

TITLE 3 REVENUE AND FINANCE

Chapter 3.04	<u>Claims against the City</u>
Chapter 3.08	<u>Purchasing System</u>
Chapter 3.12	<u>Collection of Special Improvement Taxes</u>
Chapter 3.16	<u>Special Improvement Guaranty Fund</u>
Chapter 3.20	<u>Uniform Local Sales and Use Tax</u>
Chapter 3.32	<u>Municipal Energy Sales and Use Tax</u>
Chapter 3.36	<u>Telecommunication Service Sales and Use Tax</u>

Chapter 3.04 Claims against the City**3.04.010 Claims Against the City in General****3.04.010 Claims Against the City in General**

Every person asserting a claim against the City shall be required to comply in all respects with the provisions of the Utah Governmental Immunity Act, Utah Code Ann. §63-30-1 et seq. Any such claim received by the City shall be submitted to Utah Risk Management Mutual Association for review and handling. Any claimant shall be required to provide such additional information as may be requested by URMMA. Any claim referred back to the City by URMMA, on the basis that the City lacks coverage for that particular claim, shall be referred to the City council for review and disposal. The City council shall have full authority to settle and/or litigate any such claim.

Chapter 3.08 Purchasing System

- 3.08.010 System Adopted
- 3.08.020 Definitions
- 3.08.030 Administration
- 3.08.040 Bid Process
- 3.08.050 Choice of Bid Process
- 3.08.060 Awarding of Bids and RFP's
- 3.08.070 Exceptions to Bidding Requirements
- 3.08.080 Interlocal Agreements in Letting of Contracts for Commodities or Services
- 3.08.090 Disposal or Lease of Public Property
- 3.08.100 Penalties

3.08.010 System Adopted

Pursuant to Utah Code Annotated §10-6-122, §10-7-20, §10-8-1, §10-8-2, and other pertinent provisions of the laws of the state of Utah, there is adopted and established a purchasing system for Spanish Fork City Corporation which shall be based on the following principles.

(Ord. No. 01-99, Amended, 01/05/1999)

3.08.020 Definitions

Unless the context requires otherwise, the terms as used in this chapter, shall have the following meanings:

"Adequate Appropriation Balance" means sufficient fund balance which must exist in the line item appropriation in the approved budget against which the purchase order is to be charged.

"Bidding" means the procedure used to solicit quotations on price and delivery from various prospective suppliers of supplies, equipment and contractual services.

"Bid Process" means the process used by the City to solicit and award bids or contracts. Examples of bid processes used in this chapter include formal competitive bidding, competitive sealed proposals in lieu of bids and open market procedure.

"Capital Improvements Projects" means any construction which adds to or improves infrastructure or buildings of the City.

"Construction" means the process of building, renovating or demolishing any public structure or building, major developmental work, or landscaping of public real property. It does not include the routine operations, routine repair, or routine maintenance of existing structures, buildings or real property.

"Line Item Change Order" means changes to the quantities of existing line items with unit pricing approved according to the purchasing system.

"Local Bidder" means a firm or individual who regularly maintains a place of business and transacts business in, or maintains an inventory of merchandise for sale

in, or is licensed by, or pays business taxes to the City.

"Professional Services" means, but not be limited to, the following: auditing, architecture, banking, insurance, engineering, appraisals, legal services, and other consulting services.

"Public Property" Any item of real or personal property owned by the City.

"Responsible Bid" means an offer, submitted by a responsible bidder to furnish supplies, equipment or contractual services in conformity with the specifications, delivery terms and conditions, and other requirements included in the invitation for bids.

"Lowest Responsible bidder" means a person or firm who has the capability in all respects to perform fully the contract requirements and who has the integrity and reliability which will assure good faith performance. The lowest responsible bidder is a bidder who has submitted the lowest bid to furnish supplies or contractual services to the City, and who meets the standards set forth in this definition. The lowest responsible bidder's bid shall comply with the specifications, delivery terms and conditions, and other qualifications and requirements included in the invitation for bids, and shall be accompanied by any bonds required by the City or other applicable law. In determining the lowest responsible bidder, the City shall give primary emphasis to bid price, but may also consider the following items in addition to the actual bid price:

1. The ability, capacity, experience and skill of the bidder to perform the service required.
2. Whether the bidder can perform the contract or provide his or her services within the time specified.
3. The quality and performance of previous services by the bidder, either to the City or another entity.
4. Quality, availability and adaptability of the supplies or contractual services to the particular use required.
5. The ability of the bidder to provide future maintenance and service.
6. The number and scope of conditions attached to the bid or price quotation.
7. The maintenance history of the product, the parts and service costs of the product, existing inventory, mechanic's expertise, and ease of maintenance.

