

From: [Chris Jordan](#)
To: [City Council](#)
Cc: christopher.diaz@bbklaw.com; [Gail Karish](#); [John Gasparini](#); [Jim Sandoval](#); [Wendy Meisner](#); [Jon Maginot](#)
Subject: Questions regarding the wireless facilities ordinance for the August 5 special meeting
Date: Monday, August 5, 2019 1:50:40 PM
Attachments: [Additional Urgency Ordinance Pages 8-5-19-c1.pdf](#)
[Additional First Reading Pages 8-5-19-c1.pdf](#)

Council – Below are some more questions/responses for tonight’s agenda. Also, attached are some possible replacement pages.

11.12.020, the definition for item 22, "Site" seems not to be grammatical. Something is missing.

The text is identical to the federal definition, which the Mayor’s Proposal and other communities used as well. It should not be changed.

11.12.030 (B) - how does this affect poles on easements in PCF-zoned land owned by the city?

This language was in the Mayor’s Proposal. The Ordinance applies to the entire City; facilities on City-owned property other than the rights of way would be regulated through a lease, rather than a regulatory permit.

11.12.030(C) - add period at end of paragraph

The website copy appears to have a period.

11.12.050(E)(1) line 6, should "pole" be included ("...with any existing tower [, pole] or base station...") or is this intended not to apply to utility or other poles?

This section lists examples, and is not limited, but we will prepare a replacement page adding “poles” for clarity.

11.12.080(A)(4) and 11.12.140(F) - this should directly reference Chapter 6.16 where the noise standards are. Referencing "this chapter" seems incorrect, as the noise standards are in a different chapter. The notes in the staff report indicate that such change was made to 11.12.080(A)(4), but I think it was not. The .140(F) seems to be an additional oversight.

We will prepare replacement pages making these changes.

Resolution 2019-35 - 5th Whereas, what is the source of the wording "...benefits that flow from robust, advanced wireless services...."?

This is language that many cities use. A change can be proposed.

Resolution 2019-35, Section 4(D) Order of Preference _ Location, item 2: does this need to have a caveat re: excluding parks as is done in the following section (E), for consistency, or does (E) take sufficient preference?

The specific restriction in 4(E) will overrule the general in 4(D), so a revision is not necessary.

Resolution 2019-35, Section 7 (B)(1) (as proposed) Does the 24" provide legal separation from PG&E lines that might be on the existing utility pole?

It does not; however, not all utility poles have power lines which require separation. For those that do, the next sentence in that paragraph, requiring compliance with CPUC General Order 95, will address separation issues.

Resolution 2019-35, Section 7 (G) (as proposed) omits the limit of 15 square feet for any footprint, and otherwise omits any limits if putting the equipment above ground is the only feasible solution. Is there a reason for such omission?

The language you point to in the Mayor's Proposal would have allowed a cabinet of up to 75 cubic feet (15 square feet times five foot maximum height). As an alternative, we use the definition of small cell facility, which limits the size of accessory equipment to 28 cubic feet. The language in the proposed ordinance does not contemplate ground cabinets, because we require undergrounding if feasible, or pole-mounted facilities in the alternative. Even if a provider qualified for an exception, the limit to accessory equipment would still be 28 cubic feet.

Resolution 2019-35 (as proposed) - omits the "Documentation" paragraph from the existing language (sub I (1.)). Is that an oversight or intentional?

Requirements to provide documentation are covered by the application requirements in the Ordinance, and by the application form staff will develop to implement it.

Attached are additional replacement pages, for the urgency and first reading ordinances. No changes were necessary to the Resolutions.

New Urgency pages: 21, 27, 37 of the packet

New First Reading pages: 53, 60, 70 of the packet

Note: the new page 53 supplants the previously distributed replacement page 53 – this version includes both the earlier change, and this latest one.

application must be in a standard format that can be easily uploaded on a web page for review by the public.

E. **Procedures for a Duly Filed Application.** The City shall not review any application unless duly filed in accordance with this section, as follows:

1. Pre-Submittal Conference. Before application submittal, applicants are strongly encouraged to schedule and attend a pre-application meeting with the City Manager. The pre-submittal conference is intended to streamline the review process through informal discussion that includes, without limitation, the appropriate project classification, including whether the project qualifies for Section 6409(a); any latent issues in connection with any existing **pole**, tower or base station; potential concealment issues (if applicable); coordination with other City departments responsible for application review; and application completeness issues. To mitigate unnecessary delays due to application incompleteness, applicants are encouraged (but not required) to bring any draft applications or other materials so that City staff may provide informal feedback about whether such applications or other materials may be incomplete or unacceptable.

2. Submittal Appointment. All applications must be filed with the City at a pre-scheduled appointment. Applicants may generally submit one application per appointment, but may schedule successive appointments for multiple applications whenever feasible and not prejudicial to other applicants. Any application received without an appointment, whether delivered in-person or through any other means, will not be considered duly filed unless the applicant received a written exemption from the City Manager at a pre-submittal conference.

3. Appointment Scheduling Procedures. For any event in the submittal process that requires an appointment, applicants must submit a written request to the City Manager. The City Manager shall endeavor to provide applicants with an appointment as soon as reasonably feasible and within five business days after a written request is received.

4. Incomplete Applications Deemed Denied Without Prejudice. To promote efficient review and timely decisions, an application will be automatically deemed denied without prejudice by the City when the applicant fails to tender a substantive response to the City within ninety (90) calendar days after the City deems the application incomplete in a written notice to the applicant. The City Manager may, in the City Manager's discretion, grant a written extension for up to an additional 30 calendar days when the applicant submits a written request prior to the 90th day that shows good cause to grant the extension. Delays due to circumstances outside the applicant's reasonable control will be considered good cause to grant the extension.

5. Departmental Forms, Rules and Other Regulations. The City Council authorizes the City Manager to develop and publish permit application forms, checklists, informational handouts and other related materials that the City Manager finds necessary, appropriate or useful for processing requests for Section 6409(a) approvals. Without further authorization from the City Council, the City Manager may, from time to time, update and alter any such permit application forms, checklists, informational handouts and other related materials as the City Manager deems necessary, appropriate or useful to respond to regulatory, technological or other changes related to this chapter. The City Council authorizes the City Manager to establish other reasonable rules and regulations,

- e. Umbrella or Excess Liability: Umbrella or Excess Insurance. If umbrella or an excess liability insurance policy is used to satisfy the minimum requirements for CGL or Automobile Liability insurance coverage listed above, the umbrella or excess liability policies shall provide coverage at least as broad as specified for the underlying coverages and covering those insured in the underlying policies. Coverage shall be “pay on behalf,” with defense costs payable in addition to policy limits. permittee shall provide a “follow form” endorsement or schedule of underlying coverage satisfactory to the City indicating that such coverage is subject to the same terms and conditions as the underlying liability policy.
- f. The relevant policy(ies) shall name the City, its elected/appointed officials, commission members, officers, representatives, agents, and employees as additional insureds. Permittee shall use its best efforts to provide thirty (30) days’ prior notice to the City of to the cancellation or material modification of any applicable insurance policy.

