

ORDINANCE NO. 09-04

ROLL CALL

VOTING	YES	NO
MAYOR DALE R. BARNEY <i>(votes only in case of tie)</i>		
MATTHEW D. BARBER <i>Councilmember</i>	X	
PAUL M. CHRISTENSEN <i>Councilmember</i>	X	
EVERETT KELEPOLO <i>Councilmember</i>	X	
SETH V. SORENSEN <i>Councilmember</i>	X	
CHRIS C. WADSWORTH <i>Councilmember</i>	X	

I MOVE this ordinance be adopted: Councilmember Wadsworth

I SECOND the foregoing motion: Councilmember Kelepolo

ORDINANCE NO. 09-04

**AN ORDINANCE ESTABLISHING A TAX ON THE GROSS RECEIPTS OF
TELECOMMUNICATIONS SERVICE PROVIDERS; SETTING THE RATE FOR
SUCH TAX; AND ESTABLISHING THE EFFECTIVE DATE OF THE TAX**

WHEREAS, Spanish Fork City has the authority under Utah Code Ann. §10-1-401 et seq. to levy a tax on the gross receipts of telecommunication service providers; and

WHEREAS, Spanish Fork City has determined the need for such a tax as a source of general fund revenue; and

WHEREAS, Spanish Fork City has previously raised general fund revenue from taxes or fees from certain telecommunication providers under the authority of Utah Code Ann. §§10-1-203 or 11-26-1 et seq. The Utah legislature has recently amended those sections of the Utah Code, making it necessary to repeal those taxes and/or fees and adopt a new ordinance in order to remain fiscally neutral;

NOW THEREFORE BE IT ORDAINED AND ENACTED by the Spanish Fork City Council as follows:

I.
Municipal Code

Chapter 36 of Title 3 of the Spanish Fork City Municipal Code is hereby enacted as follows:

3.36.010. Definitions.

As used in this chapter, the following terms shall be defined as follows:

- (1) "Commission" means the 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 chapter, "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 Title 59, Chapter 12, Sales and Use Tax Act and determined in accordance with Utah Code section 59-12-207.
- (5) "Gross receipts from telecommunications service" means the revenue that a telecommunications provider receives for telecommunications service rendered except for the 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, a 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 Spanish Fork City.

(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, as defined in the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

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

(a) if the location described in the Subsection (9)(a) is not 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 Utah Code Ann. §54-8b-2.

(11) "Telecommunications service" means:

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

(b) mobile telecommunications service, as defined in Utah Code Ann. §59-12-102:

(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. §116 et seq.

3.36.020. Levy of Tax.

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

3.36.030. Rate

The rate of the tax levy shall be one-half of one percent (0.50%) of the telecommunication provider's gross receipts from telecommunications service that are attributed to the municipality. If the location of transaction is determined to be other than this municipality then the rate imposed on the gross receipts for telecommunications services shall be determined pursuant to the provisions of Utah Code Ann. §10-1-407.

3.36.040. Rate Limitation and Exemption Therefrom.

This rate of this levy shall not exceed four percent (4%) of the telecommunication provider's gross receipts from telecommunication service attributed to the municipality unless a higher rate is approved by a majority vote of the voters in the municipality that vote in:

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

3.36.050. Changes in Rate or Repeal of the Tax

This ordinance is subject to the requirements of Utah Code Ann. §10-1-403. If the tax rate is changed or the tax is repealed, then the appropriate notice shall be given as provided in section.

3.36.060. Procedures for Taxes Erroneously Recovered from Customers

Pursuant to the provisions of Utah Code Ann. §10-1-408, 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 the municipal telecommunication license tax, except as provided in §10-1-408.

II.

Effective Date

This tax shall be levied beginning July 1, 2004.

III.

Interlocal Agreement for collection of the tax

On or before the effective date of the ordinance, Spanish Fork City shall enter into a uniform interlocal agreement with the Commission as described in Utah Code Ann. §10-1-405 for the collection, enforcement, and administration of this municipal telecommunications license tax.

IV.

Repeal of inconsistent taxes and fees.

Any tax or fee previously enacted under authority of Utah Code Ann. §10-1-203 or Utah Code Title 11, Chapter 26, Local Taxation of Utilities Limitation is hereby repealed.

Nothing in this ordinance shall be interpreted to repeal any municipal ordinance or fee which provides that Spanish Fork City may recover from a telecommunications provider in the rights-of-way of the municipality, if the fee is imposed in accordance with Utah Code Ann. §72-7-102 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 Spanish Fork City's 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 Utah Code Ann. §72-7-108, in this municipality.

V.

Municipal Code

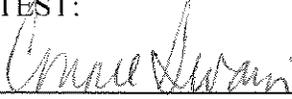
Sections II, III, IV, and V are not part of the Spanish Fork City Municipal Code.

PASSED AND ORDERED PUBLISHED BY THE CITY COUNCIL OF SPANISH FORK, UTAH, this 15th day of June, 2004.

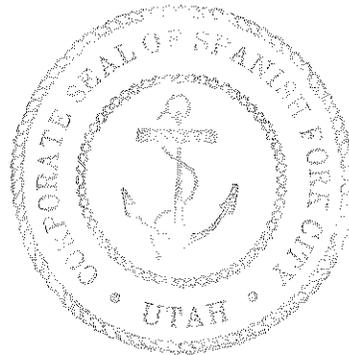


DALE R. BARNEY, Mayor

ATTEST:



CONNIE SWAIN, Deputy City Recorder



Proof of Publication

I **Steve Hardman** being first duly sworn according to law, disposes and says that he is the General Manager of **THE SPANISH FORK PRESS**, a weekly newspaper printed and published at Spanish Fork, Utah County, Utah and of general circulation therein; that the Notice, a copy of which is hereto attached, was printed and published in said paper

ORDINANCE NO. 09-04, AN ORDINANCE ESTABLISHING A TAX ON THE GROSS RECEIPTS OF TELECOMMUNICATIONS SERVICE PROVIDERS; SETTING THE RATE FOR SUCH TAX; AND ESTABLISHING THE EFFECTIVE DATE OF THE TAX

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3.36.010. Definitions.
3.36.020. Levy of Tax.
3.36.030. Rate.
3.36.040. Rate Limitation and Exemption Therefrom.
3.36.050. Changes in Rate or Repeal of the Tax.
3.36.060. Procedures for Taxes Erroneously Recovered from Customers

Effective Date, This tax shall be levied beginning July 1, 2004.

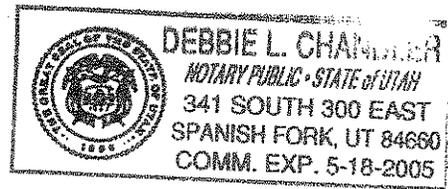
Interlocal Agreement for collection of the tax. Repeal of inconsistent taxes and fees. Municipal Code. Sections II, III, IV, and V are not part of the Spanish Fork City Municipal Code.

A complete copy of the ordinance is available for inspection at the Spanish Fork City Office, 40 South Main, Spanish Fork.

PASSED AND ORDERED PUBLISHED BY THE CITY COUNCIL OF SPANISH FORK, UTAH, this 15th day of June, 2004.

Published in the Spanish Fork Press on July 1, 2004.

for consecutive 1 weeks,
the first publication on the 1 day
of JULY 2004
And the last on the 1 day
of JULY 2004
SHR



Subscribed and sworn to before me this 1st day of July 2004

Debbie L. Chandler
Notary Public