

4B Franchised Utilities and Taxes

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4B-1-1 Business License Required

All franchised utilities and cable television operators must obtain from the City a license to do business within the City. It shall be unlawful for a franchised utility or cable television operator to conduct business in Park City without a license. The City shall not charge a business license fee, but the fees for the franchise license amount below and any franchise fee imposed by virtue of a franchise agreement must be timely paid to receive a business license.

4B-1-2 Franchise License

There is hereby imposed on all franchised utilities, except 'energy suppliers' taxed pursuant to Chapter 4B-5 of this Title, telecommunications providers taxed pursuant to Chapter 4B-4 of this Title, and cable television operators who conduct business within the City with a franchise license. The franchise license shall be three and one-half percent (3.5%) of the gross revenue of the franchised utility or cable television operator derived from the sale of its service or product within Park City's corporate limits. For purposes of this Chapter, gross revenue, shall include all revenue generated from the sale of the franchisee's product or service. The franchise fee imposed by other ordinances as a consideration for granting the franchises shall be excluded from the gross revenue.

4B-1-3 Exclusions

This franchise license fee shall not apply to 'energy suppliers' taxed pursuant to Chapter 4B-5 of this Title, telecommunications providers taxed pursuant to Chapter 4B-4 of this Title, or revenue derived from the sale of household appliances by a franchisee, service of appliances, or to the sale or rental of telephone switching equipment not included in "exchange access service".

4B-1-4 Payment Of Fee

The fee is payable in monthly installments which shall be due on or before the 15th day of the month following the billing cycle of the utility or cable television operator. The fee shall be paid on the basis of the preceding month's actual collections. A service charge of one and a half percent (1.5%) per month of the total amount due may be imposed on late payments.

4B-1-5 Penalty

The operation of a franchised utility or cable television business within Park City without paying the required fees shall be a Class "B" misdemeanor punishable by a fine of not more than one thousand dollars (\$1,000.00) for each day of each violation and imprisonment of the corporate officials responsible for the violation for not more than six months in the County jail for each day of each violation. These

criminal penalties are in addition to, and not in lieu of a civil action to recover the license fee due, or a civil action to terminate the franchise. Each connection to the utility or cable television system through which service is provided by the franchisee is hereby deemed a separate transaction or sale, and each such sale, while unlicensed, shall constitute a separate violation.

4B-2 Telecommunications And Rights-Of-Way

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4B-2-1 Scope Of Ordinance

This ordinance shall provide the basic local scheme for providers of telecommunications services and systems that require the use of the rights-of way, including providers of both the system and service, those providers of the system only, and those providers who do not build the system but who only provide services. This ordinance shall apply to all future providers and to all providers in the City prior to the effective date of this ordinance, whether operating with or without a franchise as set forth in Section 4B-2-12(B). This ordinance shall not apply to cable television operators otherwise regulated by a franchise granted by the City, nor personal wireless service facilities. Providers excused by other law that prohibits the City from requiring a franchise shall not be required to obtain a franchise, but all of the requirements imposed by this ordinance through the exercise of the City's police power and not preempted by other law shall be applicable.

4B-2-2 Defined Terms

- A. **APPLICATION**. The process by which a provider submits a request and indicates a desire to be granted a franchise to utilize the rights-of-way of all, or a part, of the City. An application includes all written documentation, verbal statements, and representations, in whatever form or forum, made by a provider to the City concerning: the construction of a telecommunications system over, under, on, or through the rights-of-way; the telecommunications services proposed to be provided in the City by a provider; and any other matter pertaining to a proposed system or service.
- B. **CITY**. Park City, Utah.
- C. **COMPLETION DATE**. The date that a provider begins providing services to customers in the City.
- D. **CONSTRUCTION COSTS**. All costs of constructing a system, including make ready costs, other than engineering fees, attorneys or accountants fees, or other consulting fees.
- E. **CONTROL OR CONTROLLING INTEREST**. Actual working control in whatever manner exercised, including, without limitation, working control through ownership, management, debt instruments or negative control, as the case may be, of the system or of a provider. A rebuttable

presumption of the existence of control or a controlling interest shall arise from the beneficial ownership, directly or indirectly, by any person, or group of persons acting in concert, of more than twenty-five percent (25%) of any provider, which person or group of persons is hereinafter referred to as "controlling person". "Control" or "controlling interest" as used herein may be held simultaneously by more than one person or group of persons.

- F. **FCC**. The Federal Communications Commission, or any successor thereto.
- G. **FRANCHISE**. The rights and obligation extended by the City to a provider to own, lease, construct, maintain, use, or operate a system in the rights-of-way within the boundaries of the City. Any such authorization, in whatever form granted, shall not mean or include:
 - 1. Any other permit or authorization required for the privilege of transacting and carrying on a business within the City required by the ordinances and laws of the City;
 - 2. Any other permit, agreement, or authorization required in connection with operations on rights-of-way or public property including, without limitation, permits and agreements for placing devices on or in poles, conduits or other structures, whether owned by the City or a private entity, or for excavating or performing other work in or along the rights-of-way.
- H. **FRANCHISE AGREEMENT**. A contract entered into in accordance with the provisions of this ordinance between the City and a franchisee that sets forth, subject to this ordinance, the terms and conditions under which a Franchise will be exercised.
- I. **INFRASTRUCTURE PROVIDER**. A person providing to another, for the purpose of providing telecommunication services to customers, all or part of the necessary system, which uses the rights-of-way.
- J. **OPEN VIDEO SERVICE**. Any video programming services provided to any Person through the use of rights-of-way, by a provider that is certified by the FCC to operate an open video system pursuant to 47 U.S.C. 521 et seq., regardless of the system used.
- K. **OPEN VIDEO SYSTEM**. The system of cables, wires, lines, towers, wave guides, optic fiber, microwave, laser beams, and any associated converters, equipment, or facilities designed and constructed for the purpose of producing, receiving, amplifying, or distributing open video services to or from subscribers or locations within the City.
- L. **OPERATOR**. Any person who provides service over a telecommunications system and directly or through one or more persons owns a controlling interest in such system, or who otherwise controls or is responsible for the operation of such a system.
- M. **ORDINANCE OR TELECOMMUNICATIONS ORDINANCE**. This telecommunications ordinance concerning the granting of franchises in and by the City for the construction, ownership, operation, use, or maintenance of a telecommunications system.
- N. **PERSON**. Includes any individual, corporation, partnership, association, joint stock company, trust, or any other legal entity, but not the City.
- O. **PERSONAL WIRELESS SERVICES FACILITIES**. Has the same meaning as provided in Section 704 of the Act (47 U.S.C. 332(c)(7)(c)), which includes what is commonly known as

