

1 BY AUTHORITY

2 ORDINANCE NO. \_\_\_\_\_  
3 SERIES OF \_\_\_\_\_

COUNCIL BILL NO. 12-566  
COMMITTEE OF REFERENCE:  
Government and Finance

4  
5  
6 A BILL  
7

8 For an ordinance authorizing the City and County of Denver to retain and spend all tax  
9 revenue in excess of the constitutional limitations on revenue and spending, subject to  
10 the approval of the voters at a special municipal election to be coordinated with the state  
11 general election on November 6, 2012; providing for the restoration of the City's lawful  
12 maximum ad valorem property tax rate; adopting an alternative limitation on annual  
13 increases in ad valorem property tax revenue to be in effect while the city is restoring its  
14 lawful maximum property tax rate; specifying categories of expenditures to be made with  
15 revenue derived from the restoration of the maximum lawful property tax rate; allowing  
16 credits against business personal property taxes for new and expanded businesses;  
17 increasing the amount of tax refunds available to low-income elderly or disabled  
18 persons; and making related conforming amendments to the Denver Revised Municipal  
19 Code.  
20

21 WHEREAS, section 20 (7) (b) and (d) of article X of the Colorado Constitution limits annual  
22 increases in a local government's total fiscal year revenue and spending, but expressly allows local  
23 voters to approve the retention and expenditure of revenue in excess of the limit; and  
24

25 WHEREAS, section 20 (7)(c) and (d) of article X of the Colorado Constitution specifically limits  
26 annual increases in a local government's ad valorem property tax revenue, but expressly allows local  
27 voters to approve the retention and expenditure of property tax revenue in excess of the limit; and  
28

29 WHEREAS, at an election occurring on November 7, 2000, Denver voters previously authorized  
30 the city to retain and spend all excess revenue derived from non-tax sources in perpetuity, and also  
31 authorized the city to retain and spend all excess tax revenue (other than excess ad valorem property  
32 tax revenue) for a period of five years; and  
33

34 WHEREAS, at an election occurring on November 1, 2005, Denver voters previously authorized  
35 the city to retain and spend all excess tax revenue (other than excess ad valorem property tax  
36 revenue) for an additional period of ten years; and  
37

38 WHEREAS, in order to comply with the constitutional limitation on annual increases in ad

1 valorem property tax revenue, since 1996 the city has annually adopted and certified temporary  
2 property tax credits as permitted by § 39-1-111.5, C.R.S., thus reducing the overall amount of revenue  
3 that would otherwise be derived from the imposition of the city’s maximum lawful property tax rate on  
4 all taxable property; and

5  
6 WHEREAS, the temporary property tax credit currently causes the city to forego the receipt  
7 and expenditure of approximately \$68 million per annum in property tax revenue that would otherwise  
8 be derived from the city’s maximum lawful property tax rate and would otherwise be available to pay  
9 for essential city services; and

10  
11 WHEREAS, as expressly permitted by the Colorado Constitution, Denver voters should decide  
12 whether or not to allow retain and spend any and all tax revenues, including revenues derived from  
13 property taxes, in excess of the constitutional limitations; and

14  
15 WHEREAS, if the voters approve the retention and expenditure of property tax revenue in  
16 excess of the constitutional limit, the city will be allowed to restore its maximum lawful property tax  
17 rate; and

18  
19 WHEREAS, in order to mitigate the effect of the restoration of the city’s maximum lawful  
20 property tax rate on the taxpayers, the city intends to: (A) phase-in the restoration of the maximum  
21 lawful tax rate over time; (B) impose its own cap on annual increases in city property tax revenue while  
22 the tax rate is being restored; (C) offer credits against business personal property taxes for new or  
23 expanded businesses; and (D) provide additional tax relief for low-income elderly or disabled  
24 taxpayers.

