



REGULAR MEETING AGENDA

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

August 26, 2020
3:00 p.m.

REVISED

The City of Black Hawk is hosting Virtual City Council meetings in Zoom in response to the Coronavirus COVID-19 until further notice. There are no physical meetings at this time.

Join from a PC, Mac, iPad, iPhone, or Android device:
Please click this URL to join: <https://us02web.zoom.us/j/82071142731>

Or join by phone:

888-475-4499 (Toll-Free)

Webinar ID: 820 7114 2731
International numbers available

Phone commands using your phone's dial pad while in a Zoom meeting:

- *6 – Toggle mute/unmute
- *9 – Raise your hand to make a public comment or to speak for or against a Public Hearing matter

Public Comment:

If you wish to make a public comment during the meeting,
please go to:

https://www.cityofblackhawk.org/comment_signup

and provide your Name, Email address, and Telephone.

During the Public comment section of the meeting, the host will go to sign up to ask for comments from those who have signed up

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. EXECUTIVE SESSION:

The City Council will be meeting in Executive Session 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)

6. PUBLIC COMMENT: *Please limit comments to 5 minutes*
7. APPROVAL OF MINUTES: August 12, 2020, Regular City Council Meeting Minutes
August 12, 2020, Black Hawk Urban Renewal Authority Meeting Minutes
8. PUBLIC HEARINGS:

- A. Resolution 46-2020, A Resolution Denying a Variance to Allow a Height Variance which would Allow a Structure 103 Feet in Height (**continued to September 23, 2020**)

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

- B. Resolution 47-2020, A Resolution Conditionally Approving a Certificate of Architectural Compatibility and a Site Development Plan for the T Mobile Facility Located at 821 Miners Mesa Road (continued to September 23, 2020)
- C. CB19, An Ordinance Approving the Rezone of Fifteen (15) Properties Owned by the City of Black Hawk (continued to September 23, 2020)
- D. CB20, An Ordinance Setting a Ballot Question for a November 3, 2020 Special Election to be Conducted as a Coordinated with Gilpin County Pursuant to the Colorado Munciipal Election Code
- E. CB21, An Ordinance Setting a Ballot Question for a November 3, 2020 Special Election to be Conducted as a Coordinated with Gilpin County Pursuant to the Colorado Munciipal Election Code
- F. CB22, An Ordinance Amending Chapter 4, Article IV, of the Black Hawk Municipal Code to Define Economic Nexus and Update Methods for Collection and Remittance of Sales Tax
- G. CB23, An Ordinance Approving Amendment No. 1 to the Amended and Restated Intergovernmental Agreement By and Between the City of Central and the City of Black Hawk.

9. ACTION ITEMS:

None

10. CITY MANAGER REPORTS:

11. CITY ATTORNEY:

12. EXECUTIVE SESSION:

13. 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**

August 12, 2020

MEETING MINUTES

1. **CALL TO ORDER:** Mayor Spellman called the regular meeting of the City Council to order on Wednesday, August 12, 2020, at 3:00 p.m.
2. **ROLL CALL:** Present were: Mayor Spellman, Aldermen Armbright, Bennett, Johnson, Midcap, Moates, and Torres.

Virtual/Present Staff: City Attorney Hoffmann, City Manager Cole, Acting Police Chief Cooper, Fire Chief Woolley, Finance Director Hillis, City Clerk/Administrative Services Director Greiner, Community Planning & Development Director Linker, Baseline Consultant Harris, IT Systems Analyst Blenker, 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 changes to the agenda.
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. City Council noted no conflicts.

City Attorney Hoffmann asked the virtual audience if there were any objections to any member of Council voting on any issue on the agenda this afternoon. There were no objections noted.
5. **PUBLIC COMMENT:** City Clerk Greiner confirmed that no one had signed up for public comment.

6. APPROVAL OF
MINUTES:

July 22, 2020

**MOTION TO
APPROVE**

Alderman Bennett **MOVED** and was **SECONDED** by Alderman Armbright to approve the Minutes as presented.

MOTION PASSED

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

7. PUBLIC HEARINGS:

A. Council Bill 18, An Ordinance Approving the Exclusion of Property from the Black Hawk Business Improvement District and Changing the Boundaries of the District Consistent Therewith

Mayor Spellman read the title and opened the public hearing.

City Attorney Hoffmann stated that at the last City Council meeting, Council approved a resolution authorizing a petition for exclusion of City-owned property from the Black Hawk Business Improvement District (BID) and that this public hearing is required to determine if it is appropriate to exclude the property. Once approved, the ordinance will be recorded, and this property removed from the BID.

PUBLIC HEARING:

Mayor Spellman declared a Public Hearing on CB18, an Ordinance approving the exclusion of property from the Black Hawk Business Improvement District and changing the boundaries of the District consistent therewith open and invited anyone wanting to address the Board either “for” or “against” the proposed resolution to come forward.

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

**MOTION TO
APPROVE**

Alderman Torres **MOVED** and was **SECONDED** by Alderman Johnson to approve CB18 an Ordinance approving the exclusion of property from the Black Hawk Business Improvement District and changing the boundaries of the District consistent therewith.

MOTION PASSED

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

8. ACTION ITEMS:

A. Resolution 58-2020, A Resolution Rebating City Use Tax on Construction and Building Materials for Residential Projects Within the City’s National Historic Landmark District

B. Resolution 59-2020, A Resolution Rebating City Sales Tax on Retail Items Delivered to City Residential Properties for Personal Consumption and Use

Mayor Spellman combined the agenda items and read the titles.

City Attorney Hoffmann introduced these resolutions, which were previous authorizations for rebates for properties in residential areas and normally heard every two years each time a new council is seated. He said Mayor Spellman asked for a different approach so they wouldn't have to be reheard every two years. Mr. Hoffmann drafted the resolutions so they are not binding future City Councils as they are able to repeal them if needed, and worded so they do not have to come back every two years for approval.

