

1 **BY AUTHORITY**

2 ORDINANCE NO. _____
3 SERIES OF 2011

COUNCIL BILL NO. _____
COMMITTEE OF REFERENCE:
Government Affairs & Finance Committee

6 **A BILL**

7 **For an ordinance relating to Chapter 53 (Taxation and Miscellaneous Revenue)**
8 **of the Revised Municipal Code, to standardize the refund, assessment, petition,**
9 **and appeal procedures for the taxes imposed in Articles II through VII.**

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

12 **Section 1.** Section 7, Article I (General), Chapter 53 (also known and cited as Section 53-
13 7) of the Revised Municipal Code is enacted and added to read as follows:

14 **Sec. 53-7. Definitions.**

15 The following words and phrases, when used in this chapter, shall have the meanings
16 given to them in this section, except where the context in which they are used indicates clearly
17 and requires a different meaning according to customary usage.

18 (1) *City* means the City and County of Denver or the geographical area within its territorial
19 limits, depending upon the context.

20 (2) *Director of Excise and Licenses* means the director of excise and licenses for the City and
21 County of Denver.

22 (3) *Manager* means the manager of finance for the City and County of Denver or the manager
23 of finance's designee.

24 (4) *Person* means any natural person, corporation, partnership, limited liability company,
25 association, and other legal entities.

26 (5) *Taxpayer* means any person obligated to account to the Manager for taxes collected or to
27 be collected, or from whom a tax is due, under the terms of this chapter.

28 **Section 2.** Subsections 24(6), (8), and (27), Article II (City Sales Tax Article), Chapter 53,
29 (also known as cited as Section 53-24(6), (8), and (27)) of the Revised Municipal Code, which
30 currently reads as follows, is repealed in its entirety:

31 (6) *City* shall mean the City and County of Denver or the geographical area within its
32 territorial limits, depending upon the context.

33 (8) *Director of excise and licenses* shall mean the director of excise and licenses in and for
34 the city; and the term "manager" shall mean the manager of finance, or the duly authorized

1 representative thereof, in and for the city.

2 (27) *Taxpayer* shall mean any person obligated to account to the manager for taxes
3 collected or to be collected under the terms of this article.

4 **Section 3.** Subsection 43(d), Article II (City Sales Tax Article), Chapter 53 (also known
5 and cited as Section 53-43(d)) of the Revised Municipal Code is amended by deleting the
6 language stricken and adding the language underlined to read as follows:

7 (d) ~~*Hearing-Petition.*~~ An aggrieved applicant for a refund may, within thirty (30) days ~~after~~
8 ~~such decision is mailed postpaid to the taxpayer~~ from the date of the decision to deny or reduce
9 their claim for refund, petition the manger of finance in writing for ~~a hearing on the claim~~ review of
10 the decision in the manner provided in section ~~53-49~~53-50 of this article, ~~regarding petitions to the~~
11 ~~manager protesting assessments and estimates of unpaid taxes.~~

12 **Section 4.** Section 49, Article II (City Sales Tax Article), Chapter 53 (also known and cited
13 as Section 53-49) of the Revised Municipal Code is amended by deleting the language stricken
14 and adding the language underlined to read as follows:

15 **Sec. 53-49. ~~Refusal to make return; Audit; estimate of taxes, penalty, and interest;~~**
16 **penalty; notice; assessment.**

17 (a) The manager is authorized to examine, inspect and audit the books, invoices, accounts
18 and other records kept or maintained by the taxpayer for the collection of the taxes imposed by
19 this article. If the manager determines that any ~~If any retailer taxpayer~~ neglects or refuses to make
20 a timely return in payment of the taxes or to pay or to correctly account for any taxes as required
21 by this article, the manager shall make an estimate, based upon such information as may be
22 available ~~to him~~, with or without employing investigative powers vested in the manager by this
23 article, of the amount of the taxes due for the period or periods for which the taxpayer is
24 delinquent; and upon the basis of such estimated amount, compute and assess in addition
25 thereto a penalty equal to fifteen (15) percent thereof, together with the interest on such
26 delinquent taxes at the rate of one (1) percent each month, or a fraction thereof, from the date
27 when due until the date paid.

28 (b) Promptly thereafter the manager shall notify the delinquent taxpayer in writing and
29 demand payment thereof of such estimated taxes, penalty and interest.

30 (c) Such estimated amounts shall thereupon become an assessment, and such
31 assessment shall be final and due and payable from the taxpayer to the city thirty (30) days from
32 ~~either the date of personal service of the notice and demand or the date of mailing of the notice~~
33 and demand; provided, however, that within said thirty-day ~~(30)~~ period the delinquent taxpayer

1 may petition the manager in writing for review of the assessment in the manner provided in
2 section 53-50 of this article. ~~in writing for a revision, modification, or cancellation of such~~
3 ~~assessment, and, in such case, the taxpayer shall, within such thirty-day (30) period, elect to have~~
4 ~~further proceedings, if any, following the hearing before the manager, governed either by~~
5 ~~subsections 29-2-106.1(3) or (8) of the Colorado Revised Statutes or by section 53-56 of this~~
6 ~~article (in accordance with subsection 29-2-106.1(9) of the Colorado Revised Statutes). Failure to~~
7 ~~make an election shall be considered to be an election to be governed in further proceedings, if~~
8 ~~any, by section 53-56 of this article. Further, the taxpayer shall furnish the manager a summary~~
9 ~~written statement of facts and reasons for and the amount of the requested changes in the~~
10 ~~assessment and otherwise comply with the applicable rules and regulations promulgated by the~~
11 ~~manager relating to petitions and hearings.—The filing of a petition shall not toll the accrual of~~
12 ~~interest on the amount of taxes due.~~

13 (d) ~~Similarly, if any retailer having filed a return of and paid over the tax levied by this article~~
14 ~~feels that the amount of the tax is incorrect, the retailer may apply to the manager by petition in~~
15 ~~writing within twenty (20) days after the notice is mailed to him, or if applicable, after personal~~
16 ~~service, and the retailer may demand a hearing and a correction of the amount, or part of the~~
17 ~~amount, of the tax so assessed, following and complying with the same requirements as set forth~~
18 ~~in subsection (c) of this section.~~

19 (e) ~~The burden of proof that sales or consumption of commodities and services upon which~~
20 ~~refunds of taxes are claimed, or for which modifications or cancellations of assessments are~~
21 ~~sought, are exempt from or not subject to taxation under this article shall be on the taxpayer and~~
22 ~~such proof shall be by a preponderance of evidence.~~

23 **Section 5.** Section 50, Article II (City Sales Tax Article), Chapter 53 (also known and cited
24 as Section 53-50) of the Revised Municipal Code is amended by deleting the language stricken
25 and adding the language underlined to read as follows:

26 **Sec. 53-50. ~~Petition by aggrieved taxpayer to set hearing.~~ Review by the manager.**

27 (a) Petitions. Petitions submitted to the manager shall be in writing and shall contain a
28 statement of facts and reasons for and the amount of the requested changes in the assessment
29 or decision to deny or reduce a refund claim, and shall otherwise comply with the applicable rules
30 promulgated by the manager relating to petitions and hearings.

31 (b) Time limit for filing petitions. Petitions shall be submitted to the manager within thirty
32 (30) days from the date of the assessment or decision to deny or reduce a refund claim. If a

1 petition is not submitted within this time, the assessment or decision is final and no further review
2 is available.

3 (c) Notice of Hearing. ~~The manager shall notify the petitioning retailer claiming an error in~~
4 ~~assessment, or the purchaser claiming refund, taxpayer~~ in writing of the time and place within the
5 city fixed for hearing. ~~at least thirty (30) days prior thereto.~~

6 (d) Hearings. (i) A hearing, if any, shall be held and a decision issued within one hundred
7 eighty (180) days from the date a petition is received by the manger, unless the taxpayer and the
8 manager agree in writing: (a) that the hearing shall be held and a decision issued within such
9 further agreed time or (b) that no hearing shall be held before the manager, in which case, the
10 taxpayer may pursue further review in accordance with section 53-56 of this article. (ii) If none of
11 the events described in subsection (d)(i) of this section have occurred, the manager may notify
12 the taxpayer in writing that the manager does not intend to conduct a hearing, in which case, the
13 taxpayer may pursue further review in accordance with section 53-56 of this article. (iii) If none of
14 the events described in subsections (d)(i) and (d)(ii) of this section have occurred, the taxpayer
15 may pursue further review in accordance with section 53-56 of this article any time after one
16 hundred eighty (180) days or such further agreed time has passed.

17 (e) Manager may appoint designee. A hearing, if any, shall be before the manager or its
18 designee, who is authorized to administer oaths, to take testimony, to hear arguments, and to
19 issue all necessary and appropriate orders and decisions.

20 (f) Burden of proof. The burden of proof that sales of tangible personal property and
21 services upon which refunds of taxes are claimed, or for which modifications or cancellations of
22 assessments are sought, are exempt from or not subject to taxation under this article shall be on
23 the taxpayer and such proof shall be by a preponderance of evidence.

