

1 BY AUTHORITY

2 ORDINANCE NO. _____

COUNCIL BILL NO. 15-0553_____

3 SERIES OF 2015

COMMITTEE OF REFERENCE:

4
5 A BILL

6 **For an ordinance increasing the sales and use tax by a rate of .08 percent and**
7 **dedicating the revenue derived from the tax rate increase to fund the Denver**
8 **College Affordability Fund, and setting forth requirements for use of the Fund,**
9 **subject to the approval of the voters at a special municipal election to be**
10 **conducted in coordination with the state general election on November 3, 2015.**

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

12 **Section 1.** Subject to voter approval as provided in Section 9 of this ordinance, Account Number
13 97000-282110 of the Fund Plan, Section 20-18, D.R.M.C., concerning apportionment of the sales, use
14 and lodger's tax, shall be amended by the addition of a new subsection (i), to read as follows (with
15 existing subsection (i) being re-designated as subsection (j)):

16 **Sec. 20-18. Fund Plan.**

17
18 *Account No. 97000-282110*

19
20 *Name of account:* Unapportioned sales, use and lodger's tax

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

23 *Disposition of funds:*

- 24 (i) Monthly, (1) allocation apportionment and transfer of only those revenues raised at
25 the rate of .08 percent of gross taxable sales from sales and use taxes levied to the
26 Denver College Affordability Fund Project in the General Government Special
27 Revenue Fund.

28
29 **Section 2.** Subject to the approval of the voters as provided in Section 9 of this Ordinance,
30 subsection (a) of section 53-27, D.R.M.C., concerning sales taxes, shall be amended to read as
31 follows:

1 (a) *Tax rates.* A tax of three and seventy-three one-hundredths (3.73) percent is imposed and
2 levied upon all taxable sales of commodities and services except those commodities or
3 services specified in subsection (b) of this section. In order to avoid amounts that are fractions
4 of pennies, taxpayers shall use a rounding procedure approved by the manager when
5 computing the tax.

6 On those taxable sales of commodities or services specified in subsection (b) of this section,
7 there is levied and imposed upon all taxable sales a tax in accordance with the rates set forth in
8 subsection (b).

9 **Section 3.** Subject to the approval of the voters as provided in Section 9 of this Ordinance, Section
10 53-27, D.R.M.C., concerning sales taxes shall be amended by the addition of a new subsection (h) to
11 read as follows:

12 (h) *Sales tax increment to fund the Denver College Affordability Fund.* In addition to the sales
13 tax otherwise imposed by this section, a tax of eight one-hundredths of one (.08) percent
14 shall be paid on all taxable sales of commodities or services, except on commodities or
15 services specified in subsection (b) of this section, beginning January 1, 2016 and expiring
16 December 31, 2025. The revenue from such additional tax shall be used for the sole
17 purpose of funding the Denver College Affordability Fund pursuant to article IV of chapter
18 11.

19 **Section 4.** Subject to the approval of the voters as provided in Section 9 of this Ordinance,
20 subsection (a) of section 53-28, D.R.M.C., concerning sales taxes, shall be amended to read as
21 follows:

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

23 (a) *Amount.* Every retailer shall, irrespective of other provisions of this article, be liable
24 and responsible for the payment of an amount equivalent to three and seventy-three
25 one-hundredths (3.73) percent of the retailer's gross taxable sales of commodities or
26 services specified in this article, except: (1) Aviation and railway fuel, as to which the
27 rate of four cents (\$0.04) for each gallon purchased shall apply; (2) Automotive
28 vehicles when they are for any term of thirty (30) days or less hired for use, rented,
29 leased or transferred under a grant of a license to use, as to which a rate of taxation
30 as set forth in section 53-27(b)(2) shall apply; and (3) Food and beverages not

