



## REGULAR MEETING AGENDA

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

February 14, 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: January 24, 2018
7. PUBLIC HEARINGS:
  - A. CB1, An Ordinance Repealing and Reenacting Chapter 4, Articles IV, of the Black Hawk Municipal Code to Adopt Standardized Sales Tax Definitions
8. ACTION ITEMS:
  - A. Resolution 14-2018, A Resolution Reappointing Ronald W. Carlson to be the City of Black Hawk Municipal Court Judge
  - B. Resolution 15-2018, A Resolution Reappointing Thad Renaud to be the City of Black Hawk Assistant Municipal Court Judge
  - C. Resolution 16-2018, A Resolution Cancelling the April 3, 2018 Election and Declaring Candidates Elected
  - D. Resolution 17-2018, A Resolution Approving the Second Amendment to the Subdivision/Site Improvement Agreement Between the City of Black Hawk and JIJE, LLC for the Canyon Black Hawk Subdivision, Filing No. 1
9. CITY MANAGER REPORTS:
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**

**January 24, 2018**

**MEETING MINUTES**

Baseline Engineering Consultant Ethan Watel, rang the bell.

1. CALL TO ORDER: The regular meeting of the City Council was called to order on Wednesday, January 24, 2018, at 3:00 p.m. by Mayor Spellman.

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

Staff present: City Attorney Hoffmann, City Manager Lewis, Police Chief Cole, Fire Chief Taylor, Finance Director Hillis, City Clerk/Administrative Services Director Greiner, Public Works Director Isbester, Community Planning and Development Administrator Linker, Baseline Engineering Consultant Watel, 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 there were no known agenda changes.

Mayor Spellman said he'd like to add a question to Council after Action Item 8E in regards to marketing money for the BID.

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: January 10, 2018

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

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

7. PUBLIC HEARINGS:

**A. Resolution 2-2018, A Resolution Conditionally Approving the Certificate of Appropriateness and the Site Development Plan for the Canyon Parking Garage and Lot**

**B. Resolution 3-2018, A Resolution Approving Variances from the Front Set Back and Landscaping Requirements**

Mayor Spellman read the titles and re-opened the public hearings from December 13, 2017.

Community Planning and Development Administrator Linker and Baseline Engineering Senior Planner Watel introduced these items. Watel explained the changes that took place since the December 13 meeting where Resolution 69-2017 approved the final subdivision plat, but the Site Development Plan (SDP) and variances were continued. He said these current resolutions include a First Amendment to the Subdivision/Site Improvement Agreement and the variance requests. He went through a slide presentation depicting the revised architectural elements based off feedback the applicant had received from Council in December. The two zoning variance requests are for a 10-foot front set back and a 10-foot landscape strip. Watel explained that the FEMA floodplain for North Clear Creek in this area is tied to the Subdivision/Site Improvement Agreement, because the applicant is required to do some channel improvements in order to bring this area back in line with the actual approved FEMA floodplain map. He said the existing situation on the ground is different from what is on the map. He added that just prior to today's meeting, the applicant asked to reword Condition H on Resolution 2-2018 related to this issue. Staff recommends approval of both of the resolutions, subject to Section 4, Condition H of Resolution 2-2018 being reworded.

City Attorney Hoffmann said that Condition H would be mutually agreed upon by both parties and would only come back before Council

if no agreement was reached. He explained that the concern from the applicant in regards to Condition H is that the condition is impossible for the applicant to achieve as they cannot submit the map revision documents until the conditions have been completed. The application to amend the map will be submitted after the improvements have been completed, and Hoffmann said they would not be able to receive a Certificate of Occupancy for the structure until the submittal to amend the map has been made. He said that is the concept, both parties just need to work on the language.

Dave Grunenwald, Vice-President of Development for Jacobs Entertainment and Bob Schnautz, of River Studio Architects in Golden were present to go over details of the changes such as the masonry arches, 5-foot canopy over the entrance, recessed panels on the brick, and native stone in dry stack fashion below the windows. They confirmed that the windows on Main Street will be all glass, but the side openings are mesh instead of glass for ventilation. Council was happy with the revisions stating the applicant captured what was suggested at the last meeting.

**PUBLIC HEARING:**

Mayor Spellman declared a Public Hearing on Resolution 2-2018, a Resolution conditionally approving the Certificate of Appropriateness and the Site Development Plan for the Canyon parking garage and lot and Resolution 3-2018, a Resolution approving variances from the front set back and landscaping requirements 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 Bennett **MOVED** and was **SECONDED** by Alderman Torres to approve Resolution 2-2018, a Resolution conditionally approving the Certificate of Appropriateness and the Site Development Plan for the Canyon parking garage, noting Condition H will be reworked to the mutual satisfaction of both parties, and Resolution 3-2018, a Resolution approving variances from the front set back and landscaping requirements.

**MOTION PASSED**

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

**C. Resolution 6-2018, A Resolution Conditionally Approving a Certificate of Appropriateness for the Exterior Lighting of the Golden Gates Casino Located at 261 Main Street**

**D. Resolution 7-2018, A Resolution Conditionally Approving a Certificate of Appropriateness for the Exterior Lighting of the Mardi Gras Casino Located at 300 Main Street**

**E. Resolution 8-2018, A Resolution Conditionally Approving a Certificate of Appropriateness for the Exterior Lighting of the KMM Parking Garage Located at 255 Main Street**

Mayor Spellman read the titles and opened the public hearings.

Community Planning and Development Administrator Linker and Baseline Engineering Senior Planner Watel introduced these straightforward applications for exterior lighting to enhance the exterior of all the buildings noted, with the same four standard conditions as listed in each resolution.

**PUBLIC HEARING:**

Mayor Spellman declared a Public Hearing on Resolutions 6-2018, 7-2018, and 8-2018, Resolutions conditionally approving Certificates of Appropriateness for the exterior lighting of the Golden Gates Casino located at 261 Main Street, the Mardi Gras Casino located at 300 Main Street, the KMM Parking Garage located at 255 Main Street 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 Johnson **MOVED** and was **SECONDED** by Alderman Moates to approve Resolutions 6-2018, 7-2018, and 8-2018, Resolutions conditionally approving Certificates of Appropriateness for the exterior lighting of the Golden Gates Casino located at 261 Main Street, the Mardi Gras Casino located at 300 Main Street, the KMM Parking Garage located at 255 Main Street.

**MOTION PASSED**

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

**8. ACTION ITEMS:**

- A. Resolution 9-2018, A Resolution Approving the Agreement of Lease Between the City of Black Hawk as Lessor and Cactus Arts as Lessee for Property Located at 440 Gregory Street, Black Hawk, Colorado**
- B. Resolution 10-2018, A Resolution Approving the Agreement of Lease Between the City of Black Hawk as Lessor and Twin Perspective, LLC as Lessee for Property Located at 450 Gregory Street, Black Hawk, Colorado**

Mayor Spellman read the titles.

Finance Director Hillis introduced two leases with the same standard conditions as the other tenants in Mountain City.

**MOTION TO APPROVE**

Alderman Midcap **MOVED** and was **SECONDED** by Alderman Bennett to approve Resolutions 9-2018 and 10-2018, Resolutions approving the Agreements of Lease between the City of Black Hawk as lessor and Cactus Arts as lessee for property located at 440 Gregory Street, Black Hawk, Colorado, and between the City of Black Hawk as lessor and Twin Perspective, LLC as lessee for property located at 450 Gregory Street, Black Hawk, Colorado.

**MOTION PASSED**

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

**C. Resolution 11-2018, A Resolution Approving a Lease Agreement and Necessary Development Documents with CommNet Cellular dba Verizon Wireless for the Installation and Maintenance of a Small Site Cellular Tower on the Hidden Valley Water Plant Property**

Mayor Spellman read the title.

Public Works Director Isbester explained that Verizon wants to put in a small cell tower over at the Hidden Valley Water Plant. He said the City has ground that is currently not being utilized and Verizon is providing all their own equipment; the City is just providing the space and getting some rent for it.

**MOTION TO APPROVE**

Alderman Armbright **MOVED** and was **SECONDED** by Alderman Bennett to approve Resolution 11-2018, a Resolution approving a Lease Agreement and necessary development documents with CommNet Cellular dba Verizon Wireless for the installation and maintenance of a small site cellular tower on the Hidden Valley Water Plant property.

**MOTION PASSED**

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

**D. Resolution 12-2018, A Resolution Approving the First Addendum to Professional Services Agreement for Holiday Decorations with Alpine Artisan Studios in the Amount Not to Exceed \$155,010.26**

Mayor Spellman read the title.

Public Works Director Isbester said this resolution was to take down the current decorations, refurbish and store them, and to put them up again later this year. The price is a little more than last year because some of the garlands have to be replaced due to deterioration over the years. Isbester said if Council would like to suggest any other locations to put up decorations to please let him know. With potential new locations along Gregory Street due to the improvements, he said he would

provide an inventory and come back with a suggested program for the future.

**MOTION TO APPROVE**

Alderman Bennett **MOVED** and was **SECONDED** by Alderman Johnson to approve Resolution 12-2018, a Resolution approving the First Addendum to Professional Services Agreement for holiday decorations with Alpine Artisan Studios in the amount not to exceed \$155,010.26.

**MOTION PASSED**

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

**E. Resolution 13-2018, A Resolution Approving the 2018 Fireworks Production Contract Between the City of Black Hawk and Western Enterprises, Inc.**

Mayor Spellman read the title.

City Clerk/Administrative Services Director Greiner introduced this item and said this contract is the first price increase since 2015, due to a 7% increase from their overseas supplier.

**MOTION TO APPROVE**

Alderman Armbright **MOVED** and was **SECONDED** by Alderman Bennett to approve Resolution 13-2018, a Resolution approving the 2018 Fireworks Production Contract between the City of Black Hawk and Western Enterprises, Inc.

**MOTION PASSED**

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

Mayor Spellman addressed the topic of the Business Improvement District's (BID) marketing money, and said Council discussed this prior to the budget sessions. He said the casinos did not meet their requisite benchmark for funding, so the City decided to go ahead and make a marketing contribution. He said the agreement with the BID does not reflect that and Council will have to amend it for this year. He is asking Council to authorize release of those funds, at the time \$185,000 was budgeted. Alderman Moates **MOVED** and was **SECONDED** by Alderman Johnson to approve \$200,000 in funding for the City and BID marketing plan, all were in favor and the motion **PASSED** unanimously.

**9. CITY MANAGER REPORTS:**

City Manager Lewis had nothing to report.

**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 questions relate to potential legislation.

**MOTION TO  
ADJOURN INTO  
EXECUTIVE  
SESSION**

Alderman Bennett **MOVED** and was **SECONDED** by Alderman Johnson to adjourn into Executive Session at 3:25 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 Moates to adjourn the Executive Session at 4:10 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 4:10 p.m.

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Melissa A. Greiner, CMC  
City Clerk

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David D. Spellman  
Mayor



**COUNCIL BILL 1**  
**ORDINANCE 2018-1**  
**AN ORDINANCE REPEALING**  
**AND REENACTING**  
**CHAPTER 4, ARTICLES IV**  
**AND V, OF THE BLACK**  
**HAWK MUNICIPAL CODE**  
**TO ADOPT STANDARDIZED**  
**SALES TAX DEFINITIONS**

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

**COUNCIL BILL NUMBER: CB1**

**ORDINANCE NUMBER: 2018-1**

**TITLE: AN ORDINANCE REPEALING AND REENACTING CHAPTER 4, ARTICLES IV AND V, OF THE BLACK HAWK MUNICIPAL CODE TO ADOPT STANDARDIZED SALES TAX DEFINITIONS**

**WHEREAS**, in Senate Joint Resolution 14-038 the General Assembly asked the Colorado Municipal League to revive the tax simplification project from the 1990s to address current systemic problems associated with local tax collection;

**WHEREAS**, the City Council has determined that the standard tax definitions project is a major collaborative sales tax simplification initiative by Colorado's home rule municipalities that locally collect their sales tax and the retail business community;

**WHEREAS**, the City Council has determined that the City will cooperate in furtherance of a statewide goal to have all locally collecting municipalities agree to use standard definitions in their sales and use tax codes;

**WHEREAS**, the City Council has determined that maintaining the local collection of sales and use taxes for the City is of paramount importance to the continued financial strength of the City;

**WHEREAS**, the City Council has determined that the retail business community desires better uniformity and simplicity when operating in the City;

**WHEREAS**, the City Council has determined that revenue neutral tax simplification is generally construed as good for business and good for the community as a whole; and

**WHEREAS**, the City Council has determined that, as part of adoption of the standard definitions, other minor modifications of the City's sales and use tax code's substantive provisions are required to ensure compliance with the Taxpayer Bill of Rights ("TABOR") by remaining revenue neutral, and that this is an appropriate time to make other minor housekeeping revisions to the sales and use tax code.

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

**Section 1.** The City of Black Hawk Municipal Code, Chapter 4, Article IV, is hereby repealed and reenacted to read as follows:

## ARTICLE IV

### Sales Tax

#### **Sec. 4-41. Purpose.**

(a) The purpose of this Article is to impose a four-percent sales tax on the sale of tangible personal property at retail and the furnishing of services and credit sales and exchanges of property at retail as provided in Section 29-2-105(1)(d), C.R.S., upon every retailer in the City. In addition, this Article shall provide the power necessary to exercise effectively the right to raise revenue that is essential to home rule and self-government. Similarities to state law adopted in this Article are for the purpose of promoting efficiency in the collection of revenue, and, except where prohibited by state law, such matters are declared to be matters of local concern.

(b) The provisions of this Article shall apply to the imposition as well as administration, enforcement and collection of sales tax by the City and shall apply to the administration of the City license as described in this Article.

(c) The provisions of this Article shall be construed to effect uniformity of administration, enforcement and collection of taxes and to establish uniform procedures, but shall not be construed to extend or increase the application, rate or amount of any tax levied or imposed by this Article; provided, however, that the imposition of a penalty, interest or both interest and penalty shall be lawful and shall not be construed as an extension or increase of the application, rate or amount of tax. The substantive provisions of this Article, including but not limited to Section 4-50 of this Article, shall be construed in a manner consistent with state law, in effect on January 1, 2010. Procedural differences between this Article and state statute, if any, are solely intended to facilitate the City's self-collection of sales tax, as is permitted by Article XX, Section 6, of the Colorado Constitution and Article VI, Section 1(a) and (b) of the City's Home Rule Charter.

