

## CITY OF KEARNS

Ordinance No. 2024-05-02

Date: May 13, 2024

### AN ORDINANCE OF THE KEARNS CITY COUNCIL ESTABLISHING A MUNICIPAL ENERGY SALES AND USE TAX AND A TELECOMMUNICATIONS LICENSE TAX

#### RECITALS

**WHEREAS**, the Kearns City Council (“**Council**”) met in a regular session on May 13, 2024, to consider, among other things, establishing a municipal energy sales and use tax (“**MET**”) and a telecommunications license tax (“**TLT**”), and establishing the effective dates and rates for such taxes; and

**WHEREAS**, pursuant to the Municipal Energy Sales and Use Tax Act, Utah Code § 10-1-301 *et seq.*, Kearns (“**Kearns**”) may levy a MET through ordinance; and

**WHEREAS**, pursuant to the Municipal Telecommunications License Act, Utah Code § 10-1-401 *et seq.*, Kearns may levy a TLT through ordinance; and

**WHEREAS**, the Council has determined to enact a MET and a TLT through this ordinance.

**BE IT ORDAINED BY THE KEARNS CITY COUNCIL** as follows:

1. Enactment of MET. The following is enacted as Chapter 3.80 of the Kearns Municipal Code:

#### **3.80.010 Purpose**

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

#### **3.80.020 Definitions**

*All words and phrases in this chapter shall have the same meaning given them in the MET Act, with the following additions:*

- A. “**Consumer**” means a person who acquires taxable energy for any use that is subject to the MET Act.
- B. “**MET**” means municipal energy sales and use tax.
- C. “**MET Act**” means Utah Code § 10-1-301 *et seq.*, the “Municipal Energy Sales and Use Tax Act.”

D. *“Sale” shall mean any transfer of title, exchange, or barter, conditional or otherwise, in any manner, of taxable energy or fuel for consideration. It includes:*

E. *“Installment and credit sale” means*

1. *Any closed transaction constituting a sale; and*

2. *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.*

i. *“Storage” means any keeping or retention of taxable energy in Kearns for any purpose, except the sales in the regular course of business.*

j. *“Use” means the exercise of any right or power over taxable energy incident to the ownership or the leasing of the taxable energy, excluding the sale, display, demonstration, or trial of the taxable energy in the regular course of business and or taxable energy which is held for resale.*

### **3.80.030 Municipal Energy Sales and Use Tax Levied**

*Pursuant to Utah Code §59-12-301 et seq., the Municipal Energy Sales and Use Tax Act, there is hereby levied, subject to the provisions of this Ordinance, a tax on every Sale or Use of taxable energy made within Kearns equaling 6% of the value of the taxable energy to the consumer and effective on and after October 1, 2024. This tax shall be known as the Municipal Energy Sales and Use Tax (“MET”). The MET shall be calculated on the delivered value of the taxable energy to the consumer. The MET shall be in addition to any sales or use tax imposed by Kearns under Utah Code §59-12-201 et seq., the Local Sales and Use Tax Act.*

### **3.80.040 Exemptions**

*Pursuant to Utah Code § 10-1-305(2)(b), the MET exempts from its terms the sale and use of:*

A. *Aviation fuel, motor fuel, or special fuel which is subject to taxation under Utah Code § 59-13;*

B. *Taxable energy where the primary use is for compounding or producing taxable energy or a fuel which is subject to taxation under Utah Code § 59-13;*

C. *Taxable energy that Kearns is prohibited from taxing under federal law or the Constitutions of the United States or Utah;*

D. *Taxable energy purchased or stored in Kearns for resale;*

- E. Taxable energy brought into the state by a nonresident for his or her own personal use while in 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. Taxable energy for any purpose other than use as a fuel or energy; and*
- G. Taxable energy for use outside of Kearns.*
- H. Pursuant to Utah Code § 10-1-305(4), the sale, storage, use, or other consumption of taxable energy is exempt from the MET if:*
  - 1. The delivered value of the taxable energy has been subject to a municipal energy sales and use tax levied by another municipality within Utah under an ordinance enacted in accordance with the MET Act; and*
  - 2. Kearns shall be paid the difference between the tax paid to the other municipality and the tax that would otherwise be due under the MET if the tax due under the MET exceeds the tax paid to the other municipality.*

