

**BY AUTHORITY**

ORDINANCE NO. \_\_\_\_\_  
SERIES OF 2017

COUNCIL BILL NO. CB17-0428  
COMMITTEE OF REFERENCE:  
Finance & Governance

**A BILL**

**For an ordinance authorizing and approving (i) the use of an amount not to exceed \$65,000,000 of Private Activity Bond Volume Cap Allocation for the purpose of making a mortgage credit certificate election; and (ii) the MCC Program Administration Agreement, Lender Participation Agreement and MCC Program Guidelines.**

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

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

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

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

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

**WHEREAS**, the City has filed Internal Revenue Service (“IRS”) Forms 8328 to carryforward unused private activity bond volume cap allocated to the City for calendar years 2015 and 2016 (the “2015 Carryforward Volume Cap” and the “2016 Carryforward Volume Cap,” respectively); and

**WHEREAS**, for purposes of the 2017 MCC Program, the City desires to use \$1,789,000 of its 2015 Carryforward Volume Cap, \$45,381,100 of its 2016 Carryforward Volume Cap, and

1 \$17,829,900 of the private activity bond volume cap allocation that was awarded to the City by the  
2 State of Colorado Department of Local Affairs (“DOLA”) for use in calendar year 2017 (the “2017  
3 Volume Cap”); and

4 **WHEREAS**, there have been presented to the City Council of the City (the “Council”) the  
5 following documents in substantially final form: (a) the proposed form of the Program Administration  
6 Agreement to be entered into by and between the City and Raymond James & Associates, Inc.  
7 (“Raymond James”), as administrator of the MCC Program (the “MCC Program Administration  
8 Agreement”) (City Clerk’s Filing No. 2017-0147); (b) the proposed form of the Lender Participation  
9 Agreement (the “Lender Participation Agreement”) to be entered into by the MCC Program lenders  
10 (the “Lenders”) and Raymond James (City Clerk’s Filing No. 2017-0148); and (c) the proposed form  
11 of the Program Summary and Guidelines (the “MCC Program Guidelines”) (City Clerk’s Filing  
12 No. 2017-0149), which are available in the office and on the web page of the Council, and to be  
13 filed in the office of the City Clerk under the City Clerk’s Filing Numbers set forth above;

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

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

22 **Section 2.** The Council finds and determines that it is necessary to make the Election to  
23 exchange its authority to issue up to \$65,000,000 of private activity bonds for the authority to issue  
24 Certificates, which will promote a public purpose, including, without limitation, assisting persons or  
25 families of low- and middle-income in obtaining decent, safe and sanitary housing.

26 **Section 3.** The Council directs the appropriate officers of the City to make one or more  
27 Elections not to issue up to an aggregate of \$65,000,000 of private activity bonds (the “Nonissued  
28 Bond Amount”) that the City is authorized to issue and has \$65,000,000 of private activity bond  
29 volume cap allocation available to utilize for the MCC Program, \$1,789,000 of which is available  
30 from the 2015 Carryforward Volume Cap, \$45,381,100 of which is available from the 2016  
31 Carryforward Volume Cap, and \$17,829,900 of which is available from the 2017 Volume Cap. The  
32 Nonissued Bond Amount shall be allocated to the MCC Program to be established by the  
33 appropriate officers of the City under this Ordinance. To effectuate the foregoing, the appropriate

1 officers of the City are directed to file notice of the Election(s) with the IRS and DOLA, as required  
2 by the Code and the regulations.

3 **Section 4.** The Council authorizes the appropriate officers of the City to establish an MCC  
4 Program to issue Certificates for the purposes set forth in the MCC Program Guidelines. For such  
5 MCC Program, the appropriate officers of the City may establish one or more credit rates for the  
6 mortgage loans described therein, determine the program expiration date, select the types of  
7 mortgage loans for which Certificates may be issued, approve the terms and conditions on which  
8 participating lenders make loans that are eligible for Certificate financing, and make other  
9 determinations as appropriate, all in accordance with the terms and provisions of Section 25 of the  
10 Code and the regulations thereunder and this ordinance. The appropriate officers of the City are  
11 hereby directed to further define the MCC Program and revise the MCC Program Guidelines as  
12 necessary to maximize the availability of lower cost financing to low- and middle-income persons  
13 under the MCC Program. The initial credit rate is intended to be 25% which will permit up to  
14 \$65,000,000 of Certificates to be issued. The Manager of Finance is hereby authorized to execute  
15 any documents, agreements and certificates relating to the MCC Program. From time to time, the  
16 Manager of Finance is also authorized to approve any amendments and modifications to such  
17 documents, agreements and certificates relating to the MCC Program.

