

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2018
AS AMENDED 7-16-18

COUNCIL BILL NO. CB18-0641
COMMITTEE OF REFERENCE:
Finance

A BILL

For an ordinance increasing the sales and use tax by a rate of 0.25 percent and dedicating the revenue derived from the tax rate increase to fund Denver parks, trails, and open space, subject to the approval of the voters at a special municipal election to be conducted in coordination with the state general election on November 6, 2018.

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

Section 1. Subject to voter approval as specified in Section 7 of this ordinance, Account Number 97000-282110 of the Fund Plan, Section 20-18, D.R.M.C., concerning apportionment of the sales, use and lodger's tax, is amended by the addition of a new subsection (i), to read as follows (with existing subsection (i) being re-designated as subsection (j)):

§. 20-18. Fund Plan

Account No. 97000-282110

Name of account: Unapportioned sales, use and lodger's tax

Source of funds: City retail sales taxes, city use taxes and city lodger's taxes that have been collected, returned, and await apportionment.

Disposition of funds:

- i. Monthly, (1) allocation apportionment and transfer of only those revenues raised at the rate of 0.25 percent of gross taxable sales from sales and use taxes levied to the Parks, Trails, and Open Space Fund.

Section 2. Subject to the approval of the voters as specified in Section 7 of this ordinance, Section 53-27, D.R.M.C., concerning sales taxes is amended by the addition of a new subsection (h) to read as follows:

(h) *Sales tax increment to fund the Parks, Trails, and Open Space Program.* In addition to the sales tax otherwise imposed by this section, a tax of twenty-five one-hundredths of one percent (.25%) must 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, 2019. The revenue from such additional tax must be used for the sole purpose of funding the Parks, Trails, and Open Space Program created in article XII of chapter 39.

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 is 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 to ~~three and sixty-five one-hundredths (3.65) percent~~ three and 90 one-hundredths (3.90) percent of the retailer's taxable sales of tangible personal property, products, 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 subsection 53-27(b)(2) shall apply; (3) Food and beverages not exempted from taxation under subsection 53-26(8) of this article, as to which the rate of four (4) percent shall apply; (4) For each of which respective rates aforesaid the retailer shall be liable for an equivalent amount; (5) Every retailer shall, on its return, round each calculation, as directed on such form as the manager may require, to the nearest whole dollar and remit the rounded amount. In rounding under this section, any amount of forty-nine cents (\$0.49) or less shall be rounded down, and any amount of fifty cents (\$0.50) or higher shall be rounded up.

Section 4. Subject to the approval of the voters as provided in Section 7 of this ordinance, Section 53-98, D.R.M.C., concerning use taxes is amended by the addition of a new subsection (l) to read as follows:

(l) *Use tax increment to fund the Parks, Trails, and Open Space Program.* In addition to the use tax otherwise imposed by this section, a tax of twenty-five one-hundredths of one percent (.25%) must be paid on all taxable uses, consumptions, distributions, and storages of commodities and services, except on commodities and services specified in subsection (b) of this section, beginning January 1, 2019. The revenue from such additional tax must be used for the sole purpose of funding the Parks, Trails, and Open Space Program created in article XII of chapter 39.

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

Sec.53-99. 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 to ~~three and sixty-five one-hundredths (3.65) percent~~ three and 90 one-hundredths (3.90) percent of taxable sales made by him of tangible personal property, products, and services, 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 subsection 53-98(b)(2) shall apply; (3) Food and beverages not exempted from taxation under subsection 53-26(8) of the city retail sales tax article, as to which the rate of four (4) percent shall apply; (4) For each of which respective rates aforesaid the retailer shall be liable for an equivalent amount; and (5) Every retailer shall, on its return, round each calculation, as directed on such form as the manager may require, to the nearest whole dollar and remit the rounded amount. In rounding under this section, any amount of forty-nine cents (\$0.49) or less shall be rounded down, and any amount of fifty cents (\$0.50) or higher shall be rounded up.

