

SHORT TITLE:


An ordinance amending the Utility Transportation Fund as specified in Section 5.08.090 of the Provo City Code.

PASSAGE BY MUNICIPAL COUNCIL

ROLL CALL

DISTRICT	NAME	MOTION	SECOND	FOR	AGAINST	OTHER	
CW 1	DAVID SEWELL	✓		✓			
CW 2	GARY GARRETT		✓	✓			
CD 1	GARY WINTERTON			✓			
CD 2	KIM SANTIAGO			✓			
CD 3	HAL MILLER			✓			
CD 4	KAY VAN BUREN			✓			
CD 5	STEPHEN HALES			✓			
				TOTALS	7	0	0


This ordinance was passed by the Municipal Council of Provo City, on the 4th day of February, 2014 on a roll call vote as described above. Signed this 17th day of March, 2014.


Chair

II

APPROVAL BY MAYOR

This ordinance is approved by me this 17th day of March, 2014.


Mayor

ORDINANCE 2014-07

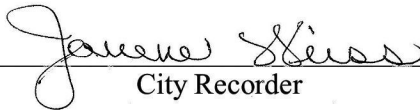
III

CITY RECORDER'S CERTIFICATE AND ATTEST

This ordinance was recorded in the office of the Provo City Recorder on the 18th day of March 2014, with a short summary being published on the 22nd day of February 2014, in The Daily Herald, a newspaper circulated in Provo, Utah. I hereby certify and attest that the foregoing constitutes a true and accurate record of proceedings with respect to Ordinance Number 2014-07.



Signed this 18th day of March 2014.



City Recorder

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ORDINANCE NO 2014-07

AN ORDINANCE AMENDING CHAPTER 5.08 IN THE PROVO CITY CODE TO EXEMPT CERTAIN 501(c)(3) ENTITIES FROM THE UTILITY TRANSPORTATION FUND. (13-077)

WHEREAS, on November 29, 2013, the Provo City Municipal Council enacted Chapter 5.08 of the Provo City Code to create a Utility Transportation Fund and impose a fee for the purpose of funding street maintenance; and

WHEREAS, Section 5.08.090 Pre-Implementation Conference and Hearing of that ordinance allowed certain owners of property falling under the Public Use classification to present information to the Mayor regarding why the owner should be exempted from some or all of the fee; and

WHEREAS, Section 5.08.090 also required the Mayor to report back to the Municipal Council his recommendations following from such presentations, which the Mayor did in the January 21, 2014 Work Session; and

WHEREAS, the Mayor's recommendation is to exempt from the fee certain property owners that have made a voluntary payment equal to the amount of the fee or who are 501(c)(3) charitable organizations meeting certain narrow criteria regarding purposes of health, education, and religious worship (the Mayor's recommendation is attached as Exhibit 1); and

WHEREAS, on February 4, 2014 the Municipal Council held a duly noticed public meeting to consider this matter and after considering the facts and comments presented to the Municipal Council, the Council finds: (i) the Provo City Code should be amended as described herein to exempt certain property owners from the fee imposed by Chapter 5.08 of the Provo City Code, and (ii) such amendments are in the best interests of the residents of Provo City and reasonably further the health, safety, and general welfare of the citizens of Provo City;

NOW THEREFORE, BE IT ORDAINED BY The Municipal Council of Provo City, Utah as follows:

PART I:

Chapter 5.08 of the Provo City Code is hereby amended by the enactment of Section 5.08.100 as follows:

Section 5.08.100. Contribution and Internal Revenue Code §501(c)(3) Exemption.

(1) The Fee shall not be charged to any person or entity that in lieu of paying the Fee makes an advance voluntary contribution to the Utility Transportation Fund in an amount equal to or greater than the amount of the Fee imposed by this Chapter.

(2) The Fee shall not be charged in regard to any property owned and operated by one or more organizations described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Federal Tax Code"), that is:

- 47 (a) Not used primarily for the production of income that is taxable under Section 511
48 of the Federal Tax Code;
49 (b) Exempt from property tax; and
50 (c) Used primarily:
51 (i) To provide in-patient hospital care;
52 (ii) For the education, instruction or training of the individual at the collegiate
53 level or for no more than a nominal charge: (A) on subjects useful to the
54 individual and beneficial to the community; or (B) for the purpose of
55 improving or developing an individual's capabilities; or
56 (iii) For religious purposes, including as a house of worship or to provide
57 religious education for youth.
58 (3) Any entity seeking an Internal Revenue Code § 501(c)(3) exemption pursuant to
59 subparagraph (2), above, shall make application for the exemption and provide proof of
60 qualification.

