

**Title 1
General Provisions**

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1.01 Adoption of Code**Sections:**

- 1.01.010 Code Adopted**
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1.01.010 Code Adopted.

All ordinances of a general nature now in force in Payson, Utah, as revised, compiled and hereinafter set forth in the volume entitled "Revised Ordinances of Payson City, Utah, 1998", contained within and other said titles, are adopted, passed, published and declared to be the revised ordinances of Payson City, Utah, 1998.

1.01.020 Publication.

These revised ordinances in the volume are entitled as provided in Section 1.01.010, containing 23 titles and various chapters and sections contained in said titles, are hereby published by the authority of the City Council.

1.01.030 Effect on Prior Legislation.

All ordinances passed by the City Council subsequent to the printing of the above described published volume entitled "Revised Ordinances of Payson City, 1998, are hereby declared to remain in force and effect, but all ordinances which are in conflict with the revised ordinances of Payson City, 1998, are hereby repealed.

1.02 Interpretation, Repeal, Legislative Effect**Sections:**

- 1.02.010 Repeal of Existing Ordinances.**
- 1.02.020 Effect of Repealing Ordinances.**
- 1.02.030 Definitions for Code Construction.**
- 1.02.040 When Ordinances Take Effect--Publication Proof.**

1.02.010 Repeal of Existing Ordinances.

All the ordinances contained in this book shall be known as Revised Ordinances of Payson City, Utah, and so far as their provisions are the same in effect as those of previously existing ordinances, they shall be construed as continuations thereof; but subject to the above limits and provisions of the next section, all ordinances of Payson City, a municipal corporation heretofore in force (except those that are of private, local, or temporary character, including franchises, grants, dedications, easements, rates for electrical power and special levies for local assessments) are hereby repealed.

1.02.020 Effect of Repealing Ordinances.

The repeal of the ordinances as provided in Section 1.02.010 shall not revive the ordinances previously repealed nor affect any right which has accrued, commenced under or by virtue of the ordinance repealed nor the tenure of office of any person holding office at the time when they take effect; nor shall the repeal of any ordinance thereby have the effect of reviving any ordinance theretofore repealed or superseded.

1.02.030 Definitions For Code Construction.

In the construction of the revised ordinances and all ordinances amendatory thereof, the following rules shall be observed, unless such construction would be inconsistent with manifest intent of the legislative body or repugnant to the context of the ordinance:

- 1) The singular number includes the plural.
- 2) Words used in the present tense include the future.
- 3) Words in the masculine gender comprehend, as well as the feminine and neuter.
- 4) The word "person" includes bodies politic and corporate partnerships, associations and companies.
- 5) The word "writing" includes all printing, writing and typewriting.
- 6) The word "signature" includes any name, mark or sign written with the intent to authenticate any instrument or writing.
- 7) The word "month" means a calendar month, unless otherwise expressed, and the word "year" or the abbreviation "A.D." is equivalent to the expression "Year of our Lord".
- 8) The word "oath" includes "affirmation", and the word "swear" includes the word "affirm". Every mode of oral statement under oath or affirmation is embraced in the term "testify", and every written one in the word "depose".
- 9) The word "property" includes both real and personal property.

11) The words "land", "real estate" and "real property" includes lands, tenements, hereditaments, water rights, possessory rights and claims.

12) The term "personal property" includes every description of money, goods, chattels, effects, evidences of rights in action and all written instruments by which any pecuniary obligation, rights or title to property is created, acknowledged, transferred, increased, defeated, discharged or diminished, and every right or interest therein.

13) The words "highway" and "road" include public bridges, and may be held equivalent to the words "county way", "country road", and "common road", and "State road".

14) The word "street" includes alleys, lanes, courts, boulevards, public ways, public squares, public places and sidewalks.

15) When any time is specified in these ordinances, it shall mean standard time, as distinguished from solar time, and the words "midnight" or "noon" shall be taken to be midnight or noon standard time.

16) The word "owner" applied to a building or land shall include any part owner, joint owner, tenant in common, joint tenant or lessees or the whole or of a part of such building or land.

17) The word "tenant" or "occupant" applied to a building or land shall include any person who occupies the whole or part of such building or land, either alone or with others.

18) Words prohibiting anything being done, except in accordance with a license or permit or authority from the Board of Officers, shall be construed as giving such Board of Officers power to license or permit or authorize such thing to be done.

19) The word "officer" shall include officers and boards in charge of departments and members of such boards.

20) The term "willfully" when applied to the intent with which an act is done or omitted, implies simply a purpose or willingness to commit the act or make the omission referred to. It does not require any intent to isolate law, or to injure another, or to acquire any advantage.

21) The terms "neglect," "negligence," "negligent," and "negligently" import a want of such attention to the nature or probable consequences of the act or omission as a prudent man ordinarily bestows in acting in his own concern.

22) The term "knowingly" imports only a knowledge that the facts exist which bring the act or omission within the provisions of these ordinances. It does not require any knowledge of the unlawfulness of such act or omission.

23) The term "bribe" signifies any money, goods, right in action, property, thing of value, or advantage, present or prospective, or any promise or undertaking to give any, asked, given, or accepted, with a corrupt intent to influence unlawfully the person to whom it is given in his action, vote, or opinion on any public or official capacity.

24) The term "corruptly" imports a wrongful design to acquire or cause some pecuniary or other advantage to the person guilty of the act, established either by proof or by presumption of law.

25) The enacting style of all ordinances of Payson City shall "be it ordained by the City Council of Payson City, Utah."

