

# Implementation of S.B. 1004 – What can/must a city do?

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Georgia N. Crump  
gcrump@lglawfirm.com

# Compliance

- ❖ Can require compliance with ROW management ordinances, undergrounding requirements, zoning restrictions.
- ❖ Can continue to exercise zoning, land use, planning, and permitting authority.
- ❖ Can continue to impose police power-based regulations in management of PROW
- ❖ Can require compliance with a design manual – historic and design districts, parks and residential areas.
- ❖ Can require indemnification by providers, same as Chapter 283.
- ❖ Can require relocation or adjustment of NN in a timely manner and without cost to city.
- ❖ Can require non-interference with city mobile telecomm operations.

# Permits

- ❖ Can require permits for nodes, node support poles, and transport facilities.
- ❖ § 284.152.

# Fees

- ❖ Can charge permit/application fees for NN and NSP - § 284.156
- ❖ Can charge right-of-way use fees for each node, node support pole, and transport facility - §§ 284.053, .055.

## What's the size of a node?

- ❖ Antenna must fit within 6 cubic feet – real or imaginary.
- ❖ Can't be higher than 3 feet above the top of the pole.
- ❖ Can't protrude more than 2 feet from the side of the pole.

## What if it's larger than this?

- ❖ Then not covered in the definition, and access not granted.

# How about a “micro network node”?

- ❖ Can't be larger than 24" long, 15" wide, and 12" high.
- ❖ Any exterior antenna can't be longer than 11".

# What about “other” equipment?

- ❖ The cumulative size of other equipment associated with the network node can't be more than 28 cubic feet in volume.
- ❖ And, it can't protrude more than 2 feet from outer circumference of existing structure or pole.

## **How about ground-based enclosures, separate from poles?**

- ❖ No taller than 3 ½ feet from grade, no wider than 3 ½ feet, no deeper than 3 ½ feet.

## **How about pole-mounted enclosures?**

- ❖ Can't be taller than 5 feet.

# How about poles?

- ❖ No higher than the *LESSER* of:
  - 10 feet above the tallest utility pole within 500 linear feet, or 55 feet.
- ❖ If higher than this – not covered by Chapter 284, and not allowed as matter of right.
  - E.g., 120' poles in PROW (Mobilitie).

# What's not included in these limitations?

- ❖ Electric meters;
- ❖ Concealment elements;
- ❖ Telecomm demarcation boxes;
- ❖ Grounding equipment;
- ❖ Power transfer switches;
- ❖ Cut-off switches; and
- ❖ Vertical cable runs for connection of power and other services.

# ROW Management Ordinance

## § 284.001(c) – Findings and Policy

“It is the policy of this state, subject to state law and strictly within the requirements and limitations prescribed by this chapter, that municipalities:

- (1) Retain the authority to manage the public right-of-way to ensure the health, safety, and welfare of the public...”

# ROW Management Ordinance, cont.

## § 284.002 – Definitions

(19) “public right-of-way management ordinance” means an ordinance that complies with Subchapter C.

## Industry focus on § 284.110 – Discrimination Prohibited.

In the management of, and access to, the PROW, the city’s exercise of administrative and regulatory authority must be competitively neutral with regard to other users of the PROW.

## ROW Management Ordinance, cont.

§ 284.101 – city may not require a network provider to obtain a special use permit or similar zoning review, nor may the network provider be subject to further land use approval to access PROW in order to:

- 1) Construct, modify, maintain, operate, relocate, and remove a NN or NSP;
- 2) Modify or replace a utility pole or NSP; and
- 3) Collocate on a pole, subject to agreement with the city.

***But*** all of these activities are subject to applicable codes, including PROW management ordinances.

## ROW Management Ordinance, cont.

**And** all of these activities must comply with §294.102:

- May not obstruct, impede, or hinder usual travel or public safety on PROW;
- May not obstruct legal use of PROW by other utility providers;
- May not violate nondiscriminatory applicable codes;
- May not violate or conflict with city's PROW design specifications;
- May not violate federal Americans with Disabilities Act of 1990.

# PROW Management Ordinance

- ❖ Review existing ordinance – most provisions should also apply to Network Providers.
- ❖ Will need additional provisions related to permit processing and fees.
- ❖ In general – keep as uniform as possible to avoid claims of discrimination.
- ❖ In general – have provisions ensuring the non-violation of the provisions of §284.102 (above).

# Design Manual

**§ 284.108** – a city may adopt a Design Manual.

- ❖ For the installation and construction of NN and new NSP in the PROW.
- ❖ Supplements the installation and construction provisions of Chapter 284.
- ❖ Must not conflict with Chapter 284.

# Design Manual

Supplements the PROW management ordinance. May include:

1. Submittal of an industry standard pole load analysis for each service pole.
2. Requirement that NN equipment placed on new and existing poles be placed more than 8 feet above ground level.

Statute does *NOT* limit the Design Manual to these 2 items.

# Design Manual

- ❖ City can only impose requirements that are “in place” on date the permit application is filed.
- ❖ Time limitations for action on permit applications cannot be tolled or extended pending the adoption or modification of a design manual.

# Design Manual

So, what can be included?

- ❖ ROW management provisions
- ❖ preferences for location
- ❖ required concealment/camouflage measures/colors
- ❖ renderings of “pre-approved” designs for decorative fixtures, street signage installations
- ❖ identification requirements
- ❖ provisions for removing abandoned/damaged installations
- ❖ removal to underground locations
- ❖ placement in ROW (protecting sight-lines, pedestrian travel, ADA)
- ❖ minimum height of pole attachments (protecting sight-lines, pedestrians, etc.)
- ❖ set-backs for ground equipment from streets/parks/corners (same protections)
- ❖ limiting protrusions from poles
- ❖ limiting number of NN per pole
- ❖ spacing of new NSP
- ❖ placement restrictions to avoid interference with traffic signals

# Historic Districts/Design Districts

**§284.105** – Network Provider MUST obtain advance approval before installing new NN or new NSP in area zoned or designated as historic district or a design district.

