



Legislative UPDATE

April 9, 2021
Number 13

Bills on the Move

Significant Bills in Committee

S.B. 10 (Bettencourt), relating to community censorship. TML provided [written testimony](#). Left pending in Senate Local Government.

S.B. 861 (Paxton), relating to open meetings. TML President Karen Hunt testified in support of the bill. Voted from Senate Business and Commerce Committee.

H.B. 782 (Swanson), relating to recall elections, ballot propositions, and petitions. TML provided [written testimony](#). Left pending in House Elections.

H.B. 1879 (Schofield), relating to eminent domain. TML provided [written testimony](#). Left pending in House Land and Resource Management.

H.B. 1929 (Wilson), relating to ETJ development agreements. TML provided [written testimony](#). Left pending in House Land and Resource Management.

H.B. 2438 (Meyer), relating to law enforcement funding. TML provided [written testimony](#). Left pending in House Ways & Means.

H.B. 2578 (Leach), relating to newspaper notice. Left pending in House State Affairs.

[H.B. 2590 \(Leach\)](#), relating to building permits. TML provided [written testimony](#). Left pending in House Land and Resource Management.

[H.B. 2776 \(Deshotel\)](#), relating to disannexation. TML provided [written testimony](#). Left pending in House Land and Resource Management.

[H.B. 4121 \(Guillen\)](#), relating to land development applications. TML provided [written testimony](#). Left pending in House Land and Resource Management.

Significant Floor Action

[H.B. 5 \(Ashby\)](#), relating to broadband. Passed to third reading in the Texas House.

[H.B. 738 \(Paul\)](#), relating to building codes. Passed the Texas House.

[H.B. 1118 \(Capriglione\)](#), relating to cybersecurity training. Passed the Texas House.

[H.B. 2073 \(Burrows\)](#), relating to quarantine leave for fire fighters, peace officers, and emergency technicians. Passed the Texas House.

[H.B. 2404 \(Meyer\)](#), relating to Chapter 380 Economic Development Agreements. Passed the Texas House.

[H.B. 2429 \(Meyer\)](#), relating to property tax rate notice. Passed to third reading in Texas House.

[S.B. 24 \(Huffman\)](#), relating to pre-employment procedures for law enforcement. Passed the Texas Senate.

TCEQ Proposes Rules Requiring Alternative Language for Certain Permits

The Texas Commission on Environmental Quality (TCEQ) is [proposing rules](#) that would require translations for certain proceedings and applications for TCEQ permits. Specifically, the rules would apply to: (1) all air quality permit applications; and (2) water quality or waste permit applications when the closest elementary or middle school nearest to the facility or proposed facility is required by Texas law to provide a bilingual education program. The required translations will result in additional costs for cities seeking these permits.

Under the proposed rules, applicants required to publish an alternative language notice of their permitting action would also be required to: (1) translate notice of any public meeting; (2) provide professional interpretation services at any public meeting; and (3) translate certain information related to a contested case hearing.

The comment period closes on **April 26, 2021**. Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box

13087, Austin, Texas 78711-3087, or faxed to fax4808@tceq.texas.gov. Electronic comments may be submitted at: <https://www6.tceq.texas.gov/rules/ecomments/>. All comments should reference **Rule Project Number 2020-018-039-LS**.

TCEQ will also hold *virtual* public hearings on this proposal on April 20 and April 22. TCEQ staff members will be available to discuss the proposal 30 minutes prior to and after the virtual hearings via the GoToMeeting Q&A chat function.

Public Hearing Details

Webinar link for all sessions <https://www.gotomeeting.com/webinar/join-webinar>.

Tuesday, April 20, 2021 @ 9:30 a.m. (CST) Webinar ID 328-027-147

Thursday, April 22, 2021 @ 1:30 p.m. (CST) Webinar ID 627-364-267

For those persons without computer or internet access who would like to participate in the webinars (in English): Call (844) 368-7161 and enter code 435007#.

