



## CITY COUNCIL ACTION FORM

| DEPARTMENT     | PRESENTED BY                     | DATE        |
|----------------|----------------------------------|-------------|
| Administration | Drew Nelson - City Administrator | May 2, 2023 |

### **ITEM**

Resolution 2023-23 – A Resolution of the City Council for the City of Salida Reauthorizing the Temporary Closure of a Portion of F Street and Providing for a Revised Procedure for Liquor Licensees to Obtain Proper Authorization for Outdoor Expansion

### **BACKGROUND**

During the summer months of the past three years, the City of Salida has facilitated the temporary closure of certain portions of F Street to assist businesses in dealing with the Covid-19 pandemic. This was done previously through the emergency provisions authorized by the City Council monthly during the pandemic; however, said emergency declaration expired over the 2021/2022 winter and is no longer in effect. As such, a separate process must be approved by the City Council by resolution in order to create the pedestrian plaza that received significant support in the City's 2022 Community Survey.

The State's liquor laws were relaxed during the Covid-19 pandemic to allow for the expansion of its Modification of Premises (MOP) guidelines. The expansion of MOP guidelines continue to receive refinement by the State's Liquor Enforcement Division (LED), and City staff is currently reviewing our MOP guidelines to ensure compliance with State law. The LED released guidance regarding "sidewalk service area" in Regulation 47-302 (attached), which creates the ability to utilize streets and sidewalks for liquor service as long as license holders are authorized to utilize the public space; the City has also created and updated Requirements and Policies for Expanding Business Activities, also attached.

As done in 2022, the current proposal includes the plaza being in the same place prior to Memorial Day (put in place on May 24<sup>th</sup>) and removed following Labor Day (removed on September 5, 2023). The City will work with FIBArk promoters to open up the half-block closure between 2<sup>nd</sup> and 3<sup>rd</sup> Streets for the FIBArk Parade, as was done in 2022. Other parades generally including walking parades, which can navigate the barriers that are in place to prevent vehicular traffic.

### **FISCAL NOTE**

Costs for creating the F Street plaza would be less than \$10,000, mostly for labor costs. Pergolas, trash cans, and chairs were purchased last year and would be used again in 2023.

### **STAFF RECOMMENDATION**

Staff recommends approval of Resolution 2023-23, which includes closure from May 24<sup>th</sup> until September 5, and includes the closure of the half block between 2<sup>nd</sup> and 3<sup>rd</sup> Streets.

### **SUGGESTED MOTION**

A City Councilmember should state, "I move to approve Resolution 2023-23", followed by a second and a roll call vote.

**RESOLUTION NO. 2023-23**  
**(Series 2023)**

**A RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF SALIDA  
REAUTHORIZING THE TEMPORARY CLOSURE OF A PORTION OF F STREET  
AND PROVIDING FOR A REVISED PROCEDURE FOR LIQUOR LICENSEES TO  
OBTAIN PROPER AUTHORIZATION FOR OUTDOOR EXPANSION**

**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**, as part of an effort to mitigate the negative health effects of the COVID-19 pandemic and to support the local business community, the City previously closed the portion of F Street between Sackett Avenue and 2<sup>nd</sup> Street to allow for outdoor dining and retail spaces during the warmer months of 2020, 2021, and 2022;

**WHEREAS**, these previous closures of F Street were received positively by both residents of the City and members of the local business community alike;

**WHEREAS**, pursuant to C.R.S. § 31-15-401(1)(b), the governing body of each municipality has the power “[t]o do all acts and make all regulations which may be necessary or expedient for the promotion of health or the suppression of disease;”

**WHEREAS**, while case numbers fluctuate, the COVID-19 respiratory virus remains a prevalent public health concern and continuing to take action to mitigate its spread remains a prudent course of action for the City;

**WHEREAS**, allowing for additional outdoor dining and retail spaces will help mitigate the spread of COVID-19 by reducing the need for individuals to congregate in enclosed, indoor spaces;