24 (g) Final order or decision. ~~After such hearing, at which the manager is authorized to~~
25 ~~administer oaths and take evidence and hear argument, the manager shall enter findings and~~
26 ~~make such order in the matter as is proper and furnish a copy to the taxpayer. Said findings and~~
27 ~~order shall constitute final decision of the manager in the matter. The final order or decision of the~~
28 manager or its designee shall be in writing and notice thereof shall be mailed to the taxpayer
29 forthwith.

30 **Section 6.** Section 55, Article II (City Sales Tax Article), Chapter 53 (also known and cited
31 as Section 53-55) of the Revised Municipal Code, which currently reads as follows, is repealed in
32 its entirety:

33 **Sec. 53-55. Decisions of manager, notice; when final.**

1 Decisions of the manager shall be final upon their entry and shall be mailed to the taxpayer
2 forthwith.

3 **Section 7.** Section 56, Article II (City Sales Tax Article), Chapter 53 (also known and cited
4 as Section 53-56) of the Revised Municipal Code is amended by deleting the language stricken
5 and adding the language underlined to read as follows:

6 **Sec. 53-56. Review of manager's final order or decision.**

7 (a) Should the taxpayer be aggrieved by ~~the~~ a final order or decision of the manager, the
8 taxpayer may proceed to have the same reviewed under Colorado Rules of Civil Procedure
9 106(a)(4), ~~or such similar procedure for the issuance of a writ in the nature of certiorari, only by~~
10 the district court for the second judicial district of the state. The petition or complaint for review
11 must be filed within thirty (30) days from the date entry of the manager's final order or decision
12 and ~~shall be the exclusive remedy for taxpayers electing, or deemed to have elected, to be~~
13 ~~governed by this section under subsection (c) of section 53-49 of this article. Court proceedings~~
14 ~~shall be governed by the Colorado Rules of Civil Procedure as amended from time to time. Any~~
15 party, including the city, may appeal the final order or decision of the manager and, also, the
16 decision of the district court (or such other tribunal having jurisdiction), using all judicial, appellate,
17 and extraordinary proceedings available.

18 (b) In lieu of the procedure provided for in subsection 53-56(a) of this article, the taxpayer
19 may proceed to have a final order or decision of the manger reviewed under section 29-2-106.1 of
20 the Colorado Revised Statutes.

21 **Section 8.** Subsections 95(6), (8), and (27), Article III (City Use Tax Article), Chapter 53,
22 (also known as cited as Section 53-95(6), (8), and (27)) of the Revised Municipal Code, which
23 currently reads as follows, is repealed in its entirety:

24 (6) *City* shall mean the City and County of Denver or the geographical area within its
25 territorial limits, depending upon the context.

26 (8) *Director of excise and licenses* shall mean the director of excise and licenses in and for
27 the city; and the term "manager" shall mean the manager of finance, or the duly authorized
28 representative thereof, in and for the city.

29 (27) Taxpayer shall mean any person obligated to account to the manager for taxes
30 collected or to be collected or from whom a tax is due under the terms of this article.

31 **Section 9.** Subsection 111(d), Article III (City Use Tax Article), Chapter 53 (also known
32 and cited as Section 53-111(d)) of the Revised Municipal Code is amended by deleting the
33 language stricken and adding the language underlined to read as follows:

1 (d) ~~*Hearing-Petition.*~~ An aggrieved applicant for a refund may, within thirty (30) days after
2 such decision is mailed postpaid to the taxpayer from the date of the decision to deny or reduce
3 their claim for refund, petition the manager of finance in writing for a hearing on the claim review of
4 the decision in the manner provided in section ~~53-117~~53-118 of this article, ~~regarding petitions to~~
5 ~~the manager protesting assessments and estimates of unpaid taxes.~~

6 **Section 10.** Section 117, Article III (City Use Tax Article), Chapter 53 (also known and
7 cited as Section 53-117) of the Revised Municipal Code is amended by deleting the language
8 stricken and adding the language underlined to read as follows:

9 **Sec. 53-117. ~~Refusal to make return; Audit; estimate of taxes, penalty, and interest;~~**
10 **penalty; notice; assessment.**

11 (a) The manager is authorized to examine, inspect and audit the books, invoices, accounts
12 and other records kept or maintained by the taxpayer for the collection of the taxes imposed by
13 this article. If the manager determines that any ~~if any person taxpayer~~ neglects or refuses to make
14 a timely return in payment of the taxes or to pay or to correctly account for any taxes as required
15 by this article, the manager shall make an estimate, based upon such information as may be
16 available ~~to him~~, with or without employing investigative powers vested in the manager by this
17 article, of the amount of the taxes due for the period or periods for which the taxpayer is
18 delinquent; and upon the basis of such estimated amount, compute and assess in addition
19 thereto a penalty equal to fifteen (15) percent thereof, together with the interest on such
20 delinquent taxes at the rate of one (1) percent each month, or a fraction thereof, from the date
21 when due until the date paid.

22 (b) Promptly thereafter the manager shall notify the delinquent taxpayer in writing and
23 demand payment thereof of such estimated taxes, penalty and interest.

24 (c) Such estimated amounts shall thereupon become an assessment, and such
25 assessment shall be final and due and payable from the taxpayer to the city thirty (30) days from
26 ~~either the date of personal service of the notice and demand or the date of mailing of the notice~~
27 and demand; provided, however, that within said thirty-day (30) period the delinquent taxpayer
28 may petition the manager in writing for review of the assessment in the manner provided in
29 section 53-118 of this article. ~~in writing for a revision, modification, or cancellation of such~~
30 ~~assessment, and, in such case, the taxpayer shall, within such thirty-day (30) period, elect to have~~
31 ~~further proceedings, if any, following the hearing before the manager, governed either by~~
32 ~~subsections 29-2-106.1(3) or (8) of the Colorado Revised Statutes or by section 53-56 of this~~
33 ~~article (in accordance with subsection 29-2-106.1(9) of the Colorado Revised Statutes). Failure to~~

1 ~~make an election shall be considered to be an election to be governed in further proceedings, if~~
2 ~~any, by section 53-56 of this article. Further, the taxpayer shall furnish the manager a summary~~
3 ~~written statement of facts and reasons for and the amount of the requested changes in the~~
4 ~~assessment and otherwise comply with the applicable rules and regulations promulgated by the~~
5 ~~manager relating to petitions and hearings. The filing of a petition shall not toll the accrual of~~
6 ~~interest on the amount of taxes due.~~

7 ~~(d) Similarly, if any retailer having filed a return of and paid over the tax levied by this article~~
8 ~~feels that the amount of the tax is incorrect, the retailer may apply to the manager by petition in~~
9 ~~writing within twenty (20) days after the notice is mailed to him, or if applicable, after personal~~
10 ~~service, and the retailer may demand a hearing and a correction of the amount, or part of the~~
11 ~~amount, of the tax so assessed, following and complying with the same requirements as set forth~~
12 ~~in subsection (c) of this section.~~

13 ~~(e) The burden of proof that sales or consumption of commodities and services upon which~~
14 ~~refunds of taxes are claimed, or for which modifications or cancellations of assessments are~~
15 ~~sought, are exempt from or not subject to taxation under this article shall be on the taxpayer and~~
16 ~~such proof shall be by a preponderance of evidence.~~

17 **Section 11.** Section 118, Article III (City Use Tax Article), Chapter 53 (also known and
18 cited as Section 53-118) of the Revised Municipal Code is amended by deleting the language
19 stricken and adding the language underlined to read as follows:

20 **Sec. 53-118. Petition by aggrieved taxpayer to set hearing. Review by the manager.**

21 (a) *Petitions.* Petitions submitted to the manager shall be in writing and shall contain a
22 statement of facts and reasons for and the amount of the requested changes in the assessment
23 or decision to deny or reduce a refund claim, and shall otherwise comply with the applicable rules
24 promulgated by the manager relating to petitions and hearings.

25 (b) *Time limit for filing petitions.* Petitions shall be submitted to the manager within thirty
26 (30) days from the date of the assessment or decision to deny or reduce a refund claim. If a
27 petition is not submitted within this time, the assessment or decision is final and no further review
28 is available.

29 (c) *Notice of Hearing.* The manager shall notify the petitioning retailer claiming an error in
30 assessment, or the purchaser claiming refund, taxpayer in writing of the time and place within the
31 city fixed for hearing, at least thirty (30) days prior thereto.

32 (d) *Hearings.* (i) A hearing, if any, shall be held and a decision issued within one hundred
33 eighty (180) days from the date a petition is received by the manger, unless the taxpayer and the

1 manager agree in writing: (a) that the hearing shall be held and a decision issued within such
2 further agreed time or (b) that no hearing shall be held before the manager, in which case, the
3 taxpayer may pursue further review in accordance with section 53-124 of this article. (ii) If none
4 of the events described in subsection (d)(i) of this section have occurred, the manager may notify
5 the taxpayer in writing that the manager does not intend to conduct a hearing, in which case, the
6 taxpayer may pursue further review in accordance with section 53-124 of this article. (iii) If none
7 of the events described in subsections (d)(i) and (d)(ii) of this section have occurred, the taxpayer
8 may pursue further review in accordance with section 53-124 of this article any time after one
9 hundred eighty (180) days or such further agreed time has passed.