MOTION TO APPROVE

Alderman Johnson **MOVED** and was **SECONDED** by Alderman Torres to approve Resolution 58-2020, a Resolution rebating City Use Tax on construction and building materials for residential projects within the City's National Historic Landmark District and Resolution 59-2020, a Resolution rebating City Sales Tax on retail items delivered to City residential properties for personal consumption and use.

MOTION PASSED

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

9. CITY MANAGER REPORTS:

City Manager Cole had nothing to report.

10. CITY ATTORNEY:

City Attorney Hoffmann recommended an Executive Session following the Special Meeting of the Black Hawk Urban Renewal Authority.

11. EXECUTIVE SESSION:

City Attorney Hoffmann recommended items number 2 and 5 only for Executive Session, and the negotiations relate to various contracts the City is considering either entering into or amending, and the specific legal issues relate to potential legislation and potential litigation.

MOTION TO ADJOURN INTO EXECUTIVE SESSION AFTER THE SPECIAL MEETING OF THE BLACK HAWK URBAN RENEWAL AUTHORITY

Alderman Bennett **MOVED** and was **SECONDED** by Alderman Johnson to adjourn into Executive Session at 3:07 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) and to determine positions relative to matters that may be subject to negotiations, develop a strategy for negotiations, and/or instruct negotiators, pursuant to C.R.S. § 24-6-402(4)(e).

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

Mayor Spellman called for a recess of the regular City Council meeting in order to open the Black Hawk Urban Renewal Authority Special Meeting.

Mayor Spellman reconvened the regular City Council meeting at 3:09 p.m. to go into Executive Session.

**MOTION TO
ADJOURN**

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

Melissa A. Greiner, CMC
City Clerk

David D. Spellman
Mayor



**The Black Hawk
Urban Renewal Authority**

August 12, 2020

**SPECIAL MEETING
MINUTES**

A special meeting of The Black Hawk Urban Renewal Authority was called to order on Wednesday, August 12, 2020, at 3:07 p.m. by Chairman Spellman.

1. ROLL CALL: Present were: Chairman Spellman, Commissioners Armbright, Bennett, Johnson, Midcap, Moates, and Torres.

Virtual/Present Staff: City Attorney Hoffmann, City Manager Cole, Finance Director Hillis, City Clerk/Administrative Services Director Greiner, Community Planning & Development Director Linker, Baseline Consultant Harris, IT Systems Analyst Blenker, and Deputy City Clerk Martin.

2. ACTION ITEMS:

A. Resolution 2020-01, A Resolution Approving the Conveyance of Property from the Black Hawk Urban Renewal Authority to the City of Black Hawk to Confirm to the Minor Subdivision of Property Located on Gregory Street

Chairman Spellman read the title.

Baseline Consultant Harris introduced this item. He said this conveyance was necessary to transfer a small piece of property from the Black Hawk Urban Renewal Authority to the City of Black Hawk to coincide with the new Lot 6A lot line of the recently approved Plat named City of Black Hawk, Block 28 Amendment No. 1 Subdivision so that the City owns all the land included in the new Lot 6A.

**MOTION TO
APPROVE**

Commissioner Armbright **MOVED** and was **SECONDED** by Commissioner Bennett to approve Resolution 2020-01, a Resolution approving the conveyance of property from the Black Hawk Urban Renewal Authority to the City of Black Hawk to confirm to the minor subdivision of property located on Gregory Street.

MOTION PASSED

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

3. ADJOURNMENT: Chairman Spellman declared the Meeting of the Black Hawk Urban Renewal Authority closed at 3:09 p.m.

Melissa A. Greiner, CMC
City Clerk

David D. Spellman
Chairman

DRAFT

RESOLUTION 46-2020
A RESOLUTION DENYING
A VARIANCE TO ALLOW
A HEIGHT VARIANCE
WHICH WOULD ALLOW A
STRUCTURE 103 FEET IN
HEIGHT

(continued to September 23, 2020)

RESOLUTION 47-2020
A RESOLUTION
CONDITIONALLY
APPROVING A
CERTIFICATE OF
ARCHITECTURAL
COMPATIBILITY AND A
SITE DEVELOPMENT
PLAN FOR THE T MOBILE
FACILITY LOCATED AT
821 MINERS MESA ROAD

(continued to September 23, 2020)

**COUNCIL BILL 19
ORDINANCE 2020-19
AN ORDINANCE
APPROVING THE REZONE
OF FIFTEEN (15)
PROPERTIES OWNED BY
THE CITY OF BLACK
HAWK**

(continued to September 23, 2020)

**COUNCIL BILL 20
ORDINANCE 2020-20
AN ORDINANCE SETTING
A BALLOT QUESTION
FOR A NOVEMBER 3, 2020
SPECIAL ELECTION TO
BE CONDUCTED AS A
COORDINATED
ELECTION WITH GILPIN
COUNTY PURSUANT TO
THE COLORADO
MUNICIPAL ELECTION
CODE**

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

COUNCIL BILL NUMBER: 20

ORDINANCE NUMBER: 2020-20

TITLE: AN ORDINANCE SETTING A BALLOT QUESTION FOR A NOVEMBER 3, 2020 SPECIAL ELECTION TO BE CONDUCTED AS A COORDINATED ELECTION WITH GILPIN COUNTY PURSUANT TO THE COLORADO MUNICIPAL ELECTION CODE

WHEREAS, the City of Black Hawk desires to conduct a special election on November 3, 2020;

WHEREAS, Section 2 of Article III of the City of Black Hawk Home Rule Charter adopts by reference the Colorado Municipal Election Code of 1965;

WHEREAS, pursuant to the provisions of the Colorado Municipal Election Code and the City's home rule authority regarding the conduct of its elections, the City desires to conduct its November 3, 2020 special election as a coordinated election with Gilpin County; and

WHEREAS, the City Council finds it is necessary to ask the registered electors of the City whether to authorize a revision to the limits on single bets and the authorization for additional games because Black Hawk is facing an unforeseen financial crisis due to the pandemic, and if Colorado voters approve increased betting limits and new games, the City needs to approve these changes in the same election in order to quickly put these changes in place to create jobs and increase tax revenue for the local community.

