



City of Cambridge

Executive Department

YI-AN HUANG
City Manager

CMA 2026-244
IN CITY COUNCIL
September 14, 2026

To the Honorable, the City Council:

Please see attached a memo from City Solicitor, Megan Bayer in response to Awaiting Report #26-27, which requested that the City Manager direct staff to examine whether the City can enact an ordinance requiring public buildings and places of public accommodation in Cambridge with one or more single-stall restrooms to have at least one single-stall restroom with gender-neutral signage.

Very truly yours,

Yi-An Huang
City Manager



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City Solicitor

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CITY OF CAMBRIDGE

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September 14, 2026

Yi-An Huang
City Manager
Cambridge City Hall
795 Massachusetts Avenue
Cambridge, MA 02139

Re: *Awaiting Report No. 26-27 of 3/23/26, requesting that the City Manager direct staff to examine whether the City can enact an ordinance requiring public buildings and places of public accommodation in Cambridge with one or more single-stall restrooms to have at least one single-stall restroom with gender-neutral signage*

Dear Mr. Huang:

I write in response to the above-referenced City Council order, that requests that staff examine whether an ordinance can require that public buildings have at least one single-stall, gender-neutral restroom. In 2012, Cambridge adopted a city-wide policy to encourage the establishment of gender-neutral restrooms in City-owned buildings and privately-owned public use buildings, in line with the State Plumbing Code. The Plumbing Code was later amended in 2023 to facilitate the inclusion of gender-neutral restrooms.

The Law Department and Inspectional Services Department have reviewed the Plumbing Code requirements and current case law about whether state regulations related to the Plumbing Code preempt local regulations, and have determined that a City ordinance requiring gender-neutral restrooms would likely be found to be invalid and preempted by state regulations. However, the 2023 revisions to the Plumbing Code have made it easier to comply with Code requirements with gender-neutral restrooms, so businesses may voluntarily offer gender-neutral restrooms.

A. Preemption by the State Plumbing Code

The Building Code is in place to provide uniform regulations for construction statewide. Pursuant to G.L. c.143, §96, the Building Code incorporates any specialized construction codes, including the Plumbing Code.

In determining whether an ordinance is inconsistent with state law/regulations, the “question is not whether the Legislature intended to grant authority to municipalities to act...but rather whether the Legislature intended to deny [a municipality] the right to legislate on the subject [in question].” Wendell v. Attorney General, 394 Mass. 518, 524 (1985) “This intent can be either express or inferred.” St. George Greek Orthodox Cathedral of Western Massachusetts, Inc. v. Fire Dep’t of Springfield, 462 Mass. 120, 125-126 (2012). Local action is precluded in three instances, paralleling the three categories of federal preemption: (1) where the “Legislature has made an explicit indication of its intention in this respect”; (2) where “the State legislative purpose can[not] be achieved in the face of a local by-law on the same subject”; and (3) where “legislation on a subject is so comprehensive that an inference would be justified that the Legislature intended to preempt the field.” Wendell, 394 Mass. at 524.

The Legislature established the Building Code as the one state-wide building code and rejected the premise of each municipality having its own requirements. St. George, 462 Mass. at 120. “In authorizing the development of the [C]ode, the Legislature has expressly stated its intention: to ensure ‘[u]niform standards and requirements for construction and construction materials.’” St. George, 462 Mass. at 126 (citing G.L. c. 143, § 95(c).). Based on this express legislative goal of uniformity, the court found “the Legislature [had] demonstrate[d] its express intention to preempt local action.” Id. at 129.

In the St. George case, the city enacted an ordinance that allowed property owners to use 1 of 3 different fire protection systems that alerts the fire department when a fire alarm has been activated. The Building Code permitted all 3 of those fire protection systems, plus an additional 4th system that was not allowed under the ordinance. The Court found that the ordinance was in conflict with the Building Code because the ordinance prohibited the 4th type of system, and Building Code preempts local action.

Similarly, as explained below, the Plumbing Code provides multiple options for how a building can configure its restrooms. However, an ordinance that removes any of those options by mandating that only one of those options is allowed, is likely preempted by the Plumbing Code.

B. State Plumbing Code Options for Gender-Neutral Restrooms

Generally, the Plumbing Code sets the required number of restrooms using a ratio based on the occupancy of the facility. The Plumbing Code then requires that 50% of the required restrooms be designated male, and 50% female. 248 CMR 10.10(15)(c). For small establishments, it is possible to just have one restroom for all users. The updated Plumbing Code does not require buildings to provide gender-neutral restrooms. Rather, it establishes the standards for those restrooms when they are provided.

The 2023 amendments to the Plumbing Code added two sections: "Use of Unisex/Gender Neutral Toilet Rooms" and "Multi-user/Gender Neutral Toilet Rooms." 248 CMR 10.10(15)(g) and (h). The first new section allows for single-user restrooms to be designated as gender-neutral instead of male/female. It also allows for a combination of male and female restrooms, and single-user, gender-neutral restrooms. The second new section allows multi-user gender-neutral restrooms. This section requires floor-to-ceiling toilet compartment partitions with lockable doors and limits the gap at the bottom of the door to a maximum of $\frac{3}{4}$ inch. The Code also requires proper illumination, mechanical exhaust, sprinkler protection, and emergency notification devices in these restrooms. Buildings that provide gender-neutral restrooms must still comply with the minimum plumbing fixture requirements established by the Plumbing Code.

The code also requires that, in establishments other than residential occupancies, restroom facilities be clearly designated. Gender-segregated restrooms must be identified as such, while property owners or installers are otherwise free to use any terminology they deem appropriate to indicate that a restroom is available for use by all users regardless of gender.

C. Conclusion

The Council likely does not have the authority to enact an ordinance requiring gender-neutral restrooms. However, the Plumbing Code provides flexibility to buildings to configure restrooms with gender-neutral options. ISD will work to provide information to building permit applicants about the available options for gender-neutral restrooms.

Very truly yours,


Megan B. Bayer
City Solicitor