Title 2
FINANCE AND TAXATION

Chapter 1

BUDGET AND ACCOUNTING

2-1-1: PROCEDURES:

The budget and accounting procedures of the town shall be those required by the state uniform fiscal procedures act, Utah Code Annotated section 10-5-101 et seq., as the same may be amended from time to time. All of the hearings, notices and other requirements set forth in that act shall be complied with by the town. (1984 Code § 8-5-1; amd. 2010 Code)

2-1-2: DUTIES OF TOWN OFFICERS:

The Town Treasurer shall, in his function as auditor, be the primary budget officer of the town and shall be responsible for preparing the proposed budget under the direction of the Town Manager. The proposed budget shall be submitted to the Town Council for consideration and adoption as outlined and specified by state law, and shall be adopted by the Town Council only after having met hearing and other requirements imposed by state law. It shall be the duty of the Town Manager to see that the town budgetary and accounting procedures are in conformity with state law. (1984 Code § 8-5-2; amd. 2010 Code)

Chapter 2

SALES AND PURCHASES OF TOWN PROPERTY

2-2-1: PURPOSE:

In order to be in compliance with Utah code section 10-8-2, which requires municipalities to provide reasonable notice before disposing of a significant parcel of real property, the Town Council of Brian Head, Utah, hereby defines "significant parcel of property" and "reasonable notice". (Ord. 12-005, 6-29-2012)

2-2-2: DISPOSAL OF TOWN OWNED REAL PROPERTY:

The Town Council may declare any town owned significant parcel of real property (as defined) below to be surplus. The Town Manager may declare any town owned non-significant parcel of real property (as defined below) to be surplus if it is found that the parcel is no longer needed by the town. After town owned real property is declared to be surplus, the town may dispose of real property pursuant to the following guidelines:

A. Definitions: For the purpose of this section, the designated words shall have the following meanings:

NONSIGNIFICANT PARCEL OF REAL PROPERTY: Any parcel of real property that is not included in the definition of "significant parcel of real property".

REASONABLE NOTICE: A brief summary of the proposed disposition including: 1) a general description of the parcel (including the approximate address of the parcel, the approximate size of the parcel, the zone designation of the parcel, and the current use of the parcel); and 2) the date, time and location where the public can comment on the proposed disposition. The notice shall be published at least once in a newspaper of general circulation within Iron County and posted in at least three (3) locations within the town boundaries.

SIGNIFICANT PARCEL OF REAL PROPERTY: A parcel of real property that is larger than five (5) acres in size. The following parcels of real property are excluded from this definition, even if they meet the size standards set forth herein:

1. Parcels disposed of by the town as part of a boundary line agreement or adjustment.

2. Parcels created by a right of way vacation or an easement vacation.

3. Parcels that are undevelopable unless combined with an adjacent parcel. A parcel will be considered to be undevelopable if it cannot be developed as an independent parcel due to the town ordinance requirements and due to the physical characteristics of the parcel.

4. Parcels acquired by eminent domain or other means if the town is statutorily or contractually obligated to first offer the parcel to a specific party, provided that the parcel is offered, sold or conveyed to the party holding the right to acquire the parcel.

B. Disposal Of Significant Parcel Of Real Property: Before disposing of a significant parcel of real property, the town shall:

1. Notice: Provide reasonable notice of the proposed disposition at least fourteen (14) days before the opportunity for public comment; and

2. Public Comment: Allow an opportunity for public comment on the proposed disposition. The opportunity for public comment shall take place at the Brian Head Town Council meeting.

C. Manner Of Disposal: The town may dispose of real property by sale, trade, lease, sublease, or other means deemed to be in the best interest of the town by the Town Council for significant parcels of real property. (Ord. 12-005, 6-29-2012)

1) Trading Surplus Property

a) The Town Manager will maintain a prioritized list of properties designated by the Town Council as properties the Town has interest in obtaining through trade

b) Prior to listing any surplus properties for sale, the Town Manager will attempt to negotiate a trade for one or more of the properties on the prioritized trade list

c) The Town may trade any parcel or parcels from the surplus list for any parcel or parcels from the trade list if it is deemed in the best interest of the Town by the Town Council, regardless of the appraised value of any of the parcels involved in the trade.

2) Selling Surplus Property

a) Listing the Parcel

i) The Town Manger may list for sale any parcel designated as surplus for which an advantageous trade cannot be identified

ii) An appraisal will be obtained for any surplus property prior to being listed for sale

iii) The Town Manager may set the list price within 10% of the appraised value

iv) Town Council approval is required for any listing price which varies in excess of 10% of the appraised value

b) Professional real estate services

i) The Town Manager may contract with a real estate professional for services related to the disposal of surplus real property

ii) If the Town Manager chooses to contract for services, the Town Manager will follow the Town's purchasing policies related to contracting for professional services

iii) Commission for professional real estate services shall not exceed 6% of the sale price of the property without Town Council approval

c) Final purchase price approval

i) The Town Manager is authorized to (but not required to) accept an offer on the Town's behalf if the offer is within 10% of the appraised value

ii) Acceptance of any offer not within 10% of the appraised value requires Council approval

iii) All sales of significant property require Town Council approval. (amd Ord. 14-006, 7-22-2014)

Chapter 3

PROPERTY TAXES

2-3-1: TOWN COUNCIL TO LEVY TAXES:

Prior to and not later than June 22 of each year, the Town Council, at a regularly scheduled meeting, shall by resolution set the property tax mill levy for real and personal property within the town that has been made taxable for various municipal purposes at the assessed, rather than actual, valuation of the property. (1984 Code § 18-1-1; amd. 2010 Code)

2-3-2: BASIS FOR DETERMINING TAX:

From the effective date of the budget or of any amendment relating to the budget adopted prior budget to the date on which property taxes are levied, the amount stated therein as the amount of estimated revenue from property taxes shall constitute the basis for a determination of the amount of the property tax levy to be imposed by the town during the corresponding tax year, subject to the limitations on the amount of the tax which are imposed by state law. In the computation of the total levy, the Town Council shall determine the requirements for each fund for which property taxes are to be levied and shall specify in its resolution which adopted the yearly levy, the number of mills apportioned to each said fund with the total mill levy not to exceed thirty five (35) mills in any one year. (1984 Code § 18-1-2)

2-3-3: COLLECTION OF TAXES:

The Town Treasurer shall be responsible for collecting all taxes that are due and payable to the town pursuant to this chapter. (1984 Code § 18-1-3)

2-3-4: APPORTIONMENT OF PROCEEDS:

The proceeds of said levy apportioned for general fund purposes shall be received as revenue in the general fund. The proceeds of the levy apportioned for utility and other special fund

purposes shall be credited to the appropriate accounts in the utility or other special funds. (1984 Code § 18-1-4)

2-3-5: CERTIFICATION OF LEVY:

The Town Treasurer shall certify the resolution adopting the yearly mill levy and deliver the same to the office of the County Auditor not later than June 22 of each year. (1984 Code § 18-1-5; amd. 2010 Code)

Chapter 4

SALES AND USE TAX

2-4-1: TITLE:

This chapter shall be known as the *SALES AND USE TAX ORDINANCE OF BRIAN HEAD TOWN*. (Ord. 90-002, 2-13-1990)

2-4-2: PURPOSE:

A. Authorization Of Tax: The forty eighth session of the Utah legislature authorized the counties and municipalities of the state to enact sales and use tax ordinance imposing a one percent (1%) tax.

B. Tax Established: It is the purpose of this chapter to conform the sales and use tax of the town to conform to the requirements of the sales and use tax act, Utah Code Annotated title 59, chapter 12, as currently amended. (Ord. 90-002, 2-13-1990)

2-4-3: EFFECTIVE DATE:

This chapter shall become effective as of one minute after twelve o'clock (12:01) A.M., February 13, 1990. (Ord. 90-002, 2-13-1990)

2-4-4: TAX IMPOSED:

A. Imposed:

1. From and after the effective date hereof, there is levied and there shall be collected and paid a tax upon every retail sale of tangible personal property, services and meals made within the town at the rate of one percent (1%).

2. An excise tax is hereby imposed on the storage, use or other consumption in the town of tangible personal property from any retailer on or after the operative date hereof at the rate of one percent (1%) of the sales price of the property.

3. For the purposes of this chapter, 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 designation. 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 and adopted by the state tax commission. "Public utilities", as defined by Utah Code Annotated title 54, shall not be obligated to determine the place or places within any county or municipality where public utilities are rendered, but the place of sale or the sales tax revenue arising from such service allocable to the town shall be as determined by the state tax commission s of Utah Code Annotated title 59, chapter 12, as amended, insofar as they relate to sales taxes, excepting section 59-12-104 thereof, are hereby adopted and made a part of this chapter as though fully set forth herein. (Ord. 90-002, 2-13-1990; amd. 2010 Code)

B. Adoption of Sate Codes; Provisions:

1. Except as hereinafter provided, and except insofar as they are inconsistent with the provision of the sales and use tax act, all of the provision of the Utah Code Annotated title 59, chapter 12, as amended, insofar as they relate to sales taxes, excepting section 59-12-104 thereof, are hereby adopted and made part of this chapter as though fully set forth herein. (Ord. 90-002, 2-13-1990; amd. 2010 Code)

2. Wherever, and to the extent that in Utah Code Annotated title 59, chapter 12, the state of Utah is named or referred to as the taxing agency, the name of this town shall be substituted therefore. Nothing in this subsection shall be deemed to require substitution of the name of the town for the word "state" when the word is used as part of the title of the state tax commission, or of the constitution of the state of Utah, nor shall the name of the town 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 state tax commission in performing the functions incident to the administration or operation of this chapter.

3. If an annual license has been issued to a retailer under Utah Code Annotated section 59-12-106, an additional license shall not be required by reason of this section.

4. There shall be excluded from the purchase price paid or charged by which the tax is measured:
   a. The amount of any sales or use tax imposed by the state upon a retailer or consumer.
   b. The gross receipts from the sale of or the cost of storage, use or other consumption of tangible personal property upon which a sales or use tax has become due by reason of the sales transaction to any other municipality and any county in the state under the sales or use tax ordinance enacted by that county or municipality in accordance with the sales and use tax act. (Ord. 90-002, 2-13-1990)

2-4-5: PENALTY:

Any person violating any of the provisions of this chapter shall be deemed guilty of a class B misdemeanor and, upon conviction thereof, shall be subject to penalty as provided in section 1-4-1 of this code. (Ord. 90-002, 2-13-1990; amd. 2010 Code)

Chapter 5

MUNICIPAL ENERGY SALES AND USE TAX

2-5-1: DEFINITIONS:

As used in this chapter, the following words and terms shall have the meanings ascribed to them in this section:

CONSUMER: A person who acquires taxable energy for any use that is subject to the Brian Head Town municipal energy sales and use tax.

CONTRACTUAL FRANCHISE FEE:

A. A fee:
1. Provided for in a franchise agreement; and

2. That is consideration for the franchise agreement; or

B.
1. A fee similar to subsection A of this definition; or

2. Any combination of subsections A or B of this definition.

DELIVERED VALUE:

A. The fair market value of the taxable energy delivered for sale or use in Brian Head Town and includes:

1. The value of the energy itself; and

2. 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 town.

B. "Delivered value" does not include the amount of a tax paid under Utah Code Annotated title 59, chapter 12, part 1 or part 2, or this chapter.

ENERGY SUPPLIER: 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.

FRANCHISE AGREEMENT: A franchise or an ordinance, contract or agreement granting a franchise.

FRANCHISE TAX:

A. A franchise tax.

B. A tax similar to a franchise tax; or

C. Any combinations of subsection A or B of this definition.

PERSON: Includes any individual, firm, partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, this state, any county, town, municipality, district, or other local governmental entity of the state of Utah, or any group or combination acting as a unit.

