AGENDA
COMMITTEE OF THE WHOLE MEETING
CITY OF BERLIN
TUESDAY, MAY 7, 2019, 7:00 PM
CITY HALL COUNCIL CHAMBERS

1. Roll Call.

2. General Public Comments. Registration card required (located at podium in Council Chamber).

3. Approval of Minutes. RECOMMENDATION: Approve the minutes from the April 2, 2019 Committee of the Whole meeting.

4. Shared-Ride Taxi Service Area Proposed Changes. RECOMMENDATION: Review, discuss and recommend to Common Council to schedule a public hearing for June 11, 2019 on the proposed shared-ride taxi service area changes.

5. Request for Designated Parking at American House, 123 S. Pearl Street. RECOMMENDATION: Discuss and action as appropriate.

6. Revised Agreement with DOT on Ripon Road Project. RECOMMENDATION: Recommend to Common Council to approve the Revised State-Municipal Project Agreement between the City of Berlin and the Wisconsin Department of Transportation for the Ripon Road Project and authorize the appropriate signatures.

7. Discussion on Flags on Street Signs. RECOMMENDATION: Discuss and action as appropriate.

8. Bid Solicitation for Demolition of Old Safeguard Property (114 Pierce/119 Commercial St.) RECOMMENDATION: Review SAG grant information and Request for Proposal (RFP) and recommend to Common Council to authorize staff to solicit bids thru the RFP process for demolition of the old Safeguard property at 114 Pierce/119 Commercial Street.

9. Wireless Telecommunications Facilities in the Right-of-Way Ordinance. RECOMMENDATION: Discuss and recommend to Common Council approval and adoption of the Wireless Telecommunications Facilities in the Right-of-Way Ordinance.

10. Motion to convene into closed session pursuant to WI SS. 19.85(1)(g) to confer with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved (*Discussion and Disallowing Patrick Garcynski Claim*)

11. Reconvene into open session and take appropriate action resulting from closed session discussion.

12. Adjourn.

In adherence to the City of Berlin Public Meeting Participation Policy, public participation will be allowed under each agenda item at the discretion of the presiding officer, with the exception of the Consent Agenda. Attendees must register their intention to participate on either a general comments section or a specific agenda item prior to the meeting by filling out a Registration Card, which can be obtained from the Internet, City Clerk's office or in the City Hall Council Chambers at the podium. Registration Cards should be turned in prior to the meeting to either the presiding officer or City Clerk.

DATE: May 1, 2019

TO: Committee of the Whole

FROM: Jodie Olson

RE: Shared-Ride Taxi Service Area Proposed Changes

BACKGROUND: At the April Committee meeting Karl Schulte, General Manager of Running Inc., provided a review of how operations were going under the new contract. Karl had made a few recommendations to expand the service area to accommodate medical and court appointments to Ripon and Green Lake. Staff contacted the state on the proposed changes. The state was agreeable to some trips going to Ripon and Green Lake as per Karl's written recommendations, but they will not allow any budgetary increases in 2019. We are also required to have a public hearing prior to implementation of changes to receive public comment on the rules and fares that are being proposed. The public hearing must spell out any special rules the city wants to put on trips to Ripon or Green Lake. Those rules were outlined in the attached document Karl provided us last month.

We can have a public hearing in June and I have attached the notice that would be published. The public hearing would be held at the regular June 11 Common Council meeting.

RECOMMENDATION: Review, discuss and recommend to Common Council to schedule a public hearing for June 11, 2019 on the proposed shared-ride taxi service area changes.

PUBLIC NOTICE
CITY OF BERLIN SHARED-RIDE TAXI
PROPOSED CHANGES

The City of Berlin receives funds from the Federal Transit Administration Section 5311 Rural Public Transit Assistance program and the Wisconsin Department of Transportation Section 85.20 Transit Assistance program to assist in funding the shared-ride taxi program. The state and federal funding sources require the program to offer the public the opportunity for input on proposed changes. The City is considering expanded taxicab service to Green Lake during limited hours; and also expanded service to medical services within Ripon during limited hours; and modifying its Fare Schedule to include surcharges for persons traveling to or from the aforementioned locations. These changes if adopted would become effective on July 1, 2019.

Please note that none of these proposed changes would affect the cost of cab service within the City. The proposed service expansion and associated new fares are as follows:

Fare Category	Current	As of 7/1/2019
Within City Limits	Base Fare*	no change
First 5 out-of-town Miles	$1.50/ mile	no change
Green Lake	not allowed	Base Fare* plus $15.00
Ripon	not allowed	Base Fare* plus $20.00

**Several Base Fares currently exist: one for Seniors & Disabled Citizens; another for Students; and yet another for Working Age Adults. These Base Fares are not changing.*

A public hearing on this new fare schedule will be held as part of the City Council Meeting at June 11, 2019 at Berlin City Hall, 108 N. Capron St., Berlin, WI 54923. Written comments should be sent to Jodie Olson, City Administrator, at the above address so they are received prior to the hearing date.

Publish May 16, 2019

Jodie Olson

From: Reuter, Chadwic D - DOT <Chadwic.Reuter@dot.wi.gov>
Sent: Friday, April 05, 2019 4:51 PM
To: Jodie Olson
Cc: Karl Schulte; Lange, Kevin V - DOT; Hirshfeld, Steve - DOT; Ritz, Ian - DOT
Subject: RE: Emailing: Berlin Shared Ride Taxi proposed changes.pdf

Hi Jodie,

Thanks for sharing this information. The RFP that you advertised in the fall stated that service was to end at a 5-mile radius outside the city limits. However, if the city is willing to give Brown Cab permission for rides outside that service area for some trips, that will be deemed acceptable.

Unfortunately, we will not be able to increase budgets for 2019 at this point in the process. Fare-setting to make up for extra costs are strictly up to the city, but you should advertise those fare increases in public hearing of some sort before implementation. The public hearing would also have to spell out any special rules the city wants to put on trips on Ripon or Green Lake so that residents have a chance to comment.

Any changes in service should be done within the 2019 service contract with the provider. The service hours were advertised at a certain level in the RFP so making big changes in the hours at this point is not allowed. It sounds from Karl's proposal that the expansion for some out-of-town trips may not greatly increase service hours or wait times...but you will be limited to what the company believes will work in the current service hour framework.

Cab companies should not be entering into any agreements with other private companies that would, in effect, spend taxpayer dollars. However, we are in favor of coordinated service. If the cab companies want to work together to ensure a rider can get back and forth, that's great! But there cannot be any contracts for formal services between private entities that promise service levels than the community may not have interest in paying for.

Please note that Ripon's RFP states that the service area is only a 1-mile radius of the city limits. These rides, therefore, should be a very limited amount that are for medical purposes only. Please notify Lori Rich with Ripon of this situation, if you have not already. She needs to sign-off on these sorts of arrangements, as well.

If additional coordination is needed, we will need both communities to re-bid their services so the effort is clear to any potential bidders. Then there could be an intergovernmental agreement between the cities for whatever types of services best meet their residents' needs.

Chad Reuter
Transit Section Lead Worker
Bureau of Transit, Local Roads, Rails, and Harbors Wisconsin Department of Transportation
(608) 267-7345
chadwic.reuter@dot.wi.gov

Chad

-----Original Message-----
From: Jodie Olson <Jolson@cityofberlin.net>
Sent: Wednesday, April 03, 2019 4:53 PM
To: Reuter, Chadwic D - DOT <Chadwic.Reuter@dot.wi.gov>
Cc: Karl Schulte <karl@runninginc.net>
Subject: Emailing: Berlin Shared Ride Taxi proposed changes.pdf

Hi Chad - please review the attached proposed changes for our service with Running Inc as presented by Karl. Are the changes he outlined allowed under our current contract? Are there any modifications to the contract involved? Do any changes require going out for an RFP or waiting until 1/1/20 for implementation?

I believe going to Ripon may go beyond a 10-mile radius so that may be a sticking issue. Please advise.

Jodie Olson
City of berlin
920-361-5409

Your message is ready to be sent with the following file or link attachments:

Berlin Shared Ride Taxi proposed changes.pdf

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

BERLIN PUBLIC TRANSIT

Running Inc. is in our third month providing taxicab service in the City of Berlin. Our volume (measured by one-way trips) is down from one year ago, but it is increasing. Revenue has stayed steady when compared to one year ago.

	One Way Trips	
	2018 Trips - (data from Classic Cab)	2019 Trips
January	1952	1548
February	1952	1728
March	1952	
April	1810	
May	1810	
June	1810	
July	1486	
August	1486	
September	1485	
October	1755	
November	1755	
December	1755	
	2018 Total 21,008	2019 YTD 3,276

	Farebox Revenue Classic Cab 2018	Farebox Revenue 2019
January	$6,301	$6,469
February	$6,301	$6,360
March	$6,300	
April	$6,339	
May	$6,339	
June	$6,338	
July	$5,571	
August	$5,571	
September	$5,570	
October	$6,011	
November	$6,010	
December	$6,010	
Totals	$72,661	$12,828

The loss of trips is attributed to several factors: (1) in January our staffing levels were touch and go---we relied on Ripon Taxi drivers to keep enough drivers on the road; (2) we (drivers and dispatchers) and our consumers had a learning curve---we conducted business differently than our predecessor, and many customers who were accustomed to charging rides needed to adjust to our procedures; (3) we purposely ceased to provide trips which went deep out of town (more about this below).

Staffing levels have greatly improved, and our trip volume is ticking upwards.

PROBLEMS: Unfortunately drivers and dispatchers developed a habit of talking about Ripon. I think this was natural as they were processing (out-loud) the difference between how things are done in Ripon as opposed to Berlin. But it was an unfortunate habit. Berlin callers couldn't care less about how things work in Ripon---and commenting on the difference hurt our image. This bad habit has largely ceased.

TABLETS & DISPATCH SOFTWARE: Our dispatchers are entering trip requests into software designed for dispatching. Drivers are receiving dispatch assignments on computer tablets which are connected to the dispatch software. Like all new software, it took dispatchers and drivers a bit of time to get comfortable with the new procedures.

STAFF HAS MET WITH SEVERAL KEY STAKEHOLDERS: Running Inc endeavors to be available to answer questions to key stakeholders. Representatives of Running Inc have participated in a phone conference with staff from the Hospital, and also met in person with the Senior Commission. As the year goes on we hope to meet with other organizations and individuals who have an interest in public transportation in the Berlin area.

PROPOSALS TO CONSIDER

Previous to January 1st the public was able to use Berlin Public Transit to get to many locations far outside the City Limits. Beginning on January 1st Berlin Public Transit imposed a strict 5 mile limit on all out-of-town trips, and required that one end of the trip of the other must be within the City Limits.

Our dispatchers find that every week several people request a ride to/from Green Lake for either medical or county purposes. Ripon is also frequently requested (usually for medical reasons). Less frequently callers request to go to Redgranite, Neshkoro, or Wautoma. (These less frequent requests are generally from people leaving the hospital and heading to their homes, or their nursing homes.)

After three months of providing service Running Inc believes we could restore service to some out-of-town locations (but not all) to the benefit of City residents. We believe we could restore this limited service without creating in-City service delays.

SERVICE TO GREEN LAKE

Because many residents of Berlin have business with county agencies or other agencies located in the City of Green Lake, it seems reasonable and a good idea to allow Berlin Public Transit to send cabs to and from Green Lake. But to ensure that this is cost effective and doesn't create unnecessary delays for people remaining in Berlin this service should be set up with the following rules:

1. Fare: each passenger will pay $15.00 above and beyond the fare they normally would pay for in-town trips. (i.e. an elderly person would pay $15.00 + $2.00).
2. Must Call Two Hours in Advance: unlike in-town trips, all trips to and from Green Lake must be requested at least two hours in advance.
3. No Green Lake service during the busiest time periods. These are (on school-days) 7:30AM until 9:00AM; and again from 3:00PM until 4:00PM.
4. Southbound Trips will leave Berlin at (or near) the top of the hour. The dispatcher will endeavor to get all southbound travelers into the same taxicab. Southbound Trips will be scheduled only at 9AM, 10AM, 11AM, NOON, 1PM, 2PM and 4PM.
5. Northbound Trips will leave Green Lake at half-past the hour. The dispatcher will endeavor to get all northbound travelers into the same taxicab. Northbound trips will be scheduled only at 9:30AM; 10:30AM; 11:30AM; 12:30PM; 1:30PM; 2:30PM; and 4:30PM.

RECIPROCAL SERVICE BETWEEN BERLIN HOSPITAL AND RIPON MEDICAL CENTER

Periodically a resident of Berlin must travel to Ripon Medical Center for medical services. Likewise, periodically a resident of Ripon must travel to Berlin Hospital to receive medical services. Previously a

reciprocal agreement existed between Ripon Taxi and Classic Cab wherein residents from one city could be transported to a clinic by their home cab company and returned home by the clinic's home cab company. A similar new agreement could be entered into. This service (if approved) only authorizes trips to and from medical facilities within these two cities. This agreement would eliminate the need for a cab driver to sit idle and wait for an appointment to finish up.

1. This agreement stipulates that whenever a Ripon resident is dropped off at Berlin Hospital, a Berlin Public Transit driver can return that Ripon resident to their home after their appointment. (So long as the trip is within normal Berlin Public Transit hours of operation.)
2. Likewise, anytime a Berlin resident is dropped off at a Ripon medical facility, a Ripon Taxi driver can return that Berlin resident to their home after their appointment. (So long as the trip is within normal Ripon Taxi hours of operation.)
3. No Ripon service during the busiest time periods. These are (on school-days) 7:30AM until 9:00AM; and again from 3:00PM until 4:00PM.
4. Each company will charge an appropriate fare according to its own City Council approved fare structure. Berlin Public Transit would charge $20.00 above and beyond the fare normally charged for an in-town trip. (i.e. an elderly person would pay $20.00 + $2.00).

Running Inc is very proud to help the City provide this valuable service to its residents. We believe that adopting the two proposals above will enhance our service without negatively impacting the program's budget or overwhelming the program's capacity.

Please let me know if you have any concerns or questions.

Karl Schulte, General Manager
Running Inc Transit Services

Running Inc.
transit services

Jodie Olson

From: Reuter, Chadwic D - DOT <Chadwic.Reuter@dot.wi.gov>
Sent: Friday, April 05, 2019 4:51 PM
To: Jodie Olson
Cc: Karl Schulte; Lange, Kevin V - DOT; Hirshfeld, Steve - DOT; Ritz, Ian - DOT
Subject: RE: Emailing: Berlin Shared Ride Taxi proposed changes.pdf

Hi Jodie,

Thanks for sharing this information. The RFP that you advertised in the fall stated that service was to end at a 5-mile radius outside the city limits. However, if the city is willing to give Brown Cab permission for rides outside that service area for some trips, that will be deemed acceptable.

Unfortunately, we will not be able to increase budgets for 2019 at this point in the process. Fare-setting to make up for extra costs are strictly up to the city, but you should advertise those fare increases in public hearing of some sort before implementation. The public hearing would also have to spell out any special rules the city wants to put on trips on Ripon or Green Lake so that residents have a chance to comment.

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Cab companies should not be entering into any agreements with other private companies that would, in effect, spend taxpayer dollars. However, we are in favor of coordinated service. If the cab companies want to work together to ensure a rider can get back and forth, that's great! But there cannot be any contracts for formal services between private entities that promise service levels than the community may not have interest in paying for.

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If additional coordination is needed, we will need both communities to re-bid their services so the effort is clear to any potential bidders. Then there could be an intergovernmental agreement between the cities for whatever types of services best meet their residents' needs.

Chad Reuter
Transit Section Lead Worker
Bureau of Transit, Local Roads, Rails, and Harbors Wisconsin Department of Transportation
(608) 267-7345
chadwic.reuter@dot.wi.gov

Chad

-----Original Message-----
From: Jodie Olson <Jolson@cityofberlin.net>
Sent: Wednesday, April 03, 2019 4:53 PM
To: Reuter, Chadwic D - DOT <Chadwic.Reuter@dot.wi.gov>
Cc: Karl Schulte <karl@runninginc.net>
Subject: Emailing: Berlin Shared Ride Taxi proposed changes.pdf

Notice of Proposed Changes to Taxicab Service

The City of Berlin receives funds from the Federal Transit Administration Section 5311 Rural Public Transit Assistance program and the Wisconsin Department of Transportation Section 85.20 Transit Assistance program to assist in funding the shared-ride taxi program. The state and federal funding sources require the program to offer the public the opportunity for input on proposed changes. The City is considering expanded taxicab service to Green Lake during limited hours; and also expanded service to medical services within Ripon during limited hours; and modifying its Fare Schedule to include surcharges for persons traveling to or from the aforementioned locations. These changes if adopted would become effective on June 1, 2019.

Please note that none of these proposed changes would affect the cost of cab service within the City. The proposed service expansion and associated new fares are as follows:

Fare Category	**Current**	**As of 6/1/2019**
Within City Limits	Base Fare*	no change
First 5 out-of-town Miles	$1.50/ mile	no change
Green Lake	not allowed	Base Fare* plus $15.00
Ripon	not allowed	Base Fare* plus $20.00

**Several Base Fares currently exist: one for Seniors & Disabled Citizens; another for Students; and yet another for Working Age Adults. These Base Fares are not changing.*

A public hearing on this new fare schedule will be held as part of the City Council Meeting at _____ at Berlin City Hall, 108 N. Capron St., Berlin, WI 54923. Written comments should be sent to Jodie Olson, City Administrator, at the above address so they are received prior to the hearing date.

Jodie Olson

From: Karl <karl@runninginc.net>
Sent: Tuesday, April 16, 2019 7:58 AM
To: Jodie Olson
Cc: Justin Running; john.wwill@yahoo.com; berlintransit
Subject: RE: Berlin taxi issues
Attachments: Berlin 2019 fare notice[65619].doc

Hello Jodie:

Three issues are: late payment to Krause; long waits for service at two local hair salons; and DOT's requirements for adding to the service area.

1. KRAUSE --- John Will (the mechanic employed by Running Inc who oversees our Berlin Transit operations) has been in regular contact with Keith Krause multiple times each month since we began the contract in January. John has been working with Keith to assure that invoices are received and paid timely. After I received your email I asked John to reach out to Keith. Keith assured John that he is not dissatisfied with our timeliness, and John assures me that he is working to speed our processing time for when we receive future invoices from Krause. I will send another email to you when I know with certainty that payment has been made and received (for February and March).

2. BEAUTY --- I have looked at the computer time-stamps from our dispatch program and I only find a couple long wait times at the hair salons. I see that we had 104 total trips to/from the two salons. 78 of the 104 trips seemed to have been picked up in 20 minutes or less. All but 3 of the 104 seemed to have been picked up in 45 minutes or less. Five of the ten longest waits occurred during the busy 8 o'clock am hour. I will have staff reach out to both hair salons myself, and then follow up by reaching out myself.

3. EXPANDED SERVICE --- Chad in his email reminded us that we must follow FTA's public hearing requirements. A notice must be placed in the City's newspaper of record notifying the public that the City is considering an expansion of the service and that the public is invited to ask for a public hearing on the topic. I've attached a suitable public notice to this email, with space left open for meeting date and effective date. After you've filled in a meeting date and effective date you need to share this with Chad at DOT. (The notice must be posted at least five weeks prior to the effective date.) Chad also mentioned that Ripon must go through a similar process, so the Ripon portion of our resolution should probably be effective at some convenient date after Ripon adopts a complimentary resolution affecting their taxicab service.

Please let me know if you have any questions.

Yours truly,

Karl Schulte, General Manager
Brown Cab & Running Transit Inc.
735 Madison Avenue
Fort Atkinson, WI 53538

From: Jodie Olson
Sent: Monday, April 15, 2019 5:41 PM
To: Karl Schulte
Subject: RE: Berlin taxi issues

Karl – I have not heard back from you on this issue. Please let me know if this has been resolved.

Also, beyond my e-mail correspondence, have you been in touch with the state about if we need to do anything special to implement these changes?

Jodie

From: Jodie Olson
Sent: Thursday, April 11, 2019 11:13 AM
To: Karl Schulte
Subject: Berlin taxi issues

Hi Karl – Connie Krause was in here this morning and indicated that they have not been paid for Feb or March bills that are owed to Krause Mobile. She said they have been going thru a John Will and have emailed, texted, and mailed the bills to him. No matter which method they send it to him, he apparently says he doesn't receive it. They are not happy with the process of getting paid. I don't know that this is in your wheelhouse, but please pass this along to whoever needs to know to get this fixed. Also, please let me know when the situation has been taken care of.

Connie can be reached at 361-2818 or 290-0756

Connie also said that the service won't pick up appointments for hair to the Mop Shop and the ladies at Berlin Beauty just sit and wait and wait.

Jodie Olson
City Administrator/Clerk-Treasurer
City of Berlin
108 N. Capron Street, PO Box 272
Berlin, WI 54923
920-361-5400

DATE: 4/24/2019

TO: Mayor and Committee of the Whole

FROM: Scott Zabel

RE: Request for designated parking in front of the American House at 123 S. Pearl St.

BACKGROUND: At the April COTW meeting council directed staff to research options to provide designated parking in front of the American House at 123 S. Pearl St. Attorney Chier determined that Section 70-481 of the Code under Loading Zones is the appropriate designation to allow emergency and other vehicles to park for the purpose of loading and unloading passengers in front of the American House. Attorney Chier also stated that this would require an ordinance change. After further discussion our suggestion would be to utilize the two stalls that are currently 15 Min. parking, for the purpose of loading and unloading passengers. This would allow emergency vehicles to enter and exit the loading zone easier eliminating the need to parallel park. The two spaces would be combined into one loading zone area with the appropriate pavement marking and a sign posted at the south end of the zone designating it a PASSENGER LOADING AND UNLOADING ZONE ONLY. The anticipated cost to make the changes would be around $200.00 to the responsible party.

RECOMMENDATION: Discussion and action as appropriate.

Jodie Olson

From: Scott Zabel
Sent: Friday, April 05, 2019 3:09 PM
To: legalsolutions@chierlaw.com; Jodie Olson
Subject: RE: COB Streets, Parking, & Traffic Issues American House Berlin LLC Loading Zone Parking at 123 S. Pearl Street

Hi Matt,
The MUTCD regulations does not offer much guidance for loading zones involving passengers. I would think as long as the sign is red letter on white and mounted per regulation guidelines we should be good. How do you feel about the sign reading, PASSENGER LOADING AND UNLOADING ONLY or PASSENGER LOADING AND UNLOADING ZONE ONLY. My recommendation will be to paint the two stalls that are currently 15 min. parking in yellow slant lines for loading zone and using the white parallel parking lines as the boarder which will be just painted over in yellow. Then place one sign at the south stall. Let me know you thoughts, thanks.

-Scott

Public Works Superintendent (920) 361-5425 szabel@cityofberlin.net

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From: Chier Law Office LLC [mailto:legalsolutions@chierlaw.com]
Sent: Friday, April 05, 2019 11:58 AM
To: Jodie Olson
Cc: Scott Zabel
Subject: COB Streets, Parking, & Traffic Issues American House Berlin LLC Loading Zone Parking at 123 S. Pearl Street

This e-mail message (including all attachments) may contain confidential, proprietary, privileged, and/or private information intended only for the use of the individual or entity named above as the recipient. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is prohibited. If you have received this communication in error, please immediately notify us by telephone, return the original message to us at the below address via the U.S. Postal Service, and delete it from your computer. Although Chier Law Office LLC attempts to prevent the passage of viruses via e-mail and attachments thereto, Chier Law Office LLC does not guarantee that either are virus free, and accepts no liability for any damage sustained as a result of any such viruses.

Jodie:

I did some research and met with Scott. It is my opinion that Section 70-481, Loading Zones, is the appropriate designation to allow emergency and other vehicles parking spaces to load and unload passengers in front of the American House. This would require an ordinance change. Scott can give his opinion, but during our discussions, our consensus was that at least two parking spaces should be designated to allow for easy swings in and out for emergency vehicles. In other words, I don't think you want to require parallel parking. Scott thought that it made sense to simply change the two current 15 minute spaces to loading zone spaces.

Scott will research the required signage to comply with the traffic manual, as well as required painting. The question of cost will have to be presented to the COTW and the Council, with the knowledge that ADVOCAP was required to pay for the handicap space signage in front of its building.

Let me know if you have any questions, but this should otherwise go on the next COTW agenda. Note that the ordinance expressly requires a recommendation from the COTW to the Council on the loading zone designation.

Thanks.

DATE: 5/1/19

To: Mayor and Committee of the Whole

FROM: Scott Zabel

RE: Update on Project 6995-09-71, Ripon Road Resurfacing in the City of Berlin, Green Lake County.

BACKGROUND: The City of Berlin was approved for Federal funding, (80% Federal and 20% local) under the Surface Transportation Program (STP Rural) to resurface Ripon Rd. from S. Church St. to the City Limits. The project is due for construction in 2020 and is currently in the design phase.

WisDOT has guidelines and requirements that need to be met when Federal Funds are awarded to local government. WisDOT recently performed a traffic count on Ripon Rd. which is part of the process they use to gain information during the design phase. WisDOT found that Ripon Rd. has a peak volume of 3,260 vehicles daily, and 25% of that traffic is considered heavy truck traffic. WisDOT requires Engineering Consultants to follow a formula pertaining to road base and pavement strength based on the type of traffic using the road. Ripon Road was found to have a higher amount of heavy truck traffic which determined the need for a higher road strength rating.

This traffic count changes the original scope of the project increasing the project cost by an additional $292,000.00. The city is responsible for 20% of that increase which is $58,400. Staff submitted a Management Fund Request to WisDOT to acquire the additional funds and the request was approved. Attached you will find a REVISED State-Municipal Project Agreement between the City of Berlin and the Wisconsin Department of Transportation for approval.

Original total project cost:	$704,000
New total project cost:	$996,000
Difference	$292,000

Original City 20% Portion:	$140,800
New City 20% Portion:	$199,200
Difference	$58,400

We have been budgeting annually since 2017 for this project. We will likely need to increase our 2020 budget contribution and may have to budget some in 2021.

RECOMMENDATION: Recommend to Common Council to approve the Revised State-Municipal Project Agreement between the City of Berlin and the Wisconsin Department of Transportation for the Ripon Road project and authorize the appropriate signatures.

STP-Rural and small STP-Urban (206) Standard SMA Template

1st REVISION **STATE/MUNICIPAL AGREEMENT FOR A STATE- LET STP-RURAL PROJECT** *This agreement supersedes the agreement signed by the Municipality on June 14, 2016 and signed by the State on June 27, 2016.* **Program Name: STP-Rural** **Sub-program #: 206**	Revised Date: April 25, 2019 I.D.: 6995-09-01 Design 6995-09-71 Construction Road Name: Ripon Road Limits: City of Berlin, Ripon Road South Church Street to City Limits County: Green Lake Roadway Length: 1.06 miles Functional Classification: Major Collector Project Sponsor: City of Berlin

The signatory, **City of Berlin**, hereinafter called the Municipality, through its undersigned duly authorized officers or officials, hereby requests the State of Wisconsin Department of Transportation, hereinafter called the State, to initiate and effect the highway or street improvement hereinafter described.

The authority for the Municipality to enter into this agreement with the State is provided by Sections 86.25(1), (2), and (3) and Section 66.0301 of the Statutes.

NEEDS AND ESTIMATE SUMMARY:

All components of the project must be defined in the environmental document if any portion of the project is federally funded. The Municipality agrees to complete all participating and any non-participating work included in this improvement consistent with the environmental document. No work on final engineering and design may occur prior to approval of the environmental document.