(d) Effective January 1, 2009, this Article shall also impose an additional one-and-one-half-percent sales tax on the same transactions identified in Subsection (a) above for the purpose of providing financial support to the Gilpin County School District RE-1, except that this additional tax shall expire upon the occurrence of one (1) of the conditions set forth in Section 4-80 of this Article.

#### **Sec. 4-42. Definitions.**

Except as defined below, the words used in this Article shall be defined in Section 39-26-102, C.R.S., and said definitions are incorporated herein by this reference.

**Aircraft** means a device that is used or intended to be used for flight in the air.

**Aircraft part** means any tangible personal property that is intended to be permanently affixed or attached as a component part of an aircraft.

**Business** means all activities engaged in or caused to be engaged in with the object of gain, benefit, or advantage, direct or indirect.

**Charitable organization** means any entity which: (1) has been certified as a nonprofit organization under Section 501(c)(3) of the Internal Revenue Code, and (2) is an organization which exclusively, and in a manner consistent with existing laws and for the benefit of an indefinite number of persons or animals, freely and voluntarily ministers to the physical, mental, or spiritual needs of persons or animals, and thereby lessens the burden of government.

**City** means the municipality of the City of Black Hawk.

**Coins** means monetized bullion or other forms of money manufactured from gold, silver, platinum, palladium or other such metals now, in the future or heretofore designated as a medium of exchange under the laws of this State, the United States or any foreign nation.

**Collection costs** shall include, but is not limited to, all costs of audit, assessment, bank fees, hearings, execution, lien filing, distraint, litigation, locksmith fees, auction fees and costs, prosecution and attorney fees.

**Commercial shipping materials** means materials that do not become part of the finished product to the purchaser which are used exclusively in the shipping process. Commercial Shipping Materials include but are not limited to containers, labels, pallets, banding material and fasteners, shipping cases, shrink wrap, bubble wrap or other forms of binding, padding or protection.

**Construction equipment** means any equipment, including mobile machinery and mobile equipment, which is used to erect, install, alter, repair, remodel, or otherwise make improvements to any real property, building, structure or infrastructure.

**Construction materials** means tangible personal property which, when combined with other tangible personal property, loses its identity to become an integral and inseparable part of a structure or project including public and private improvements. Construction materials include, but are not limited to, such things as: asphalt, bricks, builders' hardware, caulking material, cement, concrete, conduit, electric wiring and connections, fireplace inserts, electrical heating and cooling equipment, flooring, glass, gravel, insulation, lath, lead, lime, lumber, macadam, millwork, mortar, oil, paint, piping, pipe valves and pipe fittings,

plaster, plumbing fixtures, putty, reinforcing mesh, road base, roofing, sand, sanitary sewer pipe, sheet metal, site lighting, steel, stone, stucco, tile, trees, shrubs and other landscaping materials, wall board, wall coping, wallpaper, weather stripping, wire netting and screen, water mains and meters, and wood preserver. The above materials, when used for forms, or other items which do not remain as an integral or inseparable part of completed structure or project are not construction materials.

**Consumer** means any person in the City who purchases, uses, stores, distributes or otherwise consumes in the City tangible personal property or taxable services purchased from sources inside or outside the City.

**Contract auditor** means a duly authorized agent designated by the taxing authority and qualified to conduct tax audits on behalf of and pursuant to an agreement with the municipality.

**Contractor** means any person who shall build, construct, reconstruct, alter, expand, modify, or improve any building, dwelling, structure, infrastructure, or other improvement to real property for another party pursuant to an agreement. For purposes of this definition, “contractor” also includes subcontractor.

**Cover charge** means a charge paid to a club or similar entertainment establishment which may, or may not, entitle the patron paying such charge to receive tangible personal property, such as food and/or beverages.

**Engaged in business in the City** means performing or providing services or selling, leasing, renting, delivering or installing tangible personal property for storage, use or consumption within the City. Engaged in business in the City includes, but is not limited to, any one of the following activities by a person: (1) Directly, indirectly, or by a subsidiary maintains a building, store, office, salesroom, warehouse, or other place of business within the taxing jurisdiction; (2) Sends one or more employees, agents or commissioned sales persons into the taxing jurisdiction to solicit business or to install, assemble, repair, service, or assist in the use of its products, or for demonstration or other reasons; (3) Maintains one or more employees, agents or commissioned sales persons on duty at a location within the taxing jurisdiction; (4) Owns, leases, rents or otherwise exercises control over real or personal property within the taxing jurisdiction; or (5) Makes more than one delivery into the taxing jurisdiction within a twelve month period.

**Farm closeout sale** means full and final disposition of all tangible personal property previously used by a farmer or rancher in farming or ranching operations which are being abandoned.

**Finance Director** means the Finance Director of the City of Black Hawk or such other person designated by the municipality; Finance Director shall also include such person's designee.

**Food for home consumption** means food for domestic home consumption as defined in 7 U.S.C. sec. 2012 (k), as amended, for purposes of the federal food stamp program, or any successor program, as defined in 7 U.S.C. sec. 2012 (l), as amended; except that "food" does not include carbonated water marketed in containers; chewing gum; seeds and plants to grow foods; prepared salads and salad bars; packaged and unpackaged cold sandwiches; deli trays; and hot or cold beverages served in unsealed containers or cups that are vended by or through machines or non-coin-operated coin-collecting food and snack devices on behalf of a retailer.

**Gross sales** means the total amount received in money, credit, property or other consideration valued in money for all sales, leases, or rentals of tangible personal property or services.

**Internet access services** means services that provide or enable computer access by multiple users to the Internet, but shall not include that portion of packaged or bundled services providing phone or television cable services when the package or bundle includes the sale of internet access services.

**License** means a City of Black Hawk sales and/or use tax license.

**Machinery** means any apparatus consisting of interrelated parts used to produce an article of tangible personal property. The term includes both the basic unit and any adjunct or attachment necessary for the basic unit to accomplish its intended function.

**Manufacturing** means the operation or performance as a business of an integrated series of operations which places a product, article, substance, commodity, or other tangible personal property in a form, composition or character different from that in which it was acquired whether for sale or for use by a manufacturer. The change in form, composition or character must result in a different product having a distinctive name, character or use from the raw or prepared materials.

**Mobile machinery and self-propelled construction equipment** means those vehicles, self-propelled or otherwise, which are not designed primarily for the transportation of persons or cargo over the public highways, and those motor vehicles which may have originally been designed for the transportation of persons or cargo over the public highways, and those motor vehicles which may have originally been designed for the transportation of persons or cargo but which have been redesigned or modified by the mounting thereon of special equipment or machinery, and which may be only incidentally operated or moved over the

public highways. This definition includes but is not limited to wheeled vehicles commonly used in the construction, maintenance, and repair of roadways, the drilling of wells, and the digging of ditches.

**Person** means any individual, firm, partnership, joint venture, corporation, limited liability corporation, estate or trust, receiver, trustee, assignee, lessee or any person acting in a fiduciary or representative capacity, whether appointed by court or otherwise, or any group or combination acting as a unit.

**Precious metal bullion** means any precious metal, including but not limited to, gold, silver, platinum, palladium, that has been put through a process of refining and is in such a state or condition that its value depends upon its precious metal content and not its form.

**Preprinted newspaper supplements** shall mean inserts, attachments or supplements circulated in newspapers that: (1) are primarily devoted to advertising; and (2) the distribution, insertion, or attachment of which is commonly paid for by the advertiser.

**Price or purchase price** means the aggregate value measured in currency paid or delivered or promised to be paid or delivered in consummation of a sale, without any discount from the price on account of the cost of materials used, labor or service cost, and exclusive of any direct tax imposed by the federal government or by this article, and, in the case of all retail sales involving the exchange of property, also exclusive of the fair market value of the property exchanged at the same time and place of the exchange, if: (1) Such exchanged property is to be sold thereafter in the usual course of the retailer's business, or (2) Such exchanged property is a vehicle and is exchanged for another vehicle and both vehicles are subject to licensing, registration, or certification under the laws of this state, including, but not limited to, vehicles operating upon public highways, off-highway recreation vehicles, watercraft, and aircraft. Any money or other consideration paid over and above the value of the exchanged property is subject to tax.

**Price or Purchase Price** includes: (1) The amount of money received or due in cash and credits. (2) Property at fair market value taken in exchange but not for resale in the usual course of the retailer's business. (3) Any consideration valued in money, whereby the manufacturer or someone else reimburses the retailer for part of the purchase price and other media of exchange. (4) The total price charged on credit sales including finance charges which are not separately stated. An amount charged as interest on the unpaid balance of the purchase price is not part of the purchase price unless the amount added to the purchase price is included in the principal amount of a promissory note; except the interest or carrying charge set out separately from the unpaid balance of the purchase price on the face of the note is not part of the purchase price. An amount charged for insurance on the property sold and separately stated is not

part of the purchase price. (5) Installation, applying, remodeling or repairing the property, delivery and wheeling-in charges included in the purchase price and not separately stated. (6) Transportation and other charges to effect delivery of tangible personal property to the purchaser. (7) Indirect federal manufacturers' excise taxes, such as taxes on automobiles, tires and floor stock. (8) The gross purchase price of articles sold after manufacturing or after having been made to order, including the gross value of all the materials used, labor and service performed and the profit thereon.

**Price or Purchase Price** shall not include: (1) Any sales or use tax imposed by the State of Colorado or by any political subdivision thereof. (2) The fair market value of property exchanged if such property is to be sold thereafter in the retailers' usual course of business. This is not limited to exchanges in Colorado. Out of state trade-ins are an allowable adjustment to the purchase price. (3) Discounts from the original price if such discount and the corresponding decrease in sales tax due is actually passed on to the purchaser, and the seller is not reimbursed for the discount by the manufacturer or someone else. An anticipated discount to be allowed for payment on or before a given date is not an allowable adjustment to the price in reporting gross sales.

**Purchase or sale** means the acquisition for any consideration by any person of tangible personal property, other taxable products or taxable services that are purchased, leased, rented, sold, used, stored, distributed, or consumed. These terms include capital leases, installment and credit sales, and property and services acquired by: (1) Transfer, either conditionally or absolutely, of title or possession or both to tangible personal property, other taxable products, or taxable services; (2) A lease, lease-purchase agreement, rental or grant of a license, including royalty agreements, to use tangible personal property, other taxable products, or taxable services; (3) Performance of taxable services; or (4) Barter or exchange for other tangible personal property, other taxable products, or services. The terms **purchase** and **sale** do not include: (1) A division of partnership assets among the partners according to their interests in the partnership; (2) The transfer of assets of shareholders in the formation or dissolution of professional corporations, if no consideration including, but not limited to, the assumption of a liability is paid for the transfer of assets; (3) The dissolution and the pro rata distribution of the corporation's assets to its stockholders, if no consideration including, but not limited to, the assumption of a liability is paid for the transfer of assets; (4) A transfer of a partnership or limited liability company interest; (5) The transfer of assets to a commencing or existing partnership or limited liability company, if no consideration including, but not limited to, the assumption of a liability is paid for the transfer of assets; (6) The repossession of personal property by a chattel mortgage holder or foreclosure by a lienholder.



**Retailer** means any person selling, leasing, renting, or granting a license to use tangible personal property or services at retail. Retailer shall include, but is not limited to, any: (1) Auctioneer; (2) Salesperson, representative, peddler or canvasser, who makes sales as a direct or indirect agent of or obtains such property or services sold from a dealer, distributor, supervisor or employer; (3) Charitable organization or governmental entity which makes sales of tangible personal property to the public, notwithstanding the fact that the merchandise sold may have been acquired by gift or donation or that the proceeds are to be used for charitable or governmental purposes; (4) Retailer-contractor, when acting in the capacity of a retailer.

**Retailer-contractor** means a contractor who is also a retailer of building supplies, construction materials, or other tangible personal property, and purchases, manufactures, or fabricates such property for resale (which may include installation), repair work, time and materials jobs, and/or lump sum contracts.

**Return** means any form prescribed by the city/town administration for computing and reporting a total tax liability.

**Sales tax** means the tax that is or should be collected and remitted by a retailer on sales taxed under this Code.

**School** means an educational organization which maintains a faculty and curriculum and has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are routinely conducted.

**Storage** means any keeping or retention of, or exercise or dominion or control over, or possession of, for any length of time, tangible personal property not while in transit but on a stand still basis for future use when leased, rented or purchased at retail from sources either within or without the City from any person or retailer.

**Tax** means the use tax due from a consumer or the sales tax due from a retailer or the sum of both due from a retailer who also consumes.

**Tax deficiency or deficiency** means any amount of tax, penalty, interest, or other fee that is not reported and/or not paid on or before the date that any return or payment of the tax is required under the terms of this Code.

**Taxable sales** means gross sales less any exemptions and deductions specified in this Code.

**Taxable services** means services subject to tax pursuant to this Code.

**Taxpayer** means any person obligated to collect and/or pay tax under the terms of this Code.

**Telecommunications service** means the service of which the object is the transmission of any two-way interactive electronic or electromagnetic communications including but not limited to voice, image, data and any other information, by the use of any means but not limited to wire, cable, fiber optical cable, microwave, radio wave, Voice over Internet Protocol (VoIP), or any combinations of such media, including any form of mobile two-way communication.

**Therapeutic device** means devices, appliances, or related accessories that correct or treat a human physical disability or surgically created abnormality.

**Total tax liability** means the total of all tax, penalties and/or interest owed by a taxpayer and shall include sales tax collected in excess of such tax computed on total sales.

**Use** means the exercise, for any length of time by any person within the City of any right, power or dominion over tangible personal property or services when rented, leased or purchased at retail from sources either within or without the City from any person or retailer or used in the performance of a contract in the City whether such tangible personal property is owned or not owned by the taxpayer. Use also includes the withdrawal of items from inventory for consumption.

**Use tax** means the tax paid or required to be paid by a consumer for using, storing, distributing or otherwise consuming tangible personal property or taxable services inside the City.

**Wholesaler** means any person doing an organized wholesale or jobbing business and selling to licensed retailers, jobbers, dealers, or other wholesalers, for the purpose of resale, and not for storage, use, consumption, or distribution.

**Sec. 4-43. Sales tax exempt property and services.**

The following goods and services shall be exempt from the sales tax imposed by this Article, it being the intent of this Section that, where applicable, these exemptions are interpreted and applied according to the state law sales tax exemptions described in Part 7, Article 26, of Title 39, C.R.S.:

(a) All sales which the City is prohibited from taxing under the constitution or laws of the United States, the State or the City's Charter.

(b) Sales to the United States government and to the State, its departments and institutions and the political subdivisions thereof in their governmental capacities.

(c) All sales of cigarettes.

