

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2019

COUNCIL BILL NO. CB19-
COMMITTEE OF REFERENCE:
Finance & Governance

A BILL

For an ordinance adding a new Division _____ of Article IV, Denver Minimum Wage.

WHEREAS, despite a state-wide minimum wage rate, many **working** Denver residents struggle to afford the basic necessities of life;

WHEREAS, the health and welfare of all Denver residents is benefited and advanced when workers are paid a wage which enables them to **earn a livable wage and establish self-sufficiency**;

WHEREAS, the city seeks to confront the issue of wage **inequity** and cost of living affordability in the community;

WHEREAS, the city has historically demonstrated leadership on pay-equity issues;

WHEREAS, during the 2019 legislative session the Colorado legislature empowered local governments to establish a jurisdiction-wide minimum wage in accordance with certain requirements and restrictions mandated by state law;

WHEREAS, the Denver Revised Municipal Code requires payment of certain wages with respect to city contracts, however no jurisdiction-wide minimum wage was previously permitted pursuant to state law;

WHEREAS, ensuring that workers in Denver can support themselves and their families benefits the Denver economy and the well-being of the city;

WHEREAS, addressing the minimum wage needs of workers is a matter of significant local concern;

WHEREAS, studies of local minimum wage laws have demonstrated that jurisdiction-wide minimum wage laws can increase earnings for workers without negatively affecting overall employment;

WHEREAS, the city has consulted with surrounding local governments and extensively engaged with community stakeholders, including chambers of commerce, small and large businesses, businesses that employ tipped workers, workers, labor unions and numerous community groups;

WHEREAS, the city engaged with hundreds of community stakeholders by facilitating five (5)

1 publicly-advertised open town hall meetings, by conducting open office hours available to all to
2 discuss minimum wage related-issues, and has met with dozens of community leaders to evaluate
3 and research critical considerations related to a Denver minimum wage;

4 **WHEREAS**, the city throughout its expansive outreach efforts solicited, received and
5 evaluated feedback, and revisited the terms of this ordinance based on stakeholder feedback;

6 **WHEREAS**, city council finds that a new division should be added to city code to require
7 employers throughout Denver to compensate workers no less than the Denver minimum wage
8 established herein;

9 **WHEREAS**, the city has enjoyed robust economic growth for a prolonged period, and if the
10 local economy is materially impaired subsequent to the effective date of this ordinance, and found
11 by the city not capable of reasonably-sustaining future increases to the then-prevailing minimum
12 wage required by this ordinance, the city will review and evaluate the appropriateness of future
13 increases to Denver’s minimum wage;

14 **WHEREAS**, jurisdiction-wide minimum wage enforcement by local governments is new to the
15 state of Colorado, and the city intends to collect and evaluate data related to implementation of this
16 ordinance and by the end of 2020 evaluate whether initial enforcement mechanisms enacted herein
17 effectively secure payment of wages required hereby to workers and whether additional enforcement
18 mechanisms are necessary to ensure compliance with Denver’s minimum wage ordinance; and

19 **WHEREAS**, the city seeks to regulate wage rates in its legislative capacity.

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

22 **Section 1.** A new Section 20-___, Division _____ of Article IV of the Denver Revised
23 Municipal Code shall be added and read as follows:

24 Sec. 20-___. –Denver minimum wage.

25 (a) *Required.* Subject to the terms of this division, every employer shall ensure its workers are
26 paid not less than the “Denver Minimum Wage” as calculated pursuant to **Section 20-__ (b)** for work
27 performed in accordance with this division.

28 (b) *Calculation of Denver minimum wage.*

29 (1) City council hereby declares that it is in the best interest of the city to protect workers’
30 bargaining power and establish the Denver minimum wage that shall be paid to workers in
31 the manner described in this division.