*The MET further incorporates all other exemptions required by Utah law.*

#### **3.80.050 No Effect Upon Existing Franchises; Credits for Franchise Fees**

*This MET shall not alter any existing franchise agreements unless otherwise terminated or altered by agreement or applicable law. Any energy supplier who (a) pays a contractual franchise fee to Kearns pursuant to a contract which was in effect as of July 1, 1997, (b) passes the fee through to taxpayers as a separately itemized charge, and (c) accepts the franchise shall receive a tax credit equal to its contractual franchise fee.*

#### **3.80.060 Tax Collection Contract With the Tax Commission**

- A. On or before the effective date of the ordinance from which this chapter is derived, Kearns shall contract with the state Tax Commission to perform all functions related to the administration and collection of the MET, save those functions reserved to Kearns by law and described below. The Mayor and City Recorder are hereby authorized to enter into such agreement or amended agreement as needed with the state Tax Commission that may be necessary to the continued administration and operation of the MET.*
- B. An energy supplier shall pay the MET collected from its consumers directly to Kearns monthly if:*
  - 1. Kearns is the energy supplier; or*

2. *The energy supplier estimates that the MET collected annually from its Utah consumers equals one million U.S. dollars (\$1,000,000.00) or more and (c) the energy supplier collects the MET.*
- C. *An energy supplier paying the MET directly to Kearns may retain the percent of the tax authorized under Utah Code § 59-12-108(2) for energy supplier's cost of collecting and remitting the tax.*

### **3.80.070 State Statutes Incorporated**

- A. *Except as herein provided, and except insofar as they are inconsistent with the provisions of the MET Act, as well as this Chapter, all of the provisions of Utah Code § 59-12-1, as amended, and in force and effect on the effective date hereof, insofar as they relate to 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 § 59-12-1 or the MET Act the State of Utah is named or referred to as the taxing agency, the name of Kearns shall be substituted, insofar as is necessary for the purposes of those parts. In no event shall the word "state" be substituted when used in junction with the "state tax commission," nor shall the State Tax Commission be substituted with Kearns in any way or for any matter of liability which is assigned by statute to the State Tax Commission.*
- C. *Any amendments made to Utah Code § 59-12-1 that relate to levying or collecting a municipal energy sales and use tax are hereby adopted by reference.*

### **3.080.080 No Additional License or Reporting Required**

*No additional license to collect or report the MET tax is required, provided the energy supplier collecting the tax has a license issued under Utah Code § 59-12-106.*

2. Enactment of TLT. The following is enacted as Chapter 3.90 of the Kearns Municipal Code:

#### **3.90.010 Purpose**

*It is the intent of the Council to adopt a TLT pursuant to, and in conformance with, Utah Code § 10-1-401 et seq., the "Telecommunications License Tax Act."*

**3.90.020 Definitions.** *All words and phrases in this Chapter shall have the same meaning given them in the TLT Act, with the following additions:*

- A. *"TLT" means a telecommunications license tax authorized under the TLT Act.*
- B. *"TLT Act" means the Telecommunications License Tax Act, Utah Code § 10-1-401 et seq.*

### **3.90.030 TLT Levied**

*There is hereby levied, subject to the provisions of this Chapter, a tax on the gross receipts of telecommunications services attributable to Kearns in accordance with Utah Code §§ 59-12 and 10-1-407. The rate of the TLT shall equal 3.5% of each telecommunications provider's gross receipts from telecommunications services that are attributed to Kearns. The tax shall be effective on and after October 1, 2024. Kearns may exceed this rate if a higher rate is approved by a majority vote among those persons who vote in a municipal general election or a regular general election.*

### **3.90.040 Agreement With the Tax Commission**

*On or before the effective date of the ordinance from which this chapter is derived, Kearns shall enter a uniform interlocal agreement described in Utah Code § 10-1-405 with the Utah Tax Commission.*

### **3.90.050 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 this ordinance unless the customer meets the same requirements that a purchaser is required to meet to bring a cause of action against a seller for a refund or credit as provided in Utah Code § 59-12-110.1(3).*

3. Notice to Utah State Tax Commission. The Mayor is directed and authorized to execute and send the letter attached to this ordinance to the Utah State Tax Commission.
4. Effective Date of MET and TLT. The MET and TLT will become effective on and after October 1, 2024, pursuant to Utah Code § 10-1-304(3)(b).
5. Agreements with Utah State Tax Commission. On or before the effective date of the MET Tax, the Mayor shall execute agreements that are in substantially the same form as Attachment 2 of the attached letter, unless the Commission requires another form or format, in which case the Mayor will present such agreement(s) to the Council for review and approval.
6. Direction to Mayor and Staff. The Council directs the Mayor and Kearns staff to take all actions necessary to implement this ordinance.
7. Effective Date of Ordinance. This ordinance shall take effect as soon as it is posted pursuant to Utah Code §10-3-711, deposited, and recorded in the office of the City Recorder.

