



## CITY COUNCIL ACTION FORM

DEPARTMENT	PRESENTED BY	DATE
City Attorney	Nina P. Williams - City Attorney	May 2, 2023

### **ITEM**

Ordinance 2023-05, Amending Chapter 16 of the Salida Municipal Code (“the Code”) regarding small cell facilities to establish a procedure for the application, review, and siting of small cell facilities.

### **BACKGROUND**

In September of 2018 the Federal Communications Commission (FCC) adopted a declaratory ruling and order (“Small Cell Order”) that limited the ability of local governments to regulate the siting and placement of Small Cell Facilities. In addition to limiting local governments’ ability to regulate the actual siting and placement, the Small Cell Order also limited the recovery of fees and costs and went on to establish a presumptively valid fee schedule.

The Small Cell Order is slightly in conflict with the state statutes, so to create clarity for the City, the amendments are proposed.

Within the attached Ordinance are the proposed amendments to Chapter 16 of the Code, as it relates to creating a procedure for the application, review and siting of small cell facilities and the variance approval criteria.

This Ordinance was originally introduced to Council on First Reading on February 21, 2023. The public hearing was subsequently continued to give Planning Commission an opportunity to review. At a public hearing on April 24, 2023, Planning Commission unanimously recommended approval.

### **FISCAL NOTE:**

There is no fiscal impact associated with Ordinance No. 2023-05.

**STAFF RECOMMENDATION** The City Attorney recommends approval of Ordinance No. 2023-05, Amending Chapter 16 of the Salida Municipal Code regarding small cell facilities to establish a procedure for the application, review, and siting of small cell facilities.

### **SUGGESTED MOTION**

A City Councilmember should state, “I move to approve Ordinance 2023-05 on second reading.”

**CITY OF SALIDA, COLORADO**  
**ORDINANCE NO. 05**  
**(Series of 2023)**

**AN ORDINANCE OF THE CITY COUNCIL FOR THE CITY OF SALIDA,  
COLORADO AMENDING CHAPTER 16 OF THE SALIDA MUNICIPAL CODE,  
REGARDING SMALL CELL FACILITIES, TO ESTABLISH A PROCEDURE FOR  
THE APPLICATION, REVIEW, AND SITING OF SMALL CELL FACILITIES**

**WHEREAS**, the City of Salida, Colorado (the “City”) is a statutory city, duly organized and existing under the laws of the state of Colorado;

**WHEREAS**, pursuant to C.R.S. § 31-15-401, the City possesses the authority to adopt laws and ordinances within its police power in furtherance of the public health, safety, and welfare;

**WHEREAS**, pursuant to C.R.S. § 31-23-301, the City possesses the authority to regulate and restrict the height, size, location, and uses of buildings and other structures in furtherance of the public health, safety, and welfare;

**WHEREAS**, the City Council finds it desirable and prudent to regulate the siting of Small Cell Facilities to provide for managed development, installation, maintenance, modification, and removal of Small Cell Facilities that is consistent with the City’s mountain town character and to protect the health, safety, and welfare of the public;

**WHEREAS**, at the same time, the City Council recognizes the importance of modern, reliable wireless connectivity for its residents and endeavors to not unreasonably or materially inhibit the development of a competitive wireless communications marketplace in the City;

**WHEREAS**, Small Cell Facilities, which are necessary for the delivery of new and evolving wireless technologies, provide network coverage to a smaller area than previous wireless technologies and, as such, must be deployed in greater numbers, often within the public right-of-way;

**WHEREAS**, pursuant to C.R.S. § 29-27-404(3), the siting, construction, and operation of Small Cell Facilities is a permitted use by right in any zone, subject to the exercise of local police powers;

**WHEREAS**, on September 26, 2018, the Federal Communications Commission (the “FCC”) adopted a Declaratory Ruling and Order (“Small Cell Order”) limiting the ability of local governments to regulate the siting and placement of Small Cell Facilities;

**WHEREAS**, the FCC Small Cell Order provided that local governments cannot “materially inhibit” the deployment of Small Cell Facilities;

**WHEREAS**, the FCC Small Cell Order provided that aesthetic standards adopted by local governments applicable to Small Cell Facilities must be reasonable and published in advance;

**WHEREAS**, the FCC Small Cell Order established “shot clocks” limiting the amount of time that local governments have to respond to Small Cell Facility applications, which in some respects conflict with the shot clocks for Small Cell Facilities established under C.R.S. § 29-27-403;