All bidders shall furnish information and data requested by the City that will assist the City in determining whether or not a particular bidder is the "lowest responsible bidder".

"Supplies, Materials and Equipment" means any tangible and all articles of personal property or things which shall be furnished to or used by any City department or by any City employee in the performance of his or her duties. For purposes of brevity, supplies, materials and equipment shall hereafter be collectively referred to as "supplies".

(Ord. No. 01-99, Rep/Reenact 01/05/1999)

3.08.030 Administration

The City Finance Director or his/her designee, shall function as the chief

procurement officer for the City. He/she shall administer the purchasing system provided by this chapter, shall perform the duties and have the powers concerning purchasing as follows:

- A. Administer and maintain the purchasing system;
- B. Recommend to the City such new or revised purchasing requirements as are deemed desirable and in conformance with other statutory requirements;
- C. Negotiate and recommend execution of contracts for the purchase of supplies, equipment and contractual services;
- D. Seek to obtain as full and open competition as possible on all purchases;
- E. Keep informed of current developments in the field of purchasing, i.e., prices, market conditions, new products, etc.;
- F. Prescribe and maintain such forms as are reasonably necessary to the operation of this chapter and other rules and regulations;
- G. Supervise the inspection of all supplies and equipment to assure conformance with specifications;
- H. Transfer surplus or unused supplies and equipment between departments as needed;
- I. Maintain a bidders' list, vendors' catalog file, and other records needed for the efficient operation of the purchasing system.

(Ord. No. 01-99, Amended 01/05/1999)

(Ord. No. 09-10, Amended 06/04/2010)

3.08.040 Bid Process

The City shall substantially comply with the following guidelines for the specific bid process used:

A. Formal Competitive Bidding.

1. Notice Inviting Bids Issued

- a. Notice includes a general description of the articles to be purchased or the work to be performed, the location where bid plans and specifications may be secured, and the time and place for opening bids.
- b. The notice inviting bids shall be:
 - i. In cases involving building improvements or public works projects over the bid limit as defined in Utah Code Ann. §11-39-101:

- Published twice (2) in a newspaper of general circulation within the City five (5) days before the date of the opening of the bids and, at the discretion of the City, may be;
 - Delivered to all known responsible prospective bidders, including those whose names are on a bidders' list or who have made a written request that their names be added to the bidders' list.
 - Posted on an electronic bid page which is accessible to large numbers of potential bidders.
- ii. In cases involving building improvements or public works projects less than the bid limit, or the purchase of any supplies, materials and equipment:
 - Perform the work itself, purchase off the State Bid, or, at the discretion of the City, bid requests may be;
 - Delivered to all known responsible prospective bidders and/or suppliers, including those whose names are on a bidders' list or who have made a written request that their names be added to the bidders' list, or
 - Post on an electronic bid page which is accessible to large numbers of potential bidders.

2. **State Bid List**

If there is a quotation for the item desired to be purchased on the State bid list, the City may invite prospective bidders to bid against the price quoted in the State bid list.

3. **Bid Procedure**

- a. Sealed bids shall be submitted as designated in the notice with the statement "Bid for (item or project)" on the envelope.
- b. Bids shall be opened in public at the time and place stated in the notice.
- c. A tabulation of all bids received shall be open for public inspection during regular business hours for a period of not less than thirty (30) days after the bid opening.
- d. Bids submitted to the City shall be evaluated on the basis of compliance with specifications and other relevant criteria.

4. **Bid Award**

Bids shall be awarded or rejected as set forth in Section 3.08.060.

B. Competitive Sealed Proposals in Lieu of Bids (RFP) This bid process may only be used when the City Finance Director or designee determines that the use

of formal competitive bidding is either impractical or not advantageous to the City, or for professional service contracts.

1. **Notice** shall be given by:

- a. Solicitation through a request for proposals. Request are to be delivered to all known responsible prospective bidders or suppliers, including those whose names are on a bidders' list or who have made a written request that their names be added to the bidders' list, and/or
- b. Public notice of the request for proposals may be given by publication once in a newspaper, magazine or journal likely to give notice to qualified bidders or suppliers five (5) days prior to the date of bid opening and/or
- c. Posting on an electronic bid page which is accessible to large numbers of potential bidders.

2. **Request for Proposals** The request for proposals shall state the relative importance of price and other evaluating factors.

3. **Opening of Proposals**

- a. Proposals shall be opened so as to avoid disclosure of contents to competing bidders during the process of negotiation.
- b. A register of proposals shall be maintained by the City for thirty (30) days after the contract award and shall be open for public inspection.