25  
26  
27 **NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF**  
28 **DENVER:**

29  
30 Subject to voter approval of the ballot question set forth in Section 5 of this bill for an ordinance,  
31 the Denver Revised Municipal Code shall be amended in the following particulars:

32  
33 **Section 1.** Section 20-26, D.R.M.C., concerning compliance with constitutional revenue  
34 limitations shall be repealed and reenacted by deleting the language stricken and adding the language

1 underlined to read as follows:

2 **Sec. 20-26. Constitutional Revenue Limitations.**

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

9  
10 ~~(b) *Calculation of excess revenue; 2005—2014.* For fiscal years 2005 through~~  
11 ~~2014 inclusive, after the end of the each fiscal year, and after the completion of the~~  
12 ~~audited financial statements for that fiscal year, the finance director shall determine~~  
13 ~~the exact amount, if any, by which all city revenues for that fiscal year exceeded the~~  
14 ~~constitutional revenue limitation. The finance director shall also determine the extent~~  
15 ~~to which any revenue in excess of the constitutional revenue limitation, was derived~~  
16 ~~from city taxes.~~

17  
18 ~~(b.5) *Calculation of excess revenue; 2015 and thereafter.* For fiscal year 2015~~  
19 ~~and thereafter, after the end of the each fiscal year and after the completion of the~~  
20 ~~audited financial statements for that fiscal year, the finance director shall determine~~  
21 ~~the exact amount, if any, by which all city revenues for that fiscal year exceeded the~~  
22 ~~constitutional revenue limitation, and shall determine the extent to which any revenue~~  
23 ~~in excess of the constitutional revenue limitation was derived from city taxes. The~~  
24 ~~finance director shall also determine whether any such revenue exceeds the excess~~  
25 ~~city and county revenue cap as defined in this section.~~

26  
27 ~~(c) *Appropriation of excess tax revenue.* Upon performing the calculations set~~  
28 ~~forth in paragraph (b) or (b.5) and upon a determination that the city is in receipt of~~  
29 ~~tax revenue in excess of the limitations set forth therein, the finance director shall~~  
30 ~~promptly report to the mayor, the city council, and the auditor the amount of excess~~  
31 ~~revenue. Any revenue in excess of the constitutional revenue limitation but not in~~  
32 ~~excess of the city and county excess revenue cap shall be accounted for in~~  
33 ~~accordance with the fund plan and shall be appropriated for public safety, public~~  
34 ~~works, parks and recreation, health care, libraries and other essential services. For~~  
35 ~~fiscal year 2015 and thereafter, any revenue in excess of city and county excess~~  
36 ~~revenue cap shall be refunded to the taxpayers in accordance with Section 20 of~~  
37 ~~Article X of the Colorado Constitution.~~

38  
39 ~~(d) *Excess revenue derived from non-tax sources.* For fiscal year 1999 and all~~  
40 ~~subsequent fiscal years, the city may collect, retain and spend any and all revenues~~  
41 ~~in excess of the limitation set forth in Section 20(7)(d), Article X to the extent those~~  
42 ~~revenues are derived from sources other than city taxes. Such revenues shall be~~  
43 ~~accounted for in accordance with the fund plan and shall be expended for the~~

1 purpose for which they are received or, if no purpose is specified, for general fund  
2 purposes.

3  
4 ~~(e) *Property tax revenue limit.* Notwithstanding the provisions of subsections~~  
5 ~~(b), (b.5) and (c) of this section, the city shall remain subject to the specific limitation~~  
6 ~~on annual increases in property tax revenue as set forth in Section 20(7)(c), Article X,~~  
7 ~~of the Constitution of the State of Colorado.~~

8  
9 ~~(f) *Excess city and county revenue cap.* As used in this section, the term~~  
10 ~~"excess city and county revenue cap" or "revenue cap" shall mean, for 2015 and any~~  
11 ~~given fiscal year thereafter, an amount that is equal to the highest total city and~~  
12 ~~county revenues for a fiscal year from the period from 2005 to 2014, adjusted each~~  
13 ~~subsequent fiscal year for inflation and local growth, the qualification or~~  
14 ~~disqualification of enterprises, and debt service changes. The term "city and county~~  
15 ~~revenues" means revenues not excluded from fiscal year spending as defined by~~  
16 ~~Section 20(2)(c), Article X of the Colorado Constitution. The terms "inflation" and~~  
17 ~~"local growth" shall have the same meaning as is provided in Section 20(2)(f) and~~  
18 ~~(g), Article X of the Colorado Constitution.~~

