

1 **BY AUTHORITY**

2 ORDINANCE NO. _____
3 SERIES OF 2014

COUNCIL BILL NO. CB14-0535
COMMITTEE OF

4 REFERENCE:

5 Health, Safety, Education and Services

6 **A BILL**

7 For an ordinance amending Chapter 14, D.R.M.C. to create the Denver County Court
8 Municipal Public Defender's Commission and the Office of Municipal Public Defender
9

10 **BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:**

11 **Section 1.** That Chapter 14, D.R.M.C., concerning the County Court, is hereby amended
12 by adding a new Article VII, to read as follows:

13
14 **ARTICLE VII. MUNICIPAL PUBLIC DEFENDER**

15
16 **Sec. 14-130. Municipal Public Defender Commission created.**

17 The Municipal Public Defender Commission is hereby established within the Denver County
18 Court. The Commission, through its ability to appoint and discharge the Chief Municipal Public
19 Defender, shall ensure that indigent defendants in the Denver County Court who are charged with
20 a municipal ordinance violation which carries the potential of a jail sentence are represented free
21 from any political considerations or private interests, shall provide legal services to such indigent
22 defendants commensurate with those provided to non-indigents, and shall conduct the office in
23 accordance with the Colorado Code of Professional Conduct and with the American Bar
24 Association Standards Relating to the Administration of Criminal Justice, the defense function.
25

26 **Sec. 14-131. Appointment of commissioners; qualifications of commissioners.**

27 The Municipal Public Defender Commission shall consist of five members appointed by the
28 Presiding Judge of the Denver County Court. Three members of the Commission shall be
29 attorneys admitted to practice law in the state of Colorado, and two members shall be persons not
30 admitted to practice law in the state of Colorado. All members shall be residents of the City and
31 County of Denver. No member of the Commission shall be, at the time of or during the term of the
32 appointment, a judge, prosecutor, public defender, or employee of a law enforcement agency.
33

34 **Sec. 14-132. Term of commissioners; vacancies; removal.**

1 The members of the Municipal Public Defender Commission shall serve for a period of four
2 years except that upon the creation of the Commission one of the attorney members and one of
3 the non-attorney members shall be appointed for a provisional two-year term. Commissioners may
4 be appointed for successive terms without limitation. Upon the expiration of any term, a
5 commissioner may carry-over on the Commission until a successor is appointed. Any vacancy on
6 the Commission shall be filled by appointment of the Presiding Judge, and any person so
7 appointed shall serve the remaining portion of the term of the commissioners so replaced. Any
8 commissioner may be removed at any time with or without cause by the Presiding Judge.

9
10 **Sec. 14-133. Compensation.**

11 Members of the Municipal Public Defender Commission shall serve without compensation.

12
13 **Sec. 14-134. Powers and duties of the Commission.**

14 (a) *Appointment of officers.* The Commission shall elect from its membership a chair and
15 vice-chair.

16 (b) *Required meetings.* The Commission shall meet at least quarterly, and shall meet at
17 such other times pursuant to a call of the chair of the Commission or at the request of
18 the Chief Municipal Public Defender.

19 (c) *Appointment and supervision of Chief Municipal Public Defender.* The Commission shall
20 be the appointing authority for the Chief Municipal Public Defender, and shall supervise
21 the work of the Chief Municipal Public Defender in carrying out the purposes and
22 requirements of this Article VII and fulfilling the duties set forth in Section 14-135. The
23 Chief Municipal Public Defender shall have career service status, shall be an attorney
24 admitted to practice law in the state of Colorado, and shall meet such other qualifications
25 as shall be determined by the Commission in consultation with the Office of Human
26 Resources.

27 (d) *Independent oversight.* The Commission shall exercise independent oversight of and
28 provide guidance to the Chief Municipal Public Defender in the administration of the
29 Office of Municipal Public Defender.

30 (e) *Non-interference.* No commissioner shall interfere with the discretion, professional
31 judgment or advocacy of the Chief Municipal Public Defender or any other attorney
32 employed in the Office of the Municipal Public Defender in the representation of any
33 indigent defendant in the Denver County Court.

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Sec. 14-135. Powers and Duties of Chief Municipal Public Defender

- (a) *Office of Municipal Public Defender.* The Chief Municipal Public Defender shall manage the Office of Municipal Public Defender in carrying out the purposes and requirements of this Article VII and shall regularly report to the Commission concerning the activities of the Office.
- (b) *Appointment of attorneys and staff.* The Chief Municipal Public Defender shall be the appointing authority for all assistant municipal public defenders and any and all non-attorneys on the staff of the Office of Municipal Public Defender, all of who shall have career service status. The Chief Municipal Public Defender shall, in consultation with the Office of Human Resources, establish qualifications for all attorneys and non-attorneys employed in the Office.
- (c) *Law students.* Pursuant to Rule 226.5, Colorado Rules of Civil Procedure, and the Colorado Student Practice Act, § 12-5-116.1, C.R.S., the Chief Municipal Public Defender may accept the services of law students, in addition to other volunteer workers, license attorneys and consultants at no compensation other than reimbursement of actual and necessary expenses, and such person shall not be considered employees of the City.
- (d) *Limitation on private practice of law.* The Chief Municipal Public Defender and any assistant municipal public defender shall not engage in the private practice of law.