Existing Facility - Describe and give reason for request:
Ripon Road is a 2-lane roadway that carries 2,800 vehicles a day and has posted or statutory speed limits of 25 and 35 mph. It is functionally classified as a Major Collector and was last improved in 1991. The existing asphalt is in poor condition with lane rutting and potholes. The heavy trucks have rutted the pavement resulting in water to pond creating a hazard. The pavement width is 24 feet and the shoulder type is a combination consisting of urban section that is asphalt and a rural section that is gravel with width varying from 6 to 8 feet. There is an existing sidewalk in the urban section.

Proposed Improvement - Nature of work:
The proposed project is a pavement replacement to upgrade the pavement condition for safe travel. The 2,100 feet of urban section will be pulverized, regraded and paved with asphalt pavement. The 3,500-foot rural section will add base course, pulverize and overlay with asphalt. The proposed improvement may include but is not limited to the following: pulverizing the old pavement, placing new asphalt pavement with shoulders and curb and gutter where applicable, upgrading sidewalk where applicable, and permanent and temporary pavement marking and signing. Less than 1/2 acre of right of way consisting of temporary interests may be required. Bike and pedestrian accommodations will be investigated.

Describe non-participating work included in the project and other work necessary to completely finish the project that will be undertaken independently by the Municipality. Please note that non-participating components of a project/contract are considered part of the overall project and will be subject to applicable federal requirements: No Non-Participating work has been identified at this time.

STP-Rural and small STP-Urban (206) Standard SMA Template

The Municipality agrees to the following 2015-2020 STP-Rural project funding conditions:

Project design and construction costs are funded with **80%** federal funding up to a funding limit of **$796,800**. The Municipality agrees to provide the remaining **20%** and any funds in excess of the **$796,800** federal funding limit. Real estate and non-participating costs are 100% the responsibility of the Municipality. Any work performed by the Municipality prior to federal authorization is not eligible for federal funding. The Municipality will be notified by the State that the project is authorized and available for charging.

This project is currently scheduled in State Fiscal Year 2020. **In accordance with the State's sunset policy for STP-Rural projects, the subject 2015-2020 STP-Rural improvement must be constructed and in final acceptance within six years from the start of State Fiscal Year 2017, or by June 30, 2022.** Extensions may be available upon approval of a written request by or on behalf of the Municipality to State. The written request shall explain the reasons for project implementation delay and revised timeline for project completion.

The dollar amounts shown in the Summary of Costs Table below are estimates. The final Municipal share is dependent on the final federal participation, and actual costs will be used in the final division of cost for billing and reimbursement. In no event shall federal or state funding exceed the estimate of **$796,800** in the Summary of Costs Table, unless such increase is approved in writing by the State through the State's Change Management Policy prior to the Municipality incurring the increased costs.

	SUMMARY OF COSTS				
PHASE	Total Est. Cost	Federal Funds	%	Municipal Funds	%
ID 6995-09-01 *					
Design	$66,000	$52,800	80% MAX	$13,200	20% + BAL
State Review	$22,000	$17,600	80% MAX	$4,400	20% + BAL
Design Subtotal	**$88,000**	**$70,400**		**$17,600**	
ID 6995-09-71 **					
Participating Construction	$796,491	$637,193	80% MAX	$159,299	20% + BAL
Non-Participating Construction			0%		100%
State Review	$111,509	$89,207	80% MAX	$22,301	20% + BAL
Construction Subtotal	**$908,000**	**$726,400**		**$181,600**	
Total Est. Cost Distribution	**$996,000**	**$796,800**	N/A	**$199,200**	N/A

*Design ID# 6995-09-01 federal funding is limited to $70,400
**Construction ID# 6995-09-71 federal funding is limited to $726,400

This request is subject to the terms and conditions that follow (pages 3 – 8) and is made by the undersigned under proper authority to make such request for the designated Municipality and upon signature by the State and delivery to the Municipality shall constitute agreement between the Municipality and the State. No term or provision of neither the State/Municipal Agreement nor any of its attachments may be changed, waived or terminated orally but only by an instrument in writing executed by both parties to the State/Municipal Agreement.

Signatures certify the content has not been altered by the municipality.
Signed for and in behalf of: **City of Berlin**: (please sign in blue ink.)

Name Title

Signature Date

Signed for and in behalf of the State of Wisconsin:

Name Michael Wendt Title: WisDOT North Central Region Planning Chief

Signature Date

STP-Rural and small STP-Urban (206) Standard SMA Template

GENERAL TERMS AND CONDITIONS:

1. All projects must be in an approved Transportation Improvement Program (TIP) or State Transportation Improvement Program (STIP) prior to requesting authorization.

2. Work prior to federal authorization is ineligible for federal funding.

3. The Municipality, throughout the entire project, commits to comply with and promote all applicable federal and state laws and regulations that include, but are not limited to, the following:

   a. Environmental requirements, including but not limited to those set forth in the 23 U.S.C. 139 and National Environmental Policy Act (42 U.S.C. 4321 et seq.)

   b. Equal protection guaranteed under the U.S. Constitution, WI Constitution, Title VI of the Civil Rights Act and Wis. Stat. 16.765. The municipality agrees to comply with and promote applicable Federal and State laws, Executive Orders, regulations, and implementing requirements intended to provide for the fair and equitable treatment of individuals and the fair and equitable delivery of services to the public. In addition the Municipality agrees not to engage in any illegal discrimination in violation of applicable Federal or State laws and regulations. This includes but is not limited to Title VI of the Civil Rights Act of 1964 which provides that "no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." The Municipality agrees that public funds, which are collected in a nondiscriminatory manner, should not be used in ways that subsidize, promote, or perpetuate illegal discrimination based on prohibited factors such as race, color, national origin, sex, age, physical or mental disability, sexual orientation, or retaliation.

   c. Prevailing wage requirements, including but not limited to 23 U.S.C 113.

   d. Buy America Provision and its equivalent state statutes, set forth in 23 U.S.C. 313 and Wis. Stat. 16.754.

   e. Competitive bidding requirements set forth in 23 U.S.C 112 and Wis. Stat. 84.06.

   f. All applicable Disadvantaged Business Enterprise (DBE) requirements that the State specifies.

   g. Federal statutes that govern the Surface Transportation Program (STP), including but not limited to 23 U.S.C. 133.

   h. General requirements for administrating federal and state aids set forth in Wis. Stat. 84.03.

STATE RESPONSIBILITIES AND REQUIREMENTS:

4. Funding of each project phase is subject to inclusion in Wisconsin's approved 2015-2020 STP-Rural program. Federal funding will be limited to participation in the costs of the following items, as applicable to the project:

   a. The grading, base, pavement, and curb and gutter, sidewalk, and replacement of disturbed driveways in kind.

   b. The substructure, superstructure, grading, base, pavement, and other related bridge and approach items.

   c. Storm sewer mains necessary for the surface water drainage.

   d. Catch basins and inlets for surface water drainage of the improvement, with connections to the storm sewer main.

e. Construction engineering incident to inspection and supervision of actual construction work (except for inspection, staking, and testing of sanitary sewer and water main).

f. Signing and pavement marking.

g. New installations or alteration of street lighting and traffic signals or devices.

h. Landscaping.

i. Preliminary engineering and design.

j. Management consultant and state review services.

5. The work will be administered by the State and may include items not eligible for federal participation.

6. As the work progresses, the State will bill the Municipality for work completed that is not chargeable to federal/state funds. Upon completion of the project, a final audit will be made to determine the final division of costs subject to funding limits in the Summary of Costs Table. If reviews or audits show any of the work to be ineligible for federal/state funding, the Municipality will be responsible for any withdrawn costs associated with the ineligible work.

MUNICIPAL RESPONSIBILITIES AND REQUIREMENTS:

7. Work necessary to complete the 2015-2020 STP-Rural improvement project to be <u>financed entirely</u> by the Municipality or other utility or facility owner includes the items listed below.

   a. New installations of or alteration of sanitary sewers and connections, water, gas, electric, telephone, telegraph, fire or police alarm facilities, parking meters, and similar utilities.

   b. Damages to abutting property after project completion due to change in street or sidewalk widths, grades or drainage.

   c. Detour routes and haul roads. The municipality is responsible for determining the detour route.

   d. Conditioning, if required and maintenance of detour routes.

   e. Repair of damages to roads or streets caused by reason of their use in hauling materials incident to the improvement.

   f. All work related to underground storage tanks and contaminated soils.

   g. Street and bridge width in excess of standards, in accordance with the current WisDOT Facilities Development Manual (FDM).

   h. Real estate for the improvement

8. The construction of the subject improvement will be in accordance with the appropriate standards unless an exception to standards is granted by State prior to construction. The entire cost of the construction project, not constructed to standards, will be the responsibility of the Municipality unless such exception is granted.

9. Work to be performed by the Municipality without federal funding participation necessary to ensure a complete improvement acceptable to the Federal Highway Administration and/or the State may be done in a manner at the election of the Municipality but must be coordinated with all other work undertaken during construction.

10. The Municipality is responsible for financing administrative expenses related to Municipal project responsibilities.

11. The Municipality will include in all contracts executed by them a provision obligating the contractor not to discriminate against any employee or applicant for employment because of age, race, religion, color,

handicap, sex, physical condition, developmental disability as defined in Wis. Stat. 51.01 (5), sexual orientation as defined in Wis. Stat. 111.32 (13m), or national origin.

12. The Municipality will pay to the State all costs incurred by the State in connection with the improvement that exceed federal/state financing commitments or are ineligible for federal/state financing. To guarantee the Municipality's foregoing agreements to pay the State, the Municipality, through its above duly authorized officers or officials, agrees and authorizes the State to set off and withhold the required reimbursement amount as determined by the State from any moneys otherwise due and payable by the State to the Municipality.

13. **In accordance with the State's sunset policy for STP-Rural projects, the subject 2015-2020 STP-Rural improvement must be constructed and in final acceptance within six years from the start of State Fiscal Year 2017, or by June 30, 2022.** Extensions may be available upon approval of a written request by or on behalf of the Municipality to State. The written request shall explain the reasons for project implementation delay and revised timeline for project completion.

14. If the Municipality should withdraw the project, it will reimburse the State for any costs incurred on behalf of the project.

15. The Municipality will at its own cost and expense:

    a. Maintain all portions of the project that lie within its jurisdiction (to include, but not limited to, cleaning storm sewers, removing debris from sumps or inlets, and regular maintenance of the catch basins, curb and gutter, sidewalks and parking lanes [including snow and ice removal]) for such maintenance through statutory requirements in a manner satisfactory to the State, and will make ample provision for such maintenance each year.

    b. Regulate [or prohibit] parking at all times in the vicinity of the proposed improvements during their construction.

    c. Regulate [or prohibit] all parking at locations where and when the pavement area usually occupied by parked vehicles will be needed to carry active traffic in the street.

    d. Assume general responsibility for all public information and public relations for the project and to make fitting announcement to the press and such outlets as would generally alert the affected property owners and the community of the nature, extent, and timing of the project and arrangements for handling traffic within and around the project.

    e. Provide complete plans, specifications, and estimates to State upon request.

    f. Provide relocation orders and real estate plats to State upon request.

    g. Use the *WisDOT Utility Accommodation Policy* unless it adopts a policy, which has equal or more restrictive controls.

    h. Provide maintenance and energy for lighting.

    i. Provide proper care and maintenance of all landscaping elements of the project including replacement of any plant materials damaged by disease, drought, vandalism or other cause.

16. It is further agreed by the Municipality that:

    a. The Municipality assumes full responsibility for the design, installation, testing and operation of any sanitary sewer and water main infrastructure within the improvement project and relieves the state and all of its employees from liability for all suits, actions, or claims resulting from the sanitary sewer and water main construction under this agreement.

b. The Municipality assumes full responsibility for the plans and special provisions provided by their designer or anyone hired, contracted or otherwise engaged by the Municipality. The Municipality is responsible for any expense or cost resulting from any error or omission in such plans or special provisions. The Municipality will reimburse State if State incurs any cost or expense in order to correct or otherwise remedy such error or omission or consequences of such error or omission.

c. The Municipality will be 100% responsible for all costs associated with utility issues involving the Contractor, including costs related to utility delays.

d. All signs and traffic control devices and other protective structures erected on or in connection with the project including such of these as are installed at the sole cost and expense of the Municipality or by others, will be in conformity with such *Manual of Uniform Traffic Control Devices* as may be adopted by the American Association of State Highway and Transportation Officials, approved by the State, and concurred in by the Federal Highway Administration.

e. The right-of-way available or provided for the project will be held and maintained inviolate for public highway or street purposes. Those signs prohibited under federal aid highway regulations, posters, billboards, roadside stands, or other private installations prohibited by federal or state highway regulations will not be permitted within the right-of-way limits of the project. The Municipality, within its jurisdictional limits, will remove or cause to be removed from the right-of-way of the project all private installations of whatever nature which may be or cause an obstruction or interfere with the free flow of traffic, or which may be or cause a hazard to traffic, or which impair the usefulness of the project and all other encroachments which may be required to be removed by the State at its own election or at the request of the Federal Highway Administration, and that no such installations will be permitted to be erected or maintained in the future.

f. The Municipality is responsible for any damage caused by legally hauled loads, including permitted oversize and overweight loads. The contractor is responsible for any damage caused to haul roads if the contractor does not obey size and weight laws, use properly equipped and maintained vehicles, and does not prevent spilling of materials onto the haul road (WisDOT *Standard Specifications* 618.1, 108.7, 107.8). The local maintaining authority can impose special or seasonal weight limitations as defined in Wis. Stat. 349.16, but this should not be used for the sole purpose of preventing hauling on the road.

The bid item 618.0100 Maintenance and Repair of Haul Roads (project) is ineligible for federal funding on local program projects as per the State/Municipal Agreement. The repair of damages as a result of hauling materials for the project is the responsibility of the Municipality as specified in the State/Municipal Agreement Terms and Conditions under "Municipal Responsibilities and Requirements."

LEGAL RELATIONSHIPS:

17. The State shall not be liable to the Municipality for damages or delays resulting from work by third parties. The State also shall be exempt from liability to the Municipality for damages or delays resulting from injunctions or other restraining orders obtained by third parties.

18. The State will not be liable to any third party for injuries or damages resulting from work under or for the Project. The Municipality and the Municipality's surety shall indemnify and save harmless the State, its officers and employees, from all suits, actions or claims of any character brought because of any injuries or damages received or sustained by any person, persons or property on account of the operations of the Municipality and its sureties; or on account of or in consequence of any neglect in safeguarding the work; or because of any act or omission, neglect or misconduct of the Municipality or its sureties; or because of any claims or amounts recovered for any infringement by the Municipality and its sureties of patent, trademark or copyright; or from any claims or amounts arising or recovered under the Worker's Compensation Act, relating to the employees of the Municipality and its sureties; or any other law, ordinance, order or decree relating to the Municipality's operations.

19. Contract modification: This State/Municipal Agreement can only modified by written instruments duly executed by both parties. No term or provision of either this State/Municipal Agreement or any of its attachments may be changed, waived or terminated orally.

20. Binding effects: All terms of this State/Municipal Agreement shall be binding upon and inure to the benefits of the legal representatives, successors and executors. No rights under this State/Municipal Agreement may be transferred to a third party. This State/Municipal Agreement creates no third-party enforcement rights.

21. Choice of law and forum: This State/Municipal Agreement shall be interpreted and enforced in accordance with the laws of the State of Wisconsin. The Parties hereby expressly agree that the terms contained herein and in any deed executed pursuant to this State/Municipal Agreement are enforceable by an action in the Circuit Court of Dane County, Wisconsin.

PROJECT FUNDING CONDITIONS

22. Non-appropriation of funds: With respect to any payment required to be made by the State under this State/Municipal Agreement, the parties acknowledge the State's authority to make such payment is contingent upon appropriation of funds and required legislative approval sufficient for such purpose by the Legislature. If such funds are not so appropriated, either the Municipality or the State may terminate this State/Municipal Agreement after providing written notice not less than thirty (30) days before termination.

23. Maintenance of records: During the term of performance of this State/Municipal Agreement, and for a period not less than three years from the date of final payment to the Municipality, records and accounts pertaining to the performance of this State/Municipal Agreement are to be kept available for inspection and audit by representatives of the State. The State reserves the right to audit and inspect such records and accounts at any time. The Municipality shall provide appropriate accommodations for such audit and inspection.

    In the event that any litigation, claim or audit is initiated prior to the expiration of said records maintenance period, the records shall be retained until such litigation, claim or audit involving the records is complete.

24. The Municipality agrees to the following 2015-2020 STP-Rural project funding conditions:

    a. **ID 6995-09-01**: Design is funded with 80% federal funding up to a funding limit of **$70,400** when the Municipality agrees to provide the remaining 20% and any funds in excess of the **$70,400** federal funding limit. This phase includes plan development, management consultant review, and state review. The work includes project review, approval of required reports and documents and processing the final Plan, Specification & Estimate (PS&E) document for award of the contract. Costs for this phase include an estimated amount for state review activities, to be funded 80% with federal funding and 20% by the Municipality.

    b. **Real estate** is funded 100% by the Municipality.

    c. **ID 6995-09-71: Construction:**

        i. Costs for the pavement replacement project: are funded with 80% federal funding up to a funding limit of **$726,400**, when the Municipality agrees to provide the remaining 20%, and any funds in excess of the **$726,400** federal funding

        ii. Non-participating costs are funded 100% by the Municipality. Costs include construction delivery

        iii. Costs for this phase include an estimated amount for state review activities, to be funded 80% with federal funding and 20% by the Municipality.

[End of Document]

DATE: May 2, 2019

TO: Mayor and Common Council

FROM: Lindsey Kemnitz

RE: Safeguard Grant and RFP

BACKGROUND:

Staff has received quotes for demolition and abatement of the asbestos and lead paint for the safeguard site. Attached is the breakdown of the costs for the project. The City has received a grant from WI DNR for the further site investigation for $23,000. Staff has put together an RFP for the demolition and abatement of the asbestos and lead paint.

Recommendation: Approve RFP for publication.

WISCONSIN ECONOMIC DEVELOPMENT CORPORATION

SITE ASSESSMENT GRANT PROJECT BUDGET

PROJECT ACTIVITIES*	WEDC GRANT	SOURCE OF MATCHING FUNDS (Applicant, Public Funds, etc.)				TOTAL
		SOURCE #1 NAME: City of Berlin	SOURCE #2 NAME: WAM	SOURCE #3 NAME:	SOURCE #4 NAME:	
Environmental Assessments	$	$	$	$	$	$Click here to enter amount.
Site Investigation	$Click here to enter amount.	$	$22,945	$	$	$22,945
Asbestos Removal/ Abatement	$6,000	$9,000	$	$	$	$15,000
Demolition	$120,000	$Click here to enter amount.	$	$	$	$120,000
Storage Tank Removal	$	$	$	$	$	$
Other (explain): Click here to enter text.	$	$	$	$	$	$
SUBTOTAL	$	$	$	$	$	$157,945
OTHER ACTIVITIES**						
Property Acquisition	$Click here to enter amount.	$	$	$	$	$
Grant Administration/ Project Overhead	$	$	$	$	$	$
State Reimbursable Environmental Costs (e.g., PECFA, DERF, ACCP)	$	$	$	$	$	$
Other (explain): Phase II	$	$	$19,000	$	$	$19,000
Other (explain): Pre Inspection	$	$1,800	$	$	$	$1,800
TOTAL USE OF FUNDS	$125,000	$11,800	$41,945	$	$	$178,745

* Project Activities are those activities reimbursable through the Site Assessment Grant.

** Other Activities are those activities that demonstrate the financial investment necessary for site activities to occur, but are not reimbursable through the Site Assessment Grant.

Ineligible costs for reimbursement, includes, but may not be limited to the following:
-Grant application/bid preparation costs -Costs coved by other grants or programs -Insurance premiums -In-Kind contributions -Relocation fees –Acquisition costs –Zoning changing costs –Signage –Advertising –New construction costs –Cost covered by other grants or programs –Lien claims of the DNR & EPA –DNR fees –Marketing studies –WEDC compliance reporting, including performance and SOE reporting and draw requests –Project administration fees –Financing fees, Interest payments, or the assumption of debt –Accounting, legal, appraisals, and architectural fees –Permits –Performance and payment bonds –Contingencies –Supplies and the purchase of movable equipment –Developer fees –Environmental costs where the viable causer is the current property owner –Non-environmental post-construction clean-up costs –Parking lot paving for non-environmental reasons, and striping –Decorative landscaping and fencing –Environmental costs where a viable causer exists

CITY of BERLIN
Former Safegaurd Building Demolition
& Abatement

Request for Proposal

Official Notice

Proposals Requested

Sealed proposals will be received until 10:00 am, local time, on May 30, 2019, by the City of Berlin at the office of the City Clerk, City Hall, 108 N. Capron Street, Berlin, Wisconsin, 54923. The bids will be opened and reviewed at a later date. All proposals should be clearly labeled "Former Safeguard Building Demolition and Abatement". The proposals are a lump sum proposal for the abatement of lead paint and asbestos and demolition of the existing buildings on parcel 1572, 1573, and 1574.

The City of Berlin reserves the right to reject any or all proposals or to accept the proposal deemed most advantageous to the City and to waive any or all technicalities or informalities in submitted proposals.

Scope of Work

The work under this contract shall consist of providing all work, materials, labor, equipment, and supervision necessary to provide for the abatement and demolition of the buildings on parcel 1572, 1573, and 1574 to two feet below grade. The City of Berlin had a per-inspection conducted on site and have provided the plan. It is the contractors responsibility to properly remove hazardous materials according to State and Federal regulations.

Proposal Requirements

Proposals for this work shall, at a minimum, included the following:

- Lump Sum Proposal: The proposal shall include a breakdown of the lump sum proposal that mirrors the projected timetable.
- Experience of the Firm
- A Projected Timetable for the demolition of the buildings
- Additional Information: The proposal shall include any additional information the contractor deems necessary that would aid the City in choosing a qualified candidate.

Contractor Selection

The contractor may be selected based upon the submitted proposal, competitive pricing and availability.

Insurance

The Owner shall be named as additional insureds on the Contractor's Insurance. The limits of liability for the insurance required of the General Conditions shall provide coverage for not less than one million dollars. Contractor must provide proof of insurance. This insurance shall include the interests of Owner, Contractor, Subcontractors, Engineer and Engineer's consultants in the work (all of whom shall be listed as insureds or additional insured parties),

Special Provisions
CITY of BERLIN
Former Safeguard Building Demolition

Time of Completion

Substantial Completion: July 5, 2019

Final Completion: July 19, 2019

The above time of completion is based on an anticipated contract award date of June 4th, 2019. Should the Contract be awarded after the anticipated date of award, the Engineer will issue a Notice of Award and the Contractor will be allowed the same number of calendar days from the above anticipated award date to the time of completion, to finish this work under this Contract.

Substantial completion includes all items associated with the project with the exception of final restoration and punch list items. The project shall be completed in its entirety and ready for final payment by the final completion date including resolution of all punch list items.

Owner
When the OWNER or CITY is mentioned herein, it means the City of Berlin.

Abatement of Asbestos and Lead Paint
The OWNER has selected Badger Environmental Services, LLC of Fond Du Lac, WI for the abatement on the subject site. The contractor must work with Badger Environmental Services, LLC on the abatement of the lead paint and asbestos prior to demolition of the buildings.

Utilities
Notify all Utilities that may have overhead or buried lines in the construction area. Repair or replacement of any disturbed utilities is Contractor's responsibility. The Contract Price includes any costs for temporary or permanent relocations of such structures and facilities required to complete the Work unless specifically indicated otherwise in the plans or specifications.

Payment Requests
The contractor's payment requests shall be submitted in the format shown attached to these provisions. The form is included to illustrate the required format and the minimum information to be shown on the contractor's payment requests. In addition contractor must provide lien waivers from all suppliers and subcontractors prior to final payment being approved.

Erosion Control
GENERAL:
The Contractor must prepare an erosion control plan for the project. The Contractor must provide additional or alternate erosion control measures as needed due to the contractors' means and methods throughout all phases of demolition. Include in the erosion control plan any required seeding to stabilize the site after demolition activities. Erosion control and storm water management practices shall be installed and maintained in accordance with the WDNR approved Technical Standards.

STREET CLEANING:
Keep adjacent streets clear of gravel, tracked soil and material spilled from trucks or other equipment. Implement dust control measures as required. This work will not be paid for separately and will be considered incidental.

Abatement & Demolition

GENERAL:
Comply with federal, state and local regulations pertaining to water, air, solid waste, recycling, chemical waste, sanitary waste, sediment and noise pollution.

Revenues or other savings obtained from recycled, re-used, or salvaged materials shall accrue to Contractor unless otherwise noted in the Contract Documents.

SAFETY
Verify that all utilities have been abandoned or disconnected and associated hazards mitigated, prior to beginning any demolition. Maintain a clean and orderly site. Burning of debris is not permitted. The use of explosives is not permitted.

Take all necessary precautions while dismantling piping containing gas, gasoline, oil or other explosive or toxic fluids or gases. Purge lines and contain materials in accordance with all applicable regulations. Store such piping outdoors until fumes are removed.

Maintain a clean and orderly site. Remove debris at end of each workday.

Furnish and install fencing, other barriers and signs to prevent access to the site by the public or as otherwise necessary to protect existing features.

SUBMITTALS
For utilities or other services requiring removal or abandonment in-place, submit materials documenting completion of such work.

Submit copies of records documenting recycling or disposal of demolition materials from the site.

Submit copies of all permit applications and approvals prior to demolition.

RECORD DRAWINGS
Maintain record drawings showing actual locations of utilities and other features encountered. Show actual limits of removal and demolition.

PERMITS
Contractor shall be responsible for obtaining and paying for all permits necessary to complete demolition work. If necessary, file and maintain Notification of Demolition and/or Renovation and Application for Permit Exemption (WDNR Form 4500-113) in accordance with the Wisconsin Administrative Code Chapter NR447.

PROTECTION OF EXISTING WORK AND FACILITIES

Verify the locations of, and protect, any buildings, structures, utilities, paved surfaces, signs, streetlights, utilities, landscaping and all other such facilities that are intended to remain or be salvaged. Make such explorations and probes as necessary to ascertain any required protection measures that shall be used before proceeding with demolition.

Contractor is responsible for the repair and replacement of any damaged facilities or infrastructure outside the limits of this project. Keep streets, walks and adjacent paved areas clean and swept clear of dirt, mud and debris deposited as a result of this project. Protect surrounding area and parked vehicles from dust. Any costs associated with the clean up of the surrounding area, or repair and detailing of affected vehicles shall be paid by the contractor.

Provide and maintain adequate catch platforms, warning lights, barricades, guards, weather protection, dust protection, fences, planking, bracing, shoring, piling, signs, and other items required for proper protection. Provide protection for workmen, public, adjacent construction and occupants of existing building(s).

Report damage of any facilities to the OWNER and ENGINEER.

DISCONNECTION OF SERVICES

Prior to starting removal and/or demolition operations, the Contractor shall be responsible and must field verify the disconnection of all existing utilities.

Disconnect all services in a manner that ensures continued operation in facilities not scheduled for demolition.

Disconnect all services in a manner that allows for future connection to that service.

Disconnect services to equipment at unions, flanges, valves, or fittings wherever possible.

DEMOLITION

Demolish buildings to two feet below grade completely and remove from the site. The basement floor must be broken up. Use methods required to complete Work within limitations of governing regulations. Demolish concrete and masonry in sizes that will be suitable for acceptance at recycling or disposal facilities. Remove structural framing members and lower to ground by method suitable to avoid free fall and to prevent ground impact or dust generation. Remove all disconnected, abandoned utilities on site.

