



REVISED
REGULAR MEETING AGENDA

City of Black Hawk City Council
211 Church Street, Black Hawk, CO

October 10, 2018
3:00 p.m.

RINGING OF THE BELL:

1. CALL TO ORDER:
2. ROLL CALL & PLEDGE OF ALLEGIANCE:
3. AGENDA CHANGES:
4. CONFLICTS OF INTEREST: (Council disclosures are on file w/City Clerk & Sec. of State)
5. PUBLIC COMMENT: *Please limit comments to 5 minutes*
6. APPROVAL OF MINUTES: September 26, 2018
7. PUBLIC HEARINGS:
 - A. CB22, An Ordinance Amending Chapter 5, Article V, of the Black Hawk Municipal Code to Expand the City's Use Tax to all Tangible Property and All Taxable Services, Upon Approval of the Voters
8. ACTION ITEMS:
 - A. Resolution 64-2018, A Resolution Opposing Amendment 74, an Attempt to Amend the Colorado Constitution to Drastically Limit State and Local Government Services at a High Cost to Taxpayers
9. CITY MANAGER REPORTS: Proposed 2019 Annual Budget
10. CITY ATTORNEY:
11. EXECUTIVE SESSION:
12. ADJOURNMENT:

MISSION STATEMENT

The mission of the City of Black Hawk is to progressively provide cost effective programs and services of the highest quality to the community



**City of Black Hawk
City Council**

September 26, 2018

MEETING MINUTES

Jim Ford, Senior Civil Engineer, rang the bell to open the meeting.

1. **CALL TO ORDER:** The regular meeting of the City Council was called to order on Wednesday, September 26, 2018, by Mayor Spellman.

2. **ROLL CALL:** Present were: Mayor Spellman, Aldermen Armbright, Bennett, Midcap, Moates, and Torres.

Absent: Alderman Johnson.

Staff present: City Attorney Hoffmann, City Manager Lewis, Police Chief Cole, Fire Chief Woolley, Finance Director Hillis, City Clerk/Administrative Services Director Greiner, Public Works Director Isbester, Senior Civil Engineers Ford and Reed, Community Planning and Development Administrator Linker, and Deputy City Clerk Martin.

PLEDGE OF ALLEGIANCE: Mayor Spellman led the meeting in the recitation of the Pledge of Allegiance.

3. **AGENDA CHANGES:** Deputy City Clerk Martin confirmed that Agenda Item 7B, Ordinance 2018-21, has been revised to now include two directors.

4. **CONFLICTS OF INTEREST:** City Attorney Hoffmann asked Council to declare any Conflicts of Interest on any issue appearing on the agenda this afternoon other than those previous disclosures and conflicts that have already been disclosed and are on file with the City Clerk and Secretary of State. No conflicts were noted from City Council.

City Attorney Hoffmann asked the audience if there were any objections to any member of Council voting on any issue on the agenda this afternoon. The audience had no objections.

5. PUBLIC COMMENT: Deputy City Clerk Martin confirmed that no one had signed up to speak.

6. APPROVAL OF MINUTES: September 12, 2018

MOTION TO APPROVE Alderman Bennett **MOVED** and was **SECONDED** by Alderman Torres to approve the Minutes as presented.

MOTION PASSED There was no discussion, and the motion passed unanimously with Alderman Moates abstaining.

7. PUBLIC HEARINGS:

A. CB20, An Ordinance Amending Article 6; Section 7-152; Section 10-145; and Section 18-302 of the Black Hawk Municipal Code

Mayor Spellman read the title and opened the public hearing.

City Attorney Hoffmann noted that State law was changed to move numerous sections of the Colorado Revised Statutes from Title 12, including alcohol and marijuana, to a newly created Title 44. He said if approved, this ordinance would change all reference to Title 12 in the Black Hawk Municipal Code to reference Title 44.