**WHEREAS**, the FCC Small Cell Order provided that local fees associated with the deployment of Small Cell Facilities must be limited to recovery of a regulatory entity’s actual costs, and established a presumptively valid fee schedule;

**WHEREAS**, pursuant to the Middle Class Tax Relief and Job Creation Act of 2012, the FCC, in an Order dated May 19, 2020 (“6409 Order”), promulgated specific regulations for applications for Wireless Communications Facilities that qualify as Eligible Facilities Requests, as that term is defined in the 6409 Order;

**WHEREAS**, some applications for Small Cell Facilities may qualify as Eligible Facilities Requests;

**WHEREAS**, pursuant to 47 U.S.C. 332(c)(7)(B)(i), local governments cannot regulate the placement, construction, or modification of any Wireless Communications Facility, including Small Cell Facilities, on the basis of the environmental effects of radio frequency emissions;

**WHEREAS**, at a public hearing held on April 24, 2023, the City Planning Commission reviewed all related issues and unanimously recommended that City Council approve this Ordinance; and

**WHEREAS**, the City Council finds it desirable and appropriate, and in the best interest of the general health, safety, and welfare of its residents to amend Chapter 16 of the Salida Municipal Code (the “Code”), by creating a new Article XIV, as it relates to the establishment of procedures for the application, review, and siting of Small Cell Facilities.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF SALIDA, COLORADO AS FOLLOWS:**

**Section 1.** The foregoing recitals are hereby incorporated as conclusions, facts, determinations, and findings by the City Council.

**Section 2.** Section 16-1-80 of the Code, concerning definitions for the Land Use Code, is hereby amended by the addition of the following definitions to read as follows:

This Article defines words, terms and phrases contained within this Land Use Code. The following terms shall have the following meanings when used in this Land Use Code:

...

*Base Station* means a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The definition of Base Station does not include or encompass a Tower as defined herein or any equipment associated with a Tower. Base Station does include, without limitation:

- a. Equipment associated with wireless communications services such as private broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services

such as microwave backhaul that, at the time the relevant application is filed with the City, has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

b. Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplied, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems (“DAS”) and small-cell networks) that, at the time the relevant application is filed with the City, has been reviewed and approved under the applicable zoning or siting process, or under another state or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

*Camouflage or Camouflage Design Techniques* means measures used in the design and siting of Wireless Communications Facilities (WCFs) with the intent to minimize or eliminate the visual impact of such facilities to surrounding uses. A WCF site utilizes Camouflage Design Techniques when it (i) is integrated as an architectural feature of an existing structure, or (ii) is integrated in an outdoor fixture such as a flagpole, while still appearing to some extent as a WCF. This definition does not include Concealment Design Techniques where a facility is designed to look like something other than a WCF.

*Concealment or Concealment Design Techniques* means utilization of elements of stealth design in a facility such that the facility looks like something other than a WCF. Concealment can further include a design which mimics and is consistent with the nearby natural or architectural features (such as an artificial tree), is incorporated into existing permitted facilities (such as being attached to the exterior of such facility and painted to match it), or replaces existing permitted facilities (such as traffic signs or freestanding light standards) so that the presence of the WCF is not apparent. This definition does not include conditions that merely minimize visual impact but do not incorporate Concealment Design Techniques such that the facility looks like something other than a WCF.

*Eligible Facilities Request* means any request for modification of an existing Tower or Base Station that does not Substantially Change the physical dimensions of such Tower or Base Station involving:

- a. Collocation of new Transmission Equipment;
- b. Removal of Transmission Equipment; or
- c. Replacement of Transmission Equipment.

A request for modification of an Existing Tower or Base Station that does not comply with the generally applicable building, structural, electrical, and safety codes or with other laws codifying objective standards reasonably related to health and safety, or does not comply with any relevant federal requirements, is not an Eligible Facilities Request.

*Eligible Support Structure* means any Tower or Base Station as defined herein, provided that it is existing at the time the relevant application is filed with the City.

*Small cell facility* means a wireless service facility that meets both of the following qualifications:

- a. Each antenna is located inside an enclosure of no more than three (3) cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than three (3) cubic feet; and
- b. Primary equipment enclosures are no larger than seventeen (17) cubic feet in volume as measured on the exterior surface of the enclosure. The following associated equipment may be located outside of the primary equipment enclosure and, if so located, is not included in the calculation of equipment volume: Electric meter, concealment, telecommunications demarcation box, ground-based enclosures, back-up power systems, grounding equipment, power transfer switch, and cut-off switch.

