

1 BY AUTHORITY

2 ORDINANCE NO. _____
3 SERIES OF 2014

COUNCIL BILL NO. _____
COMMITTEE OF REFERENCE:

4
5 A BILL
6

7 For an ordinance extending the existing .12 percent sales and use tax (the
8 “Denver Preschool Tax”) through December 31, 2026 and increasing the rate to
9 .15 percent, dedicating the revenue derived from the tax to fund the Denver
10 Preschool Program, subject to the approval of the voters at a special municipal
11 election to be conducted in coordination with the state general election on
12 November 4, 2014; and making certain changes to the Denver Preschool
13 Program.
14

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

16 **Section 1.** Subject to voter approval as provided in Section 7 of this ordinance,
17 subsection (h) of Account Number 97000-282110 of the Fund Plan, Section 20-18, D.R.M.C.,
18 concerning apportionment of the sales, use and lodger’s tax, shall be amended to read as
19 follows:
20

21 **Sec. 20-18. Fund Plan**

22 *Account No. 97000-282110*

23
24 *Name of account:* Unapportioned sales, use and lodger’s tax

25 *Source of funds:* City retail sales taxes, city use taxes and city lodger’s taxes that
26 have been collected, returned, and await apportionment

27 *Disposition of funds:*
28

29 h. Monthly, (1) allocation apportionment and transfer of only those revenues
30 raised at the rate of .~~15~~2 percent of gross taxable sales from sales and use taxes
31 levied to the Denver Preschool Program **Project** in the General Government
32 Special Revenue Fund.

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Section 2. Subject to the approval of the voters as provided in Section 7 of this Ordinance, subsection (g) of Section 53-27, D.R.M.C., concerning sales taxes shall be amended by adding the language underlined and deleting the language stricken, to read as follows:

(g) *Sales tax increment to fund the Denver Preschool Program.* In addition to the sales tax otherwise imposed by this section, a tax of ~~twelve~~ fifteen one-hundredths of one percent (.152%) shall be paid on all taxable sales of commodities or services, except on commodities or services specified in subsection (b) of this section, beginning January 1, ~~2007~~ 2015 and expiring December 31, ~~2016~~ 2026. The revenue from such additional tax shall be used for the sole purpose of funding the Denver Preschool Program pursuant to article III of chapter 11.

Section 3. Subject to the approval of the voters as provided in Section 7 of this Ordinance, subsection (a) of section 53-28, D.R.M.C., concerning collection of sales taxes shall be amended by adding the language underlined and deleting the language stricken, to read as follows:

Sec. 53-28. Retailer responsible for payment of tax.

(a) *Amount.* Every retailer shall, irrespective of other provisions of this article, be liable and responsible for the payment of an amount equivalent three and sixty-~~two~~ five one-hundredths (3.652) percent of the retailer's gross taxable sales of commodities or services specified in this article, except: (1) Aviation and railway fuel, as to which the rate of four cents (\$0.04) for each gallon purchased shall apply; (2) Automotive vehicles when they are for any term of thirty (30) days or less hired for use, rented, leased or transferred under a grant of a license to use, as to which a rate of taxation as set forth in section 53-27(b)(2) shall apply; and (3) Food and beverages not exempted from taxation under section 53-26(8) of this article, as to which the rate of four (4) percent shall apply, and for each of which respective rates aforesaid the retailer shall be liable for an equivalent amount; and every retailer shall on or before the twentieth day of each month pay

1 over such amount and make a return to the manager, less one-half of one (.5)
2 percent of such amount as a discount allowable for prompt payment. If any vendor
3 is delinquent in remitting the tax levied by this article, other than in unusual
4 circumstances shown to the satisfaction of the manager, the vendor shall not be
5 allowed to retain any discount allowable for prompt payment, and the full amount
6 shall be remitted to the manager by any such delinquent vendor, together with any
7 other applicable penalty or interest payable under the terms of this article.

8
9 **Section 4.** Subject to the approval of the voters as provided in Section 7 of this
10 Ordinance, subsection (k) of Section 53-98, D.R.M.C., concerning use taxes shall be
11 amended by adding the language underlined and deleting the language stricken, to read
12 as follows:

13
14 (k) *Use tax increment to fund the Denver Preschool Program.* In addition to the
15 use tax otherwise imposed by this section, a tax of ~~twelve~~ fifteen one-hundredths of one
16 percent (.152%) shall be paid on all taxable uses, consumptions, distributions, and
17 storages of commodities and services, except on commodities and services specified in
18 subsection (b) of this section, beginning January 1, ~~2007~~ 2015 and expiring December
19 31, ~~2016~~ 2026. The revenue from such additional tax shall be used for the sole purpose
20 of funding the Denver Preschool Program pursuant to article III of chapter 11.