Carry out vehicle loading as necessary within the project boundaries but not in locations that block vehicular traffic on the streets or pedestrian traffic on adjacent public walks.

Conduct demolition operations and the removal of rubbish and debris in such a way that a minimum of nuisance dust is created. Constantly sprinkle rubbish and debris with water if necessary to keep nuisance dust to a minimum.

Survey the condition of the building to determine whether removing any element might result in a structural deficiency or unplanned collapse of any portion of the structure or adjacent structures during demolition. Where necessary install temporary shores, underpinning, struts or bracing to prevent unplanned collapse of any portion of the structure. Perform surveys as the Work progresses to detect hazards resulting from demolition activities.

The site restoration will need to be gravel on the subject site.

TRANSPORTATION AND DISPOSAL OF DEMOLITION WASTE

Transport and dispose all demolition waste in accordance with local, state, and federal guidelines.

Whenever possible, or otherwise required by the Contract Documents, recycle demolition waste.

Demolition waste shall be disposed of at a landfill or dumpsite designed and approved to accept the given waste.

Maintain records documenting recycling and disposal of demolition waste. Record description of material, date removed, quantity removed, method of transport and recycling/disposal destination.

Do not burn, bury or otherwise dispose of rubbish and waste materials on project site.

ORDINANCE #_____-19

AN ORDINANCE FOR WIRELESS TELECOMMUNICATIONS FACILITIES IN THE RIGHT-OF-WAY

The Common Council of the City of Berlin do ordain as follows:

Chapter 58, Article VI. Section 58-274 of the Code of Ordinances is hereby created as follows:

ARTICLE VI. – WIRELESS TELECOMMUNICATIONS FACILITIES IN THE RIGHT-OF-WAY

Sec. 58-274. – Purpose; intent.

The common council has determined that in the exercise of its police powers, the city has priority over all other uses of the right-of-way. The purpose of this Chapter is to provide the city with a process for managing, and uniform standards for acting upon, requests for the placement of wireless telecommunications facilities within the right-of-way consistent with the city obligation to promote the public health, safety, and welfare; to manage the right-of-way; and to ensure that the public's use is not obstructed or incommoded by the use of the right-of-way for the placement of wireless telecommunications facilities. The city recognizes the importance of wireless telecommunications facilities to provide high-quality communications and internet access services to residents and businesses within the city. The city also recognizes its obligation to comply with applicable Federal and State laws regarding the placement of wireless telecommunications facilities in the right-of-way including, without limitation, the Telecommunications Act of 1996 (47 U.S.C. § 151 et seq), Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Wis. Stat. § 182.017, and Wis. Stat. § 196.58, and this Chapter shall be interpreted consistent with those provisions.

Sec. 58-275. – Definitions.

As used in this section, the following terms shall have the following meanings, unless the context clearly indicates that a different meaning is intended:

Administrator. Administrator means the Superintendent of Streets or his or her designee.

Application. Application means a formal request, including all required and requested documentation and information, submitted by an Applicant to the city for a wireless permit.

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Applicant. Applicant means a person filing an application for placement or modification of a wireless telecommunications facility in the right-of-way.

Base Station. Base Station means the same as in 47 C.F.R. § 1.6100(b)(1), which defines the term to mean a structure or wireless telecommunications equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. This definition does not include towers.

Eligible Facilities Request. Eligible Facilities Request means the same as in 47 C.F.R. § 1.6100(b)(3), which defines the term to mean any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving: (i) collocation of new transmission equipment; (ii) removal of transmission equipment; or (iii) replacement of transmission equipment.

FCC. FCC means the Federal Communications Commission.

Right-of-way. Right-of-way means the surface of, and the space above and below the entire width of an improved or unimproved public roadway, highway, street, bicycle lane, landscape terrace, shoulder, side slope, and public sidewalk over which the city exercises any rights of management and control or in which the city has an interest.

Small Wireless Facility. Small Wireless Facility, consistent with 47 C.F.R. § 1.6002(l), means a facility that meets each of the following conditions:

(a) The structure on which antenna facilities are mounted:
  (1) is 50 feet or less in height, or
  (2) is no more than 10 percent taller than other adjacent structures, or
  (3) is not extended to a height of more than 50 feet or by more than 10 percent above its preexisting height, whichever is greater, as a result of the collocation of new antenna facilities;
(b) Each antenna (excluding associated antenna equipment) is no more than three cubic feet in volume; All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is cumulatively no more than 28 cubic feet in volume;
(c) The facility does not require antenna structure registration;
(d) The facility is not located on Tribal lands; and
(e) The facility does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified by federal law.

Support Structure. Support Structure means any structure capable of supporting wireless telecommunications equipment.

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Tower. Tower means the same as in 47 C.F.R. § 1.6100(b)(9), which defines the term as any structure built for the sole or primary purpose of supporting any Federal Communication Commission (FCC) licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. This definition does not include utility poles.

Underground areas. Underground areas mean those areas where there are no electrical facilities or facilities of the incumbent local exchange carrier in the right of way; or where the wires associated with the same are or are required to be located underground; or where the same are scheduled to be converted from overhead to underground. Electrical facilities are distribution facilities owned by an electric utility and do not include transmission facilities used or intended to be used to transmit electricity at nominal voltages more than 35,000 volts.

Utility Pole. Utility Pole means a structure in the right-of-way designed to support electric, telephone, and similar utility distribution lines and associated equipment. A tower is not a utility pole.

Wireless Infrastructure Provider. Wireless Infrastructure Provider means a person that owns, controls, operates, or manages a wireless telecommunications facility or portion thereof within the right-of-way.

Wireless Permit or Permit. Wireless Permit or Permit means a permit issued pursuant to this Chapter and authorizing the placement or modification of a wireless telecommunications facility of a design specified in the permit at a particular location within the right-of-way, and the modification of any existing support structure to which the wireless telecommunications facility is proposed to be attached.

Wireless Regulations. Wireless Regulations means those regulations adopted pursuant to Section 58-278(b)(1) to implement the provisions of this Chapter.

Wireless Service Provider. Wireless Service Provider means an entity that provides wireless services to end users.

Wireless Telecommunications Equipment. Wireless Telecommunications Equipment means equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network.

Wireless Telecommunications Facility or Facility. Wireless Telecommunications Facility or Facility means a facility at a fixed location in the right-of-way consisting of a base station, antennas and other accessory equipment, and a tower and underground wiring, if any, associated with the base station.

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Definitions in this section may contain quotations or citations to 47 C.F.R. §§ 1.6100 and 1.6002. In the event that any referenced section is amended, creating a conflict between the definition as set forth in this Chapter and the amended language of the referenced section, the definition in the referenced section, as amended, shall control.

Sec. 58-276. – Scope.

(a) *Applicability.* Unless exempted by Section 58-276(b), below, every person who wishes to place a wireless telecommunications facility in the right-of-way or modify an existing wireless telecommunications facility in the right-of-way must obtain a wireless permit under this Chapter.

(b) *Exempt facilities.* The provisions of this Chapter (other than Sections 58-283-287) shall not be applied to applications for the following:

(1) Installation of a small wireless facility on the strand between two utility poles, provided that the cumulative volume of all wireless facilities on the strand shall not exceed 1 cubic foot, and provided further that the installation does not require replacement of the strand, or excavation, modification, or replacement of either of the utility poles.

(2) Installation of a mobile cell facility (commonly referred to as "cell on wheels" or "cell on truck") for a temporary period in connection with an emergency or event, but no longer than required for the emergency or event, provided that installation does not involve excavation, movement, or removal of existing facilities.

(3) Placement or modification of a wireless telecommunications facility on structures owned by or under the control of the city. See Section 58-286 of this Chapter.

(4) Placement or modification of a wireless telecommunications facility by city staff or any person performing work under contract with the city.

(5) Modification of an existing wireless telecommunications facility that makes no material change to the footprint of a facility or to the surface or subsurface of a public street if the activity does not disrupt or impede traffic in the traveled portion of a street, and if the work does not change the visual or audible characteristics of the wireless telecommunications facility.

Sec. 58-277. – Nondiscrimination.

In establishing the rights, obligations, and conditions set forth in this Chapter, it is the intent of the city to treat each applicant and right-of-way user in a competitively neutral and nondiscriminatory manner, to the extent required by law, while taking into account the unique technologies, situation, and legal status of each applicant or request for use of the right-of-way.

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Sec. 58-278. – Administration.

(a) *Administrator.* The Administrator is responsible for administering this Chapter.

(b) *Powers.* As part of the administration of this Chapter, the Administrator may:

(1) Adopt wireless regulations governing the placement and modification of wireless telecommunications facilities in addition to but consistent with the requirements of this Chapter, including regulations governing collocation, the resolution of conflicting applications for placement of wireless telecommunications facilities, and aesthetic standards.3

(2) Interpret the provisions of the Chapter and the wireless regulations.

(3) Develop forms and procedures for submission of applications for wireless permits consistent with this Chapter.

(4) Collect any fee required by this Chapter.

(5) Require, as a condition of completeness of any application, notice to members of the public that may be affected by the placement or modification of the wireless telecommunications facility that is the subject of the wireless permit application.

(6) Establish deadlines for submission of information related to an application, and extend or shorten deadlines where appropriate and consistent with federal laws and regulations.

(7) Issue notices of incompleteness or requests for information in connection with any wireless permit application.

(8) Select and retain an independent consultant or attorney with expertise in telecommunications to review any issue that involves specialized or expert knowledge in connection with any permit application.

(9) Coordinate and consult with other city staff, committees, and governing bodies to ensure timely action on all other required permits under Section 58-279(b)(8) of this Chapter.

(10) Subject to appeal as provided in Section 28-281(d) of this Chapter, determine whether to grant, grant subject to conditions, or deny an application.

(11) Take such other steps as may be required to timely act upon wireless permit applications, including issuing written decisions and entering into agreements to mutually extend the time for action on an application.

Sec. 58-279. – Application.

(a) *Format.* Unless the wireless regulations provide otherwise, the applicant must submit both a paper copy and an electronic copy (in a searchable format) of any application, as well as any amendments or

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supplements to the application or responses to requests for information regarding an application, to the Administrator. An application is not complete until both the paper and electronic copies are received by the Administrator.

(b) *Content.* In order to be considered complete, an application must contain:

(1) All information required pursuant to the wireless regulations.

(2) A completed application cover sheet signed by an authorized representative of the applicant, listing all standard permit conditions.

(3) The name of the applicant (including any corporate or trade name), and the name, address, email address, and telephone number of a local representative. If the applicant is a wireless infrastructure provider, the name and contact information for the wireless service provider(s) that will be using the wireless telecommunications facility must also be provided.

(4) A statement of which shot clock or shot clocks apply to the application and the reasons the chosen shot clocks apply.

(5) A separate and complete description of each proposed wireless telecommunications facility and the work that will be required to install or modify it, including but not limited to detail regarding proposed excavations, if any; detailed site plans showing the location of the facility and technical specifications for each element of the facility, clearly describing the site and all structures and facilities at the site before and after installation or modification and identifying the owners of such preexisting structures and facilities; and describing the distance to the nearest residential dwelling unit. Before and after 360-degree photo simulations must be provided for each facility.

(6) Proof that the applicant has mailed to the owners of all property within 300 feet of the proposed wireless telecommunications facility a notice that the applicant is submitting an application to the city for placement or modification of a wireless telecommunications facility in the right-of-way, which notice must include (i) the proposed location of the facility, (ii) a description and scale image of the proposed facility, and (iii) an email address and phone number for a representative of the applicant who will be available to answer questions from members of the public about the proposed project.

(7) A copy of the FCC license for the facility or a sworn written statement from the applicant attesting that the facility will comply with current FCC regulations.

(8) To the extent that filing of the wireless permit application establishes a deadline for action on any other permit that may be required in connection with the wireless telecommunications facility, the application must include complete copies of applications for every required permit (including without limitation electrical permits,

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building permits, traffic control permits, and excavation permits), with all engineering completed and with all fees associated with each permit.

(9) A certification by a registered and qualified engineer that the installation can be supported by and does not exceed the tolerances of the structure on which it will be mounted and that all elements of the wireless telecommunications facility comply with applicable safety standards.

(10) Payment of all required fees.

(11) If an applicant contends that denial of the application would prohibit or effectively prohibit the provision of service in violation of federal law, or otherwise violate applicable law, the application must provide all evidence on which the applicant relies in support of that claim. Applicants are not permitted to supplement this evidence if doing so would prevent the city from complying with any deadline for action on an application.

(12) If the application is an eligible facilities request, the application must contain information sufficient to show that the application qualifies as an eligible facilities request under 47 C.F.R. § 1.6100(b)(3), including evidence that the application relates to an existing tower or base station that has been approved by the city. Before and after 360-degree photo simulations must be provided with detailed specifications demonstrating that the modification does not substantially change the physical dimensions of the existing approved tower or base station.

(c) *Waivers.* Requests for waivers from any requirement of this Section 58-279 shall be made in writing to the Administrator. The Administrator may grant a request for waiver if it is demonstrated that, notwithstanding the issuance of the waiver, the city will be provided with all information necessary to understand the nature of the construction or other activity to be conducted pursuant to the wireless permit sought.

(d) *Fees.* Applicant must provide an application fee pursuant to the fee schedule or file in the city clerk-treasurer's office, and shall be required to pay all costs reasonably incurred in reviewing the application, including costs incurred in retaining outside consultants. Fees shall be reviewed periodically, in conjunction with the annual reviews of the city's entire fee schedule, and raised or lowered based on the costs the city expects to incur.

(e) *Public records.* Applications are public records that may be made publicly available pursuant to state and federal public records law. Notwithstanding the foregoing, the applicant may designate portions of the application materials that it reasonably believes contain proprietary or confidential information by clearly marking each portion of such materials accordingly, and the city shall endeavor to treat the

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information as proprietary and confidential, subject to applicable state and federal public records law and the Administrator's determination that the applicant's request for confidential or proprietary treatment of the application materials is reasonable. The city shall not be required to incur any costs to protect the application from disclosure.

Sec. 58-280. – General standards.

(a) *Generally.* Wireless telecommunications facilities shall meet the minimum requirements set forth in this Chapter and the wireless regulations, in addition to the requirements of any other applicable law or regulation.

(b) *Regulations.* The wireless regulations and decisions on wireless permits shall, at a minimum, ensure that the requirements of this Chapter are satisfied, unless it is determined that the applicant has established that denial of an application would, within the meaning of federal law, prohibit or effectively prohibit the provision of a telecommunications or personal wireless services, or otherwise violate applicable laws or regulations. If that determination is made, the requirements of this Chapter and the wireless regulations may be waived, but only to the extent required to avoid the prohibition.

(c) *Standards.*

(1) Wireless telecommunications facilities shall be installed and modified in a manner that:

a. Minimizes risks to public safety;

b. Ensures that placement of facilities on existing structures is within the tolerance of those structures;

c. Avoids placement of aboveground facilities in underground areas, installation of new support structures or equipment cabinets in the public right-of-way, or placement in residential areas when commercial areas are reasonably available;

d. Maintains the integrity and character of the neighborhoods and corridors in which the facilities are located;

e. Ensures that installations are subject to periodic review to minimize the intrusion on the right-of-way;

f. Ensures that the city bears no risk or liability as a result of the installations; and

g. Ensures that applicant's use does not inconvenience the public, interfere with the primary uses of the right-of-way, or hinder the ability of the city or other government entities to improve, modify, relocate, abandon, or vacate the right-of-way or any portion thereof, or to cause the improvement, modification, relocation, vacation, or abandonment of facilities in the right-of-way.

(2) No wireless permit shall be issued unless (i) the wireless service provider applicant has immediate plans to use the proposed facility or

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(ii) the wireless infrastructure applicant has a contract with a wireless service provider that has immediate plans to use the proposed facility.

(3) In no event may ground-mounted equipment interfere with pedestrian or vehicular traffic and at all times must comply with the requirements of the Americans with Disabilities Act of 1990.

(4) |

Comment [M21]: See Attachment C for further possible aesthetic standards that could be added if desired.

4. *Standard permit conditions.* All wireless permits under this Chapter are issued subject to the following minimum conditions:
   a. *Compliance.* The permit holder shall at all times maintain compliance with all applicable Federal, State, and local laws, regulations, and other rules.
   b. *Term.* A wireless permit issued pursuant to an eligible facilities request shall expire at the same time the permit for the underlying existing wireless telecommunications facility expires. All other wireless permits shall be valid for a period of five years from the date of issuance unless revoked pursuant to Section 58-282(b) of this Chapter.
   c. *Contact information.* The permit holder shall at all times maintain with the city accurate contact information for the permit holder and all wireless service providers making use of the facility, which shall include a phone number, mailing address, and email address for at least one natural person.
   d. *Emergencies.* The city shall have the right to support, repair, disable, or remove any elements of the facilities in emergencies or when the facility threatens imminent harm to persons or property.
   e. *Indemnities.* The permit holder, by accepting a permit under this Chapter, agrees to indemnify, defend, and hold harmless the city, its elected and appointed officials, officers, employees, agents, representatives, and volunteers (collectively, the "Indemnified Parties") from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, attorneys' fees, costs, and expenses of whatsoever kind or nature in any manner caused in whole or in part, or claimed to be caused in whole or in part, by reason of any act, omission, fault, or negligence, whether active or passive, of the permit holder or anyone acting under its direction or control or on its behalf, even if liability is also sought to be imposed on one or more of the Indemnified Parties. The obligation to indemnify, defend, and hold harmless the Indemnified Parties shall be applicable even if the liability results from an act or failure to act on the part of one or more of the Indemnified Parties. However, the obligation does not apply if the liability results from the willful misconduct of an Indemnified Party.
   f. *Adverse impacts on adjacent properties.* The permit holder shall undertake all reasonable efforts to avoid undue adverse impacts to

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adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification, or removal of the facility.

g. *General maintenance.* The wireless communications facility and any associated structures shall he maintained in a neat and clean manner and in accordance with all approved plans and conditions of approval.

h. *Graffiti removal.* All graffiti on facilities shall be removed at the sole expense of the permit holder within 48 hours after notification from the city.

i. *Relocation.* At the request of the city pursuant to Section 58-283 of this Chapter, the permit holder shall promptly and at its own expense permanently remove and relocate any wireless telecommunications facility in the right-of-way.

j. *Abandonment.* The permit holder shall promptly notify the city whenever a facility has not been in use for a continuous period of 60 days or longer and must comply with Section 58-284 of this Chapter.

k. *Restoration.* A permit holder who removes or relocates a facility from the right-of-way must restore the right-of-way in accordance with Section 58-285 of this Chapter.

l. *Record retention.* The permit holder shall retain full and complete copies of all permits and other regulatory approvals issued in connection with the facility, which includes without limitation all conditions of approval, approved plans, resolutions, and other documentation associated with the permit or regulatory approval. In the event the city cannot locate any such full and complete permits or other regulatory approvals in its official records, and the permit holder fails to retain full and complete records in the permit holder's files, any ambiguities or uncertainties that would be resolved through an examination of the missing documents will be conclusively resolved against the permit holder.

m. *Radio frequency emissions.* Every wireless facility shall at all times comply with applicable FCC regulations governing radio frequency emissions, and failure to comply with such regulations shall be treated as a material violation of the terms of the permit.

n. *Certificate of insurance.* A certificate of insurance sufficient to demonstrate to the satisfaction of the Administrator that the applicant has the capability to cover any liability that might arise out of the presence of the facility in the right-of-way.

Sec. 58-281. – Application processing and appeal.

(a) *Rejection for incompleteness.* Notices of incompleteness shall be provided in conformity with state, local, and federal law, including 47 C.F.R. § 1.6003(d), as amended.

(b) *Processing timeline.* Wireless permit applications (including applications for other permits under Section 58-279(b)(8) necessary to place or modify

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the facility) and appeals will be processed in conformity with the shot clocks set forth in state, local, and federal law, as amended.

(c) *Written decision.* In the event that an application is denied (or approved with conditions beyond the standard permit conditions set forth in Section 58-280(d)), the Administrator shall issue a written decision with the reasons therefor, supported by substantial evidence contained in a written record.

(d) *Appeal to city council.* Any person adversely affected by the decision of the Administrator may appeal that decision to the City Council, which may decide the issues *de novo,* and whose written decision will be the final decision of the city. An appeal by a wireless infrastructure provider must be taken jointly with the wireless service provider that intends to use the wireless telecommunications facility.

(e) *Deadline to appeal.*

(1) Appeals that involve eligible facilities requests must be filed within three business days of the written decision of the Administrator.

(2) All other appeals not governed by Section 58-281(e)(1), above, must be filed within ten business days of the written decision of the Administrator, unless the Administrator extends the time therefor. An extension may not be granted where extension would result in approval of the application by operation of law.

(f) *Decision deadline.* All appeals shall be conducted so that a timely written decision may be issued in accordance with the applicable shot clock.

Sec. 58-282. – Expiration and revocation.

(a) *Expiration.* A wireless permit issued pursuant to an eligible facilities request shall expire at the same time the permit for the underlying existing wireless telecommunications facility expires. All other wireless permits shall be valid for a period of five years from the date of issuance. Upon expiration of the wireless permit, the permit holder must either:

(1) Remove the wireless telecommunications facility; or,

(2) Submit an application to renew the permit at least 90 days prior to its expiration. The facility must remain in place until the renewal application is acted on by the city and any appeals from the city's decision are exhausted.

(b) *Revocation for breach.* A wireless permit may be revoked for failure to comply with the conditions of the permit or applicable federal, state, or local laws, rules, or regulations. Upon revocation, the wireless telecommunications facility must be removed within 30 days of receipt of written notice from the city. All costs incurred by the city in connection with the revocation, removal, and right-of-way restoration shall be paid by the permit holder.

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(c) *Failure to obtain permit.* Unless exempted from permitting by Section 58-276(b) of this Chapter, a wireless telecommunications facility installed without a wireless permit must be removed within 30 days of receipt of written notice from the city. All costs incurred by the city in connection with the notice, removal, and right-of-way restoration shall be paid by entities who own or control any part of the wireless telecommunications facility.

Sec. 58-283. – Relocation.

Except as otherwise prohibited by state or federal law, a permit holder must promptly and at its own expense, with due regard for seasonal working conditions, permanently remove and relocate any of its wireless telecommunications facilities in the right-of-way whenever the city requests such removal and relocation. The city may make such a request to prevent the facility from interfering with a present or future city use of the right-of-way; a public improvement undertaken by the city; an economic development project in which the city has an interest or investment; when the public health, safety, or welfare require it; or when necessary to prevent interference with the safety and convenience of ordinary travel over the right-of-way. Notwithstanding the foregoing, a permit holder shall not be required to remove or relocate its facilities from any right-of-way that has been vacated in favor of a non-governmental entity unless and until that entity pays the reasonable costs of removal or relocation to the permit holder.

Sec. 58-284. – Abandonment.

(a) *Cessation of use.* In the event that a permitted facility within the right-of-way is not in use for a continuous period of 60 days or longer, the permit holder must promptly notify the city and do one of the following:

(1) Provide information satisfactory to the Administrator that the permit holder's obligations for its facilities under this Chapter have been lawfully assumed by another permit holder.

(2) Submit to the Administrator a proposal and instruments for dedication of the facilities to the city. If a permit holder proceeds under this Section 58-284(a)(2), the city may, at its option:

a. Accept the dedication for all or a portion of the facilities;

b. Require the permit holder, at its own expense, to remove the facilities and perform the required restoration under Section 58-285; or

c. Require the permit holder to post a bond or provide payment sufficient to reimburse the city for reasonably anticipated costs to be incurred in removing the facilities and undertaking restoration under Section 58-285.

(3) Remove its facilities from the right-of-way within one year and perform the required restoration under Section 58-285, unless the Administrator waives this requirement or provides a later deadline.

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(b) *Abandoned facilities.* Facilities of a permit holder who fails to comply with Section 58-284(a) and which, for one year, remain unused shall be deemed to be abandoned. Abandoned facilities are deemed to be a nuisance. In addition to any remedies or rights it has at law or in equity, the city may, at its option:

(1) abate the nuisance and recover the cost from the permit holder or the permit holder's successor in interest;
(2) take possession of the facilities; and/or
(3) require removal of the facilities by the permit holder or the permit holder's successor in interest.

Sec. 58-285. – Restoration.

In the event that a permit holder removes or is required to remove a wireless telecommunications facility from the right-of-way under this Chapter (or relocate it pursuant to Section 58-283, the permit holder must restore the right-of-way to its prior condition in accordance with city specifications. However, a support structure owned by another entity authorized to maintain that support structure in the right-of-way need not be removed but must instead be restored to its prior condition. If the permit holder fails to make the restorations required by this Section 58-285, the city at its option may do such work. In that event, the permit holder shall pay to the city, within 30 days of billing therefor, the cost of restoring the right-of-way.

Sec. 58-286. – Placement on city-owned or -controlled structures

The city may negotiate agreements for placement of wireless telecommunications facilities on city-owned or -controlled structures in the right-of-way. The agreement shall specify the compensation to the city for use of the structures. The person or entity seeking the agreement shall reimburse the city for all costs the city incurs in connection with its review of and action upon the request for an agreement.

Sec. 58-287. – Severability.

If any section, subsection, clause, phrase, or portion of this Chapter is for any reason held to be illegal or otherwise invalid by any court or administrative agency of competent jurisdiction, such illegal or invalid portion shall be severable and shall not affect or impair any remaining portion of this Chapter, which shall remain in full force and effect.

This ordinance shall take effect the day after publication.

The numeric section numbers and headings shall he subject to modification in the discretion of the codifier, and the approval of the City Attorney, during codification into the City's current Code of Ordinances

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Passed, approved and adopted this ____ day of _____, 20__.

ROLL CALL VOTE:

_____ AYES
_____ NAYS
_____ ABSENT

CITY OF BERLIN

BY: _____
Richard D. Schramer, Mayor

APPROVED AS TO FORM:

_____
Matthew G. Chier, City Attorney

ATTEST: _____
Jodie Olson, City Clerk

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BoardmanClark

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MEMORANDUM

TO: Curt Witynski, Deputy Executive Director
Claire Silverman, Legal Counsel
League of Wisconsin Municipalities

FROM: Anita T. Gallucci
Julia K. Potter
Jared W. Smith

DATE: February 4, 2019

RE: FCC *2018 Small Cell Order*[1] and Model Ordinance for Siting of Wireless Facilities in Local Rights-of-Way

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We have been asked to draft a Model Ordinance regulating the siting of wireless telecommunications facilities in local rights-of-way ("**ROW**"), taking into account the *2018 Small Cell Order*, which was recently released by the Federal Communications Commission ("**FCC**"). The order will have a profound effect on Wisconsin cities and villages when exercising their authority to regulate the use of local ROW by providers of wireless telecommunications services pursuant to their statutory home rule powers, Wis. Stat. § 196.58(1r), and Wis. Stat. § 182.017(1r). As discussed below, the order imposes new and significant limitations on a municipality's ability to regulate wireless facilities in the ROW.[2] The effective date of the *2018 Order* with respect to the new limitations on ROW fees and deadlines for acting on permit applications was January 14, 2019, and the new limitations on aesthetic standards will go into effect April 15, 2019.[3]

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[1] *In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, Declaratory Ruling and Third Report and Order*, WT Docket No. 17-79, WC Docket No. 17-84, FCC 18-133, 2018 WL 4678555 (released Sept. 27, 2018)("***2018 Small Cell Order***" or "***2018 Order***").