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62 PART II:

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64 A. If a provision of this ordinance conflicts with a provision of a previously adopted
65 ordinance, this ordinance shall prevail.
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67 B. The sections, paragraphs, sentences, clauses, and phrases of this ordinance and of Chapter
68 5.08 are severable. If any such section, paragraph, sentence, clause, or phrase shall be declared
69 invalid or unconstitutional by the valid judgment or decree of a Court of competent jurisdiction,
70 such invalidity or unconstitutionality shall not affect the validity or constitutionality of any of the
71 remaining sections, paragraphs, sentences, clauses, or phases of this Chapter.
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73 C. The Municipal Council hereby directs that the official copy of the Provo City Code be
74 updated to reflect the provisions enacted by this ordinance.
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76 D. This ordinance shall take effect immediately upon being posted or published as required
77 by law.

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79 END OF ORDINANCE.

Exhibit '1'

DRAFT MAYOR'S LETTERHEAD

To: Members of the Provo City Municipal Council
From: John Curtis, Mayor
Date: January 21, 2014
Re: Report and Recommendation on Implementation of the Utility Transportation Fund

As you are aware, Provo City has put forth a significant amount of public outreach regarding the recently adopted Utility Transportation Fund (UTF) Ordinance. As a result, the UTF Ordinance was unanimously adopted. Further outreach was provided for in the UTF Ordinance by adoption of Provo City Code §5.08.090. That code section requires a report and recommendation to the Municipal Council regarding additional outreach. As the result of this additional outreach, the Mayor's Office has received comment that has led us to conclude that an additional section should be added to the UTF Ordinance to provide a "sunset" provision, a voluntary payment provision, and a narrow exemption for 501(c)(3) entities who are using tax exempt property primarily for health, education, and religious purposes.

The recommendation for a voluntary payment program arises from the desire by some to participate in the UTF Fund, but their concern that in doing so they will waive legal rights. The addition of a voluntary payment provision will allow participation without the waiver of legal rights.

Finally, we recommend a very narrow health, education, and religious worship exemption for 501(c)(3) entities whose property is tax exempt and who are using that property primarily for the following purposes: (1) In-patient hospital services. Such hospitals provide charitable indigent emergency care services that are traditionally the means of last resort for those who cannot afford it. (2) Higher education or other instruction and education where there is no more than a nominal charge for the service. These are effectively privately subsidized educational benefits for Provo. (3) Religious worship. Rather than being able to charge a fee for services, religious entities must "pass the plate" and seek similar voluntary contributions to carry on their First Amendment protected religious activities. Their use of the streets can also be distinguished by the fact that parishioners' use of City streets is infrequent, local and non-commercial in nature, and to some extent already accounted for in the "trip end" calculation of neighboring properties.

For the reasons set forth above, we recommend your consideration and adoption of the ordinance changes as set forth in the attached "Exhibit A." We would be happy to provide additional information upon request.

EXHIBIT A

Section 5.08.100. Sunset, Contribution, and Internal Revenue Code §501(c)(3) Exemption.

- (1) The Fee shall not be charged to any person or entity that in lieu of paying the Fee makes an advance voluntary contribution to the Utility Transportation Fund in an amount equal to or greater than the amount of the Fee imposed by this Chapter.
- (2) The Fee shall not be charged in regard to any property owned and operated by one or more organizations described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Federal Tax Code”), that is:
 - (a) Not used primarily for the production of income that is taxable under Section 511 of the Federal Tax Code;
 - (b) Exempt from property tax; and
 - (c) Used primarily:
 - (i) To provide in-patient hospital care;
 - (ii) For the education, instruction or training of the individual at the collegiate level or for no more than a nominal charge: (A) on subjects useful to the individual and beneficial to the community; or (B) for the purpose of improving or developing an individual’s capabilities; or
 - (iii) For religious purposes, including as a house of worship or to provide religious education for youth.
- (3) Any entity seeking an Internal Revenue Code § 501(c)(3) exemption pursuant to subparagraph (2), above, shall make application for the exemption and provide proof of qualification.