SALE: Any transfer of title, exchange or barter, conditional or otherwise, in any manner, of taxable energy for a consideration. It includes:

A. Installment and credit sales;

B. Any closed transaction constituting a sale;

C. 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.

STORAGE: Any keeping or retention of taxable energy in Brian Head Town for any purpose, except sale in the regular course of business.

TAXABLE ENERGY: Gas and electricity.

USE:

A. The exercise of any right or power over taxable energy incident to the ownership or the leasing of the taxable energy.

B. "Use" does not include the sale, display, demonstration or trial of the taxable energy in the regular course of business and held for resale. (Ord. 00-001, 2-22-2000; amd. 2010 Code)

2-5-2: TAX IMPOSED:

There is hereby levied, subject to the provisions of this chapter, a tax on every sale or use of taxable energy made within the town equaling six percent (6%) of the delivered value of the taxable energy. This tax shall be known as the municipal energy sales and use tax.

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

B. Additional Tax: The tax shall be in addition to any sales or use tax on taxable energy imposed by the town as authorized by Utah Code Annotated title 59, chapter 12, part 2, the local sales and use tax act. (Ord. 00-001, 2-22-2000)

2-5-3: EXEMPTIONS TO TAX:

A. No exemptions are granted from the municipal energy sales and use tax, except as expressly provided in Utah Code Annotated section 10-1-305(2)(b); notwithstanding an exemption granted under Utah Code Annotated section 59-12-104.

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

1. Sales and use of aviation fuel, motor fuel and special fuels subject to taxation under Utah Code Annotated title 59, chapter 13;

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 Utah Code Annotated title 59, chapter 13;

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 town.

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 Utah Code Annotated title 10, chapter 1, part 3; and

2. The town 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. 00-001, 2-22-2000)

2-5-4: EXISTING FRANCHISE AGREEMENTS:

A. No Alteration: This chapter shall not alter any existing franchise agreements between the town and energy suppliers.

B. Credit Against Tax Due: 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 town pursuant to a franchise agreement in effect on February 22, 2000;

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. 00-001, 2-22-2000)

2-5-5: CONTRACT WITH STATE TAX COMMISSION:

A. Required; Authority: On or before the effective date hereof, the town 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. The Mayor 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. Monthly Payments By Supplier; Conditions: Any energy supplier shall pay the municipal energy sales and use tax revenues collected from consumers directly to the town monthly if:

1. The town 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 one million dollars ($1,000,000.00) or more; and

b. The energy supplier collects the municipal energy sales and use tax.

C. Deduction Of Franchise Fees: An energy supplier paying the municipal energy sales and use tax directly to the town 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 Utah Code Annotated section 10-1-307(4). (Ord. 00-001, 2-22-2000)

2-5-6: STATE STATUTES INCORPORATED:

A. Specified; Exemptions: Except as herein provided, and except insofar as they are inconsistent with the provisions of Utah Code Annotated title 10, chapter 1, part 3, municipal energy sales and use tax act, as well as this chapter, all of the provisions of Utah Code Annotated title 59, chapter 12, part 1, as amended, and in force and effect on the effective date hereof, insofar as they relate to sales and use taxes, excepting section 59-12-101 thereof, and excepting for 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. Substitution Of Terms: Wherever, and to the extent that in Utah Code Annotated title 59, chapter 12, part 1 as amended, the state is named or referred to as the “taxing agency”, the name of the town shall be substituted, insofar as is necessary for the purposes of that part, as well as Utah Code Annotated title 10, chapter 1, part 3, as amended. Nothing in this subsection shall be deemed to require substitution of the name of the town 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 town 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 the town 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. Amendments: Any amendments made to Utah Code Annotated title 59, chapter 12, part 1, as amended, which would be applicable to the town for the purpose 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. 00-001, 2-22-2000)

2-5-7: ADDITIONAL LICENSE OR REPORTING NOT REQUIRED:

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 Utah Code Annotated section 59-12-106. (Ord. 00-001, 2-22-2000)

2-5-8: EFFECTIVE DATE OF LEVY:

This chapter is effective February 22, 2000. The municipal energy sales and use tax shall be levied beginning one minute after twelve o'clock (12:01) A.M., April 1, 2000. (Ord. 00-001, 2-22-2000)

Chapter 6

RESORT TAX

2-6-1: DEFINITIONS:

For purposes of this chapter, all terms used herein shall have the same meaning and definition as applied to those terms by the provisions of Utah Code Annotated title 59, chapter 12, and the state tax commission regulations adopted under those sections, unless superseded by the definitions provided below:

PURCHASE PRICE: The purchase price for a retail sale of tangible personal property subject to the tax shall be the gross selling price, exclusive of the state general sales tax imposed by the state of Utah by Utah Code Annotated title 59, chapter 12, and exclusive of the local option sales tax imposed by the town under the uniform local sales and use tax law, Utah Code Annotated title 59, chapter 12, and the local ordinance adopting the tax, so that each of these sales taxes is imposed independently of the retail sales price, and does not result in the application of this tax on the amount of other sales taxes on the same sale.

WHOLESALE SALES: A sale of tangible personal property by any person to a retailer, merchant, jobber, dealer or commission agent, or another wholesaler, for the purpose of resale within a retail business. (1984 Code § 18-3-1; amd. 2010 Code)

2-6-2: APPLICATION OF TAX:

There is hereby imposed an optional general sales tax in the town since transient room capacity equals or exceeds the permanent census population in the town. (1984 Code § 18-3-2)

2-6-3: TAX IMPOSED:

There is hereby imposed a tax upon every retail sale within the town of tangible personal property, services, meals, lodging, admissions to places of recreation, entertainment or amusements, utility service, and ad sections 59-12-102 and 59-12-103, within the town at the rate of one and one-half percent (1.6%) of the retail selling price.

This section shall become effective on January 1, 1998, and the increased resort tax shall be levied beginning one minute after twelve o'clock (12:00) A.M., January 1, 1998. (Ord. 97-005, 11-18-1997; amd. 2010 Code) An increase of 0.1% became effective October 01, 2013 (amd Ord. 13-004, 6-11-2013 eff. 10-01-2013)

2-6-4: PLACE OF SALE:

For the purpose of this chapter, all retail sales shall be presumed to have been consummated at the place of business of the retailer unless the tangible personal property is sold and delivered by the retailer or his agent to an out of state destination or sold or delivered to a common carrier, including the United States postal service, for delivery to an out of state destination. In the event the retailer has no permanent place of business in the town, or has more than one scribed and adopted by the state tax commission for the administration of the local sales tax under Utah Code Annotated title 59, chapter 12. "Public utilities", as defined by Utah Code Annotated title 54, shall not be obligated to determine the place or places within any municipality where public utility services are rendered, but the place of sale or the sales tax revenue arising from such service allocable to the town shall be as determined by the state tax commission pursuant to an appropriate formula and other rules and regulations or prescribed and adopted by the commission for the application of the general sales tax. (1984 Code § 18-3-4; amd. 2010 Code)

2-6-5: COLLECTION AND PAYMENT OF TAX:

The tax imposed by this chapter is in addition to, and not in lieu of, the general sales tax imposed under the provisions of the uniform local sales and use tax chapter adopted by the town under Utah Code Annotated title 59, chapter 12, and the state sales tax under Utah Code Annotated title 59, chapter 12. The procedure for collection and payment of this tax shall be identical to the procedure prescribed by Utah Code Annotated title 59, chapter 12, and the state tax commission regulations adopted under these actions. The town shall contract with the state tax commission for collection and all other functions incident to the administration and operation of this tax for as long as the tax is imposed. (1984 Code § 18-3-5; amd. 2010 Code)

2-6-6: STATE STATUTES APPLICABLE:

A. Except as hereinafter provided, and except as they are inconsistent with the provisions of the uniform local sales tax law, Utah Code Annotated title 59, chapter 12, pertaining to sales tax as in force on the effective date hereof, are hereby adopted in full and made a part of this chapter as though fully set forth herein, except for provisions stating the rate of the tax applied.

B. Wherever, and to the extent that in Utah Code Annotated title 59, chapter 12, the state of Utah is named or referred to as the taxing agency, the name of Brian Head Town shall be substituted therefore, nothing in this subsection shall be deemed to require substitution of the name of the "town" for the word "state" when the word is used as part of the title of the state tax commission, or of the constitution of the state, nor shall the name of the town 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 town, 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. If an annual license has been issued to a retailer under Utah Code Annotated title 59, chapter 12, an additional license shall not be required by reason of this section. (1984 Code § 18-3-6; amd. 2010 Code)

2-6-7: EXEMPTIONS:

This optional resort tax shall not apply to the following sales or kinds of sales:

A. Sales of a single item with a price of two thousand five hundred dollars ($2,500.00) or more.

B. "Wholesale sales", as defined in section 2-6-1 of this chapter

C. Items exempted from the general sales tax under the provisions of Utah Code Annotated title 59, chapter 12.

D. Tax collected on contracts for sales which are executed prior to the adoption of this chapter, but which have not been fully performed. Said taxes shall be refunded upon application to the state tax commission pursuant to its regulations. (1984 Code § 18-3-7; amd. 2010 Code)

2-6-8: SEVERABILITY:

In the event that any provision, section or clause of this chapter is found to be unlawful or unconstitutional, only the particular section, provision or clause shall be stricken and the remainder of the chapter shall stand and not be affected thereby. Should any exclusion or exemption granted in this chapter be found to be unlawful or unconstitutional, that exemption or exclusion shall be stricken, and the tax shall apply to the item formerly exempted or excluded. (1984 Code § 18-3-8)

2-6-9: PENALTY:

Any person violating any of the provisions of this chapter shall be deemed guilty of a class B misdemeanor and, upon conviction thereof, shall be subject to penalty as provided in section 1-

4-1 of this code. This penalty shall be in addition to any penalties that may apply for violation of state statutes pertaining to the collection, payment and accounting for sales and use taxes. (1984 Code § 18-3-9; amd. Ord. 87-008, 8-11-1987; 2010 Code)

Chapter 7

MUNICIPAL HIGHWAY TAX

2-7-1: TAX IMPOSED:

A tax is hereby imposed upon every retail sale within the town of "tangible personal property", as defined under Utah Code Annotated section 59-12-102(124)(b) awithin the town at the rate of three-tenths of one percent (0.3%) of the retail selling price. (Ord. 07-12, 10-9-2007, eff. 1-1-2008)

2-7-2: COMPUTATION OF TAX:

A. Each person licensed as a retail business in the town, shall pay a quarterly license fee computed on the "retail sales", as defined herein, for each separate place of business during each calendar quarter of the year. Such fees shall be paid on or before the thirtieth day of the month immediately following the end of such quarter and shall be an amount equal to the total of the following:

   A fee upon every retail sale of “tangible personal property”, as defined under Utah Code Annotated sections 59-12-102(124)(b), made within the town equivalent to three-tenths of one percent (0.3%) of the purchase price paid or charged; or in the case of retail sales involving the exchange of property, equivalent to three-tenths of one percent (0.3%) of the consideration paid or charged, including the fair market value of the property exchanged at the time and place of the exchange.

B. The taxes imposed hereunder shall be paid to the state tax commission in the same manner as required for the other state sales taxes. (Ord. 07-12, 10-9-2007, eff. 1-1-2008)

2-7-3: EXEMPTIONS:

Sales and uses exempted under Utah Code Annotated section 59-12-501 and 59-12-1001 shall be exempted from the highway tax provided hereunder. (Ord. 07-12, 10-9-2007, eff. 1-1-2008)

2-7-4: RECORDS AND REPORTS:

A. Each person licensed as a retail business in the town pursuant to the town business licenses and regulations ordinance shall maintain at and for each place of business required to be licensed under town law, records of purchases, sales and other data normally required by good accounting practices to disclose and verify the retail sales of such place of business and the gross sales price or other consideration received for the sale or transfer of personal property and services which are sold or transferred during each calendar quarter year. Each such person shall make such report relating to the retail sales during the calendar quarters as may be required from time to time by the town manager.

