



SAFETY CODES COUNCIL

#1000, 10665 Jasper Avenue N.W., Edmonton, Alberta, Canada, T5J 389
Tel: 780-413-0099 / 1-888-413-0099 • Fax: 780-424-5134 / 1-888-424-5134
www.safetycodes.ab.ca

COUNCIL ORDER No. 0015408

ORDER

**BEFORE THE BUILDING TECHNICAL COUNCIL
On February 22, 2012**

IN THE MATTER OF the Safety Codes Act, Revised Statutes of Alberta 2000, Chapter S-1.

AND IN THE MATTER OF the Order dated August 23, 2011 issued by an Accredited Municipality (Respondent) against a Restaurant (Appellant).

UPON REVIEWING the Order **AND UPON HEARING** the Appellant and the Respondent; **THIS COUNCIL ORDERS THAT** the Order is **VARIED**.

Replacing the Order's directive:

From:

"YOU ARE HEREBY ORDERED to vacate the restaurant AND to not reoccupy until ALL the infractions have been corrected AND a final inspection is completed.

If you do not comply with this order by September 28, 2011, pursuant to Section 55 of the Safety Codes Act, the City, at your expense, will initiate the required actions to comply with this Order and add all incurred costs to the tax roll of the property.

To:

You are hereby ordered to:

1. Comply with the Alberta Building Code 2006, Division B, sentences 6.2.2.6.(1) and 6.2.2.6.(5),
2. Obtain inspections from the Building Safety Codes Officer as required to ensure compliance with safety codes requirements have been achieved, AND,

3. Obtain a final inspection and permission to occupy from the Building Safety Codes Officer,

Prior to June 1, 2012.

Issue:

1. The Appeal concerns the kitchen exhaust system at the restaurant.

The Record:

2. The Appeal Panel considered, or had available for reference, the following documentation:
 - a. Letter dated February 7th, 2012, from the Coordinator of Appeals to the Appellant providing notice of the appeal hearing.
 - b. Hand-written letter dated November 15, 2011, from the Appellant to the Coordinator of Appeals.
 - c. Letter dated October 3, 2011, from the Building Technical Council to the Appellant refusing the request for a stay of order.
 - d. Letter to the Appellant dated September 14, 2011, acknowledging receipt of request for appeal and payment.
 - e. Letter from the Appellant to the Coordinator of Appeals, dated September 9, 2011, requesting an appeal and a stay of order.
 - f. Order dated August 23, 2011 issued by the Respondent.
 - g. Exhibit #1 Appellant – correspondence from a Professional Engineer regarding kitchen exhaust ventilation.
 - h. Exhibit #2 Appellant – Letter to Coordinator of Appeals from the Appellant dated September 9, 2011.
 - i. Exhibit #3 Appellant – Letter from an HVAC company to the Appellant.
 - j. Exhibit #4 Appellant – Cleaning proposal from a cleaning company
 - k. Exhibit #5 Appellant – Copy of business license issued to the Restaurant on May 26, 2011.
 - l. Exhibit #6 Appellant – Photographs of a local restaurant showing the front of the business and the external exhaust system.
 - m. Exhibit #7 Appellant – Photographs of a second local restaurant showing the front of the business and the external exhaust system.
 - n. Exhibit #8 Appellant – Photographs of third local restaurant showing the front of the business and the external exhaust system.

- o. Exhibit #9 Appellant – Photographs of Appellant’s Restaurant showing the front of the business and the external exhaust system.
- p. Exhibit #1 Respondent – Respondent’s submission including a chronology of events, photographs, letter to Respondent from an engineering company dated June 18, 2010, and a revised drawing of the Restaurant dated May 13, 2010.

Position of the Parties

Appellant

- 3. The Appellant’s position is that:
 - (a) This is a family-run restaurant that will experience financial hardship if required to install an \$80,000 kitchen exhaust system.
 - (b) The restaurant has been unfairly targeted by the Respondent. Other restaurants in Edmonton are not required to have the same kitchen exhaust system that the Appellant’s restaurant has been ordered to install.
 - (c) The Appellant believed that the kitchen exhaust system installed at the restaurant was accepted by the Respondent because the restaurant was permitted occupancy and was issued a business license by the Respondent.

Respondent

- 4. The Respondent’s position is that:
 - (a) An inspection on January 19, 2011, revealed infractions of the Alberta Building Code 2006.
 - (b) The Appellant’s kitchen exhaust system does not conform to NFPA 96 Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations.
 - (c) The order was issued after communicating several times with the Appellant that the kitchen exhaust system was non-compliant. The Respondent has met several times with the Appellant on this issue.

Findings of Fact:

- 5. All areas of Alberta are subject to the laws, codes, regulations and policies of the *Safety Codes Act*.
- 6. The Alberta Building Code 2006, Division B, provides:
 - Section 6.2.Design and Installation
 - 6.2.2. Ventilation
 - 6.2.2.6. Commercial Cooking Equipment

1) Systems for the ventilation of commercial cooking equipment shall be designed, constructed and installed to conform to NFPA 96, "Ventilation Control and Fire Protection of Commercial Cooking Operations," except as required by Sentence 3.6.3.1.(1) and Article 3.6.4.2.