- 1 (2) The Denver minimum wage, exclusive of fringe benefits and any other deductions or credits
2 except as described in this division, shall be calculated as follows:
3 i. Beginning January 1, 2020: \$12.85 (twelve dollars and eighty-five cents) per hour;
4 ii. Beginning January 1, 2021: \$14.77 (fourteen dollars and seventy-seven cents) per hour;
5 and
6 iii. Beginning January 1, 2022: \$15.87 (fifteen dollars and eighty-seven cents) per hour.
- 7 (3) Tips regularly and actually received by a food and beverage worker may be applied to an
8 employer's obligation to pay such food and beverage worker the Denver minimum wage.
9 However, no more than \$3.02 per hour in tip income ("Tip Credit") may be used to partially
10 offset payment of the Denver minimum wage.
- 11 (4) In order to prevent inflation from eroding the value of the city's minimum wage rate, on
12 January 1, 2023, the Denver minimum wage rate shall increase by an amount corresponding
13 to the prior year's increase, if any, in the Consumer Price Index (Urban Wage Earners and
14 Clerical Workers, Denver-Aurora-Lakewood) or its successor index as published by the U.S.
15 Department of Labor or its successor agency ("CPI"). Annually thereafter, on the first of
16 January, the Denver minimum wage rate shall increase by an amount corresponding to the
17 prior year's increase, if any, in CPI.

18 (c) *Exclusions*. In accordance with Colorado law, this division shall not apply to work that: (1) is
19 not performed physically within the geographic boundaries of the city; (2) is performed by a worker
20 totaling less than four hours in any given week for a particular employer within the geographic
21 boundaries of the city; or (3) occurs in the city solely for the purpose of traveling through Denver
22 from a point of origin outside of the city to a destination outside of Denver, with no employment-
23 related or commercial stops in the city except for refueling or the worker's personal meals or errands.

24 (d) *Worker Complaints*. Subject to any rules and regulations that may be issued by the auditor,
25 any worker may submit a complaint of a violation of this division by her or his employer to the auditor.
26 The burden of demonstrating to the auditor's satisfaction that a violation has occurred rests with the
27 person making the complaint and shall be demonstrated by a preponderance of the evidence. Any
28 such complaint shall be made in writing to the auditor and shall include all information relied upon
29 by such person. If a worker filing a complaint pursuant to this Section 20-____(d) is unable to
30 reasonably file her or his complaint in writing, a complainant may request the auditor to assist him
31 or her with documenting any allegations to satisfy the written complaint requirement. A worker may
32 also consult with an attorney or other third-party for assistance when filing a complaint. The auditor
33 shall prioritize complaints received pursuant to rules established by the auditor and may investigate

1 any credible complaints. For any credible complaint investigated by the auditor, the auditor shall
2 notify any employer alleged to have violated this division of any credible complaint, and shall provide
3 a summary of findings regarding any such complaint to both the complainant and the employer. Any
4 determination by the auditor pursuant to this division is reviewable by the complained-of party,
5 pursuant to Section 20-__ (h). Any complaint must be submitted to auditor within one year of the
6 date the employer was alleged to have violated the requirements of this division, and shall include:
7 the worker's name and/or the name of their duly authorized representative, if applicable; the worker's
8 contact information; a detailed statement of the employer's alleged violation of the requirements of
9 this division, including readily available supporting documentation demonstrating a violation; and any
10 additional information requested by the auditor or pursuant to rules issued by the auditor. Employers
11 shall be subject to penalties and other consequences pursuant to this division for any actual
12 violation(s) that occurred within one year of the date a credible complaint was first and timely
13 submitted to the auditor pursuant to this Section 20-__ (d) and within three years of the date an
14 investigation of an employer by the auditor (not limited to a specific complaint) is initiated following
15 the earlier of receipt of a credible worker complaint concerning a specific employer by the auditor,
16 referral of a complaint from the State of Colorado or any agency thereof, referral of a complaint from
17 a city agency specifically authorized to receive complaints made pursuant to this division; or filing of
18 a private right of action by a worker against an employer pursuant to this division. At any time, the
19 auditor may refer a worker complaint to an appropriate state or federal agency to coordinate
20 resources with respect to such complaint or otherwise assist a worker alleging a violation of this
21 division or other law.

