



DENVER ZONING CODE (DZC) UNLISTED ACCESSORY USE DETERMINATION: TEMPORARY TELECOMMUNICATIONS TOWER

EFFECTIVE DATE OF DETERMINATION: OCTOBER 26, 2023

BACKGROUND AND SUMMARY

In 2018, the Zoning Administrator issued an unlisted use determination identifying a temporary telecommunications tower as a temporary unlisted use in compliance with Section 12.4.6 of the Denver Zoning Code. The determination was specific to a site in the U-MX-5 zone district and focused on the scenario wherein a temporary telecommunications tower needed to be relocated from its permanent site to another site to maintain cellular service while construction occurred on both sites. In recent weeks, there have been two requests for temporary telecommunications towers in other zone districts in the City and County of Denver. This determination generally retains the use limitations of the 2018 determination and allows the temporary telecommunication tower use to be permitted in more zone districts across the city of Denver.

Two applications have prompted this revision to the 2018 determination:

4137 East Colfax Avenue (2023-CIUD-0000528): The applicant proposes to construct a temporary telecommunications tower on the subject property while the location of a permanent tower in the area is redeveloped (at 1565 North Colorado Boulevard). The subject property will be under construction during the time a temporary tower is to be located on-site. After construction is completed, a permanent tower may be placed on the original location or on a to-be-determined location in the same area. The subject zone lot is zoned U-MS-5.

301 South Cherokee Street (2023-CIUD-0000535): The applicant proposes to construct a temporary telecommunications tower to provide service while an existing permanent tower on the same zone lot is taken offline during construction. The temporary tower will be removed after construction is complete and the permanent tower can be brought back into service. The subject zone lot is zoned under a Planned Unit Development: PUD G 13, based on C-MX-16.

In keeping with the determination that was originally issued in 2018, both sites are proposed to be active construction sites during the time the Temporary Telecommunications Towers are located on the sites. In both cases, Temporary Telecommunications Towers are proposed because active construction will cause disruptions in service if the permanent towers are removed without a suitable interim solution.

UNLISTED USE FOR TEMPORARY TELECOMMUNICATIONS TOWER SUMMARY OF STANDARDS

In general, this determination applies to temporary telecommunication towers when they are proposed as an interim solution for permanent towers that must be removed or otherwise taken out of service during construction. The temporary nature of the use is based on a need to enable continuation of telecommunications services during construction of a new building, frequently on a separate zone lot than that of the original tower. The location of a temporary tower on a separate zone lot is common, but not a requirement. The intent of this determination is to allow a temporary telecommunications tower only during the time of construction; to concurrently allow time to apply for appropriate permits for a new, permanent telecommunications facility on or near a new building; and then to require the removal of the temporary tower after the construction activity is completed.

If permanent telecommunications towers are removed without any type of replacement facility, the result would create a gap in service, therefore, Temporary Telecommunication Tower sites would limit service disruptions to nearby cellular users, including large institutional users such as health care facilities.

This unlisted temporary use, as generally described, will hereafter be referenced as a "Temporary Telecommunication Tower." A Temporary Telecommunications Tower is not specifically listed as a permitted temporary use in the listed zone districts below; therefore, the Zoning Administrator must determine if the use is allowed. This determination will refer to the following zone districts:

1. All CC Zone districts
2. All MX Zone districts
3. All MS Zone districts
4. All CCN Zone districts
5. All Downtown Neighborhood Context Zone districts
6. I-MX- districts
7. All Campus Context Zone districts
8. M-CC- zone districts
9. M-MX- Zone districts
10. M-IMX- Zone districts
11. M-GMX- Zone districts

These zone districts are defined in Article 13 of the Denver Zoning Code as "Mixed Use Commercial Zone Districts." The list in Article 13 includes the Denver International Airport, but that zone district is excluded from this determination because that district specifically allows the Manager of Aviation to determine all allowed uses there. These districts will be referred to as "Mixed Use Commercial Zone Districts" in the rest of this document.

APPLICABLE RULES AND REVIEW CRITERIA FOR DETERMINING AN UNLISTED TEMPORARY USE

UNLISTED TEMPORARY USE – DZC, SECTION 11.1.1

Unlisted temporary uses, when permitted in a specific zone district, are governed by the Denver Zoning Code (“DZC”), Section 11.11.1, *Unlisted Temporary Uses*, which authorizes the Zoning Administrator to allow and impose limitations on an unlisted temporary use after review according to the procedures and review criteria in DZC, Section 12.4.6, *Code Interpretations and Determination of Unlisted Uses*.