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

Section 1. The City Council of the City of Black Hawk does hereby call a special municipal election to be conducted on November 3, 2020.

Section 2. The City Council of the City of Black Hawk further states it will submit at least one question to the registered electors of the City of Black Hawk at the November 3, 2020, special election, such special election to be conducted as a coordinated election with Gilpin County pursuant to the Colorado Municipal Election Code, C.R.S. § 31-10-101, *et seq.*, and the City's home rule authority.

Section 3. The following ballot question shall be submitted to the registered electors of the City of Black Hawk at the November 3, 2020 special election:

Ballot Question No. 1:

PROVIDED THAT THE STATEWIDE INITIATIVE TO ALLOW THE VOTERS OF THE CITY OF BLACK HAWK TO INCREASE MAXIMUM SINGLE BETS AND TO AUTHORIZE ADDITIONAL GAMES IS APPROVED AT THE NOVEMBER 3, 2020 STATEWIDE ELECTION, SHALL THE CITY OF BLACK HAWK ALLOW REVISIONS TO LIMITED GAMING WITHIN THE CITY'S GAMING DISTRICTS TO AUTHORIZE THE FOLLOWING:

- (1) REPLACE THE SINGLE BET LIMIT OF UP TO \$100 WITH UNLIMITED SINGLE BETS; AND
- (2) DELEGATE AUTHORITY TO THE BLACK HAWK CITY COUNCIL TO AUTHORIZE BY RESOLUTION THE APPROVAL OF ADDITIONAL GAMES, PROVIDED THAT THE COLORADO LIMITED GAMING CONTROL COMMISSION ALSO PROMULGATES FINAL RULES TO IMPLEMENT SUCH ADDITIONAL GAMES.

Yes_____

No_____

Section 4. 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 5. 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 6. 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 26th day of August, 2020.

David D. Spellman, Mayor

ATTEST:

Melissa A. Greiner, CMC, City Clerk

CITY OF BLACK HAWK

REQUEST FOR COUNCIL ACTION

SUBJECT: Request for approval of the Ordinance Setting Ballot Questions for the November 3, 2020 Special Election Conducted as a Coordinated Election with Gilpin County

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

MOTION TO APPROVE Council Bill 20, An Ordinance Setting a Ballot Question for a November 3, 2020 Special Election to be Conducted as a Coordinated Election with Gilpin County Pursuant to the Colorado Municipal Election Code

SUMMARY AND BACKGROUND OF SUBJECT MATTER:

The City of Black Hawk desires to conduct a special election on November 3, 2020 as a coordinated election with Gilpin County. The following ballot question shall be submitted to the registered electors of the City of Black Hawk at the November 3, 2020 special election:

Ballot Question No. 1:

PROVIDED THAT THE STATEWIDE INITIATIVE TO ALLOW THE VOTERS OF THE CITY OF BLACK HAWK TO INCREASE MAXIMUM SINGLE BETS AND TO AUTHORIZE ADDITIONAL GAMES IS APPROVED AT THE NOVEMBER 3, 2020 STATEWIDE ELECTION, SHALL THE CITY OF BLACK HAWK ALLOW REVISIONS TO LIMITED GAMING WITHIN THE CITY'S GAMING DISTRICTS TO AUTHORIZE THE FOLLOWING:

- (1) REPLACE THE SINGLE BET LIMIT OF UP TO \$100 WITH UNLIMITED SINGLE BETS;
AND
- (2) DELEGATE AUTHORITY TO THE BLACK HAWK CITY COUNCIL TO AUTHORIZE BY RESOLUTION THE APPROVAL OF ADDITIONAL GAMES, PROVIDED THAT THE COLORADO LIMITED GAMING CONTROL COMMISSION ALSO PROMULGATES FINAL RULES TO IMPLEMENT SUCH ADDITIONAL GAMES.

Yes _____

No _____

AGENDA DATE: August 26, 2020

WORKSHOP DATE: N/A

FUNDING SOURCE: N/A

DEPARTMENT DIRECTOR APPROVAL: [X]Yes []No

STAFF PERSON RESPONSIBLE: Melissa Greiner, City Clerk/Administrative Services
Director

DOCUMENTS ATTACHED: Ordinance 2020-20

RECORD: ☐ Yes ☒ No

CITY ATTORNEY REVIEW: ☒ Yes ☐ N/A

SUBMITTED BY:

Melissa A. Greiner

Melissa A. Greiner, CMC
City Clerk/Administrative Services Director

REVIEWED BY:

Stephen N. Cole

Stephen N. Cole
City Manager



**COUNCIL BILL 21
ORDINANCE 2020-21
AN ORDINANCE SETTING
A BALLOT QUESTION
FOR A NOVEMBER 3, 2020
SPECIAL ELECTION TO
BE CONDUCTED AS A
COORDINATED
ELECTION WITH GILPIN
COUNTY PURSUANT TO
THE COLORADO
MUNICIPAL ELECTION
CODE**

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

COUNCIL BILL NUMBER: 21

ORDINANCE NUMBER: 2020-21

**TITLE: AN ORDINANCE SETTING A BALLOT QUESTION FOR THE
NOVEMBER 3, 2020 SPECIAL ELECTION TO BE CONDUCTED AS A
COORDINATED ELECTION WITH GILPIN COUNTY PURSUANT TO
THE COLORADO MUNICIPAL ELECTION CODE**

WHEREAS, the City of Black Hawk has previously determined to conduct a special election on November 3, 2020; and

WHEREAS, the City Council finds it is necessary to ask the registered electors of the City whether to authorize an excise tax on the wager or handle associated with the placing of a sports bet because Black Hawk is facing an unforeseen financial crisis due to the pandemic, and the proceeds from such an excise tax will assist the City in generally increasing tax revenue for the local community to offset the impacts of the pandemic.