*Substantial Change* means a modification substantially changes the physical dimensions of an Eligible Support Structure if, after the modification, the structure meets any of the following criteria:

- a. For Towers, other than Towers in the right-of-way, it increases the height of the Tower by more than ten (10) percent or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty (20) feet, whichever is greater, as measured from the top of an existing antenna to the bottom of a proposed new antenna; for other Eligible Support Structures, including Towers in the right-of-way, it increases the height of the structure by more than ten (10) percent or more than ten (10) feet, whichever is greater, as measured from the top of an existing antenna to the bottom of a proposed new antenna;
- b. For Towers, it involves adding an appurtenance to the body of the Tower that would protrude from the edge of the Tower more than twenty (20) feet, or more than the width of the Tower structure at the level of the appurtenance, whichever is greater; for Eligible Support Structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six (6) feet;
- c. For any Eligible Support Structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, as determined on a case-by-case basis based on the location of the Eligible Support Structure but not to exceed four (4) cabinets per application; or for Base Stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than ten (10) percent larger in height or overall volume than any other ground cabinets associated with the structure;
- d. For any Eligible Support Structure, it entails any excavation or deployment outside the current site;
- e. For any Eligible Support Structure, it would defeat the Concealment elements of the Eligible Support Structure by causing a reasonable person to view the structure's intended stealth design as no longer effective;

f. For any Eligible Support Structure, it does not comply with the conditions associated with the siting approval of the construction or modification of the Eligible Support Structure or Base Station equipment, unless the non-compliance is due to an increase in height, increase in width, addition of cabinets, or new excavation that would not exceed the thresholds identified in paragraphs (a), (b), and (c) of this definition.

For purposes of determining whether a Substantial Change exists, changes in height are measured from the original support structure in cases where deployments are or will be separated horizontally, such as on building rooftops; in other circumstances, changes in height are measured from the dimensions of the Tower or Base Station.

*Tower* means any structure that is designed and built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. The term includes radio and television transmission towers, self-supporting lattice towers, guy towers, monopoles, microwave towers, common carrier towers, cellular telephone towers, and other similar facilities. Small Cell Facilities in rights-of-way are not Towers.

*Transmission Equipment* means equipment that facilitates transmission for any FCC licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

*Wireless Communications Facility or WCF* means a facility used to provide personal wireless services as defined in 47 U.S.C. 332(c)(7)(C); or wireless information services provided to the public or to such classes of users as to be effectively available directly to the public via licensed or unlicensed frequencies; or wireless utility monitoring and control services. A WCF does not include a facility entirely enclosed within a permitted building where the installation does not require a modification of the exterior of the building; nor does it include a device attached to a building used for serving that building only. A WCF includes antennas (including without limitation, directions, omni-directions, and parabolic antennas), Base Stations, Transmission Equipment, Small Cell Facilities, Towers, and support equipment. It does not include the support structure to which the WCF or its components are attached if the use of such structures for WCFs is not the primary use. The term does not include mobile transmitting devices used by wireless service subscribers, such as vehicle or handheld radios and their associated transmitting antennas.

**Section 3.** Table 16-D of Section 16-4-150 of the Code, concerning the schedule of uses and review process, is hereby amended in-part, to read as follows:

**TABLE 16-D  
Schedule of Uses**

<b>N = Not Permitted</b> <b>P = Permitted</b> <b>AC = Administrative Conditional Use</b> <b>C = Conditional Use</b> <b>AR = Administrative Review</b> <b>LR = Limited Impact Review</b> <b>MR = Major Impact Review</b>									
<b>Industrial Uses</b>	<b>R-1</b>	<b>R-2</b>	<b>R-3</b>	<b>R-4</b>	<b>RMU</b>	<b>C-2</b>	<b>C-1</b>	<b>I</b>	<b>Standards</b>
...									
Communication facility, <u>excluding small cell facilities</u>	N	N	N	N	N	N	MR	LR	Sec. 16-4-190(o)
<u>Small cell facilities</u>	<u>AR</u>	<u>AR</u>	<u>AR</u>	<u>AR</u>	<u>AR</u>	<u>AR</u>	<u>AR</u>	<u>AR</u>	Chap. 16, Art. XIV

**Section 4.** Subsection 16-4-190(o) of the Code, concerning communication facilities, is amended to read as follows:

**Sec. 16-4-190. – Review standards applicable to particular uses.**

...

(o) Communication Facilities, excluding small cell facilities

...

