

1 **BY AUTHORITY**

2 **ORDINANCE NO. _____**

COUNCIL BILL NO. 18-0776

3 **SERIES OF 2018**

COMMITTEE OF REFERENCE:

4 **BUSINESS, ARTS, WORKFORCE & AERONAUTICAL SERVICES**

5 **A BILL**

6 **For an ordinance concerning the Airport Facilities of the City and County of**
7 **Denver; providing for the administration of certain passenger facility**
8 **charges; ratifying action previously taken; providing for other related**
9 **matters; and providing the effective date of this ordinance.**

10
11 **PREFACE**

12 This ordinance (referred to herein as “this PFC Supplemental Ordinance”) is
13 supplemental to and is adopted for and on behalf of the Department in accordance with the
14 provisions of, the Authorizing General Bond Ordinances as defined in Section 102 of this PFC
15 Supplemental Ordinance.

16 **DEFINITIONS**

17 All defined terms in this PFC Supplemental Ordinance have the meanings set forth in the
18 Authorizing General Bond Ordinances except as otherwise expressly provided herein and in
19 Section 102 of this PFC Supplemental Ordinance, and except where the context by clear
20 implication otherwise requires.

21 **RECITALS**

22 (1) The City and County of Denver, Colorado is a municipal corporation duly
23 organized and existing as a home rule city under Article XX, State Constitution, and under the
24 Charter of the City, and is a political subdivision of the State.

25 (2) Pursuant to Article XX, State Constitution, the Charter of the City, and the
26 plenary grant of powers as a home rule city, the City has acquired certain airport facilities
27 constituting its Airport System, the management, operation, and control of which is vested by
28 the Charter of the City in the Department of Aviation of the City. Pursuant to the Enterprise
29 Ordinance, the City designated the Department as an “enterprise” within the meaning of
30 Section 20, Article X, State Constitution.

1 (3) The City has imposed the Passenger Facility Charges for the use of the Airport
2 System. The definition of “Gross Revenues” under the General Bond Ordinance includes “any
3 passenger taxes, passenger facility charges, or other passenger charges imposed for the use of
4 the Airport System, but only to the extent included as Gross Revenues by the terms of any
5 Supplemental Ordinance.”

6 (4) Pursuant to (a) the Prior PFC Ordinances, which amended and supplemented the
7 General Bond Ordinance, including the 2013-2018 Committed PFC Ordinance and the 2013-
8 2018 Designated PFC Ordinance, and (b) the requests of the Manager of the Department of
9 Aviation as contemplated by the Enterprise Ordinance, the City heretofore established a certain
10 separate account (and subaccounts therein) within the Airport System Fund and provided for the
11 administration of and accounting for the Passenger Facility Charges in such account and
12 subaccounts and for the use of such account and subaccounts to administer and account for the
13 Committed Passenger Facility Charges.

14 (5) In respect of the Fiscal Year 2019 and future Fiscal Years, the Manager has
15 requested that the provisions relating to the administration of Passenger Facility Charges be
16 revised and supplemented as provided in this PFC Supplemental Ordinance and generally as
17 follows: commencing with the Fiscal Year beginning January 1, 2019, (a) the Committed
18 Passenger Facility Charges and the related irrevocable commitments to the payment of Debt
19 Service Requirements of Bonds provided for in Prior PFC Ordinances shall not be continued or
20 extended, (b) the definition of “Committed Passenger Facility Charges” and the related
21 administrative account and subaccounts be considered to have been deleted from the General
22 Bond Ordinance, including any applicable supplements thereto, (c) the definition of “Designated
23 Passenger Facility Charges” shall be revised and supplemented to include “amounts received by
24 the City from all PFCs received by the City from time to time pursuant to all existing and future
25 PFC applications of the City, net of amounts that collecting air carriers are entitled to retain for
26 collecting, handling and remitting such passenger facility charge revenues as provided in the
27 FAA PFC Regulations, and (d) Designated Passenger Facility Charges, as defined herein, shall
28 be included in Gross Revenues of the Airport System for purposes of the Authorizing General
29 Bond Ordinances commencing Fiscal Year 2019 and each Fiscal Year thereafter until such time
30 as the Manager shall give written notice to the Treasurer that the Designated Passenger Facility

1 Charges or any portion thereof shall no longer continue to be included in Gross Revenues for
2 purposes of the Authorizing General Bond Ordinances.

