

1 BY AUTHORITY

2 ORDINANCE NO. _____
3 SERIES OF 2022

COUNCIL BILL NO. 22-1614
COMMITTEE OF REFERENCE:
Finance & Governance

6 A BILL

7 **For an ordinance amending Chapter 58 of the Denver Revised Municipal Code to**
8 **provide a civil penalty for the offense of wage theft and clarifying enforcement**
9 **provisions for wage violations in connection therewith.**
10

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

12
13 **Section 1.** A new article I, chapter 58 of the Denver Revised Municipal Code is hereby
14 enacted as follows:

15 **ARTICLE I – Wages.**

16 **Division 1 – IN GENERAL.**

17 **Sec. 58-1. – Defined terms.**

18 Except as otherwise provided in this chapter, the following words and phrases shall have the
19 following meanings:

20 (1) *Adverse action* means denying a job or promotion, demoting, terminating, failure to rehire
21 after a seasonal interruption of work, threatening, penalizing, retaliating, engaging in unfair
22 immigration-related practices, filing a false report with a government agency, changing an
23 employee's status to a nonemployee, and any other negative change to an aspect of employment,
24 including modification of pay, work hours, responsibilities, or other material change in the terms or
25 conditions of a person's employment.

26 (2) *Aggrieved party* means a worker or other person who suffers tangible or intangible harm
27 due to an employer or other person's violation of this article.

28 (3) *City* means the City and County of Denver.

29 (4) *Complaint* means a complaint submitted pursuant to section 58-3(a).

30 (5) *Employ, employed, or employed by* means to suffer or permit to work.

31 (6) *Employer* means any corporation, proprietorship, partnership, nonprofit, joint venture,
32 association, individual, limited liability company, business trust, or any person or group of persons,
33 and any of the foregoing who employ a worker acting directly or indirectly in the interest of an
34 employer in relation to a worker, and any successor thereof.

1 (7) *Payroll records* means records kept by an employer documenting the number of hours
2 worked by each worker, the wage paid to such workers, any deductions made from workers' wages
3 including, but not limited to, any tax withholdings, and the net amount of wages received by any such
4 worker.

5 (8) *Successor* means any person to whom an employer quitting, selling out, exchanging, or
6 disposing of a business sells or otherwise conveys in bulk and not in the ordinary course of the
7 employer's business, a major part of employer's property, whether real or personal, tangible or
8 intangible, of the employer's business. For purposes of this definition, person means an individual,
9 receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, company,
10 limited liability company, association, joint venture, or any other legal or commercial entity.

11 (9) *Wage investigation* means an investigation into violations of this article by the auditor
12 pursuant to a complaint or an investigation absent a credible complaint. A wage investigation is
13 commenced upon the filing of a complaint with the auditor or an employer's receipt of the notice of
14 an investigation absent a complaint.

15 (10) *Work* means any services performed on behalf of or for the benefit of an employer or
16 other person, for pay, whether on an hourly, piecework, commission, time, task, or other basis.

17 (11) *Worker* means a natural person performing work, and includes, but is not limited to: full
18 time employees, part-time employees, temporary workers, agents, and any other persons
19 performing work on behalf of or for the benefit of an employer or other person.

20 **58-2. – Employer Responsibilities.**

21 (a) *Signage*. Employers shall post in a place which is prominent and easily accessible to
22 workers an auditor-approved notice detailing the Denver minimum wage to be paid to workers, that
23 wage theft is a crime, that workers are entitled to civil recovery of wages lost due to theft or
24 underpayment of the minimum wage, and that complaints related to any alleged violations may be
25 submitted to the auditor. Employers shall display the posting in English and Spanish. If display of a
26 physical notice is not feasible, including situations when a worker does not have a regular workplace
27 or job site, employers may provide the required information on an individual basis, in a worker's
28 primary language, in a physical or electronic form that is reasonably conspicuous and accessible.

29 (b) *Retaliation strictly prohibited*.

30 (1) *Rights*. No person shall take any adverse action against any person because the
31 person has exercised in good faith rights described in this article, including:

- 32 a. the right to file and pursue a private cause of action alleging a violation;
- 33 b. making inquiries about rights protected;

- c. informing an employer, a union or similar organization, the person's legal counsel, and/or any other person about an alleged violation;
- d. filing a written complaint with the auditor;
- e. cooperating with the auditor in any wage investigations;
- f. testifying in a proceeding related to a wage investigation; and
- g. refusing to participate in or opposing an activity that would result in a violation of city, state, or federal law.

