

EAGLE MOUNTAIN CITY
CITY COUNCIL MEETING
 APRIL 3, 2018

TITLE:	ORDINANCE – An Ordinance of Eagle Mountain City, Utah, Amending Chapter 3.10 of the Eagle Mountain Municipal Code Related to the Municipal Energy Sales and Use Tax.		
FISCAL IMPACT:	N/A		
APPLICANT:	City Staff		
GENERAL PLAN DESIGNATION	CURRENT ZONE	ACREAGE	COMMUNITY
N/A	N/A	N/A	N/A

NOTICES:

-Public Meeting Notices
 -Public Hearing Notice published in the Daily Herald

REQUIRED FINDINGS:

Planning Commission Action / Recommendation
Vote: N/A

<p>Prepared By: Paul Jerome Assistant City Administrator</p>
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NOTES/COMMENTS:

Recommendations:

City staff recommends that the City Council, by ordinance, amend the Eagle Mountain Municipal Code to provide for a reimbursement of the 6% Energy Sales and Use Tax to certain users to be effective May 1, 2018.

Background:

Eagle Mountain City currently assesses a 6% Energy Sales and Use Tax on every sale or use of taxable energy that is made or delivered within the City. The proposed amendment to Eagle Mountain Municipal Code section (3.10.020) is to:

- 1) Provide for a reimbursement of 50% of the Municipal Energy Sales and Use Tax that is paid to the City on behalf of any entity that uses 15,000 kW or more at annual peak load, or whose total aggregated electric load is expected to be at least 15,000 kW within the twenty-four (24) months following commencement of construction of the entity's facility.

- 2) Provide for a reimbursement of 100% of the Municipal Energy Sales and Use Tax that is paid to the City on behalf of any entity that uses 15,000 kW or more at annual peak load or whose total aggregated electric load is expected to be at least 15,000 kW within the twenty-four (24) months following commencement of construction of the entity's facility if not less than fifty (50) percent of the electricity sold to, used by, stored or consumed by the entity is produced from a renewable energy source (as defined in Section 54-17-502, Utah Code Annotated 1953).

ORDINANCE NO. O- -2018

**AN ORDINANCE OF EAGLE MOUNTAIN CITY, UTAH,
AMENDING CHAPTER 3.10 OF THE EAGLE MOUNTAIN MUNICIPAL CODE
RELATED TO THE MUNICIPAL ENERGY SALES AND USE TAX**

PREAMBLE

WHEREAS, the Eagle Mountain City Council (the “Council”) met in regular meeting on January 2, 2018 to consider, among other things, amending a section of the Eagle Mountain Municipal Code;

NOW THEREFORE, BE IT ORDAINED by the Eagle Mountain City Council of Eagle Mountain City, Utah:

1. Chapter 3.10 of the Eagle Mountain Municipal Code is hereby amended to read as follows:

3.10.010 Definitions.

A. “Consumer” means a person who acquires taxable energy for any use that is subject to the municipal energy sales and use tax.

B. “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. A fee similar to subsection (B)(1)(a) of this subsection; or

b. Any combination of subsections (B)(1)(a) or (B)(1)(b) of this subsection.

C. 1. “Delivered value” means the fair market value of the taxable energy delivered for sale or use in the municipality and includes:

a. The value of the energy itself; and

b. 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 municipality.

2. “Delivered value” does not include the amount of a tax paid under Title 59, Chapter 12, Part 1, Tax Collection, Part 2, Local Sales and Use Tax Act, Utah Code Annotated 1953, or this chapter.

D. “De minimis amount” means an amount of taxable energy that does not exceed the greater of:

1. Five percent of the energy supplier’s estimated total Utah gross receipts from sales of property or services; or

2. Ten thousand dollars.

E. “Energy supplier” means a person supplying taxable energy, except for persons supplying a de minimis amount of taxable energy, if such persons are excluded by rule promulgated by the State Tax Commission.