Section 6. Subject to the approval of the voters as provided in Section 7 of this

ordinance, Chapter 39, D.R.M.C., concerning Parks and Recreation, is amended by the addition of a new Article XII, to read as follows:

ARTICLE XII. PARKS, TRAILS, AND OPEN SPACE PROGRAM

Sec. 39-223. Legislative Declaration. (a) The City Council finds, determines, and declares:

(1) Since its founding, the city and county of Denver (“the city”) has endeavored to build a city in a park through a continued and consistent prioritization of parks, trails, open space, parkways, green medians, street and park trees, greenways and waterways, and a system of city and mountain parks;

(2) The current gap in funding for acquiring additional land for parks, trails, and open spaces; developing and improving new and existing parks, Denver’s mountain parks, open spaces, and trails; restoring and protecting waterways, rivers, **canals** and streams; purchasing, planting and caring of trees in parks and in the public right of way; and operating and maintaining any additional acquisitions and new capital improvements to the City’s parks, mountain parks, and open space systems is insurmountable without an additional revenue stream;

(3) The City faces increased pressure from population growth, development, and densification and park amenities—from new parks, like dog parks, to improvements in the mountain parks, and to protection and restoration of urban waterways—are lagging due to a lack of funding;

(4) The City now ranks at the bottom of the list compared to peer cities on park acres per resident and the percentage of residents who can get to a park with a 10-minute walk, and, according to The Trust for Public Land’s recently released 2018 ParkScore® ranking of park systems in the 100 largest U.S. cities, the City fell to ranking number 26 from number 20 in one year;

(5) Dedicated, additional funding for parks will help achieve these goals and ensure that future generations will be able to enjoy Denver parks and open space.

(b) Therefore, the city council has determined that the question of whether the City shall be authorized to impose a 0.25 percent sales tax for the purposes and in the manner set forth in this ordinance should be submitted to the registered electors of the City at the special municipal election to be conducted in coordination with the state general election on November 6, 2018.

1
2 **Sec. 39-224. Permitted Uses of Revenue in the Parks, Trails, and Open**
3 **Space Fund.**

4 (a) All monies derived from the sales and use taxes in the Parks, Trails, and
5 Open Space Fund must be expended solely on:

- 6 (1) Acquiring additional land for parks, open spaces, and trails;
7 (2) Developing, improving, and maintaining new and existing parks, including
8 Denver's mountain parks, open spaces, and trails;
9 (3) Restoring and protecting waterways, rivers, **canals** and streams;
10 (4) Purchasing, planting and caring of trees; and
11 (5) Operating and maintaining any additional acquisitions and capital
12 improvements to the City's parks, mountain parks, and open space.

13 (b) *Cap on administrative costs.* Monies in the Parks, Trails, and Open Space
14 Fund may be expended to pay the costs incurred by the city associated directly with
15 the administration of the funds; except that, in no event may the amount expended
16 from the funds for administrative expenses in any year exceed five percent (5%) of the
17 amount of revenue received in the fund in that year.

18 (c) *Fund earnings.* Any interest earned on the balance of the Fund accrues to
19 the Fund.

20 (d) *Administration of funds.* The Manager of Parks and Recreation designated
21 in accordance with § 2.4.2 of the Charter will manage the Fund.

22 (e) *Permanency.* If the monies in the Fund are not expended at the end of the
23 fiscal year, such monies must remain in the fund to be expended in subsequent fiscal
24 years.

25 (f) *Maintenance of Effort.* All monies in the Fund must be used in accordance
26 with this section and may not replace nor supplant any general fund appropriations
27 allocated each year to the Department of Parks and Recreation.

28 (g) *Rulemaking.* The Manager of Parks and Recreation may promulgate any
29 rules necessary for the proper administration of this section.

30 (h) *Reporting.* A report of fund expenditures must be submitted annually to the
31 mayor, city council, city auditor, and the Denver Parks and Recreation Advisory Board.

32 (i) *Planning.* Within one year of the adoption of this Article XII, and every five
33 years thereafter, the Manager of Park and Recreation, as designated in accordance
34 with § 2.4.2 of the Charter, ~~must submit a five-year plan to the City Council and~~

1 ~~the Denver Parks and Recreation Advisory Board~~ shall work with the Denver
2 **Parks and Recreation Advisory Board** to hold no less than one public hearing
3 **and submit a five-year plan for the approval by City Council** on the planned
4 revenue uses in the Parks, Trails, and Open Space Fund.
5

6 **Section 7.** In accordance with § 3.3.6 of the Charter and Article X, Section 20 of the
7 Colorado Constitution, this ordinance will be submitted to a vote of the registered electors of
8 the City and County of Denver at a special municipal election to be coordinated with the state
9 general election occurring November 6, 2018. Each elector desirous of voting for or against
10 the ordinance must cast a vote as provided by law either “Yes” or “No” on the proposition:
11