Section 11.12.080 Findings.

- A. Where a wireless telecommunication facility requires a use permit under this chapter, the City shall not approve any application unless, in addition to the findings generally applicable to all use permits, all of the following additional findings are made:
1. The proposed facility complies with all applicable provisions of this chapter, and with design and siting guidelines adopted by the City Council, and will be in compliance with all applicable building, electrical, and fire safety codes.
 2. The proposed facility has been designed and located to achieve compatibility with the community to the maximum extent reasonably feasible.
 3. The applicant has submitted a statement of its willingness to allow other carriers to collocate on the proposed wireless telecommunications facility wherever technically and economically feasible and where collocation would not harm community compatibility.
 4. Noise generated by equipment will not be excessive, annoying nor be detrimental to the public health, safety, and welfare and will not exceed the standards set forth in ~~this chapter~~ [Chapter 6.16 of the Code](#).
- B. In addition to the findings in subsection A of this section, approval of a wireless telecommunications facility permit for a facility that will be located in the public right-of-way may be granted only if the following findings are made by the City:
1. The applicant has provided substantial written evidence supporting the applicant’s claim that it has the right to enter the public right-of-way pursuant to state or federal law, or the applicant has entered into a franchise or other agreement with the City permitting them to use the public right-of-way.
 2. The applicant has demonstrated that the facility will not interfere with the use of the public right-of-way, existing subterranean infrastructure, or the City’s plans for modification or use of such location and infrastructure
- C. A copy of any decision on an application made under this section shall be provided to the applicant, and to any party who submitted comments to the City Manager pursuant to notice required by this Chapter. Decisions shall also be posted on the Los Altos website within

facility site shall be maintained in good condition, including ensuring the facilities are reasonably free of:

1. General dirt and grease;
2. Chipped, faded, peeling, and cracked paint;
3. Rust and corrosion;
4. Cracks, dents, and discoloration;
5. Missing, discolored, or damaged artificial foliage or other camouflage;
6. Graffiti, bills, stickers, advertisements, litter and debris;
7. Broken and misshapen structural parts; and
8. Any damage from any cause.

C. All trees, foliage or other landscaping elements approved as part of the facility shall be maintained in good condition at all times, and the permittee, owner and operator of the facility shall be responsible for replacing any damaged, dead or decayed landscaping. No amendment to any approved landscaping plan may be made until it is submitted to and approved by the City Manager.

D. The permittee shall replace its facilities, after obtaining all required permits, if maintenance or repair is not sufficient to return the facility to the condition it was in at the time of installation.

E. Each facility shall be operated and maintained at all times in compliance with applicable federal regulations, including FCC radio frequency emissions standards.

F. Each facility shall be operated and maintained to comply at all times with the noise regulations of ~~this chapter~~[Chapter 6.16 of the Code](#), and shall be operated and maintained in a manner that will minimize noise impacts to surrounding residents. Except for emergency repairs, any testing and maintenance activities that will be audible beyond the property line shall only occur between the hours of 7:00 a.m. and 5:00 p.m. on Monday through Friday, excluding holidays, unless alternative hours are approved by the City Manager. Backup generators, if permitted, shall only be operated during periods of power outages or for testing.

G. If a flagpole is used for camouflaging a wireless telecommunications facility, flags shall be flown and shall be properly maintained at all times.

H. Each owner or operator of a facility shall routinely inspect each site to ensure compliance with the standards set forth in this section and the conditions of approval.

Section 11.12.150 No dangerous conditions or obstructions allowed.

No person shall install, use or maintain any wireless telecommunications facility which in whole or in part rests upon, in or over any public sidewalk or parkway, when such installation, use or maintenance endangers or is reasonably likely to endanger the safety of persons or property, or when such site or location is used for public utility purposes, public transportation purposes or other governmental use, or when such facility unreasonably interferes with or impedes the flow of pedestrian or vehicular traffic including any legally parked or stopped vehicle, the ingress into or egress from any residence or place of business, the use of poles, posts, traffic signs or signals,

which is located within a one thousand (1,000) feet foot radius of the location of the applicant's proposed facility. Such notice shall be in the form and include the content specified by the City Manager in a publicly stated format, as may be revised from time to time, but at a minimum must be clearly marked as a notification of proposed wireless infrastructure installation, identify the applicant and service provider(s) who will utilize the facility, and include a plain language description of the proposed facility, photosimulations or illustrations depicting the proposed wireless facility, and the address where comments may be sent to the City Manager within fifteen (15) days of the date of the notice. Applicant shall supplement its application with proof of mailing of required notices no less than two (2) days after mailing of notices

D. All applications shall be posted to the City of Los Altos website within three (3) days of receipt of the application, or as soon as is reasonably practicable. The electronic version of an application must be in a standard format that can be easily uploaded on a web page for review by the public.

E. Procedures for a Duly Filed Application. The City shall not review any application unless duly filed in accordance with this section, as follows:

1. Pre-Submittal Conference. Before application submittal, applicants are strongly encouraged to schedule and attend a pre-application meeting with the City Manager. The pre-submittal conference is intended to streamline the review process through informal discussion that includes, without limitation, the appropriate project classification, including whether the project qualifies for Section 6409(a); any latent issues in connection with any existing pole, tower or base station; potential concealment issues (if applicable); coordination with other City departments responsible for application review; and application completeness issues. To mitigate unnecessary delays due to application incompleteness, applicants are encouraged (but not required) to bring any draft applications or other materials so that City staff may provide informal feedback about whether such applications or other materials may be incomplete or unacceptable.

2. Submittal Appointment. All applications must be filed with the City at a pre-scheduled appointment. Applicants may generally submit one application per appointment, but may schedule successive appointments for multiple applications whenever feasible and not prejudicial to other applicants. Any application received without an appointment, whether delivered in-person or through any other means, will not be considered duly filed unless the applicant received a written exemption from the City Manager at a pre-submittal conference.

3. Appointment Scheduling Procedures. For any event in the submittal process that requires an appointment, applicants must submit a written request to the City Manager. The City Manager shall endeavor to provide applicants with an appointment as soon as reasonably feasible and within five business days after a written request is received.

4. Incomplete Applications Deemed Denied Without Prejudice. To promote efficient review and timely decisions, an application will be automatically deemed denied without prejudice by the City when the applicant fails to tender a substantive response to the City within ninety (90) calendar days after the City deems the

2. The proposed facility has been designed and located to achieve compatibility with the community to the maximum extent reasonably feasible.
3. The applicant has submitted a statement of its willingness to allow other carriers to collocate on the proposed wireless telecommunications facility wherever technically and economically feasible and where collocation would not harm community compatibility.
4. Noise generated by equipment will not be excessive, annoying nor be detrimental to the public health, safety, and welfare and will not exceed the standards set forth in ~~this chapter~~ Chapter 6.16 of the Code.