cellular and PCS Services that do not install any system or portion of a system in the rights-of-way.

- P. **PROVIDER**. An operator, infrastructure provider, reseller, or system lessee.
- Q. **PSC**. The Public Service Commission, or any successor thereto.
- R. **RESELLER**. Any person that provides local exchange service over a system for which a separate charge is made, where that person does not own or lease the underlying system used for the transmission.
- S. **RIGHTS-OF-WAY**. The surface of and the space above and below any public street, sidewalk, alley, or other public way of any type whatsoever, now or hereafter existing, and owned by or otherwise dedicated to the City.
- T. **SIGNAL**. Any transmission or reception of electronic, electrical, light or laser or radio frequency energy or optical information in either analog or digital format.
- U. **SYSTEM OR TELECOMMUNICATIONS SYSTEM**. All conduits, manholes, poles, antennas, transceivers, amplifiers, and all other electronic devices, equipment, wire and appurtenances owned, leased, or used by a provider, located in the rights-of-way and utilized in the provision of services, including fully digital or analog, voice, data and video imaging and other enhanced telecommunications services. Telecommunications system or systems also includes an open video system.
- V. **SYSTEM LESSEE**. Any person that leases a system or a specific portion of a system to provide services.
- W. **TELECOMMUNICATIONS**. The transmission, between or among points specified by the user, of information of the user's choosing, e.g., data, video, and voice, without change in the form or content of the information sent and received.
- X. **TELECOMMUNICATIONS SERVICES OR SERVICES**. Any telecommunications services provided by a provider within the City that the provider is authorized to provide under federal, state, and local law, and any equipment and/or facilities required for and integrated with the services provided within the City, except that these terms do not include "cable service" as defined in the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992, 47 U.S.C. 521, et seq., and the Telecommunications Act of 1996. Telecommunications system or systems also includes an open video system.
- Y. **WIRE**. Fiber optic telecommunications cable, wire, coaxial cable, or other transmission medium that may be used in lieu thereof for similar purposes.

4B-2-3 Franchise Required

- A. **NON-EXCLUSIVE FRANCHISE**. The City is empowered and authorized to issue non-exclusive franchises governing the installation, construction, and maintenance of systems in the City's rights-of-way, in accordance with the provisions of this ordinance. The franchise is granted through a franchise agreement entered into between the City and provider.

- B. **EVERY PROVIDER MUST OBTAIN.** Except to the extent preempted by federal or state law, as ultimately interpreted by a court of competent jurisdiction, including any appeals, every provider must obtain a franchise prior to constructing a telecommunications system or providing telecommunications services using the rights-of-way, and every provider must obtain a franchise before constructing an open video system or providing open video services via an open video system. Any open video system or service shall be subject to the customer service and consumer protection provisions applicable to the cable TV companies to the extent the City is not preempted or permitted as ultimately interpreted by a court of competent jurisdiction, including any appeals. The fact that particular telecommunications systems may be used for multiple purposes does not obviate the need to obtain a franchise for other purposes. By way of illustration and not limitation, a cable operator of a cable system must obtain a cable franchise, and, should it intend to provide telecommunications services over the same system, must also obtain a telecommunications franchise.
- C. **NATURE OF GRANT.** A franchise shall not convey title, equitable or legal, in the rights-of-way. A franchise is only the right to occupy rights-of-way on a non-exclusive basis for the limited purposes and for the limited period stated in the franchise; the right may not be subdivided, assigned, or subleased. A franchise does not excuse a provider from obtaining appropriate access or pole attachment agreements before collocating its system on the property of others, including the City's property. The franchise agreement may impose additional limitations upon the provider, such as location of utilities. This section shall not be construed to prohibit a provider from leasing conduit to another provider, so long as the lessee has obtained a franchise from the City.
- D. **CURRENT PROVIDERS.** Except to the extent exempted by federal or state law, any provider acting without a franchise on the effective date of this ordinance shall request issuance of a franchise from the City within ninety (90) days of the effective date of this ordinance. If such request is made, the provider may continue providing service during the course of negotiations. If a timely request is not made, or if negotiations cease and a franchise is not granted, the provider shall comply with the provisions of Section 4B-2-9 of this Code.
- E. **NATURE OF FRANCHISE.** The franchise granted by the City under the provisions of this ordinance shall be a nonexclusive franchise providing the right and consent to install, repair, maintain, remove, and replace its system on, over, and under the rights-of-way in order to provide services, unless otherwise specified by the franchise agreement.
- F. **REGULATORY APPROVAL NEEDED.** Before offering or providing any services pursuant to the franchise, a provider shall obtain any and all regulatory approvals, permits, authorizations, or licenses for the offering or provision of such services from the appropriate federal, state and local authorities, if required, and shall submit to the City upon the written request of the City evidence of all such approvals, permits, authorizations, or licenses.
- G. **TERM.** No franchise issued pursuant to this ordinance shall have a term of less than five (5) years or greater than fifteen (15) years. Each franchise shall be granted in a nondiscriminatory manner.

