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MEMORANDUM

**TO: All municipal code enforcement officials
All city solicitors and town counsel**

FROM: Thomas G. Gatzunis, P.E., Commissioner of Public Safety *TGG*

**CC: Beth McLaughlin, DPS Chief of Staff/General Counsel
Robert Anderson, DPS Chief of Inspections/Building
Thomas Riley, DPS Code Development Manager
Michael Guigli, DPS Technical Director**

RE: Preemption of municipal action

DATE: June 14, 2012

This memorandum is intended to bring an important court decision to your attention. The Supreme Judicial Court (Massachusetts' highest court) recently issued an opinion discussing the prohibition of municipal action relative to the State Building Code ("Code"). In the case, St. George Greek Orthodox Cathedral of Western Massachusetts, Inc. v. Fire Department of Springfield, 462 Mass. 120 (2012), the Court held that the Code preempted an ordinance enacted by the City of Springfield thus rendering it invalid. Essentially, the City of Springfield adopted an ordinance that mandated the use of a city approved radio box. The Code, however, allows the user to choose from four different types of fire protective signaling systems including the radio box. In effect, the City had limited the four choices offered by the Code to just one. Where this mandate was clearly inconsistent with the Code, the Court struck the ordinance down.

The St. George decision is important in that it clearly recognizes the legislature's intention to create a uniform, centralized State Building Code. The case stands for the proposition that any municipal dictate that is inconsistent with the Code or regulates in an area governed by the Code is impermissible. That is, a municipality may not enact any ordinance or by-law or policy that in any way governs in an area that is covered by the Code. The reason being that if a city or town were allowed to do so "a patchwork of building regulations would ensue." See St. George, supra at 130. That is not the result intended by the legislature when it established the Board of Building Regulations and Standards ("BBRS") to promulgate and oversee a uniform State Building Code. To allow individual municipalities to regulate in areas that the Code covers would be the equivalent of "sanctioning the development of different applicable building codes in each of the

Commonwealth's 351 cities and towns, precisely the result that promulgation of the code was meant to foreclose.” Id.

To the extent that a municipality determines that special conditions prevail in the city or town which the Code does not adequately address, it is not left without redress. The legislature has provided a vehicle by which a municipality can seek to have more restrictive standards imposed in its city or town than those required by the standard Code. To accomplish this a petition must be filed with the BBRS in accordance with G.L. c.143, §98. After review, the BBRS may allow the request and impose the heightened, requested standard. The staff of the BBRS and Department of Public Safety is available to offer assistance to any municipality interested in pursuing such a petition.

In light of the St. George decision, municipalities are encouraged to review any existing by-laws and ordinances to ensure that they do not in any way conflict with the State Building Code. It is particularly critical that zoning and fire by-laws and ordinances be reviewed.¹ To the extent that there is uncertainty as to whether an existing rule is inconsistent with the Code, you may contact Tom Riley (tom.riley@state.ma.us *or* (617) 826-5250) or Mike Guigli (michael.guigli@state.ma.us *or* (617) 826-5215) to aid in your review. Ultimately, as public safety and code enforcement officials it is our duty to ensure that the citizenry not be subjected to inconsistent regulations or requirements on the same subject matter.

Thank you for your attention to this issue.

¹ Though local option adoption and general enforcement of fire protection related measures by a municipality in accordance with G.L. c.148 remains permissible under the St. George decision, care must be taken to ensure that enforcement of those provisions is performed with due circumspection and discretion consistent with the limitations set forth in the plain language of the applicable statute.