1.02.040 When Ordinances Take Effect--Publication Proof.

All ordinances, before taking effect, shall be deposited in the office of the city recorder and published at least once in some newspaper published within the city, and shall take effect on the twenty-first day after publication, or the thirty-first day after their final passage of such ordinance. Ordinances, if so provided therein may take effect at a later date. Measures necessary for the immediate preservation of the peace, health or safety of the city, may, if so provided in the ordinance, take effect at an earlier date, but no such emergency measure shall become immediately operative unless it shall state in a separate section the reason why it is necessary that it should become effective; provided further, that when a revision is made and the revised ordinances are published by authority of the city council, no further publication shall be deemed necessary; and provided further, that ordinances establishing rules and regulations for the construction of buildings, the installation of plumbing, the installation of electric wiring or other related or similar work, and rules and regulations controlling traffic and relating to the prevention of fires within the corporate limits where such rules and regulations have been printed as a code in book form, may be adopted and take effect without further publication, if reference is made to such code, and not less than three copies of such code shall have been filed for use and examination by the public in the office of the recorder prior to the adoption of such ordinance by the city council.

The city recorder shall record all ordinances in a book kept for that purpose, together with affidavits of publication by the publisher, or his agent; and said book or a certified copy of the ordinances, under the seal of the city, shall be received as evidence in all courts and places without further proof, or if printed

in book or pamphlet form by authority of the city council, they shall be so received.

1.03 Liabilities and Penalties

Sections:

1.03.010 Intent to Defraud.

1.03.020 Aiding Offense--Liability of Employer

1.03.030 Essentials of Crime.

1.03.040 Penalty for Violations.

1.03.050 Reduction of Sentence For Good Behavior.

1.03.060 Prisoners of Labor.

1.03.070 Persons Authorized to Enforce Ordinances and Issue Citations.

1.03.010 Intent to Defraud.

Whenever, by any of the provisions of the revised ordinances, an intent to defraud is required in order to constitute any offense, it is sufficient if any intent appears to defraud any persons, association or body politic or corporate whatever.

1.03.020 Aiding Offense--Liability of Employer.

When the provisions of an ordinance prohibit the commission or omission of an act, not only the person actually doing the prohibited thing or omitting the direct act, but also the employer and all other persons concerned or aiding or abetting therein shall be guilty of the offense described and liable to the penalty described for the offense.

1.03.030 Essentials of Crime.

In every crime or public offense, there must exist a union or joint operation of act and intent, or criminal negligence.

1.03.040 Penalties for Violations.

Where the performance of any act is prohibited or declared to be unlawful, by any provision of any ordinance, included in these revised ordinances, or ordinances hereafter enacted, and no penalty for the violation of such ordinance is imposed by any ordinance, the doing of such act is a Class C Misdemeanor.

1.03.050 Reduction of Sentence for Good Behavior.

Every person undergoing sentence for thirty days or more, who has not been guilty of a breach of the rules of the prison, shall be entitled to a reduction of the period of his sentence as follows: From a term of one

month, five days; from a term of two months, ten days; from a term of three months, fifteen days; from a term of four months, twenty days; from a term of five months, twenty-five days; from a term of six months, thirty days. Proportionate reductions shall be made for the fractional parts of a month included in any sentence.

1.03.060 Prisoners of Labor.

Whenever any person is sentenced to imprisonment for violation of any city ordinance, and such person is required by the judgment of the Court to Labor, such labor shall be performed under the direction of the Chief of Police.

1.03.070 Persons Authorized to Enforce Ordinances and Issue Citations.

1) Officers authorized to enforce city ordinances. The following officers are authorized and directed by Payson City to enforce the ordinances of Payson City as indicated and issue citations and/or swear out criminal complaints to individuals or corporations who violate said ordinances:

- a) Police officers-All ordinances of Payson City;
- b) Zoning enforcement officers-All ordinances pertaining to zoning.
- c) Building and housing inspectors-All ordinances pertaining to buildings and other structures;
- d) License inspectors-All ordinances pertaining to city business and regulatory licensing; and
- e) Animal control officers-All ordinances pertaining to animal control.

2) Identification. Except for police officers, all other individuals shall be sworn as enforcement officers and issued appropriate identification.

3) All ordinances or parts of ordinances in conflict with ordinance are hereby repealed.

1.04 Elections

Sections:

1.04.010 Primary elections re-established

1.04.020 Effective date

1.04.030 Campaign Finance Disclosure

1.04.010 Primary elections re-established.

Payson City Ordinance No. 2.9.84, passed February 9, 1984, by the City Council of Payson, Utah, is hereby repealed, and primary elections are hereby re-established as provided in Title 20A, Utah Code Annotated (1953, as amended).

1.04.020 Effective date.

This ordinance shall become effective upon publication, and shall not affect the 1989 Payson City Elections, but shall apply to Payson City Elections held thereafter.

1.04.30 Campaign Finance Disclosure**1) Definitions (All definitions not listed here shall be defined by the state election laws)**

- a. **“Candidate”** means any person who: (a) files a declaration of candidacy for a public office; or (b) receives contributions, makes expenditures, or gives consent for any other person to receive contributions or make expenditures to bring about the person’s nomination or election to a public office.
- b. **“Contribution”** means any of the following when done for political purposes: (i) a gift, subscription, donation, loan, advance, or deposit of money or anything of value given to the filing entity; (ii) an express, legally enforceable contract, promise, or agreement to make a gift, subscription, donation, unpaid or partially unpaid loan, advance, or deposit of money or anything of value to the filing entity; (iii) any transfer of funds from another reporting entity or a corporation to the filing entity; (iv) compensation paid by any person or reporting entity other than the filing entity for personal services provided without charge to the filing entity; (v) remuneration from any organization or its directly affiliated organization that has a registered lobbyist to compensate a legislator for a loss of salary or income while the Legislature is in session; (vi) salaries or other remuneration paid to a legislator by any agency or subdivision of the state, including school districts, for the period the Legislature is in session; and (vii) goods or services provided to or for the benefit of the filing entity at less than fair market value. (b) **“Contribution”** does not include: (i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of the filing entity; or (ii) money lent to the filing entity by a financial institution in the ordinary course of business.
- c. **“Election”** means each: (a) regular general election; (b) regular primary election; and (c) special election at which candidates are eliminated and selected.

