

1 BY AUTHORITY

2 ORDINANCE NO. _____
3 SERIES OF 2014

COUNCIL BILL NO. CB14-_____
COMMITTEE OF REFERENCE:
Finance and Services

6 A BILL

7 **For an ordinance authorizing and approving (i) the use of an amount not to**
8 **exceed \$45,000,000 of Private Activity Bond Volume Cap Allocation for the**
9 **purpose of making a mortgage credit certificate election; and (ii) the MCC**
10 **Program Administration Agreement and the MCC Program Guidelines.**

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

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

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

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

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

30 **WHEREAS**, the City has filed Internal Revenue Service (the “IRS”) Form 8328 to
31 Carryforward unused private activity bond volume cap allocated to the City for the 2013 calendar
32 year (“2013 Carryforward Volume Cap”) and the City intends to file IRS Form 8328 to
33 Carryforward unused private activity bond volume cap allocated to the City for the 2014 calendar
34 year (“2014 Carryforward Volume Cap”); and

1 **WHEREAS**, for purposes of the 2015 Program, the City desires to use \$30,000,000 of its
2 2013 Carryforward Volume Cap and \$15,000,000 of its 2014 Carryforward Volume Cap; and

3 **WHEREAS**, there have been presented to the City Council of the City (the "Council") the
4 following documents in substantially final form: (a) the proposed form of the Program
5 Administration Agreement to be entered into by and between the City and Raymond James &
6 Associates, Inc. ("Raymond James") , as administrator of the MCC Program (the "MCC Program
7 Administration Agreement") (City Clerk's Filing No. 14-___); and (b) the proposed form of the
8 Program Summary and Guidelines (the "MCC Program Guidelines") (City Clerk's Filing No. 14-
9 ___), which are available in the office and on the web page of the Council, and to be filed in the
10 office of the City Clerk under the City Clerk's Filing Numbers set forth above;

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

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

19 **Section 2.** The Council finds and determines that it is necessary to make the Election to
20 exchange its authority to issue up to \$45,000,000 of private activity bonds for the authority to issue
21 Certificates, which will promote a public purpose, including, without limitation, assisting persons or
22 families of low- and middle-income in obtaining decent, safe and sanitary housing.

23 **Section 3.** The Council directs the appropriate officers of the City to make one or more
24 Elections not to issue up to an aggregate of \$45,000,000 of private activity bonds (the "Nonissued
25 Bond Amount") that the City is authorized and has \$45,000,000 of private activity bond volume
26 cap allocation available to issue, \$30,000,000 of which is available from 2013 Carryforward
27 Volume Cap and \$15,000,000 of which is available from 2014 Carryforward Volume Cap. The
28 Nonissued Bond Amount shall be allocated to the MCC Program to be established by the
29 appropriate officers of the City under this Ordinance. To effectuate the foregoing, the appropriate
30 officers of the City are directed to file notice of the Election(s) with the IRS, as required by the
31 Code and the regulations.

32 **Section 4.** The Council authorizes the appropriate officers of the City to establish an MCC
33 Program to issue Certificates for the purposes set forth in the MCC Program Guidelines. For such
34 MCC Program, the appropriate officers of the City may establish one or more credit rates for the

1 mortgage loans described therein, determine the program expiration date, select the types of
2 mortgage loans for which Certificates may be issued, approve the terms and conditions on which
3 participating lenders make loans that are eligible for Certificate financing, and make other
4 determinations as appropriate, all in accordance with the terms and provisions of Section 25 of the
5 Code and the regulations thereunder and this Ordinance. The appropriate officers of the City are
6 hereby directed to further define the MCC Program and revise the MCC Program Guidelines as
7 necessary to maximize the availability of lower cost financing to low and middle income persons
8 under the MCC Program. The initial credit rate is intended to be 30% which will permit up to
9 \$37,500,000 of Certificates to be issued.

10 **Section 5.** The Council approves the use of the 2013 Carryforward Volume Cap in the
11 amount of \$30,000,000 and the use of the 2014 Carryforward Volume Cap in the amount of
12 \$15,000,000 in connection with the issuance of Certificates.

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

18 **Section 7.** The form, terms and provisions of the MCC Program Administration
19 Agreement are hereby approved; with such changes therein as are not inconsistent herewith; and
20 the City shall execute and deliver the MCC Program Administration Agreement, in substantially
21 the form heretofore filed with the Council and to be filed with the City Clerk; and the Mayor (or
22 Acting Mayor) is hereby authorized and directed to execute and deliver the MCC Program
23 Administration Agreement, and the City Clerk is hereby authorized and directed to affix the City
24 seal and to attest the MCC Program Administration Agreement, the Manager of Finance and the
25 City Auditor are hereby authorized and directed to countersign and register the MCC Program
26 Administration Agreement and the City Attorney is hereby authorized to execute the MCC
27 Program Administration Agreement.

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

30 **Section 9.** All actions not inconsistent with the provisions of this Ordinance heretofore
31 taken by the Council and the officers of the City directed toward financing the MCC Program and
32 the issuance Certificates are hereby, ratified, approved and confirmed.

33 **Section 10.** The officers of the City shall take all action in conformity with the Charter, the
34 Colorado Private Activity Bond Ceiling Allocation Act, constituting Article 32, Title 24, Part 17,

1 Colorado Revised Statutes, as amended (the "Allocation Act"), and the Code necessary or
2 reasonably required to effectuate the issuance of the Certificates and shall take all action
3 necessary or desirable in conformity with the Charter, the Allocation Act and the Code to
4 implement the MCC Program and for carrying out, giving effect to and consummating the
5 transactions contemplated by this Ordinance, including without limitation, the filing of any
6 statements or reports with the IRS or with the Secretary of the Treasury or his delegate necessary
7 for the issuance of the Certificates.

8 **Section 11.** The Council authorizes the appropriate officers of the City to certify pursuant
9 to Section 1703(14) of the Allocation Act to the Executive Director of the Colorado Department of
10 Local Affairs that the City has implemented the MCC Program.

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

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

16 COMMITTEE APPROVAL: _____, 2014
17 MAYOR-COUNCIL DATE: _____, 2014
18 PASSED BY THE COUNCIL: _____, 2014

19 _____ - PRESIDENT
20 APPROVED: _____ - MAYOR _____, 2014
21 ATTEST: _____ - CLERK AND RECORDER,
22 EX-OFFICIO CLERK OF THE
23 CITY AND COUNTY OF DENVER

24 NOTICE PUBLISHED IN THE DAILY JOURNAL: _____, 2014; _____, 2014
25 PREPARED BY: Reno & Cavanaugh PLLC and Kutak Rock LLP DATE:

26 Pursuant to section 14-12, D.R.M.C., this proposed ordinance has been reviewed by the office of
27 the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
28 ordinance. The proposed ordinance is not submitted to the City Council for approval pursuant to §
29 3.2.6 of the Charter.

30 D. Scott Martinez, City Attorney for the City and County of Denver
31 BY: _____, Assistant City Attorney DATE: _____, 2014

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