EPA Announces Public Listening Sessions and Roundtables on the Lead and Copper Rule Revisions

The U.S. Environmental Protection Agency (EPA) announced upcoming public listening sessions and roundtables to ensure that communities and stakeholders have the opportunity to provide their perspectives to the agency on protections from lead in drinking water. Virtual public listening sessions will be held on April 28, 2021, and May 5, 2021. EPA will then host community-focused virtual roundtables, starting in May of 2021. Additional details are available at www.epa.gov/safewater. Those unable to attend any of the events will be able to submit comments via the docket at: <http://www.regulations.gov>, Docket ID: EPA-HQ-OW-2021-0255 until June 30, 2021.

Broadband Legal Update: FCC and Federal and State Court Proceedings

The League's last general update on the status of various broadband actions affecting cities was in late 2019. At that time, the picture was fairly grim – especially at the Federal Communications Commission. The new presidential administration at the federal level led to the appointment of a new FCC chairwoman early in 2021. Nevertheless, cities face an uphill battle in most of the following proceedings:

- **Federal Small Cell Order Lawsuit:** Early in 2019, the FCC issued its “Declaratory Ruling and Third Report and Order” relating to state and local management of small cell wireless infrastructure deployment. It preempts cities in many areas, but the most significant provisions are: (1) “shot clocks” for small cell wireless facility siting review;

(2) limits on recurring fees for small cells in the rights-of-way, such as rights-of-way access 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; and (3) limits allowable local aesthetic requirements, including minimum spacing requirements.

Shortly after the order became effective, a nationwide coalition of cities and state leagues, including TML, filed a lawsuit to overturn it. In 2020, the U.S. Court of Appeals for the Tenth Circuit denied the coalition’s motion to postpone implementation of the order while the lawsuit advances.

After the case was transferred for procedural reasons, a three-judge panel of the Ninth Circuit Court of Appeals issued its opinion in *City of Portland v. the United States of America/Federal Communications Commission*. The opinion was a mixed bag for cities, with most issues decided in favor of the cellular industry. The most important issue involved the cap on right-of-way rental (a.k.a., “franchise”) fees for small cell deployment. The panel upheld the provision limiting a city’s right-of-way fees to “an amount needed to recover administrative costs.” After several intermediate steps, the coalition appealed the federal order to the U.S. Supreme Court on March 22, 2021, and that appeal is pending.

- **FCC Cable In-Kind Order and Lawsuit:** In 2018, the FCC released a “Second Further Notice of Proposed Rulemaking” that will allow cable companies to deduct the fair market value of a wide range of franchise obligations, including public, educational, and governmental (PEG) channel capacity and other PEG-related franchise requirements, from their existing franchise fee payments. If the FCC’s proposed new rules are adopted, cities that operate PEG channels will see reductions in franchise fee payments from cable operators.

The League is participating in another coalition of cities that filed comments on the proposal, filed a motion for stay at the FCC, and filed a lawsuit in September of 2019 in federal court to halt the implementation of the rules.

Following the President’s appointment of the new chair, the FCC asked the Sixth Circuit court to delay oral argument in the case, which is scheduled for April 15, 2021, to allow further review of the issue. Unfortunately, the court rejected the request on March 19.

- **FCC Collocation Petitions for Declaratory Ruling:** In September 2019, the Wireless Industry Association (WIA) and the Communications Technology Industry Association (CTIA) filed petitions with the FCC to further limit local oversight of wireless towers and pole attachments.

The FCC requested comments on the proposals and whether it should expand the scope of an existing federal law (Section 6409 of the Middle-Class Tax Relief and Job Creation Act of 2012) that already preempts certain municipal regulations relating to wireless towers. If enacted, the proposals from WIA and CTIA would substantially limit the authority of local governments to manage large wireless towers in their communities, as well as further

limiting the control that pole owners, such as municipal utilities, have over pole attachments.

TML joined a coalition consisting of the National League of Cities, the Texas Coalition of Cities for Utilities Issues, and several cities to file comments in opposition to the proposal. The litigation was moving forward in the Ninth Circuit Court of Appeals, but the FCC also requested an abeyance in this case to allow its staff more time to study the issue. In this case, the court granted that request and stayed all proceedings until July 2021, at the earliest.

- **State Court Franchise Fee Lawsuit:** This lawsuit claims that small cell rental fees, and the elimination of video franchise fees or telephone access line fees, violates the Texas Constitution's "donations" provisions.