10 (e) *Manager may appoint designee.* A hearing, if any, shall be before the manager or its
11 designee, who is authorized to administer oaths, to take testimony, to hear arguments, and to
12 issue all necessary and appropriate orders and decisions.

13 (f) *Burden of proof.* The burden of proof that storage, use, distribution, or consumption of
14 tangible personal property or services upon which refunds of taxes are claimed, or for which
15 modifications or cancellations of assessments are sought, are exempt from or not subject to
16 taxation under this article shall be on the taxpayer and such proof shall be by a preponderance of
17 evidence.

18 (g) *Final order or decision.* After such hearing, at which the manager is authorized to
19 administer oaths and take evidence and hear argument, the manager shall enter findings and
20 make such order in the matter as is proper and furnish a copy to the taxpayer. Said findings and
21 order shall constitute final decision of the manager in the matter. The final order or decision of the
22 manager or its designee shall be in writing and notice thereof shall be mailed to the taxpayer
23 forthwith.

24 **Section 12.** Section 123, Article III (City Use Tax Article), Chapter 53 (also known and
25 cited as Section 53-123) of the Revised Municipal Code, which currently reads as follows, is
26 repealed in its entirety:

27 **Sec. 53-123. Decision of manager; notice; when final.**

28 Decisions of the manager shall be final upon their entry and shall be mailed to the taxpayer
29 forthwith.

30 **Section 13.** Section 124, Article III (City Use Tax Article), Chapter 53 (also known and
31 cited as Section 53-124) of the Revised Municipal Code is amended by deleting the language
32 stricken and adding the language underlined to read as follows:

33 **Sec. 53-124. Review of manager's final order or decision.**

1 (a) Should the taxpayer be aggrieved by ~~the~~ a final order or decision of the manager, the
2 taxpayer may proceed to have the same reviewed under Colorado Rules of Civil Procedure
3 106(a)(4), ~~or such similar procedure for the issuance of a writ in the nature of certiorari, only by~~
4 the district court for the second judicial district of the state. The petition or complaint for review
5 must be filed within thirty (30) days from the date entry of the manager's final order or decision
6 ~~and shall be the exclusive remedy for taxpayers electing, or deemed to have elected, to be~~
7 ~~governed by this section under subsection (c) of section 53-117 of this article. Court proceedings~~
8 ~~shall be governed by the Colorado Rules of Civil Procedure as amended from time to time. Any~~
9 party, including the city, may appeal the final order or decision of the manager and, also, the
10 decision of the district court (or such other tribunal having jurisdiction), using all judicial, appellate,
11 and extraordinary proceedings available.

12 (b) In lieu of the procedure provided for in subsection 53-124(a) of this article, the taxpayer
13 may proceed to have a final order or decision of the manger reviewed under section 29-2-106.1 of
14 the Colorado Revised Statutes.

15 **Section 14.** Subsection 170(7), Article IV (City Lodger's Tax Article), Chapter 53, (also
16 known as cited as Section 53-170(7)) of the Revised Municipal Code, which currently reads as
17 follows, is repealed in its entirety:

18 (7) *Taxpayer* shall mean any person obligated to account to the manager of finance for
19 taxes collected or to be collected, or from which a tax is due, under the terms of this article.

20 **Section 15.** Subsection 181(d), Article IV (City Lodger's Tax Article), Chapter 53 (also
21 known and cited as Section 53-181(d)) of the Revised Municipal Code is amended by deleting the
22 language stricken and adding the language underlined to read as follows:

23 (d) *Hearing-Petition.* An aggrieved applicant for a refund may, within thirty (30) days ~~after~~
24 ~~such~~ from the date of the decision to deny or reduce their claim for refund is mailed to him,
25 ~~petition the manager of finance in writing for a hearing on the claim-review of the decision in the~~
26 manner provided in section 53-188 of this article.

27 **Section 16.** Section 187, Article IV (City Lodger's Tax Article), Chapter 53 (also known
28 and cited as Section 53-187) of the Revised Municipal Code is amended by deleting the language
29 stricken and adding the language underlined to read as follows:

30 **Sec. 53-187. ~~Refusal to make return; Audit; estimate of taxes, penalty, and interest;~~**
31 **penalty; notice; assessment.**

32 (a) The manager is authorized to examine, inspect and audit the books, invoices, accounts
33 and other records kept or maintained by the taxpayer for the collection of the taxes imposed by

1 this article. If the manager determines that any ~~if any person taxpayer~~ neglects or refuses to make
2 a timely return in payment of the taxes or to pay or to correctly account for any taxes as required
3 by this article, the manager shall make an estimate, based upon such information as may be
4 available, with or without employing investigative powers vested in the manager by this article, of
5 the amount of the taxes due for the period or periods for which the taxpayer is delinquent; and
6 upon the basis of such estimated amount, compute and assess in addition thereto a penalty equal
7 to fifteen (15) percent thereof, together with the interest on such delinquent taxes at the rate of
8 one (1) percent each month, or a fraction thereof, from the date when due until the date paid.

9 (b) Promptly thereafter the manger of ~~finance~~ shall ~~give to~~ notify the delinquent taxpayer
10 ~~written notice in writing and demand payment thereof~~ of such estimated taxes, penalty and
11 interest, ~~which notice must be served personally or by register or certified mail.~~

12 (c) Such estimated amounts shall thereupon become an assessment, and such
13 assessment shall be final and due and payable from the taxpayer to the city thirty (30) days from
14 ~~either the date of personal service of the notice and demand or the date of mailing of the notice~~
15 and demand; provided, however, that within said thirty-day period the delinquent taxpayer may
16 petition the manager in writing for review of the assessment in the manner provided in section 53-
17 198 of this article. ~~a revision, modification or cancellation of such assessment, and, further, said~~
18 taxpayer shall, ~~within such thirty-day period, furnish the manager a written statement of the facts~~
19 ~~and reasons for the requested changes in the assessment and otherwise comply with the~~
20 ~~applicable rules and regulations promulgated by the manager relating to petitions and hearings.~~
21 The filing of a petition shall not toll the accrual of interest on the amount of taxes due.

22 (d) ~~Such petition shall be in writing and the facts and figures submitted shall be submitted~~
23 ~~either in writing or orally and shall be given under oath of the taxpayer.~~

24 (e) ~~Thereupon the manager of finance shall modify such assessment in accordance with~~
25 ~~the facts submitted, which facts the manager deems correct. Such assessment shall be~~
26 ~~considered the final order of the manager and may be reviewed under Rule 106(a)(4) of the~~
27 ~~Colorado Rules of Civil Procedure as provided in this article, provided, that the taxpayer gives~~
28 ~~written notice to the manager of such intention within five (5) days after receipt of the final order of~~
29 ~~assessment.~~

30 **Section 17.** Section 188, Article IV (City Lodger's Tax Article), Chapter 53 (also known
31 and cited as Section 53-188) of the Revised Municipal Code is amended by deleting the language
32 stricken and adding the language underlined to read as follows:

33 **Sec. 53-188.** ~~Petition by aggrieved taxpayer to set hearings.~~ Review by the manager.

1 If any person, having made a return and paid the tax provided for in this article, feels that
2 the amount of tax is incorrect, the person may apply to the manager by petition in writing within
3 thirty (30) days after the notice is mailed to the person, for a hearing and a correction of the
4 amount of tax so assessed, in which petition the person shall set forth the reasons why such
5 hearing should be granted and the amount by which such tax should be reduced.

6 (a) Petitions. Petitions submitted to the manager shall be in writing and shall contain a
7 statement of facts and reasons for and the amount of the requested changes in the assessment
8 or decision to deny or reduce a refund claim, and shall otherwise comply with the applicable rules
9 promulgated by the manager relating to petitions and hearings.

10 (b) Time limit for filing petitions. Petitions shall be submitted to the manager within thirty
11 (30) days from the date of the assessment or decision to deny or reduce a refund claim. If a
12 petition is not submitted within this time, the assessment or decision is final and no further review
13 is available.

14 (c) Notice of Hearing. The manager shall notify the ~~petitioner taxpayer~~ in writing of the time
15 and place within the city fixed by the manager for such hearing, ~~at least thirty (30) days prior~~
16 ~~thereto.~~

17 (d) Hearings. A hearing, if any, shall be conducted in accordance with applicable rules
18 promulgated by the manger relating to petitions and hearings.

19 (e) Manager may appoint designee. A hearing, if any, shall be before the manager or its
20 designee, who is authorized to administer oaths, to take testimony, to hear arguments, and to
21 issue all necessary and appropriate orders and decisions.

22 (f) Burden of proof. The burden of proof that sales of lodging upon which refunds of taxes
23 are claimed, or for which modifications or cancellations of assessments are sought, are exempt
24 from or not subject to taxation under this article shall be on the taxpayer and such proof shall be
25 by a preponderance of evidence.

26 (g) Final order or decision. After such hearing, at which the manager is authorized to
27 administer oaths and take evidence and hear argument, the manager shall enter findings and
28 make such order in the matter as is proper and furnish a copy to the taxpayer. Said findings and
29 order shall constitute final decision of the manager in the matter. The final order or decision of the
30 manager or its designee shall be in writing and notice thereof shall be mailed to the taxpayer
31 forthwith.

