



Legislative UPDATE

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Let's Get to Work: *Our Home, Our Decisions*

The Texas Municipal League's "Our Home, Our Decisions" campaign is ready to roll! The goal of the campaign is to raise awareness about the State of Texas eroding the ability of Texans to have a voice in developing local solutions to local problems that affect their neighborhoods and their communities.



The League has developed informational materials for city officials to use in meetings with local groups and organizations. While the materials are suitable for any public use, they will likely be of greater interest to city residents who are already actively engaged in civic affairs through membership in

business, professional, social, charitable, and neighborhood organizations and individuals who serve on city boards and commissions.

The first components of "Our Home, Our Decisions" are now available for download and use by TML member cities. They are: (1) a three-minute video production; (2) a PowerPoint Presentation that can be customized by cities for local presentations; and, (3) a two-sided handout in PDF format. The video production can be used as an introduction to the slide presentation, and the handout can be photocopied and distributed to attendees. The components, as well as a document with tips on how to use them, are available at www.tml.org/ourhomeourdecisions.

Please feel free to modify all or parts of the materials to suit your city's needs. If you have questions about the materials or want additional advice on how to use them, contact legislative@tml.org.

Governor Abbott's Legislative Blueprint Updated

Last Monday, Governor Abbott updated his "[Legislative Blueprint](#)" by posting his new "safeguarding, securing, and serving" [public safety plan](#) on his campaign website. The plan covers human trafficking, violent gangs, police officer safety, and red light cameras. The following city-related items are included as recommendations:

- Prohibit local adoption of red light cameras and preempt any local ordinances or policies permitting red light cameras already in force.
- Provide rifle-resistant body armor to law enforcement with grants through the governor's Criminal Justice Division.

With regard to the second initiative, the governor is recommending \$10 million in grants for rifle-resistant body armor. That grant amount is significant, and any efforts to protect law enforcement officers are a step in the right direction and welcomed by cities.

Of course, \$10 million is miniscule in comparison to what cities spend on law enforcement each year. According to the 2015 TML General Fund Survey, cities spent close to \$2 billion annually on police salaries and equipment.

Interestingly, the [property tax component](#) of the governor's Legislative Blueprint also includes support for a 2.5 percent property tax revenue cap on cities. In many cities, a substantial portion of property tax revenue is spent on public safety. A revenue cap would almost certainly reduce public safety spending by far more than \$10 million statewide.

FCC Releases Preemptive Small Cell Order

[Editor's note: The edited information below was reprinted with permission from the National League of Cities (NLC).]

After more than a year of deliberation, the FCC released its draft [Declaratory Ruling and Third Report and Order](#) relating to state and local management of small cell wireless infrastructure deployment. The document, if approved by a majority of commissioners at the FCC's September 26, 2018, open meeting, will enact substantial new limits on wireless siting review.

Specifically, the declaratory ruling and report and order:

- Creates two new categories of “shot clocks” for small cell wireless facility review. Local governments will have 60 days to complete review of applications for collocated small cells and 90 days for small cells on new structures.

These shot clocks include “all aspects of and steps in the siting process,” including mandatory pre-application procedures, license/franchise agreements for rights-of-way access, public notice and meeting periods, lease negotiations, building/encroachment/electric/road closure permits, and other approvals.

The shot clocks begin upon submission of an application, regardless of completion. They may be paused only if a local government notifies the applicant within 30 days of receipt that the application is incomplete, or through mutual agreement with the applicant.

(Editor’s note: These time periods are shorter than the Texas small cell legislation passed last session, and will control if the order is adopted.)

- Establishes or affirms definitions of two key terms:
 - “Small wireless facilities” are defined as including an antenna of no more than three cubic feet and equipment totaling no more than 28 cubic feet, placed on a structure that is either no more than 50 feet in height, no more than 10 percent taller than adjacent structures, or no more than 10 percent taller than the structure’s preexisting height after the new antenna is placed.
 - “Collocation” is defined as placing an antenna on any existing structure, regardless of whether that structure already has wireless equipment on it, or whether it has been zoned for placing that equipment.
- Limits application fees for all small wireless facilities to \$500 for up to five sites, and \$100 per site for each site thereafter.

