

# ADMINISTRATIVE GUIDELINES FOR ISSUANCE OF PUBLIC RIGHT-OF-WAY PERMITS UNDER BERKELEY MUNICIPAL CODE CHAPTER 16.10

## SECTION 1. PURPOSE AND INTENT

(a) The City of Berkeley (“City”) intends these Guidelines to establish reasonable, uniform and comprehensive standards and procedures for the implementation of Berkeley Municipal Code Chapter 16.10. The standards and procedures contained in these Guidelines are intended to, and should be applied to, protect and promote public health, safety and welfare, and balance the benefits that flow from robust, advanced wireless services with the City’s local values, which include without limitation the aesthetic character of the City, its neighborhoods and community. These Guidelines are intended to achieve the following objectives:

(1) foster an aesthetically pleasing urban environment, protect and preserve public safety and general welfare, and protect the character of residential and adjacent neighborhood commercial areas by preventing visual blight and clutter from inappropriately designed and sited infrastructure facilities to the extent permitted by applicable laws;

(2) to preserve views and prevent adverse impacts to parks, neighborhoods, and historic resources;

(3) promote location and design of facilities to minimize interference with pedestrian and vehicular traffic, avoid damage to street trees, and protect historic and cultural, and natural resources by preventing degradation of their surrounding setting;

(4) minimize noise, traffic disruption, dust, air pollution, and other short-term impacts of construction activities and day-to-day operation;

(5) provide opportunities for citizens to comment on the location and design of overhead facilities, undergrounding work and aboveground structures to make installations more responsive to neighborhood concerns about their aesthetic and environmental effects;

(6) ensure that restoration of sidewalks, landscaped area, streets or other infrastructure damaged or removed is completed consistent with City specifications;

(7) provide greater certainty to both applicants and interested members of the public while ensuring compliance with all applicable City requirements;

(8) protect and preserve the City’s public rights-of-way and municipal infrastructure located within the City’s public rights-of-way;

(9) promote access to high-quality, advanced wireless services for the City’s residents, businesses and visitors; and

(10) promote equitable opportunities for all communities and peoples, taking into account the extent to which the benefits and burdens that providing advanced wireless

## **ADMINISTRATIVE GUIDELINES FOR ISSUANCE OF PUBLIC RIGHT-OF-WAY PERMITS UNDER BERKELEY MUNICIPAL CODE CHAPTER 16.10**

services accrue to or are imposed on different racial, cultural, linguistic, or geographic communities in the City.

(b) These Guidelines are intended to establish regulations, and standards for small wireless facilities consistent with the City's regulations for other infrastructure deployments unless specifically prohibited by applicable law. Different infrastructure deployments may be managed through other mechanisms, such as franchise or license agreements. These Guidelines are intended to be administered such that small wireless facility deployments shall apply the same aesthetic, maintenance and public safety regulations and standards to the permit or other approval issued in connection with a request for authorization under such franchise, license or other agreement. However, different infrastructure deployments may have different impacts on the public rights-of-way that require different regulations, standards or guidelines to protect public health, safety and welfare. To the extent that different regulations, standards or guidelines are applied to small wireless facilities or other infrastructure deployments, the City intends that one set be no more burdensome than comparable infrastructure when viewed under the totality of the circumstances.

(c) These Guidelines are not intended to, nor shall it be interpreted or applied to: (i) prohibit or effectively prohibit any personal wireless service provider's ability to provide personal wireless services; (ii) prohibit or effectively prohibit any entity's ability to provide any telecommunications service, subject to any competitively neutral and nondiscriminatory rules, regulations or other legal requirements for rights-of-way management; (iii) unreasonably discriminate among providers of functionally equivalent personal wireless services; (iv) regulate the placement, construction or modification of personal wireless service facilities on the basis of environmental effects of radio frequency emissions to the extent that such wireless facilities comply with the FCC's regulations concerning such emissions; (v) prohibit any collocation or modification that the City may not deny under federal or California state law; (vi) impose any unreasonable, discriminatory or anticompetitive fees that exceed the reasonable cost to provide the services for which the fee is charged; or (vii) otherwise authorize the City to preempt any applicable federal or California law.

(d) These Guidelines are not intended to and will not limit or prejudice any individual's ability to seek a reasonable accommodation under the Americans with Disabilities Act, the Fair Housing Act Amendments of 1988, the California Fair Employment and Housing Act or any other similar federal or state law due to electromagnetic sensitivity or symptoms based on exposure to radio frequency emissions.

### **SECTION 2. DEFINITIONS**

The definitions in this Section 2 are applicable to the terms, phrases and words of these Guidelines. Undefined terms, phrases or words will have the meanings assigned to them in 47 U.S.C. § 153 or, if not defined therein, will have the meaning assigned to

## ADMINISTRATIVE GUIDELINES FOR ISSUANCE OF PUBLIC RIGHT-OF-WAY PERMITS UNDER BERKELEY MUNICIPAL CODE CHAPTER 16.10

them in the Berkeley Municipal Code or, if not defined in either therein, will have their ordinary meanings. If any definition assigned to any term, phrase or word in this Section 2 conflicts with any federal or state-mandated definition, the federal or state-mandated definition will control.

**“Accessory equipment”** means equipment other than antennas used in connection with a small wireless facility or other infrastructure deployment. The term includes “transmission equipment” as defined by the FCC in 47 C.F.R. § 1.6100(b)(8), as may be amended or superseded.

**“Antenna”** means the same as defined by the FCC in 47 C.F.R. § 1.6002(b), as may be amended or superseded.

**“Batched application”** means more than one application submitted at the same time by the same applicant with the intention that the City shall process the requests for authorization together as a group.

**“Collocation”** means the same as defined by the FCC in 47 C.F.R. § 1.6002(g), as may be amended or superseded.

**“CPUC”** means the California Public Utilities Commission established in the California Constitution, Article XII, § 5, or its duly appointed successor agency.

**“Decorative pole”** means any pole that includes decorative or ornamental features, design elements and/or materials intended to enhance the appearance of the pole or the public rights-of-way in which the pole is located.

**“Director”** means the same as defined in Berkeley Municipal Code Section 16.10.020.

**“FCC”** means the Federal Communications Commission or its duly appointed successor agency.

**“FCC Shot Clock”** means the FCC’s presumptively reasonable time frame, accounting for any tolling or voluntary extension, or unusual circumstances justifying additional time, within which the City generally must act on a duly filed request for authorization in connection with a personal wireless service facility, as such time frame is defined by the FCC and as may be amended or superseded. For small wireless facilities, the FCC Shot Clock is 60 days for collocations and 90 days for new structures. For batched applications, the longest shot clock applicable to any small wireless facility in the batch shall be applicable to the entire batch (e.g., in a batch with four collocations and one new/replacement pole, the FCC Shot Clock would be 90 days for the entire batch even though the collocation applications would be 60 days if submitted on an individual basis).

## ADMINISTRATIVE GUIDELINES FOR ISSUANCE OF PUBLIC RIGHT-OF-WAY PERMITS UNDER BERKELEY MUNICIPAL CODE CHAPTER 16.10

“**OTARD**” means an “over-the-air reception device” and includes all antennas and antenna supports covered by 47 C.F.R. § 1.4000(a)(1), as may be amended or superseded.

“**Personal wireless services**” means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended or superseded.

“**Personal wireless service facilities**” means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended or superseded.

“**Public right-of-way**” or “**public rights-of-way**” has the meaning provided in BMC section 16.10.020.A.14.

“**RF**” means radio frequency or electromagnetic waves.

“**Shot clock days**” means calendar days counted toward the presumptively reasonable time under the applicable FCC Shot Clock. The term “shot clock days” does not include any calendar days on which the FCC Shot Clock is tolled. As an illustration and not a limitation, if an applicant applies on February 1, receives a valid incomplete notice on February 5 and then resubmits on February 20, only four “shot clock days” have elapsed because the time between the incomplete notice and resubmittal are not counted.

“**Small wireless facility**” means the same as defined by the FCC in 47 C.F.R. § 1.6002(l), as may be amended or superseded.

“**Support structure**” means a “structure” as defined by the FCC in 47 C.F.R. § 1.6002(m), as may be amended or superseded.

“**Technically Feasible**” means the same as defined in Berkeley Municipal Code Chapter 16.10“

“**Underground district**” means any area in the City within which overhead wires, cables, cabinets and associated overhead equipment, appurtenances and other improvements are either (i) prohibited by ordinance, resolution or other applicable law; (ii) scheduled to be relocated underground within 18 months from the time an application is submitted; or (iii) primarily located underground at the time an application is submitted.

### SECTION 3. APPLICABILITY

(a) **Small Wireless Facilities.** Except as expressly provided otherwise, the provisions in these Guidelines shall be applicable to all existing small wireless facilities and all applications and requests for authorization to construct, install, attach, operate, collocate, modify, reconstruct, relocate, remove or otherwise deploy small wireless

## ADMINISTRATIVE GUIDELINES FOR ISSUANCE OF PUBLIC RIGHT-OF-WAY PERMITS UNDER BERKELEY MUNICIPAL CODE CHAPTER 16.10

facilities within the public rights-of-way within the City's jurisdictional and territorial boundaries.