21
22 **Section 5.** Subject to the approval of the voters as provided in Section 7 of this
23 ordinance, subsection (a) of section 53-99, D.R.M.C., concerning collection of use taxes,
24 shall be amended by the addition of the language underlined and the deletion of the
25 language stricken, to read as follows:

26
27 **Sec.53-99. Retailer responsible for payment of tax.**

28 (a) *Amount.* Every retailer shall, irrespective of other provisions of this
29 article, be liable and responsible for the payment of an amount equivalent to three
30 and sixty-~~two~~ five one-hundredths percent of gross taxable sales made by him of
31 services and tangible personal property specified in this article, except: (1) aviation
32 and railway fuel, as to which the rate of four cents (\$0.04) for each gallon

1 purchased shall apply, (2) automotive vehicles when they are for any term of thirty
2 (30) days or less hired for use, rented, leased or transferred under a grant of a
3 license to use, as to which a rate of taxation as set forth in section 53-98(b)(2)
4 shall apply, and (3) food and beverages not exempted from taxation under section
5 53-26(8) of the city retail sales tax article, as to which the rate of four (4) percent
6 shall apply, and for each of which respective rates aforesaid the retailer shall be
7 liable for an equivalent amount; and every retailer shall on or before the twentieth
8 day of each month pay over such amount and make a return to the manager, less
9 one-half of one (.5) percent of such amount as a discount allowable for prompt
10 payment. If any vendor is delinquent in remitting the tax levied by this article, other
11 than in unusual circumstances shown to the satisfaction of the manager, the
12 vendor shall not be allowed to retain any discount allowable for prompt payment,
13 and the full amount shall be remitted to the manager by any such delinquent
14 vendor, together with any other applicable penalty or interest payable under the
15 terms of this article.

16
17 **Section 6.** Article III of Chapter 11, D.R.M.C., shall be amended by the addition of
18 the language underlined and the deletion of the language stricken, to read as follows:

19
20 **ARTICLE III. DENVER PRESCHOOL PROGRAM**
21

22 **Sec. 11-20. Legislative Intent.** The purpose of this article III is to provide for the
23 governance and administration of the dedicated sales and use tax increase approved by
24 the voters on November 7, 2006 and November 4, 2014 and as provided in sections 53-
25 27(g) and 53-98(k) of this Code (hereinafter referred to as the "Denver preschool tax"),
26 for the purpose of funding the Denver preschool program in order to increase access to
27 and quality of preschool programs for Denver residents. The city hereby determines that
28 the expenditure of the Denver preschool tax and the establishment of the Denver
29 preschool program serve important public and municipal purposes, and are matters of
30 local concern for which the citizens of Denver enjoy the full right of self-government.
31

1 **Sec. 11-21. Expenditures of Denver preschool tax to be made by contract with non-**
2 **profit corporation.**

3 (a) Expenditures of the Denver preschool tax for early childhood education programs
4 and services shall be made pursuant to an agreement between the city and a Colorado non-
5 profit corporation meeting the requirements set forth in this section, which agreement shall
6 define the obligations of the corporation in consideration of such funding. The agreement
7 shall be administered on behalf of the city by the manager of revenue and any expenditure
8 under the agreement shall be subject to audit by the auditor for compliance with the
9 requirements of this article and of the agreement.

10 (b) Any non-profit corporation with which the city may contract pursuant to this article
11 shall meet the following criteria and requirements:

12 (1) The corporation shall be duly incorporated and in good standing under the
13 Colorado Revised Nonprofit Corporation Act, shall be a separate and distinct legal entity
14 from the city, shall be deemed an independent contractor of the city, and shall not be
15 considered a department or agency of the city. The corporation shall have the authority
16 to contract in its own name and to hire its own employees who shall not be considered
17 officers or employees of the city.

18 (2) The sole purpose of the corporation as reflected in the corporation's articles
19 of incorporation shall be to administer the Denver preschool program under contract
20 with the city in accordance with the requirements of this article and all applicable law.

21 (3) The corporation's articles of incorporation shall provide for a ~~seven-member~~
22 board of directors with a minimum of eleven and a maximum of fifteen members. ~~Six (6)~~
23 ~~members of the board shall be appointed by the mayor and confirmed by the city~~
24 ~~council~~. One (1) member of the board shall be a member of the city council appointed
25 by the city council. The remaining members shall be appointed by the mayor and
26 confirmed by the city council. Members of the board of directors shall be appointed to
27 staggered three-year terms of office, and may serve no more than three terms.
28 Members of the board shall serve without compensation, but may be reimbursed for
29 actual and necessary expenses. ~~(4) The corporation's articles of incorporation shall~~
30 ~~provide for a twenty-five member board of advisors to make non-binding~~
31 ~~recommendations to the board on policy issues regarding early childhood education in~~

1 ~~general and the administration of the Denver preschool program in particular. Members~~
2 ~~of the board of advisors shall be appointed by the mayor and confirmed by the city~~
3 ~~council. Members of the board of advisors shall be appointed to staggered three-year~~
4 ~~terms. Members of the board of advisors shall serve without compensation, but may be~~
5 ~~reimbursed for actual and necessary expenses.~~ The articles of incorporation shall
6 provide criteria and qualifications for membership on the board of ~~advisors~~ directors
7 sufficient to ensure a cross-section of representation by early childhood education
8 providers, education advocates and experts, parents, and members of the business and
9 non-profit communities.

