

ORDINANCE NO. 7,540-N.S

AMENDING BERKELEY MUNICIPAL CODE SECTION 16.10.100 TO REQUIRE REGULAR TESTING OF WIRELESS TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT OF WAY IN ORDER TO VERIFY COMPLIANCE WITH FCC REQUIREMENTS

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

Section 1. That a new subdivision G is added to Berkeley Municipal Code Section 16.10.100 to read as follows:

G. No wireless telecommunications facility (“WTF”) or combination of facilities subject to this Chapter shall produce power densities that exceed applicable FCC limits for electric and magnetic field strength and power density for transmitters. In order to ensure compliance with all applicable exposure standards, WTFs that are not categorically excluded from the FCC’s standards may be required to submit reports as required by this subdivision. Notwithstanding anything herein, no operator shall be required to provide any report, or any information in any report, that exceeds reports or information required by the FCC. The City may obtain, at the operator’s expense, independent verification of the results of any analysis. If an operator of a WTF fails to supply the required report or fails to correct a violation of the FCC standard following notification, the PROW Permit for that WTF shall be suspended until the operator complies with this subdivision.

1. Within forty five (45) days of initial operation or modification of a WTF that is not categorically excluded from the FCC’s standards, the operator of each new or modified telecommunications antenna associated with that WTF shall submit to the City a written report that the WTF’s radio frequency exposure is in compliance with applicable FCC regulations. The report shall state the radio frequency radiation of the approved WTF, including the cumulative impact from other nearby WTFs, and state whether it meets any applicable FCC requirements. If the report shows that the WTF does not comply with applicable FCC requirements, the owner or operator shall cease operation of the WTF until it complies with, or has been modified to comply with, FCC requirements. Proof of compliance shall be a report provided by the person who prepared the original report. The City may require, at the applicant’s expense, peer review or independent verification of the results of the analysis.

2. Prior to January 31st of every year, an authorized representative for the operator of a WTF permitted under this Chapter shall provide written certification to the City that each WTF is being operated in accordance with the applicable FCC Maximum Permissible Exposure (MPE) standards.

3. With respect to a WTF that is not categorically excluded from the FCC’s standards, once every two years, at the operator’s expense, the City may conduct, or retain a licensed professional engineer to conduct, an unannounced spot check of the WTF’s compliance with applicable FCC MPE standards.

4. To the extent required by the FCC standards, the operator of a WTF shall be required to submit to the City a report, based on actual measurements, of compliance with applicable FCC MPE limits within 90 days of a reduction in the FCC’s MPE limits for

electric and magnetic field strength and power density for transmitters, or of any modification of the WTF requiring a new submission under FCC standards to determine compliance. If calculated levels are not in compliance with the FCC's MPE limits, the operator shall cease operation of the WTF until it is brought into compliance with the FCC's standards. A report of these calculations and required measurements, if any, and the findings with respect to compliance with the current MPE limits, shall be submitted to the City.

For purposes of this subdivision, "wireless telecommunications facility" means personal wireless service facilities as defined in the Telecommunications Act of 1996, including, but not limited to, facilities that transmit and/or receive electromagnetic signals for cellular radio telephone service, personal communications services, enhanced specialized mobile services, paging systems, and related technologies. Such facilities include antennas, microwave dishes, parabolic antennas, and all other types of equipment used in the transmission or reception of such signals; telecommunication towers or similar structures supporting said equipment; associated equipment cabinets and/or buildings; and all other accessory development used for the provision of personal wireless services. WTF does not include radio towers, television towers, and government-operated public safety networks.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 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.

At a regular meeting of the Council of the City of Berkeley held on March 28, 2017, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Davila, Droste, Hahn, Harrison, Maio, Wengraf, Worthington and Arreguin.

Noes: None.

Absent: None.