- d. **“Expenditure”** means: (i) any disbursement from contributions, receipts, or from the separate bank account required by this chapter; (ii) a purchase, payment, donation, distribution, loan, advance, deposit, gift of money, or anything of value made for political purposes; (iii) an express, legally enforceable contract, promise, or agreement to make any purchase payment, donation, distribution, loan, advance, deposit, gift of money, or anything of value for political purposes; (iv) compensation paid by a corporation or filing entity for personal services rendered by a person without charge to a reporting entity; (v) a transfer of funds between the filing entity and a candidate’s personal campaign committee; or (vi) goods or services provided by the filing entity to or for the benefit of another reporting entity for political purposes at less than fair market value. (b) **“Expenditure”** does not include: (i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a reporting entity; (ii) money lent to a reporting entity by a financial institution in the ordinary course of business; or (iii) anything listed in Subsection (10)(a) that is given by a corporation or reporting entity to candidates for office or officeholders in states other than Utah.
 - e. **“Reporting Date”** means: (i) ten days before a municipal general election, for a campaign finance statement required to be filed no later than 30 days after a municipal primary or general election.
 - f. **“Reporting Limit”** means \$50.00
- 2) Filing and Timing of Campaign Finance Statement:** Each candidate for municipal office who is not eliminated at a municipal primary election shall file with the City Recorder a campaign finance statement: (A) no later than seven (7) days before the municipal general election and (B) no later than thirty (30) days after the municipal general election. Each candidate for municipal office who is eliminated at a municipal primary election shall file with the City Recorder a campaign finance statement no later than thirty (30) days after the municipal primary election. A campaign finance statement is considered filed if it is received in the City Recorder’s office by 6:00 p.m. on the date it is due.

- 3) **Filing Fee:** The Governing Body may from time to time assess a declaration of candidacy filing fee. This fee will be set by the Governing Body as part of the fee schedule resolution.
- 4) **Contents of Statement:**
- a. Each required campaign finance statement, except as provided in subsection 3b, shall:
 - i. Report all of the candidate's itemized and total campaign contributions, including in-kind and other non-monetary contributions, as of the reporting date;
 - ii. report all of the candidate's itemized and total expenditures as of the reporting date;
 - iii. identify for each contribution that exceeds the reporting limit, the amount of the contribution and the name of the donor;
 - iv. identify the aggregate total of all contributions that individually do not exceed the reporting limit; and
 - v. identify for each campaign expenditure, the amount of the expenditure and the name of the recipient of the expenditure.
 - b. Report the total amount of all campaign contributions and expenditures if the candidate receives \$500 or less in campaign contributions and spends \$500 or less on the candidates campaign.
- 5) **Public information:** Notwithstanding any provision of Title 63, Chapter 2, Governmental Records Access and Management Act, the City Recorder shall make each campaign finance statement filed by a candidate available for public inspection and copying no later than one business day after the statement is filed.
- 6) **Penalty for Noncompliance:** Any candidate who fails to comply with this ordinance is guilty of an infraction. If a candidate fails to file a campaign finance statement before the municipal general election by the deadline specified above, the municipal clerk or recorder shall inform the appropriate election official who: (i) shall: (A) if practicable, remove the candidate's name from the ballot by blacking out the candidate's name before the ballots are delivered to voters; or (B) if removing the candidate's name from the ballot is not practicable, inform the voters by any practicable method that the candidate has been disqualified and that votes cast for the candidate will not be counted; and (ii) may not count any votes for that candidate. A candidate who files a

campaign finance statement seven days before a municipal general election is not disqualified if: (i) the statement details accurately and completely the information required under section 4, except for inadvertent omissions or insignificant errors or inaccuracies; and (ii) the omissions, errors, or inaccuracies are corrected in an amended report or in the next scheduled report.

1.05 Transient Room Tax

Sections:

1.05.10.1 Transient Room Tax (Effective August 1, 1999)

- 1) There is hereby levied upon the business of every person, company, corporation, or other like and similar persons, groups or organizations, doing business in Payson City as motor courts, motels, hotels, inns or the like, and similar public accommodations, a transient room tax equal to one percent (1.0%) of the gross revenue derived from the rent for each and every occupancy of a suite, room or rooms, for a period of thirty (30) days or less.
- 2) For purposes of this section, gross receipts shall be computed upon the base room rental rate. There shall be excluded from the gross revenue, by which this tax is measured:
 - a) The amount of any sales or use tax imposed by the state of Utah or by any other governmental agency upon a retailer or consumer;
 - b) The amount of any county transient room tax or resort communities tax levied under authority of Chapter 12 of Title 59, Utah Code Annotated, 1953, as amended, or its successor;
 - c) Receipts from the sale or service charge for any food, beverage, or room-service charges in connection with the occupancy of the suite, room or rooms, not included in the base room rate; and
 - d) Charges made for supplying telephone service, gas or electrical energy service, not included in the base room rate.
- 3) The City may collect on the same basis and schedule as established for the transient room tax being collected by the Utah State Tax Commission. Every person or business taxed hereunder shall report and remit to that person or entity designated by the City Administration as responsible for collection of the amount of tax due for the period covered by the report.

4) The City may contract with the Utah State Tax Commission or other agencies to perform all functions incident to the administration and operation of this chapter and is further authorized to participate in such enforcement measures, including but not limited to levies and other penalties, as may be established by the Utah State Tax Commission.

1.06 Uniform Local Sales and Use Tax

Sections:

- 1.01.010 Title**
- 1.01.020 Purpose**
- 1.01.030 Effective Date**
- 1.01.040 Sales Tax**
- 1.01.050 Use Tax**
- 1.01.060 Execution**
- 1.01.070 Contract with State Tax Commission**
- 1.01.080 Penalties**
- 1.01.090 Severability**

1.06.010 Title.

This ordinance shall be known as the "Uniform Local Sales and Use Tax Ordinance" of Payson City.