4B-2-4 Compensation And Other Payments

- A. **TELECOMMUNICATIONS TAX.** As provided for in Chapter 4B-4 of this Title.

- B. **APPLICATION FEE.** In order to offset the cost to the City to review an application for a franchise and in addition to all other fees, permits, or charges, a provider shall pay to the City at the time of application, five hundred dollars (\$500) as a non-refundable application fee.
- C. **EXCAVATION PERMITS.** The provider shall also pay fees required for an excavation permit as provided in the City's Fee Resolution or applicable Code.
- D. **FUTURE COSTS.** A provider shall pay to the City or to third parties, at the direction of the City, an amount equal to the reasonable costs and reasonable expenses that the City incurs for the services of third parties, including but not limited to attorneys and other consultants, in connection with any renewal or provider-initiated renegotiation, or amendment of this ordinance or a franchise, provided, however, that the parties shall agree upon a reasonable financial cap at the offset of negotiations. In the event the parties are unable to agree, either party may submit the issue to binding arbitration in accordance with the rules and procedures of the American Arbitration Association.
- E. **CONTINUING OBLIGATION AND HOLDOVER.** In the event a provider continues to operate all or any part of the system after the term of the franchise, such operator shall continue to comply with all applicable provisions of this ordinance and the franchise, including, without limitation, all compensation and other payment provisions throughout the period of such continued operation, provided that any such continued operation shall in no way be construed as a renewal or other extension of the franchise, nor as a limitation on the remedies, if any, available to the City as a result of such continued operation after the term, including, but not limited to, damages and restitution.
- F. **COSTS OF PUBLICATION.** A provider shall assume any publication costs associated with its franchise that may be required by law.

4B-2-5 Franchise Applications

- A. **FRANCHISE APPLICATION.** To obtain a franchise to construct, own, maintain, or provide services through any system within the City, to obtain a renewal of a franchise granted pursuant to this ordinance, or to obtain the City approval of a transfer of a franchise, as provided in Section 4B-2-7 of this Code, granted pursuant to this ordinance, an application must be filed with the City. The application form may be changed by the City Manager so long as such changes request information that is consistent with this ordinance.
- B. **APPLICATION CRITERIA.** In making a determination as to an application filed pursuant to this ordinance, the City may, but shall not be limited to, request the following from the provider:
 - 1. A copy of the order from the PSC granting a Certificate of Convenience and Necessity.
 - 2. Certification of the provider's financial ability to compensate the City for provider's intrusion, maintenance, and use of the rights-of-way during the franchise term proposed by the provider;
 - 3. Provider's agreement to comply with the requirements of Section 4B-2-6 of this ordinance.
- C. **FRANCHISE DETERMINATION.** The City, in its discretion, shall determine the award of any franchise on the basis of these and other considerations relevant to the use of the rights-of-way, without competitive bidding.

4B-2-6 Construction And Technical Requirements

- A. **GENERAL REQUIREMENT.** No provider shall receive a franchise unless it agrees to comply with each of the terms set forth in this section governing construction and technical requirements for its system, in addition to any other reasonable requirements or procedures specified by the City or the franchise, including requirements regarding locating and sharing in the cost of locating portions of the system with other systems or with City utilities. A provider shall obtain an excavation permit before commencing any work in the rights-of-way.
- B. **QUALITY.** All work involved in the construction, maintenance, repair, upgrade, and removal of the system shall be performed in a safe, thorough, and reliable manner using materials of good and durable quality, and in accordance with the City's design standards, construction specifications, and latest edition standard drawings. If, at any time, it is determined by the FCC or any other agency granted authority by federal law or the FCC to make such determination, that any part of the system, including, without limitation, any means used to distribute signals over or within the system, is harmful to the public health, safety, or welfare, or quality of service or reliability, then a provider shall, at its own cost and expense, promptly correct all such conditions.
- C. **LICENSES AND PERMITS.** A provider shall have the sole responsibility for diligently obtaining, at its own cost and expense, all permits, licenses, or other forms of approval or authorization necessary to construct, maintain, upgrade, or repair the system, including but not limited to any necessary approvals from persons and/or the City to use private property, easements, poles, and conduits. A provider shall obtain any required permit, license, approval, or authorization, including but not limited to excavation permits, pole attachment agreements, etc., prior to the commencement of the activity for which the permit, license, approval, or authorization is required.
- D. **RELOCATION OF THE SYSTEM.**
1. **NEW GRADES OR LINES.** If the grades or lines of any rights-of-way are changed at any time in a manner affecting the system, then a provider shall comply with the requirements of the excavation ordinance or other applicable City regulation.
 2. **THE CITY AUTHORITY TO MOVE SYSTEM IN CASE OF AN EMERGENCY.** The City may, at any time, in case of fire, disaster, or other emergency, as determined by the City in its reasonable discretion, cut or move any parts of the system and appurtenances on, over, or under the rights-of-way of the City, in which event the City shall not be liable therefore to a provider.

The City shall notify a provider in writing prior to, if practicable, but in any event as soon as possible and in no case later than the next business day following any action taken under this section. Notice shall be given as provided in Section 4B-2-11 of this Code.
 3. **A PROVIDER REQUIRED TO TEMPORARILY MOVE SYSTEM FOR THIRD PARTY.** A provider shall, upon prior reasonable written notice by the City or any person holding a permit to move any structure, and within the time that is reasonable under the circumstances, temporarily move any part of its system to permit the moving of said structure. A provider may impose a reasonable charge on any person other than the City for any such movement of its systems.
 4. **RIGHTS-OF-WAY CHANGE - OBLIGATION TO MOVE SYSTEM.** When the City is changing a rights-of-way and makes a written request, a provider is required to move or remove its system from the rights-of-way, without cost to the City, to the extent

provided in the excavation ordinance. This obligation does not apply to systems originally located on private property pursuant to a private easement, which property was later incorporated into the rights-of-way, if that private easement grants a superior vested right.