**WHEREAS**, Section 10-7-30 of the Salida Municipal Code (the “Code”) generally prohibits the possession and consumption of alcoholic beverages in public places, but provides an exemption for places duly licensed for sale of alcoholic beverages;

**WHEREAS**, on September 28, 2021, the Colorado Liquor Enforcement Division (the “LED”) published Bulletin 21-05, which provides guidance regarding the service area premises extension options available to liquor licenses in municipalities which permit such an expansion;

**WHEREAS**, the LED’s COVID-19 temporary modification of premises option, initially permitted by emergency rules promulgated in response to the COVID-19 pandemic and previously utilized by the City to facilitate these expansions, expires on May 31, 2022;

**WHEREAS**, the LED’s guidance identifies a sidewalk service area, as authorized by Regulation 47-302(A)(4), 1 CCR 203-2, as a more permanent alternative to the expiring COVID-19 temporary expansion option;

**WHEREAS**, like the COVID-19 temporary expansion option, authorization from the LED for a sidewalk service area requires that the licensee have the right of possession for the space from the governing body of the municipality;

**WHEREAS**, the City will continue to utilize its temporary outdoor expansion application form and issue, in the City’s discretion, revocable licenses for the use of public rights-of-way and public places to provide liquor licensees the legal right to use these spaces;

**WHEREAS**, pursuant to C.R.S. § 31-15-702(1)(a)(I), the governing body of each municipality has the power “[t]o lay out, establish, open, alter, widen, extend, grade, pave, or otherwise improve streets, parks, and public grounds and vacate the same and... to regulate the use of the same;”

**WHEREAS**, the “Requirements and Policies for Expanding Business Activity Parking Lots, Parking Spaces and Streets,” previously adopted in conjunction with Resolution 2021-14, functioned effectively and applicable portions of said document ought to be continued with this closure of F Street; and

**WHEREAS**, the City Council finds it desirable and prudent, and in the best interest of the general health, safety, and welfare of its residents to reauthorize the temporary closure of a portion of F Street and to provide for a revised procedure for liquor licensees to obtain proper authorization for outdoor expansion.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO THAT:**

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

**Section 2.** The City Council hereby reauthorizes the temporary closure of the streets, alleys, and sidewalks on F Street between Sackett Avenue and 2<sup>nd</sup> Street, effective May 24, 2023 through September 5, 2023.

**Section 3.** City Council hereby adopts the updated “Requirements and Policies for Expanding Business Activity into Parking Lots, Parking Spaces and Streets,” annexed hereto as **Exhibit A**.

**Section 4.** The City Administrator or his designee is hereby authorized to take any further action reasonably necessary or prudent to carry out the effect of this Resolution.

**RESOLVED, APPROVED, AND ADOPTED this 2<sup>nd</sup> of May, 2023.**

City of Salida

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Dan Shore, Mayor

ATTEST:

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City Clerk/Deputy City Clerk



## **REQUIREMENTS AND POLICIES FOR EXPANDING BUSINESS ACTIVITY INTO PARKING LOTS, PARKING SPACES AND STREETS**

The City of Salida desires to work with businesses throughout our community to provide unique outdoor experiences for our residents and guests. On Tuesday, April 19, 2022, the Salida City Council approved Resolution 2022-14, which directed City staff to facilitate the expansion of outdoor dining and retail spaces into parking lots, parking spaces, and even public streets.

In order to proceed with expansion, there are a few rules that businesses must apply as part of an application process:

### **For Restaurants and Bars with a Liquor License**

Any bar or restaurant wishing to expand their existing licensed premise into parking lots or streets must apply for a Temporary Modification of Premise (MOP) with the City of Salida. The City will review, and if approved, will send the application, signed lease, the applicant's drafted map of the expansion (including barriers and access points) and the check to the Colorado Liquor Enforcement Division (LED) for final approval. The application form, DR 8442, can be found at:

[www.sbg.colorado.gov/liquor-forms-by-number](http://www.sbg.colorado.gov/liquor-forms-by-number)

Applicants will fill out Section C. Instructions are on page 2 (Section C) for more information. There is a \$150 processing fee payable to the State of Colorado (written to the Department of Revenue) for the Temporary Modification and the form will need to be filled out again, submitted, and remitted to the City with a \$150 check (written to the Department of Revenue) to end the Temporary Modification. There is no fee for the City of Salida.