22 (e) *Third party complaints.* Subject to any rules and regulations that may be issued by the
23 auditor, any person or entity may submit a complaint of a violation of this division to the auditor. The
24 burden of demonstrating to the auditor's satisfaction that a violation has occurred rests with the
25 person or entity making the complaint and shall be demonstrated by a preponderance of the
26 evidence. Any non-worker complaint shall be made in writing to the auditor and shall include all
27 information relied upon by such person or entity. The auditor shall prioritize complaints received
28 pursuant to rules established by the auditor and may investigate any credible complaints. For any
29 credible complaint investigated by the auditor, the auditor shall notify any employer alleged to have
30 violated this division of any credible complaint, and shall provide a summary of findings regarding
31 any such complaint to both the complainant (unless the complaint was filed anonymously) and the
32 employer. Any determination by the auditor pursuant to this division is reviewable by the complained-
33 of party, pursuant to Section 20-__ (h). Any complaint must be submitted to the auditor within one

1 year of the date an employer was alleged to have violated the requirements of this division, and shall
2 include: a detailed statement of the employer's alleged violation of the requirements of this division,
3 including readily available supporting documentation demonstrating a violation; and any additional
4 information requested by the auditor or pursuant to rules issued by the auditor. Employers shall be
5 subject to penalties and other consequences pursuant to this division for any actual violation(s) that
6 occurred within one year of the date a credible third-party complaint was first and timely submitted
7 to the auditor pursuant to this Section 20-____(e) and within three years of the date an investigation
8 of an employer by the auditor (not limited to a specific complaint) is initiated following receipt of a
9 credible third-party complaint concerning a specific employer by the auditor. At any time, the auditor
10 may refer a third-party complaint to an appropriate state or federal agency to coordinate resources
11 with respect to such complaint or otherwise secure assistance for persons or entities alleging a
12 violation of this division or other law.

13 (f) *Investigations in the absence of a complaint.* On and after January 1, 2022, the auditor may
14 utilize data collected and received concerning non-compliance with this division to investigate and
15 enforce the terms of this division against employers and industries without issuance of a prior
16 credible complaint consistent with rules established by the auditor and as follows:

17 (1) Prior to an investigation absent a credible complaint, the auditor must determine that based
18 on available information a reasonable basis exists for a belief that a violation of this division has
19 occurred or will occur due to any or all of the following:

20 i. The owner or partial owner of a legal entity has violated the terms of this division with respect
21 to another entity with common ownership interests;

22 ii. A pattern and practice, including but not limited to receipt of multiple credible complaints
23 filed against a particular industry, demonstrates an increased likelihood that certain workers within
24 an industry are regularly not paid wages as required by this division;

25 iii. The auditor receives credible information from a state or federal agency that demonstrates
26 an increased likelihood that a particular employer or industry has failed to comply with the terms of
27 this division; or

28 iv. The auditor, relying upon data collected by the city, establishes a reasonable basis to
29 conclude that a particular employer or industry is likely to have failed to comply with the terms of this
30 division.

31 (g) *Retaliation strictly prohibited.* No employer shall interfere with, restrain, deny, assist another
32 person or entity, or attempt to deny the exercise of any right protected under this division. Any
33 attempted or actual retaliation shall be regulated as follows:

1 (1) No employer or any other person shall take any adverse action against any person because
2 the person has exercised in good faith rights described in this division. Such rights include,
3 but are not limited to: the right to file and pursue a private cause of action alleging a violation
4 of this division; the right to make inquiries about rights protected under this division; the right
5 to inform employer, a union or similar organization, and/or the person's legal counsel or any
6 other person about an alleged violation of this division; the right to file a written complaint
7 with the auditor; the right to cooperate with the auditor in any investigations pursuant to this
8 division; the right to testify in a proceeding related to an investigation pursuant to this
9 division; the right to refuse to participate in an activity that would result in a violation of city,
10 state, or federal law; and the right to oppose any policy, practice, or act that is unlawful
11 pursuant to this division.