PUBLIC HEARING: Mayor Spellman declared a Public Hearing on CB20, an Ordinance amending Article 6; Section 7-152; Section 10-145; and Section 18-302 of the Black Hawk Municipal Code open and invited anyone wanting to address the Board either “for” or “against” the proposed ordinance to come forward.

No one came forward to speak, and Mayor Spellman declared the Public Hearing closed.

MOTION TO APPROVE Alderman Armbright **MOVED** and was **SECONDED** by Alderman Moates to approve CB20, an Ordinance amending Article 6; Section 7-152; Section 10-145; and Section 18-302 of the Black Hawk Municipal Code.

MOTION PASSED There was no discussion, and the motion **PASSED** unanimously.

B. CB21, An Ordinance Appointing Directors to the Board of the Black Hawk Business Improvement District

Mayor Spellman read the title and opened the public hearing.

City Attorney Hoffmann explained that the Business Improvement District (BID) had two vacancies to fill and at the time of the packet being prepared there was a recommendation for only one of the two vacancies. He said after the packet was sent; a second recommendation from the BID was requested. The first request is for Rodney Turlan to replace Brian Watts of the Isle Casino, and the second is for Brandon Lensen to replace Walter Northcott Grounell of the Mardi Gras Casino.

PUBLIC HEARING:

Mayor Spellman declared a Public Hearing on CB21, an Ordinance appointing Directors to the Board of the Black Hawk Business Improvement District open and invited anyone wanting to address the Board either “for” or “against” the proposed ordinance to come forward.

No one else came forward to speak, and Mayor Spellman declared the Public Hearing closed.

MOTION TO APPROVE

Alderman Bennett **MOVED** and was **SECONDED** by Alderman Torres to approve CB21, an Ordinance appointing Directors to the Board of the Black Hawk Business Improvement District.

MOTION PASSED

There was no discussion, and the motion **PASSED** unanimously.

8. ACTION ITEMS:

A. Resolution 60-2018, A Resolution Approving the Proposal from the Colorado Intergovernmental Risk Sharing Agency (CIRSA) for 2019 Property Casualty Coverage

Mayor Spellman read the title.

City Clerk/Administrative Services Director Greiner introduced the annual renewal from CIRSA. She said they had increased their rates substantially for the first time in a year, and that even with the City’s Loss Control and Loss Experience Credits of \$13,116.00; the City’s rates have increased by 9.83% over last year’s numbers.

MOTION TO APPROVE

Alderman Armbright **MOVED** and was **SECONDED** by Alderman Bennett to approve Resolution 60-2018, a Resolution approving the

proposal from the Colorado Intergovernmental Risk Sharing Agency (CIRSA) for 2019 Property Casualty Coverage.

MOTION PASSED There was no discussion, and the motion **PASSED** unanimously.

B. Resolution 61-2018, A Resolution Revising a Job Description for Police Sergeant

Mayor Spellman read the title.

Police Chief Cole explained the current restrictions placed on the Police Department to fill a Sergeant position, by approving this change it will allow them the flexibility to look outside the department at the Chief's discretion.

MOTION TO APPROVE

Alderman Armbright **MOVED** and was **SECONDED** by Alderman Moates to approve Resolution 61-2018, a Resolution revising a job description for Police Sergeant.

MOTION PASSED There was no discussion, and the motion **PASSED** unanimously.

C. Resolution 62-2018, A Resolution Approving an Agreement with Merrick & Company in the Amount of \$77,467.00 for the Design of the Green Lake Headgate Project

Mayor Spellman read the title.

Senior Civil Engineer Ford said that this scheduled item was the last large piece for the Green Lake project; it has been pushed up due to the slow flows. He said in the past few years flows had been down in Leavenworth Creek, and they have been stacking rocks to get more water into the headgate. He said the design could start this Fall into Spring with construction beginning after water delivery next year.

MOTION TO APPROVE

Alderman Torres **MOVED** and was **SECONDED** by Alderman Midcap to approve Resolution 62-2018, a Resolution approving an agreement with Merrick & Company in the amount of \$77,467.00 for the design of the Green Lake Headgate Project.

