October 23, 2019

Mr. Nicholas Erickson
Regulatory Affairs Manager
Housing First Minnesota
2960 Centre Pointe Drive
Roseville, MN 55133

Dear Mr. Erickson,

This letter is in response to your request of September 23, 2019 regarding Minnesota cities that require construction of a storm shelter or safe room when building a new home. You referred to Minnesota Statute 326B.121 that states, *A municipality must not by ordinance, or through development agreement, require building code provisions regulating components or systems of any structure that are different from any provision of the State Building Code.*

Minnesota Statutes §326B.121, subd. 2(c) prohibits a municipality from adopting an ordinance or development agreement requiring building components or systems that differ from any provision of the State Building Code. This statute has been interpreted by our Supreme Court to prohibit not only municipal provisions that "differ from" the State Building Code, but also any municipal requirements that are even "merely *additional* and *complementary*" to the State Building Code. *See* City of Morris v. Sax Investments, Inc, 749 NW2d 1 (Minn. 2008)(emphasis added). *See also* Builder's Ass'n of Minnesota v. City of St. Paul, 819 NW2d 172 (Minn. Ct. App. 2012)(State Building Code preempts municipal regulations concerning building systems and components).

The Minnesota State Building Code does not require safe rooms or shelters for slab-on-grade residential construction and has specifically deleted IRC Section R323 (Storm Shelters/Safe Rooms) from the International Residential Code by way of Minnesota Amendment. *See* Minn. Rule 1309.0323 (2012). Based on the foregoing statutes, Rules, and case law, it appears that any municipal regulation which requires storm shelters or safe rooms in residential dwellings is superseded and preempted by the Minnesota State Building Code.

Sincerely,

Scott D. McLellan
Director/State Building Official

CC: Jeffrey F. Lebowski, DLI/CCLD General Counsel