10 ~~(5)~~ (4) The records of the corporation shall be treated as public records and
11 subject to the provisions of the Colorado Open Records Act, C.R.S. § 24-72-201 et seq.,
12 as amended. Meetings of the board of directors and the board of advisors shall be
13 treated as public meetings subject to the provisions of the Colorado Open Meetings Law,
14 C.R.S. § 24-6-401 et seq., as amended.

15 **Sec. 11-22. Program requirements to be included in contract.** Any contract between the city
16 and a non-profit corporation for disbursement of the Denver preschool tax revenues shall
17 include the following provisions and requirements:

18 (1) Any expenditure of Denver preschool tax revenues under the contract shall be
19 subject to annual appropriation by the city council.

20 (2) No more than ~~five~~ seven (~~75~~) percent of the Denver preschool tax revenue
21 received by the corporation in any year shall be spent on administrative expenses. For
22 purposes of this limitation, "administrative expenses" shall mean salaries and office
23 expense related to any staff or employees of the corporation; any expenses reimbursed
24 to members of the board of directors or the board of advisors; routine business
25 expenses such as insurance, accounting and legal expenses; and any similar overhead
26 expenses incurred by the corporation. The term "administrative expenses" shall not be
27 deemed to include any fees or expenses paid to third-party contractors or consultants to
28 assist in the development or administration of the Denver preschool program.

29 (3) At least ninety-~~five~~ three (~~935~~) percent of Denver preschool tax revenue received
30 by the corporation in any year shall be used for the following purposes only,:

1 (i) Tuition credits administered in accordance with the requirements of subsection
2 (4) of this section.

3 (ii) Outreach to parents and the Denver community and assistance with enrollment
4 in preschools.

5 (iii) Technical assistance and direct grants to preschool providers meeting the
6 requirements of subsection (5) of this section, for the purpose of improving the
7 quality of pre-school programs and services.

8 (iv) Contracting with qualified experts to design and assist with the implementation
9 of a quality improvement system for preschools, including an objective quality rating
10 system for preschools.

11 (v) Measurement of the performance of the Denver preschool program and the
12 preparation of reports to city officials and to the public on the performance of the
13 program.

14 (4) Tuition credits funded pursuant to the Denver preschool program shall comply with
15 the following standards and requirements:

16 (i) Any Denver resident who is a parent or legal guardian of any preschool-
17 aged child who is also a Denver resident shall be eligible for a tuition credit to be
18 used to enroll that child in preschool in the year prior to the year in which the child
19 will be eligible for kindergarten in accordance with state law. Should the board of
20 directors determine that funds are available to expand the program to serve a
21 younger population of Denver residents, it may do so at its discretion through
22 measures the board finds appropriate if such an expansion is permissible under
23 applicable law and can be achieved in accordance with the non-profit corporation's
24 contract with the city.

25 (ii) Tuition credits shall be administered on a sliding scale, with the amount of
26 the credit being inversely related to the family income of the recipient, and with this
27 sliding scale to be more specifically determined by the board of directors.

28 (iii) Tuition credits shall be administered on a sliding scale, with the amount of
29 the credit being related to the rated quality of the preschool provider with whom the

1 credit is used, and with this sliding scale to be more specifically determined by the
2 board of directors.

3 (iv) Tuition credits shall be utilized at the discretion of the parent or guardian at
4 any qualified preschool as set forth in subsection (5) of this section.

5 (v) Other specific criteria and procedures for the disbursement of tuition credits
6 shall be determined by the board of directors.

7 (5) In order to be qualified for the use of tuition credits and for the receipt of technical
8 assistance or direct grants, a preschool provider shall meet the following minimum
9 requirements:

10 (i) The preschool shall be duly licensed under the Colorado Child Care
11 Licensing Act, C.R.S. § 26-6-101 et seq., as amended, and the provisions of this
12 chapter 11, or shall be an early childhood education program administered by
13 Denver Public Schools pursuant to the Colorado Preschool Program Act, C.R.S. §
14 22-28-101 et seq., as amended.

15 (ii) The preschool provider shall agree to participate in a three-part quality
16 improvement system that includes an introduction to quality, ~~establishment of an~~
17 ~~objective quality rating for the preschool, regular and objective quality ratings as~~
18 ~~prescribed by the board of directors,~~ and development and implementation of a
19 quality improvement plan for the preschool.

