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**MEMORANDUM**

**To:** Interested Parties

**From:** Commonwealth of Massachusetts, Board of Fire Prevention Regulations

**Date:** May 2, 2013

**Re:** Guidance Document Regarding the Creation of and Procedures for the Newly Created Fire Prevention Regulations Appeals Board.

Under the provisions of M.G.L. c. 30A, s.8, the Board of Fire Prevention Regulations is issuing this guidance document to assist potential appellants and local fire code enforcement officials or other interested persons, to understand the basic procedures and jurisdictional matters regarding appeals before the newly created Fire Prevention Regulations Appeals Board. For ease of use, this guidance is issued in question and answer format. The Board anticipates that future guidance documents may be issued as needed.

**1. What is the Fire Prevention Regulations Appeals Board?**

The Fire Prevention Regulations Appeals Board was recently created by statute (M.G.L. Chapter 22D, s. 5) and is made up of the members of the Board of Fire Prevention Regulations. The appeal hearings are conducted by a three-member panel selected by the Appeals Board Chairman. The Appeals Board has jurisdiction to accept appeals filed by persons aggrieved by decisions, determinations and orders issued by “any state or local official charged with the enforcement of the state fire code, relative to fire protection requirements for buildings and structures...”

**2. When will the Fire Prevention Regulations Appeals Board start conducting appeal hearings?**

The law creating the new Appeals Board takes effect on July 1, 2013. The Appeals Board will begin to hear appeals on matters which relate to determinations or decisions issued by state or local fire code officials on or after July 1, 2013.

**3. What type of matters are within the jurisdiction of the Fire Prevention Regulations Appeals Board?**

The Appeals Board’s jurisdiction is limited to appeals filed by persons aggrieved by decisions, determinations and orders issued by “. . . any state or local official charged with the enforcement of the state fire code, relative to fire protection requirements for buildings and structures...” In most cases, the official who enforces the State Fire Code is the head of the fire department or in some cases, the State Fire Marshal (or their designees as applicable). By statute, the jurisdiction of the Appeals Board is limited to those appeals relating to the provisions of the State Fire Code, 527 CMR “. . . relative to fire protection requirements for buildings and structures...” The Appeals Board anticipates that most appeals will arise out of issues of a technical nature relating to fire protection requirements of the State Fire Code.

**4. What matters are not within the jurisdiction of the Board?**

Filing an appeal to the proper appellate jurisdiction is often a time sensitive matter and care should be taken to assure that the matter is not within the jurisdiction of another appeals board or appellate procedure. Filing your appeal to the wrong board or following the wrong appellate procedure, may preclude you from exercising your legal rights. The jurisdiction of the Fire Prevention Regulations Appeals Board is limited to those matters arising out of the State Fire Code “. . . relative to fire protection requirements for buildings and structures...”

The Appeals Board **cannot or will not** exercise jurisdiction to hear appeals relating to the following matters:

- a. Matters arising out of construction or installation requirements of the State Building Code, 780 CMR (Building Code Appeals Board, M.G.L. c. 143, s. 100);
- b. Matters arising out of the enforcement of the statutory enhanced automatic sprinkler provisions of M.G.L. c. 148, sections 26A ½, 26G, 26G½, or 26H (Automatic Sprinkler Appeals Board, M.G.L. c. 6, s. 201);
- c. Matters arising out of an appeal of a determination of the municipal wiring inspector and/or involving the application of the Massachusetts Electrical Code, 527 CMR 12.00 (Board of Electrician’s Appeal, M.G.L. c. 143, s. 3L);
- d. Matters arising out the issuance of a “Non-Criminal Fire Code Violation Notice” issued under the civil enforcement provisions of M.G.L. c. 148A;
- e. Matters arising out of the enforcement of a violation of any statute, including the provisions of M.G.L. c. 148 or arising out of any Order issued by the head of the fire department or the State Fire Marshal relating to the abatement of a condition that constitutes a fire or explosion hazard or which is dangerous or unsafe or a menace to public safety (M.G.L. c. 148, s. 5; 527 CMR 1.06);

- f. Administrative matters initiated by the State Fire Marshal relating to the suspension, revocation or refusal to issue any certificate of competency or user's certificate issued by the Marshal;
- g. Matters arising out of the head of the state or local enforcement official's determination to suspend, revoke, issue or renew any permit based upon the exercise of discretionary function rather than a technical fire protection requirement of the State Fire Code; and
- h. Matters arising out of the enforcement of a city ordinance or town by law or regulation promulgated or adopted by the municipality.

**5. How are appeals filed with the Appeals Board?**

The Appeals Board has a formal application form that must be completed by the person seeking the appeal. The form must be submitted to the Appeals Board office **no later than 45 days** following the service of notice of the act, rule, order, decision requirement or directive subject to appeal. In addition to the application form, a detailed statement of the basis for the appeal, a copy of the chief's determination and an appeal application fee (\$150.00) must accompany each application. Appeals Board application forms may be obtained by calling (978) 567-3181 or on the web at [www.mass.gov/dfs](http://www.mass.gov/dfs) under the "Board of Fire Prevention Regulations" website.

**6. When will I know about the status of my appeal application?**

The Appeals Board will ordinarily schedule the time and place of the hearing to a date within sixty (60) days of the receipt of the application. If the Board rejects the appeal, the applicant should be notified within two weeks of the receipt of the application. The Appeals Board will give at least ten (10) days notice of the time and place of the hearing to the parties.

**7. What are the Appeals Board hearings like?**

The hearings before the Appeals Board are informal since the strict rules of evidence used in a court of law are not used. The hearings do require the presence of the appellant and the appropriate state or local enforcement official or designee, legal agent or attorney. Although the hearings are informal, it is important that the parties be prepared to fully and clearly present the facts and their positions at the hearing. The parties have only one chance to present their case and should be fully prepared! All plans, drawings, photographs expert findings/analysis or any other documents, information and testimony and all technical and legal arguments should be submitted and presented at the hearing to assist the Board in making its findings and determination. Every effort should be made to submit any additional evidence to the Appeals Board office (not already submitted with the appeal application) at least one week before the scheduled hearing date.