1 exempted from taxation under section 53-26(8) of this article, as to which the rate of
2 four (4) percent shall apply, and for each of which respective rates aforesaid the
3 retailer shall be liable for an equivalent amount; and every retailer shall on or before
4 the twentieth day of each month pay over such amount and make a return to the
5 manager, less one-half of one (.5) percent of such amount as a discount allowable
6 for prompt payment. If any vendor is delinquent in remitting the tax levied by this
7 article, other than in unusual circumstances shown to the satisfaction of the
8 manager, the vendor shall not be allowed to retain any discount allowable for prompt
9 payment, and the full amount shall be remitted to the manager by any such
10 delinquent vendor, together with any other applicable penalty or interest payable
11 under the terms of this article.
12
13

14 **Section 5.** Subject to the approval of the voters as provided in Section 9 of this Ordinance,
15 subsection (a) of section 53-98, D.R.M.C., concerning use taxes, shall be amended to read as follows:
16

17 (a) *Tax rates.* A tax of three and seventy-three one-hundredths (3.73) percent is imposed and levied
18 and there shall be collected and paid a tax upon the exercise of the privilege of storing, using,
19 distributing or consuming in the city a service subject to the provisions of this article or any item
20 of tangible personal property purchased at retail, or deemed to be purchased at retail, except
21 those commodities or services specified in subsection (b) of this section. In order to avoid
22 amounts that are fractions of pennies, taxpayers shall use a rounding procedure approved by
23 the manager when computing the tax.
24

25 On those taxable uses, consumptions, distributions and storages of commodities or services
26 specified in subsection (b) of this section, there is levied and imposed upon the privilege of
27 storing, using, distributing or consuming in the city a tax in accordance with the rates set forth
28 therein.
29
30

31 **Section 6.** Subject to the approval of the voters as provided in Section 9 of this Ordinance, Section
32 53-98, D.R.M.C., concerning use taxes shall be amended by the addition of a new subsection (l) to
33 read as follows:

1 (l) *Use tax increment to fund the Denver College Affordability Fund.* In addition to the use tax
2 otherwise imposed by this section, a tax of eight one-hundredths of one (.08) percent shall
3 be paid on all taxable uses, consumptions, distributions, and storages of commodities and
4 services, except on commodities and services specified in subsection (b) of this section,
5 beginning January 1, 2016 and expiring December 31, 2025. The revenue from such
6 additional tax shall be used for the sole purpose of funding the Denver College Affordability
7 Fund pursuant to article IV of chapter 11.

8 **Section 7.** Subject to the approval of the voters as provided in Section 9 of this ordinance, subsection
9 (a) of section 53-99, D.R.M.C., concerning collection of use taxes, shall be amended to read as
10 follows:

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

12 (a) *Amount.* Every retailer shall, irrespective of other provisions of this article, be liable
13 and responsible for the payment of an amount equivalent to three and seventy-three
14 one-hundredths (3.73) percent of gross taxable sales made by him of services and
15 tangible personal property 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 for
18 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 53-98(b)(2) shall apply, and (3) food and
20 beverages not exempted from taxation under section 53-26(8) of the city retail sales
21 tax article, as to which the rate of four (4) percent shall apply, and for each of which
22 respective rates aforesaid the retailer shall be liable for an equivalent amount; and
23 every retailer shall on or before the twentieth day of each month pay over such
24 amount and make a return to the manager, less one-half of one (.5) percent of such
25 amount as a discount allowable for prompt payment. If any vendor is delinquent in
26 remitting the tax levied by this article, other than in unusual circumstances shown to
27 the satisfaction of the manager, the vendor shall not be allowed to retain any
28 discount allowable for prompt payment, and the full amount shall be remitted to the
29 manager by any such delinquent vendor, together with any other applicable penalty
30 or interest payable under the terms of this article.