[2] The *2018 Order* limits state and local regulation in the same way, but this memorandum focuses on local regulation.

[3] *2018 Order* at ¶¶ 89 and 153.

While the *2018 Order* affects municipal regulation of all wireless telecommunications facilities in the ROW, the order is directed at small wireless facilities[4] ("**SWF**") used to provide personal wireless services to the public (e.g., cell phone service). Small cell systems, as well as distributed antenna systems, which are similar to small cell systems, are deployed to serve areas of high demand and to enhance broadband capacity. These systems typically use relatively small antennas and equipment cabinets installed on utility poles, street light poles, traffic signal poles, or stand-alone poles. Small cell and distributed antenna system components in the ROW can include: poles, antennas, base stations or equipment cabinets, power sources or meters, canisters or boxes attached to a pole for housing antennas or equipment, and fiber lines.[5]

This memorandum will briefly summarize the *2018 Order* and will serve as a guide to the Model Ordinance, explaining the legal basis for the central provisions of the ordinance and discussing issues a municipality will have to consider in adapting the Model Ordinance to its specific circumstances. It is important to understand that the Model Ordinance is not a one-size-fits-all ordinance and that it will have to be reviewed carefully and adapted by the municipal attorney in conjunction with the departments responsible for administering the ordinance.

In that regard, some municipalities may already have detailed ROW ordinances. In such cases, we would expect that these municipalities would look to the Model Ordinance to update their existing ordinances by incorporating the provisions relating to wireless telecommunications facilities and excluding any redundant provisions (e.g., Sections 10 and 11 pertaining to the relocation or abandonment of facilities). On the other hand, municipalities with less robust ordinances may wish to consider developing an ordinance pertaining to the installation and maintenance of wireless and other utility facilities in the ROW, such as electric, wireline telecommunications, and cable TV facilities.

The following documents and information are provided with this memorandum:

Attachment A: Model Ordinance
Attachment B: Application Checklist
Attachment C: Sample Aesthetic Standards
Attachment D: Relevant Laws and Regulations

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[4] The term "small wireless facilities" is defined in 47 C.F.R. § 1.6002(l). All of the regulations cited in this memorandum appear in full in Attachment D.

[5] Practical Law Government Practice, *Small Wireless Facilities in Public Rights-of-Way,* Practical Law Practice Note 10-014-4949 (last accessed Jan. 23, 2019).

A. FCC'S *2018 SMALL CELL ORDER*

The purported object of the *2018 Small Cell Order* is to remove perceived barriers to the deployment of wireless broadband services by ensuring that wireless broadband providers have low-cost and easy access to municipal property located in local ROW. The *2018 Order* attempts to achieve this purpose by limiting municipal authority to regulate the placement of SWF in local ROW and on municipally owned structures in the ROW, including light poles, traffic light poles, and utility poles.

1. Source of FCC Authority

The FCC looks to Sections 253 and 332 of the Telecommunications Act of 1996 (the "**Act**") as the basis for its legal authority. First, Section 253(a) of the Act, 47 U.S.C. § 253(a), provides that "[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." In addition, Section 253(c) preserves state and local authority to regulate the ROW and "to require fair and reasonable compensation from telecommunications providers," provided that such regulations are "competitively neutral" and "nondiscriminatory."

Second, Section 332(c)(7)(B)(i) of the Act, 47 U.S.C. § 332(c)(7)(B)(i), provides that "[t]he regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government ... (I) shall not unreasonably discriminate among providers of functionally equivalent services; and (II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services." In addition, Section 332(c)(7)(B)(ii) requires state and local governments to act on wireless siting applications "within a reasonable period of time."

By its terms, Section 253 applies to both wireline and wireless telecommunications facilities located in the ROW. Thus, it is no surprise that the FCC looks to Section 253 for its authority. However, though not limited by its express language, Section 332(c)(7) had previously only been applied to wireless facilities outside the ROW. The *2018 Order* clarifies that Section 332(c)(7) also applies to wireless facilities inside the ROW and that both 253(a) and 332(c)(7) apply to "wireless telecommunications services as well as to commingled services and facilities."[6]

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[6] *2018 Small Cell Order* at ¶ 36.

2. New Effective Prohibition Standard

As stated above, both Sections 253(a) and 332(c)(7)(B)(i)(II) provide that municipal regulations are preempted if they **prohibit or have the effect of prohibiting** the provision of a telecommunications service or personal wireless service. In the *2018 Small Cell Order*, the FCC adopted a new standard to determine whether a municipal regulation constitutes an effective prohibition on the provision of a telecommunications or personal wireless service. Specifically, the FCC declared that an effective prohibition occurs where a municipal legal requirement "**materially limits or inhibits** any competitor's or potential competitor's ability to compete in a fair and balanced legal and regulatory environment."[7]

The FCC rejected the rulings of those federal circuit courts that have "held that a denial of a wireless siting application will 'prohibit or have the effect of prohibiting' the provision of personal wireless service under Section 332(c)(7)(B)(i)(II) only if the provider can establish that it has a significant gap in service coverage in the area and a lack of feasible alternative locations for siting facilities."[8] The effective prohibition test now applies not only when a provider is attempting to fill a gap in coverage, but also when the provider proposes to densify its existing wireless network, introduce new services, or otherwise improve service capabilities.[9] Effectively, all ROW regulations as applied to telecommunications service providers will now be scrutinized under the new effective prohibition test. The FCC goes on to discuss its new test as applied to fees and other non-fee legal requirements, such as aesthetic and undergrounding requirements.

B. LIMITATIONS ON MUNICIPAL REGULATORY AUTHORITY

Although municipalities have the right to regulate wireless telecommunications facilities sited in local ROW pursuant to their statutory home rule powers, Wis. Stat. §§ 196.58(1r), and 182.017(1r), there are significant limitations imposed on municipal regulatory authority by both state and federal laws and regulations.

While this memorandum focuses on the new federal limitations, it is also important to have a general understanding of state law limitations on municipal regulatory authority. Under Wisconsin law, a municipality has the authority to regulate utility facilities in the ROW, subject to the requirement that those regulations be "reasonable"

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[7] *Id.* at ¶¶ 35-37 (emphasis added).

[8] *Id.* at ¶ 34.

[9] *Id.* at ¶ 37.

and defensible on public health, safety, and welfare grounds.[10] The Public Service Commission of Wisconsin ("**PSC**") has been authorized to hear complaints by utility companies challenging a particular municipal regulation as unreasonable.[11] The PSC's role is to determine, after a hearing, whether the regulation is unreasonable. If the PSC so concludes, the challenged regulation is void.[12]

1. Moratoria

Express or *de facto* moratoria on the deployment of wireless facilities are prohibited.[13] Unlike express moratoria, which are formally codified by municipalities as outright prohibitions, *de facto* moratoria are "local actions that are not express moratoria, but that effectively halt or suspend the acceptance, processing, or approval of applications or permits for telecommunications services or facilities in a manner akin to an express moratorium."[14] Such *de facto* moratoria include: (i) blanket refusals to process applications; (ii) refusals to issue permits for a category of structures; (iii) frequent and lengthy delays of months in issuing permits and processing applications; and (iv) claims that applications cannot be granted until pending local, state, or federal legislation is adopted.[15]

2. Deadlines for Acting on a Wireless Siting Application

Both state and federal law impose certain time limits for review of and action on applications to place wireless telecommunications facilities in local ROW. These time limits, discussed in detail below, are commonly referred to as "shot clocks" and can vary based on the type of application submitted. Municipalities must be familiar with the shot clocks and be sure to structure their application review processes to allow for final action on an application within the applicable shot clock time period.

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[10] *See* Wis. Stat. §§ 196.58(1r)(a) and 182.017(1r).

[11] *See* Wis. Stat. §§ 196.58(4) and 182.017(8).

[12] Wis. Stat. § 196.58(4)(a).

[13] *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, Third Report and Order and Declaratory Ruling,* WT Docket No. 17-79, WC Docket No. 17-84, FCC 18-111, 2018 WL 3738326 at ¶¶ 145 and 149 (Aug. 3, 2018)("***Moratoria Declaratory Ruling***").

[14] *Id.* at ¶ 149.

[15] *Id.*

a. Federal Shot Clocks

In its *2009 Declaratory Ruling*, the FCC decided to use shot clocks to define a presumptive "reasonable period of time" beyond which a municipality's inaction on a wireless siting application would constitute a "failure to act" within the meaning of Section 332.[16] It determined that 90 days was a reasonable period of time for a municipality to act on an application to collocate a wireless telecommunications facility on an existing structure and that 150 days was reasonable for acting on an application for a facility requiring a new support structure.

The *2018 Small Cell Order* adopts two new shot clocks that apply to applications to place SWF in local ROW. The order also preserves and codifies the shot clocks adopted in the *2009 Declaratory Ruling*.

The new SWF shot clocks allow:

- 60 days for reviewing an application for the attachment of SWF to existing structures,[17] and
- 90 days for reviewing an application for the placement of SWF on new structures.[18]

The shot clocks begin to run from the day the application is submitted (or the next business day if a submission is made on a holiday), rather than the day the municipality determines that the application is complete.[19] If an applicant files multiple applications at the same time (a "**batched application**"), whether under one application cover sheet or separate cover sheets, the longest shot clock applicable to any application in the batch will apply to the entire batch.[20]

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[16] *2018 Small Cell Order* at ¶ 104 (citing *Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7) to Ensure Timely Siting Review*, Declaratory Ruling, 24 FCC Rcd 13994 (2009)("***2009 Declaratory Ruling***"), *aff'd, City of Arlington v. FCC*, 668 F.33d 229 (5th Cir. 2012), *aff'd*, 569 U.S. 290 (2013)).

[17] 47 C.F.R. § 1.6003(c)(1)(i).

[18] 47 C.F.R. § 1.6003(c)(1)(iii).

[19] *2018 Small Cell Order* at ¶ 19 (citing *In the Matter of Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, WT Docket No. 13-328, Report and Order, 29 FCC Rcd 12865, 12970 at ¶ 258 (2014), *aff'd, Montgomery County v. FCC*, 811 F.3d 121 (4th Cir. 2015)).

[20] *2018 Small Cell Order* at ¶ 114.

If the municipality misses the applicable shot clock deadline, it is presumed to have violated the effective prohibition standard under Sections 253(a) and 332(c)(7)(B)(i)(II). The applicant may then commence an action in a court of competent jurisdiction alleging a violation of the effective prohibition standard and seeking injunctive relief granting the application. However, if the applicant brings a court action because the federal shot clock deadline was missed, the municipality has the opportunity to demonstrate that the failure to act was reasonable under the circumstances and, therefore, did not materially limit or inhibit the applicant from introducing new services or improving existing services, thereby rebutting the effective prohibition presumption.[21]

b. Eligible Facilities Requests Under Section 6409(a) of the Spectrum Act[22]

Because the Model Ordinance is designed to apply to all wireless facilities, it also addresses eligible facilities requests, which have their own federal shot clock and remedy. An eligible facilities request is any request to add, remove, or replace transmission equipment (e.g., antennas) on an existing privately owned wireless tower or base station where the proposed work will not substantially change the physical dimensions of the tower or base station.[23] A "tower" includes any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities.[24] "Base stations" consist of structures other than towers that support antenna, transceiver, or other associated equipment, even if the structure was not built for the sole or primary purpose of providing such support, but does not include structures that do not, at the time of a request, support or house base station components.[25]

If the proposed project meets the definition of an eligible facilities request, the municipality must grant the request within 60 days, regardless of whether the application meets the standards that the municipality would apply to other wireless telecommunications facilities applications.[26] If the 60-day shot clock deadline is

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[21] *Id.* at ¶ 130 and Appendix C at ¶ 4.

[22] Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96 (codified at 47 U.S.C. § 1455) ("***Spectrum Act***").

[23] 47 C.F.R. § 1.6100(b)(3).

[24] 47 C.F.R. § 1.6100(b)(9).

[25] 47 C.F.R. § 1.6100(b)(1).

[26] 47 C.F.R. § 1.6100(c).

missed, the application is deemed granted.[27] To prevent the project from going forward, the municipality must seek injunctive relief in a court of competent jurisdiction.[28]

c. Broadened Applicability of Shot Clocks

FCC shot clocks no longer apply just to applications to install or modify wireless telecommunications facilities. For all federal shot clocks (except for eligible facilities requests), all permits and authorizations necessary for the deployment of wireless facilities must now be approved or denied within the applicable shot clock period, unless the municipality and the applicant agree to a different time frame.[29] This includes such authorizations as building permits, ROW access permits, lease or license agreements, road closure permits, aesthetic approvals, excavation permits, and any pre-application procedures. If there are any public meetings or hearings on the applications or a local appeal of a denial, those processes must also be completed within the time limits. The shot clocks also apply to negotiation of any lease or license agreements to collocate wireless facilities on municipally owned property in the ROW, such as street lights, traffic poles, or utility poles.

We do not yet know how the shot clocks, in practice, will be applied to negotiating lease or license agreements for SWF to be placed on municipally owned structures in the ROW. However, we recommend developing written technical and aesthetic requirements now that will protect the municipality's street lights, utility poles, and other property to the extent possible in light of the *2018 Order*. That being said, we would expect that the providers and municipalities will be able to agree to extend the shot clock deadlines to accommodate the negotiation process.

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[27] *Id.*

[28] 47 C.F.R. § 1.6100(c)(5).

[29] *2018 Small Cell Order* at ¶ 132.

d. Deadlines for Review of SWF and Non-SWF Applications for Completeness

The *2018 Order* also sets deadlines for the initial review of wireless applications to determine whether the applications are complete or are missing any required information:

- 10 days to review a SWF application for completeness and notify the applicant in writing of the missing information. The applicable shot clock resets to zero when the missing information is submitted.[30]
- 30 days to review any wireless application for completeness (including SWF applications where the 10-day deadline is missed) and to notify the applicant in writing of the missing information. The applicable shot clock is tolled until the missing information is submitted.[31]
- 10 days to review the missing information that the provider submits and notify the applicant in writing of the information that is still missing. The applicable shot clock is tolled until the missing information is submitted.[32]

The notification that the application is "materially incomplete," must "clearly and specifically" identify:

- the missing documents or information, and
- the specific rule or regulation creating the obligation to submit such documents or information.[33]

See the table in section 2.e below for a summary of all of the federal review deadlines that currently apply to the placement of telecommunications facilities in the ROW.

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[30] 47 C.F.R. § 1.6003(d)(1).
[31] 47 C.F.R. § 1.6003(d)(2).
[32] 47 C.F.R. § 1.6003(d)(3).
[33] 47 C.F.R. § 1.6003(d)(1).

e. Table of Federal Shot Clocks and Completeness Review Deadlines

ACTIVITY	DEADLINE (calendar days)	TYPE OF APPLICATION	FCC RULE
REVIEW FOR COMPLETENESS	10 days	Review **SWF application** and notify applicant in writing of missing information. Shot clock is ***reset*** to zero when the applicant submits the missing information.	47 C.F.R. § 1.6003(d)(1)
	30 days	Review **any wireless facility** application and notify applicant in writing of missing information. Shot clock is ***tolled*** until the applicant provides the missing information.	47 C.F.R. §1.6003(d)(2)(iii)
	10 days	Review a resubmission and notify applicant of any missing information. Shot clock is ***tolled*** again until applicant submits the additional information.	47 C.F.R. § 1.6003(d)(3)(iii)
GRANT PERMIT OR DENY APPLICATION	60 days	Application to collocate **SWF** on an existing structure (including non-telecommunications structures)	47 C.F.R. § 1.6003(c)(1)(i)
	90 days	Application for **SWF** involving construction of a new structure	47 C.F.R. § 1.6003(c)(1)(iii)
	90 days	Application to collocate **non-SWF** facility on an existing structure	47 C.F.R. § 1.6003(c)(1)(ii)
	150 days	Application for a **non-SWF** facility involving construction of a new structure	47 C.F.R. § 1.6003(c)(1)(iv)
	60 days	**Eligible Facilities Request** to add, remove, or replace equipment on an existing tower or base station that doesn't substantially change the physical dimensions of the tower or base station	47 C.F.R. § 1.6100(c)(2)

f. Wisconsin Shot Clocks

Wisconsin law also imposes shot clocks on wireless telecommunications facilities applications.[34] As between state and federal law, the more restrictive shot clock requirement applies. Wisconsin law provides a 60-day shot clock for applications to place or modify utility facilities in the ROW.[35] If the municipality fails to either approve or deny the permit within the 60-day statutory window, the application is deemed approved and the installation can go forward.[36]

Since this shot clock begins to run when the application is received and not when the application is determined to be complete, a municipality may have no choice but to deny the permit on incompleteness grounds.[37] It would be up to the provider to resubmit the application with the missing information. In any event, if the municipality denies the permit, it must "provide the applicant a written explanation of the reasons for the denial at the time the municipality denies the application."[38]

Although outside the scope of the Model Ordinance, it is important to be aware that Wisconsin also has timelines for reviewing permit applications for wireless installations outside the ROW. Under Wis. Stat. § 66.0404(3)(c) and (2)(d), a municipality has 45 days in which to either approve or deny an application to place a "mobile service" facility on an existing structure not requiring substantial modification and 90 days when the facility requires a new support structure or the substantial modification of an existing structure. These shot clocks begin to run when the application is complete. If, upon receipt of an application, the municipality fails to take the proper actions within the prescribed deadline, the "applicant may consider the application approved."[39]

g. Model Ordinance Comment

Due to the complexity of determining which of the federal and/or state shot clocks apply to any given application, we suggest that the municipality require the wireless provider to specify in its application the shot clocks that apply and the basis for that

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[34] A municipality's local code of ordinances may also contain relevant time limits. They would apply if they set a shorter time in which to act than either federal or state law.

[35] Wis. Stat. § 182.017(9).

[36] *Id.*

[37] Before doing so, the municipality should consult with counsel to determine the implications of this denial on the federal shot clock deadlines, if any.

[38] *Id.*

[39] Wis. Stat. § 66.0404(2)(d) and (3)(c).

determination. This application requirement is contained in Section 6(b)(4) of the Model Ordinance.

One should also keep in mind that the shot clocks may be extended by mutual agreement. An agreement extending the applicable shot clock deadlines may be particularly appropriate in the case of batched applications, where an applicant submits many applications at the same time and the municipality may need to outsource review of the applications to a third-party contractor. Section 5(b)(11) of the Model Ordinance gives the person charged with administering the ordinance the power to enter into agreements with applicants to extend a shot clock.

3. Limitations on Application Fees, ROW Access Fees, and Charges for Use of Municipally Owned Structures in the ROW

The *2018 Order* declares that application fees, ROW access fees, and fees charged for the use of municipally owned property in the ROW (including street lights, traffic poles, and utility poles) are unlawful unless the following three conditions are met:

- the fees are a reasonable approximation of the municipality's costs,
- only objectively reasonable costs are factored into those fees,[40] and
- the fees are no higher than the fees charged to similarly situated competitors in similar situations.[41]

The fees subject to these conditions include all fees pertaining to the deployment of the wireless facilities, including one-time application or permit fees "such as siting applications, zoning variance applications, building permits, electrical permits, parking permits, or excavation permits" as well as recurring fees such as ROW access fees and "fees for the attachment to or use of property within the ROW owned or controlled by the government (*e.g.*, street lights, traffic lights, utility poles, and other infrastructure within the ROW suitable for the placement of Small Wireless Facilities)."[42]

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[40] The FCC confirms that municipalities may hire third party contractors or consultants to assist with processing applications (as many municipalities do in the case of batched applications). However, the fees for those third-party contractors or consultants may only be passed on to the applicant if the fees are, themselves, reasonable and not "excessive." *2018 Small Cell Order* at ¶ 70.

[41] *Id.* at ¶ 50.

[42] *Id.* at ¶ 69.

The *2018 Order* sets out fee levels ("safe harbors") the FCC presumes would meet the three conditions:

> ***Application Fees:*** $500 for a single up-front application that includes up to five small wireless facilities, with an additional $100 for each SWF beyond five, or $1,000 for a new pole to support a SWF.
>
> ***Recurring Fees:*** $270 per SWF, per year, for all recurring fees (including any possible ROW access fee[43] or fee for attachment to municipally owned structures in the ROW).[44]

It is important to understand that these safe harbors are not absolute caps on the fees a municipality may charge, but rather are fee levels that presumptively do not constitute an effective prohibition under Section 253(a) or Section 332(c)(7)(B)(i)(II) and are presumed to be "fair and reasonable compensation" under Section 253(c).[45] The safe harbors are purported to help avoid disputes over the level of compensation required by the municipality.

a. Model Ordinance Comment

Fees are addressed in Section 6(d) of the Model Ordinance. We have not set out any specific fees in the Model Ordinance and assume that each municipality will adopt fees that reflect its costs and that those fees will be set from time to time via ordinance or resolution or otherwise as part of the wireless regulations provided for in Section 5(b)(1) of the Model Ordinance. Each municipality will need to decide whether to rely on the safe harbors or set fees that are more or less than the safe harbors.

Ultimately, each municipality should undertake a cost study to determine the full costs incurred in reviewing wireless siting applications for completeness and granting

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[43] ROW access fees are not allowed under Wisconsin law if the fees are not cost-based but rather are designed to raise revenue. *See Wisconsin Telephone Co. v. Milwaukee*, 223 Wis. 251, 256-57, 270 N.W. 336 (1936) (A municipality cannot impose a ROW fee on a telephone company or another public utility for the purpose of raising revenue. Such a provision would not be within the lawful exercise of a municipality's police power.); *see also Wisconsin Telephone Co. v. Milwaukee*, 126 Wis. 1, 13, 104 N.W. 1009 (1905) ("where the power to license exists, a reasonable discretion is vested in the municipality, but courts will look into ordinances with a view of determining whether they are passed for the purpose of raising revenue, although sought to be upheld as police regulations").

[44] *2018 Small Cell Order* at ¶ 79.

[45] *Id.* at ¶ 80. Section 253(c) of the Telecommunications Act of 1996, 47 U.S.C. § 253(c), provides that state and local governments may require "fair and reasonable compensation from telecommunications providers" for use of the public ROW, as long as the requirement is "competitively neutral and nondiscriminatory" and "publicly disclosed."

permits. Such cost studies will be crucial in defending the municipality's application and permit fees if those fees are challenged by an applicant. In conducting a cost study, the municipality should consider such things as the cost of municipal staff time and that of outside legal counsel and engineers for tasks such as:

- reviewing applications for completeness, technical suitability, compliance with electric safety and traffic safety standards, and compliance with the Americans with Disabilities Act of 1990;
- conducting any necessary pre- or post-construction inspections; or
- administering a public notification process.

Regarding the level of recurring fees for the attachment of SWF to street lights, utility poles, and other municipally owned structures in the ROW, a municipality should be prepared to document fees by also undertaking a cost study. That study should consider such things as the municipality's investment in the facility, the cost to maintain, repair, and replace the facility and how such costs may be fairly allocated between the municipality and the wireless provider. In addition, to protect its assets in the ROW, the municipality may wish to develop a written plan for the future use of currently unused space on the facility for municipal and public safety uses. In that way, the municipality will have a principled basis on which to deny attachment requests from wireless providers and to defend its decision if challenged in court.

4. New Effective Prohibition Standard Applies to Non-Fee Legal Requirements, Such as Aesthetics

In adopting the new effective prohibition standard, the FCC makes clear that the standard applies to both fees and other non-fee legal requirements, including aesthetic, undergrounding, and minimum spacing requirements.[46] The FCC states that complying with aesthetic and other such requirements imposes costs on SWF providers that may impact their ability to provide service, just as fees may do. Aesthetic and other similar requirements, therefore, violate Sections 253(a) and 332(c)(7)(B)(i)(II) unless they are:

- reasonable,
- no more burdensome than those applied to other types of

[46] *2018 Small Cell Order* at ¶ 82.

infrastructure deployments,[47] and
- objective and published in advance.[48]

Aesthetic requirements are reasonable if "they are technically feasible and reasonably directed to avoiding or remedying the intangible public harm of unsightly or out-of-character deployments."[49] The FCC reasons that an aesthetic requirement that is imposed on wireless infrastructure deployments but not on similar non-wireless infrastructure deployments is evidence that the requirement is unreasonable and not directed at remedying the negative aesthetic impact of the wireless deployment.[50] Likewise, the FCC opines that the increased cost to comply with an aesthetic standard may, in some cases, materially inhibit the provider's provision of service.[51]

Undergrounding and minimum spacing requirements are to be evaluated using the same standards as the FCC uses to evaluate aesthetic requirements.[52] For example, a minimum spacing requirement that would prevent the provider's wireless system from functioning efficiently may amount to an effective prohibition of service. Likewise, a regulation that required all wireless facilities to be placed underground would be preempted if it could be shown that, to operate, wireless facilities must be above ground.

a. Model Ordinance Comment

Section 7(c) of the Model Ordinance provides somewhat generic standards related to aesthetics and similar requirements. Attachment C provides examples of standards for the municipality to consider if it wishes to.[53] These standards may cover such things as:

- Size of antennas, equipment boxes, and cabling;

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[47] We find this criterion problematic in that it apparently requires the municipality to apply the same non-fee legal requirements on wireless infrastructure as it does on electric utility poles, even though the electric utility and the wireless provider are not similarly situated, which is a standard element for unlawful discrimination.

[48] *2018 Small Cell Order* at ¶ 86.

[49] *Id.* at ¶ 87.

[50] *Id.*

[51] *Id.*

[52] *Id.* at ¶¶ 90-91.

[53] These examples are provided to assist the municipality in developing its own standards particularized to local circumstances.

- Use of shrouds, stealth techniques, or other camouflage;
- Painting of attachments to match mounting structures;
- Flush-mounting of antennas;
- Placement of equipment in the pole base rather than on the outside of the pole;
- Consistency with the character of historic neighborhoods; and
- Minimum spacing between attachments.[54]

Whether the particular standards the municipality adopts will violate the effective prohibition standard will, of course, depend on whether or not they materially inhibit the provision of a telecommunications or personal wireless service. Keep in mind that they will not be reasonable under the *2018 Order* if they are applied only to wireless facilities and if they impose unreasonable costs on the provider. Finally, it is very important that these standards be published in advance of receiving an application; otherwise, they cannot be enforced with respect to that application.

5. Existing Agreements

Existing license or lease agreements between a municipality and a wireless provider for use of municipally owned property in the ROW (e.g., street lights or utility poles) are not exempt from the new rules and standards adopted in the *2018 Order*.[55] The FCC, however, recognizes that the order's effect on any particular agreement cannot be determined without considering all the facts and circumstances of the specific agreement. Thus, whether or not provisions in a particular wireless attachment agreement are preempted is a determination that would be made by a court.

C. STATUS OF *2018 SMALL CELL ORDER*

Communities across the country and several municipal organizations have filed petitions challenging the *2018 Order*.[56] These cases raise substantial questions regarding the validity of the order, and, among other things, challenge the FCC's new effective prohibition test. Given the possibility that the order may be overturned, we have tried to avoid incorporating the FCC's standards themselves into the Model

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[54] *See* Baller, Stokes & Lide, PC, *Ten Strategies to Protect State and Local Property After the FCC's 5G Preemption Order* (Nov. 12, 2018), https://www.baller.com/2018/11/ten-strategies-to-protect-state-and-local-property-after-the-fccs-small-cell-preemption-order/.

[55] *2018 Small Cell Order* at ¶ 66.

[56] The main case is *City of San Jose v. FCC*, Docket No. 19-9568, which was filed in the Tenth Circuit but was transferred to the Ninth Circuit on January 10, 2019.

