

1 **BY AUTHORITY**

2 ORDINANCE NO. _____
3 SERIES OF 2016

COUNCIL BILL NO. CB16-0279
COMMITTEE OF REFERENCE:
4 Finance & Services

5 **A BILL**

6 **For an ordinance authorizing and approving (i) the use of an amount**
7 **not to exceed \$40,000,000 of Private Activity Bond Volume Cap**
8 **Allocation for the purpose of making a mortgage credit certificate**
9 **election; and (ii) the MCC Program Administration Agreement,**
10 **Lender Participation Agreement and the MCC Program Guidelines.**

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

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

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

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

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

1 WHEREAS, the City has filed Internal Revenue Service (“IRS”) Forms 8328 to
2 carryforward unused private activity bond volume cap allocated to the City for calendar
3 years 2014 and 2015 (the “2014 Carryforward Volume Cap” and the “2015 Carryforward
4 Volume Cap,” respectively); and

5 WHEREAS, for purposes of the 2016 MCC Program, the City desires to use
6 \$25,000,000 of its 2014 Carryforward Volume Cap and \$15,000,000 of its 2015
7 Carryforward Volume Cap; and

8 WHEREAS, there have been presented to the City Council of the City (the
9 “Council”) the following documents in substantially final form: (a) the proposed form of
10 the Program Administration Agreement to be entered into by and between the City and
11 Raymond James & Associates, Inc. (“Raymond James”), as administrator of the MCC
12 Program (the “MCC Program Administration Agreement”) (City Clerk’s Filing No. 2016-
13 0142-001); (b) the proposed form of the Lender Participation Agreement (the “Lender
14 Participation Agreement”) to be entered into by the MCC Program lenders (the
15 “Lenders”) and Raymond James (City Clerk’s Filing No. 2016-0142-002); and (c) the
16 proposed form of the Program Summary and Guidelines (the “MCC Program
17 Guidelines”) (City Clerk’s Filing No. 2016-0142), which are available in the office and on
18 the web page of the Council, and to be filed in the office of the City Clerk under the City
19 Clerk’s Filing Numbers set forth above;

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

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

28 **Section 2.** The Council finds and determines that it is necessary to make the
29 Election to exchange its authority to issue up to \$40,000,000 of private activity bonds for
30 the authority to issue Certificates, which will promote a public purpose, including,

1 without limitation, assisting persons or families of low- and middle-income in obtaining
2 decent, safe and sanitary housing.

3 **Section 3.** The Council directs the appropriate officers of the City to make one or
4 more Elections not to issue up to an aggregate of \$40,000,000 of private activity bonds
5 (the “Nonissued Bond Amount”) that the City is authorized and has \$40,000,000 of
6 private activity bond volume cap allocation available to utilize for the MCC Program,
7 \$25,000,000 of which is available from the 2014 Carryforward Volume Cap and
8 \$15,000,000 of which is available from the 2015 Carryforward Volume Cap. The
9 Nonissued Bond Amount shall be allocated to the MCC Program to be established by
10 the appropriate officers of the City under this Ordinance. To effectuate the foregoing,
11 the appropriate officers of the City are directed to file notice of the Election(s) with the
12 IRS, as required by the Code and the regulations.

13 **Section 4.** The Council authorizes the appropriate officers of the City to establish
14 an MCC Program to issue Certificates for the purposes set forth in the MCC Program
15 Guidelines. For such MCC Program, the appropriate officers of the City may establish
16 one or more credit rates for the mortgage loans described therein, determine the
17 program expiration date, select the types of mortgage loans for which Certificates may
18 be issued, approve the terms and conditions on which participating lenders make loans
19 that are eligible for Certificate financing, and make other determinations as appropriate,
20 all in accordance with the terms and provisions of Section 25 of the Code and the
21 regulations thereunder and this ordinance. The appropriate officers of the City are
22 hereby directed to further define the MCC Program and revise the MCC Program
23 Guidelines as necessary to maximize the availability of lower cost financing to low- and
24 middle-income persons under the MCC Program. The initial credit rate is intended to be
25 25% which will permit up to \$40,000,000 of Certificates to be issued. The Manager of
26 Finance is hereby authorized to execute any documents, agreements and certificates
27 relating to the MCC Program.

28 **Section 5.** The Council approves the use of the \$25,000,000 of 2014
29 Carryforward Volume Cap and the \$15,000,000 of 2015 Carryforward Volume Cap in
30 connection with the issuance of Certificates.

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

6 **Section 7.** The form, terms and provisions of the MCC Program Administration
7 Agreement and the Lender Participation Agreement are hereby approved, with such
8 changes therein as are not inconsistent herewith. The City shall execute and deliver the
9 MCC Program Administration Agreement, in substantially the form heretofore filed with
10 the Council and to be filed with the City Clerk. The Mayor (or Acting Mayor) is hereby
11 authorized and directed to execute and deliver the MCC Program Administration
12 Agreement; and the City Clerk is hereby authorized and directed to affix the City seal
13 and to attest the MCC Program Administration Agreement; and the Manager of Finance
14 and the City Auditor are hereby authorized and directed to countersign and register the
15 MCC Program Administration Agreement; and the City Attorney is hereby authorized to
16 execute the MCC Program Administration Agreement.

17 **Section 8.** Raymond James is hereby appointed as the administrator of the MCC
18 Program.

19 **Section 9.** All actions not inconsistent with the provisions of this Ordinance
20 heretofore taken by the Council and the officers of the City directed toward financing the
21 MCC Program and the issuance of the Certificates are hereby, ratified, approved and
22 confirmed. The publication of the Notice of Election in the *Daily Journal* on February 17,
23 2016 is hereby ratified and approved.

24 **Section 10.** The officers of the City shall take all action in conformity with the
25 Charter, the Colorado Private Activity Bond Ceiling Allocation Act, constituting Article
26 32, Title 24, Part 17, Colorado Revised Statutes, as amended (the “Allocation Act”), and
27 the Code necessary or reasonably required to effectuate the issuance of the Certificates
28 and shall take all action necessary or desirable in conformity with the Charter, the
29 Allocation Act and the Code to implement the MCC Program and for carrying out, giving
30 effect to and consummating the transactions contemplated by this Ordinance, including

1 without limitation, the filing of any statements or reports with the IRS or with the
2 Secretary of the Treasury or his delegate necessary for the issuance of the Certificates.

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

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

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

12 COMMITTEE APPROVAL: April 19, 2016

13 MAYOR-COUNCIL DATE: April 26, 2016

14 PASSED BY THE COUNCIL: _____, 2016.
15 _____ - PRESIDENT

16 APPROVED: _____ - MAYOR _____, 2016.

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

20 NOTICE PUBLISHED IN THE DAILY JOURNAL: _____, 2016; _____, 2016.

21 PREPARED BY: KUTAK ROCK LLP DATE: April 28, 2016

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

26 D. SCOTT MARTINEZ, CITY ATTORNEY

27 BY: _____ Assistant City Attorney DATE:
28 _____, 2016