B. In addition to the findings in subsection A of this section, approval of a wireless telecommunications facility permit for a facility that will be located in the public right-of-way may be granted only if the following findings are made by the City:

1. The applicant has provided substantial written evidence supporting the applicant's claim that it has the right to enter the public right-of-way pursuant to state or federal law, or the applicant has entered into a franchise or other agreement with the City permitting them to use the public right-of-way.
2. The applicant has demonstrated that the facility will not interfere with the use of the public right-of-way, existing subterranean infrastructure, or the City's plans for modification or use of such location and infrastructure

C. A copy of any decision on an application made under this section shall be provided to the applicant, and to any party who submitted comments to the City Manager pursuant to notice required by this Chapter. Decisions shall also be posted on the Los Altos website within twenty-four (24) hours of their issuance, in a manner clearly identifying the application to which the decision relates.

Section 11.12.090 Exceptions.

A. Exceptions pertaining to any provision of this chapter, including, but not limited to, exceptions from findings that would otherwise justify denial, may be granted by the City if the City makes the finding that:

1. Denial of the facility as proposed would violate federal law, state law, or both; or
2. A provision of this chapter, as applied to applicant, would deprive applicant of its rights under federal law, state law, or both.

B. An applicant may only request an exception at the time of applying for a wireless telecommunications facility permit. The request must include both the specific provision(s) of this chapter and any design or siting standards from which the exception is sought and the basis of the request. Any request for an exception after the City has deemed an application complete shall be treated as a new application.

C. Notwithstanding any other provision of this chapter, a use permit shall be required for a facility when an exception is requested.

D. The applicant shall have the burden of proving that denial of the facility as proposed would violate federal law, state law, or both, or that the provisions of this chapter, as applied to applicant, would deprive applicant of its rights under federal law, state law, or

8. Any damage from any cause.
- C. All trees, foliage or other landscaping elements approved as part of the facility shall be maintained in good condition at all times, and the permittee, owner and operator of the facility shall be responsible for replacing any damaged, dead or decayed landscaping. No amendment to any approved landscaping plan may be made until it is submitted to and approved by the City Manager.
- D. The permittee shall replace its facilities, after obtaining all required permits, if maintenance or repair is not sufficient to return the facility to the condition it was in at the time of installation.
- E. Each facility shall be operated and maintained at all times in compliance with applicable federal regulations, including FCC radio frequency emissions standards.
- F. Each facility shall be operated and maintained to comply at all times with the noise regulations of ~~this chapter~~ Chapter 6.16 of the Code, and shall be operated and maintained in a manner that will minimize noise impacts to surrounding residents. Except for emergency repairs, any testing and maintenance activities that will be audible beyond the property line shall only occur between the hours of 7:00 a.m. and 5:00 p.m. on Monday through Friday, excluding holidays, unless alternative hours are approved by the City Manager. Backup generators, if permitted, shall only be operated during periods of power outages or for testing.
- G. If a flagpole is used for camouflaging a wireless telecommunications facility, flags shall be flown and shall be properly maintained at all times.
- H. Each owner or operator of a facility shall routinely inspect each site to ensure compliance with the standards set forth in this section and the conditions of approval.

Section 11.12.150 No dangerous conditions or obstructions allowed.

No person shall install, use or maintain any wireless telecommunications facility which in whole or in part rests upon, in or over any public sidewalk or parkway, when such installation, use or maintenance endangers or is reasonably likely to endanger the safety of persons or property, or when such site or location is used for public utility purposes, public transportation purposes or other governmental use, or when such facility unreasonably interferes with or impedes the flow of pedestrian or vehicular traffic including any legally parked or stopped vehicle, the ingress into or egress from any residence or place of business, the use of poles, posts, traffic signs or signals, hydrants, mailboxes, permitted sidewalk dining, permitted street furniture or other objects permitted at or near said location.

Section 11.12.160 Permit expiration.

- A. A permit for any wireless telecommunications facility shall be valid for a period of 10 years, unless the permit states a longer period, or pursuant to another provision of the Los Altos Municipal Code the permit lapses sooner or is revoked. At the end of such period, the permit shall expire.
- B. A permittee may apply for extensions of its permit in increments of no more than 10 years and no sooner than 12 months prior to expiration of the permit.

From: [Chris Jordan](#)
To: [City Council](#)
Cc: [Gail Karish](#); [John Gasparini](#); christopher.diaz@bbklaw.com; [Jim Sandoval](#); [Wendy Meisner](#); [Jon Maginot](#)
Subject: Questions regarding the wireless facilities ordinance for the August 5 special meeting
Date: Monday, August 5, 2019 11:20:38 AM
Attachments: [Urgency Ordinance Replacement Pages 8-5-19-c1.pdf](#)
[Design Resolution Replacement Pages 8-5-19-c1.pdf](#)
[First Reading Ordinance Replacement Pages 8-5-19-c1.pdf](#)

Council --

A member of the Council has submitted some questions regarding tonight's meeting. Below are the responses from the City Attorney's office and attached are possible replacement pages for the ordinances and resolution.

Questions about the Urgency Ordinance (and the same questions apply to the regular ordinance too):

The answers are the same for both ordinances as they are identical except for the urgency findings.

1. In the definitions section 11.12.020, items 3. (Base Station), 7. (Collocation), 8. (Eligible Facilities Request), 9. (Eligible Support Structure), 10. (Existing), 22 (Site), all reference FCC 47 C.F.R Section 1.6100 (x) (x) --- however, in the Mill Valley and Fairfax Ordinances, they reference FCC 47 C.F.R . Section 1.40001 (x) (x). Why are we different? Are we referencing the correct sections in this ordinance?

As noted in the staff report on page 5, second bullet under "Other Revisions to Ordinance", the relevant portion of the Code of Federal Regulations was reorganized in 2018 and this resulted in section numbers being renumbered. The ordinance has the current numbers.

2. In the Definitions Section, the definition of "Reviewing Authority", which is in the Mill Valley and Fairfax ordinances, is not in our ordinance. Why is that?

For simplicity and clarity we replaced the term "reviewing authority" with "City" and so there is no need for the definition. There is one section where we missed making the change-- Section 11.12.060, first paragraph. We will have a substitute page made to correct this.

3. Section 11.12.040 B.1.c. The MV/Fairfax ordinance includes the additional underlined words "Whether any requested exception is necessary to close a significant gap in coverage and is the least intrusive means of doing so." Is there a reason the proposed Los Altos ordinance does not include these words?

We believe you meant to refer to 11.12.050 B.1.c. We removed the extra words because they may be interpreted to unduly limit the matters which can be examined by the consultant in response to an applicant's claim for an exception. Section 11.12.090 states that an

applicant may request an exception due to a violation of federal law or state law or both. The extra language in the MV/Fairfax ordinance only refers to a judge made test interpreting the “effective prohibition” standard in federal law (47 USC 332(c)(7). As we noted in the July 30th staff report, the FCC rejected this test for small cells. Removing the extra words ensures the consultant can examine whether any exception is necessary no matter what the basis for the applicant’s claim.