GENERAL AUTHORITY TO DETERMINE UNLISTED USES

DZC, SECTION 12.4.6

According to DZC, Section 12.4.6.1, the Zoning Administrator may determine whether a specific unlisted use, including unlisted temporary uses, “may be permitted in one or more zone districts, and what type of use review is required.”

The Zoning Administrator is directed to:

- “1. Review and evaluate the application in light of this Code, the Comprehensive Plan, established administrative practices and past interpretations, the potential for establishing a precedent with the interpretation, and any other relevant policy and regulatory documents;
2. Review and evaluate the application with consideration of the general rules of interpretation specified in this Section 12.4.6.3.F, as applicable; and
3. Consult with the Manager, City Attorney, other agencies and staff, as necessary.”

DZC, SECTION 12.4.6.3.D.

In making a use determination, the Zoning Administrator may impose reasonable conditions on such use after consideration of, “at a minimum, the compatibility of the use within the zone districts in which the use may be permitted, the intensity of the use, the amount and configuration of physical space occupied by the use, and the potential for adverse impacts on adjacent properties.” (DZC, Section 12.4.6.3.E.2.) As part of the use determination, the Zoning Administrator must also determine which zoning permit use review procedure will apply, such as Informational Notice (“ZPIN”), Special Exception Review (“ZPSE”), or administrative review without notice or hearing (“ZP”). Determining the use review procedure “shall be based on consideration of the zoning procedure(s) applicable to similar land uses or subject matter, and/or the degree to which the zoning procedure may inform mitigation of possible adverse impacts” from the subject use. (DZC, Section 12.4.6.3.E.3.)

REVIEW CRITERIA FOR DETERMINING UNLISTED TEMPORARY USES

Denver Zoning Code, Section 12.4.6.4, specifies the criteria against which the Zoning Administrator must review all requests for determining whether an unlisted temporary should be allowed. The Zoning

Administrator must find that the request satisfies all the relevant review criteria before permitting the unlisted use. If the Zoning Administrator cannot find the proposed use satisfies the review criteria, then the only regulatory path for permitting such use is to amend the text of the zoning code to specifically list and allow the use.

In sum, an unlisted use may only be permitted through the process established in DZC Section 12.4.6 if the determination is: "1. Consistent with the intent of this Code; and 2. Consistent with the intent of the subject Neighborhood Context and zone district(s), and with the intent of any specific Code provision(s) at issue." (DZC, Section 12.4.6.4.A.)

In addition, the Zoning Administrator must find that the "proposed use has a character and impact that are similar in nature, function, and duration to the other uses permitted in the zone district(s)" by assessing all relevant characteristics of the proposed use, including without limitation (DZC, Section 12.4.6.4.B.1.):

"The type, size, and typical massing of buildings and structures associated with the unlisted use;

"Transportation requirements, including the modal split for people and freight, by volume type and characteristics of traffic generation to and from the site;

"Parking requirements, turnover and generation, ratio of the number of spaces required per unit area or activity;

"The amount and nature of any external effects generated on the premises, including but not limited to noise, smoke, odor, glare, vibration, radiation and fumes;

"The type and extent of impacts on adjacent properties created by the proposed use in comparison to impacts from other uses permitted in the zone district."

ANALYSIS

CONSISTENCY WITH DENVER ZONING CODE'S INTENT – DZC §12.4.6.4.A.1

The overarching purpose of the Denver Zoning Code is to "implement Denver's Comprehensive Plan and guide orderly development of the City that preserves and promotes the public health, safety, prosperity, and welfare of its inhabitants." DZC, Section 1.1.1, *Purpose*. To achieve its purpose, the intent of the Denver Zoning Code is to strike a balance between conservation and development, to achieve design excellence in the built environment, and to guide Denver toward a prosperous and sustainable future. (DZC, Section 1.1.2., *Intent*.)

In this case, if allowed, a Temporary Telecommunications Tower, necessitated because of an active construction project, will ensure orderly development and redevelopment in accordance with the City's adopted plans, as well as promote the public health and safety by planning for and avoiding a substantial disruption in an essential public service – cellular service.

Accordingly, I find that the proposed Temporary Telecommunications Tower use is consistent with the overall purpose and intent of the Denver Zoning Code.

CONSISTENCY WITH INTENT OF SUBJECT NEIGHBORHOOD CONTEXT AND ZONE DISTRICT – DZC §12.4.6.4.A.2

The unlisted use request is to allow a Temporary Telecommunications Tower in Mixed Use Commercial Zone Districts.

