

# Local Governance Expand Influence over Commercial Building

## In the Dirt: A Real Estate Legal Update

By Joseph Tierney IV on February 22, 2024

A seemingly small win for birds could potentially have big implications for builders. A recent court of appeals decision may impact commercial buildings and construction. In Wisconsin, a statewide commercial building code prevents local governments from enforcing building codes that are stricter than the state law. Wis. Stat. § 101.02(7r)(a). The decision in *Associated Builders & Contractors Of Wisconsin, Inc. v. City of Madison* offers local governments a pathway around the state law.

The case involves a challenge to Madison's bird-safe-glass ordinance, which requires the treatment of certain exterior glass surfaces in new construction or expansion of existing buildings to reduce the risk of bird collisions. The plaintiffs, a consortium of trade associations, sought a declaration that the ordinance is preempted, meaning the ordinance is prohibited by the state law. The defendants, the City of Madison, maintained that the ordinance was passed as a zoning code, which the state law does not preempt.

The court of appeals held that Wis. Stat. § 101.02(7r)(a) does not preempt the city's bird-safe-glass ordinance. The court agreed with the city that the ordinance is a zoning code. Unlike a building code, the ordinance focused on bird safety rather than structural integrity or general building safety, and thus does not fall within the scope of preempted standards.

This decision indicates that local ordinances addressing specific issues, such as bird safety, may coexist with the statewide building code as long as they do not conflict with its purpose and scope. This decision limits the statewide building code, and provides local governments with greater influence over buildings and construction, as long as it doesn't interfere with the buildings structural integrity and safety. This shift may limit a builder's choice in construction and design, and potentially raise building costs—an added challenge in a time when construction costs have increased the past few years.