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OFFICE OF THE MAYOR

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TO: Ald. Denise Fenton; Community and Economic Development Committee Chair
FROM: Mayor Jacob A. Woodford
DATE: July 24, 2023
RE: Resolution 6-R-23 – Bird Safe Glass

Resolution 6-R-23 – Bird Safe Glass was introduced at Council on June 7, 2023 and referred to staff for review. While multiple departments were consulted on this Resolution, the enclosed memorandum from Attorney Behrens provides the clearest and most pertinent information for the committee’s consideration. Additionally, enclosed you will find an analysis of exterior glazing of City of Appleton-owned facilities with respect to some of the parameters of the proposed regulations.

Given the legal challenges similar legislation faces in the State of Wisconsin, staff were directed to minimize the scope of impact analysis to mitigate waste of taxpayer resources. There are also unanswered questions about the current impact of architecture and glass across the municipality that are beyond the capacity, expertise, and arguably the role of our local government. Should the Council decide to proceed with this legislation, provision will need to be made for external consultation as well as, eventually, mitigation of existing conditions in municipal buildings (which, alone is estimated at a minimum of \$25,000 based on the provisions of the Resolution).

Customarily, and in keeping with Council rules, Resolution concepts are reviewed with staff prior to introduction. Council Rule 4 states that “council members are encouraged to work with staff before introducing Resolutions in order to ensure that Resolutions are well-researched and ready for debate.”

While authors of 6-R-23 did discuss the concept with staff in early 2023, the Resolution was drafted and submitted despite feedback on pending litigation and potential problems with the example legislation cited. Whether the intent of Rule 4 was met in this case is a matter for the Council to decide, however, it is evident that the legislative process was initiated without regard for the counsel provided by staff.

This Resolution is referred to Council via the Community and Economic Development Committee, with the enclosed exhibits to aid in your consideration. Our recommendation is to, at a minimum, hold this item until the legality of the legislation is settled.



LEGAL SERVICES DEPARTMENT

Office of the City Attorney

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TO: Mayor Jacob A. Woodford

FROM: Christopher R. Behrens, City Attorney

DATE: July 18, 2023

RE: Resolution #6-R-23 – Addition of Bird Safe Glass Requirements to Appleton Municipal Code

This resolution was introduced on June 7, 2023 and referred to various City departments for review and comment, including the Legal and Administrative Services Department. The resolution directs, among other things, that new ordinance language be developed and adopted “to incorporate bird-safe glass building requirements and define acceptable window glass or glass treatments for any new construction of facades with a certain percentage of window area.” The resolution’s authors include the City of Madison’s Bird-Safe Glass Requirements ordinance as an example.

Currently the Madison ordinance is facing a legal challenge that has made its way to the Court of Appeals. The matter has been briefed, but a decision hasn’t been issued as of the date of this memo. It is advisable to wait for direction from the courts as the challenges to the ordinance’s legality may have merit.

One challenge is that imposing glass requirements such as these is not statutorily permissible. Cities are prohibited from adopting a local-specific commercial building code, unless it is in *strict conformity* with the statewide code. *Wis. Stat. 101.02(7r)(a)*. As a result, since local-specific building codes are prohibited, the legislature made DSPS’s Commercial Building Code a uniform statewide building code. For a local ordinance to “strictly conform” it must not be “additional or more restrictive” than the DSP-adopted Commercial Building Code. *Wis. Admin. Code Sec. SPS361.03(5)(a)1*. The argument is that a local bird-safe glass requirement is additional to, and more restrictive than, the state-wide code contrary to the strict conformity standard.

Another challenge relates to whether the bird-safe glass ordinance is part of the zoning code as opposed to a building code. Madison frames its bird-safe glass ordinance as a zoning code which would avoid strict conformity requirements of local building regulations. Relying on a recent Wisconsin Supreme Court decision that identifies multiple characteristics required of a zoning regulation, the challengers address these characteristics arguing that Madison’s ordinance lacks most, if not all, of the characteristics of a typical zoning ordinance. In other words, the argument is that calling the bird-safe glass ordinance a zoning ordinance doesn’t make it so and therefore, it’s a building regulation subject to strict conformity.

