



Office of the City Manager

CONSENT CALENDAR
January 25, 2011

To: Honorable Mayor and Members of the City Council
 From: *PK* Phil Kamlarz, City Manager
 Submitted by: Zach Cowan, City Attorney
 Subject: Amendment to Berkeley Municipal Code Chapter 16.10 to Codify Existing Application Process

RECOMMENDATION

Adopt first reading of an Ordinance codifying the existing practice for permitting telecommunications facilities in the public right of way under BMC Chapter 16.10.

FISCAL IMPACTS OF RECOMMENDATION

No impacts.

CURRENT SITUATION AND ITS EFFECTS

Recent applications by a wireless telecommunications carrier to install microcells on utility poles in the public right of way have brought to light discrepancies between the provisions of Chapter 16.10 and the application and review process actually in use. The purpose of this amendment is to codify existing practice, which provides for more review and public notice than Chapter 16.10 as currently drafted.

Chapter 16.10 regulates telecommunications facilities in the public right of way. With respect to facilities that are located exclusively on utility poles (as opposed to those located on the ground), it requires public notice prior to construction or installation, but not prior to approval. In fact, however, the Public Works Department has been requiring applicants to provide public notice prior to approval. This practice has proved useful, by resulting in more scrutiny of problematic proposals, and providing an opportunity for affected property owners and residents to contact the applicants to resolve any differences before the City takes any action.

Nonetheless, because the pre-approval public notice requirement for these types of facilities is not in Chapter 16.10, the City is arguably prohibited from imposing them as an administrative matter. Thus, the proposed ordinance would codify this process in Chapter 16.10, giving staff positive authority to impose these procedural requirements.

BACKGROUND

See preceding discussion.

RATIONALE FOR RECOMMENDATION

See preceding discussion.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Zach Cowan, City Attorney, 981-6998

Attachment:

1: Ordinance amending BMC Section 16.10.030 and adding Section 16.10.045

ORDINANCE NO. #,### – N.S.

AMENDING SECTION 16.10.030 AND ADDING SECTION 16.10.045 OF THE
BERKELEY MUNICIPAL CODE REGULATING TELECOMMUNICATIONS FACILITIES
IN THE PUBLIC RIGHT OF WAY

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Section 16.10.030.A of the Berkeley Municipal Code is amended to read as follows:

A. 1. Except as provided in subdivision B, in addition to any agreement, license, permit or Franchise required by this Code or any other local, state or federal law, no Company may undertake any project involving excavation in the PROW for a Facility or installation of an AGF, in order to construct, install, or repair a Telecommunications or Video System, or a portion thereof, without first obtaining a PROW permit pursuant to this Chapter and paying all lawful fees required by this Code. The Director shall have the authority to determine whether a proposed Facility is an AGF as defined in Section 16.10.020.A.1.

2. All Facilities proposed to be located on utility poles owned or controlled by the Northern California Joint Pole Authority shall be subject to the application requirements and process set forth in Section 16.10.045.

Section 2. That Section 16.10.045 is added to the Berkeley Municipal Code to read as follows:

16.10.045 Applications for Facilities other than AGFs

A. Applications for Facilities subject to Section 16.10.030.A.2 shall include proof that all entities with authority to grant or deny permission for installation of the Facility have approved it.

B. Such applications shall also include proof that all property owners and occupants within 500 feet of the proposed location of the Facility have been given notice by first class mail, at least 30 days prior to the date of the application, of the proposed construction or installation of the Facility. Such notice shall also be posted on the pole on which the Facility is proposed to be installed. Notices under this Section shall identify the specific pole on which the Facility is proposed to be installed and contact information for the Company or its authorized representative. The purpose of this notice is to ensure that property owners and residents have an opportunity to contact the Company and any entities responsible for the pole on which the Facility is proposed to be located so that they can try to resolve any objections they may have.

C. The application shall include all communications received by the Company in response to the public notice, as well as its responses to those communications.

Section 3. Posting.

Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within fifteen days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.