

COTTONWOOD HEIGHTS

ORDINANCE NO. 245

AN ORDINANCE LEVYING A MUNICIPAL ENERGY SALES AND USE TAX AND ENACTING NEW CHAPTER 3.12, “MUNICIPAL ENERGY SALES AND USE TAX,” OF THE COTTONWOOD HEIGHTS CODE OF ORDINANCES

WHEREAS, effective 14 January 2005, the city council (the “*Council*”) of the city of Cottonwood Heights (the “*City*”) adopted a code of ordinances (the “*Code*”) for the City; and

WHEREAS, the Code includes Title 3, entitled “Revenue and Finance”; and

WHEREAS, the Council met in regular session on 16 June 2015 to consider, among other things, (a) levying a municipal energy sales and use tax (the “*Municipal Energy Tax*”) pursuant to the Municipal Energy Sales and Use Tax Act, UTAH CODE ANN. §§10-1-301 to -310 (the “*Act*”); and (b) enacting and adopting new Chapter 3.12, entitled “Municipal Energy Sales and Use Tax” (“*Chapter 3.12*”), of the COTTONWOOD HEIGHTS CODE OF ORDINANCES (the “*City Code*”) concerning the Municipal Energy Tax; and

WHEREAS, the Council has reviewed proposed new Chapter 3.12, a copy of which is attached as an exhibit to this ordinance (this “*Ordinance*”) and the terms and provisions of which are incorporated herein by this reference; and

WHEREAS, after careful consideration, the Council has determined that it is in the best interest of the health, safety and welfare of the citizens of the City to (a) so levy the Municipal Energy Tax as authorized by the Act, and (b) enact and adopt new Chapter 3.12 of the Code concerning the Municipal Energy Tax, as proposed;

NOW, THEREFORE, BE IT ORDAINED by the city council of the city of Cottonwood Heights as follows:

Section 1. ***Levy of Municipal Energy Tax.*** There is hereby levied a tax on every sale or use of taxable energy made within the City equaling six percent (6%) of the delivered value of the taxable energy to the consumer. The Municipal Energy Tax shall be calculated on the delivered value of the taxable energy to the consumer; shall be in addition to any local option sales or use tax which is or may hereafter be imposed by the City pursuant to the Local Sales and Use Tax Act, UTAH CODE ANN. Title 59, Chapter 12; and shall be subject to the provisions of Chapter 3.12, as the same may be hereafter amended from time to time.

Section 2. ***Adoption of Chapter 3.12.*** The Council hereby enacts and adopts new Chapter 3.12 of the Code as shown on the attached exhibit.

Section 3. ***Action of Officers.*** All actions of the officers, agents and employees of the City that are in conformity with the purpose and intent of this Ordinance, whether taken before or after the adoption hereof, are hereby ratified, confirmed and approved.

Section 4. ***Severability.*** It is hereby declared that all parts of this Ordinance are severable, and if any section, paragraph, clause or provision of this Ordinance shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of any such section, paragraph, clause or provision shall not affect the remaining sections, paragraphs, clauses or provisions of this Ordinance.

Section 5. ***Repealer.*** All ordinances or parts thereof in conflict with this Ordinance are, to the extent of such conflict, hereby repealed.

Section 6. ***Effective Date.*** This Ordinance, assigned no. 245, shall take immediate effect as soon as it shall be published or posted as required by law and deposited and recorded in the office of the City's recorder, or such later date as may be required by Utah statute.

PASSED AND APPROVED this 16th day of June 2015.

ATTEST:

COTTONWOOD HEIGHTS CITY COUNCIL

By: *Kory Solorio*
Kory Solorio, Recorder

By *Kelvyn H. Cullimore, Jr.*
Kelvyn H. Cullimore, Jr., Mayor

VOTING:

Kelvyn H. Cullimore, Jr.	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Michael L. Shelton	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
J. Scott Bracken	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Michael J. Peterson	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Tee W. Tyler	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>

DEPOSITED in the Recorder's office this 16th day of June 2015.

POSTED this 16 day of June 2015.

Chapter 3.12

MUNICIPAL ENERGY SALES AND USE TAX

Sections:

- 3.12.010 Purpose and intent.**
- 3.12.020 Definitions.**
- 3.12.030 Municipal energy tax levied.**
- 3.12.040 Exemptions.**
- 3.12.050 No effect on existing franchises; Credit for franchise fees.**
- 3.12.060 Collection contract with State Tax Commission.**
- 3.12.070 State statutes incorporated.**
- 3.12.080 Reports of delivered value and tax due; No additional licenses or reporting.**
- 3.12.090 Severability.**

3.12.010 Purpose and intent.

It is the intent of the city of Cottonwood Heights to adopt the municipal energy sales and use tax pursuant to, and in conformance with, the Municipal Energy Sales and Use Tax Act, UTAH CODE ANN. §§10-1-301 to -310, as currently enacted or as hereafter amended (the "*Act*").