12 SHALL CITY AND COUNTY OF DENVER SALES AND USE TAXES BE INCREASED
13 BY \$45.94 MILLION ANNUALLY, COMMENCING JANUARY 1, 2019, AND BY
14 WHATEVER ADDITIONAL AMOUNTS ARE RAISED ANNUALLY THEREAFTER,
15 FROM A TWENTY-FIVE ONE-HUNDREDTHS OF ONE PERCENT (0.25%) SALES
16 AND USE TAX RATE (2.5 CENTS ON A TEN-DOLLAR PURCHASE), THAT WILL
17 NOT BE COLLECTED ON SALES OF FOOD FOR HOME CONSUMPTION OR
18 PRESCRIPTION DRUGS, TO BE EXPENDED SOLELY ON:

- 19 • ACQUIRING ADDITIONAL LAND FOR PARKS, TRAILS, AND OPEN SPACE;
- 20 • DEVELOPING, IMPROVING, AND MAINTAINING NEW AND EXISTING
21 PARKS, TRAILS AND OPEN SPACE, INCLUDING DENVER'S MOUNTAIN
22 PARKS;
- 23 • RESTORING AND PROTECTING WATERWAYS, RIVERS, **CANALS** AND
24 STREAMS;
- 25 • PURCHASING, PLANTING, AND CARING OF TREES; AND
- 26 • OPERATING AND MAINTAINING ANY RELATED ADDITIONAL
27 ACQUISITIONS AND CAPITAL IMPROVEMENTS,

28 AND, IN CONNECTION THEREWITH, SHALL NO MORE THAN FIVE PERCENT
29 (5%) OF THE TOTAL ANNUAL REVENUES DERIVED FROM THE INCREASE IN
30 SALES AND USE TAX BE SPENT ON ADMINISTRATIVE COSTS RELATED TO THE
31 ABOVE PURPOSES; AND SHALL THE MONIES DERIVED FROM THE INCREASE
32 IN SALES AND USE TAX NOT BE USED TO OFFSET ANY CURRENT OR FUTURE
33 REVENUE EXPENDITURES FROM THE GENERAL FUND; AND SHALL THE
34 REVENUES FROM THESE INCREASED TAXES BE COLLECTED AND SPENT IN

1 EACH FISCAL YEAR BY DENVER WITHOUT REGARD TO ANY EXPENDITURE,
2 REVENUE-RAISING, OR OTHER LIMITATION CONTAINED WITHIN ARTICLE X,
3 SECTION 20 OF THE COLORADO CONSTITUTION OR ANY OTHER LAW?
4

5 **Section 8.** The officials of the City and County of Denver charged with duties relating to the
6 election must, before the election, issue such calls, make such certifications and publications,
7 give such notices, make such appointments, and do all such other acts and things in
8 connection with the submission of this code amendment to the registered electors of the City
9 and County of Denver at the election required by the Constitution and laws of the State of
10 Colorado and the Charter and ordinances of the City and County of Denver.
11

12 **Section 9.** The ballots cast at such election must be canvassed and the results ascertained,
13 determined, and certified in accordance with the requirements of the Constitution and laws of
14 the State of Colorado and the Charter and ordinances of the City and County of Denver.
15

16 **Section 10.** If any section, paragraph, clause, or other portion of this ordinance is held to be
17 invalid or unenforceable for any reason, the validity of the remaining portions of this ordinance
18 shall not be affected.

19 COMMITTEE APPROVAL DATE: June 12, 2018.

20 MAYOR-COUNCIL DATE: June 19, 2018.

21 PASSED BY THE COUNCIL _____ July 16, 2018

22 _____ - PRESIDENT

23 APPROVED: _____ - MAYOR _____

24 ATTEST: _____ - CLERK AND RECORDER,
25 EX-OFFICIO CLERK OF THE
26 CITY AND COUNTY OF DENVER
27

28 NOTICE PUBLISHED IN THE DAILY JOURNAL _____; _____

29 PREPARED BY: Troy Bratton, Assistant City Attorney; DATE: June 26, 2018

30 Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office
31 of the City Attorney. We find no irregularity as to form, and have no legal objection to the
32 proposed ordinance. The proposed ordinance **is not** submitted to the City Council for
33 approval pursuant to § 3.2.6 of the Charter.
34

35 Kristin M. Bronson, Denver City Attorney

36 BY: Kristin J. Crawford, Assistant City Attorney DATE: July 16, 2018