19  
20  
21 (a) *Purpose.* The purpose of this section is to provide for the implementation of the  
22 ballot measures approved by voters at the special municipal elections conducted on  
23 November 7, 2000 and November 6, 2012, in which the voters authorized the City  
24 and County of Denver to collect, retain and spend all city revenues in excess of the  
25 limitations set forth in section 20(7)(b) and (c) of article X, of the Colorado  
26 Constitution.

27  
28  
29 (b) *Definitions.* As used in this section, the following terms have the meanings  
30 herein set forth:

31  
32 (1) "Affected funds" means the general fund, the human service fund, the police  
33 pension fund, and the fire pension fund, for which a millage rate has been itemized  
34 in the annual certification of city and county property taxes, offset by temporary  
35 property tax credits or rate reductions between tax years 1996 and 2011 in order to  
36 comply with the constitutional property tax revenue limitation.

37  
38 (2) "City property tax revenue limitation" means the amount of property tax revenue

1 levied for the affected funds in the preceding year plus six percent (6%), plus an  
2 additional percentage equal to “local growth” as defined by section 20(2)(g) of article  
3 X of the Colorado Constitution, but excluding revenue derived from any of the  
4 following:

- 5  
6 a. increased property tax revenue caused by the retirement or expiration of  
7 any tax increment financing obligations incurred by the Denver Urban  
8 Renewal Authority or any downtown development authority within the city; or  
9 b. any revenue derived from any abatement or refund levy as authorized by  
10 law.

11  
12 (3) “Constitutional property tax revenue limitation” means the limit on annual  
13 increases in city property tax revenue as set forth in section 20(7)(c) of article X of  
14 the Colorado Constitution.

15  
16 (4) “Constitutional spending limitation” means the limitation on annual increases in  
17 total city revenue and fiscal year spending as set forth in section 20 (7)(b) of article X  
18 of the Colorado Constitution.

19  
20 (5) “Credited mills” means 6.222 mills, representing the combined total of the  
21 temporary property tax credits or rate reductions for the affected funds as of tax year  
22 2011 for taxes collected in 2012, certified in accordance with section 39-1-111.5,  
23 C.R.S. in order to comply with the constitutional property tax revenue limitation.

24  
25 (6) “Maximum lawful property tax rate” means 22.830 mills, representing the  
26 combined total millage rate for the affected funds as of tax year 1996 for taxes  
27 collected in 1997.

28  
29 (7) “Restored property tax revenue” means the amount of additional property tax  
30 revenue the city is allowed to collect and expend in the affected funds as allowed in  
31 subsection (d) of this section, in excess of the amount of property tax revenue the  
32 city is otherwise allowed to collect and expend in the affected funds under the  
33 constitutional property tax revenue limitation.

34  
35 (c) Authority to exceed constitutional spending limitation. By virtue of the voter  
36

1 approval granted on November 7, 2000 and November 6, 2012, the city is authorized  
2 to collect, retain and spend revenues from any source in excess of the constitutional  
3 spending limitation, with any revenue in excess of the constitutional limitation being  
4 treated as a “voter-approved revenue change” within the meaning of section 20(7)(d)  
5 of article X of the Colorado Constitution.

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

15  
16 (1) For 2012 property taxes to be collected in 2013, the city shall reduce the credited  
17 mills by four mills and shall be permitted to retain and spend the additional revenue  
18 derived therefrom in excess of the total amount of revenue the city is allowed to  
19 collect and spend under the constitutional property tax revenue limitation.

20  
21 (2) For 2013 property taxes to be collected in 2014 and for each subsequent year,  
22 the city may increase property tax revenue on an annual basis in an amount not to  
23 exceed the city property tax revenue limitation, and may reduce or otherwise adjust  
24 the credited mills to the extent necessary to comply with the city property tax revenue  
25 limitation until such time as the credited mills are entirely eliminated.