This obligation exists whether or not the provider has obtained an excavation permit.

5. **PROTECT STRUCTURES.** In connection with the construction, maintenance, repair, upgrade, or removal of the system, a provider shall, at its own cost and expense, protect any and all existing structures belonging to the City and any historically significant structure or building, as designated by the Historic District Commission. A provider shall obtain the prior written consent of the City to alter any water main, power facility, sewerage or drainage system, or any other municipal structure on, over, or under the rights-of-way of the City required because of the presence of the system. Any such alteration shall be made by the City or its designee on a reimbursable basis. A provider agrees that it shall be liable for the costs incurred by the City to replace or repair and restore to its prior condition in a manner as may be reasonably specified by the City, any municipal structure or any other rights-of-way of the City involved in the construction, maintenance, repair, upgrade, or removal of the system that may become disturbed or damaged as a result of any work thereon by or on behalf of a provider pursuant to the franchise.
6. **NO OBSTRUCTION.** In connection with the construction, maintenance, upgrade, repair, or removal of the system, a provider shall not unreasonably obstruct the rights-of-way of fixed guide way systems, railways, passenger travel, or other traffic to, from, or within the City without the prior consent of the appropriate authorities.
7. **SAFETY PRECAUTIONS.** A provider shall, at its own cost and expense, undertake all necessary and appropriate efforts to prevent accidents at its work sites, including the placing and maintenance of proper guards, fences, barricades, security personnel, and suitable and sufficient lighting, and such other requirements prescribed by OSHA and Utah OSHA. A provider shall comply with all applicable federal, state and local requirements including but not limited to the National Electric Safety Code.
8. **REPAIR.** After written reasonable notice to the provider, unless, in the sole determination of the City, an imminent danger exists, any rights-of-way within the City which are disturbed or damaged during the construction, maintenance or reconstruction by a provider of its system may be repaired by the City at the provider's expense, to a condition as good as that prevailing before such work was commenced. Upon doing so, the City shall submit to such a provider an itemized statement of the cost for repairing and restoring the rights-of-ways intruded upon.

The provider shall, within thirty (30) days after receipt of the statement, pay to the City the entire amount thereof.

9. **SYSTEM MAINTENANCE.** A provider shall:
 - a. Install and maintain all parts of its system in a non-dangerous condition throughout the entire period of its franchise;

- b. Install and maintain its system in accordance with standard prudent engineering practices and shall conform, when applicable, with the National Electrical Safety Code and all applicable other federal, state, and local laws or regulations;
- c. At all reasonable times, permit examination by any duly authorized representative of the City of the system and its effect on the rights-of-way.

10. TRIMMING OF TREES. A provider shall have the authority to trim trees, in accordance with all applicable utility restrictions, ordinance and easement restrictions, upon and hanging over rights-of-way so as to prevent the branches of such trees from coming in contact with its system. See Title 14, Trees/Landscaping.

4B-2-7 Franchise And License Non-Transferable

A. NOTIFICATION OF SALE.

1. **NOTIFICATION AND ELECTION.** When a provider is the subject of a sale, transfer, lease, assignment, sublease or disposed of, in whole or in part, either by forced or involuntary sale, or by ordinary sale, consolidation or otherwise, such that it or its successor entity is obligated to inform or seek the approval of the PSC, the provider or its successor entity shall promptly notify the City of the nature of the transaction. The notification shall include either:
 - a. The successor entity certification that the successor entity unequivocally agrees to all of the terms of the original provider's franchise agreement; or
 - b. The successor entity application in compliance with Section 4B-2-5 of this ordinance.
2. **TRANSFER OF FRANCHISE.** Upon receipt of a notification and certification in accordance with Section 4B-2-7(A)(1) of this ordinance, the City designee, as provided in Section 4B-2-9(A)(1) of this ordinance, shall send notice affirming the transfer of the franchise to the successor entity. If the City has good cause to believe that the successor entity may not comply with this ordinance or the franchise agreement, it may require an application for the transfer. The application shall comply with Section 4B-2-5 of this ordinance.
3. **IF PSC APPROVAL NO LONGER REQUIRED.** If the PSC no longer exists, or if its regulations or state law no longer require approval of transactions described in Section 4B-2-7(A) of this Code, and the City has good cause to believe that the successor entity may not comply with this ordinance or the franchise agreement, it may require an application. The application shall comply with Section 4B-2-5 of this ordinance.

B. EVENTS OF SALE. The following events shall be deemed to be a sale, assignment, or other transfer of the franchise requiring compliance with Section 4B-2-7(A)(1):

1. The sale, assignment, or other transfer of all or a majority of a provider's assets to another person;
2. The sale, assignment, or other transfer of capital stock or partnership, membership, or other equity interests in a provider by one (1) or more of its existing shareholders,

partners, members, or other equity owners so as to create a new controlling interest in a provider;

3. The issuance of additional capital stock or partnership, membership, or other equity interest by a provider so as to create a new controlling interest in such a provider; or
4. The entry by a provider into an agreement with respect to the management or operation of such provider or its system.

4B-2-8 Oversight And Regulation

- A. **INSURANCE, INDEMNITY, AND SECURITY.** Prior to the execution of a franchise, a provider will deposit with the City an irrevocable, unconditional letter of credit as required by the terms of the franchise, and shall obtain and provide proof of the insurance coverage required by the Franchise. A provider shall also indemnify the City as set forth in the franchise.
- B. **OVERSIGHT.** The City shall have the right to oversee, regulate, and inspect periodically the construction, maintenance, and upgrade of the system, and any part thereof, in accordance with the provisions of the franchise and applicable law. A provider shall establish and maintain managerial and operational records, standards, procedures, and controls to enable a provider to prove, in reasonable detail, to the satisfaction of the City at all times throughout the term, that a provider is in compliance with the franchise. A provider shall retain such records for not less than the applicable statute of limitations.
- C. **MAINTAIN RECORDS.** A provider shall at all times maintain:

1. On file with the City, a full and complete set of plans, records and "as-built" hard copy maps and, to the extent the maps are placed in an electronic format, they shall be made in electronic format compatible with the City's existing GIS system, of all existing and proposed installations and the types of equipment and systems installed or constructed in the rights-of-way, properly identified and described as to the types of equipment and facility by appropriate symbols and marks which shall include annotations of all rights-of-ways where work will be undertaken.