(Editor’s note: The \$500 is the same as the Texas small cell legislation passed last session, but the \$100 is a lower cap.)

- Limits recurring fees for small cells in the rights-of-way, such as rights-of-way access fees or lease fees, to a “reasonable approximation” of the city’s “objectively reasonable costs” for maintaining the rights-of-way or a structure within the rights-of-way, which must be no higher than fees for similar actors.

The FCC finds a presumptively reasonable recurring fee to be \$270 per site, per year. Cities are expressly prohibited from recovering any cost not directly related to rights-of-way maintenance, charging fees above cost recovery, or recovering “unreasonable” costs, such as excessive contractor or consultant fees. The FCC finds gross revenue fees to be presumptively unreasonable, and existing agreements are not grandfathered.

- Limits allowable local aesthetic requirements, including minimum spacing requirements, to those that “are: (1) reasonable, (2) no more burdensome than those applied to other

types of infrastructure deployments, and (3) published in advance." The FCC notes that undergrounding requirements for all wireless facilities would constitute an illegal prohibition of service by a city, but it does not clarify whether local governments may require auxiliary equipment for small cell sites, such as equipment cabinets and fiber backhaul, to be undergrounded.

More restrictive state laws will remain in effect, and will not be replaced by this order.

(Editor's note: The \$270 is similar to the amount in the Texas small cell legislation, but the Texas cap is currently in litigation.)

If approved during the open meeting, the new regulations will go into effect 30 days after publication in the Federal Register. Local governments could then face enforcement action if wireless providers or other small cell applicants challenge them in court on the basis of noncompliance with the above requirements.

NLC and its local government partners will oppose this proposal. To support their efforts, you can send a [letter](#) to the FCC expressing your opposition before September 19, before the FCC publishes its official "sunshine agenda" for the open meeting.

TCEQ: Renewal of Phase II MS4 General Permit

The Texas Commission on Environmental Quality (TCEQ) is in the process of renewing the 2013 Texas Pollution Discharge Elimination System (TPDES) general permit for small municipal separate storm sewer systems (MS4s) permit. The permit expires on December 13, 2018. The [draft permit and fact sheet](#) is available now.

The Small MS4 General Permit authorizes the discharge of storm water to surface water from small MS4s in the state. Stakeholders will have the opportunity to comment electronically to the [Office of the Chief Clerk](#) on the proposed draft permit during the public comment period (August 24 - September 24). A public meeting will be held on September 24, 2018, at 1:30 p.m. at the TCEQ Park 35 Campus in Austin.

Significant changes to the general permit include:

- Electronic submittal of application and reports will be required by December 21, 2020.
- Minimum Control Measure Seven, authorization of construction activities where the small MS4 is the site operator, has a lower benchmark value for total suspended solids from 100 mg/L to 50 mg/L.
- The definition of "construction activity" is revised to include stockpiling of fill material and demolition.
- Implementation of the MS4 Remand Rule, which modifies the permit language so it becomes clear, specific, and measurable.
- A requirement for the MS4 to post its annual reports and its Storm Water Management Program on its website, if the MS4 has one;

- Addition of a public notice process for certain notice of changes;
- Level Four MS4s (MS4s serving a population of more than 100,000) must control the discharge of floatables in the MS4s and evaluate new and existing flood management projects to determine their impact on water quality.
- The application fee will now be \$400 instead of \$100.

According to TCEQ, permittees with current, active authorizations should not attempt to renew their authorization before the new permit has been issued and made effective on December 13, 2018. Permittees with current authorizations will have a 180-day grace period to renew their authorizations starting on the date the new permit becomes effective.

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