1.06.020 Purpose.

The Utah Legislature has authorized Municipalities of the State of Utah to enact Sales and Use Tax Ordinances imposing a 58/64 percent tax, effective July 1, 1986, and has authorized said tax to be increased to 1 percent effective July 1, 1987.

It is the purpose of this ordinance to levy and impose a 58/64 percent local option sales and use tax effective July 1, 1986, to increase said sales and use tax to 1 percent effective July 1, 1987, to authorize and designate the Utah State Tax Commission as agent for the municipality to collect the tax and to conform with the requirements of the Uniform Local Sales and Use Tax Law of Utah, Chapter 9, Title 11, Utah Code Annotated, 1953.

1.06.030 Effective date.

This ordinance shall become effective as of 12:01 o'clock a.m., July 1, 1986. The provisions of the previously enacted Uniform Local Sales and Use Tax ordinance of the municipality which is repealed hereby and which are in conflict herewith shall continue effective until 12:00 o'clock midnight, June 30, 1986. The provisions of this ordinance which are not in conflict with said former ordinance shall be deemed to be a continuation thereof and any rights, duties and obligations arising thereunder shall not in any way be deemed abrogated or terminated.

1.06.040 Sales tax.

1) From and after 12:01 o'clock a.m., July 1, 1986, there is levied and there shall be collected and paid a tax on every retail sale of tangible personal property, services and meals made within the municipality at the rate of 58/64 percent. Said rate of 58/64 percent shall be increased to 1 percent from and after 12:01 o'clock a.m., July 1, 1987.

2) For the purposes of this ordinance, all retail sales shall be presumed to have been consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to an out-of-state destination. If a retailer has no permanent place of business in the state, or has more than one place of business, the place or places at which the retail sales are consummated shall be as determined under the rules and regulations prescribed and adopted by the State Tax Commission. Public utilities as defined by Title 54, Utah Code Annotated, 1953, shall not be obligated to determine the place or places within any county or municipality where public utilities services are rendered, but the place of sale or the sales tax revenues arising from such service allocable to the municipality shall be as determined by the State Tax Commission pursuant to an appropriate formula and other rules and regulations to be prescribed and adopted by it.

3) Except as hereinafter provided, and except insofar as they are inconsistent with the provisions of the Uniform Local Sales and Use Tax Law of Utah, all of the provisions of Chapter 15, Title 59, Utah Code Annotated, 1953, as amended, and in force and effect on the effective date of this ordinance, insofar as they relate to sales taxes, excepting Sections 59.15.1 and 50.15.21 thereof, and excepting for the amount of the sales tax levied therein, are hereby adopted and made a part of this ordinance as though fully set forth herein.

4) Wherever, and to the extent that in Chapter 15 of Title 59, Utah Code Annotated, 1953, the State is named or referred to as the "taxing agent," the name of this municipality shall be substituted therefore. Nothing in this subparagraph (b) shall be deemed to require substitution of the name of the municipality for the work "State" when that word is used as part of the title of the State Tax Commission, or of the Constitution of Utah, nor shall the name of the municipality be substituted for that of the State in any section when the result of that substitution would require action to be taken by or against the municipality or any agency thereof, rather than by or against the State Tax Commission in performing the

functions incident to the administration or operation of this ordinance.

5) If an annual license has been issued to a retailer under Section 59.15.3, Utah Code Annotated, 1953, an additional license shall not be required by reason of this section.

6) There shall be excluded from the purchase price paid or charged by which the tax is measured:

- a) The amount of any sales or use tax imposed by the State of Utah on a retailer or consumer.
- b) Receipts from the sale of tangible personal property on which a sales or use tax has become due by reason of the same transaction to any other municipality and any county in the State of Utah, under a Sales or Use Tax Ordinance enacted by that county or municipality in accordance with the Uniform Local Sales and Use Law of Utah.

1.06.050 Use Tax.

1) An excise tax is hereby imposed on the storage, use, or other consumption in this municipality of tangible personal property from any retailer on or after the operative date of this ordinance for storage, use or other consumption in the municipality at the rate of 58/64 percent of the sales price of the property.

2) Except as hereinafter provided, and except insofar as they are inconsistent with the provisions of the Uniform Local Sales and Use Tax Law of Utah, all of the provisions of Chapter 16, Title 59, Utah Code Annotated 1953, as amended and in force and effect on the effective date of this ordinance, applicable to use taxes, excepting the provisions of Section 59.16.1 and 59.16.25 thereof, and excepting for the amount of the tax levied therein, are hereby adopted and made a part of this section as though fully set forth herein.

3) Wherever and to the extent that in Chapter 16 of Title 59, Utah Code Annotated 1953, the State of Utah is named or referred to as the "taxing agency," the name of Payson City shall be substituted therefore. Nothing in this subparagraph (b) shall be deemed to require the substitution of the name of this municipality for the word "State" when that word is used as part of the title of the State Tax Commission, or of the Constitution of Utah, nor shall the name of the municipality be substituted for that of the State in any section when the results of that substitution would require action to be taken by or against the municipality or any agency thereof, rather than by or against the State Tax Commission in performing the functions incident to the administration or operation of this ordinance.

4) There shall be exempt from the tax due under this section:

- a) The amount of any sales or use tax imposed by the State of Utah upon a retailer or consumer;
- b) The storage, use or other consumption of tangible personal property, the gross receipts from the sales of or the cost of which has been subject to sales or use tax under a sales or use tax ordinance enacted in accordance with the Uniform Local Sales and Use Tax Law of Utah by any other municipality and any county of the State.

1.06.060 Execution.

The Mayor is authorized to execute whatever documents are necessary to distribute sales and use tax revenues on the combination of point of sale and population factors set forth in Section 11.9.5, Utah Code Annotated 1953.