As used herein, "as-built" maps include file construction prints. Maps shall be drawn to scale. "As-built" maps, including the compatible electronic format, as provided above, shall be submitted within thirty (30) days of completion of work or within thirty (30) days after completion of modification and repairs.

As- built maps are not required of the provider who is the incumbent local exchange carrier for the existing system to the extent they do not exist.

2. Throughout the term of the franchise, a provider shall maintain complete and accurate books of account and records of the business, ownership, and operations of a provider with respect to the system in a manner that allows the City at all times to determine whether a provider is in compliance with the franchise. Should the City reasonably determine that the records are not being maintained in such a manner, a provider shall alter the manner in which the books and/or records are maintained so that a provider comes into compliance with this Section. All financial books and records which are maintained in accordance with the regulations of the FCC and any governmental entity that regulates utilities in the State of Utah, and generally accepted accounting principles shall be deemed to be acceptable under this Section.

- D. **CONFIDENTIALITY.** If the information required to be submitted is proprietary in nature or must be kept confidential by federal, state, or local law, upon proper request by a provider, such information shall be classified as a Protected record within the meaning of the Utah Government Records Access and Management Act ('GRAMA'), making it available only to those who must have access to perform their duties on behalf of the City, provided that a provider notifies the City of, and clearly labels the information which a provider deems to be confidential, proprietary information. Such notification and labeling shall be the sole responsibility of the provider.
- E. **PROVIDER'S EXPENSE.** All reports and records required under this ordinance shall be furnished at the sole expense of a provider, except as otherwise provided in this ordinance or a franchise.
- F. **RIGHT OF INSPECTION.** For the purpose of verifying the correct amount of the franchise fee, the books and records of the provider pertaining thereto shall be open to inspection or audit by duly authorized representatives of the City at all reasonable times, upon giving reasonable notice of the intention to inspect or audit the books and records, provided that the City shall not audit the books and records of the provider more often than annually. The provider agrees to reimburse the City the reasonable costs of an audit if the audit discloses that the provider has paid ninety five percent (95%) or less of the compensation due the City for the period of such audit. In the event the accounting rendered to the City by the provider herein is found to be incorrect, then payment shall be made on the corrected amount within thirty (30) calendar days of written notice, it being agreed that the City may accept any amount offered by the provider, but the acceptance thereof by the City shall not be deemed a settlement of such item if the amount is in dispute or is later found to be incorrect.

4B-2-9 Rights Of City

A. ENFORCEMENT AND REMEDIES.

1. **ENFORCEMENT - CITY DESIGNEE.** The City is responsible for enforcing and administering this ordinance, and the City or its designee, as appointed by the City Manager, is authorized to give any notice required by law or under any franchise agreement.
2. **ENFORCEMENT PROVISION.** Any franchise granted pursuant to this ordinance shall contain appropriate provisions for enforcement, compensation, and protection of the public, consistent with the other provisions of this ordinance, including, but not limited to, defining events of default, procedures for accessing the bond/security fund, and rights of termination or revocation.

B. **FORCE MAJEURE.** In the event a provider's performance of any of the terms, conditions or obligations required by this ordinance or a franchise is prevented by a cause or event not within a provider's control, such inability to perform shall be deemed excused and no penalties or sanctions shall be imposed as a result thereof. For the purpose of this section, causes or events not within the control of a provider shall include, without limitation, acts of God, strikes, sabotage, riots or civil disturbances, failure or loss of utilities, explosions, acts of public enemies, and natural disasters such as floods, earthquakes, landslides, and fires.

C. EXTENDED OPERATION AND CONTINUITY OF SERVICES.

1. **CONTINUATION AFTER EXPIRATION.** Upon either expiration or revocation of a franchise granted pursuant to this ordinance, the City shall have discretion to permit a provider to continue to operate its system or provide services for an extended period of time not to exceed six (6) months from the date of such expiration or revocation. A

provider shall continue to operate its system under the terms and conditions of this ordinance and the franchise granted pursuant to this ordinance.

2. **CONTINUATION BY INCUMBENT LOCAL EXCHANGE CARRIER.** If the provider is the incumbent local exchange carrier, it shall be permitted to continue to operate its system and provide services without regard to revocation or expiration, but shall be obligated to negotiate a renewal in good faith.

D. REMOVAL OR ABANDONMENT OF FRANCHISE PROPERTY.

1. **ABANDONED SYSTEM.** In the event that:
 - a. The use of any portion of the system is discontinued for a continuous period of twelve (12) months, and thirty (30) days after no response to written notice from the City to the last known address of provider;
 - b. Any system has been installed in the rights-of-way without complying with the requirements of this ordinance or franchise; or
 - c. No franchise is granted, a provider, except the provider who is an incumbent local exchange carrier, shall be deemed to have abandoned such system.
2. **REMOVAL OF ABANDONED SYSTEM.** The City, upon such terms as it may impose, may give a provider written permission to abandon, without removing, any system, or portion thereof, directly constructed, operated, or maintained under a franchise. Unless such permission is granted or unless otherwise provided in this ordinance, a provider shall remove within a reasonable time the abandoned system and shall restore, using prudent construction standards, any affected rights-of-way to their former state at the time such system was installed, so as not to impair their usefulness.

