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3
4 **A RESOLUTION/ORDINANCE**

5
6 amending Chapter 47 and Chapter 67 of the Milwaukee County Code of General
7 Ordinances related to guidelines for deployment of small cell wireless facilities
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10 WHEREAS, small cell wireless facilities (SWF) are a type of wireless broadband
11 infrastructure and are small antennas attached to an existing utility infrastructure for the
12 provision of wireless service, including fifth-generation cellular wireless (5G); and
13

14 WHEREAS, in September 2018, the Federal Communications Commission
15 (FCC) issued its Declaratory Ruling and Report and Order 18-133 (FCC Order)
16 removing regulatory barriers that inhibit the deployment of SWF to accelerate wireless
17 broadband development and 5G; and
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19 WHEREAS, in July 2019, the Wisconsin State Legislature passed 2019
20 Wisconsin Act 14, creating Wis. Stat. § 66.0414 that, among other things, severely
21 limited local regulation of SWF; and
22

23 WHEREAS, 2019 Wisconsin Act 14 allows for very limited regulation related to
24 health, safety, and welfare considerations, aesthetic concerns, and placement in historic
25 or underground districts, as such terms are defined in the statute; and
26

27 WHEREAS, the effect of 2019 Wisconsin Act 14 is that Milwaukee County has
28 very little authority over the placement, cost, or appearance of SWF and wireless
29 providers have broad authority to facilitate the provision of wireless service; and
30

31 WHEREAS, some Milwaukee County departments have already received
32 requests for placement of SWF and their ancillary easements on Milwaukee County
33 property, including the Department of Transportation and the Department of Parks,
34 Recreation, and Culture; and
35

36 WHEREAS, File No. 20-525 created the Small Cell Wireless Facilities Workgroup
37 to study and make recommendations to the Milwaukee County Board of Supervisors for
38 the placement of small cell wireless facilities in Milwaukee County, in alignment with
39 aesthetic and historical preferences and State and Federal law; and
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41 WHEREAS, the Small Cell Wireless Facilities Workgroup met several times over
42 the course of 2020 and made a final report in December 2020 with its recommendations
43 for health and safety, aesthetic, historic and underground district, and ancillary
44 easement guidelines (File No. 20-917); and

45 WHEREAS, the proposed guidelines function within the scope of Milwaukee
46 County's ability to regulate the deployment of SWF within Milwaukee County, including
47 the expanded definition of "right-of-way"; and
48

49 WHEREAS, although limited regulation is given to municipalities through 2019
50 Wisconsin Act 14, Milwaukee County supports protecting its ability to retain autonomy
51 over its application processes, utility placements, parkland, and compensation for such
52 installations as much as possible under the law; and
53

54 WHEREAS, the Committee on Parks, Energy, and Environment, at its meeting of
55 March 16, 2021, recommended adoption of File No. 21-226 (vote 5-0); now, therefore,
56

57 BE IT RESOLVED, that the Milwaukee County Board of Supervisors hereby
58 supports the reasonable deployment of SWF in Milwaukee County for the provision of
59 5G of wireless; and
60

61 BE IT FURTHER RESOLVED, that the Milwaukee County Board of Supervisors,
62 to the extent possible allowed by state and federal law, hereby regulates the
63 deployment of SWF by establishing guidelines as it relates to health and safety,
64 aesthetics, historic and underground districts, and ancillary easements; and
65

66 BE IT FURTHER RESOLVED, that the Milwaukee County Board of Supervisors
67 hereby amends Chapter 47 and Chapter 67 of the Milwaukee County Code of General
68 Ordinances by adoption of the following:
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70 AN ORDINANCE

71
72 **Section 1.** Section 47.01 of the Milwaukee County Code of General Ordinances is
73 amended as follows:
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75 **47.01. – Definitions.**

- 76
77 (1) *Park; parkway.* The terms "park" and "parkway," wherever used in chapter 47,
78 unless otherwise stated, shall include the grounds, buildings thereon, waters
79 therein and any other property which is now or may hereafter be under the
80 control or jurisdiction of the county park commission.
81 (2) *Person.* The term "person," as used in chapter 47, shall include any individual,
82 firm, partnership, corporation and association of persons, and the singular
83 number shall include the plural.
84 (3) *Park commission; commission.* The term "park commission" or "commission,"
85 wherever used in chapter 47, shall mean the county park commission.
86 (4) *Right-of-way.* The term "right-of-way", as used in chapter 47, shall have the
87 meaning provided in Wis. Stats. § 66.0414(1)(t).

88 (5) *Small cell wireless facility.* The term “small cell wireless facility”, as used in
89 chapter 47, shall have the meaning provided in Wis. Stats. § 66.0414(1)(u).

90 **Section 2.** Section 47.19 of the Milwaukee County Code of General Ordinances is
91 amended as follows:

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93 **47.19 – Location and construction of utility fixtures.**

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95 The location of all sewers and receivers, gas pipes, stopcock boxes, hydrants,
96 lampposts, telegraph, telephone and electric power posts and lines, manholes, conduit
97 and pumps within any park or parkway shall be subject to the jurisdiction and control
98 of the department of parks, recreation and culture; and their construction, erection,
99 repair or relocation shall be undertaken only after written permission is received from
100 said department.

