

1 BY AUTHORITY

2 ORDINANCE NO. _____

COUNCIL BILL NO. 12-0155

3 COMMITTEE OF REFERENCE:

4 Government and Finance

5 A BILL

6 **For an ordinance authorizing and approving (i) the use of an amount not to**
7 **exceed \$30,000,000 of Private Activity Bond Volume Cap Allocation for the**
8 **purpose of making a mortgage credit certificate election; and (ii) the MCC**
9 **Program Administration Agreement and the MCC Program Guidelines.**

10 WHEREAS, the City and County of Denver, Colorado (the "City") is a legally and regularly
11 created, established, organized and existing home rule city, municipal corporation and political
12 subdivision under the provisions of Article XX of the Constitution of the State of Colorado (the
13 "State") and the Home Rule Charter of the City (the "Charter"); and

14 WHEREAS, the City is authorized to promote the financing of residential facilities for low
15 and middle income persons or families or facilities intended for use as the sole place of residence
16 by the owners or intended occupants and to promote the health, safety and general welfare of the
17 people of the City; and

18 WHEREAS, the City desires to make a mortgage credit certificate (referred to herein as
19 either the "Certificate" or the "Certificates") election (the "Election") pursuant to Section 25(a)(2)(ii)
20 of the Internal Revenue Code of 1986, as amended (the "Code") in connection with financing
21 mortgage loans for residential facilities for low-and middle-income families or facilities intended for
22 use as the sole place of residence by the owners or intended occupants thereof and establishing a
23 mortgage credit certificate program (the "MCC Program"); and

24 WHEREAS, a Certificate provides housing assistance in the form of a federal tax credit, the
25 value of which is equal to a portion of the mortgage interest paid up to \$2,000 to a homeowner on
26 certain qualifying loans; and

27 WHEREAS, the holder of a Certificate may apply this tax credit against his or her federal
28 income taxes in each year the Certificate is effective; and

29 WHEREAS, the City has filed Internal Revenue Service (the "IRS") Form 8328 to
30 carryforward unused private activity bond volume cap allocated to the City for the calendar year
31 2011 ("2011 Carryforward Volume Cap"); and

1 WHEREAS, the City desires to use \$25,000,000 of its 2011 Carryforward Volume Cap and
2 \$5,000,000 of its current 2012 private activity volume cap allocation (“2012 Volume Cap”); and

3 WHEREAS, there have been presented to the City Council of the City (the “Council”) the
4 following documents in substantially final form: (a) the proposed form of the Program
5 Administration Agreement to be entered into by and between the City and Morgan Keegan &
6 Company, Inc. (“Morgan Keegan”) , as administrator of the MCC Program (the “MCC Program
7 Administration Agreement”) (City Clerk’s Filing No. 12-140); and (b) the proposed form of the
8 Program Summary and Guidelines (the “MCC Program Guidelines”) (City Clerk’s Filing No. 12-
9 140-A), which are available in the office and on the web page of the Council, and to be filed in the
10 office of the City Clerk under the City Clerk’s Filing Numbers set forth above;

11 **NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY AND**
12 **COUNTY OF DENVER, COLORADO:**

13 **Section 1.** In order to benefit the residents of the City, the Council authorizes and approves
14 the MCC Program and the issuance of Certificates to low- and middle-income persons and families
15 originating new mortgage loans for residential housing facilities, all of which residents shall be
16 located within the boundaries of the City. The MCC Program Guidelines are hereby approved,
17 with such changes and modifications as the appropriate officers of the City deem necessary and
18 advisable.

19 **Section 2.** The Council finds and determines that it is necessary to make the Election to
20 exchange its authority to issue up to \$30,000,000 of private activity bonds for the authority to issue
21 Certificates, which will promote a public purpose, including, without limitation, assisting persons or
22 families of low- and middle-income in obtaining decent, safe and sanitary housing.

23 **Section 3.** The Council directs the appropriate officers of the City to make one or more
24 Elections not to issue up to an aggregate of \$30,000,000 of private activity bonds (the “Nonissued
25 Bond Amount”) that the City is authorized and has \$30,000,000 of private activity bond volume cap
26 allocation available to issue, \$25,000,000 of which is available from 2011 Carryforward Volume
27 Cap and \$5,000,000 of which is available from 2012 Volume Cap. The Nonissued Bond Amount
28 shall be allocated to the MCC Program to be established by the appropriate officers of the City
29 under this Ordinance. To effectuate the foregoing, the appropriate officers of the City are directed
30 to file notice of the Election(s) with the IRS, as required by the Code and the regulations.