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

Section 1. The following additional ballot question shall be submitted to the registered electors of the City of Black Hawk at the November 3, 2020 special election:

Ballot Question No. 2:

SHALL THE CITY OF BLACK HAWK'S TAXES BE INCREASED BY ONE MILLION DOLLARS (\$1,000,000.00) IN THE FIRST FULL FISCAL YEAR AND BY WHATEVER ADDITIONAL AMOUNTS ARE RAISED ANNUALLY THEREAFTER BY IMPOSING AN EXCISE TAX AT THE RATE OF ONE QUARTER OF A PERCENT (.25%) ON THE HANDLE OR WAGER ON SPORTS BETTING ACTIVITIES, DEFINED AS THE TOTAL AMOUNT OF MONEY WAGERED ON A SPORTS EVENT WHICH HANDLE OR WAGER IS PLACED WITH A PERSON LICENSED TO CONDUCT SPORTS BETTING AT A DESIGNATED PHYSICAL LOCATION WITHIN THE CITY OR AN INTERNET SPORTS BETTING OPERATOR UNDER CONTRACT WITH A CASINO LOCATED WITHIN THE CITY TO CONDUCT SPORTS BETTING, WITH THE RATE OF THE EXCISE TAX BEING ALLOWED TO BE DECREASED OR INCREASED WITHOUT FURTHER VOTER APPROVAL SO LONG AS THE RATE OF THE EXCISE TAX DOES NOT EXCEED ONE QUARTER OF A PERCENT (.25%) AND SHALL ALL SUCH TAX REVENUES BE COLLECTED, RETAINED AND SPENT AS A VOTER APPROVED REVENUE CHANGE UNDER ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION, NOTWITHSTANDING ANY REVENUE OR EXPENDITURE LIMITATIONS CONTAINED IN THE COLORADO CONSTITUTION OR OTHER LAW?

Yes_____

No_____

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

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

Section 4. Effective Date. The City Clerk is directed to post the Ordinance as required by the Charter. This Ordinance shall become effective upon posting by the City Clerk.

READ, PASSED AND ORDERED POSTED this 26th day of August, 2020.

David D. Spellman, Mayor

ATTEST:

Melissa A. Greiner, CMC, City Clerk

CITY OF BLACK HAWK

REQUEST FOR COUNCIL ACTION

SUBJECT: Request for approval of the Ordinance Setting Ballot Questions for the November 3, 2020 Special Election Conducted as a Coordinated Election with Gilpin County

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

MOTION TO APPROVE Council Bill 21, An Ordinance Setting a Ballot Question for a November 3, 2020 Special Election to be Conducted as a Coordinated Election with Gilpin County Pursuant to the Colorado Municipal Election Code

SUMMARY AND BACKGROUND OF SUBJECT MATTER:

The City of Black Hawk desires to conduct a special election on November 3, 2020 as a coordinated election with Gilpin County. The following ballot question shall be submitted to the registered electors of the City of Black Hawk at the November 3, 2020 special election:

Ballot Question No. 2:

SHALL THE CITY OF BLACK HAWK'S TAXES BE INCREASED BY ONE MILLION DOLLARS (\$1,000,000.00) IN THE FIRST FULL FISCAL YEAR AND BY WHATEVER ADDITIONAL AMOUNTS ARE RAISED ANNUALLY THEREAFTER BY IMPOSING AN EXCISE TAX AT THE RATE OF ONE QUARTER OF A PERCENT (.25%) ON THE HANDLE OR WAGER ON SPORTS BETTING ACTIVITIES, DEFINED AS THE TOTAL AMOUNT OF MONEY WAGERED ON A SPORTS EVENT WHICH HANDLE OR WAGER IS PLACED WITH A PERSON LICENSED TO CONDUCT SPORTS BETTING AT A DESIGNATED PHYSICAL LOCATION WITHIN THE CITY OR AN INTERNET SPORTS BETTING OPERATOR UNDER CONTRACT WITH A CASINO LOCATED WITHIN THE CITY TO CONDUCT SPORTS BETTING, WITH THE RATE OF THE EXCISE TAX BEING ALLOWED TO BE DECREASED OR INCREASED WITHOUT FURTHER VOTER APPROVAL SO LONG AS THE RATE OF THE EXCISE TAX DOES NOT EXCEED ONE QUARTER OF A PERCENT (.25%) AND SHALL ALL SUCH TAX REVENUES BE COLLECTED, RETAINED AND SPENT AS A VOTER APPROVED REVENUE CHANGE UNDER ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION, NOTWITHSTANDING ANY REVENUE OR EXPENDITURE LIMITATIONS CONTAINED IN THE COLORADO CONSTITUTION OR OTHER LAW?