3 The Manager has further requested that, while the Designated Passenger Facility
4 Charges are included in Gross Revenues for purposes of the Authorizing General Bond
5 Ordinances, all Designated Passenger Facility Charges, upon their receipt from time to time, to
6 the extent not otherwise required to be applied under any of the Authorizing General Bond
7 Ordinances, shall be applied for any purposes permitted under the FAA PFC Regulations as
8 determined by the City.

9 (6) The Council has determined and does hereby declare that it is necessary and
10 appropriate to provide for the administration of Passenger Facility Charges in Fiscal Year 2019
11 and thereafter as requested by the Manager and as set forth in this PFC Supplemental
12 Ordinance.

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

14 **ARTICLE I**
15 **DEFINITIONS, RATIFICATION, AUTHENTICATION,**
16 **PUBLICATION AND EFFECTIVE DATE**

17 Section 101. Supplemental Ordinance. This PFC Supplemental Ordinance is
18 supplemental to and is adopted for and on behalf of the Department in accordance with the
19 provisions of, the Authorizing General Bond Ordinances as defined in Section 102 of this PFC
20 Supplemental Ordinance.

21 Section 102. Meanings and Construction.

22 A. General Bond Ordinance Definitions. All capitalized terms in this PFC
23 Supplemental Ordinance have the meanings set forth in the Authorizing General Bond
24 Ordinances except as otherwise expressly provided herein.

25 B. Additional Definitions. For all the purposes of this PFC Supplemental
26 Ordinance and of any other document relating hereto, except where the context by clear
27 implication otherwise requires:

28 (1) “2013-2018 Committed PFC Ordinance” means Ordinance No. 490, Series
29 of 2012, providing that certain amounts credited to the PFC Debt Service Account in each

1 of the Fiscal Years of 2013 through 2018, inclusive, are irrevocably committed to the
2 payment of the Debt Service Requirements of Bonds.

3 (2) “2013-2018 Designated PFC Ordinance” means Ordinance No. 498, Series
4 of 2012, providing that certain Passenger Facility Charges shall be included in Gross
5 Revenues of the Airport System for purposes of the General Bond Ordinance in each of
6 the Fiscal Years of 2013 through 2018, inclusive.

7 (3) “Authorizing General Bond Ordinance(s)” means, collectively, the General
8 Bond Ordinance in respect of the Bonds, the General Subordinate Bond Ordinance in
9 respect of the Subordinate Bonds and the General Junior Lien Bond Ordinance in respect
10 of the Junior Lien Bonds.

11 (4) “Committed Passenger Facility Charges” means, prior to January 1, 2019,
12 and as set forth in the 2013-2018 Committed PFC Ordinance, two-thirds of all PFCs
13 received by the City from time to time pursuant to the existing PFC applications of the
14 City. Effective on and after January 1, 2019, this defined term is considered to have been
15 deleted from the General Bond Ordinance, including any applicable prior supplements
16 thereto.

17 (5) “Designated Passenger Facility Charges” means, prior to January 1, 2019,
18 and as set forth in the 2013-2018 Designated PFC Ordinance, amounts received by the
19 City from the PFCs, excluding the Committed Passenger Facility Charges. Effective on
20 and after January 1, 2019, “Designated Passenger Facility Charges” means all amounts
21 received by the City from the PFCs.

22 (6) “FAA PFC Regulations” means Title 14, Code of Federal Regulations,
23 Part 158 and any regulations of the United States Federal Aviation Administration
24 amending, supplementing, replacing or superseding such regulations and pertaining to
25 PFCs.

26 (7) “General Bond Ordinance” means Ordinance No. 626, Series of 1984, cited
27 as the “1984 Airport System General Bond Ordinance,” as amended and restated in its
28 entirety pursuant to the provisions of Ordinance No. 0777, Series of 2018, as amended
29 and supplemented from time to time by any Supplemental Ordinance.

1 (8) "General Junior Lien Bond Ordinance" means Ordinance No. 17-0972,
2 Series of 2017, cited as "Airport System General Junior Lien Bond Ordinance," as
3 amended and supplemented from time to time.