*[Execution on following page]*

ADOPTED AND APPROVED at a duly called meeting of the Kearns City Council on this 13<sup>th</sup> day of May 2024.

CITY OF KEARNS

  
By: Kelly Bush, Mayor

ATTEST:



\_\_\_\_\_  
City Recorder

APPROVED AS TO FORM:



\_\_\_\_\_  
City Attorney

VOTING:

|                                   |     |
|-----------------------------------|-----|
| Council Member Bush voting        | Yea |
| Council Member Butterfield voting | Yea |
| Council Member Peterson voting    | Yea |
| Council Member Schaeffer voting   | Yea |
| Council Member Snow voting        | Yea |

(Complete as Applicable)

Date ordinance summary was published on the Utah Public Notice Website per Utah Code §10-3-711: June 13, 2024

Effective date of ordinance: June 13, 2024

**SUMMARY OF**  
**CITY OF KEARNS**  
**ORDINANCE NO. 2024-05-02**

On May 13, 2024, the Kearns City Council enacted Ordinance No. 2024-05-02 to enact: (1) Chapter 3.80 of the Kearns Municipal Code to establish a municipal energy sales and use tax pursuant to the Municipal Energy Sales and Use Tax, Utah Code § 10-1-301 *et seq.*; and (2) Chapter 3.90 of the Kearns Municipal Code to establish a municipal telecommunications license tax pursuant to the Municipal Telecommunications License Act, Utah Code § 10-1-401 *et seq.*

CITY OF KEARNS

  
By: Kelly Bush, Mayor

ATTEST:



City Recorder

APPROVED AS TO FORM:



City Attorney

VOTING:

|                                   |     |
|-----------------------------------|-----|
| Council Member Bush voting        | Yea |
| Council Member Butterfield voting | Yea |
| Council Member Peterson voting    | Yea |
| Council Member Schaeffer voting   | Yea |
| Council Member Snow voting        | Yea |

A complete copy of Ordinance No. 2024-05-02 is available in the office of the Kearns City Recorder, 2001 South State Street, N2-700, Salt Lake City, Utah.



4956 West 6200 South  
P.O. Box 527  
Kearns, Utah 84118

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**Kelly F. Bush**

Mayor

[kbush@kearns.utah.gov](mailto:kbush@kearns.utah.gov)

**Tina Snow**

Deputy Mayor

[tsnow@kearns.utah.gov](mailto:tsnow@kearns.utah.gov)

**Chrystal Butterfield**

Council Member

[cbutterfield@kearns.utah.gov](mailto:cbutterfield@kearns.utah.gov)

**Al Peterson**

Council Member

[apeterson@kearns.utah.gov](mailto:apeterson@kearns.utah.gov)

**Patrick Schaeffer**

Council Member

[pschaeffer@kearns.utah.gov](mailto:pschaeffer@kearns.utah.gov)

May 10, 2024

***Sent via email to: [salestaxdist@utah.gov](mailto:salestaxdist@utah.gov)***

Utah Tax Commission  
210 North 1950 West  
Salt Lake City, Utah 84134

Re: Notice of Enactment of Municipal Energy Sales and Use Tax and Municipal Telecommunications License Tax

To Whom It May Concern,

Pursuant to Utah Code §§ 10-1-304(3)(b) and 10-1-403(3)(b), the City of Kearns ("Kearns") hereby provides notice to the Tax Commission of Kearns's intent to enact a Municipal Energy Sales and Use Tax ("MET") and a Telecommunications License Tax ("TLT") by ordinance. Kearns is authorized to enact the MET under 10-1-301 *et seq.* and the TLT under Utah Code §§ 10-1-401 *et seq.*

The effective date of the MET and TLT shall be the first day of the first yearly quarter that begins at least 90 days after you receive this notice, which date is October 1, 2024. The rate of the MET shall be 6% of the value of the taxable energy delivered to the consumer. The rate of the TLT shall be 3.5% of the gross receipts of telecommunications services attributable to Kearns. More details are included hereto in the Notices of Change in Sales Tax Rate attached hereto as **Attachment 1**.