(2) No person shall directly or indirectly make an implied or express communication to any person exercising rights under this article of their will or intent to inform a government agency of the protected person, or the protected person's family members' immigration or citizenship status.

(3) Proof of retaliation shall be sufficient upon a showing that an employer or person has taken an adverse action against a person and the person's exercise of rights protected in this article was a motivating factor in the adverse action. If the adverse action occurs within ninety (90) days of the person's exercise of rights protected in this article—or in the case of seasonal work that ended before the close of a 90-day period the employer fails to rehire the former worker at the next opportunity for work in the same position—retaliation shall be presumed, but shall be rebuttable by clear and convincing evidence that the adverse action was taken for a lawful purpose.

(c) Recordkeeping requirements and inspection.

(1) *Required.* All employers shall retain payroll records concerning work performed for a period of at least three (3) years.

(2) Production of payroll records per auditor request.

a. Pursuant to a wage investigation or a private right of action, the auditor may request a certified copy of payroll records for all workers for a three (3) year period from an employer. Payroll records produced pursuant to this subsection shall be accompanied by a sworn statement from the employer attesting that records provided are a true and correct copy of the requested payroll records, that payments were made to workers as set forth in the payroll records, and that all workers have been paid at least the Denver minimum wage or the wage promised, whichever is higher, for all work or alternately a detailed description of all instances and ways in which the foregoing requirements were not fully satisfied and all explanations therefore.

b. If the auditor does not receive the certified payroll records and accompanying sworn statement within 30 days, the auditor shall notify an employer of the failure to furnish records. An employer shall be penalized unless the failure to furnish the payroll records is a good faith error corrected within ten (10) days of notice.

1 c. The auditor shall notify an employer of any materially false information
2 contained in the certified payroll records or accompanying sworn statement discovered by the
3 auditor. Additionally, an employer shall notify the auditor of any materially false information contained
4 in the certified payroll records and accompanying sworn statement discovered after it has been
5 submitted to the auditor. An employer shall be penalized unless such materially false information is
6 corrected within ten (10) days of notice or of discovering the error.

7 **Sec 58-3. Complaints and investigation.**

8 Except as otherwise provided in this article, complaints, investigation, and enforcement of
9 violations of any division in this article shall be conducted as follows:

10 (a) *Complaints.*

11 (1) *Submission.* Any person may submit a written complaint of a violation of this article
12 to the auditor. A complaint submitted by a third-party shall only contain the items required in
13 subsection (a)(1)c. and d. of this section, while a complaint submitted by a worker shall include:

14 a. the worker's name and/or the name of their duly authorized representative, if
15 applicable;

16 b. the worker's contact information;

17 c. a detailed statement of the employer or other person's alleged violation,
18 including readily available supporting documentation demonstrating a violation; and

19 d. any additional information requested by the auditor or pursuant to rules issued
20 by the auditor.

21 (2) *Assistance.* If a worker filing a complaint is unable to reasonably file her or his
22 complaint in writing, that worker may request the auditor to assist him or her with documenting any
23 allegations to satisfy the written complaint requirement.

24 (3) *Determination of credibility.* The burden of demonstrating to the auditor's
25 satisfaction that a violation has occurred rests with the person making the complaint and shall be
26 demonstrated by a preponderance of the evidence. If a complaint is deemed credible by the auditor,
27 the auditor shall notify the complained-of-party and shall provide a summary of findings regarding
28 any such complaint to the complained-of-party, worker, and complainant, if applicable.

29 (b) *Investigations in the absence of a complaint.* The auditor may initiate an investigation into
30 violations of this article absent a complaint if there is a reasonable basis to believe that a violation
31 occurred. A reasonable basis exists if:

32 (1) The owner or partial owner of a legal entity has violated the terms of this article with
33 respect to another entity with common ownership interests;

1 (2) A pattern and practice, including, but not limited to, receipt of multiple credible
2 complaints filed against a particular industry, demonstrates an increased likelihood that certain
3 workers within an industry are regularly not paid wages;

4 (3) The auditor receives credible information from a governmental agency that
5 demonstrates an increased likelihood that a particular employer or industry has failed to comply with
6 the terms of this article; or

7 (4) The auditor, relying upon data collected or received by the city, establishes a
8 reasonable basis to conclude that a particular person or industry is likely to have failed to comply
9 with the terms of this article.