(b) **Other Infrastructure Deployments.** To the extent that other infrastructure deployments, including without limitation any deployments that require approval pursuant to Chapter 16.10, involve the same or substantially similar structures, apparatus, antennas, equipment, fixtures, cabinets, cables or improvements as those deployed for small wireless facilities, the City official or designee responsible to review and approve or deny requests for authorization in connection with such other infrastructure deployment shall apply the provisions in these Guidelines unless specifically prohibited by applicable law.

(c) **Exemptions.** These Guidelines shall not be applicable to (i) OTARD facilities and (ii) requests for approval to collocate, replace or remove transmission equipment at an existing wireless tower or base station submitted pursuant to as 47 U.S.C. § 1455(a), which will be subject to the current FCC rules and regulations applicable to "eligible facilities requests" as defined by FCC and as may be amended or superseded.

### SECTION 4. APPLICATION AND REVIEW PROCEDURES

(a) **Application Requirements for Small Wireless Facilities.** Berkeley Municipal Code Sections 16.10.040 and 16.10.045 set forth the minimum application requirements for a PROW Permit. In addition, or as clarification, to the minimum requirements in the Berkeley Municipal Code and any other publicly stated requirements, all PROW Permit applications for small wireless facilities must include the following information and materials:

(1) **Application Form.** The applicant shall submit a complete, duly executed PROW Permit application on the current City of Berkeley form.

(2) **Application Fee.** The applicant shall submit the applicable PROW Permit application fee established by City Council resolution. Batched applications must include the applicable PROW Permit application fee for each small wireless facility in the batch. If no PROW Permit application fee has been established, then the applicant must submit a signed written statement that acknowledges that the applicant will be required to reimburse the City for its reasonable costs incurred in connection with the application within 10 days after the City issues a written demand for reimbursement.

(3) **Construction Drawings.** The applicant shall submit true and correct construction drawings, prepared, signed by a licensed or registered engineer, that depict all the existing and proposed improvements, equipment and conditions related to the proposed project, which includes without limitation any and all poles, posts, pedestals, traffic signals, towers, streets, sidewalks, pedestrian ramps, driveways, curbs, gutters, drains, handholes, maintenance holes, fire hydrants, equipment cabinets, antennas, cables, trees and other landscape features. The construction drawings must: (i) contain cut sheets that contain the technical specifications for all

## ADMINISTRATIVE GUIDELINES FOR ISSUANCE OF PUBLIC RIGHT-OF-WAY PERMITS UNDER BERKELEY MUNICIPAL CODE CHAPTER 16.10

existing and proposed antennas and accessory equipment, which includes without limitation the manufacturer, model number and physical dimensions; (ii) identify all potential support structures within 75 feet from the proposed project site and call out such structures' overall height above ground level; (iii) depict the applicant's preliminary plan for electric and data backhaul utilities, which shall include the anticipated locations for all conduits, cables, wires, handholes, junctions, transformers, meters, disconnect switches, and points of connection; (iv) include locations for existing utility facilities within 50 feet of the footprint of work; and (v) demonstrate that proposed project will be in full compliance with all applicable health and safety laws, regulations or other rules, which includes without limitation all building codes, electric codes, local street and sidewalk standards and specifications, and public utility regulations and orders. All pole attachments shall be shown with pole numbers.

(4) **Site Survey.** For any small wireless facility, the applicant shall submit a survey prepared, signed and stamped by a licensed engineer. The survey must identify and depict all existing boundaries, encroachments and other structures within 75 feet from the proposed project site and any new improvements, which includes without limitation all: (i) traffic lanes; (ii) all private properties and property lines; (iii) above and below-grade utilities and related structures and encroachments; (iv) fire hydrants, roadside call boxes and other public safety infrastructure; (v) streetlights, decorative poles, traffic signals and permanent signage; (vi) sidewalks, driveways, parkways, curbs, gutters and storm drains; (vii) benches, trash cans, mailboxes, kiosks and other street furniture; and (viii) existing trees, planters and other landscaping features.

(5) **Photo Simulations.** The applicant shall submit site photographs and photo simulations that show the existing location and proposed small wireless facility in context from at least three vantage points within the public streets or other publicly accessible spaces, together with a vicinity map that shows the proposed site location and the photo location for each vantage point. At least one simulation must depict the small wireless facility from a vantage point approximately 50 feet from the proposed support structure or location. The photo simulations and vicinity map shall be incorporated into the construction plans submitted with the application.

(6) **Project Narrative and Justification.** The applicant shall submit a written statement that explains in plain factual detail whether and why the proposed facility qualifies as a "small wireless facility" as defined by the FCC in 47 C.F.R. § 1.6002(l). A complete written narrative analysis will state the applicable standard and all the facts that allow the City to conclude the standard has been met—bare conclusions not factually supported do not constitute a complete written analysis. As part of the written statement the applicant must also include (i) an analysis of whether and why the proposed support structure is a "structure" as defined by the FCC in 47 C.F.R. § 1.6002(m); (ii) where permitted by federal or state law, an analysis of whether and why the facility fills a gap in personal wireless services, introduces new personal wireless services, or improves existing personal wireless services, together with evidence of the existence of such gap or provision of such new service or improvement (including but

**ADMINISTRATIVE GUIDELINES FOR ISSUANCE OF PUBLIC RIGHT-OF-WAY PERMITS UNDER BERKELEY MUNICIPAL CODE CHAPTER 16.10**

not limited to applicable service area and network maps); (iii) an analysis of whether and why the proposed wireless facility meets the location and design standards in these Guidelines; (iv) evidence of a bona fide plan to actually deploy facilities by the applicant or specified third-party lessee(s); (v) an inventory of support of support structures and any technically feasible locations within 500 feet of the proposed location; and (vi) any additional information required in BMC Section 16.10.040 or Section 16.10.045. The projective narrative and justification must include sufficient information to demonstrate compliance with the requirements of Sections 7 and 8 of these Guidelines.

(7) **RF Compliance Report.** The applicant shall submit an RF exposure compliance report that certifies that the proposed small wireless facility, both individually and cumulatively with all other emitters that contribute more than 5% to the cumulative emissions in the vicinity (if any), will comply with applicable federal RF exposure standards and exposure limits. The RF report must be prepared and certified by an RF engineer acceptable to the Director. The RF report must include the actual frequency bands and power levels (in watts effective radiated power) for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also the boundaries of areas with RF exposures in excess of the controlled/occupational limit (as that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the project site. If the applicant submits a batched application, a separate RF report shall be prepared for each facility associated with the batch.

(8) **Public Notices.** The applicant shall include with the application an affidavit that attests that notice has been posted at the project site and three other conspicuous locations within 500 feet of the project site, and delivered by first class, certified mail to all record owners and legal occupants of all properties within 500 feet from the proposed project site. Notice to the legal occupants shall be deemed given when sent to the property's physical address. The notice shall be posted or delivered pursuant to Berkeley Municipal Code Section 16.10.040, must be on the form provided by the Director, and must contain: (i) a general project description; (ii) the applicant's identification and contact information as provided on the application submitted to the City for interested parties to submit comments; (iii) contact information for the Director; (iv) a statement that the Director will act on the application without a public hearing and that the owner or occupant may request to be notified of the Director's decision; (v) if the application is for a small wireless facility, a general statement that the FCC requires the City to take final action on such applications within 60 days for collocations and 90 days for facilities on new support structures; and (vi) a statement that any person that wishes to seek a reasonable accommodation under the American with Disabilities Act or Fair Housing Amendments Act may do so. The notice should provide the location, date and time of a community meeting, if applicable. The notice shall be delivered in an envelope that prominently displays the operator's logo and shall prominently display the text "NEW WIRELESS FACILITY INFORMATION" on the front of the envelope. The

## ADMINISTRATIVE GUIDELINES FOR ISSUANCE OF PUBLIC RIGHT-OF-WAY PERMITS UNDER BERKELEY MUNICIPAL CODE CHAPTER 16.10

applicant shall maintain (a) a list of recipients of the public notice and a log of any correspondence to or from the recipients of the notice prior to the City's final decision on the application, and (b) a separate list of recipients of the public notice who have requested to receive notice of the Director's decision to issue or deny a PROW Permit under Berkeley Municipal Code section 16.10.060.A.

(9) **Regulatory Authorization.** The applicant shall submit evidence of the applicant's regulatory status under federal and California law to provide the services and construct the small wireless facility proposed in the application. As illustrations, but not as limitations, the applicant's status as a telephone corporation under California law could be established by providing a copy of the applicant's Certificate of Public Convenience and Necessity. The applicant shall also be required to demonstrate compliance with the National Environmental Policy Act.

