

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2020

COUNCIL BILL NO. 20-0684
COMMITTEE OF REFERENCE:
Safety, Housing, Education & Homelessness

A BILL

For an ordinance increasing the sales and use tax by a rate of 0.25 percent and dedicating the revenue derived from the tax rate increase to fund efforts to eliminate green house gases and air pollution, and to adapt to climate change, subject to the approval of the voters at a special municipal election to be conducted in coordination with the state general election on November 3, 2020.

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

Section 1. Subject to voter approval as specified in Section 7 of this ordinance, 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, is amended by the addition of a new subsection (m), to read as follows (with existing subsection (m) being re-designated as subsection (n)):

§ 20-18. Fund Plan

Account No. 97000-282110

m. Monthly allocation apportionment and transfer of only those revenues raised at the rate of twenty-five one-hundredths of one (0.25) percent of gross taxable sales from sales and use taxes levied to the Climate Protection Fund in the General Government Special Revenue Fund.

Section 2. Subject to the approval of the voters as specified in Section 7 of this ordinance, Section 53-27, D.R.M.C., concerning sales taxes is amended by adding a new subsection (l) to read as follows:

(l) *Sales tax increment to fund the Climate Protection Fund.* In addition to the sales tax otherwise imposed by this section, a tax of twenty-five one-hundredths of one (.25) percent must be paid on all taxable sales of tangible personal property, products, or services, except on tangible personal property, products, or services specified in subsection (b) of this section, beginning January 1, 2021. The revenue from such

1 additional tax shall be used for the sole purpose of funding the Climate Action Program
2 created in division 2, article XIX of chapter 2.

3
4 **Section 3.** Subject to the approval of the voters as provided in Section 7 of this ordinance,
5 subsection (a) of section 53-28, D.R.M.C., concerning collection of sales is amended by adding the
6 language underlined and deleting the language stricken, to read as follows:

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

8 (a) *Amount.* Every retailer shall, irrespective of other provisions of this article, be liable and
9 responsible for the payment of an amount equivalent to ~~four and thirty-one one-hundredths (4.31)~~ four
10 and fifty-six one-hundredths (4.56) percent of the retailer's taxable sales of tangible personal property,
11 products, or services specified in this article, except:

- 12 (1) Aviation and railway fuel, as to which the rate of four cents (\$0.04) for each gallon
13 purchased shall apply;
- 14 (2) Automotive vehicles when they are for any term of thirty (30) days or less hired for use,
15 rented, leased or transferred under a grant of a license to use, as to which a rate of
16 taxation as set forth in subsection 53-27(b)(2) shall apply;
- 17 (3) Food and beverages not exempted from taxation under subsection 53-26(8) of this
18 article, as to which the rate of four (4) percent shall apply;
- 19 (4) For each of which respective rates aforesaid the retailer shall be liable for an equivalent
20 amount;
- 21 (5) Every retailer shall, on its return, round each calculation, as directed on such form as the
22 manager may require, to the nearest whole dollar and remit the rounded amount. In
23 rounding under this section, any amount of forty-nine cents (\$0.49) or less shall be
24 rounded down, and any amount of fifty cents (\$0.50) or higher shall be rounded up.

25
26 **Section 4.** Subject to the approval of the voters as provided in Section 7 of this ordinance,
27 Section 53-98, D.R.M.C., concerning use taxes is amended by the addition of a new subsection (p) to
28 read as follows:

- 29 (p) *Use tax increment to fund the Climate Protection Fund.* In addition to the use tax
30 otherwise imposed by this section, a tax of twenty-five one-hundredths of one (.25)
31 percent must be paid on all taxable sales of tangible personal property, products, or
32 services, except on tangible personal property, products, or services specified in
33 subsection (b) of this section, beginning January 1, 2021. The revenue from such
34 additional tax shall be used for the sole purpose of funding the Climate Action Program