B. Taxes computed in the return to the state shall in all cases be based upon the total sales made during the period, including both cash and charge sales.

C. If the accounting methods regularly employed by the retail business in the transaction of the business are such that reports of sales made during a calendar month will impose unnecessary hardships, the town manager may accept reports at such intervals as will in his opinion better suit the convenience of both business and will not jeopardize the collection of the tax. Wherever possible, the town manager shall seek to make the reporting and record keeping requirements of the state tax commission under the provisions of the state sales tax.

D. It shall be the duty of every person subject to this chapter to preserve the records required by this section to be kept for a period of five (5) years from the date of sale.

E. Returns made under this section shall not be made public nor shall they be subject to the inspection of any person except the town manager or his authorized agent. It shall be unlawful for any person to make public or to inform any other person as to the contents of any information contained in or permit the inspection of any return except as authorized in this section.

F. No person shall make and file a false return knowing the same to be false.

G. If any business under this chapter fails, neglects or refuses to file the taxes provided hereunder, when required, the town manager is authorized to determine the amount of the taxes due, together with penalties and interest, and to notify such business by mail of the amount so determined. The amount so fixed shall thereupon become the amount due, and shall be immediately payable. For purposes of determining the amount of the tax due, the town manager shall have access to all books, records, invoices, inventories and stock of goods, wares and merchandise of such business, and it shall be unlawful for any such business to refuse the town manager or designee free access thereto at all reasonable times. (Ord. 07-12, 10-9-2007, eff. 1-1-2008)

2-7-5: TAXES ADDITIONAL TO OTHER TAXES OR FEES:

The tax imposed by this chapter shall be in addition to any other taxes, whether called a fee or

tax or otherwise, imposed by any other provision of this code or any other ordinances of the town. (Ord. 07-12, 10-9-2007, eff. 1-1-2008)

2-7-6: FAILURE TO PAY TAX; ACTION TO COLLECT; PENALTY:

A. Whenever any tax required to be paid under this chapter is not paid on or before the day on which it becomes delinquent, a penalty of ten percent (10%) of the amount due shall be imposed, or a minimum penalty of ten dollars ($10.00) shall be imposed, whichever sum shall be greater.

B. Any taxes due and unpaid under this chapter and all penalties thereon shall constitute a debt to the town and shall be collected by court proceedings in the same manner as any other debt in like amount; which remedy shall be in addition to all other existing remedies. (Ord. 07-12, 10-9-2007, eff. 1-1-2008)

C. A failure to pay any tax required under this chapter in a timely manner shall constitute a class B misdemeanor and shall be subject to penalty as provided in section 1-4-1 of this code. (Ord. 07-12, 10-9-2007, eff. 1-1-2008; amd. 2010 Code)

Chapter 8

MOBILE TELEPHONE SERVICE REVENUE TAX

2-8-1: DEFINITIONS:

For purposes of this chapter, the following terms are defined as follows:

CUSTOMER:

A. The person or entity having a place of primary use within the town, that contracts with the home service provider for mobile telecommunications services; or

B. If the end user of mobile telecommunications services is not the contracting party, the end user of the mobile telecommunications services; but this clause applies only for the purpose of determining the place of primary use.

C. "Customer" does not include:

1. A reseller of mobile telecommunications service; or

2. A serving carrier under an arrangement to serve the customer outside the home service provider's licensed service area.

DESIGNATED DATABASE PROVIDER: A corporation, association or other entity representing all the political subdivisions of a state that is:

A. Responsible for providing an electronic database prescribed in subsection 119(a) of chapter 4, title 4 of the United States code if the state has not provided such electronic database; and

B. Approved by municipal and county associations or leagues of the state whose responsibility it would otherwise be to provide such database prescribed by sections 116 through 126 of chapter 4, title 4 of the United States code.

ENHANCED ZIP CODE: A United States postal zip code of nine (9) or more digits.

HOME SERVICE PROVIDER: The facilities based carrier or reseller with which the customer contracts for the provision of mobile telecommunications services.

LICENSED SERVICE AREA: The geographic area in which the home service provider is authorized by law or contract to provide commercial mobile radio service to the customer.

MOBILE TELECOMMUNICATIONS SERVICE: Commercial mobile radio service, as defined in section 20.3 of title 47 of the code of federal regulations as in effect on June 1, 1999. For purposes of this chapter, "mobile telecommunications services" shall not include:

A. Pager services using mobile devices that do not allow for two-way voice communication;

B. Narrowband personal communications services; and

C. Short message services (SMS).

PLACE OF PRIMARY USE: The street address representative of where the customer's use of the mobile telecommunications service primarily occurs, which must be:

A. The residential street address or the primary business street address of the customer; and

B. Within the licensed service area of the home service provider.

PREPAID TELEPHONE CALLING SERVICES: The right to purchase exclusively telecommunications services that must be paid for in advance, that enables the origination of calls using an access number, authorization code, or both, whether manually or electronically dialed, if the remaining amount of units of service that have been prepaid is known by the provider of the prepaid service on a continuous basis.

RESELLER:

A. A provider who purchases telecommunications services from another telecommunications service provider and then resells, uses as a component part of, or integrates the purchased services into a mobile telecommunications service; and

B. Does not include a serving carrier with which a home service provider arranges for the service to its customers outside the home service provider's licensed service area.

SERVING CARRIER: A facilities based carrier providing mobile telecommunications service to a customer outside a home service provider's or reseller's licensed service area. (Ord. 00-007, 11-28-2000, eff. 1-1-2001)

2-8-2: MONTHLY TAX LEVIED:

There is levied upon every home service provider a tax of one dollar ($1.00) per month for each telephone number assigned to any customer whose place of primary use is within the town.

The home service provider may or may not pass this tax on to its customers. If the home service provider passes the tax on to the customer, and the tax is reflected on the customer's bill, the tax shall be shown on the bill as a flat rate municipal tax charge. (Ord. 00-007, 11-28-2000, eff. 1-1-2001)

2-8-3: REMITTANCE DATE:

A. Filing And Payment: Within thirty (30) days after the end of each calendar month, the home service provider taxed hereunder shall file, with the Town Treasurer, a report computing the tax. Coincidental with the filing of such report, the business shall pay to the Town Treasurer the amount of the tax due for the calendar month subject to the report. If the thirtieth day after the end of each calendar month falls on a Saturday, Sunday or state or federal holiday, the deadline for filing the monthly report and remitting payment for that month is extended to the next subsequent business day.

B. Delinquent Payment: Any payment not paid when due shall be subject to a delinquency penalty charge of ten percent (10%) of the unpaid amount. Failure to make full payment and penalty charges within sixty (60) days of the applicable payment date shall constitute a violation of this chapter. All overdue amounts, including penalty charges, shall bear interest until paid at the rate of an additional ten percent (10%) per annum.

C. Reconciliation: Within three (3) years after the filing of any report or the making of any payment, the Town Treasurer may examine such report or payment, determine the accuracy thereof, and, if the town treasurer finds any errors, report such errors to the home service provider for correction. If any tax, as paid, shall be found deficient, the home service provider shall within sixty (60) days remit the difference, and if the tax as paid to be found excessive, the town shall within sixty (60) days refund the difference, plus interest, at the same rate as if such amount were deficient. In the event of a disagreement, the home services provider shall file under protest pending the resolution of the dispute between the parties or through the courts.

D. Record Inspection: The records of the home service provider pertaining to the reports and payment of the tax, including, but not limited to, any records deemed necessary by the town to calculate or confirm proper payment by the home service provider, shall be open for inspection by the town and its duly authorized representatives upon reasonable notice at all reasonable business hours of the home services provider within the statute of limitations period defined in subsection C of this section, "reconciliation".

E. Home Service Provider Duty To Cooperate On Record Inspection:

1. In order to facilitate any record inspection, the home service provider shall, upon thirty (30) days' prior written request:

a. Grant the town or its duly authorized representatives reasonable access to those portions of the books and records of the home service provider necessary to calculate and confirm property payment of the tax; or

b. Provide the town or its duly authorized representatives with reports containing or based on information necessary to calculate and confirm proper payment of the tax.

2. Any requests for such books, records, reports or portions thereof shall specify in writing the purpose for such request. Any books, records, reports or portions thereof provided by the home service provider to the town under a claim that such documents are confidential business records are hereby designated as "protected records" and shall not be copied or disclosed by the town to third parties without the written permission of the home service provider, unless such documents are determined by a court of law to constitute "public records" within the meaning of the Utah government records access and management act. (Ord. 00-007, 11-28-2000, eff. 1-1-2001)

2-8-4: ELECTRONIC DATABASE OR ENHANCED ZIP CODE LISTING:

A. Electronic Database:

1. Provision Of Database: The state may provide an electronic database to a home service provider; or, if the state does not provide such an electronic database, the designated database provider may choose to provide an electronic database to a home service provider.

2. Format:
   a. Such electronic database, whether provided by the state or the designated database provider, shall be provided in a format approved by the American National Standards Institute's accredited standards committee X12, which, allowing for de minimis deviations, designates for each street address in the town, including, to the extent practicable, any multiple postal street addresses applicable to one street location, the appropriate taxing jurisdictions, and the appropriate code identified by one nationwide standard numeric code.

   b. Such electronic database shall also provide the appropriate code for each street address with respect to political subdivisions that are not taxing jurisdictions when reasonably needed to determine the proper taxing jurisdiction.

   c. The nationwide standard numeric codes shall contain the same number of numeric digits, with each digit or combination of digits referring to the same level of taxing jurisdiction throughout the United States, using a format similar to FIPS 55-3 or other appropriate standard approved by the federation of tax administrators and the multistate tax commission, or their successors. Each address shall be provided in standard postal format.

B. Notice; Updates: The state or designated database provider that provides or maintains an electronic database described above shall provide notice of the availability of the then current electronic database and any subsequent revisions thereof, by publication in the manner normally employed for the publication of informational tax, charge or fee notices to taxpayers in such state.

C. User Held Harmless: A home service provider using the data contained in an electronic database described above shall be held harmless from any tax, charge or fee liability that otherwise would be due solely as a result of any error or omission in such database provided by the town or designated database provider. The home service provider shall reflect the changes made to such database during a calendar quarter, no later than thirty (30) days after the end of such calendar quarter the state has issued notice of the availability of an electronic database reflecting such changes under subsection B of this section, "notice; updates".

D. Procedure If No Electronic Database Provided:

1. Safe Harbor: If neither the state nor the designated database provider provides an electronic database, a home service provider shall be held harmless from any tax, charge or fee liability in the town that otherwise would be due solely as a result of an assignment of a street address to an incorrect taxing jurisdiction, if the home service provider employs an enhanced zip code to assign each street address to a specific taxing jurisdiction and exercises due diligence to ensure that each such street address is assigned to the correct taxing jurisdiction. If an enhanced zip code overlaps boundaries of taxing jurisdictions of the same level, the home service provider must designate one specific jurisdiction within such enhanced zip code for use in taxing the activity for such enhanced zip code. Any enhanced zip code assignment changed is deemed to be in compliance with this section. For purposes of this section, there is a rebuttable presumption that a home service provider has exercised due diligence if the home service provider demonstrates that it has:

   a. Expended reasonable resources to implement and maintain an appropriately detailed electronic database of street address assignments to taxing jurisdictions;

   b. Implemented and maintained reasonable internal controls to promptly correct misassignments of street addresses to taxing jurisdictions; and

   c. Used all reasonably obtainable and usable data pertaining to municipal annexations, incorporations, reorganizations, and any other changes in jurisdictional boundaries that materially affect the accuracy of such database.

