

ORDINANCE 2013-42

SHORT TITLE:

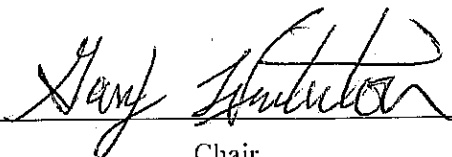
An ordinance amending Title 5 and enacting Chapter 5.08 in the Provo City Code to create a Utility Transportation Fund for street maintenance.

PASSAGE BY MUNICIPAL COUNCIL

ROLL CALL

| DISTRICT | NAME               | MOTION | SECOND | FOR    | AGAINST | OTHER |   |
|----------|--------------------|--------|--------|--------|---------|-------|---|
| CW 1     | LAURA H. CABANILLA |        | ✓      | ✓      |         |       |   |
| CW 2     | GARY GARRETT       |        |        | ✓      |         |       |   |
| CD 1     | GARY WINTERTON     |        |        | ✓      |         |       |   |
| CD 2     | RICHARD D. HEALEY  | ✓      |        | ✓      |         |       |   |
| CD 3     | HAL MILLER         |        |        | ✓      |         |       |   |
| CD 4     | KAY VAN BUREN      |        |        | ✓      |         |       |   |
| CD 5     | STERLING BECK      |        |        |        | ✓       |       |   |
|          |                    |        |        | TOTALS | 6       | 1     | 0 |

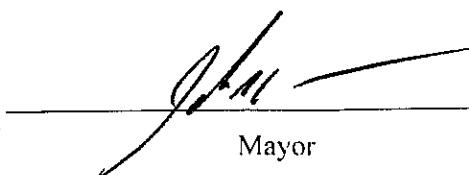
This ordinance was passed by the Municipal Council of Provo City, on the 19 day  
of November, 2013 on a roll call vote as described above. Signed this 19 day  
of November, 2013.

  
Chair

II

APPROVAL BY MAYOR

This ordinance is approved by me this 21 day of November 2013.

  
Mayor

ORDINANCE 2013-42

III

CITY RECORDER'S CERTIFICATE AND ATTEST

This ordinance was recorded in the office of the Provo City Recorder on the 2<sup>nd</sup> day of December 2013, with a short summary being published on the 23<sup>rd</sup> day of November 2013, in The Daily Herald, a newspaper circulated in Provo, Utah. I hereby certify and attest that the foregoing constitutes a true and accurate record of proceedings with respect to Ordinance Number 2013-42.



Signed this 2 day of December 2013.

Janeke Steiss  
City Recorder

1 ORDINANCE NO 2013-42.

2  
3 AN ORDINANCE AMENDING TITLE 5 AND ENACTING CHAPTER 5.08 IN  
4 THE PROVO CITY CODE TO CREATE A UTILITY TRANSPORTATION  
5 FUND FOR STREET MAINTENANCE. (13-077)  
6

7 WHEREAS, a June 2011 study confirmed the need for the City to invest additional  
8 funding to maintain streets in order to preserve the useful life of city streets and expressed  
9 concern, that without additional funding, the vast majority of city streets would be beyond their  
10 useful life in ten years; and

11  
12 WHEREAS, one of the most fundamental roles of local government is to provide safe  
13 and well maintained streets for the traveling public and for commerce; and

14  
15 WHEREAS, during the September 4, 2012 City Council meeting, the Provo City Mayor  
16 and Municipal Council adopted a Joint Resolution expressing their intention to find a solution  
17 that is fiscally responsible, transparent, and equitable to all who live, work, and travel in Provo  
18 City; and

19  
20 WHEREAS, the Mayor and Municipal Council have studied the need to provide  
21 additional funding for street maintenance in Provo and believe it prudent to fund street  
22 maintenance in a manner that does not contribute to increased City debt and allocates street  
23 maintenance costs proportional to the use of the streets by different users; and

24  
25 WHEREAS, the costs for street maintenance and reconstruction have risen approximately  
26 75% over the past decade and the Provo City Municipal Council recognizes the need to establish  
27 sustainable sources for the necessity of funding periodic preventive street maintenance and  
28 reconstruction; and

29  
30 WHEREAS, there is uncertainty regarding the future stability of federal and state funding  
31 sources for street maintenance, including Class B&C Road Funds; and

32  
33 WHEREAS, the Provo City Municipal Council understands that preventive street  
34 maintenance is up to ten times more cost effective than street repair and reconstruction; and