4 (9) "General Subordinate Bond Ordinance" means Ordinance No. 549, Series
5 of 1997, cited as the "1997 Airport System Subordinate Bond Ordinance," as amended
6 and restated in its entirety pursuant to the provisions of Ordinance No. 302, Series of
7 2013, as amended and supplemented from time to time.

8 (10) "Passenger Facility Charges" or "PFCs" means amounts received by the
9 City from the passenger facility charges imposed by the City pursuant to the FAA PFC
10 Regulations, net of amounts that collecting air carriers are entitled to retain for collecting,
11 handling and remitting such passenger facility charge revenues as provided in the FAA
12 PFC Regulations.

13 (11) "PFC Debt Service Account" means the special and separate subaccount
14 created within the PFC Fund designated as the "PFC Debt Service Account," created
15 under the General Bond Ordinance. Effective on and after January 1, 2019, this defined
16 term shall be considered deleted from the General Bond Ordinance, including any
17 applicable prior supplements thereto.

18 (12) "PFC Fund" means the special and separate account designated as the
19 "City and County of Denver, Colorado, Airport System Revenue Bonds, PFC Fund,"
20 created under the General Bond Ordinance. Effective on and after January 1, 2019, this
21 defined term shall be considered deleted from the General Bond Ordinance, including
22 any applicable prior supplements thereto.

23 (13) "PFC Project Account" means the special and separate subaccount in the
24 PFC Fund designated as the "PFC Project Account," created under the General Bond
25 Ordinance. Effective on and after January 1, 2019, this defined term shall be considered
26 deleted from the General Bond Ordinance, including any applicable prior supplements
27 thereto.

28 (14) "Prior PFC Ordinances" means all of the Supplemental Ordinances which
29 provide for the deposit of PFC revenues to the PFC Fund, and to the PFC Debt Service
30 Account and the PFC Project Account in such fund and additional provisions for the
31 administration of Passenger Facility Charges, enacted prior to the date of this PFC

1 Supplemental Ordinance, which Prior PFC Ordinances are being repealed hereby
2 effective immediately after December 31, 2018.

3 Section 103. Ratification. All action heretofore taken (not inconsistent with the provisions
4 of this Supplemental Ordinance) by the Council, the Manager, the Manager of Finance, Chief
5 Financial Officer, *ex-officio* Treasurer (the “Treasurer”), and the officers of the City relating to
6 the Passenger Facility Charges be, and the same hereby is, authorized, ratified, approved and
7 confirmed.

8 Section 104. Irrepealable Contract. This PFC Supplemental Ordinance and the
9 Authorizing General Bond Ordinances shall constitute an irrevocable contract between the City,
10 for and on behalf of the Department, and owners of the related Bonds, the related Subordinate
11 Bonds and the related Junior Lien Bonds, except as otherwise provided in any of the related
12 Authorizing General Bond Ordinances and subject in any case to the provisions of Section 203
13 of this PFC Supplemental Ordinance.

14 Section 105. Repealer. All ordinances, resolutions, bylaws, orders, interdepartmental
15 memoranda of understanding and other instruments, or parts thereof, inconsistent herewith are
16 hereby repealed to the extent only of such inconsistency, it being intended that the provisions for
17 the administration of Passenger Facility Charges set forth herein replace and supersede the
18 provisions of the Prior PFC Ordinances, and any interdepartmental memorandum of
19 understanding executed pursuant thereto, only with respect to any Fiscal Year commencing after
20 December 31, 2018. This repealer shall not be construed to revive any ordinance, resolution,
21 bylaw, order, or other instrument, or part thereof, heretofore repealed.

22 Section 106. Severability. If any section, subsection, paragraph, clause, or other
23 provision of this PFC Supplemental Ordinance shall for any reason be held to be invalid or
24 unenforceable, the invalidity or unenforceability of such section, subsection, paragraph, clause,
25 or other provision shall not affect any of the remaining provisions of this PFC Supplemental
26 Ordinance.

27 Section 107. Effective Date. This PFC Supplemental Ordinance shall take effect
28 immediately upon its final passage and publication.

29 Section 108. Delegated Powers. The Mayor, Auditor, Clerk, Treasurer, Manager and
30 other officers and employees of the City are hereby authorized and directed to take all action
31 necessary or appropriate to effect the provisions of this Supplemental Ordinance.

