

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

**COUNCIL BILL NUMBER: 22**

**ORDINANCE NUMBER: 2018-22**

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

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

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

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

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

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

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

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

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

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

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

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

The use tax shall not apply to:

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

...

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

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

...

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

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

...

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

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

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

...

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

...

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

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

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

...

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

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

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


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

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

READ, PASSED AND ORDERED POSTED this 10<sup>th</sup> day of October, 2018.

  
David D. Spellman, Mayor

ATTEST:

  
Melissa A. Greiner, CMC, City Clerk