1 **Section 8.** Subject to the approval of the voters as provided in Section 9 of this Ordinance, Chapter
2 11, D.R.M.C., concerning Child Care Establishments, shall be amended by the addition of a new
3 Article IV, to read as follows:

4 **ARTICLE IV. DENVER COLLEGE AFFORDABILITY FUND**

5 **Sec. 11-30. Legislative Intent.** The purpose of this Article IV is to provide for the governance
6 and administration of the dedicated sales and use tax increase approved by the voters on
7 November 3, 2015, and as provided in sections 53-27 (h) and 53-98 (l) of this code (hereinafter
8 referred to as the “Denver College Affordability tax”), for the purpose of funding the Denver
9 College Affordability Fund in order to increase college enrollment and completion for Denver
10 residents. The city hereby determines that the expenditure of the Denver College Affordability
11 tax and the establishment of the Denver College Affordability Fund serve important public and
12 municipal purposes, and are matters of local concern for which the citizens of Denver enjoy the
13 full right of self-government.

14 **Sec. 11-31. Expenditures of Denver College Affordability tax to be made by contract with**
15 **non-profit corporation.**

16 (a) Expenditures of the Denver College Affordability tax shall be made pursuant to a
17 contract between the city and a Colorado non-profit corporation meeting the
18 requirements set forth in this section (the “corporation”), which contract shall define
19 the obligations of the corporation in consideration of such funding. The contract
20 shall be administered on behalf of the city by the Manager of Finance and any
21 expenditure under the contract shall be subject to audit by the auditor for
22 compliance with the requirements of this article and of the contract.

23 (b) The corporation shall meet the following criteria and requirements:

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

- 1 (2) The sole purpose of the corporation as reflected in the corporation's articles of
2 incorporation shall be to administer the Denver College Affordability Fund
3 under contract with the city in accordance with the requirements of this Article.
- 4 (3) The corporation's articles of incorporation shall provide for a seven member
5 board of directors. Six members of the board shall be appointed by the mayor
6 and confirmed by the city council. One member of the board shall be a
7 member of the city council appointed by the city council. Members of the
8 board shall be appointed to staggered three-year terms of office. Members of
9 the board shall serve without compensation, but may be reimbursed for actual
10 and necessary expenses.
- 11 (4) The records of the corporation shall be treated as public records and subject
12 to the provisions of the Colorado Open Records Act, §§ 24- 72-201, et seq.,
13 C.R.S., as amended. Meetings of the corporation's board of directors shall be
14 treated as public meetings subject to the provisions of the Colorado Open
15 Meetings Law, §§ 24-6-401, et seq., C.R.S., as amended.
- 16 (5) Not less than once annually, the corporation shall report to the mayor, the city
17 council, the auditor, and the public the following information:
- 18 (i) The number of students receiving assistance from the Denver College
19 Affordability Fund, in total and by program.
 - 20 (ii) The number of part time and the number of full time students (as
21 defined by the student's post-secondary institution).
 - 22 (iii) Metrics tracking students year over year, students graduated, students
23 on track to graduate in a timely fashion (as defined by the student's
24 post-secondary institution), students who have lost eligibility due to
25 performance, and students who have stopped going to school.
 - 26 (iv) The long term workforce impact resulting from scholarships and
27 services funded by the Denver College Affordability Fund, to the extent
28 such information is available to the corporation in future years.
 - 29 (v) Audited financial statements for the corporation, including full reports
30 on expenditures for the prior fiscal year and anticipated budgets and
31 work plans for the ensuing fiscal year.

- 1 (6) In administering the Denver College Affordability Fund, or expending any
2 monies derived from the Denver College Affordability tax, the corporation shall
3 not discriminate against any person on the basis of race, color, religion,
4 national origin, gender, age (except as to the age of children qualifying for
5 tuition credits), military status, sexual orientation, gender variance, marital
6 status, or physical or mental disability.