4. **Revision of Proposals**

- a. As provided in the request for proposals, discussions may be conducted with responsible bidders who submit proposals determined to be reasonably susceptible of being selected for award. The purpose of the discussion is to assure full understanding of and responsiveness to the solicitation requirements.
- b. Bidders shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals. Any revision may be permitted after submissions and prior to award for the purpose of obtaining best and final offers.
- c. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing bidders.

5. **Award of Proposal**

Award shall be made to the responsible bidder whose proposal is determined to be the most advantageous to the City, taking into consideration price, the evaluation factors set forth in the request for proposals, and other criteria set forth herein. The City may further negotiate terms in order to comply with budgets, specific services/products sought, and other matters beneficial to the City. The award shall be in

accordance with section 3.08.060.

C. Open Market Procedure

1. Supplies may be purchased through supplier accounts the City has opened with various vendors. Employees are encouraged to use sales events for those common supplies sold through various public vendors.
2. Purchases shall, whenever possible, be based on at least three (3) bids (price quotations) and shall be awarded to the lowest responsible bidder.
3. Bids (price quotations) shall be solicited from prospective vendors by written or oral request.
4. The City Finance Director or his/her designee may approve purchases on the open market.

(Ord. No. 01-99, Amended 01/05/1999)

(Ord. No. 17-11, Amended 12/20/2011)

3.08.050 Choice of Bid Process

Except as otherwise provided in this Chapter or by provisions of State or Federal law, purchases of supplies, services, or equipment shall follow one of the bid or rfp processes outlined below for the appropriate dollar amount. In cases where more than one alternative is listed as acceptable for a given dollar amount, any of the listed alternatives shall be acceptable. The City shall not incur any liability for choosing one alternative over another. The choices of bid process are as follows:

- A. Purchases of supplies or services having an estimated value in excess of seventy five thousand dollars (\$75,000.00) shall be pursuant to one of the following procedures:
 1. State bid.
 2. Formal competitive bidding, without the requirement of publishing notice.
 3. Competitive sealed proposals in lieu of bids.

- B. Purchases of supplies or services having an estimated value of greater than five thousand dollars (\$5,000.00) but less than or equal to seventy-five thousand dollars (\$75,000.00) shall be pursuant to one of the following procedures:
 1. State bid.
 2. Formal competitive bidding, without the requirement of publishing notice.
 3. Competitive sealed proposals in lieu of bids.
 4. Open market procedure.

- C. Whenever the supplies or services have an estimated value of \$5,000.00 or less, all bid processes and price solicitation procedures may be dispensed with.

(Ord. No. 01-99, Amended 01/05/1999)

(Ord. No. 17-11, Amended 12/20/2011)

3.08.060 Awarding of Bids and RFPs

A. Bids/Purchases in Relation to Budget

Except as otherwise required by law, building improvement or public works projects and supplies, services, and equipment, no more than the lesser of \$10,000.00 or 10% of the appropriation balance, and within the scope of the project, as budgeted by the City Council, may be accepted and awarded by the City Finance Director or designee. Bids which exceed the budgeted amounts by more than the lesser of \$10,000.00 or 10% of the appropriation balance must be approved and awarded by the City Council.

B. Professional Services

Contracts for professional services in an estimated amount no more than the lesser of \$10,000.00 or 10% of the appropriation balance, and within the scope of or related to the project, as budgeted by the City Council, may be accepted and awarded by the City Finance Director or designee. Proposals which exceed the budgeted amounts by more than the lesser of \$10,000.00 or 10% of the appropriation balance must be approved and awarded by the City Council.

C. Rejection of Bids

The City Council or the City Finance Director or his/her designee, or others authorized to accept and award bids may reject any and all bids presented, and may resolicit for bids as set forth in this Chapter. The City may proceed to do any work itself after rejecting all bids, by following the procedures set forth in Utah Code Ann. §11-39-103.

D. Lowest Responsible Bidder

Except as otherwise allowed or required, the City shall award the contract or bid to the lowest responsible bidder.

E. Negotiation of Bids

Where a bid exceeds available funds and time or economic considerations preclude resolicitation of work or purchase of a reduced scope or quantity, the City Finance Director or designee may negotiate an adjustment of the bid price, including changes in the bid requirements, with the lowest responsible bidder, in order to bring the low bid within the amount of available funds.

F. Tie Bids

If two (2) or more of the bids received are for the same total amount or list price, quality and service being equal, the City Finance Director or designee may negotiate with the bidders and obtain the best bid possible and/or give a preference to a local bidder.

G. Single Bids

The City Finance Director or his/her designee may require a price or cost analysis if only one bid is received. The bidder may be required to furnish a detailed cost proposal, and the bid award shall be subject to subsequent negotiation.