32 **Section 18.** Section 189, Article IV (City Lodger's Tax Article), Chapter 53 (also known
33 and cited as Section 53-189) of the Revised Municipal Code, which currently read as follows, is

1 hereby repealed in its entirety:

2 **Sec. 53-189. Hearings to be held in city.**

3 Every hearing before the manager of finance under this article shall be held in the city.

4 **Section 19.** Section 193, Article IV (City Lodger's Tax Article), Chapter 53 (also known
5 and cited as Section 53-193) of the Revised Municipal Code, which currently reads as follows, is
6 hereby repealed in its entirety:

7 **Sec. 53-193. Decisions of manager, notice; when final.**

8 Every decision of the manager of finance shall be in writing, and notice thereof shall be
9 mailed to the vendor within ten (10) days, and all such decisions shall become final upon the
10 expiration of thirty (30) days after notice of such decision shall have been mailed to the taxpayer,
11 unless proceedings are begun within the time for review thereof as provided in this article.

12 **Section 20.** Section 194, Article IV (City Lodger's Tax Article), Chapter 53 (also known
13 and cited as Section 53-194) of the Revised Municipal Code is amended by deleting the language
14 stricken and adding the language underlined to read as follows:

15 **Sec. 53-194. Review of manager's final order or decision.**

16 (a) Should the applicant for a refund taxpayer be aggrieved at the by a final order or
17 decision of the manager of finance, the applicant taxpayer may proceed to have same reviewed
18 by the courts in the manner provided for review of other decisions of the manager under this
19 article, such review under Colorado Rules of Civil Procedure 106(a)(4) by to be in the district court
20 of for the second judicial district of the state. The petition or complaint for review must be filed
21 within thirty (30) days from the date of the final order or decision. Any party, including the city,
22 may appeal the final order or decision of the manager and, also, the decision of the district court
23 (or such other tribunal having jurisdiction), using all judicial, appellate, and extraordinary
24 proceedings available.

25 (b) Before filing a petition or complaint for review under Colorado Rules of Civil Procedure
26 106(a)(4), the taxpayer shall file with the manager of finance a bond in twice the amount of the
27 taxes, interest and other charges audited and stated in the final order or decision of the manager,
28 with surety as is provided in other cases of appeal, or may deposit lawful money of the United
29 States in the same manner as herein provided.

30 **Section 21.** Section 195, Article IV (City Lodger's Tax Article), Chapter 53 (also known
31 and cited as Section 53-195) of the Revised Municipal Code, which currently reads as follows, is
32 hereby repealed in its entirety:

33 **Sec. 53-195. Review of manager's decision by district court.**

1 (a) The district court of the second judicial district of the state shall have original jurisdiction
2 in proceedings to review all questions of law and fact determined by the manager of finance in
3 administering the provisions of this article by writ under Rule 106(a)(4) of the Colorado Rules of
4 Civil Procedure.

5 (b) Before making application to the district court under Rule 106(a)(4) of the Colorado
6 Rules of Civil Procedure, the party making such application shall file with the manager of finance
7 a bond in twice the amount of the taxes, interest and other charges audited and stated in the
8 determination and decision of the manager with surety as is now provided in other cases of
9 appeal, or at his option may deposit lawful money of the United States in the same manner as
10 herein provided

11 (c) Such writs shall be issued by the clerk of the court upon a verified petition of the
12 taxpayer, filed within thirty (30) days after notice of the decision of the manager of finance in any
13 such matter.

14 (d) The writ shall be served within five (5) days after its issuance and shall be returnable, at
15 such time as the court may determine, not less than ten (10) days nor more than twenty (20) days
16 after the date when the writ was issued. The manager of finance shall forthwith certify the record
17 of the manager's proceedings to the court.

18 (e) The procedure thereunder shall be in conformity with the rules of civil procedure of the
19 state.

20 **Section 22.** Section 196, Article IV (City Lodger's Tax Article), Chapter 53 (also known
21 and cited as Section 53-196) of the Revised Municipal Code, which currently reads as follows, is
22 hereby repealed in its entirety:

23 **Sec. 53-196. Review of district court decision by supreme court.**

24 The decision of the district court under this article may be reviewed in the supreme court
25 upon writ of error by any party.

26 **Section 23.** Subsection 240(3), Article V (Employee Occupational Privilege Tax Article),
27 Chapter 53 (also known and cited as Section 53-240(3)) of the Revised Municipal Code, which
28 currently reads as follows, is hereby repealed in its entirety:

29 (3) Taxpayer shall mean any employer who is required to withhold and pay the tax
30 imposed by this article; or the employee who is taxed herein, as the case may be.

31 **Section 24.** Subsections 249(c) and (d), Article V (Employee Occupational Privilege Tax
32 Article), Chapter 53 (also known and cited as Section 53-249(c) and (d)) of the Revised Municipal
33 Code are amended by deleting the language stricken and adding the language underlined to read

1 as follows:

2 (c) Decisions. Upon receipt of such application, the manager shall examine the same with
3 all convenient speed and shall give notice to the applicant by an order in writing of his decision
4 thereon. ~~Hearing.~~ Upon receipt of such application, the manager of finance shall grant to such
5 employee a hearing upon the same, and the manager shall notify such employee in writing of the
6 time and place fixed by him for such hearing. After such hearing, the manager shall make such
7 order in the manner as is just and lawful and shall furnish a copy of such order to such employee.

8 (d) Petition. An aggrieved applicant for a refund may, within thirty (30) days from the date
9 of the decision to deny or reduce their claim for refund, petition the manager in writing for review
10 of the decision in the manner provided in section 53-255 of this article. ~~Decisions.~~ Upon receipt of
11 such application, the manager shall examine the same with all convenient speed and shall give
12 notice to the applicant by an order in writing of his decision thereon.

13 **Section 25.** Section 254, Article V (Employee Occupational Privilege Tax Article), Chapter
14 53 (also known and cited as Section 53-254) of the Revised Municipal Code is amended by
15 deleting the language stricken and adding the language underlined to read as follows:

16 **Sec. 53-254. Refusal to make return Audit; estimate of taxes, penalty, and interest;**
17 **penalty; notice; assessment.**

18 (a) The manager is authorized to examine, inspect and audit the books, invoices, accounts
19 and other records kept or maintained by the taxpayer for the collection of the taxes imposed by
20 this article. If the manager determines that any ~~if any person taxpayer~~ neglects or refuses to
21 make a return in payment of the taxes as required by this article, the manager shall make an
22 estimate, based upon such information as may be available, ~~to him,~~ with or without employing
23 investigative powers vested in the manager by this article, of the amount of the taxes due for the
24 period or periods for which the taxpayer is delinquent; and upon the basis of such estimated
25 amount, compute and assess in addition thereto a penalty equal to fifteen (15) percent thereof,
26 together with the interest on such delinquent taxes at the rate of one (1) percent each month, or a
27 fraction thereof, from the date when due until the date paid.

28 (b) Promptly thereafter the manager shall notify the delinquent taxpayer in writing and
29 demand payment thereof of such estimated taxes, penalty and interest, ~~in writing served~~
30 ~~personally or by mail.~~

31 (c) Such estimated amounts shall thereupon become an assessment, and such
32 assessment shall be final and due and payable from the taxpayer to the city thirty (30) days from
33 ~~either the date of personal service of the notice and demand or the date of mailing of the notice~~

1 and demand; provided, however, that within said thirty-day period the delinquent taxpayer may
2 petition the manager in writing for review of the assessment in the manner provided in section 53-
3 255 of this article. ~~a revision, modification or cancellation of such assessment, and further, said~~
4 ~~taxpayer shall, within such thirty-day period, furnish the manager a summary written statement of~~
5 ~~the facts and reasons for and the amount of the requested changes in the assessment and~~
6 ~~otherwise comply with the applicable rules and regulations promulgated by the manager relating~~
7 ~~to petitions and hearings.~~ The filing of a petition shall not toll the accrual of interest on the amount
8 of taxes due.

9 (d) ~~Such petition shall be in writing, and the facts and figures submitted shall be submitted~~
10 ~~either in writing or orally and shall be given under oath of the taxpayer.~~

11 (e) ~~Thereupon the manager of finance shall modify such assessment in accordance with~~
12 ~~the facts submitted, which facts the manager deems correct. Such assessment shall be~~
13 ~~considered the final order of the manager and may be reviewed under Rule 106(a)(4) of the~~
14 ~~Colorado Rules of Civil Procedure as provided in this article, provided that the taxpayer gives~~
15 ~~written notice to the manager of such intention within five (5) days after receipt of the final order of~~
16 ~~assessment.~~

17 **Section 26.** Section 255, Article V (Employee Occupational Privilege Tax Article), Chapter
18 53 (also known and cited as Section 53-255) of the Revised Municipal Code is amended by
19 deleting the language stricken and adding the language underlined to read as follows:

20 **Sec. 53-255. Hearings generally Review by the manager.**

21 (a) Petitions. Petitions submitted to the manager shall be in writing and shall contain a
22 statement of facts and reasons for and the amount of the requested changes in the assessment
23 or decision to deny or reduce a refund claim, and shall otherwise comply with the applicable rules
24 promulgated by the manager relating to petitions and hearings.

