

City of Appleton

100 North Appleton Street Appleton, WI 54911-4799 www.appleton.org

Meeting Agenda - Final

Community & Economic Development Committee

Wednesday, September 13, 2023

6:30 PM

Council Chambers, 6th Floor

- 1. Call meeting to order
- Pledge of Allegiance
- 3. Roll call of membership
- Approval of minutes from previous meeting

23-1055 CEDC Minutes from 8-9-23

Attachments: CEDC Minutes 8-9-23.pdf

- 5. Public Hearing/Appearances
- 6. Action Items

23-0664 Resolution #6-R-23, Addition of Bird Safe Glass requirements to

Appleton Municipal Code

Attachments: #6-R-23 Bird Safe Glass Resolution-Final.pdf

Resolution 6-R-23 Bird Friendly Glass Response.pdf

Email re Stop the Fallout Campaign-Resolution 6-R-23 Bird Safe Glass.pdf

Legislative History

8/9/23 Community & Economic held

Development Committee

7. Information Items

8. Adjournment

Notice is hereby given that a quorum of the Common Council may be present during this meeting, although no Council action will be taken.

Any questions about items on this meeting are to be directed to Kara Homan, Director, Community and Economic Development Department at 920-832-6468.

Reasonable Accommodations for Persons with Disabilities will be made upon Request and if Feasible.



City of Appleton

100 North Appleton Street Appleton, WI 54911-4799 www.appleton.org

Meeting Minutes - Final Community & Economic Development Committee

Wednesday, August 9, 2023

6:30 PM

Council Chambers, 6th Floor

1. Call meeting to order

Chair Fenton called the meeting to order at 6:33 p.m.

- 2. Pledge of Allegiance
- 3. Roll call of membership

Present: 4 - Fenton, Jones, Thyssen and Wolff

Excused: 1 - Del Toro

Others present: Alderperson Alex Schultz, District #9 Alderperson Sheri Hartzheim, District #13

4. Approval of minutes from previous meeting

23-0938 CEDC Minutes from 7-26-23

Attachments: CEDC Minutes 7-26-23.pdf

Jones moved, seconded by Thyssen, that the Minutes be approved. Roll Call.

Motion carried by the following vote:

Aye: 4 - Fenton, Jones, Thyssen and Wolff

Excused: 1 - Del Toro

- 5. Public Hearing/Appearances
- 6. Action Items

23-0664 Resolution #6-R-23, Addition of Bird Safe Glass requirements to

Appleton Municipal Code

Attachments: #6-R-23 Bird Safe Glass Resolution-Final.pdf

Resolution 6-R-23 Bird Friendly Glass Response.pdf

Fenton moved, seconded by Thyssen, that the Report Action Item be held until the September 13 CEDC meeting. Roll Call. Motion carried by the following

vote:

Aye: 4 - Fenton, Jones, Thyssen and Wolff

Excused: 1 - Del Toro

7. Information Items

23-0893 Community & Economic Development Department Mid-Year 2023

Budget Report

<u>Attachments:</u> 2023 Mid Year Report Comm Econ Dev Dept.pdf

This item was presented.

8. Adjournment

Wolff moved, seconded by Jones, that the meeting be adjourned at 6:46 p.m. Roll Call. Motion carried by the following vote:

Aye: 4 - Fenton, Jones, Thyssen and Wolff

Excused: 1 - Del Toro

RESOLUTION #6-R-23

Addition of Bird Safe Glass requirements to Appleton Municipal Code

SUMMARY resolution to add language to the Municipal building code which requires all future construction to analyze and address bird strike risk of large reflective glass surfaces, and also directs the City to evaluate and remediate existing window surfaces on public buildings which meet a certain threshold for bird strike risk and apply reasonable safely measures to these surfaces by 2025.

Submitted By: Alderperson Schultz - District 9, Alderperson Meltzer - District 2, Alderperson Del Toro, District 4.

