

Massachusetts State Building Code Update: 9th Edition Anticipated to be Issued without Concurrency Period

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The Massachusetts State Board of Building Regulations and Standards (the "State Board") has announced that it expects to issue the 9th Edition of the Massachusetts State Building Code in the first half of 2016, which will take effect upon publication in the State Register, without the benefit of the "concurrency" period which has been a feature of the transition to prior editions of the Code.

The new edition will incorporate the 2015 Editions of the International Building Code, the International Existing Building Code, the International Energy Conservation Code, and, by reference, the International Fire Code and International Mechanical Code, all with Massachusetts amendments. The 8th Edition of the Code, originally adopted in 2010, is based on the 2009 versions of the same international codes but was amended since its original adoption to incorporate the 2012 International Energy Conservation Code.

A draft of the 9th Edition was approved by the State Board last June. A revised draft is expected to be approved shortly, and will be followed by a 60-day public comment period and additional public hearings and governmental review over the next several months, with the current expectation that the 9th Edition will become effective in the first half of 2016.

It is important to note that, unlike the process for adoption of prior versions of the State Building Code, the 9th Edition is not anticipated to have a six-month concurrency period during which developers could choose to proceed under the new or previous version of the State Building Code. Therefore, the 9th Edition will become effective upon publication by the Secretary of the Commonwealth in the State Register. However, a building code application filed before the effective date of the 9th Edition will continue to be governed by the 8th Edition, as long as the building permit application is diligently prosecuted. The building official then has all time periods normally associated with plan review and approval following the filing of a permit application.

With this in mind, developers, owners, designers, contractors, architects and engineers should familiarize themselves with the draft 9th Edition of the State Building Code, so that permit applications for projects which only conform to the 8th Edition of the State Building Code can be submitted before the effective date of the 9th Edition and then diligently prosecuted, and so that permit applications for projects submitted after the effective date of the 9th Edition can be appropriately designed.

In municipalities in which the "Stretch Energy Code" has been adopted, the proposed draft of the 9th Edition requires that new structures over 100,000 sq. ft. and new supermarkets, laboratories and conditioned warehouses over 40,000 sq. ft. demonstrate energy use per square foot at least 10% below the energy requirements of the 2013 ANSI/ASHRAE/IESNA 90.1, Appendix G, Performance Rating Method, on either a site or source energy basis. Under the 8th Edition, these structures are required to demonstrate energy use at least 20% below the 2007 ASHRAE/IESNA Standard 90.1, Appendix G. The reduction in percentage from 20% to 10% reflects an increase in the stringency of the "base" standard from 2007 to 2013.

Goulston & Storrs will continue to monitor the status of the 9th Edition of the State Building Code as it makes its way through the approval process, as well as future updates to the State Building Code whose energy provisions are required by statute to be updated within one year of revisions to the International Energy Conservation Code. For questions about the 9th Edition of the State Building Code, we encourage you to contact your usual Goulston & Storrs attorney or one of the authors of this advisory.

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