MOTION PASSED There was no discussion, and the motion **PASSED** unanimously.

D. Resolution 63-2018, A Resolution Approving Change Order #9 for the St. Charles House in the Amount of \$64,749.00 for Installation of a License Plate Reader (LPR) Parking Management System

Mayor Spellman read the title.

Senior Civil Engineer Reed introduced this change order for the installation and start-up of a fully automated License Plate Reader System to include six cameras to record vehicle plates coming in and leaving each level of the parking garage. He explained there would be a fee billed to the owner after a certain amount of time had expired and there would be signs alerting drivers of this restriction. He added there would be annual operational costs to be handled under a separate contract at a later date.

City Manager Lewis said the City is still waiting on documentation as to how the system will operate in the future, which still needs to be reviewed. He would suggest not signing the Change Order at this time; to just approve the authorization to sign after staff has reviewed the documentation. Mayor Spellman added that Council still needs to determine the duration of parking and the fee.

MOTION TO APPROVE

Alderman Bennett **MOVED** and was **SECONDED** by Alderman Moates to approve Resolution 63-2018, a Resolution approving Change Order #9 for the St. Charles House in the amount of \$64,749.00 for installation of a License Plate Reader (LPR) Parking Management System and to wait to sign the actual Change Order until staff is satisfied.

MOTION PASSED

There was no discussion, and the motion **PASSED** unanimously.

9. CITY MANAGER REPORTS:

City Manager Lewis invited Community Planning and Development Administrator Linker to provide an update to Council on some changes to the Site Development Plans (SDP) for both the Canyon and Dakota sites. Linker explained the difference is on the Materials Board pages in both SDPs for the screen walls top cap. Both the Dakota and Canyon sites went with the Ashler dry stack pattern, but the top cap was changed to match and be consistent with the top cap of the stone walls at the Lodge Casino. Additionally, extra light poles were added to the Dakota site, and the style changed to match and be consistent with the style that is currently approved for the Canyon site. She said these changes could be approved administratively because it remains consistent with what was originally approved by Council. City Attorney Hoffmann confirmed that none of the changes were inconsistent with what Council had approved, so there was no reason to bring it back for approval.

10. CITY ATTORNEY: City Attorney Hoffmann had nothing to report.

11. EXECUTIVE SESSION:

City Attorney Hoffmann recommended item number 2 only for Executive Session for specific legal issues related to potential legislation and legal issues related to parking.

MOTION TO ADJOURN INTO EXECUTIVE SESSION

Alderman Bennett **MOVED** and was **SECONDED** by Alderman Armbright to adjourn into Executive Session at 3:16 p.m. to hold a conference with the City's attorney to receive legal advice on specific legal questions, pursuant to C.R.S. § 24-6-402(4)(b).

MOTION PASSED

There was no discussion, and the motion **PASSED** unanimously.

MOTION TO ADJOURN

Alderman Bennett **MOVED** and was **SECONDED** by Alderman Torres to adjourn the Executive Session at 4:05 p.m.

MOTION PASSED

There was no discussion, and the motion **PASSED** unanimously.

12. ADJOURNMENT:

Mayor Spellman declared the Regular Meeting of the City Council closed at 4:05 p.m.

Melissa A. Greiner, CMC
City Clerk

David D. Spellman
Mayor

**COUNCIL BILL 22
ORDINANCE 2018-22
AN ORDINANCE
AMENDING CHAPTER 5,
ARTICLE V, OF THE
BLACK HAWK
MUNICIPAL CODE TO
EXPAND THE CITY'S USE
TAX TO ALL TANGIBLE
PROPERTY AND ALL
TAXABLE SERVICES,
UPON APPROVAL OF THE
VOTERS**