(10) **Property Owner's Authorization.** For any small wireless facility proposed to be installed on an existing or replacement support structure in the public rights-of-way, the applicant must submit the support structure identification number and a written authorization from the support structure owner(s). As an illustration, but not as a limitation, an applicant that proposes to install a small wireless facility on a utility pole owned or controlled by the Northern California Joint Pole Authority ("NCJPA") shall, pursuant to Berkeley Municipal Code Section 16.10.045.A, provide evidence that the proposed facility has been (i) affirmatively approved by all entities with authority to grant or deny permission for the installation or (ii) deemed approved by the operation of the NCJPA's procedures.

(11) **Acoustic Analysis.** The applicant shall submit an acoustic analysis prepared and certified by a California licensed engineer for the proposed small wireless facility and all associated equipment including all environmental control units, sump pumps, temporary backup power generators and permanent backup power generators demonstrating compliance with the applicable provisions in Berkeley Municipal Code Chapter 13.40. The acoustic analysis must also include an analysis of the manufacturers' specifications for all noise-emitting equipment and a depiction of the proposed equipment relative to all adjacent property lines. Where no generator, mechanical fan, or other noise-emitting equipment is proposed for installation, the applicant may submit, in lieu of an acoustic analysis, evidence from the equipment manufacturer(s) that demonstrates the ambient noise emitted from all the proposed equipment will not, both individually and cumulatively, exceed the applicable noise limits.

(12) **Structural Analysis.** The applicant shall submit a report prepared and certified by an California-licensed structural engineer (or other qualified personnel acceptable to the City) that certifies (i) the underlying pole or support structure has the structural integrity and/or capacity to support all the proposed equipment and attachments; (ii) the foundation has the capacity to support additional loading and to accommodate any modifications to the pole base and bolt pattern; and (iii) any drilling or

**ADMINISTRATIVE GUIDELINES FOR ISSUANCE OF PUBLIC RIGHT-OF-WAY PERMITS UNDER BERKELEY MUNICIPAL CODE CHAPTER 16.10**

cutting will preserve the structural integrity of the pole. At a minimum, the analysis must be consistent with all applicable requirements in CPUC General Order 95 (including, but not limited to, load and pole overturning calculations), the National Electric Safety Code, the standards and practices required for an ANSI/TIA-222 Maintenance and Conditions Assessment, Structural Standards for Antenna Supporting Structures and Antennas, and Maintenance and Condition Assessment of the proposed structure (under the most current revision at the time of submittal), and any safety and construction standards required by law and the utility provider.

(b) **Community Meeting.** The City strongly encourages, but does not require, applicants to schedule, notice, arrange, and attend a pre-submittal community meeting with all interested members of the public. This voluntary, pre-submittal public meeting does not cause the FCC Shot Clock to begin and is intended to give applicants the opportunity to hear from members of the public regarding proposed deployment. Applicants should bring any draft applications, plans, maps, presentations or other materials to facilitate the public's understanding of the applicant's proposal. The City seeks to encourage dialogue that may allow applicants to address and resolve areas of concern prior to the applicant submitting an application. If no voluntary pre-submittal community meeting is held, the applicant shall schedule a community meeting on or after the date on which the application is submitted.

(c) **Submittal Appointments.** All applications must be submitted in person to the City at a pre-scheduled appointment with the Director. Prospective applicants may generally submit one application per appointment, or up to five individual applications per appointment as a batch. Potential applicants may schedule successive appointments for multiple applications whenever feasible and not prejudicial to other applicants for any other development project as determined by the Director. The Director shall use reasonable efforts to offer an appointment within five working days after the Director receives a written request from a potential applicant. Any purported application received without an appointment, whether delivered in-person, by mail or through any other means, will not be considered duly filed, regardless of whether the City retains, returns or destroys the materials received.

(d) **Incomplete Applications Deemed Withdrawn.** Any application governed under these Guidelines shall be automatically deemed withdrawn by the applicant when the applicant fails to submit a substantive response to the Director within 60 calendar days after the Director deems the application incomplete by written notice. As used in this subsection (d), a "substantive response" must include, at a minimum, some or all the materials identified as incomplete in the written incomplete notice.

(e) **Peer and Independent Consultant Review.** Pursuant to Berkeley Municipal Code Section 16.10.040.I, the Director may, at their discretion, select and retain an independent consultant with specialized training, experience and/or expertise in applicable regulations for human exposure to RF emissions to verify the results of the applicant's RF compliance report and analysis including, without limitation: (i) pre-

## **ADMINISTRATIVE GUIDELINES FOR ISSUANCE OF PUBLIC RIGHT-OF-WAY PERMITS UNDER BERKELEY MUNICIPAL CODE CHAPTER 16.10**

construction planned compliance with applicable regulations for human exposure to RF emissions; (ii) post-construction actual compliance with applicable regulations for human exposure to RF emissions; and (iii) the applicability, reliability and/or sufficiency of any information, analyses or methodologies used by the applicant to reach any conclusions about any issue within the City's discretion to review. The Director may require that the independent consultant prepare written reports, testify at public meetings, hearings and/or appeals and attend meetings with City staff and/or the applicant. Subject to applicable law, in the event that the Director elects to retain an independent consultant in connection with any permit application, the applicant shall be responsible for the reasonable costs in connection with the services provided, which may include without limitation any costs incurred by the independent consultant to attend and participate in any meetings or hearings. Before the independent consultant may perform any services, the applicant shall tender to the City a deposit in an amount equal to the estimated cost for the consultant's services to be provided, as determined by the Director until the City adopts the initial required deposit by fee schedule. The Director may request additional deposits as reasonably necessary to ensure sufficient funds are available to cover the reasonable costs in connection with the independent consultant's services. In the event that the deposit exceeds the total costs for consultant's services, the Director shall promptly return any unused funds to the applicant after the wireless facility has been installed and passes a final inspection by the Director. In the event that the reasonable costs for the independent consultant's services exceed the deposit, the Director shall invoice the applicant for the balance. The City shall not issue any construction or PROW Permit to any applicant with any unpaid deposit requests or invoices.

(f) **Public Comment Log.** Applicants shall maintain a log of all calls and correspondence received by the applicant from the public in response to the public notice required pursuant to Berkeley Municipal Code Section 16.10.040.F, including the commenter's name, property address and comment, the date the comment was received and the applicant's response and resolution. A copy of the log shall be provided to the City upon the Director's request, prior to the Director's decision or before the applicable shot clock expires, whichever occurs first.

(g) **Public Information.** Information regarding the location and status of all proposed and active small wireless facilities and applicant contact information shall be posted on the City of Berkeley website.

### **SECTION 5. DECISIONS**

(a) **Initial Administrative Decision.** Not more than 29 shot clock days after the application has been deemed complete, the Director shall approve, conditionally approve or deny a complete and duly filed PROW Permit application without a public hearing. Failure of the Director to comply with the timetable in this paragraph shall not affect the Director's authority to approve or deny any permit.

## ADMINISTRATIVE GUIDELINES FOR ISSUANCE OF PUBLIC RIGHT-OF-WAY PERMITS UNDER BERKELEY MUNICIPAL CODE CHAPTER 16.10

(b) **Criteria for Approval.** Berkeley Municipal Code Section 16.10.060.B sets forth the criteria for the Director to determine whether to grant or deny a PROW Permit. To clarify such criteria in the context of small wireless facilities, the Director shall also consider whether:

(1) the proposed project complies with all applicable design standards (Section 7) and location standards (Section 8) in these Guidelines;

(2) the proposed project allows the applicant to (i) fill a significant gap in personal wireless services coverage, (ii) introduce new personal wireless services, or (iii) improve existing personal wireless services; and

(3) the applicant has demonstrated that the proposed project will be in planned compliance with all applicable FCC regulations and guidelines for human exposure to RF emissions.

Subparagraphs (2)(ii) and (2)(iii) of this Paragraph shall apply only to the extent that consideration of such findings is required by federal law.

(c) **Conditional Approvals; Denials Without Prejudice.** Subject to any applicable state or federal laws, nothing in these Guidelines is intended to limit the Director's ability to conditionally approve or deny without prejudice any PROW Permit application as may be necessary or appropriate to ensure compliance with these Guidelines.

(d) **Application Decision Notice.** Within five calendar days after the Director acts on a PROW Permit application, the Director shall provide written notice to the applicant. If the Director denies an application (with or without prejudice) for a small wireless facility, the written notice must also contain the reasons for the denial.

### SECTION 6. CONDITIONS OF APPROVAL

(a) **Standard Conditions.** In addition to, and consistent with, the construction, operation, maintenance, removal and relocation standards in Berkeley Municipal Code Chapter 16.10, and except as may be authorized in subsection (b), all PROW Permits issued under these Guidelines shall be automatically subject to the conditions in this subsection (a).

(1) **Permit Term.** Any PROW Permit will automatically expire 10 years and one day from its issuance unless California Government Code § 65964(b) authorizes the City to establish a shorter term for public safety or substantial land use reasons. Any other permits or approvals issued in connection with any collocation, modification or other change to this wireless facility, which includes without limitation any permits or other approvals deemed-granted or deemed- approved under federal or state law, will not extend this term limit unless expressly provided otherwise in such permit or approval or required under federal or state law.

