



Safety Codes Council

COUNCIL ORDER NO. 2023-08

BEFORE THE ADMINISTRATIVE TRIBUNAL OF THE FIRE AND BUILDING SUB-COUNCILS

(the "Tribunal")

ON DECEMBER 11, 2023

IN THE MATTER OF the *Safety Codes Act*, Revised Statutes of Alberta 2000, Chapter S-1 (the "Act");

AND IN THE MATTER OF the Order issued to the Siri Guru Nanak Sikh Gurdwara of Alberta (the "Appellants") by the City of Edmonton (the "City" or the "Respondent") on March 30, 2023, varied by the Provincial Administrator on April 17, 2023;

UPON REVIEWING AND CONSIDERING the evidence named in **The Record**, including written submissions of the Respondent; and **UPON HEARING** the testimony of the Respondent at the hearing;

IT IS HEREBY ORDERED THAT the subject of appeal is UPHELD.

Appearances, Preliminary, Evidentiary, or Procedural Matters:

1. The hearing for this matter was conducted by virtual means.
2. The Appellants did not appear for the hearing. The Tribunal confirmed with the Coordinator of Appeals that the Appellants had confirmed their appearance on October 31, 2023, in an email response to the hearing scheduling notice. This response confirmed the Appellants would be appearing on the scheduled date.
3. The Coordinator of Appeals confirmed for the Tribunal that a reminder for the hearing was sent on November 22, 2023, with the "Record", and a reminder was again sent to the Appellants with the instructions for attendance on December 5, 2023. The Tribunal also requested information regarding the scheduling history of the file. The Coordinator of Appeals confirmed that this was the third date scheduled for the hearing, as the Appellants had requested two adjournments since the application was received by the Safety Codes Council.
4. The Coordinator of Appeals also confirmed for the Tribunal that reminder emails to submit materials for the hearing were sent to the Appellants on November 20, 2023, and November 22, 2023. The Coordinator of Appeals confirmed that these reminders did not receive a reply.
5. The Tribunal requested the Coordinator of Appeals contact the Appellants to determine if they would be appearing. The Tribunal waited to start the appeal hearing for an additional 20 minutes after the time the hearing was scheduled.

6. The Tribunal decided to move forward with the hearing in the absence of the Appellants. The Tribunal decided that given that the Appellants had confirmed their attendance and had been reminded of the hearing date multiple times leading up to the hearing, that the Appellants were aware of the date of the hearing. The Tribunal also decided that given the history of the appeal being rescheduled for three different dates it would be prejudicial to the Respondent to not move forward with the hearing as scheduled.
7. At the commencement of the hearing, the Coordinator of Appeals confirmed the subject of the appeal was the varied order issued on April 17, 2023, and confirmed the names of those in attendance:
 - a. Appearing for the Respondent, the Tribunal heard from:
 - i. [REDACTED];
 - ii. [REDACTED];
 - iii. [REDACTED];
 - b. Facilitating the hearing on behalf of the Safety Codes Council:
 - i. [REDACTED], Coordinator of Appeals and Legal Counsel;
 - c. Attending as observers for the hearing:
 - i. [REDACTED];
 - ii. [REDACTED];
 - iii. [REDACTED];
 - iv. [REDACTED];
 - v. [REDACTED];
 - vi. [REDACTED];
 - vii. [REDACTED];
 - viii. [REDACTED] and [REDACTED];
 - ix. [REDACTED].
8. The Coordinator of Appeals then introduced the Chair of the Tribunal (the "Chair"), [REDACTED] and turned the hearing over to them.
9. The Chair called the hearing to order and introduced the other Tribunal members: [REDACTED], [REDACTED], [REDACTED].
10. The Respondent confirmed there were no objections to any members of the Tribunal, and that the Safety Codes Council in general and the Tribunal in particular had jurisdiction to hear and decide the appeal. The Tribunal also confirmed they had jurisdiction to hear and decide this appeal.
11. The Chair then explained the process of the hearing and advised of the list of the written material before the Tribunal, consisting of the documents listed below in The Record (see paragraph 7). The Respondent confirmed that there were no objections to any of the material submitted to the Tribunal.

The Record:

12. The Tribunal considered, or had available for reference, the following documentation:

<u>Description</u>	<u>Date</u>
<i>Notice of Appeal</i>	<i>April 5, 2023</i>
<i>Acknowledgement of Appeal Letter</i>	<i>May 8, 2023</i>
<i>Acknowledgement Letter Confirmation and Clarification</i>	<i>May 20, 2023</i>
<i>Order</i>	<i>March 30, 2023</i>
<i>Varied Order</i>	<i>April 17, 2023</i>
<i>Notification of Hearing Letter</i>	<i>October 31, 2023</i>
<i>Reminder to provide evidence sent to Appellant</i>	<i>November 20, 2023</i>
<i>Respondent’s Brief Submission</i>	<i>November 20, 2023</i>

Issue:

13. This appeal concerns an order to vacate the Siri Guru Nanak Sikh Temple, located at [REDACTED] in Edmonton, Alberta (the “Building”), and to remedy the deficiencies or restore the Building to it’s the last approved state, as the Building has numerous deficiencies related to life safety.

Positions of the Parties:

Appellant

From the Appellant’s appeal application, the Appellant’s position is summarized as follows:

14. As per the notice of appeal received by the Council on April 5, 2023 (the “Appeal Application”), it is the Appellant’s position that several of the items outlined in the Order have been resolved or are close to completion.