1.06.070 Contract with State Tax Commission.

Heretofore, this municipality has entered into an agreement with the State Tax Commission to perform all functions incident to the administration or operation of the Sales and Use Tax Ordinance of the municipality. That contract is hereby confirmed and the Mayor is hereby authorized to enter into such supplementary agreement with the State Tax Commission as may be necessary to the continued administration and operation of the Local Sales and Use Tax Ordinance of the municipality as reenacted by this ordinance.

1.06.080 Penalties.

Any person violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor.

1.06.090 Severability.

If any section, subsection, sentence, clause, phrase or portion of this ordinance, including but not limited to any exemption is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. It is the intention of the City Council that each separate provision of this ordinance shall be deemed independent of all other provisions herein.

1.07 Utility Revenue Fee

Sections:

1.07.010 Revenue tax on pulic utilities

1.07.020 Revenue tax on business in competition with public utilities

1.07.030 Restricted use of revenues

1.07.010 Revenue tax on public utilities.

There is hereby levied upon the business of every person or company engaged in the business of supplying telephone service, or taxable energy as public utilities within the municipal limits of Payson City, an annual license fee equal to six percent (6%) of the gross revenue derived from the sale and use of the services of such utilities, delivered from and after May 1, 1990, within the corporate limits of Payson City.

1) **Definitions:**

- a) "Basic local exchange service revenue" as used herein shall mean revenues received from the furnishing of telecommunications within Payson City and access to the telecommunications network to either business, residential or other customers whether on a flat rate or measured basis, by means of an access line. Basic local exchange service does not include revenues obtained by the telephone public utility company from the provision of terminal telephone equipment services (such as basic telephone sets, private branch exchanges and key telephone systems), or from other telephone equipment which is obtainable from both the telephone company and other suppliers.
- b) "Gross revenue" as used herein, means the revenue derived from the sale and use of public utility services within Payson City, provided that "gross revenue", as applied to the telephone utility, shall be construed to mean basic local exchange services revenue.
- c) "Public utility services" means the sale and use of electric power and energy, natural gas, and basic local exchange telephone service.

2) **Remittance Date:** Within forty-five days after the end of each month in a calendar year, the public utility taxed hereunder shall file with the City Treasurer a report of its gross revenue derived from the sale and use of public utility service in Payson City, as defined in this ordinance, together with a computation of the tax levied hereunder against the utility. Coincidental with the filing of such report, the utility shall pay to the City Treasurer the amount of the tax due for that calendar month subject to said report.

1.07.020 Revenue tax on business in competition with public utilities.

There is levied upon the business of every person or company engaged in the business, in Payson City, of supplying basic local exchange; telephone service, as defined in this section, natural gas, or electric energy service in competition with public utilities, as annual license tax equal to six percent (6%) of the gross revenue derived from the sale and use of such competitive services sold, used, or delivered within the corporate limits of Payson City, after May 1, 1990.

1) **Definitions:** "In competition with public utilities" means to trade in products or services within the same market as a public utility as defined under Section 1 of this ordinance or its successor.

2) **Remittance Date:** Within forty-five days after the end of each month in a calendar year, any business taxed hereunder shall file with the City Treasurer a report of its gross revenue derived from the sale and use of services specified hereunder rendered in competition with public utilities in Payson City, together with a computation of the tax levied hereunder against such business. Coincidental with the filing of such report, the business shall pay to the City Treasurer the amount of the tax due for the calendar month, which is the subject of the said report.

1.07.030 Restricted use of revenues.

All revenues derived from the Utility Revenue Tax established by this ordinance shall be accounted for in a special capital projects construction fund to be used exclusively for funding or assisting in the funding of capital construction projects or for funding or assisting in the funding of debt service associated with capital construction projects approved by official action of the City Council for such funding assistance.

1.08 Mobile Telephone Service Revenue Act (10-18-00C)

Sections:

- 1.08.010 Repealer**
- 1.08.020 Enactment**
- 1.08.030 Definitions**
- 1.08.040 Monthly Tax Levied**
- 1.08.050 Remittance Date**
- 1.08.060 Requirement to maintain Electronic Database or Enhanced Zip Code Listing**
- 1.08.070 Place of Primary Use**
- 1.08.080 Tax Against Customer**

1.08.090 Nonapplication**1.08.100 Implementation Date****1.08.110 Severability****1.08.120 Effective Date****1.08.010. Repealer**

Any provision of the Payson City Code found to be in conflict with this ordinance is hereby repealed.

1.08.020. Enactment

Section 1.08 of the Payson City Code, relating to the Mobile Telecommunication Service Revenue Act, is hereby enacted to read as follows:

1.08.030 Definitions

For purposes of this ordinance, the following terms are defined as follows:

1) CUSTOMER means:

- a) The person or entity, having a place of primary use within the City, that contracts with the home service provider for mobile telecommunications services; or
- b) If the end user of mobile telecommunications services is not the contracting party, the end user of the mobile telecommunications services; but this clause applies only for the purpose of determining the place of primary use.
- c) CUSTOMER does not include:
 - i) A reseller of mobile telecommunications service; or
 - ii) A serving carrier under an arrangement to serve the customer outside the home service provider's licensed service area.

2) DESIGNATED DATABASE PROVIDER means a corporation, association, or other entity representing all the political subdivisions of a state that is:

- a) Responsible for providing an electronic database prescribed in subsection 119(a) of chapter 4, title 4 of the United States Code if the state has not provided such electronic database; and
- b) Approved by municipal and county associations or leagues of the state whose responsibility it would otherwise be to provide such database prescribed by sections 116 through 126 of chapter 4, title 4 of the United States Code.

3) ENHANCED ZIP CODE means a United States postal zip code of nine or more digits.

4) HOME SERVICE PROVIDER means the facilities-based carrier or reseller with which the customer contracts for the provision of mobile telecommunications services.