The City shall have the right to inspect and approve the condition of the rights-of-way cables, wires, attachments, and poles prior to and after removal. The liability, indemnity, and insurance provisions of this ordinance and any security fund provided in a franchise shall continue in full force and effect during the period of removal and until full compliance by a provider with the terms and conditions of this section.

3. **TRANSFER OF ABANDONED SYSTEM TO CITY.** Upon abandonment of any system in place, a provider, if required by the City, shall submit to the City a written instrument, satisfactory in form to the City, transferring to the City the ownership of the abandoned system.
4. **REMOVAL OF ABOVE-GROUND SYSTEM.** At the expiration of the term for which a franchise is granted, or upon its revocation or earlier expiration, as provided for by this ordinance, in any such case without renewal, extension, or transfer, the City shall have the right to require a provider to remove, at its expense, all above-ground portions of a system from the rights-of-way within a reasonable period of time, which shall not be less than one hundred eighty (180) days.

If the provider is the incumbent local exchange carrier, it shall not be required to remove its system, but shall negotiate a renewal in good faith, unless otherwise provided for in the franchise agreement.

5. **LEAVING UNDERGROUND SYSTEM.** Notwithstanding anything to the contrary set forth in this ordinance, a provider may abandon any underground system in place so long as it does not materially interfere with the use of the rights-of-way or with the use thereof

by any public utility, cable operator, or other person, unless otherwise provided for in the franchise agreement.

4B-2-10 Obligation To Notify

- A. **PUBLICIZING WORK.** Before entering onto any private property, a provider shall make a good faith attempt to contact the property owners in advance, and describe the work to be performed. Nothing herein authorizes the provider to trespass.

4B-2-11 General Provisions

- A. **CONFLICTS.** In the event of a conflict between any provision of this ordinance and a franchise entered pursuant to it, the provisions of this ordinance in effect at the time the franchise is entered into shall control.
- B. **SEVERABILITY.** If any provision of this ordinance is held by any federal, state or local court of competent jurisdiction, to be invalid as conflicting with any federal or state statute, or is ordered by a court to be modified in any way in order to conform to the requirements of any such law and all appellate remedies with regard to the validity of the ordinance provisions in question are exhausted, such provision shall be considered a separate, distinct, and independent part of this ordinance, and such holding shall not affect the validity and enforceability of all other provisions hereof. In the event that such law is subsequently repealed, rescinded, amended or otherwise changed, so that the provision which had been held invalid or modified is no longer in conflict with such law the provision in question shall return to full force and effect and shall again be binding on the City and the provider, provided that the City shall give the provider thirty (30) days, or a longer period of time as may be reasonably required for a provider to comply with such a rejuvenated provision, written notice of the change before requiring compliance with such provision.
- C. **NEW DEVELOPMENTS.** It shall be the policy of the City to liberally amend this ordinance, upon application of a provider, when necessary to enable the provider to take advantage of any developments in the field of telecommunications which will afford the provider an opportunity to more effectively, efficiently, or economically serve itself or the public.
- D. **NOTICES.** All notices from a provider to the City required under this ordinance or pursuant to a franchise granted pursuant to this ordinance shall be directed to the officer as designated by the City Manager. A provider shall provide in any application for a franchise the identity, address, and phone number to receive notices from the City. A provider shall immediately notify the City of any change in its name, address, or telephone number.
- E. **EXERCISE OF POLICE POWER.** To the full extent permitted by applicable law either now or in the future, the City reserves the right to adopt or issue such rules, regulations, orders, or other directives that it finds necessary or appropriate in the lawful exercise of its police powers.

4B-2-12 Federal, State, And City Jurisdiction

- A. **CONSTRUCTION.** This ordinance shall be construed in a manner consistent with all applicable federal and state statutes.
- B. **ORDINANCE APPLICABILITY.** This ordinance shall apply to all franchises granted or renewed after the effective date of this ordinance. This ordinance shall further apply, to the extent permitted by applicable federal or state law to all existing franchises granted prior to the effective date of this ordinance and to a provider providing services, without a franchise, prior to the effective date of this ordinance.

- C. **OTHER APPLICABLE ORDINANCES.** A provider's rights are subject to the police powers of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public. A provider shall comply with all applicable general laws and ordinances enacted by the City pursuant to its police powers. In particular, all providers shall comply with the City zoning and other land use requirements.
- D. **CITY FAILURE TO ENFORCE.** A provider shall not be relieved of its obligation to comply with any of the provisions of this ordinance or any franchise granted pursuant to this ordinance by reason of any failure of the City to enforce prompt compliance.
- E. **CONSTRUED ACCORDING TO UTAH LAW.** This ordinance and any franchise granted pursuant to this ordinance shall be construed and enforced in accordance with the substantive laws of the State of Utah.

4B-3 Sales And Use Tax

4B-3-1 Purpose

4B-3-2 Sales And Use Tax

4B-3-1 Purpose

It is the purpose of this ordinance to conform the sales and use tax of Park City to the requirements of the Sales and Use Tax Act, Utah Code 59-12-101 et seq., as currently amended.

4B-3-2 Sales And Use Tax

- A. 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 Park City at the rate of one percent (1%). An excise tax is hereby imposed on the storage, use, or other consumption in Park City of tangible personal property from any retailer on or after the operative date of this ordinance at the rate of one percent (1%) of the sales price of the property. 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 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 Utah Code 54-2-1, 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 Park 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. 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 Utah Code 59-12-101 et seq., as amended, and in force and effect on the effective date of this ordinance, insofar as they relate to sales taxes, are hereby adopted and made a part of this ordinance as though fully set forth herein. Wherever, and to the extent that in Utah Code 59-12-101 et seq., the State of Utah is named or referred to as the taxing agency, the name of Park City shall be substituted therefore. Nothing in this subparagraph shall be deemed to require substitution of the name of Park 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 the State of Utah, nor shall the name of Park City 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 Park 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 the ordinance.