Respondent

From the Respondent’s submissions and testimony, the Respondent’s position is summarized as follows:

15. It is the City’s position that every effort was made to work with the Appellants, and that despite these efforts, there have been repeated and flagrant disregard of the instructions of the Safety Codes Officers. This repeated disregard is putting both occupants of the Building and first responders at risk.

16. The issues identified by the City are serious issues that directly affect life safety. The City believes they have been patient and accommodating throughout the process but the issues identified cannot be ignored or put off because of the serious, life threatening nature of the violations.

Summary of the Evidence Provided On Behalf of the Respondent:

Evidence submitted on behalf of the Respondent through the "Record":

- 17.** On May 13, 2020, the City issued a Commercial Final Permit (the "Foundation Permit") for the construction of footing and foundation for the addition to the Building. The permit was issued with the following conditions:
- (a) The permit is for the footing and foundation only, and additional permits are required before construction beyond the foundation;
 - (b) A plans examination has not been completed and the applicant [the Appellants] assumes all responsibility for errors and omissions that may impact the foundation;
 - (c) The applicant [the Appellant] assumes all responsibility if construction begins before approval by any other City of Edmonton departments;
 - (d) Tower crane erection and use requires additional permits;
 - (e) The Site shall be protected from unauthorized access at all times;
 - (f) All equipment and materials shall be stored entirely on site;
 - (g) Use of public property is "NOT" permitted [emphasis included in original];
 - (h) Safety measures at construction sites to conform to NBC 2019(AE) Div B Part 8.
- 18.** On August 5, 2020, the City issued a Commercial Final Permit (the "Framing Permit") for the construction of structural framing for the addition to the Building. The permit was issued with the following conditions:
- (a) The permit is a structural frame permit only and additional permits are required before construction beyond the frame stage;
 - (b) Safety measures at construction sites to conform to NBC 2019(AE) Div. B Part 8;
 - (c) The site shall be protected from unauthorized access at all times;
 - (d) All equipment and materials shall be stored entirely on the site;
 - (e) Use of public property is NOT permitted [emphasis included in original].
- 19.** On September 1, 2020, the City issued a Commercial Final Permit (the "Building Permit") for the construction of the addition to the Building. The permit was issued with the following conditions:
- (a) No rooms to be used for sleeping/bedrooms;
 - (b) The maximum occupant load is 280 persons;
 - (c) The permit is a building permit only and additional permits for mechanical and electrical are required before proceeding with that work;
 - (d) Safety measures at construction sites to conform to NBC 2019(AE) Div. B Part 8;
 - (e) Construction activities in an occupied building to comply with Alberta Building Code Bulletin 19-BCB-004 19-FCB-005;
 - (f) A construction fire safety plan must be approved before any construction may begin;

- (g) Signage shall be posted in a conspicuous location at the main entrance stating a maximum occupancy load of 150 people;
- (h) All means of egress and required exits must be kept clear of obstructions and all safety systems including fire suppression and fire alarm systems are fully functional during construction;
- (i) Portable fire extinguishers shall be provided and installed in conformance with NBC 2019(AE) Div. B 3.2.5.16;
- (j) Provide emergency lighting as per article NBC 2019(AE) Div B. 3.4.5;
- (k) Exit signs shall be provided at each exit as per article NBC 2019(AE) Div. B 3.4.5;
- (l) Audibility and visibility of fire alarm signal devices to comply with NBC 2019(AE) Div. B 3.2.4.18 and 3.2.4.19;
- (m) All work to conform to the barrier-free requirements as per NBC 2019(AE) 3.8 including washrooms, doors, door thresholds, curb cuts;
- (n) All penetrations through required separations (walls or ceiling/floors) by structural, mechanical or electrical components are required to be protected by fire dampers or approved fire-stopping materials;
- (o) Final inspection must be successfully completed prior to occupancy.

20. In response to discussions regarding partial occupancy, on May 17, 2023, the City issued a revised Commercial Final Permit (the "Revised Building Permit") for the construction of the addition to the "north and south" sides of the Building. The Revised Building Permit included the following conditions in addition to those conditions included in the Building Permit:

- (a) No rooms to be used for sleeping/bedrooms;
- (b) The maximum occupant load is 280 persons;
- (c) The maximum basement occupant load is limited to 100 persons;
- (d) Fire alarm verification certificate and C-Schedules must be required prior to requesting partial occupancy permits;
- (e) Revised structural drawings with engineer's permit to practice stamp on plans must be submitted to an examiner for review prior to requesting final building inspection.

21. [REDACTED] Fire Safety Codes Officer for the City of Edmonton ([REDACTED]), attended the Appellant's construction site on November 30, 2021. In an email following the visit, [REDACTED] reported that there were multiple safety infractions observed, including "blocked exits, damaged/no exit/emergency lighting, obvious signs the commercial kitchen is being used with no suppression system, expired fire extinguishers, lack of fire detection devices throughout the basement/kitchen areas, large holes in the boiler room fire separation..". His notes to the file also report the north addition foundation was built at an increased size than what was approved, and the foundation blocked both exit doors at the north end of the Building. [REDACTED] was unable to confirm at this time whether the fire alarm system was functional because he was asked to leave the Building by [REDACTED] ([REDACTED]), a representative of the Appellant.