### **Private Parking Lots**

A maximum of fifty percent (50%) or half of existing private parking lots may be utilized for a restaurant patio extension for a currently-permitted restaurant, subject to the written approval of the owner of the parking lot.

### **Public Sidewalks**

A clear travel path of five feet (5') in width and meeting Americans with Disabilities Act (ADA) accessible path requirements must be maintained and is subject to a revocable license agreement approved by the City. The business owner must provide the City an ADA plan if they wish to close or alter a sidewalk space.

### **Public Streets**

Expansion into public streets and rights-of-way shall be at the sole discretion of the City, subject to any additional terms deemed necessary. Use of public streets shall only occur where streets are restricted to pedestrian traffic only for an entire block. The City will pre-determine four (4) areas, two (2) on each block, as sites for a City-installed pergola with seating. The City will work with adjacent business owners to minimize encroachment into outdoor space being utilized by that business.

A clear travel path of six feet (6') in width must be maintained along the center of the street, three feet (3') on each side of the street centerline. The City will put up metal fencing or other temporary means to

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delineate between the business expansion space and the six-foot clear travel path. Bicycles, skateboards, scooters and similar devices must be walked or carried in any area where vehicle traffic is not allowed. In addition to no physical objects, no performance will be allowed to encroach into this travel path.

The remaining area, extending from the curb to within three feet (3') from the centerline of the public street, at a width equal to the street frontage of the individual physical business, shall be available for expansion by that individual business. A business must have a plan for security (including overnight), trash maintenance and removal, and rehabilitation for any damage or mess that may occur.

#### Public Parking Spaces

For businesses in the Downtown C-2 district on streets that are not closed to vehicle traffic, the use of the existing public parking spaces adjacent to and in front of the business may be used with the exception of State Highway right-of-way (similar to the City's existing program for patio spaces). In order to use public parking spaces, the business must complete the TOE application with required attachments. In addition, the business must provide a safety plan for patrons utilizing this space, including barriers and fencing, protection from vehicles by physical means, security (including overnight), trash maintenance and removal, and rehabilitation for any damage or mess that may occur due to business activity. The City may have barriers and fencing available for the business if needed.

#### Temporary Structures and Fences

Any proposed structure or fence shall be secured utilizing weights. Anchors involving drilling or fastening to the roadway infrastructure shall be reviewed on a case-by-case basis.

- Small Tents (<400 s.f.): Small tents of 400 square feet or less are permitted on a temporary basis. Where tents are proposed, the City encourages the use of tents having a total area of 400 square feet or less to streamline review and approval.
- Large Tents (>400 s.f.): Tents that are larger than 400 square feet are subject to additional building and fire code requirements, greater submittal requirements, and a review process that is more extensive than that used for small tents less than 400 square feet in area.
- Temporary Fences: Fences of a temporary nature with a maximum height of six feet (6') may be installed in connection with a patio extension, subject to the written approval of the property owner. All fencing, if installed, shall meet building and fire code access requirements, including for egress.

#### Temporary Lighting

Lighting of a temporary nature may be permitted in connection with a patio extension, subject to City approval and in compliance with the Salida Municipal Code's dark sky provisions.

#### Hours of Operation

Temporary patio extensions and all activities authorized under this Resolution are required to close or cease by 10:00 p.m.

