

STATE OF COLORADO
COUNTY OF GILPIN
CITY OF BLACK HAWK

COUNCIL BILL NUMBER: 23

ORDINANCE NUMBER: 2010- 93

**TITLE: AN ORDINANCE CREATING A NEW ARTICLE X WITHIN CHAPTER 4
 OF THE BLACK HAWK MUNICIPAL CODE TO ESTABLISH A
 COMMERCIAL IMPROVEMENTS TAX**

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

Section 1. A new Article X, titled, "Commercial Improvements Tax" within Chapter 4, "Revenue and Finance," of the Black Hawk Municipal Code is hereby adopted and shall read as follows:

**Article X
Commercial Improvements Tax**

Sec. 4-210. Commercial improvements tax.

(a) A commercial improvements tax for the act or privilege of engaging in business activities within the City is hereby levied upon and shall be collected from every person that leases, owns, occupies or otherwise maintains a commercial improvement or structure within the City. The tax shall be measured by the number of square feet of floor space for each office or place of business leased, owned, occupied, or otherwise maintained within the City during the reporting period.

(b) For the purpose of this Article, the definitions of terms shall be as set forth below or as defined in Section 39-26-102, C.R.S., as may be amended from time to time, and said definitions are incorporated herein by this reference.

(1) *Floor space* means the total square footage of floor space for commercial improvements on a parcel of property as calculated by the Gilpin County Assessor's Office.

(2) *Financial Officer* means the City Manager or the City Manager's designee.

(3) *Reporting period* means each quarter of the calendar year.

(c) The amount of tax due shall be equal to the number of square feet of floor space for each office or place of business leased, owned, occupied or otherwise maintained within a commercial zone within the City multiplied by the initial tax rate of \$0.30 annually.

(d) The Financial Officer shall adjust the commercial improvements tax rate annually for inflation as follows: the tax rate increase or decrease for each year shall be equal to the tax rate for the previous year increased or decreased by the percentage change in the annual Denver Boulder Greeley consumer price index for all urban consumers (CPI-U) for the previous year.

(e) When a person rents space to another person, the person occupying the rental space shall be responsible for the commercial improvements tax on that rental space only if the renter has exclusive right of possession in the space as against the landlord and the lease agreement explicitly states that the renter shall be responsible for paying the commercial improvements tax.

(f) Persons with more than one office or place of business shall include all business floor space for all locations in making one remittance of square foot business tax to the City.

Sec. 4-211. Set-off for other City taxes paid.

Any person required to pay the commercial improvements tax that also pays sales tax imposed by Article IV of this Chapter 4, use tax imposed by Article V of this Chapter 4, occupational tax imposed by Article IX of this Chapter 4, or lodging tax imposed by Article XIII of this Chapter 4 shall be entitled to take a dollar-for-dollar set-off against their annual commercial improvements tax as follows:

(a) The annual commercial improvements tax shall be reduced by one dollar (\$1.00) for every one dollar (\$1.00) of local sales, use, occupational, or lodging tax remitted to the City in a timely manner and according to the rules and regulations adopted or amended by the Financial Officer.

(b) Local sales, use, occupational, or lodging tax that is not timely or properly remitted shall not qualify for set-off against the commercial improvements tax due.

(c) Set-off information, because it is based on remittance of local sales, use, occupational, or lodging tax, whether furnished by the person paying the tax or obtained through audit, shall be treated as confidential by the City and its officers, employees and legal representatives.

(1) Except in accordance with judicial order or as otherwise provided by law, the Financial Officer shall not divulge or make known in

any way any financial information obtained from any investigation conducted by the Financial Officer, or disclosed in any document, report or return filed under the provisions of this Article.

(2) Nothing in this subsection (3)(c) shall be construed to prohibit the publication of statistics so classified as to prevent the identification of particular report or returns and the contents thereof, nor to prohibit the inspection of any documents by the city attorney or any other legal representatives of the City.