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**ARTICLE II
ADMINISTRATION OF AND ACCOUNTING
FOR PASSENGER FACILITY CHARGES COMMENCING JANUARY 1, 2019**

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Section 201. Committed Passenger Facility Charges Not Continued or Extended.

6 Commencing with the Fiscal Year beginning January 1, 2019, (a) the Committed Passenger
7 Facility Charges and the related irrevocable commitments to the payment of Debt Service
8 Requirements of Bonds provided for in Prior PFC Ordinances shall not be continued or extended
9 after December 31, 2018, and (b) the definition of "Committed Passenger Facility Charges" and
10 the related administrative account and subaccounts (the PFC Fund, the PFC Debt Service
11 Account and the PFC Project Account) shall be considered to have been deleted from the
12 General Bond Ordinance, including any applicable supplements thereto. For the related Fiscal
13 Years prior to January 1, 2019, the Prior PFC Ordinances shall remain in full force and effect
14 through December 31, 2018, and immediately after December 31, 2018, are hereby repealed.

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Section 202. Definition of "Designated Passenger Facility Charges". In respect of the

16 Fiscal Year 2019 and future Fiscal Years, the definition of "Designated Passenger Facility
17 Charges" shall mean: all amounts received by the City from the PFCs.

18 In causing such amendment to be made, the City intends that this amended definition
19 include amounts received by the City from all PFCs received by the City from time to time
20 pursuant to all existing and future PFC applications of the City.

21 For the related Fiscal Years prior to January 1, 2019, the 2013-2018 Designated PFC
22 Ordinance shall remain in full force and effect until and through December 31, 2018, and
23 immediately after December 31, 2018, is hereby repealed.

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Section 203. Designated Passenger Facility Charges Treated as Gross Revenues.

25 Designated Passenger Facility Charges, as defined herein, shall be included in Gross Revenues
26 of the Airport System for Fiscal Year 2019 and each Fiscal Year thereafter until such time as the
27 Manager shall give written notice to the Treasurer that the Designated Passenger Facility
28 Charges or any portion thereof shall no longer continue to be included in Gross Revenues for
29 purposes of the Authorizing General Bond Ordinances.

30 While the Designated Passenger Facility Charges are included in Gross Revenues for
31 purposes of the Authorizing General Bond Ordinances, all Designated Passenger Facility
32 Charges, upon their receipt from time to time, to the extent not otherwise required to be applied

1 under any of the Authorizing General Bond Ordinances, shall be applied for any purposes
2 permitted under the FAA PFC Regulations as determined by the City.

3 Section 204. PFC Maintenance. So long as the imposition and use of a passenger
4 facility charge is necessary to develop and maintain the Airport System in accordance with the
5 requirements of the Authorizing General Bond Ordinances, the City shall use its best efforts both
6 to continue to impose and use a passenger facility charge and to comply with all valid and
7 applicable federal laws and regulations as may be necessary to such imposition and use.

8 **ARTICLE III**
9 **MISCELLANEOUS**

10 Section 301. Other Passenger Taxes or Charges. This PFC Supplemental Ordinance
11 shall be applicable only to amounts derived from the Passenger Facility Charges and the
12 investment thereof; and nothing in this PFC Supplemental Ordinance shall be construed to limit
13 the application by the City, for itself or for and on behalf of the Department, of any other
14 passenger facility charges authorized under the FAA Regulations or other passenger taxes or
15 passenger charges, not constituting Passenger Facility Charges.

16 [Remainder of this page intentionally left blank.]
17

1 COMMITTEE APPROVAL DATE: July 18, 2018

2 MAYOR-COUNCIL DATE: July 24, 2018

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 NOTICE PUBLISHED IN THE DAILY JOURNAL _____; _____

10 PREPARED BY: Hogan Lovells US LLP and Becker Stowe Partners LLC DATE: July 26, 2018

11 REVIEWED BY: Everett Martinez, Assistant City Attorney DATE: July 26, 2018

12 Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office
13 of the City Attorney. We find no irregularity as to form, and have no legal objection to the
14 proposed ordinance. The proposed ordinance is submitted to the City Council for approval
15 pursuant to § 3.2.6 of the Charter.

16 Kristin M. Bronson, City Attorney

17 BY:  _____, Assistant City Attorney DATE: Jul 26, 2018

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