7 **Sec 11-32. Spending limitations to be included in contract.** Any contract between the city
8 and the corporation for disbursement of the Denver College Affordability tax revenues shall
9 include the following provisions and requirements:

- 10 (1) Any expenditure of Denver College Affordability tax revenues under the
11 contract shall be subject to annual appropriation by the city council.
- 12 (2) No more than 10% of the Denver College Affordability tax revenue received by
13 the corporation in any year shall be spent on administrative expenses. For
14 purposes of this limitation, “administrative expenses” shall mean salaries and
15 office expenses related to any staff or employees of the corporation; any
16 expenses reimbursed to members of the board of directors; routine business
17 expenses such as insurance, accounting and legal expenses; and any similar
18 overhead expenses incurred by the corporation. The term “administrative
19 expenses” shall not be deemed to include any fees or expenses paid to third-
20 party contractors or consultants to assist in the development or administration
21 of the Denver College Affordability Fund.
- 22 (3) At least 90% of Denver College Affordability tax revenue received by the
23 corporation in any year shall be used for the following purposes only:
- 24 (i) Organization reimbursement grants administered in accordance with
25 the requirements of section 11-34, D.R.M.C..
- 26 (ii) Debt relief for higher education costs, administered in accordance with
27 the requirements of section 11-35, D.R.M.C..
- 28 (iii) Contracting with qualified experts to design and assist with the
29 implementation of the Denver College Affordability Fund program.

- 1 (iv) Measurement of the performance of the Denver College Affordability
2 Fund and scholarship recipients, and the preparation of reports to city
3 officials and to the public on the performance of the program.

4 **Sec. 11-33. Student eligibility requirements.**

- 5 (a) To be eligible for funding from the Denver College Affordability Fund, the student
6 benefitted (“eligible student”) must have resided in Denver continuously for more than
7 thirty-six (36) months prior to their first scheduled post-secondary class day, and
8 otherwise meet all criteria for in-state tuition.
- 9 (b) Eligible students must have completed the FAFSA application, and have an
10 Expected Family Contribution no greater than 2.5 times the Pell limit.
- 11 (c) Eligible students must attend a regionally accredited non-profit or public post-
12 secondary institution located in Colorado, and be in good standing at said institution,
13 as demonstrated by the institution’s determination that the student has achieved
14 “satisfactory academic progress.”
- 15 (d) Eligible students may not be older than twenty-five years of age as of the final
16 scheduled class day of the academic year for which a reimbursement grant or debt
17 relief is requested.

18 **Sec. 11-34. Organization reimbursement program.** Funding from the Denver College
19 Affordability Fund may be paid to nonprofit organizations (“organizations”) that provide tuition
20 grants and/or support services to eligible students, on a reimbursement basis, in compliance
21 with the following standards and requirements:

- 22 (1) Organizations may apply annually for reimbursement grants from the
23 corporation for eligible students supported by the organization in the prior
24 academic year. The application must include a complete list of the eligible
25 students assisted by the organization during the prior academic year; the
26 amounts spent on account of each eligible student for tuition and support
27 services (as hereafter defined); and any other information required by the
28 corporation.

- 1 (2) Reimbursable “support services” are defined as services designed to increase
2 college student persistence and graduation, including the following: academic
3 tutoring; advice and assistance in college course selection; graduation
4 coaching; services that assist with student financial aid, such as resources for
5 locating scholarships and assistance in completing financial aid applications;
6 education or counseling services designed to improve student financial and
7 economic literacy; assistance for students enrolled in certificate and two-year
8 programs in applying for admission to, and financial assistance for, enrollment
9 in two-year and four-year programs; career and academic counseling; and
10 mentoring programs.
- 11 (3) Reimbursement for tuition and support services shall be funded by the
12 corporation on a sliding scale, with individual reimbursement rates calculated
13 based on and inversely related to the demonstrated financial need and
14 expected family contribution of the eligible student. Only privately raised funds
15 spent on an eligible student can be reimbursed; in no event may organizations
16 seek reimbursement of their expenditures of funds received from the
17 corporation. In no event will reimbursement exceed 75% of the total amount
18 spent on the eligible student by the organization, and in no event will an
19 organization (or organizations, if more than one is supporting the same eligible
20 student) be reimbursed more than \$4,000 per eligible student. The per
21 student maximum dollar amount may be increased annually by the
22 corporation’s board of directors, by an amount not to exceed the most recent
23 percentage increase in the Consumer Price Index for Denver-Boulder-Greeley
24 (“CPI”). Reimbursement for support services shall not exceed a stated
25 percentage of the total amount reimbursed on account of the eligible student,
26 such percentage to be established annually by the corporation’s board of
27 directors.
- 28 (4) Other specific criteria and procedures for the disbursement of Denver College
29 Affordability tax revenue shall be determined by the corporation’s board of
30 directors.