2. Termination Of Safe Harbor: Subsection D1 of this section, "safe harbor", applies to a home service provider that is in compliance with the requirements of the "safe harbor" subsection with respect to a state for which an electronic database is not provided, until the later of:

   a. Eighteen (18) months after the nationwide standard numeric code has been approved by the federation of tax administrators and the multistate tax commission; or

   b. Six (6) months after the state or a designated database provider in the state provides such database. (Ord. 00-007, 11-28-2000, eff. 1-1-2001)

2-8-5: PLACE OF PRIMARY USE:

A. A home service provider is responsible for obtaining and maintaining the customer's place of primary use, subject to section 2-8-4 of this chapter, and if the home service provider's reliance on information by its customer is in good faith, a home service provider:

1. May rely upon the applicable residential or business street address supplied by the home service provider's customer.

2. Is not liable for any additional taxes, charges or fees based on a different determination of the place of primary use for taxes, charge or fees that are customarily passed on to the customer as a separate address under existing agreements.

B. A home service provider may treat the address used by the home service provider for tax purposes for any customer under a service contract or agreement in effect two (2) years after the date of this amendment to this chapter as that customer's place of primary use for the remaining term of such service contract or agreement, excluding any extension or renewal of such service contract or agreement, for purposes of determining the taxing jurisdiction to which taxes, charges or fees on charges for mobile telecommunication services are remitted. (Ord. 00-007, 11-28-2000, eff. 1-1-2001)

2-8-6: TAX AGAINST CUSTOMER:

Each customer shall accurately report the customer's place of primary use. The customer shall be liable for any taxes not paid by the home service provider as a result of the customer's failure to accurately report the customer's place of primary use. (Ord. 00-007, 11-28-2000, eff. 1-1-2001)

2-8-7: NONAPPLICATION:

This chapter does not apply to the determination of the taxing situs of:

A. Prepaid telephone calling services; or

B. Air-ground radio telephone service, as defined in section 22.99 of title 47 of the code of federal regulations as in effect on June 1, 1999. (Ord. 00-007, 11-28-2000, eff. 1-1-2001)

2-8-8: IMPLEMENTATION DATE:

If this chapter is adopted before January 1, 2001, a home service provider shall have a minimum of thirty (30) days' notice before being obligated to collect the tax described in this chapter. After January 1, 2001, a home service provider shall have a minimum of sixty (60) days' notice before being obligated to collect the tax described in this chapter. After January 1, 2001, a home service provider shall receive a minimum of sixty (60) days' notice regarding any changes to this chapter. (Ord. 00-007, 11-28-2000, eff. 1-1-2001)

2-8-9: SEVERABILITY:

If the monthly tax levied, section 2-8-2 of this chapter, is for any reason determined to be, or is rendered, illegal, invalid or superseded by other lawful authority, including any state or federal, legislative, regulatory or administrative authority having jurisdiction thereof, or determined to be unconstitutional, illegal or invalid by any court of competent jurisdiction, such section shall be deemed a separate, distinct and independent provision, and such determination shall have no effect on the validity of any other section; provided, however, upon such event and in lieu of such tax, there is levied upon every home service provider a tax equal to six percent (6%) of the annual gross revenue of the home service provider generated from services and products to customers. (Ord. 00-007, 11-28-2000, eff. 1-1-2001)

Chapter 9

TELECOMMUNICATIONS SERVICE PROVIDERS TAX

2-9-1: DEFINITIONS:

As used in this chapter:

COMMISSION: The state tax commission.

CUSTOMER:

A. The person who is obligated under a contract with a telecommunications provider to pay for telecommunications service received under the contract.

B. For purposes of this chapter, "customer" means:

1. The person who is obligated under a contract with a telecommunications provider to pay for telecommunications service received under the contract; or

2. If the end user is not the person described in subsection B1 of this definition, the end user of the telecommunications service.

C. "Customer" does not include a reseller:

1. Of telecommunications service; or

2. For mobile telecommunications service, of a serving carrier under an agreement to serve the customer outside the telecommunications provider's licensed service area.

END USER: The person who uses a telecommunications service. 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.

GROSS RECEIPTS ATTRIBUTED TO THE TOWN: Those gross receipts from a transaction for telecommunications services that is located within the town for purposes of sales and use taxes under Utah Code Annotated title 59, chapter 12, the sales and use tax act, and determined in accordance with Utah Code Annotated section 59-12-207.

GROSS RECEIPTS FROM TELECOMMUNICATIONS SERVICE: The revenue that a telecommunications provider receives for telecommunications service rendered, except for amounts collected or paid as:

A. A tax, fee or charge:

1. Imposed by a governmental entity;

2. Separately identified as a tax, fee or charge in the transaction with the customer for the telecommunications service; and

3. Imposed only on a telecommunications provider;

B. Sales and use taxes collected by the telecommunications provider from a customer under Utah Code Annotated title 59, chapter 12, the sales and use tax act; or

C. Interest, a fee, or a charge that is charged by a telecommunications provider on a customer for failure to pay for telecommunications service when payment is due.

MOBILE TELECOMMUNICATIONS SERVICE: Is as defined in the mobile telecommunications sourcing act, 4 USC section 124.

PLACE OF PRIMARY USE:

A. For telecommunications service, other than mobile telecommunications service, means the street address representative of where the customer's use of the telecommunications service primarily occurs, which shall be:

1. The residential street address of the customer; or

2. The primary business street address of the customer; or

B. For mobile telecommunications service, is as defined in the mobile telecommunications sourcing act, 4 USC section 124.

SERVICE ADDRESS: Notwithstanding where a call is billed or paid, means:

A. If the location described in subsection A of this definition is known, the location of the telecommunications equipment:

1. To which a call is charged; and

2. From which the call originates or terminates;

B. If the location described in subsection A of this definition is not known but the location described in subsection B of this definition is known, the location of the origination point of the signal of the telecommunications service first identified by:

1. The telecommunications system of the telecommunications provider; or

2. If the system used to transport the signal is not a system of the telecommunications provider, information received by the telecommunications provider from its service provider; or

C. If the locations described in subsections A or B of this definition are not known, the location of a customer's place of primary use.

TELECOMMUNICATIONS PROVIDER:

A. A person that:

1. Owns, controls, operates or manages a telecommunications service; or

2. Engages in an activity described in subsection (10)(a) for the shared use with or resale to any person of the telecommunications service.

B. A person described in subsection A of this definition is a telecommunications provider whether or not the public service commission of Utah regulates:

1. That person; or

2. The telecommunications service that the person owns, controls, operates or manages.

C. "Telecommunications provider" does not include an aggregator as defined in Utah Code Annotated section 54-8b-2.

TELECOMMUNICATIONS SERVICE:

A. "Telephone service", as defined in Utah Code Annotated section 59-12-102, other than mobile telecommunications service, that originates and terminates within the boundaries of this state; and

B. "Mobile telecommunications service", as defined in Utah Code Annotated section 59-12-102:

1. That originates and terminates within the boundaries of one state; and
2. Only to the extent permitted by the mobile telecommunications sourcing act, 4 USC section 116 et seq.

TOWN: Brian Head Town, Utah. (Ord. 04-002, 6-29-2004)

2-9-2: LEVY OF TAX:

There is hereby levied a municipal telecommunications license tax on the gross receipts from telecommunications service attributed to the town. (Ord. 04-002, 6-29-2004)

2-9-3: RATE:

The rate of the tax levy shall be four percent (4%) of the telecommunication provider's gross receipts from telecommunications service a transaction is determined to be other than this town, then the rate imposed on the gross receipts for telecommunications services shall be determined pursuant to the provisions of Utah Code Annotated section 10-1-407. (Ord. 04-002, 6-29-2004)

2-9-4: RATE LIMITATION AND EXEMPTION:

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

A. A municipal general election;

B. A regular general election; or

C. A local special election. (Ord. 04-002, 6-29-2004)

2-9-5: EFFECTIVE DATE OF TAX LEVY:

This tax shall be levied beginning July 1, 2004. (Ord. 04-002, 6-29-2004)

2-9-6: TAXES ERRONEOUSLY RECOVERED:

Pursuant to the provisions of Utah Code Annotated section 10-1-408, a customer may not bring a cause of action against a telecommunications provide on the basis that the telecommunications provider erroneously recovered from the customer the municipal telecommunication license tax, except as provided in Utah Code Annotated section 10-1-408. (Ord. 04-002, 6-29-2004)

2-9-7: CHANGES IN RATE OR REPEAL OF TAX:

This chapter is subject to the requirements of Utah Code Annotated section 10-1-401. If the tax rate is changed or the tax is repealed, then the appropriate notice shall be given as provided in Utah Code Annotated section 10-1-403. (Ord. 04-002, 6-29-2004)

2-9-8: INTERLOCAL AGREEMENT FOR COLLECTION:

On or before the effective date hereof, the town shall enter into a uniform interlocal agreement with the state tax commission, as described in Utah Code Annotated section 10-1-405, for the collection, enforcement and administration of this municipal telecommunications license tax. (Ord. 04-002, 6-29-2004)

2-9-9: REPEAL OF INCONSISTENT TAXES AND FEES:

A. Any tax or fee previously enacted by the town under authority of Utah Code Annotated section 10-1-203, or title 11, chapter 26, local taxation of utilities limitation, is hereby repealed.

B. Nothing in this chapter shall be interpreted to repeal any town ordinance or fee which provides that the town may recover from a telecommunications provider the management costs of the town caused by the activities of the telecommunications provider in the rights of way of the town, if the fee is imposed in accordance with Utah Code Annotated section 72-7-102, and is not related to the town's loss of 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 chapter limit the town's right to charge fees or taxes on persons that are not subject to the municipal telecommunications license tax under this chapter and locate "telecommunication facilities", as defined in Utah Code Annotated section 72-7-108, in the town. (Ord. 04-002, 6-29-2004)

Chapter 10
IMPACT FEES

ARTICLE A. TRANSPORTATION AND PARKS AND RECREATION SERVICES IMPACT FEES

2-10A-1: PURPOSE:

This impact fee policy is promulgated pursuant to the requirements of the impact fees act, Utah Code Annotated section 11-36-101 et seq. (the "act"). (Ord. 99-001, 3-23-1999)

2-10A-2: DEFINITIONS:

Words and phrases that are defined in the act shall have the same definition in this impact fee policy. The following words and phrases shall have the following meanings:

CAPITAL FACILITIES PLAN: The plan required by Utah Code Annotated section 11-36-201 of the act. In section 11-36-201(2)(e), there is an exception to the capital facilities plan for towns of five thousand (5,000) or less in population, based on the latest census. The town does meet this exception; therefore, the town has completed a limited scope capital facility plan, adopted in October 1998 (exhibit A attached to ordinance 99-001, "Capital Facility Plan").

DEVELOPMENT ACTIVITY: Any construction or expansion of a building, structure or use, any change in the use of a building or structure, or any change in the use of land that creates additional demand and need for public facilities.

DEVELOPMENT APPROVAL: Any written authorization from the town that authorizes the commencement of development activity, including, but not limited to, line extension agreements (LEAs).

HOOKUP FEES: Reasonable fees, not in excess of the approximate average costs to the town for services provided for and directly attributable to the connection to services provided by the town.

IMPACT FEE: A payment of money imposed upon development activity as a condition of development approval. “impact fee” includes development impact fees, but does not include a tax, a special assessment, a hookup fee, a building permit fee, a fee for project improvements, or other reasonable permit or application fees.

MUNICIPALITY: A local political subdivision of the state of Utah and herein shall mean Brian Head Town or "town".

PROJECT IMPROVEMENTS: Site improvements and facilities that are planned and designed to provide service for development resulting from a development activity and are necessary for the use and convenience of the occupant or users of development resulting from a development activity. "Project improvements" do not include "system improvements", as defined in this section.