35  
36 WHEREAS, on October 29, 2013 the Municipal Council held a duly noticed public  
37 meeting to consider this matter and after considering the facts and comments presented to the  
38 Municipal Council, the Council finds: (i) the Provo City Code should be amended as described  
39 herein to enact a Utility Transportation Fund to provide for the maintenance and improvement of

40 Provo City streets, and (ii) such amendments are in the best interests of the residents of Provo  
41 City and reasonably further the health, safety, and general welfare of the citizens of Provo City;

42  
43 NOW THEREFORE, BE IT ORDAINED BY The Municipal Council of Provo City,  
44 Utah as follows:

45  
46 PART I:

47  
48 Title 5 of the Provo City Code is hereby amended and Chapter 5.08 is hereby enacted as  
49 follows:

50  
51 **TITLE 5**  
52 **FEES AND TAXATION**

53  
54 ...

55  
56 **Chapter 5.08**  
57 **Utility Transportation Fund.**

58  
59 **5.08.010. Intent in Creating a Utility Transportation Fund.**

60 **5.08.020. Definitions.**

61 **5.08.030. Establishment of a Utility Transportation Fund.**

62 **5.08.040. Billing and Collections.**

63 **5.08.050. Enforcement.**

64 **5.08.060. Dedication of Funds.**

65 **5.08.070. Annual Report and Gas Tax Revenues.**

66 **5.08.080. Appeals.**

67 **5.08.090. Pre-Implementation Conference and Hearing.**

68  
69 **Section 5.08.010. Intent in Creating a Transportation Utility.**

70 The Municipal Council hereby finds, determines, and declares that the public necessity of  
71 providing maintenance, upkeep, improvement, and repair of the City's streets and related  
72 facilities within the right-of-way requires the establishment of a comprehensive Transportation  
73 Utility with the purpose and power of undertaking such maintenance and improvement of City  
74 streets and related facilities as may be necessary and proper, with such mandate to include,  
75 without limitation, the following activities: patching, crack sealing, seal coating, over-laying and  
76 other activities as are necessary in order that local streets may be properly maintained to  
77 safeguard the health, safety and welfare of the City and its inhabitants. As part of the  
78 establishment of this Utility, a Utility Transportation Fund ("Fund") is hereby created for the  
79 purpose of providing funds for the maintenance of Provo City streets. Insofar as possible to do

80 so with funds available, and in accordance with policies adopted by the Municipal Council, the  
81 City intends to maintain only Provo public streets and rights-of-way and shall not use funds for  
82 the maintenance of private streets, rights-of-way, or easements.

83

84 **Section 5.08.020. Definitions.**

85 Trip-End means a trip to or from an origin or destination. A Trip-End is the standard unit of  
86 measure for trip-generation and can be measured as one pass by a traffic counter. Two Trip-  
87 Ends are involved in a simple round trip. Round trips with multiple stops include "pass-by trips"  
88 at the destinations between the beginning and end of the trip.

89 Single-Family Unit means a one-family detached, semi-detached (Twin Home), or attached  
90 (town home)(side by side under separate ownership) dwelling unit arranged, designed for, and  
91 occupied by not more than one (1) family, and which has a kitchen and a bathroom.

92 Multi-Family Unit means a non-detached dwelling unit arranged, designed for, and occupied by  
93 more than one (1) family living independently of each other in separate units, including, but not  
94 limited to, apartments.

95 Commercial means a non-public use, non-residential land use including, but not limited to,  
96 industrial, office, retail, for-profit education, for-profit medical facilities, or professional services  
97 establishments.

98 Public Use means a land use for a tax-exempt property, including, but not limited to,  
99 government property, school district property, education or religious property, or tax-exempt  
100 medical facilities.

101 Street means any street, avenue, boulevard, road, lane, parkway, viaduct, alley, or other way for  
102 the movement of vehicular traffic, or a street or way shown upon a plat, heretofore approved,  
103 pursuant to law or approved by official action; and includes the land between street lines,  
104 whether improved or unimproved, and may comprise pavement shoulders, gutter, parking areas,  
105 and other areas within the right-of-way. For the purposes of this section, sidewalks are not  
106 considered as part of streets.

107

108 **Section 5.08.030. Establishment of Utility Transportation Fund.**

109 (1) There is hereby created a Utility Transportation Fund, to be reported as an enterprise fund, to  
110 be funded by a fee ("Fee") to be paid by the users of Provo City utilities within the corporate  
111 limits of Provo City. Such Fee shall be established by resolution of the Municipal Council in  
112 such amounts as deemed necessary to provide funds to properly maintain City streets. The  
113 amount of the Fee shall be adopted in the Consolidated Fee Schedule, which may be amended as  
114 needed by resolution of the Municipal Council. The amount of the Fee charged shall be based  
115 upon the following land use categories and subcategories:

116 (a) Residential

117 (i) Residential Class A - Single Family Units.