5) LICENSED SERVICE AREA means the geographic area in which the home service provider is authorized by law or contract to provide commercial mobile radio service to the customer.

6) MOBILE TELECOMMUNICATIONS SERVICE

means commercial mobile radio service, as defined in section 20.3 of title 47 of the Code of Federal Regulations as in effect on June 1, 1999. For purposes of this ordinance, mobile telecommunications services shall not include:

- a) Pager services using mobile devices that do not allow for two-way voice communication;
- b) Narrowband personal communications services; and
- c) Short message services (SMS).

7) PLACE OF PRIMARY USE means the street address representative of where the customer's use of the mobile telecommunications service primarily occurs, which must be:

- a) The residential street address or the primary business street address of the customer; and
- b) Within the licensed service area of the home service provider.

8) PREPAID TELEPHONE CALLING SERVICES means the right to purchase exclusively telecommunications services that must be paid for in advance, that enables the origination of calls using an access number, authorization code, or both, whether manually or electronically dialed, if the remaining amount of units of service that have been prepaid is known by the provider of the prepaid service on a continuous basis.

9) RESELLER:

- a) Means a provider who purchases telecommunications services from another telecommunications service provider and then resells, uses as a component part of, or integrates the purchased services into a mobile telecommunications service; and
- b) Does not include a serving carrier with which a home service provider arranges for the service to its customers outside the home service provider's licensed service area.

10) SERVING CARRIER means a facilities-based carrier providing mobile telecommunications service to a customer outside a home service provider's or reseller's licensed service area.

1.08.040 Tax Levied.

There is levied upon every home service provider a tax of one dollar (\$1) per month for each telephone number assigned to any customer whose place of primary use is within the City. The home service

provider may or may not pass this tax on to its customers. If the home service provider passes the tax on to the customer, and the tax is reflected on the customer's bill, the tax shall be shown on the bill as a flat rate municipal tax charge.

1.08.050 Remittance Date.

1) Within thirty (30) days after the end of each calendar month, the home service provider taxed hereunder shall file, with the City Treasurer, a report computing the tax. Coincidental with the filing of such report, the business shall pay, to the City Treasurer, the amount of the tax due for the calendar month subject to the report. If the 30th day after the end of each calendar month falls on a Saturday, Sunday, or state or federal holiday, the deadline for filing the monthly report and remitting payment for that month is extended to the next subsequent business day.

2) Delinquent Payment. Any payment not paid when due shall be subject to a delinquency penalty charge of ten percent (10 %) of the unpaid amount. Failure to make full payment and penalty charges within sixty (60) days of the applicable payment date shall constitute a violation of this ordinance. All overdue amounts, including penalty charges, shall bear interest until paid at the rate of an additional ten percent (10 %) per annum.

3) Reconciliation. Within three (3) years after the filing of any report or the making of any payment, the City Treasurer may examine such report or payment, determine the accuracy thereof, and, if the City Treasurer finds any errors, report such errors to the home service provider for correction. If any tax, as paid, shall be found deficient, the home service provider shall within sixty (60) days remit the difference, and if the tax as paid be found excessive, the City shall within sixty (60) days refund the difference plus interest at the same rate as if such amount was deficient. In the event of a disagreement, the home services provider shall file under protest pending the resolution of the dispute between the parties or through the courts.

4) Record Inspection. The records of the home service provider pertaining to the reports and payment of the tax, including, but not limited to, any records deemed necessary by the City to calculate or confirm proper payment by the home service provider, shall be open for inspection by the City and its duly authorized representatives upon reasonable notice at all reasonable business hours of the home services provider within the statute of limitations period defined in the "Reconciliation" subsection above.

5) Home Service Provider Duty to Cooperate on

Record Inspection.

- a) In order to facilitate any record inspection, the home service provider shall, upon thirty (30) days' prior written request:
 - i) Grant the City or its duly authorized representatives reasonable access to those portions of the books and records of the home service provider necessary to calculate and confirm property payment of the tax; or
 - ii) Provide the City or its duly authorized representatives with reports containing or based on information necessary to calculate and confirm proper payment of the tax.
- b) Any requests for such books, records, reports, or portions thereof shall specify in writing the purpose for such request. Any books, records, reports, or portions thereof provided by the home service provider to the City under a claim that such documents are confidential business records are hereby designated as "protected records" and shall not be copied or disclosed by the City to third parties without the written permission of the home service provider, unless such documents are determined by a court of law to constitute "public records" within the meaning of the Utah Government Records Access and Management Act.

1.08.060 Requirement to Maintain Electronic Database or Enhanced Zip Code Listing.

- 1) Electronic Database.
 - a) Provision of Database: The State may provide an electronic database to a home service provider; or, if the State does not provide such an electronic database, the designated database provider may choose to provide an electronic database to a home service provider.
 - b) Format:
 - i) Such electronic database, whether provided by the State or the designated database provider, shall be provided in a format approved by the American National Standards Institute's Accredited Standards Committee X12, which, allowing for *de minimis* deviations, designates for each street address in the City, including, to the extent practicable, any multiple postal street addresses applicable to one street