## **ADMINISTRATIVE GUIDELINES FOR ISSUANCE OF PUBLIC RIGHT-OF-WAY PERMITS UNDER BERKELEY MUNICIPAL CODE CHAPTER 16.10**

(2) **Permit Renewal.** Not more than one year before the PROW Permit expires, the permittee may apply for permit renewal. The permittee must demonstrate that the subject small wireless facility or other infrastructure deployment complies with all the conditions of approval associated with the PROW Permit and all applicable provisions in the Berkeley Municipal Code and the Guidelines that exist at the time the decision to renew or not renew is rendered. The Director may modify or amend the conditions on a case-by-case basis as may be necessary or appropriate to ensure compliance with the Berkeley Municipal Code, these Guidelines or other applicable law. Upon renewal, the PROW Permit will automatically expire 10 years and one day from its issuance unless issued for a shorter duration pursuant to the previous paragraph.

(3) **Post-Installation Certification.** Within 60 calendar days after the permittee receives the final inspection or completes the construction/installation of a small wireless facility, the permittee shall provide the Director with documentation reasonably acceptable to the Director that the small wireless facility has been installed and/or constructed in strict compliance with the approved construction drawings and photo simulations. Such documentation shall include without limitation as-built drawings, GIS data and site photographs.

(4) **Build-Out Period.** Any PROW Permit will automatically expire 12 months from the approval date (the “build-out period”) unless the permittee obtains all other permits and approvals required to install, construct and/or operate the approved small wireless facility or other infrastructure deployment, which includes without limitation any permits or approvals required by any federal, state or local public agencies with jurisdiction over the subject property, support structure or the small wireless facility or other infrastructure deployment and its use, and delivers the Post-Installation Certification to the City as required under this Section. The permittee may request in writing, and the City may grant in writing, one, six-month extension if the permittee submits substantial and reliable written evidence demonstrating justifiable cause for a six-month extension. If the build-out period and any extension finally expires, the permit shall be automatically void but the permittee may resubmit a complete application, including all application fees, for the same or substantially similar project.

(5) **Site Maintenance.** The permittee shall comply with the provisions of the most current editions of the City’s Building Code, Plumbing Code, Electrical Code, any applicable City-adopted Public Works construction standards, and specifications and plans, as they are modified from time to time, and any applicable federal, state or local statutes, ordinances, regulations, guidelines, or requirements. The permittee shall keep the site, which includes without limitation any and all improvements, equipment, structures, access routes, fences and landscape features, in a neat, clean and safe condition in accordance with the approved construction drawings and all conditions in the PROW Permit. The permittee shall keep the site area free from all litter and debris at all times. The facility shall be manufactured or treated to resist graffiti. The permittee, at no cost to the City, shall monitor and abate any graffiti or other vandalism at the site. The permittee shall make reasonable commercial efforts to remove graffiti within 72

## **ADMINISTRATIVE GUIDELINES FOR ISSUANCE OF PUBLIC RIGHT-OF-WAY PERMITS UNDER BERKELEY MUNICIPAL CODE CHAPTER 16.10**

hours after the permittee receives notice or otherwise becomes aware that such graffiti or other vandalism occurred.

(6) **Compliance with Laws.** The permittee shall maintain compliance at all times with all federal, state and local statutes, regulations, orders or other rules that carry the force of law (“laws”) applicable to the permittee, the subject property, the small wireless facility or other infrastructure deployment or any use or activities in connection with the use authorized in the PROW Permit, which includes without limitation any laws applicable to human exposure to RF emissions and the City’s RF compliance procedures as set forth in Berkeley Municipal Code Section 16.10.100.G and consistent with applicable FCC regulations. The permittee expressly acknowledges and agrees that this obligation is intended to be broadly construed and that no other specific requirements in these conditions are intended to reduce, relieve or otherwise lessen the permittee’s obligations to maintain compliance with all laws. No failure or omission by the City to timely notice, prompt or enforce compliance with any applicable provision in the Berkeley Municipal Code, these Guidelines, any permit, any permit condition or any applicable law or regulation, shall be deemed to relieve, waive or lessen the permittee’s obligation to comply in all respects with all applicable provisions in the Berkeley Municipal Code, these Guidelines, any permit, any permit condition or any applicable law or regulation.

(7) **Construction Activities and Adverse Impacts on Other Properties.** Construction shall be coordinated with other utility companies or applicants installing infrastructure in the public rights-of-way as provided for in Berkeley Municipal Code Section 16.10.050. Construction shall be scheduled and conducted so as to minimize interference with public use of the right-of-way including access to the right-of-way from private property. The permittee shall use all reasonable efforts to avoid any and all unreasonable, undue or unnecessary adverse impacts on nearby properties that may arise from the permittee’s or its authorized personnel’s construction, installation, operation, modification, maintenance, repair, removal and/or other activities on or about the site, including the public’s use of rights-of-way and the public’s access to the rights-of-way from private property. The permittee shall not perform or cause others to perform any construction, installation, operation, modification, maintenance, repair, removal or other work that involves heavy equipment or machines except during normal construction work hours authorized by the Berkeley Municipal Code. The restricted work hours in this condition will not prohibit any work required to prevent an actual, immediate harm to property or persons, or any work during an emergency declared by the City or other state or federal government agency or official with authority to declare an emergency within the City. The Director may issue a stop work order for any activity that violates this condition in whole or in part. The permittee agrees to fully cooperate with the City in assisting the City to achieve its accommodation obligations under the Americans with Disabilities Act, the Fair Housing Act Amendments of 1988 and other applicable laws.

**ADMINISTRATIVE GUIDELINES FOR ISSUANCE OF PUBLIC RIGHT-OF-WAY  
PERMITS UNDER BERKELEY MUNICIPAL CODE CHAPTER 16.10**

(8) **Inspections; Emergencies.** The permittee expressly acknowledges and agrees that the City's officers, officials, staff, agents, contractors or other designees may enter onto the site and inspect the improvements and equipment upon reasonable prior notice to the permittee. Notwithstanding the prior sentence, the City's officers, officials, staff, agents, contractors or other designees may (i) at any time inspect the facility visually or with any remote sensing equipment from the PROW and (ii) may, but will not be obligated to, enter onto the site area without prior notice to support, repair, disable or remove any improvements or equipment in emergencies or when such improvements or equipment threatens actual, imminent harm to property or persons. The permittee, if present, may observe the City's officers, officials, staff or other designees while any such inspection or emergency access occurs.

(9) **Permittee's Contact Information.** Within 10 days from the final approval, the permittee shall furnish the City with accurate and up-to-date contact information for a person responsible for the small wireless facility or other infrastructure deployment, which includes without limitation such person's full name, title, direct telephone number, mailing address and email address. The permittee shall keep such contact information up-to-date at all times and promptly provide the City with updated contact information if either the responsible person or such person's contact information changes.

(10) **Indemnification and Insurance.** The permittee shall indemnify the City, and secure and maintain liability insurance in favor of the City, in accordance with Berkeley Municipal Code Section 16.10.160. In the event the City becomes aware of any claims, the City will use best efforts to promptly notify the permittee and the private property owner (if applicable) and shall reasonably cooperate in the defense. The permittee expressly acknowledges and agrees that the City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City's defense, and the property owner and/or permittee (as applicable) shall promptly reimburse the City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. The permittee expressly acknowledges and agrees that the permittee's indemnification obligations under this condition are a material consideration that motivates the City to approve this PROW Permit, and that such indemnification obligations will survive the expiration, revocation or other termination of this PROW Permit.

(11) **Performance Bond; Contractor Information.** Before the City issues any permit required to commence construction in connection with this permit, the permittee shall post a performance bond from a surety and in a form acceptable to the Director in an amount reasonably necessary to cover the cost to remove, store and/or dispose of the improvements and restore all affected areas based on a written estimate from a qualified contractor with experience in wireless facilities or other infrastructure removal. The written estimate must include the cost to remove, reasonably store and/or dispose of all equipment and other improvements, which includes without limitation all antennas, radios, batteries, generators, utilities, cabinets, mounts, brackets, hardware, cables, wires, conduits, structures, shelters, towers, poles, footings and foundations, whether

## **ADMINISTRATIVE GUIDELINES FOR ISSUANCE OF PUBLIC RIGHT-OF-WAY PERMITS UNDER BERKELEY MUNICIPAL CODE CHAPTER 16.10**

above ground or below ground, constructed or installed in connection with the wireless facility, plus the cost to completely restore any areas affected by the removal work to a standard compliant with applicable laws. In establishing or adjusting the bond amount required under this condition, the Director shall take into consideration any information provided by the permittee regarding the cost to remove, reasonably store and/or dispose of the small wireless facility or other infrastructure deployment to a standard compliant with applicable laws. The performance bond shall expressly survive the duration of the permit term to the extent required to effectuate a complete removal of the subject wireless facility or other infrastructure deployment in accordance with this condition. In addition, before the City issues any permit required to commence construction, the permittee shall furnish the City with accurate and up-to-date contact information for the contractor responsible for the construction of the facility, which includes without limitation such person's full name, title, direct telephone number, mailing address and email address

(12) **Permit Revocation.** Any permit granted under these Guidelines may be revoked in accordance with the provisions and procedures in Berkeley Municipal Code Section 16.10.170. The Director may initiate revocation proceedings when the Director has information that the facility may not be in compliance with all applicable laws, which includes without limitation, any permit in connection with the facility and any associated conditions with such permit(s). Before any public hearing to revoke a permit granted under these Guidelines, the Director must issue a written notice to the permittee that specifies (i) the facility; (ii) the violation(s) to be corrected; (iii) the timeframe in which the permittee must correct such violation(s); and (iv) that, in addition to all other rights and remedies the City may pursue, the City may initiate revocation proceedings for failure to correct such violation(s). The Director may revoke a permit if the violation(s) are not corrected within 30 days of the date of mailing of the notice, or within the timeframe to correct such violation(s), whichever is longer, when the Director finds that the facility is not in compliance with any applicable laws, which includes without limitation, any permit in connection with the facility and any associated conditions with such permit(s). The permittee may appeal the decision of the Director to the City Council within 10 days of service of the decision via first class mail. Any decision by the City Council to revoke or not revoke a permit shall be made after a duly noticed public hearing, and shall be final and not subject to any further appeals. Within five business days after the City Council adopts a resolution to revoke a permit, the Director shall provide the permittee with a written notice that specifies the revocation and the reasons for such revocation.