4. Section 11.12.040 C. Under Notice, we asked that it state “within one thousand (1,000) feet **radius** ... “ The word “radius” is not in the proposed ordinance as we requested.

We believe you meant to refer to 11.12.050 C. We determined that it was not necessary to specify ‘radius’ because the phrase “within one thousand feet” is legally sufficient to make that clear. The staff report notes on page 4, in the fourth bullet point, that this language will provide notice “in any direction.” Nonetheless, we will have a substitute page made to add this word to avoid any doubt.

Resolution No. 2019-35

1. Under Definitions, there is a definition of a Small Cell Facility, which I do not see anywhere in the Mill Valley or Fairfax ordinances. Why is it included here? It also includes height requirements / restrictions, which seem to possibly be inconsistent with the section H. Other Requirements where additional heights are stated.

The definition’s text is the same as the FCC small cell order, now codified in regulations – 47 C.F.R. 1.6002(l). We added the definition so that we could limit the types of wireless facilities that might go in the public right of way and public utilities easements (See section 7 of the Resolution). The MV/Fairfax ordinances did not include this basic limitation.

2. In Section 2 (6), it references 47C.F.R Section 1.1307(b). At the last meeting, I requested that there be a definition that describes what this is, as there is no other mention of this section or definition of this section in the document. Can you please provide language for this?

47 CFR 1.1307(b) contains the FCC’s RF emissions safety standards as Section 2(6) explains. The full text of the current standards is lengthy but available online. A copy is attached (we have provided the full section for context). We can prepare a substitute page that will add these standards to the design resolution as an appendix for reference.

3. In Section 4.D., where the table says “All Zoning Districts” under Public Right of Way, this should say “Non-Residential Districts”, in concert with the Mill Valley and Fairfax ordinances, as requested by the council at the July 30 meeting.

The Council requested two alternatives for this section be provided – one to restrict

facilities in residential areas while avoiding an outright ban, and the other to ban them. The draft includes the severe restrictions. The alternative language to effectuate a ban, is in the staff report starting on page 6, in the third bullet under Design Standards Resolution.

3. In section 7. H. Other Requirements, it mentions maximum heights can't exceed 50 feet. In Section C. Poles, it says no facility shall exceed 35 feet in height. Can you please reconcile this inconsistency?

The first sentence of 7.H.2 should have been deleted because pole height is addressed elsewhere as you noted. We will have a substitute page made to make this deletion.

4. In Section 7. H. 3, it talks about the circumstance where the RF emissions exceed applicable FCC limits for exposure to the general public, and how this is OK if the affected property owner consents. Why do we have this at all? All of the installations should comply with the FCCs RF limits, and we should not allow any that exceed the limits? This should be struck.

FCC rules establish the safe levels of RF emissions exposure and require the facility owner/applicant to determine the exclusion zone immediately around the facility where those levels would be exceeded. This would be an area high off the ground near the antenna and not readily accessible by the general public. The intent of the language is state that the consent of the property owner will be required if this exclusion area would be over private property. The alternative would be to state that the exclusion area may not be over private property in any circumstances.

5. In Section 7. H. 4, it says new poles are permitted. However, in our discussion on July 30, we said that new poles are not permitted, as Los Altos is trying to eliminate new utility poles. This should be struck.

This was an oversight. To be consistent with the exception process allowed in the ordinance, the first sentence should be struck and replaced with "New poles are only permitted by exception." The second sentence should remain to provide guidance if an exception is demonstrated. We will have a substitute page made to make this change.

Also:

Attached are the replacement pages referenced in the above responses. The items in the packet don't have page numbers this time around, so I've noted the locations in the combined PDF where they are. Note that there's two versions of the Ordinance changes – one for the urgency, and one for the first reading. The Design Resolution new pages include the current FCC RF standards as an appendix, as well.

Urgency ordinance replacement pages – 20, 22 of the packet

First reading ordinance replacement pages – 53, 54 of the packet

Design Resolution replacement pages – 77, 84 of the packet, plus appendix to add at the end

Please let me know if you have any issues or further questions.

11. Any other studies or information determined necessary by the City Manager may be required.

12. Applicants are strongly encouraged to include a master plan which identifies the location of the proposed facility in relation to all existing and potential locations in the City that are reasonably anticipated for construction within two years of submittal of the application.

13. A siting analysis which identifies a minimum of five other feasible locations within or outside the City by which the applicant could achieve the service goals to be met by the facility, unless the applicant provides compelling technical reasons for fewer than the minimum. The alternative site analysis should include at least one collocation site, if feasible.

14. A sample of the proposed notice to be mailed pursuant to subsection C of this section, and a list of intended recipients (including content and mailing envelope).

B. Independent Expert.

1. The City Manager is authorized to retain on behalf of the City an independent, qualified consultant to review any application for a permit for a wireless telecommunications facility to review the technical aspects of the application, including, but not limited to, the following matters:

- a. The accuracy, adequacy, and completeness of submissions;
- b. Compliance with applicable radio frequency emission standards;
- c. Whether any requested exception is necessary;
- d. Technical demonstration of the unavailability of alternative sites, facility designs or configurations, and coverage analysis; and
- e. The validity of conclusions reached or claims made by applicant.

2. The cost of this review shall be paid by the applicant through a deposit pursuant to an adopted fee schedule resolution.

C. Notice. Within three (3) business days of submission of an application containing all information required by this Chapter and any associated regulations, an applicant shall provide notice, by mail, to all owners and residents of all property, and the residential manager for any multi-family dwelling unit that includes ten (10) or more units, any part of which is located within a one thousand (1,000) ~~feet~~ foot radius of the location of the applicant's proposed facility. Such notice shall be in the form and include the content specified by the City Manager in a publicly stated format, as may be revised from time to time, but at a minimum must be clearly marked as a notification of proposed wireless infrastructure installation, identify the applicant and service provider(s) who will utilize the facility, and include a plain language description of the proposed facility, photosimulations or illustrations depicting the proposed wireless facility, and the address where comments may be sent to the City Manager within fifteen (15) days of the date of the notice. Applicant shall supplement its application with proof of mailing of required notices no less than two (2) days after mailing of notices

D. All applications shall be posted to the City of Los Altos website within three (3) days of receipt of the application, or as soon as is reasonably practicable. The electronic version of an

which may include, without limitation, regular hours for appointments with applicants, as the City Manager deems necessary or appropriate to organize, document and manage the application intake process.

Section 11.12.060 Conditions of approval for all facilities.

