

RESOLUTION NO. _____ (N.C.S.)

**A RESOLUTION ESTABLISHING REQUIREMENTS FOR
SMALL WIRELESS FACILITIES (SWF) IN THE PUBLIC RIGHT OF WAY (ROW)**

WHEREAS, the City of Salinas (“City”) is a charter city organized and operating pursuant to the California Constitution and with powers and authority stemming therefrom, including Sections 5 and 7 of Article XI.

WHEREAS, the City of Salinas desires to comply with all mandates regarding public utilities as imposed upon it by state and federal law; and

WHEREAS, on April 17, 2018, the Salinas City Council determined that there is a need for SWFs in the City of Salinas, defined the terms and conditions under which the City would support such installations, and established the requirement for a Master Lease Agreement between the City and the installer of telecommunications equipment for the use of City facilities; and

WHEREAS, on October 15, 2018, the Federal Communications Commission (FCC) published an Administrative Order in the Federal Register, declaring that SWFs are permitted by right on City-owned property in the ROW, subject to the requirements of the Administrative Order and “reasonable” City regulations and fees; and

WHEREAS, this Administrative Order argues that allowing attachment of SWFs to publicly owned assets in the right of way without a Master Lease Agreement avoids an effective prohibition of broadband deployment, and specifies that any regulations be made publicly available prior to any applications for permits; and

WHEREAS, in order to maintain an aesthetically pleasing community environment, protect the safety and welfare of Salinas residents, minimize degradation of the residential character of neighborhoods, and require the best available design to eliminate visual impacts while ensuring that adequate public services and facilities are constructed to accommodate the needs of Salinas residents, the city of Salinas chooses to use its police power and land use planning authority to regulate SWFs, and establishes the proposed requirements for the issuance of permits and entitlements relative to such projects in situations where the City is unable to come to an agreement on the terms of a Master Lease Agreement with a telecommunications equipment installer; and

WHEREAS, pursuant to the California Environmental Quality Act (“CEQA”), the proposed requirements for SWFs in the public right of way are exempt per Section 15302 and 15303 of the CEQA Guidelines, as the FCC has already deemed the installation of SWFs in the ROW to be approved, and as these regulations do not alter this, there is no potential for these regulations to cause a significant effect on the environment.

NOW, THEREFORE BE IT RESOLVED by the Salinas City Council that the following requirements for all SWFs in the public right of way within the City are adopted with the purpose of preserving the health, safety, and welfare of the City's residents and City property, as follows:

1. The following definitions shall be applicable to this Resolution:
 - a. Antenna means an apparatus designed for the purpose of emitting radiofrequency (RF) radiation, to be operated or operating from a fixed location for the provision of personal wireless service and any commingled information or telecommunications services. For purposes of this definition, the term antenna does not include an unintentional radiator, mobile station, or device authorized under Title 47, Part 15 of the Code of Federal Regulations.
 - b. Antenna Equipment means all equipment, including but not limited to electronics, switches, wiring, cabling, power sources, shelters or cabinets associated with an antenna, located at the same fixed location as the antenna, and is mounted or installed at the same time as such antenna.
 - c. Antenna Facility means an Antenna and associated Antenna Equipment.
 - d. Right-of-Way (or ROW) means all or any part of the entire width of a road, street or highway easement, whether or not such entire area is actually used for road, street or highway purposes.
 - e. Small Wireless Facility (or SWF) means an Antenna Facility that meets each of the following conditions:
 - i. The facility—
 1. Is mounted on a Structure 50 feet or less in height including any Antennas; or
 2. Is mounted on a Structure no more than 10 percent taller than other adjacent Structures; or
 3. Does not extend the existing Structure upon which the facility is located to a height of more than 50 feet or by more than 10 percent, whichever is greater;
 - ii. Each Antenna associated with the deployment, excluding associated Antenna Equipment, is no more than three cubic feet in volume;
 - iii. All other wireless equipment associated with the Structure, including the wireless equipment associated with the Antenna and any pre-existing associated equipment on the Structure, is no more than 28 cubic feet in volume;
 - iv. The facility will not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified by the FCC.
 - f. Structure means a pole, tower, base station, or other building located within the ROW, whether or not it has an existing Antenna Facility.

