



Community Development Department

Small Cell Update – May 7, 2020

You are receiving this information because you expressed an interest in getting updates on small cells in Durango.

New Applications

The City has received three applications for new small cell installations. The submittals are from Kappa Consulting, acting on behalf of Verizon Wireless. Kappa Consulting has stated these small cells will contain 4G technology for the next several years, but in the future, they will be switched out for 5G. The term small cell refers to the size of the antenna. The terms 4G and 5G mean fourth generation and fifth generation technology, respectively, which have different frequency and transmitting technologies.

The City is currently not processing these applications because they are incomplete. Sections 2-2-3-15(C) 5 and 6 of the City's Land Use and Development Code (LUDC) contain requirements for small cells that have not been met in the current applications.

Section #5 requires colocation, which means that multiple cellular providers can use the same structure to keep the number of telecommunication facilities to a minimum as a means of reducing the overall visual impacts throughout the community. Colocation is required if it is a practical alternative to the construction of a new telecommunication tower. The applications do not address colocation.

Section #6 requires new antennas to be attached to water towers, existing transmission towers, or existing buildings, or light poles or utility poles if it is practical to do so. The attachment requirement is not addressed in Kappa's applications.

The City has requested that Kappa Consulting revise its application to address the missing information. Each of these facilities have been proposed as a free standing, 40-foot tall pole in public right-of-way. The applications state the poles are to be in the following locations:

1. Adjacent to 537 E 2nd Ave, on the west side of E 2nd Ave, north of E 5th St. Near the north property line of Southwest Book Trader.
2. Adjacent to the LPEA substation, E 4th Ave south of E 2nd St.
3. 572 East 6th Ave, on the south side of East College Dr near Reruns.

Federal and state laws restrict the power of local governments to regulate small cell facilities, especially in public right-of-way. The City believes it has regulatory authority over some aspects of small cell facilities, however, and will continue to enforce the small cell regulations that we have adopted.

Public Notice Process

Small cell applications are permitted through the Special Use Permit (SUP) process. SUP permits require a posting of the site. To ensure that more people are informed about the current applications, the City will repost the sites once it has received complete applications. The City will also notify people on our small cell email list and provide notice on the City's website.

New Regulations and Legal Action Against Small Cell Regulations

Hundreds of local governments, including Durango, are party to a series of lawsuits against Federal small cell regulations. The presentations of the defendants and plaintiffs wrapped up earlier this year, including in the 9th Circuit Appeals, in which the City of Durango is involved through its membership of CCUA, or the Colorado Communications and Utility Alliance. The timeline for courts to issue their decisions is unknown, although it should be this year. When the decisions are issued local governments will be able to revise their small cell regulations to account for any changes to existing law, as will be described in the courts' decisions.

The City is in the process of revising its small cell regulations to provide more design review, access to frequency information and restrictions on work in City right-of-way. The City's new regulations could be ready for adoption prior to the court ruling being issued, in which case the City will adopt new regulations at least twice.

It is important to note that some of the most contentious issues around small cell and 5G facilities may not be changed as a result of the lawsuits. Local governments are unlikely to gain the ability to regulate small cells on based on "perceived environmental impacts," i.e. the perceived health impacts. The state statute requiring cities to grant use of their right-of-way for small cells is similarly unlikely to change, unless amended by the Colorado General Assembly.

Emergency Declaration

A few people have contacted the City requesting a delay in processing small cell applications. The request is based on an assertion that emergency declarations stemming from the COVID-19 pandemic empower local governments to temporarily impose additional regulations, which is true in some ways, but not regarding small cell development. The City's legal counsel on telecommunications has provided an opinion that the emergency declarations do not empower local governments to adopt small cell moratoria, and that applications should be processed in accordance with our adopted standards. The City's counsel believes that federal regulations prohibit any local government from adopting a moratorium on small cell applications.

As a response to the pandemic the State of Colorado has issued guidelines that urge local governments to decrease review times for small cell applications. The City will continue to review applications within the previously established federal timelines. For a new stand-alone facility such as the ones Kappa has applied for, that is 90 days.