22. A formal inspection was scheduled for December 1, 2021. Following this inspection, [REDACTED] issued a Fire Prevention Inspection Report (the "First Inspection Report"), which documented the following deficiencies and required actions:

- (a) Fire alarm system is non-operational and not extended into the south addition;
- (b) Exit signage missing in the south addition and basement areas;
- (c) Remove all "kick down" door hold open devices on exit stair doors. Exit doors must remain shut at all times;
- (d) Repair fire doors to close and latch automatically. Ensure all exit stair doors, mechanical room doors, storage room doors, laundry room doors all have self closing and latching hardware;
- (e) Emergency lighting and power battery pack unit missing;
- (f) Fire extinguishers throughout building expired and require serviced;
- (g) Install fire extinguishers throughout the south addition;
- (h) No key box for the fire department installed;
- (i) Breaks in fire separations in basement floor walls, ceilings in washrooms, storage areas under exit stairwells, must be installed;
- (j) Required fire separation door missing from storage rooms, mechanical/electrical spaces, and elevator machine room;
- (k) Exit egress in south west exit stairwell blocked by storage of combustible material;
- (l) North exit stairs from the basement are obstructed and not-operational. Exit signage must be removed above these doors, and exit signage at main floor level must be installed;
- (m) The occupant load for the main floor is restricted to 60 persons until both of the two south exit stairs of the addition are completed with proper emergency lighting, exit lighting, and self-closing and latching hardware on all exit stairwell doors;
- (n) The occupant load for the basement is revoked due to compromised exiting, non-operational fire alarm system, incomplete fire separations, and no exit or emergency lighting. Basement occupancy is only permitted for construction to repair these deficiencies;
- (o) Basement kitchen may not be used until a fire extinguishing system is installed with an exhaust hood system and occupancy of the basement has been re-instated;
- (p) A fire safety plan for the building and ongoing construction activities throughout the building must be submitted for review and approval;
- (q) Evidence of sleeping occurring in the Building, including beds and bedding present during inspection, contrary to the Building Permit;
- (r) Outstanding permits are associated with the property; and
- (s) Keys to all areas of the building must be available for inspection. Priest rooms were locked,

and keys were not provided.

23. The First Inspection report also states that reinspection will be made on or about December 23, 2021.

24. On December 9, 2021, the City issued an order to the Appellants (the "First Order") requiring the following:

- (a) Cease occupancy immediately;
- (b) Complete final inspections and obtain occupancy approval for the additions;
- (c) Ensure no rooms are used for sleeping or as bedrooms;
- (d) Correct all building code deficiencies;
- (e) Install life safety systems in the north and south additions and the basement and ensure they have been tested, inspected, and are operational;
- (f) Install exterior guards and handrails on the north exterior stairs;
- (g) Install exit doors on the north exit stairwells on the basement level;
- (h) Submit revised plans for review and approval for all building deviations from the original design under the original permit; and
- (i) Submit documentation on the flame spread rating of the wood paneling finishes installed in the south addition exit stairwell.

25. The First Order included a deadline to comply of January 18, 2022. On January 20, 2022, the City inspected the property with the architect and [REDACTED] a representative of the Appellant. Notes on the file provided by Building Safety Codes Officer [REDACTED] ([REDACTED]) record that updated drawings were still required, fire separations in the north addition remained incomplete, exit doors to the exterior of the north end of the building were still required, panic hardware on exit doors was still missing, as were rated exit doors, exit door self-closers, and information for cabinet and finishes in the south exit stairwells regarding flame spread and smoke devices.

26. On August 10, 2022, the City's file has an email from [REDACTED] requesting a time to do a walk through on August 23, 24, or 25, as the updated drawings requested during the previous two walk throughs had not yet been submitted, the conditions of the Order had not been met, and there had been an order to vacate. Response was not received from the Appellant until August 29, 2022, stating that they could do a walk through at the end of September. No evidence was presented of follow up until October 9, 2022, again requesting a time for a walk through, and then again on November 15, 2022, wherein another request was made to conduct a walk through.

27. Notes from [REDACTED] and HVAC Safety Codes Officer [REDACTED] ([REDACTED]) from the site visit that occurred on December 21, 2022, indicate multiple infractions, including:

- (a) Basement kitchen area was in use during the site visit despite the order to cease use and vacate present in the First Order;
- (b) A number of openings in the floor fire separation between basement and main level and in the storage rooms;
- (c) The constructed building did not match the approved drawings;

- (d) Exit door between the garage and the exit stairwell had been closed off;
- (e) Elevator mechanical room opens into the exit stairwell;
- (f) Shelves were present in exits;
- (g) North exits were carpeted;
- (h) Wood wall panelling was installed in south exits;
- (i) Bathroom in the south addition included body and facewash, suggesting some living activity, despite order for no sleeping or living conditions of the Building Permit;
- (j) Built HVAC did not match the approved drawings, including the air ductwork, exhaust system, and the missing installation of the second floor HRV and exhaust fan which were included in the approved drawings;
- (k) No permit was obtained for central basement area despite its development;
- (l) No ventilation in central basement assembly area;
- (m) Kitchen exhaust does not meet required clearances and the black iron duct does not slope back into the canopy as required under the NFPA 96 standard;
- (n) Kitchen shaft is incomplete despite the kitchen area being occupied;
- (o) Exhaust fan is missing hinges and a grease receptacle and is not interlocked;
- (p) kitchen shaft was not vented to the exterior;
- (q) kitchen storage area did not have heating or air ventilation;
- (r) stairwell did not have heat;
- (s) basement washrooms were not constructed as per the drawings;
- (t) air and fire damper access missing in the library;
- (u) combustion air to the boiler room obstructed; and
- (v) A poster advertising a winter children's camp to occur in the Building on December 26 through December 30th, 2022, despite the vacancy order, was posted on the wall.