26  
27 (3) When the credited mills have been entirely eliminated and the maximum lawful  
28 property tax rate has been fully restored, the city property tax revenue limitation shall  
29 no longer apply, and the city may then levy the maximum lawful property tax rate  
30 upon the assessed valuation of all taxable property in the city on a year to year  
31 basis.

32  
33 (4) In no event shall the city increase the maximum lawful property tax rate without  
34 prior voter approval, as required by section 20(4)(a) of Article X of the Colorado  
35 Constitution.

1  
2  
3 (e) Use of restored property tax revenues. Restored property tax revenues shall be  
4 expended exclusively for the following purposes, with the allocation of revenue  
5 between and among these purposes to be determined on a year to year basis as a  
6 part of the annual budget and appropriation process: public safety, services for  
7 children, street maintenance, parks and recreation, libraries, and other essential city  
8 services; payments to low-income elderly and disabled persons as provided in  
9 section 53-498; and business incentive programs to retain and attract businesses to  
10 Denver.

11  
12 (f) Reporting requirements. Notwithstanding the voter-approved authorization to  
13 exceed the constitutional spending limitation and the constitutional property tax  
14 revenue limitation, the Manager of Finance shall continue to annually calculate and  
15 report to the to the mayor, the auditor and the city council the following information:

- 16  
17 (1) Any amount by which the city's total fiscal year revenue and spending exceeds  
18 the constitutional spending limit after 2012.  
19 (2) The total amount of restored property tax revenue received by the city on a year  
20 to year basis.  
21 (3) An accounting demonstrating that the restored property tax revenue has been  
22 dedicated to and expended exclusively for the purposes set forth in subsection  
23 (e) of this section.  
24

25 **Section 2.** Fund Number 190000 of the Fund Plan, Section 20-18, D.R.M.C., concerning  
26 apportionment of the TABOR Excess Revenue Fund, shall be amended by deleting the language  
27 stricken and adding to the language underlined to read as follows:  
28

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

30  
31 *Fund Number 19000*

32  
33 *Name of fund:* TABOR Excess Revenue Fund  
34

1 *Source of funds:* Appropriation from the general fund of any revenues which exceed  
2 the annual limitation on property tax revenue set forth in Section 20 (7)(b) (c), Article  
3 X, or the Colorado Constitution, to the extent the excess is derived from any tax  
4 imposed by the City and County of Denver, for fiscal years 2005 through 2014  
5 inclusive; and appropriation from the general fund of any revenues which exceed the  
6 excess city and county revenue cap as defined in section 20-26, to the extent the  
7 excess is derived from any tax imposed by the City and County of Denver, for fiscal  
8 year 2010 and thereafter which the city is allowed to retain and expend on a year to  
9 year basis to the extent provided in section 20-26 (d) of the code.

10  
11 *Purpose of expenditures:* ~~Public safety, public works, parks and recreation, health~~  
12 ~~care, libraries and other essential services.~~ public safety, services for children, street  
13 maintenance, parks and recreation, libraries, and other essential city services;  
14 payments to low-income elderly and disabled persons as provided in section 53-498;  
15 and business incentive programs to retain and attract businesses to Denver.

16  
17  
18 *Expending authority:* By appropriation.  
19  
20

21 **Section 3.** Chapter 53, D.R.M.C., concerning taxation shall be amended by  
22 the addition of a new Article XVI, to read as follows:  
23

24 **Article XVI. Business Personal Property Tax**  
25 **Credits for New or Expanded Businesses**  
26

27 **Sec. 53-541 Credit against personal property taxes.**

28 Each qualifying taxpayer is entitled to enter into an agreement with the City and  
29 County of Denver for an incentive tax credit in the amount of the general fund portion  
30 of the taxes upon the taxpayer's taxable personal property assessed by the City and  
31 County of Denver upon the taxable personal property located at or within a new  
32 business facility, or directly attributable to an expanded business facility and located  
33 at or within the expanded facility, and used in connection with the operation of the

1 new or expanded facility. The term of the agreement made pursuant to the  
2 provisions of this section shall not exceed four years. The credit will be applied  
3 against only the general fund portion of the subject taxes, and will not be applied  
4 against taxes that are specifically pledged for other purposes. The credit is not  
5 available with respect to personal property whose value is determined by the State of  
6 Colorado.