#### Music, Performance Art, and Outdoor Entertainment

Businesses may host live performances including but not limited to musicians, artists, buskers, and speakers as well as outdoor games and entertainment outside of their business. A business must obtain an amplified sound permit from the City for any amplified sound over 65 dB. In no case can the activity or performance area, or audience, encroach upon the six-foot (6') clear travel path down the center of the street, the five-foot (5') clear travel path required on the sidewalks, or any ADA designated paths or appurtenances.

#### Required Approval and Permits:

In order to take advantage of this program, the business owner will have to use the Administrative Review of Temporary Outdoor Expansion application form and provide the City with the following:

- Applicants must file a signed Revocable License for Use of Public Right Of Way or Public Place.
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- A conceptual site plan of the proposed expansion area showing existing and proposed features, such as buildings, fences, roads, alleys, sidewalks and parking lots which are relevant to the application. The business must provide the City an ADA accessibility plan for their space.
- For Businesses with an Approved Liquor License: In addition to the conceptual site plan, the plan must include information related to access to and egress from the patio by both patrons and staff; a layout of tables, chairs, and serving stations; spacing required for social distancing; and sanitation plans and programs.

*For Food Trucks and Mobile Vendors*

Businesses along the F Street closure may have a food truck or mobile food vending operation in their allocated outdoor area. However the business owner or property owner must own and operate the food truck or mobile food vending operation. The business must provide a plan for their food truck, cart, etc. which would include hook-ups for power and water as well as whether the food truck, cart, etc. would be able to remain in place for the duration of the F Street closure. Only smaller equipment that can be moved by hand will be allowed to be removed on a regular basis. Generators will not be allowed. Power must be sourced from the adjacent business, and power cords must have appropriate ADA compliant coverings. All food vendors must have required Health Department permits.

***These measures are subject to change at the sole discretion of the City of Salida and may be terminated at any time.***



**Regulation 47-302. Changing, Altering, or Modifying Licensed Premises.**

Basis and Purpose. The statutory authority for this regulation includes, but is not limited to, subsections 44-3-202(1)(b), 44-3-202(2)(a)(I)(A), and 44-3-202(2)(a)(I)(D), C.R.S. The purpose of this regulation is to establish procedures for a licensee seeking to make material or substantial alterations to the licensed premises, and provide factors the licensing authority must consider when evaluating such alterations for approval or rejection.

- A. After issuance of a license, the licensee shall make no physical change, alteration or modification of the licensed premises that materially or substantially alters the licensed premises or the usage of the licensed premises from the latest approved plans and specifications on file with the state and local licensing authorities without application to, and the approval of, the respective licensing authorities.

For purposes of this regulation, physical changes, alterations or modifications of the licensed premises, or in the usage of the premises requiring prior approval, shall include, but not be limited to, the following:

1. Any increase or decrease in the total size or capacity of the licensed premises.
2. The sealing off, creation of or relocation of a common entryway, doorway, passage or other such means of public ingress and/or egress, when such common entryway, doorway or passage alters or changes the sale or distribution of alcohol beverages within the licensed premises.
3. Any substantial or material enlargement of a bar, relocation of a bar, or addition of a separate bar. However, the temporary addition of bars or service areas to accommodate seasonal operations shall not require prior approval unless the additional service areas are accompanied by an enlargement of the licensed premises.
4. A temporary outside service area located on a sidewalk owned by a municipality, and that the licensee possesses in accordance with subsection (B)(2) of this regulation, may be approved by the state and local licensing authorities upon the annual filing of a temporary modification of premises application, due at the time of initial application or at the time of renewal, on a form approved by the State Licensing Authority, and payment of the associated fee as set forth in Regulation 47-506, provided that:
  - a. the proposed temporary outside service area located on a sidewalk is immediately adjacent to the licensed premises;
  - b. The licensed premises, as temporarily modified, will comprise a definite contiguous area; and
  - c. Plans and specifications identifying the temporary outside service area located on a sidewalk accompany the form and fee.



