

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF _____

COUNCIL BILL NO. 12-566
COMMITTEE OF REFERENCE:

A BILL

For an ordinance authorizing the City and County of Denver to retain and spend all tax revenue in excess of the constitutional limitations on revenue and spending, subject to the approval of the voters at a special municipal election to be coordinated with the state general election on November 6, 2012; providing for the restoration of the City's lawful maximum ad valorem property tax rate; adopting an alternative limitation on annual increases in ad valorem property tax revenue to be in effect while the city is restoring its lawful maximum property tax rate; specifying categories of expenditures to be made with revenue derived from the restoration of the maximum lawful property tax rate; allowing credits against business personal property taxes for new and expanded businesses; increasing the amount of tax refunds available to low-income elderly or disabled persons; and making related conforming amendments to the Denver Revised Municipal Code.

WHEREAS, section 20 (7) (b) and (d) of article X of the Colorado Constitution limits annual increases in a local government's total fiscal year revenue and spending, but expressly allows local voters to approve the retention and expenditure of revenue in excess of the limit; and

WHEREAS, section 20 (7)(c) and (d) of article X of the Colorado Constitution specifically limits annual increases in a local government's ad valorem property tax revenue, but expressly allows local voters to approve the retention and expenditure of property tax revenue in excess of the limit; and

WHEREAS, at an election occurring on November 7, 2000, Denver voters previously authorized the city to retain and spend all excess revenue derived from non-tax sources in perpetuity, and also authorized the city to retain and spend all excess tax revenue (other than excess ad valorem property tax revenue) for a period of five years; and

WHEREAS, at an election occurring on November 1, 2005, Denver voters previously authorized the city to retain and spend all excess tax revenue (other than excess ad valorem property tax revenue) for an additional period of ten years; and

1 WHEREAS, in order to comply with the constitutional limitation on annual increases in ad
2 valorem property tax revenue, since 1996 the city has annually adopted and certified temporary
3 property tax credits as permitted by § 39-1-111.5, C.R.S., thus reducing the overall amount of revenue
4 that would otherwise be derived from the imposition of the city's maximum lawful property tax rate on
5 all taxable property; and

6
7 WHEREAS, the temporary property tax credit currently causes the city to forego the receipt
8 and expenditure of approximately \$68 million per annum in property tax revenue that would otherwise
9 be derived from the city's maximum lawful property tax rate and would otherwise be available to pay
10 for essential city services; and

11
12 WHEREAS, as expressly permitted by the Colorado Constitution, Denver voters should decide
13 whether or not to allow retain and spend any and all tax revenues, including revenues derived from
14 property taxes, in excess of the constitutional limitations; and

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16 WHEREAS, if the voters approve the retention and expenditure of property tax revenue in
17 excess of the constitutional limit, the city will be allowed to restore its maximum lawful property tax
18 rate; and

19
20 WHEREAS, in order to mitigate the effect of the restoration of the city's maximum lawful
21 property tax rate on the taxpayers, the city intends to: (A) phase-in the restoration of the maximum
22 lawful tax rate over time; (B) impose its own cap on annual increases in city property tax revenue while
23 the tax rate is being restored; (C) offer credits against business personal property taxes for new or
24 expanded businesses; and (D) provide additional tax relief for low-income elderly or disabled
25 taxpayers.

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28 **NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF**
29 **DENVER:**

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31 Subject to voter approval of the ballot question set forth in Section 5 of this bill for an ordinance,
32 the Denver Revised Municipal Code shall be amended in the following particulars:

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Section 1. Section 20-26, D.R.M.C., concerning compliance with constitutional revenue limitations shall be repealed and reenacted by deleting the language stricken and adding the language underlined to read as follows:

Sec. 20-26. Constitutional Revenue Limitations.