(13) **Record Retention.** Throughout the permit term, the permittee must maintain a complete and accurate copy of the written administrative record, which includes without limitation the PROW Permit application, PROW Permit, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval, any permits or approvals issued in connection with this approval and any records, memoranda, documents, papers and other correspondence entered into the public record in connection with the PROW Permit (collectively, "records"). If the

## ADMINISTRATIVE GUIDELINES FOR ISSUANCE OF PUBLIC RIGHT-OF-WAY PERMITS UNDER BERKELEY MUNICIPAL CODE CHAPTER 16.10

permittee does not maintain such records as required in this condition, any ambiguities or uncertainties that would be resolved by inspecting the missing records will be construed against the permittee. The permittee shall protect all records from damage from fires, floods and other hazards that may cause deterioration. The permittee may keep records in an electronic format; provided, however, that hard copies or electronic records kept in the City's regular files will control over any conflicts between such City-controlled copies or records and the permittee's electronic copies, and complete originals will control over all other copies in any form. The requirements in this condition shall not be construed to create any obligation to create or prepare any records not otherwise required to be created or prepared by other applicable laws. Compliance with the requirements in this condition shall not excuse the permittee from any other similar record-retention obligations under applicable law.

(14) **Landscaping.** The permittee shall replace any landscape features damaged or displaced by the construction, installation, operation, maintenance or other work performed by the permittee or at the permittee's direction on or about the site. The permittee shall comply with the requirements in Berkeley Municipal Code Chapter 12.44 and Section 8(d) of these Guidelines.

(15) **Cost Reimbursement.** The permittee acknowledges and agrees that (i) the permittee's request for authorization to construct, install and/or operate the wireless facility will cause the City to incur costs and expenses; (ii) the permittee shall be responsible to reimburse the City for all costs incurred in connection with the permit, which includes without limitation costs related to application review, permit issuance, site inspection and any other costs reasonably related to or caused by the request for authorization to construct, install and/or operate the wireless facility or other infrastructure deployment; (iii) any application fees required for the application may not cover all such reimbursable costs and that the permittee shall have the obligation to reimburse the City for all such costs 10 days after a written demand for reimbursement and reasonable documentation to support such costs; and (iv) the City shall have the right to withhold any permits or other approvals in connection with the wireless facility until and unless any outstanding costs have been reimbursed to the City by the permittee.

(16) **Future Undergrounding Programs.** Notwithstanding any term remaining on any PROW Permit, if other utilities or communications providers in the public rights-of-way underground their facilities in the segment of the public rights-of-way where the permittee's small wireless facility or other infrastructure deployment is located, the permittee must also underground its equipment, except the antennas and any approved electric meter, at approximately the same time. Accessory equipment such as radios and computers that require an environmentally controlled underground vault to function shall not be exempt from this condition. Such undergrounding shall occur at the permittee's sole cost and expense except as may be reimbursed through tariffs approved by the state public utilities commission for undergrounding costs.

**ADMINISTRATIVE GUIDELINES FOR ISSUANCE OF PUBLIC RIGHT-OF-WAY  
PERMITS UNDER BERKELEY MUNICIPAL CODE CHAPTER 16.10**

(17)       **Electric Meter Upgrades.** If the commercial electric utility provider adopts or changes its rules obviating the need for a separate or ground-mounted electric meter and enclosure, the permittee on its own initiative and at its sole cost and expense shall remove the separate or ground-mounted electric meter and enclosure. Prior to removing the electric meter, the permittee shall apply for any permit(s) required to perform the removal. Upon removal, the permittee shall restore the affected area to its original condition that existed prior to installation of the equipment.

(18)       **Rearrangement and Relocation.** The permittee acknowledges that the City, in its sole discretion and at any time, may: (i) change any street grade, width or location; (ii) add, remove or otherwise change any improvements in, on, under or along any street owned by the City or any other public agency, which includes without limitation any sewers, storm drains, conduits, pipes, vaults, boxes, cabinets, poles and utility systems for gas, water, electric or telecommunications; and/or (iii) perform any other work deemed necessary, useful or desirable by the City (collectively, "City work"). The City reserves the rights to do any and all City work without any admission on its part that the City would not have such rights without the express reservation in this PROW Permit. If the Director determines that any City work will require the permittee's small wireless facility located in the public rights-of-way to be rearranged and/or relocated, the permittee shall, at its sole cost and expense, do or cause to be done all things necessary to accomplish such rearrangement and/or relocation. If the permittee fails or refuses to either permanently or temporarily rearrange and/or relocate the permittee's small wireless facility or other infrastructure deployment within a reasonable time after the Director's notice, the City may (but will not be obligated to) cause the rearrangement or relocation to be performed at the permittee's sole cost and expense. The City may exercise its rights to rearrange or relocate the permittee's small wireless facility or other infrastructure deployment without prior notice to permittee when the Director determines that City work is immediately necessary to protect public health or safety. The permittee shall reimburse the City for all costs and expenses in connection with such work within 10 days after a written demand for reimbursement and reasonable documentation to support such costs.

(19)       **Truthful and Accurate Statements.** The permittee acknowledges that the City's approval relies on the written and/or oral statements by permittee and/or persons authorized to act on permittee's behalf. In any matter before the City in connection with the PROW Permit or the infrastructure approved under the PROW Permit, neither the permittee nor any person authorized to act on permittee's behalf shall, in any written or oral statement, recklessly or intentionally provide material factual information that is incorrect or misleading or intentionally or recklessly omit any material information necessary to prevent any material factual statement from being incorrect or misleading. Failure to comply with this paragraph may result in permit revocation and other sanction pursuant to this Section. All certifications required by these Guidelines shall be made under penalty of perjury.

**ADMINISTRATIVE GUIDELINES FOR ISSUANCE OF PUBLIC RIGHT-OF-WAY PERMITS UNDER BERKELEY MUNICIPAL CODE CHAPTER 16.10**

(20) **Trenching and Excavation.** Facilities that require excavation shall be installed within existing facilities whenever sufficient excess capacity is available subject to reasonable terms and conditions. Excavation and trenching activities shall not disturb the root systems of trees measuring 24 inches or more in diameter. Protective fencing should be installed around street trees within or adjacent to the work area to prevent damage to branches, trunks, or root systems. If any cultural resources are discovered during excavation, trenching, or other construction activities, work shall be stopped immediately and the Director of Planning and Development shall be notified. Directional boring should be used instead of trenching whenever possible to minimize interference with vehicular traffic and may be required by the City when working in streets that have been recently resurfaced or resealed. When trenching is necessary, all trenches shall be covered at the end of each workday. The total time that a trench may remain open in any segment of the road system should not exceed one week.

(21) **Construction Hours and Noise Control.** Noise-producing site preparation and construction activities shall comply with Berkeley Municipal Code Section 13.40.070, or as designated in the permit. All trucks and equipment shall use the best available noise control techniques and equipment including improved mufflers, intake silencers, ducts, engine enclosures, and noise-reducing shields or shrouds. Impact tools such as jackhammers, pavement breakers, and noise drills shall be hydraulically or electrically powered wherever feasible to avoid noise associated with compressed air exhaust from pneumatically powered tools. When the use of pneumatic tools is unavoidable, an exhaust muffler shall be used on the compressed air exhaust to lower noise levels. External jackets shall be used on tools where feasible to achieve noise reductions. To the extent as technically feasible, quieter procedures shall be used, such as drilling instead of jack hammering. Stationary noise sources shall be located as far as technically feasible from sensitive receptors. If location within 20 feet of homes, schools, neighborhood parks, and retail businesses is necessary, stationary noise sources shall be muffled and enclosed with temporary sheds. Trucks and other vehicles should not be permitted to idle when waiting at or near the construction site.

