board will also take a common sense approach in its interpretation of the wording in the statute, taking into consideration the legislative history and intent of Chapter 304 of the Acts of 2004 (which contains the provisions of M.G.L. c. 148, s. 26G1/2).

The law evolved from legislative action in response to the horrific Rhode Island nightclub fire which occurred on February 20, 2003, killing 100 people and injuring many others. After this tragedy, the Executive Branch, through a special Task Force, and the Legislative Joint Committee on Public Safety held hearings and issued regulatory and legislative strategies to reduce the chances of a similar fire catastrophe occurring in Massachusetts. This Board, through representative membership, participated in these deliberations. Both groups recommended, among other things, that sprinklers be installed retroactively in existing nightclubs, bars, dancehalls and discotheques. During these deliberations, it was determined that these particular types of occupancies required enhanced sprinkler protection for property protection and life safety. This conclusion was based upon a realization that these types of establishments tend to create circumstances that potentially diminish an occupant's ability to appreciate and/or effectively react to or escape from dangerous fire related situations. Such circumstances, individually or in combination, included but were not limited to: loud noise, low lighting levels, distraction caused by entertainment or dancing activity, crowded occupancy or a diminished capacity due to alcohol consumption.

The board notes that the terms "nightclub" and "dance hall" are used within the A-2 use group classification found in the 6th Edition of the Massachusetts Building Code, 780 CMR 303.3. This use group definition was drafted from nationally recognized model building code language. The commentary documents relating to the A-2 use group definitions used in the nationally recognized model code, indicates that such classification includes occupancies in which people congregate in high densities for social entertainment purposes. Examples given in the commentary are: dancehalls, nightclubs, cabarets, beer gardens, drinking establishments, discotheques and other similar facilities. The commentary concludes that the uniqueness of these occupancies is characterized, but not limited to, by 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 is the conclusion of this board that the characteristics of the “A-2 like” occupancy, as stated, are the type of factors that heads of fire departments should consider in enforcing the sprinkler mandates of M.G.L. c.148, s.26G1/2. It is noted that the list of characteristics is not necessarily all-inclusive. Additionally, the factors may be applied individually or in combination depending upon the unique characteristics of the building. For example, an occupancy that does not serve alcoholic beverages may still be subject to the law if entertainment by live band or recorded music is provided or/and there is a high occupant load.

Although the “A-2 like” assembly use occupancy is typical of the establishments subject to the law, neither the head of the fire department nor the Sprinkler Appeals Board are bound by the classification of a particular building as an A-2 occupancy under the 6th Edition of the Building Code. The requirements of c. 148, s. 26G1/2 are clearly separate and distinct from said code classification. In fact many buildings or structures that may certainly be required to install sprinkler systems under the new law may not be classified according to building department records as A-2 (Assembly) Use Group occupancies. This may be due to the age of the building which could have been built prior to the enactment of the State Building Code (1975) or because the current design or use of the building may have been changed or altered from its original building classification.

10. Are there specific exemptions from the enhanced sprinkler requirements for certain existing buildings?

Yes, the new law specifically does not apply to a place of assembly within a building, structure or portions thereof “used principally” as a house of worship, restaurant, lecture hall, auditorium, state or local government building, educational function facility, or other similar place of assembly. It should be noted that the exemptions only apply to such places that are “used principally” as described.

11. Are such exempted places of assembly that do not have an adequate system of automatic sprinklers totally prohibited from ever hosting a bar, nightclub, discotheque, dance hall, or similar entertainment event?

No. *Temporary use* of such a building or structure or portions thereof as a nightclub, dance hall, discotheque, bar or for similar entertainment purposes, may be allowed if a *permit* is issued for such use by the head of the fire department in consultation with the local building inspector who may set

the terms and conditions to protect against fire and preserve public safety. Such “terms and conditions” could include (for example the use of fire safety equipment, enhanced supervision by firefighting personnel or limitations of use and occupancy during the temporary event.

It should be noted that such exception only applies to a “temporary use” of the building as described. The meaning of the words “used principally” and “temporary” may be determined in the reasonable discretion of the head of the fire department in consultation with the building inspector. If the building is used in such a manner often, regularly or on a routine basis it may not be considered a “temporary” use eligible for the exemption by permit.

12. There are many establishments that are designed and used as a restaurant and also as a nightclub, dance hall, discotheque or bar, or similar occupancy. Are these subject to the sprinkler system requirements?

It depends. If the establishment which is principally used as a restaurant is only used as a nightclub, dance hall, discotheque or bar, or similar occupancy on a temporary basis, it probably may be considered “temporary” use. Therefore it may be allowed if properly permitted by the head of the Fire Department in consultation with the building inspector who may establish the terms and conditions of such use. Again the determination of what is “temporary” is within the discretion of the head of the fire department in accordance with analysis described in the previous answer.

