



WISCONSIN INSTITUTE FOR LAW & LIBERTY, INC.
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NOTICE OF CLAIM

March 3, 2021

City of Madison, Mayor Satya Rhodes-Conway,
and the Madison Common Council
c/o Madison City Clerk
210 Martin Luther King Jr. Blvd.
Madison, WI 53703

To the City of Madison, Mayor Satya Rhodes-Conway, and the Madison Common Council:

Wisconsin Institute for Law and Liberty, Inc. (WILL) hereby notifies the City, its Mayor, and the Common Council that its new building-glass ordinance, Madison General Ordinance § 28.129, is preempted by state law and therefore unenforceable. On behalf of the claimants identified below, WILL submits this notice of claim under Wis. Stat. § 893.80.

On August 4, 2020, the Common Council passed MGO § 28.129. The ordinance provides that “all exterior construction and development activity” must meet new “bird-safe glass treatment requirements.” Madison’s new minimum standard for glass requires dots, patterns, lines, metal screens, or other features “intended to reduce the heightened risk for bird collisions with glass.” The ordinance went into effect on October 1, 2020 and applies to all buildings over 10,000 square feet, skyways, and other glass features.

Madison’s new ordinance is illegal and violates the settled expectations of builders, contractors, developers, and property owners. The ordinance, if enforced, will hinder the creation of good-paying jobs, increase housing costs and commercial rents, and drive investments away from the City of Madison.

Since 2014, Wisconsin has had a uniform commercial building code. *See* 2013 Wis. Act 270 (effective April 18, 2014). To ensure Wisconsin’s code is uniform, state law provides that no city “may enact or enforce an ordinance that establishes minimum standards for constructing, altering, or adding to” buildings unless that ordinance “strictly conforms” to the uniform building code adopted by the Department of Safety and Professional Services (DPS). *See* Wis. Stat. § 101.02(7r)(a). The

applicable administrative rules make clear that cities may not enact or enforce a local ordinance that imposes “additional or more restrictive” standards than the uniform building code. Wis. Admin. Code § SPS 361.03(5).

Wisconsin’s uniform commercial building code, Wis. Admin. Code chs. 360–366, adopts various national and international standards, including the International Building Code (IBC). The IBC, among other things, governs the quality of glass used in buildings. *See* 2015 IBC, ch. 24. The IBC imposes requirements concerning the materials, design, construction, safety, and quality of glass. Specifically, the IBC’s requirements impose requirements upon each pane of glass used in a building, including the manufacturer’s identifying mark that must appear on the glass, the framing, and the durability of the glass to wind, load, and human impact forces. The IBC also includes provisions specifying the type of glass and the type of installation required for such structures as glass railings and glass walkways. The IBC does not include any bird-safety features, and specifically does not include the requirements as outlined in MGO § 28.129.

Because the uniform commercial building code establishes minimum standards for glass, and MGO § 28.129 imposes additional and more restrictive standards for glass, the ordinance is invalid.

The names and business addresses of the claimants are as follows:

Associated Builders and Contractors of Wisconsin
5330 Wall St.
Madison, WI 53718

Commercial Association of Realtors Wisconsin
250 E. Wisconsin Ave., Suite 725
Milwaukee, WI 53202

NAIOP Wisconsin – Commercial Real Estate Development Association
250 E. Wisconsin Ave., Suite 700
Milwaukee, WI 53202

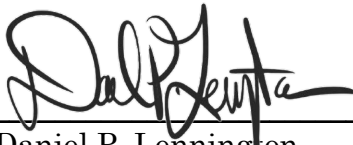
Wisconsin Builders Association
660 John Nolen Dr., Suite 320
Madison, WI 53713

The bird-safety standards in MGO § 28.129 apply to claimants or their members. They are injured on an ongoing basis because of this unlawful ordinance. The remedy that they seek is a declaration that the ordinance is preempted by state law and an injunction preventing enforcement of the ordinance. If the claimants are required to incur costs in order to comply with the ordinance in a specific project, the applicable

claimant will submit a supplemental Notice of Claim for those specific damages and costs.

Any communication to the claimants regarding this matter should be directed to my attention. Service of this form does not waive any other claims or arguments, including the argument that Wis. Stat. § 893.80 is inapplicable to claims for injunctive and declaratory relief. If the City of Madison attempts to apply MGO § 28.129 to any current or future project, the claimants may seek injunctive relief in the appropriate court.

WISCONSIN INSTITUTE FOR LAW & LIBERTY, INC.

A handwritten signature in black ink, appearing to read "Dan Lennington", written over a horizontal line.

Daniel P. Lennington
Deputy Counsel