(22) **Dust and Stormwater Control.** Construction sites shall be watered at least twice daily to control dust caused by site preparation and construction activities. Watering intervals shall be increased whenever wind speeds exceed 15 miles per hour. Where feasible, reclaimed water shall be used for this purpose. Cover all trucks hauling soil, sand, paving materials, and other loose materials or require all trucks to maintain at least two feet of space between the top of the load and the top of the trailer. Streets shall be swept at the end of each workday if soil, sand, or other material has been carried onto adjacent paved streets or sidewalks. When feasible, streets shall be swept using reclaimed water. Best Management Practices shall be used to prevent oil, dirt, and other materials from construction equipment or activity from washing into the City storm drainage system. Water discharge resulting from both construction and underground facility drainage shall comply with National Pollutant Discharge Elimination System (NPDES) regulations.

## ADMINISTRATIVE GUIDELINES FOR ISSUANCE OF PUBLIC RIGHT-OF-WAY PERMITS UNDER BERKELEY MUNICIPAL CODE CHAPTER 16.10

(23) **Safety Hazard Protocols.** If the Fire Chief (or their designee) finds good cause to believe that the wireless facility (including, without limitation, its accessory equipment, antenna and/or base station) presents a fire risk, electrical hazard or other immediate threat to public health and safety in violation of any applicable law, such officials may order the facility to be shut down and powered off until such time as the fire risk or electrical hazard has been mitigated. Any mitigations required shall be at the permittee's sole cost and expense.

(i) **Continued Monitoring.** The permittee shall certify in writing continued compliance with the safety standards of this policy (with special attention to potential fire hazards) on or before January 30 of each calendar year.

(ii) **Oversight Authority.** The Fire Chief, in his or her discretion, may issue written fire safety performance directives that shall apply to all existing permits within the scope of such directives and shall be considered as though incorporated into such permits. All permittees shall be required to comply with such directives at the permittee's sole cost and expense.

(b) **Right to Modify Permit.** In the event that the FCC Report and Order is invalidated, modified, or limited in any way that expands the City's authority with respect to the placement and/or design of the small wireless facility, the Director may review and revoke or modify any permit issued under this Chapter based on any amendments to this Chapter, or based on new regulations established pursuant to Berkeley Municipal Code Section 16.10.200.B.

(c) **Successors and Assigns.** The conditions, covenants, promises and terms contained in this PROW Permit will bind and inure to the benefit of the City and permittee and their respective successors and assigns. Prior to any voluntary assignment or assumption, the permittee shall notify the City in writing of the assignment or assumption and shall provide all contact information required by the Director for the permittee's successor or assign.

(d) **Modified Conditions.** Subject to and only in compliance with the requirements of Chapter 16.10, the Director may modify, add or remove conditions to any PROW Permit as the Director deems necessary or appropriate to: (i) protect and/or promote the public health, safety and welfare; (ii) tailor the standard conditions in subsection (a) to the particular facts and circumstances associated with the deployment; and/or (iii) memorialize any changes to the proposed deployment need for compliance with the Berkeley Municipal Code, these Guidelines, generally applicable health and safety requirements and/or any other applicable laws. Only to the minimum extent required by applicable FCC regulations, the Director shall take care to ensure that any different conditions applied to small wireless facilities are no more burdensome than those applied to other infrastructure deployments.

**ADMINISTRATIVE GUIDELINES FOR ISSUANCE OF PUBLIC RIGHT-OF-WAY PERMITS UNDER BERKELEY MUNICIPAL CODE CHAPTER 16.10**

(e) **Lessee/Operator Bound.** Any lessee of the permittee and any operator of each antenna on the facility, shall commit in writing to be fully and directly bound by all applicable conditions and obligations of the PROW Permit

**SECTION 7. LOCATION STANDARDS**

(a) **Location Preferences.** To help applicants and decision makers understand and respond to the community's aesthetic preferences and values, this subsection sets out listed preferences for locations to be used in connection with small wireless facilities in an ordered hierarchy.

The City prefers small cells in the public rights-of-way to be installed in locations, ordered from most preferred to least preferred, as follows:

- (1) locations within manufacturing districts, mixed use districts or commercial districts on or along arterial streets;
- (2) locations within manufacturing districts, mixed use districts or commercial districts on or along collector streets;
- (3) locations within manufacturing districts, mixed use districts or commercial districts on or along residential streets;
- (4) locations within any neighborhood commercial district on or along arterial streets;
- (5) locations within any neighborhood commercial district on or along collector streets;
- (6) locations within any neighborhood commercial district on or along residential streets;
- (7) any location within 1,500 feet of an existing or proposed small wireless facility;
- (8) locations within residential districts on or along arterial streets;
- (9) locations within residential districts on or along collector streets;
- (10) locations within residential districts on or along residential streets;
- (11) any location within a historic district as defined in Chapter 3.24 of the Berkeley Municipal Code, or within 300 feet of a City park, school, or senior center, or of a historic district or a property designated as a landmark or structure of merit under Chapter 3.24, or a property that is eligible for protection under Chapter 3.24 or under the State Public Resources Code Section 5020.1(j).

**ADMINISTRATIVE GUIDELINES FOR ISSUANCE OF PUBLIC RIGHT-OF-WAY  
PERMITS UNDER BERKELEY MUNICIPAL CODE CHAPTER 16.10**

Where technically feasible, applicants shall be prohibited from installing strand-mounted equipment of any kind.

(b) **Prohibited Support Structures.** Small wireless facilities shall not be permitted on the following support structures:

- (1) decorative poles (including historic or ornamental streetlight poles);
- (2) traffic signal poles, mast arms, cabinets or related devices or structures;
- (3) new, non-replacement wood poles;
- (4) any utility pole scheduled for removal or relocation within 24 months from the time the Director acts on the small cell application.

(c) **Encroachments over Private Property.** No small cell antennas, accessory equipment or other improvements may encroach onto or over any private or other property outside the public rights-of-way without the property owner's express written consent.

(d) **No Interference with Other Uses.** Small cells and any associated antennas, accessory equipment or improvements shall not be located in any place or manner that would physically interfere with or impede access to any: (i) worker access to any aboveground or underground infrastructure for traffic control, streetlight or public transportation, including without limitation any curb control sign, parking meter, vehicular traffic sign or signal, pedestrian traffic sign or signal, barricade reflectors; (ii) access to any public transportation vehicles, shelters, street furniture or other improvements at any public transportation stop; (iii) worker access to aboveground or underground infrastructure owned or operated by any public or private utility agency; (iv) fire hydrant, water valve or mains; (v) access to any doors, gates, sidewalk doors, passage doors, stoops or other ingress and egress points to any building appurtenant to the rights-of-way; (vi) wastewater stations; (vii) access to any fire escape; or (viii) any other similar service or facility that benefits the City or the health, safety, or welfare of its residents.

(e) **Replacement Poles.** All replacement poles must: (i) be located as close to the removed pole as possible; (ii) be aligned with the other existing poles along the public rights-of-way; and (iii) be substantially similar in height and width to the existing pole and be compliant with all applicable standards and specifications by the Director.

(f) **Additional Placement Requirements.** In addition to all other requirements in these Guidelines, small wireless facilities, other infrastructure deployments and all related equipment and improvements shall:

- (1) be placed on existing structures to the extent technically feasible;

## ADMINISTRATIVE GUIDELINES FOR ISSUANCE OF PUBLIC RIGHT-OF-WAY PERMITS UNDER BERKELEY MUNICIPAL CODE CHAPTER 16.10

- (2) be placed as close as possible to the property corners or the property line between two parcels that abut the public rights-of-way;
  - (3) not be placed in front of the primary entrance to a residence or retail business or at any other location where they would unduly interfere with the operation of a business, including blocking views of the entrance or display windows;
  - (4) not be placed in the line of sight of View Corridors, as defined in Section 23F.04 of the Berkeley Municipal Code, as viewed from the primary living area of a residence;
  - (5) not be located where they would reduce the amount of space available for on-street parking spaces or interfere with access of the public or workers to meters, fire hydrants, or other objects of street hardware in the right-of-way;
  - (6) not be placed within any sight distance triangles at any intersections, street corners driveways and/or other points of ingress or egress, or otherwise obstruct the view of any traffic control devices installed or authorized by the City;
  - (7) be placed at least five feet away from any driveway or established pedestrian pathway between a residential structure and the public rights-of-way;
  - (8) be placed at least 50 feet away from any driveways for police stations, fire stations or other emergency responder facilities;
  - (9) not be placed in any location that obstructs view lines for traveling vehicles, bicycles and pedestrian;
  - (10) not be placed in any location that obstructs views of any traffic signs or signals;
  - (11) not be placed where they would reduce the amount of space available for on-street parking spaces;
  - (12) not be placed in any location that obstructs illumination patterns for existing streetlights.
- (g) **Demonstration of Technical Infeasibility.** Applications that involve lesser-preferred locations or structures or otherwise fail to meet the requirements of this Section may be approved if the applicant demonstrates by clear and convincing evidence in the written record that either (i) no more preferred location or structure exists within 500 feet from the proposed site; or (ii) any more preferred locations or structures within 500 feet from the proposed site would be technically infeasible.