12 (2) No employer or any other person shall communicate to a person exercising rights protected
13 under this division, directly or indirectly, the willingness to inform a government employee
14 that the person is not lawfully in the United States, or to report, or to make an implied or
15 express assertion of a willingness to report, suspected citizenship or immigration status of a
16 worker or a family member of the worker to a federal, state, or local agency because the
17 worker has exercised a right pursuant to this division.

18 (3) It shall be a rebuttable presumption of retaliation if an employer or any other entity or person
19 takes an adverse action against a person within 90 days of the person's exercise of rights
20 protected in this division. However, in the case of seasonal work that ended before the close
21 of a 90-day period, the presumption also applies if the employer or other person or entity
22 fails to rehire a former worker at the next opportunity for work in the same position. The
23 employer may rebut this presumption with clear and convincing evidence that the adverse
24 action was taken for a lawful purpose.

25 (4) Proof of retaliation shall be sufficient upon a showing that an employer or any other person
26 or entity has taken an adverse action against a person and the person's exercise of rights
27 protected in this division was a motivating factor in the adverse action, unless the employer
28 can prove that the action would have been taken in the absence of such protected activity.

29 (h) *City-initiated enforcement; appeals.* Any determination of the auditor related to the payment
30 of the Denver minimum wage and an employer's strict adherence to the requirements of this division
31 including, but not limited to, determinations of worker status, determinations of underpayment or
32 misreporting, and the imposition of penalties pursuant to this division shall be reviewable as follows:

1 (1) Any employer who disputes any determination made by or on behalf of the city pursuant to
2 the authority of the auditor, which determination adversely affects such employer, may
3 petition the auditor for a hearing concerning such determination no later than thirty (30) days
4 after having been notified of any such determination. Compliance by an employer with the
5 provisions of this **Section 20-__ (h)(1)** shall be a jurisdictional prerequisite to appeal any
6 determination made by the auditor pursuant to this division, and failure of compliance shall
7 forever bar any such appeal. The foregoing in no way shall preclude or limit a worker from
8 initiating a private cause of action pursuant to this division.

9 (2) The auditor shall designate as a hearing officer a person retained by the city for appeal
10 purposes.

11 (3) The petition for a hearing shall be in writing, and the facts and figures submitted shall be
12 submitted under oath or affirmation either in writing or orally at a hearing scheduled by the
13 hearing officer. The hearing, if any, shall take place in the city, and notice thereof and the
14 proceedings shall otherwise be in accordance with rules and regulations issued by the
15 auditor. The petitioner shall bear the burden of proof, and the standard of proof shall conform
16 with that in civil, nonjury cases in state district court.

17 (4) The designated hearing officer may hold hearings pursuant to this division, subpoena
18 witnesses and compel their attendance, administer oaths and take the testimony of any
19 person under oath and compel witnesses to produce for examination books and papers
20 related to the subject matter of the appeal.

21 (5) Following a hearing, the hearing officer shall make a final determination. Such final
22 determination shall be considered a final order and may be reviewed under Rule 106(a)(4)
23 of the state rules of civil procedure by the employer or by the city. A request for
24 reconsideration of the determination may be made if filed in writing with the hearing officer
25 within fifteen (15) days of the date of a final determination, in which case the hearing officer
26 shall review the record of the proceedings, and the determination shall be considered a final
27 order upon the date the hearing officer rules on the request for reconsideration.

28 (6) The district court of the second judicial district of the State of Colorado shall have original
29 jurisdiction in proceedings to review all questions of law and fact determined by the hearing
30 officer by order or writ under Rule 106(a)(4) of the state rules of civil procedure.