Yes _____

No _____

AGENDA DATE: August 26, 2020

WORKSHOP DATE: N/A

FUNDING SOURCE: N/A

DEPARTMENT DIRECTOR APPROVAL: [X]Yes []No

STAFF PERSON RESPONSIBLE: Melissa Greiner, City Clerk/Administrative Services
Director

DOCUMENTS ATTACHED: Ordinance 2020-21

RECORD: ☐ Yes ☒ No

CITY ATTORNEY REVIEW: ☒ Yes ☐ N/A

SUBMITTED BY:

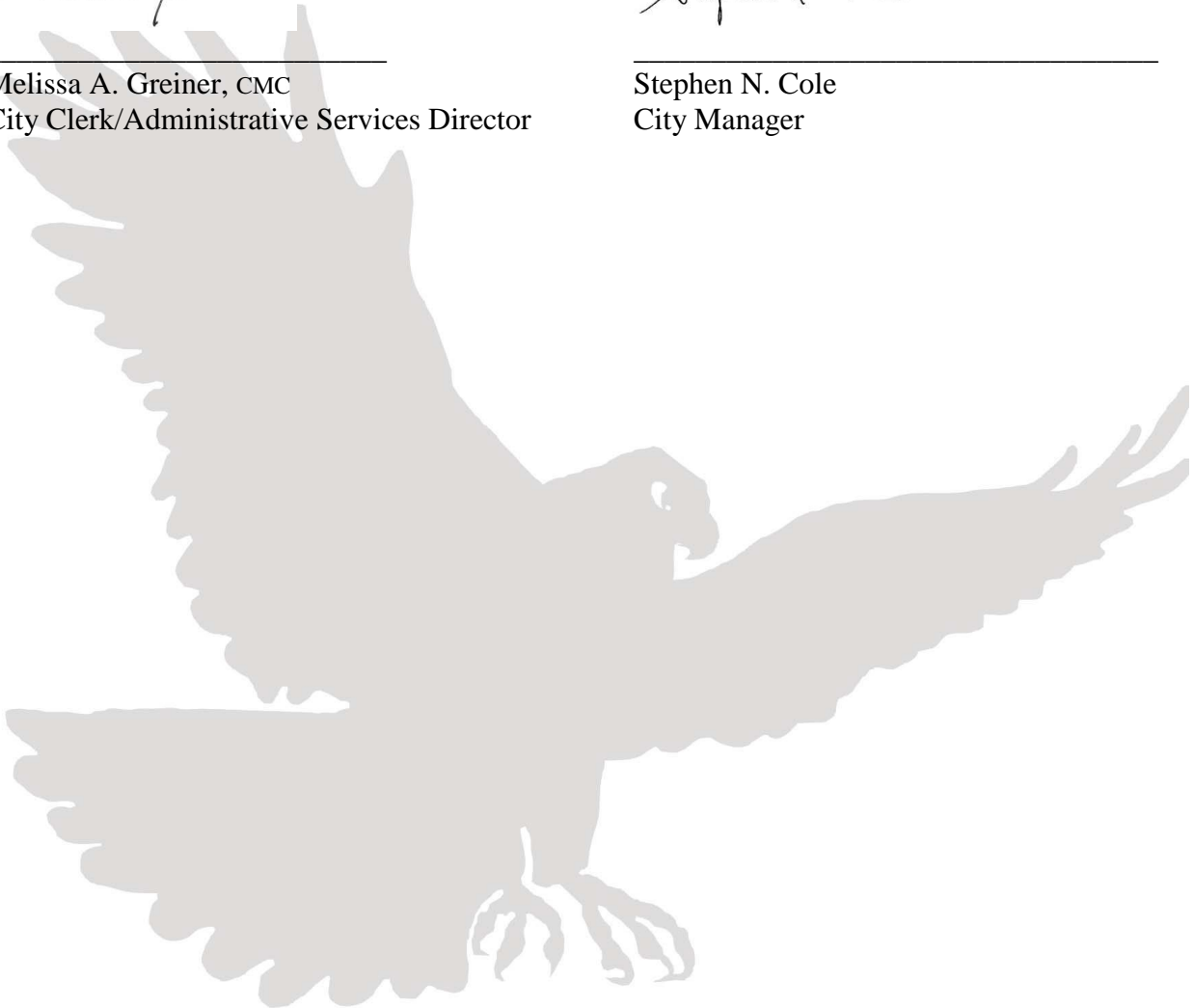


Melissa A. Greiner, CMC
City Clerk/Administrative Services Director

REVIEWED BY:



Stephen N. Cole
City Manager



**COUNCIL BILL 22
ORDINANCE 2020-22
AN ORDINANCE
AMENDING CHAPTER 4,
ARTICLE IV, OF THE
BLACK HAWK
MUNICIPAL CODE TO
DEFINE ECONOMIC
NEXUS AND UPDATE
METHODS FOR
COLLECTION AND
REMITTANCE OF SALES
TAX**

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

COUNCIL BILL NUMBER: 22

ORDINANCE NUMBER: 2020-22

**TITLE: AN ORDINANCE AMENDING CHAPTER 4, ARTICLE IV, OF THE
BLACK HAWK MUNICIPAL CODE TO DEFINE ECONOMIC NEXUS
AND UPDATE METHODS FOR COLLECTION AND REMITTANCE OF
SALES TAX**

WHEREAS, the City of Black Hawk is a home rule municipality, organized and existing under Article XX, Section 6 of the Colorado Constitution;

WHEREAS, pursuant to Article XX, Section 6 of the Colorado Constitution, the right to enact, administer and enforce sales taxes is clearly within the constitutional grant of power to the City and is necessary to raise revenue with which to conduct the affairs and render the services performed by the City;

WHEREAS, pursuant to such authority, the City has adopted and enacted a Sales Tax Code (the "Code"), under which City sales tax is levied on all sales and purchases of tangible personal property or taxable services at retail unless prohibited, as applicable to the provision of this ordinance, under the Constitution or laws of the United States;