25 (b) Time limit for filing petitions. Petitions shall be submitted to the manager within thirty
26 (30) days from the date of the assessment or decision to deny or reduce a refund claim. If a
27 petition is not submitted within this time, the assessment or decision is final and no further review
28 is available.

29 (c) Notice of Hearing. The manager shall notify the taxpayer in writing of the time and
30 place within the city fixed for hearing.

31 (d) Hearings. A hearing, if any, shall be conducted in accordance with applicable rules
32 promulgated by the manger relating to petitions and hearings.

1 (e) Manager may appoint designee. A hearing, if any, shall be before the manager or its
2 designee, who is authorized to administer oaths, to take testimony, to hear arguments, and to
3 issue all necessary and appropriate orders and decisions.

4 (f) Burden of proof. The burden of proof that the employment upon which refunds of taxes
5 are claimed, or for which modifications or cancellations of assessments are sought, are exempt
6 from or not subject to taxation under this article shall be on the taxpayer and such proof shall be
7 by a preponderance of evidence.

8 ~~(a) The manager of finance shall notify the taxpayer in writing of the time and place for a~~
9 ~~hearing thirty (30) days prior thereto.~~

10 ~~(b) After a hearing under this article, the taxpayer shall not be entitled to a second hearing~~
11 ~~before the manager of finance on the matters set forth in the previous request for a hearing.~~

12 ~~(c) At the hearing, the taxpayer may assert any facts, make any arguments and file any~~
13 ~~briefs and affidavits the taxpayer believes pertinent to the taxpayer's cause.~~

14 ~~(d) In lieu of the request for hearing within the time provided by this article, the taxpayer~~
15 ~~may, at the taxpayer's election, file a written brief and such other written materials or documents~~
16 ~~as the taxpayer shall deem appropriate and request that the manager of finance reconsider the~~
17 ~~deficiency without a hearing. The manager shall proceed to reconsider the deficiency in the same~~
18 ~~manner as if the written material submitted had been presented at a hearing pursuant to this~~
19 ~~section. The submission of written material shall be considered for all purposes the same as a~~
20 ~~request for and submission of the material at a hearing.~~

21 ~~(e) Based on the evidence presented at such hearing or filed in support of the taxpayer's~~
22 ~~contentions, the manager of finance shall make a final determination within a reasonable time and~~
23 ~~shall send the taxpayer a notice of final determination by mail accompanied by notice and~~
24 ~~demand for payment. The manager may modify the tax, penalty and interest questioned at the~~
25 ~~hearing and may approve a refund. Unless an appeal be taken as provided in this article, the tax,~~
26 ~~together with interest thereon and penalties, if any, shall be paid within thirty (30) days after~~
27 ~~mailing of the notice and demand for payment by the manager.~~

28 ~~(f) The burden of proof at the hearing shall be on the one making the claim and such proof~~
29 ~~shall be by a preponderance of evidence.~~

30 **Section 27.** Section 256, Article V (Employee Occupational Privilege Tax Article), Chapter
31 53 (also known and cited as Section 53-256) of the Revised Municipal Code, which currently
32 reads as follows, is repealed in its entirety:

33 **Sec. 53-256. Hearings to be held in city.**

1 Every hearing before the manager of finance under this article shall be held in the city.

2 **Section 27.** Section 259, Article V (Employee Occupational Privilege Tax Article), Chapter
3 53 (also known and cited as Section 53-259) of the Revised Municipal Code, which currently
4 reads as follows, is repealed in its entirety:

5 **Sec. 53-259. - Depositions.**

6 The manager of finance or any party in an investigation or hearing before the manager
7 may cause the deposition of witnesses residing within or without the state to be taken in the
8 manner prescribed by law for like depositions in civil actions in courts of this state and to that end
9 compel the attendance of witnesses and the production of books, papers, records or memoranda.

10 **Section 28.** Section 260, Article V (Employee Occupational Privilege Tax Article), Chapter
11 53 (also known and cited as Section 53-260) of the Revised Municipal Code, which currently
12 reads as follows, is repealed in its entirety:

13 **Sec. 53-260. Decisions of manager; notice; when final.**

14 Every decision of the manager of finance shall be in writing, and notice thereof shall be
15 mailed to the taxpayer within ten (10) days, and all such decisions shall become final upon the
16 expiration of thirty (30) days after notice of such decision shall have been mailed to the taxpayer,
17 unless proceedings are begun within the time for review thereof as provided in this article.

18 **Section 29.** Section 261, Article V (Employee Occupational Privilege Tax Article), Chapter
19 53 (also known and cited as Section 53-261) of the Revised Municipal Code is amended by
20 deleting the language stricken and adding the language underlined to read as follows:

21 **Sec. 53-261. Review of manager's final order or decision in district court.**

22 (a) Should the taxpayer be aggrieved by a final order or decision of the manager, the
23 taxpayer may proceed to have the same reviewed under Colorado Rules of Civil Procedure
24 106(a)(4) by the The district court of for the second judicial district of the state. The petition or
25 complaint for review must be filed within thirty (30) days from the date of the final order or
26 decision. Any party, including the city, may appeal the final order or decision of the manager and,
27 also, the decision of the district court (or such other tribunal having jurisdiction), using all judicial,
28 appellate, and extraordinary proceedings available. shall have original jurisdiction in proceedings
29 to review all questions of law and fact determined by the manager of finance in administering the
30 provisions of this article by writ under Rule 106(a)(4) of the Colorado Rules of Civil Procedure.

31 (b) Before filing a petition or complaint for review under Colorado Rules of Civil Procedure
32 106(a)(4), the taxpayer shall file with the manager a bond in twice the amount of the taxes,
33 interest and other charges audited and stated in the final order or decision of the manager, with

1 surety as is provided in other cases of appeal, or may deposit lawful money of the United States
2 in the same manner as herein provided. ~~Such writs shall be issued by the clerk of the court upon~~
3 ~~a verified petition of the taxpayer, filed within thirty (30) days after notice of the decision of the~~
4 ~~manager of finance in any such matter.~~

5 ~~(c) The writ shall be served within five (5) days after its issuance and shall be returnable at~~
6 ~~such time as the court may determine, not less than ten (10) days nor more than twenty (20) days~~
7 ~~after the date when the writ was issued. The manager of finance shall forthwith certify the record~~
8 ~~of the manager's proceedings to the court.~~

9 ~~(d) The procedure there under shall be in conformity with the rules of civil procedure of the~~
10 ~~state.~~

11 **Section 30.** Section 262, Article V (Employee Occupational Privilege Tax Article), Chapter
12 53 (also known and cited as Section 53-262) of the Revised Municipal Code, which currently
13 reads as follows, is repealed in its entirety:

14 **Sec. 53-262. Review of district court decision by supreme court.**

15 The decision of the district court under this article may be reviewed in the supreme court
16 upon writ of error by any party.

17 **Section 31.** Subsection 295(5), Article VI (Employer Occupational Privilege Tax Article),
18 Chapter 53 (also known and cited as Section 53-295(5)) of the Revised Municipal Code, which
19 currently reads as follows, is repealed in its entirety:

20 (5) *Taxpayer* shall mean any person engaged in business who is required to pay the tax
21 imposed by this article.

22 **Section 32.** Section 306, Article VI (Employer Occupational Privilege Tax Article), Chapter
23 53 (also known and cited as Section 53-306) of the Revised Municipal Code is amended by
24 deleting the language stricken and adding the language underlined to read as follows:

25 **Sec. 53-306. ~~Refusal to make return~~ Audit; estimate of taxes, penalty, and interest;**
26 **penalty; notice; assessment.**

27 (a) The manager is authorized to examine, inspect and audit the books, invoices, accounts
28 and other records kept or maintained by the taxpayer for the collection of the taxes imposed by
29 this article. If the manager determines that any ~~If any person taxpayer~~ neglects or refuses to
30 make a timely return in payment of the taxes or to pay or to correctly account for any taxes as
31 required by this article, the manager shall make an estimate, based upon such information as
32 may be available ~~to him~~, with or without employing investigative powers vested in the manager by
33 this article, of the amount of the taxes due for the period or periods for which the taxpayer is

1 delinquent; and upon the basis of such estimated amount, compute and assess in addition
2 thereto a penalty equal to fifteen (15) percent thereof, together with the interest on such
3 delinquent taxes at the rate of one (1) percent each month, or a fraction thereof, from the date
4 when due until the date paid.

5 (b) Promptly thereafter, the manager shall notify the delinquent taxpayer in writing and
6 demand payment thereof of such estimated taxes, penalty and interest.