H. Bonds

Before entering a contract, the City shall have authority to require performance, payment, or other bonds in such amounts as deemed necessary to protect the interests of the City. The types and amounts of the bonds to be required shall be described in the notice inviting bids.

I. Change orders

Change orders which increase the contract price in an amount of the lesser of \$10,000.00 or 10% of the contract amount may be approved by the City Finance Director or designee, as long as the overall project budget is not exceeded by more than the lesser of \$10,000.00 or 10% of the contract price, and provided further that the sum of all change orders does not increase the contract price by more than the lesser of \$10,000.00 or 10% of the contract amount. Line item change orders may be approved by the City Finance Director or designee as long as the overall project budget is not exceeded by more than the lesser of \$10,000.00 or 10% of the contract price.

(Ord. No. 01-99, Rep/Reenact 01/05/1999)

(Ord. No. 15-05, Amended 12/06/2005)

(Ord. No. 17-11, Amended 12/20/2011)

(Ord. No. 10-13, Amended 07/16/2013)

3.08.070 Exceptions to Bidding Requirements

Unless otherwise required by State or Federal law, the bid process requirements set forth in section 3.08.050 do not apply in the following situations.

A. Professional service contracts

1. Professional services shall include, but not be limited to, the following: auditing, architecture, banking, insurance, engineering, appraisals, legal services, and other consulting services. Professional service contracts shall be awarded based on professional qualifications, service ability, cost of service, and other criteria deemed important by the City.
2. A professional services contract for the annual fiscal year financial audit shall only be awarded by the City Council. This contract may be awarded for multiple years. The performance of the auditing firm may be reviewed periodically to determine whether to continue the contract or put it back out to bid.

- #### **B. Contracts Not Suited to Competitive Bidding**
- Contracts, which by their nature are not suited to award by competitive bidding, shall not be subject to the competitive bidding requirements of Section 3.08.040. These contracts include,

but are not necessarily limited to:

1. Contracts for items which may only be purchased from a single or sole source.
2. Contracts for additions to and repairs and maintenance of equipment owned by the City which may be more efficiently added to, repaired or maintained by a particular person or firm.
3. Contracts for equipment which, by reason of the training of City personnel or the inventory of replacement parts maintained by the City, is more compatible with the existing equipment owned by the City.

C. Library Purchases

The purchase of library books, records, tapes, films, publications, periodicals and subscriptions are specifically exempted from competitive bidding requirements.

D. Auction, Closeout, Bankruptcy Sales

If the City Finance Director or designee determines that supplies, materials or equipment can be purchased at any public auction, closeout sale, bankruptcy sale or other similar sale, and if the City Manager or his/her designee finds that a purchase at any such auction or sale will be made at a cost below the market cost in the county, a contract or contracts may be let, or the purchase made, without complying with the competitive bidding requirements of this Chapter.

E. Exchanges

Exchanges of supplies, material or equipment between the City and any other public agency which are not by sale or auction shall be by mutual agreement of the respective public agencies.

F. Projects Performed by City Employees

City employees may be used to complete City projects, provided that the City complies with State statutory requirements governing contracts for building improvements and public works projects.

G. State Bid List

The City may purchase supplies from the vendor who has submitted the lowest bid price for such items to the State of Utah Purchasing Office at the quoted price, without any solicitation or price quotation or invitation to bid. For such purposes, the quoted price shall be deemed to be the lowest price available for such items and the City need not follow any other bidding requirements.

H. Utah Correctional Industries Division

Goods and services produced by the Utah Correctional Industries Division may be purchased from the Utah Correctional Industries Division without following any of the bidding requirements set forth herein.

I. Emergency Purchases

Notwithstanding any other section of this Chapter, competitive bidding may be suspended in the event of an emergency when supplies, services, and/or contracts are needed immediately in order to respond to the emergency. A state of emergency must have been declared by the Mayor, City Manager, Public Safety Director, or Public Works Director, or their next in command if they are not available. In order to suspend competitive bidding, the emergency must require immediate action and/or response in order to protect the life, health, or safety of persons or property, or, in the event of an improvement bond forfeiture, the need to complete the bonded improvements in a certain time frame, given all factors, including weather considerations

(Ord. No. 01-99, Amended 01/05/1999)

(Ord. No. 01-02, Amended 05/07/2002)

(Ord. No. 17-11, Amended 12/20/2011)

3.08.080 Interlocal Agreements in Letting of Contracts for Commodities or Services

The City shall have the power to enter into joint purchase agreements with any or all other public agencies within the state for the purchase of any commodity or service, whenever it is determined by the City Council to be in the best interest of the City.