- location, the appropriate taxing jurisdictions, and the appropriate code identified by one nationwide standard numeric code.
- ii) Such electronic database shall also provide the appropriate code for each street address with respect to political subdivisions that are not taxing jurisdictions when reasonably needed to determine the proper taxing jurisdiction.
 - iii) The nationwide standard numeric codes shall contain the same number of numeric digits, with each digit or combination of digits referring to the same level of taxing jurisdiction throughout the United States, using a format similar to FIPS 55-3 or other appropriate standard approved by the Federation of Tax Administrators and the Multistate Tax Commission or their successors. Each address shall be provided in standard postal format.
- 2) Notice; Updates. The State or designated database provider that provides or maintains an electronic database described above shall provide notice of the availability of the then-current electronic database and any subsequent revisions thereof, by publication in the manner normally employed for the publication of informational tax, charge, or fee notices to taxpayers in such State.
- 3) User Held Harmless. A home service provider using the data contained in an electronic database described above shall be held harmless from any tax, charge, or fee liability that otherwise would be due solely as a result of any error or omission in such database provided by the City or designated database provider. The home service provider shall reflect changes made to such database during a calendar quarter, not later than thirty (30) days after the end of such calendar quarter the State has issued notice of the availability of an electronic database reflecting such changes under the “Notice; Updates” subsection above.
- 4) Procedure If No Electronic Database Provided.
- a) Safe Harbor: If neither the State nor the designated database provider provides an electronic database, a home service provider shall be held harmless from any tax, charge, or fee liability in the City that otherwise would be due solely as a result of an assignment of a street address to an incorrect taxing jurisdiction, if the home service provider employs an enhanced zip code to assign each street address to a specific taxing jurisdiction and exercises due diligence to ensure that each such street address is assigned to the correct taxing jurisdiction. If an enhanced zip code overlaps boundaries of taxing jurisdictions of the same level, the home service provider must designate one specific jurisdiction within such enhanced zip code for use in taxing the activity for such enhanced zip code. Any enhanced zip code assignment changed is deemed to be in compliance with this section. For purposes of this section, there is a rebuttable presumption that a home service provider has exercised due diligence if the home service provider demonstrates that it has:
 - i) Expended reasonable resources to implement and maintain an appropriately detailed electronic database of street address assignments to taxing jurisdictions;
 - ii) Implemented and maintained reasonable internal controls to promptly correct misassignments of street addresses to taxing jurisdictions; and
 - iii) Used all reasonably obtainable and usable data pertaining to municipal annexations, incorporations, reorganizations, and any other changes in jurisdictional boundaries that materially affect the accuracy of such database.
 - b) Termination of Safe Harbor: The “Safe Harbor” subsection above applies to a home service provider that is in compliance with the requirements of the “Safe Harbor” subsection with respect to a state for which an electronic database is not provided, until the later of:
 - i) Eighteen (18) months after the nationwide standard numeric code has been approved by the Federation of Tax Administrators and the Multistate Tax Commission; or
 - ii) Six (6) months after the State or a designated database provider in the State provides such database.
- 1.08.070. Place of Primary Use.**
- 1) A home service provider is responsible for obtaining and maintaining the customer’s place of primary use. Subject to the “Requirement to Maintain Electronic Database or Enhanced Zip Code Listing” section above, and if the home service provider’s reliance on information by its customer is

in good faith, a home service provider:

- a) May rely upon the applicable residential or business street address supplied by the home service provider's customer.
- b) Is not liable for any additional taxes, charges, or fees based on a different determination of the place of primary use for taxes, charges, or fees that are customarily passed on to the customer as a separate address under existing agreements.

2) A home service provider may treat the address used by the home service provider for tax purposes for any customer under a service contract or agreement in effect two (2) years after the date of this amendment to this ordinance as that customer's place of primary use for the remaining term of such service contract or agreement, excluding any extension or renewal of such service contract or agreement, for purposes of determining the taxing jurisdiction to which taxes, charges, or fees on charges for mobile telecommunication services are remitted.

1.08.080. Tax Against Customer.

Each customer shall accurately report the customer's place of primary use. The customer shall be liable for any taxes not paid by the home service provider as a result of the customer's failure to accurately report the customer's place of primary use.

1.08.090. Nonapplication.

This ordinance does not apply to the determination of the taxing situs of:

- 1) Prepaid telephone calling services; or
- 2) Air-ground radiotelephone service, as defined in section 22.99 of title 47 of the Code of Federal Regulations as in effect on June 1, 1999.

1.08.100. Implementation Date.

If this ordinance is adopted before January 1, 2001, a home service provider shall have a minimum of thirty (30) days' notice before being obligated to collect the tax described in the ordinance. After January 1, 2001, a home service provider shall have a minimum of sixty (60) days' notice before being obligated to collect the tax described in this ordinance. After January 1, 2001, a home service provider shall receive a minimum of sixty (60) days' notice regarding any changes to this ordinance.

1.08.110. Severability.

If the "Monthly Tax Levied" section above is for any reason determined to be, or is rendered, illegal, invalid, or superseded by other lawful authority,

including any state or federal, legislative, regulatory, or administrative authority having jurisdiction thereof, or determined to be unconstitutional, illegal, or invalid by any court of competent jurisdiction, such section shall be deemed a separate, distinct, and independent provision, and such determination shall have no effect on the validity of any other section; provided, however, upon such event and in lieu of such tax, there is levied upon every home service provider a tax equal to six percent (6%) of the annual gross revenue of the home service provider generated from services and products to customers.

1.08.120. Effective Date.

This ordinance shall take effect January 1, 2001.

1.09.010 Definitions.

As used in this ordinance:

(1) "Commission" means the Utah State Tax Commission.

(2) (a) Subject to Subsections (2)(b) and (c), "customer" means the person who is obligated under a contract with a telecommunications provider to pay for telecommunications service received under the contract.

(b) For purposes of this ordinance, "customer" means:

(i) the person who is obligated under a contract with a telecommunications provider to pay for telecommunications service received under the contract; or

(ii) if the end user is not the person described in Subsection (2)(b)(i), the end user of telecommunications service.

(c) "Customer" does not include a reseller:

(i) of telecommunications service; or

(ii) for mobile telecommunications service, of a serving carrier under an agreement to serve the customer outside the telecommunications provider's licensed service area.

(3) (a) "End user" means the person who uses a telecommunications service.

(b) For purposes of telecommunications service provided to a person who is not an individual, "end user" means the individual who uses the telecommunications service on behalf of the person who is provided the telecommunications service.