1 (5) In order to be qualified to receive payments from the Denver College
2 Affordability Fund, an organization shall meet the following minimum
3 requirements:

4 (i) The organization shall be duly incorporated and in good standing
5 under the Colorado Revised Nonprofit Corporation Act, and approved by the
6 Internal Revenue Service as a tax exempt, charitable organization.

7 (ii) The organization shall have existed and operated as a college
8 scholarship and/or support services entity for not less than three years, and
9 shall operate independently as a financial and operational entity separate from
10 any post-secondary institution, school district, or charter school management
11 organization.

12 (iii) To remain in good standing and eligible to receive reimbursement from
13 the Denver College Affordability Fund, organizations must submit a
14 report each year to the corporation, detailing expenditures of Denver
15 College Affordability tax revenues, the form and substance of such
16 report to be as required by the corporation.

17 (iv) Other requirements as may be established by the corporation's board
18 of directors.

19 **Sec. 11-35. Debt Relief Higher Education Partnership Program.**

20 (a) Eligible students may apply directly to the corporation for a grant to assist with student
21 loan repayment, after successfully completing a year of their degree program.

22 (b) To obtain financial assistance pursuant to this section, the eligible student must disclose
23 the total cost of their tuition and fees for the school year, all student loans obtained from
24 any source, and the total amount of those loans cannot exceed the cost of attendance
25 for the completed school year as determined by the student's higher education
26 institution.

27 (c) Debt relief grants shall be made using the same sliding reimbursement scale described
28 in subsection 11-34(3), D.R.M.C., and funds shall be disbursed only to: (i) the Colorado
29 post-secondary institution attended by the eligible student, to be applied toward the
30 student's next year of study; or (ii) the eligible student's student loan provider, to pay
31 down the principal of debt from the student's just completed academic year. The

1 student will select the method of disbursement, provided that after the final year of a
2 student's program, funds may only be disbursed to the student's loan provider. Except
3 as provided in subsection 11-35(d), D.R.M.C., debt relief grants shall not exceed the
4 lesser of: 150% of the student's total cost of tuition and fees for the completed school
5 year; or \$4,000. The per student maximum dollar amount may be increased annually by
6 the corporation's board of directors, by an amount not to exceed the most recent
7 percentage increase in the CPI. The per student dollar limits applicable to the
8 organization reimbursement and the debt relief programs may not be aggregated. Any
9 student who has received assistance from an organization pursuant to section 11-34,
10 D.R.M.C., and who also applies for debt relief assistance pursuant to this section 11-35,
11 D.R.M.C., is limited to a maximum benefit totaling \$4,000 (or such greater maximum
12 amount as may be approved by the Corporation's board of directors as provided above).

13 (d) Students who participate in this program, who successfully complete their associate
14 degree or technical certification, are also eligible for additional financial support in an
15 amount to be determined by the corporation's board of directors, for the final year
16 leading to their degree or certificate. Payments will be based upon the same sliding
17 reimbursement scale described in subsection 11-34(3), D.R.M.C., and subject to the
18 other requirements of this section 11-35, D.R.M.C.

19 (e) The corporation shall have the authority to partner with post-secondary education
20 institutions for the provision of support services to eligible students participating in the
21 debt relief program described in this section.