All Mixed Use Commercial Zone Districts listed have Telecommunications Towers as a permitted primary use, showing that Temporary Towers could be tolerated because of their shorter duration, which minimizes their impact on the surrounding neighborhoods. Further, Temporary Telecommunications Towers have lower height limits (typically 50 feet or less) than permanent Telecommunications Towers, resulting in reduced visual impacts.

COMPARISON TO OTHER COMMUNICATIONS USES PERMITTED IN THE COMMERCIAL MIXED USE ZONE DISTRICTS

As described above, the Zoning Administrator must find that the proposed temporary use “has a character and impact that are similar in nature, function, and duration to the other uses permitted in the zone district(s)” by assessing all relevant characteristics of the proposed use. (DZC, Section 12.4.6.4.B.1)

The proposed Temporary Telecommunications Tower use is similar in character and impact to the permanent “Telecommunication Towers” primary use allowed in all the Mixed Use Commercial Zone Districts. A “Telecommunications Tower” use is generally categorized as a specific type of “Communications and Information” land use, under the broader classification of “Industrial, Manufacturing and Wholesale” primary land uses. (DZC, Section 11.12.5.1.)

The Communications and Information land use category is defined to include: “plant, equipment and property used for the transmission of voice, data, image or video programming.” The more specific use type of “Telecommunications Tower” is defined as: “Any structure designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guy towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common carrier towers, cellular telephone towers, and other similar structures. This term also includes any antenna or antenna array attached to the tower structure.”

The proposed Temporary Telecommunications Tower use is the same use and structure-type as a permanent Telecommunications Tower allowed in all Mixed Use Commercial Zone Districts. The Temporary Telecommunications Tower use serves the same purpose and provides the same array of telecommunications services as the permanent tower use.

Differences between the permanent Telecommunications Tower use in the Mixed Use Commercial Zone Districts and the proposed temporary use concern duration, process, and mitigation of adverse visual impacts.

Telecommunications Towers allowed in the Mixed Use Commercial Zone Districts are permanent in duration, whereas the proposed Temporary Telecommunications Tower Use will be on an active construction site for approximately 2 years, depending on the duration of construction. In most other respects, however, the function and character of permitted the Telecommunications Tower primary use is like the function and character of the proposed Temporary Telecommunications Tower.

The Denver Zoning Code speaks directly to the intent behind facilitating the siting of permanent telecommunications services, including towers, in Denver through their liberal allowance in most zone districts. As listed in DZC Sec. 11.5.2.1, those goals include:

- “To encourage the location of towers in nonresidential zone districts;
- “To ensure that towers are located in areas that minimize adverse impacts;
- “To enhance the ability to provide telecommunications services to the community quickly, effectively and efficiently;
- “To consider public health and safety of telecommunications facilities; and
- “To facilitate the provision of telecommunications services throughout the city.”

This determination serves these goals by encouraging location of towers in nonresidential districts by now allowing temporary towers across all Mixed Use Commercial Districts; ensuring that adverse impacts will be minimized by limiting the duration temporary towers are present; and enhancing the provision of telecommunications services to the community by avoiding substantial disruption in services because of construction activity. Allowance for a Temporary Telecommunications Tower in the circumstances allowed under this determination will advance public safety and avoid a significant gap in telecommunications service for the area during construction.

In terms of external effects, the potential adverse impacts from a permitted permanent Telecommunications Tower use are primarily controlled through application of specific use limitations, found in DZC Section 11.5.2. These limitations seek to protect residential areas; to encourage location in nonresidential zones; and to ensure towers are in areas that minimize adverse impacts, especially visual and potential safety impacts such as tower failure. Standards to achieve this intent include: minimum separation and distance requirements between multiple towers and from residential areas and parks/open space; maximum height standards; reduced regulation for co-location of antennas on a single tower or antennas attached to buildings versus towers; screening, landscaping, and lighting standards; and general design compatibility standards.

Generally, under the above cited standards, a proposed *permanent* Telecommunications Tower in a Mixed Use Commercial Zone District, serving only a single user, would be allowed up to height of 75 feet (DZC, Section 11.5.2.1.E). Such tower must be designed for compatibility with its physical surroundings, including screening and landscaping around its equipment compound. Separation distances of 500 feet and 1,000 feet are required between permanent Telecommunications Towers and residential areas and City parks, respectively.

With a proposed *Temporary* Telecommunications Tower, concerns regarding compatibility with surrounding areas, as well as separation from protected residential areas, are mitigated by the temporary duration of the use, as well as its location on an active construction site, which itself will be visually “blighted” for the duration by various heavy machinery and trucks, stockpiled building materials, and considerable numbers of workers regularly on site. Moreover, the proposed Temporary Telecommunications Tower is limited to the maximum permitted height for a permanent tower in the same zone district.