Pursuant to Utah Code §§ 10-1-305(3) and 10-1-405, Kearns must enter into agreements with the Commission enlisting your services in performing certain functions related to the administration or operation of the MET and TLT, with some exceptions. Kearns respectfully requests the Commission's aid in reaching an amenable agreement. Proposed agreements between the Commission and Kearns for the MET and TLT are attached hereto as **Attachment 2**.

Respectfully,

**KEARNS METRO TOWNSHIP**

Mayor Kelly Bush



**Attachment 1**

***Notices of Change in Sales Tax Rate***

**Notice of Change in Sales Tax Rate**

tax.utah.gov

|   |   |   |
|---|---|---|
| County<br><b>Salt Lake County</b>   | City, town or entity<br><b>City of Kearns</b> |   |
| Contact name<br><b>Kelly Bush, Mayor</b>  | Email address<br><b>kbush@kearns.utah.gov</b> | Phone<br><b>(801) 654-2123</b>                              |
| Tax type<br><b>municipal energy sales and use tax</b>   | New tax rate<br><b>6%</b>                     | Effective date (see instructions)<br><b>October 1, 2024</b> |
| Statutory authority for this tax (Utah Code title, chapter, section and subsection, if applicable)<br><b>Municipal Energy Sales and Use Tax, UCA 10-1-301 et seq.</b> |   |   |

- This change is a(n): ☒ New tax
- ☐ Repeal of an existing tax
- ☐ Increase of an existing tax rate
- ☐ Decrease of an existing tax rate
- ☐ Annexation resulting in the enactment or repeal of tax in the annexed area

**Instructions**

A locality must file this form with the Tax Commission whenever it enacts, repeals, increases or decreases a sales and use tax rate, or when land annexation will result in a tax rate change for existing businesses.

In the case of an annexation, include a list of existing businesses annexed into the locality. Include a copy of the ordinance, if available.

**Effective date**

Tax rate changes are effective the first day of a calendar quarter. The Tax Commission must receive this form, filled out completely, **at least 90 days before** an effective date.

| <b><u>Effective date</u></b> | <b><u>Notice must be received by</u></b> |
|------------------------------|--|
| January 1                    | October 1 (of the previous year)         |
| April 1                      | January 1                                |
| July 1                       | April 1                                  |
| October 1                    | July 1                                   |

**Submitting the Form**

Email this form (and a list of affected business, if annexation) to: **salestaxdist@utah.gov**

**Notice of Change in Sales Tax Rate**

tax.utah.gov

|   |   |   |
|---|---|---|
| County<br><b>Salt Lake County</b>   | City, town or entity<br><b>City of Kearns</b> |   |
| Contact name<br><b>Kelly Bush, Mayor</b>  | Email address<br><b>kbush@kearns.utah.gov</b> | Phone<br><b>(801) 654-2123</b>                              |
| Tax type<br><b>municipal telecommunications license tax</b>   | New tax rate<br><b>3.5%</b>                   | Effective date (see instructions)<br><b>October 1, 2024</b> |
| Statutory authority for this tax (Utah Code title, chapter, section and subsection, if applicable)<br><b>Municipal Telecommunications License Tax Act, UCA 10-1-401 et seq.</b> |   |   |

- This change is a(n): ☒ New tax
- ☐ Repeal of an existing tax
- ☐ Increase of an existing tax rate
- ☐ Decrease of an existing tax rate
- ☐ Annexation resulting in the enactment or repeal of tax in the annexed area

**Instructions**

A locality must file this form with the Tax Commission whenever it enacts, repeals, increases or decreases a sales and use tax rate, or when land annexation will result in a tax rate change for existing businesses.

In the case of an annexation, include a list of existing businesses annexed into the locality. Include a copy of the ordinance, if available.

