

FAQs About SB 1004 (Deployment of Network Nodes in Public Right-of-Way)

Q: What are network nodes?

A: Network nodes also called wireless network nodes are part of a wireless network system that supports or enhances data capacity used by wireless communication devices such as smart phones. The node is the antenna. The other parts of the system are the pole, meter, radio, backup battery, amplifier, switches, and other devices. Instead of building more large unsightly cell towers to deal with increased network and capacity demand, wireless network providers are using wireless network systems that are significantly smaller, denser, and less visible. DAS and small cells are the two common types of wireless network systems.

Q: What is DAS?

A: DAS stands for distributed antenna system.

Q: What do wireless networks like DAS and small cells have to do with the City of Houston?

A: Wireless networks require antennas, also known as network nodes, to be within every few hundred foot of each other to operate. These antennas sometimes require installation of poles to support them and other equipment. The most economical and efficient way to deploy these network nodes is in the public right-of-way because network providers have access to a continuous piece of land and deal with only one landlord. In the past 10 years, companies that build, support, and use these network nodes have been approaching cities throughout the nation to use the public right-of-way. This will probably continue for at least the next 10 years as use of wireless devices increase.

Q: Can the City refuse to allow use of its public right-of-way?

A: No, the City has a master license agreement, approved by Council in December 2015, with several wireless network providers to use the public right-of-way. Also, refusing access is not an effective, long-term solution. On September 1, 2017, Senate Bill 1004 (SB 1004 codified as Chapter 284, Tex. Loc. Gov't Code) will go into effect, preventing any Texas city from denying wireless network providers use of its public right-of-way. Furthermore, there have been and continue to be efforts at the Federal Communications Commission ("FCC") to promote wireless network deployment throughout the country by issuing or considering rules that address this issue.

Q: What is the federal government's position on wireless network deployment?

A: The FCC has a clear policy of supporting wireless network infrastructure deployment throughout the country to meet increasing demand for wireless capacity. The FCC cites the increasing use of smart phones, tablets, and other smart devices as the need to facilitate deployment by issuing clearer rules. The agency has also cited examples of some cities delaying or obstructing deployment as justification for rules.

Q: What is the impact of refusing access to the right-of-way?

A: While Texas cities before September 1, 2017, could refuse access to the right-of-way, such a position could delay wireless infrastructure deployment in those cities. In cities that allowed use of the right of way under an agreement, the city usually had more control and authority over where and what was installed in the right-of-way than those cities will under new legislation, SB 1004.

Q: What is SB 1004?

A: SB 1004 is legislation that was recently approved by the Texas Legislature authorizing wireless network providers to use municipal public right-of-way with certain restrictions. A more comprehensive break down of the legislation is provided in the chart below.

Q: What is the impact of SB 1004 on cities?

A: SB 1004 is not a full preemption, but takes considerable control over the right-of-way away from cities. On September 1, 2017, SB 1004 will trump any agreement that cities have with wireless providers for use of their right-of-way.

Q: What is the difference between SB 1004 and the cities agreement?

A: A full breakdown of the differences is provided in the chart below, but generally SB 1004 provides for significantly reduced right-of-way use fees, less requirements for what and where a network node, pole, and supporting equipment can be placed in the right of way. The City will still be able to regulate for public health and safety reasons.

Q: What can the City do about SB 1004?

A: The City fought very hard during this recent legislative session to retain municipal authority and was somewhat successful. The City's legislative and lobbying team delayed the effective date and got amendments included in the bill that protected the City and its authority over the right-of-way. The City will have to wait until the next legislative session to do anything about SB 1004.

Q: What is preempted by SB 1004?

A: The City has little control over use of locations in the right-of-way except for the following locations, which require the City's approval:

- Parks
- Single family residential areas next to a street that is not more than 50 feet wide
- Historic Districts
- Design Districts (districts with decorative street lights i.e. management districts), provided it is limited to complying with design requirements

Q: How does the City control the use of locations in the right of way under its current agreement?

A: Under the City's master license agreement, each location must be approved by the PWE and comply with terms in the agreement before the applicant can install in the right-of-way.

Q: What are the remedies under SB 1004 and the City’s agreement?