31 (i) *Recordkeeping requirements and inspection.* All employers shall retain sufficient payroll
32 records concerning work performed for a period of at least three years. After a worker **or third-party**
33 complaint determined credible by the auditor has been received, referral of a complaint from the

1 State of Colorado or any agency thereof, referral of a complaint from a city agency specifically
2 authorized to receive complaints made pursuant to this division, pursuant to an investigation in
3 accordance with Section 20-__ (f), or a private right of action has been initiated by a worker against
4 an employer pursuant to this division, the employer shall promptly allow the auditor access to such
5 records at a reasonable time during normal business hours to review and assess employer's
6 compliance with the requirements of this division. The auditor's review of an employer's records
7 following receipt of a credible worker or third-party complaint, referral of a complaint from the State
8 of Colorado or any agency thereof, referral of a complaint from a city agency specifically authorized
9 to receive complaints made pursuant to this division, pursuant to an investigation in accordance with
10 Section 20-__ (f), or initiation of a private right of action shall not be limited to workers who have filed
11 complaints. Should an employer not maintain or retain adequate records documenting the manner
12 and amount of wages paid for work performed pursuant to this division, or not allow the auditor
13 reasonable access to such records within thirty (30) days of an auditor request, there shall be a
14 presumption, rebuttable by clear and convincing evidence, that the employer violated this division
15 for the periods and for each worker for whom adequate records were not retained or access to such
16 records was not timely provided.

17 (j) *Private right of action, authorization and scope.* Within three (3) years of an alleged violation
18 of this division, any aggrieved party may bring a civil action in a court of competent jurisdiction against
19 an employer alleged to have violated this division, and, upon prevailing, shall be entitled to such
20 legal and equitable relief as may be appropriate to fully remedy the violation including, without
21 limitation: the payment of any wages unlawfully withheld and any unpaid overtime based on those
22 wages (including amounts that accrued after the filing of the civil action), interest on unpaid wages
23 and overtime compensation at a rate of 12 percent per annum from the date such wages were first
24 due, the payment of an additional sum as a penalty in the amount of \$100 to each worker whose
25 rights under this division were violated for each day that the violation occurred or continued,
26 liquidated damages in an amount equal up to three times the amount of unpaid wages and overtime
27 compensation in connection with such wages, reinstatement of employment (if applicable) and/or
28 other injunctive relief, and shall be awarded reasonable attorney fees and costs. Nothing in this
29 Section 20-__ (j) shall be interpreted as restricting, precluding, or otherwise limiting a separate or
30 concurrent investigation by the auditor of an alleged violation of this division pursuant to city code.
31 Jeopardy shall not attach as a result of any administrative or civil enforcement action initiated
32 pursuant to this division.

33 **Section 2.** A new Section 20-__, Division _____ of Article IV of the Denver Revised

1 Municipal Code shall be added and read as follows:

2 Sec. 20-____. – Enforcement, penalties and costs.

3 (a) *Enforcement.*

4 (1) Following notification of a worker or third-party complaint determined credible by the auditor,
5 a complaint referred to the auditor in accordance with this division, or pursuant to an
6 investigation in accordance with Section 20-____(f), an employer shall furnish to the auditor,
7 upon the auditor's request, a true and correct certified copy of the payroll records of all
8 workers in accordance with the terms of this division. Such payroll records shall reflect the
9 entire period of record keeping required by this division, and include information
10 documenting the number of hours worked by each worker, the hourly wage paid such
11 workers, any deductions made from worker wages including but not limited to any tax
12 withholdings, and the net amount of wages received by any such worker.

