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**December Board Cycle****Small Cell Wireless Facilities****Workgroup**

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Date: Date

To: Marcelia Nicholson, Chairwoman, County Board of Supervisors

From: Jeremy Lucas, Chair, Small Cell Wireless Facilities Workgroup

Subject: Final Recommendations from Small Cell Wireless Facilities Workgroup **(INFO)**

**Introduction**

In 2019, the Wisconsin state legislature passed 2019 Wisconsin Act 14, which created Section 66.0414 of the statutes (the “Small Cell Law”) to govern the deployment of small cell wireless facilities (“SWFs”) in the state. The Small Cell Law provides a framework and rules for local governments to follow in permitting SWF deployment in public rights of way.

Pursuant to File No. 20-525, the Milwaukee County Board of Supervisors authorized the creation of the Small Cell Wireless Facilities Workgroup (the “Workgroup”) for the purpose of recommending a set of guidelines for adoption by the Board governing the deployment of SWFs in the county, consistent with the policies of the Board (as set forth in the resolution attached to File No. 20-525) and with the legal requirements set forth in the Small Cell Law, FCC Order 18-133, and other federal and state laws for SWFs and associated utilities, including ancillary easements.

The Workgroup met six times from September through November of 2020. The Workgroup has determined that only two county departments have operational jurisdiction over property that is included within “right of way,” as such term is defined in the Small Cell Law: Milwaukee County Department of Transportation (MCDOT) and Milwaukee County Parks Department (Parks). MCDOT has operational jurisdiction over county roads and trunk highways and Parks controls certain parkways open to vehicular traffic, both of which arguably fall within the “right of way” definition in the Small Cell Law. While other county departments (e.g. Economic and Community Development) have operational jurisdiction over other county land and buildings, such property is not within the “right of way” under the Small Cell Law. As such, the county has a much broader ability to regulate SWF deployment in such areas and is not constrained by the Small Cell Law in the manner that “right of way” SWF deployments are for MCDOT and Parks. Development of standards for deployment of SWFs on non- “right of way” property is worthwhile and important and the departments that control



such land and buildings should be encouraged to develop such standards. Consistent with the resolution in File No. 20-525, however, the Workgroup's recommendations in this report are focused on MCDOT and Parks as the two departments with operational jurisdiction over county land that is subject to the Small Cell Law.

With respect to SWF deployments in county "right of way" that are governed by the Small Cell Law, the Workgroup discussed possible guidelines by organizing them into the following categories: (1) health and safety; (2) aesthetics; (3) historic districts; and (4) associated utilities/ancillary easements.

### **Health and Safety**

Current practices for health and safety considerations are already part of standard practices for siting new structures or utilities within both MCDOT and Parks. MCDOT is subject to additional statutory regulation and retains permitting authority enabled through county ordinance. Considerations for all new installations within MCDOT and Parks include a review of vision triangles, proximity to entrances or egresses, pedestrian walkways and adjacent installations. The workgroup recognizes that each application and site have unique challenges and circumstances that must be reviewed on a case-by-case basis in accordance with applicable statutes, ordinances and other laws or regulations.

Recommendation: The Workgroup recommends that

- County departments should continue to review each requested SWF installation for compliance with applicable state statutes, local ordinances and other regulatory requirements, including without limitation the health, safety & general welfare standards set forth in the Small Cell Law.
- Pursuant to Wisconsin Statutes Section 66.0414(2)(e)1., the Board of Supervisors may adopt an ordinance regulating deployment of SWFs consistent with that subdivision. The Workgroup recommends that if the Board of Supervisors wishes to regulate in this area it should enact an ordinance, consistent with the Small Cell Law.

### **Aesthetics**

Aesthetic requirements that govern the deployment of small wireless facilities are permitted insofar as they are reasonable and technically feasible, no more burdensome than those applied to other types of infrastructure deployments and are both objective and published in advance. Parks has drafted aesthetic requirements which are included in this report as Appendix A. The Workgroup acknowledges that each application and site have its own particular challenges and circumstances.

Recommendation: The Workgroup recommends that county departments with operational jurisdiction over "right of way," as defined in the Small Cell Law be encouraged to adopt and publish aesthetic guidelines consistent with the needs and policies of such departments and the requirements of the Small Cell Law.