Date: June 7, 2023

Referred To: Community & Economic Development Dept., Parks, Recreation & Facilities Dept. & Legal Services Dept.

WHEREAS, according to the Audubon Society, up to a billion birds die annually from collisions with windows in our buildings, with research showing that between 54-76% of window collisions are fatal, and;

WHEREAS, such deaths are entirely avoidable by incorporating bird-friendly glass, glass films which are readily available, affordable and nearly impossible to distinguish by humans, while being almost completely safe for birds, and

WHEREAS, the City of Appleton was designated a official Bird City in 2017 and has been recognized for its continuing work to support and sustain urban avian populations, and

WHEREAS, a significant number of urban commercial and residential buildings in Appleton incorporate large panes of glass with the capacity to injure or kill birds at a time when bird-friendly glass and glass film alternatives are widely available, yet may not have been available, considered cost-prohibitive or not even considered during construction, and

WHEREAS, on Aug. 4, 2020, the Madison Common Council unanimously adopted Wisconsin's first bird-friendly building ordinance which requires large new construction and expansion projects to use bird-safe strategies and materials, a template for developing bird-safe glass ordinance language, (Addendum A), now, therefore

BE IT RESOLVED, that the City of Appleton is hereby directed to develop and adopt new ordinance language to incorporate bird-safe glass building requirements and define acceptable window glass or glass treatments for any new construction of façades with a certain percentage of window area, and

BE IT FURTHER RESOLVED, that the City of Appleton include educational language on its website to inform and compel non-public entities, businesses and urban residential housing managers and owners whose existing buildings have glass panes which meet the bird-strike risk criteria, to do the same, and

BE IT FURTHER RESOLVED, that the City of Appleton evaluate and identify all public buildings with existing glass panes at heights and of surface areas which pose a danger for birds and then apply glass safety films or other bird-strike abatement measures over time:

- a. Anytime such a window is replaced in an existing building, it should be replaced with bird-friendly glass or treated with a glass film or abatement application alternative;
 - b. All such windows must be retrofired using bird-friendly glass or alternatives by 2025.

Alder Schultz - District 9 Alder Meltzer – District 2 Alder DelToro – District 4

28.129 - BIRD-SAFE GLASS REQUIREMENTS.

- (1) <u>Statement of Purpose</u>. The Bird-Safe Glass Requirements in this section are intended to reduce the heightened risk for bird collisions with glass on specified building designs and configurations.
- (2) <u>Applicability</u>. Subsection (4) applies to all exterior construction and development activity, including the expansion of existing buildings and structures, as specified therein.
- (3) Measuring Glass Area. Under this Ordinance, glass area shall be measured as one (1) continuous panel of glass or other transparent material, or a set of two (2) or more such panels divided by mullions of six (6) inches in width or narrower. Panels surrounded on all sides by solid walls or mullions wider than six (6) inches shall be considered individual windows. Spandrel or opaque glass with reflectivity of 14% or less shall not be included in the calculation of glass area. See Revised Figure 1. (Am by ORD-21-00073, 11-17-21)

SPANDRELL (OPAQUE) GLASS MUST HAVE A REFLECTIVITY OF 14% OR ✓ LESS IN ORDER TO NOT BE COUNTED IN GLASS AREA CALCULATIONS SPANDRELL (OPAQUE) SPANDRELL (OPAQUE) **GLASS GLASS GLASS GLASS** AREA OF 50 sq. ft. AREA OF 50 sq. ft. CALCULATION CALCULATION GREATER -6 in. OR → THAN 6 in. LESS