(4) "Gross receipts attributed to the municipality" means those gross receipts from a transaction for telecommunications services that is located within the municipality for the purposes of sales and use taxes under Utah Code Annotated Title 59, Chapter 12, Sales and Use Tax Act and

determined in accordance with §59-12-207 Utah Code Annotated, 1953 (as amended).

(5) "Gross receipts from telecommunications service" means the revenue that a

telecommunications provider receives for telecommunications service rendered except for amounts collected or paid as:

- (a) a tax, fee, or charge:
 - (i) imposed by a governmental entity;
 - (ii) separately identified as a tax, fee, or charge in the transaction with the customer for the telecommunications service; and
 - (iii) imposed only on a telecommunications provider;

(b) sales and use taxes collected by the telecommunications provider from a customer under Title 59, Chapter 12, Sales and Use Tax Act; or

(c) interest, fee, or a charge that is charged by a telecommunications provider on a customer for failure to pay for telecommunications service when payment is due.

(6) "Mobile telecommunications service" is as defined in the Mobile

Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

(7) "Municipality" means Payson City Corporation.

(8) "Place of primary use":

(a) for telecommunications service other than mobile telecommunications service, means the street address representative of where the customer's use of the telecommunications service primarily occurs, which shall be:

- (i) the residential street address of the customer; or
- (ii) the primary business street address of the customer; or

(b) for mobile telecommunications service, is as defined in the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

(9) Notwithstanding where a call is billed or paid, "service address" means:

(a) if the location described in this Subsection (9)(a) is known, the location of the telecommunications equipment:

- (i) to which a call is charged; and
- (ii) from which the call originates or terminates;

(b) if the location described in Subsection (9)(a) is not known but the location described in this Subsection (9)(b) is known, the location of the origination point of the signal of the telecommunications service first identified by:

- (i) the telecommunications system of the telecommunications provider; or

(ii) if the system used to transport the signal is not a system of the telecommunications provider, information received by the telecommunications provider from its service provider; or

(c) if the locations described in Subsection (9)(a) or (b) are not known, the location of a customer's place of primary use.

(10)(a) Subject to Subsections (10)(b) and (10)(c), "telecommunications provider" means a person that:

- (i) owns, controls, operates, or manages a telecommunications service; or
- (ii) engages in an activity described in Subsection (10)(a)(i) for the shared use with or resale to any person of the telecommunications service.

(b) A person described in Subsection (10)(a) is a telecommunications provider whether or not the Public Service Commission of Utah regulates:

- (i) that person; or
- (ii) the telecommunications service that the person owns, controls, operates, or manages.

(c) "Telecommunications provider" does not include an aggregator as defined in §54-8b-2 Utah Code Annotated, 1953 (as amended).

(11) "Telecommunications service" means:

(a) telephone service, as defined in §59-12-102 Utah Code Annotated, 1953 (as amended), other than mobile telecommunications service, that originates and terminates within the boundaries of this state; and

(b) mobile telecommunications service, as defined in §59-12-102 Utah Code Annotated, 1953 (as amended):

- (i) that originates and terminates within the boundaries of one state; and
- (ii) only to the extent permitted by the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 116 et seq.

1.09.020 Levy of tax.

There is hereby levied a municipal telecommunications license tax on the gross receipts from telecommunications service attributed to this municipality.

1.09.030 Rate

The rate of the tax levy shall be 3.5% of the telecommunication provider's gross receipts from telecommunications service that are attributed to the municipality subject to the provisions of section 10-1-407 Utah Code Annotated, 1953 (as amended) which is incorporated herein by reference.

1.09.040 Rate Limitation and Exemption

Therefrom.

The rate of this levy shall not exceed 3.5% of the telecommunication providers' gross receipts from telecommunication service attributed to the municipality unless a higher rate is approved by a majority vote of the voters in this municipality that vote in:

- (a) a municipal general election;
- (b) a regular general election; or
- (c) a local special election.

1.09.050 Effective Date of Tax Levy.

This tax shall be levied beginning July 1, 2007.

1.09.060 Interlocal Agreement for Collection of the Tax

On or before the effective date of the ordinance, the municipality shall enter into the uniform interlocal agreement with the Commission as described in §10-1-405 Utah Code Annotated, 1953 (as amended) for the collection, enforcement, and administration of this municipal telecommunications license tax;

1.09.070 Repeal of Inconsistent Taxes and Fees.

Any tax or fee previously enacted by this municipality under authority of §10-1-203 Utah Code Annotated, 1953 (as amended) or Title 11, Chapter 26, Local Taxation of Utilities Limitation, which deal specifically with telecommunications service, is hereby repealed. Nothing in this ordinance shall be interpreted to repeal any municipal ordinance or fee which provides that the municipality may recover from a telecommunications provider the management costs of the municipality caused by the activities of the telecommunications provider in the rights-of-way of the municipality, if the fee is imposed in accordance with §72-7-102 Utah Code Annotated, 1953 (as amended), and is not related to the municipality's loss of use of a highway as a result of the activities of the telecommunications provider in a right-of-way, or increased deterioration of a highway as a result of the activities of the telecommunications provider in a right-of-way; nor does this ordinance limit the municipalities right to charge fees or taxes on persons that are not subject to the municipal telecommunications license tax under this ordinance and locate telecommunications facilities, as defined in §72-7-108 Utah Code Annotated, 1953 (as amended), in this municipality.

1.09.80 Procedure for Taxes Erroneously Recovered from Customers

A customer may not bring a cause of action against a

telecommunications provider on the basis that the telecommunications provider erroneously recovered from the customer municipal telecommunications license taxes authorized by section 10-1-401 et. seq., Utah Code Annotated, 1953 (as amended):

- 1) unless the customer provides the telecommunications provider written notice that:
 - a. the customer requests a refund of the amounts paid by the customer pursuant to subsection 10-1-403(2); and
 - b. contains the information necessary to determine the validity of the request described in subsection 1(a); and
- 2) before 60 days from the day on which the telecommunications provider receives the written notice required by subsection 1.