1 created in division 2, article XIX of chapter 2.
2

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

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

7 (a) Amount. Every retailer shall, irrespective of other provisions of this article, be liable and
8 responsible for the payment of an amount equivalent to ~~four and thirty-one one-hundredths (4.31)~~ four
9 and fifty-six one-hundredths (4.56) percent of taxable sales made by him of tangible personal property,
10 products, and services, except:

- 11 (1) Aviation and railway fuel, as to which the rate of four cents (\$0.04) for each gallon
12 purchased shall apply;
- 13 (2) Automotive vehicles when they are for any term of thirty (30) days or less hired for use,
14 rented, leased or transferred under a grant of a license to use, as to which a rate of
15 taxation as set forth in subsection 53-98(b)(2) shall apply;
- 16 (3) Food and beverages not exempted from taxation under subsection 53-26(8) of the city
17 retail sales tax article, as to which the rate of four (4) percent shall apply;
- 18 (4) For each of which respective rates aforesaid the retailer shall be liable for an equivalent
19 amount; and
- 20 (5) Every retailer shall, on its return, round each calculation, as directed on such form as the
21 manager may require, to the nearest whole dollar and remit the rounded amount. In
22 rounding under this section, any amount of forty-nine cents (\$0.49) or less shall be
23 rounded down, and any amount of fifty cents (\$0.50) or higher shall be rounded up.
24

25 **Section 6.** Subject to the approval of the voters as provided in Section 7 of this ordinance,
26 Chapter 2, D.R.M.C., concerning the Office of Climate Action, Sustainability, and Resiliency, is
27 amended by the addition of a new Division 2, to read as follows:

28 **DIVISION 2 – CLIMATE ACTION PROGRAM**

29 **Sec. 2-404. - Legislative Declaration.**

30 (a) The city council finds, determines, and declares:

- 31
32 (1) For nearly 20 years, the city has endeavored to reduce its impact on the
33 environment, conserve natural resources, and protect its residents and thriving
34 business community from the perils of climate change;

- 1 (2) The damage to people, business continuity, and the natural systems that sustain life
2 caused by climate change demands swift and meaningful action, including steep
3 reductions in fossil fuel consumption and significant improvements in air and water
4 quality;
- 5 (3) The disproportionate health, social, and economic impacts of climate change is falling
6 on under-resourced communities;
- 7 (4) The lack of leadership at the national level leaves cities to combat climate change on
8 their own. The city's sustainability accomplishments to date have garnered national
9 attention and respect and with this act the city will propel to the highest ranks of cities
10 developing innovative solutions that address not only climate change, but also
11 improve public health and dismantle racist systems;
- 12 (5) Dedicated funding for climate action, sustainability, and resiliency will help ensure
13 that future generations will be able to live, work, and thrive in the city without an
14 omnipresent climate crisis.
- 15 (6) This dedicated funding should maximize investments in under
16 resourced communities, and communities most vulnerable to climate change
17 effects to ensure equity and help these communities prepare for a changing climate
18 through innovative mechanisms such as community-based grants and partnerships
19 with community-based environmental and climate justice organizations.
- 20 (7) Funds should be expended on the permitted uses listed below while allowing for the
21 flexibility to take advantage of one-time opportunities and catalytic projects but
22 should, over the long term, endeavor to invest fifty percent (50%) of the dedicated
23 funds directly in the community with a strong lens toward equity, race and social
24 justice.

25 (b) Therefore, the city council has determined that the question of whether the city shall
26 be authorized to impose a 0.25 percent sales tax for the purposes and in the manner set forth in
27 this ordinance should be submitted to the registered electors of the city at the special municipal
28 election to be conducted in coordination with the state general election on November 3, 2020.

