

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2018

COUNCIL BILL NO. CB18-0864
COMMITTEE OF REFERENCE:
Safety, Housing, Education & Homelessness

A BILL

For an ordinance amending Article V of Chapter 27 of the Revised Municipal Code of the City and County of Denver regarding Dedicated Funding for Affordable Housing, amending Article II of Chapter 53 of the Revised Municipal Code of the City and County of Denver regarding Imposition of Tax and dedicating such increased revenue from sales tax on retail marijuana and retail marijuana products to the funding of affordable housing programs, and amending ordinance no. 20160625 in Series 2016 establishing the Affordable Housing Permanent Funds.

WHEREAS, Denver continues to experience a virtually unprecedented level of population growth and a market environment in which the supply of housing within the city has not kept pace with demand, particularly for households with low and moderate incomes; and

WHEREAS, the general lack of affordable housing for households of low and moderate income, along with the large number of existing households that are "housing cost burdened" cause many adverse social and economic impacts within the city, particularly impacts associated with the fact that persons who are employed in Denver are increasingly unable to afford to live in Denver near their place of employment; and

WHEREAS, the City and County of Denver, like cities throughout Colorado and the United States, has long treated the promotion and provision of affordable housing for persons of low and moderate incomes as an important and essential public service, and as a part of the City's fundamental mission to promote the public health, safety and general welfare; and

WHEREAS, particularly in light of the ongoing decline in federal resources to fund affordable housing programs, as well as the recent population and market trends described in these recitals, the City Council deems it essential for the City to now adopt additional dedicated revenue to support the city's affordable housing programs and to remove the sunset date on the dedicated affordable housing fund;

WHEREAS, a maximum tax of 15% was approved by voters to be imposed as a tax on sales of retail marijuana and marijuana products, but only a 3.5% tax has been imposed to date;

WHEREAS, there is wide support for an increase on such sales tax to support affordable housing programs in the City;

1 **WHEREAS**, the original language in the ordinance establishing the appropriation basis of the
2 affordable housing funds requires clarification; and

3 **WHEREAS**, the City Council has now determined that amendments to Article V Chapter 27
4 and Article II Chapter 53 are advised to further the goal of preserving affordable housing units.

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

7 **Section 1.** Chapter 27 Section 150, D.R.M.C. Dedicated Funding for Affordable Housing
8 shall be amended to read as follows:

9 **Sec. 27-150. – Sources and uses of fund revenue.**

10 (a) Dedicated revenues. The affordable housing permanent funds shall consist of the
11 ~~affordable housing linkage fee revenue fund~~ **Affordable Housing Linkage Fee**
12 **Revenue Fund** created for the exclusive purpose of receiving and accounting for all
13 revenues derived from the affordable housing linkage fees provided in division 2 of this
14 article V and the ~~affordable housing property tax revenue fund~~ **Affordable Housing**
15 **Property Tax and Other Local Revenue Fund** created for the purpose of receiving and
16 accounting for revenues derived from the portion of the city's property taxes **and retail**
17 **marijuana sales taxes** dedicated for affordable housing programs as provided in
18 subsections (i) and (j) of this section, **as well as donations, cash transfers from other**
19 **funds, and other local revenue sources.**

20 (b) Permitted **uses** of revenue in the ~~affordable housing linkage fee revenue fund~~
21 **Affordable Housing Linkage Fee Revenue Fund**. Revenue received in the ~~affordable~~
22 ~~housing linkage fee revenue fund~~ **Affordable Housing Linkage Fee Revenue Fund**
23 shall be used exclusively for the following purposes:

24 (1) To increase the supply of affordable rental housing, including the funding of renter
25 assistance programs, for qualified households earning eighty (80) percent or less
26 of AMI, in response to increased housing demand linked to new construction and
27 new employment.

28 (2) To increase the supply of for-sale housing for qualified households earning eighty
29 (80) percent or less of AMI, in response to increased housing demand linked to new
30 construction and new employment.

