



Office of the City Manager

CONSENT CALENDAR
December 7, 2010

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 Section 16.10.050 Granting City Manager Authority to Adopt Implementing Regulations

RECOMMENDATION

Adopt an Urgency Ordinance granting the City Manager authority to adopt regulations to implement BMC Section 16.10.050, concerning equipment in the public right of way.

FISCAL IMPACTS OF RECOMMENDATION

No direct impacts. Development of design standards to implement Section 16.10.050 is expected to cost approximately \$10,000. (Budget code 010-8502-463-3038 FY11.)

CURRENT SITUATION AND ITS EFFECTS

At least one wireless telecommunications carrier has recently embarked on a significant effort to construct distributed antenna system components on telephone poles in areas where installation of cellular base stations on buildings is infeasible.

The first round of such applications has demonstrated that such facilities are quite large compared to equipment that is typically found on telephone poles, and if improperly installed, could present a physical hazard.

The City's existing ordinance governing installation of such facilities (BMC Chapter 16.10) does not provide sufficient guidance as to their design. Moreover, since technology will continue to evolve, it would not be appropriate to adopt design standards for such facilities in the Ordinance itself. Rather, it is more appropriate to authorize the City Manager to adopt and revise such standards on an ongoing basis. Accordingly, the proposed amendment grants the City Manager this authority.

Since additional applications are expected imminently, it is critical for the immediate preservation of the public health and safety that such standards be adopted and be effective as soon as possible. The City Manager has already contracted for the development of design standards, and if this Ordinance is passed will adopt them as soon as they are complete.

Pursuant to Charter Section 93, the proposed urgency ordinance may only be adopted with the affirmative vote of 7 Council members.

BACKGROUND

See preceding discussion.

RATIONALE FOR RECOMMENDATION

See preceding discussion.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Zach Cowan, City Attorney, 981-6998

Attachments:

1: Urgency Ordinance amending BMC Section 16.10.050

ORDINANCE NO. #,###-N.S.

URGENCY ORDINANCE ADDING NEW SUBDIVISION (N) TO SECTION 16.10.050 OF THE BERKELEY MUNICIPAL CODE GRANTING THE CITY MANAGER AUTHORITY TO ADOPT IMPLEMENTING REGULATIONS

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

Section 1. Findings

The City Council finds that:

- A. At least one wireless telecommunications carrier has recently embarked on a significant effort to construct distributed antenna system components on telephone poles in areas where installation of cellular base stations on buildings is infeasible.
- B. It is likely that as early projects of this sort succeed, many more will follow, since there are large areas of the City where installation of cellular base stations on buildings is infeasible.
- C. The first round of such applications has demonstrated that such facilities are quite large compared to equipment that is typically found on telephone poles, and if improperly installed, could present a physical hazard.
- D. The City's existing ordinance governing installation of such facilities (BMC Chapter 16.10) does not provide sufficient guidance as to their design. Therefore it is necessary to adopt design standards for such facilities
- E. Since additional applications are expected imminently, it is critical for the immediate preservation of the public health and safety that such standards be adopted and be effective as soon as possible.

Section 2. That a new subdivision (N) is added to Section 16.10.050 of the Berkeley Municipal Code to read as follows:

N. The City Manager or his/her designee may adopt regulations, guidelines and standards to implement this Section.

Section 3. Vote Required, Immediately Effective

Based on the findings and evidence in Section 1 of this Urgency Ordinance, the Council determines that this Ordinance must go into effect immediately in order preserve public safety, health, and welfare. In addition, this Moratorium is intended to prohibit any uses that may be in conflict with contemplated general plan and/or zoning amendments that the Planning Department is considering or studying or intends to study within a reasonable time. This Ordinance shall go into effect immediately upon a seven-ninths vote of the City Council as provided in the Charter of the City of Berkeley.