



Legislative UPDATE

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Small Cell Lawsuit Clears First Hurdle

Late last year, A Texas judge denied the state’s motion to dismiss in the “small cell” lawsuit brought by the City of McAllen and a coalition of around 40 cities.

The lawsuit challenges the unconstitutionally low right-of-way rental fees in S.B. 1004. That bill, passed during the 2017 regular session and effective September 1, 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 price per node in the current bill is a taxpayer subsidy to the cellular industry because it allows nearly free use of taxpayer-owned rights-of-way and facilities. The lawsuit also claims that S.B. 1004 unconstitutionally delegates a city’s legislative authority to control its rights-of-way to private businesses.

After a hearing at which both the cities and the state made arguments and examined witnesses, the judge ruled that the case can move forward to the merits.

Interested city officials can still join the coalition by contacting Kevin Pagan, city attorney for McAllen, at kpagan@mcallen.net or 956-681-1090.

Don't Forget: Mandatory Hotel Occupancy Tax Reporting

The 50-day window for reporting local hotel occupancy tax information is now open. The reporting period began on January 1 and closes on February 20.

During the 2017 regular session, the legislature passed [S.B. 1221](#), which aims to improve transparency about the hotel occupancy tax by requiring cities to file an annual report with the comptroller that includes the city's hotel occupancy tax rate, the amount of revenue generated by the tax, and the amount and percentage of the revenue spent for each of the following purposes:

- Convention or information centers.
- Convention delegates registration.
- Advertising to attract tourists.
- Arts promotion and improvement.
- Historical restoration and preservation projects.
- Signage directing the public to sights and attractions.

Cities have two reporting options: (1) use the comptroller's online reporting form to submit all required information; or (2) clearly post and maintain all required information on the city's website and provide the comptroller's office with a link to the information. For cities selecting the second option, the comptroller provides an [optional format template](#) to post on the city's website.

For more information and access to the online reporting form, see the comptroller's hotel occupancy tax reporting [webpage](#). City officials with questions about the new requirements can also contact the comptroller's transparency team by email at transparency@cpa.texas.gov or (844) 519-5676.

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