1 (3) To support homebuyer assistance programs, including by way of example down
2 payment and mortgage assistance programs, for qualified households earning
3 eighty (80) percent or less of AMI, in response to increased housing demand linked
4 to new construction and new employment.

5 (c) Permitted uses of revenue in the ~~affordable housing property tax revenue fund~~
6 **Affordable Housing Property Tax and Other Local Revenue Fund**. Revenue
7 received in the ~~affordable housing property tax revenue fund~~ **Affordable Housing**
8 **Property Tax and Other Local Revenue Fund** shall be used exclusively for the
9 following purposes:

10 (1) For the production or preservation of rental housing, including the funding of rental
11 assistance programs, for qualified households earning eighty (80) percent or less
12 of AMI.

13 (2) For the production or preservation of for-sale housing for qualified households
14 earning one hundred (100) percent or less of AMI.

15 (3) For homebuyer assistance programs, including by way of example down payment
16 and mortgage assistance programs, for qualified households earning one hundred
17 and twenty (120) percent or less of AMI.

18 (4) For the development of permanent supportive housing for homeless persons, and
19 for supportive services associated with such housing; provided, however, in no
20 event shall the amount expended from the ~~affordable housing property tax~~
21 ~~revenue tax fund~~ **Affordable Housing Property Tax and Other Local Revenue**
22 **Fund** for supportive services under this paragraph (4) exceed ten (10) percent of
23 the amount ~~of revenue received in~~ **appropriated by the City Council to** the fund
24 for ~~the~~ that year.

25 (5) For programs supporting low-income at-risk individuals in danger of losing their
26 existing homes, for mitigation of the effects of gentrification and involuntary
27 displacement of lower income households in those neighborhoods of the city that
28 are most heavily impacted by rapidly escalating housing costs, for homeowner
29 emergency repairs, or for other housing programs.

30 (d) Cap on administrative costs. Monies in the affordable housing permanent funds may be
31 expended to pay the costs incurred by the city associated directly with the administration

1 of the funds; provided, however, in no event shall the amount expended from the funds
2 for such administrative expenses in any year exceed eight (8) percent of the amount of
3 revenue received in ~~the Affordable Housing Linkage Fee Revenue Fund both funds~~
4 ~~in~~ that year and shall not exceed eight (8) percent of the amount appropriated by
5 the City Council to the Affordable Housing Property Tax and Other Local Revenue
6 Fund that year.

- 7 (e) Fund earnings. Any interest earning on any balance in either of the affordable housing
8 permanent funds shall accrue to that fund.
- 9 (f) Administration of funds. The affordable housing permanent funds shall be administered
10 by the ~~executive director of the office of economic development~~ Executive Director
11 of the Office of Economic Development, in coordination with the recommendations and
12 assistance of the ~~affordable housing advisory committee~~ Affordable Housing
13 Advisory Committee as provided in subsection (c) of this article V. The ~~executive~~
14 ~~director~~ Executive Director may promulgate rules and regulations consistent with this
15 article V governing the procedures and requirements for expenditures from the funds.
16 Expenditures from the funds shall be made in accordance with the adopted three- to five-
17 year comprehensive housing plan for the funds as provided in subsection 27-164(a).
- 18 (g) Definition of AMI. As used in this section, the term "AMI" means the area median income,
19 adjusted for household size, for the Denver metropolitan area as determined by the U.S.
20 Department of Housing and Urban Development.
- 21 (h) Review of article. No later than December 31, 2021, the office of economic development
22 shall conduct a policy review of this article V, hold a public hearing to gather input for the
23 review, and report the findings and any recommendations to the city council.
- 24 (i) Dedicated levy for ~~affordable housing property tax revenue fund~~ Affordable
25 Housing Property Tax and Other Local Revenue Fund. For 2016 property taxes to
26 be collected in 2017, the city's certification of property tax mill levies shall include a
27 separate itemized levy at the rate of one-half of one mill (.5 mill) for the purpose of
28 funding affordable housing programs through the ~~affordable housing property tax~~
29 ~~revenue fund~~ Affordable Housing Property Tax and Other Local Revenue Fund.
30 For 2017 property taxes to be collected in 2018, and in each subsequent [year], the city
31 shall continue to maintain a separately itemized levy to fund affordable housing

1 programs and, as provided in subsection 20-26(d), shall adjust the levy annually in
2 coordination with the adjustment other city levies to the extent necessary to comply with
3 the city property tax revenue limitation.