WHEREAS, the United States Supreme Court in *South Dakota v. Wayfair*, 138 S.Ct. 2080 (2018), overturned prior precedent and held that a State is not prohibited by the Commerce Clause from requiring a retailer to collect sales tax based solely on the fact that such retailer does not have a physical presence in the State ("Remote Sales");

WHEREAS, based upon such decision, the retailer's obligation to collect tax on Remote Sales is no longer based on the retailer's physical presence in the jurisdiction by the Constitution or law of the United States, and the Code needs to be amended to clearly reflect such obligation consistent with said decision;

WHEREAS, the delivery of tangible personal property, products, or services into the City relies on and burdens local transportation systems, emergency and police services, waste disposal, utilities and other infrastructure and services;

WHEREAS, the failure to tax Remote Sales creates incentives for businesses to avoid a physical presence in the State and its respective communities, resulting in fewer jobs and increasing the share of taxes to those consumers who buy from competitors with a physical presence in the State and its municipalities;

WHEREAS, it is appropriate for Colorado municipalities to adopt uniform definitions within their sales tax codes to encompass marketplace facilitators, marketplace sellers, and

multichannel sellers that do not have a physical presence in the City, but that still have a taxable connection with the City;

WHEREAS, the goal of adopting this ordinance is to join in on the simplification efforts of all the self-collecting home rule municipalities in Colorado;

WHEREAS, this ordinance provides a safe harbor to those who transact limited sales within the City;

WHEREAS, absent this amendment, the continued failure of retailers to voluntarily apply and remit sales tax owed on Remote Sales exposes the City to unremitted taxes and permits an inequitable exception that prevents market participants from competing on an even playing field;

WHEREAS, the City adopts this ordinance with the intent to address tax administration, and, in connection with, establish economic nexus for retailers or vendors without physical presence in the State and require the retailer or vendor to collect and remit sales tax for all sales made within the marketplace as permitted in 2018 by the U.S. Supreme Court; and

WHEREAS, the State's adoption of economic nexus for state sales tax and state-collected municipal sales tax did not require voter approval under the Taxpayer's Bill of Rights ("TABOR"), Article X, § 20 of the Colorado Constitution, and, similarly, updating the City's methods to allow collection and remittance of sales tax to the full extent permitted by law does not require voter approval under TABOR.

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

Section 1. Section 4-42 of the Black Hawk Municipal Code is amended by the revision to or addition of the following defined terms, which shall appear in alphabetical order:

Economic nexus means the connection between the City and a person not having a physical nexus in the State of Colorado, which connection is established when the person or marketplace facilitator makes retail sales into the City, and:

(1) In the previous calendar year, the person, which includes a marketplace facilitator, has made retail sales into the state exceeding the amount specified in Section 39-26-102(3)(c), C.R.S., as amended; or

(2) In the current calendar year, 90 days has passed following the month in which the person, which includes a marketplace facilitator, has made retail sales into the state exceeding the amount specified in Section 39-26-102(3)(c), C.R.S., as amended.

This definition does not apply to any person who is doing business in this state but otherwise applies to any other person.

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 salespersons 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 (1) or more employees, agents or commissioned salespersons 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;

(5) Makes more than one (1) delivery into the taxing jurisdiction within a twelve-month period; or

(6) Makes retail sales sufficient to meet the definitional requirements of economic nexus as set forth herein.

Marketplace means a physical or electronic forum, including, but not limited to, a store, a booth, an internet website, a catalog, or a dedicated sales software application, where tangible personal property, taxable products, or taxable services are offered for sale.

Marketplace facilitator means a person who:

(1) Contracts with a marketplace seller or multichannel seller to facilitate for consideration, regardless of whether or not the consideration is deducted as fees from the transaction, the sale of the marketplace seller's tangible personal property, products, or services through the person's marketplace;

(2) Engages directly or indirectly, through one or more affiliated persons, in transmitting or otherwise communicating the offer or acceptance between a purchaser and the marketplace seller or multichannel seller; and

(3) Either directly or indirectly, through agreements or arrangements with third parties, collects payment from the purchaser on behalf of the seller.

(4) This definition does not include a person that exclusively provides internet advertising services or lists products for sale, and that does not otherwise meet this definition.

Marketplace seller means a person, regardless of whether or not the person is engaged in business in the City, which has an agreement with a marketplace

facilitator and offers for sale tangible personal property, products, or services through a marketplace owned, operated, or controlled by a marketplace facilitator.

Multichannel seller means a retailer that offers for sale tangible personal property, commodities, or services through a marketplace owned, operated, or controlled by a marketplace facilitator, and through other means.

Retailer or vendor means any person selling, leasing, renting, or granting a license to use tangible personal property or services at retail. Retailer or vendor 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; and
- (5) Marketplace facilitator, marketplace seller, or multichannel seller.

Section 2. Section 4-50 of the Black Hawk Municipal Code is amended by the addition of the following new subsection (d):

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

* * *

(d) Marketplace Sales:

(1) A marketplace facilitator engaged in business in the City is required to collect and remit sales tax on all taxable sales made by the marketplace facilitator, or facilitated by it for marketplace sellers or multichannel sellers to customers in the City, whether or not the marketplace seller for whom sales are facilitated would have been required to collect sales tax had the sale not been facilitated by the marketplace facilitator.

(2) A marketplace facilitator shall assume all the duties, responsibilities, and liabilities of a vendor under this article. Marketplace facilitators shall be liable for the taxes collected from marketplace sellers or multichannel sellers. The City may recover any unpaid taxes, penalties, and interest from the marketplace facilitator that is responsible for collecting on behalf of marketplace sellers or multichannel sellers.

(3) The liabilities, obligations, and rights set forth under this subsection are in addition to any duties and responsibilities of the marketplace facilitator has under this article if it also offers for sale tangible personal property, products, or services through other means.

