

**INTEROFFICE COMMUNICATION
COUNTY OF MILWAUKEE**

DATE: November 13, 2017

TO: Theo Lipscomb, Sr., Chairman, County Board of Supervisors

FROM: Colleen A. Foley, Deputy Corporation Counsel

SUBJECT: *Candy Lab, Inc. v. Milwaukee County*
Case No.: 2017-CV-569-JPS

I request that this matter be referred to the Committee on Judiciary, Safety and General Services for approval of a settlement in *Candy Lab, Inc. v. Milwaukee County* to be paid by the Wisconsin County Mutual Insurance Company in the amount of \$83,000 for Candy Lab's costs and attorneys' fees in this matter. Candy Lab filed its lawsuit in the United States District Court for the Eastern District of Wisconsin on April 21, 2017.

On February 2, 2017, the Milwaukee County Board of Supervisors adopted Resolution 16-637, creating section 47.03(3) of the Milwaukee County Code of General Ordinances requiring permits for location-based augmented reality games in County parks. The County Executive signed the legislation into law on February 10, 2017. The ordinance reads in relevant part:

(3) *Permits required for location-based augmented reality games.* Virtual and location-based augmented reality games are not permitted in Milwaukee County Parks except in those areas designated with a permit for such use by the Director of the Department of Parks, Recreation, and Culture. Permits shall be required before any company may introduce a location-based augmented reality game into the Parks, effective January 1, 2017. The permitting application process is further described on DPRC's website for companies that create and promote such games. That process shall include an internal review by the DPRC to determine the appropriateness of the application based on site selection, protection of rare flora and fauna, personal safety, and the intensity of game activities on park lands. Game activity shall only occur during standard park hours, unless otherwise authorized by the DPRC Director, who has the authority to designate special events and activities within the Parks outside of the standard operational hours.

On July 20, 2017, the Court entered an Order granting a Preliminary Injunction for Candy Lab, Inc., holding that the Ordinance violates the First Amendment to the Constitution of the United States. The parties have reached a stipulated settlement converting the preliminary injunction into a permanent injunction against enforcement of the Ordinance and including declaratory relief and a monetary award representing a portion of Candy Lab's costs and attorneys' fees in the amount of \$83,000.

This settlement is covered by the Wisconsin County Mutual, which recommends settlement for this amount. Our office agrees with this recommendation. This claim falls under the Wisconsin County Mutual Insurance Corporation policy issued to Milwaukee County for the 2017 calendar year. For this policy year, the amount paid and the total currently incurred (\$108,827.70) both fall under the County's self-insured retention (SIR). For this reason, this settlement falls entirely under Milwaukee County's deductible.

c: Raisa Koltun
Kelly Bablitch
Allyson Smith
Erica Hayden