A. In addition to compliance with the requirements of this chapter, upon approval all facilities shall be subject to each of the following conditions of approval, as well as any modification of these conditions or additional conditions of approval deemed necessary by the ~~reviewing authority~~City:

1. Before the permittee submits any application for a building permit or other permits required by the Los Altos Municipal Code, the permittee must incorporate the wireless telecommunication facility permit granted under this chapter, all conditions associated with the wireless telecommunications facility permit and the approved plans and any photo simulations (the “approved plans”) into the project plans. The permittee must construct, install and operate the wireless telecommunications facility in strict compliance with the approved plans. The permittee shall submit an as built drawing within 90 days after installation of the facility.
2. Where feasible, as new technology becomes available, the permittee shall:
 - a. Place above-ground wireless telecommunications facilities below ground, including, but not limited to, accessory equipment that has been mounted to a telecommunications tower or mounted on the ground; and
 - b. Replace larger, more visually intrusive facilities with smaller, less visually intrusive facilities, after receiving all necessary permits and approvals required pursuant to the Los Altos Municipal Code.
3. The permittee shall submit and maintain current at all times basic contact and site information on a form to be supplied by the City. The permittee shall notify the City of any changes to the information submitted within seven days of any change, including change of the name or legal status of the owner or operator. This information shall include, but is not limited to, the following:
 - a. Identity, including the name, address and 24-hour local or toll free contact phone number of the permittee, the owner, the operator, and the agent or person responsible for the maintenance of the facility.
 - b. The legal status of the owner of the wireless telecommunications facility, including official identification numbers and FCC certification.
 - c. Name, address, and telephone number of the property owner if different than the permittee.
4. The permittee shall not place any facilities that will deny access to, or otherwise interfere with, any public utility, easement, or right-of-way located on the site. The permittee shall allow the City reasonable access to, and maintenance of, all utilities and existing public improvements within or adjacent to the site, including, but not limited to, pavement, trees, public utilities, lighting and public signage.
5. At all times, all required notices and signs shall be posted on the site as required by the FCC and California Public Utilities Commission, and as approved by the City. The

which is located within a one thousand (1,000) feet foot radius of the location of the applicant's proposed facility. Such notice shall be in the form and include the content specified by the City Manager in a publicly stated format, as may be revised from time to time, but at a minimum must be clearly marked as a notification of proposed wireless infrastructure installation, identify the applicant and service provider(s) who will utilize the facility, and include a plain language description of the proposed facility, photosimulations or illustrations depicting the proposed wireless facility, and the address where comments may be sent to the City Manager within fifteen (15) days of the date of the notice. Applicant shall supplement its application with proof of mailing of required notices no less than two (2) days after mailing of notices

D. All applications shall be posted to the City of Los Altos website within three (3) days of receipt of the application, or as soon as is reasonably practicable. The electronic version of an application must be in a standard format that can be easily uploaded on a web page for review by the public.

E. Procedures for a Duly Filed Application. The City shall not review any application unless duly filed in accordance with this section, as follows:

1. Pre-Submittal Conference. Before application submittal, applicants are strongly encouraged to schedule and attend a pre-application meeting with the City Manager. The pre-submittal conference is intended to streamline the review process through informal discussion that includes, without limitation, the appropriate project classification, including whether the project qualifies for Section 6409(a); any latent issues in connection with any existing tower or base station; potential concealment issues (if applicable); coordination with other City departments responsible for application review; and application completeness issues. To mitigate unnecessary delays due to application incompleteness, applicants are encouraged (but not required) to bring any draft applications or other materials so that City staff may provide informal feedback about whether such applications or other materials may be incomplete or unacceptable.

2. Submittal Appointment. All applications must be filed with the City at a pre-scheduled appointment. Applicants may generally submit one application per appointment, but may schedule successive appointments for multiple applications whenever feasible and not prejudicial to other applicants. Any application received without an appointment, whether delivered in-person or through any other means, will not be considered duly filed unless the applicant received a written exemption from the City Manager at a pre-submittal conference.

3. Appointment Scheduling Procedures. For any event in the submittal process that requires an appointment, applicants must submit a written request to the City Manager. The City Manager shall endeavor to provide applicants with an appointment as soon as reasonably feasible and within five business days after a written request is received.

4. Incomplete Applications Deemed Denied Without Prejudice. To promote efficient review and timely decisions, an application will be automatically deemed denied without prejudice by the City when the applicant fails to tender a substantive response to the City within ninety (90) calendar days after the City deems the

application incomplete in a written notice to the applicant. The City Manager may, in the City Manager's discretion, grant a written extension for up to an additional 30 calendar days when the applicant submits a written request prior to the 90th day that shows good cause to grant the extension. Delays due to circumstances outside the applicant's reasonable control will be considered good cause to grant the extension.

5. Departmental Forms, Rules and Other Regulations. The City Council authorizes the City Manager to develop and publish permit application forms, checklists, informational handouts and other related materials that the City Manager finds necessary, appropriate or useful for processing requests for Section 6409(a) approvals. Without further authorization from the City Council, the City Manager may, from time to time, update and alter any such permit application forms, checklists, informational handouts and other related materials as the City Manager deems necessary, appropriate or useful to respond to regulatory, technological or other changes related to this chapter. The City Council authorizes the City Manager to establish other reasonable rules and regulations, which may include, without limitation, regular hours for appointments with applicants, as the City Manager deems necessary or appropriate to organize, document and manage the application intake process.

Section 11.12.060 Conditions of approval for all facilities.

A. In addition to compliance with the requirements of this chapter, upon approval all facilities shall be subject to each of the following conditions of approval, as well as any modification of these conditions or additional conditions of approval deemed necessary by the ~~reviewing authority~~City:

1. Before the permittee submits any application for a building permit or other permits required by the Los Altos Municipal Code, the permittee must incorporate the wireless telecommunication facility permit granted under this chapter, all conditions associated with the wireless telecommunications facility permit and the approved plans and any photo simulations (the "approved plans") into the project plans. The permittee must construct, install and operate the wireless telecommunications facility in strict compliance with the approved plans. The permittee shall submit an as built drawing within 90 days after installation of the facility.
2. Where feasible, as new technology becomes available, the permittee shall:
 - a. Place above-ground wireless telecommunications facilities below ground, including, but not limited to, accessory equipment that has been mounted to a telecommunications tower or mounted on the ground; and
 - b. Replace larger, more visually intrusive facilities with smaller, less visually intrusive facilities, after receiving all necessary permits and approvals required pursuant to the Los Altos Municipal Code.
3. The permittee shall submit and maintain current at all times basic contact and site information on a form to be supplied by the City. The permittee shall notify the City of any changes to the information submitted within seven days of any change, including change of the name or legal status of the owner or operator. This information shall include, but is not limited to, the following:

(2) Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in 47 C.F.R. Section 1.1320(d)), is no more than three cubic feet in volume;

(3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;

(4) The facility does not require antenna structure registration under 47 C.F.R. Part 17;

(5) The facility is not located on Tribal lands, as defined under 36 C.F.R. Section 800.16(x);
and

(6) The facility does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 C.F.R. Section 1.1307(b). [A copy of those standards as currently in effect is attached as Appendix 1.](#)

Underground areas: Those areas where there are no electrical facilities or facilities of the incumbent local exchange carrier in the right of way; or where the wires associated with the same are or are required to be located underground; or where the same are scheduled to be converted from overhead to underground. Electrical facilities are distribution facilities owned by an electric utility and do not include transmission facilities used or intended to be used to transmit electricity at nominal voltages in excess of 35,000 volts.