**Section 5.** Chapter 16, Article XIV of the Code, concerning small cell facilities, is hereby created to read as follows:

#### **ARTICLE XIV. - SMALL CELL FACILITIES**

**Sec. 16-14-10. - Purpose.**

The purpose of this Article is to regulate the placement, construction, and modification of Small Cell Facilities to protect the health, safety, and welfare of the public and to provide for managed development, installation, maintenance, modification, and removal of Small Cell Facilities that is consistent with the City's mountain town character, while at the same time not unreasonably interfering with or materially inhibiting the development of a competitive wireless communications marketplace in the City.

**Sec. 16-14-20. - Scope and applicability.**

No person shall construct a Small Cell Facility in the City except in compliance with the

provisions of this Article. Wireless communications providers shall request permission to locate Small Cell Facilities or modify existing Small Cell Facilities pursuant to the requirements of this Article. The siting, mounting, placement, construction, and operation of Small Cell Facilities is a permitted use by right in any zone, provided that the conditions of this Article are satisfied.

**Sec. 16-14-30. - Procedures for review.**

(a) Small Cell Facilities - Generally. No new Small Cell Facility shall be constructed except after a written request from an applicant, reviewed and approved by the City in accordance with the procedures set forth in this subsection (a), unless eligible for review as an Eligible Facilities Request as set forth in subsection (b).

(1) Within ten (10) business days of receipt of an application for a new Small Cell Facility, the Administrator shall provide written comments to the applicant determining completeness of the application and setting forth any modifications required to complete the application to bring the proposal into full compliance with the requirements of this Article.

a. To toll the timeframe for incompleteness, the City must provide written notice to the applicant within ten (10) business days of receipt of the application, specifically delineating all missing documents or information required in the application.

b. The timeframe for review resets to zero (0) when the applicant makes a supplemental written submission in response to the City's notice of incompleteness.

c. Following a supplemental submission, the City will notify the applicant within ten (10) business days whether the supplemental submission provided the information identified in the original notice delineating missing information. If the application remains incomplete, the timeframe is tolled pursuant to the procedures identified in the foregoing paragraphs. In the case of a second or subsequent notice of incompleteness, the City may not specify missing information or documents that were not delineated in the original notice of incompleteness.

(2) Subject to tolling, the City shall approve or deny an application for a new Small Cell Facility within ninety (90) calendar days of the date on which the City receives such an application.

(b) Small Cell Facilities - Eligible Facilities Requests. No collocation of a Small Cell Facility nor modification to any existing Small Cell Facility shall occur except after a written request from an applicant, reviewed and approved by the City in accordance with the procedures for Eligible Facilities Requests set forth in this subsection (b).

(1) Upon receipt of an application for an Eligible Facilities Request, the City shall review such application to determine whether the application so qualifies. An application for an Eligible Facilities Request does not qualify as such if the modification would result in a Substantial Change to an Eligible Support Structure or would violate a generally applicable building, structural, electrical, or safety code or other law codifying objective standards reasonably related to public health and safety.

(2) Subject to tolling, the City shall approve an Eligible Facilities Request within sixty (60)



calendar days of the date on which the City receives such an application, unless it determines that the request is not properly classified as an Eligible Facilities Request. The sixty (60) calendar day review period begins to run when the application is filed with the City, and may be tolled by mutual agreement of the City and the applicant or where the City determines that the application is incomplete, as follows:

- a. To toll the timeframe for incompleteness, the City must provide written notice to the applicant within thirty (30) calendar days of receipt of the application, specifically delineating all missing documents or information required in the application;
- b. Upon notice of incompleteness to the applicant, the timeframe for review pauses. The timeframe for review begins running again, but does not reset to zero (0), when the applicant makes a supplemental written submission in response to the City's notice of incompleteness; and
- c. Following a supplemental submission, the City will notify the applicant within ten (10) calendar days that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in the foregoing paragraphs. In the case of a second or subsequent notice of incompleteness, the City may not specify missing documents or information that were not delineated in the original notice of incompleteness.

(3) In the event the City fails to act on an Eligible Facilities Request within the timeframe for review (accounting for any tolling), the request shall be deemed granted. The deemed grant of approval becomes effective when the applicant notifies the City in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.

(c) The Administrator shall be the final approval authority for all Small Cell Facilities and Eligible Facilities Requests and, upon approval, shall issue a permit to the applicant to deploy or modify a Small Cell Facility.