28. Notes from the City file report another site visit on January 11, 2023, where more work was being done on the north addition with nothing in place to prevent public access to the construction area, contrary to NBC Alberta 2019 Edition Division B section 8.2.1. Eighteen vehicles were in the parking lot despite only two workers being present.

29. The City file includes notes from another site visit conducted on March 3, 2023, conducted by [REDACTED] and Director [REDACTED] ([REDACTED]). Notes indicate that access to the building for the public remained through the construction site on the north addition, which was still missing guards and handrails on the stairs and floor area despite being ordered to install them in the First Order. The priests' rooms were open and there were four beds visible in one room and one bed visible in another, all of which were made up. Additionally, many stairwell exit doors were propped open. The kitchen was not being used at the time, but did have signs of still being in use, including dishes and ingredients being out on the counters, sinks, and tables in the cooking area.

- 30.** The City provided notes from a site visit conducted on March 14, 2023, which state that there was no change to the issues and deficiencies noted previously, that the rooms were being used as sleeping quarters, and there were signs the basement was still being used. Additional work was also observed throughout the building that did not have a permit. Finally, the public was observed still accessing the building through the construction area of the north addition.
- 31.** On March 30, 2023, the City's records document a further site visit. City representatives attended site with [REDACTED] from Community Services Social Development, [REDACTED] from the Multicultural Relations Office with Citizen Services, and [REDACTED] who provided interpretation services. During this visit, a "Do not enter" notice was posted on the north entry doors and the south east entrance, including notices printed in Punjabi. A copy of the Second Order (defined below) was left with a priest with the number for [REDACTED] the City Quality Management Plan manager. A copy of the Second Order was also sent by email to four representatives of the Appellants with whom email correspondence had occurred throughout the process.
- 32.** The City issued a second order on March 30, 2023, (the "Second Order") to the Appellants. The Second Order is the basis of this Appeal. The Second Order requirements include the following:
- (a) Cease use and vacate the use of the Building, secure the property from public access and board and secure all openings into the building per Division B National Building Code 2019 Alberta Edition; AND
 - (b) Obtain required permits for the work completed and restore the building to a safe condition, in conformance with the requirements of the minimum building and fire code requirements, ensure mandatory permit inspections are satisfactorily completed and obtain approvals from the Authority Having Jurisdiction prior to allowing any public access to the building;
 - (c) Submit copies of the Field Reviews conducted by all registered professionals;
 - (d) Submit copies of the field reviews conducted by all registered professionals of record including associated and current professional schedules; OR
 - (e) Obtain permits to remove the building additions and restore the property to the last permitted state on record that was approved by the Authority Having Jurisdiction. Ensure mandatory permit inspections are satisfactorily completed and obtain approvals from the Authority Having Jurisdiction prior to allowing any public access to the Building.
- 33.** On March 31, 2023, the City returned to the Building. The notices to not enter the building had been removed from the north doors. Safety Codes Officer [REDACTED] ([REDACTED]) had a discussion with [REDACTED] inside the building, who stated that the occupants will not leave the building, that the Second Order was fabricated and that there are viable options to consider that would not require them to leave. The Appellant's representative, [REDACTED] stated the Board of the Gurdwara had not received the First Order. He explained that people volunteer to do parts of the construction work. The [REDACTED] told the City that the Appellants would get a lawyer because there were legal issues and that they would not leave.
- 34.** On April 1 and 2, 2023, the City again returned to the Building. On each day, photos show the parking lot full of vehicles. April 1 had a small crowd, with the parking lot approximately fifteen percent full,

and on April 2 the parking lot was completely full, and multiple people were seen entering the Building.

35. On April 6, 2023, █████ notes in the City file state that all notices had been removed from the doors, and that people were observed entering and exiting the building. The City re-posted the signs, in English and Punjabi, to not enter.
36. █████ returned to the Building on April 15, 2023. The notes in the file state that on this day multiple people were seen entering the Building through the construction area of the north addition.
37. █████ again returned to the Building on April 16, 2023, at which time his notes state that there were between twenty-five and thirty vehicles in the parking lot, and people were seen entering the building again through the construction area and through the far side doors. █████ notes indicate a ceremony appeared to be taking place, and approximately fifteen people were watching the ceremony from the north addition floor area and the parking lot.
38. The Second Order was varied by the Provincial Administrator on April 17, 2023 (the “Varied Second Order”), granting the Appellants twenty-one days from the date of the Varied Second Order, to comply with the requirements of the Second Order to submit field reviews conducted by all registered professionals of record or to obtain permits to remove the building additions. All other requirements in the Second Order are applicable.
39. Notes in the City of Edmonton file from April 19, 2023, written by █████ report that fencing was installed at the north end of the building, but was set up to allow access to the north addition and the doors at the north end of the Building. Fencing directs people to the north doors of the Building but keeps them away from the floor area edges. Other fencing around the addition was erected, but open, not preventing access. Handrails were installed on both sets of stairs in the north addition.
40. On May 4, 2023, the City and the Appellants entered into a Court of King’s Bench consent order (the “Consent Order”). In the Consent Order, the parties agreed to the following:
 - (a) The Appellants are directed to comply with the Second Order;
 - (b) Specifically, the Appellants shall vacate and secure the Building until the conditions set out in the Second Order have been complied with, to the satisfaction of a safety codes officer, or the Second Order is varied by the Safety Codes Council through appeal to remove the vacating requirement, or it is otherwise ordered by the Court of King’s Bench;
 - (c) The Appellants are specifically restrained from hindering or interfering from the enforcement of the Second Order;
 - (d) In the event the Appellants do not comply with the Second Order, the City is authorized to take all steps reasonably necessary to remove and exclude persons found in the Building or on the premises, to secure the Building against unauthorized entry, to ensure no persons re-enter the Premises including contracting or providing security services, and otherwise ensure compliance with the Second Order or the Consent Order; and
 - (e) Edmonton Police Service is authorized to assist in the enforcement of the Consent Order and may use reasonable force where necessary.