(Ord. No. 01-99, Amended 01/05/1999)

3.08.090 Disposal or Lease of Public Property

- A. No public property having an estimated value in excess of one hundred dollars (\$100.00) shall be disposed of or released to anyone other than the City, unless such property has been declared surplus by the City Finance Director or designee.
- B. Whenever public property is surplus, unused, obsolete, unsuitable or otherwise no longer needed, the department head having control of such property shall notify the City Finance Director or designee. The City Finance Director or designee may notify other City departments of the availability of such property. The City Finance Director or designee shall supervise any transfer of such property to any other department. If no use can be made or can be expected to be made within the reasonably foreseeable future, the property shall be disposed of in accordance with this section.
- C. The City Finance Director or designee shall prepare a listing of all City-owned property which s/he feels is no longer needed by the City and which can be declared surplus. After an item has been declared surplus, the property may be disposed of or leased. If an item has an estimated salvage value over twenty thousand dollars (\$20,000), the City Council shall approve its disposal. All disposals, leases and/or subleases of public property shall be made, in

accordance with law, under the direction of the City Finance Director or designee.

- D. Except as otherwise required by State law, boundary line agreements and deeds conveying unneeded portions of rights-of-way or easements may be executed without declaring the property surplus.
- E. Before disposing of a significant parcel of real property, the City shall comply with the provisions of Utah Code Ann. §10-8-2(4). For purposes of this section, a significant parcel of real property is defined to be any parcel with a value equal to or greater than \$100,000.00. Reasonable notice shall constitute posting the property thirty (30) days prior and publishing notice in a newspaper of local circulation fourteen (14) days prior to a public hearing concerning the disposition.

(Ord. No. 01-99, Amended 01/05/1999)

(Ord. No. 02-06, Amended 2/21/2006)

(Ord. No. 17-11, Amended 12/20/2011)

3.08.100 Penalties

A. It is unlawful:

1. For any bidder or prospective bidder, or any employee or officer thereof, in restraint of freedom of competition or otherwise, by agreement with any other person, bidder, or prospective bidder, to bid a fixed price, or to "rotate" bidding practices among competitors.
2. For any person to offer or to give to any elected official, officer or employee of the City or any member of his immediate family, any gift, whether in the form of money, services, loan, travel, entertainment, hospitality, promise, or other form, under circumstances in which it could reasonably be intended to influence him/her or could reasonably be expected to influence him/her in his/her duties concerning the award of any contract or order of purchase, or for any elected official, officer or employee to directly or indirectly solicit or directly or indirectly accept any such gift for such purpose.
3. For any elected official, officer or employee to disclose, in advance of the opening of the bids, the content of any bid invited through the formal competitive bidding procedure.
4. For any elected official, officer or employee to actively participate in the awarding of a contract from which s/he will directly benefit, without fully disclosing any interest s/he has therein.
5. For any elected official, officer or employee or other person to appropriate for personal or private use any item of public property.
6. To purchase supplies or equipment for the personal use of any elected official, officer or employee unless the item or items are required parts of a worker's equipment and are necessary to the successful performance of the duties of such official, officer or employee. Other personal purchases

shall not be permitted and will be cause for disciplinary action.

- B. The following contracts are, in the discretion of the City Manager, voidable:
 - 1. Contracts which result from a conflict of interest under this Chapter or other applicable law.
 - 2. Contracts awarded to a person or firm that tried to influence the award of such contract by offering something of value to any elected official, officer or employee.

- C. A violation of this section by a City employee shall be cause for disciplinary action. A violation of this section by an elected official shall be malfeasance in office.

(Ord. No. 01-99, Rep/Reenact 01/05/1999)

Chapter 3.12 Collection of Special Improvement Taxes**3.12.010 Purpose****3.12.020 Acceleration of Unpaid Balance****3.12.030 Sale of Property upon Delinquency****3.12.010 Purpose**

It is the purpose of this chapter to provide for the summary sale of property assessed under Utah law after a delinquency shall have occurred in the payment of any assessment or any part or installment of it, pursuant to Utah Code Annotated §17A-3-323.