7 (c) Such estimated amounts shall thereupon become an assessment, and such
8 assessment shall be final and due and payable from the taxpayer to the city thirty (30) days from
9 ~~either the date of personal service of the notice and demand or the date of mailing of the notice~~
10 ~~and demand; provided, however, that within said thirty-day period the delinquent taxpayer may~~
11 ~~petition the manager in writing for~~ review of the assessment in the manner provided in section 53-
12 307 of this article. ~~a revision, modification or cancellation of such assessment, and further, said~~
13 ~~taxpayer shall, in order to perfect such petition and within such thirty-day period, furnish the~~
14 ~~manager a summary written statement of the facts and reasons for and the amount of the~~
15 ~~requested changes in the assessment, and thereafter comply otherwise with the applicable rules~~
16 ~~and regulations promulgated by the manager relating to petitions and hearings. The filing of a~~
17 ~~petition shall not toll the accrual of interest on the amount of taxes due.~~

18 ~~(d) Such petition shall be in writing, and the facts and figures submitted shall be submitted~~
19 ~~either in writing or orally and shall be given under oath of the taxpayer.~~

20 ~~(e) Thereupon the manager of finance shall modify such assessment in accordance with~~
21 ~~the facts submitted, which facts the manager deems correct. Such assessment shall be~~
22 ~~considered the final order of the manager and may be reviewed under Rule 106(a)(4) of the~~
23 ~~Colorado Rules of Civil Procedure as provided in this article, provided, that the taxpayer gives~~
24 ~~written notice to the manager of such intention within five (5) days after receipt of the final order of~~
25 ~~assessment.~~

26 **Section 33.** Section 307, Article VI (Employer Occupational Privilege Tax Article), Chapter
27 53 (also known and cited as Section 53-307) of the Revised Municipal Code is amended by
28 deleting the language stricken and adding the language underlined to read as follows:

29 **Sec. 53-307. Hearings generally Review by the manager.**

30 (a) *Petitions.* Petitions submitted to the manager shall be in writing and shall contain a
31 statement of facts and reasons for and the amount of the requested changes in the assessment
32 and shall otherwise comply with the applicable rules promulgated by the manager relating to
33 petitions and hearings.

1 (b) Time limit for filing petitions. Petitions shall be submitted to the manager within thirty
2 (30) days from the date of the assessment. If a petition is not submitted within this time, the
3 assessment is final and no further review is available.

4 (c) Notice of Hearing. The manager shall notify the taxpayer in writing of the time and
5 place within the city fixed for hearing.

6 (d) Hearings. A hearing, if any, shall be conducted in accordance with applicable rules
7 promulgated by the manger relating to petitions and hearings.

8 (e) Manager may appoint designee. A hearing, if any, shall be before the manager or its
9 designee, who is authorized to administer oaths, to take testimony, to hear arguments, and to
10 issue all necessary and appropriate orders and decisions.

11 (f) Burden of proof. The burden of proof that the employment upon which modifications or
12 cancellations of assessments are sought, are exempt from or not subject to taxation under this
13 article shall be on the taxpayer and such proof shall be by a preponderance of evidence.

14 ~~(a) The manager of finance shall notify the taxpayer in writing of the time and place for a~~
15 ~~hearing under this article thirty (30) days prior thereto.~~

16 ~~(b) After a hearing under this article, the taxpayer shall not be entitled to a second hearing~~
17 ~~before the manager of finance on the matters set forth in the previous request for a hearing.~~

18 ~~(d) In lieu of the request for a hearing within the time provided by this section, the taxpayer~~
19 ~~may, at the taxpayer's election, file a written brief and such other written materials or documents~~
20 ~~as the taxpayer shall deem appropriate and request that the manager of finance reconsider the~~
21 ~~deficiency without a hearing. The manager shall proceed to reconsider the deficiency in the same~~
22 ~~manner as if the written material submitted had been presented at a hearing pursuant to this~~
23 ~~section. The submission of written material shall be considered for all purposes the same as a~~
24 ~~request for and submission of the material at a hearing.~~

25 ~~(e) Based on the evidence presented at such hearing or filed in support of the taxpayer's~~
26 ~~contentions, the manager of finance shall make a final determination within a reasonable time and~~
27 ~~shall send the taxpayer a notice of final determination by mail accompanied by notice and~~
28 ~~demand for payment. The manager may modify the tax, penalty and interest questioned at the~~
29 ~~hearing and may approve a refund. Unless an appeal be taken as provided in this article, the tax,~~
30 ~~together with interest thereon and penalties, if any, shall be paid within thirty (30) days after~~
31 ~~mailing of the notice and demand for payment by the manager.~~

32 ~~(f) The burden of proof shall be on the one making such claim and such proof shall be by a~~
33 ~~preponderance of evidence.~~

1 **Section 34.** Section 308, Article VI (Employer Occupational Privilege Tax Article), Chapter
2 53 (also known and cited as Section 53-308) of the Revised Municipal Code, which currently
3 reads as follows, is repealed in its entirety:

4 **Sec. 53-308. Hearings to be held in city.**

5 Every hearing before the manager of finance under this article shall be held in the city.

6 **Section 35.** Section 311, Article VI (Employer Occupational Privilege Tax Article), Chapter
7 53 (also known and cited as Section 53-311) of the Revised Municipal Code, which currently
8 reads as follows, is repealed in its entirety::

9 **Sec. 53-311. Depositions.**

10 The manager of finance or any party in an investigation or hearing before the manager
11 may cause the deposition of witnesses residing within or without the state to be taken in the
12 manner prescribed by law for like depositions in civil actions in courts of this state and to that end
13 compel the attendance of witnesses and the production of books, papers, records or memoranda.

14 **Section 36.** Section 312, Article VI (Employer Occupational Privilege Tax Article), Chapter
15 53 (also known and cited as Section 53-312) of the Revised Municipal Code, which currently
16 reads as follows, is repealed in its entirety::

17 **Sec. 53-312. Decisions of manager; notice; when final.**

18 Every decision of the manager of finance shall be in writing, and notice thereof shall be
19 mailed to the taxpayer within ten (10) days, and all such decisions shall become final upon the
20 expiration of thirty (30) days after notice of such decision shall have been mailed to the taxpayer,
21 unless proceedings are begun within the time for review thereof as provided in this article.

22 **Section 37.** Section 313, Article VI (Employer Occupational Privilege Tax Article), Chapter
23 53 (also known and cited as Section 53-313) of the Revised Municipal Code is amended by
24 deleting the language stricken and adding the language underlined to read as follows:

25 **Sec. 53-313. Review of manager's final order or decision in district court.**

26 (a) Should the taxpayer be aggrieved by a final order or decision of the manger, the
27 taxpayer may proceed to have the same reviewed under Colorado Rules of Civil Procedure
28 106(a)(4) by the The district court of for the second judicial district of the state, shall have original
29 jurisdiction in proceedings to review all questions of law and fact determined by the manager of
30 finance in administering the provisions of this article by writ under Rule 106(a)(4) of the Colorado
31 Rules of Civil Procedure. The petition or complaint for review must be filed within thirty (30) days
32 from the date of the final order or decision. Any party, including the city, may appeal the final
33 order or decision of the manager and, also, the decision of the district court (or such other tribunal

1 having jurisdiction), using all judicial, appellate, and extraordinary proceedings available.

2 (b) Before filing a petition or complaint for review under Colorado Rules of Civil Procedure
3 106(a)(4), the taxpayer shall file with the manager a bond in twice the amount of the taxes,
4 interest and other charges audited and stated in the final order or decision of the manager of
5 finance, with surety as is provided in other cases of appeal, or may deposit lawful money of the
6 United States in the same manner as herein provided. ~~Such writs shall be issued by the clerk of~~
7 ~~the court upon a verified petition of the taxpayer, filed within thirty (30) days after notice of the~~
8 ~~decision of the manager of finance in any such matter.~~

9 ~~(c) The writ shall be served within five (5) days after its issuance and shall be returnable at~~
10 ~~such time as the court may determine, not less than ten (10) days nor more than twenty (20) days~~
11 ~~after the date when the writ was issued. The manager shall forthwith certify the record of the~~
12 ~~manager's proceedings to the court.~~

13 ~~(d) The procedure there under shall be in conformity with the rules of civil procedure of the~~
14 ~~state.~~

15 **Section 38.** Section 314, Article VI (Employer Occupational Privilege Tax Article), Chapter
16 53 (also known and cited as Section 53-314) of the Revised Municipal Code, which currently
17 reads as follows, is repealed in its entirety:

18 **Sec. 53-314. Review of district court decisions by supreme court.**

19 The decision of the district court in this article may be reviewed in the supreme court upon
20 writ of error by any party.

21 **Section 39.** Subsection 345(6), Article VII (Facilities Development Administration Tax
22 Article), Chapter 53 (also known and cited as Section 53-345(6)) of the Revised Municipal Code,
23 which currently reads as follows, is repealed in its entirety:

24 (6) *Taxpayer* shall mean any person obligated to account to the manager of finance for the
25 taxes collected or to be collected, or from whom a tax is due, under the terms of this article.