- C. If an annual license has been issued to a retailer under Utah Code 59-12-101 et seq., an additional license shall not be required by reason of this Section. There shall be excluded from the purchase price paid or changed by which the tax is measured:
1. The amount of any sales or use tax imposed by the State of Utah upon a retailer of consumer; and
 2. 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 or any county in the State of Utah, under the sales or use tax ordinances enacted by that county or municipality in accordance with the Sales and Use Tax Act, Utah Code 59-12-101 et seq.

4B-4 Telecommunications Tax

4B-4-1 Definitions

4B-4-2 Levy Of Tax

4B-4-3 Rate

4B-4-4 Rate Limitation And Exemption Therefrom

4B-4-5 Effective Date Of Tax Levy

4B-4-6 Changes In Rate Or Repeal Of Tax

4B-4-7 Interlocal Agreement For Collection Of Tax

4B-4-8 Procedures For Taxes Erroneously Recovered From Customers

4B-4-9 Repeal Of Inconsistent Taxes And Fees

4B-4-1 Definitions

As used in this Chapter:

- A. "Commission" means the State Tax Commission.
- B.
1. Subject to Subsections (B)(2) and (3), "customer" means the person who is obligated under a contract with a telecommunications provider to pay for telecommunications service received under the contract.
 2. For purposes of this ordinance, "customer" means:
 - a. The person who is obligated under a contract with a telecommunications provider to pay for telecommunications service received under the contract; or
 - b. If the end user is not the person described in Subsection (B)(2)(a), the end user of telecommunications service.
 3. "Customer" does not include a reseller:
 - a. Of telecommunications service; or
 - b. For mobile telecommunications service, or a serving carrier under an agreement to serve the customer outside the telecommunications provider's licensed service area.
- C.
1. "End user" means the person who uses a telecommunications service.
 2. 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.

- D. “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 the Sales and Use Tax Act, Utah Code 59-12-101 et seq.
- E. “Gross Receipts from telecommunications service” means the revenue that a telecommunications provider receives for telecommunications service rendered except for amounts collected or paid as:
1. A tax, fee, or charge:
 - a. Imposed by a governmental entity;
 - b. Separately identified as a tax, fee, or charge in the transaction with the customer for the telecommunications service; and
 - c. Imposed only on a telecommunications provider.
 2. Sales and use taxes collected by the telecommunications provider from a customer under the Sales and Use Tax Act, Utah Code 59-12-101 et seq; or
 3. 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.
- F. “Mobile telecommunications service” is as defined in the Mobile Telecommunications Sourcing Act, 4 U.S.C. 124.
- G. “Municipality” means Park City Municipal Corporation.
- H. “Place of primary use”:
1. 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:
 - a. The residential street address of the customer; or
 - b. The primary business street address of the customer; or
 2. For mobile telecommunications service, is as defined in the Mobile Telecommunications Sourcing Act, 4 U.S.C. 124.
- I. Notwithstanding where a call is billed or paid, “service address” means:
1. If the location described in this Subsection (I)(1) is known, the location of the telecommunications equipment:
 - a. To which a call is charged; and
 - b. From which the call originates or terminate;
 2. If the location described in Subsection (I)(1) is not known but the location described in this Subsection (I)(2) is known, the location of the origination point of the signal of the telecommunications service first identified by:
 - a. The telecommunications system of the telecommunications provider; or

- b. 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
3. If the locations described in Subsection (I)(1) or (2) are not known, the location of a customer's place of primary use.

J.

1. Subject to Subsections (J)(2) and (J)(3), "telecommunications provider" means a person that:
 - a. Owns, controls, operates, or manages a telecommunications service; or
 - b. Engages in an activity described in Subsection (J)(1)(a) for the shared use with or resale to any person of the telecommunications service.
2. A person described in Subsection (J)(1) is a telecommunications provider whether or not the Public Service Commission of Utah regulates:
 - a. That person; or
 - b. The telecommunications service that the person owns, controls, operates, or manages.
3. "Telecommunications provider" does not include an aggregator as defined in Utah Code 54-8b-2.

K. "Telecommunications service" means:

1. Telephone service, as defined in Utah Code 59-12-102, other than mobile telecommunications service, that originates and terminates within the boundaries of this state; and
2. Mobile telecommunications service, as defined in Utah Code 59-12-102:
 - a. That originates and terminates within the boundaries of one state; and
 - b. Only to the extent permitted by the Mobile Telecommunications Sourcing Act, 4 U.S.C. 116 et seq.

4B-4-2 Levy Of Tax

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

4B-4-3 Rate

The rate of the tax levy shall be four percent (4%) of the telecommunication provider's gross receipts from telecommunications service that are attributed to the municipality. If the location of a 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 10-1-407.

4B-4-4 Rate Limitation And Exemption Therefrom

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

- A. A municipal general election;
- B. A regular general election; or
- C. A local special election.

4B-4-5 Effective Date Of Tax Levy

This tax shall be levied beginning July 1, 2004.

4B-4-6 Changes In Rate Or Repeal Of Tax

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

4B-4-7 Interlocal Agreement For Collection Of Tax

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

4B-4-8 Procedures For Taxes Erroneously Recovered From Customers

Pursuant to the provisions of Utah Code 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 Utah Code 10-1-408.

4B-4-9 Repeal Of Inconsistent Taxes And Fees

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

Nothing in this ordinance shall be interpreted to repeal any municipal ordinance or fee which provides that the municipality may recover from a telecommunications provider the management costs of the municipality caused by the activities of the telecommunications provider in the rights-of-way of the municipality, if the fee is imposed in accordance with Utah Code 72-7-102 and is not related to the municipality's loss of the use of a highway as a result of the activities of the telecommunications provider in a right-of-way, or increased deterioration of a highway as a result of the activities of the telecommunications provider in a right-of-way nor does this ordinance limit park City's right to charge fees or taxes on persons that are not subject to the municipal telecommunication license tax under this ordinance and locate telecommunications facilities, as defined in Utah Code 72-7-108, in this municipality.