7  
8 **Sec. 53-542 Qualifying taxpayers.**

9 To be a qualifying taxpayer, a taxpayer must:

- 10  
11 (1) Establish a new business facility in the city and county, as defined in  
12 section 39-30-105(7)(e), C.R.S.; or  
13  
14 (2) Expand a facility in the city and county, as defined in section 39-30-  
15 105(7)(c), C.R.S., the expansion of which constitutes a new business facility,  
16 as defined in section 39-30-105(7)(e), C.R.S.

17  
18 **Sec. 53-543 Determination and Application of Credit; Agreement.**

19  
20 Upon application for a personal property tax credit to the Office of Economic  
21 Development (OED), the OED shall determine whether the taxpayer and the  
22 taxpayer's personal property meet the criteria of sections 53-541 and 53-542.

- 23  
24 (1) If the OED determines that a taxpayer and the taxpayer's personal  
25 property meet the criteria of sections 53-541 and 53-542, the OED shall  
26 consult with the Department of Finance to establish which personal property is  
27 valued, assessed and taxable by the City and County of Denver.  
28  
29 (2) When the OED and the Department of Finance have determined which  
30 personal property is valued, assessed and taxable by the City and County of  
31 Denver, the OED shall offer to the qualifying taxpayer an agreement setting  
32 forth the terms and conditions upon which the qualifying taxpayer may receive  
33 a tax credit.  
34

- 1
- 2 (3) Agreements between the City and qualifying taxpayers shall include,
- 3 without limitation, terms and conditions necessary to demonstrate the
- 4 taxpayer's eligibility for the tax credit throughout the term of the agreement.
- 5

6 **Sec. 53-544 Administration.**

7 The administration of this article is vested in the Manager of Finance and the Director

8 of OED, who shall prescribe application forms, submittal deadlines and other

9 program requirements, and who may make reasonable rules and regulations in

10 conformity with this article for the proper administration of the same.

11

12 **Sec. 53-545 Review and Sunset.**

- 13 (1) This Article XVI shall be reviewed by the Mayor, the Director of
- 14 OED and the Manager of Finance on the third anniversary of its
- 15 enactment, in order to determine whether adjustments, revisions,
- 16 additional studies or inquiries are deemed appropriate and should be
- 17 undertaken or recommended, in order to further and maintain the
- 18 purpose of this Article XVI.
- 19 (2) This Article XVI will be repealed effective June 30, 2017.
- 20 Agreements fully executed prior to the effective date of the repeal shall
- 21 remain in effect in accordance with their terms.”
- 22
- 23

24 **Section 4.** Section 53-498, D.R.M.C. concerning payments to low-income senior

25 and disabled persons shall be amended by deleting the language stricken and adding the

26 language underlined, to read as follows:

27

28 **Sec. 53-498. - Computation of payment.**

29 The manager of finance shall compute the total payments due to eligible persons or

30 other applicants meeting all of the requirements set forth in subsection 53-497(a) as

31 follows:

1           (1) ~~An~~ For applications associated with a dwelling unit owned or rented by the  
2 applicant in 2011 and prior years, an initial amount of one hundred eighty-six dollars  
3 (\$186.00) to each applicant who establishes eligibility as provided in this article; for  
4 applications associated with a dwelling unit owned or rented by the applicant in 2012  
5 and subsequent years, an initial amount of three hundred and seventy two dollars  
6 (\$372.00) to each applicant who establishes eligibility as provided in this article; and  
7

