

**AGENDA  
OURAY CITY COUNCIL**

**August 23, 2021 - 4pm**

**IN-PERSON MEETING – ALL PUBLIC WHO WOULD LIKE TO SPEAK SHOULD  
ATTEND IN-PERSON  
320 6<sup>th</sup> Ave. – Massard Auditorium**

**ZOOM MEETING (FOR LISTENING PURPOSES ONLY)**

<https://zoom.us/j/9349389230>

Meeting ID: 934 938 9230      Passcode: 491878  
Or dial:                      408 638 0968      or    669 900 6833

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**Special Meeting – 4pm**

- Changes to this agenda can be found on the bulletin board at City Hall
- Electronic copies of the Council Packet are available on the City website at [www.cityofouray.com](http://www.cityofouray.com). A hard copy of the Packet is also available at the Administrative Office for interested citizens.
- Action may be taken on any agenda item
- Notice is hereby given that a majority or quorum of the Planning Commission, Community Development Committee, Beautification Committee, and/or Parks and Recreation Committee may be present at the above noticed City Council meeting to discuss any or all of the matters on the agenda below for Council consideration

1. CALL TO ORDER
2. ROLL CALL
3. PLEDGE OF ALLEGIANCE
4. ACTION ITEMS
  - a. Consideration and Possible Approval of Resolution 10, Series 2021 – Submitting to the Registered Electors at the November Election, a Ballot Question Regarding the Imposition of an Excise Tax of 15% on the Amount Charged for Short-Term Rentals, for the Purpose of Assisting to Pay the Future Debt for the Mandated New Wastewater Treatment Facility and Water Treatment Facility and to Create a Housing Fund to be Used to Provide Long-term, Workforce and/or Attainable/Affordable Housing Options    Page 2
  - b. Consideration and Possible Approval of Resolution 11, Series 2021 – Authorizing the City Administrator to Execute Grant Applications of up to \$500,000 in Award    Page 6
  - c. Consideration and Possible Approval of Ouray Silver Mines Letter of Intent to Develop a Water Right for the use of the Ouray Ice Park    Page 9
5. ADJOURNMENT

**RESOLUTION 10, SERIES 2021**

**A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF OURAY SUBMITTING TO THE REGISTERED ELECTORS AT THE NOVEMBER BIENNIAL AND COORDINATED ELECTION, A BALLOT QUESTION REGARDING THE IMPOSITION OF AN EXCISE TAX OF 15% ON THE AMOUNT CHARGED FOR SHORT-TERM RENTALS.**

**WHEREAS**, the City of Ouray, in the County of Ouray and State of Colorado (the “City”), is a home rule municipal corporation duly organized and existing under laws of the State of Colorado and the City Charter (the “Charter”).

**WHEREAS** the members of the City Council of the City (the “Council”) have been duly elected and qualified.

**WHEREAS**, Article X, Section 20 of the Colorado Constitution (“TABOR”) requires voter approval for any new tax and for collecting, retaining, and spending certain moneys above limits established by TABOR.

**WHEREAS** TABOR requires the City to submit ballot issues (as defined in TABOR) to the City’s electors on limited election days.

**WHEREAS**, pursuant to Section IV of the Charter, the City’s biennial election will be on November 2, 2021, pursuant to the Colorado Municipal Election Code of 1965 (the “Election”).

**WHEREAS** the City Council may submit any question to the voters pursuant to C.R.S. §31-11-111(2).

**WHEREAS** the travel industry has changed during the COVID-19 pandemic and short-term rental of homes has become more popular creating an increase in the use of City parks, open space, trails, and streets as well as administrative costs to administer and enforce short-term rentals within the City.

**WHEREAS**, City Council has determined that short-term rental properties increase the demand on City infrastructure including, but not limited to, increased water and sewer demand as well as increase road deterioration in areas outside the commercial corridor.

**WHEREAS**, the City Council has determined that short-term rental properties often replace long-term rentals in the City, making longer term work force housing difficult to locate with many local businesses unable to provide adequate services to the public without available long-term rentals for work force housing.

**WHEREAS** City Council finds it necessary to impose an excise tax of 15% of the amount charged for short-term rentals, including any off premise short-term rental used by any lodging business that does not pay a commercial property tax rate, to level the playing field between a lodging business that pays property tax at a commercial rate.