10 (c) *Limitation of actions.* Any complaint must be submitted to the auditor within three (3) years
11 of the date of an alleged violation of this article.

12 **Sec. 58-4. Enforcement and penalties.**

13 (a) *Notice.* Notice provided for in this article shall be sent via first class mail to the most recent
14 mailing address provided to the auditor or contained in the records of any municipal, state, or federal
15 agency, including but not limited to the Colorado Secretary of State. Notice shall be deemed
16 complete seven (7) calendar day after mailing.

17 (b) *Enforcement.* The auditor is authorized to assess civil penalties pursuant to this article as
18 provided in article XII, chapter 2 of the Code, provided however the procedures for enforcement,
19 penalty, and appeals shall be as specified in this article.

20 (c) *Penalties.* The following shall be imposed in conjunction with any other penalties imposed
21 under this article:

22 (1) A penalty of up to one thousand dollars (\$1,000.00) shall be imposed for failure to
23 furnish the auditor a complete and certified payroll pursuant to section 58-2(c)(2)(b).

24 a. Should an employer not maintain or retain adequate payroll records, or not
25 allow the auditor access in the manner or time allowed by section 58-2(c)(2)(b), there shall be a
26 presumption, rebuttable by clear and convincing evidence, that the employer violated this article for
27 the periods and for each worker for whom adequate records were not retained or access to such
28 records was not timely provided.

29 (2) A penalty of one thousand dollars (\$1,000.00) shall be imposed for each incident
30 of materially false information contained in certified payroll produced pursuant to section 58-
31 2(c)(2)(c).

32 (3) A penalty of five thousand dollars (\$5,000.00) shall be imposed for each instance
33 of retaliation pursuant to section 58-2(b).

1 (4) A penalty of one thousand dollars (\$1,000.00) may be imposed for a violation of
2 any obligation described in this article which does not otherwise have a penalty assigned.

3 (d) *Unpaid penalties.*

4 (1) Penalties assessed under this article shall be due and payable thirty (30) days after
5 notice. The failure to pay penalties assessed pursuant to this article within thirty (30) days after notice
6 may result in the imposition of a late fee of up to twenty-five dollars (\$25.00) and interest at a rate of
7 ten (10) percent per annum.

8 (2) The auditor is further authorized to collect any and all unpaid penalties assessed
9 pursuant to this article, either informally, or as provided for by section 53-403 of the Code; provided,
10 however, that no action in court shall be filed to collect amounts determined by the auditor to be
11 owing under this article more than three (3) years after the date the auditor provided notice to the
12 employer or other person of the amounts owing.

13 **Sec. 58-5. Appeals.**

14 Notwithstanding the provisions in section 2-286, any determination of the auditor related to
15 this article shall be reviewable as follows:

16 (a) Any person may petition the auditor for a hearing concerning the determination to assess
17 a civil penalty pursuant to this article. Such petition shall be submitted in writing to the auditor for a
18 hearing no later than thirty (30) days after notice of any such determination. Compliance with the
19 provisions of this section shall be a jurisdictional prerequisite to appeal any determination made by
20 the auditor pursuant to this article, and failure to comply shall bar any such appeal. Appeals to the
21 auditor from any notice or order shall stay all administrative enforcement proceedings. However,
22 nothing in this section shall preclude or limit a worker from initiating a private cause of action pursuant
23 to this article.

24 (b) The auditor is authorized to appoint one or more hearing officers to certify the record or a
25 summary thereof as required by the auditor, along with the hearing officer's findings, conclusions,
26 and decision. The hearing, if any, shall take place in the city, and notice thereof and the proceedings
27 shall otherwise be in accordance with rules and regulations issued by the auditor. The designated
28 hearing officer may hold hearings pursuant to this article, subpoena witnesses and compel their
29 attendance, administer oaths and take the testimony of any person under oath, and compel
30 witnesses to produce for examination books and papers related to the subject matter of the appeal.
31 The facts and figures submitted shall be submitted under oath or affirmation either in writing or orally
32 at a hearing scheduled by the hearing officer. The petitioner shall bear the burden of proving the
33 allegations in the petition by a preponderance of the evidence. Following a hearing, if any, the

1 hearing officer shall make a final determination, which may be reviewed under Rule 106(a)(4) of the
2 Colorado Rules of Civil Procedure.