PROPORTIONATE SHARE OF THE COST OF PUBLIC FACILITY IMPROVEMENTS: An amount that is roughly proportionate and reasonably related to the service demands and needs of a development activity.

PUBLIC FACILITIES: Transportation improvements, and parks and recreation facility improvements of the town.

SERVICE AREA: Refers to a geographic area designated by the town based on sound planning or engineering principles in which a defined set of the town's public facilities provides service. The "service area", for purposes of this transportation and parks and recreation impact fee policy, includes all of the area within the jurisdictional boundaries of the town.

SYSTEM IMPROVEMENTS: Refer both to existing public facilities designed to provide services to service areas within the town at large and to future public facilities identified in reasonable plans for capital improvements adopted by the town that are intended to provide service to service areas within the town at large. "System improvements" do not include "project improvements", as defined in this section. (Ord. 99-001, 3-23-1999; amd. 2010 Code)

2-10A-3: IMPACT FEE CALCULATIONS:

A. Ordinance Enacting Impact Fees: The town council will, by this article, approve an impact fee in accordance with the impact fee analysis set forth in exhibit B attached to ordinance 99-001, "Impact Fee Study", for transportation, and parks and recreation facilities.

   1. Elements: In calculating the impact fee, the town may include the construction contract price, land acquisition costs, costs of improvements, material costs, the cost of fixtures, fees for planning, surveying and engineering services provided for and directly related to the construction of system improvements, and debt service charges if the town might use impact fees as revenue stream to pay principal and interest on bonds or other obligations to finance the cost of system improvements.

   2. Notice And Hearing: Before adopting the ordinance, the town shall follow the notice and hearing requirements of Utah Code Annotated section 11-36-202(1)(F).

   3. Contents Of Ordinance: The ordinance adopting or modifying an impact fee will contain such detail and elements as deemed appropriate by the town council, including a

designation of the service area or service areas within which the impact fee is to be calculated and imposed. The ordinance will include: a) a schedule of impact fees to be imposed for each type of system improvement; or b) the formula to be used by the town in calculating each impact fee, or both. A copy of this requirement is included in exhibit B attached to ordinance 99-001, "Impact Fee Study".

4. Adjustments: The standard impact fee may be adjusted at the time the fee is charged in response to unusual circumstances or to fairly allocate costs associated with impacts created by a development activity or project. The standard impact fee may also be adjusted to ensure that impact fees are imposed fairly for affordable housing projects, in accordance with the town affordable housing policy, and other development activities with broad public purposes.

5. Previously Incurred Costs: To the extent that the new growth and development will be served by previously constructed improvements, the town impact fee may include public facility costs previously incurred by the town. The costs may include transportation and parks and recreation system improvements constructed with previously issued bonds and/or capital improvement reserve funds; the reimbursable costs under existing and future agreements with the developers for system improvements; and all projects included in the reasonable capital projects plan which are under construction or completed but have not been utilized to their capacity.

B. Developer Credits: A developer may be allowed a credit against impact fees for any dedication of land or improvement to, or new construction of, system improvements provided by the developer provided that: 1) it is identified in the town reasonable capital projects plan; and 2) required by the town as a condition of approving the development activity. Otherwise, no credit may be allowed.

C. Impact Fees Accounting:

1. Accounting, Reporting Requirements: The town shall fallow the accounting and reporting requirements of Utah Code Annotated section 11-36-301. (Ord. 99-001, 3-23-1999; amd. 2010 Code)

2. Impact Fee Expenditures: The town may expend impact fees covered by impact fees policy only for system improvements that are: a) public facilities identified in the town reasonable capital projects plan; and b) of the specific public facility type for which the fee was collected.

3. Time Of Expenditure: Impact fees collected pursuant to the requirements of this impact fees policy are to be either expended, dedicated or encumbered for a permissible use within six (6) years of the receipt of those funds by the town, unless the town council otherwise directs. For purposes of this calculation, the first funds received shall be deemed to be the first funds expended.

4. Extension Of Time: The town may hold previously dedicated or unencumbered fees for longer than six (6) years if it identifies in writing: a) an extraordinary and compelling reason why the fees should be held longer than six (6) years; and b) an absolute date by which the fees will be expended.

D. Refunds: The town shall refund any impact fees paid by a developer, plus interest actually earned, when: 1) the developer does not proceed with the development activity and files a written request for a refund; 2) the fees have not been spent or encumbered; and 3) no impact has resulted. An impact that would preclude a developer from a refund from the town may include any impact reasonably identified by the town, including, but not limited to, the town having sized facilities and/or paid for, installed and/or caused the installation of facilities based, in whole or in part, upon the developer's planned development activity even though that capacity may, at some future time, be utilized by another development.

E. Other Impact Fees: To the extent allowed by law, the town council may negotiate or otherwise impose impact fees and other fees different from those currently charged. Those charges may, in the discretion of the town council, include, but not be limited to, reductions or increases in impact fees, all or part of which may be reimbursed to the developer who installed improvements that service the land to be connected with the town systems.

F. Additional Fees And Costs: The impact fees authorized hereby are separate from and in addition to user fees and offer charges lawfully imposed by the town, such as engineering and inspection fees, and other fees and costs that may not be included as itemized component parts of the impact fee schedule. In charging any such fees as a condition of development approval, the town recognizes that the fees must be a reasonable charge for the service provided.

G. Fees Effective At Time Of Payment: Unless the town is otherwise bound by a contractual requirement, the impact fee shall be determined from the fee schedule in effect at the time of payment in accordance with the provisions of section 2-10A-5 of this article.

H. Imposition Of Additional Fee Or Refund After Development: Should any developer undertake development activities such that the ultimate density or other impact of the development activity is not revealed to the town, either through inadvertence, neglect, a change in plans, or any other cause whatsoever, and/or the impact fee is not initially charged against all units or the total density within the development, the town shall be entitled to charge an additional impact fee to the developer or other appropriate person covering the density for which an impact fee was not previously paid. (Ord. 99-001, 3-23-1999)

2-10A-4: CAPITAL FACILITIES PLAN:

A. Written Analysis: As part of each reasonable capital projects plan, the town shall prepare a written analysis of each impact fee adopted or modified under the requirements of the impact fees policy that identifies the impact on system improvements required by development activity, estimates the proportionate share of the costs of impacts on system improvements that are reasonably related to new development activity and identifies how the impact fee was calculated (impact fee study).

B. Elements: The analysis may contain such elements as deemed relevant by the town. To the extent applicable and available, the analysis will identify the following: 1) the cost of existing facilities; 2) the manner of financing those facilities; 3) the relative extent to which newly developed properties and other properties have already contributed to the cost of existing public facilities; 4) the relative extent to which newly developed properties and other properties will contribute to the cost of existing public facilities in the future; 5) the extent, if

any, to which newly developed properties are entitled to a credit because the town is requiring the developer, by contractual arrangement or otherwise, to provide common facilities inside or outside the proposed development that have been provided by the town and financed through general taxation or other means, apart from user charges, in other parts of the town; 6) any extraordinary costs in servicing the newly developed property; and 7) the time-price differential that may be inherent in comparisons of amounts paid at different times (impact fee study). (Ord. 99-001, 3-23-1999)

2-10A-5: GROSS IMPACT FEE CALCULATIONS AND SCHEDULES:

Impact fee calculations and schedules shall be updated periodically through an updated capital facilities plan and impact fee analysis, and adopted by resolution in the consolidated fee schedule. (Ord. 99-001, 3-23-1999; amd. 2010 Code)

2-10A-6: FEE EXCEPTIONS AND ADJUSTMENTS:

A. The town council may, on a project by project basis, authorize exceptions or adjustments to the then impact fee rate structure for those projects the town council determines to be of such be projects may include facilities being funded by tax supported agencies, affordable housing project or facilities of a temporary nature.

B. Applications for exceptions are to be filed with the town at the time the applicant first requests the extension of service to the applicant's development or property. (Ord. 99-001, 3-23-1999; amd. 2010 Code)

2-10A-7: APPEAL PROCEDURE:

A. Application: The appeal procedure applies both to challenges to the legality of impact fees, to similar and related fees of the town and to the interpretation and/or application of those fees. By way of illustration, in addition to the legality of the impact fee schedule, determinations of the density of a development activity or calculation of the amount of the impact fee due will also be subject to this appeal procedure.

B. Declaratory Judgment Action: Any person or entity residing in or owning property within the town and any organization, association or corporation representing the interests of persons or entities owning property within the town may file a declaratory judgment action challenging the validity of an impact fee only after having first exhausted their administrative remedies of this section.

C. Request For Information Concerning Fee: Any person or entity required to pay an impact fee may file a written request for information concerning the fee with the town. The town will provide the person or entity with the town written impact fee analysis and other relevant information relating to the impact fee within fourteen (14) days after receipt of the request for information.

D. Appeal To Town Before Payment Of Impact Fee: Any affected or potentially affected person or entity who wishes to challenge an impact fee prior to payment thereof may file a written request for information concerning the fee and proceed under the town appeal procedure.

E. Appeal To Town After Payment Of Impact Fee; Statute Of Limitations For Failure To File: Any person or entity who has paid an impact fee and wishes to challenge the fee shall file a written request for information concerning the fee within thirty (30) days after having paid the fee and proceed under the town appeal procedure. If thirty (30) days has passed after payment of the impact fee and a written request for information or challenge has not been filed with the town, the person or entity is barred from filing an appeal with the town or seeking judicial relief.

F. Appeal To Town: Any developer, landowner or affected party desiring to challenge the legality of any impact fee or related fee or exaction may appeal directly to the town council by filing a written challenge with the town; shall affirm, reverse or take action with respect to the challenge or appeal as the town council deems to be appropriate in light of the town policies and procedures and any applicable law, rule or regulation. The decision of the town council may include the establishment or calculation of the impact fee applicable to the development activity at issue; any impact fee set by the town council may include the establishment or calculation of the impact fee applicable to the development activity at issue. Any impact fee set by the town council may be the same as or higher or lower than that being appealed; provided, that it shall not be higher than the maximum allowed under the town lawful impact fee rate or form which is either in existence on the effective date of the act or as promulgated under the impact fees policy, as appropriate. The decision of the town council will be issued within thirty (30) days after the date the written challenge was filed with the town as mandated by Utah Code Annotated section 11-36-401(4)(b). In light of the statutory mandated time restriction, the town shall not be required to provide more than three (3) working days' prior notice of the time, date and location of the informal hearing and the inconvenience of the hearing to the challenging party shall not serve as a basis of appeal of the town's final determination.

G. Denial Due To Passage Of Time: Should the town, for any reason, fail to issue a final decision on a written challenge to an impact fee, its calculation or application, within thirty (30) days after the filing of that challenge with the town, the challenge shall be deemed to have been denied and any affected party to the proceedings may seek appropriate judicial relief from such denial.

H. Judicial Review: Any party to the administrative action who is adversely affected by the town's final decision must petition the district court for a review of the decision within ninety (90) days of a final town decision upholding an impact fee, its calculation or application, or within one hundred twenty (120) days after the written challenge to the impact fee, its calculation or application, was filed with the town, whichever is earlier.

I. Record Of Proceedings: After having been served with a copy of the pleadings initiating the town court review, the town shall submit to the court the record of the proceedings before the town, including minutes, and, if available, a true and correct transcript of any proceedings. If the town is able to provide a record of the proceedings, the town court's review is limited, by Utah Code Annotated section 11-36-401(5)(c), to the record. The court may not accept or consider evidence outside of the record of proceedings before the town unless the evidence was offered to the town and improperly excluded in the proceedings before the town. If the record is inadequate however, the court may call witnesses and take evidence. The court is to affirm the town's decision if the decision is supported by substantial evidence in the record. (Ord. 99-001, 3-23-1999)

2-10A-8: ADMINISTRATIVE PROVISIONS:

A. Interpretation: This impact fee policy has been divided into sections, subsections, paragraphs and clauses for convenience only and the interpretation of this impact fee policy shall not be affected by such division or by any heading contained herein.