- 41.** As part of the Consent Order, the parties also entered into a memorandum of understanding on May 4, 2023 (the “Memorandum of Understanding”). In the Memorandum of Understanding, the parties agreed as follows:
- (a) The Consent Order does not nullify the Second Order;
 - (b) The Consent Order will not be entered with the Court Registry so long as the following deadlines are observed by the Appellants;
 - i. The fire safety plan must be submitted by May 12, 2023 at 12:00pm;
 - ii. If the fire safety plan is deficient, the City will provide written notice and the Appellants shall have five business days to re-submit an amended fire safety plan;
 - iii. All requirements of the approved fire safety plan shall be implemented by the Appellants within one week of obtaining approval from the City, and the Appellants shall provide notice to the City of implementation so inspection may occur;
 - iv. Any issues of non-compliance with the fire safety plan shall be rectified within seventy-two hours of identification.
 - (c) The fire safety plan shall be complied with until either (a) construction is complete and occupancy permits are granted, or (b) the City directs it is no longer needed, or (c) the Safety Codes Council directs that it is no longer needed; and
 - (d) Should the Consent Order come into force, the City shall allow for a priest to remain on-premises to accompany the Holy Scripture until such time as it can be moved to a new location. The Appellants agree to take the necessary steps to relocate the Holy Scripture as soon as is practicable.
- 42.** The Appellants provided a fire safety plan and a fire safety plan construction amendment to the City on May 16, 2023. The plan states it was approved by Edmonton Fire Services on May 12, 2023.
- 43.** City records include an email from June 16, 2023 from [REDACTED], Senior Fire Protection Engineer for the City (“[REDACTED]”), informed the Appellants that there were five deficiencies noted during the City’s inspection, primarily related to documentation, which included a need for the development of a building emergency organization, updating the contact information in the fire safety plan to be accurate and direct telephone numbers, formal identification of anyone providing a role under the fire safety plan and training taken documented, log books for maintenance activities needs to be maintained, records relating to fire drills need to be maintained, fire wardens need to be identified and trained, and emergency procedures need to be prominently posted throughout the building.
- 44.** Inspection notes from July 18, 2023, for the HVAC inspection indicate that the outcome was sufficient. The kitchen make-up air duct was installed and covered, the kitchen exhaust duct was wrapped with a double layer of 3M fire wrap, and access doors had been installed at each level.
- 45.** In response to an application for partial occupancy, [REDACTED] conducted an inspection on August 24, 2023, for partial occupancy. Notes indicate that missing panic hardware on doors in the exit stairwells

were missing, smoke alarms were located too close to walls in a number of rooms, only one set of emergency lighting in three-story stairwells, the door on the main level of the south addition did not seal properly when closed and had gaps between the door and frame, and finally there were missing heat detectors that were on the approved plans.

46. [REDACTED] HVAC inspection notes from this same date, August 24, 2023, indicate there was no ventilation in the basement library, the washroom exhaust in the basement was not operational, dryers were not shown on drawings and did not have a dryer vent that could be located.
47. Electrical partial occupancy inspection notes from August 24, 2023, lists 22 deficiencies, including:
 - (a) Wires and cables in boiler room and electrical room hanging and cables in the walk-in cooler need to be strapped and permanently fastened;
 - (b) Ceiling heater in both washrooms and storage room require service disconnect;
 - (c) Plugs within 1.5 meters of slop sink and kitchen sinks require GFCI protection CEC 26-700;
 - (d) Electrical wire #8/3 NMD under sink in kitchen cannot be run in conduit, must be wet rated;
 - (e) Fire alarm cable in kitchen to be run in conduit;
 - (f) Fire alarm cable for the storage room needs to enter conduit through an approved box and connector;
 - (g) Wires to the heater in the garage need to terminate in a junction box;
 - (h) All cables for future parking lot lights need to terminate into a junction box;
 - (i) The disconnect for the walk-in cooler is not accessible as it is located directly behind the fan;
 - (j) Exterior lights need to be installed or covered; and
 - (k) All panels must be properly labelled.
48. Plumbing partial occupancy notes from August 24, 2023, written by plumbing safety codes officer [REDACTED], also indicate multiple deficiencies. Most of the deficiencies do not go to life-safety but the listed deficiencies includes: the need to cap the open water outlet by the hot water tank, venting on interceptors of sinks and dishwasher drain tied below the flood level rim of the sink, and back grading from two-compartment sink drain with an interceptor that appeared to not have flow control. The notes also indicate that the white PEX lines in the washrooms and garage need verification that they are rated for heating and the heating lines to the fan coil need to be insulated.
49. Partial occupancy was not granted following the inspections from August 24, 2023.
50. The City's file includes notes and photos from [REDACTED] visit to the Building on September 13, 2023. These notes indicate that the construction fence on the north side was open in two locations. [REDACTED] observed persons entering the Building through the construction zone.
51. The City issued a commercial combination gas permit to the Appellants on September 22, 2023, for the addition of gas lines to the north and south side of the Building.