3 **Sec. 58-6. Private right of action.**

4 (a) Within three (3) years of the date an alleged violation of this article any aggrieved party
5 may bring a civil action in a court of competent jurisdiction against an employer alleged to have
6 violated this article. Upon prevailing, the aggrieved party shall be entitled to such legal and equitable
7 relief as may be appropriate to fully remedy the violation including, without limitation:

8 (1) the payment of any wages unlawfully withheld (including amounts that accrued after
9 the filing of the civil action);

10 (2) interest on unpaid wages and overtime compensation at a rate of twelve (12)
11 percent per annum from the date such wages were first due;

12 (3) a penalty in the amount of one hundred dollars (\$100.00) to each worker whose
13 rights under this article were violated for each day that the violation occurred or continued;

14 (4) liquidated damages in an amount equal up to three (3) times the amount of unpaid
15 wages and overtime compensation in connection with such wages;

16 (5) reinstatement of employment (if applicable) and/or other injunctive relief; and

17 (6) shall be awarded reasonable attorney fees and costs.

18 (b) Nothing in this section shall be interpreted as restricting, precluding, or otherwise limiting
19 a separate or concurrent wage investigation by the auditor.

20 **Sec. 58-7. – Data collection and reporting.**

21 The auditor shall track complaints, investigations, and violations of this article, including
22 penalties assessed, during each calendar year, and by March 31 of the following year, beginning in
23 2023 for Denver minimum wage and 2024 for civil wage theft, issue a written report to city council.

24 **Sec. 58-8. – Rulemaking.**

25 The auditor may promulgate rules pertaining to signage, the filing of a complaint, conducting
26 a wage investigation, and appeals.

27 **Reserve—58-9 – 58-12.**

28

29 **Section 2.** That a new division 2, chapter 58 of the Denver Revised Municipal Code shall be added
30 to read as follows:

31 **Division 2 – DENVER MINIMUM WAGE.**

32 **Sec. 58-13. – Defined Terms.**

33 In addition to the definitions set forth in section 58-1, the following words and phrases shall have the

1 following meanings:

2 (1) *Certified youth employment program* means a program certified by the Denver Economic
3 Development & Opportunity (DEDO) agency that provides unemancipated minors employment
4 opportunities in conjunction with a curriculum designed to develop enumerated skills and
5 competencies of unemancipated minors. Any such program shall adhere with rules, regulations and
6 certification requirements issued by DEDO and provide skills development above and beyond the
7 time spent simply performing work in the job.

8 (2) *Food and beverage worker* means a worker for any business or enterprise that prepares
9 and offers for sale food or beverages for consumption either on or off an employer's physical
10 premises.

11 (3) *Tips* means a verifiable sum presented directly and customarily by customers as a gift or
12 gratuity in recognition of some service performed for customers by the person receiving the tip.

13 (4) *Unemancipated minor* means a person less than eighteen (18) years of age who does not
14 maintain sole or primary responsibility for his or her own support, is not married or domiciled
15 separately from his or her parents or guardian, and is unable to show that his or her well-being is
16 substantially dependent on being gainfully employed.

17 **Sec. 58-14. – Workers; intent.**

18 The intent of this article is to ensure the payment of at least the Denver minimum wage to as
19 many workers as possible in accordance with limitations imposed by Colorado law. It is not the intent
20 of this article to apply the Denver minimum wage to work performed by independent contractors, or
21 reduce any differing wage requirements established by federal or state law or that arise from or in
22 connection with federal or state funding. Any greater wage requirements shall be controlling in the
23 event of a conflict between a federal or state wage requirement and the requirements of this article.

24 **Sec. 58-15. Denver minimum wage.**

25 (a) *Required.* Subject to the terms of this division, every employer shall ensure its workers
26 are paid not less than the "Denver Minimum Wage" as calculated pursuant to this section for work
27 performed in accordance with this division. Any agreement providing for indemnifications or recovery
28 from third parties shall in no way excuse an employer from taking whatever steps are necessary to
29 ensure compliance by all persons engaging in work on behalf of or for the benefit of an employer,
30 nor serve as a basis for an employer to avoid payment of any monetary penalties or occurrence of
31 other consequences for violation(s) of this division.

