

CERTIFICATE OF PASSAGE AND POSTING

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

CITY OF BLUFFDALE

I, Teddie K. Bell, the duly chosen, qualified and acting Recorder of Bluffdale City, County of Salt Lake, State of Utah, do hereby certify as follows:

1. On the 23rd day of June, 2009, the Bluffdale City Council adopted Ordinance No. 2009-10.
2. On the 6th day of July, 2009 I caused to be posted in three (3) public and conspicuous places within said City, certified copies of Ordinance No. 2009-10 of said City entitled:

AN ORDINANCE ADOPTING AN ENERGY SALES AND USE TAX FOR THE CITY OF BLUFFDALE

The places in said City where such certified copies of Ordinance No. 2009-10 were posted are as follows:

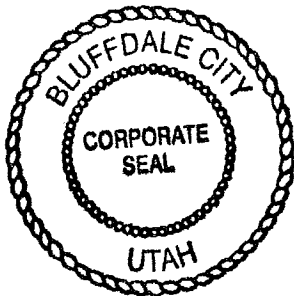
One at Bluffdale City Fire Station – 14350 South 2200 West;

One at Bluffdale City Hall -- 14175 South Redwood Road;

One at The Bluffs Apartments -- 14035 S. Marketview Drive and;

3. Attached hereto is a full, true and correct copy of Ordinance No. 2009-10 so posted.

IN WITNESS WHEREOF, I have hereunto set my official signature and affixed the seal of the City of Bluffdale, Utah, Salt Lake County, at 5:30 p.m. this 6th day of July, 2009.



Teddie K. Bell

Teddie K. Bell, City Recorder

CITY OF BLUFFDALE, UTAH

ORDINANCE NO. 2009-10

AN ORDINANCE ADOPTING AN ENERGY SALES AND USE TAX FOR THE CITY OF BLUFFDALE.

WHEREAS, Utah municipalities have been given the authority to enact energy sales and use taxes pursuant to Utah Code sections 10-1-301 *et seq.*, and

WHEREAS, following due consideration of relevant financial and other information, the Bluffdale City Council has determined that there is a need for such a tax as a source of general fund revenue for the City of Bluffdale.

NOW, THEREFORE, THE BLUFFDALE CITY COUNCIL HEREBY ORDAINS AS FOLLOWS:

Section 1. The following is hereby adopted:

CHAPTER ____ . MUNICIPAL ENERGY SALES AND USE TAX

____ . PURPOSE

It is the intent of the City of Bluffdale to adopt the municipal energy sales and use tax, pursuant to, and in conformance with, Utah Code Ann. § 10-1-301 *et seq.*, The Municipal Energy Sales and Use Tax Act.

____ . DEFINITIONS

As used in this part:

- (1) "Commission" means the State Tax Commission.
- (2) "Contractual franchise fee" means:
 - (a) a fee:
 - (i) provided for in a franchise agreement; and
 - (ii) that is consideration for the franchise agreement; or
 - (b) (i) a fee similar to Subsection (2)(a); or
 - (ii) any combination of Subsections (2)(a) and (b).
- (3) (a) "Delivered value" means the fair market value of the taxable energy delivered for sale or use in the municipality and includes:
 - (i) the value of the energy itself; and
 - (ii) any transportation, freight, customer demand charges, services charges, or other costs typically incurred in providing taxable energy in usable form to each class of customer in the municipality.

- (b) "Delivered value" does not include the amount of a tax paid under:
 - (i) Title 59, Chapter 12, Part 1, Tax Collection;
 - (ii) Title 59, Chapter 12, Part 2, Local Sales and Use Tax Act; or
 - (iii) this part.
- (4) "De minimis amount" means an amount of taxable energy that does not exceed the greater of:
 - (a) 5% of the energy supplier's estimated total Utah gross receipts from sales of property or services; or
 - (b) \$10,000.
- (5) "Energy supplier" means a person supplying taxable energy, except that the commission may by rule exclude from this definition a person supplying a de minimis amount of taxable energy.
- (6) "Franchise agreement" means a franchise or an ordinance, contract, or agreement granting a franchise.
- (7) "Franchise tax" means:
 - (a) a franchise tax;
 - (b) a tax similar to a franchise tax; or
 - (c) any combination of Subsections (7)(a) and (b).
- (8) "Person" includes any individual, firm, partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city, municipality, district, or other local governmental entity of the state, or any group or combination acting as a unit.
- (9) "Taxable energy" means gas and electricity.

_____. MUNICIPAL ENERGY SALES AND USE TAX.

There is hereby levied, subject to the provisions of this chapter, a tax on every sale or use of taxable energy made within the City of Bluffdale at the rate of six percent (6%).

- A. The tax shall be calculated on the delivered value of the taxable energy.
- B. The tax shall be in addition to any local option sales and use tax imposed by the City of Bluffdale authorized by Title 59, Chapter 12, Part 2 of the Utah Code Annotated, The Local Sales and Use Tax Act.
- C. Notwithstanding the foregoing, in accordance with Utah Code Section 10-1-304(5), the tax is not levied within any portion of the City of Bluffdale that is within a project area described in a project area plan adopted by the military installation development authority under Title 63H, Chapter 1 of the Utah Code Annotated, Military Installation Development Authority Act.