52. Notes in the City file record a site visit again on September 27, 2023, by [REDACTED] and [REDACTED]. These notes indicate that there were over thirty vehicles in the parking lot, the construction fencing to prevent public access along the north side of the Building had been removed, the north doors were unlocked, and the basement level was occupied by several people and the kitchen was in use. [REDACTED] notes indicate at least three people entering the Building through the construction zone.
53. Inspections occurred again on October 5, 2023, to assess the possibility of partial occupancy. City notes record the inspection being conducted by [REDACTED] [REDACTED] for HVAC, [REDACTED] and [REDACTED] for plumbing and gas, Elvin for electrical, [REDACTED] [REDACTED] and [REDACTED] from the City, and the architect and [REDACTED] [REDACTED] notes state that the fencing around the north addition construction area was gone except for a couple panels blocking the doorways. Following the inspection, electrical and HVAC indicated that their inspections were sufficient to grant partial occupancy, although there were still deficiencies that needed to be fixed. Building, plumbing and gas inspections were not sufficient to grant partial occupancy.
54. Inspection notes from [REDACTED] for the October 5, 2023, inspection state that the items noted from the August 24, 2023, inspection had been corrected. However, there were four additional deficiencies, namely:
- (a) Power operator for barrier-free entry door required;
 - (b) Directional exit signs in both exit stairwells were required in the main lobby;
 - (c) Exit stairwell doors from lobby had wrong swing direction, did not match approved plans; and
 - (d) Missing panic hardware on the exit stairwell doors in the lobby.
55. Finally, on November 7, 2023, the City received a notification from the Edmonton Fire Department that the Building fire alarm system had been deactivated. Fire Safety Codes Officer Captain [REDACTED] [REDACTED] and Senior Fire Protection Engineer [REDACTED] [REDACTED] attended the Building to follow up on this notification. During this visit, [REDACTED] and [REDACTED] noted numerous deficiencies in the Appellant's adherence to the approved fire safety plan. Specifics of these deficiencies are not included in the City's notes.
56. As of the date of this appeal, partial occupancy has not been granted to the Appellants.

Evidence made on behalf of [REDACTED]

57. The order was issued to the Appellants in response to concerns regarding life safety. Specifically, there were failures to maintain safe conditions during construction and use of the building contrary to the purposes specified in the granted permit.
58. The description of the Building Permit included specifically that no rooms were to be used for sleeping or as bedrooms. In response to a question from the Tribunal, [REDACTED] agreed that in their inspections the City had not witnessed anyone actually sleeping, however the beds were consistently made and in discussions with the Appellants the City was informed that the site needed to be attended twenty-four hours per day so the Holy Book was always protected, so it is an inference that has been made by the City.
59. The Foundation Permit was issued in May 2020, the Framing Permit in August 2020, and the Building

Permit in September 2020. The final commercial permit was not issued until May 17, 2023, and the Gas Permit was not issued until September 2, 2023. All permits were issued with the conditions that the site shall be protected from occupancy at all times, deviation from approved drawings are allowed only by written approval, and such deviations must comply with the National Building Code and associated regulations.

60. The Final Commercial Permit included the condition that construction activities must comply with the Alberta PCP-004 Bulletin, and that a fire safety plan must be approved before construction could begin.
61. The First Order was provided to the Appellants by placing the First Order in the mailbox of the Building, as instructed to do after speaking with [REDACTED] and was delivered to the architectural firm listed as the applicant on the Building Permit. The First Order included an order to cease occupancy, to stop using the north and south additions immediately, and that no rooms were to be used for sleeping or as bedrooms. These conditions were also discussed with the architect and [REDACTED].
62. When the City returned on January 20, 2022, representatives completed an inspection with [REDACTED] and the architects. At this time, City representatives informed [REDACTED] and the architects that the City still needed to be provided updated drawings.
63. The City did not return to the Building until December 21, 2022. The architect and [REDACTED] were present for this inspection as well. The basement kitchen area was in use at this time and the main basement area had been finished, the washrooms at the north end were operational as well. No additional work had been done to the south addition. During this inspection, HVAC SCO [REDACTED] noted many infractions, including that there was no ventilation in the basement where the kitchen was being used and that they were unable to identify where supply air was coming from on the second floor of the Building.
64. The site visit on January 11, 2023, was only a visit for the exterior. There was no protection to keep the public from the construction area.
65. The site visit on March 3, 2023, still had public access to the Building through the north construction area and exit stairwell doors propped open throughout the inspection, again leaving nothing to prevent the public from accessing the construction area. This inspection also showed signs that the kitchen was still being used and that the exhaust shaft from the kitchen into one of the rooms above had not been completed.
66. Due to the significant number of issues with deviation from the plans in what was being built, the plans examiner, [REDACTED], who approved the plans, attended a walk through of the Building on March 14, 2023.
67. Finally, on March 30, 2023, the City delivered the Second Order to the Appellants. The City brought with them a representative from the multicultural relations office and an interpreter when the Second Order was served. At the time, there was no representative from the Board, so a copy of the Second Order was left with a priest, posted on the two entry doors of the north addition, and emailed the Second Order to [REDACTED], [REDACTED], [REDACTED] and [REDACTED], other representatives from the Board. They also spoke with the architect during this visit.
68. The Second Order was issued due to the concerns for public safety and the responsibilities of the

owners and professionals involved that were not being upheld.

69. In each walk through, concerns with public safety were emphasized repeatedly with the Appellant's representatives. In response to a question from the Tribunal as to whether the board was contacted, [REDACTED] confirmed that there was a meeting with the Appellant's board members with [REDACTED] and [REDACTED] in March, and that board members were present during at least one of the walk throughs. However, it is [REDACTED] understanding that a number of the board members do not understand English, which is why most communication was with [REDACTED] or the architect. Despite this, [REDACTED] expressed that he is reasonably confident that the board understood the contents of the Second Order.