SECTION 3.

BACKGROUND AND PURPOSE. The City of Los Altos is establishing these *Design and Siting Guidelines and Standards* for wireless facilities in order to regulate the design and placement of wireless infrastructure throughout the City.

These *Design and Siting Guidelines and Standards* provide objective aesthetic design and siting requirements that all wireless facilities must meet for approval by the City.

SECTION 4. LOCATION AND CONFIGURATION PREFERENCES

A. Purpose. The purpose of this section is to provide guidelines to applicants and the City regarding the preferred locations and configurations for wireless telecommunication facilities in the City, provided that nothing in this section shall be construed to permit a wireless telecommunication facility in any location or configuration that it is otherwise prohibited by this chapter.

B. Review of Location and Configuration. The City shall consider the extent to which a proposed wireless telecommunication facility complies with these preferences and whether there are feasible alternative locations or configurations to the proposed facility that are more preferred under this section. If the location or configuration of a proposed facility qualifies for two or more categories of preferred locations or configurations, it shall be deemed to belong to the least preferred category.

6. Installations shall be located on poles that are located outside of driveway and intersection sight lines. Where feasible, installations shall be located on poles that are located as close as feasible to shared property lines between two adjacent lots and not directly in front of residences and businesses.

7. All equipment (other than the antenna, antenna supports, ancillary wires, cables and any electric meter) shall be installed underground in any underground areas.

F. Americans with Disabilities Act Compliance. All facilities shall be built in compliance with the Americans with Disabilities Act (ADA) and no facility shall be approved which would render any portion of the rights-of-way noncompliant with the ADA.

G. Accessory Equipment. With the exception of the electric meter, which shall be pole-mounted to the extent feasible, all accessory equipment shall be located underground to the extent feasible. All wireless equipment installed on poles should be completely contained within an equipment shroud. Equipment shroud and lines should be painted, treated or finished to match existing utility pole and line aesthetics. Utility line installations should be colored to a non-reflective color. Required electrical meter cabinets shall be adequately screened and camouflaged.

H. Other Requirements.

1. Small wireless facilities shall not be located on decorative streetlights.

2. ~~Pole heights shall be minimized, but in no case shall the maximum height of any facilities exceed 50 feet.~~ Legally required lightning arresters and beacons shall be included when calculating the height of facilities. Pole height is measured from the top of foundation, which should be flushed with the ground, to the top of pole or top of antenna, whichever is greater.

3. No portion of any wireless communications facility shall overhang a property line. Where a facility generates RF emissions in excess of applicable FCC limits for exposure to the general public, and any portion of the area occupied by those emissions is on or above any private property, the application for such facility shall include evidence of the affected property owner(s)' consent.

4. ~~New poles are only permitted if: (a) the applicant demonstrates that above-ground support structures near the project site either do not exist or are not reasonably available to the applicant; or (b) the City specifically finds that a new, non-replacement support structure would be more aesthetically desirable and consistent with the objectives of these Guidelines than installations on existing structures near the project site. New poles are only permitted by exception.~~ Pole material and finishes should match the existing materials of the City standard streetlight poles or match aesthetics and materials of existing decorative poles.

5. Disturbance of existing topography and on-site vegetation shall be minimized, unless such disturbance would substantially reduce the visual impacts of the facility.

6. Separation of service shall be provided by installing all new electrical conduit(s) or utilizing empty conduit(s) with conduit owner's expressed consent in writing.

APPENDIX 1

https://www.ecfr.gov/cgi-bin/text-idx?SID=fc77b2f4d9e3a4a8720aecdbf93260e5&mc=true&node=se47.1.1_11307&rgn=div8

47 CFR §1.1307 Actions that may have a significant environmental effect, for which Environmental Assessments (EAs) must be prepared.

(a) Commission actions with respect to the following types of facilities may significantly affect the environment and thus require the preparation of EAs by the applicant (see §§1.1308 and 1.1311) and may require further Commission environmental processing (see §§1.1314, 1.1315 and 1.1317):

(1) Facilities that are to be located in an officially designated wilderness area.

(2) Facilities that are to be located in an officially designated wildlife preserve.

(3) Facilities that: (i) May affect listed threatened or endangered species or designated critical habitats; or (ii) are likely to jeopardize the continued existence of any proposed endangered or threatened species or likely to result in the destruction or adverse modification of proposed critical habitats, as determined by the Secretary of the Interior pursuant to the Endangered Species Act of 1973.

NOTE: The list of endangered and threatened species is contained in 50 CFR 17.11, 17.22, 222.23(a) and 227.4. The list of designated critical habitats is contained in 50 CFR 17.95, 17.96 and part 226. To ascertain the status of proposed species and habitats, inquiries may be directed to the Regional Director of the Fish and Wildlife Service, Department of the Interior.

(4) Facilities that may affect districts, sites, buildings, structures or objects, significant in American history, architecture, archeology, engineering or culture, that are listed, or are eligible for listing, in the National Register of Historic Places (see 54 U.S.C. 300308; 36 CFR parts 60 and 800), and that are subject to review pursuant to section 1.1320 and have been determined through that review process to have adverse effects on identified historic properties.

(5) Facilities that may affect Indian religious sites.

(6) Facilities to be located in floodplains, if the facilities will not be placed at least one foot above the base flood elevation of the floodplain.

(7) Facilities whose construction will involve significant change in surface features (e.g., wetland fill, deforestation or water diversion). (In the case of wetlands on Federal property, see Executive Order 11990.)

(8) Antenna towers and/or supporting structures that are to be equipped with high intensity white lights which are to be located in residential neighborhoods, as defined by the applicable zoning law.

(b) In addition to the actions listed in paragraph (a) of this section, Commission actions granting construction permits, licenses to transmit or renewals thereof, equipment authorizations or modifications in existing facilities, require the preparation of an Environmental Assessment (EA) if the particular facility, operation or transmitter would cause human exposure to levels of radiofrequency radiation in excess of the limits in §§1.1310 and 2.1093 of this chapter. Applications to the Commission for construction permits, licenses to transmit or renewals thereof, equipment

authorizations or modifications in existing facilities must contain a statement confirming compliance with the limits unless the facility, operation, or transmitter is categorically excluded, as discussed below. Technical information showing the basis for this statement must be submitted to the Commission upon request. Such compliance statements may be omitted from license applications for transceivers subject to the certification requirement in §25.129 of this chapter.