### SECTION 8. DESIGN STANDARDS

**ADMINISTRATIVE GUIDELINES FOR ISSUANCE OF PUBLIC RIGHT-OF-WAY  
PERMITS UNDER BERKELEY MUNICIPAL CODE CHAPTER 16.10**

- (a) **Finishes.** All exterior surfaces shall be painted, colored and/or wrapped in flat, non-reflective hues that match the underlying support structure or blend with the primary background. All surfaces shall be treated with graffiti-resistant sealant. All finishes shall be subject to the Director's prior approval.
- (b) **Noise.** Small cells and all associated antennas, accessory equipment and other improvements must comply with all applicable noise control standards and regulations in the Berkeley Municipal Code Chapter 13.40, as either may be amended or superseded, and shall not exceed, either on an individual or cumulative basis, the noise limit in the applicable district. All air conditioning units and any other equipment that may emit noise that would be exceed the applicable noise control standards shall only be equipped with noise attenuation devices or otherwise modified to comply with applicable noise limits. Backup generators shall be operated during periods of power outages or for testing, and shall not be tested on weekends, holidays or between the hours of 5:00 p.m. and 9:00 a.m.
- (c) **Lights.** All lights and light fixtures must be aimed and shielded so that their illumination effects are directed downwards and confined within the public rights-of-way in a manner consistent with any other standards and specifications by the Director. All antennas, accessory equipment and other improvements with indicator or status lights must be installed in locations and within enclosures that mitigate illumination impacts visible from publicly accessible areas.
- (d) **Trees and Landscaping.** Small wireless facilities and other infrastructure deployments on or beneath the ground surface shall not be installed (in whole or in part) within any tree drip line. Small wireless facilities and other infrastructure deployments may not displace any existing tree or landscape features unless: (i) such displaced tree or landscaping is replaced with native and/or drought-resistant trees, plants or other landscape features approved by the Director; and (ii) the applicant submits and adheres to a landscape maintenance plan. Only International Society of Arboriculture certified workers under a licensed arborist's supervision shall be used to install the replacement tree(s). Any replacement tree must be substantially the same size as the damaged tree unless approved by the Director. The permittee shall, at all times, be responsible to maintain any replacement landscape features.
- (e) **Signs and Advertisements.** All small wireless facilities and other infrastructure deployments that involve RF transmitters must include signage that, consistent with applicable state and federal regulatory requirements, accurately identifies the site owner/operator, the owner/operator's site name or identification number and a toll-free number to the owner/operator's network operations center. The signage shall be attached to the support structure base (or as otherwise required by applicable regulations and standards) to which the equipment is affixed. Dimensions shall not exceed 8.5 inches by 11 inches. Small wireless facilities and other infrastructure deployments may not bear any other signage or advertisements unless expressly approved by the City, required by law or recommended under FCC or other United

## ADMINISTRATIVE GUIDELINES FOR ISSUANCE OF PUBLIC RIGHT-OF-WAY PERMITS UNDER BERKELEY MUNICIPAL CODE CHAPTER 16.10

States governmental agencies for compliance with RF emissions regulations. Informational signage required by these Guidelines may include an identifying logo.

(f) **Site Security Measures.** Small wireless facilities and other infrastructure deployments may incorporate reasonable and appropriate site security measures, such as locks and anti-climbing devices, to prevent unauthorized access, theft or vandalism. The Director shall not approve any barbed wire, razor ribbon, electrified fences or any similarly dangerous security measures. All exterior surfaces on small wireless facilities shall be constructed from or coated with graffiti-resistant materials.

(g) **Compliance with Health and Safety Regulations.** All small wireless facilities and other infrastructure deployments shall be designed, constructed, operated and maintained in compliance with all generally applicable health and safety regulations, which includes without limitation all applicable regulations for human exposure to RF emissions, the California Environmental Quality Act (California Public Resources Code §§ 2100 *et seq.*) and compliance with the federal Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 *et seq.*).

(h) **Antennas.** The provisions in this subsection (h) are generally applicable to all antennas.

(1) **Shrouding.** All antennas and associated cables, jumpers, wires, mounts, masts, brackets and other connectors and hardware must be installed within a shroud or radome unless shrouding is technically infeasible. For pole-top antennas, the shroud shall not exceed 18 inches in diameter and must taper down to pole to cover mounting hardware, cables, wires, jumpers and other equipment between the pole and the antenna. For side-arm antennas, the shroud must cover the cross arm and any cables, jumpers, wires or other connectors between the vertical riser and the antenna. The antenna shroud shall be finished in a flat, non-reflective color to match the underlying support structure. If an antenna shroud is not used, chin straps/chin covers are required. Straps/chin covers should be no more than six inches long and no wider than antennas. Cables should be routed directly from chin straps into the pole, minimizing exposed cabling. Cables should not loop or bunch. 90-degree connectors should be used.

**ADMINISTRATIVE GUIDELINES FOR ISSUANCE OF PUBLIC RIGHT-OF-WAY  
PERMITS UNDER BERKELEY MUNICIPAL CODE CHAPTER 16.10**



**Figure 1:** Antenna concealed within a single shroud (or radome) with a tapered cable shroud between the antenna and pole-top

(2) **Antenna Volume.** Each individual antenna associated with a single small cell shall not exceed three cubic feet. The cumulative volume for all antennas on a single small cell shall not exceed: (i) three cubic feet in residential areas; or (ii) six cubic feet in nonresidential areas. Notwithstanding the preceding sentence, the Director may grant an exception when the applicant demonstrates by clear and convincing evidence that compliance with this section would not be technically feasible.

**ADMINISTRATIVE GUIDELINES FOR ISSUANCE OF PUBLIC RIGHT-OF-WAY PERMITS UNDER BERKELEY MUNICIPAL CODE CHAPTER 16.10**

(3) **Overall Height.** No antenna may extend more than five feet above the support structure, plus any minimum separation between the antenna and other pole attachments required by applicable health and safety regulations.

(4) **Horizontal Projection.** Horizontal projections are prohibited except where other designs are technically infeasible. Side-mounted antennas, where permitted, shall not project: (i) more than 24 inches from the support structure; (ii) over any roadway for vehicular travel; or (iii) over any abutting private property. If applicable laws require a side-mounted antenna to project more than 24 inches from the support structure, the projection shall be no greater than required for compliance with such laws.



**Figure 2:** Pole-top antenna on a wood utility pole with tapered shroud.

(i) **Accessory Equipment Volume.** The cumulative volume for all accessory equipment for a single small wireless facility or other infrastructure deployment shall not exceed: (i) seven cubic feet to the extent technically feasible, but in no event greater than nine cubic feet in residential areas; or (ii) 12 cubic feet in nonresidential areas. The

**ADMINISTRATIVE GUIDELINES FOR ISSUANCE OF PUBLIC RIGHT-OF-WAY  
PERMITS UNDER BERKELEY MUNICIPAL CODE CHAPTER 16.10**

volume limits in this subsection do not apply to any undergrounded accessory equipment.

**(j) Undergrounded Accessory Equipment.**

(1) **Where Required.** Accessory equipment (other than any electric meter emergency disconnect switch) shall be placed underground when proposed in any (i) underground district or (ii) any location where the Director finds substantial evidence that the additional aboveground accessory equipment would incommode the public's uses in the public rights-of-way. Notwithstanding the preceding sentence, the Director may grant an exception when the applicant demonstrates by clear and convincing evidence that compliance with this section would be technically infeasible.

(2) **Vaults.** All undergrounded accessory equipment must be installed in an environmentally controlled vault that is load-rated to meet applicable standards and specifications. Underground vaults located beneath a sidewalk must be constructed with a slip-resistant cover. Vents for airflow shall be flush-to-grade when placed within the sidewalk and may not exceed two feet above grade when placed off the sidewalk. All vault lids shall be constructed from materials rated for heavy traffic and acceptable to the Director. Only non-toxic sealants may be used.

**ADMINISTRATIVE GUIDELINES FOR ISSUANCE OF PUBLIC RIGHT-OF-WAY PERMITS UNDER BERKELEY MUNICIPAL CODE CHAPTER 16.10**



**Figure 3:** Flush-to-grade underground equipment vault.

(k) **Pole-Mounted Accessory Equipment.** The provisions in this subsection (k) are applicable to all pole-mounted accessory equipment in connection with small wireless facilities and other infrastructure deployments.

(1) **Preferred Concealment Techniques.** Applicants should propose to place any pole-mounted accessory equipment in the least conspicuous position under the circumstances presented by the proposed pole and location. All new wires and cables needed to service the facility should be installed within the width of the pole so as to avoid vertical visual clutter or distraction. If pole-mounted accessory equipment must be installed on the exterior of the pole, as opposed to underground, within the pole or within the radome, it shall be concealed behind street, traffic or other existing signs to

## ADMINISTRATIVE GUIDELINES FOR ISSUANCE OF PUBLIC RIGHT-OF-WAY PERMITS UNDER BERKELEY MUNICIPAL CODE CHAPTER 16.10

the extent that the installation complies with applicable public health and safety regulations.

