

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2014

COUNCIL BILL NO. CB14-0574
COMMITTEE OF REFERENCE:
Government & Finance

A BILL

For an ordinance extending the existing .12 percent sales and use tax (the "Denver Preschool Tax") through December 31, 2026 and increasing the rate to .15 percent, dedicating the revenue derived from the tax to fund the Denver Preschool Program, subject to the approval of the voters at a special municipal election to be conducted in coordination with the state general election on November 4, 2014; and making certain changes to the Denver Preschool Program.

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

Section 1. Subject to voter approval as provided in Section 7 of this ordinance, subsection (h) of Account Number 97000-282110 of the Fund Plan, Section 20-18, D.R.M.C., concerning apportionment of the sales, use and lodger's tax, shall be amended by adding the language underlined and deleting the language stricken, to read as follows:

Sec. 20-18. Fund Plan

Account No. 97000-282110

Name of account: Unapportioned sales, use and lodger's tax

Source of funds: City retail sales taxes, city use taxes and city lodger's taxes that have been collected, returned, and await apportionment

Disposition of funds:

h. Monthly, (1) allocation apportionment and transfer of only those revenues raised at the rate of .15~~2~~ percent of gross taxable sales from sales and use taxes levied to the Denver Preschool Program ~~Project~~ in the General Government Special Revenue Fund.

Section 2. Subject to the approval of the voters as provided in Section 7 of this Ordinance, subsection (g) of Section 53-27, D.R.M.C., concerning sales taxes shall be amended by adding the language underlined and deleting the language stricken, to read as follows:

(g) *Sales tax increment to fund the Denver Preschool Program.* In addition to the sales tax otherwise imposed by this section, a tax of ~~twelve~~ fifteen one-hundredths

1 of one percent (.152%) shall be paid on all taxable sales of commodities or
2 services, except on commodities or services specified in subsection (b) of this
3 section, beginning January 1, ~~2007~~ 2015 and expiring December 31, ~~2016~~ 2026.

4 The revenue from such additional tax shall be used for the sole purpose of funding
5 the Denver Preschool Program pursuant to article III of chapter 11.

6
7 **Section 3.** Subject to the approval of the voters as provided in Section 7 of this
8 Ordinance, subsection (a) of section 53-28, D.R.M.C., concerning collection of sales taxes shall
9 be amended by adding the language underlined and deleting the language stricken, to read as
10 follows:

11 **Sec. 53-28. Retailer responsible for payment of tax.**

12 (a) *Amount.* Every retailer shall, irrespective of other provisions of this
13 article, be liable and responsible for the payment of an amount equivalent three and
14 ~~sixty-two-five~~ one-hundredths (3.652) percent of the retailer's gross taxable sales of
15 commodities or services specified in this article, except: (1) Aviation and railway
16 fuel, as to which the rate of four cents (\$0.04) for each gallon purchased shall apply;
17 (2) Automotive vehicles when they are for any term of thirty (30) days or less hired
18 for use, rented, leased or transferred under a grant of a license to use, as to which a
19 rate of taxation as set forth in section 53-27(b)(2) shall apply; and (3) Food and
20 beverages not exempted from taxation under section 53-26(8) of this article, as to
21 which the rate of four (4) percent shall apply, and for each of which respective rates
22 aforesaid the retailer shall be liable for an equivalent amount; and every retailer
23 shall on or before the twentieth day of each month pay over such amount and make
24 a return to the manager, less one-half of one (.5) percent of such amount as a
25 discount allowable for prompt payment. If any vendor is delinquent in remitting the
26 tax levied by this article, other than in unusual circumstances shown to the
27 satisfaction of the manager, the vendor shall not be allowed to retain any discount
28 allowable for prompt payment, and the full amount shall be remitted to the manager
29 by any such delinquent vendor, together with any other applicable penalty or
30 interest payable under the terms of this article.

31
32 **Section 4.** Subject to the approval of the voters as provided in Section 7 of this
33 Ordinance, subsection (k) of Section 53-98, D.R.M.C., concerning use taxes shall be amended by
34 adding the language underlined and deleting the language stricken, to read as follows:

1 (k) *Use tax increment to fund the Denver Preschool Program.* In addition to
2 the use tax otherwise imposed by this section, a tax of ~~twelve~~ fifteen one-
3 hundredths of one percent (.152%) shall be paid on all taxable uses, consumptions,
4 distributions, and storages of commodities and services, except on commodities
5 and services specified in subsection (b) of this section, beginning January 1, ~~2007~~
6 2015 and expiring December 31, ~~2046~~ 2026. The revenue from such additional tax
7 shall be used for the sole purpose of funding the Denver Preschool Program
8 pursuant to article III of chapter 11.