(Ord. No. 08-93, Amended 09/01/1993)

3.12.020 Acceleration of Unpaid Balance

- A. When an assessment is payable in installments and a default occurs in the payment of any installment when due, the City Council, by resolution may declare the unpaid amount to be delinquent, immediate due, and subject to collection as provided in this chapter. In addition, it may accelerate payment of the total unpaid balance of the assessment and declare the whole of the unpaid principal and the interest then due to be immediately due and payable. Interest shall accrue and be paid on all amounts declared to be delinquent or accelerated and immediately due and payable, and shall be paid at such a rate as shall be determined by the City Council until the next succeeding date after payment or collection on which interest is payable on any bonds issued. Costs of collection as approved by the City Council or require by law shall be charged and paid on all amounts declared to be delinquent or accelerated and immediately due and payable.
- C. Notwithstanding the provisions of subsection A of this section, if prior to the final date that payment may be legally made under a final sale or foreclosure of the property to collect delinquent assessment installments, the owner pays the amount of all unpaid installments which are past-due and delinquent, with interest at the rate determined by the City Council to the date of payment, plus all approved or required costs, the owner shall then be restored to the right to pay in installments in the same manner as if default had not occurred.

3.12.030 Sale of Property upon Delinquency

Following acceleration of the balance due on the special improvement levy or upon resolution of the City Council acknowledging a deficiency or default under special improvement obligations, the lien of the City upon real property to guarantee the payments of special improvement bond assessments shall be foreclosed in the same

manner as a deed of trust as set forth in Utah Code Annotated §57-1-19, et.seq. The City attorney is hereby designated trustee and shall be authorized to file a notice of default with the Utah County Recorder and proceed in accordance with the provisions of Utah law.

Chapter 3.16 Special Improvement Guaranty Fund

- 3.16.010 Created - Use**
3.16.020 Maintenance
3.16.030 Interest and Penalties - Deposit in Fund
3.16.040 Payment of Bonds or Warrants
3.16.050 Replenishment of Fund
3.16.060 Recorder to Issue Warrants
3.16.070 Subrogation of City

3.16.010 Created - Use

There is created a special fund to be known as the "Special Improvement Guaranty Fund." Said fund shall be used for the purpose of guaranteeing to the extent of said fund the payment of special improvement bonds or special improvement warrants and interest thereon heretofore or hereafter issued against the local improvement districts for the payment of local improvements therein and for the purchase of property sold to the City at tax sales or under foreclosure for delinquent special improvement taxes.

3.16.020 Maintenance

The City Council shall create and maintain said special improvement guaranty fund by appropriations from the general fund or by the levy of a tax not to exceed one mill in any one year or by the issuance of general obligation bonds or by appropriation from such other sources as may be determined by the City Council to provide the money necessary for that purpose. Said fund shall be held by the City Treasurer and shall be kept by him or her separate and apart from all other funds held by him or her. Payments out of said fund shall be made only by checks or warrants drawn by the City Finance Director.

(Ord. No. 18-09, Amended 11/03/2009)

3.16.030 Interest and Penalties - Deposit in Fund

All excess charges and penalties collected by the City Treasurer for the benefit of or credit of any special improvement fund and remaining on hand after all the bonds or warrants, together with interest thereon, drawn against said special improvement fund have been fully paid and cancelled, shall be transferred by the City Finance Director to the said special improvement guaranty fund.

(Ord. No. 18-09, Amended 11/03/2009)

3.16.040 Payment of Bonds or Warrants

When any bond, warrant or coupon drawn against any special improvement fund is presented to the City Treasurer for payment and there is not a sufficient amount in said special improvement fund against which it is drawn to pay the same, unless otherwise

requested by the holder, payment therefore shall be made by warrant drawn upon the City Finance Director against the special improvement guaranty fund.

(Ord. No. 18-09, Amended 11/03/2009)

3.16.050 Replenishment of Fund

Whenever there is not a sufficient amount of cash in said special improvement guaranty fund at any time to make any and all purchases of property bid in by the City at sales of property for delinquent special improvement taxes, the City Council shall replenish said special improvement guaranty fund by transfer of appropriation from the general fund or other available sources as may be determined by the City Council.

3.16.060 Recorder to Issue Warrants

Warrants drawing interest at a rate not to exceed eight percent (8%) per annum year may be issued by the City Finance Director against said fund to meet any financial liabilities accruing against it; but at the time of making its annual tax levy, the City Council shall provide for the levy of a sum sufficient with the other resources of the fund to pay warrants so issued and outstanding, the tax for this purpose not to exceed one mill in any one year.

(Ord. No. 18-09, Amended 11/03/2009)

3.16.070 Subrogation of City

Whenever the City has paid under its guaranty any sum on account of principal or interest on the bonds or warrants of any district, it shall be subrogated to the rights of the holders of such bonds or warrants or interest coupons so paid, and such bonds or warrants or coupons and the proceeds thereof shall become a part of the guaranty fund.