18 **Section 5.** The Council approves the use of the \$1,789,000 of 2015 Carryforward Volume  
19 Cap, \$45,381,100 of 2016 Carryforward Volume Cap, and \$17,829,900 of 2017 Volume Cap in  
20 connection with the issuance of Certificates.

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

26 **Section 7.** The form, terms and provisions of the MCC Program Administration Agreement,  
27 the Certificates and the Lender Participation Agreement are hereby approved, with such changes  
28 therein as are not inconsistent herewith. The City shall execute and deliver the MCC Program  
29 Administration Agreement (including the Certificates attached thereto), in substantially the form  
30 heretofore filed with the Council and to be filed with the City Clerk. The Mayor (or Acting Mayor) is  
31 hereby authorized and directed to execute and deliver the MCC Program Administration Agreement  
32 (including the Certificates attached thereto); and the City Clerk is hereby authorized and directed to  
33 affix the City seal and to attest the MCC Program Administration Agreement (including the

1 Certificates attached thereto); and the Manager of Finance and the City Auditor are hereby  
2 authorized and directed to countersign and register the MCC Program Administration Agreement  
3 (including the Certificates attached thereto); and the City Attorney is hereby authorized to execute  
4 the MCC Program Administration Agreement.

5 **Section 8.** Raymond James is hereby appointed as the administrator of the MCC Program.

6 **Section 9.** All actions not inconsistent with the provisions of this Ordinance heretofore taken  
7 by the Council and the officers of the City directed toward financing the MCC Program and the  
8 issuance of the Certificates are hereby, ratified, approved and confirmed. The publication of the  
9 Notice of Election in *The Denver Post* on February 14, 2017 is hereby ratified and approved.

10 **Section 10.** The officers of the City shall take all action in conformity with the Charter, the  
11 Colorado Private Activity Bond Ceiling Allocation Act, constituting Article 32, Title 24, Part 17,  
12 Colorado Revised Statutes, as amended (the "Allocation Act"), and the Code necessary or  
13 reasonably required to effectuate the issuance of the Certificates and shall take all action necessary  
14 or desirable in conformity with the Charter, the Allocation Act and the Code to implement the MCC  
15 Program and for carrying out, giving effect to and consummating the transactions contemplated by  
16 this Ordinance, including without limitation, the filing of any statements or reports with the IRS or  
17 with the Secretary of the Treasury or his delegate necessary for the issuance of the Certificates. All  
18 prior actions taken relating to the MCC Program are hereby ratified and approved.

19 **Section 11.** The Council authorizes the appropriate officers of the City to certify, pursuant  
20 to Section 1703(14) of the Allocation Act, to the Executive Director of DOLA that the City has  
21 implemented the MCC Program.

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

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

1 COMMITTEE APPROVAL DATE: April 18, 2017

2 MAYOR-COUNCIL DATE: April 25, 2017

3 PASSED BY THE COUNCIL: \_\_\_\_\_

4 \_\_\_\_\_ - PRESIDENT

5 APPROVED: \_\_\_\_\_ - MAYOR \_\_\_\_\_

6 ATTEST: \_\_\_\_\_ - CLERK AND RECORDER,  
7 EX-OFFICIO CLERK OF THE  
8 CITY AND COUNTY OF DENVER

9 NOTICE PUBLISHED IN THE DAILY JOURNAL: \_\_\_\_\_; \_\_\_\_\_

10 PREPARED BY: KUTAK ROCK LLP AND BERG HILL GREENLEAF & RUSCITTI LLP

11 REVIEWED BY: Jo Ann Weinstein, Assistant City Attorney DATE: April 27, 2017

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

16 Kristin M. Bronson, Denver City Attorney

17 BY: \_\_\_\_\_, Assistant City Attorney DATE: \_\_\_\_\_