My recommendation is to pause any action on this matter until the courts (the Court of Appeals and Supreme Court assuming the matter is further appealed) have weighed in on whether such regulations are legally permissible.

A23-0518

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**CITY OF APPLETON
BIRD FRIENDLY GLASS REVIEW**

SITE	ADDRESS	YEAR BUILT	SQ. FT.	>10,000 SQ. FT.	GLASS>50 sq. ft.	>50% GLASS	<50% GLASS	GLASS CORNER(S)	NOTES
<i>Fire Department Facilities</i>									
Fire Station #1	700 N. Drew St., 54911	1965	42,159	X			X		Mullions greater than 6".
Fire Station #2	1801 S. Matthias St., 54915	1982	8,280						
Fire Station #3	801 W. Grove St., 54915	1991	9,643						
Fire Station #4	724 E. Greenfield St., 54911	1961	9,130						
Fire Station #5	1701 W. Brewster St., 54914	1991	9,643						
Fire Station #6	4930 N. Lightning Dr., 54913	2001	13,360	X			X		No windows greater than 50 sq. ft.
Fire Station #6 - Garage	4930 N. Lightning Dr., 54913	2001	1,200						
Fire Station #6 - Training Tower	4930 N. Lightning Dr., 54913	2001	3,132						
<i>City Hall</i>									
City Hall (1st, 5th and 6th floors of City Center)	100 N. Appleton St., 54911	1960	56,562	X	X		X		Need to verify mullion sizes.
City Hall Dance Studios		Leased	6,344						
Municipal Services Building	2625 E. Glendale Ave., 54911	1966	140,403	X			X		No windows greater than 50 sq. ft.
Parks, Recreation & Facilities Management	1819 E. Witzke Blvd.	1981	39,560	X			X		No windows greater than 50 sq. ft.
Police Station	222 S. Walnut St., 54911	2009	63,144	X			X		No windows greater than 50 sq. ft.
Police Station Parking Deck	222 S. Walnut St., 54911	2009	49,920	X			X		No windows
Public Library	225 N. Oneida St., 54911	1981	98,609	X	X		X		New library.
Reid Golf Course Clubhouse	1100 E. Fremont St., 54915	1941	5,539						
Reid Golf Course Maintenance Facility	1200 E. South St., 54915	1992	7,829						
Reid Golf Course Storage Facility	1100 E. Fremont St., 54915	1992	4,000						
Reid Golf Course Pumphouse	1100 E. Fremont St., 54915	2007	224						
Reid Golf Course Rain Shelters	1100 E. Fremont St., 54915								
Transit Center	100 E. Washington St., 54911	1989	5,717						
Valley Transit	801 S. Whitman Ave., 54914	1982	41,783	X			X		No windows greater than 50 sq. ft.
<i>Utilities Facilities</i>									
Wastewater Treatment Plant	2006 E. Newberry St., 54915	1976	280,469	X			X		No windows greater than 50 sq. ft.
Water Treatment Plant	2281 Manitowoc Rd., 54952, Menasha	2002	173,232	X	X		X		
Lake Station	N8742 Fire Lane 1, 54952, Menasha	1964	1,491						
North Water Tower	6721 N. Ballard Rd., 54913	2002	1,596						
Glendale Water Tower	3300 E. Glendale Ave., 54911	2016							
<i>Public Works Storage Facilities</i>									
Storage for Street Materials & Chips	2625 E. Glendale Ave., 54911	1969	10,275	X			X		No windows.
Salt Storage Dome	2626 E. Glendale Ave., 54911	2001	7,854						
Salt Storage	2627 E. Glendale Ave., 54911	1971	6,840						
Frame Storage/Oil Storage Tanks	2627 E. Glendale Ave., 54911	1997	120						
Storage (Wood Frame, Metal Clad)	2628 E. Glendale Ave., 54911	1991	240						
Yardwaste Facility- Glendale	2629 E. Glendale Ave., 54911	1998	240						
Yardwaste Facility- Whitman	701 S. Whitman Ave., 54914	2010							