Ordinance. Otherwise, there is a risk that the ordinance may require the municipality to continue to comply with those standards even after they have been overturned. A municipality may also wish to consider adding a standard condition to its wireless facilities permits causing the permit to terminate if it was granted based on any rules or orders that are later held to be unlawful.

ATTACHMENT A
MODEL ORDINANCE

Chapter [#]: Wireless Telecommunications Facilities in the Right-of-Way

Section 1: Definitions

For the purposes of this Chapter, the terms below shall have the following meanings:

"Administrator" means the Director of Public Works[1] or his or her designee.

"Application" means a formal request, including all required and requested documentation and information, submitted by an Applicant to the [CITY/VILLAGE] for a wireless permit.

"Applicant" means a person filing an application for placement or modification of a wireless telecommunications facility in the right-of-way.

"Base Station" means the same as in 47 C.F.R. § 1.6100(b)(1), which defines the term to mean a structure or wireless telecommunications equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. This definition does not include towers.

"Eligible Facilities Request" means the same as in 47 C.F.R. § 1.6100(b)(3), which defines the term to mean any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving: (i) collocation of new transmission equipment; (ii) removal of transmission equipment; or (iii) replacement of transmission equipment.

"FCC" means the Federal Communications Commission.

"Right-of-way" means the surface of, and the space above and below the entire width of an improved or unimproved public roadway, highway, street, bicycle lane, landscape terrace, shoulder, side slope, and public sidewalk over which the [CITY/VILLAGE] exercises any rights of management and control or in which the [CITY/VILLAGE] has an interest.

"Small Wireless Facility," consistent with 47 C.F.R. § 1.6002(l), means a facility that meets each of the following conditions:

(1) The structure on which antenna facilities are mounted:

i. is 50 feet or less in height, or

ii. is no more than 10 percent taller than other adjacent structures, or

[1] When choosing the appropriate person to administer the ordinance (e.g., Public Works Director, Engineer, Director of Planning and Zoning), it is wise to consider both the expertise and the workload of the employee appointed, given the short review timeline required by state and federal shot clocks. *See* Memo Section B.2.

iii. is not extended to a height of more than 50 feet or by more than 10 percent above its preexisting height, whichever is greater, as a result of the collocation of new antenna facilities;

(2) Each antenna (excluding associated antenna equipment) is no more than three cubic feet in volume;

(3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is cumulatively no more than 28 cubic feet in volume;

(4) The facility does not require antenna structure registration;

(5) The facility is not located on Tribal lands; and

(6) The facility does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified by federal law.

"Support Structure" means any structure capable of supporting wireless telecommunications equipment.

"Tower" means the same as in 47 C.F.R. § 1.6100(b)(9), which defines the term as any structure built for the sole or primary purpose of supporting any Federal Communication Commission (FCC) licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. This definition does not include utility poles.

"Underground areas" means those areas where there are no electrical facilities or facilities of the incumbent local exchange carrier in the right of way; or where the wires associated with the same are or are required to be located underground; or where the same are scheduled to be converted from overhead to underground. Electrical facilities are distribution facilities owned by an electric utility and do not include transmission facilities used or intended to be used to transmit electricity at nominal voltages more than 35,000 volts.

"Utility Pole" means a structure in the right-of-way designed to support electric, telephone, and similar utility distribution lines and associated equipment. A tower is not a utility pole.

"Wireless Infrastructure Provider" means a person that owns, controls, operates, or manages a wireless telecommunications facility or portion thereof within the right-of-way.

"Wireless Permit" or "Permit" means a permit issued pursuant to this Chapter and authorizing the placement or modification of a wireless telecommunications facility of a design specified in the permit at a particular location within the right-of-way, and the

modification of any existing support structure to which the wireless telecommunications facility is proposed to be attached.

"Wireless Regulations" means those regulations adopted pursuant to Section 5(b)(1) to implement the provisions of this Chapter.

"Wireless Service Provider" means an entity that provides wireless services to end users.

"Wireless Telecommunications Equipment" means equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network.

"Wireless Telecommunications Facility" or "Facility" means a facility at a fixed location in the right-of-way consisting of a base station, antennas and other accessory equipment, and a tower and underground wiring, if any, associated with the base station.

Definitions in this Section may contain quotations or citations to 47 C.F.R. §§ 1.6100 and 1.6002. In the event that any referenced section is amended, creating a conflict between the definition as set forth in this Chapter and the amended language of the referenced section, the definition in the referenced section, as amended, shall control.

Section 2: Purpose

In the exercise of its police powers, the [CITY/VILLAGE] has priority over all other uses of the right-of-way. The purpose of this Chapter is to provide the [CITY/VILLAGE] with a process for managing, and uniform standards for acting upon, requests for the placement of wireless telecommunications facilities within the right-of-way consistent with the [CITY'S/VILLAGE'S] obligation to promote the public health, safety, and welfare; to manage the right-of-way; and to ensure that the public's use is not obstructed or incommoded by the use of the right-of-way for the placement of wireless telecommunications facilities. The [CITY/VILLAGE] recognizes the importance of wireless telecommunications facilities to provide high-quality communications and internet access services to residents and businesses within the [CITY/VILLAGE]. The [CITY/VILLAGE] also recognizes its obligation to comply with applicable Federal and State laws regarding the placement of wireless telecommunications facilities in the right-of-way including, without limitation, the Telecommunications Act of 1996 (47 U.S.C. § 151 et seq), Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Wis. Stat. § 182.017, and Wis. Stat. § 196.58, and this Chapter shall be interpreted consistent with those provisions.

Section 3: Scope

(a) **Applicability.** Unless exempted by Section 3(b), below, every person who wishes to place a wireless telecommunications facility in the right-of-way or modify an existing wireless telecommunications facility in the right-of-way must obtain a wireless permit under this Chapter.

(b) **Exempt Facilities.**[2] The provisions of this Chapter (other than Sections 10-14) shall not be applied to applications for the following:

(1) Installation of a small wireless facility on the strand between two utility poles, provided that the cumulative volume of all wireless facilities on the strand shall not exceed 1 cubic foot, and provided further that the installation does not require replacement of the strand, or excavation, modification, or replacement of either of the utility poles.

(2) Installation of a mobile cell facility (commonly referred to as "cell on wheels" or "cell on truck") for a temporary period in connection with an emergency or event, but no longer than required for the emergency or event, provided that installation does not involve excavation, movement, or removal of existing facilities.

(3) Placement or modification of a wireless telecommunications facility on structures owned by or under the control of the [CITY/VILLAGE]. See Section 13 of this Chapter.

(4) Placement or modification of a wireless telecommunications facility by [CITY/VILLAGE] staff or any person performing work under contract with the [CITY/VILLAGE].

(5) Modification of an existing wireless telecommunications facility that makes no material change to the footprint of a facility or to the surface or subsurface of a public street if the activity does not disrupt or impede traffic in the traveled portion of a street, and if the work does not change the visual or audible characteristics of the wireless telecommunications facility.

Section 4: Nondiscrimination

In establishing the rights, obligations, and conditions set forth in this Chapter, it is the intent of the [CITY/VILLAGE] to treat each applicant and right-of-way user in a competitively neutral and nondiscriminatory manner, to the extent required by law, while taking into account the unique technologies, situation, and legal status of each applicant or request for use of the right-of-way.

Section 5: Administration

(a) **Administrator.** The Administrator is responsible for administering this Chapter.

(b) **Powers.** As part of the administration of this Chapter, the Administrator may:

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[2] None of these carve-outs are mandatory—they are included simply for practical reasons. The items listed in sections 3(b)(1), (2), and (5) are exempted from permitting because they are either temporary or quite simple and unobtrusive. Allowing telecommunications providers to make such installations without permitting may encourage them to choose these types of installations over others that the municipality finds less preferable. Items 3(b)(3) and (4) are exempted from permitting because the municipality has means other than permitting to control these types of installations.

(1) Adopt wireless regulations governing the placement and modification of wireless telecommunications facilities in addition to but consistent with the requirements of this Chapter, including regulations governing collocation, the resolution of conflicting applications for placement of wireless telecommunications facilities, and aesthetic standards.[3]

(2) Interpret the provisions of the Chapter and the wireless regulations.

(3) Develop forms and procedures for submission of applications for wireless permits consistent with this Chapter.

(4) Collect any fee required by this Chapter.

(5) Require, as a condition of completeness of any application, notice to members of the public that may be affected by the placement or modification of the wireless telecommunications facility that is the subject of the wireless permit application.

(6) Establish deadlines for submission of information related to an application, and extend or shorten deadlines where appropriate and consistent with federal laws and regulations.

(7) Issue notices of incompleteness or requests for information in connection with any wireless permit application.

(8) Select and retain an independent consultant or attorney with expertise in telecommunications to review any issue that involves specialized or expert knowledge in connection with any permit application.

(9) Coordinate and consult with other [CITY/VILLAGE] staff, committees, and governing bodies to ensure timely action on all other required permits under Section 6(b)(8) of this Chapter.

(10) Subject to appeal as provided in Section 8(d) of this Chapter, determine whether to grant, grant subject to conditions, or deny an application.

(11) Take such other steps as may be required to timely act upon wireless permit applications, including issuing written decisions and entering into agreements to mutually extend the time for action on an application.

Section 6: Application[4]

(a) **Format.** Unless the wireless regulations provide otherwise, the applicant must submit both a paper copy and an electronic copy (in a searchable format) of any application, as

[3] Adoption of wireless regulations is optional, but advisable. The regulations can contain more detailed technical specifications, vary the general standards set forth in the ordinance based on the character of a particular neighborhood or corridor, and set more detailed aesthetic requirements. *See* Attachment C to Memo.

[4] Each municipality should develop its own permit application form. *See* Attachment B to Memo.

well as any amendments or supplements to the application or responses to requests for information regarding an application, to the Administrator. An application is not complete until both the paper and electronic copies are received by the Administrator.

(b) **Content.** In order to be considered complete, an application must contain:

(1) All information required pursuant to the wireless regulations.

(2) A completed application cover sheet signed by an authorized representative of the applicant, listing all standard permit conditions.

(3) The name of the applicant (including any corporate or trade name), and the name, address, email address, and telephone number of a local representative. If the applicant is a wireless infrastructure provider, the name and contact information for the wireless service provider(s) that will be using the wireless telecommunications facility must also be provided.

(4) A statement of which shot clock or shot clocks apply to the application and the reasons the chosen shot clocks apply.

(5) A separate and complete description of each proposed wireless telecommunications facility and the work that will be required to install or modify it, including but not limited to detail regarding proposed excavations, if any; detailed site plans showing the location of the facility and technical specifications for each element of the facility, clearly describing the site and all structures and facilities at the site before and after installation or modification and identifying the owners of such preexisting structures and facilities; and describing the distance to the nearest residential dwelling unit. Before and after 360-degree photo simulations must be provided for each facility.

(6) Proof that the applicant has mailed to the owners of all property within 300 feet of the proposed wireless telecommunications facility a notice that the applicant is submitting an application to the [CITY/VILLAGE] for placement or modification of a wireless telecommunications facility in the right-of-way, which notice must include (i) the proposed location of the facility, (ii) a description and scale image of the proposed facility, and (iii) an email address and phone number for a representative of the applicant who will be available to answer questions from members of the public about the proposed project.

(7) A copy of the FCC license for the facility or a sworn written statement from the applicant attesting that the facility will comply with current FCC regulations.

(8) To the extent that filing of the wireless permit application establishes a deadline for action on any other permit that may be required in connection with the wireless telecommunications facility,[5] the application must include complete copies of

[5] *See* Memo Section B.2.c.

applications for every required permit (including without limitation electrical permits, building permits, traffic control permits, and excavation permits),[6] with all engineering completed and with all fees associated with each permit.

(9) A certification by a registered and qualified engineer that the installation can be supported by and does not exceed the tolerances of the structure on which it will be mounted and that all elements of the wireless telecommunications facility comply with applicable safety standards.

(10) Payment of all required fees.

(11) If an applicant contends that denial of the application would prohibit or effectively prohibit the provision of service in violation of federal law, or otherwise violate applicable law, the application must provide all evidence on which the applicant relies in support of that claim. Applicants are not permitted to supplement this evidence if doing so would prevent the [CITY/VILLAGE] from complying with any deadline for action on an application.

(12) If the application is an eligible facilities request, the application must contain information sufficient to show that the application qualifies as an eligible facilities request under 47 C.F.R. § 1.6100(b)(3), including evidence that the application relates to an existing tower or base station that has been approved by the [CITY/VILLAGE]. Before and after 360-degree photo simulations must be provided with detailed specifications demonstrating that the modification does not substantially change the physical dimensions of the existing approved tower or base station.

(c) **Waivers**. Requests for waivers from any requirement of this Section 6 shall be made in writing to the Administrator. The Administrator may grant a request for waiver if it is demonstrated that, notwithstanding the issuance of the waiver, the [CITY/VILLAGE] will be provided with all information necessary to understand the nature of the construction or other activity to be conducted pursuant to the wireless permit sought.

(d) **Fees.**[7] Applicant must provide an application fee and shall be required to pay all costs reasonably incurred in reviewing the application, including costs incurred in retaining outside consultants. Fees shall be reviewed periodically and raised or lowered based on the costs the Village expects to incur, with a review commencing by the first anniversary of the effective date of this Chapter.

(e) **Public Records**. Applications are public records that may be made publicly available pursuant to state and federal public records law. Notwithstanding the foregoing, the applicant may designate portions of the application materials that it reasonably believes

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[6] The municipality should review its code of ordinances to determine which other permits may be required and modify this list accordingly.

[7] *See* Memo Section B.3.

contain proprietary or confidential information by clearly marking each portion of such materials accordingly, and the [CITY/VILLAGE] shall endeavor to treat the information as proprietary and confidential, subject to applicable state and federal public records law and the Administrator's determination that the applicant's request for confidential or proprietary treatment of the application materials is reasonable. The [CITY/VILLAGE] shall not be required to incur any costs to protect the application from disclosure.

Section 7: General Standards

(a) **Generally**. Wireless telecommunications facilities shall meet the minimum requirements set forth in this Chapter and the wireless regulations, in addition to the requirements of any other applicable law or regulation.

(b) **Regulations**. The wireless regulations and decisions on wireless permits shall, at a minimum, ensure that the requirements of this Chapter are satisfied, unless it is determined that the applicant has established that denial of an application would, within the meaning of federal law, prohibit or effectively prohibit the provision of a telecommunications or personal wireless services, or otherwise violate applicable laws or regulations.[8] If that determination is made, the requirements of this Chapter and the wireless regulations may be waived, but only to the extent required to avoid the prohibition.

(c) **Standards.**[9]

(1) Wireless telecommunications facilities shall be installed and modified in a manner that:

(A) Minimizes risks to public safety;

(B) Ensures that placement of facilities on existing structures is within the tolerance of those structures;

(C) Avoids placement of aboveground facilities in underground areas, installation of new support structures or equipment cabinets in the public right-of-way, or placement in residential areas when commercial areas are reasonably available;

(D) Maintains the integrity and character of the neighborhoods and corridors in which the facilities are located;

(E) Ensures that installations are subject to periodic review to minimize the intrusion on the right-of-way;

[8] Before making such a determination, it is advisable to consult with the municipal attorney.

[9] If a municipality chooses to incorporate aesthetic standards into the ordinance, rather than in its wireless regulations, they should be added to this Section 7(c). *See* Attachment C to Memo.

(F) Ensures that the [CITY/VILLAGE] bears no risk or liability as a result of the installations; and

(G) Ensures that applicant's use does not inconvenience the public, interfere with the primary uses of the right-of-way, or hinder the ability of the [CITY/VILLAGE] or other government entities to improve, modify, relocate, abandon, or vacate the right-of-way or any portion thereof, or to cause the improvement, modification, relocation, vacation, or abandonment of facilities in the right-of-way.

(2) No wireless permit shall be issued unless (i) the wireless service provider applicant has immediate plans to use the proposed facility or (ii) the wireless infrastructure applicant has a contract with a wireless service provider that has immediate plans to use the proposed facility.

(3) In no event may ground-mounted equipment interfere with pedestrian or vehicular traffic and at all times must comply with the requirements of the Americans with Disabilities Act of 1990.

(d) **Standard Permit Conditions.** All wireless permits under this Chapter are issued subject to the following minimum conditions:

(1) **Compliance.** The permit holder shall at all times maintain compliance with all applicable Federal, State, and local laws, regulations, and other rules.

(2) **Term.** A wireless permit issued pursuant to an eligible facilities request shall expire at the same time the permit for the underlying existing wireless telecommunications facility expires. All other wireless permits shall be valid for a period of five years from the date of issuance unless revoked pursuant to Section 9(b) of this Chapter.

(3) **Contact Information.** The permit holder shall at all times maintain with the [CITY/VILLAGE] accurate contact information for the permit holder and all wireless service providers making use of the facility, which shall include a phone number, mailing address, and email address for at least one natural person.

(4) **Emergencies.** The [CITY/VILLAGE] shall have the right to support, repair, disable, or remove any elements of the facilities in emergencies or when the facility threatens imminent harm to persons or property.

(5) **Indemnities.** The permit holder, by accepting a permit under this Chapter, agrees to indemnify, defend, and hold harmless the [CITY/VILLAGE], its elected and appointed officials, officers, employees, agents, representatives, and volunteers (collectively, the "Indemnified Parties") from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, attorneys' fees, costs, and expenses of whatsoever kind or nature in any manner caused in whole or in part, or claimed to be caused in whole or in part, by reason of

any act, omission, fault, or negligence, whether active or passive, of the permit holder or anyone acting under its direction or control or on its behalf, even if liability is also sought to be imposed on one or more of the Indemnified Parties. The obligation to indemnify, defend, and hold harmless the Indemnified Parties shall be applicable even if the liability results from an act or failure to act on the part of one or more of the Indemnified Parties. However, the obligation does not apply if the liability results from the willful misconduct of an Indemnified Party.

(6) **Adverse Impacts on Adjacent Properties.** The permit holder shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification, or removal of the facility.

(7) **General maintenance.** The wireless communications facility and any associated structures shall be maintained in a neat and clean manner and in accordance with all approved plans and conditions of approval.

(8) **Graffiti Removal.** All graffiti on facilities shall be removed at the sole expense of the permit holder within 48 hours after notification from the [CITY/VILLAGE].

(9) **Relocation.** At the request of the [CITY/VILLAGE] pursuant to Section 10 of this Chapter, the permit holder shall promptly and at its own expense permanently remove and relocate any wireless telecommunications facility in the right-of-way.

(10) **Abandonment.** The permit holder shall promptly notify the [CITY/VILLAGE] whenever a facility has not been in use for a continuous period of 60 days or longer and must comply with Section 11 of this Chapter.

(11) **Restoration.** A permit holder who removes or relocates a facility from the right-of-way must restore the right-of-way in accordance with Section 12 of this Chapter.

(12) **Record Retention.** The permit holder shall retain full and complete copies of all permits and other regulatory approvals issued in connection with the facility, which includes without limitation all conditions of approval, approved plans, resolutions, and other documentation associated with the permit or regulatory approval. In the event the [CITY/VILLAGE] cannot locate any such full and complete permits or other regulatory approvals in its official records, and the permit holder fails to retain full and complete records in the permit holder's files, any ambiguities or uncertainties that would be resolved through an examination of the missing documents will be conclusively resolved against the permit holder.

(13) **Radio Frequency Emissions.** Every wireless facility shall at all times comply with applicable FCC regulations governing radio frequency emissions, and failure to comply with such regulations shall be treated as a material violation of the terms of the permit.

(14) **Certificate of Insurance.** A certificate of insurance sufficient to demonstrate to the satisfaction of the Administrator that the applicant has the capability to cover any liability that might arise out of the presence of the facility in the right-of-way.

Section 8: Application Processing and Appeal

(a) **Rejection for Incompleteness.** Notices of incompleteness shall be provided in conformity with state, local, and federal law, including 47 C.F.R. § 1.6003(d), as amended.

(b) **Processing Timeline.**[10] Wireless permit applications (including applications for other permits under Section 6(b)(8) necessary to place or modify the facility) and appeals will be processed in conformity with the shot clocks set forth in state, local, and federal law, as amended.

(c) **Written Decision.**[11] In the event that an application is denied (or approved with conditions beyond the standard permit conditions set forth in Section 7(d)), the Administrator shall issue a written decision with the reasons therefor, supported by substantial evidence contained in a written record.

(d) **Appeal to [CITY COUNCIL/VILLAGE BOARD].** Any person adversely affected by the decision of the Administrator may appeal that decision to the [CITY COUNCIL/VILLAGE BOARD], which may decide the issues *de novo*, and whose written decision will be the final decision of the City. An appeal by a wireless infrastructure provider must be taken jointly with the wireless service provider that intends to use the wireless telecommunications facility.

(e) **Deadline to Appeal.**

(1) Appeals that involve eligible facilities requests must be filed within three business days of the written decision of the Administrator.

(2) All other appeals not governed by Section 8(e)(1), above, must be filed within ten business days of the written decision of the Administrator, unless the Administrator extends the time therefor. An extension may not be granted where extension would result in approval of the application by operation of law.

(d) **Decision Deadline.** All appeals shall be conducted so that a timely written decision may be issued in accordance with the applicable shot clock.

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[10] *See* Memo Section B.2.

[11] If a municipality denies an application, 47 U.S.C. § 332(c)(7)(B)(iii) requires the decision be "in writing and supported by substantial evidence contained in a written record" while Wis. Stat. § 182.017(9) requires that the municipality "provide the applicant a written explanation of the reasons for the denial at the time that the municipality denies the application."

Section 9: Expiration and Revocation

(a) **Expiration.** A wireless permit issued pursuant to an eligible facilities request shall expire at the same time the permit for the underlying existing wireless telecommunications facility expires. All other wireless permits shall be valid for a period of five years from the date of issuance. Upon expiration of the wireless permit, the permit holder must either:

(1) Remove the wireless telecommunications facility; or,

(2) Submit an application to renew the permit at least 90 days prior to its expiration. The facility must remain in place until the renewal application is acted on by the [CITY/VILLAGE] and any appeals from the [CITY'S/VILLAGE'S] decision are exhausted.

(b) **Revocation for Breach.** A wireless permit may be revoked for failure to comply with the conditions of the permit or applicable federal, state, or local laws, rules, or regulations. Upon revocation, the wireless telecommunications facility must be removed within 30 days of receipt of written notice from the [CITY/VILLAGE]. All costs incurred by the [CITY/VILLAGE] in connection with the revocation, removal, and right-of-way restoration shall be paid by the permit holder.

(c) **Failure to Obtain Permit.** Unless exempted from permitting by Section 3(b) of this Chapter, a wireless telecommunications facility installed without a wireless permit must be removed within 30 days of receipt of written notice from the [CITY/VILLAGE]. All costs incurred by the [CITY/VILLAGE] in connection with the notice, removal, and right-of-way restoration shall be paid by entities who own or control any part of the wireless telecommunications facility.

Section 10: Relocation

Except as otherwise prohibited by state or federal law, a permit holder must promptly and at its own expense, with due regard for seasonal working conditions, permanently remove and relocate any of its wireless telecommunications facilities in the right-of-way whenever the [CITY/VILLAGE] requests such removal and relocation. The [CITY/VILLAGE] may make such a request to prevent the facility from interfering with a present or future [CITY/VILLAGE] use of the right-of-way; a public improvement undertaken by the [CITY/VILLAGE]; an economic development project in which the [CITY/VILLAGE] has an interest or investment; when the public health, safety, or welfare require it; or when necessary to prevent interference with the safety and convenience of ordinary travel over the right-of-way. Notwithstanding the foregoing, a permit holder shall not be required to remove or relocate its facilities from any right-of-way that has been vacated in favor of a non-governmental entity unless and until that entity pays the reasonable costs of removal or relocation to the permit holder.

Section 11: Abandonment

(a) **Cessation of Use.** In the event that a permitted facility within the right-of-way is not in use for a continuous period of 60 days or longer, the permit holder must promptly notify the [CITY/VILLAGE] and do one of the following:

(1) Provide information satisfactory to the Administrator that the permit holder's obligations for its facilities under this Chapter have been lawfully assumed by another permit holder.

(2) Submit to the Administrator a proposal and instruments for dedication of the facilities to the [CITY/VILLAGE]. If a permit holder proceeds under this Section 11(a)(2), the [CITY/VILLAGE] may, at its option:

(A) Accept the dedication for all or a portion of the facilities;

(B) Require the permit holder, at its own expense, to remove the facilities and perform the required restoration under Section 12; or

(C) Require the permit holder to post a bond or provide payment sufficient to reimburse the [CITY/VILLAGE] for reasonably anticipated costs to be incurred in removing the facilities and undertaking restoration under Section 12.

(3) Remove its facilities from the right-of-way within one year and perform the required restoration under Section 12, unless the Administrator waives this requirement or provides a later deadline.

(b) **Abandoned Facilities.** Facilities of a permit holder who fails to comply with Section 11(a) and which, for one year, remain unused shall be deemed to be abandoned. Abandoned facilities are deemed to be a nuisance. In addition to any remedies or rights it has at law or in equity, the [CITY/VILLAGE] may, at its option:

(1) abate the nuisance and recover the cost from the permit holder or the permit holder's successor in interest;

(2) take possession of the facilities; and/or

(3) require removal of the facilities by the permit holder or the permit holder's successor in interest.

Section 12: Restoration

In the event that a permit holder removes or is required to remove a wireless telecommunications facility from the right-of-way under this Chapter (or relocate it pursuant to Section 10), the permit holder must restore the right-of-way to its prior condition in accordance with [CITY/VILLAGE] specifications. However, a support structure owned by another entity authorized to maintain that support structure in the right-of-way

need not be removed but must instead be restored to its prior condition. If the permit holder fails to make the restorations required by this Section 12, the [CITY/VILLAGE] at its option may do such work. In that event, the permit holder shall pay to the [CITY/VILLAGE], within 30 days of billing therefor, the cost of restoring the right-of-way.

Section 13: Placement on [CITY/VILLAGE]-Owned or -Controlled Structures

The [CITY/VILLAGE] may negotiate agreements for placement of wireless telecommunications facilities on [CITY/VILLAGE]-owned or -controlled structures in the right-of-way. The agreement shall specify the compensation to the [CITY/VILLAGE] for use of the structures.[12] The person or entity seeking the agreement shall reimburse the [CITY/VILLAGE] for all costs the [CITY/VILLAGE] incurs in connection with its review of and action upon the request for an agreement.

Section 14: Severability

If any section, subsection, clause, phrase, or portion of this Chapter is for any reason held to be illegal or otherwise invalid by any court or administrative agency of competent jurisdiction, such illegal or invalid portion shall be severable and shall not affect or impair any remaining portion of this Chapter, which shall remain in full force and effect.

[12] *See* Memo Section B.3.

ATTACHMENT B
APPLICATION CHECKLIST

COMMENT: Section 6(b) of the Model Ordinance sets out the basic content of the wireless permit application. This Application Checklist ("**Checklist**") is to assist the municipality in developing a comprehensive application form based on the Model Ordinance, which grants the Administrator the authority to develop the application form. *See* Model Ordinance Section 5(b)(3). The provisions included in this Checklist are a starting point for the municipality. The municipality should review its code of ordinances to determine if there are other necessary provisions to include in the application.

The application form must be consistent with the ordinance, and, consequently, whatever modifications the municipality makes regarding the content of the application should be reflected in the ordinance. Moreover, the municipality should be mindful that its application must be consistent with the limitations imposed by the *2018 Small Cell Order*.