B. Effective Date: Except as otherwise specifically provided herein, this impact fee policy shall not repeal, modify or effect any impact fee of the town in existence as of the effective date hereof. All impact fees established, including amendments and modifications to previously existing impact fees, after the effective date hereof, shall comply with the requirements of this impact fee policy. (Ord. 99-001, 3-23-1999)

Chapter 10

ARTICLE B. FIRE IMPACT FEES

2-10B-1: IMPOSED:

A fire impact fee shall be imposed on all new residential and commercial buildings as determined by resolution of the town council. (1984 Code § 14-2-12)

2-10B-2: APPLICABILITY:

A. Residential: "Residential" fees shall be applicable to all residential buildings, including, but limited to, condominiums, townhouses, cabins and homes.

B. Commercial: "Commercial" fees shall be applicable to all other commercial facilities, including, but not limited to, malls, restaurants, stores, motels, hotels, and gas stations. (1984 Code § 14-2-12)

2-10B-3: USE OF FUNDS:

The funds collected from the fire impact fee shall be used at the discretion of the Town Council for the prevention and suppression of fire within and around the town limits, as well as in any necessary fire related capital equipment or capital improvement investment. (1984 Code § 14-2-12)

Chapter 10

ARTICLE C. WASTEWATER IMPACT FEES

2-10C-1: PURPOSE:

The purpose of this article is to regulate the use and development of land through impact fees so as to assure that new development bears an equitable and proportionate share of the cost of increasing the wastewater facilities necessitated and generated by such development, and to assist in the implementation of the general plan of the town. The intent of this article is to comply with the impact fee act, the Utah constitution, and the United States constitution. (Ord. 04-006(B), 10-27-2004)

2-10C-2: DEFINITIONS:

BUILDING PERMIT: A permit from the town for the construction of any structure or building.

CAPITAL FACILITIES PLAN: A plan required by Utah Code Annotated section 11-36-201, which is satisfied by adoption of the reports as a "reasonable plan" in lieu of a capital facilities plan as allowed because the town has a population of five thousand (5,000) or less based on the last census.

DEVELOPMENT ACTIVITY: Any construction or expansion of a building, structure or use, any change in use of a building or structure, or any change in the use of land that creates additional demand and need for water or wastewater facilities.

FEE PAYER: A person who seeks to develop land which uses water and requires the issuance of a building permit.

PERSON: An individual, a corporation, a partnership, an incorporated association, a limited liability company, or any other similar entity.

PROPORTIONATE SHARE: The cost of public facility improvements that are roughly proportionate and reasonably related to the service demands and needs of any development activity.

PUBILC WORKS DIRECTOR: The Public Works Director of Brian Head Town, or his designee.

TOWN MANAGER: The Town Manager of Brian Head Town, or his designee.

WASTEWATER FACILITIES: The town wastewater infrastructure systems, including, but not limited to, water treatment facilities, sewer lines and pipes, storage facilities, ditches, easements and rights of way, and all associated real property, structures and equipment used in connection with the town wastewater systems. "Wastewater facilities" does not mean water rights.

WASTEWATER IMPACT FEE: A payment of money imposed upon development activity as a condition of development approval to be used for the purpose of constructing and upgrading wastewater facilities necessitated by development activity. "Wastewater impact fee" does not mean a tax, a special assessment, a building permit fee, a hookup fee, a fee for project improvements, or other permits or application fee.

WATER METER: A device that measures the flow of water to a specific lot, parcel, structure, business or dwelling. "Water meter" does not mean a fire meter where the water passes through the meter only when there is a fire or immediate threat of fire to the structure or property serviced by the meter. (Ord. 04-006(B), 10-27-2004)

2-10C-3: IMPOSITION OF WASTEWATER IMPACT FEE:

A. Any person who, after the effective date hereof, seeks to develop land in the town by making improvements to the land which will generate additional water use is hereby required to pay a wastewater impact fee in the manner and amounts set forth in this article. The fees shall be paid at the time of the building permit application. The amount of the wastewater impact fee shall be as set forth in the town schedule of fees and charges. The amount of the wastewater impact fee may be modified at any time by resolution of the Town Council. The amount of the wastewater impact fee shall be no more than that justified by the capital facilities plan for wastewater. (Ord. 04-006(B), 10-27-2004; amd. 2010 Code)

B. No building permit shall be issued by the town unless or until the wastewater impact fee required by this article has been paid.

C. The following shall be exempted from payment of the wastewater impact fee:

    1. Alterations or expansion of an existing residential building where no additional residential units are created and where no additional wastewater demand is added.

    2. The construction of accessory buildings or structures where no additional wastewater demand is added.

3. The replacement of a destroyed or partially destroyed building or structure with a new building or structure where no additional wastewater demand is added.

4. Alterations or expansion of an existing commercial or manufacturing building not increasing the equivalent residential units of wastewater generated by such building.

D. Any claim or exemption must be made no later than the time of application for a building permit or permit for mobile home installation. Any claim not so made shall be deemed waived. (Ord. 04-006(B), 10-27-2004)

2-10C-4: COMPUTATION OF AMOUNT OF WASTEWATER IMPACT FEE:

A. At the option of the fee payer, the amount of the wastewater impact fee shall be determined as established in section 2-10C-3 of this article, or as set forth in subsection B of this section.

B. If a fee payer opts not to pay the wastewater impact fee as established in section 2-10C-3 of this article, the fee payer shall pay the wastewater impact fee as determined under this subsection. The fee payer shall prepare and submit to the Public Works Director an independent fee calculation study for the land development activity for which the building permit is sought. The cost of the independent fee calculation shall be borne by the fee payer. The independent fee calculation study shall follow accepted professional hydro-engineering methodologies as approved by the Public Works Director. The independent study submitted shall show the basis upon which the independent fee calculation was made. If the public works director determines that the independent fee calculation study provides a more accurate and equitable basis upon which to calculate the wastewater impact fee, then the amount of the fee set forth in the independent fee calculation study shall be the fee that the fee payer is required to pay under this article. Any fees imposed under this article which are modified pursuant to an independent fee calculation as provided herein shall apply only to the fee payer who prepared and submitted the independent fee calculation.

C. If the fee payer opts to have the wastewater impact fee determined according to subsection B of this section, and the public works director has approved the fee as determined in the independent fee calculation, the fee payer may not then choose to pay the fee under subsection A of this section. (Ord. 04-006(B), 10-27-2004)

2-10C-5: USE OF FUNDS:

A. There is hereby established a separate interest bearing ledger account for the deposit of wastewater impact fees collected pursuant to this article.

B. Funds collected pursuant to the wastewater impact fee shall be deposited in such account and shall only be used by the town to construct and upgrade wastewater facilities, which are identified in the capital facilities plan.

C. Interest earned on such account shall be retained therein and annually the town shall prepare a report regarding it.

D. Funds may be used to provide refunds as described in section 2-10C-8 of this article.

E. A separate administrative charge may be established for impact assessment reviews for the purpose of recovering the governmental costs associated with preparing, reviewing, assessing, collecting and administering this article. (Ord. 04-006(B), 10-27-2004)

2-10C-6: SERVICE AREA:

Based upon the geographic size and the interconnection of the wastewater service of the town, there is hereby established a single wastewater impact fee service area comprising the corporate limits of the town. (Ord. 04-006(B), 10-27-2004)

2-10C-7: ADJUSTMENT OF FEES:

The Public Works Director may adjust either up or down the standard wastewater impact fee at the time the fee is charged in order to respond to the unusual circumstances in specific cases and to ensure that the fees are imposed fairly. The Public Works Director may also adjust the amount of the fees to be imposed upon a developer if the developer submits studies and data clearly showing that the payment of an adjusted wastewater impact fee is more consistent with the intent and purposes of the article as provided in subsection 2-10C-4B of this article. If the Public Works Director makes an adjustment in the wastewater impact fee imposed, the Public Works Director shall make written findings that support the adjustment. (Ord. 04-006(B), 10-27-2004)

2-10C-8: REFUNDS:

The town shall refund any wastewater impact fees paid by a fee payer when:

A. The fee payer has not proceeded with the development activity;

B. The fee pay has filed a written request with the public works director for a refund within two (2) years after the wastewater impact fee was paid;

C. The fees have not been spent or encumbered; and

D. No impact has resulted. (Ord. 04-006(B), 10-27-2004)

2-10C-9: APPEALS:

A. Any person required to pay a wastewater impact fee who believes the fee does not meet the requirements of law may file a written request for information with the Town Clerk.

B. Within two (2) weeks of the receipt of the request for information, the town shall provide the person or entity with a copy of the reports and with any other relevant information relating to the wastewater impact fee.

C. Any person or entity required to pay an impact fee imposed under this article who believes the fee does not meet the requirements of law may request and be granted a full administrative appeal of that grievance. An appeal shall be made to the Town Manager within thirty (30) calendar days of the date of the action complained of, or of the date when the complaining person reasonably should have become aware of the action.

D. The notice of the administrative appeal to the Town Manager shall be filed with the office of the Town Clerk and shall contain the following information:

1. The person's name, mailing address, and daytime telephone number;

2. A copy of the written request for information and a brief summary of the grounds for appeal;

3. The relief sought.

E. The Town Clerk shall schedule the appeal before the Town Manager no sooner than five (5) and not later than fifteen (15) days from the date of the filing of the appeal. The written decision of the Town Manager shall be made no later than thirty (30) days after the date the challenge to the fee is filed with the town and shall, when necessary, be forwarded to the appropriate town officials for corrective action.

F. Any person who is adversely affected by the Town Manager's decision may appeal to the district court in accordance with Utah Code Annotated section 11-36-401.

G. The provisions of this section notwithstanding, the town and persons participating in the proceeding may, by written stipulation, extend the time periods specified in this section.

H. A person who has failed to comply with the administrative remedies established by this section may not file or join an action challenging the validity of any impact fee.

I. The town shall transmit to the reviewing court the record of its proceedings, including its minutes, findings, order and, if available, a true and correct transcript of its proceedings. (Ord. 04-006(B), 10-27-2004)

Chapter 10 - ARTICLE D.

CULINARY WATER FACILITIES IMPACT FEES

2-10D-1: PURPOSE:

This impact fee article establishes the town culinary water impact fee policies and procedures and repeals certain provisions of prior ordinances related to culinary water impact fees and conforms to the requirements of the Utah impact fees act, Utah Code Annotated Title 11, chapter 36a. This article repeals any prior ordinances related to culinary water impact fees and establishes impact fees for culinary water facilities within the town wide service area, provides a schedule of impact fees for differing types of land use development, and sets forth direction for challenging, modifying and appealing impact fees. (Ord. 09-002, 2-24-2009, eff. 5-25-2009)

2-10D-2: DEFINITIONS:

Words and phrases that are defined in the act shall have the same definition in this impact fee article. The following words and phrases shall have the following meanings:

CAPITAL FACILITIES PLAN: The plan required by Utah Code Annotated section 11-36-201 of the act. In Utah Code Annotated section 11-36-201 (2)(e), there is an exception to the capital facilities plan for cities of five thousand (5,000) or less in population, based on the latest census. Brian Head Town does meet this exception, but has completed a capital facilities plans in accordance with the act and has adopted the capital facilities plan in conjunction with this article.

DEVELOPMENT ACTIVITY: Any construction or expansion of building, structure or use, any change in use of building or structure, or any change in the use of land located within the Brian Head town wide service area that creates additional demand and need for public facilities related to culinary water.

