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The New Local Government Code Chapter 284 Planning Considerations

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Local Government Code Chapter 284 Planning Considerations

Chapter 284 of the Local Government Code became effective September 1, 2017. That chapter allows network nodes to be in the right-of-way without a grant of authority from the local government.

That statement may raise some questions for you, such as:

- Why do I care about that law as a land use attorney?
- Why should my clients, either municipalities or developers or other land owners, care about the new law, and if they do care, what can they do?
- And, finally - what is a network node?

The law, which was passed over the objections of municipalities and without input from and without input from the majority of developers and land owners, will affect cities, developers, landowners and their attorneys for decades to come. This paper will look at what the law is, the new requirements, what actions a city should take, and the paper and presentation will also explain what a network node is.

Let's start at the beginning (last question first) – what is a network node?

Chapter 284 (S.B. 1004) refers to “network nodes” but people may have heard of or be familiar with such equipment under a different title – distributed antenna systems (“DAS”) or small cell systems. Both systems are different from the traditional cell towers (sometimes referred to as a “macro” cell site) in size, that is, both are smaller and may use existing poles, such as electrical poles, instead of a new tower. These systems are not as small as some companies would have you believe, but they are smaller than the traditional cell tower.

Distributed Antenna Systems are defined as “A distributed antenna system, or DAS, is a network of spatially separated antenna nodes connected to a common source via a transport medium that provides wireless service within a geographic area or structure. DAS antenna elevations are generally at or below the clutter level and node installations are compact.”¹ It was an earlier system,² and it appears to have been initially designed for indoor areas, such as stadiums, which had challenges with cell phone and data usage.

“Small cells are low-powered cellular radio access nodes that operate in licensed and unlicensed spectrum that have a range of 10 meters to a few kilometers. They are ‘small’ compared to a mobile macrocell, partly because they have a shorter range and partly because they typically handle fewer concurrent calls or sessions. They make best use of available spectrum by re-using the same frequencies many times within a geographical area. Fewer new macrocell sites being built, with larger numbers of small cells recognized as an important method of increasing cellular network capacity, quality and resilience with a growing focus using LTE Advanced.”³

The statutory definition is tediously long, but in the end the statutory definition is the only one that counts. It is:

(12) "Network node" means equipment at a fixed location that enables wireless communications between user equipment and a communications network. The term:

(A) includes:

(i) equipment associated with wireless communications;

(ii) a radio transceiver, an antenna, a battery-only backup power supply, and comparable equipment, regardless of technological configuration; and

¹ Wikipedia, https://en.wikipedia.org/wiki/Distributed_antenna_system .

² “When small cells first appeared a few years ago, many pundits and some mobile operators proclaimed that distributed antenna systems (DAS) were dead.” Spindler, John, “Use Distributed Antenna Systems to Complement Small Cells,” *Network World*, September 12, 2016

³From Wikipedia article https://en.wikipedia.org/wiki/Small_cell

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