Figure 1 - Window Mullion Graphic

- (4) <u>Bird-Safe Glass Treatment Requirements</u>. Glass areas on the following buildings or structures shall be treated to reduce the risk of bird collisions by incorporating a pattern of visual markers that are either: a) dots or other isolated shapes that are ½" in diameter or larger and spaced at no more than a two-inch (2") by two-inch (2") pattern; or b) lines that are ½" in width or greater and spaced no more than 2" apart; low reflectance opaque materials; building-integrated structures like non-glass double-skin facades, metal screens, fixed solar shading, exterior insect screens, and other features that cover the glass surface; or other similar mitigation treatments approved by the Zoning Administrator.
 - (a) <u>Buildings or structures over 10,000 square feet</u>. For any building or structure over 10,000 square feet in size (floor area of above-grade stories), bird-safe glass treatment is required as follows:
 - 1. For building façades where the first sixty (60) feet (see REVISED Figure 2) from grade

are comprised of greater than or equal to fifty percent (50%) glass:

- a. At least eighty-five percent (85%) of the glass must be treated; and
- b. All glass within fifteen (15) feet of a building corner must be treated when see through or fly through conditions exist. See Figure 3.
- 2. For building façades where the first sixty (60) feet from grade are comprised of less than fifty percent (50%) glass:
 - a. At least eighty-five percent (85%) of the glass on glass areas fifty (50) square feet or over must be treated; and
 - b. Of all glass areas over fifty (50) square feet, any glass within fifteen (15) feet of a building corner must be treated.
- 3. All glass railings must be treated.
- 4. All glass on enclosed building connections shall be treated up to sixty (60) feet above-grade.
- (b) <u>Sky-bridges</u>. For buildings and structures of any size, all glass on above-ground bridges must be treated.
- (c) <u>At-grade glass</u>. For buildings and structures of any size, all at-grade glass features such as sound walls or glass screens must be treated."
- (5) This Ordinance shall become effective on October 1, 2020.

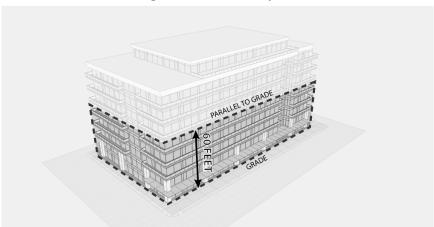
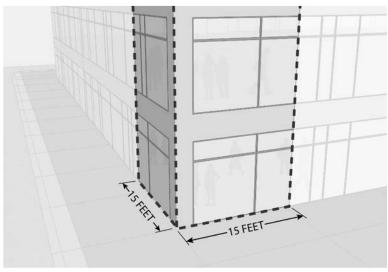


Figure 2 - 60 ft. Graphic

Figure 3 - Glass Corner Graphic



(Cr. by <u>ORD-20-00069</u>, 8-14-20)



OFFICE OF THE MAYOR

Jacob A. Woodford 100 North Appleton Street Appleton, Wisconsin 54911 Phone: (920) 832-6400