32 (b) *Exclusions.* This division shall not apply to:

33 (1) Work performed by independent contractors while acting solely in such capacity;

- 1 (2) Work performed by persons providing volunteer services that are uncompensated
- 2 except for reimbursement of expenses such as meals, parking, or transportation; or
- 3 (3) Work not performed physically within the geographic boundaries of the city;
- 4 (4) Work performed by a worker totaling less than four (4) hours in any given week for
- 5 a particular employer within the geographic boundaries of the city; or
- 6 (5) Work performed in the city solely for the purpose of traveling through the city from
- 7 a point of origin outside of the city to a destination outside of the city, with no employment-related or
- 8 commercial stops in the city except for refueling or the worker's personal meals or errands.

9 (c) *Calculation of Denver minimum wage.*

10 (1) City council hereby declares that it is in the best interest of the city to establish the

11 Denver minimum wage that shall be paid to workers in the manner described in this article.

12 (2) The Denver minimum wage, exclusive of fringe benefits and any other deductions

13 or credits except as described in this article, shall be calculated as follows:

- 14 a. Beginning January 1, 2020: Twelve dollars and eighty-five cents (\$12.85) per
- 15 hour;
- 16 b. Beginning January 1, 2021: Fourteen dollars and seventy-seven cents
- 17 (\$14.77) per hour; and
- 18 c. Beginning January 1, 2022: Fifteen dollars and eighty-seven cents (\$15.87)
- 19 per hour.

20 (3) Tips regularly and actually received by a food and beverage worker may be applied

21 to an employer's obligation to pay such food and beverage worker the Denver minimum wage.

22 However, no more than three dollars and two cents (\$3.02) per hour in tip income (tip credit) may be

23 used to partially offset payment of the Denver minimum wage.

24 (4) Employers may pay wages for work performed equal to the then-current Denver

25 minimum wage reduced on an hourly basis by up to fifteen (15) percent when compensating

26 unemancipated minor workers for work performed pursuant to a certified youth employment

27 program. The Denver economic development and opportunity agency may issue rules and

28 regulations related to certification and maintenance of eligibility of an employer as a certified youth

29 employment program. The foregoing shall not affect any tip credit offset prescribed by this article,

30 which shall also be permitted.

31 (5) In order to prevent inflation from eroding the value of the Denver minimum wage

32 rate, on January 1, 2023, the Denver minimum wage rate shall increase by an amount corresponding

33 to the prior year's increase, if any, in the Consumer Price Index (Urban Wage Earners and Clerical

1 Workers, Denver-Aurora-Lakewood) or its successor index as published by the U.S. Bureau of Labor
2 Statistics Department of Labor or its successor agency (CPI) observed between the first half of 2021
3 and the first half of 2022, as calculated by the manager of finance. Annually thereafter, on the first
4 of January, the Denver minimum wage rate shall increase by an amount corresponding to the
5 increase, if any, in CPI observed between the first half of the year two (2) years prior and the first
6 half of the year prior to the effective date of the increase, as calculated by the manager of finance.

7 (d) *Application of this division to prevailing wage and contract minimum wage.* Nothing in this
8 division shall be deemed to lessen any obligations of employers to comply with the Denver Revised
9 Municipal Code concerning payment of prevailing wage and/or the contract minimum wage to
10 workers. Should a prevailing wage or contract minimum wage requirement be greater than the
11 Denver minimum wage requirement, the greater wage rate shall be paid. If the Denver minimum
12 wage requires payment of a higher wage rate than an applicable prevailing wage or contract
13 minimum wage requirement for work, the Denver minimum wage shall be paid to any worker for such
14 work.

15 **Sec. 58-16. Enforcement; Minimum wage special trust fund.**

16 (a) *Complaint, investigation, and enforcement.* Complaints, investigations, and enforcement
17 of violations under this division shall be conducted as provided in division 1. Penalties under this
18 division shall be in addition to those provided in division 1.

19 (b) *Non-cumulative remedy.* Where a violation of this division also constitutes a violation of
20 division 3, the auditor may only assess penalties under either this division or division 3, but not both.

21 (c) *Payment of withheld wages.*

22 (1) *Payment owed.* The auditor shall order an employer in violation of this division to
23 pay the aggrieved party any wages unlawfully withheld, including amounts that accrued after the
24 filing of a complaint.