**STATE OF COLORADO
COUNTY OF GILPIN
CITY OF BLACK HAWK**

COUNCIL BILL NUMBER: 22

ORDINANCE NUMBER: 2018-22

TITLE: AN ORDINANCE AMENDING CHAPTER 5, ARTICLE V, OF THE BLACK HAWK MUNICIPAL CODE TO EXPAND THE CITY'S USE TAX TO ALL TANGIBLE PROPERTY AND ALL TAXABLE SERVICES, UPON APPROVAL OF THE VOTERS

WHEREAS, the City's current use tax only applies to construction and building materials stored or used in the City and motor or other vehicles brought into the City on which the State of Colorado requires registration;

WHEREAS, at a November 6, 2018, special election to be coordinated with the County as part of the state's general election, City voters will be asked to approve an increase of the rate of the use tax as well as an expansion of the use tax to apply it to the privilege of using, storing, distributing or consuming any article of tangible personal property within the City;

WHEREAS, provided voter approval is obtained, the revisions to the Black Hawk Municipal Code will be required to enact the revised tax, and the changes are being considered and conditionally adopted at this time; and

WHEREAS, adoption of this ordinance also presents an opportunity to make certain minor, housekeeping changes to the use tax code.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BLACK HAWK, GILPIN COUNTY:

Section 1. Portions of Charter 4, Article V, of the Black Hawk Municipal Code related to use tax are amended as follows:

Sec. 4-81. Amount imposed.

(a) There is imposed a six-percent (6%) use tax to be imposed for the privilege of storing, using, distributing, or consuming within the City any article of tangible personal property or any taxable service purchased, including, without limitation, construction and building materials, and on motor or other vehicles on which registration is required which are purchased at retail.

(b) Effective January 1, 2009, one-and-one-half-percent of the use tax imposed in Subsection (a) above shall be for the purpose of providing financial support to the Gilpin County School

District RE-1, and it shall expire along with the sales tax imposed by Subsection 4--41(d) of this Chapter upon the occurrence of any one (1) of the conditions set forth in Section 4-80 of this Chapter.

Sec. 4-82. Exemptions.

The use tax shall not apply to:

(1) The storage, use or consumption of any tangible personal property, the sale of which is subject to a retail sales tax imposed by the City;

...

(6) The storage, use or consumption of any tangible personal property consisting or food or beverage items that are provided on a complimentary basis so that no retail sales tax is imposed by the City;

Sec. 4-83. Collection, administration and enforcement.

...

(b) The use tax on construction and building materials stored, used or consumed within the City must be paid upon the issuance of a building permit by the City. In no event shall any certificate of occupancy be issued prior to the full payment to the City of the use tax due and owing pursuant to this Article. The amount of the use tax for construction and building materials shall be as follows:

(1) The amount collected will be based on six percent (6%) of the job material valuation. The job material valuation is established as one-half (1/2) of the total value of the job. The total value of the job equals all the construction work for which the permit is issued, as well as all finishing work, painting, roofing, electrical, plumbing, heating, air conditioning, elevators, fire extinguishing systems and any other permanent equipment.

...

Sec. 4-84. Credit for sales or use taxes previously paid to another municipality.

For transactions consummated on or after July 1, 1991, the City's use tax shall only apply to the extent the City's use tax is in excess of a lawfully imposed and paid sales or use tax of another

municipality imposed on the purchase, storage, use or consumption of any article of tangible personal property. A credit shall be granted against the City's use tax with respect to the person's storage, use or consumption in the City of tangible personal property, the amount of the credit to equal the tax actually paid by him or her by reason of the lawful imposition of a sales or use tax of another municipality on the purchase or use of the property. The amount of the credit shall not exceed six percent (6%).

...

Sec. 4-86. Proration as applied to certain construction equipment.

...

(b) With respect to transactions consummated on or after July 1, 1991, construction equipment which is located within the boundaries of the City for one hundred eighty (180) consecutive days or less shall be subjected to the City's use tax in an amount calculated as follows: multiply the purchase price of the equipment by a fraction, the numerator of which is one (1) and the denominator of which is twelve (12), and the result shall be multiplied by six percent (6%) (purchase price x 1/12 x .06).