(2) **Minimum Vertical Clearance.** The lowest point on any pole-mounted accessory equipment shall be at least eight feet above ground level adjacent to the pole. If applicable laws require any pole-mounted accessory equipment component to be placed less than eight feet above ground level, the clearance from ground level shall be no less than required for compliance with such laws.

(3) **Horizontal Projection.** Pole-mounted accessory equipment shall not project:

(i) more than 18 inches from the pole surface, unless a great distance is required to comply with legal requirements imposed by the CPUC; (ii) over any roadway for vehicular travel; or (iii) over any abutting private property. All pole-mounted accessory equipment shall be mounted flush to the pole surface. If applicable laws preclude flush-mounted equipment, the separation gap between the pole and the accessory equipment shall be no greater than required for compliance with such laws and concealed by opaque material (such as cabinet “flaps” or “wings”).



**Figure 4:** Flush-mounted radio shroud.

(4) **Orientation.** Unless placed behind a street sign or some other concealment that dictates the equipment orientation on the pole, all pole-mounted accessory equipment should be oriented away from prominent views, and shall not substantially obstruct a view from the primary living area of a residence. In general, the proper orientation will likely be toward the street to reduce the overall profile when viewed from

## ADMINISTRATIVE GUIDELINES FOR ISSUANCE OF PUBLIC RIGHT-OF-WAY PERMITS UNDER BERKELEY MUNICIPAL CODE CHAPTER 16.10

the nearest abutting properties. If orientation toward the street is not feasible, then the proper orientation will most likely be away from oncoming traffic. If more than one orientation would be technically feasible, the Director may select the most appropriate orientation.



**Figure 5:** Accessory equipment concealed behind banners.

(l) **Ground-Mounted or Base-Mounted Accessory Equipment.** The provisions in this subsection (l) are applicable to all ground-mounted and base-mounted accessory equipment in connection with small wireless facilities and other infrastructure deployments.

**ADMINISTRATIVE GUIDELINES FOR ISSUANCE OF PUBLIC RIGHT-OF-WAY PERMITS UNDER BERKELEY MUNICIPAL CODE CHAPTER 16.10**



**Figure 6:** Base-mounted accessory equipment.

(1) **Ground-Mounted Concealment.** All ground-mounted equipment cabinets shall be placed six inches behind the sidewalk, at least two feet from the curb, and two feet from driveway and curb edges. Pedestals must be at least three feet from fire hydrants. Installations must leave a minimum horizontal clear space for the path of travel of at least six feet. The Director may require more clear space for travel in heavily used commercial areas to provide sufficient room for pedestrian traffic. On collector streets and local streets, the City prefers ground-mounted accessory equipment to be concealed as follows: (i) within a landscaped parkway, median or similar location, behind or among new/existing landscape features and painted or wrapped in flat natural colors to blend with the landscape features; and (ii) if landscaping concealment is not technically feasible, disguised as other street furniture adjacent to the support structure, such as, for example, mailboxes, benches, trash cans and information kiosks. On major streets outside underground districts, proposed ground-mounted accessory equipment

**ADMINISTRATIVE GUIDELINES FOR ISSUANCE OF PUBLIC RIGHT-OF-WAY PERMITS UNDER BERKELEY MUNICIPAL CODE CHAPTER 16.10**

should be completely shrouded or placed in a cabinet substantially similar in appearance to existing ground-mounted accessory equipment cabinets.



**Figure 7:** Ground-mounted accessory equipment concealed as a mailbox.

**ADMINISTRATIVE GUIDELINES FOR ISSUANCE OF PUBLIC RIGHT-OF-WAY PERMITS UNDER BERKELEY MUNICIPAL CODE CHAPTER 16.10**

(2) **Public Safety Visibility.** To promote and protect public health and safety and prevent potential hazards hidden behind large equipment cabinets, no individual ground-mounted accessory equipment cabinet may exceed four feet in height, four feet in width and two feet in depth. Ground-mounted and base-mounted equipment cabinets shall not have any horizontal flat surfaces greater than 1.5 square inches to prevent litter or other objects left on such surfaces. Cabinets and pedestals shall be located at least two feet from the curb of the street. No unit higher than three feet shall be placed in any location that would interfere with vehicular sight lines at street corners, driveways, and other points of ingress or egress or obstruct the view of any traffic devices installed or authorized by the City. Pedestals, amplifier units, equipment cabinets, and similar above ground installations shall, where feasible, be located at least six inches from any sidewalk and two feet from driveway and curb edges. As required by the State Fire Code, pedestals must be at least three feet from fire hydrants. Installations must leave a minimum horizontal clear space for the path of travel that complies with the requirements of the Americans with Disabilities Act, and shall be at least six feet wide, where feasible. The Director may require more clear space for travel in heavily used commercial areas to provide sufficient room for pedestrian traffic, or may approve applications with less clear space where it is not feasible to comply with the requirements of this paragraph.

(3) **Fire Protection.** The exterior walls and roof covering of all ground-mounted accessory equipment cabinets and equipment shelters shall be constructed of materials rated as nonflammable in the Uniform Building Code. Openings in all aboveground equipment shelters and cabinets shall be protected against penetration by fire and windblown embers to the extent feasible.

(m) **Strand-Mounted Wireless Facilities.** No more than one strand-mounted wireless facility may be installed (i) on any single span between two poles or (ii) directly adjacent to any single pole. The Director shall not approve any ground-mounted equipment in connection with a strand-mounted wireless facility, unless the ground-mounted equipment consists of a remote power source used to power a cluster of strand-mounted wireless facilities. All equipment and other improvements associated with a strand-mounted wireless facility must comply with all applicable health and safety regulations. Strand-mounted wireless facilities shall not exceed one cubic foot in total volume. Any accessory equipment mounted on the pole shall be finished to match the underlying pole. "Snow shoes" and other spooled fiber or cables are prohibited.

**ADMINISTRATIVE GUIDELINES FOR ISSUANCE OF PUBLIC RIGHT-OF-WAY PERMITS UNDER BERKELEY MUNICIPAL CODE CHAPTER 16.10**



**Figure 8:** Strand-mounted wireless facility with a ground-mounted remote power source.

(n) **Utilities.** The provisions in this subsection (n) are applicable to all utilities and other related improvements that serve small wireless facilities and other infrastructure deployments.

(1) **Overhead Lines.** The Director shall not approve any new overhead utility lines in underground districts. In areas with existing overhead lines, new communication lines shall be “overlashed” with existing communication lines to the maximum extent feasible. No new overhead utility lines shall be permitted to traverse any roadway used for vehicular transit.

(2) **Vertical Cable Risers.** All cables, wires and other connectors must be routed through conduits within the pole or other support structure, and all conduit attachments, cables, wires and other connectors must be concealed from public view. To the extent that cables, wires and other connectors cannot be routed through the pole, such as with wood utility poles, applicants shall route them through a single external conduit or shroud that has been finished to match the underlying pole.

## ADMINISTRATIVE GUIDELINES FOR ISSUANCE OF PUBLIC RIGHT-OF-WAY PERMITS UNDER BERKELEY MUNICIPAL CODE CHAPTER 16.10

(3) **Spools and Coils.** To reduce clutter and deter vandalism, excess fiber optic or coaxial cables shall not be spooled, coiled or otherwise stored on the pole outside equipment cabinets or shrouds. Fiber or cable placement on existing poles shall have a minimum safety slack for sway and wind. Looped fiber storage for future use is prohibited.

(4) **Electric Meters.** Small cells and other infrastructure deployments shall use flat-rate electric service or other method that obviates the need for a separate above-grade electric meter. If flat-rate service is not available, applicants may install a shrouded smart meter. If the proposed project involves a ground-mounted equipment cabinet, an electric meter may be integrated with and recessed into the cabinet, but the Director shall not approve a separate ground-mounted electric meter pedestal.

(o) **Existing Conduit or Circuits.** To reduce unnecessary wear and tear on the public rights-of-way, applicants are encouraged to use existing vaults, utility holes, conduits, ducts, manholes, electric circuits and/or other similar facilities whenever available and technically feasible. Access to any conduit and/or circuits owned by the City shall be subject to the Director's prior written approval, which the Director may withhold or condition as the Director deems necessary or appropriate to protect the City's infrastructure, prevent interference with the City's municipal functions, and protect public health and safety.

### SECTION 9. MODIFICATION OF FACILITIES

These Guidelines shall apply to the modification of existing facilities, provided, however, that any application that qualifies as an "eligible facilities request" under 47 U.S.C. § 1455(a) shall be exempt from the requirements of these Guidelines, as set forth in Section 3(c). The provisions of under 47 U.S.C. § 1455(a) shall apply if the Director determines the application involves collocation, removal, or replacement of transmission equipment that does not substantially change the physical dimensions of the facility. The conditions of the permit previously issued for the eligible facility shall apply to the maximum extent permitted by federal and state law, and the modification of the eligible facility shall comply with generally applicable building and safety codes,