25 (2) *Duty to locate and pay worker.* Withheld wages shall be due to the worker and
26 payable thirty (30) days after notice of an order to pay wages or a final determination. An employer
27 shall make a good faith attempt to locate and pay the worker prior to the thirty (30) day deadline
28 identified herein. Such attempts to locate and pay the worker shall be documented, and if the worker
29 is not located and paid, the employer shall notify the auditor and provide such documentation,
30 together with the required payment to the special minimum wage fund, no later than fifteen (15) days
31 after the thirty (30) day deadline identified herein.

32 (3) *Special wage theft fund.*

33 a. Any employer or other person who is unable to locate a worker pursuant to

1 subsection (c)(2) shall submit to the auditor, for each worker to whom wages are due, a check
2 payable to that worker or to the City of Denver in a manner that is negotiable by either the worker or
3 the city. Any check submitted as payment of a penalty for violation of this article shall be negotiated
4 by the city and the proceeds deposited in the auditor's unclaimed wage theft special trust fund.

5 b. Any valid, verified claim by a worker for payment from the auditor's unclaimed
6 minimum wage special trust fund must be made prior to three (3) years after the date of the most
7 recent underpayment of wages by employer to the worker to whom such wages were due. After such
8 date, the city shall no longer be liable for payment. The city, as trustee, shall pay such claimant only
9 the amount of the check concerning such claimant that is actually negotiated pursuant to this section,
10 regardless of any dispute as to any additional amount of wages owed to the claimant. No interest
11 shall be paid by city on any funds received or disbursed pursuant to this section.

12 c. On the last working day of each calendar month, the amount of any claim for
13 which the city is no longer liable pursuant to this section shall be credited to the general fund, except
14 as otherwise required by law.

15 d. The auditor shall maintain a list of all unclaimed, city-negotiated wage theft
16 checks received. Such list shall be updated monthly and shall be available for inspection at the office
17 of the auditor.

18 (d) *Penalties.*

19 (1) *Failure to pay wages.*

20 a. For a single violation of this division within a three (3) year period, the auditor
21 may assess a penalty of up to fifty dollars (\$50.00) for each day, for each worker not paid full wages
22 for work. The auditor shall waive the penalty for a first time offense if the failure of the employer to
23 pay the correct wage was a good faith mistake, the employer has not previously failed to pay a
24 worker the Denver Minimum Wage, and the error was corrected within thirty (30) days of the date
25 the employer received notice.

26 b. For a second or third violation of this division within a three (3) year period,
27 the auditor may assess a penalty of not less than one thousand dollars (\$1,000.00) and not greater
28 than two thousand five hundred dollars (\$2,500.00), plus an amount not less than ten dollars (\$10.00)
29 and not greater than seventy-five dollars (\$75.00) for each day, for each worker not paid full wages
30 for work.

31 c. For a fourth or subsequent violation of this division within a three (3) year, the
32 auditor may assess a penalty of not less than two thousand five hundred dollars (\$2,500.00) and not
33 greater than five thousand dollars (\$5,000.00), plus an amount not less than fifty dollars (\$50.00)

1 and not greater than one hundred dollars (\$100.00) for each day, for each worker not paid full wages
2 for work.

3 d. In assessing a penalty under this subsection, the auditor may consider any
4 relevant aggravating or mitigating factors, including, but not limited to, whether the failure of the
5 employer to pay the correct wage was a good faith mistake, whether the error was corrected within
6 thirty (30) days of the date the employer received notice, and whether the employer has previously
7 failed to satisfy the requirements of this division.

8 (2) *Failure to make a good faith effort to locate and pay worker.* The auditor shall issue
9 a penalty of five thousand dollars (\$5,000.00) for each failure to comply with subsection(b)(2)
10 pursuant an order or final determination, if applicable.

11
12 **Reserved—50-17 – 50-21.**

13
14 **Section 3.** That a new division 3, chapter 58 of the Denver Revised Municipal Code shall be added
15 to read as follows:

16 **Division 3 – CIVIL WAGE THEFT.**

17 **Sec. 58-22. – Purpose and intent.**

18 The intent of this article is to ensure the payment of earned wages to as many workers as
19 possible, and to limit and redress wage theft involving workers in accordance with limitations
20 imposed by Colorado law. It is not the intent of this article to reduce any differing wage theft
21 requirements established by federal or state law or that arise from or in connection with federal or
22 state funding, and any greater wage theft requirements and restrictions shall be controlling in the
23 event of a conflict between a federal or state wage theft requirement and the requirements of this
24 article.