(1) The appropriate exposure limits in §§1.1310 and 2.1093 of this chapter are generally applicable to all facilities, operations and transmitters regulated by the Commission. However, a determination of compliance with the exposure limits in §1.1310 or §2.1093 of this chapter (routine environmental evaluation), and preparation of an EA if the limits are exceeded, is necessary only for facilities, operations and transmitters that fall into the categories listed in table 1, or those specified in paragraph (b)(2) of this section. All other facilities, operations and transmitters are categorically excluded from making such studies or preparing an EA, except as indicated in paragraphs (c) and (d) of this section. For purposes of table 1, *building-mounted antennas* means antennas mounted in or on a building structure that is occupied as a workplace or residence. The term *power* in column 2 of table 1 refers to total operating power of the transmitting operation in question in terms of effective radiated power (ERP), equivalent isotropically radiated power (EIRP), or peak envelope power (PEP), as defined in §2.1 of this chapter. For the case of the Cellular Radiotelephone Service, subpart H of part 22 of this chapter; the Personal Communications Service, part 24 of this chapter and the Specialized Mobile Radio Service, part 90 of this chapter, the phrase *total power of all channels* in column 2 of table 1 means the sum of the ERP or EIRP of all co-located simultaneously operating transmitters owned and operated by a single licensee. When applying the criteria of table 1, radiation in all directions should be considered. For the case of transmitting facilities using sectorized transmitting antennas, applicants and licensees should apply the criteria to all transmitting channels in a given sector, noting that for a highly directional antenna there is relatively little contribution to ERP or EIRP summation for other directions.

TABLE 1—TRANSMITTERS, FACILITIES AND OPERATIONS SUBJECT TO ROUTINE ENVIRONMENTAL EVALUATION

Service (title 47 CFR rule part)	Evaluation required if:
Experimental Radio Services (part 5)	Power >100 W ERP (164 W EIRP).
Commercial Mobile Radio Services (part 20)	Non-building-mounted antennas: height above ground level to lowest point of antenna <10 m and power >1000 W ERP (1640 W EIRP). Building-mounted antennas: power >1000 W ERP (1640 W EIRP).
	Consumer Signal Booster equipment grantees under the Commercial Mobile Radio Services provisions in part 20 are required to attach a label to Fixed Consumer Booster antennas that:
	(1) Provides adequate notice regarding potential radiofrequency safety hazards, e.g., information regarding the safe minimum separation distance required between users and transmitting antennas; and
	(2) references the applicable FCC-adopted limits for

	radiofrequency exposure specified in §1.1310.
Paging and Radiotelephone Service (subpart E of part 22)	Non-building-mounted antennas: height above ground level to lowest point of antenna <10 m and power >1000 W ERP (1640 W EIRP).
	Building-mounted antennas: power >1000 W ERP (1640 W EIRP).
Cellular Radiotelephone Service (subpart H of part 22)	Non-building-mounted antennas: height above ground level to lowest point of antenna <10 m and total power of all channels >1000 W ERP (1640 W EIRP).
	Building-mounted antennas: total power of all channels >1000 W ERP (1640 W EIRP).
Personal Communications Services (part 24)	(1) Narrowband PCS (subpart D):
	Non-building-mounted antennas: height above ground level to lowest point of antenna <10 m and total power of all channels >1000 W ERP (1640 W EIRP).
	Building-mounted antennas: total power of all channels >1000 W ERP (1640 W EIRP).
	(2) Broadband PCS (subpart E):
	Non-building-mounted antennas: height above ground level to lowest point of antenna <10 m and total power of all channels >2000 W ERP (3280 W EIRP).
	Building-mounted antennas: total power of all channels >2000 W ERP (3280 W EIRP).
Satellite Communications Services (part 25)	All included.
	In addition, for NGSO subscriber equipment, licensees are required to attach a label to subscriber transceiver antennas that:
	(1) provides adequate notice regarding potential radiofrequency safety hazards, e.g., information regarding the safe minimum separation distance required between users and transceiver antennas; and
	(2) references the applicable FCC-adopted limits for radiofrequency exposure specified in §1.1310 of this chapter.
Miscellaneous Wireless Communications Services (part 27)	(1) For the 1390-1392 MHz, 1392-1395 MHz, 1432-1435 MHz, 1670-1675 MHz, and 2385-2390 MHz bands:

except subpart M)	
	Non-building-mounted antennas: height above ground level to lowest point of antenna <10 m and total power of all channels >2000 W ERP (3280 W EIRP).
	Building-mounted antennas: total power of all channels >2000 W ERP (3280 W EIRP).
	(2) For the 698-746 MHz, 746-764 MHz, 776-794 MHz, 2305-2320 MHz, and 2345-2360 MHz bands:
	Total power of all channels >1000 W ERP (1640 W EIRP).
Broadband Radio Service and Educational Broadband Service (subpart M of part 27)	Non-building-mounted antennas: height above ground level to lowest point of antenna <10 m and power >1640 W EIRP.
	Building-mounted antennas: power >1640 W EIRP.
	BRS and EBS licensees are required to attach a label to subscriber transceiver or transverter antennas that:
	(1) provides adequate notice regarding potential radiofrequency safety hazards, e.g., information regarding the safe minimum separation distance required between users and transceiver antennas; and
	(2) references the applicable FCC-adopted limits for radiofrequency exposure specified in §1.1310.
Upper Microwave Flexible Use Service (part 30)	Non-building-mounted antennas: Height above ground level to lowest point of antenna <10 m and power >1640 W EIRP.
	Antennas are mounted on buildings.
Radio Broadcast Services (part 73)	All included.
Auxiliary and Special Broadcast and Other Program Distributional Services (part 74)	Subparts G and L: Power >100 W ERP.
Stations in the Maritime Services (part 80)	Ship earth stations only.
Private Land Mobile Radio Services Paging Operations (subpart P of part 90)	Non-building-mounted antennas: height above ground level to lowest point of antenna <10 m and power >1000 W ERP (1640 W EIRP).
	Building-mounted antennas: power >1000 W ERP (1640 W EIRP).

Private Land Mobile Radio Services Specialized Mobile Radio (subpart S of part 90)	Non-building-mounted antennas: height above ground level to lowest point of antenna <10 m and total power of all channels >1000 W ERP (1640 W EIRP).
	Building-mounted antennas: Total power of all channels >1000 W ERP (1640 W EIRP).
76-81 GHz Radar Service (part 95)	All included.
Amateur Radio Service (part 97)	Transmitter output power >levels specified in §97.13(c)(1) of this chapter.
Local Multipoint Distribution Service (subpart L of part 101) and 24 GHz (subpart G of part 101)	Non-building-mounted antennas: height above ground level to lowest point of antenna <10 m and power >1640 W EIRP.
	Building-mounted antennas: power >1640 W EIRP.
	LMDS and 24 GHz Service licensees are required to attach a label to subscriber transceiver antennas that:
	(1) provides adequate notice regarding potential radiofrequency safety hazards, e.g., information regarding the safe minimum separation distance required between users and transceiver antennas; and
	(2) references the applicable FCC-adopted limits for radiofrequency exposure specified in §1.1310.
70/80/90 GHz Bands (subpart Q of part 101)	Non-building-mounted antennas: height above ground level to lowest point of antenna <10 m and power >1640 W EIRP.
	Building-mounted antennas: power >1640 W EIRP.
	Licensees are required to attach a label to transceiver antennas that:
	(1) provides adequate notice regarding potential radiofrequency safety hazards, e.g., information regarding the safe minimum separation distance required between users and transceiver antennas; and
	(2) references the applicable FCC-adopted limits for radiofrequency exposure specified in §1.1310.