29 **Sec. 2-405. - Permitted Uses of Revenue in the Climate Protection Fund**

30 (a) All monies derived from the sales and use taxes in the Climate Protection Fund
31 ("Fund") must be expended on:

- 32 (1) Job creation through local workforce training and new careers for under-resourced
33 individuals in renewable and clean energy technology and management of natural
34 resources;

- 1 (2) Increased investments in solar power, battery storage and other renewable energy
2 technology;
- 3 (3) Neighborhood-based environmental and climate justice programs;
- 4 (4) Adaptation and resiliency programs that help vulnerable communities prepare for a
5 changing climate;
- 6 (5) Programs and services that provide affordable, clean, safe and reliable transportation
7 choices, like walking, biking, transit, electric vehicles, and neighborhood-scale transit;
8 and
- 9 (6) Upgrade the energy efficiency of homes, offices and industry to reduce their carbon
10 footprint, utility bills, and indoor air pollution.
- 11 (b) *Cap on administrative costs.* Monies in the Fund may be expended to pay the costs
12 incurred by the city associated directly with the administration of the funds; except that, in no event
13 may the amount expended from the funds for administrative expenses in any year exceed eight
14 percent (8%) of the amount of revenue received in the fund in that year.
- 15 (c) *Fund earnings.* Any interest earned on the balance of the Fund accrues to the Fund.
- 16 (d) *Administration of funds.* The Executive Director of the Office of Climate Action,
17 Sustainability, and Resiliency will manage the Fund.
- 18 (e) *Permanency.* If the monies in the Fund are not expended at the end of the fiscal year,
19 such monies must remain in the fund to be expended in subsequent fiscal years.
- 20 (f) *Maintenance of Effort.* All monies in the Fund must be used in accordance with this
21 section and may not replace nor supplant any general fund appropriations allocated each year to
22 the Office of Climate Action, Sustainability, and Resiliency.
- 23 (g) *Rulemaking.* The Executive Director of the Office of Climate Action, Sustainability,
24 and Resiliency may promulgate any rules necessary for the proper administration of the Climate
25 Action Program.
- 26 (h) *Reporting.* A report of Fund expenditures and performance plan must be submitted
27 annually to the mayor, city council, city auditor, and the Sustainability Advisory Council, or any
28 successor body.
- 29 (i) *Planning.* Within one year of the adoption of this Division 2 and every five years
30 thereafter, the Executive Director of the Office of Climate Action, Sustainability, and Resiliency
31 shall submit a five-year plan to the city council and the Sustainability Advisory Council on the
32 planned revenue uses in the Climate Protection Fund.
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1 **Section 7.** In accordance with § 3.3.6 of the Charter and Article X, Section 20 of the Colorado
2 Constitution, this ordinance will be submitted to a vote of the registered electors of the City and County
3 of Denver at a special municipal election to be coordinated with the state general election occurring
4 November 3, 2020. Each elector desirous of voting for or against the ordinance must cast a vote as
5 provided by law either “Yes” or “No” on the proposition:

6
7 SHALL CITY AND COUNTY OF DENVER SALES AND USE TAXES BE INCREASED BY \$40
8 MILLION ANNUALLY, COMMENCING JANUARY 1, 2021, AND BY WHATEVER ADDITIONAL
9 AMOUNTS ARE RAISED ANNUALLY THEREAFTER, FROM A TWENTY-FIVE ONE-
10 HUNDREDTHS OF ONE PERCENT (0.25%) SALES AND USE TAX RATE (2.5 CENTS ON A
11 TEN-DOLLAR PURCHASE) WITH EXEMPTIONS FOR FOOD, WATER, FUEL, MEDICAL
12 SUPPLIES, AND FEMININE HYGIENE PRODUCTS, TO BE USED TO FUND PROGRAMS
13 TO ELIMINATE GREENHOUSE GAS EMISSIONS AND AIR POLLUTION, AND ADAPT TO
14 CLIMATE CHANGE, INCLUDING:

- 15 • JOB CREATION THROUGH LOCAL WORKFORCE TRAINING AND NEW CAREERS
16 FOR UNDER-RESOURCED INDIVIDUALS IN RENEWABLE AND CLEAN ENERGY
17 TECHNOLOGY AND MANAGEMENT OF NATURAL RESOURCES;
- 18 • INCREASED INVESTMENTS IN SOLAR POWER, BATTERY STORAGE AND OTHER
19 RENEWABLE ENERGY TECHNOLOGY;
- 20 • NEIGHBORHOOD-BASED ENVIRONMENTAL AND CLIMATE JUSTICE PROGRAMS;
- 21 • ADAPTATION AND RESILIENCY PROGRAMS THAT HELP VULNERABLE
22 COMMUNITIES PREPARE FOR A CHANGING CLIMATE;
- 23 • PROGRAMS AND SERVICES THAT PROVIDE AFFORDABLE, CLEAN, SAFE AND
24 RELIABLE TRANSPORTATION CHOICES, LIKE WALKING, BIKING, TRANSIT,
25 ELECTRIC VEHICLES, AND NEIGHBORHOOD-SCALE TRANSIT; AND
- 26 • UPGRADE THE ENERGY EFFICIENCY OF HOMES, OFFICES AND INDUSTRY TO
27 REDUCE THEIR CARBON FOOTPRINT, UTILITY BILLS, AND INDOOR AIR
28 POLLUTION;

29 THIS DEDICATED FUNDING SHOULD MAXIMIZE INVESTMENTS IN COMMUNITIES OF
30 COLOR, UNDER RESOURCED COMMUNITIES, AND COMMUNITIES MOST
31 VULNERABLE TO CLIMATE CHANGE AND ENDEAVOR TO INVEST 50% OF THE
32 DEDICATED FUNDS DIRECTLY IN COMMUNITY WITH A STRONG LENS TOWARD
33 EQUITY AND RACE AND SOCIAL JUSTICE; THE SPENDING OF FUNDS WILL BE

1 OVERSEEN BY THE OFFICE OF CLIMATE ACTION, SUSTAINABILITY AND
2 RESILIENCY AND THE CITIZEN'S SUSTAINABILITY COMMITTEE; ALL FUNDS WILL BE
3 SUBJECT TO AN ANNUAL REPORT AVAILABLE FOR PUBLIC REVIEW; AND REQUIRING
4 THAT REVENUES FROM THESE INCREASED TAXES SHALL BE COLLECTED AND SPENT
5 WITHOUT REGARD TO ANY EXPENDITURE, REVENUE-RAISING, OR OTHER LIMITATION
6 CONTAINED WITHIN ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION OR ANY
7 OTHER LAW?

8
9 **Section 8.** The officials of the City and County of Denver charged with duties relating to the
10 election must, before the election, issue such calls, make such certifications and publications, give
11 such notices, make such appointments, and do all such other acts and things in connection with the
12 submission of this code amendment to the registered electors of the City and County of Denver at the
13 election required by the Constitution and laws of the State of Colorado and the Charter and ordinances
14 of the City and County of Denver.

15
16 **Section 9.** The ballots cast at such election must be canvassed and the results ascertained,
17 determined, and certified in accordance with the requirements of the Constitution and laws of the State
18 of Colorado and the Charter and ordinances of the City and County of Denver.

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20 **Section 10.** If any section, paragraph, clause, or other portion of this ordinance is held to be
21 invalid or unenforceable for any reason, the validity of the remaining portions of this ordinance shall not
22 be affected.

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27 **INTENTIONALLY LEFT BLANK**
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1 COMMITTEE APPROVAL DATE: July 15, 2020

2 MAYOR-COUNCIL DATE: July 21, 2020

3 PASSED BY THE COUNCIL _____

4 _____ - PRESIDENT

5 APPROVED: _____ - MAYOR _____

6 ATTEST: _____ - CLERK AND RECORDER,
7 EX-OFFICIO CLERK OF THE
8 CITY AND COUNTY OF DENVER
9

10 NOTICE PUBLISHED IN THE DAILY JOURNAL _____; _____

11

12 PREPARED BY: Charles T. Solomon, Assistant City Attorney; DATE: July 22 2020

13

14 Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of the
15 City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
16 ordinance. The proposed ordinance **is not** submitted to the City Council for approval pursuant to §
17 3.2.6 of the Charter.
18

19 Kristin M. Bronson, City Attorney

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21 BY: Kristin J. Crawford, Assistant City Attorney DATE: Jul 22, 2020