5) Canopies, hoods and ductwork for a ventilation system exposed within a food establishment shall be constructed of stainless steel.

7. The National Fire Protection Association (NFPA) 96 Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations provides:

4.2.1. Where enclosures are not required, hoods, grease removal devices, exhaust fans, and ducts shall have a clearance of at least 457 mm (18") to combustible material, 76 mm (3") to limited combustible material and 0 mm (0") to non-combustible material.

7.1.1. Ducts shall not pass through fire walls.

7.1.4. All ducts shall be installed without forming dips or traps that might collect residues.

7.6.4. All ducts shall be protected on the exterior by paint or other suitable weather-protective coatings.

7.8.3. Wall terminations shall be arranged with or provided with the following properties:

1) through a non-combustible wall with a minimum of 3 m (10 feet) clearance from the outlet to adjacent buildings, property lines, grade level, combustible construction, electrical equipment or lines, and the closest point of any air intake or operable door or window at or below the exhaust termination.

8. The building in question operates as a restaurant and is classified as Group A, Division 2. The restaurant opened in 2010.

9. The Order, issued August 23, 2011, identified six infractions. The Appellant was ordered to address the six infractions to bring the kitchen exhaust system into compliance with the Alberta Building Code 2006. If the infractions were not addressed the Appellant was ordered to vacate the restaurant by September 28, 2011.

10. In cross-examination the Appeal Panel asked which of the six items still remained outstanding on the order. The Respondent indicated that items 1, 3, 5 and 6 were outstanding and that some work was initiated on items 2 and 4. The Respondent was not aware if the work undertaken on items 2 and 4 complied with the Alberta Building Code 2006. The Appellant indicated that item 3 had been addressed.

11. The Appellant arranged for the kitchen exhaust system to be cleaned (The Record, Item J), and the Appellant stated that although the cleaning proposal indicates regular cleaning service of every six months, the cleaning service actually occurs every three months.

12. In presentation, the Appellant indicated a willingness to install a kitchen exhaust system compliant with the Alberta Building Code 2006, provided that other restaurants in the municipality are also

required to have the same type of kitchen exhaust system, and that the system is not so expensive as to cause financial hardship for the family-run restaurant.

13. The Respondent indicated that other restaurants in the municipality are inspected for compliance with the safety codes.
14. The Appellant indicated that previously when he asked the Respondent for examples of restaurants with kitchen exhaust systems similar to what the Respondent was requiring the Appellant to install, that the Respondent did not provide any names. The Appellant also referred to photographs submitted into record (The Record, Items L, M, and N), and indicated that based on the photographs submitted these restaurants do not have the type of kitchen exhaust system that the Appellant is expected to install. Each set of photographs showed the store-front and the external exhaust system of each restaurant.
15. The Respondent indicated that on previous occasions, the Appellant was advised that, in this context, the names of other restaurants given were examples of restaurants with kitchen exhaust systems conforming to the NFPA 96 Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations.
16. In presentation, the Respondent referred to a chronology of inspections and meetings that have occurred with the Respondent, the Appellant, engineer, and contractors. The Respondent indicated that meetings have occurred with the Appellant and the Appellant's contractors on many occasions, quotes have been provided to the Appellant and the Appellant has not proceeded with the work proposed in the contractors' quotes. (Respondent's Exhibit #1, pages 1-2 and 9)

Reasons for Decision:

17. The intent of the *Safety Codes Act*, its regulations, codes and standards is to provide an acceptable level of safety in the built environment to persons and property. The Appeal Panel needs and expects the Appellant and the Respondent to provide the facts, circumstances, and influencing factors that are pertinent to the subject matter of contention. With this, the Appeal Panel applies a reasonable approach to achieve safety within the context and intent of the legislation.
18. The Alberta Building Code 2006 requires that systems for the ventilation of commercial cooking equipment be designed, constructed and installed to conform to NFPA 96, "Ventilation Control and Fire Protection of Commercial Cooking Operations". The Appellant's kitchen exhaust system as described by both the Appellant and the Respondent does not comply with the Alberta Building Code 2006 code requirements.
19. The Appeal Panel, in considering the Respondent's chronology, (Respondent's Exhibit #1), noted that the Respondent did not include a copy of the infraction letter referred to in the chronology (page 2) nor did the submission include copies of inspection reports. The Appeal Panel felt that the submission by the Respondent did not provide clear proof that the owner was notified of the infractions prior to issuance of the Order.

20. The Appeal Panel varied the order to allow the Appellant a reasonable and practical amount of time to bring the restaurant into compliance with the outstanding Code infractions identified during the appeal. The Appeal Panel acknowledges the Appellant's kitchen exhaust system cleaning frequency of once every three months as commendable and encourages the Appellant to continue this practice.

Dated at Edmonton, Alberta this 30th day of March, 2012

Chair, Building Technical Council Appeal Panel