5. Any material change in the interior of the premises that would affect the basic character of the premises or the physical structure detailed in the latest approved plans and specifications on file with the state and local licensing authorities. However, the following types of modifications will not require prior approval, even if a local building permit is required: painting and redecorating of premises; the installation or replacement of electric fixtures or equipment, plumbing, refrigeration, air conditioning or heating fixtures and equipment; the lowering of ceilings; the installation and replacement of floor coverings; the replacement of furniture and equipment; and any non-structural remodeling where the remodel does not expand or reduce the existing area designed for the display or sale of alcohol beverage products.
  6. The destruction or demolition, and subsequent reconstruction, of a building that contained the retailer's licensed premises shall require the filing of new building plans with the local licensing authority, or in the case of manufacturers and wholesalers, with the state licensing authority. However, reconstruction shall not require an application to modify the premises unless the proposed plan for the newly-constructed premises materially or substantially alters the licensed premises or the usage of the licensed premises from the plans and specifications detailed in the latest approved plans and specifications on file with the state and local licensing authorities.
  7. Nothing herein shall prohibit a licensee, who is otherwise not eligible for an optional premises permit or optional premises license, from modifying its licensed premises to include in the licensed premises a public thoroughfare, if the following conditions are met:
    - a. The licensee has been granted an easement for the public thoroughfare for the purpose of transporting alcohol beverages.
    - b. The public thoroughfare is authorized solely for pedestrian and non-motorized traffic.
    - c. The inclusion of the public thoroughfare is solely for the purpose of transporting alcohol beverages between licensed areas, and no sale or consumption will occur on or within the public thoroughfare.
    - d. Any other conditions as established by the local licensing authority.
  8. The addition of a noncontiguous location to the licensed premises of a winery licensed pursuant to sections 44-3-402 or 44-3-403, C.R.S.
  9. Modification of the licensed premises to include a communal outdoor dining area, subject to the requirements of section 44-3-912, C.R.S., and Regulation 47-1103.
- B. In making its decision with respect to any proposed changes, alterations or modifications, the licensing authority must consider whether the premises, as changed, altered or modified, will meet all of the pertinent requirements of the Colorado Liquor or Beer Codes and related regulations. Factors to be taken into account by the licensing authority shall include, but not be limited to, the following:
1. The reasonable requirements of the neighborhood and the desires of the adult inhabitants.
  2. The possession, by the licensee, of the changed premises by ownership, lease, rental or other arrangement.
  3. Compliance with the applicable zoning laws of the municipality, city and county or county.

4. Compliance with the distance prohibition in regard to any public or parochial school or the principal campus of any college, university, or seminary.
  5. The legislative declaration that the Colorado Liquor and Beer Codes are an exercise of the police powers of the state for the protection of the economic and social welfare and the health, peace, and morals of the people of this state.
- C. If permission to change, alter or modify the licensed premises is denied, the licensing authority shall give notice in writing and shall state grounds upon which the application was denied. The licensee shall be entitled to a hearing on the denial if a request in writing is made to the licensing authority within fifteen (15) days after the date of notice.
- D. This regulation shall be applicable to the holder of a manufacturer's license as specifically defined in Section 44-3-402, C.R.S., or a limited winery defined in section 44-3-403, C.R.S., only if the physical change, alteration, or modification involves any increase or decrease in the total size of the licensed premises, including the addition of a noncontiguous location to the licensed premises of a winery licensed pursuant to sections 44-3-402 or 44-3-403, C.R.S. Except, any change, alteration, or modification of a sales room, shall be reported in accordance with subsection (A).
- E. The state licensing authority shall not impose any additional fees for the processing or review of an application for a modification of premises for the holder of a manufacturer's license, except for applications to modify the premises through the addition of a noncontiguous location to the licensed premises of a winery licensed pursuant to sections 44-3-402 or 44-3-403, C.R.S.
- F. Due to public health concerns raised by the presence COVID-19 in Colorado, a licensee may apply to temporarily modify its licensed premises to facilitate social distancing by employees and customers and to facilitate compliance with the requirements of applicable public health orders (See Regulation 47-1102).
1. If permitted by the relevant local licensing authority, the temporary premises modification may include expansion of the licensed premises into outside areas that the licensee possesses in accordance with subsection (B)(2) of this regulation, provided that:
    - a. Any outside area proposed to be included in the licensed premises, as temporarily modified, is contiguous or adjacent to the licensed premises and appropriately monitored by the licensee;
    - b. The licensed premises, as temporarily modified, will comprise a definite contiguous area;
    - c. The licensee will designate the boundaries of the licensed premises, as temporarily modified, using barriers approved by the local licensing authority and state licensing authority and post warning signs in areas visible to the public, including all points of ingress and egress, regarding laws against public consumption of alcohol beverages;
    - d. The licensed premises, as temporarily modified, will not encroach upon or overlap with the licensed premises of any other licensee;
    - e. The licensed premises, as temporarily modified, complies with local building and zoning laws; and
    - f. The licensed premises, as temporarily modified, complies with all other restrictions and requirements imposed by the Colorado Liquor Code and Rules.