F. “Franchise agreement” means a franchise or an ordinance, contract, or agreement granting a franchise.

G. “Franchise tax” means:

1. A franchise tax;

2. A tax similar to a franchise tax; or

3. Any combination of subsections (G)(1) or (G)(2) of this section.

H. “Person,” “sale,” “storage” and “use” mean the same as defined in Section [59-12-102](#), Utah Code Annotated 1953.

I. “Renewable energy source” means the same as defined in Section [54-17-502](#), Utah Code Annotated 1953.

J. “Taxable energy” means gas and electricity. [Ord. O-14-2003 § A].

3.10.020 Municipal energy sales and use tax levied.

There is hereby levied, subject to the provisions of this chapter, a tax on every sale or use of taxable energy made within the city equaling six percent of the delivered value of the taxable

energy to the consumer effective on and after April 1, 2015. The rate of such tax under the prior Ordinance O-14-2003 for previous periods governed by that ordinance, namely, through March 31, 2015, shall be three percent of such delivered value. This tax shall be known as the municipal energy sales and use tax.

A. The tax shall be calculated on the delivered value of the taxable energy to the consumer.

B. The tax shall be in addition to any sales or use tax on taxable energy imposed by the city authorized by Title [59](#), Chapter [12](#), Utah Code, Sales and Use Tax Act. [Ord. O-15-2014; Ord. O-15-2005 (Exh. A, p. 4); Ord. O-14-2003 § B].

3.10.030 Exemptions from the municipal energy sales and use tax.

A. No exemptions are granted from the municipal energy sales and use tax except as expressly provided in Section [10-1-305\(2\)\(b\)](#), Utah Code Annotated 1953, notwithstanding an exemption granted by Section [59-1-104](#), Utah Code Annotated 1953.

B. The following are exempt from the municipal energy sales and use tax, pursuant to Section [10-1-305\(2\)\(b\)](#), Utah Code Annotated 1953:

1. Sales and use of aviation fuel, motor fuel, and special fuels subject to taxation under Title [59](#), Chapter [13](#), Utah Code Annotated 1953;
2. Sales and use of taxable energy that is exempt from taxation 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 Title [59](#), Chapter [13](#), Utah Code Annotated 1953;
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. The sale or use of taxable energy for any purpose other than as a fuel or energy; and
7. The sale of taxable energy for use outside the boundaries of the city.

C. The sale, storage, use, or other consumption of taxable energy is exempt from the municipal energy sales and use 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 authorized by Title [59](#), Chapter [12](#), Part 3, Utah Code Annotated 1953; and
2. The city is paid the difference between the tax paid to the other municipality and the tax that would otherwise be due under this chapter, if the tax due under this chapter exceeds the tax paid to the other municipality. [Ord. O-14-2003 § C].

3.10.040 No effect upon existing franchises – Credit for franchise fees.

A. This chapter shall not alter any existing franchise agreements between the city and energy suppliers.

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

1. The energy supplier pays the contractual franchise fee to the city pursuant to a franchise agreement in effect on July 1, 1997;
2. The contractual franchise fee is passed through by the energy supplier to a consumer as a separately itemized charge; and
3. The energy supplier has accepted the franchise. [Ord. O-14-2003 § D].

3.10.050 Tax collection contract with State Tax Commission.

A. On or before the effective date of the ordinance codified in this chapter, the city shall contract with the State Tax Commission to perform all functions incident to the administration and collection of the municipal energy sales and use tax, in accordance with this chapter, except for functions relating to taxes collected by the city as the energy supplier as provided in Section [10-1-307\(3\)](#), Utah Code Annotated 1953, as amended 1996. The mayor, with the approval of the city attorney, is hereby authorized to enter into agreements with the State Tax Commission that may be necessary to the continued administration and operation of the municipal energy sales and use tax ordinance enacted by this chapter.