13 (2) Payroll records produced pursuant to Section 20-____(a)(1) shall be accompanied by a sworn
14 statement of the employer that records provided are a true and correct copy of the requested
15 payroll records pursuant to this division, that payments were made to workers as set forth in
16 the payroll records, that no deductions were made other than those described in such
17 records, and that any worker identified in a complaint and any other workers for whom the
18 auditor has requested the production of records have been paid at least the Denver minimum
19 wage for all work or a detailed description of all instances and ways in which the foregoing
20 requirements were not fully satisfied and all explanations therefore.

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

28 (4) The auditor is authorized to enforce findings and orders made pursuant to this division and
29 collect any and all assessed and unpaid penalties and other amounts from employers who
30 violate any of the terms of this division either informally, or by action initiated in state district
31 court.

32 (b) *Penalties.* Any employer subject to the requirements of this division shall as a penalty pay
33 to the city an amount as set forth below for each worker for each day they are paid less than the

1 Denver minimum wage for the performance of work.

2 (1) The amount of the penalty shall be determined by the auditor based on consideration of both
3 of the following:

4 a. Whether the failure of the employer to pay the correct wage rate was a good faith mistake
5 and, if so, the error was corrected within thirty (30) days of the date it was brought to the
6 attention of the employer.

7 b. Whether the employer has **previously failed to satisfy** the requirements of this division.

8 (2) An employer's penalty shall be fifty dollars (\$50.00) for each day, or portion thereof, for each
9 worker paid less than the Denver minimum wage rate for work, unless the failure of the
10 employer to ensure payment of the Denver minimum wage rate was a good faith mistake,
11 the employer has not previously failed to timely pay a worker the Denver minimum wage
12 (regardless of whether a penalty was assessed), and the underpayment was paid in full
13 within thirty (30) days of the date it was brought to the attention of the employer in writing by
14 the worker or the auditor.

15 (3) An employer's penalty shall be two thousand five hundred dollars (\$2,500.00) for a violation,
16 plus seventy-five dollars (\$75.00) for each day, or portion thereof, for each worker paid less
17 than the Denver minimum wage rate for work, if the employer has been assessed a penalty,
18 but not more than two (2) other penalties, within the previous three (3) years of the date of
19 the complaint or notice of an investigation is provided to employer for failure to comply with
20 the terms of this division, unless all such penalties were subsequently withdrawn or
21 overturned during the same three (3) year period pursuant to this division.

22 (4) An employer's penalty shall be five thousand dollars (\$5,000.00) for a violation, plus one
23 hundred dollars (\$100.00) for each day, or portion thereof, for each worker paid less than
24 the Denver minimum wage rate for work, if the employer has been assessed three (3) or
25 more other penalties within the previous three (3) years of the date of the complaint or notice
26 of an investigation is provided to employer for failure to comply with the terms of this division,
27 unless any such penalties were subsequently withdrawn or **reversed** resulting in two (2) or
28 fewer penalties during the same three (3) year period pursuant to this division.

29 (5) An employer's penalty shall be one thousand dollars (\$1,000.00) for each instance in which
30 any employer fails to furnish the auditor a complete and certified payroll for any worker filing
31 a complaint against employer pursuant to this division, unless the failure of the employer to
32 furnish the auditor a complete and certified payroll was a good faith mistake and, if so, the
33 error was corrected within ten (10) days of the date the auditor notifies employer of such

1 failure. This penalty shall be imposed in conjunction with penalties imposed under Section
2 20-___(b)(2)-(4), and shall apply whether or not the work was performed by worker directly
3 for an employer or for another person or entity on the employer's behalf.

4 (6) An employer's penalty shall be one thousand dollars (\$1,000.00) for each incident of false
5 reporting in connection with a certified payroll not corrected within ten (10) days of the date
6 the auditor notifies the employer of such report. A certified payroll shall be determined to be
7 a false report when information related to hours worked or wages paid reported on a certified
8 payroll is not identical to supportive documentation, including payments issued to workers,
9 timecards maintained by employer, invoices for work performed issued to other persons or
10 entities, and tax documents. This penalty shall be imposed in conjunction with penalties
11 imposed under Section 20-___(b)(2)-(5).

