

Municipal LAW

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September 30, 2019

Renee Lauber, DCTA Planner
Dane County Towns Association
1252 Morrison Court
Madison, WI 53703

**Re: Telecommunications Facilities
Small Wireless Facilities
New State Law: 2019 Wisconsin Act 14
Recommendations**

Dear Ms. Lauber:

Effective July 12, 2019, the State of Wisconsin adopted new State laws affecting the siting of small wireless facilities. This new State law significantly impacts upon your members' municipal authority, especially in public right-of-way, for small wireless facilities. This continues a trend that has been occurring over the past several years.

The law in this area is now quite complicated given the overlapping State and Federal regulations, the different regulation of new installations versus collocation on existing facilities, and large and small wireless facilities. I am enclosing several documents for your members consideration in this regard. The enclosed documents include the following:

1. Memorandum Concerning 2019 Wisconsin Act 14, the Wisconsin Small Wireless Facility Law. Enclosed is a memorandum outlining significant aspects of the new State law, 2019 Wisconsin Act 14.
2. Exhibit A-1 Collocation of Large Wireless Antennas on Existing Structures. This table shows the laws that apply for collocation on existing structures, concerning large wireless facility antennas under state and federal laws.
3. Exhibit A-2 Collocation of Small Wireless Antennas on Existing Structures. This table shows the laws that apply for collocation on existing structures, concerning small wireless facilities under state and federal laws.
4. Exhibit B: Definitions of Substantial Change. This table outlines the state and federal definitions of what constitutes a substantial change to an existing facility. This is significant because if it is a substantial change, the telecommunications provider must comply with the new structure requirements rather the collocation requirements.

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5. Exhibit C-1: Application Review Deadlines; New Structures for Large Wireless Facilities. This exhibit outlines the state and federal review deadlines for large wireless facilities under state and federal laws.
6. Exhibit C-2: Application Review Deadlines; New Structures for Small Wireless Facilities. This exhibit outlines the state and federal review deadlines for new structures for small wireless facilities.
7. Exhibit D: Application Fees for Large and Small Cell Siting of New Structures and Collocations. This table outlines the maximum fees that can be charged for large and small cell siting applications.
8. Exhibit E: Aesthetic Considerations for Large and Small Cell Siting of New Structures and Collocations. This table outlines the extent to which you are allowed to consider aesthetic issues under state and federal law, both for new structures and for collocations.
9. Exhibit F: Cell Siting Limitations in Historic Areas and Underground Districts. This table outlines your authority of siting telecommunications facilities in historic areas pursuant to state and federal laws.

I recommend that your members retain these materials, so that they can make use of them when they receive applications for these technologies. Keep in mind that this is an overview, and these laws continue to change, so these materials will not necessarily answer every question when these issues arise. This should provide a good starting point for your members consideration of the matters, however, and help to ensure that they act in a timely manner as required by these laws.

Note that these new laws provide several opportunities for local regulation, that your members may want to consider. Among the issues that they can now clearly regulate for small wireless facilities, and in some cases for large facilities, are the following:

- Your members can establish some aesthetic requirements, subject to numerous limitations;
- Your members can establish underground districts, where utilities including telecommunications facilities are required to be underground in some situations;
- Your members can impose setback requirements in and adjacent to residential districts;
- Your members can require indemnification;
- Your members can establish some charges for use of the right-of-way, subject to numerous limitations;
- Your members can establish some application fees, subject to numerous limitations; and
- Your members can impose some charges on use of your municipal facilities in the right-of-way, subject to numerous limitations.

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I recommend that Your members consider updating their ordinances accordingly.

Let me add that I have encountered an organized effort in some of my communities, of citizens seeking to prevent proliferation of wireless communications facilities, often targeting especially 5G deployments. I need to caution your members that these citizens groups often fail to acknowledge or address the limitations of applicable laws. The siting of wireless facilities is highly regulated under the current State and federal laws, as demonstrated by the enclosed materials, and your members are not free to prohibit these facilities outright, or to regulate them in manner that is inconsistent with these laws. I should also add that some of the citizens groups have made statements that come close to making claims against municipalities, or threatening litigation. If your members receive such communication, I recommend that they closely consider whether the issue should be referred to their insurer to give notice of a potential claim.

If you should have any questions or concerns regarding these matters, please do not hesitate to contact me.

Yours very truly,
MUNICIPAL LAW & LITIGATION GROUP, S.C.

Eric J. Larson

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Enclosures

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