(d) Where an applicant seeks approval for more than one (1) Small Cell Facility, the City shall allow the applicant, at the applicant's discretion, to file a consolidated application for Small Cell Facilities and receive a single approval for multiple Small Cell Facilities in a consolidated application. For a consolidated application, each Small Cell Facility within the consolidated application remains subject to review for compliance with the requirements of this Article. The denial of any individual Small Cell Facility is not a basis to deny the consolidated application as a whole or any other Small Cell Facility incorporated within the consolidated application.

(e) The Administrator may apply reasonable conditions to the approval of a Small Cell Facility application or an Eligible Facilities Request to ensure conformance with applicable design criteria or to advance a legitimate City interest related to health, safety, or welfare, except where the City's authority is limited with respect to Eligible Facilities Requests.

(f) The approval under this Article for any Small Cell Facility expires if the Small Cell Facility is not established within one (1) year of the approval or if it is abandoned or unused for a period of six (6) months.

**Sec. 16-14-40. - Application contents; fees.**

(a) An application for a Small Cell Facility or an Eligible Facilities Request shall include the following information and materials:

- (1) The applicant's name, address, and telephone number and the name, address, and telephone number of any representative authorized to act on behalf of the applicant.
- (2) A description of the property on which the Small Cell Facility is proposed for development, including a visual plan illustrating the proposed location of the Small Cell Facility.
- (3) A disclosure of the ownership of the property on which the Small Cell Facility is proposed for development, and a demonstration of the applicant's right to install a Small Cell Facility on such property.
- (4) An eight and one-half (8½) inches by eleven (11) inches vicinity map locating the subject property within the City.
- (5) A written description of the proposal and a written explanation of how the proposed Small Cell Facility complies with the requirements for Small Cell Facilities or, if applicable, Eligible Facilities Requests.
- (6) A signed statement from a qualified radio frequency engineer, certifying that a technical evaluation of proposed Small Cell Facility indicates no potential interference problems and that the site will comply with all applicable regulations for radio frequency emissions promulgated by the FCC.
- (7) A signed statement from the applicant certifying the accuracy of the information contained in the application.

(b) An applicant for a Small Cell Facility or Eligible Facilities Request shall pay the required fees as set forth in the City's fee schedule. An application submitted without the required fees shall be deemed incomplete.

(c) All applications are public records and the information contained therein is subject to disclosure, except such information that is protected from public disclosure by applicable law.

**Sec. 16-14-50. - Design standards.**

Small Cell Facilities shall conform to the following design standards:

- (1) Trees. Existing trees shall be preserved to the maximum extent possible.
- (2) Height limitation. The maximum height of any Small Cell Facility shall either not exceed the maximum structure height established for the zoning district in which the facility is to be located or not extend beyond five (5) feet taller than any other utility poles or traffic signals within five hundred (500) feet of the proposed Small Cell Facility located within the same zone

district.

(3) Camouflage/concealment required. Small Cell Facilities shall, to the maximum extent possible, use Concealment Design Techniques, such as incorporating the facility into the built environment, using a pole painted a color consistent with other utility poles in the vicinity (with all antennas and related equipment located within the pole structure), or replacing existing permitted facilities with Small Cell Facilities located within the replaced poles, so that the presence of the Small Cell Facility is not apparent. Where Concealment Design Techniques are not possible, Small Cell Facilities shall utilize Camouflage Design Techniques. Camouflage Design Techniques include, but are not limited to using materials, colors, textures, screening, undergrounding, landscaping, or other design options that will blend the site to the surrounding natural setting and built environment.

(4) Non-reflective materials. The visible exterior surfaces of Small Cell Facilities, such as poles, antennas, vaults, and equipment enclosure structures shall be constructed out of or finished with non-reflective materials and shall be painted to match as closely as possible the color and texture of the vertical infrastructure on which it is mounted.

(5) Equipment vaults below grade. Except for equipment that is expressly permitted above grade for a Small Cell Facility, equipment vaults and other Transmission Equipment shall be placed below grade when located within the right-of-way. Such equipment may be placed above grade outside of the right-of-way, provided Concealment/Camouflage Design Techniques are utilized.

(6) Multiple users. To the extent practicable, all Small Cell Facilities shall be designed and constructed to permit such facilities to accommodate at least two (2) wireless service providers on the same facility.

(7) Separation. All stand-alone Small Cell Facilities located within the right-of-way shall be separated from other stand-alone Small Cell Facilities by a distance of at least six hundred (600) feet. In determining compliance with this separation requirement, the Administrator may consider approved and pending applications for other Small Cell Facilities.