1 **Section 4.** The Council authorizes the appropriate officers of the City to establish an MCC
2 Program to issue Certificates for the purposes set forth in the MCC Program Guidelines. For such
3 MCC Program, the appropriate officers of the City may establish one or more credit rates for the
4 mortgage loans described therein, determine the program expiration date, select the types of
5 mortgage loans for which Certificates may be issued, approve the terms and conditions on which
6 participating lenders make loans that are eligible for Certificate financing, and make other
7 determinations as appropriate, all in accordance with the terms and provisions of Section 25 of the
8 Code and the regulations thereunder and this Ordinance. The appropriate officers of the City are
9 hereby directed to further define the MCC Program and revise the MCC Program Guidelines as
10 necessary to maximize the availability of lower cost financing to low and middle income persons
11 under the MCC Program.

12 **Section 5.** The Council approves the use of the 2011 Carryforward Volume Cap in the
13 amount of \$25,000,000 and the 2012 Volume Cap in the amount of \$5,000,000 in connection with
14 the issuance of Certificates.

15 **Section 6.** The Certificates shall not constitute nor give rise to a pecuniary liability of the
16 City or a charge against the City's general credit or taxing powers, nor shall the Certificates ever be
17 deemed to be an obligation or agreement of any officer, director, agent or employee of the City in
18 such person's individual capacity, and none of such persons shall be subject to any personal
19 liability by reason of the Certificates.

20 **Section 7.** The form, terms and provisions of the MCC Program Administration
21 Agreement are hereby approved; with such changes therein as are not inconsistent herewith; and
22 the City shall execute and deliver the MCC Program Administration Agreement, in substantially the
23 form heretofore filed with the Council and to be filed with the City Clerk; and the Mayor (or Acting
24 Mayor) is hereby authorized and directed to execute and deliver the MCC Program Administration
25 Agreement, and the City Clerk is hereby authorized and directed to affix the City seal and to attest
26 the MCC Program Administration Agreement, the Manager of Finance and the City Auditor are
27 hereby authorized and directed to countersign and register the MCC Program Administration
28 Agreement and the City Attorney is hereby authorized to execute the MCC Program Administration
29 Agreement.

30 **Section 8.** Morgan Keegan is hereby appointed as the administrator of the MCC Program.

1 **Section 9.** All actions not inconsistent with the provisions of this Ordinance heretofore
2 taken by the Council and the officers of the City directed toward financing the MCC Program and
3 the issuance Certificates are hereby, ratified, approved and confirmed.

4 **Section 10.** The officers of the City shall take all action in conformity with the Charter, the
5 Colorado Private Activity Bond Ceiling Allocation Act, constituting Article 32, Title 24, Part 17,
6 Colorado Revised Statutes, as amended (the "Allocation Act"), and the Code necessary or
7 reasonably required to effectuate the issuance of the Certificates and shall take all action
8 necessary or desirable in conformity with the Charter, the Allocation Act and the Code to
9 implement the MCC Program and for carrying out, giving effect to and consummating the
10 transactions contemplated by this Ordinance, including without limitation, the filing of any
11 statements or reports with the IRS or with the Secretary of the Treasury or his delegate necessary
12 for the issuance of the Certificates.

13 **Section 11.** The Council authorizes the appropriate officers of the City to certify pursuant to
14 Section 1703(14) of the Allocation Act to the Executive Director of the Colorado Department of
15 Local Affairs that the City has implemented the MCC Program.

16 **Section 12.** After any of the Certificates are issued, this Ordinance shall be and remain
17 irrevocable.

18 **Section 13.** If any section, paragraph, clause or provision of this Ordinance shall for any
19 reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section,
20 paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

21 **Section 14.** All bylaws, orders, resolutions, ordinances, or parts thereof, inconsistent
22 herewith are hereby repealed to the extent only of such inconsistency, and if so repealed, no other
23 bylaw, order, resolution, ordinance, or part thereof, shall be revived. This repealer shall not be
24 construed as reviving any bylaw, order, resolution or ordinance, or part thereof.

25

1 COMMITTEE APPROVAL: February 29, 2012
2 MAYOR-COUNCIL DATE: March 6, 2012
3 PASSED BY THE COUNCIL ON _____, 2012 AND ON _____, 2012
4 _____ - PRESIDENT

5 APPROVED: _____ - MAYOR _____, 2012
6 ATTEST: _____ -CLERK AND RECORDER, EX OFFICIO
7 _____
8 _____ CLERK OF THE CITY AND COUNTY
9 _____ OF DENVER

9 PUBLISHED IN THE DAILY JOURNAL _____, 2012 AND _____, 2012
10 PREPARED BY: KUTAK ROCK LLP

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

15
16 DOUGLAS J. FRIEDNASH, City Attorney
17
18 BY: _____ - _____ City Attorney
19
20 DATE: _____, 2012