Chapter 3.20 Uniform Local Sales and Use Tax

3.20.010	<u>Title</u>
3.20.020	<u>Purpose</u>
3.20.030	<u>Effective Date</u>
3.20.040	<u>Sales and Use Tax</u>
3.20.050	<u>Mayor Authorized to Execute Documents</u>
3.20.060	<u>Contract with State</u>

3.20.010 Title

This chapter shall be known as the "Uniform Local Sales and Use Tax Ordinance of Spanish Fork City."

3.20.020 Purpose

The 48th Session of the Utah Legislature of Utah has authorized the counties and municipalities of the State of Utah to enact sales and use tax ordinances imposing a one percent tax.

It is the purpose of this ordinance to conform the Sales and Use Tax of the municipality to the requirements of the Sales and Utah Tax Act, Utah Code Annotated., 1953

3.20.030 Effective Date

This ordinance shall become effective as of 12:01 o'clock a.m., January 1, 1990.

3.20.040 Sales and Use Tax

A.

1. From and after the effective date of this ordinance, there is levied and there shall be collected and paid a tax upon every retail sale of tangible personal property, services and meals made within the municipality at the rate of one percent.
2. 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 at the rate of one percent of the sales price of the property.
3. For the purpose of this ordinance all retail sales shall be presumed to have been consummated at the place of business delivered by the retailer or his or her agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. In the event a retailer has no permanent place of business, the place or places at which the retail sales are consummated shall be as determined under the rules and regulations

prescribed by and adopted by the State Tax Commission. Public utilities as defined by Title 54, Utah Code Annotated, 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 revenue arising from such service allocable to the City 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.

B.

1. Except as hereinafter provided, and except insofar as they are inconsistent with the provisions of the Sales and Use Tax Act, all of the provisions of Chapter 12, Title 59, Utah Code Annotated, and in force and affect on the effective date of this ordinance, insofar as they relate to sales taxes, excepting §59-12-101 and §59-12-119 thereof, are hereby adopted and made a part of the ordinance as though fully set forth herein.
2. Wherever, and to the extent that in Chapter 12 of Title 59, Utah Code Annotated, the State of Utah is named or referred to as the taxing agency, the name of this municipality shall be substituted therefore. Nothing in subparagraph (b) shall be deemed to require substitution of the name of the 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 the State 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 the ordinance.
3. If an annual license has been issued to a retailer under Utah Code Annotated §59-12-106, an additional license shall not be required by reason of this section.
4. There shall be excluded from the purchase price paid or changed by which the tax is measured:
 - a. The amount of any sales or use tax imposed by the State of Utah upon a retailer or consumer;
 - b. The gross receipts from the sale of or the cost of storage, use or other consumption of tangible personal property upon which a sales or use tax has become due by reason of the sale transaction to any other municipality and any county in the State of Utah, under the sales or use tax ordinance enacted by that county or municipality in accordance with the Sales and Use Tax Act.

3.20.050 Mayor Authorized to Execute Documents

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 Utah Code Annotated, §11-9-5.

3.20.060 Contract with State

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 confirmed and the mayor is 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 chapter.

Chapter 3.32 Municipal Energy Sales and Use Tax

3.32.010	<u>Title</u>
3.32.020	<u>Purpose</u>
3.32.030	<u>Energy Sales and Use Tax</u>
3.32.040	<u>Mayor Authorized to Execute Documents</u>
3.32.050	<u>Collection of Taxes</u>
3.32.060	<u>Remittance</u>
3.32.070	<u>Inspection</u>
3.32.080	<u>Condition of Service</u>
3.32.090	<u>Effective Date</u>

3.32.010 Title

This chapter shall be known as the Municipal Energy Sales and Use Tax Ordinance of Spanish Fork City.

(Ord. No. 12-97, Enacted 06/17/1997)

3.32.020 Purpose

The 1996 Utah Legislature has authorized municipalities of the State of Utah to enact a sales and use tax as defined by Utah law in an amount up to 6% of the value of energy delivered to consumers.

It is the purpose of this ordinance to conform the energy sales and use tax of Spanish Fork City to the requirements of the Municipal Energy Sales and Use Tax Act, Utah Code Ann. § 10-1-301 et. seq.

(Ord. No. 12-97, Enacted 06/17/1997)

3.32.030 Energy Sales and Use Tax

A.

1. From and after the effective date of this ordinance, there is levied and there shall be collected and paid a tax upon every delivery of taxable energy, as defined by Utah law, which is delivered to a customer within Spanish Fork City. The amount of the Municipal Energy Sales and Use Tax shall be six percent (6%) of the value of the delivered energy to the consumer.
2. For purposes of determining the tax and the value of delivered energy, regulations as promulgated by the Utah State Tax Commission shall be applicable and are adopted herein, by this reference.

B.