26 **Section 40.** Subsection 355(d), Article VII (Facilities Development Administration Tax
27 Article), Chapter 53 (also known and cited as Section 53-355(d)) of the Revised Municipal Code is
28 amended by deleting the language stricken and adding the language underlined to read as
29 follows:

30 (d) ~~*Hearing-Petition.*~~ An aggrieved applicant for a refund may, within thirty (30) days after
31 notice of such decision, from the date of the decision to deny or reduce their claim for refund,
32 petition the manager of finance in writing for a hearing on the claim review of the decision in the
33 manner provided for petitioning assessments set forth in subsections ~~53-365~~53-361(c) and (d) of

1 ~~this article. and the final determination of the manager may be reviewed in district court as~~
2 ~~provided in sections 53-361(e) and 53-366~~

3 **Section 41.** Section 361, Article VII (Facilities Development Administration Tax Article),
4 Chapter 53 (also known and cited as Section 53-361) of the Revised Municipal Code is amended
5 by deleting the language stricken and adding the language underlined to read as follows::

6 **Sec. 53-361. Refusal to make return Audit; estimate of taxes, penalty, and interest;**
7 **penalty; notice; assessment.**

8 (a) The manager is authorized to examine, inspect and audit the books, invoices, accounts
9 and other records kept or maintained by the taxpayer for the collection of the taxes imposed by
10 this article. If the manager determines that any ~~any person taxpayer~~ neglects or refuses to make
11 a timely return in payment of the taxes or to pay or to correctly account for any tax as required by
12 this article, the manager of finance shall make an estimate, ~~the amount of taxes due,~~ based upon
13 such information as may be available ~~to him,~~ with or without employing investigative powers
14 vested in the manager by this article, of the amount of taxes due for the period or periods for
15 which the taxpayer is delinquent; and upon the basis of such estimated amount, compute and
16 assess in addition thereto a penalty equal to fifteen (15) percent thereof, together with the interest
17 on such delinquent taxes at the rate of one (1) percent each month, or a fraction thereof, from the
18 date when due until the date paid.

19 (b) Promptly thereafter, the manager of finance shall notify ~~give to~~ the delinquent taxpayer
20 in writing and demand payment thereof ~~notice of such estimated taxes, penalty and interest.~~

21 (c) Such estimated amounts shall thereupon become an assessment, and such
22 assessment shall be final and due and payable from the taxpayer to the city thirty (30) days from
23 ~~either the date of personal service of the notice and demand or the date of mailing of the notice~~
24 ~~and demand; provided, however, that within said thirty-day period the delinquent taxpayer may~~
25 ~~petition the manager in writing for review of the assessment in the manner provided in section 53-~~
26 ~~365 of this article. in writing for a revision, modification or cancellation of such assessment, and~~
27 ~~further, said taxpayer shall, within such thirty day period, furnish the manager a summary written~~
28 ~~statement of the facts and reasons for and the amount of the requested changes in the~~
29 ~~assessment, and otherwise comply with the applicable rules and regulations promulgated by the~~
30 ~~manager relating to petitions and hearings. The filing of a petition shall not toll the accrual of~~
31 ~~interest on the amount of taxes due.~~

32 (d) ~~Such petition shall be in writing, and the facts and figures submitted shall be submitted~~
33 ~~under oath either in writing or orally at a hearing scheduled by the manager of finance. The~~

1 ~~hearing shall take place in the office of the manager, and notice thereof and the proceedings shall~~
2 ~~otherwise be in substantial conformity with C.R.S. 1973, 24-4-105, except as modified by~~
3 ~~regulations issued by the manager.~~

4 ~~(e) Thereupon, the manager of finance shall make a final determination and, if appropriate,~~
5 ~~modify such assessment in accordance with the facts submitted, which facts the manager deems~~
6 ~~correct. Such assessment, as modified, shall be considered the final order of assessment of the~~
7 ~~manager and may be reviewed under Rule 106(a)(4) of the Colorado Rules of Civil Procedure as~~
8 ~~provided in this article, provided, that the taxpayer give written notice to the manager of such~~
9 ~~intention to petition for review under Rule 106(a)(4) within ten (10) calendar days after notice of~~
10 ~~the final order of assessment.~~

11 **Section 42.** Section 364, Article VII (Facilities Development Administration Tax Article),
12 Chapter 53 (also known and cited as Section 53-364) of the Revised Municipal Code, which
13 currently reads as follows, is repealed in its entirety:

14 **Sec. 53-364. Depositions.**

15 The manager of finance or any party in an investigation or hearing before the manager
16 may cause the deposition of witnesses residing within or without the state to be taken in the
17 manner prescribed by law for like depositions in civil actions in courts of this state and to that end
18 compel the attendance of witnesses and the production of books, papers, records or memoranda.

19 **Section 43.** Section 365, Article VII (Facilities Development Administration Tax Article),
20 Chapter 53 (also known and cited as Section 53-365) of the Revised Municipal Code is amended
21 by deleting the language stricken and adding the language underlined to read as follows:

22 **~~Sec. 53-365. Decisions of manager; notice; when final~~ Review by the manager.**

23 (a) *Petitions.* Petitions submitted to the manager shall be in writing and shall contain a
24 statement of facts and reasons for and the amount of the requested changes in the assessment
25 or decision to deny or reduce a refund claim, and shall otherwise comply with the applicable rules
26 promulgated by the manager relating to petitions and hearings.

27 (b) *Time limit for filing petitions.* Petitions shall be submitted to the manager within thirty
28 (30) days from the date of the assessment or decision to deny or reduce a refund claim. If a
29 petition is not submitted within this time, the assessment or decision is final and no further review
30 is available.

31 (c) *Notice of Hearing.* The manager shall notify the taxpayer in writing of the time and
32 place within the city fixed for hearing.

1 (d) Hearings. A hearing, if any, shall be conducted in accordance with applicable rules
2 promulgated by the manger relating to petitions and hearings.

3 (e) Manager may appoint designee. A hearing, if any, shall be before the manager or its
4 designee, who is authorized to administer oaths, to take testimony, to hear arguments, and to
5 issue all necessary and appropriate orders and decisions.

6 (f) Burden of proof. The burden of proof that admissions upon which refunds of taxes are
7 claimed, or for which modifications or cancellations of assessments are sought, are exempt from
8 or not subject to taxation under this article shall be on the taxpayer and such proof shall be by a
9 preponderance of evidence.

10 (g) Final order or decision. The final order or decision of the manager or its designee
11 shall be in writing and notice thereof shall be mailed to the taxpayer forthwith.

12 ~~Decisions of the manager shall be final upon their entry and shall be mailed to the taxpayer~~
13 ~~forthwith.~~

14 ~~All notices or other information required to be given to the taxpayer in writing under the~~
15 ~~provisions of this article if mailed postpaid to the last known address of the taxpayer, after~~
16 ~~reasonable inquiry of such address, shall be deemed complete and effective upon and as of the~~
17 ~~posting of the same in the mails of the United States postal service unless returned within ten (10)~~
18 ~~days by the United States postal service to the manager. Filing by the taxpayer shall be deemed~~
19 ~~complete upon mailing to or personal service on the manager of finance.~~

20 **Section 44.** Section 366, Article VII (Facilities Development Administration Tax Article),
21 Chapter 53 (also known and cited as Section 53-366) of the Revised Municipal Code is amended
22 by deleting the language stricken and adding the language underlined to read as follows:

23 **Sec. 53-366. Review of manager's final order or decision in district court.**

24 (a) Should the taxpayer be aggrieved by a final order or decision of the manager, the
25 taxpayer may proceed to have the same reviewed under Colorado Rule of Civil Procedure
26 106(a)(4) by the ~~The~~ district court ~~of~~ for the second judicial district of the state. The petition or
27 complaint for review must be filed within thirty (30) days from the date of the final order or
28 decision. Any party, including the city, may appeal the final order or decision of the manager and,
29 also, the decision of the district court (or such other tribunal having jurisdiction), using all judicial,
30 appellate, and extraordinary proceedings available. ~~shall have original jurisdiction in proceedings~~
31 to review all questions of law and fact determined by the manager of finance in administering the
32 provisions of this article by order or writ under Rule 106(a)(4) of the Colorado Rules of Civil
33 Procedure.

1 (b) Before filing a petition or complaint for review under Colorado Rules of Civil Procedure
2 106(a)(4), the taxpayer shall file with the manager a bond in twice the amount of the taxes,
3 interest and other charges audited and stated in the final order or decision of the manager of
4 finance, with surety as is provided in other cases of appeal, or may deposit lawful money of the
5 United States in the same manner as herein provided. ~~Before making application to the district~~
6 ~~court under Rule 106(a)(4) of the Colorado Rules of Civil Procedure, the party making such~~
7 ~~application shall file with the manager of finance a bond in twice the amount of the taxes, interest~~
8 ~~and other charges stated in the determination and decision of the manager with surety as is now~~
9 ~~provided in cases of attachment under the rules of civil procedure, or at the party's option may~~
10 ~~deposit lawful money of the United States in the same manner.~~

11 ~~(c) Such writs or orders shall be issued by the clerk of the court upon a verified petition or~~
12 ~~complaint of the taxpayer, filed within thirty (30) days after notice of the decision of the manager~~
13 ~~of finance.~~

14 ~~(d) The procedure there under shall be in conformity with the rules of civil procedure of the~~
15 ~~state.~~

16 **Section 45.** Section 379, Article VII (Facilities Development Administration Tax Article),
17 Chapter 53 (also known and cited as Section 53-379) of the Revised Municipal Code is enacted
18 and added to read as follows:

19 **Sec. 53-379. Notices to be sent by mail.**

20 All notices or other information required to be given to the taxpayer in writing under the
21 provisions of this article if mailed postpaid to the last known address of the taxpayer, after
22 reasonable inquiry of such address, shall be deemed complete and effective upon and as of the
23 posting of the same in the mails of the United States postal service unless returned within ten (10)
24 days by the United States postal service to the manager. Filing by the taxpayer shall be deemed
25 complete upon mailing to or personal service on the manager of finance.