(4) A marketplace seller, with respect to sales of tangible personal property, products, or services made in or through a marketplace facilitator's marketplace, does not have the liabilities, obligations, or rights of a retailer under this article if the marketplace seller can show that such sale was facilitated by a marketplace facilitator:

(A) With whom the marketplace seller has a contract that explicitly provides that the marketplace facilitator will collect and remit sales tax on all sales subject to tax under this article; or

(B) From whom the marketplace seller requested and received in good faith a certification that the marketplace facilitator is registered to collect sales tax and will collect sales tax on all sales subject to tax under this article made in or through the marketplace facilitator's marketplace.

(5) If a marketplace seller makes a sale that is not facilitated by a licensed marketplace facilitator in a marketplace, the marketplace seller is subject to all of the same licensing, collection, remittance, filing and recordkeeping requirements as any other retailer.

(6) With respect to any marketplace sale, the City shall solely audit the marketplace facilitator for sales made by marketplace sellers or multichannel sellers but facilitated by the marketplace. The City will not audit or otherwise assess tax against marketplace sellers or multichannel sellers for sales facilitated by a marketplace facilitator.

Section 3. No obligation to collect the sales and use tax required by this Ordinance may be applied retroactively. Responsibilities, duties and liabilities described in Section 2 of a marketplace facilitator, marketplace seller, or multichannel seller begin upon the earlier of when they became licensed to collect the City's sales tax or when they became legally obligated to collect the City's sales tax.

Section 4. This ordinance shall become effective on the first day of the month that is at least thirty (30) days after date of its adoption.

Section 5. 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 6. 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.

READ, PASSED AND ORDERED POSTED this 26th day of August, 2020.

David D. Spellman, Mayor

ATTEST:

Melissa A. Greiner, CMC, City Clerk

CITY OF BLACK HAWK

REQUEST FOR COUNCIL ACTION

SUBJECT: Amending Chapter 4, Article IV, of the Black Hawk Municipal Code to Define Economic Nexus and Update Methods for Collection and Remittance of Sales Tax.

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

MOTION TO APPROVE: Council Bill 22, An Ordinance Amending Chapter 4, Article IV, of the Black Hawk Municipal Code to Define Economic Nexus and Update Methods for Collection and Remittance of Sales Tax.

SUMMARY AND BACKGROUND OF SUBJECT MATTER: In an effort to join the simplification efforts of all the self-collecting home-rule municipalities in Colorado, the Black Hawk Municipal Code will be amended to define economic nexus for vendors without a physical presence per the 2018 Supreme Court ruling in South Dakota v. Wayfair. Furthermore, adoption of the uniform economic nexus definitions will allow for standardized reporting and remittance by vendors to the various home rule municipalities.

AGENDA DATE: August 26, 2020

WORKSHOP DATE: N/A

FUNDING SOURCE: N/A

DEPARTMENT DIRECTOR APPROVAL: ☒ Yes ☐ No

STAFF PERSON RESPONSIBLE: Lance Hillis, Finance Director

DOCUMENTS ATTACHED: Ordinance 2020-22

RECORD: ☐ Yes ☒ No

CITY ATTORNEY REVIEW: ☒ Yes ☐ N/A

SUBMITTED BY:

Lance Hillis

Lance Hillis, Finance Director

REVIEWED BY:

Stephen N. Cole

Stephen N. Cole, City Manager

**COUNCIL BILL 23
ORDINANCE 2020-23
AN ORDINANCE
APPROVING
AMENDMENT NO. 1 TO
THE AMENDED AND
RESTATED
INTERGOVERNMENTAL
AGREEMENT BY AND
BETWEEN THE CITY OF
CENTRAL, THE CITY OF
BLACK HAWK, GILPIN
COUNTY, AND THE
BLACK HAWK-CENTRAL
CITY SANITATION
DISTRICT**

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

COUNCIL BILL NUMBER: 23

ORDINANCE NUMBER: 2020-23

TITLE: AN ORDINANCE APPROVING AMENDMENT NO. 1 TO THE AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN THE CITY OF CENTRAL AND THE CITY OF BLACK HAWK

WHEREAS, on June 17, 2020, the City of Black Hawk approved the Amended and Restated Intergovernmental Agreement (the "Original Agreement") following a public hearing thereon;

WHEREAS, Black Hawk and Central City desire to clarify language in the Original Agreement as set forth in the **First Amendment**, attached hereto as Exhibit 1; and

WHEREAS, the City of Black Hawk desires to approve the First Amendment and further desires to authorize the Mayor to execute the same on behalf of the City.

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

Section 1. The City Council hereby approves the First Amendment, and authorizes the Mayor to execute the same on behalf of the City.

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

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

Section 4. Effective Date. The City Clerk is directed to post the Ordinance as required by the Charter. This Ordinance shall become effective upon posting by the City Clerk.

READ, PASSED AND ORDERED POSTED this 26th day of August, 2020.

David D. Spellman, Mayor

ATTEST:

Melissa A. Greiner, CMC, City Clerk

CITY OF BLACK HAWK

REQUEST FOR COUNCIL ACTION

SUBJECT: First Amendment to the Amended and Restated IGA by and between the City of Black Hawk, Gilpin County, and the Black Hawk-Central City Sanitation District

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

MOTION TO APPROVE Council Bill 23, An Ordinance Approving Amendment No. 1 to the Amended and Restated Intergovernmental Agreement by and Between the City of Central, the City of Black Hawk, Gilpin County, and the Black Hawk-Central City Sanitation District

AGENDA DATE: August 26, 2020

WORKSHOP DATE: N/A

FUNDING SOURCE: N/A

DEPARTMENT DIRECTOR APPROVAL: [X]Yes []No

STAFF PERSON RESPONSIBLE: Melissa Greiner, City Clerk/Administrative Services Director

DOCUMENTS ATTACHED: First Amendment and Exhibit 1

RECORD: [X]Yes []No

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

SUBMITTED BY:



Melissa A. Greiner, CMC
City Clerk/Administrative Services Director

REVIEWED BY:



Stephen N. Cole
City Manager

EXHIBIT 1

AMENDMENT NO. 1 TO AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT

THIS AMENDMENT NO. 1 TO AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT (“Amendment No. 1”) is made and entered into as of this ____ day of _____, 2020, by the CITY OF BLACK HAWK, COLORADO, a home-rule municipality of the State of Colorado (“Black Hawk”), and the CITY OF CENTRAL, COLORADO, a home-rule municipality of the State of Colorado (“Central”) (collectively, the “Cities”), and shall be effective as of the date of mutual execution by the Cities (“Effective Date”).