1. The definitions set forth in U. C. A. §10-1-303 are adopted and made a part of this ordinance as though fully set forth herein.
2. This ordinance does not affect any contractual franchise fee, which shall continue to be collected.

- C. There shall be excluded from the purchase price paid or charged by which the tax is measured:
1. The sales and use of aviation fuel, motor fuel, or special fuel subject to taxation under the Utah Motor and Special Fuel Tax Act;
 2. The sales and use of taxable energy that the municipality is prohibited from taxing under federal law or the Constitution of United States or the Constitution of the State of Utah;
 3. The sales and use of taxable energy purchased or stored in the state for resale;
 4. The sales or use of taxable energy to a person if the primary use is for use for compounding or producing taxable energy or fuel subject to taxation under the Utah Motor and Special Fuel Tax Act;
 5. The taxable energy brought into the state by a nonresident for the nonresident's own personal use or enjoyment while within the state, except a taxable energy purchased for use in the state by a nonresident living or working in the state at the time of purchase;
 6. The sales or use of taxable energy for any purpose other than use as fuel energy; and
 7. The sale of taxable energy for use outside of the municipality.

- D. An additional license to collect the tax is not required if one has been issued under Utah Code Ann. §59-12-206.

(Ord. No. 12-97, Enacted 06/17/1997)

3.32.040 Mayor Authorized to Execute Documents

The Mayor is authorized to execute whatever documents are necessary to distribute the energy sales and use tax revenues in compliance with the Municipal Energy Sales and Use Tax Act.

(Ord. No. 12-97, Enacted 06/17/1997)

3.32.050 Collection of Taxes

- A. In those instances when the energy supplier is a municipality, the municipality shall be obligated to collect the tax from its customers and to pay the same directly to Spanish Fork City.
- B. In those instances when the energy supplier estimates that the municipal energy sales and use tax collected annually from its Utah customers equals one million dollars or more, the energy supplier shall collect the tax and remit it directly to Spanish Fork City.
- C. In those instances when the energy supplier does not estimate that the municipal energy sales and use tax collected annually from its Utah customers equals one million dollars or more, the energy supplier shall collect the tax and shall remit

the same to Utah State Tax Commission for disbursement to Spanish Fork City, or may disburse directly to Spanish Fork City if authorized by the Utah State Tax Commission.

- D. In those instance when the energy supplier is paying the tax to Spanish Fork City directly under this part, the energy supplier may retain the percentage of the tax authorized under Utah Code Ann. §59-12-208 (3) for its costs of collecting and remitting the tax.

(Ord. No. 12-97, Enacted 06/17/1997)

3.32.060 Remittance

The energy supplier incurring an energy sales or use tax under this chapter shall submit a report to the City within forty-five days after the end of each calendar month. The report shall indicate the gross revenues received from the delivery of taxable energy within Spanish Fork City during the applicable month. Together with the report, payment of the six percent (6%) energy sales and use tax shall be remitted to Spanish Fork City except those sums authorized to be retained by Utah Code Ann. §59-12-208(3).

(Ord. No. 12-97, Enacted 06/17/1997)

3.32.070 Inspection

Spanish Fork City shall have the right, after giving reasonable notice, to inspect the books and records of any energy supplier delivering energy within the City to determine the accuracy of the monthly reports submitted to the City. The inspection shall be limited to books and records pertaining to the customers receiving taxable energy within the City boundaries.

(Ord. No. 12-97, Enacted 06/17/1997)

3.32.080 Condition of Service

Compliance with all of the requirements of this chapter is a condition precedent to providing or delivering taxable energy within Spanish Fork City.

(Ord. No. 12-97, Enacted 06/17/1997)

3.32.090 Effective Date

The Municipal Energy Sale and Use Tax, as imposed herein, shall commence as of the 30th day of June, 1997.

(Ord. No. 12-97, Enacted 06/17/1997)

***Note: Chapter 3.24 Electric Revenue Fee, and Chapter 3.28 Natural Gas Utility Revenue Fees were repealed in their entirety by Ordinance 10-97 on 05/20/1997.*

Chapter 3.36 Telecommunication Service Sales and Use Tax

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

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 ©, "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)®, “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 three and one-half percent (3.5%) 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.

(Ord. No. 09-08, Amended 06/17/2008)

(Ord. No. 10-10, Amended 06/15/2010)

3.36.040 Rate Limitation

The rate of this levy shall not exceed three and one-half (3.5%) of the telecommunication provider’s gross receipts from telecommunication service attributed to the municipality.

(Ord. No. 10-10, Amended 06/15/2010)

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.

(Ord. No. 09-04, Enacted 06/15/2004)