In 2017, 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. 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. That lawsuit was recently amended to add a claim based on S.B. 1152, the "franchise fee elimination" bill passed in 2019. That bill, S.B. 1152, 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 that bill.

These bills, if left unchecked, could lead the way to the complete elimination of all franchise fees in future sessions. That is why the lawsuit to prove that they are unconstitutional, which is still pending in state district court, is so important to Texas cities.

League staff will continue to participate in these proceedings and report on future activity.

Stay Engaged During the Legislative Session: Grassroots Involvement Program

During the upcoming Texas legislative session, Texas cities will face many challenges and opportunities. TML will need to mobilize our membership at key points during session. The Grassroots Involvement Program (GRIP) is one way to do so. Our GRIP survey focuses on a variety of items including your areas of expertise and involvement with other professional

organizations. Most importantly, the GRIP survey asks how well you know various state legislators and if you are willing to communicate with those legislators during the session. With many unknowns on how the capitol will operate during a pandemic, TML's grassroots approach will be crucial to our efforts.

If you have a relationship with your legislator(s) or want to be more involved during session, please take the time to complete the [GRIP survey](#). Past efforts have proven that such participation is a highly effective tool.

We ask that you complete the survey as soon as possible.

City Officials Testify

When the legislature is in session, nothing compares to the effectiveness of city officials testifying at the Capitol. City officials who take the time to attend legislative committee meetings – whether virtually or by traveling to Austin – to speak out on important city issues should be applauded by us all. The League extends its thanks to all those who are vigilantly representing cities during this session. If we missed your testimony let us know by an email to ford@tml.org, and we will recognize you in next week's edition.

The following officials testified in committee hearings held March 29 through April 1:

- Sally Bakko, Director of Policy and Government Relations, City of Galveston
- Joel Baker, Fire Chief, City of Austin
- Chris Herrington, Environmental Officer, City of Austin
- Bryan Block, Program Manager, Music Office, Economic Development Department, City of Austin
- Loren Hopkins, Chief Environmental Officer, City of Houston
- Bill Kelly, Director of Government Relations, City of Houston
- Jeff Cheney, Mayor, City of Frisco
- Leonard Chan, City of Houston Fire Department
- Lee Kleinman, Councilmember, City of Dallas
- Chris Caso, City Attorney, City of Dallas
- Jesse Reyes, Assistant Chief, City of Dallas Police Department
- Heather Hubert, Finance Director, City of Corpus Christi
- Adam Colby, Sergeant, City of Tyler Police Department
- Ron Jensen, Mayor, City of Grand Prairie
- Donovan Burton, VP - Water Resources & Governmental Relations, San Antonio Water System
- Margaret Wallace Brown, Planning Director, City of Houston
- Greg Smith, Councilmember, City of Corpus Christi
- Ben Molina, Councilmember, City of Corpus Christi
- Cyrus Zafrani, Police Lieutenant, City of Dallas
- Cathy Skurow, Mayor, City of Portland

- Kathryn Bruning, Asst. Director, Administration & Regulatory Affairs, City of Houston
- Adam Bazaldua, Councilmember, City of Dallas
- Teresa Adrian, Code Enforcement Director, City of Irving
- Richard Aubin, Councilmember, City of Garland
- Robert Severance III, Chief of Police, City of Cleburne
- Shane Wickson, Lieutenant, City of Cleburne Police Department
- Deborah Klein, Deputy City Attorney, City of San Antonio
- Jimmy Reyes, Assistant Chief, City of San Antonio Police Department
- Hope Wells, Corporate Counsel, San Antonio Water Services
- Dalton Rice, City Manager, City of Morgan's Point Resort
- Jared Miller, City Manager, City of Amarillo
- Daniel Pope, Mayor, City of Lubbock

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 the legal department for legal assistance at legalinfo@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 an email update each Tuesday with information on new developments. The email updates are our primary means of communication during the pandemic. Those emails are archived [chronologically](#) as well as by [subject matter](#).

TML member cities may use the material herein for any purpose. No other person or entity may reproduce, duplicate, or distribute any part of this document without the written authorization of the Texas Municipal League.