(8) Residential property. When located adjacent to a residential property, a Small Cell Facility must be placed in front of the common side yard property line between adjoining residential properties. In the case of a corner lot, a Small Cell Facility must be placed in front of the common side yard property line adjoining residential properties or on the corner formed by two intersecting streets.

(9) Historic preservation. Any Small Cell Facility that is proposed for construction in a historic district shall be required to receive a certificate of approval pursuant to Chapter 16, Article XII, unless exempt pursuant to Section 16-12-100.

(10) Any other administratively approved Small Cell Facility design standards adopted by the Administrator.

#### **Sec. 16-14-60. - Operational standards.**

(a) Federal requirements. All Small Cell Facilities shall meet the current standards and regulations of the Federal Aviation Administration, the Federal Communications Commission, and any other agency of the federal government with the authority to regulate Small Cell Facilities. If such standards and regulations are changed, then the owners of the Small Cell Facility shall bring such facility into compliance with such revised standards and regulations within the time period mandated by the controlling federal agency. Failure to meet such revised standards and regulations shall constitute grounds for the removal of the Small Cell Facility at the applicant's expense.

(b) Radio frequency standards. All Small Cell Facilities shall comply with federal standards for radio frequency emissions.

(c) Signal interference. All Small Cell Facilities shall be designed and sited, consistent with applicable federal regulations, so as not to cause interference with the normal operation of radio, television, telephone, public safety communications, and other services utilized by adjacent residential and non-residential properties.

(d) Operation and maintenance. All Small Cell Facilities shall be maintained in compliance with standards contained in applicable local building and safety codes. If upon inspection, the City concludes that a Small Cell Facility fails to comply with such codes and constitutes a danger to persons or property, then the City may take any action with respect to such violation as provided by applicable law, including removal of the Small Cell Facility at the applicant's expense.

(e) Abandonment and removal. Any Small Cell Facility that is not used for a period of six (6) months or more shall be deemed to be abandoned. No applicant shall fail to remove a Small Cell Facility that is abandoned. If a Small Cell Facility applicant fails to remove an abandoned facility at the request of the Administrator, the City may remove the Small Cell Facility at the applicant's expense.

(f) Hazardous materials. No hazardous materials shall be permitted in association with Small Cell Facilities, except those necessary for the operation of Small Cell Facilities and only in accordance with all applicable laws governing such materials.

(g) Collocation. No Small Cell Facility applicant shall unreasonably exclude a communications competitor from using the same facility or location. Upon request by the Administrator, the applicant shall provide evidence explaining why collocation is not possible at a particular facility or location.

(h) Compliance with other laws. All Small Cell Facilities shall meet the requirements of the City design and construction standards, the requirements of Chapter 11, "Streets, Sidewalks and Public Property," and all other applicable local, state, and federal laws.

#### **Sec. 16-14-70. - Indemnification.**

As a condition of its permit, the applicant for any Small Cell Facility shall, at its sole cost and expense, indemnify, hold harmless and faithfully defend the City, its officials, boards, commissions, commissioners, agents, and employees against any claims, suits, causes of action, proceedings, and judgments for damages or equitable relief arising out of the construction, maintenance, or operation of its equipment authorized by this Article. This indemnification

requirement will apply whether the act or omission complained of is authorized, allowed, or prohibited by applicable law, except in cases where liability is solely caused by the negligence of the person or persons covered by the indemnity.

**Sec. 16-14-80. - Waiver.**

The Administrator shall have the authority to waive any requirement or standard set forth in this Article if the Administrator makes a determination that the specific requirement or standard is preempted by federal or state law. Prior to applying the waiver to any pending application, the Administrator shall, in consultation with the City Attorney, make a written preemption determination which written determination shall identify the specific requirement or standard that is being waived and cite to the specific federal or state law provision that preempts the specific City requirement or standard set forth in this Article.

**Section 6.** *Severability.* The provisions of this ordinance are severable and the invalidity of any section, phrase, clause, or portion of the ordinance as determined by a court of competent jurisdiction shall not affect the validity or effectiveness of the remainder of the ordinance.

INTRODUCED ON FIRST READING on this 21st day of February, 2023, ADOPTED and ORDERED PUBLISHED IN FULL in a newspaper of general circulation by the City Council on this \_\_\_\_ day of \_\_\_\_\_, 2023, and set for second reading and public hearing on the 2nd day of May, 2023.

INTRODUCED ON SECOND READING FINALLY ADOPTED and ORDERED PUBLISHED IN FULL, by the City Council on this 2nd day of May, 2023.

City of Salida

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Mayor Dan Shore

ATTEST:

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City Clerk