(d) Sales of prescription drugs, prosthetic and therapeutic devices for humans under the following conditions:

(1) Therapeutic devices, appliances or related accessories with a retail value of more than one hundred dollars (\$100.00), which are sold to correct or treat a human physical disability or surgically created abnormality and when sold in accordance with a written recommendation from a licensed doctor;

(2) Therapeutic devices, appliances or related accessories with a retail value of one hundred dollars (\$100.00) or less, when sold to correct or treat a human physical disability or surgically created abnormality.

(e) All sales and purchases of rooms or accommodation or lodging services to any occupant who is a permanent resident of any hotel, inn, bed and breakfast residence, apartment hotel, lodging house, motor hotel, guesthouse, guest ranch, trailer court, mobile home, auto camp or trailer court or park, and who enters into or has entered into a written agreement for occupancy of a room or accommodations for a period of at least thirty (30) consecutive days during the calendar year or preceding year.

(f) All sales made to schools, other than schools held or conducted for private or corporate profit.

(g) Any sale of a new or used trailer, semi-trailer, truck, truck-tractor or truck body if such vehicle is purchased for use exclusively outside the City or in interstate commerce and is delivered by the manufacturer or licensed dealer to the purchaser within the City, if the purchaser drives or moves such vehicle to any point outside the City within thirty (30) days after the date of delivery and if the purchaser furnishes an affidavit to the seller that such vehicle shall be permanently licensed and registered outside the City and shall be removed from the City within thirty (30) days of delivery.

(h) All sales of construction materials to a common carrier by rail operating in interstate or foreign commerce for use by such common carrier in construction and maintenance of its railroad tracks.

(i) All transactions in which the fair market value of the exchanged property is excluded from the consideration or purchase price, because there is no additional consideration involved in the transaction.

(j) Any right to the continuous possession or use for three (3) years or less of any article of tangible personal property under a lease or contract, if the lessor has paid a sales or use tax on such tangible personal property upon its acquisition. The City may permit a lessor of tangible personal property leased for a period of three (3) years or less to acquire such property free of sales or use tax if the lessor agrees to collect sales tax on all lease payments received on such property.

(k) All sales of aircraft used or purchased for use in interstate commerce by a commercial airline, aircrafts purchased by out-of-State residents for use out of State and the sale of aircraft parts.

(l) The sale of tangible personal property that is to be affixed or attached as a component part of a locomotive, a freight car, railroad work equipment or other railroad rolling stock.

(m) All sales of locomotives, freight cars, railroad work equipment and other railroad rolling stock used or purchased for use in interstate commerce by a railroad company.

(n) Internet access services and, in accordance with the Mobile Telecommunications Sourcing Act, 4 U.S.C. §§ 116 to 126, as amended, mobile telecommunications service provided to a customer whose place of primary use is outside the boundaries of the City.

(o) Forty-eight percent (48%) of the purchase price of factory built housing as such housing is defined in 24-32-3302(11), as amended, and the entire purchase price in any subsequent sale of a motor home, as such vehicle is defined in Section 42-1-102(57), C.R.S, as amended, after such motor home has been subject to the payment of sales tax.

(p) All sales of precious metal bullion and coins.

(q) All sales and purchases of refractory materials and carbon electrodes used by a person manufacturing iron and steel for sale and all sales and purchases of inorganic chemicals used in the processing of vanadium-uranium ores.

(r) All sales of equipment, as defined in Section 12-9-102(5), C.R.S., to a bingo-raffle licensee, as defined in Section 12-9-102(1.2), C.R.S.

(s) All sales and purchases of machinery that comprises a clean room, when used to produce tangible property, such as computer components, microprocessors, software media, biotechnological products, nanotechnological products, photonic products and pharmaceuticals.

(t) Agricultural compounds, animal pharmaceuticals and agricultural pesticides according to Section 39-26-716, C.R.S., and according to the temporary moratorium imposed on these exemptions until June 30, 2013.

(u) All sales of construction materials, if such materials are picked up by the purchaser, and if the purchaser of such materials presents to the retailer a building permit or other documentation acceptable to the City evidencing that a local use tax has been paid or is required to be paid to another jurisdiction.

(v) All sales of construction materials to contractors and subcontractors for use in the building, erection, alteration or repair of structures, highways, roads, streets and other public works owned or used by:

(1) The United States government, the State, its departments and institutions and the political subdivisions thereof in their governmental capacities only;

(2) Charitable organizations in the conduct of their regular charitable functions and activities; or

(3) Schools, other than schools held or conducted for private or corporate profit.

(w) All sales and purchases of newsprint and printer's ink for use by publishers of newspapers and commercial printers and all sales and purchases of newspapers.

(x) All sales and purchases of food, as specified in 7 U.S.C. § 2012(g), as such section existed on October 1, 1987, or is thereafter amended, which is purchased with food stamps pursuant to the federal food stamp program, or sales and purchases of food, as specified in 42 U.S.C. § 1786, as such section existed on October 1, 1987, or is thereafter amended, which is purchased with Women Infant Children ("WIC") vouchers or checks pursuant to the federal special supplemental program for women, infants and children.

(y) All occasional sales by charitable organizations of tangible personal property.

(z) All sales made to charitable organizations in the conduct of their regular charitable functions and activities.

(aa) Sales and purchases of electricity, coal, wood, gas, fuel, oil or coke sold, but not for resale, to occupants of residences, whether owned, leased or rented by said occupants, for the purpose of operating residential fixtures and appliances that provide light, heat and power for such residences. Gas shall include natural, manufactured and liquefied petroleum gas.

**Sec. 4-44. Exemptions; state taxes.**

The amount subject to tax under this Article shall not include the state sales and use tax imposed by Article 26, Title 39, C.R.S.

**Sec. 4-45. Consummation of a taxable transaction.**

For the purpose of this Article, all retail sales shall be considered consummated at the place of business of the retailer, unless the tangible personal property sold is delivered by the retailer or his or her agent to a destination outside the City, or to a common carrier for delivery to a destination outside the limits of the City.

**Sec. 4-46. Delivery charge to retailer.**

The gross sales include delivery charges when such charges are subject to the state sales and use tax imposed by Article 26 of Title 39, C.R.S., regardless of the place to which delivery is made.

**Sec. 4-47. Credit sales taxed.**

In case of a sale upon credit, or a contract for sale wherein it is provided that the price shall be paid in installments and title does not pass until a future date or a chattel mortgage or a conditional sale, there shall be paid upon each payment, upon the account of purchase price, that portion of the total tax which the amount paid bears to the total purchase price.

**Sec. 4-48. Place of business.**

In the event a retailer has no permanent place of business in the City or more than one (1) place of business, the place or places at which the retail sales are consummated for the purpose of this sales tax shall be determined by the provisions of Article 26 of Title 39, C.R.S., and by the rules and regulations promulgated by the Department of Revenue. A retailer shall be deemed to be engaged in business in the City as defined in this Article.

**Sec. 4-49. Exempt sales.**

All sales of personal property on which a specific ownership tax has been paid or is payable shall be exempt from the City sales tax when such sales meet both of the following conditions:

(a) The purchaser is a nonresident of or has its principal place of business outside the City; and

(b) Such personal property is registered or required to be registered outside the limits of the City under the laws of the State.

**Sec. 4-50. Imposition of tax; schedules.**

(a) There is hereby imposed on all sales or exchanges of tangible personal property at retail and the furnishing of services as provided in Section 39-26-104, C.R.S., and credit sales, a tax equal to four and one-half percent (4½%) of the gross sales and an additional tax equal to one and one-half percent (1½%) of the gross sales, separately subject to the termination provisions set forth in Section 4-80 below.

(b) The tangible personal property, services and credit sales taxable by this Article shall be the same as the tangible personal property, services and credit sales taxable pursuant to Sections 39-26-104 and 39-26-111, C.R.S.

(c) The imposition of the tax on individual sales shall be in accordance with schedules set forth in the rules and regulations promulgated by the City Manager by separate ordinance of the City. If any retailer, during any reporting period, shall collect as a tax an amount in excess of the amount required of his or her total taxable sales, he or she shall remit to the City Manager the full amount of the tax herein imposed and also such excess.

**Sec. 4-51. Collection, enforcement, etc.**

(a) The administration of all provisions of this Article and of the City's sales tax is hereby vested in and shall be exercised by the City Manager, who shall prescribe forms and formulate and promulgate appropriate rules and regulations to effectuate the purpose of this Article, in conformity with this Article and subject to other provisions of law relating thereto, for the making of returns, for the ascertainment, assessment and collection of the taxes imposed and for the proper administration and enforcement thereof, and to provide uniform methods of adding the tax, or the average equivalent thereof, to the purchase price. Rules and regulations adopted, amended or rescinded by the City Manager shall be effective in the manner and at the time prescribed, subject to the provisions of the Article. The City Manager is authorized to delegate any duty or power conferred by this Article to a subordinate unless otherwise specifically prohibited from doing so herein.

(b) For the purpose of ascertaining the correctness of any return or for the purpose of making an estimate of the tax due from any taxpayer, the City Manager shall have power to examine or cause to be examined the records required to be kept by Section 4-52 below. Subject to the provisions of this Article, the City Manager is authorized to prescribe the duties and powers of such officers, accountants, experts and other persons, including but not limited to contract auditors, as may be necessary in the performance of his or her duty. The

City Manager may delegate to any employee of the City such power and authority as deemed reasonable and proper for the effective administration of this Article.

**Sec. 4-52. Audits.**

(a) Taxpayer's retention of records. It shall be the duty of every person, firm or corporation liable to the City for any tax to keep and preserve for a period of at least three (3) years from the date of filing the return with the City the records described in Subsection (b) below.

(b) Records to be made available for audit. All such books, accounts and records, together with all bills, receipts, invoices, cash register tapes or other documents of original entry supporting the entries in the books, shall be maintained and shall be open for examination at any reasonable time by the City Manager. The records shall show:

(1) Gross sales from leases of tangible personal property (including any services that are part of the sale or lease) made in the City, irrespective of whether the seller or lessor regards the sale to be taxable or nontaxable.

(2) All deductions allowed by law and claimed in filing returns.

(3) Receipts for purchases of all tangible personal property purchased for sale, consumption or lease in the City, including detailed invoices for goods and services provided by subcontractors, if any. The taxpayer's name and address shall be clearly indicated on all receipts.

(c) Travel required to perform audit. In the case of a person, firm or corporation which does not keep the necessary books, accounts and records within the City, it shall be sufficient if such person, firm or corporation produces within the City such books, accounts and records or such information as shall be reasonably required by the City Manager for examination by the City Manager; or, in lieu thereof, said person, firm or corporation shall pay in advance, or as approved by the City Manager, such travel, lodging, meal and related expenses as shall reasonably be incurred by the City Manager or his or her duly authorized agent in examination of said books, accounts and records at such place where said books, accounts and records are kept.

(d) Coordinated audit.

(1) Any taxpayer licensed in the City and holding a similar sales tax license or business registration in another Colorado municipality that administers its own sales tax collection may request a coordinated audit as provided in this Article.



(2) Within fourteen (14) days of receipt of notice of an intended audit by any municipality that administers its own sales tax collection, the taxpayer may provide to the City Manager of such city, by certified mail, return receipt requested, a written request for a coordinated audit indicating the municipality from which the notice of intended audit was received and the name of the official who issued such notice. Such request shall include a list of those Colorado municipalities using local collection of their sales tax in which the taxpayer holds a current sales tax license or business registration.

(3) Except as provided in Paragraph (6) below, any taxpayer that submits a complete request for a coordinated audit and promptly signs a waiver of limitation, if required, may be audited by the City during the twelve (12) months after request is submitted only through a coordinated audit involving all municipalities electing to participate in such an audit.

(4) If the City desires to participate in the audit of a taxpayer that submits a complete request for a coordinated audit pursuant to Paragraph (3) above, the City Manager shall so notify the City Manager of the municipality whose notice of audit prompted the taxpayer's request within ten (10) days after receipt of the taxpayer's request for a coordinated audit. The City Manager shall then cooperate with other participating municipalities in the development of arrangements for the coordinated audit, including arrangement of the time during which the coordinated audit will be conducted, the period of time to be covered by the audit and a coordinated notice to the taxpayer of those records most likely to be required for completion of the coordinated audit.

(5) If the taxpayer's request for a coordinated audit was in response to a notice of audit issued by the City, the City Manager shall facilitate arrangements between this City and other municipalities participating in the coordinated audit unless and until an official from some other participating municipality agrees to assume this responsibility. The City Manager shall cooperate with other participating municipalities to, whenever practicable, minimize the number of auditors that will be present on the taxpayer's premises to conduct the coordinated audit on behalf of the participating municipalities. Information obtained by or on behalf of those municipalities participating in the coordinated audit may be shared only among such participating municipalities.

(6) If the taxpayer's request for a coordinated audit was in response to a notice of audit issued by the City, the City Manager shall, once arrangements for the coordinated audit between this City and other participating municipalities are completed, provide written notice to the taxpayer of which municipalities will be participating, the period to be audited and the records most likely to be required by participating

municipalities for completion of the coordinated audit. The City Manager shall also propose a schedule for the coordinated audit.

(7) The City may conduct an audit in conjunction with another municipality.

(8) The coordinated audit procedure set forth in this Section shall not apply:

(A) When the proposed audit is a jeopardy audit;

(B) To audits for which a notice of audit was given prior to the effective date of this Section;

(C) When a taxpayer refuses to promptly sign a waiver of limitation; or

(D) When a taxpayer fails to provide a timely and complete request for a coordinated audit as provided in Paragraph (2) above.

#### **Sec. 4-53. Tax reports and returns.**

(a) City's preservation of records. All reports and returns of taxes received by the Finance Department covered by this Article shall be preserved subject to the Colorado Municipal Records Retention Schedule, as adopted by the City.

(b) Confidential nature of returns. Except in accordance with judicial order, consent of the taxpayer, or as otherwise provided by law, the City Manager, the Finance Director and the City Attorney shall not divulge or make known in any way information disclosed in any document, report or return filed in connection with any of the taxes covered by this Article. The officials charged with the custody of such documents, reports and returns shall not be required to produce them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the City Manager in an action or proceeding under the provisions of any such taxing or open record statutes when the report of facts shown thereby are directly involved in such action or proceeding, in either of which events the Court may require the production of, and may admit into evidence, so much of said reports, or of the facts shown thereby, as are pertinent to the action or proceeding, and no more.