(3) Notwithstanding the provisions of this subsection (3)(c), the Financial Officer may furnish to the taxing officials of the state or its political subdivisions, any other state or its subdivisions, or the United States any information contained in any application, report, return or any other document if the recipient jurisdiction agrees with the Financial Officer to grant similar privileges to the City and if such information is to be used by the jurisdiction only for tax related purposes.

Sec.4-212. Reporting procedure.

Every person with a duty to remit the tax imposed by this Article shall report such taxes collected on forms prescribed by the Financial Officer and shall remit such taxes to the City annually according to the rules and regulations established by the Financial Officer.

Sec. 4-213. Maintenance and preservation of tax returns, reports and records.

(a) The Financial Officer may require any person to make such return, render such statement, or keep and furnish such records as the Financial Officer may deem sufficient and reasonable to demonstrate whether such person is liable under this Article for payment or collection of the tax imposed hereby.

(b) Any person required to make a return or file a report under this Article shall preserve such records.

(c) The Financial Officer shall maintain all reports and returns of taxes required under this Article.

Sec. 4-214. Interest and penalties for failure to file tax return or pay tax.

Penalties for failure of a person to make a return and remit the correct amount of the commercial improvements tax required by this Article, and the procedures for enforcing such penalties, shall be the same as those prescribed in Article IV of Chapter 4 of this Code with respect to the City sales tax.

Sec. 4-215. Enforcement of tax liability.

The commercial improvements tax imposed by this Article is a first and prior lien on real property in which the person responsible to collect and remit the tax has an ownership interest, subject only to valid mortgages or other liens of record at the time of and prior to the recording of a notice of lien.

Sec. 4-216. Duties and powers of Financial Officer.

The Financial Officer or a designee thereof is authorized to administer the provisions of this Article. The Financial Officer shall have and may exercise with respect to the commercial improvements tax imposed by this Article all powers and procedures as set forth in this Code, including but not limited to the authority to promulgate rules and regulations for the administration and enforcement of this Section and the authority to conduct dispute resolution, hearings and appeal procedures as set forth in this Code.

Sec. 4-217. Violations.

(a) It shall be a violation of this Article for any person subject to the provisions hereof to refuse to make any return required in this Article or to make any false or fraudulent return or any false statements in any return; or to fail or refuse to make payment to the Financial Officer of any commercial improvements tax due the City, or in any manner to evade the collection and payment of the tax, or to otherwise violate or fail to comply with any other provision of this Article.

(b) It shall be unlawful for any person who leases, owns, occupies or otherwise maintains an office or place of business within a commercial zone district within the City to fail or refuse to pay the commercial improvements tax imposed by this Article; or to evade the payment or aid or abet another in any attempt to evade the payment of the commercial improvements tax imposed by this Article; or to make any false or fraudulent statement concerning such tax obligation or to otherwise violate or fail to comply with any other provision of this Article.

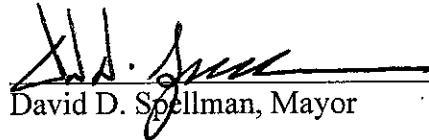
(c) Any person convicted of violating any of the provisions of this Article shall be subject to the general penalty provisions set forth in section 1-74 of this Municipal Code, unless otherwise expressly provided in this Article.

Section 2. Safety Clause. The Board of Aldermen 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 Board of Aldermen further determines that the Ordinance bears a rational relation to the proper legislative object sought to be attained.

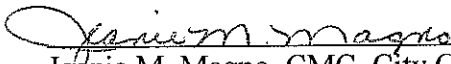
Section 3. Severability. If any clause, sentence, paragraph, or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

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; provided, however, that this Ordinance shall not take effect unless and until the qualified electors of the City of Black Hawk approve a ballot question authorizing imposition and collection of the commercial improvements tax, as set forth herein, at the City's November 2, 2010, special election.

READ, PASSED AND ORDERED POSTED this 27 day of October, 2010.


David D. Spellman, Mayor

ATTEST:


Jeanie M. Magno, CMC, City Clerk