2. A Small Wireless Facility Encroachment Permit (SWFEP) shall be required for all SWFs constructed within the ROW. SWFEPs shall be administered consistent with the provisions of Chapter 30, Article V of the Salinas Municipal Code. A SWFEP application will include all Equipment that is part of a Small Wireless Facility, including associated communication and/or electrical connection lines of a length equal to either the distance to the first splice point of these lines with a communication and/or electrical supply line or 50 (fifty) feet from the Structure upon which the Small Wireless Facility is mounted, whichever is less.
3. The City shall not issue a SWF Encroachment Permit if the Application for a SWF Encroachment Permit does not comply with the requirements of this Resolution.
4. An applicant for a SWFEP shall be deemed incomplete unless it includes all information deemed required by the Department of Public Works to review the application. The City Engineer shall prepare or cause to be prepared a detailed list of required information and shall make such list publicly available to facilitate the timely processing of applications. This material shall include, but is not necessarily limited to, the following:
 - a. An application, in a form to be provided by the City Engineer, that includes all requested information; and
 - b. A map showing the location of the proposed SWF; and
 - c. A photo showing the proposed location of the SWF; and
 - d. A photosimulation demonstrating that the SWF will comply with the design standards described herein; and
 - e. Documentation identifying the owner of the Structure and demonstrating that the SWF conforms to the design and co-location restrictions of the Structure owner(s).
 - f. Construction details, including a soils report and a structural analysis signed by qualified Professional Engineer(s), demonstrating that the Structure will be structurally sound, as defined in these regulations, and will not have a significant risk of structural failure after installation of the SWF; and
 - g. Details regarding the connection of electrical and communications transmission lines to the site; and
 - h. Details relating to any closures of roads or sidewalks that will be necessary due to the proposed construction; and
 - i. A study demonstrating that the SWF will not emit radiofrequency emissions that will, either individually or cumulatively with other already installed telecommunications facilities, expose any member of the public to radiofrequency emissions in excess of those permitted under FCC regulations; and
 - j. Proof of insurance pursuant to City specifications as may be amended from time-to-time to defend, indemnify, and hold harmless the City for its facility, and name the City and its officers and employees as additional insured by endorsement; and

- k. Any applicable permit review fees as adopted by City Council.
5. The City Engineer or his/her designee shall review the application to confirm compliance with City Ordinances and regulations. Installation of SWFs shall conform to the following minimum design standards:
- a. SWFs shall be designed, installed and located so as to minimize adverse visual impacts and shall not contain advertising material of any kind.
 - b. SWFs shall be constructed of, painted, or otherwise treated with anti-graffiti materials, including, but not limited to, graffiti resistant paints or finishes. Graffiti on SWFs, including Structures and Equipment, shall be removed within forty-eight hours of being reported. All Structures shall have a decal or permanent sticker (maximum 6 square inches) with the SWF operator's graffiti abatement contact information affixed.
 - c. SWFs may not include any type of lighted signal, lights, or other illumination, except as required by federal or state law.
 - d. Soils and structural analysis shall be prepared and stamped by a qualified Professional Engineer. The analysis shall include plans and specifications that shall include, at a minimum, the size, weight, mounting method, method of providing electrical power (including placement of any cables), estimated monthly electrical use, radiofrequency radiation, method of attaching to the Structure if required for electrical power, and compliance with manufacturer's specification for such Structure. Licensee shall not overload the structural member of any Structure so as to cause any undue or serious stress or strain to the Structure, or any part thereof, and shall demonstrate compliance with specifications issued by the manufacturer of such Structure, if applicable. The City shall have the right, at any time, to make a determination whether the Structure, or any part thereof, is being overloaded so as to cause undue or serious stress or strain on the Structure or any part thereof. The decision of the City shall be final and binding on Licensee. If in the opinion of the City the stress or strain may endanger or injure the Structure, or any part thereof, Licensee agrees, at its sole cost, to immediately relieve the stress or strain by lightening the load, provide structural reinforcement in a manner satisfactory to City or install a replacement Structure. If any of Licensee's Network Equipment and facilities fails to meet applicable legal or City requirements, Licensee shall promptly, at its own cost, replace such equipment and facilities with compliant equipment and facilities.
 - e. Before issuance of a permit, proposals for SWFs attached to a structure in the ROW must demonstrate that the proposed SWF will comply with all of the following:
 - i. All work shall be done in a manner consistent with the City's "Dig Once" policy (Resolution 21080, as such may be amended from time-to-time).