RECITALS

A. The Cities, together with the County of Gilpin (the “County”) and the Black Hawk-Central City Sanitation District (the “District”) entered into that certain Amended and Restated Intergovernmental Agreement dated June 30, 2020, and recorded on July 9, 2020, 2020 at Reception No. 166470 in the real estate records of the County (the “Agreement”).

B. Section 10.n. of the Agreement states that no change or amendment to the Agreement shall be binding upon the Parties except as specifically expressed in writing, referring to the Agreement and signed “. . . by all of the Parties hereto agreeing to be bound thereby.”

C. The County is a party to the Agreement for the sole purpose of effectuating the termination of that certain Intergovernmental Agreement dated September 29, 1999 and is not required to review or execute this Amendment No. 1.

D. The District is a party to the Agreement only for purposes of Section 4 of the Agreement (setting forth the terms under which the District will provide sanitary sewer service to real property in the New Black Hawk Growth Area and the New Central City Growth Area, as those terms are defined in the Agreement).

E. This Amendment No. 1 does not modify Section 4 of the Agreement, and the District is not required to review or execute this Amendment No. 1.

F. The Cities desire to amend the Agreement: (1) to amend Section 2 of the Agreement; and (2) to clarify that future uses within a specified portion of the New Central City Growth Area will be limited to active and passive open space and recreation-related uses.

NOW THEREFORE, IN CONSIDERATION of the above recitals, the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the Cities agree as follows:

AGREEMENT

1. Definitions. Any capitalized term not defined herein shall have the meaning set forth in the Agreement. The rules of construction set forth in the Agreement shall be applicable herein.

2. Amendments to Section 2 of the Agreement. Section 2 of the Agreement is hereby amended as follows, with additions shown in underline and deletions shown in ~~strikethrough~~:

2. **New Central City Growth Area.** The Central City Growth Area is the combination of: (1) all land areas within Clear Creek County that may be lawfully annexed by Central; and (2) all land areas within Gilpin County that are described in **Exhibit 1.A.**, which is attached hereto and incorporated by this reference ~~(the such land areas, collectively, the “New Central City Growth Area”)~~. Central may annex, within its sole discretion and pursuant to the procedure required by the Municipal Annexation Act of 1965, as amended, any and all land located within the New Central City Growth Area, provided that Central’s land uses within the New Central City Growth Area are and shall be consistent with Central’s 2017 Comprehensive Plan, as amended, and that Central’s land uses within that portion of the New Central Growth Area specifically described in **Exhibit 3** attached hereto shall be limited to active and passive open space and recreation-related uses. Black Hawk shall not annex any land within the New Central City Growth Area.

3. Exhibit 3 added. **Exhibit 3** (labeled Open Space) is attached to this Amendment No. 1 and is incorporated into the Agreement for all purposes.

4. Amendment to Section 10.o. of the Agreement. Section 10.o. of the Agreement is hereby amended as follows, with additions shown in underline and deletions shown in ~~strikethrough~~:

o. Boundary Arbitration. It is mutually agreed and understood that the growth boundaries have not been surveyed and legal descriptions created to define the areas described in **Exhibits 1, 1.A, 1.B, and 2, and 3** have not been prepared by a professional land surveyor. The areas defined have been created using Geographic Information System (GIS) data. If the boundary line(s) between growth areas are in dispute, it is mutually agreed to solicit professional impartial arbitration to determine the boundary line. The arbitrator shall be selected by mutual written consent of Central ~~City~~ and Black Hawk. It is mutually agreed that both Central and Black Hawk will accept the results of this arbitration, without appeal or a subsequent legal action in an effort to

overturn the arbitrator's decision. The arbitrator's decision shall be based on 1) **Exhibits 1, 1.A, 1.B, and 2, and 3** incorporated in this Agreement, 2) by the GIS lines shown in the Exhibit(s) in relation to the aerial photography used at the time this Agreement was executed and 3) by the property lines that parallel or share the growth lines in question, at the time this Agreement was executed.

5. Counterparts. This Amendment No. 1 may be executed in any number of counterparts, each of which shall be considered an original for all purposes, and all of which when taken together shall constitute one and the same instrument.

6. Recordation. The Cities shall record this Amendment No. 1 in the real estate records of Gilpin County, Colorado.

7. Authority. Each of the undersigned represents as to itself that each has the authority to execute this Amendment No. 1.

[Signature Page Follows.]

IN WITNESS WHEREOF, the Cities have executed this Amendment No. 1 to Amended and Restated Intergovernmental Agreement on the date(s) set forth below.

CITY OF BLACK HAWK, COLORADO

BY: _____
David D. Spellman, Mayor

ATTEST: _____
Melissa Greiner, City Clerk

DATE: _____, 2020

CITY OF CENTRAL, COLORADO

BY: _____
Jeremy Fey, Mayor

ATTEST: _____
Reba Bechtel, City Clerk

DATE: _____, 2020

Exhibit 3

Open Space