3.12.020 Definitions.

The following words and phrases used in this chapter shall have the following meanings:

- A. "*City*" means the city of Cottonwood Heights, Utah
- B. "*Consumer*" means a person who acquires taxable energy for any use that is subject to the municipal energy tax imposed by this Chapter.
- C. "*Contractual franchise fee*" means:
 - 1. A fee:
 - (a) Provided for in a franchise agreement; and
 - (b) That is consideration for the franchise agreement; or
 - 2. A fee similar to Subsection (C)(1) above; or
 - (3) Any combination of Subsections (C)(1) and (C)(2) above.
- D. "*Delivered value*" means the fair market value of the taxable energy delivered for sale or use in the city and:
 - 1. Includes the value of the energy itself; and
 - 2. Includes any transportation, freight, customer demand charges, service charges, or other costs typically incurred in providing taxable energy in usable form to each class of customer in the city; but
 - 3. Does not include the amount of a tax paid under UTAH CODE ANN. Title 59, Chapter 12, Sales and Use Tax Act, or this Chapter.
- E. "*De minimis amount*" means an amount of taxable energy that does not exceed the greater of:
 - 1. Five percent (5%) of the energy supplier's estimated total Utah gross receipts from sales of property or services; or
 - 2. \$10,000.00.
- F. "*Energy supplier*" means a person supplying taxable energy, except for such persons supplying a de minimis amount of taxable energy as may be excluded by rule promulgated by the

State Tax Commission.

G. "*Franchise agreement*" means a franchise or an ordinance, contract, or agreement granting a franchise.

H. "*Franchise tax*" means:

1. A franchise tax;
2. A tax similar to a franchise tax; or
3. Any combination of Subsections (H)(1) and (H)(2) above.

I. "*Municipal energy tax*" means the municipal energy sales and use tax imposed by this Chapter.

J. "*Person*" includes any individual; firm; partnership; joint venture; association; corporation; estate; trust; business trust; receiver; syndicate; the state of Utah; any county, city, municipality, district, or other local governmental entity of the state of Utah; any group or combination acting as a unit; and such other entity as may be identified in UTAH CODE ANN. §59-12-102.

K. "*Sale*" means any transfer of title, exchange, or barter, conditional or otherwise, in any manner, of taxable energy for a consideration, including but not necessarily limited to:

1. Installment and credit sales;
2. Any closed transaction constituting a sale; and
3. Any transaction under which right to acquire, use, or consume taxable energy is granted under a lease or contract and the transfer would be taxable if an outright sale were made.

L. "*Storage*" means any keeping or retention of taxable energy, within the geographical boundaries of this city for any purpose except sale in the regular course of business.

M. "*Taxable energy*" means gas and electricity.

N. "*Use*":

1. Means the exercise of any right or power over taxable energy incident to the ownership or the leasing of the taxable energy;
2. Does not include the sale, display, demonstration, or trial of the taxable energy in the regular course of business and held for resale.

3.12.030 Municipal energy tax levied.

A. Subject to the provisions of this chapter, there is hereby levied a tax on every sale or use of taxable energy made within this city equaling six percent (6%) of the delivered value of the taxable energy to the consumer.

B. Such municipal energy tax shall be calculated on the delivered value of the taxable energy to the consumer.

C. Such municipal energy tax shall be in addition to any local option sales or use tax which is or may hereafter be imposed by the city pursuant to the Local Sales and Use Tax Act, UTAH CODE ANN. Title 59, Chapter 12.

3.12.040 Exemptions.

A. No exemptions are granted from the municipal energy tax except as expressly provided in UTAH CODE ANN. §10-1-305(2)(b), and notwithstanding any exemption granted by UTAH CODE ANN. Title 59, Chapter 12, Part 1, Tax Collections.

B. The following are currently exempt from the municipal energy tax under UTAH CODE ANN. §10-1-305(2)(b):

1. Sales and use of aviation fuel, motor fuel, and special fuels subject to taxation under the

Motor and Special Fuel Tax Act, UTAH CODE ANN. Title 59, Chapter 13;

2. Sales and use of taxable energy that the city is prohibited from taxing under federal law, the United States Constitution or the Utah Constitution;

3. Sales and use of taxable energy purchased or stored for resale;

4. Sales or use of taxable energy to a person if the primary use of the taxable energy is for use in compounding or producing taxable energy or a fuel subject to taxation under the Motor and Special Fuel Tax Act, UTAH CODE ANN. Title 59, Chapter 13;

5. 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;

6. Sale or use of taxable energy for any purpose other than use as a fuel or energy; and

7. Sale of taxable energy for use outside the geographical boundaries of the city.

C. The sale, storage, use, or other consumption of taxable energy is exempt from the municipal energy tax levied by this Chapter, provided:

1. The delivered value of the taxable energy has been subject to a municipal energy sales or use tax levied by another municipality within the state under an ordinance enacted in accordance with the Act; and

2. The city is paid the difference between the tax paid to the other municipality and the tax that would otherwise be due to the city under this Chapter, if the tax due to the city under this Chapter exceeds the tax paid to the other municipality.

