

OFFICE OF THE MAYOR

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Email: Mayor@Appleton.org

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 Appletonowned 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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Fax: 920/832-5962

"...meeting community needs...enhancing quality of life."

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

CITY OF APPLETON

			CITY (DLY GLASS REVIEV	V				
SITE	ADDRESS	YEAR BUILT				>50% GLASS <5	0% GLASS	GLASS CORNER(S)	NOTES
	lace u. c.		Fire Dep	artment Facilities					
ire Station #1	700 N. Drew St., 54911	1965	42,159	X	+	1	Х		Mullions greater than 6".
ire Station #2	1801 S. Matthias St., 54915	1982	8,280						
ire Station #3	801 W. Grove St., 54915	1991	9,643		+				
ire Station #4	724 E. Greenfield St., 54911 1701 W. Brewster St., 54914	1961 1991	9,130 9,643						
ire Station #6	4930 N. Lightning Dr., 54913	2001	13,360	Х			х		No windows greater than 50 sq. ft.
ire Station #6	4930 N. Lightning Dr., 54913	2001	1,200	^	+		^		No willdows greater than 50 sq. it.
ire Station #6 - Training Tower	4930 N. Lightning Dr., 54913	2001	3,132						
ity Hall (1st, 5th and 6th floors of City Center)	100 N. Appleton St., 54911	1960	56,562	Х	X		Х		Need to verify mullion sizes.
ity Hall Dance Studios		Leased	6,344						
Nunicipal Services Building	2625 E. Glendale Ave., 54911	1966	140,403	X			Х		No windows greater than 50 sq. ft.
arks, Recreation & Facilities Management	1819 E. Witzke Blvd.	1981	39,560	X			Х		No windows greater than 50 sq. ft.
olice Station	222 S. Walnut St., 54911	2009	63,144	Х			Х		No windows greater than 50 sq. ft.
Police Station Parking Deck	222 S. Walnut St., 54911	2009	49,920	X			Х		No windows
ublic Library	225 N. Oneida St., 54911 1100 E. Fremont St., 54915	1981	98,609	X	Х		Х		New library.
eid Golf Course Maintenance Facility		1941	5,539 7,829						
eid Golf Course Maintenance Facility eid Golf Course Storage Facility	1200 E. South St., 54915 1100 E. Fremont St., 54915	1992 1992	4,000						
eid Golf Course Pumphouse	1100 E. Fremont St., 54915	2007	224		+				
eid Golf Course Rain Shelters	1100 E. Fremont St., 54915	2007	224						
ransit Center	100 E. Washington St., 54911	1989	5,717						
alley Transit	801 S. Whitman Ave., 54914	1982	41,783	Х			Х		No windows greater than 50 sq. ft.
				ties Facilities	•				
/astewater Treatment Plant	2006 E. Newberry St., 54915	1976	280,469	Х			Х		No windows greater than 50 sq. ft.
/ater Treatment Plant	2281 Manitowoc Rd., 54952, Menash	2002	173,232	Х	X		Х		
ake Station	N8742 Fire Lane 1, 54952, Menasha	1964	1,491						
orth Water Tower	6721 N. Ballard Rd., 54913	2002	1,596						
lendale Water Tower	3300 E. Glendale Ave., 54911	2016							
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torage for Street Materials & Chips	2625 E. Glendale Ave., 54911	1969	10,275	X	+	+	Х		No windows.
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rame Storage/Oil Storage Tanks	2627 E. Glendale Ave., 54911 2627 E. Glendale Ave., 54911	1971	120		+				
torage (Wood Frame, Metal Clad)	2628 E. Glendale Ave., 54911	1997	240		+				
ardwaste Facility- Glendale	2629 E. Glendale Ave., 54911	1998	240						
ardwaste Facility- Whitman	701 S. Whitman Ave., 54914	2010	240						
			Park	ing Structures					
ed Ramp (Midtown Ramp)	134 S. Superior St., 54911		496,000	Х			Х		No windows.
ireen Ramp (Washington St. Ramp)	315 W. Washington St., 54911		207,000	Х			Х		No windows.
'ellow Ramp (East Ramp)	130 E. Washington St., 54911		273,000	Х	Х		Х	Х	Skywalk and corners.
			Miscell	aneous Facilities					
				ancous rucinties					
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tackville Storage Facility awe street Bridge Tender Idle Oneida Bridge Tender Idle Are Pool Bathhouse & Pumphouse Idlicia Park Pavilion ppleton Memorial Park Concession Facility ppleton Memorial Park Concession Facility ppleton Memorial Park Amphitheater ppleton Memorial Park Amphitheater ppleton Memorial Park Electrical Service ppleton Memorial Park Equipment Storage Facility ppleton Memorial Park Restroom Facility Itly Park Pavilion olony Oaks Park Pavilion erks Park Pavilion olony Oaks Park Pavilion reen Meadows Park Pavilion instein Park Pavilion reen Meadows Park Pavilion oover Park Pavilion oover Park Pavilion oover Park Pavilion iwanis Park Pavilion iwanis Park Pavilion iwanis Park Pavilion utz Park Restroom Facility utz Park Gazebo deabody Park Pavilion ierce Park Ravilion ierce Park Pavilion ierce Park Ravilion ierce Park Ravilion ierce Park Ravilion heiej Center elulah Park Bavilion (Iarge) elulah Park Ravilion (small)	1800 N. Morrison St., 54911 1430 E. John St., 54911 1430 E. John St., 54914 1620 E. Witzke Blvd., 54911 1800 N. Morrison St., 54915 1320 E. Guyette St., 54915 1320 N. Durkee St., 54911 165 Pheasant Ct., 54915 100 W. Wayfarer In., 54915 1200 S. Jefferson St., 54915 1200 S. Jefferson St., 54914 401 N. Douglas St., 54914 401 N. Douglas St., 54914 1320 Lutz Dr., 54914 1320 Lutz Dr., 54914 1320 Lutz Dr., 54914 1320 Lutz Dr., 54914 1330 W. Prospect Ave., 54914 1038 W. Prospect Ave., 54914 1038 W. Prospect Ave., 54914 1038 W. Prospect Ave., 54915 1331 E. Witzke Blvd., 54911 1300 E. Newberry St., 54915 1301 E. Newberry St., 54915	2017 2017 1992 1977 1987 1987 1988 2012 2014 1952 2004 1977 1950, 2017 1987 2000 1997 1981 1983 ??? 1998 1998 1971 1983 1983 2007 2007 2012 2014 1987 2000 1997 1981 1983 1983 207 2097 2097 2097 2097 2097 2097 2097	150 576 Aquu 8,633 8,633 8,633 15,710 Pa 10,008 6,724 1,440 1,190 560 366 386 386 1,008 1,108 1,456 386 386 1,200 1,480	atics Facilities			x		No windows greater than 50 sq. ft.
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