Once the municipality has developed its application form, it may wish to create its own simplified one-page checklist that clearly identifies all the materials the applicant must submit. This will help minimize the submission of incomplete applications. The simplified checklist will also aid the municipal reviewer in determining whether the application is complete and in timely processing the application within the short review period established by the state and federal shot clocks. *See* Memo Section B.2 for a discussion of shot clocks.

This Checklist assumes that the municipality will be using the application as the final permit.

General Application Content

- ☐ **Copies and Format.** Section 6(a) of the Model Ordinance requires the applicant to submit one paper copy and one electronic copy of the application unless otherwise provided in the municipality's wireless regulations. However, the municipality can choose to receive applications by paper or electronic format only. The municipality's ordinance or wireless regulations can establish the number of paper copies of the application and associated materials that the applicant must submit.

- ☐ **Submission Information.** The application should identify where the application must be submitted (e.g., street address for hand delivery, mailing address, email address) and which department may be contacted to answer any questions about the application.

Disclosures to Applicant

- ☐ **Disclosures.** The application should either restate or refer to all municipal disclosures required in the municipality's ordinance, including the following Sections of the Model Ordinance:
    - 6(a): Application format and standards for completion;

- 6(c): Waiver request requirements and standards;
- 6(d): Applicable fees; and,
- 6(e): Public record law compliance.

☐ **Cover Sheet with Standard Permit Conditions.** Section 6(b)(2) of the Model Ordinance requires the municipality to provide an application cover sheet, listing all standard permit conditions (as provided in Section 7(d) of the Model Ordinance). As discussed below, the standard permit conditions include indemnification and insurance provisions and, consequently, the cover sheet must be signed by an authorized representative of the applicant. Therefore, it is preferable to restate the standard permit conditions from the municipality's ordinance in their entirety, rather than simply citing the relevant ordinance provisions.

Required Information Provided by Applicants - As Provided in Section 6(b) of the Model Ordinance

☐ **Wireless Regulations.** All information required pursuant to the wireless regulations adopted by the municipality.

Comment: This will likely include evidence that the project will comply with any applicable aesthetic or other standards included in the wireless regulations. The required photo simulations and design or engineering plans to be submitted with the application may provide sufficient evidence to demonstrate that the standards will be met, although the municipality could also require the applicant to provide one or more written narratives explaining project compliance. Any request under Section (6)(c) of the Model Ordinance for a waiver of an application requirement should be supported with sufficient evidence for the municipality to determine whether such a waiver is warranted.

☐ **Signed Cover Sheet.** A completed application cover sheet signed by an authorized representative of the applicant, listing all standard permit conditions.

Comment: A signed cover sheet ensures that the applicant has agreed, in writing, to the standard permit conditions provided in Section 7(d) of the Model Ordinance. These standard permit conditions include, but are not limited to, the permit term, indemnification, and insurance requirements.

☐ **Contact Information.** The name of the applicant (including any corporate or trade name), and the name, address, email address, and telephone number of a local representative. If the applicant is a wireless infrastructure provider, the name and contact information for the wireless service provider(s) that will be using the wireless telecommunications facility must also be provided.

Comment: Section 6(b)(3) of the Model Ordinance requires the applicant to identify a local representative for the applicant and wireless service provider (if different). The

municipality may also wish to request secondary contact information if the primary contact is unavailable in the case of an emergency.

☐ **Shot Clock.** A statement of which shot clock or shot clocks apply to the application and the reasons the chosen shot clocks apply.

Comment: The municipality should require the applicant to identify which shot clock(s) apply. One way to accomplish this is to have the applicant "check the box" to choose the appropriate shot clock, as illustrated below. This prevents the municipality from making incorrect assumptions and missing essential deadlines. *See* Memo Section B.2 for further discussion of state and federal shot clocks.

IDENTIFY APPLICABLE SHOT CLOCK(S)	DEADLINE (calendar days)	TYPE OF APPLICATION	FEDERAL OR STATE AUTHORITY
☐	60 days	Application to collocate **SWF** on an existing structure (including non-telecommunications structures)	47 CFR § 1.6003(c)(1)(i)
☐	90 days	Application for **SWF** involving construction of a new structure	47 CFR § 1.6003(c)(1)(iii)
☐	90 days	Application to collocate **non-SWF** facility on an existing structure	47 CFR § 1.6003(c)(1)(ii)
☐	150 days	Application for a **non-SWF** facility involving construction of a new structure	47 CFR § 1.6003(c)(1)(iv)
☐	60 days	**Eligible Facilities Request** to add, remove, or replace equipment on an existing tower or base station that doesn't substantially change the physical dimensions of the tower or base station	47 CFR § 1.6100(c)(2)
☐	60 days	Applications to place a **wireless telecommunications facility**	Wis. Stat. § 182.017(9)

☐ **Description of Each Wireless Facility.** A separate and complete description of each proposed wireless telecommunications facility and the work that will be required to install or modify it, including, but not limited to, detail regarding proposed excavations, if any; detailed site plans showing the location of the facility and technical specifications for each element of the facility, clearly describing the site and all structures and facilities at the site before and after installation or modification; and describing the distance to the nearest residential dwelling unit. Before and after 360-degree photo simulations must be provided for each site.

Comment (Additional Information): This provision is a starting point. The municipality should consult an engineer with the relevant telecommunications experience to determine what additional information may be necessary.

Comment (Multiple Applications): Where the municipality receives more than one application in a day, the applicant must provide the required description and photo simulation for each site, regardless of the similarities between the installations. An application that does not provide such site specific information is incomplete under the terms of the Model Ordinance.

Comment (Collocation): If the proposed facility is to be collocated on an existing support structure, the applicant must identify the owner of the support structure. If the municipality requires collocation, where possible, under its wireless regulations, then the municipality should consider requiring the applicant to identify nearby support structures that could potentially accommodate collocation and to explain the reasons collocation is not possible.

Comment (Other Permits): Under Section 6(b)(8) of the Model Ordinance, the applicant is required to submit complete applications for all other authorizations required for installation and operation of the facility in the ROW. To ensure all necessary applications have been submitted, the municipality may consider requiring the applicant to separately describe any excavation work, temporary closures of any public thoroughfares, traffic redirection plans, electric work, or modifications to public improvements necessary in the construction of the proposed facility.

☐ **Notice to Property Owners.** The applicant must submit proof that a notice has been mailed to all owners of property within 300 feet of the proposed installation site that the applicant is seeking to place or modify wireless facilities in the ROW. The notice must include: (i) the proposed location of the facility, (ii) a description and scaled image of the proposed facility, and (iii) an email address and phone number for a representative of the applicant who will be available to answer questions from members of the public about the proposed project.

Comment (Notice): The *2018 Order* does not require the wireless provider to notify nearby property owners, nor does the order provide an objecting property owner with any recourse to stop or alter the project. However, the wireless provider may be willing to work with the municipality to address specific property owner concerns and the notice requirement in Section 6(b)(6) of the Model Ordinance may facilitate that process.

Comment (Applicant Q&A Session): Depending on the size of the project, the municipality may consider requiring the applicant to hold a public question and answer session to address citizen concerns. If the municipality wants to reserve this option, the municipality's ordinance or wireless regulations should reflect this.

- ☐ **FCC Compliance.** A copy of the FCC license for the facility or a sworn written statement from the applicant attesting that the facility will comply with current FCC regulations.

- ☐ **Complete Copies of Applications for Other Permits or Approvals.** To the extent that filing of the wireless permit application establishes a deadline for action on any other permit that may be required in connection with the wireless telecommunications facility, the application must include complete copies of applications for every required permit (including without limitation electrical permits, building permits, traffic control permits, and excavation permits), with all engineering completed and with all fees associated with each permit.

  Comment: The municipality should consider providing a checklist in the application of all applicable or potentially applicable permits. This may be part of the simplified checklist recommended above. *See* Memo Section B.2.c for a discussion of when filing an application for a wireless permit establishes a deadline for action on other municipal approvals.

- ☐ **Engineer Certification.** A certification by a registered and qualified engineer that the installation can be supported by and does not exceed the tolerances of the structure on which it will be mounted and that all elements of the wireless telecommunications facility comply with applicable safety standards.

- ☐ **Fee Payment.** Payment of all required fees.

  Comment: This also includes any fees required for the other permits or approvals that the applicant must seek at the same time it submits the wireless permit application.

- ☐ **"Effective Prohibition" Statement.** If an applicant contends that denial of the application would prohibit or effectively prohibit the provision of service in violation of federal law, or otherwise violate applicable law, the application must provide all evidence on which the applicant relies in support of that claim. Applicants are not permitted to supplement this evidence if doing so would prevent the municipality from complying with any deadline for action on an application.

  Comment: An applicant may claim that it cannot comply with one or more of the requirements in the municipality's ordinance or wireless regulations and that denial of its application on that basis effectively prohibits its provision of service in violation of federal law. If the applicant wishes to make such a claim, it must submit detailed evidence to support the claim. Receiving this evidence with the application may allow a mutually agreeable process to resolve disputes short of a lawsuit. If the municipality finds the evidence convincing, it may consider waiving the relevant ordinance provisions or wireless regulations. *See* Section 6(c) of the Model Ordinance, which authorizes the Administrator to grant waivers from the requirements of the ordinance or the wireless regulations.

☐ **Eligible Facilities Request**. If making an eligible facilities request, the applicant must submit information sufficient to show that the application qualifies as an eligible facilities request under 47 C.F.R. § 1.6100(b)(3), including evidence that the application relates to an existing tower or base station that has been approved by the municipality. Before and after 360-degree photo simulations must be provided with detailed specifications demonstrating that the modification does not substantially change the physical dimensions of the existing approved tower or base station.

ATTACHMENT C
SAMPLE AESTHETIC STANDARDS

COMMENT: In adopting its new effective prohibition standard, the FCC makes clear that the standard applies to both fees and non-fee legal requirements, including aesthetic, undergrounding, and minimum spacing requirements.[1] The FCC states that complying with aesthetic and other such requirements imposes costs on SWF providers that may impact their ability to provide service, just as fees may do. Aesthetic and other similar requirements, therefore, violate Sections 253(a) and 332(c)(7)(B)(i)(II) of the Act unless they are:

- reasonable,
- no more burdensome than those applied to other types of infrastructure deployments, and
- objective and published in advance.[2]

For further discussion of the legal limitations on aesthetic standards, see Section B.4 of the Memo.

Section 7(c) of the Model Ordinance contains a number of general aesthetic standards. These standards were drafted with the expectation that the municipality would adapt the standards to its particular circumstances after developing a record to justify the standards based on health, safety, and public welfare considerations. The aesthetic standards can be incorporated into the municipality's ordinance[3] or into its wireless regulations. Incorporating the standards into the wireless regulations may provide greater flexibility for the municipality. Keep in mind that the standards must also be applied to other types of infrastructure deployments (e.g., electric and telephone poles) and that they cannot be applied unless they have been published in advance.

This document provides samples of aesthetic standards. In particular, many are from *Regulations for Wireless Facilities in Public Rights-of-Way*, Practical Law Government Practice (Practical Law Standard Document w-016-2287). Others have been taken from standards adopted by other communities around the country. While modified for clarity and, in some cases, to reflect the definitions in the Model Ordinance, these sample standards reflect considerations from diverse communities subject to varying state laws and come from ordinances and regulations adopted both before and after the *2018 Small Cell Order*. **The municipality should not incorporate these examples verbatim, but instead should adapt them to address particular local circumstances.**

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[1] *2018 Small Cell Order* at ¶ 82.

[2] *Id.* at ¶ 86.

[3] For example, starting at a new Section 7(c)(4).

LOCATION WITHIN DISTRICTS

This section provides examples of how municipalities regulate placement of wireless telecommunications facilities within districts. *See* Model Ordinance Section 7(c)(1)(C). Limitations placed on the general location of wireless telecommunications facilities within districts will be reviewed under the same standards as aesthetic standards.

EXAMPLE 1:

(a) **Preferred Locations.** The following locations, in the order listed from most to least preferred, are the preferred locations for installations of facilities in public rights-of-way[, except for areas within [a historic district [or [OTHER DISTRICTS]]]:[4]

(1) Industrial areas;

(2) Commercial areas; and

(3) [OTHER AREAS].

(b) **Non-Preferred Locations.** The applicant should avoid locating new support structures, towers, or utility poles within residential neighborhoods, designated open space, conservation areas, or historic districts. A facility may be permitted in a location other than a preferred location if the applicant provides evidence showing that:

(1) Adequate coverage can be maintained, existing services can be improved, or new services can be added only if facilities are placed in a non-preferred location; or

(2) The proposed facility will meet all applicable requirements for the non-preferred location and will complement the character of the surrounding area.

EXAMPLE 2:

The most desirable location for new wireless telecommunications facilities is co-location on existing facilities. All wireless telecommunications facilities shall be sited to avoid or minimize land use conflicts in compliance with the following standards:

1. **Preferred Locations.** The following list of preferred locations for wireless telecommunications facilities is in order of preference from most to least preferred: Industrial, public or quasi-public, commercial and office zoning districts.

2. **Less Preferred Locations.** The following less preferred locations are listed in order of preference from most to least preferred: Parks or open space and residential zoning districts.

3. **Avoid Residential and Open Space Areas.** New support structures, towers, and utility poles shall not be located within residential, designated open space or conservation areas unless sufficient technical and other information is provided to

[4] The municipality may prefer to list specific zoning districts or provide additional preferences.

demonstrate to the satisfaction of the planning commission or zoning administrator that location in such areas is appropriate, subject to the following findings:

a. The location of the proposed facility site is essential to meet the service demands of the carrier and no other alternative co-location, existing development or utility facility site, or type of support structure is feasible. This shall be documented by the applicant providing a list of the locations of preferred technically feasible sites, the good faith efforts and measures taken by the applicant to secure these preferred sites, and the specific reasons why these efforts and measures were unsuccessful.

b. The use of a new support structure, tower, or utility pole for the proposed facility by itself or in combination with other existing, approved, and proposed facilities will avoid or minimize adverse effects related to land use compatibility, visual resources, and public safety.

4. **Avoid Significant Buildings and View Sheds.** Wireless communication facilities shall not be located on historically or architecturally significant structures unless visually and architecturally integrated with the structure and shall not interfere with prominent vistas or significant public view corridors.

COLLOCATION

The Model Ordinance establishes a presumption that collocation on existing support structures, towers, or utility poles—without regard to whether the owner of the structure is the municipality or a private entity—is preferable over installing new structures. *See* Model Ordinance Section 7(c)(1)(C).[5] However, not all municipalities will prefer collocation in all cases. For example, collocation on decorative structures or where collocation would result in an overly bulky appearance may be less preferable than placement of a new support structure.

In addition, keep in mind that not all collocations are subject to the Model Ordinance. If an applicant proposes collocation on a structure owned or controlled by the municipality, that installation is exempt from permitting under the Model Ordinance and instead will be the subject to a negotiated agreement between the applicant and the municipality. *See* Model Ordinance Sections 3(b)(3) and 13.

EXAMPLE 1:

Collocation Preference. Collocation of facilities is generally preferred over new support structures if the collocation would satisfy applicable aesthetic and structural requirements.

[5] *See also* Wis. Stat. § 196.04, requiring owners of "transmission equipment and property" to allow collocation by "any public utility, video service provider, or telecommunications provider" under certain circumstances.

EXAMPLE 2:

(a) **Collocation Generally.** Subject to the provisions of this section, collocation of facilities is generally preferred over new support structures if it can be accomplished in a way that better compliments the character of the surrounding area.

(b) **Collocation with non-municipal facilities.** Collocation on facilities or support structures owned by parties other than the [CITY/VILLAGE] is subject to the following:

(1) Where an existing facility or support structure can potentially accommodate collocation of a new wireless facility, collocation will be required unless:

(A) The applicant submits substantial evidence supporting the unsuitability of the collocation;

(B) The owner of the existing facility or support structure is unwilling to accommodate the applicant's equipment and cannot be required to cooperate; or

(C) The [director of the [DEPARTMENT NAME] department]/[VILLAGE ADMINISTRATOR]/[CITY MANAGER]/[BOARD NAME] determines that installing a new support structure or collocation with a [CITY/VILLAGE] facility is preferable to collocation with another facility or support structure.

(2) Authorization for collocation on a facility or support structure owned by a party other than the [CITY/VILLAGE] will be voided if the facility or support structure is destroyed, removed, relocated, or replaced, unless:

(A) The owner of the collocated facility obtains a new right-of-way use permit; or

(B) The facility or support structure accommodating the collocation is replaced with a facility or support structure comparable in size, mass, appearance, and placement, as determined by the [director of the [DEPARTMENT NAME] department]/[VILLAGE ADMINISTRATOR]/[CITY MANAGER]/[BOARD NAME].

GENERAL LOCATION RESTRICTIONS

In addition to regulating location among districts, municipalities may establish site-specific restrictions and requirements.

EXAMPLES:

- **Obstruction of Traffic.** Facilities and support structures, towers, and utility poles must be at least [NUMBER OF FEET] feet from the curb or nearest traffic lane to reduce the risk of being struck by a motor vehicle or bicycle.

- **Obstruction of Traffic.** Facilities and support structures, towers, and utility poles must not obstruct, impede, or hinder vehicular, pedestrian, or bicycle travel or public safety within the right-of-way, except for authorized temporary lane or sidewalk closures.
- **Obstruction of Traffic.** Facilities and support structures, towers, and utility poles must not be located within sight triangles at street intersections [established pursuant to/set forth in] [CITY/VILLAGE] [ORDINANCE/CODE] [CITATION].
- **Obstruction of Traffic.** Facilities and support structures, towers, and utility poles must not be located within any area that will create traffic visibility loss to drivers, pedestrians, or bicyclists.
- **Obstruction.** To the extent possible, a facility, support structure, tower, or utility pole should be located and designed so as to avoid interference with right-of-way maintenance activities, such as:
  (1) Grass mowing, brush collection, tree trimming, and landscaping maintenance;
  (2) Trash collection;
  (3) Maintenance of streets, pavement, sidewalks, and bicycle lanes; and
  (4) Maintenance of other facilities in the rights-of-way.
- **ADA.** Facilities and support structures, towers, and utility poles at all times must comply with the requirements of the Americans with Disabilities Act of 1990.
- **Alignment.** Facilities and support structures, towers, and utility poles must be located in alignment with existing trees, facilities, support structures, towers, utility poles, and streetlights.
- **Spacing.** A support structure, tower, or utility pole for a wireless facility must be at least [NUMBER] feet from any other support structure in a public right-of-way.
- **Spacing.** Facilities and support structures, towers, and utility poles must be located equal distance between trees when possible, and no closer than [NUMBER OF FEET] feet to a tree to avoid a tree's critical root zone.
- **Frontage.** Facilities and support structures, towers, and utility poles must not be located along the frontage of any building deemed to be of historic significance on a federal, state, or local level.
- **Frontage.** New facilities and support structures, towers, and utility poles must not be located directly in front of any existing residential, commercial, or industrial structure.
- **Frontage.** To the extent possible, new facilities and support structures, towers, and utility poles must be located in line with existing lot lines, but in areas where multiple structures abut each other or where no side lot setback requirement exists,

structures must not be located directly in front of an entrance or window of any existing structure.

- **Use of Lighting Elements.** A combination support structure and streetlight pole should only be located where an existing pole can be removed and replaced, or at a new location where the [CITY/VILLAGE] has identified that a streetlight is necessary.

HEIGHT RESTRICTIONS AND REQUIREMENTS

The following example maximum height requirement is taken from the small cell legislation proposed, but not adopted, in Wisconsin's last legislative session. A municipality may have district-specific height restrictions. In addition, minimum height requirements for mounted equipment protect the public from hazards. The height restrictions and requirements must be applied to all structures within the ROW.

EXAMPLE 1 (maximum height):

(a) **Support Structures, Towers, and Utility Poles.** The height of a support structure, tower, or utility pole in the right-of-way may not exceed the greater of 50 feet above ground level or ten feet above the tallest existing support structure, tower, or utility pole that is in place on the effective date of this ordinance and that is located in the same right-of-way and within 500 feet of the facility that is the subject of the application.

(b) **Small Wireless Facility.** The height of a small wireless facility in the right-of-way may not exceed the greater of 50 feet above ground level or ten feet above the tallest existing support structure, tower, or utility pole that is in place on the effective date of this ordinance and that is located in the same right-of-way.

EXAMPLE 2 (minimum height):

(a) **Minimum Height of Wireless Communications Equipment.** Equipment mounted to support structures must not interfere with or create a hazard to pedestrian or vehicular traffic [and must be a minimum of 10 feet above any pedestrian or bicycle thoroughfare and a minimum of [NUMBER OF FEET] feet above any traffic lane].

UNDERGROUNDING

The *2018 Small Cell Order* limits regulation of undergrounding requirements. Any undergrounding requirement cannot require "that all wireless facilities be deployed underground" as this "would amount to an effective prohibition given the propagation

characteristics of wireless signals."[6] However, these sample standards take an aggressive approach and require undergrounding when possible.

EXAMPLE 1:

(a) **Underground Areas.** Ground-mounted equipment associated with facilities must be placed underground in underground areas.

(b) **Other Areas.** In all other areas, ground-mounted equipment must be placed underground to the extent feasible.

(c) **Prohibition.** Ground-mounted equipment must be placed underground in connection with a street light, traffic signal, or other similar infrastructure in the ROW.

EXAMPLE 2:

a. **Undergrounded Equipment.** To conceal the non-antenna equipment, applicants shall install all non-antenna equipment underground when proposed in an area where utilities or other equipment or in the right-of-way is primarily located underground. In all other areas, applicants shall underground its non-antenna equipment to the extent feasible. Additional expense to install and maintain an underground equipment enclosure does not exempt an applicant from this requirement, except where the applicant demonstrates by clear and convincing evidence that this requirement will effectively prohibit the provision of personal wireless services. Nothing in this subsection is intended to require the applicant to install any electric meter required by the applicant's electrical service provider underground.

b. **Ground-Mounted Equipment.** To the extent that the equipment cannot be placed underground as required, applicants shall install ground-mounted equipment in the location so that it does not obstruct pedestrian or vehicular traffic. The [CITY/VILLAGE] may require landscaping as a condition of approval to conceal ground-mounted equipment. Ground-mounted equipment shall not be permitted in connection with a street light, traffic signal, utility pole or other similar infrastructure in the public right-of-way. In the event that the City approves ground-mounted equipment, the applicant shall conform to the following requirements:

> (1) **Self-Contained Cabinet or Shroud.** The equipment shroud or cabinet shall contain all the equipment associated with the facility other than the antenna. All cables and conduits associated with the equipment shall be concealed from view.
>
> (2) **Concealment.** The [CITY/VILLAGE] may require the applicant to incorporate concealment elements into the proposed design, including but not limited to public art displayed on the cabinet, strategic placement in less obtrusive locations and placement within existing or replacement street furniture.

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[6] *2018 Small Cell Order* at ¶ 90.

GENERAL AESTHETIC STANDARDS

The following examples demonstrate some of the general aesthetic standards that municipalities impose on ROW infrastructure. They are grouped roughly in relation to the purpose of the standard or restriction.

EXAMPLE 1 (concealment):

(1) Each new or modified facility must be compatible in size, mass, and color to similar facilities in the immediate area, with a goal of minimizing the physical and visual impact on the area.

(2) New support structures, towers, and utility poles must be no more than [NUMBER] inches in diameter with a surface that is powder-coated and [COLOR] in color, unless another color would blend better with the surrounding area.

(3) Notwithstanding paragraphs (1) and (2) above, a new facility or support structure, tower, or utility pole must be designed using camouflaging techniques that make it as unobtrusive as possible if:

(A) It is not possible or desirable to match the design and color of a new facility or support structure, tower, or utility pole with the similar structures in the immediate area; or

(B) Existing structures in the area are out of character with a streetscape plan or other aesthetic plan that has been adopted by the [CITY/VILLAGE].

EXAMPLE 2 (concealment):[7]

Permits for wireless telecommunications facilities shall incorporate specific concealment elements to minimize visual impacts, and design requirements ensuring compliance with all standards for noise emissions. Unless it is determined that another design is less intrusive, or placement is required under applicable law:

(1) Antennas located at the top of support structures shall be incorporated into the structure, or placed within shrouds of a size such that the antenna appears to be part of the support structure;

(2) Antennas placed elsewhere on a support structure shall be integrated into the structure, or be designed and placed to minimize visual impacts.

(3) Radio units or equipment cabinets holding radio units and mounted on a utility pole shall be placed as high as possible on a support structure, located to avoid interfering with, or creating any hazard to, any other use of the public rights of way, and located on one side of the utility pole. Unless the radio units or equipment

[7] This example incorporates other requirements, such as undergrounding, into a single "concealment" regulation.

cabinets can be concealed by appropriate traffic signage, radio units or equipment cabinets mounted below the communications space on utility poles shall be designed so that the largest dimension is vertical, and the width is such that the radio units or equipment cabinets are minimally visible from the opposite side of the support structure on which they are placed.

(4) Wiring and cabling shall be neat and concealed within or flush to the support structure, ensuring concealment of these components to the greatest extent possible.

(5) Ground-mounted equipment associated with a wireless telecommunications facility shall be permitted only where consistent with the portion of the corridor in which it is to be placed, and may be required to be underground, located in alleys or otherwise shielded. In no event may ground-mounted equipment interfere with pedestrian or vehicular traffic.

(6) No support structures, towers, or utility poles shall be permitted in the public rights-of-way, and no wireless telecommunications facilities shall be permitted above-ground, in underground areas; provided that the city may permit placements where all elements of the wireless telecommunications facility are concealed and the facility does not appear to a casual observer to be a wireless telecommunications facility.

(9) Unless appropriately placed, and concealed, so that the size of the facility cannot be increased except with the discretionary approval of the [CITY/VILLAGE], no wireless telecommunications facility is permitted in rights-of-way in alleys.

(10) No wireless telecommunications facility is permitted in any local historic district without the approval of the [MUNICIPAL BODY RESPONSIBLE FOR REGULATING HISTORIC DISTRICTS].

EXAMPLE 3 (concealment):

(1) New support structures, towers, and utility poles must not be made of wood.[8]

(2) Ground level equipment must not be higher, wider, or deeper than [NUMBER] feet.

(3) Ground level equipment cabinets and shelters must be:

(A) Secured to prevent public safety risks and unauthorized access to equipment and wiring; and

[8] If wood utility poles are allowed within areas of the municipality, this restriction may be considered more burdensome than restrictions on similar facilities. The municipality should consider limiting this restriction to specific areas of the municipality where all utilities are underground or metal poles are required.

(B) Screened with landscaping or other means, maintained by the owner of the facility; or designed to blend with and match the character of the surrounding area.

(4) Antennas located at the top of support structures must be incorporated into the structure, or placed within shrouds of a size such that the antenna appears to be part of the support structure.

(5) Wiring and cabling must be neat and concealed within or flush to the support structure.