~~(a) Purpose. The purpose of this section is to provide for the implementation of the voter approved revenue changes approved at the special municipal elections conducted on November 7, 2000 and November 1, 2005, whereby the City and County of Denver has been authorized to collect, retain and spend revenues in excess of the limitation set forth in Section 20(7)(b), Article X, of the Colorado Constitution, hereinafter referred to as the "constitutional revenue limitation."~~

~~(b) Calculation of excess revenue; 2005—2014. For fiscal years 2005 through 2014 inclusive, after the end of the each fiscal year, and after the completion of the audited financial statements for that fiscal year, the finance director shall determine the exact amount, if any, by which all city revenues for that fiscal year exceeded the constitutional revenue limitation. The finance director shall also determine the extent to which any revenue in excess of the constitutional revenue limitation, was derived from city taxes.~~

~~(b.5) Calculation of excess revenue; 2015 and thereafter. For fiscal year 2015 and thereafter, after the end of the each fiscal year and after the completion of the audited financial statements for that fiscal year, the finance director shall determine the exact amount, if any, by which all city revenues for that fiscal year exceeded the constitutional revenue limitation, and shall determine the extent to which any revenue in excess of the constitutional revenue limitation was derived from city taxes. The finance director shall also determine whether any such revenue exceeds the excess city and county revenue cap as defined in this section.~~

~~(c) Appropriation of excess tax revenue. Upon performing the calculations set forth in paragraph (b) or (b.5) and upon a determination that the city is in receipt of tax revenue in excess of the limitations set forth therein, the finance director shall promptly report to the mayor, the city council, and the auditor the amount of excess revenue. Any revenue in excess of the constitutional revenue limitation but not in excess of the city and county excess revenue cap shall be accounted for in accordance with the fund plan and shall be appropriated for public safety, public works, parks and recreation, health care, libraries and other essential services. For fiscal year 2015 and thereafter, any revenue in excess of city and county excess revenue cap shall be refunded to the taxpayers in accordance with Section 20 of Article X of the Colorado Constitution.~~

1 ~~(d) Excess revenue derived from non-tax sources.~~ For fiscal year 1999 and all
2 subsequent fiscal years, the city may collect, retain and spend any and all revenues
3 in excess of the limitation set forth in Section 20(7)(d), Article X to the extent those
4 revenues are derived from sources other than city taxes. Such revenues shall be
5 accounted for in accordance with the fund plan and shall be expended for the
6 purpose for which they are received or, if no purpose is specified, for general fund
7 purposes.

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9 ~~(e) Property tax revenue limit.~~ Notwithstanding the provisions of subsections
10 (b), (b.5) and (c) of this section, the city shall remain subject to the specific limitation
11 on annual increases in property tax revenue as set forth in Section 20(7)(c), Article X,
12 of the Constitution of the State of Colorado.

13
14 ~~(f) Excess city and county revenue cap.~~ As used in this section, the term
15 "excess city and county revenue cap" or "revenue cap" shall mean, for 2015 and any
16 given fiscal year thereafter, an amount that is equal to the highest total city and
17 county revenues for a fiscal year from the period from 2005 to 2014, adjusted each
18 subsequent fiscal year for inflation and local growth, the qualification or
19 disqualification of enterprises, and debt service changes. The term "city and county
20 revenues" means revenues not excluded from fiscal year spending as defined by
21 Section 20(2)(c), Article X of the Colorado Constitution. The terms "inflation" and
22 "local growth" shall have the same meaning as is provided in Section 20(2)(f) and
23 (g), Article X of the Colorado Constitution.
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25
26 (a) Purpose. The purpose of this section is to provide for the implementation of the
27 ballot measures approved by voters at the special municipal elections conducted on
28 November 7, 2000 and November 6, 2012, in which the voters authorized the City
29 and County of Denver to collect, retain and spend all city revenues in excess of the
30 limitations set forth in section 20(7)(b) and (c) of article X, of the Colorado
31 Constitution.

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34 (b) Definitions. As used in this section, the following terms have the meanings
35 herein set forth:

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37 (1) "Affected funds" means the general fund, the human service fund, the police
38 pension fund, and the fire pension fund, for which a millage rate has been itemized

1 in the annual certification of city and county property taxes, offset by temporary
2 property tax credits or rate reductions between tax years 1996 and 2011 in order to
3 comply with the constitutional property tax revenue limitation.

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5 (2) “City property tax revenue limitation” means the amount of property tax revenue
6 levied for the affected funds in the preceding year plus six percent (6%), plus an
7 additional percentage equal to “local growth” as defined by section 20(2)(g) of article
8 X of the Colorado Constitution, but excluding revenue derived from any of the
9 following:

- 10
11 a. increased property tax revenue caused by the retirement or expiration of
12 any tax increment financing obligations incurred by the Denver Urban
13 Renewal Authority or any downtown development authority within the city; or
14 b. any revenue derived from any abatement or refund levy as authorized by
15 law.