8           (2) An additional one dollar (\$1.00) of payment for every one- hundred-dollar  
9 decrement in the applicant's income from the annual income limitations defined in  
10 paragraph (a)(2) section 53-497 of the Revised Municipal Code, down to the  
11 following thresholds: eight thousand three hundred dollars (\$8,300.00) if single or to  
12 twelve thousand one hundred dollars (\$12,100.00) in the case of husband and wife;  
13 and  
14

15           (3) An additional two dollars (\$2.00) of payment for every one- hundred-dollar  
16 decrement in the applicant's income beneath the following thresholds: eight  
17 thousand three hundred dollars (\$8,300.00) if single or twelve thousand one hundred  
18 dollars (\$12,100.00) in the case of husband and wife; and  
19

20           (4) For payments made under this article after May 1, 2001, the thresholds set forth  
21 in paragraphs (2) and (3) of this section 53-498 shall be directly and proportionately  
22 adjusted by the percentage equal to the cost of living adjustments approved by the  
23 federal Social Security Administration for social security recipients under Section  
24 230, Title 2, of the Social Security Act, as amended, for each calendar year.  
25  
26

27           **Section 5.** In accordance with § 3.3.6 of the Charter and Article X, Section 20 of the  
28 Colorado Constitution, this ordinance shall be submitted to a vote of the registered electors of the  
29 City and County of Denver at a special municipal election to be coordinated with the state general  
30 election occurring November 6, 2012. Each elector voting at said election and desirous of voting  
31 for or against the ordinance shall cast a vote as provided by law either “Yes” or “No” on the  
32 proposition:  
33

1  
2 Without increasing any tax rate or adopting any new tax, and in order to pay for  
3 improvements to police, fire, streets, Denver Public Library, parks, after-school and  
4 summer programs for children and such services as specified in City Council Bill 12-  
5 566 and published on the city's web-site, shall the City and County of Denver be  
6 authorized to collect, retain and spend all tax revenue derived from the city's existing  
7 gross tax rates to the extent those revenues exceed the constitutional limitation on  
8 tax revenue, also known as TABOR, beginning in 2013, provided that in no event  
9 shall the city increase the maximum lawful property tax rate without prior voter  
10 approval as required by Section 20(4)(a) of Article X of the Colorado Constitution,  
11 and requiring specific annual reporting requirements by the Manager of Finance to  
12 the mayor, the city auditor and the city council on the disposition of these funds?  
13

14  
15 The proper officials of the City and County of Denver as are charged with duties relating to the election  
16 shall, before the election, issue such calls, make such certifications, and publications, give such  
17 notices (including, without limitation, the notice required by Art. X, §20(3)(b) of the Colorado  
18 Constitution), make such appointments, and do all such other acts and things in connection with the  
19 submission of this question to the registered electors of the City and County of Denver at the election  
20 as are required by the constitution and laws of the state of Colorado and the Charter and ordinances  
21 of the City and County of Denver. The ballots cast at such election shall be canvassed and the results  
22 ascertained, determined, and certified in accordance with the requirements of the Constitution and  
23 laws of the State of Colorado and the Charter and ordinances of the City and County of Denver.  
24

25 **Section 6.** Subject to voter approval of the ballot question set forth in Section 5, this ordinance  
26 shall be effective January 1, 2013 and shall apply to 2012 property taxes certified for collection in  
27 2013.  
28

29  
30 COMMITTEE APPROVAL DATE: August 1, 2012.

31 MAYOR-COUNCIL DATE: August 7, 2012.

32 PASSED BY THE COUNCIL \_\_\_\_\_ 2012

33 \_\_\_\_\_ - PRESIDENT

34 APPROVED: \_\_\_\_\_ - MAYOR \_\_\_\_\_ 2012

35 ATTEST: \_\_\_\_\_ - CLERK AND RECORDER,  
36 EX-OFFICIO CLERK OF THE  
37 CITY AND COUNTY OF DENVER  
38

39 NOTICE PUBLISHED IN THE DAILY JOURNAL \_\_\_\_\_ 2012; \_\_\_\_\_ 2012

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PREPARED BY: David W. Broadwell, Assistant City Attorney; DATE: August 3, 2012

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: \_\_\_\_\_