4B-5 Municipal Energy Sales And Use Tax

4B-5-1 Definitions

4B-5-2 Tax Imposed

4B-5-3 Exemptions From The Tax

4B-5-4 No Effect On Existing Franchise Agreements; Tax Credits

4B-5-5 Tax Collection

4B-5-1 Definitions

Those definitions contained under Utah Code 10-1-303 through 310, as amended, are hereby incorporated by reference.

4B-5-2 Tax Imposed

There is imposed on every sale or use of taxable energy made within Park City Municipal Corporation a tax of six percent (6%) of the delivered value of taxable energy to the consumer.

4B-5-3 Exemptions From The Tax

No tax under this ordinance is imposed on the sale or use of taxable energy, which is exempt from taxation pursuant to Utah Code 10-1-305 or its successor sections, which are incorporated by reference herein.

4B-5-4 No Effect On Existing Franchise Agreements; Tax Credits

There is allowed a credit against the tax due under this ordinance for any contractual franchise fee paid where:

- A. The taxpayer's energy supplier pays a contractual franchise fee to Park City Municipal Corporation pursuant to a franchise agreement in effect on July 1, 1997;
- B. The contractual franchise is passed through by the energy supplier to the taxpayer as a separately itemized charge; and
- C. The energy supplier has accepted the franchise.

4B-5-5 Tax Collection

This ordinance incorporates by reference the tax collection provisions of the Utah Code 59- 12-101 through 129, Tax Collection, and any amendments thereto, for the purpose of levying and collecting the tax imposed by this ordinance. The Manager is hereby authorized to contract, in a form approved by the City Attorney, with the State Tax Commission effective July 1, 1997 and thereafter to have the Commission perform all functions relative to administration or operation of this ordinance, except an energy supplier which estimates that the municipal energy sales and use tax collected annually by it from its Utah customers equals \$1 million or more shall pay the tax imposed by this ordinance directly to Park City Municipal Corporation. In such case, the energy supplier may retain that percentage of the tax authorized under Utah Code 59-12-108 for the energy supplier's costs of collecting and remitting the tax. The energy supplier shall remit the tax no later than forty-five (45) days after the end of the month in which the tax was collected.

4B-6 ~~Resort-Impacted~~ Communities Sales Tax

4B-6-1 Definitions

4B-6-2 Resort Communities ~~And Additional Resort Communities~~ Sales Tax Imposed

4B-6-3 Place Of Sale

4B-6-4 Collection And Payment Of Tax

4B-6-5 State Statutes Applicable

4B-6-6 Exclusions

4B-6-1 Definitions

For purposes of this Chapter, all terms used shall have the same meaning and definition as applied to those terms by the provisions of Utah Code 59-12-405, and the State Tax Commission regulations adopted under Utah Code 59-12 -401 et seq. ~~and Utah Code 59-12-402 et seq.~~

4B-6-2 Resort Communities ~~And Additional Resort Communities~~ Sales Tax Imposed

Except as otherwise provided herein, there is levied and there shall be collected and paid a tax upon every retail sale within Park City of tangible personal property, services, meals, lodging, admission to places of recreation, entertainment or amusements, utility service and all other personal property taxed under Utah Code 59-12-401 et seq., within Park City at the rate of one and one-tenth percent (1.1%) of the retail

selling price and under Utah Code 59-12-402 et seq., within Park City at the rate of one half of one percent (0.5%) of the retail selling price.

4B-6-3 Place Of Sale

For the purpose of this Chapter, the location of a sales transaction shall be determined in accordance with Utah Code 59-12-211 through 59-12-215.

4B-6-4 Collection And Payment Of Tax

The tax imposed by this ordinance is in addition to and not in lieu of the general sales tax imposed under the provisions of the local sales and use tax ordinance adopted by Park City, and the state sales tax under Utah Code 59-12-101 et seq.. The procedure for collection and payment of this tax shall be identical to the procedure prescribed by Utah Code 59-12-101 et seq. and the State Tax Commission Regulations adopted under that Chapter.

4B-6-5 State Statutes Applicable

- A. Except as hereinafter provided, and except as they are inconsistent with the provisions of the Local Sales Tax Law of Utah, all other provisions of Utah Code 59-12-101 et seq. pertaining to sales tax as in force at the effective date of this ordinance, and as thereafter amended, are hereby adopted in full and made a part of this ordinance as though fully set forth herein, except for the provisions stating the rate of the tax applied.
- B. Wherever, and to the extent that in Utah Code 59-12-101 et seq., the State of Utah is named or referred to as the taxing agency, the name of Park City shall be substituted therefore. Nothing in this paragraph 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 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 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 ordinance.
- C. If an annual license has been issued to a retailer under Utah Code 59-12-101 et seq., an additional license shall not be required by reason of this section.

4B-6-6 Exclusions

As provided in Utah Code 59-12-401 ~~and Utah Code 59-12-402 et seq.~~, the resort communities and additional resort communities tax imposed under this Section shall not apply to the sale of:

- A. A motor vehicle;
- B. An aircraft;
- C. A water craft;
- D. A modular home;
- E. A manufactured home;
- F. A mobile home;
- G. The sales and uses described in Utah Code 59-12-104 to the extent the sales and uses are exempt from taxation under that section;

H. Food and food ingredients, except the amounts paid or charged for food and food ingredients shall not be exempt from taxation under Utah Code 59-12-401 ~~and Utah Code 59-12-402 et seq.~~ if the food and food ingredients are sold as part of a bundled transaction attributable to food and food ingredients and tangible personal property other than food and food ingredients