

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2024

COUNCIL BILL NO.
COMMITTEE OF REFERENCE:
Finance & Governance

A BILL

For an ordinance referring a question to the ballot to increase the sales and use tax by a rate of 0.50 percent and dedicating the revenue derived from the tax rate increase to fund affordable housing and related housing support services citywide subject to the approval of the voters at a special municipal election to be conducted in coordination with the state general election on November 5, 2024.

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

Section 1. Subject to voter approval as specified in Section 7 of this ordinance, Account Number 97000/282110 of the Fund Plan, Section 20-18, D.R.M.C., concerning unapportioned sales, use and lodger's tax, is amended by the addition of a new subsection (o), to read as follows (with existing subsections (o) and (p) being re-designated as subsections (p) and (q)):

Sec. 20-18. – Fund Plan

Account No. 97000/282110

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

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

Disposition of funds:

o. Monthly, allocation apportionment and transfer of only those revenues raised at the rate of fifty hundredths (0.50) percent of gross taxable sales from sales and use taxes levied to the Affordable Denver Fund in the General Government Special Revenue Fund.

Section 2. Subject to the approval of the voters as specified in Section 7 of this ordinance, Section 53-56, D.R.M.C., concerning sales taxes is amended by the addition of a

1 new subsection (n) to read as follows:

2 **Sec. 53-56. - Retailers to collect tax.**

3 (n) Sales tax increment to fund Affordable Denver Fund. In addition to the sales tax
4 otherwise imposed by this section, a tax of fifty one-hundredths of one percent (.50%) must
5 be paid on all taxable sales of commodities or services, except on commodities or services
6 specified in subsection (b) of this section, beginning January 1, 2025.

7

8 **Section 3.** Subject to the approval of the voters as provided in Section 7 of this
9 Ordinance, subsection (a) of section 53-57, D.R.M.C., concerning collection of sales is
10 amended by adding the language underlined and deleting the language stricken, to read as
11 follows:

12 **Sec. 53-57. Retailer responsible for payment of tax.**

13 (a) *Amount.* Every retailer shall, irrespective of other provisions of this article, be
14 liable and responsible for the payment of an amount equivalent to ~~four and eighty-one one-~~
15 ~~hundredths (4.81) percent~~ five and thirty-one one-hundredths (5.31) percent of the retailer's
16 taxable sales of tangible personal property, products, or services specified in this article,
17 except:

18 (1) Aviation and railway fuel, as to which the rate of four cents (\$0.04) for each
19 gallon purchased shall apply;

20 (2) Automotive vehicles when they are for any term of thirty (30) days or less hired
21 for use, rented, leased or transferred under a grant of a license to use, as to which a rate of
22 taxation as set forth in subsection 53-56(b)(2) shall apply;

23 (3) Food and beverages not exempted from taxation under subsection 53-55(a)(8)
24 of this article, as to which the rate of four (4) percent shall apply;

25 (4) For each of which respective rates aforesaid the retailer shall be liable for an
26 equivalent amount;

27 (5) Every retailer shall, on its return, round each calculation, as directed on such
28 form as the manager may require, to the nearest whole dollar and remit the rounded amount.
29 In rounding under this section, any amount of forty-nine cents (\$0.49) or less shall be rounded
30 down, and any amount of fifty cents (\$0.50) or higher shall be rounded up.

31

32 **Section 4.** Subject to the approval of the voters as provided in Section 7 of this
33 ordinance, Section 53-106, D.R.M.C., concerning use taxes is amended by the addition of a
34 new subsection (r) to read as follows:

1
2 **Sec. 53-106. - Retailers to collect tax.**

3 (r) *Use tax increment to fund the Affordable Denver Fund.* In addition to the use tax
4 otherwise imposed by this section, a tax of one-half of one percent (.50%) must be paid on all
5 taxable uses, consumptions, distributions, and storages of commodities and services, except
6 on commodities and services specified in subsection (b) of this section, beginning January 1,
7 2025.
8

9 **Section 5.** Subject to the approval of the voters as provided in Section 7 of this
10 ordinance, subsection (a) of section 53-107, D.R.M.C., concerning collection of use taxes, is
11 amended by the addition of the language underlined and the deletion of the language stricken,
12 to read as follows:

13 **Sec.53-107. Retailer responsible for payment of tax.**

14 (a) *Amount.* Every retailer shall, irrespective of other provisions of this article, be
15 liable and responsible for the payment of an amount equivalent to ~~four and eighty-one one-~~
16 ~~hundredths (4.81) percent~~ five and thirty-one one-hundredths (5.31) percent of taxable sales
17 made by him of tangible personal property, products, and services, except:

18 (1) Aviation and railway fuel, as to which the rate of four cents (\$0.04) for each
19 gallon purchased shall apply;

20 (2) Automotive vehicles when they are for any term of thirty (30) days or less hired
21 for use, rented, leased or transferred under a grant of a license to use, as to which a rate of
22 taxation as set forth in subsection 53-98(b)(2) shall apply;

23 (3) Food and beverages not exempted from taxation under subsection 53-26(8) of
24 the city retail sales tax article, as to which the rate of four (4) percent shall apply;

25 (4) For each of which respective rates aforesaid the retailer shall be liable for an
26 equivalent amount; and

27 (5) Every retailer shall, on its return, round each calculation, as directed on such
28 form as the manager may require, to the nearest whole dollar and remit the rounded amount.
29 In rounding under this section, any amount of forty-nine cents (\$0.49) or less shall be rounded
30 down, and any amount of fifty cents (\$0.50) or higher shall be rounded up.
31

32 **Section 6.** Subject to the approval of voters as provided in Section 7 of this ordinance,
33 Chapter 27, Article V, Division 4, D.R.M.C. concerning dedicated funding for affordable
34 housing repealed and re-enacted to read as follows:

DIVISION 4. – AFFORDABLE DENVER FUND.

Sec. 27-170. – Legislative Intent.

(a) The City Council finds, determines, and declares:

(1) According to the 2024 Regional Housing Needs Assessment conducted by the Denver Regional Council of Governments (“DRCOG”), Denver has not produced enough housing to keep pace with population and job growth, with an anticipated gap of 44,000 units under 100% of area median income (“AMI”) in the next 10 years. The study also found that a lack of dedicated funding and financing tools inhibits Denver’s ability to meet this demand of affordable housing;

(2) A 2019 study conducted by Root Policy Research found a nearly 50,000 unit shortage of affordable housing in Denver, with most need at 60% of AMI or below. The same study found that only 7% of the overall housing stock in Denver is income-restricted, falling short of the more than 130,000 households with incomes at or below 80% of AMI who do not have access to fair market housing;

(3) According to the 2023 Point in Time (“PIT”) study by the Metro Denver Homeless Initiative, there are more than 5,800 people experiencing homelessness on a single night in Denver, and over 24,000 people experience homelessness in a given year in Denver according to the region’s Homeless Management Information System (“HMIS”). Data in both the PIT and HMIS show the high cost of housing as the top cause of homelessness;

(4) According to the Denver Housing Market Analysis by Root Policy Research, between 2010 and 2019, 10,595 low-income households, or 21% of households between 0-60% of AMI, have been forced to move out of Denver in order to obtain affordable housing, harming the city’s cultural diversity and economic growth while reducing economic mobility;

(5) According to the 2022 U.S. Census Bureau, wages have risen in Denver by 110% since 2000 and the cost of housing has risen 220%, meaning the average Denver resident’s income no longer keeps pace with their ability to pay a rent or mortgage;

(6) According to the 2022 American Community Survey (ACS) data from the U.S. Census Bureau, more than 50% of Denver’s renter households are housing burdened, including 80% of all renter households earning less than \$75,000 annually;

(7) The COVID-19 pandemic worsened the housing affordability crisis in Denver, leading to historic eviction rates for households unable to pay rent. In 2023, Denver had over 12,900 eviction actions, when the annual average over the past 15 years was a little over 8,000. More and more households each year are unable to make ends meet due to the high

1 cost of housing;

2 (8) In Denver's Comprehensive Plan 2040, adopted by Denver City Council in May
3 2019, there are 3 goals focused on housing affordability in Denver, including building housing
4 as a continuum to serve residents across a range of incomes, ages, and needs, developing
5 housing that is affordable to residents of all income levels, and preserving existing affordable
6 housing. Investment is needed to advance these goals and create an equitable, inclusive city
7 with a high quality of life for all residents, regardless of income level, race, gender, ability or
8 age;