4 **(j) Dedicated portion of marijuana sales tax revenues. All revenue collected by the**
5 **city pursuant to section 53-85(a)(ii) shall be remitted to the Affordable Housing**
6 **Property Tax and Other Local Revenue Fund as provided in subsection (a) of this**
7 **section and used exclusively for the purposes set forth in subsection (c) of this**
8 **section.**

9 **Section 2.** Chapter 27 Section 158, D.R.M.C. Dedicated Funding for Affordable Housing
10 shall be amended to read as follows:

11 **Sec. 27-158. – Committee created.**

12 There is hereby created an affordable housing advisory committee. The committee shall
13 consist of twenty-three (23) members as follows:

14 (a) The following nine (9) ex officio members, or the member's designee:

- 15 (1) ~~Executive director of the mayor's office of housing and opportunities for~~
16 ~~people everywhere (H&OPE).~~ **Chief housing officer.**
- 17 (2) Executive director of the office of economic development.
- 18 (3) Executive director (manager) of department of community planning and
19 development.
- 20 (4) Chief financial officer (manager of finance).
- 21 (5) City official primarily responsible for services to the homeless.
- 22 (6) Executive director of Denver Housing Authority.
- 23 (7) Executive director of Denver Urban Renewal Authority.
- 24 (8) Executive director of the Colorado Housing and Finance Authority, to the extent the
25 state agency elects to participate in the committee.
- 26 (9) Executive director of the Colorado Division of Housing, to the extent the state
27 agency elects to participate in the committee.

1 (b) The following eleven (11) members appointed by the mayor and confirmed by the city
2 council:

3 (1) Housing finance expert.

4 (2) Representative of a provider of services to the homeless.

5 (3) Representative of a community housing development organization.

6 (4) Representative of a major employer.

7 (5) Resident of an affordable housing project or unit, such as a project or unit that is
8 deed-restricted for affordability.

9 (6) Representative of the private-sector, commercial real estate industry.

10 (7) Representative of the private-sector, market rate single-family real estate industry.

11 (8) Representative of the private-sector, market rate multifamily real estate industry.

12 (9) For-profit affordable housing developer.

13 (10) Nonprofit affordable housing developer.

14 (11) At-large community member.

15 (c) The following three (3) members appointed by the city council:

16 (1) A member of the city council.

17 (2) Affordable housing advocate.

18 (3) At-large community member.

19 **Section 3.** Chapter 27 Section 170, D.R.M.C. Dedicated Funding for Affordable Housing
20 (Sunset Provision) shall be deleted in its entirety.

21 **Section 4.** Subsection (a) of Chapter 53 Section 85, D.R.M.C. Imposition of Tax shall be
22 amended to read as follows:

23 **Sec. 53-85. – Imposition of tax.**

24 **(i)** In addition to the sale tax imposed by division 1 of this Article II, beginning January 1,
25 2014, there is imposed upon all sales of retail marijuana and retail marijuana products
26 to a consumer by a retail marijuana store a tax at the rate of three and one-half (3.5)
27 percent of the amount of the sale.