(c) Taxpayer request for records. Nothing contained in this Section shall be construed to prohibit the delivery to a person or his or her duly authorized representative of a copy of any return or report filed in connection with his or her tax, and such copies may be certified by the City Manager, and when so certified shall be evidence equal with and in like manner as the originals and may be received by the courts of the State as evidence of the contents.

(d) Publication of statistics. Nothing in this Section shall be construed to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof.

(e) Records available to authorized jurisdictions. Notwithstanding the provisions of this Section, the City Manager, in his or her discretion, may furnish the County Finance Director and his or her authorized personnel, to the State of Colorado Department of Revenue Executive Finance Director and his or her authorized personnel, to the taxing officials of the State political subdivisions and to the United States, any information contained in tax returns and related schedules and documents filed pursuant to this Article, or in the report of an audit or investigation made with respect thereto, provided that such information is to be used only for tax purposes.

**Sec. 4-54. Assessment; interest and penalties.**

(a) Assessment. Subsection (b) below shall apply if the City Manager determines that any person, taxpayer or retailer has failed, neglected or refused:

(1) To collect all taxes due;

(2) To make a return and pay all taxes due;

(3) To remit the proper amount of tax due;

(4) To pay in full all taxes due because of negligence, fraud or on a regular basis; or

(5) To remit taxes due pursuant to an audit resulting in an assessment.

(b) Assessment notice and due date. Interest and penalties shall be assessed and the City Manager shall give to the delinquent person, taxpayer or retailer a written notice of final determination-assessment and demand for payment, which notice shall be sent via certified mail and shall state the full amount of taxes, interest and penalties due, which assessment of deficiency amount shall be due and payable within thirty (30) days of the date that such notice is sent by the City Manager, unless a hearing has been timely requested according to Section 4-57 below.

(c) Estimated assessment. If the City Manager is unable to audit the records of a taxpayer, either due to the taxpayer's refusal, lack of cooperation or lack of records; due to time constraints; or due to other reasons which the City Manager may reasonably determine, the City Manager shall make an estimate based upon such information as may be available and shall issue an assessment as

provided in this Article. If a person, taxpayer or retailer neglects or refuses to make a return, the City Manager shall make an estimate, based upon such information as may be available, of the taxes due for the period for which such person is delinquent.

(d) Failure to file penalty. If a person, taxpayer or retailer neglects or refuses to make a return as required in this Article, a minimum penalty equal to the sum of fifteen dollars (\$15.00) shall be paid for every return not filed that is required to be filed by this Article. If the penalty mentioned in Subsection (f) below is more than this fifteen-dollar amount, the Subsection (f) penalty shall control. This penalty does not apply to returns filed prior to the issuance of a notice of final determination-assessment and demand for payment. Interest shall not accrue on this minimum penalty.

(e) Mathematical error on tax returns. In the event that the amount of tax is understated on the taxpayer's return due to a mathematical error, the City Manager shall notify the taxpayer by written notice of final determination-assessment and demand for payment of the amount of tax in excess of that shown in the return which is due and has been assessed, which notice shall be sent via certified mail. The taxpayer shall have no right of protest or appeal as in the matter of other assessments, but shall pay the tax due and assessed or file an amended return to show the true amount of tax due within thirty (30) days of the date that such assessment is sent by the City Manager.

(f) Interest and penalty for failure to comply. Unless the taxpayer shows that its failure to comply fully with this Article is due to reasonable cause, which the taxpayer may prove in a hearing requested pursuant to this Article, there shall be added to all assessments a penalty of ten percent (10%) of the tax deficiency, or a minimum of fifteen dollars (\$15.00). Interest in such case shall accrue and be collected at a rate of one and one-half percent (1½%) per month on the amount of such tax deficiency, not including the amount of the penalty, from the time the return was due.

(g) Penalty for fraud. If any deficiency in taxes paid is due to fraud with the intent to evade the tax, there shall be added to all assessments a penalty of one hundred percent (100%) of the tax deficiency. Interest on such deficiency shall accrue and be collected at a rate of one and one-half percent (1½%) per month on the amount of such deficiency, not including the amount of the penalty, from the time the return was due.

(h) Special penalty for repeated enforcement proceedings. In any assessment issued to a person, retailer or taxpayer against whom enforcement proceedings have been commenced in the past, a special penalty, in addition to all others provided in this Article, shall also be imposed. This special penalty shall be equal to the greater of two hundred fifty dollars (\$250.00) or twenty-five percent

(25%) of the tax deficiency. For purposes of this Subsection, enforcement proceedings shall mean:

(1) Issuance of a distraint warrant;

(2) Filing of a lawsuit in the district or county court; or

(3) Three (3) occurrences of the revocation of the person's, retailer's or taxpayer's license or issuance of a summons to Municipal Court for the nonpayment of taxes or a combination of revocations and summonses.

(i) City Manager may waive penalty. The City Manager is hereby authorized to waive, for good cause shown, any penalty assessed as provided in this Article. Interest imposed in excess of the regular interest rate established by Paragraph 4-61(b)(2) below shall be deemed a penalty. If the City Manager finds that a taxpayer has, in good faith, paid tax to a retailer, the City Manager is hereby authorized to abate the interest and penalty in its entirety.

(j) Interest and penalty assessment. Interest and penalties prescribed under this Article shall be paid upon notice and demand and shall be assessed, collected and paid in the same manner as the tax to which it is applicable. If any portion of a tax is satisfied by credit of an overpayment, then no interest or penalty shall be imposed under this Section on the portion of the tax so satisfied.

**Sec. 4-55. Jeopardy assessment.**

(a) Jeopardy enforcement. If the City Manager finds that collection of the tax will be jeopardized by delay, in his or her discretion, he or she may declare the taxable period immediately terminated, determine the tax and issue notice and demand for payment thereof; and, having done so, the tax shall be due and payable forthwith, and the City Manager may proceed immediately to collect such tax as provided in Section 4-63 of this Article.

(b) Immediate enforcement action. In any other case wherein it appears that the revenue is in jeopardy, the City Manager may immediately issue demand for payment; and, regardless of the provisions of Sections 4-57 and 4-58 below, the tax shall be due and payable forthwith, and, in his or her discretion, the City Manager may proceed immediately to collect said tax as provided in Section 4-63 of this Article.

(c) Security for payment. Collection under either Subsection (a) or (b) above may be stayed if the taxpayer gives such security for payment as shall be satisfactory to the City Manager.

#### **Sec. 4-56. Notice by mail.**

The taxpayer shall at all times have the burden of ensuring that his or her correct mailing address, email address and fax number are on file with the City Manager. Any notice of final determination-assessment and demand for payment or denial of refund sent to the taxpayer pursuant to this Article shall be sent via certified mail. Other forms of notice may be sent via regular U.S. mail, fax or e-mail. If notice is not received by the taxpayer or the notice is returned by the post office as undeliverable or rejected by the taxpayer, such notice shall be deemed given on the date sent, and the City shall have no further obligation to complete service of the notice.

#### **Sec. 4-57. Hearings.**

(a) Request for informal hearing. Any taxpayer may request in writing an informal hearing pursuant to Subsection (c) below on any tax imposed by reason of notice of final determination-assessment and demand for payment or by reason of denial of his or her claim for refund by application to the City Manager within thirty (30) days of the date that a notice of deficiency, assessment or denial of refund is sent by the City Manager. The request for hearing shall set forth the taxpayer's reasons for and the amount of the requested changes in the deficiency, assessment or denial of refund.

(b) Hearing time and place. The City Manager shall notify the taxpayer in writing of the time and place for such hearing fourteen (14) days prior thereto, unless the taxpayer requests shorter notice or an extension of time. In no event shall the hearing be held more than sixty (60) days after the City Manager's receipt of request for a hearing, unless the taxpayer agrees to a later date. In all cases, the hearing shall be held at the office of the City Manager.

(c) Informal hearing. Hearings shall be conducted in any manner acceptable to the taxpayer and the City Manager. Such hearing shall be informal, and no transcript, rules of evidence or filing of briefs shall be required, but the taxpayer may elect to submit a brief, in which case the City Manager may submit a brief. Such hearing shall be held and the hearing determination notice thereon issued within ninety (90) days after the City Manager's receipt of the taxpayer's written request therefor, except the period may be extended if the delay in holding the hearing or issuing the hearing determination notice thereon was occasioned by the taxpayer; but, in any such event, such hearing shall be held and the hearing determination notice thereon issued within one hundred eighty (180) days of the taxpayer's request in writing therefor.

(d) Hearing based on written brief. The taxpayer may also file a written brief and such other written materials or documents as he or she shall deem appropriate and request that the City Manager reconsider the deficiency without a hearing. The City Manager shall proceed to reconsider the deficiency in the same

manner as if the written material submitted had been presented at a hearing pursuant to Subsection (c) above. The submission of written material shall be considered for all purposes the same as a request for and submission of the material at a hearing. The City staff and/or agents shall be permitted to respond in writing to the submittals of the taxpayer. Rebuttal submissions may be permitted at the discretion of the City Manager. The hearing determination notice, with respect to the hearing based on written brief, shall be issued within ninety (90) days after the City Manager's receipt of the taxpayer's written request therefor, except the period may be extended if the delay in conducting the hearing or issuing the hearing determination notice thereon was occasioned by the taxpayer; but, in any such event, such hearing based on written brief shall occur and the hearing determination notice thereon issued within one hundred eighty (180) days of the taxpayer's request in writing therefor.

(e) Time limitation on a request for hearing. After the expiration of thirty (30) days from the date that the notice of final determination-assessment and demand for payment or denial of refund is sent, if the tax, interest and penalty, if any, has not been paid, if no request for hearing has been requested or no written brief has been filed by the taxpayer, then the notice of final determination-assessment and demand for payment previously sent shall constitute a final assessment of the amount of the tax specified, together with interest and penalty, or shall constitute a final denial of refund, as the case may be. The City Manager may promptly take necessary steps to collect all amounts owed. The taxpayer shall have no further right to a hearing, trial or appeal on the facts of its case.

(f) City Manager may adjust tax under question. Based on the evidence presented at any hearing or filed in support of the taxpayer's contentions, the City Manager may modify or abate in part or in full the tax and the interest and penalty related to such tax questioned at the hearing or may approve a refund.

(g) Hearing determination notices. After any hearing, upon rejection, in whole or in part, of the claim for refund or upon the finding by the City Manager that, on hearing the evidence, an assessment in whole or in part has been made against the taxpayer validly, the City Manager shall send a hearing determination notice to the taxpayer pursuant to Subsections (c) and (d) above setting forth the amount of claim for refund denied or the amount of deficiency assessment of taxes found due, stating therein the grounds for allowance or rejection in whole or in part.

(h) Tax due date after hearing. Unless an appeal is taken as provided in Section 4-58 below, the tax and fee, together with interest thereon and penalties, if any, shall be paid within thirty (30) days after the hearing determination notice is sent by the City Manager to the taxpayer.

(i) Compliance with Section 29-2-106.1, C.R.S. - Severability of invalid provisions. This Section shall be construed wherever possible as consistent with

Section 29-2-106.1, C.R.S. To the extent that any provision in this Section is inconsistent with Section 29-2-106.1, C.R.S., that statute shall control. If any provision of this Section, or the application of such provision to any person or circumstance, is for any reason held to be invalid, such invalidity shall not affect other provisions or applications of this Section which can be given effect without the invalid provision or application, and to this end the provisions of this Section are declared to be severable.

#### **Sec. 4-58. Appeals.**

The taxpayer may appeal the hearing determination notice of the City Manager issued pursuant to Section 4-57 above within thirty (30) days of the date that such determination is sent by the City Manager. Any such appeal shall be conducted in accordance with the provisions of Section 29-2-106.1, C.R.S., and shall be conducted de novo.

#### **Sec. 4-59. Refunds.**

(a) Disputed sales tax. Should a dispute arise between the purchaser and seller as to whether or not any sale, service or commodity is exempt from taxation under this Article, nevertheless the seller shall collect and the purchaser shall pay the tax and the seller shall issue to the purchaser a receipt or certificate, on forms prescribed by the City Manager, showing the names of the seller and the purchaser, the items purchased, the date, price, amount of tax paid and a brief statement of the claim of exemption.

(b) Refund allowed if exempt. A refund shall be made, or a credit allowed, for the sales tax so paid under dispute by any purchaser who has an exemption under this Article, provided that such refund shall be made by the City Manager after compliance with the following conditions precedent: Applications for refund must be made within sixty (60) days after the purchase of the goods whereon an exemption is claimed and must be supported by the affidavit of the purchaser accompanied by the original paid invoice or sales receipt and certificate issued by the seller and be made upon such forms as shall be prescribed and furnished by the City Manager, which forms shall contain such information as the City Manager shall prescribe.

(c) Refund disallowed. Upon receipt of such application, the City Manager shall examine the same with all due speed and shall give notice to the applicant by order in writing of his or her decision thereon. Aggrieved applicants, within thirty (30) days after such decision is sent, may petition the City Manager for a hearing on the claim in the manner provided in Section 4-57 above.

(d) Statute of limitations. With the exception of a written document that tolls the running of the statute of limitations, no refund shall be allowed or paid



under any circumstances more than three (3) years after the City's receipt of sales taxes in question.

(e) Taxpayer's discovery of overpayment of use tax. A taxpayer may apply for a refund of payment of excess use taxes within sixty (60) days after discovery of the overpayment. The City Manager may deny such refund if he or she finds that the taxpayer discovered or reasonably should have discovered the overpayment more than sixty (60) days prior to the date of City Manager application for a refund. The taxpayer may petition the City Manager for a hearing on the claim in the manner provided in Section 4-57 above within thirty (30) days after the City Manager's denial of refund is sent to the taxpayer.

(f) Refunds not assignable. The right of any taxpayer to a refund under this Article shall not be assignable, and such application for refund must be made by the same person who purchased the goods and paid the tax thereon as shown in the invoice of the sale thereof, except as provided in Subsection (j) below. The City Manager may, upon receiving a properly executed release of claim from the taxpayer and evidence to substantiate that the tax was remitted in error to another municipality, issue a joint refund check in the name of the taxpayer and the municipality, provided that the municipality has entered into an agreement to grant similar privileges to the City.

(g) Burden of proof of exemption. The burden shall be on the taxpayer making such claim to prove that sales, services and commodities on which tax refunds are claimed, are exempt from taxation or were not purchased at retail. The City Manager may prescribe reasonable requirements for such proof.

#### **Sec. 4-60. Claims for recovery.**

The intent of this Section is to streamline and standardize procedures related to situations where tax has been remitted to the incorrect municipality. It is not intended to reduce or eliminate the responsibilities of the taxpayer or retailer to correctly pay, collect and remit sales tax to the City.