- ii. All fiber and electrical infrastructure shall be installed underground, except where connection may be made to preexisting, immediately adjacent overhead electrical, telephone, or other wire/fiber service via a service drop. Applicants may not add new overhead electrical or fiber lines except when immediately adjacent to existing lines.
- iii. Except for Antennas and any Equipment necessary to screen said Antennas, all Equipment must be screened. Whenever feasible, Equipment shall be installed in an underground vault. Underground vault vents must be flush to the ground. If an underground installation is infeasible, Equipment shall be attached to the Structure and screened from view. Screening shall be accomplished in a manner consistent with the design of the Structure – in the case of decorative or architecturally enhanced street lights or other Structures, the screening shall incorporate design elements of the existing Structure. Above-ground cabinets not mounted on a Structure are prohibited.
- iv. The SWF Antenna(s) shall be screened with a solid, opaque covering that has been colored to blend with the structure upon which the facility is mounted and other streetscape or surrounding features to the extent feasible. The covering shall be no larger than is reasonably necessary to fully enclose the antennas and shall not exceed twice the width of the existing structure or increase the height of the Structure by more than 20%. When mounted on architecturally enhanced Structures (such as decorative streetlights), the SWF and its coverings shall be designed so that, in the opinion of the City Engineer or his/her designee, the aesthetic quality of the Structure has been preserved. For reasons of public safety, including routine and emergency maintenance, installation on any part of a Structure supporting signs or devices used to control or direct vehicle, pedestrian, or other traffic is prohibited.
- v. If an applicant proposes to replace an existing Structure in order to accommodate a SWF, the new Structure shall match the height, width, appearance, and neighborhood characteristics of the original Structure. Any previous function of the previous structure (such as a street light) shall be incorporated into the replacement structure in accordance with current City standards.
- vi. New Structures may not be constructed or utilized unless it is demonstrated conclusively by the Applicant that no existing structure can accommodate the SWF, that replacement of the existing structure is infeasible, and that these regulations would otherwise “effectively prohibit” the provision of wireless service if the new Structure is not permitted. The height and width of the structure without the Antenna or covering shall be equal to the height

and width of the nearest City street light mounted on a City-owned Structure. The new Structure shall also incorporate design elements of the existing nearby Structure in the design of the new Structure. SWFs on new Structures shall meet the same design guidelines as those installed on existing structures.

vii. Wires and cables must enter Structures from below ground and must run inside the Structure. All electrical connections to the facilities shall be metered separately from City's electrical service and shall have a separate shut-off device located at the Structure which allows for power to be shut off to the SWF without impacting any other operations of the Structure upon which the SWF is mounted. City staff shall be provided access to this shut-off device so that power may be quickly shut off in an emergency situation.

viii. The installation shall not interfere with the public's use and enjoyment of the public right-of-way or the continued good functioning of existing subterranean infrastructure. Applications shall demonstrate that, at a minimum:

1. Applicant's proposal will allow parking and appurtenant door opening adjacent to the Structure.
2. Applicant's proposal will comply with all American Association of State Highway and Transportation Officials (AASHTO) sight distance requirements for the health, safety, and welfare of pedestrians and drivers.
3. Applicant's proposal will not block or interfere with the use, maintenance and/or repair of fire hydrants, street lights and other existing facilities.
4. Applicant's proposal will not restrict sidewalk access or parking when access panels and doors are open.
5. Applicant's proposal will comply with all state, federal and local regulations regarding Americans with Disability Act (ADA) accessibility, providing a minimum of four feet width for sidewalk pedestrians with a cross slope not to exceed 2%.

6. If an application is found to be incomplete or not in compliance with these regulations, City shall notify the applicant and provide a written list of the reasons for the finding(s) of incompleteness and/or noncompliance. The applicant may correct any identified deficiencies and resubmit the application for further review, upon which the City will again review the materials and either approve the application or provide notice as described above. If the City has previously twice notified an applicant that the application materials submitted for a particular application are incomplete or otherwise not in

compliance with these regulations, then if that application is resubmitted and is then found to be incomplete or not in compliance with these regulations a third time, the City shall deny that application. A denied application does not prevent an applicant from submitting a significantly similar application in the future.

7. The City may issue to an Applicant a SWFEP for a SWF once it has been demonstrated to the satisfaction of the Department of Public Works that the requirements specified herein have been met. Following this approval, the Applicant shall do the following:
 - a. The Applicant shall provide contact information to the City for the construction and the ongoing operation of the site.
 - b. The Applicant shall pay to the City of Salinas any Inspection and/or Monitoring Fees due.
 - c. The Applicant shall perform the work at the site in a manner that enables City staff to inspect the work being performed. The City Engineer shall specify in writing the inspections that need to be performed and shall cause these inspections to be performed. The Applicant or their representative shall notify the City when their work is ready for inspection. The City Engineer or his/her designee may require additional funds to be paid if the work is of such quality as to necessitate a number of inspections that the City Engineer deems to be excessive.
 - d. Upon completion of the SWF, the Applicant shall provide to the City a radiofrequency study to verify that the proposed facility is operating in accordance with the standards set by federal law at the time of the study. If the study concludes that the radiofrequency emissions exceed federal standards for such emissions, the facility shall be shut down immediately and shall not resume operation until it is demonstrated to the satisfaction of the City Engineer or his/her designee that the facility will operate in accordance with federal law.
 - e. In the event that these steps are not completed within six months of the issuance of the SWFEP, the City Engineer or his/her designee may revoke the SWFEP.
8. The City may include in a SWF Encroachment Permit such conditions, in addition to those already set forth in state and federal law, as may be required to govern the construction, installation, or maintenance of SWFs in the Public Rights-of-Way, and to protect and benefit the public health, safety, and welfare. Such conditions may also govern the installation and use of equipment that is not located on a Structure, but that is deemed necessary for the use and maintenance of a permitted SWF.
9. If the Applicant believes that the application of any particular provision of these regulations to a particular application would have the impact of “effectively prohibiting” the provision of wireless service, the Applicant may appeal the denial of any application to the Director