(2)(i) Mobile and portable transmitting devices that operate in the Commercial Mobile Radio Services pursuant to part 20 of this chapter; the Cellular Radiotelephone Service pursuant to part 22 of this chapter; the Personal Communications Services (PCS) pursuant to part 24 of this chapter; the Satellite Communications Services pursuant to part 25 of this chapter; the Miscellaneous Wireless Communications Services pursuant to part 27 of this chapter; the Upper Microwave Flexible User Service pursuant to part 30 of this chapter; the Maritime Services (ship earth stations only) pursuant to part 80 of this chapter; the Specialized Mobile Radio Service, the 4.9 GHz Band Service, and the

3650 MHz Wireless Broadband Service pursuant to part 90 of this chapter; the Wireless Medical Telemetry Service (WMTS), the Medical Device Radiocommunication Service (MedRadio), and the 76-81 GHz Band Radar Service pursuant to part 95 of this chapter; and the Citizens Broadband Radio Service pursuant to part 96 of this chapter are subject to routine environmental evaluation for RF exposure prior to equipment authorization or use, as specified in §§2.1091 and 2.1093 of this chapter.

(ii) Unlicensed PCS, unlicensed NII, and millimeter-wave devices are also subject to routine environmental evaluation for RF exposure prior to equipment authorization or use, as specified in §§15.255(g), 15.257(g), 15.319(i), and 15.407(f) of this chapter.

(iii) Portable transmitting equipment for use in the Wireless Medical Telemetry Service (WMTS) is subject to routine environmental evaluation as specified in §§2.1093 and 95.2385 of this chapter.

(iv) Equipment authorized for use in the Medical Device Radiocommunication Service (MedRadio) as a medical implant device or body-worn transmitter (as defined in subpart I of part 95 of this chapter) is subject to routine environmental evaluation for RF exposure prior to equipment authorization, as specified in §§2.1093 and 95.2585 of this chapter by finite difference time domain (FDTD) computational modeling or laboratory measurement techniques. Where a showing is based on computational modeling, the Commission retains the discretion to request that supporting documentation and/or specific absorption rate (SAR) measurement data be submitted.

(v) All other mobile, portable, and unlicensed transmitting devices are categorically excluded from routine environmental evaluation for RF exposure under §§2.1091, 2.1093 of this chapter except as specified in paragraphs (c) and (d) of this section.

(3) In general, when the guidelines specified in §1.1310 are exceeded in an accessible area due to the emissions from multiple fixed transmitters, actions necessary to bring the area into compliance are the shared responsibility of all licensees whose transmitters produce, at the area in question, power density levels that exceed 5% of the power density exposure limit applicable to their particular transmitter or field strength levels that, when squared, exceed 5% of the square of the electric or magnetic field strength limit applicable to their particular transmitter. Owners of transmitter sites are expected to allow applicants and licensees to take reasonable steps to comply with the requirements contained in §1.1307(b) and, where feasible, should encourage co-location of transmitters and common solutions for controlling access to areas where the RF exposure limits contained in §1.1310 might be exceeded.

(i) Applicants for proposed (not otherwise excluded) transmitters, facilities or modifications that would cause non-compliance with the limits specified in §1.1310 at an accessible area previously in compliance must submit an EA if emissions from the applicant's transmitter or facility would result, at the area in question, in a power density that exceeds 5% of the power density exposure limit applicable to that transmitter or facility or in a field strength that, when squared, exceeds 5% of the square of the electric or magnetic field strength limit applicable to that transmitter or facility.

(ii) Renewal applicants whose (not otherwise excluded) transmitters or facilities contribute to the field strength or power density at an accessible area not in compliance with the limits specified in §1.1310 must submit an EA if emissions from the applicant's transmitter or facility results, at the area in question, in a power density that exceeds 5% of the power density exposure limit applicable to that transmitter or facility or in a field strength that, when squared, exceeds 5% of the square of the electric or magnetic field strength limit applicable to that transmitter or facility.

(c) If an interested person alleges that a particular action, otherwise categorically excluded, will have a significant environmental effect, the person shall submit to the Bureau responsible for processing that action a written petition setting forth in detail the reasons justifying or circumstances necessitating environmental consideration in the decision-making process. (See §1.1313). The Bureau shall review the petition and consider the environmental concerns that have been raised. If the Bureau determines that the action may have a significant environmental impact, the Bureau will require the applicant to prepare an EA (see §§1.1308 and 1.1311), which will serve as the basis for the determination to proceed with or terminate environmental processing.

(d) If the Bureau responsible for processing a particular action, otherwise categorically excluded, determines that the proposal may have a significant environmental impact, the Bureau, on its own motion, shall require the applicant to submit an EA. The Bureau will review and consider the EA as in paragraph (c) of this section.

NOTE TO PARAGRAPH (d): Pending a final determination as to what, if any, permanent measures should be adopted specifically for the protection of migratory birds, the Bureau shall require an Environmental Assessment for an otherwise categorically excluded action involving a new or existing antenna structure, for which an antenna structure registration application (FCC Form 854) is required under part 17 of this chapter, if the proposed antenna structure will be over 450 feet in height above ground level (AGL) and involves either:

1. Construction of a new antenna structure;
2. Modification or replacement of an existing antenna structure involving a substantial increase in size as defined in paragraph I(C)(1)(3) of Appendix B to part 1 of this chapter; or
3. Addition of lighting or adoption of a less preferred lighting style as defined in §17.4(c)(1)(iii) of this chapter. The Bureau shall consider whether to require an EA for other antenna structures subject to §17.4(c) of this chapter in accordance with §17.4(c)(8) of this chapter. An Environmental Assessment required pursuant to this note will be subject to the same procedures that apply to any Environmental Assessment required for a proposed tower or modification of an existing tower for which an antenna structure registration application (FCC Form 854) is required, as set forth in §17.4(c) of this chapter.

(e) No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the regulations contained in this chapter concerning the environmental effects of such emissions. For purposes of this paragraph:

(1) The term *personal wireless service* means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services;

(2) The term *personal wireless service facilities* means facilities for the provision of personal wireless services;

(3) The term *unlicensed wireless services* means the offering of telecommunications services using duly authorized devices which do not require individual licenses, but does not mean the provision of direct-to-home satellite services; and

(4) The term *direct-to-home satellite services* means the distribution or broadcasting of programming or services by satellite directly to the subscriber's premises without the use of ground receiving or distribution equipment, except at the subscriber's premises or in the uplink process to the satellite.