(a) When it is determined by the City Manager that sales tax owed to the City has been reported and paid to another municipality, the City shall promptly notify the retailer that taxes are being improperly collected and remitted and that, as of the date of the notice, the retailer must cease improper tax collections and remittances.

(b) The City may make a written claim for recovery directly to the municipality that received tax and/or penalty and interest owed to the City or, in the alternative, may institute procedures for collection of the tax from the taxpayer or retailer. The decision to make a claim for recovery lies in the sole discretion of the City. Any claim for recovery shall include a properly executed release of claim from the taxpayer and/or retailer releasing its claim to the taxes

paid to the wrong municipality, evidence to substantiate the claim and a request that the municipality approve or deny, in whole or in part, the claim within ninety (90) days of its receipt. The municipality to which the City submits a claim for recovery may, for good cause, request an extension of time to investigate the claim, and approval of such extension by the City shall not be unreasonably withheld.

(c) Within ninety (90) days after receipt of a claim for recovery, the City shall verify to its satisfaction whether or not all or a portion of the tax claimed was improperly received and shall notify the municipality submitting the claim in writing that the claim is either approved or denied in whole or in part, including the reasons for the decision. If the claim is approved in whole or in part, the City shall remit the undisputed amount to the municipality submitting the claim within thirty (30) days of approval. If a claim is submitted jointly by a municipality and a retailer or taxpayer, the check shall be made to the parties jointly. Denial of a claim of recovery may be made only for good cause.

(d) The City may deny a claim on the grounds that it has previously paid a claim for recovery arising out of an audit of the same taxpayer.

(e) The period subject to a claim of recovery shall be limited to the thirty-six-month period prior to the date the municipality that was wrongly paid the tax receives the claim for recovery. This period may be extended only if a written document was approved by the City Manager and taxpayer to toll the running of this thirty-six-month period.

#### **Sec. 4-61. Interest on overpayments and refunds.**

(a) Interest allowance basis. No interest shall be paid upon any overpayment of sales tax unless:

(1) Such overpayment was made under protest;

(2) The taxpayer has requested a refund in writing within sixty (60) days after the tax was paid; and

(3) The taxpayer has provided the City with the records required by Section 4-52 of this Article.

(b) Payment of interest:

(1) Interest owed by the taxpayer on an audit may be applied against calculated interest that would be credited if allowed.

(2) Interest paid on an eligible overpayment of taxes pursuant to Subsection (a) herein under protest shall be paid at the interest rate set by

the City Manager on January 1 of each year for the next succeeding year, as allowed by Section 39-21-110.5, C.R.S., which interest rate is currently defined to be the prime rate, as reported on the previous July 1, plus three (3) points, rounded to the next full percent.

(3) Interest shall accrue only from the date of the taxpayer's application for a refund. If the refund is to be applied against other taxes owed by the taxpayer, interest shall not be paid on the refund for the period after the due date of the amount against which the credit is taken.

(c) Refund erroneously made to bear interest. Any portion of a sales tax or any interest, assessable penalty, additional amount or additional tax, which has been erroneously refunded, shall bear interest at the rate established in Subsection (b) above from the date of the payment of the refund.

#### **Sec. 4-62. False or fraudulent refund claim.**

(a) Violation of Article. Any applicant for a refund under the provisions of this Article, or any other person who shall make any false statement in connection with an application for a refund of any taxes, shall be deemed guilty of a violation of this Article.

(b) Action to recover fraudulent claims. If any person is convicted of a violation of Subsection (a) above, such conviction shall be prima facie evidence that all refunds received by such person during the current year were obtained unlawfully, and the City Manager is hereby empowered and directed to bring appropriate collection proceedings for recovery of such refunds.

#### **Sec. 4-63. City Manager's remedies in case of nonpayment.**

(a) So long as a final assessment remains unpaid, the City Manager may take any of the following enforcement procedures against the defaulting taxpayer:

(1) Revoke the taxpayer's sales tax license, as described in Section 4-68 of this Article.

(2) Issue a summons to the person, retailer or taxpayer to appear in the Municipal Court to collect all amounts owed on charges of violating this Article.

(3) Issue a distraint warrant pursuant to this Article.

(4) File a complaint in county or district court to collect all amounts owed.

(b) Regardless of the collection or enforcement procedures invoked by the City Manager, all unpaid taxes, interest and penalties shall be secured by a lien arising by operation of law as provided by this Article.

**Sec. 4-64. Enforcing collection by distraint.**

(a) Warrant. The City Manager may issue a warrant under his or her own hand directed to any representative of the Finance Department, including the sheriff of any county of the State, commanding him or her to distraint, seize and sell the personal property of the taxpayer, except such personal property as is exempt from execution and sale by any provision of this Article, for the payment of the tax due together with interest and penalties accrued thereon and collection costs:

(1) When any deficiency in tax is not paid within thirty (30) days from the date of notice of final determination-assessment and demand for payment therefor and no hearing has been requested and no appeal from such deficiency assessment has been docketed with any district court of this State within said period;

(2) When any other amount of tax, interest or penalty is not paid within thirty (30) days from the date of the assessment and demand for payment thereof and no hearing has been requested and no appeal from such assessment or demand has been docketed with any district court of the State within said period; or

(3) Immediately upon making of a jeopardy assessment or of the issuance of a demand for payment, as provided in Section 4-55 of this Article.

(b) Distraint seizure:

(1) The agent charged with the collection shall make or cause to be made an account of the goods or effects distrained, a copy of which, signed by the agent making such distraint, shall be properly personally served on the owner or possessor of the goods or effects according to the Colorado Rules of Civil Procedure. If said notice cannot be served on the taxpayer within thirty (30) miles of the City, it shall be mailed to the taxpayer's last known address, return receipt requested.

(2) The agent shall forthwith cause to be published a notice of the time and place of sale, together with a description of the property to be sold, in some newspaper within the county wherein distraint is made, or, in lieu thereof and in the discretion of the City Manager, the agent or sheriff shall cause such notice to be publicly posted at the courthouse of

the county wherein such distraint is made and copies thereof to be posted in at least two (2) other public places within said county.

(c) Distraint sale:

(1) The time fixed for the sale shall not be less than ten (10) days not more than sixty (60) days from the date of such notification to the owner or possessor of the property and the publication or posting of such notices. Said sale may be adjourned from time to time by said agent or sheriff if he or she deems it advisable, but not for a time to exceed ninety (90) days from the date first fixed for the sale. When any personal property is advertised for sale under distraint as aforesaid, the agent or sheriff making the seizure shall proceed to sell such property at public auction, offering the same at not less than a fair minimum price, including the expenses of making the seizure and of advertising the sale; and if the amount bid for the property at the sale is not equal to the fair minimum price so fixed, the agent or sheriff conducting the sale may declare the same to be purchased by him or her for the City. The property so purchased may be sold by the agent or sheriff under such regulations as may be prescribed by the City Manager.

(2) In any case of distraint for the payment of taxes, the real property, goods, chattels or effects so distrained shall be restored to the owner or possessor, if, prior to the sale, the amount due is paid, together with the fees and other charges or may be redeemed by any person holding a chattel mortgage or other evidence of right of possession.

(d) Certificate of sale and evidence of purchase. In all cases of sale, the agent or sheriff making the sale shall issue a certificate of sale to each purchaser, and such certificate shall be prima facie evidence of the right of the agent or sheriff to make such sale and the conclusive evidence of the regularity of his or her proceedings in making the sale, and shall transfer to the purchaser all right, title and interest of such delinquent in and to the property sold; and where such property consists of certificates of stock in the possession of the agent or sheriff, the certificate of sale shall be notice, when received, to any corporation, company or association of said transfer, and said certificate of such sale shall be authority for such corporation, company or association to record the transfer on its books and records; and where the subject of sale is securities or other evidences of debt, in the possession of the agent or sheriff, the certificate of sale shall be good and valid evidence of title in the person holding the same, as against any other person. Any surplus remaining above the taxes, interest and penalties and all costs and all expenses of making the seizure and of advertising the sale shall be returned to the owner or such other person having a legal right thereto, and, on demand, the City Manager shall render an account in writing of the sale. Expenses of a seizure include all reasonable costs and expenses incurred by the City in enforcing collection by distraint, including but not limited to all personnel costs of the City.

**Sec. 4-65. Recovery of unpaid tax by action of law.**

(a) Action at law. The City Manager may also treat any such taxes, interest and penalties due and unpaid as a debt due the City from the taxpayer personally. In case of failure to pay the tax, or any portion thereof, or any interest thereon, or any penalty when due, the City Manager may receive at law the amount of such taxes, interest and penalties and collection costs in such county or district court of the county wherein venue may be proper under the applicable rule of civil procedure. The taxpayer's return or the assessment made by the City Manager as provided in this Article shall be prima facie proof of the amount due.

(b) Writs of attachment. Such actions may be actions in attachment, and writs of attachment may be issued to the sheriff. In any such proceedings, no bond shall be required of the City Manager nor shall any sheriff require of the City Manager an indemnifying bond for executing the writ of attachment or writ of execution upon any judgment entered in such proceedings; and the City Manager may prosecute appeals or writs of error in such cases without the necessity of providing a bond therefor. The City Attorney, when requested by the City Manager, may commence action for the recovery of taxes due under this Article, and this remedy shall be in addition to all other existing remedies or remedies provided in this Article.

(c) Civil action to enforce lien against real property. In any case where there has been a refusal or neglect to pay any tax due the City, the City Manager may cause to be filed a civil action to enforce the lien of the City. The Court shall decree a sale of such real property and shall order distribution of the proceeds from the sale. The manner of sale, the period for and manner of redemption from such sale and the execution of any deeds of conveyance shall proceed according to the laws relating to foreclosures of mortgages upon real property. In any such action, if equity so requires, the Court may appoint a receiver of the real property involved.

(d) Exhaustion of administrative remedies. No lawsuit may be filed by the City until the time for the taxpayer to exercise his or her administrative remedies or to file an appeal has expired. This remedy shall be in addition to all other existing remedies available to the City. No de novo trial of the facts shall be permitted if the taxpayer has had a hearing before the City Manager or has had the opportunity for such a hearing but failed to exhaust his or her administrative remedies.

**Sec. 4-66. Sales tax constitutes lien.**

(a) Any sales tax imposed by this Article, together with the interest and penalties set forth in this Article and the cost of collection, shall be a first and prior lien upon:

(1) The goods, stock-in-trade and business fixtures of or used by any taxpayer under lease, title-retaining contract or other contractual arrangement; and

(2) The real and personal property owned or leased by any such taxpayer, including personal property affixed to real property, and shall take precedence on all such property over other claims and mortgages.

(b) This lien shall arise upon the day the tax becomes due and payable and shall be extinguished by operation of law when the tax is paid in full, including any interest, penalty and collection costs.

(c) Whenever the business or property of any taxpayer subject to this Article shall be placed in receivership, bankruptcy or assignment for the benefit of creditors, or seized under distraint for property or other taxes, all taxes, interest and penalties imposed by this Article and for which said person is in any way liable under the terms of this Article shall be a prior and preferred lien against all the property of said taxpayer; and no sheriff, receiver, assignee or other officer shall sell the property of any person subject to this Article under process or order of any court, without first ascertaining from the City Manager the amount of any taxes due and payable under this Article. If there are any such taxes due, owing or unpaid, it shall be the duty of such officer to first pay the amount of said taxes out of the proceeds of said sale before making payment of any moneys to judgment creditors or other claims of whatsoever nature.

(d) At any time a tax has accrued but is unpaid, the City Manager may issue a notice of tax lien, setting forth the name of the taxpayer, the amount of the tax, interest and penalties and the date of the accrual thereof and that the City claims a first and prior lien therefor on the real and tangible personal property of the taxpayer. Said notice may be filed in the office of the clerk and recorder of any county in the State in which the taxpayer owns real or tangible personal property. Issuance of such notice and filing thereof shall be at the discretion of the City Manager and shall not affect the priority or validity of the lien provided by this Article, which arises by operation of law when the tax accrues and is payable.

(e) Any representative of the City Manager to whom a distraint warrant has been issued may file a notice of lien in such form as the City Manager may prescribe with the person in possession of any personal property or rights to property belonging to the taxpayer if not previously recorded with the County Clerk and Recorder. The City Manager may release said lien as to any part or all of the property or rights to property covered by such lien upon such terms as he or she may deem proper.

(f) Upon payment in full of taxes, interest and penalties, the City Manager shall release any recorded tax lien in the same manner as mortgages and judgments are released.

**Sec. 4-67. Compromise.**

(a) Compromise limitation. After an assessment has become final because the taxpayer has waived his or her right to a hearing or because the hearing officer has issued his or her final decision, the City Manager may compromise to the extent of one thousand dollars (\$1,000.00) any collection proceeding arising under this Article.

(b) Compromise record. Whenever a compromise, in value or valuation, of one thousand dollars (\$1,000.00) or less is made by the City Manager in any case, there shall be placed on file in the office of the City Manager the opinion of the City Manager with his or her reasons therefor, which may include financial inability of the taxpayer to pay a greater amount, with a statement of:

- (1) The amount of tax assessed;
- (2) The amount of interest and penalty assessed; and
- (3) The amount paid in accordance with the terms of the compromise.

**Sec. 4-68. Purchasing license.**

It shall be unlawful for any person to engage in the business of selling at retail, as the same is defined in this Article, without first having obtained a license therefore, which license shall be granted and issued by the City Clerk and shall be in force and effect until December 31 of the year in which it is issued unless sooner revoked. Such license shall be granted or renewed only upon application stating the name and address of the person desiring such a license, the name of such business, and the location, including the street number of such business, and such other facts as the City Clerk may require.

**Sec. 4-69. Renewal of license.**

It shall be the duty of each such licensee on or before January 1 of each year during which this Article remains in effect, to obtain a renewal thereof if the licensee remains in retail business or is liable to account for the tax herein provided, but nothing herein contained shall be construed to empower the City Clerk to refuse such renewal except the revocation for cause of the licensee's prior license.

**Sec. 4-70. Costs of license.**

For each license issued, a fee shall be paid pursuant to a separate resolution setting the City of Black Hawk Fee Schedule, which shall accompany the application.



#### **Sec. 4-71. Amendments.**

The City Council may amend, alter or change this Article, except as to the rate of tax herein imposed, subsequent to adoption by a majority vote of the City Council. Unless required by Article X, Section 20, of the Colorado Constitution, such amendment, alteration or change need not be submitted to the electors of the City for their approval.