1 **(ii) In addition to the sale tax imposed by division 1 of this Article II and the sale tax**
2 **imposed by subsection (a)(i) of this Section 53-85, beginning October 1, 2018,**
3 **there is imposed upon all sales of retail marijuana and retail marijuana products**
4 **to a consumer by a retail marijuana store a tax at the rate of two (2) percent of the**
5 **amount of the sale. The two (2) percent tax described in this subsection 53-85(a)(ii)**
6 **shall be dedicated to the Affordable Housing Property Tax and Other Local**
7 **Revenue Fund for affordable housing purposes.**

8 **Section 5.** Section 7 of ordinance 20160625 establishing the Affordable Housing
9 Permanent Funds shall be amended to read as follows:

10 **A.** There is hereby established in the Community Development Special Revenue Fund,
11 Fund Number 16000, an Affordable Housing Property Tax **and Other Local Revenue** Fund,
12 Accounting No. 16606, for the purpose of receiving and expending certain tax revenue and revenue
13 from other sources to promote the provision of affordable housing in accordance with the laws of the
14 city. Revenues derived from the component of the city's property taxes dedicated to affordable
15 housing, as provided in Section 20-26, D.R.M.C., including any such revenues transferred from the
16 TABOR excess revenue fund, Fund No. 19000, shall be deposited into the Treasury of the City and
17 credited to the Affordable Housing Property Tax **and Other Local Revenue** Fund.

18 **A.B.** There is hereby established in the Community Development Special Revenue Fund,
19 Fund Number 16000, an Affordable Housing Linkage Fee Revenue Fund, Accounting No. 16607,
20 for the exclusive purpose of receiving and expending revenues derived from the city affordable
21 housing linkage fees, as provided in Article V of Chapter 27, D.R.M.C. Any and all such fee revenues
22 shall be deposited into the Treasury of the City and credited to the Affordable Housing Linkage Fee
23 Revenue Fund.

24 ~~(C).~~ The Affordable Housing Property Tax **and Other Local Revenue** Fund and the
25 Affordable Housing Linkage Fee Revenue Fund shall collectively be known as the city's Affordable
26 Housing Permanent Funds.

27 **CD. Expenditures are hereby authorized for the Affordable Housing Property Tax and**
28 **Other Local Revenue Fund in an amount not to exceed the total of deposits described in**
29 **subsection (A), to be expended by the Executive Director of the Office of Economic**
30 **Development for the purposes set forth in the governing law. The Affordable Housing**
31 **Property Tax and Other Local Revenue Fund shall be subject to annual appropriation by the**
32 **City Council. This is an appropriated, non-lapsing fund.**

1 **DE.** Expenditures are hereby authorized for the ~~Affordable Housing Permanent Funds~~
2 **Affordable Housing Linkage Fee Revenue Fund** in an amount not to exceed the total deposits
3 described in subsections ~~(A) and~~ (B) of this section, to be expended by the Executive Director of the
4 Office of Economic Development for the purposes set forth in the governing law for each fund. **This**
5 **is a cash-basis, non-lapsing fund. Notwithstanding any other provision of the charter of the**
6 **ordinances of the city, expenditures from the Affordable Housing Permanent Funds shall be**
7 **subject to annual appropriation by the City Council.**

8 **DE.** The Chief Financial Officer (Manager of Finance) of the City and County of Denver is
9 hereby authorized to make such book and record entries and to do such other things as may be
10 necessary to accomplish the purposes of this ordinance.

11 **Section 6.** This ordinance shall be effective upon final publication.

12 COMMITTEE APPROVAL DATE: August 8, 2018

13 MAYOR-COUNCIL DATE: August 14, 2018

14 PASSED BY THE COUNCIL: _____

15 _____ - PRESIDENT

16 APPROVED: _____ - MAYOR _____

17 ATTEST: _____ - CLERK AND RECORDER,
18 EX-OFFICIO CLERK OF THE
19 CITY AND COUNTY OF DENVER

20 NOTICE PUBLISHED IN THE DAILY JOURNAL: _____; _____

21 PREPARED BY: Julie K. L. Mecklenburg, Assistant City Attorney DATE: August 16, 2018

22 Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of
23 the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
24 ordinance. The proposed ordinance is not submitted to the City Council for approval pursuant to
25 § 3.2.6 of the Charter.

26
27 Kristin M. Bronson, Denver City Attorney

28
29 BY: _____, Assistant City Attorney DATE: _____