(c) Where Subsection (b) above applies, the credit provisions of Section 4-84 shall apply when the aggregate sales and use taxes legally imposed by and paid to another municipality on any such equipment equals six percent (6%).

(d) In order to come within the provisions of Subsection (b) above, the taxpayer shall comply with the following procedures:

...

(4) If the equipment declaration is given, it shall be presumed that any construction equipment that is temporarily brought into the City for a construction project, and that has a customary purchase price under two thousand five hundred dollars (\$2,500.00), was purchased in a jurisdiction having a local sales or use tax as high as six percent (6%) and that the local sales or use tax was paid. The City shall have the burden of proving that the local sales or use tax was not paid in any proceeding before the City, the Executive Director of the Department of Revenue or the District Court.

(e) If the taxpayer fails to comply with Subsection (d) above, the taxpayer may not avail himself or herself of Subsection (b) above, and shall be subject to Subsection (a) above. However, substantial compliance with Subsection (d) above shall allow the taxpayer to avail himself or herself of Subsection (b) above.

Section 2. Safety Clause. The City Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City of Black Hawk, that it is promulgated for the health, safety, and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The City Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be attained.

Section 3. Severability. If any clause, sentence, paragraph, or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

Section 4. Effective Date. The City Clerk is directed to post the Ordinance as required by the Charter. Upon voter approval on November 6, 2018, of a ballot issue necessary to authorize the changes set forth by this Ordinance, this Ordinance shall become effective and in force at 12:01 a.m. on December 1, 2018.

READ, PASSED AND ORDERED POSTED this 10th day of October, 2018.

David D. Spellman, Mayor

ATTEST:

Melissa A. Greiner, CMC, City Clerk

CITY OF BLACK HAWK

REQUEST FOR COUNCIL ACTION

SUBJECT: Implementing Ordinance to Amend the Black Hawk Municipal Code to reflect the upcoming Use Tax Ballot Question, provided voter approval is obtained.

RECOMMENDATION: Staff recommends the following motion to the Mayor and Board of Aldermen:

MOTION TO APPROVE: Ordinance 2018-22, An Ordinance Amending Chapter 5, Article V, of the Black Hawk Municipal Code to Expand the City's Use Tax to All Tangible Property and All Taxable Services, Upon Approval of the Voters.

SUMMARY AND BACKGROUND OF SUBJECT MATTER: On November 6, 2018 City voters will be asked to approve an increase of the rate of the Use Tax as well as expansion of the Use Tax to apply to the privilege of using, storing, distributing or consuming any article of tangible personal property within the City. If voter approval is obtained, revisions to the Black Hawk Municipal Code will be required to enact the changes. This Ordinance conditionally implements the aforementioned changes, pending results from the upcoming election.

AGENDA DATE: October 10, 2018

WORKSHOP DATE: N/A

FUNDING SOURCE: N/A

DEPARTMENT DIRECTOR APPROVAL: Yes No

STAFF PERSON RESPONSIBLE: Lance Hillis, Finance Director

DOCUMENTS ATTACHED: Ordinance

RECORD: Yes No

CITY ATTORNEY REVIEW: Yes N/A

SUBMITTED BY:

REVIEWED BY:





Lance Hillis, Finance Director

Jack D. Lewis, City Manager

RESOLUTION 64-2018
A RESOLUTION
OPPOSING AMENDMENT
74, AN ATTEMPT TO
AMEND THE COLORADO
CONSTITUTION TO
DRASTICALLY LIMIT
STATE AND LOCAL
GOVERNMENT SERVICES
AT A HIGH COST TO
TAXPAYERS

**STATE OF COLORADO
COUNTY OF GILPIN
CITY OF BLACK HAWK**

Resolution No. 64-2018

TITLE: A RESOLUTION OPPOSING AMENDMENT 74, AN ATTEMPT TO AMEND THE COLORADO CONSTITUTION TO DRASTICALLY LIMIT STATE AND LOCAL GOVERNMENT SERVICES AT A HIGH COST TO TAXPAYERS