#### **Sec. 4-72. Sale or purchase of business or property.**

(a) New license required. Any sale, transfer or purchase of an interest in a business enterprise by any persons, as defined in this Article, where the respective interest of the person purchasing or selling as a result of the transaction has changed in any degree, requires, in the case of a retailer or other person required to be licensed under this Article, the issuance of a new license.

(b) Must file final return. Any person, retailer or taxpayer who shall sell out his or her business or stock of goods or all the assets of a business to another person, or any person or taxpayer who quits business, shall make out the return as required by this Article and remit all taxes due within fifteen (15) days after the business or stock of goods is sold or the taxpayer quits business.

(c) Tax due on business property. The City tax shall be remitted on the purchase price paid for tangible personal property that is acquired with the purchase, transfer of title or transfer of possession of a business, with the exception of items to be resold in the ordinary course of business operations of the new business. The tax shall be based on the price paid for such chattels as recorded in the bill of sale or agreement and constituting a part of the total transaction at the time of the sale or transfer, provided that the valuation is as great as or greater than the fair market value of such merchandise or chattels. Where the transfer of ownership is a package deal made by a lump-sum transaction, the tax shall be paid on the book value if no determination has been made. When a business is taken over in return for the assumption of outstanding indebtedness owed by former owners, the tax shall be paid on the fair market value of all taxable tangible personal property acquired by the purchaser.

(d) All prior taxes are due. Taxes due upon the sale of a business or stock of goods include all sales taxes which were collected or should have been collected prior to the sale.

(e) Purchaser to withhold payment until tax paid. The purchaser or successor to the business, stock of goods or assets shall withhold sufficient of the purchase money to cover all of said taxes until such time as the former owner produces a receipt from the City Manager showing that all taxes have been paid in full.

(f) Purchaser liable for prior owner's unpaid tax. Purchasers of a business are liable for any unpaid tax of a predecessor. Retailers or consumers having outstanding accounts on which sales tax has not been remitted must compute and pay the tax at the time of sale.

(g) Seller and seller's agent liable for tax. The seller or his or her agent will be held liable for tax remittance on the sale of business in the event the purchaser fails to remit the tax due on the purchase.

(h) Seller and purchaser both liable. Until all taxes due under this Section are paid in full, both the former owner and the purchaser shall remain personally liable thereon and subject to all collection proceedings available under this Article. Action by the City against the former owner shall not prevent the exercise by the City of all remedies provided in this Article against the successor owner.

(i) Delinquent taxes are a lien on the property. Any person who takes or purchases personal or real property under lease, title-retaining contract or other contract arrangement, by purchase, foreclosure, sale or otherwise, takes the same subject to the lien for any delinquent taxes owed by the original owner and shall be liable for the payment of all delinquent taxes, interest, penalty and collection costs of such prior owner not, however, exceeding the value of the property so taken or acquired. Any person who takes title to or possession of any real property upon which a tax is owed takes said property subject to the lien for said delinquent tax and shall be liable for the payment thereof to the extent of the tax, interest, penalties and collection costs.

**Sec. 4-73. Reserved.**

**Sec. 4-74. Certificate of discharge.**

(a) Certificate of discharge subject to lien. If any property, real or personal, under the law, shall be subject to a lien for the payment of any tax due the City, the City Manager may issue a certificate of discharge of any part of the property subject to the lien if he or she finds that the fair market value of that part of such property remaining subject to the lien is at least double the amount of the liability remaining unsatisfied in respect to such tax and the amount of all prior liens upon such property.

(b) Certificate of discharge to part of property. If any property, real or personal, under the law, shall be subject to a lien for the payment of any tax due the City, the City Manager may issue a certificate of discharge of any part of the property subject to the lien if there is paid over to the City Manager in part satisfaction of the liability in respect to such tax an amount determined by the City Manager, which shall not be less than the value, as determined by him or her, of the interest of the City in the part to be so discharged.

(c) How values determined. In determining such values, the City Manager shall give consideration to the fair market value of the part to be so discharged and to such lien thereon as have priority to the lien of the City.

(d) Certificate of release conclusive. A certificate of release or of partial discharge issued under Subsection (a) shall be held conclusive that the lien of the City upon the property released therein is extinguished, but shall not extinguish or release any portion of the lien or property not specified in the release.

**Sec. 4-75. Closing agreements.**

(a) Satisfaction of liability. For the purpose of facilitating the settlement and distribution of estates, trusts, receiverships, other fiduciary relationships and corporations in the process of dissolution or which have been dissolved, the City Manager may agree with the fiduciary or surviving directors upon the amount of taxes due from the decedent or from the decedent's estate, the trust, receivership or other fiduciary relationship, or corporation, for any of his, her or its taxable periods, under the provisions of the taxes covered by this Article and except upon a showing of fraud, malfeasance or misrepresentation of a material fact, payment in accordance with such agreement shall be full satisfaction of the taxes for the taxable periods to which the agreement related.

(b) Personal liability. Except as provided in Subsection (d) below, any personal representative of a decedent or of the estate of a decedent, or any trustee, receiver or other person acting in a fiduciary capacity, or any City Manager of a corporation in the process of dissolution or which has been dissolved, who distributes the estate or fund in his or her control without having first paid any taxes covered by this Article due from such decedent, decedent's estate, trust estate, receivership or corporation, covered by this Article and which may be assessed within the time limited by this Article, shall be personally liable to the extent of the property so distributed, for any unpaid taxes of the decedent, decedent's estate, trust estate, receivership or corporation, covered by this Article and which may be assessed within the time limited by this Article.

(c) Notification of liability. The distributee of a decedent's estate, or a trust estate or fund or the stockholder of any dissolved corporation who receives any of the property of such decedent's estate, trust estate, fund or corporation, shall be liable to the extent of the decedent, trust estate, fund or corporation, covered by this Article and which may be assessed within the time limited by this Article. Notice to such distributee or stockholder shall be given in the same manner and within the time limit which would have been applicable had there been no distribution.

(d) Limitation of liability.

(1) In case tax covered by this Article is due from a decedent or his or her estate, or by a corporation, in order for personal liability under Subsection (b) above to remain in effect, determination of the tax due shall be made and notice and demand therefor shall issue within three (3) years after written request for such determination, filed after the filing of the decedent's final return or filed after the filing of the return of the decedent's estate with respect to which such request is applicable, by any personal representative of such decedent or by the corporation, filed after the filing of its return; however, a request under this provision shall not extend the period of limitation otherwise applicable.

(2) This Subsection will not apply in the case of a corporation unless:

(A) Such request notifies the City Manager that the corporation contemplates dissolution at or before the expiration of such three-year period;

(B) The dissolution is begun in good faith before the expiration of such three-year period; and

(C) The dissolution is completed.

(3) Upon the expiration of said three-year period, without determination being made and notice and demand being issued, the personal representative or representative of the decedent and the City Managers of the corporation no longer will be liable under the provisions of Subsection (b) above.

#### **Sec. 4-76. Limitations.**

(a) General limitations.

(1) Statute of limitations. Except as provided in this Section, the taxes for any period, together with the interest thereon and penalties with respect thereto, imposed by this Article shall not be assessed or credit taken, nor shall any notice of lien be filed, distraint warrant issued or suit for collection be instituted, or any other action to collect the same be commenced, more than three (3) years after the date on which the tax was or is payable; nor shall any lien continue after such period, except for taxes assessed before the expiration of such period, notice of lien with respect to which has been filed prior to the expiration of such period. In the case of a failure to make a return or in the case of a false or fraudulent return with intent to evade tax, the tax, together with interest and penalties thereon, may be assessed, or proceedings for the collection of such taxes may be begun at any time. The commencement of collection proceedings,

including the mailing of a notice of audit, shall toll the running of the statute of limitations.

(2) Date fixed. For purposes of this Section, a tax return filed before the last day prescribed by law or by regulation promulgated pursuant to law for the filing thereof shall be considered as filed on such last day.

(3) Payment arrangement. Where, before the expiration of the time prescribed in this Section for the assessment of tax, both the City Manager and the taxpayer have consented in writing to any assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon or by the commencement of collection proceedings made before the expiration of the period previously agreed upon. Additional interest shall be paid on taxes due at the rate established in Paragraph 4-61(b)(2) of this Article.

(4) Revision qualification. Nothing in this Section shall be construed to limit any right accrued or to revive any liability barred by any statute at the date this Article becomes effective.

(b) Taxes held in trust. All sums of money paid by the purchaser to the retailer as taxes imposed by this Article shall be and remain in public money, the property of the City, in the hands of such retailer, and he or she shall hold the same in trust for the sole use and benefit of the City, until paid to the City, and for failure to so pay to the City, such retailer shall be punished as provided by law. Thus, the statute of limitation set forth in this Article does not apply to collections of public money in the possession of the retailer, and such moneys are collectable at any time after their due date upon demand of the City Manager. Bankruptcy will not excuse unremitted taxes collected in trust.

**Sec. 4-77. Tax returns; content, consolidation and reporting periods.**

(a) Tax return content and form. The returns to be filed by the taxpayer, or the taxpayer's trustee, manager, officer or director, shall contain such information and be completed in such manner and upon such forms as the City Manager may prescribe. When a return filed by a taxpayer does not include a signature, a correct City account number or any other information required by the City Manager, the City Manager has the right to send back to the taxpayer the return and payment. The City Manager may consider an improperly filed return to be not filed with the City. A valid digital signature, or the equivalent thereof, on a filed return transmitted electronically over the Internet or transmitted by other similar means is accepted and held as a written signature. Signing a return over the Internet can

be done by any means acceptable to the City Manager. A signature on a return sent via facsimile is accepted and held as a written signature.

(b) Reporting periods.

(1) Retailers with an average total City tax due per month of three hundred dollars (\$300.00) or more shall report and remit taxes on a monthly basis. However, upon request of the retailer and upon a finding by the City Manager that monthly remittance will impose an undue hardship on the retailer, the City Manager may authorize and accept remittance at other intervals.

(2) With permission of the City Manager, retailers whose average monthly total City tax collected is less than three hundred dollars (\$300.00) may make returns and remit taxes on a quarterly basis.

(3) The amount of total City tax due per month triggering monthly or quarterly filing requirements, as set forth in Paragraphs (1) and (2) above, may be evaluated annually and amended by resolution of the City Council.

(4) With permission of the City Manager, nonretail businesses and home-based businesses required to file a return may make returns and remit taxes on an annual basis.

(5) If any taxpayer who has been granted permission to file returns and pay taxes on other than a monthly basis becomes delinquent, the City Manager may revoke authorization for such alternate method of reporting. Thereafter, following notice of such revocation, the taxpayer shall file returns and pay taxes on a monthly basis.

**Sec. 4-78. Evasion or avoidance of tax.**

(a) Any retailer, consumer, purchaser or other person subject to the tax levied by this Code shall be in violation of this Code and shall be subject to prosecution and the penalties set forth in Section 4-79 below upon proof of commission of any of the following acts:

(1) Refusing to make any return required to be made by this Code;

(2) Making any false or fraudulent return or any false statements in any return;

(3) Failing or refusing to make payment to the City Manager of any taxes collected or due the City;

(4) Failing or refusing to pay such tax or evade the payment thereof;

(5) Aiding or abetting another in any attempt to evade the payment of the tax imposed;

(6) Knowingly making a false return or a return containing a false statement; or

(7) In any manner otherwise evading the collection and payment of the tax, or any part thereof, imposed by this Code.

(b) Separate violations. Each and every twenty-four-hour continuation of any violation shall constitute a distinct and separate offense.

(c) Personal liability. Any taxpayer or person who executes any form or report required by this Code to be submitted to the City shall be personally responsible for the payment of any taxes required under this Code. Additionally, any officer, director, partner, managing partner or manager of a taxpayer shall be personally liable for any violations under this Code.

(d) Summons to court for violations of Code. The City Manager, including personnel of the Finance Department, have the authority of peace officers, as that term is defined under the Colorado Municipal Court Rules, to summons into the Municipal Court any person who may be in violation of this Code as set forth under Subsection (a) above.

#### **Sec. 4-79. Violations.**

It shall be unlawful for any person to violate any of the provisions of this Code. Any violation of this Code shall be punishable by a fine of not more than the amount set forth in Section 1-73 or by imprisonment for not more than one (1) year, or by both such fine and imprisonment.

#### **Sec. 4-80. Sales tax supporting Gilpin County School District RE-1; termination.**

The additional one-and-one-half-percent sales tax approved by voters in the 2008 special election for the purpose of providing financial support to the Gilpin County School District RE-1 (the "School District"), as established by Subsection 4-41(d) of this Article, shall terminate on the January 1 or July 1 that occurs at least sixty (60) days after the City's determination that any one (1) of the following conditions has occurred:

(a) The School District increases its mill levy above its 2008 level, unless such increase is required to meet obligations to the holders of the School District

bonds that are outstanding as of June 1, 2008, or bonds issued to refund such bonds issued in compliance with Paragraph (2) below, or unless such increase is otherwise required by state or federal law; or

(b) The School District refunds the bonds of the School District that are outstanding as of June 1, 2008, and, in connection with such refunding, one (1) of the following conditions occurs:

(1) The maturity date of the bonds is extended beyond the last maturity date of the bonds of the School District outstanding as of June 1, 2008;

(2) The debt service payable in any year by the School District is increased;

(3) After the payment in full of bonds of the School District that are outstanding as of June 1, 2008, or bonds issued to refund such bonds issued in compliance with Paragraph (1) above, the total mill levy imposed by the School District exceeds eight (8) mills unless the mills are otherwise required by state or federal law;

(4) The School District merges with any school district located outside of the County or extends its boundaries outside of the County without the City's consent;

(5) A sales or use tax or lodging tax is imposed by the County;

(6) A constitutional amendment or other mechanism applicable to the City is adopted that amends the constitutional allocation of gaming funds to the City received pursuant to Article XVIII, Section 9(5)(B), of the Colorado Constitution, and results in a decrease in the funds allocated to the City as a result of limited gaming; or

(7) All or part of the territory in the County is included within the boundaries of the Regional Transportation District or any other governmental or quasi-governmental entity created to finance transportation or mass transit.

Section 2. The City of Black Hawk Municipal Code, Chapter 4, Article V, is hereby repealed and reenacted to read as follows:

## **ARTICLE V**

### **Use Tax**

#### **Sec. 4-81. Amount imposed.**



(a) There is imposed a four percent (4%) use tax to be imposed for the privilege of storing, using or consuming within the City any construction materials, and on motor or other vehicles on which registration is required which are purchased at retail.