22 **Section 9.** In accordance with § 3.3.6 of the Charter and Article X, Section 20 of the Colorado
23 Constitution, this ordinance shall be submitted to a vote of the registered electors of the City and
24 County of Denver at a special municipal election to be coordinated with the state general election
25 occurring November 3, 2015. Each elector voting at said election and desirous of voting for or against
26 the ordinance shall cast a vote as provided by law either "Yes" or "No" on the proposition:

27 SHALL DENVER SALES AND USE TAXES BE INCREASED \$10.6 MILLION ANNUALLY,
28 COMMENCING JANUARY 1, 2016, AND BY WHATEVER ADDITIONAL AMOUNTS ARE
29 RAISED ANNUALLY THEREAFTER THROUGH DECEMBER 31, 2025, FROM A EIGHT
30 ONE-HUNDREDTHS OF ONE PERCENT (.08%) SALES AND USE TAX RATE (ABOUT A

1 PENNY ON A TEN DOLLAR PURCHASE), TO INCREASE COLLEGE ENROLLMENT AND
2 DEGREE COMPLETION BY DENVER RESIDENTS WHO QUALIFY FOR NEEDS-BASED
3 FINANCIAL AID AND ARE EARNING A DEGREE FROM A PUBLIC OR NOT-FOR-
4 PROFIT COLLEGE, UNIVERSITY, COMMUNITY COLLEGE, OR TECHNICAL SCHOOL IN
5 COLORADO THROUGH:

- 6
- 7 O PROVIDING STUDENT LOAN DEBT RELIEF; AND
- 8 O FUNDING SCHOLARSHIPS; AND
- 9 O FUNDING SUPPORT SERVICES TO PROMOTE COMPLETION OF THAT
10 DEGREE, INCLUDING TUTORING, MENTORING, FINANCIAL AID ASSISTANCE, AND
11 ACADEMIC COUNSELING;
- 12

13 PROVIDED THAT THE TAX EXPIRES IN TEN YEARS, THAT NO MORE THAN 10% OF
14 FUNDS GENERATED BE SPENT ON ADMINISTRATIVE COSTS, THAT A REPORT FOR
15 THE PROGRAM BE SUBMITTED ANNUALLY TO THE MAYOR, CITY COUNCIL, CITY
16 AUDITOR, AND THE PUBLIC; AND SHALL THE REVENUES FROM THESE INCREASED
17 TAXES BE COLLECTED AND SPENT IN EACH FISCAL YEAR BY DENVER WITHOUT
18 REGARD TO ANY EXPENDITURE, REVENUE-RAISING, OR OTHER LIMITATION
19 CONTAINED WITHIN ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION
20 OR ANY OTHER LAW?

21 The proper officials of the City and County of Denver as are charged with duties relating to the election
22 shall, before the election, issue such calls, make such certifications, and publications, give such
23 notices (including, without limitation, the notice required by Art. X, §20(3)(b) of the Colorado

1 Constitution), make such appointments, and do all such other acts and things in connection with the
2 submission of this question to the registered electors of the City and County of Denver at the election
3 as are required by the constitution and laws of the state of Colorado and the Charter and ordinances
4 of the City and County of Denver. The ballots cast at such election shall be canvassed and the results
5 ascertained, determined, and certified in accordance with the requirements of the Constitution and
6 laws of the State of Colorado and the Charter and ordinances of the City and County of Denver.

7 **Section 10.** Subject to the approval of the voters as provided in Section 7 of this Ordinance, this
8 ordinance shall be effective January 1, 2016.

9 COMMITTEE APPROVAL DATE:

10 MAYOR-COUNCIL DATE:

11 PASSED BY THE COUNCIL _____ 2015

12 _____ - PRESIDENT

13 APPROVED: _____ - MAYOR _____ 2015

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

17 NOTICE PUBLISHED IN THE DAILY JOURNAL _____ 2015; _____ 2015

18 PREPARED BY: Daniel B. Slattery, Assistant City Attorney DATE:

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

24 D. Scott Martinez, City Attorney

25 BY: _____, _____ City Attorney

26 DATE: _____