Compared to permitted permanent telecommunication towers in Mixed Use Commercial Zone Districts, a Temporary Telecommunications Tower is similar in function and character, is shorter in duration than its permanent primary use counterpart, and is similarly regulated to alleviate the potential for adverse impacts through reasonable zoning permit requirements and conditions.

COMPARISON TO OTHER CONSTRUCTION-RELATED TEMPORARY USES ALLOWED IN THE MIXED USE COMMERCIAL ZONE DISTRICTS

In determining whether the proposed temporary use “has a character and impact that are similar in nature, function, and duration to the other uses permitted in the zone district(s),” it is helpful to review and analyze the characteristics and potential for adverse impacts of other permitted temporary, construction-related uses in the Mixed Use Commercial Zone Districts.

The Denver Zoning Code allows other temporary uses in the Mixed Use Commercial Zone Districts for similar durations as the Temporary Telecommunications Tower, many of which may have greater potential for adverse impacts on surrounding properties than Temporary Telecommunications Tower. Among the temporary uses typically related to construction sites are “concrete, asphalt, and rock crushing facility,” “temporary construction office,” and “temporary real estate sales office.”

Of note, the construction-related “concrete, asphalt, and rock crushing facility,” “temporary construction office,” and “temporary real estate sales office” temporary uses are all permitted to operate for the duration of a particular construction project, which may be 18-24 months or longer. A Temporary Telecommunications Tower is intended to provide interim services during the length of a specific construction project and will have a similar duration of about 24 months.

Like the temporary construction or sales office use allowed in the Mixed Use Commercial Zone Districts, which is typically located inside a temporary trailer structure, a Temporary Telecommunications Tower use begets a temporary structure that will be removed at the end of the permitted time. Arguably, a temporary concrete, asphalt, and rock crushing facility, which is operated entirely outdoors and permitted to be on-site for up to one year, has greater potential to create adverse aesthetic, noise, and vibration impacts on surrounding properties than the static Temporary Telecommunications Tower, which will produce no discernable or similar external effects.

Daily vehicle and pedestrian traffic generated from construction workers, supply trucks, and service providers visiting the types of already permitted temporary uses in the Mixed Use Commercial Zone Districts is also likely to be substantially greater than what will be infrequently generated by Temporary Telecommunications Tower primarily for maintenance and security purposes.

Compared to several of the permitted temporary (especially construction-related) uses in the Mixed Use Commercial Zone Districts, the proposed Temporary Telecommunications Tower use is similar in function, character, and duration, and is likely to have substantially less potential for adverse impacts on its neighbors from daily operations compared to these other permitted temporary uses.

MITIGATION OF POTENTIAL ADVERSE IMPACTS

A temporary, static Temporary Telecommunication Tower is likely to have minimal impacts compared to more intensive permanent industrial, commercial, temporary, and accessory uses allowed in the Mixed Use Commercial Zone Districts. Regarding potential for public health- or safety-related adverse impacts, most of these can be mitigated through site design and reasonable security measures, such as the installation of a durable fence or wall around the tower and equipment compound. Safety from tower failure should be ensured through proper engineering and city review during the tower's building permit review. Aesthetic/visual impacts in this case are temporary in nature and subsumed by the considerable visual "noise" occurring concurrently on-site with the active construction project.

Based on the analysis described above, I find that the potential for adverse impacts from a Temporary Telecommunications Tower on an active construction site is minimal, particularly when compared to other permanent and temporary uses permitted in the Mixed Use Commercial Zone Districts. Moreover, the zoning permit review process, together with related city reviews of the tower construction, can work to ensure general and site-specific conditions on any permits to substantially mitigate any identified, potential adverse impacts.

FINAL USE DETERMINATION AND DECISION

Based on the above analysis and according to the review criteria for unlisted use determinations in DZC, Section 12.4.6, I find that the proposed Temporary Telecommunications Tower use:

1. Is consistent with the intent of the Denver Zoning Code;
2. Is consistent with the intent of the Urban Center neighborhood context and the Mixed Use Commercial Zone Districts; and
3. Is substantially similar in character and impact to other permitted primary and temporary uses in the Mixed Use Commercial Zone Districts.

I also find that the type and extent of impacts on adjacent properties by a proposed Temporary Telecommunications use are potentially no different from and most likely less than other permitted permanent and construction-related temporary uses in the Mixed Use Commercial Zone Districts.