(b) Effective January 1, 2009, this Article shall also impose an additional one-and-one-half-percent (1½%) use tax on the same transactions identified in Subsection (a) above, except that the additional use tax shall not apply to construction materials and motor vehicles. Said additional use tax 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 4-51(c) of this Chapter upon the occurrence of any one (1) of the conditions set forth in Section 4-66 of this Chapter.

#### **Sec. 4-82. Exemptions.**

The use tax shall not apply to:

(a) 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;

(b) The storage, use or consumption of any tangible personal property purchased for resale in the City either in its original form or as an ingredient of a manufactured or compounded product, in the regular course of a business;

(c) The storage, use or consumption of tangible personal property brought into the City by a nonresident thereof for his or her own storage, use or consumption while temporarily within the City; however, this exemption does not apply to the storage, use or consumption of tangible personal property brought into the State by a nonresident to be used in the conduct of a business in this State;

(d) The storage, use or consumption of tangible personal property by the United States government or the state government, or its institutions or political subdivisions, in their governmental capacities only, or by religious or charitable corporations in the conduct of their regular religious or charitable functions;

(e) The storage, use or consumption of tangible personal property by a person engaged in the business of manufacturing or compounding for sale, profit or use any article, substance or commodity, which tangible personal property enters into the processing of or becomes an ingredient or component part of the product or service which is manufactured, compounded or furnished, and the container, label or the furnished shipping case thereof;

(f) The storage, use or consumption of any article of tangible personal property, the sale or use of which has already been subjected to a lawfully imposed sales tax or use tax of another town, city or county equal to or in excess of that imposed by this Article.

(g) The storage, use or consumption of tangible personal property and household effects acquired outside of the City and brought into it by a nonresident acquiring residency;

(h) The storage or use of a motor vehicle if the owner is or was, at the time of purchase, a nonresident of the City and he or she purchased the vehicle outside of the City for use outside of the City and actually so used it for a substantial and primary purpose for which it was acquired, and he or she registered, titled and licensed the motor vehicle outside of the City;

(i) The storage, use or consumption of any construction materials and motor and other vehicles on which registration is required if a written contract for the purchase thereof was entered into prior to July 1, 1991;

(j) The storage, use or consumption of any construction materials required or made necessary in the performance of any construction contract bid, let or entered into at any time prior to July 1, 1991;

(k) The storage or use of a motor vehicle upon which registration is required, if the owner is or was, at the time of purchase, a resident of the City; and

(l) The storage, use or consumption of any construction materials used in a project funded by the City pursuant to the City of Black Hawk Community Restoration and Preservation Fund Guide to Programs.

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

(a) The use tax imposed by this Article upon motor and other vehicles on which registration is required which are purchased at retail shall be collected by the authorized agent of the County Department of Revenue.

(b) The use tax on construction 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 materials shall be as follows:

(1) The amount collected will be based on four percent (4%) of the job material valuation. The job material valuation is established as one-half (½) 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.

(2) If the taxpayer can prove the actual total value of the job, the total value shall be based on the actual value of the construction materials. Otherwise, a City building official shall determine the value of the construction materials.

**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 not apply to the storage, use or consumption of any article of tangible personal property the sale or use of which has already been subjected to a sales or use tax of another municipality imposed on the purchaser or user equal to or in excess of four percent (4%). 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 paid by him or her by reason of the 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 four percent (4%).

**Sec. 4-85. Nonapplicability to use or consumption occurring more than three years after most recent sale.**

For transactions consummated on or after July 1, 1991, the City's use tax shall not be imposed with respect to the use or consumption of tangible personal property within the City which occurs more than three (3) years after the most recent sale of the property if, within the three (3) years following the sale, the property has been significantly used within the State for the principal purpose for which it was purchased.

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

(a) Construction equipment which is located within the boundaries of the City for more than one hundred eighty (180) consecutive days shall be subjected to the full applicable use tax of the City.

(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 four percent (4%) (purchase price x  $1/12$  x .04).

(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 four percent (4%).

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

(1) Prior to or on the date the equipment is brought into the City, the taxpayer shall file with the Building Department an equipment declaration on a form provided by the City. The declaration shall state the dates the taxpayer anticipates the equipment will be located within and removed from the City, a description of each anticipated piece of equipment, the actual or anticipated purchase price of each anticipated piece of equipment, and such other information as reasonably deemed necessary by the City.

(2) No less than once every ninety (90) days after the equipment is brought into the City, the taxpayer shall file an amended equipment declaration with the City. The equipment declaration shall reflect any changes in any previous equipment declaration. If the project lasts less than ninety (90) days, the taxpayer shall file an amended equipment declaration within ten (10) days after substantial completion of the project.

(3) If the purchase price of the equipment is less than two thousand five hundred dollars (\$2,500.00), the taxpayer does not have to report the equipment on the equipment declaration.

(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 four percent (4%) 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.

**Sec. 4-87. Collection of taxes due; limitation of actions.**

(a) The use tax, interest and penalties shall be assessed within three (3) years after the return was filed, whether the return was filed on or after the date prescribed. The City shall not file a lien, assess a use tax, issue a distraint warrant, file suit for collection, or institute any action to collect the use tax, interest and penalties more than three (3) years after the return was filed. A use tax lien shall not continue for more than three (3) years after the use tax is due, except when use taxes were assessed before the expiration of the three-year period, and a notice of lien was filed prior to the expiration of the three-year period, in which case the lien shall continue only for one (1) year after the expiration of the three-year period.

(b) If the taxpayer falsely or fraudulently files a return with intent to evade the use tax or fails to file a return, the use tax, and the interest and the penalties, may be assessed or collection proceedings instituted at any time.

(c) Before the expiration of the three-year limitation period, the taxpayer and the Building Department may agree in writing to an extension, and the period agreed upon may be extended by subsequent written agreements.

**Sec. 4-88. Refunds; limitation of actions.**

(a) A taxpayer that claims an exemption but still pays the use tax shall file an application for a refund within sixty (60) days after the storage, use or consumption of the goods for which the refund is claimed.

(b) A taxpayer that pays the use tax in error or by mistake shall file an application for a refund within three (3) years after the storage, use or consumption of the goods for which the refund is claimed.

**Sec. 4-93. Collection; enforcement; interest and penalties.**

(a) The administration of all provisions of this Article is hereby vested in and shall be exercised by the City Manager, or the City Manager's designee, who may prescribe forms and formulate and promulgate appropriate rules and regulations to effectuate the purpose of this Article.

(b) If a person neglects or refuses to file a use tax return or to pay the required use tax, the Building Department shall estimate the amount of use taxes due for the period that the taxpayer is delinquent based upon available information. Enforcement, collection and penalties for failure to pay the City's use tax or for failure to make a return and remit the correct amount of tax required by this Article, and the procedures for enforcing such penalties, shall be the same as those prescribed in Article IV of this Chapter with respect to the City sales tax.

**Sec. 4-94. Other remedies.**

Nothing in Sections 4-89 through 4-93 of this Article shall preclude the City from utilizing any other applicable penalties or remedies for the collection or enforcement of use taxes.

**Sec. 4-95. Final decision of City; appeals; posting of bonds.**

(a) Within fifteen (15) days after filing a notice of appeal, the taxpayer shall file with the District Court a surety bond in twice the amount of the use taxes, interest and other charges stated in the final decision by the Building Department which are contested on appeal. The taxpayer may, at his or her option, satisfy the surety bond requirement by a savings account or deposit in or a certificate of deposit issued by a state or national bank or by a state or federal savings and loan association, in accordance with the provisions of Section 11-35-101(1), C.R.S., equal to twice the amount of the use taxes, interest and other charges stated in the final decision by the Building Department.

(b) The taxpayer may, at his or her option, deposit the disputed amount with the District Court in lieu of posting a surety bond. If the amount is deposited, no further interest shall accrue on the deficiency contested during the pendency of the action. At the conclusion of the action, after appeal to the Supreme Court or the Court of Appeals or after the time for such appeal has expired, the funds deposited shall be, at the direction of the court, either directed to the Building Department and applied against the deficiency or returned in whole or in part to the taxpayer with interest at the rate imposed pursuant to Section 4-93 of this Article. No claim for refund of amounts deposited with the Building Department need be made by the taxpayer in order for such amounts to be repaid in accordance with the direction of the court.

**Sec. 4-96. Collection; municipal boundaries.**

The City Clerk shall make available to any requesting retailer a map showing the boundaries of the City. For transactions consummated on or after July 1, 1991, the requesting retailer may rely on the map and any updates available to such retailer in determining whether to collect a use tax. No penalty shall be imposed or action for deficiency maintained against such retailer who in good faith complies with the most recent map available to it.

**Sec. 4-97. Alternative dispute resolution procedure; deficiency notice or claim for refund.**

For transactions consummated on or after July 1, 1991, the taxpayer may elect a state hearing of the Building Department's final decision on a deficiency notice or claim for refund pursuant to the procedure set forth in this Section.

(a) As used in this Section, state hearing means a hearing before the Executive Director of the Department of Revenue or delegate thereof, as provided in Section 29-2-106.1(3), C.R.S.

(b) When the City asserts that use taxes are due in an amount greater than the amount paid by a taxpayer, the City shall mail a deficiency notice to the taxpayer by certified mail. The deficiency notice shall state the additional use taxes due. The deficiency notice shall contain notification, in clear and conspicuous type, that the taxpayer has the right to elect a state hearing on the deficiency pursuant to Section 29-2-106.1(3), C.R.S. The taxpayer shall also have the right to elect a state hearing on the City's denial of the taxpayer's claim for a refund of use tax paid.

(c) The taxpayer shall request the state hearing within thirty (30) days after the taxpayer's exhaustion of local remedies. The taxpayer shall have no right to a hearing if he or she has not exhausted local remedies or if he or she fails to request a hearing within the time period provided for in this Subsection. For purposes of this Subsection, exhaustion of local remedies means:

(1) The taxpayer has timely requested in writing a hearing before the local government, and the local government has held a hearing and issued a final decision. The hearing shall be informal and no transcript, rules of evidence or filing of briefs shall be required. However, the taxpayer may elect to submit a brief, in which case the local government may submit a brief. The hearing shall be held and a final decision issued within ninety (90) days after the local government's receipt of the taxpayer's written request, except the period may be extended if the delay in holding the hearing or issuing the decision was caused by the taxpayer, but, in any event, the hearing shall be held and the decision issued within one hundred eighty (180) days of the taxpayer's written request; or

(2) The taxpayer has timely requested in writing a hearing before the City and the City has failed to hold the hearing or has failed to issue a final decision within the time periods prescribed in Subparagraph a. above.

(d) If a taxpayer has exhausted his or her local remedies as provided in Subsection (3) above, the taxpayer may request a state hearing on the deficiency notice or claim for refund, and the request shall be made and the hearing shall be conducted in the same manner as set forth in Sections 29-2-106.1(3) through (7), C.R.S.

(e) If the deficiency notice or claim for refund involves only the City, in lieu of requesting a state hearing, the taxpayer may appeal the deficiency notice or denial of a claim for refund to the District Court as provided in Section 29-2-106.1(8), C.R.S., provided that the taxpayer complies with the procedures set forth in Subsection (3) above.

(f) If the City reasonably finds that the collection of use tax will be jeopardized by delay, the City may utilize the procedures set forth in Section 39-21-111, C.R.S.

Section 3. 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. This Ordinance shall become effective upon posting by the City Clerk.

READ, PASSED AND ORDERED POSTED this \_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
David D. Spellman, Mayor

ATTEST:

\_\_\_\_\_  
Melissa A. Greiner, CMC, City Clerk



**CITY OF BLACK HAWK**  
**REQUEST FOR COUNCIL ACTION**

---

**SUBJECT:** Repealing and Reenacting Chapter 4, Articles IV and V, of the Black Hawk Municipal Code to Adopt Standardized Sales Tax Definitions.

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

**MOTION TO APPROVE:** Ordinance 2018-1, An Ordinance Repealing and Reenacting Chapter 4, Articles IV and V, of the Black Hawk Municipal Code to Adopt Standardized Sales Tax Definitions.

**SUMMARY AND BACKGROUND OF SUBJECT MATTER:** During the 2014 session the Colorado General Assembly spent a considerable amount of time attempting to fashion a referred constitutional amendment that would have required all locally collecting home rule municipalities to use standardized definitions developed and maintained by a special State board. After being stymied by a variety of issues, the General Assembly instead asked CML to develop a package of standardized definitions. The attached ordinance is the result of a collaborative effort of home rule municipalities, attorneys and the business community. Additionally, the updated definitions simply reflect current tax practices, no new tax is levied and no increase in tax revenue is expected.

**AGENDA DATE:** February 14, 2018

**WORKSHOP DATE:** N/A

**FUNDING SOURCE:** N/A

**DEPARTMENT DIRECTOR APPROVAL:**  Yes  No

**STAFF PERSON RESPONSIBLE:** Lance Hillis, Finance Director

**DOCUMENTS ATTACHED:** Ordinance 2018-1

**RECORD:**  Yes  No

**CITY ATTORNEY REVIEW:**  Yes  N/A

**SUBMITTED BY:**

*Lance Hillis*

\_\_\_\_\_  
Lance Hillis, Finance Director

**REVIEWED BY:**

*Jack D Lewis*

\_\_\_\_\_  
Jack D. Lewis, City Manager

**RESOLUTION 14-2018**  
**A RESOLUTION**  
**REAPPOINTING RONALD**  
**W. CARLSON TO BE THE**  
**CITY OF BLACK HAWK**  
**MUNICIPAL COURT**  
**JUDGE**

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

**Resolution No. 14-2018**

**TITLE: A RESOLUTION REAPPOINTING RONALD W. CARLSON TO BE THE  
CITY OF BLACK HAWK MUNICIPAL COURT JUDGE**

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY  
OF BLACK HAWK, COLORADO, THAT:

**Section 1.** Pursuant to Article V, Section 3 of the City of Black Hawk Home Rule  
Charter, Ronald W. Carlson is hereby reappointed as Municipal Judge to serve a two (2) year  
term, which term shall expire on May 1, 2020.

RESOLVED AND PASSED this 14<sup>th</sup> day of February, 2018.

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David D. Spellman, Mayor

ATTEST:

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Melissa A. Greiner, CMC, City Clerk

**CITY OF BLACK HAWK**  
**REQUEST FOR COUNCIL ACTION**

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**SUBJECT:** Reappointment of Ronald W. Carlson to be the City of Black Hawk Municipal Court Judge.

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

**MOTION TO APPROVE** Resolution 14-2018, A Resolution Reappointing Ronald W. Carlson to be the City of Black Hawk Municipal Court Judge.