12 (7) An employer's penalty shall be one thousand dollars (\$1,000.00) for each violation should
13 an employer be found by the auditor to have violated any obligation of employer described
14 in this division and not otherwise described in Section 20-___(b)(2)-(6).

15 (8) An employer who is found by the auditor pursuant to this division to have failed to ensure
16 payment of the Denver minimum wage to a worker for work shall, within thirty (30) days of
17 notice of a violation from the auditor, or if applicable, thirty (30) days from any final order
18 pursuant to Section 20-___(h), attempt in good faith to locate and pay any such worker all
19 wages required pursuant to this division. Failure by any employer to attempt in good faith
20 to locate and ensure payment of any underpaid worker in compliance with the terms of this
21 Section 20-___(b)(8) shall for any underpayment to a worker greater than fifty dollars (\$50.00)
22 result in a penalty of five thousand dollars (\$5,000.00) for each such violation. If an employer
23 is able to adequately document to auditor its good faith efforts to locate and timely pay a
24 worker all wages owed within forty five (45) days from any final order pursuant to Section
25 20-___(h) it shall not be subject to further penalty if it is unable to reasonably locate or pay
26 a worker all Denver minimum wages owed and strictly complies with Section 20-___(b)(9)-
27 (13). Any finding or penalty for failure to timely pay a worker, or attempt in good faith to
28 locate and timely pay a worker amounts owed pursuant to this Section 20-___(b)(8) shall be
29 subject to review pursuant to Section 20-___(h).

30 (9) Any employer who is found by a final order to have failed to pay a worker or workers all
31 amounts owed pursuant to this division and who is unable to timely locate and pay any
32 amount owed to a worker may submit to the auditor, for each worker to whom wages are
33 due, a check payable to that worker or to the City of Denver in a manner that is negotiable

1 by either the worker or the city. Each such check shall be for the amount of the difference
2 between wages owed a worker pursuant to this division and the amount actually paid to that
3 worker.

4 (10) Any check submitted pursuant to Section 20-____(b)(9) shall be negotiated by the city and
5 the proceeds deposited in the auditor's unclaimed minimum wage special trust fund.
6 Nothing in Section 20-____(b)(9)-(13) shall be construed to lessen an employer's
7 responsibility to attempt in good faith to locate and pay all workers all wages due pursuant
8 to this division.

9 (11) Any valid, verified claim by a worker for payment from the auditor's unclaimed minimum
10 wage special trust fund must be made prior to two (2) years after the date of the most recent
11 underpayment of wages by employer to the worker to whom such wages were due. After
12 such date, the city shall no longer be liable for payment. The city, as trustee, shall pay such
13 claimant only the amount of the check concerning such claimant that is actually negotiated
14 pursuant to Section 20-____(b)(10), regardless of any dispute as to any additional amount of
15 wages owed by an employer to the claimant. No interest shall be paid by city on any funds
16 received or disbursed pursuant to Section 20-____(b)(9)-(13).

17 (12) On the last working day of each calendar month, the amount of any claim for which the city
18 is no longer liable pursuant to Section 20-____(b)(11) shall be credited to the general fund,
19 except as otherwise required by law.

20 (13) The auditor shall maintain a list of all unclaimed, city-negotiated minimum wage checks for
21 which the city is liable. Such list shall be updated monthly, and shall be available for
22 inspection at the office of the auditor.

23 (c) *Costs and attorney fees.* Any employer found to have violated the terms of this division shall
24 in addition to any assessed penalties pay to the city an amount equal to city's reasonable attorney
25 fees and costs in connection with the applicable complaint or investigation.