25 **Sec. 58-23 – Defined terms.**

26 In addition to the definitions set forth in section 58-1, the following words and phrases shall
27 have the following meanings:(1) *Wages* means the same definition set forth in § 8-4-101, C.R.S., as
28 amended, except that it shall apply to all workers, as defined in this article.

29 **Sec. 58-24. – Applicability; Nonpayment of wages prohibited.**

30 (a) *Required.* It shall be a violation of this division for any employer or any other person who
31 is regularly engaged in business or commercial activity who has contracted with an employer or
32 worker, directly or indirectly, for labor from which such person is the beneficiary, including general
33 contractors, clients of staffing agencies, and labor brokers, to fail to ensure full payment of all wages

1 lawfully due to a worker by the date required by a lawful agreement or by state or federal law.
2 However, the rights created in this division shall not accrue until fourteen (14) days after the employer
3 or other person has been provided notice of the violation by either the aggrieved party or the auditor
4 and has failed to pay the wages lawfully due.

5 (b) *Joint and several liability.* An employer, or any other person who is regularly engaged in
6 business or commercial activity who has contracted with an employer or worker, directly or indirectly,
7 for labor from which such person is the beneficiary, including general contractors, clients of staffing
8 agencies, and labor brokers, shall be jointly and severally liable for the payment of any penalty
9 pursuant to a violation of this division, regardless of whether the employer is in a direct contractual
10 relationship with the person who contracted for the labor. However, the auditor shall attempt to collect
11 from the employer or person alleged to have committed the violation before attempting to collect
12 from any other party who benefitted from the work, other than a client. Only once the auditor has
13 attempted to collect from every other party may the auditor attempt to collect from a client.

14 (c) *Indemnification.* An employer or other person may seek indemnification or recovery from
15 third parties for penalties they incur for failure to comply with the requirements of this division.
16 However, any such rights shall in no way excuse an employer or other person from taking whatever
17 steps are necessary to ensure compliance with this division by all persons and entities engaging in
18 work on behalf of or for their benefit, nor serve as a basis for a person to avoid payment of any
19 monetary penalties or occurrence of other consequences for violation(s) of this division.

20 (d) *Exemptions and exclusions.* This division does not apply to any state governmental
21 agency, municipality, municipal corporation, quasi-municipal corporation, school district, or irrigation,
22 reservoir, or drainage conservation company or district organized and existing under the laws of
23 Colorado.

24 **Sec. 58-25. – Applicability of collective bargaining agreement.**

25 In the event that a worker has entered into a collective bargaining agreement with their
26 employer, then the rights created in this division do not accrue until the worker has exhausted the
27 remedies under the collective bargaining agreement. However, nothing in this section shall prohibit
28 the auditor from initiating a wage investigation prior to the exhaustion of such remedies.

29 **Sec. 58-26. –Enforcement.**

30 (a) *Complaint, investigation, and enforcement.* Complaints, investigations, and enforcement
31 of violations under this division shall be conducted as provided in division 1. Penalties under this
32 division shall be in addition to those provided in division 1.

33 (b) *Non-cumulative remedy.* Where a violation of this division also constitutes a violation of

1 division 2, the auditor may only assess penalties under either this division or division 2, but not both.

2 (c) *Payment of withheld wages.*

3 (1) *Payment owed.* The auditor shall order an employer or other person in violation of
4 this division to pay the worker any wages unlawfully withheld, including amounts that accrued after
5 the filing of a complaint, and interest on unpaid wages at a rate of twelve (12) percent per annum
6 from the date such wages were first due .

7 (2) *Treble damages.* The auditor may order an employer or other person to pay treble
8 damages in an amount equal to three (3) times the amount of unpaid wages and overtime
9 compensation in connection with such withheld wages owed to a worker.

10 (3) *Duty to locate and pay worker.* Withheld wages shall be due to the worker and
11 payable thirty (30) days after notice of an order to pay wages or a final determination, if applicable.
12 An employer or other person shall make a good faith attempt to locate and pay the worker prior to
13 the thirty (30) day deadline identified herein. Such attempts to locate and pay the worker shall be
14 documented, and if the worker is not located and paid, the employer or other person shall notify the
15 auditor and provide such documentation no later than fifteen (15) days after the thirty (30) day
16 deadline identified herein.

17 (d) *Reinstatement.* The auditor may order an employer to reinstate the employment of the
18 aggrieved party.