9
10 **Section 5.** Subject to the approval of the voters as provided in Section 7 of this ordinance,
11 subsection (a) of section 53-99, D.R.M.C., concerning collection of use taxes, shall be amended
12 by the addition of the language underlined and the deletion of the language stricken, to read as
13 follows:

14 **Sec.53-99. Retailer responsible for payment of tax.**

15 (a) *Amount.* Every retailer shall, irrespective of other provisions of this
16 article, be liable and responsible for the payment of an amount equivalent to three
17 and ~~sixty-two~~ five one-hundredths percent of gross taxable sales made by him of
18 services and tangible personal property specified in this article, except: (1) aviation
19 and railway fuel, as to which the rate of four cents (\$0.04) for each gallon purchased
20 shall apply, (2) automotive vehicles when they are for any term of thirty (30) days or
21 less hired for use, rented, leased or transferred under a grant of a license to use, as
22 to which a rate of taxation as set forth in section 53-98(b)(2) shall apply, and (3)
23 food and beverages not exempted from taxation under section 53-26(8) of the city
24 retail sales tax article, as to which the rate of four (4) percent shall apply, and for
25 each of which respective rates aforesaid the retailer shall be liable for an equivalent
26 amount; and every retailer shall on or before the twentieth day of each month pay
27 over such amount and make a return to the manager, less one-half of one (.5)
28 percent of such amount as a discount allowable for prompt payment. If any vendor
29 is delinquent in remitting the tax levied by this article, other than in unusual
30 circumstances shown to the satisfaction of the manager, the vendor shall not be
31 allowed to retain any discount allowable for prompt payment, and the full amount
32 shall be remitted to the manager by any such delinquent vendor, together with any
33 other applicable penalty or interest payable under the terms of this article.

1 **Section 6.** Article III of Chapter 11, D.R.M.C., shall be amended by the addition of
2 the language underlined and the deletion of the language stricken, to read as follows:

3
4 **ARTICLE III. DENVER PRESCHOOL PROGRAM**

5
6 **Sec. 11-20. Legislative Intent.** The purpose of this article III is to provide for the
7 governance and administration of the dedicated sales and use tax increase(s) approved by
8 the voters ~~on November 7, 2006~~ and as provided in sections 53-27(g) and 53-98(k) of this
9 Code (hereinafter referred to as the "Denver preschool tax"), for the purpose of funding the
10 Denver preschool program in order to increase access to and quality of preschool
11 programs for Denver residents. The city hereby determines that the expenditure of the
12 Denver preschool tax and the establishment of the Denver preschool program serve
13 important public and municipal purposes, and are matters of local concern for which the
14 citizens of Denver enjoy the full right of self-government.

15
16 **Sec. 11-21. Expenditures of Denver preschool tax to be made by contract**
17 **with non-profit corporation.**

18 (a) Expenditures of the Denver preschool tax for early childhood education programs
19 and services shall be made pursuant to an agreement between the city and a Colorado non-profit
20 corporation meeting the requirements set forth in this section, which agreement shall define the
21 obligations of the corporation in consideration of such funding. The agreement shall be
22 administered on behalf of the city by the manager of revenue and any expenditure under the
23 agreement shall be subject to audit by the auditor for compliance with the requirements of this
24 article and of the agreement.

25 (b) Any non-profit corporation with which the city may contract pursuant to this article
26 shall meet the following criteria and requirements:

27 (1) The corporation shall be duly incorporated and in good standing under the
28 Colorado Revised Nonprofit Corporation Act, shall be a separate and distinct legal entity
29 from the city, shall be deemed an independent contractor of the city, and shall not be
30 considered a department or agency of the city. The corporation shall have the authority to
31 contract in its own name and to hire its own employees who shall not be considered
32 officers or employees of the city.

33 (2) The sole purpose of the corporation as reflected in the corporation's articles
34 of incorporation shall be to administer the Denver preschool program under contract with
35 the city in accordance with the requirements of this article and all applicable law.

(3) The corporation's articles of incorporation shall provide for a ~~seven member~~ board of directors with a minimum of eleven and a maximum of fifteen members. ~~Six (6) members of the board shall be appointed by the mayor and confirmed by the city council.~~ One (1) member of the board shall be a member of the city council appointed by the city council. The remaining members shall be appointed by the mayor and confirmed by the city council. Members of the board of directors shall be appointed to staggered three-year terms of office, and may serve no more than three terms. Members of the board shall serve without compensation, but may be reimbursed for actual and necessary expenses.