16
17 (3) “Constitutional property tax revenue limitation” means the limit on annual
18 increases in city property tax revenue as set forth in section 20(7)(c) of article X of
19 the Colorado Constitution.

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21 (4) “Constitutional spending limitation” means the limitation on annual increases in
22 total city revenue and fiscal year spending as set forth in section 20 (7)(b) of article X
23 of the Colorado Constitution.

24
25 (5) “Credited mills” means 6.184 mills, representing the combined total of the
26 temporary property tax credits or rate reductions for the affected funds as of tax year
27 2011 for taxes collected in 2012, certified in accordance with section 39-1-111.5,
28 C.R.S. in order to comply with the constitutional property tax revenue limitation.

29
30 (6) “Maximum lawful property tax rate” means 22.830 mills, representing the
31 combined total millage rate for the affected funds as of tax year 1996 for taxes
32 collected in 1997.

33
34 (7) “Restored property tax revenue” means the amount of additional property tax

1 revenue the city is allowed to collect and expend in the affected funds as allowed in
2 subsection (d) of this section, in excess of the amount of property tax revenue the
3 city is otherwise allowed to collect and expend in the affected funds under the
4 constitutional property tax revenue limitation.

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7 (c) Authority to exceed constitutional spending limitation. By virtue of the voter
8 approval granted on November 7, 2000 and November 6, 2012, the city is authorized
9 to collect, retain and spend revenues from any source in excess of the constitutional
10 spending limitation, with any revenue in excess of the constitutional limitation being
11 treated as a “voter-approved revenue change” within the meaning of section 20(7)(d)
12 of article X of the Colorado Constitution.

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15 (d) Authority to exceed constitutional property tax revenue limitation. By virtue of
16 the voter approval granted on November 6, 2012, the city is authorized to collect,
17 retain and spend revenue derived from ad valorem property taxes in excess of the
18 constitutional property tax revenue limitations, with any revenue in excess of the
19 constitutional limitation being treated as a voter-approved revenue change within the
20 meaning of Section 20(7)(d) of the Colorado Constitution, subject to the following
21 requirements and limitations:

22
23 (1) For 2012 property taxes to be collected in 2013, the city shall reduce the credited
24 mills by four mills and shall be permitted to retain and spend the additional revenue
25 derived therefrom in excess of the total amount of revenue the city is allowed to
26 collect and spend under the constitutional property tax revenue limitation.

27
28 (2) For 2013 property taxes to be collected in 2014 and for each subsequent year,
29 the city shall reduce or otherwise adjust the credited mills to the extent necessary to
30 comply with the city property tax revenue limitation until such time as the credited
31 mills are entirely eliminated.

32
33 (3) When the credited mills have been entirely eliminated and the maximum lawful
34 property tax rate has been fully restored, the city property tax revenue limitation shall

1 no longer apply, and the city may then levy the maximum lawful property tax rate
2 upon the assessed valuation of all taxable property in the city on a year to year
3 basis.

4
5 (4) In no event shall the city increase the maximum lawful property tax rate without
6 prior voter approval, as required by section 20(4)(a) of Article X of the Colorado
7 Constitution.

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10 (e) Use of restored property tax revenues. Restored property tax revenues shall be
11 expended exclusively for the following purposes, with the allocation of revenue
12 between and among these purposes to be determined on a year to year basis as a
13 part of the annual budget and appropriation process: public safety, services for
14 children, street maintenance, parks and recreation, libraries, and other essential city
15 services; payments to low-income elderly and disabled persons as provided in
16 section 53-498; and business incentive programs to retain and attract businesses to
17 Denver.

18
19 (f) Reporting requirements. Notwithstanding the voter-approved authorization to
20 exceed the constitutional spending limitation and the constitutional property tax
21 revenue limitation, the Manager of Finance shall continue to annually calculate and
22 report to the to the mayor, the auditor and the city council the following information:

23
24 (1) Any amount by which the city's total fiscal year revenue and spending exceeds
25 the constitutional spending limit after 2012.