DEVELOPMENT APPROVAL: Any written authorization from the town that authorizes the

commencement of development activity. Typically, development approval would be in the form of a building permit issued by the town building department.

IMPACT FEE: A payment of money imposed upon development activity as a condition of development approval. "Impact fee" includes development impact fees, but is not a tax, a special assessment, a hookup fee, a building permit fee, a fee for project improvements, or other reasonable permit or application fee.

PROJECT IMPROVEMENTS: Site improvements and facilities that are planned and designed to provide service for development resulting from a development activity and are necessary solely for the use and convenience of the occupants or users of said development activity. "Project improvements" do not include "system improvements", as defined in this section.

PROPORTIONATE SHARE OF THE COST OF PUBLIC FACILITY IMPROVEMENTS: An amount that is roughly proportionate and reasonably related to the service demands and needs of a development activity.

PUBLIC FACILITIES: For purposes of this article, culinary water or improvements or facilities of the town for the Brian Head town wide service area.

SERVICE AREA: Refers to a geographic area designated by the town based on sound planning and engineering principles in which a defined set of the town public facilities provides service. For purposes of this article, the Brian Head town wide service area shall have coterminous boundaries with the town. The Brian Head town wide service area is identified in the map attached to ordinance 09-002 (exhibit A: "Map Of The Brian Head Town wide Service Area").

SYSTEM IMPROVEMENTS: Refer both to existing public facilities designed to provide services within the Brian Head town wide service area and to future public facilities identified in the culinary water capital facilities plan adopted by the town that are intended to provide service to the Brian Head town wide service area. "System improvements" do not include "project improvements", as defined in this section.

TOWN: A local political subdivision of the state of Utah and is referred to herein as Brian Head Town. (Ord. 09-002, 2-24-2009, eff. 5-25-2009)

2-10D-3: WRITTEN IMPACT FEE ANALYSIS:

A. Executive Summary: A summary of the findings of the written impact fee analysis that is designed to be understood by a lay person is included in the culinary water impact fee analysis and demonstrates the need for impact fees to be assessed on development activity. The executive summary has been available for public inspection at least fourteen (14) days prior to the adoption of this article.

B. Written Impact Fee Analysis: The town has commissioned the written culinary water impact fee analysis for the culinary water impact fees that identifies the impacts upon the culinary water system and the facilities required by development activity, demonstrates how those impacts on system improvements are reasonably related to development activity, estimates the proportionate share of the costs of impacts on system

improvements that are reasonably related to the development activity, and identifies how the impact fees are calculated. A copy of written culinary water impact fee analysis has been available for public inspection at least fourteen (14) days prior to the adoption of this article.

C. Proportionate Share Analysis: The town has prepared a proportionate share analysis which analyzes whether or not the proportionate share of the costs of future public facilities is reasonably related to new development activity. The proportionate share analysis identifies the costs of existing public facilities, the manner of financing existing public facilities, the relative extent to which new development will contribute to the cost of existing facilities and the extent to which new development is entitled to a credit for payment towards the costs of new facilities from general taxation or other means apart from user charges in other parts of the town. A copy of the proportionate share analysis is included in the written culinary water impact fee analysis and has been available for public inspection at least fourteen (14) days prior to the adoption of this article. (Ord. 09-002, 2-24-2009, eff. 5-25-2009)

2-10D-4: IMPACT FEE CALCULATIONS:

A. Article Enacting Impact Fees: The town council will, by this article, approve impact fees in accordance with the written impact fee analysis.

1. Elements: In calculating the impact fee, the town has included the construction costs, land acquisition costs, costs of improvements, fees for planning, surveying and engineering services provided for and directly related to the construction of system improvements, and outstanding or future debt service charges if the town might use impact fees as a revenue stream to pay principal and interest on bonds or other obligations to finance the cost of system improvements.

2. Notice And Hearing: In conjunction with the approval of this article, the town held a public hearing on February 24, 2008, and made a copy of ordinance 99-002 available to the public, at least fourteen (14) days before the date of the hearing, all in conformity with the requirements of Utah Code Annotated section 10-9-103(2). After the public hearing, the Town Council adopted this impact fee article as presented herein.

3. Contents Of Article: This article adopting or modifying an impact fee contains such detail and elements as deemed appropriate by the town council, including a designation of the town wide service area within which the impact fees are to be calculated and imposed. The town wide service area will be the only service area included in this analysis, with a map defining their boundaries included in exhibit A, "Map Of The Brian Head Town wide Service Area", attached to ordinance 99-002. Ordinance 99-002 includes: a) a schedule of impact fees to be imposed for culinary water; and b) the formula to be used by the town in calculating the impact fee.

4. Adjustments: The standard impact fee may be adjusted at the time the fee is charged in response to unusual circumstances or to fairly allocate costs associated with impacts created by a development activity or project. The standard impact fee may also be adjusted to ensure that impact fees are imposed fairly for affordable housing projects, in accordance with the local government's affordable housing policy, and other

development activities with broad public purposes. The impact fee assessed to a particular development may also be adjusted should the developer supply sufficient written information and/or data to the town showing a discrepancy between the fee being assessed and the actual impact on the system.

5. Previously Incurred Costs: To the extent that new growth and development will be served by previously constructed improvements, the town impact fees may include public facility costs and outstanding bond costs related to the culinary water improvements previously incurred by the town. These costs may include all projects included in the capital facilities plan which are under construction or completed but have not been utilized to their capacity, as evidenced by outstanding debt obligations. Any future debt obligations determined to be necessitated by growth activity will also be included to offset the costs of future capital projects.

B. Developer Credits: A developer may be allowed a credit against impact fees for any dedication or improvement to land or new construction of system improvements provided by the developer; provided that it is 1) identified in the town capital facilities plan; and 2) required by the town as a condition of approving the development activity. Otherwise, no credit may be given.

C. Impact Fees Accounting: The town will establish a separate interest bearing ledge account for the impact fees collected pursuant to this article, and will conform to the accounting requirements provided in the impact fees act. All interest earned on the collection of culinary water impact fees shall accrue to the benefit of the segregated account. Impact fees collected prior to the effective date hereof need not meet the requirements in the subsection.

1. Reporting: At the end of each fiscal year, the town shall prepare a report on each fund or account generally showing the source and amount of all monies collected, earned and received by the fund or account, and each expenditure from the fund or account.

2. Impact Fee Expenditures: The town may expend impact fees covered by the impact fees policy only for system improvements that are: a) public facilities identified in the town capital facilities plan; and b) of the specific public facility type for which the fee was collected. Impact fees will be expended on a first in, first out ("FIFO") basis.

3. Time Of Expenditure: Impact fees collected pursuant to the requirements of this impact fees article are to be expended, dedicated or encumbered for a permissible use within six (6) years of the receipt of those funds by the town, unless the town council directs otherwise. For purposes of this calculation, the first funds received shall be deemed to be the first funds expended.

4. Extension Of Time: The town may hold previously dedicated or unencumbered fees for longer than six (6) years if it identifies in writing: a) an extraordinary and compelling reason why the fees should be held longer than six (6) years; and b) an absolute date by which the fees will be expended.

D. Refunds: The town shall refund any impact fees paid by a developer, plus interest actually earned, when: 1) the developer does not proceed with the development activity and files a written request for a refund; 2) the fees have not been spent or encumbered; and 3) no impact has resulted. An impact that would preclude a developer from a refund from the

town may include any impact reasonably identified by the town, including, but not limited to, the town having sized facilities and/or paid for, installed and/or caused the installation of facilities based in whole or in part upon the developer's planned development activity even though that capacity may, at some future time, be utilized by another development.

E. Other Impact Fees: To the extent allowed by law, the town council may negotiate or otherwise impose impact fees and other fees different from those currently charged. Those charges may, at the discretion of the town council, include, but not be limited to, reductions or increases in impact fees, all or part of which may be reimbursed to the developer who installed improvements that service the land to be connected with the town system.

F. Additional Fees And Costs: The impact fees authorized hereby are separate from and in addition to user fees and other charges lawfully imposed by the town and other fees and costs that may not be included as itemized component parts of the impact fee schedule. In charging any such fees as a condition of development approval, the town recognizes that the fees must be a reasonable charge for the service provided.

G. Fees Effective At Time Of Payment: Unless the town is otherwise bound by a contractual requirement, the impact fee shall be determined from the fee schedule in effect at the time of payment in accordance with the provisions of section 2-10D-6 of this article.

H. Imposition Of Additional Fee Or Refund After Development Activity: Should any developer undertake development activities such that the ultimate density or other impact of the development activity is not revealed to the town, either through inadvertence, neglect, a change in plans, or any other cause whatsoever, and/or the impact fee is not initially charged against all units or the total density within the development, the town shall be entitled to charge an additional impact fee to the developer or other appropriate person covering the density for which an impact fee was not previously paid. (Ord. 09-002, 2-24-2009, eff. 5-25-2009)

2-10D-5: CAPITAL FACILITIES PLAN:

The town has developed a culinary water capital facilities plan for the town culinary water system. The culinary water capital facilities plan has been prepared based on reasonable growth assumptions for the town wide service area, and analyzes the general demand characteristics of current and future users of each system. Furthermore, the capital facilities plan identifies the impact on system improvements created by development activity and estimates the proportionate share of the costs of impacts on system improvements that are reasonably related to new development activity. (Ord. 09-002, 2-24-2009, eff. 5-25-2009)

2-10D-6: IMPACT FEE SCHEDULE AND FORMULA[1]:

A. Maximum Supportable Impact Fees:

1. The fee schedule included herein represents the maximum impact fees which the town may impose on development within the defined townwide service area and are based upon general demand characteristics and potential demand that can be created by

each class of user. The town reserves the right under the impact fees act, Utah Code Annotated section 11-36-202(2)(c),(d), to assess an adjusted fee to respond to unusual circumstances to ensure that fees are equitably assessed.

2. This adjustment may result in a higher impact fee if the town determines that a user would create a greater than normal impact on any of the systems. The town may also decrease the impact fee if the developer can provide documentation that the proposed impact will be less than what could be expected, given the type of user (Utah Code Annotated section 11-36-202(3)(a)).

B. Actual Impact Fee Determination: The town is seeking funding from various sources which may or may not include grant monies. The town is not able to recoup costs of capital facilities paid through federal grants, but can do so for the loan portion only. The actual impact fee will be set at or below the following recommended maximum impact fee prior to the effective date hereof and will be listed on the town consolidated fee schedule before May 25, 2009, which is the effective date of this article.

RECOMMENDED MAXIMUM CULINARY WATER IMPACT FEES

	Fee Per ERC
Maximum culinary water impact fee	$13,593.94

FORMULA FOR CALCULATING CULINARY WATER IMPACT FEES

Type Of Unit	Conversion Factor
Single-family	1 ERC
Condo unit	1 ERC
All other	Per actual fixture unit calculations[1]

Note:
1.One ERC is equivalent to 24 water fixture units as calculated in table 604.3 of the 2006 international plumbing code, and 20 drainage fixture units as calculated in table 709.1 of the 2006 international plumbing code.

(Ord. 09-002, 2-24-2009, eff. 5-25-2009)

2-10D-7: FEE EXCEPTIONS AND ADJUSTMENTS:

A. The Town Council may, on a project by project basis, authorize exceptions or adjustments to the impact fees due from development for those projects the Town Council determines to be of such benefit to the community as a whole to justify the exception or adjustment. Such projects may include facilities being funded by tax supported agencies, affordable

housing projects, or facilities of a temporary nature. The Town Council may elect to waive or adjust impact fees in consideration of economic benefits to be received from the developer's activity.