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

1. The city is the energy supplier; or
2. a. 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
b. The energy supplier collects the municipal energy sales and use tax.

C. An energy supplier paying the municipal energy sales and use tax directly to the city may deduct any contractual franchise fees collected by the energy supplier qualifying as a credit and remit the net tax less any amount the energy supplier retains as authorized by Section 10-1-307(4), Utah Code Annotated 1953. [Ord. O-14-2003 § E].

3.10.060 Incorporation of Title 59, Chapter 12, Part 1, Utah Code Annotated 1953, including amendments.

A. Except as herein provided, and except insofar as they are inconsistent with the provisions of the Municipal Energy Sales and Use Tax Act, as well as this chapter, all of the provisions of Title 59, Chapter 12, Part 1, Utah Code Annotated 1953, as amended, and in force and effect on the effective date of the ordinance codified in this chapter, insofar as they relate to sales and use taxes, excepting Sections 59-12-101 and 59-12-1119, Utah Code Annotated 1953, 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 Title 59, Chapter 12, Part 1, and Title 10, Part 3, Utah Code Annotated 1953, 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 for the purposes of that part. Nothing in this subsection shall be deemed to require substitution of the name Eagle Mountain City for the word “State” when that word is used as part of the title of the State Tax Commission, or of the Constitution of Utah, nor shall the name of Eagle Mountain City 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 Eagle Mountain City or any agency thereof, rather than by or against the State Tax Commission in performing the functions incident to the administration or operation of this chapter.

C. Any amendments made to Title 59, Chapter 12, Part 1, Utah Code Annotated 1953, which would be applicable to Eagle Mountain City for the purposes of carrying out this chapter are hereby incorporated herein by reference and shall be effective upon the date that they are effective as a Utah statute. [Ord. O-14-2003 § F].

3.10.070 No additional license to collect the municipal energy sales and use tax required – No additional license or reporting requirements.

No additional license to collect or report the municipal energy sales and use tax levied by this chapter is required, provided the energy supplier collecting the tax has a license issued under Section 59-12-106, Utah Code Annotated 1953.

3.10.080 Reimbursement for certain users.

A. Effective as of May 1, 2018, any person or entity whose total aggregated electric load is at least 15,000 kW, based on annual peak load, or whose total aggregated electric load is expected to be at least 15,000 kW within the next twenty-four (24) months, shall be entitled to a reimbursement of 50% of the municipal energy sales and use tax for the sale, storage, use, or other consumption of taxable energy that is paid or remitted to Eagle Mountain City on behalf of the person or entity.

B. Effective as of May 1, 2018, any person or entity whose total aggregated electric load is at least 15,000 kW, based on annual peak load, or whose total aggregated electric load is expected to be at least 15,000 kW within the next twenty-four (24) months, shall be entitled to a reimbursement of 100% of the municipal energy sales and use tax for the sale, storage, use, or other consumption of taxable energy by or to a consumer that is paid or remitted to Eagle Mountain City on behalf of the person or entity, if not less than fifty (50) percent of the electricity sold to, used by, stored or consumed by such consumer is produced from a renewable energy source.

2. This Ordinance shall take effect upon its first publication or posting.

ADOPTED by the City Council of Eagle Mountain City this 3rd day of April, 2018.

EAGLE MOUNTAIN CITY, UTAH

ATTEST:

Tom Westmoreland, Mayor

Fionnuala B. Kofoed, MMC
City Recorder

CERTIFICATION

The above ordinance was adopted by the City Council of Eagle Mountain City on the

3rd day of April, 2018.

Those voting aye:

- Donna Burnham
- Melissa Clark
- Colby Curtis
- Stephanie Gricius
- Benjamin Reaves

Those voting nay:

- Donna Burnham
- Melissa Clark
- Colby Curtis
- Stephanie Gricius
- Benjamin Reaves

Fionnuala B. Kofoed, MMC
City Recorder

EXHIBIT A