A: There are remedies available under the agreement with revocation of the license being the most serious one. The preferred remedy is informal resolution of the issue. The city can also revoke a specific location, but not the entire agreement with one party. Finally, there is a provision authorizing the City Attorney to enforce the agreement.

There is no remedy specifically stated under this legislation, which will be codified as new Chapter 284 of the Texas Local Government Code. However, if the violation was related to a municipal, federal, or other state law or regulation, then there may be remedies available under that specific law or regulation.

Q: Is the City’s agreement with the wireless network providers void on September 1, 2017?

A: The City’s agreement is grandfathered for those network nodes and poles installed before September 1, 2017.

Q: What are the differences between the City’s agreement and SB 1004?

A: **Differences Between the City’s Agreement and SB 1004**

	City’s Agreement	SB 1004
Effective Date	December 2015 – August 31, 2017	September 1, 2017
Right of Way Use Fees	\$2,000 to \$2,700/location + Annual CPI adjustment	\$250/location \$28/node for fiber \$0 micro network nodes + Annual CPI adjustment
Permit Fees	\$111.82 + \$80.51/sheet plan drawings	\$1,000/pole \$500 up to 5 network nodes \$250/additional network node per application \$0 for substantially similar replacement
Pole Height	50 feet maximum	55 feet maximum
Ground Box Size	3ft x 3 ft x 3ft	3.6 ft x 3.6 ft x 3.6 ft
Limits on Ground Box	No ground boxes if 100 cubic feet of equipment is already in the location, unless approved by the City Engineer	None
Spacing requirements	Poles 300 feet apart unless approved	None
Use of City-owned poles	Prohibited	Allowed, subject to agreement with the City
City Approval for Location	Required for each location	Not required unless location is in a Historic District, Park, Design District with decorative poles, or single family

		residences next to 50 feet or smaller street
Compliance with Design Manual	Required	Required
Permits	Required	Allowed if it is of general applicability to users of the right of way, does not apply exclusively to network nodes, and is processed on nondiscriminatory terms and conditions regardless of type of entity submitting the application for the permit.
Consolidated Application	Allowed as stipulated by PWE	Up to 30 network nodes on one application
Application Form	<p>Application requests information required by agreement and as needed by PWE</p> <p>GIS coordinates or nearest street address</p> <p>Construction and Engineering drawings required</p> <p>Information to ensure compliance with agreement.</p>	<p>Application cannot require applicant to provide more information than a telecommunications utility that is not a network provider is required to provide unless the information is required by Chapter 284</p> <p>Construction and Engineering drawings may be required</p> <p>Information to ensure compliance with Chapter 284</p> <p>Certificate that network node complies with FCC regulations allowed</p> <p>Certificate that proposed network node will be placed into service not later than 60th day after completion allowed.</p>
Deadline for Notifying Applicant of Incomplete Application	<p>From date of receipt:</p> <ul style="list-style-type: none"> • 30 days for network nodes 	<p>From date of receipt:</p> <ul style="list-style-type: none"> • 30 days for network nodes • 10 days for fiber
Deadline for Approving Permit	<p>From date of receipt:</p> <ul style="list-style-type: none"> • 30 days 	<p>From date of receipt of complete application:</p> <ul style="list-style-type: none"> • 150 days for poles

		<ul style="list-style-type: none"> • 60 days for network nodes • 21 days for fiber <p>From date of receipt of revised application that was denied:</p> <ul style="list-style-type: none"> • 90 days
Installation Deadline	None	6 months after final approval
Permit Exemption	If replacing identical equipment	If replacing substantially similar equipment
Use of Municipally-Owned Utility Poles	None – the City does not own any	Allowed, subject to an agreement
Relocation of Network Nodes and Poles for Public Projects	Required for City construction or maintenance project or undergrounding utilities	Required relocation of network nodes without cost to cities, unless excepted by federal or state law
Removal	Required for City construction or maintenance project or undergrounding utilities Required after revocation	None
Restoration	Required to restore to substantially same condition before Permit was granted for use of the right of way location	None
Remedies	Informal resolution, mediation, revocation or a location, revocation of the agreement, removal of pole or network node, and enforcement of the agreement by action of the City Attorney	None
Term	Sooner of 10 years or 2025	None
Termination	Either Party	None
Other Provisions	No generators, signage requirements, tree maintenance, graffiti abatement, liability, environmental laws, drug policy, security or bond, insurance	None