**WHEREAS**, if a 15% excise tax on short-term rentals existed in 2019 the revenue would have been \$287,400.00; so far, between January and June of 2021, there has been a 74% increase in Lodging Occupation Tax revenue for short-term rentals compared to the first half of 2019; assuming a continuation of a 74% increase throughout 2021 and another 25% increase in 2022 the projected revenue collected will be \$625,100.00.

**WHEREAS** the additional revenue will be allocated 50% to the debt for the wastewater treatment plant and the water treatment plant and 50% to a housing fund to be used to provide long-term, workforce, or attainable/affordable housing and to fund other housing projects at Council's discretion.

**WHEREAS** the City will be utilizing Colorado's State Revolving Fund Loan Programs to construct the mandated new Wastewater Treatment Facility and Water Treatment Facility with the potential term of 30 years for both the Wastewater Treatment loan and the Water Treatment loan.

**WHEREAS** to assist the wastewater and water rate payers, the tax is being requested to begin on January 1, 2022, and remain in effect until December 31, 20521 to match the 30-year debt term of the State Revolving Fund Loan Programs for these mandated facilities.

**WHEREAS** the Council finds it necessary to set forth certain procedures concerning the conduct of the Election and to place the question on the ballot for the election on November 2, 2021.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF OURAY, IN THE STATE OF COLORADO:**

Section 1. Unless otherwise defined herein, all terms used herein shall have the meanings specified in the Election Code.

Section 2. The Election shall be conducted as a coordinated election by the County Clerk pursuant to TABOR and the Uniform Election Code of 1992, and all laws amendatory thereof

and supplemental thereto. The Election shall also be conducted pursuant to the provisions of an intergovernmental agreement (the “intergovernmental agreement”) between the City and the County Clerk of the County. The City hereby determines that the Election shall be held on November 2, 2021, and that there shall be submitted to the eligible electors of the City the question set forth herein. Per Resolution 09, Series 2021, the officers of the City are hereby authorized to enter into one or more intergovernmental agreements with the County Clerk pursuant to Section 1-7-116, C.R.S. Any such intergovernmental agreement entered in connection with the Election is hereby ratified, approved, and confirmed.

Section 3. Pursuant to Section 31-11-111, C.R.S., the title and submission clause which shall be submitted to the eligible electors of the City at the Election shall be in substantially the following form:

**QUESTION A: AUTHORIZATION TO IMPOSE AN EXCISE TAX OF 15% ON THE AMOUNT CHARGED FOR A SHORT-TERM RENTAL AND USE THE PROCEEDS TO FUND DEBT FOR THE CITY’S WASTEWATER TREATMENT PLANT (WWTP) AND WATER TREATMENT PLANT (WTP) AND HOUSING PROGRAMS.**

**SHALL CITY OF OURAY TAXES BE INCREASED NOT MORE THAN \$625,100.00 ON JANUARY 1, 2022 AND BY SUCH AMOUNTS GENERATED ANNUALLY THEREAFTER FROM AN EXCISE TAX OF 15% ON THE AMOUNT CHARGED FOR A SHORT-TERM RENTAL AND SUCH REVENUE BE ALLOCATED 50% TO DEBT INCURRED FOR THE CITY’S WWTP AND WTP AND 50% TO FUNDING HOUSING PROGRAMS; AND SHALL THIS EXCISE TAX SUNSET ON DECEMBER 31, 2051; AND SHALL THE CITY BE ALLOWED TO COLLECT, KEEP, AND SPEND THE REVENUES FROM SUCH TAX AS A VOTER APPROVED REVENUE CHANGE WITHOUT LIMITATION OR CONDITION UNDER ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION, OR ANY OTHER LAW?**

\_\_\_\_\_ YES \_\_\_\_\_ NO

Section 4. Per Resolution 9, Series 2021, the City Clerk was appointed as the designated election official of the City for purposes of performing acts required or permitted by law in connection with the Election.

Section 5. Pursuant to Section 1-11-203.5, C.R.S., any election contest arising out of a ballot issue or ballot question election concerning the order of the ballot or the form or content

of the ballot title shall be commenced by petition filed with the proper court within five days after the title of the ballot issue or ballot question is set.