Summary of the Evidence Provided On Behalf of the Appellant:

Evidence submitted on behalf of the Appellant through the Appeal Application:

70. The Appellants did not appear for the appeal hearing, therefore the submissions the Tribunal can consider are set out in the appeal application itself, submitted on April 5, 2023 (the "Appeal Application"). No evidence was provided to support the statements in the Appeal Application, however, as this is the only available record to put forward the Appellant's position, the Tribunal did consider these statements.
71. The Appellants state in the Appeal Application that the basis of the appeal is that "many items outlined in the order as infractions have been resolved or are very close to completion."
72. The Appellants list the following items that have been addressed:
- (a) A 60-minute wall and a 45-minute door with closure added to separate the elevator and the exit stairwell;
 - (b) Storage has been removed from stairwells;
 - (c) A 60-minute wall was added to separate the electrical room under the stairs and to create a clear means to the stairwell, and a 45-minute door was cut into the existing wall;
 - (d) Garage entrance was removed and replaced with a 1.5-hour rated wall;
 - (e) The woodworking in all stairwells was treated with intumescent paint to give it a 15-minute flame spread rating;
 - (f) Bars were added across a window; and
 - (g) Beds were removed from the priest offices.
73. In the Appeal Application, the Appellants also state that an expert from Bolson Engineering summarized the condition of the Building as follows:
- (a) Ongoing construction of the north addition;
 - (b) South addition is substantially completed;
 - (c) Exit signage and life safety systems are operational;
 - (d) There is direct egress from all floors;

- (e) Stairwells are fire rated with a minimum of 90-minute door systems;
- (f) Fire alarm system verification is done;
- (g) Storage of materials was not observed in inappropriate areas; and
- (h) Key box for the fire alarm system is installed.

74. The Bolson Engineering summary was not provided to the Tribunal for consideration.

75. In the Appeal Application, the Appellants also state that, despite moving beds out of the priests' offices, there will be priests overnight. The Appellants assert in the Appeal Application that no one sleeps in the Building.

Findings of Fact:

The Tribunal makes the following findings:

76. The Tribunal has considered the submitted evidence and testimony from the City. The evidence provided is thorough and includes photos of the deficiencies to corroborate the notes, reports, and orders of the City. The Tribunal found [REDACTED] to be a credible witness. He demonstrated a comprehensive understanding of the situation, the steps taken by the City, and answered the questions of the Tribunal in a forthright manner.

77. In the absence of any evidence to support the claims of the Appellant or to refute the evidence of the City, the Tribunal finds no reason not to find the facts as presented by the City credible.

78. The Tribunal finds that the Appellant has begun and continued construction activities that have deviated significantly from the approved plans, has failed consistently to protect the life and safety of the public through failing to block the construction area from public access, and has continually disregarded and ignored the warnings, concerns, and orders issued by the City regarding the deficiencies in the construction.

79. The Tribunal also finds that the City has provided ample opportunity for the Appellant to remedy the situation, have gone beyond what is required to accommodate the concerns of the Appellant regarding the Holy Book as demonstrated by the Memorandum of Understanding signed by the parties, and has provided significant support in assisting the Appellant with understanding what is required and how the deficiencies can be addressed.

Analysis:

80. On an appeal such as this, the powers of the Tribunal are set out in subsection 52(2) of the *Act*, the relevant excerpt is reproduced as follows:

52(2) The Council may by order (a) confirm, revoke or vary an order, suspension or cancellation appealed to it and as a term of its order may issue a written variance with respect to any thing, process or activity related to the subject-matter of the order if in its opinion the variance provides approximately equivalent or greater safety performance with respect to persons and property as that provided for by this Act...

81. The Appellants have not denied the findings of the City. Rather, the basis of their appeal is that they have remedied some of the issues identified.
82. This appeal must fail on two fronts. The first is that the evidence before the Tribunal indicates that while some deficiencies have been remedied, the issues related to life safety have, overall, persisted. The second is that finding in favour of the Appellants because they complied *eventually* undermines the integrity of the safety codes system.
83. The City provided the Tribunal with extensive records demonstrating multiple opportunities over three years for the Appellants to address deficiencies, to provide documentation, and to bring the Building and their behaviour into compliance. The City's records demonstrate that the City has made attempts to work with the Appellants, that they have had discussions about minor deficiencies that could be looked past to achieve partial occupancy, and that the Appellant has not responded with equal effort. The Varied Second Order appears to be reasonable and does not include requirements that would be difficult for the Appellants to achieve compliance.
84. The Appellants have chosen to undertake significant construction work which requires permits. In choosing to undertake construction activities there is an implicit agreement to comply with the codes that apply to that work. When a permit is applied for and granted, with conditions, and work commences under that permit rather than requesting reconsideration of the imposed conditions, there is implicit agreement to comply with the conditions imposed. The Appellants have undertaken significant work on the Building knowing the conditions that apply to the work being done, and have chosen to not follow to those conditions, therefore making the work invalid and their behaviour illegal.
85. The Appellants, in the Appeal Application, assert that most of the deficiencies have been remedied or are almost complete. However, compelling evidence from the City, including photos and detailed notes from multiple representatives, indicate that the main concerns regarding public safety – namely preventing public access to the construction areas has been consistently neglected; fire safety systems have been insufficient, and once regarded as sufficient, were disconnected; and continuing to use the space and hold events despite being ordered to cease occupancy due to life safety concerns.
86. There has been no indication from the Appellants in their dealings with the City nor in the Appeal Application that they did not understand the requirements of the permits or the orders. The City brought culture representatives and interpreters to ensure that the Appellants knew the contents of the Second Order and what was required of them. There is no evidence before the Tribunal that the Appellants were unaware of what was required of them under the permits, inspections and orders they received.
87. Since the Building Permit was issued on September 1, 2020, the Appellants have been aware that sleeping was not permitted during construction. Since the Building Permit was issued, the Appellants have been warned no fewer than six times that sleeping was not permitted, and yet evidence indicates the Building has been used for sleeping consistently since September 1, 2020. This is not only a direct violation, but also a significant risk to life safety.
88. Since the First Inspection Report was issued on December 1, 2021, the Appellants have been aware that the kitchen was not to be used until deficiencies were remedied and have been reminded no