3.12.050 No effect on existing franchises; Credit for franchise fees.

A. This chapter shall not alter any existing franchise agreements unless otherwise terminated or altered by agreement or applicable law.

B. There is a credit against the tax due in the amount of a contractual franchise fee paid if:

1. The energy supplier pays the contractual franchise fee to the municipality pursuant to a franchise agreement in effect on 1 July 1997;

2. The contractual franchise fee is passed through by the energy supplier to a taxpayer as a separately itemized charge; and

3. The energy supplier has accepted the franchise.

3.12.060 Collection contract with State Tax Commission.

A. On or before the effective date hereof, the city shall enter into a contract with the Utah State Tax Commission to have the tax commission perform all functions incident to the administration and collection of the municipal energy tax, to the extent required by, and in accordance with, this Chapter and the provisions of the Act. The city is authorized to enter into such supplemental agreements with the tax commission as may be necessary from time to time to facilitate the continued administration and operation of the municipal energy tax under this Chapter.

B. An energy supplier shall pay the municipal energy tax revenues collected from consumers directly to the city monthly if:

1. The city is the energy supplier; or

2. The energy supplier estimates that the municipal energy sales and use tax collected annually from its Utah consumers equals \$1,000,000 or more and the energy supplier collects the municipal energy sales and use tax under the Act.

C. An energy supplier paying the municipal energy tax directly to the city may retain the

percentage of the tax authorized under UTAH CODE ANN. §10-1-307(4).

3.12.070 State statutes incorporated.

A. Except as herein provided or to the extent that they are inconsistent with the provisions of this Chapter or the Act, all of the provisions of UTAH CODE ANN. Title 59, Chapter 12, Part 1, Tax Collections, as amended, in force and effect on the effective date hereof—insofar as they relate to sales and use taxes, excepting §§59-12-101 and 59-12-119 thereof, and excepting the amount of the sales and use taxes levied therein—are hereby adopted and made a part of this Chapter as if fully set forth herein.

B. Wherever, and to the extent that—in UTAH CODE ANN. Title 59, Chapter 12, Part 1, and in the Act—the state of Utah is named or referred to as the “taxing agency,” the name of the city shall be substituted insofar as is necessary to effectuate the intent and purposes of those parts of the state code. Nothing in this Subsection shall be deemed to require the substitution of “the city of Cottonwood Heights” for the word “state” when that word is used as part of the title of the Utah State Tax Commission, or of the Constitution of Utah, nor shall the city's name be substituted for that of the state in any section when the result of such a substitution would require action to be taken by or against the city or any agency thereof, rather than by or against the Utah State Tax Commission, in performing the functions incident to the administration or operation of the Act and this Chapter.

C. Any amendments hereafter made to UTAH CODE ANN. Title 59, Chapter 12, which would be applicable to the city for the purposes of carrying out the provisions and intent of this Chapter are hereby incorporated in this Chapter by reference and shall be effective upon the date that they shall become effective as a Utah statute.

3.12.080 Reports of delivered value and tax due; No additional licenses or reporting.

A. Energy suppliers paying the municipal energy tax directly to the city shall—at the time they remit the appropriate tax due to the city under the provisions of this Chapter and of UTAH CODE ANN. §§59-12-107(4) and 59-12-108 (which set forth whether such remittance is to be made on a monthly or quarterly basis)—file with the city treasurer a report specifying the delivered value of the taxable energy sold or used within the city for such period, as well as the appropriate tax due and payable directly to the city less any credits, adjustments or corrections provided under this Chapter or the Act. The records of energy suppliers shall be open for inspection by the city or its duly authorized representatives at all reasonable hours for the purpose of verifying such reports.

B. No additional license to collect or report the municipal energy tax levied by this Chapter is required, provided that the energy supplier collecting the tax has procured and maintained a license issued under UTAH CODE ANN. §59-12-106.

3.12.090 Severability.

All parts of this Chapter are severable. If any portion section, subsection, paragraph, clause or provision of this Chapter shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of any such section, subsection, paragraph, clause or provision shall not affect the remainder of this Chapter.