20 (iii) The preschool shall meet such other specific criteria and standards as shall
21 be determined by the board of directors.

22 (6) Not less than once annually, the corporation shall report to the mayor, the city
23 council, the auditor, and the public the following information:

24 (i) The number of children receiving tuition credits in Denver.

25 (ii) The number of quality rated preschool providers in Denver.

26 (iii) The long term academic success of children who have participated in the
27 Denver preschool program, to the extent such information is available to the board
28 in future years.

1 (iv) Audited financial statements for the corporation, including full reports on
2 expenditures for the prior fiscal year and anticipated budgets and work plans for the
3 ensuing fiscal year.

4 (7) In administering the Denver preschool program or expending any monies derived
5 from the Denver preschool tax, the corporation shall not discriminate against any person
6 on the basis of race, color, religion, national origin, gender, age (except as to the age of
7 children qualifying for tuition credits), military status, sexual orientation, gender
8 variance, marital status, or physical or mental disability.

9 **Section 7.** 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
11 electors of the City and County of Denver at a special municipal election to be
12 coordinated with the state general election occurring November 4, 2014. Each elector
13 voting at said election and desirous of voting for or against the ordinance shall cast a vote
14 as provided by law either “Yes” or “No” on the proposition:

15 SHALL DENVER SALES AND USE TAXES BE INCREASED \$ 5 MILLION IN
16 2015 (THE FIRST FISCAL YEAR), COMMENCING JANUARY 1, 2015, AND BY
17 WHATEVER ADDITIONAL AMOUNTS ARE RAISED ANNUALLY THEREAFTER
18 BY EXTENDING THE EXISTING TWELVE ONE-HUNDREDTHS OF ONE
19 PERCENT (.12%) SALES AND USE TAX (THE “DENVER PRESCHOOL TAX”)
20 THROUGH DECEMBER 31, 2026, AND INCREASING THE TAX RATE BY
21 THREE ONE HUNDRETHS OF ONE PERCENT (.03%) TO FIFTEEN ONE-
22 HUNDREDTHS OF ONE PERCENT (.15%) FOR THE SOLE PURPOSE OF
23 FUNDING THE DENVER PRESCHOOL PROGRAM IN ORDER TO INCREASE
24 ACCESS TO PRESCHOOL SERVICES FOR DENVER CHILDREN AND TO
25 IMPROVE THE QUALITY OF PRESCHOOLS, AND SHALL THE CITY AND
26 COUNTY OF DENVER BE PERMITTED TO COLLECT, RETAIN AND SPEND
27 ALL REVENUES DERIVED FROM SUCH TAXES AS A VOTER APPROVED

1 REVENUE CHANGE AND AN EXCEPTION TO THE LIMITS WHICH WOULD
2 OTHERWISE APPLY UNDER ARTICLE X, SECTION 20 OF THE COLORADO
3 CONSTITUTION OR ANY OTHER LAW?

4 The proper officials of the City and County of Denver as are charged with duties relating to the
5 election shall, before the election, issue such calls, make such certifications, and publications,
6 give such notices (including, without limitation, the notice required by Art. X, §20(3)(b) of the
7 Colorado Constitution), make such appointments, and do all such other acts and things in
8 connection with the submission of this question to the registered electors of the City and County
9 of Denver at the election as are required by the constitution and laws of the state of Colorado
10 and the Charter and ordinances of the City and County of Denver. The ballots cast at such
11 election shall be canvassed and the results ascertained, determined, and certified in accordance
12 with the requirements of the Constitution and laws of the State of Colorado and the Charter and
13 ordinances of the City and County of Denver.

14 **Section 8.** Subject to the approval of the voters as provided in Section 3 of this
15 Ordinance, this ordinance shall be effective January 1, 2015; except that the changes to the
16 Denver Preschool Program set forth in Section 6 of this ordinance are not subject to the
17 approval of the voters and shall be effective January 1, 2015.

18
19 COMMITTEE APPROVAL DATE:

20 MAYOR-COUNCIL DATE:

21 PASSED BY THE COUNCIL _____, 2014

22 _____ - PRESIDENT

23 APPROVED: _____ - MAYOR _____, 2014

24 ATTEST: _____ - CLERK AND RECORDER,
25 EX-OFFICIO CLERK OF THE
26 CITY AND COUNTY OF DENVER

1

2 NOTICE PUBLISHED IN THE DAILY JOURNAL _____, 2014; _____,
3 2014

4 PREPARED BY: Dan Slattery, Assistant City Attorney; DATE: _____, 2014

5

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

10

11 D. Scott Martinez, City Attorney

12 BY: _____, _____ City Attorney

13 DATE: _____

14