fewer than five times that the space was not to be occupied, including use of the kitchen, and yet evidence indicates that the kitchen has been consistently used and occupied since December 1, 2021. Again, this is not only a direct violation, but also a significant risk to safety.

- 89.** Since the First Order was issued on December 9, 2021, the Appellants have been aware that there is no occupancy permitted except for those undertaking construction work to address deficiencies allowed in the Building. The Appellants were also warned and reminded of this no fewer than five times since the First Order was issued, including an issuance of the Second Order, the issuance of the Varied Second Order, and at least two occasions of “No Entry” signs being posted on the Building. Despite this, evidence indicates the Appellants have continued keep the Building open to the public for general public use, ceremonies, and events including a children’s camp. This is not only a direct violation of the permits and orders received but also repeated instances of the Appellants subjecting the public to risks to life safety.
- 90.** Since the First Inspection on December 1, 2021, the Appellants have been aware that the fire safety requirements, including lighting, panic hardware, an operational fire alarm system, and a fire safety plan, have been deficient, and as such, occupancy was not allowed. Since this date, these deficiencies have been recorded and brought to the attention of the Appellants no fewer than four times since the First Inspection. Despite this, evidence indicates the Appellants have continued to keep the Building open to the public for general use, ceremonies, and events. Once the fire alarm system was installed and working, almost two years after the First Inspection, the system was then disconnected. Again, the actions of the Appellants are not only direct violation of the orders received but also repeated instances of the Appellants subjecting the public to risks of life safety.
- 91.** The Appellants have appealed the Varied Second Order to this Tribunal on the grounds that the work required is complete or close to completion. The Tribunal finds that this is not the case. While some work may have been done, the major issues identified regarding life safety persist. Thus, the grounds upon which the Appellants have made this application have not been proven, and the appeal must fail.
- 92.** The Appellants’ ground for the appeal, in addition to not being proven, indicate a disregard for the authority of the safety codes offices and the safety system. The City has exercised its’ obligation to ensure that the construction of buildings within its jurisdiction are built properly and safely. This is a fundamental role the City plays to ensure that the public is safe and can feel safe in their city. The City has successfully shown that there have been major concerns regarding life safety that have continued for years, in contravention of the approved permits and designs and in contravention of issued orders. Requirements to remedy the deficiencies and to vacate until those deficiencies had been addressed were valid and necessary, and the deadlines upon which to comply were fair. The Varied Second Order gave appropriate time to take the ordered steps. The date of this hearing was more than seven months after the deadline to comply included in the Varied Second Order.
- 93.** If this Tribunal were to find the Appellants successful because, by the date of the Hearing, the Appellants had started to comply with the Varied Second Order, this would undermine the safety system. The power to issue orders, and for those orders to be complied with by the imposed deadline, is necessary to preserve the integrity of the public safety system. If the Appellants could avoid consequence by complying at their convenience all incentive to comply within the deadlines in the order is lost. This not only undermines the authority of the City and the Safety Codes Officers, but also

undermines the public benefit of having a system they can rely on to ensure that they live, work, and play in a safe environment.

94. The Varied Second Order is reasonable. The City has focused on life safety only, and the issues identified to remedy these very real concerns, are not vastly insurmountable. The City has been thorough and they have attempted to work with the Appellants throughout the process. The City has accommodated the Appellants to a level that goes above and beyond what is required of them. But the City also has an obligation to its residents to ensure that the buildings they may enter are safe. And it is for this second reason that the appeal must fail.

95. The Varied Second Order is upheld. The Appellants shall:

- (a) On or before February 11, 2024, cease use and vacate the Building, secure the property from public access and board and secure all openings into the building per Division B National Building Code – 2019 Alberta Edition; and
- (b) Within 21 days of this decision, obtain required permits for the work completed and restore the building to a safe condition, in conformance with the requirements of the minimum building and fire code requirements, ensure mandatory permit inspections are satisfactorily completed and obtain Authority Having Jurisdiction approvals prior to allowing any public access to the building and submit copies of the field reviews conducted by all registered Professionals of Record including associated and current professional schedules; OR
- (c) Within 21 days of this decision, obtain permits to remove the building additions and restore the property to the last permitted state on record that was approved by the Authority Having Jurisdiction. The Appellants shall ensure mandatory permit inspections are satisfactorily completed and obtain Authority Having Jurisdiction approvals prior to allowing any public access to the Building.

Signed at the City of Edmonton)
in the Province of Alberta)
this 7th day of February, 2024)

[Redacted Signature]
Chair, Fire Sub-Council
Administrative Tribunal