As part of the unlisted use determination, the Zoning Administrator must also determine the applicable zoning permit use review procedure to apply to the unlisted use. I determine that a Zoning Permit ("ZP") review will be required for all requests to establish a Temporary Telecommunications Tower in a Mixed Use Commercial zone district, according to the review process stated in DZC, Section 12.4.1, *Zoning Permit Review*.

In conclusion, my final decision is to **APPROVE** the proposed Temporary Telecommunications Tower use as an “unlisted temporary use,” according to the following **USE DEFINITION, APPLICABILITY LIMITS,** and **USE & PERMIT LIMITATIONS:**

1. **DEFINITION OF UNLISTED TEMPORARY USE:** The use at issue shall be referred to as “Temporary Telecommunications Tower,” which shall mean:
 - a. A temporary structure designed and constructed primarily for supporting one or more antennas, including self-supporting lattice towers, guy towers, or monopole towers, and which is erected to provide temporary telecommunications service due to disruption to existing levels of telecommunications service from construction activity. An example is when a permanent tower or antenna array must be removed because of construction on the same site, or demolition of the building to which the antennas are attached, and a permanent replacement facility cannot be erected on the same property until construction activity is complete.
 - b. The term includes radio and television transmission towers, microwave towers, common carrier towers, cellular telephone towers, and other similar structures. This term also includes any antenna or antenna array attached to the tower structure and ground-based equipment necessary to operate the temporary tower, such as a generator.

2. **APPLICABILITY OF UNLISTED USE DETERMINATION:** This use determination and final decision is specific to the following zone districts.
 - a. All CC Zone districts
 - b. All MX Zone districts
 - c. All MS Zone districts
 - d. All CCN Zone districts
 - e. All Downtown Neighborhood Context Zone districts
 - f. I-MX- districts
 - g. All Campus Context Zone districts
 - h. M-CC- zone districts
 - i. M-MX- Zone districts
 - j. M-IMX- Zone districts
 - k. M-GMX- Zone districts

3. **USE & PERMIT LIMITATIONS:** Applications for a zoning permit for Temporary Telecommunications Tower shall comply with the following limitations:
 - a. The temporary use shall be a minimum of 500 feet from a Residential Zone District. This requirement may be reduced or waived by the Zoning Administrator if the Applicant proves by a preponderance of the evidence that the proposed use, location, site design, its traffic generation, and other external effects indicates a smaller separation will have no significant effect on the nearby Residential Zone District, particularly in relation to any concurrent construction activity on the subject property.
 - b. The temporary use shall be set back at least 20 feet from a public named or numbered street. This requirement may be reduced or waived by the Zoning Administrator if the

Applicant proves by a preponderance of the evidence that the proposed use, location, site design, its traffic generation, and other external effects indicates a smaller separation will have no significant effect on the aesthetic impact on the pedestrian environment at the affected street or on adjoining properties and uses, particularly in relation to any concurrent construction activity on the subject property.

- c. The temporary use shall be a minimum of 1,000 feet from the nearest zone lot line of any City Park, as "City Park" is defined in the DZC, Section 11.12.3.3.B.2.
- d. The maximum height of the Temporary Telecommunications Tower shall not exceed the maximum height of a permanent Telecommunications Tower allowed in the same zone district.
- e. A durable fence or wall shall be constructed around the perimeter of the Temporary Telecommunications Tower and any related ground-mounted equipment for security purposes. The fence or wall need not be opaque. In lieu of the Denver Zoning Code, Section 10.5.5 (Fences and Walls) standards, the following minimum standards shall apply to the security fence or wall:
 - (1) Minimum height shall be 6 feet.
 - (2) There is no maximum height standard applicable to the security fence.
 - (3) Permitted materials are wood; composite materials; metal/iron bar; textured or aggregate concrete; chain link or wire mesh. Barbed wire and razor wire are not permitted materials.
- f. A zoning permit issued for a Temporary Telecommunications Tower use shall automatically expire and become null and void upon the 30th day after the approval date of a Certificate of Occupancy for the Primary Structure newly constructed on the subject property. If there are multiple structures being constructed on the same subject property, the zoning permit expiration shall be tied to the Certificate of Occupancy for the Primary Structure whose construction caused the need for the Temporary Telecommunications Tower in the first place.
- g. The Temporary Telecommunications Tower shall be removed from the subject property on or before the expiration date of the zoning permit.

APPEAL

This final use determination may be appealed to the Denver Zoning Board of Adjustment within 15 days from the date of this written decision, according to DZC, Section 12.4.8, *Appeal of Administrative Decision*.



Tina Axelrad
Zoning Administrator

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