- A “design district” must have decorative poles:  
Decorative pole is a streetlight pole “specially designed and placed for aesthetic purposes and on which no appurtenances or attachments [other than signage/banners] have been placed.” (§ 284.002(4))

# Historic Districts/Design Districts

Conditions for approval to locate in these districts:

- ❖ “require” use of design or concealment measures.
- ❖ “request” compliance with design and aesthetic standards.
- ❖ “explore feasibility” of certain camouflage measures to improve aesthetics of new NN, new NSP, or related ground equipment, or any portion of the nodes, poles, or equipment, to minimize impact to the aesthetics of the districts.

No limitation on city’s authority to enforce:

- ❖ historic preservation zoning regulations consistent with zoning authority under federal law,
- ❖ requirements for facility modifications under federal law, or
- ❖ National Historic Preservation Act of 1966.

# Underground Requirements

## § 284.107

- ❖ Any prohibitions on installation of aboveground structures in a PROW contained in ordinances, zoning regulations, state law, private deed restrictions, other public or private restrictions.
- ❖ Network Provider must comply with these restrictions for installations approved by permit from city.
- ❖ But can replace an existing structure in spite of these regulations.

# Protection of Parks and Residential Areas

## § 284.104

No installation of new NSP in PROW without city's nondiscriminatory written consent:

- ❖ PROW in a city park.
- ❖ PROW adjacent to street not more than 50' wide and adjacent to SF or MF residential lots (zoning or deed restrictions).

Compliance with private deed restrictions also required.

# Use of city-owned poles

Does the city have to allow NN on streetlights?  
On traffic signals? On directional signage?

§ 284.002(21) – “Service Pole”:

- ❖ Owned or operated by a city, in the PROW
- ❖ Supports traffic control functions
- ❖ Structure for signage
- ❖ Supports lighting (other than decorative pole)
- ❖ Supports only NN
- ❖ NOT a municipally-owned utility pole

# Use of city-owned poles

City can require a separate pole attachment agreement with network provider for location of NN on Service Poles.

## ❖ Non-discriminatory terms

- Can be very specific about weight limitations, access, removal, appearance, etc.

## ❖ Rental rate not to exceed \$20/year/pole.

# Permitting

Good idea to get procedures set up ahead of time – strict time requirements for processing permits.

No moratoria allowed for filing or processing permit applications, or issuing permits for NN or NSP – § 284.151.

Permit requirements should apply to all occupants of PROW (no discrimination, remember?)

# Permitting

§ 284.153 – Can't require more info on application than that required for telecommunications utility (no discrimination, remember?)

UNLESS the information directly related to requirements of Chapter 284.

**Application fees** not to exceed the lesser of:

- ❖ actual, direct, and reasonable costs, reasonably related in time to the time the costs are incurred; OR
- ❖ \$500 for up to 5 NN; \$250 for each additional NN per application; and \$1,000 for each pole.

No third-party legal or engineering costs to be included; no contingency fees.

# Permits Not Allowed

§ 284.157 - no application, permit, or payment allowed for:

- ❖ Routine maintenance with no excavation or closing of sidewalks or traffic lanes;
- ❖ Replace or upgrade NN or pole with node or pole substantially similar in size or smaller, and no excavation or closing;
- ❖ Install, place, maintain, operate, or replace Micro NN strung on cables between existing poles or NSP.

# Permits Not Allowed

## Substantially Similar NN or NSP:

- ❖ New or upgraded NN not more than 10% larger than existing NN (still may not exceed size limitations)
- ❖ New or upgraded NSP not more than 10% higher than existing pole (still may not exceed height limitations).
- ❖ Replacement or upgrade doesn't include replacement of an existing NSP.
- ❖ Replacement or upgrade doesn't defeat existing concealment elements of NSP.

# Permitting - § 284.153

Standard form application should be used, can require:

- ❖ Construction and engineering drawings (especially for historic, design, and underground districts, location vis-à-vis residential areas and parks)
- ❖ Info to confirm compliance with PROW design specifications and codes (drawings to show set-backs, protection of sight-lines, etc.)

# Permitting

## Very Important Time Requirements

§ 284.154 – Meet these requirements or permit will be *deemed approved*.

### Application submitted:

- ❖ For transport facility – determine if complete and notify applicant within 10 days.
- ❖ For NN or NSP – determine if complete and notify within 30 days.

# Permitting

## **If Application complete:**

- ❖ For transport facility – approve or deny within 21 days.
- ❖ For NN – approve or deny within 60 days.
- ❖ For NSP – approve or deny within 150 days.

## **If deny – document reason for denial – notify on or before date denied.**

- ❖ Applicant has 30 days to cure deficiency, without paying additional fee, other than fee for actual costs incurred by city.
- ❖ City must approve or deny within 90 days (review limited to noticed deficiencies).

# Grandfathering?

**SB 1004, Section 2** – public/private agreements for deployment of NN and ordinances:

- ❖ Rates, terms, and conditions of agreements and ordinances entered into or enacted before Sept. 1, 2017, apply to all NN ***installed and operational before Sept. 1, 2017.***
- ❖ For all NN installed and operational after Sept. 1, 2017:
  - If rate, term, or condition of agreement or ordinance doesn't comply with Chapter 284, city must amend the agreement or ordinance to comply, and amended provisions take effect on March 1, 2018.
  - Every agreement or ordinance after Sept. 1, 2017, must comply.



# Questions?

Thank you