101

102 The location and construction of small cell wireless facilities within any park or
103 parkway shall be subject to the following guidelines:

104

105 (1) *Health and Safety.* The department of parks, recreation, and culture shall review
106 each requested small cell wireless facility installation for compliance with
107 applicable state statutes, local ordinances, and other regulatory requirements,
108 including without limitation the health, safety, and general welfare standards set
109 forth in Wis. Stats. § 66.0414(2)(e)1. Such small wireless facilities and utility
110 poles, and activities related to the installation and maintenance of the small
111 wireless facilities and utility poles, may not obstruct or hinder travel, drainage,
112 maintenance, or the public health, safety, and general welfare on or around the
113 right-of-way, or obstruct the legal use of the right-of-way for other
114 communications providers, public utilities, cooperative associations organized
115 under Wis. Stats. ch. 185 for the purpose of producing or furnishing heat, light,
116 power, or water to their members only, or pipes or pipelines transmitting liquid
117 manure.

118 (2) *Aesthetics.* The department of parks, recreation, and culture shall adopt and
119 publish aesthetic guidelines consistent with the needs and policies of the
120 department, consistent with Wis. Stats. § 66.0414(3)(c)4. The aesthetic
121 guidelines shall be reasonable in that they are technically feasible and
122 reasonably directed to avoiding or remedying unsightly or out-of-character
123 deployments, no more burdensome than those applied to other types of
124 infrastructure deployments, and objective and published in advance. The
125 department of parks, recreation, and culture may deny a permit based upon its
126 published aesthetic guidelines only if it does not prohibit or have the effect of
127 prohibiting the provision of wireless service.

128 (3) *Historic and Underground Districts.* The installation of small cell wireless facilities
129 shall be prohibited in the right-of-way of a “historic district” or an “underground
130 district,” as such terms are defined in Wis. Stats. § 66.0414(3)(c)5, except in the

131 instance of collocation or replacement of existing structures. Any collocation on
132 or replacement of an existing structure shall reasonably conform to the design
133 aesthetics of the original structure in a historic or underground district.
134 (4) Ancillary Easements. The department of parks, recreation, and culture shall
135 review requests for ancillary easements related to the deployment of small cell
136 wireless facilities on a case-by-case basis, consistent with existing policies and in
137 accordance with the requirement in Wis. Stats. § 66.0414 that no local regulation
138 may result in an effective prohibition of wireless service. The review shall also be
139 consistent with local ordinances or other regulatory requirements and the
140 department shall, when necessary, make recommendations to the county board
141 for approval of any easements or other arrangements for such connections.
142

143 **Section 3.** Section 67.01 of the Milwaukee County Code of General Ordinances is
144 amended as follows:

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146 **67.01 – Public way construction permits.**
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- 148 (18) Small cell wireless facilities. The department of transportation shall:
149 (a) review each requested small cell wireless facility installation for
150 compliance with applicable state statutes, local ordinances, and other
151 regulatory requirements, including without limitation the health, safety, and
152 general welfare standards set forth in Wis. Stats. § 66.0414(2)(e)1. Such
153 small wireless facilities and utility poles, and activities related to the
154 installation and maintenance of the small wireless facilities and utility
155 poles, may not obstruct or hinder travel, drainage, maintenance, or the
156 public health, safety, and general welfare on or around the right-of-way, or
157 obstruct the legal use of the right-of-way for other communications
158 providers, public utilities, cooperative associations organized under Wis.
159 Stats. ch. 185 for the purpose of producing or furnishing heat, light, power,
160 or water to their members only, or pipes or pipelines transmitting liquid
161 manure.
162 (b) adopt and publish aesthetic guidelines consistent with the needs and
163 policies of the department and Wis. Stats. § 66.0414(3)(c)4. The aesthetic
164 guidelines shall be reasonable in that they are technically feasible and
165 reasonably directed to avoiding or remedying unsightly or out-of-character
166 deployments, no more burdensome than those applied to other types of
167 infrastructure deployments, and objective and published in advance. The
168 department of transportation may deny a permit based upon its published
169 aesthetic guidelines only if it does not prohibit or have the effect of
170 prohibiting the provision of wireless service.
171 (c) prohibit the installation of small cell wireless facilities in the right-of-way of
172 a “historic district” or an “underground district,” as such terms are defined
173 in Wis. Stats. § 66.0414(3)(c)5, except in the instance of collocation or
174 replacement of existing structures. Any collocation on or replacement of

175 an existing structure shall reasonably conform to the design aesthetics of
176 the original structure in a historic or underground district.
177 (d) review requests for ancillary permits related to the deployment of small
178 cell wireless facilities on a case-by-case basis, consistent with existing
179 policies and in accordance with the requirement in Wis. Stats. § 66.0414
180 that no local regulation may result in an effective prohibition of wireless
181 service. The review shall also be consistent with local ordinances or other
182 regulatory requirements and the department shall, to the extent required
183 under applicable law, make recommendations to the county board for
184 approval of any easements or other arrangements for such connections.
185

186 **Section 4.** The provisions of this ordinance shall be effective upon passage and
187 publication.
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