EXAMPLE 4 (additional concealment examples):

- **Color and Materials.** A new wireless telecommunications facility must be constructed with materials and colors that match or blend with the surrounding natural or built environment, to the maximum extent practicable. Unless otherwise required, muted colors, earth tones, and subdued hues shall be used.
- **Colors and Materials.** All facilities shall have subdued colors and non-reflective materials that blend with the materials and colors of the surrounding area and structures.
- **Dimensions.** Small wireless facilities shall not exceed the width of an existing structure.
- **Visual Impact.** Wireless communication facilities must be designed to minimize visual impacts. When feasible, the facilities must be concealed or camouflaged. The facilities must have a non-reflective finish and be painted or otherwise treated to minimize visibility and the obstruction of views.
- **Definitions Used in Concealment Ordinances.**
    - *Camouflaged* or *Concealed* means designed to mask or blend with the surrounding environment in such a manner to render it generally unnoticeable to the casual observer. By way of example, a wireless communication facility may be camouflaged in a faux tree, faux bush, flagpole, or otherwise designed in a manner to be compatible with the appurtenant architecture, building, or natural surroundings.
    - *Stealth* means concealment techniques that completely screen all associated equipment from public view and are so integrated into the surrounding natural or manmade environment that the observer does not recognize the structure as a wireless facility.
        - Examples include, but are not limited to: (1) wireless equipment placed completely within existing architectural features such that the installation causes no visible change to the underlying structure; (2) new architectural features that match the underlying structure in architectural style, physical proportion and construction-materials

quality; (3) flush-to-grade underground equipment vaults with flush-to-grade entry hatches, with wireless equipment placed completely within.

EXAMPLE 5 (noise examples):

- **Noise.** Facilities must be constructed and operated in a manner that minimizes noise that is audible as provided in [CODE OF ORDINANCES].
- **Noise.** A wireless facility and all equipment associated with a wireless facility shall not generate noise that exceeds the applicable ambient noise limit in the zone where the wireless facility is located. The [CITY/VILLAGE] may require the applicant to install noise attenuating or baffling materials and/or other measures, including but not limited to walls or landscape features, as the approval authority deems necessary or appropriate to ensure compliance with the applicable ambient noise limit.

EXAMPLE 6 (lighting):

Facilities must not be illuminated, except in accordance with state or federal regulations or if incorporated as part of a street light pole.

EXAMPLE 7 (signage examples):

- **Signage Prohibited.** Signage is not permitted except to comply with FCC or Wisconsin regulations to provide safety warnings.
- **Signage; Prohibition and Requirements.** No facility may display any signage or advertisements unless expressly allowed by the [CITY/VILLAGE] in a written approval, recommended under FCC regulations or required by law or permit condition. Every facility shall at all times display signage that accurately identifies the facility owner and provides the facility owner's unique site number, and also provides a local or toll-free telephone number to contact the facility owner's operations center.
- **Signage Required.** The owner and/or operator must post an identification sign at each facility, including owner/operator emergency telephone numbers. The design, materials, colors, and location of the identification signs shall be subject to review and approval by the [CITY/VILLAGE]. If at any time a new owner or operator provider takes over operation of an existing personal wireless service facility, the new personal wireless service provider shall notify the [CITY/VILLAGE] of the change in operation within 30 days and the required and approved signs shall be updated within 30 days to reflect the name and phone number of the new wireless service provider. The colors, materials and design of the updated signs shall match those of the required and approved signs. No sign shall be greater than two square feet in size.

EXAMPLE 8 (trees):[9]

Tree "topping" or the improper pruning of trees is prohibited. Any proposed pruning of trees, shrubs, or other landscaping already existing in the right-of-way must be noted in the application and approved by the [CITY/VILLAGE].

[9] *See also*, the General Location Restrictions above for alignment with trees.

ATTACHMENT D
RELEVANT LAWS AND REGULATIONS

Federal Statutes:

47 U.S.C. § 253
47 U.S.C. § 332(c)(7)

Federal Regulations:

47 C.F.R. § 1.6002
47 C.F.R. § 1.6003
47 C.F.R. § 1.6100

Wisconsin Statutes:

Wis. Stat. § 66.0404
Wis. Stat. § 182.017
Wis. Stat. § 196.58

United States Code Annotated
Title 47. Telecommunications (Refs & Annos)
Chapter 5. Wire or Radio Communication (Refs & Annos)
Subchapter II. Common Carriers (Refs & Annos)
Part II. Development of Competitive Markets (Refs & Annos)

47 U.S.C.A. § 253

§ 253. Removal of barriers to entry

Effective: February 8, 1996
Currentness

(a) In general

No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

(b) State regulatory authority

Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254 of this title, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

(c) State and local government authority

Nothing in this section affects the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government.

(d) Preemption

If, after notice and an opportunity for public comment, the Commission determines that a State or local government has permitted or imposed any statute, regulation, or legal requirement that violates subsection (a) or (b) of this section, the Commission shall preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency.

(e) Commercial mobile service providers

Nothing in this section shall affect the application of section 332(c)(3) of this title to commercial mobile service providers.

(f) Rural markets

It shall not be a violation of this section for a State to require a telecommunications carrier that seeks to provide telephone exchange service or exchange access in a service area served by a rural telephone company to meet the requirements in section 214(e)(1) of this title for designation as an eligible telecommunications carrier for that area before being permitted to provide such service. This subsection shall not apply--

(1) to a service area served by a rural telephone company that has obtained an exemption, suspension, or modification of section 251(c)(4) of this title that effectively prevents a competitor from meeting the requirements of section 214(e)(1) of this title; and

(2) to a provider of commercial mobile services.

CREDIT(S)

(June 19, 1934, c. 652, Title II, § 253, as added Pub.L. 104-104, Title I, § 101(a), Feb. 8, 1996, 110 Stat. 70.)

Notes of Decisions (117)

47 U.S.C.A. § 253, 47 USCA § 253
Current through P.L. 115-281. Also includes P.L. 115-283 to 115-333, and 115-335 to 115-338. Title 26 current through P.L. 115-442.

End of Document

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KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

United States Code Annotated
Title 47. Telecommunications (Refs & Annos)
Chapter 5. Wire or Radio Communication (Refs & Annos)
Subchapter III. Special Provisions Relating to Radio (Refs & Annos)
Part I. General Provisions

47 U.S.C.A. § 332

§ 332. Mobile services

Effective: March 23, 2018
Currentness

--See Below--

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(c) (7) Preservation of local zoning authority

(A) General authority

Except as provided in this paragraph, nothing in this chapter shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities.

(B) Limitations

(i) The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof--

(I) shall not unreasonably discriminate among providers of functionally equivalent services; and

(II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.

(ii) A State or local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.

(iii) Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.

(iv) No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.

(v) Any person adversely affected by any final action or failure to act by a State or local government or any instrumentality thereof that is inconsistent with this subparagraph may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction. The court shall hear and decide such action on an expedited basis. Any person adversely affected by an act or failure to act by a State or local government or any instrumentality thereof that is inconsistent with clause (iv) may petition the Commission for relief.

(C) Definitions

For purposes of this paragraph--

(i) the term "personal wireless services" means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services;

(ii) the term "personal wireless service facilities" means facilities for the provision of personal wireless services; and

(iii) the term "unlicensed wireless service" means the offering of telecommunications services using duly authorized devices which do not require individual licenses, but does not mean the provision of direct-to-home satellite services (as defined in section 303(v) of this title).

(8) Mobile services access

A person engaged in the provision of commercial mobile services, insofar as such person is so engaged, shall not be required to provide equal access to common carriers for the provision of telephone toll services. If the Commission determines that subscribers to such services are denied access to the provider of telephone toll services of the subscribers' choice, and that such denial is contrary to the public interest, convenience, and necessity, then the Commission shall prescribe regulations to afford subscribers unblocked access to the provider of telephone toll services of the subscribers' choice through the use of a carrier identification code assigned to such provider or other mechanism. The requirements for unblocking shall not apply to mobile satellite services unless the Commission finds it to be in the public interest to apply such requirements to such services.

KeyCite Yellow Flag - Negative Treatment
Proposed Regulation

Code of Federal Regulations
Title 47. Telecommunication
Chapter I. Federal Communications Commission (Refs & Annos)
Subchapter A. General
Part 1. Practice and Procedure (Refs & Annos)
Subpart U. State and Local Government Regulation of the Placement, Construction, and Modification of Personal Wireless Service Facilities (Refs & Annos)

47 C.F.R. § 1.6002

§ 1.6002 Definitions.

Effective: January 14, 2019
Currentness

Terms not specifically defined in this section or elsewhere in this subpart have the meanings defined in this part and the Communications Act of 1934, 47 U.S.C. 151 et seq. Terms used in this subpart have the following meanings:

(a) Action or to act on a siting application means a siting authority's grant of a siting application or issuance of a written decision denying a siting application.

(b) Antenna, consistent with § 1.1320(d), means an apparatus designed for the purpose of emitting radiofrequency (RF) radiation, to be operated or operating from a fixed location pursuant to Commission authorization, for the provision of personal wireless service and any commingled information services. For purposes of this definition, the term antenna does not include an unintentional radiator, mobile station, or device authorized under part 15 of this chapter.

(c) Antenna equipment, consistent with § 1.1320(d), means equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with an antenna, located at the same fixed location as the antenna, and, when collocated on a structure, is mounted or installed at the same time as such antenna.

(d) Antenna facility means an antenna and associated antenna equipment.

(e) Applicant means a person or entity that submits a siting application and the agents, employees, and contractors of such person or entity.

(f) Authorization means any approval that a siting authority must issue under applicable law prior to the deployment of personal wireless service facilities, including, but not limited to, zoning approval and building permit.

(g) Collocation, consistent with § 1.1320(d) and the Nationwide Programmatic Agreement (NPA) for the Collocation of Wireless Antennas, appendix B of this part, section I.B, means—

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(1) Mounting or installing an antenna facility on a pre-existing structure; and/or

(2) Modifying a structure for the purpose of mounting or installing an antenna facility on that structure.

(3) The definition of "collocation" in § 1.6100(b)(2) applies to the term as used in that section.

(h) Deployment means placement, construction, or modification of a personal wireless service facility.

(i) Facility or personal wireless service facility means an antenna facility or a structure that is used for the provision of personal wireless service, whether such service is provided on a stand-alone basis or commingled with other wireless communications services.

(j) Siting application or application means a written submission to a siting authority requesting authorization for the deployment of a personal wireless service facility at a specified location.

(k) Siting authority means a State government, local government, or instrumentality of a State government or local government, including any official or organizational unit thereof, whose authorization is necessary prior to the deployment of personal wireless service facilities.

(l) Small wireless facilities, consistent with § 1.1312(e)(2), are facilities that meet each of the following conditions:

(1) The facilities—

(i) Are mounted on structures 50 feet or less in height including their antennas as defined in § 1.1320(d); or

(ii) Are mounted on structures no more than 10 percent taller than other adjacent structures; or

(iii) Do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;

(2) Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of "antenna" in § 1.1320(d)), is no more than three cubic feet in volume;

(3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;

(4) The facilities do not require antenna structure registration under part 17 of this chapter;

(5) The facilities are not located on Tribal lands, as defined under 36 CFR 800.16(x); and

(6) The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in § 1.1307(b).

(m) Structure means a pole, tower, base station, or other building, whether or not it has an existing antenna facility, that is used or to be used for the provision of personal wireless service (whether on its own or comingled with other types of services).

AUTHORITY: 47 U.S.C. chs. 2, 5, 9, 13; Sec. 102(c), Div. P, Public Law 115–141, 132 Stat. 1084; 28 U.S.C. 2461, unless otherwise noted.

Current through Jan. 24, 2019; 84 FR 360.

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Proposed Regulation

Code of Federal Regulations
Title 47. Telecommunication
Chapter I. Federal Communications Commission (Refs & Annos)
Subchapter A. General
Part 1. Practice and Procedure (Refs & Annos)
Subpart U. State and Local Government Regulation of the Placement, Construction, and Modification of Personal Wireless Service Facilities (Refs & Annos)

47 C.F.R. § 1.6003

§ 1.6003 Reasonable periods of time to act on siting applications.

Effective: January 14, 2019
Currentness

(a) Timely action required. A siting authority that fails to act on a siting application on or before the shot clock date for the application, as defined in paragraph (e) of this section, is presumed not to have acted within a reasonable period of time.

(b) Shot clock period. The shot clock period for a siting application is the sum of—

(1) The number of days of the presumptively reasonable period of time for the pertinent type of application, pursuant to paragraph (c) of this section; plus

(2) The number of days of the tolling period, if any, pursuant to paragraph (d) of this section.

(c) Presumptively reasonable periods of time—

(1) Review periods for individual applications. The following are the presumptively reasonable periods of time for action on applications seeking authorization for deployments in the categories set forth in paragraphs (c)(1)(i) through (iv) of this section:

(i) Review of an application to collocate a Small Wireless Facility using an existing structure: 60 days.

(ii) Review of an application to collocate a facility other than a Small Wireless Facility using an existing structure: 90 days.

(iii) Review of an application to deploy a Small Wireless Facility using a new structure: 90 days.

(iv) Review of an application to deploy a facility other than a Small Wireless Facility using a new strncture: 150 days.

(2) Batching.

(i) If a single application seeks authorization for multiple deployments, all of which fall within a category set forth in either paragraph (c)(1)(i) or (iii) of this section, then the presumptively reasonable period of time for the application as a whole is equal to that for a single deployment within that category.

(ii) If a single application seeks authorization for multiple deployments, the components of which are a mix of deployments that fall within paragraph (c)(1)(i) of this section and deployments that fall within paragraph (c)(1)(iii) of this section, then the presumptively reasonable period of time for the application as a whole is 90 days.

(iii) Siting authorities may not refuse to accept applications under paragraphs (c)(2)(i) and (ii) of this section.

(d) Tolling period. Unless a written agreement between the applicant and the siting authority provides otherwise, the tolling period for an application (if any) is as set forth in paragraphs (d)(1) through (3) of this section.

(1) For an initial application to deploy Small Wireless Facilities, if the siting authority notifies the applicant on or before the 10th day after submission that the application is materially incomplete, and clearly and specifically identifies the missing documents or information and the specific rule or regulation creating the obligation to submit such documents or information, the shot clock date calculation shall restart at zero on the date on which the applicant submits all the documents and information identified by the siting authority to render the application complete.

(2) For all other initial applications, the tolling period shall be the number of days from—

(i) The day after the date when the siting authority notifies the applicant in writing that the application is materially incomplete and clearly and specifically identifies the missing documents or information that the applicant must submit to render the application complete and the specific rule or regulation creating this obligation; until

(ii) The date when the applicant submits all the documents and information identified by the siting authority to render the application complete;

(iii) But only if the notice pursuant to paragraph (d)(2)(i) of this section is effectuated on or before the 30th day after the date when the application was submitted; or

(3) For resubmitted applications following a notice of deficiency, the tolling period shall be the number of days from—

(i) The day after the date when the siting authority notifies the applicant in writing that the applicant's supplemental submission was not sufficient to render the application complete and clearly and specifically identifies the missing documents or information that need to be submitted based on the siting authority's original request under paragraph (d)(1) or (2) of this section; until

(ii) The date when the applicant submits all the documents and information identified by the siting authority to render the application complete;

(iii) But only if the notice pursuant to paragraph (d)(3)(i) of this section is effectuated on or before the 10th day after the date when the applicant makes a supplemental submission in response to the siting authority's request under paragraph (d)(1) or (2) of this section.

(e) Shot clock date. The shot clock date for a siting application is determined by counting forward, beginning on the day after the date when the application was submitted, by the number of calendar days of the shot clock period identified pursuant to paragraph (b) of this section and including any pre-application period asserted by the siting authority; provided, that if the date calculated in this manner is a "holiday" as defined in § 1.4(e)(1) or a legal holiday within the relevant State or local jurisdiction, the shot clock date is the next business day after such date. The term "business day" means any day as defined in § 1.4(e)(2) and any day that is not a legal holiday as defined by the State or local jurisdiction.

AUTHORITY: 47 U.S.C. chs. 2, 5, 9, 13; Sec. 102(c), Div. P, Public Law 115–141, 132 Stat. 1084; 28 U.S.C. 2461, unless otherwise noted.

Current through Jan. 17, 2019; 84 FR 125.

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Code of Federal Regulations
Title 47. Telecommunication
Chapter I. Federal Communications Commission (Refs & Annos)
Subchapter A. General
Part 1. Practice and Procedure (Refs & Annos)
Subpart U. State and Local Government Regulation of the Placement, Construction, and Modification of Personal Wireless Service Facilities (Refs & Annos)

47 C.F.R. § 1.6100

§ 1.6100 Wireless Facility Modifications.

Effective: January 14, 2019
Currentness

(a) [Reserved by 83 FR 51886]

(b) Definitions. Terms used in this section have the following meanings.

(1) Base station. A structure or equipment at a fixed location that enables Commission-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined in this subpart or any equipment associated with a tower.

(i) The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

(ii) The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small-cell networks).

(iii) The term includes any structure other than a tower that, at the time the relevant application is filed with the State or local government under this section, supports or houses equipment described in paragraphs (b)(1)(i) through (ii) of this section that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

(iv) The term does not include any structure that, at the time the relevant application is filed with the State or local government under this section, does not support or house equipment described in paragraphs (b)(1)(i)-(ii) of this section.

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(2) Collocation. The mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

(3) Eligible facilities request. Any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving:

(i) Collocation of new transmission equipment;

(ii) Removal of transmission equipment; or

(iii) Replacement of transmission equipment.

(4) Eligible support structure. Any tower or base station as defined in this section, provided that it is existing at the time the relevant application is filed with the State or local government under this section.

(5) Existing. A constructed tower or base station is existing for purposes of this section if it has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, provided that a tower that has uot been reviewed and approved because it was not in a zoned area when it was bnilt, but was lawfully constrncted, is existing for purposes of this definition.

(6) Site. For towers other than towers in the pnblic rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the gronnd.

(7) Substantial change. A modification substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria:

(i) For towers other than towers in the public rights-of-way, it increases the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10% or more than ten feet, whichever is greater;

(A) Changes in height should be measnred from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height should be measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act.

(ii) For towers other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves

adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;

(iii) For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for towers in the public rights-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;

(iv) It entails any excavation or deployment outside the current site;

(v) It would defeat the concealment elements of the eligible support structure; or

(vi) It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in § 1.40001(b)(7)(i) through (iv).

(8) Transmission equipment. Equipment that facilitates transmission for any Commission-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

(9) Tower. Any structure built for the sole or primary purpose of supporting any Commission-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site.

(c) Review of applications. A State or local government may not deny and shall approve any eligible facilities request for modification of an eligible support structure that does not substantially change the physical dimensions of such structure.

(1) Documentation requirement for review. When an applicant asserts in writing that a request for modification is covered by this section, a State or local government may require the applicant to provide documentation or information only to the extent reasonably related to determining whether the request meets the requirements of this section. A State or local government may not require an applicant to submit any other documentation, including but not limited to documentation intended to illustrate the need for such wireless facilities or to justify the business decision to modify such wireless facilities.

(2) Timeframe for review. Within 60 days of the date on which an applicant submits a request seeking approval under this section, the State or local government shall approve the application unless it determines that the application is not covered by this section.

(3) Tolling of the timeframe for review. The 60–day period begins to run when the application is filed, and may be tolled only by mutual agreement or in cases where the reviewing State or local government determines that the application is incomplete. The timeframe for review is not tolled by a moratorium on the review of applications.

(i) To toll the timeframe for incompleteness, the reviewing State or local government must provide written notice to the applicant within 30 days of receipt of the application, clearly and specifically delineating all missing documents or information. Such delineated information is limited to documents or information meeting the standard under paragraph (c)(1) of this section.

(ii) The timeframe for review begins running again when the applicant makes a supplemental submission in response to the State or local government's notice of incompleteness.

(iii) Following a supplemental submission, the State or local government will have 10 days to notify the applicant that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in this paragraph (c)(3). Second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.

(4) Failure to act. In the event the reviewing State or local government fails to approve or deny a request seeking approval under this section within the timeframe for review (accounting for any tolling), the request shall be deemed granted. The deemed grant does not become effective until the applicant notifies the applicable reviewing authority in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.

(5) Remedies. Applicants and reviewing authorities may bring claims related to Section 6409(a) to any court of competent jurisdiction.

Credits

[80 FR 28203, May 18, 2015; 83 FR 51886, Oct. 15, 2018]

AUTHORITY: 47 U.S.C. chs. 2, 5, 9, 13; Sec. 102(c), Div. P, Public Law 115–141, 132 Stat. 1084; 28 U.S.C. 2461, unless otherwise noted.

Notes of Decisions (1)

Current through Jan. 24, 2019; 84 FR 360.

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tem which is the subject of the permit unless the permit affecting the property is terminated under sub. (9) or unless an agreement affecting the property is filed under sub. (10).

(b) The applicant shall record with the register of deeds of the county in which the property is located the notice under par. (a) for each property specified under par. (a) and for the property upon which the solar collector or wind energy system is or will be located.

(7) REMEDIES FOR IMPERMISSIBLE INTERFERENCE. (a) Any person who uses property which he or she owns or permits any other person to use the property in a way which creates an impermissible interference under a permit which has been granted or which is the subject of an application shall be liable to the permit holder or applicant for damages, except as provided under par. (b), for any loss due to the impermissible interference, court costs and reasonable attorney fees unless:

1. The building permit was applied for prior to receipt of a notice under sub. (3) (b) or the agency determines not to grant a permit after a hearing under sub. (4).

2. A permit affecting the property is terminated under sub. (9).

3. An agreement affecting the property is filed under sub. (10).

(b) A permit holder is entitled to an injunction to require the trimming of any vegetation which creates or would create an impermissible interference as defined under sub. (1) (f). If the court finds on behalf of the permit holder, the permit holder shall be entitled to a permanent injunction, damages, court costs and reasonable attorney fees.

(8) APPEALS. Any person aggrieved by a determination by a municipality under this section may appeal the determination to the circuit court for a review.

(9) TERMINATION OF SOLAR OR WIND ACCESS RIGHTS. (a) Any right protected by a permit under this section shall terminate if the agency determines that the solar collector or wind energy system which is the subject of the permit is:

1. Permanently removed or is not used for 2 consecutive years, excluding time spent on repairs or improvements.

2. Not installed and functioning within 2 years after the date of issuance of the permit.

(b) The agency shall give the permit holder written notice and an opportunity for a hearing on a proposed termination under par. (a).

(c) If the agency terminates a permit, the agency may charge the permit holder for the cost of recording and record a notice of termination with the register of deeds, who shall record the notice with the notice recorded under sub. (6) (b) or indicate on any notice recorded under sub. (6) (b) that the permit has been terminated.

(10) WAIVER. A permit holder by written agreement may waive all or part of any right protected by a permit. A copy of such agreement shall be recorded with the register of deeds, who shall record such copy with the notice recorded under sub. (6) (b).

(11) PRESERVATION OF RIGHTS. The transfer of title to any property shall not change the rights and duties under this section or under an ordinance adopted under sub. (2).

(12) CONSTRUCTION. (a) This section may not be construed to require that an owner obtain a permit prior to installing a solar collector or wind energy system.

(b) This section may not be construed to mean that acquisition of a renewable energy resource easement under s. 700.35 is in any way contingent upon the granting of a permit under this section.

History: 1981 c. 354; 1983 a. 189 s. 329 (14); 1983 a. 532 s. 36; 1993 a. 414; 1995 a. 201; 1999 a. 150 s. 82; Stats. 1999 s. 66.0403; 2007 a. 97; 2009 a. 40.

The common law right to solar access is discussed. Prah v. Maretti, 108 Wis. 2d 223, 321 N.W.2d 182 (1982).

The owner of an energy system does not need a permit under this section. Barring enforceable municipal restrictions, an owner may construct a system without prior municipal approval. This section benefits and protects the owner of the system by restricting the use of nearby property to prevent an interference with the system. State ex rel. Numrich v. City of Mequon Board of Zoning Appeals, 2001 WI App 88, 242 Wis. 2d 677, 626 N.W.2d 366, 00–1643.

Wisconsin recognizes the power of the sun: Prah v. Maretti and the solar access act. 1983 WLR 1263.

66.0404 Mobile tower siting regulations. (1) DEFINITIONS. In this section:

(a) "Antenna" means communications equipment that transmits and receives electromagnetic radio signals and is used in the provision of mobile services.

(b) "Application" means an application for a permit under this section to engage in an activity specified in sub. (2) (a) or a class 2 collocation.

(c) "Building permit" means a permit issued by a political subdivision that authorizes an applicant to conduct construction activity that is consistent with the political subdivision's building code.

(d) "Class 1 collocation" means the placement of a new mobile service facility on an existing support structure such that the owner of the facility does not need to construct a free standing support structure for the facility but does need to engage in substantial modification.

(e) "Class 2 collocation" means the placement of a new mobile service facility on an existing support structure such that the owner of the facility does not need to construct a free standing support structure for the facility or engage in substantial modification.

(f) "Collocation" means class 1 or class 2 collocation or both.

(g) "Distributed antenna system" means a network of spatially separated antenna nodes that is connected to a common source via a transport medium and that provides mobile service within a geographic area or structure.

(h) "Equipment compound" means an area surrounding or adjacent to the base of an existing support structure within which is located mobile service facilities.

(i) "Existing structure" means a support structure that exists at the time a request for permission to place mobile service facilities on a support structure is filed with a political subdivision.

(j) "Fall zone" means the area over which a mobile support structure is designed to collapse.

(k) "Mobile service" has the meaning given in 47 USC 153 (33).

(L) "Mobile service facility" means the set of equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and associated equipment, that is necessary to provide mobile service to a discrete geographic area, but does not include the underlying support structure.

(m) "Mobile service provider" means a person who provides mobile service.

(n) "Mobile service support structure" means a freestanding structure that is designed to support a mobile service facility.

(o) "Permit" means a permit, other than a building permit, or approval issued by a political subdivision which authorizes any of the following activities by an applicant:

1. A class 1 collocation.

2. A class 2 collocation.

3. The construction of a mobile service support structure.

(p) "Political subdivision" means a city, village, town, or county.

(q) "Public utility" has the meaning given in s. 196.01 (5).

(r) "Search ring" means a shape drawn on a map to indicate the general area within which a mobile service support structure should be located to meet radio frequency engineering requirements, taking into account other factors including topography and the demographics of the service area.

(s) "Substantial modification" means the modification of a mobile service support structure, including the mounting of an antenna on such a structure, that does any of the following:

1. For structures with an overall height of 200 feet or less, increases the overall height of the structure by more than 20 feet.

2. For structures with an overall height of more than 200 feet, increases the overall height of the structure by 10 percent or more.

3. Measured at the level of the appurtenance added to the structure as a result of the modification, increases the width of the support structure by 20 feet or more, unless a larger area is necessary for collocation.

4. Increases the square footage of an existing equipment compound to a total area of more than 2,500 square feet.

(t) "Support structure" means an existing or new structure that supports or can support a mobile service facility, including a mobile service support structure, utility pole, water tower, building, or other structure.

(u) "Utility pole" means a structure owned or operated by an alternative telecommunications utility, as defined in s. 196.01 (1d); public utility, as defined in s. 196.01 (5); telecommunications utility, as defined in s. 196.01 (10); political subdivision; or cooperative association organized under ch. 185; and that is designed specifically for and used to carry lines, cables, or wires for telecommunications service, as defined in s. 182.017 (1g) (cq); for video service, as defined in s. 66.0420 (2) (y); for electricity; or to provide light.

(2) NEW CONSTRUCTION OR SUBSTANTIAL MODIFICATION OF FACILITIES AND SUPPORT STRUCTURES. (a) Subject to the provisions and limitations of this section, a political subdivision may enact a zoning ordinance under s. 59.69, 60.61, or 62.23 to regulate any of the following activities:

1. The siting and construction of a new mobile service support structure and facilities.

2. With regard to a class 1 collocation, the substantial modification of an existing support structure and mobile service facilities.