Section 6. The officers and employees of the City are hereby authorized and directed to take all action necessary or appropriate to effectuate the provisions of this Resolution.

Section 7. All actions heretofore taken (not inconsistent with the provisions of this Resolution) by the City, directed towards the Election and the objects and purposes herein stated, are hereby ratified, approved, and confirmed.

Section 8. If any portion of this Resolution is held to be invalid for any reason, such decision shall not affect the validity of the remaining portions of this Resolution. The Council hereby declares that it would have passed this Resolution and each part hereof irrespective of the fact that any one part be declared invalid.

Section 9. All other resolutions or portions thereof inconsistent or conflicting with this Resolution or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

**ADOPTED AND APPROVED** this August 23, 2021.

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Greg Nelson, Mayor

ATTEST:

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Melissa M. Drake, City Clerk

RESOLUTION NO. 11, (SERIES 2021)

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OURAY, COLORADO ADOPTING A POLICY AUTHORIZING THE CITY ADMINISTRATOR TO SIGN GRANT APPLICATIONS ON BEHALF OF THE CITY IN AMOUNTS OF \$500,000.00 OR LESS WITH RATIFICATION BY CITY COUNCIL AT THE NEXT REGULARLY SCHEDULED MEETING.**

**WHEREAS**, from time to time, a grant opportunity arises with a short deadline for application submittals;

**WHEREAS**, City Council desires to allow the City Administrator to sign grant applications on behalf of the City not over Five Hundred Thousand Dollars (\$500,000.00);

**WHEREAS**, City Council has determined that adoption of a formal written policy pertaining to grant application signatory authorization will serve the public interest; and

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF OURAY, COLORADO** that the Policy No. 3, Policy for Grant Signatures attached hereto is hereby adopted.

**ADOPTED** this 23<sup>rd</sup> day of August 2021, by the Ouray City Council.

CITY OF OURAY, COLORADO

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Greg Nelson, Mayor

ATTEST:

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Melissa M. Drake, City Clerk

**City of Ouray Administrative Services  
Policy No. 3**

**Policy for Grant Signatures**

**Current Version: Approved August 22, 2021**

## **CITY OF OURAY Grant Signature Policy**

### **I. INTRODUCTION**

This policy is intended to provide the City Administrator the ability to sign a grant application on behalf of the City of Ouray with ratification by City Council at the next regularly scheduled meeting.

### **II. AUTHORITY**

When the City desires to apply for any grant of \$500,000 or less, the City Administrator is granted the authority to sign on behalf of the City so long as the signature is ratified by City Council at the next regularly scheduled meeting.

### **III. DEFINITION OF CITY ADMINISTRATOR**

City Administrator, for purposes of this policy, shall mean the City Administrator appointed by City Council pursuant to the City of Ouray Home Rule Charter, Article 5.1 or any authorized designee.





August 20, 2021

City of Ouray  
Attn: Silas Clarke, City Manager  
Via electronic mail to: [clarkes@cityofouray.com](mailto:clarkes@cityofouray.com)

**Re: Lease of Water Available Under Revenue Virginius Mine Water Works Water Right**

Dear Mr. Clarke,

This letter ("Letter") sets forth the principal terms upon which Ouray Silver Mines Inc. ("OSMI") will lease to the City of Ouray (the "City" and, together with OSMI, the "Parties" and each, a "Party") water available pursuant to the Revenue Virginius Mine Water Works Water Right, under lease agreement ("Lease Agreement") to be entered into by the City and OSMI substantially in accordance with the terms described below (the "Proposed Transaction").

1. Good Faith Negotiations of Lease Agreement

As soon as reasonably practicable after the execution of this Letter, the City and OSMI will make good faith efforts to negotiate a definitive Lease Agreement substantially in accordance with the following terms and conditions:

- a) Lease rate: \$1.00 per year.
- b) Lease term: 10 years, renewable.
- c) Water to be leased: Up to 3.34 c.f.s. of water available for re-diversion from Canyon Creek by the City at a location of City's choosing, after release from OSMI facilities upstream on Sneffels Creek, under the Revenue Virginius Mine Water Works Water Right originally decreed in Case No. W-2993, and the subject of subsequent decrees including without limitation the Findings of Fact, Conclusions of Law, Ruling, Judgment and Decree entered in Case No. 20CW3048, Water Division No. 4 (the "Leased Water").
- d) Use of Leased Water: For recreational purposes, to create and maintain ice for the purpose of ice climbing on the property owned or leased by the City known as the Ouray Ice Park. OSMI reserves all other uses of the Revenue Virginius Mine Water Works Water Right. Neither the City nor OSMI shall seek a decreed right to reuse return flows that may accrue from the melting of ice after deliveries of the Leased Water to the Ice Park.
- e) OSMI obligations conditional: OSMI's obligation to lease the Leased Water to the City is conditioned upon its receipt of all needed approvals for the re-diversion and use of the same at the Ouray Ice Park from the Water Court for Water Division No. 4 and/or the Colorado Division of Water Resources (CDWR), and upon the City's

compliance with all conditions and limitations imposed under the decrees, which the City shall approve prior to entry of any decree. The precise amount of Leased Water to be delivered will be contingent upon the rate and volume of flow exiting the Revenue Tunnel portal, priority calls for water by downstream water right holders, other water demands of OSMI, the proper functioning of OSMI's water management and treatment facilities, and any transit losses charged by CDWR, but OSMI anticipates that Leased Water will be typically be available for use by the City during the November-March period.

- f) Absent the further advance written consent of OSMI, OSMI will have no responsibility for the design, permitting, construction or maintenance of the new diversion from Canyon Creek.
- g) The Lease Agreement will contain covenants, indemnities, representations and warranties, and other terms and conditions customary for transactions of the nature and size of the Proposed Transaction.
- h) City staff and consultants shall review and approve the Water Court application OSMI intends to file to permit use of the Leased Water at the Ouray Ice Park prior to its filing.
- i) OSMI shall continue to have the obligation to comply with any water quality discharge requirements associated with the discharge of water under the Revenue Virginius Mine Water Works Water Right to Sneffels Creek.
- j) OSMI and City will discuss the City being a co-applicant in such application with respect to the contemplated use of the Leased Water at the Ouray Ice Park to the extent of its rights as lessee, as well as the City possibly filing an additional claim in such application for a junior (2021) surface water right to be diverted at the same new diversion point from Canyon Creek for recreational use at the Ouray Ice Park. The parties agree to cooperate in such application.

The City and OSMI agree that they will negotiate in good faith to complete and consummate the Lease Agreement within sixty (60) days of the date of the City's signature below.

## 2. Governing Law

This Letter shall be governed by and construed in accordance with the laws of the State of Colorado.

## 3. Amendment

This Letter may be amended, modified or extended only by a written agreement signed by the Parties hereto.

## 4. No Third Party Beneficiaries

Except as specifically set forth or referred to herein, nothing herein is intended or shall be construed to confer upon any person or entity other than the Parties and their successors or assigns, any rights or remedies under or by reason of this Letter.

## 5. Counterparts

This Letter may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one agreement. This Letter may be executed by facsimile or .pdf signature and a facsimile or .pdf signature shall constitute an original for all purposes.

6. Assignment

This Letter may not be assigned without the non-assigning Party's prior written consent.

7. Termination

This Letter, and the obligations of the Parties pursuant to this Letter, may be terminated by either Party upon written notice to the other Party.

8. Binding Effect

Section 1 represents only the mutual understanding and intention of the Parties with respect to the Proposed Transaction, does not constitute a contract or agreement, is not binding, and shall not be enforceable against the City or OSMI. While this Letter attempts to set out certain basic terms and parameters for the Lease Agreement, it does not contain a complete, comprehensive or final list or description of all of the terms and conditions necessary or appropriate for a definitive agreement or for the completion and consummation of the Proposed Transaction. All other Sections of this Letter are legally binding and enforceable agreements of the City and OSMI in consideration of the mutual promises contained herein and are the only provisions of this Letter that shall be binding against the Parties.

If the foregoing correctly sets forth our understanding with respect to the matters set forth herein, please so indicate by signing a copy of this Letter in the space provided, then an executed copy to us.

Very truly yours,

Ouray Silver Mines Inc.

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Brian Briggs, CEO

Confirmed and agreed as of

August \_\_, 2021

The City of Ouray, Colorado

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Name: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_