2. A temporary modification of a licensed premises pursuant to this paragraph (F) may be approved by the state and local licensing authorities after the filing of a temporary modification of premises application on a form approved by the State Licensing Authority, including plans and specifications of the licensed premises, as temporarily modified, and a one-time payment of the modification of licensed premises fee set forth in Regulation 47-506.
3. Any temporary modification approved pursuant to this paragraph (F) shall expire on May 31, 2022, unless the relevant local licensing authority imposes an earlier expiration date. A licensee is not required to pay an additional modification of licensed premises fee or obtain approval to remove a temporary modification to the licensed premises upon expiration of this paragraph (F).
4. Nothing in this regulation requires a local licensing authority to allow temporary premises modifications in response to COVID-19. A local licensing authority that allows temporary premises modifications may establish an earlier expiration date for any temporary modifications issued in the relevant jurisdiction and may establish additional requirements for temporary modifications that are at least as restrictive as the requirements in this paragraph (F).
5. This subsection (F) is effective until May 31, 2022 and is repealed effective June 1, 2022.

**Regulation 47-303. License Renewal.**

Basis and Purpose. The statutory authority for this regulation includes, but is not limited to, subsections 44-3-202(1)(b), 44-3-202(2)(a)(I)(C), 44-3-202(2)(a)(I)(D), 44-3-202(2)(a)(I)(R), 44-3-302, 44-3-501, and 44-4-105, C.R.S. The purpose of this regulation is to clarify and establish procedures and deadlines for a licensee that is applying to renew its license in accordance with section 44-3-302, C.R.S.

- A. No one other than the license holder, or their duly-authorized representative, may file an application to renew the license with local and state licensing authorities.
- B. At least ninety (90) days before the expiration date of an existing license, the State Licensing Authority shall notify the licensee of the expiration date by sending notice to the most recently provided email address and/or mailing address for the licensee.
- C. A complete renewal application shall include evidence that the licensee remains in possession of the licensed premises by ownership, lease, rental, or other arrangement at the time of application. An agreement that may lapse within the new license year neither automatically disqualifies the licensee from renewing, nor automatically invalidates the license. However, this provision does not preclude the state or local licensing authority from initiating any action as provided by law to suspend or revoke a license for loss of possession of the licensed premises.
- D. Nothing herein authorizes a licensee to purchase, sell, or serve alcohol beverages with an expired license, except as authorized in subparagraphs E, F(2), and G(3) of this regulation. Licensed privileges are not restored until and unless the applicable requirements of subparagraph F(2) and/or G(3) of this regulation are met.
- E. Application for the renewal of an existing license shall be made to the local licensing authority not less than forty-five (45) days prior to the date of expiration and to the state licensing authority not less than thirty (30) days prior to the date of expiration. The state or local licensing authority may waive these requirements for good cause. Once an application for renewal has been filed with the local licensing authority, or the state licensing authority for state only licenses, the licensee may continue to operate until final agency action.