_____. EXEMPTIONS FROM THE MUNICIPAL ENERGY SALES AND USE TAX

(1) An exemption is not allowed from a tax imposed under this part for the sale or use of taxable energy that is exempt from the state sales and use tax under Title 59, Chapter 12, Part 1, Tax Collection.

(2) The following are exempt from the Municipal Energy Sales and Use Tax, pursuant to Utah Code Ann. § 10-1-305(2)(b):

- A. the sales and use of aviation fuel, motor fuel, or special fuel subject to taxation under Title 59, Chapter 13, Motor and Special Fuel Tax Act;
- B. the sales and use of taxable energy that the municipality is prohibited from taxing under federal law or the Constitution of the United States or the Utah Constitution;
- C. the sales and use of taxable energy purchased or stored in the state for resale;
- D. the sales or use of taxable energy to a person if the primary use is for use in compounding or producing taxable energy or a fuel subject to taxation under Title 59, Chapter 13, Motor and Special Fuel Tax Act;
- E. taxable energy brought into the state by a nonresident for the nonresident's own personal use or enjoyment while within the state, except taxable energy purchased for use in the state by a nonresident living or working in the state at the time of purchase;
- F. the sales or use of taxable energy for any purpose other than use as a fuel or energy; and
- G. the sale of taxable energy for use outside a municipality imposing a municipality energy sales and use tax;

(3) The sale, storage, use, or other consumption of taxable energy is exempt from the tax due under this chapter if:

- A. the delivered value of the taxable energy has been subject to a municipal energy sales or use tax under a municipal energy sales or use tax by another municipality in this state; and
- B. the City of Bluffdale is paid the difference between the tax paid to another municipality as described in this section and the tax that would otherwise be due under this ordinance if the tax due under this ordinance exceeds the tax paid to another municipality.

_____. TAX COLLECTION CONTRACT WITH STATE TAX COMMISSION.

(1) On or before the effective date of this ordinance, the City of Bluffdale shall enter into a contract with the commission to have the commission perform all functions related to the administration or operation of the ordinance, except that the city may collect the municipal energy sales and use tax directly as provided in Utah Code Section 10-1-307(3).

(2) An energy supplier shall pay the municipal energy sales and use tax revenues it collects from its customers under this part directly to the city if:

- (a) the city is the energy supplier; or
- (b) (i) the energy supplier estimates that the municipal energy sales and use tax collected annually by the energy supplier from its Utah customers equals \$1,000,000 or more; and

(ii) the energy supplier collects the tax imposed by this part.

(3) An energy supplier paying a tax under this part directly to a municipality may retain the percentage of the tax authorized under Utah Code Subsection 59-12-108 for the energy supplier's costs of collecting and remitting the tax.

_____. NO EFFECT UPON EXISTING FRANCHISES -- CREDIT FOR FRANCHISE FEES.

(1) This Chapter shall not alter any existing franchise agreements between the City of Bluffdale and energy suppliers.

- (2) There is a credit against the tax in the amount of a contractual franchise fee paid if:
- (a) an energy supplier pays a contractual franchise fee to City of Bluffdale pursuant to a franchise agreement in effect on July 1, 1997;
 - (b) the contractual franchise fee is passed through by the energy supplier to a taxpayer as a separately itemized charge; and
 - (c) the energy supplier has accepted the franchise.

_____. ADOPTION BY REFERENCE OF ANY AMENDMENTS TO THE PROVISIONS OF TITLE 59, CHAPTER 12, PART 1 OF THE UTAH CODE.

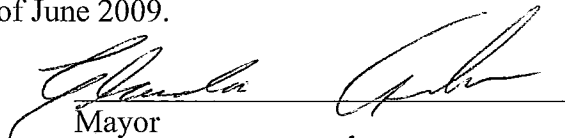
(1) Any amendments to the provisions of Title 59, Chapter 12, Part 1, Tax Collection, that relate to levying or collecting a municipal energy sales and use tax, are hereby adopted by reference.

(2) The name of the city as the taxing agency shall be substituted for that of the state when necessary for purposes of this part.

(3) An additional license to collect the tax under this chapter is not required if one has been issued under Utah Code Section 59-12-106.

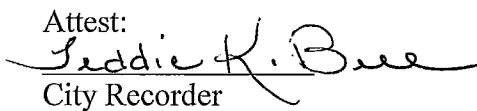
Section 2. Effective Date. This ordinance shall take effect upon posting or publication. The Municipal Energy Sales and Use Tax shall be levied beginning 12:01 A.M. on October 1, 2009.

Passed and dated this 23rd day of June 2009.

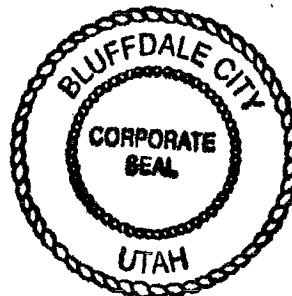


Mayor

[seal]

Attest:


City Recorder



Voting by the City Council:

Yes No

Councilmember Chisholm	<u> x </u>	<u> </u>
Councilmember Flanigan	<u> x </u>	<u> </u>
Councilmember Kartchner	<u> x </u>	<u> </u>
Councilmember Lord	<u> </u>	<u> x </u>
Councilmember Maxwell	<u> </u>	<u> x </u>