<i>Parking Structures</i>									
Red Ramp (Midtown Ramp)	134 S. Superior St., 54911		496,000	X			X		No windows.
Green Ramp (Washington St. Ramp)	315 W. Washington St., 54911		207,000	X			X		No windows.
Yellow Ramp (East Ramp)	130 E. Washington St., 54911		273,000	X	X		X	X	Skywalk and corners.
<i>Miscellaneous Facilities</i>									
Vulcan Hydro Electric Plant	530 S. Vulcan St., 54915	1882	150						
Mackville Storage Facility	W4915 CTH-O, 54913								
Lawe street Bridge Tender			576						
Olde Oneida Bridge Tender			576						
<i>Aquatics Facilities</i>									
Erb Pool	1800 N. Morrison St., 54911								
Bath house		2017	8,633						
Pool Equipment building		2017	2,713						
Mead Pool Bathhouse & Pumphouse	1430 E. John St., 5415	1992	15,710	X			X		No windows greater than 50 sq. ft.
<i>Parks Facilities</i>									
Alicia Park Pavilion	1301 W. Cedar St., 54914	1977	1,008						
Appleton Memorial Park Concession Facility	1620 E. Witzke Blvd., 54911	1974	6,724						
Appleton Memorial Park Electrical Service	1620 E. Witzke Blvd., 54911	1987	1,440						
Appleton Memorial Park Amphitheater	1620 E. Witzke Blvd., 54911	1987	1,190						
Appleton Memorial Park Observation Deck	1620 E. Witzke Blvd., 54911	1983	560						
Appleton Memorial Park Equipment Storage Facility	1620 E. Witzke Blvd., 54911	2012	864						
Appleton Memorial Park Restroom Facility	1620 E. Witzke Blvd., 54911	2014	830						
City Park Pavilion	500 E Franklin St., 54911	1952	560						
Colony Oaks Park Pavilion	801 N. Briarcliff Dr., 54915	1982	1,008						
Derks Park Pavilion	3220 E. Guyette St., 54915	2004	1,456						
Einstein Park Pavilion	3200 N. Durkee St., 54911	1977	386						
Erb Park Pavilion	1800 N. Morrison St., 54911	1950, 2017	3,057						
Green Meadows Park Pavilion	65 Pheasant Ct., 54915	1987	1,008						
Highview Park Pavilion	100 W. Wayfarer Ln., 54913	2000	1,200						
Hoover Park Pavilion	600 E. Roeland Ave., 54915	1997	288						
Jaycee Park Pavilion	1200 S. Jefferson St., 54915	1981	792						
Jones Park Pavilion	301 W. Lawrence St., 54911	1983	1,460						
Kiwanis Park Pavilion/Lift Station	2315 N. Nicholas St., 54914	???	2,000						
Linwood Park Pavilion	401 N. Douglas St., 54914	1998	1,428						
Lions Park Pavilion	1920 S. Matthias St., 54915	1971	1,008						
Lutz Park Restroom Facility	1320 Lutz Dr., 54914	2007	709						
Lutz Park Gazebo	1320 Lutz Dr., 54914	2012	358						
Peabody Park Pavilion	601 N. Greenbay Rd., 54911	1971	1,176						
Pierce Park Pavilion/Band Stand	1035 W. Prospect Ave., 54914	1944	7,345						
Pierce Park Gazebo	1036 W. Prospect Ave., 54914	1975	554						
Pierce Park Log Building	1037 W. Prospect Ave., 54914	???	405						
Pierce Park Restroom & Storage Facility	1038 W. Prospect Ave., 54914	2001	1,655						
Schaefer Park Pavilion	610 S. Buchanan St., 54915	1966	1,134						
Scheig Center	1313 E. Witzke Blvd., 54911	1995	5,658						
Telulah Park Pavilion, House Station (large)	1300 E. Newberry St., 54915	1940	2,418						
Telulah Park Kitchen	1301 E. Newberry St., 54915	2004	625						
Telulah Park Pavilion (small)	1302 E. Newberry St., 54915	1975	1,525						
Telulah Park Storage Facility	1303 E. Newberry St., 54915	1996	512						
Woodland Park Shelter	1815 Schaefer Cr., 54915	1985	900						