**SUMMARY AND BACKGROUND OF SUBJECT MATTER:**

The Municipal Court Judge has a two (2) year term, which expires on February 28. Judge Carlson was last reappointed on February 24, 2016.

**AGENDA DATE:** February 14, 2018

**WORKSHOP DATE:** N/A

**FUNDING SOURCE:** N/A

**DEPARTMENT DIRECTOR APPROVAL:**  Yes  No

**STAFF PERSON RESPONSIBLE:** Melissa Greiner, CMC, City Clerk

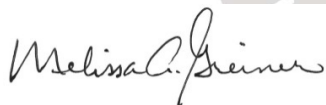
**DOCUMENTS ATTACHED:** N/A

**RECORD:**  Yes  No

**CITY ATTORNEY REVIEW:**  Yes  N/A

**SUBMITTED BY:**

**REVIEWED BY:**



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Melissa A. Greiner, CMC, City Clerk

---

Jack D. Lewis, City Manager

**RESOLUTION 15-2018**  
**A RESOLUTION**  
**REAPPOINTING THAD**  
**RENAUD TO BE THE CITY**  
**OF BLACK HAWK**  
**ASSISTANT MUNICIPAL**  
**COURT JUDGE**

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

**Resolution No. 15-2018**

**TITLE: A RESOLUTION REAPPOINTING THAD RENAUD TO BE THE CITY OF BLACK HAWK ASSISTANT MUNICIPAL COURT JUDGE**

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BLACK HAWK, COLORADO, THAT:

**Section 1.** Pursuant to Section 2-126(b), and at the request of Municipal Court Judge Ronald W. Carlson, the City Council hereby reappoints Thad Renaud as the Assistant Municipal Court Judge to act in the absence of Judge Carlson. The term of the Assistant Municipal Judge shall expire on May 1, 2020.

RESOLVED AND PASSED this 14<sup>th</sup> day of February, 2018.

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David D. Spellman, Mayor

ATTEST:

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Melissa A. Greiner, CMC, City Clerk

**CITY OF BLACK HAWK**  
**REQUEST FOR COUNCIL ACTION**

---

**SUBJECT:** Reappointment of Thad Renaud to be the City of Black Hawk Assistant Municipal Court Judge.

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

**MOTION TO APPROVE** Resolution 15-2018, A Resolution Reappointing Thad Renaud to be the City of Black Hawk Assistant Municipal Court Judge.

**SUMMARY AND BACKGROUND OF SUBJECT MATTER:**

The Assistant to the Municipal Court Judge has a two (2) year term, which expires on February 28. Assistant Judge Renaud was last reappointed on February 24, 2016.

**AGENDA DATE:** February 14, 2018

**WORKSHOP DATE:** N/A

**FUNDING SOURCE:** N/A

**DEPARTMENT DIRECTOR APPROVAL:**  Yes  No

**STAFF PERSON RESPONSIBLE:** Melissa Greiner, CMC, City Clerk

**DOCUMENTS ATTACHED:** N/A

**RECORD:**  Yes  No

**CITY ATTORNEY REVIEW:**  Yes  N/A

**SUBMITTED BY:**

**REVIEWED BY:**



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Melissa A. Greiner, CMC, City Clerk

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Jack D. Lewis, City Manager

**RESOLUTION 16-2018**  
**A RESOLUTION**  
**CANCELLING THE**  
**APRIL 3, 2018 ELECTION**  
**AND DECLARING**  
**CANDIDATES ELECTED**



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

**Resolution No. 16-2018**

**TITLE: A RESOLUTION CANCELLING THE APRIL 3, 2018 ELECTION AND  
DECLARING CANDIDATES ELECTED**

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY  
OF BLACK HAWK, COLORADO, THAT:

Section 1. The City has received the same number of Candidate Petitions and Write in Affidavits as the number of offices to be filled at the April 3, 2018 election as of the sixty-third day before the election. Therefore, pursuant to Sec. 2-4(b) of the Black Hawk Municipal Code, the City Council hereby cancels the April 3, 2018 election.

Section 2. The following candidates are hereby deemed elected to four-year terms:

Linda Armbright, Alderman  
Jim Johnson, Alderman  
Haller Midcap, Alderman

Section 3. The City Clerk is hereby directed to provide notice of the cancellation of the election pursuant to C.R.S. § 31-10-507 and C.R.S. § 1-5-208(6).

RESOLVED AND PASSED this 14<sup>th</sup> day of February, 2018.

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David D. Spellman, Mayor

ATTEST:

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Melissa A. Greiner, CMC, City Clerk

**CITY OF BLACK HAWK**  
**REQUEST FOR COUNCIL ACTION**

---

**SUBJECT:** April 3, 2018 Election

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

**MOTION TO APPROVE** Resolution 16-2018, A Resolution Cancelling the April 3, 2018 Election and Declaring Candidates Elected.

**SUMMARY AND BACKGROUND OF SUBJECT MATTER:**

The City has received the same number of Candidate Petitions and Write-in Affidavits as the number of offices to be filled at the April 3, 2018 election as of the sixty-third day before the election.

**AGENDA DATE:** February 14, 2018

**WORKSHOP DATE:** N/A

**FUNDING SOURCE:** N/A

**DEPARTMENT DIRECTOR APPROVAL:**  Yes  No

**STAFF PERSON RESPONSIBLE:** Melissa A. Greiner, CMC, City Clerk

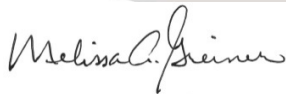
**DOCUMENTS ATTACHED:** N/A

**RECORD:**  Yes  No

**CITY ATTORNEY REVIEW:**  Yes  N/A

**SUBMITTED BY:**

**REVIEWED BY:**



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Melissa A. Greiner, CMC, City Clerk

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Jack D. Lewis, City Manager

**RESOLUTION 17-2018**  
**A RESOLUTION**  
**APPROVING THE SECOND**  
**AMENDMENT TO THE**  
**SUBDIVISION/SITE**  
**IMPROVEMENT**  
**AGREEMENT BETWEEN**  
**THE CITY AND JIJE, LLC**  
**FOR THE CANYON BLACK**  
**HAWK SUBDIVISION,**  
**FILING NO. 1**

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

**Resolution No. 17-2018**

**TITLE: A RESOLUTION APPROVING THE SECOND AMENDMENT TO THE  
SUBDIVISION/SITE IMPROVEMENT AGREEMENT BETWEEN THE  
CITY AND JJJE, LLC FOR THE CANYON BLACK HAWK  
SUBDIVISION, FILING NO. 1**

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY  
OF BLACK HAWK, COLORADO, THAT:

Section 1. The Second Amendment to Subdivision/Site Improvement Agreement  
attached hereto as **Exhibit A**, is hereby approved, and the Mayor is authorized to execute the  
same on behalf of the City.

RESOLVED AND PASSED this 14<sup>th</sup> day of February, 2018.

\_\_\_\_\_  
David D. Spellman, Mayor

ATTEST:

\_\_\_\_\_  
Melissa A. Greiner, CMC, City Clerk



**CITY OF BLACK HAWK**  
**REQUEST FOR COUNCIL ACTION**

---

**SUBJECT:** Approve Resolution 17-2018, a Resolution approving the Second Amendment to the Subdivision/Site Improvement Agreement with JIJE, LLC for the Canyon Black Hawk Subdivision, Filing No. 1.

**RECOMMENDATION:** If City Council chooses to approve Resolution 17-2018, the recommended motion is as follows: "Approve Resolution 17-2018, a Resolution approving the Second Amendment to the Subdivision/Site Improvement Agreement between the City of Black Hawk and JIJE, LLC for the Canyon Black Hawk Subdivision, Filing No. 1."

**SUMMARY AND BACKGROUND OF SUBJECT MATTER:**

This action includes the modification/correction of condition H of the conditionally approved SIA that was approved on January 24, 2018. Condition H was related to the necessary North Clear Creek channel improvements required to ensure the Canyon site was outside of the 100 year floodplain. In addition this second amendment modifies/clarifies the date by which all public improvements related to this project must be completed to be February 15, 2019.

**FUNDING SOURCE:** N/A

**WORKSHOP DATE:** February 14, 2018

**ORIGINATED BY:** Tom Isbester/Cindy Linker

**STAFF PERSON RESPONSIBLE:** same

**PROJECT COMPLETION DATE:** February 15, 2019

**DOCUMENTS ATTACHED:** Condition H & Second Amendment to SIA

**CITY ATTORNEY REVIEW:**  Yes  No  N/A INITIALS \_\_\_\_\_

**SUBMITTED BY:**

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**Thomas Isbester, Public Works Director**

**REVIEWED BY:**

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**Jack Lewis, City Manager**

#### Proposed – Condition H

Notwithstanding any provision to the contrary in Section 8 of the Canyon Subdivision/Site Improvement Agreement, as amended, the applicant shall have until the later of: (i) the issuance of the construction permit by the City for: (aa) the Private Improvements and (bb) the Public Improvements or (ii) February 15, 2019, to complete the Public Improvements.

Prior to the issuance of any building permit, the applicant shall complete the North Clear Creek Channel restoration work in order to re-establish the channel geometry and capacity as specified in the effective 2005 FIRM. This work will ensure that the Canyon Project site is outside of the effective 100 year floodplain, as provided for in the stamped letter provided by Mark Thornbrough of Martin/Martin, Inc. dated December 5, 2017. The applicant acknowledges that the site is adjacent to the AO zone identified on the current FIRM.

Upon the completion of the garage as contemplated in the site development plans dated approved on January 24, 2018 to be constructed on the Canyon Property and prior to the issuance of a Certificate of Occupancy (CO) for any such improvements, the applicant shall submit a LOMR for all resulting impacts to the floodplain boundaries (both 100 and 500 year) as shown on the current 2005 FIRM as a result of any grading and improvements on the Canyon Project site.

**SECOND AMENDMENT  
TO  
SUBDIVISION/SITE IMPROVEMENT AGREEMENT**

This SECOND AMENDMENT TO SUBDIVISION/SITE IMPROVEMENT AGREEMENT (the “Second Amendment”) is made this \_\_\_\_\_ day of February, 2018, by and between the **CITY OF BLACK HAWK, COLORADO** (the “City”) and JIJE, LLC, a Colorado limited liability company (as “Developer”).

**RECITALS:**

**WHEREAS**, the City and Developer entered into that certain Subdivision/Site Improvement Agreement dated December 13, 2017 (the “Agreement”) pertaining to certain real property located in the City of Black Hawk known as Canyon Black Hawk Subdivision, Filing No. 1, City of Black Hawk, County of Gilpin, State of Colorado);

**WHEREAS**, City and Developer have previously amended the Agreement (the “First Amendment”); and

**WHEREAS**, the City and Developer have agreed to further amend the Agreement to reflect certain agreements regarding Section 8 of the SIA, as set out below.

**AGREEMENT:**

**NOW, THEREFORE**, for and in consideration of the mutual covenants of the parties hereto, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Developer hereby agree as follows:

1. **RECITALS**. The recitals set forth in the “Whereas” section above are incorporated herein word for word and made a part of this Second Amendment for all purposes.
2. **DEFINED TERMS**. Unless expressly defined herein, all capitalized terms used in this Second Amendment shall have the meanings given to such terms in the Agreement.
3. **SECTION 8**”. Section 8 of the Agreement shall be amended by deleting the first sentence of such section and replacing same with the following:

*“Notwithstanding any provision to the contrary in Section 8 of this Agreement, as amended, the Developer shall have until the earlier of: (i) twelve (12) months from the date of the first to occur of the issuance of the construction permit by the City for: (aa) the Private Improvements and (bb) the Public Improvements or (ii) February 15, 2019, to complete the obligations of the Developer set out in Section 3, above.”*

4. CONTINUING EFFECT. This Second Amendment shall be incorporated into and become a part of the Agreement and all other terms, conditions and obligations of the Agreement, not modified by this Second Amendment, shall remain unchanged and in full force and effect.

5. CONFLICT IN TERMS. If any dispute shall arise as to a conflict in the terms of the Agreement, the First Amendment and this Second Amendment, the terms of this Second Amendment shall be deemed to supersede any such conflicting terms and this Second Amendment shall be further deemed to govern over the Agreement.

6. FURTHER ACTS. Each party hereto agrees to perform any and all such further and additional acts and execute and deliver any and all such further and additional instruments and documents as may be reasonably necessary in order to carry out the provisions and effectuate the intent of this Second Amendment.

7. SEVERABILITY. If any provision hereof is held to be illegal, invalid, or unenforceable under present or future laws effective during the term hereof, such provisions shall be duly severable; this Second Amendment shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof; and the remaining provisions hereof shall remain in full force and effect and shall not be affected by the severance of the illegal, invalid, or unenforceable provision or provisions.

8. COUNTERPART EXECUTION. This Second Amendment may be executed, in any number of counterparts, each of which may be executed by any one or more of the parties hereto, but all of which shall constitute one instrument, and shall be binding and effective when all of the parties hereto have executed at least one counterpart.

9. FACSIMILE/PDF. Each party hereto, and their respective successors and assigns shall be authorized to rely upon the signatures of all of the parties hereto on this Second Amendment which are delivered by facsimile or telecopier transmission or via scanned PDF, as constituting a duly authorized, irrevocable, actual, current delivery of this Second Amendment with original ink signatures of each person and entity.

THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK  
SIGNATURE/NOTARY PAGES ARE SET OUT BELOW



EXECUTED as to be effective as of the date first set forth above.

**CITY:**

CITY OF BLACK HAWK, COLORADO

By: \_\_\_\_\_  
David D. Spellman, Mayor

**ATTEST:**

\_\_\_\_\_  
Melissa A. Greiner, CMC, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Corey Y. Hoffmann, City Attorney

**DEVELOPER:**

JIFE, LLC, a Colorado limited liability company

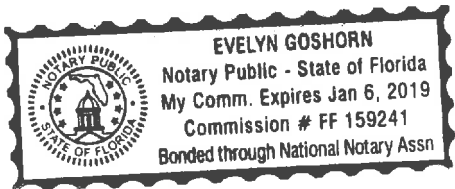
By: [Signature]  
Printed Name: THOMAS B. HAMILTON  
Title: CEO

STATE OF COLORADO )  
 ) ss.  
COUNTY OF North Palm Beach )

The foregoing instrument was subscribed, sworn to, and acknowledged before me this 8 day of February, 2018, by Thomas Goshorn, \_\_\_\_\_ of JIFE, LLC, a Colorado limited liability company.

My commission expires: Jan 6, 2019

(SEAL)



[Signature]  
Notary Public