If the establishment is designed or used as both a restaurant and a nightclub, dance hall, discotheque or bar, or similar entertainment purposes on more than a temporary basis, it may have to be sprinklered since it is not being “used principally” as a restaurant. Heads of the fire departments should use their best and reasonable discretion and make the determination consistently and fairly based upon specific factors that exist for the particular building. In determining such matters on appeal the Board will look at such common sense factors such as:

- a) Does the restaurant establishment regularly and routinely serve meals on a daily basis?
- b) Does the establishment provide a bar, bar seating, bar standing and a bar tender for the purposes of serving alcoholic beverages directly to alcohol consuming customers?
- c) Does the bar and bar seating area have the ability to expand into the dining area to accommodate special entertainment activities or increased capacity/density.
- d) If the establishment provides a bar and bar seating, are alcoholic beverages continuously served to customers more than one hour after full kitchen facilities have been closed?
- e) Is live or recorded music provided for dancing purposes or for a viewing audience? (does not include background dinner music)?
- f) Does the establishment provide special entertainment, including but not limited to: musical, theatrical, comedy, or sport viewing activities?
- g) Based upon the establishments name, décor, atmosphere, does a customer expect a bar or nightclub type establishment?

- h) Is the establishment or portions thereof routinely or regularly used for private or public functions for dancing, parties, celebrations, entertainment or performance purposes?
- i) Does the establishment have an entertainment license?

These factors are not necessarily all inclusive. However, such factors or combination of factors may be considered to determine if the occupancy has existing activities or conditions that are similar to nightclub, dance hall, discotheque, bar, or similar entertainment purposes.

13. Are buildings owned and/or operated by fraternal, social or non-profit organizations subject to the enhanced sprinkler?

There are no specific exemptions for buildings owned and operated by such organizations. The law makes no distinction between for profit and non-profit organizations. The determination will depend upon how the building is being “principally used”. If the building is used solely for meeting, dining or educational purposes it would probably not be subject to the sprinkler requirements under this law.

14. What if the building of a fraternal, social or non-profit organization is used or designed as a nightclub, dance hall, discotheque, bar or for a similar entertainment purpose?

If such use is merely temporary it may be allowed without the need to install an adequate system of automatic sprinklers if a proper permit is issued by the head of the Fire Department in consultation with the building inspector who may establish the terms and conditions of such use. Again the determination of what is “temporary” is within the discretion of the head of the fire department in accordance with analysis described in the previous answer #11.

If the building, or portions thereof, is often or routinely (rather than temporary) used or rented out by the organizations for such entertainment activities as dances, parties, weddings, fundraising events, or similar purposes which have characteristics similar to “A-2-like” assembly use group as stated in the answer to question #9, it will probably be subject to the enhanced sprinkler requirements

15. What is the role of the building inspector in carrying out the provisions of M.G.L. c.148, s. 26G1/2?

The head of the fire department has the sole jurisdiction to enforce the provisions of the law which requires the installation of an adequate system of automatic sprinklers within the three-year time limit (November 15, 2007) in those buildings or structures as described herein.

However, the Board encourages heads of the fire departments to work cooperatively with the building inspector in carrying out the enforcement obligations. The statute specifically envisions such cooperation by requiring that plans and specifications for the installation of the mandated sprinkler systems be submitted to both the head of the fire department and the building inspector. The statute also requires that the head of the fire department consult with the building inspector

when issuing a permit for the temporary use of an ordinarily exempt building for an entertainment purpose.

Additionally, there are portions of M.G.L. c.148, s.26G1/2 (see 3rd paragraph), which requires the installation of an adequate system of automatic sprinklers for businesses designed or used for such stated entertainment purposes not within the enforcement authority of the head of the fire department. These include such businesses that have a maximum capacity of *less than 100 persons*. The law requires such installation in the event that such a business violates the maximum capacity limits. The building inspector has the sole authority to enforce this provision.

16. How are appeals to the Board filed?

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 appeal shall 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. (Application forms may be obtained by calling: 978-567-3125) A detailed statement of the basis for the appeal, a copy of the chief's determination and an application fee (\$100.00) shall accompany each application. The head of the fire department should make all determinations/orders issued under the authority of M.G.L. c.26G1/2 in writing, giving as much detail as possible which supported the determination.

16. What are the Board hearings like?

The Board hearings are usually held by five members of the Fire Safety Commission. The hearings are informal in that 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 should be presented at the hearing to assist the Board in making its findings and determination.

**** A copy of the complete text of the new law (c. 304 of the 2004 Session Laws) may be found at the General Court web site: <http://www.mass.gov/legis/laws/seslaw04/>**