

1 BY AUTHORITY

2 ORDINANCE NO. \_\_\_\_\_  
3 SERIES OF 2014

COUNCIL BILL NO. CB14-0850  
COMMITTEE OF REFERENCE:  
Finance & Services

6 A BILL

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

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

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

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

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

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

30 WHEREAS, the City has filed Internal Revenue Service (the "IRS") Form 8328 to  
31 carryforward unused private activity bond volume cap allocated to the City for the 2013 calendar

1 year (“2013 Carryforward Volume Cap”) and the City intends to file IRS Form 8328 to  
2 carryforward unused private activity bond volume cap allocated to the City for the 2014 calendar  
3 year (“2014 Carryforward Volume Cap”); and

4 WHEREAS, for purposes of the 2015 Program, the City desires to use \$30,000,000 of its  
5 2013 Carryforward Volume Cap and \$15,000,000 of its 2014 Carryforward Volume Cap; and

6 WHEREAS, there have been presented to the City Council of the City (the “Council”) the  
7 following documents in substantially final form: (a) the proposed form of the Program  
8 Administration Agreement to be entered into by and between the City and Raymond James &  
9 Associates, Inc. (“Raymond James”) , as administrator of the MCC Program (the “MCC Program  
10 Administration Agreement”) (City Clerk’s Filing No. 14-0882); and (b) the proposed form of the  
11 Program Summary and Guidelines (the “MCC Program Guidelines”) (City Clerk’s Filing No. 14-  
12 0882-A), which are available in the office and on the web page of the Council, and to be filed in  
13 the office of the City Clerk under the City Clerk’s Filing Numbers set forth above;

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

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

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

26 **Section 3.** The Council directs the appropriate officers of the City to make one or more  
27 Elections not to issue up to an aggregate of \$45,000,000 of private activity bonds (the  
28 “Nonissued Bond Amount”) that the City is authorized and has \$45,000,000 of private activity  
29 bond volume cap allocation available to issue, \$30,000,000 of which is available from 2013  
30 Carryforward Volume Cap and \$15,000,000 of which is available from 2014 Carryforward

1 Volume Cap. The Nonissued Bond Amount shall be allocated to the MCC Program to be  
2 established by the appropriate officers of the City under this Ordinance. To effectuate the  
3 foregoing, the appropriate officers of the City are directed to file notice of the Election(s) with the  
4 IRS, as required by the Code and the regulations.

5 **Section 4.** The Council authorizes the appropriate officers of the City to establish an  
6 MCC Program to issue Certificates for the purposes set forth in the MCC Program Guidelines.  
7 For such MCC Program, the appropriate officers of the City may establish one or more credit  
8 rates for the mortgage loans described therein, determine the program expiration date, select the  
9 types of mortgage loans for which Certificates may be issued, approve the terms and conditions  
10 on which participating lenders make loans that are eligible for Certificate financing, and make  
11 other determinations as appropriate, all in accordance with the terms and provisions of Section  
12 25 of the Code and the regulations thereunder and this Ordinance. The appropriate officers of  
13 the City are hereby directed to further define the MCC Program and revise the MCC Program  
14 Guidelines as necessary to maximize the availability of lower cost financing to low and middle  
15 income persons under the MCC Program. The initial credit rate is intended to be 30% which will  
16 permit up to \$37,500,000 of Certificates to be issued.

17 **Section 5.** The Council approves the use of the 2013 Carryforward Volume Cap in the  
18 amount of \$30,000,000 and the use of the 2014 Carryforward Volume Cap in the amount of  
19 \$15,000,000 in connection with the issuance of Certificates.

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

25 **Section 7.** The form, terms and provisions of the MCC Program Administration  
26 Agreement are hereby approved; with such changes therein as are not inconsistent herewith;  
27 and the City shall execute and deliver the MCC Program Administration Agreement, in  
28 substantially the form heretofore filed with the Council and to be filed with the City Clerk; and the  
29 Mayor (or Acting Mayor) is hereby authorized and directed to execute and deliver the MCC  
30 Program Administration Agreement, and the City Clerk is hereby authorized and directed to affix  
31 the City seal and to attest the MCC Program Administration Agreement, the Manager of Finance

1 and the City Auditor are hereby authorized and directed to countersign and register the MCC  
2 Program Administration Agreement and the City Attorney is hereby authorized to execute the  
3 MCC Program Administration Agreement.

4 **Section 8.** Raymond James is hereby appointed as the administrator of the MCC  
5 Program.

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

9 **Section 10.** The officers of the City shall take all action in conformity with the Charter, the  
10 Colorado Private Activity Bond Ceiling Allocation Act, constituting Article 32, Title 24, Part 17,  
11 Colorado Revised Statutes, as amended (the "Allocation Act"), and the Code necessary or  
12 reasonably required to effectuate the issuance of the Certificates and shall take all action  
13 necessary or desirable in conformity with the Charter, the Allocation Act and the Code to  
14 implement the MCC Program and for carrying out, giving effect to and consummating the  
15 transactions contemplated by this Ordinance, including without limitation, the filing of any  
16 statements or reports with the IRS or with the Secretary of the Treasury or his delegate  
17 necessary for the issuance of the Certificates.

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

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

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

26 **Section 14.** All bylaws, orders, resolutions, ordinances, or parts thereof, inconsistent  
27 herewith are hereby repealed to the extent only of such inconsistency, and if so repealed, no  
28 other bylaw, order, resolution, ordinance, or part thereof, shall be revived. This repealer shall not  
29 be construed as reviving any bylaw, order, resolution or ordinance, or part thereof.

1 COMMITTEE APPROVAL DATE: October 7, 2014

2 MAYOR-COUNCIL DATE: October 14, 2014

3 PASSED BY THE COUNCIL: \_\_\_\_\_, 2014

4 \_\_\_\_\_ - PRESIDENT

5 APPROVED: \_\_\_\_\_ - MAYOR \_\_\_\_\_, 2014

6 ATTEST: \_\_\_\_\_ - CLERK AND RECORDER,  
7 EX-OFFICIO CLERK OF THE  
8 CITY AND COUNTY OF DENVER

9 NOTICE PUBLISHED IN THE DAILY JOURNAL: \_\_\_\_\_, 2014; \_\_\_\_\_, 2014

10 PREPARED BY: Reno & Cavanaugh, PLLC and Kutak Rock, LLP DATE: October 16, 2014

11 Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of  
12 the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed  
13 ordinance. The proposed ordinance is not submitted to the City Council for approval pursuant to  
14 §3.2.6 of the Charter.

15 D. Scott Martinez, City Attorney

16 BY: \_\_\_\_\_, Assistant City Attorney DATE: \_\_\_\_\_, 2014