SUPPLEMENTAL
AGENDA MATERIAL
for Supplemental Packet 3

Meeting Date: May 19, 2020

Item Number: #1

Item Description: Adoption of an Ordinance Amending Berkeley Municipal Code Chapter 16.10 (Installation of Video and Telecommunications Systems) and Revised Guidelines for Issuance of Public Right-of-Way Permits

Submitted by: Councilmember Wengraf

Revised Supplemental 2 packet with proposed changes to Ordinance and Administrative Guidelines.
REVISED Supplemental 2: Proposed amendments to Ordinance Amending Berkeley Municipal Code Chapter 16.10 (Installation of Video and Telecommunications Systems) and Revised Guidelines for Issuance of Public Right-of-Way Permits

Underlined text marks revisions to Supplemental 2

ORDINANCE

16.10.010 Purpose

Add Item B: These regulations are designed to protect and promote public safety, community welfare and the aesthetic quality of the city consistent with the goals, objectives and policies of the Berkeley General Plan while at the same time providing for managed development of wireless communications infrastructure in accordance with current law. (Councilmember Wengraf)

Add Item C: The City recognizes that judicial interpretation of Public Utilities Code Sections 7901 and 7901.1 authorizes the City to take notice that “lines or equipment might generate noise, cause negative health consequences, or create safety concerns”, which “could disturb public road use, or disturb its quiet enjoyment.” (T-Mobile West LLC v. City and County of San Francisco (2019) 6 Cal. 5th 1107, 1119.) This Ordinance seeks to protect the public welfare in a manner consistent with Public Utilities Code Sections 7901 and 7901.1. (Councilmember Harrison)

16.10.020 Definitions

Add sentence to the end of the “Franchise” definition: All franchise agreements are subject to the provisions of Chapter 16.10 of the BMC and accompanying Administrative Guidelines. (Councilmember Wengraf)

OR

Add to the end of “Franchise” definition: No franchise issued by the City may operate to diminish the requirements for attainment or maintenance of a PROW Permit as provided in this Chapter. Each and any franchise issued by the City must be approved by the City Council. (Councilmember Harrison)

Add the following to the end of the “Video System” definition: No facial recognition technologies or other invasive technologies are allowed in the public right of way. Any future or potential use of such technologies is to be addressed in a separate ordinance specifically addressing that issue. (Councilmember Wengraf)
16.10.045 Additional Application Requirements for Facilities on Utility Poles
Pg. 11 of 84/5 (B.)
Before the second sentence, starting with “Such notice shall also be posted”, insert:
Notice shall be printed on a template form to be provided by the Director, which, among other terms, shall appraise recipients of the right to request a reasonable accommodation from the City pursuant to 28 C.F.R. § 35.106. (Councilmember Harrison)

Pg. 12 of 84/6 (L)
Add “technically” before feasible, to read: Where technically feasible...
(Councilmember Harrison)

16.10.070 Construction Activities
Pg. 15 of 84/9 (B.)
Add as last sentence: The Director shall develop written guidelines to implement the granting of waivers authorized pursuant to this Chapter. (Councilmember Harrison)

16.10.120 Pg. 22 of 84/16 (A)
Add to the end: To prevent circumvention of the intent of the provisions of this paragraph and further ensure that functionally non-operational facilities do not remain in the right of way, contributing to excessive visual clutter due to changing technological requirements, demand patterns or other reasons, permittees shall by January 30th of each year certify under penalty of perjury that all Telecommunication Systems (1) continue to remain necessary to provide the telecommunication services specified in the application, or (2) are necessary to provide specifically described, additional, documented telecommunication services. Failure to provide such certification and documentation satisfactory to the Director shall result in the facility being deemed abandoned six months after the Director provides written notice of the failure to provide documentation. In the event that the Director has good cause to doubt the reliability of information provided, the Director shall undertake appropriate investigations. (Councilmember Harrison)
16.10.150 Appeals

Pg. 23 of 84/17 (A)
Remove final period and add the following: so long as such considerations are prohibited by federal law. (Councilmember Wengraf)

Pg. 23 of 84/17 (B)
Change 10 days to 10 business days (Councilmember Wengraf)

Pg. 23 of 84/17 (C)
Change 10 days to 10 calendar days (Councilmember Wengraf)

16.10.200 Adoption of Administrative Regulations or Guidelines

Pg. 26 of 84/20 (A)
Replace "so long as such guidelines are consistent with the requirements of this chapter" with "so long as such guidelines do not diminish any requirement provided in this chapter." (Councilmember Harrison)

Pg. 26 of 84/20 (B)
Add: “or any other law restricting local authority over the PROW” to the first sentence, so it will read: “In the event that the FCC Report and Order, or any other law restricting local authority over the PROW is invalidated...” (Councilmember Wengraf)
ADMINISTRATIVE GUIDELINES

Section 4. Application and Review Procedures

Pg. 58 of 84/8  (11) Acoustic Analysis
Delete the last sentence: “In lieu of an acoustic analysis, the applicant may submit evidence...equipment will not, both individually and cumulatively, exceed the applicable noise limits. (Councilmember Wengraf)

Pg. 58 of 84/8  (12. b) Community meeting
Remove “but does not require” from the first sentence, so it reads: The City strongly encourages applicants to schedule, notice, arrange, and attend a pre-submittal community meeting with all interested members of the public. (Councilmember Wengraf)

Pg. 59 of 84/9 (12. e) Peer and Independent Consultant Review
Replace “in” with “at” in the first sentence, so it reads: ...the Director may, at their discretion... (Councilmember Wengraf)

Pg. 60 of 84/10 (12. G) Public Information
Need to specify the location on the City’s website. (Councilmember Wengraf)

Section 5. Decisions

Pg. 60 of 84/10  (b) Criteria for Approval
Add item after (2) to read: (3) the applicant must demonstrate evidence of need with verification of coverage gap. (Councilmember Wengraf)

Section 6. Conditions of Approval

Pg. 68 of 84/18 (23) Safety Hazard Protocols
Add this sentence to the start of the paragraph: After submittal by the applicant, the Director shall submit the application packet to the Fire Department. The Fire Chief (or their designee) shall review the application for compliance with objective health and safety standards related to fire hazards. (Councilmember Wengraf)

Section 7. Location Standards

Pg. 71 of 84/21 (a. 10) Location Preferences
Insert new item after (10) to read: (11) any location within all City of Berkeley High Hazard Fire Zones. (Councilmember Wengraf)

Pg. 71 of 84/21 (a. 11) Location Preferences
Move the former (11) item down to (12) to accommodate the change above. (Councilmember Wengraf)
Add new item: (13) the city has a strong locational preference against strand-mounted facilities anywhere within the city of Berkeley. (Councilmember Wengraf)

Section 8. Design Standards

Add the following under the heading: Provider shall use the smallest and least visible antennas, equipment cabinets, and other facilities to accomplish the operator’s coverage and service objectives. (Councilmember Wengraf)

(b) Noise

Remove the word “enclosed” in the second to last sentence, so it would read: All air conditioning units and any other equipment that may emit noise that would exceed the applicable noise control standards shall be equipped with noise attenuation devices. (Councilmember Harrison)

Add “and shall not be tested on weekends, holidays or between the hours of 5pm and 9am” to the last sentence, so it would read: Backup generators shall only be operated during periods of power outages or for testing and shall not be tested on weekends, holidays or between the hours of 5pm and 9am. (Councilmember Wengraf)