



Legislative UPDATE

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Number 12

Coronavirus (COVID-19) Updates

The Texas Municipal League is open for business. The building is closed to all but essential personnel and most staff is working remotely, but the League remains open for business and is fully ready to serve. Cities are encouraged to call or email for legal assistance, help with ordinances, or for general advice or assistance. Let us know how we can assist you and your city.

Call TML staff at 512-231-7400, or email Scott Houston for legal assistance at SHouston@tml.org; Rachael Pitts for membership support at RPitts@tml.org; and the training team for questions about conferences and workshops at training@tml.org.

The League has prepared a coronavirus clearinghouse [web page](#) to keep cities updated. In addition, everyone who receives the *Legislative Update* should receive a daily email update each afternoon with information on new developments. The daily email updates will be our primary means of communication during the pandemic. Those emails are [being archived](#) as well.

Right-of-Way Lawsuit: Temporary Injunction Denied

A judge has denied a temporary injunction in a lawsuit arguing that the Texas Legislature is giving away city rights-of-way for little or no compensation.

The lawsuit began in 2017, when the City of McAllen and a coalition of around 40 cities sued the state to challenge the unconstitutionally low right-of-way rental fees in S.B. 1004 by Kelly Hancock (R – North Richland Hills). That bill, passed during the 2017 regular session, requires a city to allow access for cellular antennae and related equipment (“small cell nodes”) in city rights-of-way, and it also entitles cell companies and others to place equipment on city light poles, traffic poles, street signs, and other poles.

The bill gives cities limited authority over placement, and it caps a city’s right-of-way rental fee at around \$250 per small cell node. The artificially low price per node is a taxpayer subsidy to the cellular industry because it allows nearly free use of taxpayer-owned rights-of-way and facilities. The bill does precisely what the Texas Constitution prohibits: It is an action by the legislature forcing cities to give away their valuable assets to a private company.

The lawsuit was recently amended to add a claim based on S.B. 1152, the “franchise fee elimination” bill passed in 2019. That bill (also authored by Senator Hancock) authorizes a cable or phone company to stop paying the lesser of its state cable franchise or telephone access line fees, whichever is less for the company statewide. Because it also requires an unconstitutional gift of use of cities’ rights of way, the pleadings in the small cell lawsuit were amended to include the bill.

The lawsuit will still proceed, but companies won’t be enjoined from reducing their payments.

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