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4 **AN ENGROSSED RESOLUTION**

5
6 Creating the Small Cell Wireless Facilities Workgroup to study and make
7 recommendations to the Milwaukee County Board of Supervisors for the placement of
8 small cell wireless facilities in Milwaukee County, in alignment with aesthetic and
9 historical preferences and Federal and State laws

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12 WHEREAS, small cell wireless facilities (SWF) are a type of wireless broadband
13 infrastructure and are small antennas attached to an existing utility infrastructure for the
14 provision of wireless service, including fifth-generation cellular wireless (5G); and

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16 WHEREAS, in September 2018, the Federal Communications Commission
17 (FCC) issued Declaratory Ruling and Report and Order 18-133 (FCC Order) removing
18 regulatory barriers that inhibit the deployment of SWF to accelerate wireless broadband
19 development and 5G; and

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21 WHEREAS, in July 2019, the Wisconsin State Legislature passed 2019
22 Wisconsin Act 14 to severely limit the local regulation of SWF; and

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24 WHEREAS, 2019 Wisconsin Act 14:

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- 26 • Expands the definition of public “right of way”, as it applies to SWF, to
27 include highways, sidewalks, and utility easements, and expands the
28 definition of “highway” to include parkways
 - 29 • Restricts the use fee for SWF located in the right of way to no more than
30 \$20 per SWF per year
 - 31 • Restricts the fees for permit applications to no more than \$500 for up to
32 five SWF and limits the fee for more than five applications to \$100 for
33 each SWF
 - 34 • Limits the amount the county can charge for collocation on county-owned
35 poles to no more than \$250 per SWF per year
 - 36 • Institutes shot-clock provisions to severely limit the time the county can
37 respond to application for placement or collocation of SWF
 - 38 • Allows for very limited regulation related to health, safety, and welfare
39 considerations, aesthetic concerns, and placement in historic or
40 underground districts
 - 41 • Establishes that wireless providers have the right to collocate SWF in the
42 right of way and/or on county-owned poles

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

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49 WHEREAS, the City of San Jose in California, and nearly two dozen other
50 municipalities joined a lawsuit (City of San Jose v. FCC) challenging the provisions of
51 the FCC Order due to the restrictive nature of the shot clock, fee, and location
52 provisions, which is currently progressing through the Court of Appeals for the Ninth
53 Circuit; and

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55 WHEREAS, the FCC is expected to vote in early June 2020 on a 5G Upgrade
56 Plan, which would clarify shot clock provisions, what equipment can go on an existing
57 structure, and what rules cities can impose on concealing equipment or making it
58 aesthetically pleasing; and

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60 WHEREAS, municipalities around the United States are developing their own
61 standards and guidelines for processing SWF applications, including the City of
62 Madison, which has put together a set of guidelines that seeks to “maximize
63 technological benefits, while attempting to preserve street-side aesthetics”; and

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65 WHEREAS, these guidelines include recommending preferred locations to
66 wireless providers (although it cannot require providers to select those locations),
67 disallowing placement or collocation near landmark or historic places, request
68 avoidance of placement or collocation in significant buildings or view sheds, minimum
69 spacing guidelines, height restrictions, and general aesthetic requirements; and

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71 WHEREAS, other municipalities have enacted guidelines similar to those in the
72 City of Madison, which have been the subject of legal challenges by wireless providers
73 who believe the guidelines to be in violation of the FCC Order, including the case of T-
74 Mobile West LLC v. City and County of San Francisco; and

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76 WHEREAS, the California Supreme Court ruled in favor of the City and County of
77 San Francisco and in support of some local regulation over SWF; and

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79 WHEREAS, legal challenges will continue to occur between wireless providers,
80 municipalities, and the FCC where SWF due to the restrictive and unclear provisions of
81 the FCC Order; and

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83 WHEREAS, the FCC Order and 2019 Wisconsin Act 14 both allow some ability
84 for municipalities to govern the deployment of SWF, although the legality of desired
85 provisions is not always clear; and

86 WHEREAS, Milwaukee County supports technological advancement, while also
87 prioritizing street-side aesthetics in parkways, highways, right of ways, and historic
88 locations; and

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90 WHEREAS, Milwaukee County would benefit from robust guidelines governing
91 the deployment of SWF and the application process for wireless providers; and

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93 WHEREAS, the Committee on Parks, Energy, and Environment, at its meeting of
94 July 10, 2020, recommended adoption of File No. 20-525 (vote 4-0); now, therefore,

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96 BE IT RESOLVED, that the Milwaukee County Board of Supervisors
97 acknowledges the need for technological advancement and the need to protect local
98 control of its right of ways; and

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100 BE IT FURTHER RESOLVED, that the Milwaukee County Board of Supervisors
101 supports limiting the placement of small cell wireless facilities, **including underground**
102 **utilities**, to locations that do not impede upon historically designated locations, do not
103 interfere with aesthetics in highly valued park spaces, do not obstruct views, are as
104 minimally invasive as possible, and result in the highest revenues possible to the
105 county; and

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107 BE IT FURTHER RESOLVED, that the Milwaukee County Board of Supervisors
108 hereby requests the creation of a Small Cell Wireless Facilities Guidelines workgroup
109 made up of representatives from the Office of Corporation Counsel, Department of
110 Parks, Recreation, and Culture, Department of Transportation (including the Highway
111 and Airport divisions), and any other Milwaukee County department impacted by the
112 FCC Order or 2019 Wisconsin Act 14; and

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114 BE IT FURTHER RESLOVED, that the Small Cell Wireless Facilities Guidelines
115 workgroup will use legal requirements from the FCC Order, 2019 Wisconsin Act 14, and
116 other relevant federal and state law to recommend a set of guidelines for adoption by
117 the Milwaukee County Board of Supervisors that adheres to the aforementioned
118 preferences for small cell wireless facilities **and associated utilities, including**
119 **ancillary easements**; and

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121 BE IT FURTHER RESOLVED, that the Small Cell Wireless Facilities Guidelines
122 workgroup will provide their recommended guidelines to the Milwaukee County Board of
123 Supervisors for review by the September 2020 cycle; **and**

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125 **BE IT FURTHER RESOLVED, that the Chair of the Milwaukee County Board**
126 **of Supervisors shall name a member of Preserve Our Parks to the Small Cell**
127 **Wireless Facilities Guidelines workgroup.**

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