118 (ii) Residential Class B - Multi-Family Units.

119 (b) Commercial

- 120 (i) Commercial Class A – Commercial entities with less than 100 Trip-Ends generated per  
121 weekday per published Institute of Traffic Engineers (ITE) trip-generation rates.
- 122 (ii) Commercial Class B – Commercial entities with 100 or more, but less than 200, Trip-  
123 Ends generated per weekday per published ITE trip-generation rates.
- 124 (iii) Commercial Class C – Commercial entities with 200 or more, but less than 600, Trip-  
125 Ends generated per weekday per published ITE trip-generation rates.
- 126 (iv) Commercial Class D – Commercial entities with 600 or more Trip-Ends generated per  
127 weekday per published ITE trip-generation rates.

128 (c) Public Use

- 129 (i) Public Use Class A – Public Use entities with an average of less than 300 Trip-Ends  
130 generated per weekday per published ITE trip-generation rates.
  - 131 (ii) Public Use Class B – Public Use entities with an average of 300 or more Trip-Ends  
132 generated per weekday per published ITE trip-generation rates.
- 133 (2) The Fee for each land use category and subcategory shall be based on the relative share of  
134 aggregate Trip-Ends each category and subcategory generates. Trip-Ends for residential uses  
135 shall be based on Provo City residential trip-generation rates as identified in the Provo City  
136 Transportation Master Plan. Trip-Ends for Commercial and Public Use land uses shall be based  
137 on the most recent ITE trip-generation rates.

138

139 **Section 5.08.040. Billing and Collection.**

140 The Utility Transportation Fee shall be billed and collected with and as part of the monthly  
141 consolidated utility bill. The person(s) responsible for payment of the Fee shall be the same  
142 person(s) responsible for payment of other City utilities. All such bills shall be rendered monthly  
143 by the City and shall become due and payable in accordance with the rules and regulations  
144 adopted by the City pertaining to the collection of utility fees, and the City’s finance officers  
145 shall place all such fees so collected into the fund to be deposited and separately kept to be used  
146 only for the Transportation Utility purposes provided herein.

147

148 **Section 5.08.050. Enforcement.**

149 Any charge due hereunder which is not paid when due may be recovered in an action at law or  
150 equity by the City. In addition to any other remedies or penalties provided by this Chapter or  
151 any other ordinance of the City, failure of any person responsible for the payment of City utilities  
152 to timely pay the charges when due shall subject such person to discontinuance of utility services  
153 provided by the City, consistent with City policies regarding termination of utility services.

154

155 **Section 5.08.060 Dedication of Funds.**

156 All funds collected by the City from this Fee shall annually be paid into the Utility  
157 Transportation Fund, which is hereby created as an established enterprise fund in the City  
158 budget. Such revenues shall be used for the purposes of the operation, improvement, and  
159 maintenance of existing Provo City streets. It shall not be required that the operations,  
160 improvement, and maintenance expenditures from the Fund specifically relate to any particular  
161 property from which the fees were collected.

162

163 **Section 5.08.070. Annual Report and Gas Tax Revenues.**

164 (1) Each year during the annual budget process, the Municipal Council shall receive an annual  
165 report detailing the income and expenditures of the Fund. This report shall be in writing and  
166 shall be presented at a meeting of the Municipal Council by representatives of the Public Works  
167 Department or the Finance Division of the Administrative Services Department.

168 (2) In the event that any state or county legislation is enacted that either changes the rate of a tax  
169 or enacts a new tax, the purpose of which tax is to provide funds for the operation, improvement,  
170 or maintenance of municipal streets, and that results in the City receiving increased revenues  
171 dedicated to that purpose, the Municipal Council shall also hold a public hearing not more than  
172 12 months following the effective date of such legislation, to allow sufficient time to gather  
173 necessary and relevant data, to specifically consider the question of whether the Fee should be  
174 reduced to offset, either entirely or partially, those increased revenues. Such hearing may be  
175 held as a part of the public hearing held on the City budget, so long as this question is  
176 specifically addressed.