~~(4) The corporation's articles of incorporation shall provide for a twenty-five member board of advisors to make non-binding recommendations to the board on policy issues regarding early childhood education in general and the administration of the Denver preschool program in particular. Members of the board of advisors shall be appointed by the mayor and confirmed by the city council. Members of the board of advisors shall be appointed to staggered three-year terms. Members of the board of advisors shall serve without compensation, but may be reimbursed for actual and necessary expenses. The articles of incorporation shall provide criteria and qualifications for membership on the board of advisors~~ directors sufficient to ensure a cross-section of representation by early childhood education providers, education advocates and experts, parents, and members of the business and non-profit communities.

~~(5)~~(4) The records of the corporation shall be treated as public records and subject to the provisions of the Colorado Open Records Act, C.R.S. § 24-72-201 et seq., as amended. Meetings of the board of directors and the board of advisors shall be treated as public meetings subject to the provisions of the Colorado Open Meetings Law, C.R.S. § 24-6-401 et seq., as amended.

Sec. 11-22. Program requirements to be included in contract. Any contract between the city and a non-profit corporation for disbursement of the Denver preschool tax revenues shall include the following provisions and requirements:

(1) Any expenditure of Denver preschool tax revenues under the contract shall be subject to annual appropriation by the city council.

(2) No more than ~~five~~ seven ~~(75)~~ percent of the Denver preschool tax revenue received by the corporation in any year shall be spent on administrative expenses. For purposes of this limitation, "administrative expenses" shall mean salaries and office expense related to any staff or employees of the corporation; any expenses reimbursed to members of the

board of directors or the board of advisors; routine business expenses such as insurance, accounting and legal expenses; and any similar overhead expenses incurred by the corporation. The term "administrative expenses" shall not be deemed to include any fees or expenses paid to third-party contractors or consultants to assist in the development or administration of the Denver preschool program.

(3) At least ninety-five ~~three~~ (93~~5~~) percent of Denver preschool tax revenue received by the corporation in any year shall be used for the following purposes only:

(i) Tuition credits administered in accordance with the requirements of subsection (4) of this section.

(ii) Outreach to parents and the Denver community and assistance with enrollment in preschools.

(iii) Technical assistance and direct grants to preschool providers meeting the requirements of subsection (5) of this section, for the purpose of improving the quality of pre-school programs and services.

(iv) Contracting with qualified experts to design and assist with the implementation of a quality improvement system for preschools, including an objective quality rating system for preschools.

(v) Measurement of the performance of the Denver preschool program and the preparation of reports to city officials and to the public on the performance of the program.

(4) Tuition credits funded pursuant to the Denver preschool program shall comply with the following standards and requirements:

(i) Any Denver resident who is a parent or legal guardian of any preschool-aged child who is also a Denver resident shall be eligible for a tuition credit to be used to enroll that child in preschool in the year prior to the year in which the child will be eligible for kindergarten in accordance with state law. Should the board of directors determine that funds are available to expand the program to serve a younger population of Denver residents, it may do so at its discretion through measures the board finds appropriate if such an expansion is permissible under applicable law and can be achieved in accordance with the non-profit corporation's contract with the city.

(ii) Tuition credits shall be administered on a sliding scale, with the amount of the credit being inversely related to the family income of the recipient, and with this sliding scale to be more specifically determined by the board of directors.

1 (iii) Tuition credits shall be administered on a sliding scale, with the amount of
2 the credit being related to the rated quality of the preschool provider with whom the
3 credit is used, and with this sliding scale to be more specifically determined by the
4 board of directors.

5 (iv) Tuition credits shall be utilized at the discretion of the parent or guardian at
6 any qualified preschool as set forth in subsection (5) of this section.

7 (v) Other specific criteria and procedures for the disbursement of tuition credits
8 shall be determined by the board of directors.

9 (5) In order to be qualified for the use of tuition credits and for the receipt of technical
10 assistance or direct grants, a preschool provider shall meet the following minimum
11 requirements:

12 (i) The preschool shall be duly licensed under the Colorado Child Care
13 Licensing Act, C.R.S. § 26-6-101 et seq., as amended, and the provisions of this
14 chapter 11, or shall be an early childhood education program administered by
15 Denver Public Schools pursuant to the Colorado Preschool Program Act, C.R.S. §
16 22-28-101 et seq., as amended.

17 (ii) The preschool provider shall agree to participate in a three-part quality
18 improvement system that includes an introduction to quality, ~~establishment of an~~
19 ~~objective quality rating for the preschool,~~ regular and objective quality ratings as
20 prescribed by the board of directors, and development and implementation of a
21 quality improvement plan for the preschool.

22 (iii) The preschool shall meet such other specific criteria and standards as shall
23 be determined by the board of directors.