19 (e) *Penalties.*

20 (1) *Failure to pay wages.* For each violation of this division by an employer or other
21 person found pursuant to a wage investigation, the auditor may assess a penalty of up to twenty-five
22 thousand dollars (\$25,000.00) for each worker not paid full wages for work.

23 a. *Aggravating and mitigating factors.* In assessing a penalty under this
24 subsection, the auditor may consider any relevant aggravating or mitigating factors, including, but
25 not limited to, whether the failure of the employer to pay the correct wage was a good faith mistake,
26 whether the error was corrected within thirty (30) days of the date the employer or other person
27 received notice, and whether the employer or other person has previously failed to satisfy the
28 requirements of this division.

29 (2) *Failure to make a good faith effort to locate and pay worker.* The auditor shall issue
30 a penalty of five thousand dollars (\$5,000.00) for each failure to comply with subsection (c)(3)
31 pursuant an order or final determination, if applicable.

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33 **Reserved—58-27-58-30.**

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Section 4. That article III, chapter 58 of the Denver Revised Municipal Code, entitled Worker Retention is hereby amended to read as follows:

ARTICLE III. – Worker Retention.

Section 5. That article III, chapter 38 of the Denver Revised Municipal Code, shall be amended by deleting the language stricken and adding the language underlined, to read as follows:

Sec. 38-51.9. - Wage theft.

(b) Definitions.

(1) "*Employer*" shall have the meaning set forth in D.R.M.C. section 58-18.

(2) "*Wages*" shall have the same definition set forth in § 8-4-101, C.R.S., as amended.

(3) "*Worker*" shall mean a person performing work, and includes, but is not limited to: full time employees, part-time employees, temporary workers, agents, and any other person or entity performing work on behalf of or for the benefit of an employer. This definition shall not apply to work performed by independent contractors while acting solely in such capacity or by persons providing volunteer services that are uncompensated except for reimbursement of expenses such as meals, parking or transportation~~shall have the meaning set forth in D.R.M.C. section 58-18.~~ For purposes of this section, a person is a "worker" rather than an independent contractor when the person is economically dependent on the business to which he or she renders service, and a person is an "independent contractor" when the person is, as a matter of economic fact, in business for himself or herself. In making this determination, the trier of fact shall consider the totality of the circumstances, and it shall be prima facie evidence that a person is a worker when:

- a. The employer may or does exert a degree of control over the person at work, such as setting working hours, controlling break and lunch times, or directing the person when and where to work;
- b. The person earns a set wage or salary or commission;
- c. The person works exclusively for the employer, and does not provide similar services to other employers; or
- d. The person does not bring a level of skill and knowledge unique to the job, but rather the employer provides on-the-job training for the work to be done.

Section 6. That article IV, chapter 20 of the Denver Revised Municipal Code, shall be amended by deleting the language stricken and adding the language underlined, to read as follows:

1 **Sec. 20-82. - Payment of contract minimum wage.**

2 (c) Calculation of contract minimum wage.

3 (4) In order to prevent inflation from eroding the value of the contract minimum wage
4 rate, on January 1, 2023, the contract minimum wage rate shall increase to an amount equal to the
5 Denver Minimum Wage as provided in section 58-16(b)15. Annually thereafter, on the first of
6 January, the contract minimum wage rate shall increase by an amount corresponding to the increase
7 in the Denver Minimum Wage.

8 COMMITTEE APPROVAL DATE: December 20, 2022

9 MAYOR-COUNCIL DATE: December 27, 2022 by Consent

10 PASSED BY THE COUNCIL _____

11 _____ - PRESIDENT

12 APPROVED: _____ - MAYOR _____

13 ATTEST: _____ - CLERK AND RECORDER,
14 EX-OFFICIO CLERK OF THE
15 CITY AND COUNTY OF DENVER

16 NOTICE PUBLISHED IN THE DAILY JOURNAL _____; _____

17

18 PREPARED BY: Anshul Bagga, Legislative Counsel; DATE: December 28, 2022
19 Brylan Droddy, Assistant City Attorney; DATE: December 28, 2022
20

21 Pursuant to section 13-9, D.R.M.C., this proposed ordinance has been reviewed by the office of the
22 City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
23 ordinance. The proposed ordinance **is not** submitted to the City Council for approval pursuant to §
24 3.2.6 of the Charter.
25

26 Kerry Tipper, Denver City Attorney

27

28 BY: _____, Assistant City Attorney DATE: _____