(b) If a political subdivision regulates an activity described under par. (a), the regulation shall prescribe the application process which a person must complete to engage in the siting, construction, or modification activities described in par. (a). The application shall be in writing and shall contain all of the following information:

1. The name and business address of, and the contact individual for, the applicant.

2. The location of the proposed or affected support structure.

3. The location of the proposed mobile service facility.

4. If the application is to substantially modify an existing support structure, a construction plan which describes the proposed modifications to the support structure and the equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment associated with the proposed modifications.

5. If the application is to construct a new mobile service support structure, a construction plan which describes the proposed mobile service support structure and the equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment to be placed on or around the new mobile service support structure.

6. If an application is to construct a new mobile service support structure, an explanation as to why the applicant chose the proposed location and why the applicant did not choose collocation, including a sworn statement from an individual who has responsibility over the placement of the mobile service support structure attesting that collocation within the applicant's search ring would not result in the same mobile service functionality, coverage, and capacity; is technically infeasible; or is economically burdensome to the mobile service provider.

(c) If an applicant submits to a political subdivision an application for a permit to engage in an activity described under par. (a), which contains all of the information required under par. (b), the political subdivision shall consider the application complete. If the political subdivision does not believe that the application is complete, the political subdivision shall notify the applicant in writing, within 10 days of receiving the application, that the application is not complete. The written notification shall specify in detail the required information that was incomplete. An applicant may resubmit an application as often as necessary until it is complete.

(d) Within 90 days of its receipt of a complete application, a political subdivision shall complete all of the following or the applicant may consider the application approved, except that the applicant and the political subdivision may agree in writing to an extension of the 90 day period:

1. Review the application to determine whether it complies with all applicable aspects of the political subdivision's building code and, subject to the limitations in this section, zoning ordinances.

2. Make a final decision whether to approve or disapprove the application.

3. Notify the applicant, in writing, of its final decision.

4. If the decision is to disapprove the application, include with the written notification substantial evidence which supports the decision.

(e) A political subdivision may disapprove an application if an applicant refuses to evaluate the feasibility of collocation within the applicant's search ring and provide the sworn statement described under par. (b) 6.

(f) A party who is aggrieved by the final decision of a political subdivision under par. (d) 2. may bring an action in the circuit court of the county in which the proposed activity, which is the subject of the application, is to be located.

(g) If an applicant provides a political subdivision with an engineering certification showing that a mobile service support structure, or an existing structure, is designed to collapse within a smaller area than the setback or fall zone area required in a zoning ordinance, that zoning ordinance does not apply to such a structure unless the political subdivision provides the applicant with substantial evidence that the engineering certification is flawed.

(h) A political subdivision may regulate the activities described under par. (a) only as provided in this section.

(i) If a political subdivision has in effect on July 2, 2013, an ordinance that applies to the activities described under par. (a) and the ordinance is inconsistent with this section, the ordinance does not apply to, and may not be enforced against, the activity.

(3) COLLOCATION ON EXISTING SUPPORT STRUCTURES. (a) 1. A class 2 collocation is a permitted use under ss. 59.69, 60.61, and 62.23.

2. If a political subdivision has in effect on July 2, 2013, an ordinance that applies to a class 2 collocation and the ordinance is inconsistent with this section, the ordinance does not apply to, and may not be enforced against, the class 2 collocation.

3. A political subdivision may regulate a class 2 collocation only as provided in this section.

4. A class 2 collocation is subject to the same requirements for the issuance of a building permit to which any other type of commercial development or land use development is subject.

(b) If an applicant submits to a political subdivision an application for a permit to engage in a class 2 collocation, the application shall contain all of the information required under sub. (2) (b) 1. to 3., in which case the political subdivision shall consider the application complete. If any of the required information is not in the application, the political subdivision shall notify the applicant in writing, within 5 days of receiving the application, that the application is not complete. The written notification shall specify in detail the required information that was incomplete. An applicant may resubmit an application as often as necessary until it is complete.

(c) Within 45 days of its receipt of a complete application, a political subdivision shall complete all of the following or the applicant may consider the application approved, except that the

applicant and the political subdivision may agree in writing to an extension of the 45 day period:

1. Make a final decision whether to approve or disapprove the application.

2. Notify the applicant, in writing, of its final decision.

3. If the application is approved, issue the applicant the relevant permit.

4. If the decision is to disapprove the application, include with the written notification substantial evidence which supports the decision.

(d) A party who is aggrieved by the final decision of a political subdivision under par. (c) 1. may bring an action in the circuit court of the county in which the proposed activity, which is the subject of the application, is to be located.

(4) LIMITATIONS. With regard to an activity described in sub. (2) (a) or a class 2 collocation, a political subdivision may not do any of the following:

(a) Impose environmental testing, sampling, or monitoring requirements, or other compliance measures for radio frequency emissions, on mobile service facilities or mobile radio service providers.

(b) Enact an ordinance imposing a moratorium on the permitting, construction, or approval of any such activities.

(c) Enact an ordinance prohibiting the placement of a mobile service support structure in particular locations within the political subdivision.

(d) Charge a mobile radio service provider a fee in excess of one of the following amounts:

1. For a permit for a class 2 collocation, the lesser of $500 or the amount charged by a political subdivision for a building permit for any other type of commercial development or land use development.

2. For a permit for an activity described in sub. (2) (a), $3,000.

(e) Charge a mobile radio service provider any recurring fee for an activity described in sub. (2) (a) or a class 2 collocation.

(f) Permit 3rd party consultants to charge the applicant for any travel expenses incurred in the consultant's review of mobile service permits or applications.

(g) Disapprove an application to conduct an activity described under sub. (2) (a) based solely on aesthetic concerns.

(gm) Disapprove an application to conduct a class 2 collocation on aesthetic concerns.

(h) Enact or enforce an ordinance related to radio frequency signal strength or the adequacy of mobile service quality.

(i) Impose a surety requirement, unless the requirement is competitively neutral, nondiscriminatory, and commensurate with the historical record for surety requirements for other facilities and structures in the political subdivision which fall into disuse. There is a rebuttable presumption that a surety requirement of $20,000 or less complies with this paragraph.

(j) Prohibit the placement of emergency power systems.

(k) Require that a mobile service support structure be placed on property owned by the political subdivision.

(L) Disapprove an application based solely on the height of the mobile service support structure or on whether the structure requires lighting.

(m) Condition approval of such activities on the agreement of the structure or mobile service facility owner to provide space on or near the structure for the use of or by the political subdivision at less than the market rate, or to provide the political subdivision other services via the structure or facilities at less than the market rate.

(n) Limit the duration of any permit that is granted.

(o) Require an applicant to construct a distributed antenna system instead of either constructing a new mobile service support structure or engaging in collocation.

(p) Disapprove an application based on an assessment by the political subdivision of the suitability of other locations for conducting the activity.

(q) Require that a mobile service support structure, existing structure, or mobile service facilities have or be connected to backup battery power.

(r) Impose a setback or fall zone requirement for a mobile service support structure that is different from a requirement that is imposed on other types of commercial structures.

(s) Consider an activity a substantial modification under sub. (1) (s) 1. or 2. if a greater height is necessary to avoid interference with an existing antenna.

(t) Consider an activity a substantial modification under sub. (1) (s) 3. if a greater protrusion is necessary to shelter the antenna from inclement weather or to connect the antenna to the existing structure by cable.

(u) Limit the height of a mobile service support structure to under 200 feet.

(v) Condition the approval of an application on, or otherwise require, the applicant's agreement to indemnify or insure the political subdivision in connection with the political subdivision's exercise of its authority to approve the application.

(w) Condition the approval of an application on, or otherwise require, the applicant's agreement to permit the political subdivision to place at or collocate with the applicant's support structure any mobile service facilities provided or operated by, whether in whole or in part, a political subdivision or an entity in which a political subdivision has a governance, competitive, economic, financial or other interest.

(5) APPLICABILITY. If a county enacts an ordinance as described under sub. (2) the ordinance applies only in the unincorporated parts of the county, except that if a town enacts an ordinance as described under sub. (2) after a county has so acted, the county ordinance does not apply, and may not be enforced, in the town, except that if the town later repeals its ordinance, the county ordinance applies in that town.

History: 2013 a. 20, 173.

66.0405 Removal of rubbish. Cities, villages and towns may remove ashes, garbage, and rubbish from such classes of places in the city, village or town as the board or council directs. The removal may be from all of the places or from those whose owners or occupants desire the service. Districts may be created and removal provided for certain districts only, and different regulations may be applied to each removal district or class of property. The cost of removal may be funded by special assessment against the property served, by general tax upon the property of the respective districts, or by general tax upon the property of the city, village or town. If a city, village or town contracts for ash, garbage or rubbish removal service, it may contract with one or more service providers.

History: 1993 a. 246; 1999 a. 150 s. 119; Stats. 1999 s. 66.0405.

66.0406 Radio broadcast service facility regulations.

(1) DEFINITIONS. In this section:

(a) "Political subdivision" means any city, village, town, or county.

(b) "Radio broadcast services" means the regular provision of a commercial or noncommercial service involving the transmission, emission, or reception of radio waves for the transmission of sound or images in which the transmissions are intended for direct reception by the general public.

(c) "Radio broadcast service facilities" means commercial or noncommercial facilities, including antennas and antenna support structures, intended for the provision of radio broadcast services.

(2) LIMITATIONS ON LOCAL REGULATION. Beginning on May 1, 2013, if a political subdivision enacts an ordinance, adopts a resolution, or takes any other action that affects the placement, construction, or modification of radio broadcast service facilities, the

required by said order and a certified copy of the minutes of the said meeting to be promptly filed in the office of the clerk of the circuit court of said county upon payment to said clerk of the fees properly chargeable in a special proceeding. Upon such filing, such property may be conveyed or mortgaged with the same right and authority as if such sale or mortgaging had been authorized by a sufficient affirmative vote of all members of said corporation.

182.0135 Public utility corporation directors; not to delegate duty to manage; removal by commission. **(1)** The directors of corporations which are public utilities shall not, directly or indirectly, delegate or in any manner, temporarily or permanently, relinquish or surrender their duty to manage and direct the stock, property, affairs and business of such corporation.

(2) Any director violating the provisions of this section may be removed by the public service commission, after notice and hearing. If a director of a public utility is removed by the commission, the director shall be ineligible for a period of 2 years to serve as a director of said public utility.

(3) This section does not apply to a telecommunications utility, as defined in s. 196.01 (10).

History: 1993 a. 482, 496.

182.016 River improvement corporations may flow lands. Any domestic corporation created in whole or in part for the purpose of improving any stream and driving, holding or handling logs therein, and any corporation owning or controlling dams, booms or improvements designed to accomplish any of said purposes, or any municipality or any domestic corporation organized for the purpose of furnishing electric current for public purposes, shall have the power to acquire all such lands as shall be necessary for its use for ponds and reservoir purposes. Nothing in this section shall be construed as repealing any provision of s. 31.30.

182.017 Transmission lines; privileges; damages. **(1g)** DEFINITIONS. In this section:

(a) "Commission" means the public service commission.

(b) "Company" means any of the following:

1. A corporation, limited liability company, partnership, or other business entity organized to furnish telegraph or telecommunications service or transmit heat, power, or electric current to the public or for public purposes.

2. An independent system operator, as defined in s. 196.485 (1) (d).

3. An independent transmission owner, as defined in s. 196.485 (1) (dm).

4. A cooperative association organized under ch. 185 or 193 to furnish telegraph or telecommunications service.

5. A cooperative association organized under ch. 185 to transmit heat, power, or electric current to its members.

6. An interim cable operator, as defined in s. 66.0420 (2) (n).

7. A video service provider, as defined in s. 66.0420 (2) (zg).

(bm) "Municipal regulation" means any contract, ordinance, resolution, order, or other regulation entered into, enacted, or issued by a municipality before, on, or after July 2, 2013.

(c) "Municipality" means a city, village, or town.

(cq) "Telecommunications service" means the offering for sale of the conveyance of voice, data, or other information, including the sale of service for collection, storage, forwarding, switching, and delivery incidental to such communication regardless of the technology or mode used to make such offering.

(ct) "Urban rail transit system" means a system, either publicly or privately owned, which provides transportation by rail in a municipality to the public on a regular and continuing basis and which begins service on or after July 2, 2013.

(d) "Video service network" has the meaning given in s. 66.0420 (2) (zb).

(1r) RIGHT-OF-WAY FOR. Any company may, subject to ss. 30.44 (3m), 30.45, 86.16, and 196.491 (3) (d) 3m. and to reasonable regulations made by any municipality through which its transmission lines or systems may pass, construct and maintain such lines or systems with all necessary appurtenances in, across or beneath any public highway or bridge or any stream or body of water, or upon any lands of any owner consenting thereto, and for such purpose may acquire lands or the necessary easements; and may connect and operate its lines or system with other lines or systems devoted to like business, within or without this state, and charge reasonable rates for the transmission and delivery of messages or the furnishing of heat, power, or electric light.

(2) NOT TO OBSTRUCT PUBLIC USE. But no such line or system or any appurtenance thereto shall at any time obstruct or incommode the public use of any highway, bridge, stream or body of water.

(3) ABANDONED LINES REMOVED. The commission after a public hearing as provided in s. 196.26, and subject to the right of review as provided in ch. 227, may declare any line to have been abandoned or discontinued, if the facts warrant such finding. Whenever such a finding shall have been made the company shall remove such line, and on failure for 3 months after such finding of abandonment or discontinuance, any person owning land over, through or upon which such line shall pass, may remove the same, or the supervisors of any town within which said lines may be situated, may remove the said lines from the limits of its highways, and such person or supervisors shall be entitled to recover from the company owning the lines the expense for labor involved in removing the property.

(4) LOCATION OF POLES. In case of dispute as to the location of poles, pipes or conduits, the commissioners appointed in condemnation proceedings under ch. 32 may determine the location. In no case, except where the owner consents, shall poles be set in front of or upon any residence property, or in front of a building occupied for business purposes, unless the commissioners find that the same is necessary and the court may review the finding.

(5) TREE TRIMMING. Any company which shall in any manner destroy, trim or injure any shade or ornamental trees along any such lines or systems, or, in the course of tree trimming or removal, cause any damage to buildings, fences, crops, livestock or other property, except by the consent of the owner, or after the right so to do has been acquired, shall be liable to the person aggrieved in 3 times the actual damage sustained, besides costs.

(6) MUNICIPAL FRANCHISE REQUIRED. No lighting or heating corporation or lighting or heating cooperative association shall have any right hereunder in any municipality until it has obtained a franchise or written consent for the erection or installation of its lines from such municipality.

(7) HIGH-VOLTAGE TRANSMISSION LINES. Any easement for rights-of-way for high-voltage transmission lines as defined under s. 196.491 (1) (f) shall be subject to all of the following conditions and limitations:

(a) The conveyance under ch. 706 and, if applicable, the petition under s. 32.06 (7), shall describe the interest transferred by specifying, in addition to the length and width of the right-of-way, the number, type and maximum height of all structures to be erected thereon, the minimum height of the transmission lines above the landscape, and the number and maximum voltage of the lines to be constructed and operated thereon.

(b) In determining just compensation for the interest under s. 32.09, damages shall include losses caused by placement of the line and associated facilities near fences or natural barriers such that lands not taken are rendered less readily accessible to vehicles, agricultural implements and aircraft used in crop work, as well as damages resulting from ozone effects and other physical phenomena associated with such lines, including but not limited to interference with telephone, television and radio communication.

(c) In constructing and maintaining high–voltage transmission lines on the property covered by the easement the utility shall:

1. If excavation is necessary, ensure that the top soil is stripped, piled and replaced upon completion of the operation.

2. Restore to its original condition any slope, terrace, or waterway which is disturbed by the construction or maintenance.

3. Insofar as is practicable and when the landowner requests, schedule any construction work in an area used for agricultural production at times when the ground is frozen in order to prevent or reduce soil compaction.

4. Clear all debris and remove all stones and rocks resulting from construction activity upon completion of construction.

5. Satisfactorily repair to its original condition any fence damaged as a result of construction or maintenance operations. If cutting a fence is necessary, a temporary gate shall be installed. Any such gate shall be left in place at the landowner's request.

6. Repair any drainage tile line within the easement damaged by such construction or maintenance.

7. Pay for any crop damage caused by such construction or maintenance.

8. Supply and install any necessary grounding of a landowner's fences, machinery or buildings.

(d) The utility shall control weeds and brush around the transmission line facilities. No herbicidal chemicals may be used for weed and brush control without the express written consent of the landowner. If weed and brush control is undertaken by the landowner under an agreement with the utility, the landowner shall receive from the utility a reasonable amount for such services.

(e) The landowner shall be afforded a reasonable time prior to commencement of construction to harvest any trees located within the easement boundaries, and if the landowner fails to do so, the landowner shall nevertheless retain title to all trees cut by the utility.

(f) The landowner shall not be responsible for any injury to persons or property caused by the design, construction or upkeep of the high–voltage transmission lines or towers.

(g) The utility shall employ all reasonable measures to ensure that the landowner's television and radio reception is not adversely affected by the high–voltage transmission lines.

(h) The utility may not use any lands beyond the boundaries of the easement for any purpose, including ingress to and egress from the right–of–way, without the written consent of the landowner.

(i) The rights conferred under pars. (c) to (h) may be specifically waived by the landowner in an easement conveyance which contains such paragraphs verbatim.

(8) COMMISSION REVIEW. (a) Upon complaint by a company that a regulation by a municipality under sub. (1r) is unreasonable, the commission shall set a hearing and, if the commission finds that the regulation is unreasonable, the regulation shall be void. Subject to pars. (am) to (c), if the commission determines that a municipal regulation that was in effect on January 1, 2007, and immediately prior to January 9, 2008, or that a community standard, as demonstrated through consistent practice and custom in the municipality, that was in effect on January 1, 2007, and immediately prior to January 9, 2008, is substantially the same as the municipal regulation complained of, there is a rebuttable presumption that the latter regulation is reasonable.

(am) A municipal regulation is unreasonable if it has the effect of creating a moratorium on the placement of company lines or systems under sub. (1r) or on the entrance into the municipality of a video service provider, as defined in s. 66.0420 (2) (zg), or is inconsistent with the purposes of s. 66.0420.

(as) Notwithstanding sub. (2), a municipal regulation is unreasonable if it requires a company to pay any part of the cost to modify or relocate the company's facilities to accommodate an urban rail transit system.

(b) A municipal regulation is unreasonable if it requires a company to pay more than the actual cost of functions undertaken by the municipality to manage company access to and use of municipal rights–of–way. These management functions include all of the following:

1. Registering companies, including the gathering and recording of information necessary to conduct business with a company.

2. Except as provided in provided in par. (c), issuing, processing, and verifying excavation or other company permit applications, including supplemental applications.

3. Inspecting company job sites and restoration projects.

4. Maintaining, supporting, protecting, or moving company equipment during work in municipal rights–of–way.

5. Undertaking restoration work inadequately performed by a company after providing notice and the opportunity to correct the work.

6. Revoking company permits.

7. Maintenance of databases.

8. Scheduling and coordinating highway, street, and right–of–way work relevant to a company permit.

(c) A municipal regulation is unreasonable if it requires a company to be responsible for fees under s. 182.0175 (1m) (bm) that may be assessed to a municipality as a member of the one–call system under s. 182.0175.

(d) It is reasonable for a municipal regulation to provide for the recovery of costs incurred under par. (b) 1., 2., 3., and 7. through a preexcavation permit fee.

(e) It is reasonable for a municipal regulation to provide for the recovery of costs incurred under par. (b) 4., 5., and 6. only from the company that is responsible for causing the municipality to incur the costs.

(9) TIME LIMIT FOR PERMITS. If a municipality establishes a permit process under sub. (1r), the municipality shall approve or deny a permit application no later than 60 days after receipt of the application, and, if the municipality fails to do so, the municipality shall be considered to have approved the application and granted the permit. If a municipality denies a permit application, the municipality shall provide the applicant a written explanation of the reasons for the denial at the time that the municipality denies the application.

History: 1971 c. 40; 1975 c. 68, 199; 1979 c. 34, 323; 1985 a. 297 s. 76; 1989 a. 31; 1993 a. 213, 246, 371; 1997 a. 204; 2005 a. 441; 2007 a. 42; 2011 a. 22; 2013 a. 20 s. 1564m, 1978d to 1978t; 2013 a. 165, 168; 2015 a. 195 s. 82.

Sub. (2) is a safety statute, the violation of which constitutes negligence per se. An allegation that a power pole located within 4 feet of the traveled portion of a roadway violated this provision stated a cause of action. Weiss v. Holman, 58 Wis. 2d 608, 207 N.W.2d 660 (1973).

Sub. (5) is limited to damages arising from the construction, maintenance, or abandonment of facilities within a right–of–way. Vogel v. Grant–Lafayette Electric Cooperative, 195 Wis. 2d 198, 536 N.W.2d 140 (Ct. App. 1995), 94–0822.

Sub. (7) (a) governs what must be specified in a conveyance of an easement. Because the easements here were conveyed prior to the enactment of the statute, the conveyances were not subject to the statute's requirements. The circuit court's conclusion that the utility was required to obtain new easements complying with sub. (7) (a) was premised on its erroneous conclusion that the utility's easement rights were limited by the easements' current use. Wisconsin Public Service Corporation v. Andrews, 2009 WI App 30, 316 Wis. 2d 734, 766 N.W.2d 232, 07–2673.

182.0175 Damage to transmission facilities. (1) DEFINITIONS. In this section:

(aa) "Agricultural activity" has the meaning given in s. 101.10 (1) (a).

(ab) "Commission" means the public service commission.

(ac) "Complainant" means a person who files a complaint under sub. (3) (bg) 1. or 2.

(ag) "Damage prevention fund" means the fund established under sub. (1m) (d) 11.

(am) "Emergency" means a condition that poses a clear and immediate danger to life or health, or a significant loss of property.

(b) "Excavation" means any operation in which earth, rock or other material in or on the ground is moved, removed or otherwise

196.58 Municipality to regulate utilities; appeal. **(1g)** In this section, "municipal regulation" has the meaning given in s. 182.017 (1g) (bm).

(1r) The governing body of every municipality may:

(a) Determine by municipal regulation the quality and character of each kind of product or service to be furnished or rendered by any public utility within the municipality and all other terms and conditions, consistent with this chapter and ch. 197, upon which the public utility may be permitted to occupy the streets, highways or other public places within the municipality. The municipal regulation shall be in force and on its face reasonable.

(b) Require of any public utility any addition or extension to its physical plant within the municipality as shall be reasonable and necessary in the interest of the public, and designate the location and nature of the addition or extension, the time within which it must be completed, and any condition under which it must be constructed, subject to review by the commission under sub. (4).

(c) Provide a penalty for noncompliance with the provisions of any municipal regulation adopted under this subsection.

(4) (a) Upon complaint made by a public utility or by any qualified complainant under s. 196.26, the commission shall set a hearing and if it finds a municipal regulation under sub. (1r) to be unreasonable, the municipal regulation shall be void.

(b) Notwithstanding any provision of this chapter, upon complaint by a telecommunications provider, including an alternative telecommunications utility, or a video service provider, the commission shall set a hearing and, if it finds to be unreasonable any municipal regulation relating to any product or service rendered by any such provider within a municipality or relating to the terms and conditions upon which such provider occupies the streets, highways, or other public places within the municipality, the municipal regulation shall be void.

(c) Notwithstanding s. 182.017 (2), a municipal regulation is unreasonable under par. (a) or (b) if it requires a public utility, telecommunications provider, or video service provider to pay any part of the cost to modify or relocate the public utility's, telecommunications provider's, or video service provider's facilities to accommodate an urban rail transit system, as defined in s. 182.017 (1g) (ct).

(5) The commission shall have original and concurrent jurisdiction with municipalities to require extensions of service and to regulate service of public utilities. Nothing in this section shall limit the power of the commission to act on its own motion to require extensions of service and to regulate the service of public utilities.

(6) No public utility furnishing and selling gaseous fuel or undertaking to furnish or sell gaseous fuel in a municipality where the fuel has not been sold previously to the public shall change the character or kind of fuel by substituting for manufactured gas any natural gas or any mixture of natural and manufactured gas for distribution and sale in any municipality, or undertake the sale of natural gas in any municipality where no gaseous fuel was previously sold, unless the governing body of the municipality, by authorization, passage or adoption of appropriate municipal regulation, approves and authorizes the change in fuel or commencement of sale. No municipal regulation enacted under this subsection may be inconsistent or in conflict with any certificate granted under s. 196.49.

(7) (a) If a municipality operating a water system seeks to serve consumers of an area which is part of the municipality and in the same county, but in order to serve such consumers it is necessary or economically prudent for the municipality to install mains, transmission lines, pipes or service connections through, upon or under a public street, highway, road, public thoroughfare or alley located within the boundaries of any adjacent municipality, the municipality seeking the installation may file a petition with the clerk of the legislative body of the adjacent municipality requesting approval for the installation of the mains, transmission lines, pipes or service connections. The governing body of the adjacent municipality shall act on the petition within 15 days after the petition is filed. If the governing body of the adjacent municipality fails to act within the 15–day period, the petition shall be deemed approved and the municipality may proceed with the installations required for service to its consumers. If, however, the governing body of the adjacent municipality rejects the petition, the municipality may make application to the commission for authority to install within the boundaries of the adjacent municipality the installations necessary to provide service to its consumers. The commission shall hold a hearing upon the application of the municipality. If the commission determines that it is necessary or economically prudent that the municipality seeking to serve its consumers make the installations within the boundaries of the adjacent municipality, the commission shall promptly issue an order authorizing the municipality to proceed to make the installation. In the order, the commission may establish the manner of making the installation.

(b) A municipality making an installation under this section shall restore the land on or in which such installation has been made to the same condition as it existed prior to the installation. Failure to make the restoration shall subject the municipality to an action for damages by the adjacent municipality. The adjacent municipality may require a performance bond from the municipality seeking to make the installation. If no agreement can be effected between the municipalities as to the amount of the performance bond, the commission shall determine the amount of the bond. If the commission issues an order authorizing an installation under this subsection, the commission shall determine the amount of the performance bond which shall be required of the applicant municipality.

History: 1981 c. 390; 1983 a. 53; 1995 a. 378; 2013 a. 20.

Cross–reference: See also ch. PSC 130, Wis. adm. code.

196.59 Merchandising by utilities. Each public utility engaged in the production, transmission, delivery or furnishing of heat, light or power either directly or indirectly to or for the use of the public shall keep separate accounts to show any profit or loss resulting from the sale of appliances or other merchandise. The commission may not take the profit or loss into consideration in arriving at any rate to be charged for service by the public utility.

History: 1983 a. 53.

196.595 Utility advertising practices. **(1)** In this section:

(a) "Advertising" means:

1. Printed and published material and descriptive literature of a utility used in newspapers, magazines, radio and TV scripts, billboards and similar displays.

1m. Any material which provides information favorable to a public utility on any issue about which the utility is attempting to influence legislative or administrative action by direct oral or written communication with any elective state official, agency official or legislative employee if the practice is regulated under subch. III of ch. 13.

2. Descriptive literature and sales aids of all kinds issued by a utility for presentation to utility consumers and other members of the public, including but not limited to any material enclosed with or added to a utility billing statement, circulars, leaflets, booklets, depictions, illustrations and form letters.

3. Prepared sales talks to the public and public informational facilities.

4. Other materials and procedures enumerated by rule of the commission which promote or provide information to the public about a public utility.

(b) "Expenditure" means any cost of advertising directly incurred by a utility and any cost of advertising incurred by contribution to parent or affiliated companies or to trade associations.

(c) "Public utility" in this section means any public utility, as defined in s. 196.01, engaged in the transmission, delivery, or furnishing of natural gas by means of pipes or mains, heat, light,