24 (6) Not less than once annually, the corporation shall report to the mayor, the city
25 council, the auditor, and the public the following information:

26 (i) The number of children receiving tuition credits in Denver.

27 (ii) The number of quality rated preschool providers in Denver.

28 (iii) The long term academic success of children who have participated in the
29 Denver preschool program, to the extent such information is available to the board
30 in future years.

31 (iv) Audited financial statements for the corporation, including full reports on
32 expenditures for the prior fiscal year and anticipated budgets and work plans for the
33 ensuing fiscal year.

(7) In administering the Denver preschool program or expending any monies derived from the Denver preschool tax, the corporation shall not discriminate against any person on the basis of race, color, religion, national origin, gender, age (except as to the age of children qualifying for tuition credits), military status, sexual orientation, gender variance, marital status, or physical or mental disability.

Section 7. In accordance with § 3.3.6 of the Charter and Article X, Section 20 of the Colorado Constitution, this ordinance shall be submitted to a vote of the registered electors of the City and County of Denver at a special municipal election to be coordinated with the state general election occurring November 4, 2014. Each elector voting at said election and desirous of voting for or against the ordinance shall cast a vote as provided by law either “Yes” or “No” on the proposition:

SHALL DENVER SALES AND USE TAXES BE INCREASED \$ 5 MILLION IN 2015 (THE FIRST FISCAL YEAR), COMMENCING JANUARY 1, 2015, AND BY WHATEVER ADDITIONAL AMOUNTS ARE RAISED ANNUALLY THEREAFTER BY EXTENDING THE EXISTING TWELVE ONE-HUNDREDTHS OF ONE PERCENT (.12%) SALES AND USE TAX (THE “DENVER PRESCHOOL TAX”) THROUGH DECEMBER 31, 2026, AND INCREASING THE TAX RATE BY THREE ONE HUNDRETHS OF ONE PERCENT (.03%) TO FIFTEEN ONE-HUNDREDTHS OF ONE PERCENT (.15%) FOR THE SOLE PURPOSE OF FUNDING THE DENVER PRESCHOOL PROGRAM IN ORDER TO INCREASE ACCESS TO PRESCHOOL SERVICES FOR DENVER CHILDREN AND TO IMPROVE THE QUALITY OF PRESCHOOLS, AND SHALL THE CITY AND COUNTY OF DENVER BE PERMITTED TO COLLECT, RETAIN AND SPEND ALL REVENUES DERIVED FROM SUCH TAXES AS A VOTER APPROVED REVENUE CHANGE AND AN EXCEPTION TO THE LIMITS WHICH WOULD OTHERWISE APPLY UNDER ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION OR ANY OTHER LAW?

The proper officials of the City and County of Denver as are charged with duties relating to the election shall, before the election, issue such calls, make such certifications, and publications, give such notices (including, without limitation, the notice required by Art. X, §20(3)(b) of the Colorado Constitution), make such appointments, and do all such other acts and things in connection with the submission of this question to the registered electors of the City and County of Denver at the election as are required by the constitution and laws of the state of Colorado and

1 the Charter and ordinances of the City and County of Denver. The ballots cast at such election
2 shall be canvassed and the results ascertained, determined, and certified in accordance with the
3 requirements of the Constitution and laws of the State of Colorado and the Charter and
4 ordinances of the City and County of Denver.

5
6 **Section 8.** Subject to the approval of the voters as provided in Section 3 of this
7 Ordinance, this ordinance shall be effective January 1, 2015; except that the changes to the
8 Denver Preschool Program set forth in Section 6 of this ordinance are not subject to the approval
9 of the voters and shall be effective January 1, 2015.

10 COMMITTEE APPROVAL DATE: July 16, 2014

11 MAYOR-COUNCIL DATE: July 22, 2014

12 PASSED BY THE COUNCIL _____, 2014

13 _____ - PRESIDENT

14 APPROVED: _____ - MAYOR _____, 2014

15 ATTEST: _____ - CLERK AND RECORDER,
16 EX-OFFICIO CLERK OF THE
17 CITY AND COUNTY OF DENVER

18 NOTICE PUBLISHED IN THE DAILY JOURNAL _____, 2014; _____, 2014

19 PREPARED BY: Dan Slattery, Assistant City Attorney; DATE: July 31, 2014

20 Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of
21 the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
22 ordinance. The proposed ordinance is not submitted to the City Council for approval pursuant to
23 § 3.2.6 of the Charter.

24
25 D. Scott Martinez, Denver City Attorney

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

27
28 SPONSORED BY: COUNCILMEMBERS BROOKS AND LEHMANN