Sec. 14-136. Representation of indigent persons.

- (a) Municipal public defender shall represent as counsel, without charge, each indigent person who is charged with committing a violation of the charter or any ordinance of the City, the penalty for which may be a jail sentence, if:
 - (1) The defendant requests it and complies with the indigence standards set forth in section 14-137.
 - (2) The court, on its own motion or otherwise, so orders and the defendant does not affirmatively reject on the record the opportunity to be represented by legal counsel in the proceeding. When appointed by the court, the municipal public defender shall be limited to defending the indigent person. The municipal public defender shall not be appointed to act as advisory counsel. The court shall not appoint a municipal public defender to represent a defendant if the defendant does not meet the indigence

standards set forth in Section 14-137.

(b) Municipal public defenders shall not represent any indigent defendant and the court shall not order the Office of Municipal Public Defender or any other attorney to represent an indigent defendant when:

(1) The municipal ordinance violation of which the defendant is accused does not provide for jail as a potential penalty; or

(2) The office of the City Attorney informs the court that it shall not request jail as a punishment if the defendant is convicted of the violation, in which case the court shall be prohibited from imposing jail for a conviction; or

(3) Any reason or basis exists indicating that the defendant will not be sentenced to jail for a conviction.

(c) When representing an indigent person, the municipal public defender shall counsel and defend the defendant whether the defendant is held in custody or charged with a municipal charter or ordinance violation at every stage of the proceedings following arrest, detention, or service of process.

(d) Only upon order of the court shall the municipal public defender represent an indigent defendant in an appeal after the conviction. The court may review the financial status of the convicted person in order to determine the continuing need for municipal public defender representation upon appeal. The court shall not consider the propriety or merit of the appeal in determining whether to provide continued representation by the public defender.

Sec. 14-137. Determination of indigence.

All determinations of indigence shall be made in accordance with standards promulgated by the Colorado Supreme Court governing the appointment of state public defenders, which standards are hereby incorporated by reference in this Article VII. The initial determination of a defendant's indigence shall be made by the Office of the Municipal Public Defender, subject to a final determination by the court. When a defendant requests representation by a municipal public defender, such person shall submit an appropriate application, the form of which shall state that such application is signed under oath and under the penalty that a false statement may be prosecuted as such. A non-refundable twenty-five dollar (\$25.00) application fee shall be paid at the time the application is submitted and no application shall be accepted without payment of the fee; except that the court may, based upon the financial information submitted, waive the fee if the person is in custody and the court determines that the person does not have the financial

1 resources to pay the fee. Before the court appoints a municipal public defender based on the
2 application, the court shall advise the defendant that the application is filed under oath. Upon
3 request of the city attorney, the court shall hold a hearing on the issues of the eligibility for
4 appointment of a municipal public defender.

5 **Sec. 14-138. Appointment of other attorney in place of municipal public defender.**

6 For cause, including but not limited to circumstances in which there may be a conflict of
7 interest, the court may on its own motion or upon the application of the municipal public defender
8 or the indigent person, appoint an attorney other than the municipal public defender to represent
9 the indigent person at any stage of the proceedings. Any attorney so appointed shall be paid
10 reasonable compensation and reimbursement for expenses necessarily incurred out of the
11 appropriation for the Office of Municipal Public Defender.

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13 **Sec. 14-139. Recovery of fees and costs.**

14 When the court determines that a defendant is able to repay all or part of the expense of
15 court-appointed counsel or any ancillary expenses incurred in representing such defendant, the
16 court may assess such fees or costs against such defendant.

17

18 **Section 2.** This ordinance shall be effective upon publication. The functions of the Office of
19 the Municipal Public Defender shall commence on January 1, 2015.

20

21 COMMITTEE APPROVAL DATE: July 1, 2014

22 MAYOR-COUNCIL DATE: July 8, 2014

23 PASSED BY THE COUNCIL _____ 2014

24 _____ - PRESIDENT

25 APPROVED: _____ - MAYOR _____ 2014

26 ATTEST: _____ - CLERK AND RECORDER,
27 EX-OFFICIO CLERK OF THE
28 CITY AND COUNTY OF DENVER

29

30 NOTICE PUBLISHED IN THE DAILY JOURNAL _____ 2014; _____ 2014

31

32 PREPARED BY: David W. Broadwell, Asst. City Attorney DATE: July 17, 2014

33 Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of
34 the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
35 ordinance. The proposed ordinance **is not** submitted to the City Council for approval pursuant to §
36 3.2.6 of the Charter.

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2 D. Scott Martinez, City Attorney for the City and County of Denver

3 BY: _____, Assistant City Attorney DATE: _____, 2014