9 (9) The Department of Housing Stability's (HOST) 5-Year Strategic Plan, approved
10 by City Council in 2021, identifies key areas of investment for housing affordability, including
11 the creation and preservation of affordable homes, the creation of new units of supportive
12 housing, the creation of more truly mixed-income housing, increased homeownership, and
13 expanding rental subsidies to create a healthy, housed, and connected Denver;

14 (10) HOST shall publish AMI levels for households of a given size as established
15 annually by the U.S. Department of Housing and Urban Development, or its successor
16 agency;

17 (11) It is the intent of City Council that the monies in this fund will:

18 a. support the goals of Comprehensive Plan 2040 and HOST's periodic
19 strategic plans;

20 b. assist in efforts to increase the pace at which the affordable units are
21 provided to all Denver residents for whom costs have outstripped affordability, while
22 prioritizing areas of highest demonstrated community need for both rental and
23 homeownership units;

24 c. reduce displacement of renters and homeowners who cannot afford
25 prevailing housing costs, and those on fixed incomes, promote long-term affordability and
26 neighborhood stability, and avoid increased concentration of poverty;

27 d. promote equity and remedy historic and structural inequity and
28 disinvestment and to increase public participation and control over affordable housing assets;

29 e. support exploration of new financing models and the benefits of cross-
30 subsidization and mixed-income development to catalyze additional affordable housing for
31 owners and renters; and

32 f. all buildings and units shall conform to applicable Federal, State, and
33 Local accessibility guidelines, where required.

34 (12) A dedicated, additional funding source is necessary to increase the supply of

affordable housing for owners and renters, to provide financial and service-related assistance to owners and renters, and to ensure Denverites can afford to live in the City and County of Denver long-term.

(b) Therefore, the City Council has determined that the question of whether the City shall be authorized to impose a 0.5% sales and use tax for the purposes and in the manner set forth in this ordinance should be submitted to the registered electors of the City at the special municipal election to be conducted in coordination with the state general election on November 5, 2024.

Sec. 27-171. – Permitted uses of revenue in the Affordable Denver Fund.

(a) Revenue received for the Affordable Denver Fund (the “fund”) shall be used to serve the demonstrated community housing needs for households living at or below one hundred (100) percent of Denver’s Area Median Income (AMI), except as otherwise provided in part (b) of this section:

(1) To increase the long-term supply of affordable housing units or prevent displacement from an affordable housing unit for renters and homeowners through production, preservation, financing, acquisition, conversion, subsidies, or any other method; and

(2) To provide financial and service-related assistance to renters and other persons in need of housing;

(b) In addition to uses in part (a), the fund may be used:

(1) To support homebuyer assistance programs, programs to ensure preservation of housing, programs to reduce housing costs for homeowners, and persons seeking to purchase homes earning one-hundred twenty (120) percent or less of AMI; and

(2) To increase the supply of affordable housing units in innovative mixed-income projects that may include units affordable to households at higher incomes, provided the project delivers more low-income affordable units that could not otherwise be created;

(c) All housing produced under this fund shall be compliant with long-term affordability standards.

(d) *Cap on administrative costs.* Monies in the fund may be expended to pay the costs incurred by the city associated directly with the administration of the funds; except that, in no event may the amount expended from the fund for city administrative expenses in any year exceed three (3) percent of the amount of revenue received in the fund in that year.

(e) *Fund earnings.* Any interest earned on the balance of the fund accrues to the Fund.

(f) *Administration of funds.* The manager of finance shall manage the fund.

(g) *Definition of area median income.* As used in this section, the term area median income shall have the same meaning as provided in section 27-150.

(h) *Permanency.* If the monies in the fund are not expended at the end of the fiscal year, such monies must remain in the fund to be expended in subsequent fiscal years.

(i) *Planning.* The department of housing stability, in coordination with the manager of finance, shall prepare and the housing stability strategic advisors shall take public input on, review, and make recommendations regarding a first year-plan for use of the funds in 2025. No later than January 30, 2025, the first-year plan shall be submitted for City Council approval. If the Council fails to act, within thirty (30) days, either affirmatively or negatively on the first-year plan, the plan shall be deemed to be approved. Subsequently, intended uses of the fund shall be included in action plans and strategic plans for city housing expenditures as outlined in section 27-164. To the extent available, such plans shall include proposed expenditures in the manner outlined in subsection (j)(1).