B. Applications for exceptions are to be filed with the town at the time the applicant first requests the extension of service to the applicant's development or property. (Ord. 09-002, 2-24-2009, eff. 5-25-2009)

2-10D-8: APPEAL PROCEDURE:

A. Any person or entity that has paid an impact fee pursuant to this article may challenge the impact fee by filing:

1. An appeal to the town pursuant to subsections B, C and D of this section;

2. A request for arbitration as provided in Utah Code Annotated section 11-36-402(1), as amended; or

3. An action in state district court as provided in Utah Code Annotated section 11-36-401(4)(c)(iii), as amended.

B. Application: Any person or entity that has paid an impact fee pursuant to this article may challenge or appeal the impact fee by filing a written notice of appeal with the town council within thirty (30) days of the date that the fee was paid.

C. Hearing: Upon receiving the written notice of appeal, the town shall set a hearing date to consider the merits of the challenge or appeal. The person or entity challenging or appealing the fee may appear at the hearing and present any written or oral evidence deemed relevant to the challenge or appeal. Representatives of the town may also appear and present evidence to support the imposition of the fee.

D. Decision: The hearing panel, which shall consist of the Town Council or such other body as the town shall designate, shall hold a hearing and make a decision within thirty (30) days after the date the challenge or appeal is filed. (Ord. 09-002, 2-24-2009, eff. 5-25-2009)

2-10D-9: ADMINISTRATIVE PROVISIONS:

A. Interpretation: This impact fee article has been divided into sections, subsections, paragraphs and clauses for convenience only and the interpretation of this impact fee article shall not be affected by such division or by any heading contained herein.

B. Effective Date: Except as otherwise specifically provided herein, this impact fee article shall not repeal, modify or affect any impact fee of the town in existence as of the effective date hereof, other than those expressly referenced in section 2-10D-1 of this article. All impact fees established, including amendments and modifications to previously existing

impact fees, after the effective date hereof, shall comply with the requirements of this impact fee article. (Ord. 09-002, 2-24-2009, eff. 5-25-2009)

Footnote 1: Fees included in this section are the maximum supportable impact fees which can be assessed. Adjustment to these fees may be made with adequate documentation from the developer that the true impact differs from that shown.

Chapter 11

RETAIL BUSINESS LICENSE FEES

2-11-1: FINDINGS:

A. Pursuant to Utah Code Annotated section 10-1-203(5), the Town Council finds that the basic level of municipal services in the town does not include public transportation of any sort. This would include buses, shuttles or trams of any type.

B. The Town Council further finds that the cost of providing such a shuttle service constitutes disproportionate costs which are caused by the increasing demand of retail business customers for these municipal services; and further finds that the disproportionate cost of the enhanced service is approximately eighty two thousand dollars ($82,000.00) per year for public transportation services.

C. The basic level of municipal snow removal services in the town are those snow removal services provided up until the 1995-1996 winter season, and entailed two (2) part time personnel, and one piece of snow removal equipment at a cost of thirty nine thousand dollars ($39,000.00) as of fiscal year ending 1996. The Town Council further finds that the costs of providing the enhanced snow removal services contemplated herein constitute disproportionate costs caused by the increasing demand of retail business customers for these municipal services. (Ord. 97-007, 12-9-1997)

2-11-2: ENHANCED LEVEL OF SNOW REMOVAL SERVICES DEFINED:

For purposes of this chapter, the "enhanced level of snow removal services" provided under this chapter, is hereby defined as to be provided by three (3) full time personnel, and four (4) part time personnel, utilizing five (5) pieces of assorted snow removal equipment at an annual cost of forty three thousand dollars ($43,000.00) over and above the basic cost of thirty nine thousand dollars ($39,000.00). (Ord. 97-007, 12-9-1997)

2-11-3: FEE IMPOSED:

A fee shall be paid on or before the thirtieth day of each month immediately following the end of each quarter in an amount of one and one-half percent (1.50%) of every retail sale of tangible personal property made within the town. (Ord. 97-007, 12-9-1997)

2-11-4: EFFECTIVE DATE:

This chapter shall become effective January 1, 1998, and the increased retail business license fees shall be levied beginning at one minute after twelve o'clock (12:01) A.M., January 1, 1998. (Ord. 97-007, 12-9-1997)

Chapter 12

HAZARDOUS MATERIALS EMERGENCY RESPONSE EXPENSE RECOVERY

2-12-1: DEFINITIONS:

For the purpose of this chapter, the following terms, phrases and words shall have the following meanings:

EXPENSES: All costs incurred for the response, containment and/or removal and disposal of hazardous materials on initial remedial action. It includes, but is not necessarily limited to, the actual labor costs of government and other personnel, including workers' compensation benefits, fringe benefits, administrative overhead, and any costs of equipment, equipment operation, materials, disposal and any contract labor or materials.

HAZARDOUS MATERIALS EMERGENCY: A sudden and unexpected release of any substance that, because of its quantity, concentration or physical, chemical or infectious characteristics, presents a direct and immediate action to mitigate the threat. (Ord. 03-004, 6-24-2003)

2-12-2: RECOVERY OF EXPENSES:

A. Authority: Those persons or entities whose negligent or intentional actions cause or create, in whole or in part, a hazardous materials emergency within the boundaries of the town are liable to the town for all costs and expenses incurred in or arising from response to such hazardous materials emergency by the town and any other political subdivision, agency or cooperative entity. The town shall recover all such costs and expenses, including reasonable attorney fees, litigation expenses and court costs incurred in, related to or arising out of, all cost recovery efforts and enforcement of the terms of this chapter.

B. Rate: All costs and expenses shall be billed at the current rate established and admission of liability or negligence in any legal action for damages. (Ord. 03-004, 6-24-2003)

2-12-3: COST RECOVERY PROCEDURE:

A. Investigation And Notice: The town shall investigate and determine the person or entity responsible for causing or creating the hazardous materials emergency and shall notify the responsible party in writing of said determination of responsibility and the amount of costs and expenses incurred by the town in responding to the hazardous materials emergency.

B. Notice Of Right To Appeal: The notice required by subsection A of this section shall specify that the party determined to be responsible for causing or creating the hazardous materials emergency has the right to appeal the decision determining responsibility to the governing body of the town and shall specify a deadline for filing the notice of appeal and the person or office in which it must be filed. The deadline for filing the notice of appeal shall not be less than fifteen (15) days from the date of the notice.

C. Hearing: In the event a notice of appeal is filed, the hearing before the governing body shall be an informal public hearing, and the parties shall not be required to adhere to the Utah rules of civil procedure or evidence. The appealing party and the town shall each be entitled to present evidence and argument in support of their respective positions, in accordance with procedures established at the hearing by the governing body.

D. Final Decision: The decision of the governing body shall be final. (Ord. 03-004, 6-24-2003)

2-12-4: ACTION TO RECOVER COSTS:

In the event the responsible party fails or refuses to pay all of the costs and expenses determined by the town related to or arising out of the town's response to the hazardous materials emergency within thirty (30) days after assessment or after the governing body's decision on an appeal, the town may initiate a legal action to recover such costs, including reasonable attorney fees and costs. (Ord. 03-004, 6-24-2003)

2-12-5: EXPENSES OF OTHER RESPONDING ENTITIES:

A. Recovery: In the event that personnel and equipment from other political subdivisions, agencies or cooperative entities shall respond to assist with the hazardous materials emergency, then the town shall recover costs and expenses incurred by such other political subdivisions, agencies or cooperative entities as part of the town's cost recovery efforts.

B. Reimbursement: Upon recovery of costs and expenses from the responsible party, the town is authorized to reimburse such other political subdivisions, agencies or cooperative entities for their actual costs incurred in responding to the hazardous materials emergency. (Ord. 03-004, 6-24-2003)

Chapter 13

PARKS AND RECREATION FACILITIES TAX

2-13-1: PARKS AND RECREATION FACILITIES TAX:

A. Under Utah Code Annotated section 59-12-1402(5)(b), the enactment of the PAR tax shall become effective on the first day of a calendar quarter, and after a ninety (90) day period beginning on the date the tax commission received due notice from the town, namely April 1, 2006; and

B. Distribution of the entire amount of revenues generated by the PAR tax shall be made to the town. (Ord. 06-001, 3-28-2006; amd. 2010 Code)

C. Under Utah Code Annotated section 59-12-1402(4)(b)(ii), the reauthorization of the .1% PAR tax shall continue for additional ten years beginning January 01, 2015 until December 31, 2025 at which time the question will be put to the registered voters of Brian Head town. (amd Ord. 14-009, 11-25, 2014).

Chapter 14

MUNICIPAL TRANSIENT ROOM TAX

2-14-1: TITLE.

This Chapter shall be known as the TRANSIENT ROOM TAX ORDINANCE of Brian Head Town.

2-14-2: PURPOSE.

The Utah State Legislature has authorized municipalities to enact a Transient Room Tax that may be collected from persons and entities providing public accommodations in the Town. It is the purpose of this Ordinance to provide for the uniform assessment and collection of that tax pursuant to Part 3 of Title 59, Chapter 12, Utah Code (as amended).

2-14-3: EFFECTIVE DATE.

This Chapter shall become effective as of the 1st day of October, 2013.

2-14-4: DEFINITIONS:

For the purpose of this chapter, the following terms, phrases and words shall have the following meanings:

PUBLIC ACCOMMODATIONS: shall mean a place providing temporary sleeping accommodations that are regularly rented to the public and includes:

A. A motel

B. A hotel

C. An inn

D. A recreational vehicle park

E. A campground;

F. A bed and breakfast establishment;

G. A condominium; and

H. A resort home.

RENT: shall include:

A. Rents; and

B. Timeshare fees and dues.

TRANSIENT: shall mean the occupation of a public accommodation, by a person, of less than thirty (30) consecutive days.

2-14-5: TRANSIENT ROOM TAX.

There is hereby levied upon the business of every person, company, corporation, or other like and similar persons, groups, or organizations, doing business in the Town as motels, hotels, recreational vehicle parks, inns or like, and similar public accommodations, an annual license tax equal to one percent (1%) of the gross revenue derived from the rent for each and every occupancy of a suite, room, or rooms, for a period of less than thirty (30) days.

2-14-6: GROSS RECEIPTS.

For purposes of this Section, gross receipts shall be computed upon the base room rental rate. There shall be excluded from the gross revenue, by which this tax is measured:

A. The amount of any sales or use tax imposed by the State of Utah or by any other governmental agency upon a retailer or consumer;

B. The amount of any Transient Room Tax levied under authority of Chapter 31 of Title 17, Utah Code (as amended), or its successor;

C. Receipts from the sale or service charge for any food, beverage, or room service charges in conjunction with the occupancy of the suite, room, or rooms, not included in the base room rate; and

D. Charges made for supplying telephone service, gas, or electrical energy service, not included in the base room rate.

2-14-7: EXEMPTIONS TO TRANSIENT ROOM TAX.

No Transient Room Tax shall be imposed under this Chapter upon any person:

A. Engaged in business for solely religious, charitable, eleemosynary, or other types of strictly nonprofit purpose who is tax exempt in such activities under the laws of the United States and the State of Utah; or

B. Engaged in a business specifically exempted from municipal taxation and fees by the laws of the United States or the State of Utah.

2-14-8: PAYMENTS.

On or before the effective date of this Chapter, Brian Head Town shall contract with the State Tax Commission to perform all functions incident to the administration and collection of the Municipal Transient Room Tax, in accordance with the provisions of this Chapter and Utah Code Annotated, Section 59-12-354 (as amended) or its successor. The Mayor is hereby authorized to enter into agreements with the State Tax Commission that may be necessary for the continued administration and operation of the Transient Room Tax enacted by this Chapter.

2-14-9: PENALTIES AND INTEREST.

Penalties and interest equal to those authorized by Utah Code Annotated Sections 59-1-401 and 59-1-402 (as amended), or their successors, shall be imposed on any person who:

A. Is required to pay the tax under this part; and

B. Does not remit the tax to the collecting agent within the time prescribed by law."