**Effective date**

Tax rate changes are effective the first day of a calendar quarter. The Tax Commission must receive this form, filled out completely, **at least 90 days before** an effective date.

| <b><u>Effective date</u></b> | <b><u>Notice must be received by</u></b> |
|------------------------------|--|
| January 1                    | October 1 (of the previous year)         |
| April 1                      | January 1                                |
| July 1                       | April 1                                  |
| October 1                    | July 1                                   |

**Submitting the Form**

Email this form (and a list of affected business, if annexation) to: **salestaxdist@utah.gov**

**Attachment 2**

***Agreements Between Utah State Tax Commission and the City of Kearns***

**AN AGREEMENT BETWEEN  
THE UTAH STATE TAX COMMISSION AND  
A MUNICIPALITY THAT HAS IMPOSED  
THE MUNICIPAL ENERGY SALES AND USE TAX**

This Agreement is made by and between the Utah State Tax Commission (hereinafter “**Commission**”) and the City of Kearns (hereinafter “**Kearns**”).

**WHEREAS**, Utah Code Section 10-1-305 requires Kearns to enter into an Agreement with the Commission on or before the effective date of the Kearns's ordinance imposing the municipal energy sales and use tax; and

**WHEREAS**, the purpose of the Agreement is to ensure that the municipal energy sales and use tax is appropriately imposed and collected.

**NOW THEREFORE**, Commission and Kearns do hereby agree as follows:

1. Kearns has adopted an ordinance to impose the municipal energy sales and use tax under Title 10, Chapter 1, Part 3 of the Utah Code.
2. Commission shall transmit monies collected under the municipal energy sales and use tax monthly by electronic funds transfer to Kearns.
3. Commission shall conduct audits of the municipal energy sales and use tax with the same frequency and diligence as it does with the state sales and use tax.
4. Commission shall charge Kearns for the Commission's services in an amount sufficient to reimburse Commission for Commission's costs of administering, collecting, and enforcing the municipal energy sales and use tax. Commission's charge to Kearns may not exceed the amount prescribed under Utah Code Section 59-1-306.
5. Commission shall collect, enforce, and administer the municipal energy sales and use tax pursuant to the same procedures used in the administration, collection, and enforcement of the state sales and use tax as provided in Utah Code Section 10-1-307.
6. This Agreement shall be in effect for a term of one year from the effective date and shall be automatically renewed from year to year. The effective date of this Agreement shall be the first day of October 1, 2024, following the notice required under Utah Code Section 10-1-304.

*[Execution on following page]*

FOR THE UTAH STATE TAX COMMISSION

\_\_\_\_\_  
(Name/Position)

\_\_\_\_\_  
Date Signed

FOR THE CITY OF KEARNS

\_\_\_\_\_  
Kelly Bush, Mayor

\_\_\_\_\_  
Date Signed

**AN AGREEMENT BETWEEN  
THE UTAH STATE TAX COMMISSION AND  
A MUNICIPALITY THAT HAS IMPOSED  
A TELECOMMUNICATIONS LICENSE TAX**

This Agreement is made by and between the Utah State Tax Commission (hereinafter “**Commission**”) and the City of Kearns (hereinafter “**Kearns**”).

**WHEREAS**, Utah Code Section 10-1-404 requires Kearns to enter into an Agreement with the Commission on or before the effective date of Kearns’s ordinance imposing the telecommunications license tax; and

**WHEREAS**, the purpose of the Agreement is to ensure that the telecommunications license tax is appropriately imposed and collected.

**NOW THEREFORE**, Commission and Kearns do hereby agree as follows:

1. Kearns has adopted an ordinance to impose the telecommunications license tax under Title 10, Chapter 1, Part 4.
2. Commission shall transmit monies collected under the telecommunications license tax monthly by electronic funds transfer to Kearns
3. Commission shall conduct audits of the telecommunications license tax with the same frequency and diligence as it does with the state sales and use tax.
4. Commission shall charge Kearns for the Commission’s services in an amount sufficient to reimburse Commission for Commission’s costs of administering, collecting, and enforcing the municipal energy sales and use tax. Commission’s charge to Kearns may not exceed the amount prescribed under Section 59-1-306.
5. Commission shall collect, enforce, and administer the municipal energy sales and use tax pursuant to the same procedures used in the administration, collection, and enforcement of the state sales and use tax as provided in Utah Code Section 10-1-405.
6. This Agreement shall be in effect for a term of one year from the effective date and shall be automatically renewed from year to year. The effective date of this Agreement shall be the first day of October 1, 2024, following the notice required under Section 10-1-403.

*[Execution on following page]*

FOR THE UTAH STATE TAX COMMISSION

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(Name/Position)

---

Date Signed

FOR THE CITY OF KEARNS

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Kelly Bush, Mayor

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Date Signed