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

100 North Appleton Street Appleton, WI 54911 Phone: 920/832-6423

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

DIDD	FDIEN	DIVC	 DE

			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							
to a Charles Make while Co. Chil	Jacob E. Chardella C. Cardella			ks Storage Facilities	1		· ·		No otradama
torage for Street Materials & Chips	2625 E. Glendale Ave., 54911	1969	10,275	X	+	+	Х		No windows.
alt Storage Dome alt Storage	2626 E. Glendale Ave., 54911 2627 E. Glendale Ave., 54911	2001 1971	7,854 6,840		+	1			
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					
/ulcan Hydro Electric Plant	530 S. Vulcan St., 54915	1882	150	ancous rucinties					
Mackville Storage Facility	530 S. Vulcan St., 54915 W4915 CTH-O, 54913	1882	150	ancous ruemees					
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tackville Storage Facility was street Bridge Tender Idde Oneida Bridge Tender Idde Pool Equipment building Idead Pool Bathhouse & Pumphouse Ilicia Park Pavilion peleton Memorial Park Concession Facility ppleton Memorial Park Concession Facility ppleton Memorial Park Amphitheater ppleton Memorial Park Amphitheater ppleton Memorial Park Restroom Facility ty Park Pavilion Idde Park Pa	1800 N. Morrison St., 54911 1430 E. John St., 5415 1301 W. Cedar St., 54914 1620 E. Witzke Bivd., 54911 1801 N. Briarcilif Dr., 54915 1320 E. Guyette St., 54915 1320 N. Morrison St., 54911 1800 N. Morrison St., 54911 100 W. Wayfarer Ln., 54913 600 E. Roeland Ave., 54915 1200 S. Jefferson St., 54914 401 N. Douglas St., 54914 401 N. Douglas St., 54914 1920 S. Matthias St., 54914 1320 Lutz Dr., 54914 1300 Lutz Dr., 54914 1301 W. Prospect Ave., 54914 1036 W. Prospect Ave., 54914 1037 W. Prospect Ave., 54914 1038 L. Nitzke Bivd., 54911 1330 E. Newberry St., 54915	2017 2017 1992 1977 1987 1987 1988 2012 2014 1952 2004 1977 1950, 2017 1987 2000 1997 1981 1983 2012 2004 1977 1950, 2017 1987 2000 1997 1981 1983 1983 207 2012 2012 2014 1977 2017 2018 1984 1978 1984 1978 1984 1984 1984 1984 1984 1984 1986 1986 1986 1986 1986 1986 1986 1986	150 576 Aquu 8,633 8,633 15,710 Pa 15,710 Pa 1,190 560 864 1,008 864 1,008 385 3,057 1,008 386 1,200 1,456 288 1,460 1,008 1,140 1,428 1,008 1,176 1,742 1,428 1,008 1,176 1,745 1,7	atics Facilities			x		No windows greater than 50 sq. ft.
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Brenda Broeske

Subject: FW: Window Stickers

From: Katie Van Zeeland < <u>District5@Appleton.org</u>>

Sent: Wednesday, August 30, 2023 4:12 PM **To:** Kami L. Lynch < <u>Kami.Lynch@Appleton.org</u>>

Cc: Denise Fenton <<u>District6@Appleton.org</u>>; Kara J. Homan <<u>Kara.Homan@appleton.org</u>>

Subject: Fwd: Window Stickers

Hi Kami,

Could you attach this email to item #23-0664 Resolution #6-R-23, Addition of Bird Safe Glass requirements to Appleton Municipal Code?

Thanks,

Katie

Katie Van Zeeland Alderperson - District 5 Common Council President 22-23 <u>District5@Appleton.org</u> (920) 358-0501 https://www.facebook.com/AlderpersonVanZeeland

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From: Charles Hagner < director@birdcitywisconsin.org >

Sent: Wednesday, August 9, 2023 12:30 PM **To:** Katie Van Zeeland < District 5@ Appleton.org >

Subject: Re: Window Stickers

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Hello Alder Van Zeeland--

I bet you're referring to the Stop the Fallout Campaign being led by the Wisconsin Bird Conservation Partnership and SOS Save Our Songbirds. Bird City Wisconsin is a partner in both efforts. You can read about the campaign here:

Stop the Fallout

https://www.sossaveoursongbirds.org/stop-the-fallout

As part of it, Acopian BirdSavers and Feather Friendly are offering discounts on their products, both of which have been shown to be highly effective at preventing bird-window collisions. I believe all anyone has to do to get the discount is enter a coupon code at checkout.

I hope this is helpful. Thanks for your interest.

--Chuck

Charles Hagner
Director
Bird City Wisconsin
www.birdcitywisconsin.org

On Tue, Aug 8, 2023 at 8:50 AM Katie Van Zeeland < District5@appleton.org > wrote:

Hi Charles,

I was wondering if you offer or are aware of a program that distributes the stickers that keep birds from striking windows?

Or perhaps, is there a Bird City USA decal made from this material?

Thanks,

Katie

Katie Van Zeeland
Alderperson - District 5
Common Council President 22-23
District5@Appleton.org
(920) 358-0501
https://www.facebook.com/AlderpersonVanZeeland

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