26 **Section 46.** Section 405, Article VIII (Telecommunications Business Tax Article), Chapter
27 53 (also known and cited as Section 53-405) of the Revised Municipal Code is amended by
28 deleting the language stricken and adding the language underlined to read as follows:

29 **Sec. 53-405. Audit; estimate of taxes, penalty, and interest; notice; Assessments.**

30 (a) The manager is authorized to examine, inspect and audit the books, invoices, accounts
31 and other records kept or maintained by the taxpayer for the collection of the taxes imposed by
32 this article. If the manager determines that any ~~if any person taxpayer~~ neglects or refuses to make
33 a timely return in payment of the taxes or to pay or correctly account for any tax ~~or pay the tax as~~

1 required by this article, the manager shall make an estimate, the tax shall be assessed in the
2 amount estimated by the manager of finance to be due, based upon such information as may be
3 available, with or without employing investigative powers vested in the manager by this article,
4 conducting an investigation, of the amount of the taxes due for the period or periods for which the
5 taxpayer person is delinquent; and upon the basis of such estimated amount, compute and
6 assess in addition thereto a penalty equal to fifteen (15) percent thereof, together with the interest
7 on the delinquent taxes at the rate of one (1) percent each month, or a fraction thereof, from the
8 date when due until the date paid., adding thereto the penalty and interest provided in this article.

9 (b) Promptly thereafter the manager shall notify the delinquent taxpayer in writing and
10 demand payment thereof of such estimated taxes, penalty and interest.

11 (c) Such estimated amounts shall thereupon become an assessment, and such
12 assessment shall be final and due and payable from the taxpayer to the city thirty (30) days from
13 ~~either the date of personal service of the notice and demand or the date of mailing of the notice~~
14 ~~and demand; provided, however, that within said thirty-day period the delinquent taxpayer may~~
15 ~~petition the manager in writing for review of the assessment in the manner provided in section 53-~~
16 ~~406 of this article. a revision, modification, or cancellation of such assessment. The filing of a~~
17 ~~petition shall not toll the accrual of interest on the amount of taxes due.~~

18 (d) ~~Similarly, if any telecommunications business having filed a return of and paid over the~~
19 ~~tax levied by this article feels that the amount of the tax is incorrect, the telecommunications~~
20 ~~business may apply to the manager by petition in writing within thirty (30) days after the notice is~~
21 ~~mailed to him, or if applicable, after personal service, and the telecommunications business may~~
22 ~~demand a hearing and a correction of the amount, or part of the amount, of the tax assessed,~~
23 ~~following and complying with the same requirements as set forth in subsection (c) of this section.~~

24 (e) ~~The taxpayer shall furnish the manager a summary written statement of facts and~~
25 ~~reasons for and the amount of the requested changes in the assessment and otherwise comply~~
26 ~~with the applicable rules and regulations promulgated by the manager relating to petitions and~~
27 ~~hearings.~~

28 (f) ~~The burden of proof that sales or consumption of commodities and services upon which~~
29 ~~refunds of taxes are claimed, or for which modifications or cancellations of assessments are~~
30 ~~sought, are exempt from or not subject to taxation under this article shall be on the taxpayer and~~
31 ~~such proof shall be by a preponderance of evidence.~~

32 **Section 47.** Section 406, Article VIII (Telecommunications Business Tax Article), Chapter
33 53 (also known and cited as Section 53-406) of the Revised Municipal Code is amended by

1 deleting the language stricken and adding the language underlined to read as follows:

2 **Sec. 53-406. ~~Petition by aggrieved taxpayer to set hearing~~ Review by the manger.**

3 (a) *Petitions.* Petitions submitted to the manager shall be in writing and shall contain a
4 statement of facts and reasons for and the amount of the requested changes in the assessment
5 or decision to deny or reduce a refund claim, and shall otherwise comply with the applicable rules
6 promulgated by the manager relating to petitions and hearings.

7 (b) *Time limit for filing petitions.* Petitions shall be submitted to the manager within thirty
8 (30) days from the date of the assessment or decision to deny or reduce a refund claim. If a
9 petition is not submitted within this time, the assessment or decision is final and no further review
10 is available.

11 (c) *Notice of Hearing.* The manager of finance shall notify the taxpayer in writing of the
12 time and place within the city fixed for hearing.

13 (d) *Hearings.* A hearing, if any, shall be conducted in accordance with applicable rules
14 promulgated by the manger relating to petitions and hearings.

15 (e) *Manager may appoint designee.* A hearing, if any, shall be before the manager or its
16 designee, who is authorized to administer oaths, to take testimony, to hear arguments, and to
17 issue all necessary and appropriate orders and decisions.

18 (f) *Burden of proof.* The burden of proof that sales or consumption of commodities and
19 services upon which refunds of taxes are claimed, or for which modifications or cancellations of
20 assessments are sought, are exempt from or not subject to taxation under this article shall be on
21 the taxpayer and such proof shall be by a preponderance of evidence.

22 (g) *Final order or decision.* The final order or decision of the manager or its designee
23 shall be in writing and notice thereof shall be mailed to the taxpayer forthwith.

24 ~~The manager shall notify the petitioner claiming an error in assessment, or claiming a~~
25 ~~refund, in writing of the time and place within the city fixed for hearing at least thirty (30) days prior~~
26 ~~thereto. After such hearing, at which the manager is authorized to administer oaths and take~~
27 ~~evidence and hear argument, the manager shall enter findings and make such order in the matter~~
28 ~~as is proper and furnish a copy to the petitioner. Said findings and order shall constitute the final~~
29 ~~decision of the manager in the matter.~~

30 **Section 48.** Section 411, Article VIII (Telecommunications Business Tax Article), Chapter
31 53 (also known and cited as Section 53-411) of the Revised Municipal Code, which currently
32 reads as follows, is repealed in its entirety:

33 **Sec. 53-411. Decisions of manager, notice; when final.**

1 Decisions of the manager shall be final upon their entry and shall be mailed to the taxpayer
2 forthwith.

3 **Section 49.** Section 412, Article VIII (Telecommunications Business Tax Article), Chapter
4 53 (also known and cited as Section 53-412) of the Revised Municipal Code is amended by
5 deleting the language stricken and adding the language underlined to read as follows:

6 **Sec. 53-412. Review of manager's final order or decision.**

7 (a) Should the taxpayer be aggrieved by ~~the a final order or~~ decision of the manager,
8 the taxpayer may proceed to have the same reviewed under Colorado Rules of Civil Procedure
9 106(a)(4), ~~or such similar procedure for the issuance of a writ in the nature of certiorari, only by~~
10 the district court for the second judicial district of the state. The petition or complaint for review
11 must be filed within thirty (30) days from the ~~entry date~~ of the manager's final order or decision.
12 ~~and shall be the exclusive remedy. Court proceedings shall be governed by the Colorado Rules of~~
13 ~~Civil Procedure as amended from time to time.~~ Any party, including the city, may appeal the
14 decision of the manager and, also, the decision of the district court (or such other tribunal having
15 jurisdiction), using all judicial, appellate, and extraordinary proceedings available

16 (b) Before filing a petition or complaint for review under Colorado Rules of Civil Procedure
17 106(a)(4), the taxpayer shall file with the manager a bond in twice the amount of the taxes,
18 interest and other charges audited and stated in the final order or decision of the manager of
19 finance, with surety as is provided in other cases of appeal, or may deposit lawful money of the
20 United States in the same manner as herein provided.

21 **Section 50.** Subsection 419, Article VIII (Telecommunications Business Tax Article),
22 Chapter 53 (also known and cited as Section 53-419(c)) of the Revised Municipal Code is
23 amended by deleting the language stricken and adding the language underlined to read as
24 follows:

25 (d) ~~Hearing-Petition.~~ An aggrieved applicant for a refund may, within thirty (30) days after
26 such from the date the decision to deny or reduce their claim for refund is mailed postpaid to the
27 taxpayer, petition the manager of finance in writing for a hearing on the claim-review of the
28 decision in the manner provided in section 53-4056 of this article. ~~regarding petitions to the~~
29 ~~manager protesting assessments and estimates of unpaid taxes.~~

1 COMMITTEE APPROVAL DATE: _____, 2011
2 MAYOR-COUNCIL DATE: _____, 2011
3 PASSED BY THE COUNCIL: _____, 2011
4 _____ - PRESIDENT

5 APPROVED: _____ - MAYOR _____, 2011
6 ATTEST: _____ - CLERK AND RECORDER,
7 EX-OFFICIO CLERK OF THE
8 CITY AND COUNTY OF DENVER

9 NOTICE PUBLISHED IN THE DAILY JOURNAL: _____, 2011; _____, 2011

10 PREPARED BY: Charles T. Solomon, Assistant City Attorney Date: _____ 2011

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 City Council for approval pursuant to
14 § 3.2.6 of the Charter.

15 Douglas J. Friednash, City Attorney

16 BY: _____, Assistant City Attorney Date: _____, 2011