

RESOLUTION NO. 20170817-076

WHEREAS, the 85th Texas Legislature adopted Senate Bill 1004 that enacts new Chapter 284 of the Texas Local Government Code requiring all Texas municipalities to grant access to wireless telecommunications companies to place cellular antennae and equipment (“small cell nodes”) in public rights-of-way and on municipal light poles, traffic poles, street signs, and utility poles; and

WHEREAS, the new law fixes artificially low caps on the fees cities may charge wireless companies to process requests to use public right-of-way and poles and on the rents cities may obtain for the private use of public right-of-way and assets that are well below cities’ administrative costs and the value of the public spaces and assets required to be provided; and

WHEREAS, these caps are a taxpayer and electric-ratepayer subsidy to the cellular industry, granting the use of public property and resources to a private industry for a price below cities’ costs and at a fraction of the value of the public space provided, denying cities fair and reasonable compensation for the use of public rights-of-way and infrastructure; and

WHEREAS, the caps imposed by the new law will create an estimated negative fiscal impact to the City of Austin of over \$3.5 million through the end of Fiscal Year 2018, and this impact may be much higher in following years based on the anticipated requests for small cell node placement using the wireless industry’s projections; and

WHEREAS, the Texas Municipal League estimates that SB 1004 will likely result in a \$750 million transfer from Texas taxpayers to the private cellular industry; and

WHEREAS, the new law imposes administratively burdensome deadlines for reviewing permit applications for small cell nodes that, if not met, grant the permit by default, and severely limits the City's discretion and regulation over placement and aesthetics; and

WHEREAS, SB 1004 greatly limits cities' ability to control the aesthetic impacts of cellular infrastructure in the public streets and rights-of-way – including control over the placement of poles that may reach up to 55 feet in height – and may require cities to allow placement of facilities on electric utility infrastructure located on private property; and

WHEREAS, before the passage of SB 1004 the City of Austin had already begun implementation of a program to increase the presence of small cell nodes within the City, but on terms that were just and fair to Austin taxpayers; and

WHEREAS, the City Council is concerned about taxpayers and electric ratepayers being forced to subsidize the cellular industry; and

WHEREAS, other Texas municipalities have expressed the same concerns and are contemplating legal action to challenge SB 1004; **NOW, THEREFORE,**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

The Austin City Council believes that the requirements of SB 1004 are an unfair burden on Austin taxpayers and electric ratepayers; jeopardize the aesthetic characteristics of Austin and unreasonably interfere with the Council's ability to govern the municipal rights-of-way; and subsidize the private cellular industry.

BE IT FURTHER RESOLVED:

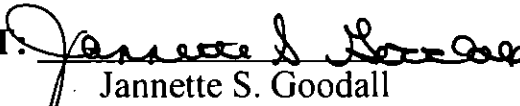
The City Manager is directed to prepare and pursue litigation, as appropriate, to challenge the requirements of SB 1004 in order to provide relief to Austin taxpayers and ratepayers.

BE IT FURTHER RESOLVED:

The City Manager is further directed to identify and allocate necessary resources for such litigation and to explore coordination with other municipalities engaging in similar litigation.

ADOPTED: August 17, 2017

ATTEST:


Jannette S. Goodall
City Clerk