WHEREAS, local government services are essential to the citizens of Black Hawk;

WHEREAS, Amendment 74 has been written by certain out-of-state corporate interests to change the text of the Colorado Constitution, Article II, Section 15, which dates back to 1876 and threatens basic governmental services;

WHEREAS, Amendment 74 declares that any state or local government law or regulation that "reduces" the "fair market value" of a private parcel is subject to "just compensation;"

WHEREAS, while Amendment 74 is shrouded in simple language, it has far reaching and unintended impacts;

WHEREAS, under the current Colorado Constitution, a property owner already has the right to seek compensation from state or local governments;

WHEREAS, Amendment 74 would expand this well-established concept by requiring the government – i.e., the taxpayers – to compensate private property owners for virtually any decrease whatsoever in the fair market value of their property traceable to any government law or regulation;

WHEREAS, Amendment 74 would create uncertainty because it is not clear what the language actually means or how it can be applied;

WHEREAS, Amendment 74 would severely limit the ability of Colorado's state and local governments to do anything that might indirectly, unintentionally, or minimally affect the fair market value of any private property;

WHEREAS, Amendment 74 would drastically diminish the ability of our state and local governments to adopt – let alone attempt to enforce – reasonable regulations, limitations, and restrictions upon private property;

WHEREAS, Amendment 74 would place laws, ordinances, and regulations designed to protect public health and safety, the environment, our natural resources, public infrastructure, and other public resources in jeopardy;

WHEREAS, Amendment 74 would make inherently dangerous or environmentally damaging activities prohibitively costly to attempt to limit or regulate, even in the interest of public health, safety, and welfare;

WHEREAS, any arguable impact upon fair market value – however reasonable or justified or minimal or incidental or temporary – resulting from state or local government action could trigger a claim for the taxpayers to pay;

WHEREAS, governments would be vulnerable to lawsuits for almost every decision to regulate or not to regulate, making regular government function prohibitively expensive for the taxpayer;

WHEREAS, similar efforts have been attempted and defeated in other states, such as the states of Washington and Oregon;

WHEREAS, the fiscal impact for similar language in Washington was estimated at \$2 billion dollars for state agencies and \$1.5 billion for local governments over the first six years; and

WHEREAS, individuals filed several thousand claims against state and local governments with an estimated value in excess of several billions of dollars in claims in Oregon before the residents repealed the takings initiative three years after its passage.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF BLACK HAWK, COLORADO, AS FOLLOWS:

Section 1. The Board of Aldermen of the City of Black Hawk hereby opposes Amendment 74, which would amend the State Constitution to include just compensation for any government law or regulation deemed to reduce fair market value of private property, and strongly urges a vote of NO this November.

RESOLVED AND PASSED this 10th day of October, 2018.

David D. Spellman, Mayor

ATTEST:

Melissa A. Greiner, CMC, City Clerk

CITY OF BLACK HAWK
REQUEST FOR COUNCIL ACTION

SUBJECT: Amendment 74

RECOMMENDATION: Staff recommends the following motion to the Mayor and Board of Aldermen:

MOTION TO APPROVE Resolution 64-2018, A Resolution Opposing Amendment 74, An Attempt to Amend the Colorado Constitution to Drastically Limit State and Local Government Services at a High Cost to Taxpayers

AGENDA DATE: October 10, 2018

WORKSHOP DATE: N/A

FUNDING SOURCE: N/A

STAFF PERSON RESPONSIBLE: Corey Y. Hoffmann

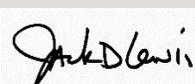
DOCUMENTS ATTACHED: N/A

RECORD: [] Yes [X] No

CITY ATTORNEY REVIEW: [X] Yes [] N/A

SUBMITTED BY:

REVIEWED BY:



Melissa A. Greiner, CMC
City Clerk

Jack D. Lewis
City Manager