### **Historic and Underground Districts**



Wisconsin Statute Section 66.0414(3)(c)5 allows local governments to adopt an ordinance to prohibit deployment of SWFs in “historic” or “underground” districts, subject to certain limitations and caveats set forth in that subdivision. “Historic districts” are defined as “area[s] designated as historic by the political subdivision, listed on the national register of historic places in Wisconsin, or listed on the state register of historic places.” “Underground districts” are defined as “area[s] designated by the political subdivision in which all pipes, pipelines, ducts, wires, lines, conduits, or other equipment, which are used for the transmission, distribution, or delivery of electrical power, heat, water, gas, sewer, or telecommunications equipment, are located underground.” Because Milwaukee County has no zoning authority, it has no legal mechanism to “designate” historic districts or underground districts in the manner permitted by the Small Cell Law. As such, Milwaukee County’s ability to prohibit deployment as permitted in Wis. Stat. § 66.0414(3)(c)5 is limited to historic districts that are either on the national register of historic places or the state register of historic places.

Recommendation: The Workgroup recommends that the Board of Supervisors first determine if, as a policy matter, SWFs should be prohibited in county “right of way” that is located in areas listed on the state or national registers of historic places. If so, then the Board of Supervisors should adopt an ordinance prohibiting such installations, consistent with the limitations set forth in the Small Cell Law.

#### **Ancillary Easements**

The governance of utilities and ancillary easements in Milwaukee County varies between MCDOT and Parks. MCDOT utility placement is outlined in Wis. Stat. § 86.16 and gives any person, firm or corporation authorized to do business in the state with written consent the authority to construct and operate various modes of conveyance for the purpose of transmitting voice, video data, messages water, liquid manure, heat light or power along, across, under or within the limits of the highway. Conversely, all Parks easements, regardless of the grantee, are approved only by the Board of Supervisors. The Executive Director of Milwaukee County Parks has been given wide discretion to negotiate fees and terms of easements for recommendation to the Board of Supervisors; however, ultimate approval authority to grant such easements rests with the Board.

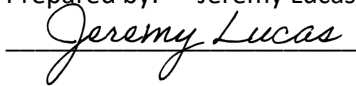
It should be noted that Wis. Stat. §66.0414 outlines placement and process for SWFs but does not specifically address regulation regarding wireline backhaul service (the transport of communications by wire from SWF to a communications network). Although easements for connections between SWF installations are not expressly addressed in the Small Cell Law, there needs to be some way for telecommunications providers deploying SWFs to connect them up, or the right to deploy the SWFs would be meaningless. The Small Cell Law proscribes that no local regulation may result in an effective prohibition of wireless service, which is what would occur if no connections between SWFs were allowed. That stated, the Small Cell Law does not specify precisely the form of any agreements to permit such connections, which can be via easements or otherwise. MCDOT and Parks have existing easement and right of entry policies, copies of which are attached hereto as Appendix B.



Recommendation: The Workgroup recommends that the Board of Supervisors encourage or empower, as applicable, county departments to review requests for SWF connections on a case-by-case basis, consistent with existing policies and in accordance with state statutes, local ordinances or other regulatory requirements, and ,where necessary (as with Parks), make recommendations to the Board for approval of any easements or other arrangements for such connections.

The Small Cell Wireless Facilities Workgroup has expressed a willingness to review relevant proposed ordinance(s) by the Milwaukee County Board of Supervisors.

Prepared by: Jeremy Lucas, Chair, Small Cell Wireless Facilities Workgroup



#### Attachments

- Appendix A – Parks Draft Aesthetic Guidelines
- Appendix B –Parks Easement and Right of Entry Policies and MCDOT Permit Requirements
- File #20-525

#### Copy

- David Crowley, County Executive
- Mary Jo Meyers, Chief of Staff, County Executive’s Office
- Sheldon Wasserman, Parks, Energy & Environment Chair, Supervisor District 3
- Steven Shea, Parks, Energy & Environment Committee Vice-Chair, Supervisor District 8
- Felesia Martin, Parks, Energy & Environment Committee Member, Supervisor District 7
- Sylvia Ortiz-Velez, Parks, Energy & Environment Committee Member, Supervisor District 12
- Liz Sumner, Parks, Energy & Environment Committee Member, Supervisor District 1
- Kelly Bablitch, Chief of Staff, County Board
- Julie Landry, Director, Department of Administrative Services
- Joseph Lamers, Fiscal & Budget Director, DAS
- Vince Masterson, Fiscal & Strategic Asset Coordinator, DAS
- Kelsey Evans, Committee Coordinator, Office of the County Clerk
- Emily Peterson, Research & Policy Analyst, Office of the Comptroller
- Pam Mathews, Budget & Management Analyst, DAS-PSB