26 (2) The total amount of restored property tax revenue received by the city on a year
27 to year basis.

28 (3) An accounting demonstrating that the restored property tax revenue has been
29 dedicated to and expended exclusively for the purposes set forth in subsection
30 (e) of this section.

1 **Section 3.** Chapter 53, D.R.M.C., concerning taxation shall be amended by
2 the addition of a new Article XVI, to read as follows:

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4 **Article XVI. Business Personal Property Tax**
5 **Credits for New or Expanded Businesses**

6
7 **Sec. 53-541 Credit against personal property taxes.**

8 Each qualifying taxpayer is entitled to enter into an agreement with the City and
9 County of Denver for an incentive tax credit in the amount of the general fund portion
10 of the taxes upon the taxpayer's taxable personal property assessed by the City and
11 County of Denver upon the taxable personal property located at or within a new
12 business facility, or directly attributable to an expanded business facility and located
13 at or within the expanded facility, and used in connection with the operation of the
14 new or expanded facility. The term of the agreement made pursuant to the
15 provisions of this section shall not exceed four years. The credit will be applied
16 against only the general fund portion of the subject taxes, and will not be applied
17 against taxes that are specifically pledged for other purposes. The credit is not
18 available with respect to personal property whose value is determined by the State of
19 Colorado.

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21 **Sec. 53-542 Qualifying taxpayers.**

22 To be a qualifying taxpayer, a taxpayer must:

- 23
24 (1) Establish a new business facility in the city and county, as defined in
25 section 39-30-105(7)(e), C.R.S.; or
26
27 (2) Expand a facility in the city and county, as defined in section 39-30-
28 105(7)(c), C.R.S., the expansion of which constitutes a new business facility,
29 as defined in section 39-30-105(7)(e), C.R.S.

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31 **Sec. 53-543 Determination and Application of Credit; Agreement.**

1 Upon application for a personal property tax credit to the Office of Economic
2 Development (OED), the OED shall determine whether the taxpayer and the
3 taxpayer's personal property meet the criteria of sections 53-541 and 53-542.
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5 (1) If the OED determines that a taxpayer and the taxpayer's personal
6 property meet the criteria of sections 53-541 and 53-542, the OED shall
7 consult with the Department of Finance to establish which personal property is
8 valued, assessed and taxable by the City and County of Denver.
9

10 (2) When the OED and the Department of Finance have determined which
11 personal property is valued, assessed and taxable by the City and County of
12 Denver, the OED shall offer to the qualifying taxpayer an agreement setting
13 forth the terms and conditions upon which the qualifying taxpayer may receive
14 a tax credit.
15

16
17 (3) Agreements between the City and qualifying taxpayers shall include,
18 without limitation, terms and conditions necessary to demonstrate the
19 taxpayer's eligibility for the tax credit throughout the term of the agreement.
20

21 **Sec. 53-544 Administration.**

22 The administration of this article is vested in the Manager of Finance and the Director
23 of OED, who shall prescribe application forms, submittal deadlines and other
24 program requirements, and who may make reasonable rules and regulations in
25 conformity with this article for the proper administration of the same.
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27 **Sec. 53-545 Review and Sunset.**

28 (1) This Article XVI shall be reviewed by the Mayor, the Director of
29 OED and the Manager of Finance on the third anniversary of its
30 enactment, in order to determine whether adjustments, revisions,
31 additional studies or inquiries are deemed appropriate and should be
32 undertaken or recommended, in order to further and maintain the
33 purpose of this Article XVI.

1 (2) This Article XVI will be repealed effective June 30, 2017.
2 Agreements fully executed prior to the effective date of the repeal shall
3 remain in effect in accordance with their terms.”
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6 **Section 4.** Section 53-498, D.R.M.C. concerning payments to low-income senior
7 and disabled persons shall be amended by deleting the language stricken and adding the
8 language underlined, to read as follows:
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10 **Sec. 53-498. - Computation of payment.**

11 The manager of finance shall compute the total payments due to eligible persons or
12 other applicants meeting all of the requirements set forth in subsection 53-497(a) as
13 follows:

14 (1) ~~An~~ For applications associated with a dwelling unit owned or rented by the
15 applicant in 2011 and prior years, an initial amount of one hundred eighty-six dollars
16 (\$186.00) to each applicant who establishes eligibility as provided in this article; for
17 applications associated with a dwelling unit owned or rented by the applicant in 2012
18 and subsequent years, an initial amount of three hundred and seventy two dollars
19 (\$372.00) to each applicant who establishes eligibility as provided in this article; and
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21 (2) An additional one dollar (\$1.00) of payment for every one- hundred-dollar
22 decrement in the applicant's income from the annual income limitations defined in
23 paragraph (a)(2) section 53-497 of the Revised Municipal Code, down to the
24 following thresholds: eight thousand three hundred dollars (\$8,300.00) if single or to
25 twelve thousand one hundred dollars (\$12,100.00) in the case of husband and wife;
26 and
27

28 (3) An additional two dollars (\$2.00) of payment for every one- hundred-dollar
29 decrement in the applicant's income beneath the following thresholds: eight
30 thousand three hundred dollars (\$8,300.00) if single or twelve thousand one hundred
31 dollars (\$12,100.00) in the case of husband and wife; and

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2 (4) For payments made under this article after May 1, 2001, the thresholds set forth
3 in paragraphs (2) and (3) of this section 53-498 shall be directly and proportionately
4 adjusted by the percentage equal to the cost of living adjustments approved by the
5 federal Social Security Administration for social security recipients under Section
6 230, Title 2, of the Social Security Act, as amended, for each calendar year.
7
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9 **Section 5.** In accordance with § 3.3.6 of the Charter and Article X, Section 20 of the
10 Colorado Constitution, this ordinance shall be submitted to a vote of the registered electors of the
11 City and County of Denver at a special municipal election to be coordinated with the state general
12 election occurring November 6, 2012. Each elector voting at said election and desirous of voting
13 for or against the ordinance shall cast a vote as provided by law either “Yes” or “No” on the
14 proposition:
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16 Without increasing any tax rate or adopting any new tax, and in order to pay for
17 improvements to police, fire, streets, Denver Public Library, after-school and summer
18 programs for children and such services as specified in City Council Bill 12-566 and
19 published on the city’s web-site, shall the City and County of Denver be authorized to
20 collect, retain and spend all tax revenue derived from the city’s existing gross tax
21 rates to the extent those revenues exceed the constitutional limitation on tax
22 revenue, also known as TABOR, beginning in 2013, provided that in no event shall
23 the city increase the maximum lawful property tax rate without prior voter approval as
24 required by Section 20(4)(a) of Article X of the Colorado Constitution, and requiring
25 specific annual reporting requirements by the Manager of Finance to the mayor, the
26 city auditor and the city council on the disposition of these funds?
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29 The proper officials of the City and County of Denver as are charged with duties relating to the election
30 shall, before the election, issue such calls, make such certifications, and publications, give such
31 notices (including, without limitation, the notice required by Art. X, §20(3)(b) of the Colorado
32 Constitution), make such appointments, and do all such other acts and things in connection with the
33 submission of this question to the registered electors of the City and County of Denver at the election
34 as are required by the constitution and laws of the state of Colorado and the Charter and ordinances
35 of the City and County of Denver. The ballots cast at such election shall be canvassed and the results
36 ascertained, determined, and certified in accordance with the requirements of the Constitution and
37 laws of the State of Colorado and the Charter and ordinances of the City and County of Denver.

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Section 6. Subject to voter approval of the ballot question set forth in Section 5, this ordinance shall be effective January 1, 2013 and shall apply to 2012 property taxes certified for collection in 2013.

COMMITTEE APPROVAL DATE: _____, 2012.
MAYOR-COUNCIL DATE: _____, 2012.
PASSED BY THE COUNCIL _____ 2012
_____- PRESIDENT
APPROVED: _____ - MAYOR _____ 2012
ATTEST: _____ - CLERK AND RECORDER,
EX-OFFICIO CLERK OF THE
CITY AND COUNTY OF DENVER
NOTICE PUBLISHED IN THE DAILY JOURNAL _____ 2012; _____ 2012

PREPARED BY: David W. Broadwell, Assistant City Attorney; DATE: _____

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

Douglas J. Friednash, City Attorney
BY: _____, _____ City Attorney
DATE: _____