177

178 **Section 5.08.080. Appeals.**

179 (1) Any person who disputes the amount of the Fee, or disputes any determination made by or  
180 on behalf of the City pursuant to and by the authority of this Chapter may petition the Mayor for  
181 a hearing on a revision or modification of such fee or determination. Such petitions may be filed  
182 only once in connection with any fee or determination, except upon a showing of changed  
183 circumstances sufficient to justify the filing of such additional petition.

184 (2) Such petitions shall be in writing, filed with the City Recorder within 30 days of the date of  
185 the utility bill containing the disputed charge or the date of the challenged determination. The  
186 facts and figures shall be submitted in writing or orally at an administrative hearing scheduled by  
187 the Mayor, or the Mayor's designee. The petitioner shall have the burden to prove that the  
188 amount of the Fee is in error.

189 (3) Within 60 days of filing the petition, the Mayor, or the Mayor's designee, shall make  
190 findings of fact based on all relevant information, shall make a determination based upon such  
191 findings and, if appropriate, modify such fee or determination accordingly. Such determination  
192 by the Mayor, or the Mayor's designee, shall be considered a final order.

193

194

195 **Section 5.08.090. Pre-Implementation Conference and Hearing.**

196 (1) An entity may request a pre-implementation conference with the Mayor, or the Mayor's  
197 designee, if that entity is the owner of multiple properties falling within either or both of the two  
198 Public Use classes that cumulatively generate more than 7,500 Trip-Ends per weekday per  
199 published ITE trip-generation rates.

200 (2) This right to request a pre-implementation conference shall expire on November 30, 2013.

201 (3) If a qualifying entity timely requests a pre-implementation conference, the Mayor, or the  
202 Mayor's designee, shall schedule the conference on or before December 16, 2013 and shall give  
203 notice of the conference to the requesting entity.

204 (4) At the pre-implementation conference, the entity may present information to the Mayor, or  
205 the Mayor's designee, to show:

206 (a) the actual Trip-Ends generated by properties owned by the entity that have been  
207 classified as Public Use Class B instead qualify that property to be classified as Public  
208 Use Class A,

209 (b) the impact to City Streets from the Trip-Ends generated by the entity's properties is  
210 less than would otherwise be expected from that amount of Trip-Ends,

211 (c) the efforts and actions the entity has taken to mitigate the impact and cost to the City  
212 of the Trip-Ends generated by the entity's properties, and

213 (d) any other information or evidence to justify a reduction of, or exemption from, the  
214 Fee imposed by this Chapter.

215 (5) Based on the information and evidence presented at the hearing by the entity, the Mayor:

216 (a) may reclassify any properties previously classified as Public Use Class B properties as  
217 Public Use Class A properties;

218 (b) shall prepare a report for the Municipal Council recommending whether the entity  
219 should be exempted from some or all of the Fee that would otherwise be due under this  
220 Chapter; and

221 (c) shall deliver that recommendation to the Municipal Council by January 1, 2014.

222 (6) At a hearing to be held before January 15, 2014, the Municipal Council shall consider the  
223 recommendation of the Mayor and may, by majority vote, exempt the entity from some or all of  
224 the Fee that would otherwise be due under this Chapter.

225 (7) Any funds that are agreed to be received from an applicant entity in lieu of the Fee that would  
226 otherwise be due under this Chapter shall be added to the Utility Transportation Fund.

227  
228 **PART II:**

229  
230 The Consolidated Fee Schedule is hereby amended as shown in Exhibit A. The Utility  
231 Transportation Fund fees shall be set forth in the amended Consolidated Fee Schedule, except as  
232 may be later amended by the Municipal Council.

233  
234 **PART III:**



- 235  
236 A. If a provision of this ordinance conflicts with a provision of a previously adopted  
237 ordinance, this ordinance shall prevail.  
238
- 239 B. This ordinance and its various sections, clauses and paragraphs are hereby declared to be  
240 severable. If any part, sentence, clause or phrase is adjudged to be unconstitutional or invalid, the  
241 remainder of the ordinance shall not be affected thereby.  
242
- 243 C. The Municipal Council hereby directs that the official copy of the Provo City Code be  
244 updated to reflect the provisions enacted by this ordinance, except that Section 5.08.090 shall  
245 remain uncodified.  
246
- 247 D. Except as otherwise provided in this paragraph, this ordinance shall take effect on  
248 January 15, 2014. Section 5.08.090 shall take effect immediately upon being posted or published  
249 as required by law. The Fee imposed under Section 5.08.040 shall take effect on March 1, 2014.  
250
- 251 END OF ORDINANCE.  
252