of Public Works within ten days of such denial. This appeal shall include, in addition to the information included in the application, a narrative identifying the provision which allegedly has this impact, provides an analysis demonstrating why application of the provision would “effectively prohibit” the installation, and provides an analysis demonstrating that no reasonable alternative exists for the provision of wireless telecommunications service. The Director of Public Works may approve the application if he/she finds that the application of the provision to this particular location would “effectively prohibit” the provision of wireless services. The Director of Public Works may request, and Applicant shall provide, any information deemed reasonably necessary by the Director to make an informed decision. Appeals shall be limited to determining whether the application of a particular provision of these regulations would “effectively prohibit” the provision of wireless service if enforced, and for no other claim or reason. The Director may deny the application if he/she finds that the Applicant has not successfully proven that the application of these regulations would “effectively prohibit” the provision of wireless services. The City may charge a fee to cover its actual costs in administering an appeal under this Section.

10. Applicant shall ensure the installation of SWF meet conditions as may be required to control the construction, installation, maintenance, repair and removal of such facilities in a public right of way so as to protect and benefit the public health, safety, and welfare. The terms and conditions of any such permit issued shall be subject to these requirements and limited to those areas consistent with the City’s authority under applicable law. These conditions shall include, but not be limited to, the following:
 - a. Normal and routine access to, and use, operation, maintenance and repair of SWF that does not impact vehicle or pedestrian traffic patterns shall be considered as part of the permitted installation, and no new permit shall be required for any such access, use, operation, maintenance or repair.
 - b. A new permit shall be required for upgrades, relocations, and/or modifications of the installed facilities, unless the City Engineer or his/her designee determines that such upgrade, relocation, and/or modification is minor, insignificant, and insubstantial. Permittee may replace approved Equipment with like-kind, similar Equipment, without obtaining a new permit if such like-kind, similar Equipment serves a substantially equivalent function, is the same or smaller in size, has the same or fewer number of antennas than approved by the City, and presents a substantially similar appearance to the Equipment it replaces. All modifications and replacements remain subject to these requirements and non-discretionary structural and safety codes.
 - c. Each year, at an interval to be specified by the City, the Applicant or their successor shall provide documentation demonstrating that insurance has been maintained on

all SWF (including Structures) in accordance with City specifications, as may be amended from time-to-time. Requirements for insurance coverage shall be determined by the City Attorney's Office, who shall make such requirements publicly available.

11. A permit for the installation of a SWF may be transferred to a successor, assign, or affiliate of the permittee, provided that any transferee holds and provides evidence of all required FCC and any other required governmental approvals or licenses necessary to provide telecommunication services.
12. This Resolution shall apply only to SWFs within the ROW and shall not extend to any other types of facilities and/or any other locations. This Resolution shall not amend or supersede Resolution 21369 (as may be amended from time to time).
13. If the City and an applicant have entered into a Master Lease Agreement (or an equivalent Agreement) pursuant to Resolution 21369, the City and the Applicant may agree within that Agreement to alternative regulations which, in the opinion of the City Council, would be equal or superior to the regulations contained herein with regards to accomplishing the stated goals of these regulations. When considering these alternatives, the Council shall consider the revised regulations as a whole, and individual modifications shall not be applicable to other Applicants unless a holistic review of alternatives is performed through a Master Lease Agreement.
14. The City reserves the right to require a Master Lease Agreement as a condition of installing or maintaining SWFs. In the event that the FCC's Administrative Order is amended, modified, and/or invalidated in a manner that the City is no longer required under the Order to issue a SWF Encroachment Permit, the City may deny any applications received pursuant to this Resolution until both parties enter into a Master Lease Agreement. Further, the City reserves the right to revoke any SWF Encroachment Permit in accordance with Section 30-42 of the Salinas Municipal Code.

PASSED AND APPROVED this 2nd day of April 2019 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

Joe Gunter, Mayor

ATTEST:

Patricia M. Barajas, City Clerk