(j) *Reporting.*

(1) The executive director of the department of housing stability shall incorporate into annual progress and intermittent reports made pursuant to section 27-164 information on the number of units produced, preserved, financed, constructed, or otherwise acquired for supportive and affordable housing, including the income levels for which those units were produced, how the expenditures addressed the demonstrated community housing needs, and the number of renters and owners that avoided displacement, due to the monies expended from the fund. Such reports shall also include information on city control or ownership interest in affordable housing assets, including any public debt leveraged in whole or in part by such assets or revenues in the fund, and any other pertinent financial information; and

(2) The executive director of the department of housing stability shall produce a "Denver Housing Needs Assessment Study" (the "Study") and report the findings and any recommendations to City Council no later than January 1, 2028. The Study shall serve as guidance for areas with the greatest demonstrated community needs to be targeted under this section. The study shall be periodically updated as needed.

(k) *Review of fund.* The executive director of the department of housing stability and the manager of finance shall jointly conduct a policy review of the fund created in this division and report the findings and any recommendations to the city council no later than January 1, 2028 and every two (2) years thereafter.

Section 7. The ballot shall contain the following title and submission clause:

1 SHALL DENVER SALES AND USE TAXES BE INCREASED \$100 MILLION
2 ANNUALLY, COMMENCING JANUARY 1, 2025, AND BY WHATEVER ADDITIONAL
3 AMOUNTS ARE RAISED ANNUALLY THEREAFTER, TO EXPAND AFFORDABLE
4 HOUSING FOR LOW- AND MIDDLE-INCOME FAMILIES AND INDIVIDUALS,
5 THROUGH A ONE-HALF OF ONE PERCENT (0.5%) SALES AND USE TAX
6 INCREASE (5 CENTS ON A \$10 PURCHASE), TO SUPPORT EFFORTS
7 INCLUDING:

- 8
- 9 • PROVIDING MORE AFFORDABLE RENTAL HOUSING AND REDUCING
- 10 RENT; AND
- 11
- 12 • PROVIDING MORE AFFORDABLE HOMES FOR PURCHASE AND
- 13 PROGRAMS TO REDUCE THE COST OF BUYING A HOME;
- 14

15 AND MAY A PORTION OF THE ANNUAL REVENUES DERIVED FROM THIS
16 INCREASE BE SPENT ON ADMINISTRATIVE COSTS FOR THE ABOVE
17 PURPOSES, AND SHALL THE REVENUE AND EARNINGS ON THIS TAX BE
18 COLLECTED AND SPENT AS A VOTER-APPROVED REVENUE CHANGE AND AN
19 EXCEPTION TO THE LIMITS THAT MAY OTHERWISE APPLY UNDER ARTICLE X,
20 SECTION 20 OF THE COLORADO CONSTITUTION OR ANY OTHER LAW?
21

22 **Section 8.** The proper officials of the City and County of Denver as are charged with
23 duties relating to the election shall, before the election, issue such calls, make such
24 certifications and publications, give such notices, make such appointments, and do all such
25 other acts and things in connection with the submission of this code amendment to the
26 registered electors of the City and County of Denver at the election as are required by the
27 Constitution and laws of the State of Colorado and the Charter and ordinances of the City and
28 County of Denver.

29

30 **Section 9.** The ballots cast at such election shall be canvassed and the results
31 ascertained, determined, and certified in accordance with the requirements of the Constitution
32 and laws of the State of Colorado and the Charter and ordinances of the City and County of
33 Denver.

34

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

38

39 COMMITTEE APPROVAL DATE:

40 MAYOR-COUNCIL DATE:

1 PASSED BY THE COUNCIL _____

2 _____ - PRESIDENT

3 APPROVED: _____ - MAYOR _____

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

8 NOTICE PUBLISHED IN THE DAILY JOURNAL _____; _____

9

10 PREPARED BY: Anshul Bagga, Assistant City Attorney; DATE: July 8, 2024

11

12 Pursuant to section 13-9, D.R.M.C., this proposed ordinance has been reviewed by the office
13 of the City Attorney. We find no irregularity as to form, and have no legal objection to the
14 proposed ordinance. The proposed ordinance is not submitted to the City Council for approval
15 pursuant to § 3.2.6 of the Charter.
16

16

17 Kerry Tipper, Denver City Attorney

18 BY: _____, Assistant City Attorney DATE: _____