26 **Section 3.** A new Section 20-____, Division _____ of Article IV of the Denver Revised
27 Municipal Code shall be added and read as follows:

28 Sec. 20-____. – Miscellaneous.

29 (a) *Workers; intent.* The intent of this division is to ensure the payment of at least the Denver
30 minimum wage to as many workers as possible in accordance with limitations imposed by Colorado
31 law. It is not the intent of this division to apply the Denver minimum wage to work performed by
32 independent contractors, or reduce any differing wage requirements established by federal or state
33 law or that arise from or in connection with federal or state funding. Any greater wage requirements

1 shall be controlling in the event of a conflict between a federal or state wage requirement and the
2 requirements of this division.

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

11 (c) *Responsibility of employer.* An employer may engage agents, **independent contractors,**
12 subcontractors, individuals and other entities to perform work on the employer's behalf. Each
13 employer shall be solely responsible for ensuring payment of the Denver minimum wage to any and
14 all agents and/or persons performing work on an individual employer's behalf for purposes of
15 compliance with this division. Employers may seek indemnification or recovery from third parties for
16 penalties an employer incurs for failure to comply with the requirements of this division. However,
17 any such rights shall in no way excuse an employer from taking whatever steps are necessary to
18 ensure compliance with this division by all persons engaging in work on behalf of or for the benefit
19 of an employer, nor serve as a basis for an employer to avoid payment of any monetary penalties or
20 occurrence of other consequences for violation(s) of this division.

21 (d) *Definitions.* For purposes of this division, the following definitions shall apply:

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

28 "Aggrieved party" means a worker or other person who suffers tangible or intangible harm
29 due to an employer or other person's violation of this division;

30 "City" shall mean the City and County of Denver;

31 "Complaint" shall mean a complaint submitted pursuant to Section 20-____(d) **or Section 20-**
32 **____(e);**

33 "Employ, Employed, or Employed By" means to suffer or permit to work;

1 “Employer” shall mean any corporation, proprietorship, partnership, nonprofit, joint venture,
2 association, individual, limited liability company, business trust, or any person or group of persons,
3 and any of the foregoing acting directly or indirectly in the interest of an employer in relation to a
4 worker, and any successor thereof;

5 “Food and Beverage Worker” shall mean a worker for any business or enterprise that
6 prepares and offers for sale food or beverages for consumption either on or off an employer’s
7 physical premises;

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

14 “Tips” shall mean a verifiable sum presented directly and customarily by customers as a gift
15 or gratuity in recognition of some service performed for customers by the person receiving the tip;

16 “Work” shall mean any services performed on behalf of **or for the benefit of** an employer
17 whether on an hourly, piecework, commission, time, task, or other basis **but shall not include services**
18 **performed as an independent contractor**; and

19 “Worker” shall mean a person performing work, and includes, but is not limited to: full time
20 employees, part-time employees, temporary workers, ~~independent contractors~~, agents, and any
21 other person or entity performing work on behalf of **or for the benefit of** an employer. This definition
22 shall not apply to work performed **by independent contractors while acting solely in such capacity or**
23 by persons providing volunteer services that are uncompensated except for reimbursement of
24 expenses such as meals, parking or transportation.

25 (e) The provisions of this division are declared to be separate and severable. If any clause,
26 sentence, paragraph, subdivision, section, subsection or portion of this division, or the application
27 thereof to any employer, person, entity or circumstance is preempted or otherwise prohibited by
28 federal or state law or is held to be invalid, it shall not affect the validity of the remainder of this
29 division, or the validity of its application to other persons or circumstances.

30 **Section 4.** This ordinance shall be effective January 1, 2020.

31
32 **BALANCE OF PAGE INTENTIONALLY LEFT BLANK**

1 COMMITTEE APPROVAL DATE: _____, 2019.
2 MAYOR-COUNCIL DATE: _____, 2019.
3 PASSED BY THE COUNCIL _____
4 _____ - PRESIDENT
5 APPROVED: _____ - MAYOR _____
6 ATTEST: _____ - CLERK AND RECORDER,
7 EX-OFFICIO CLERK OF THE
8 CITY AND COUNTY OF DENVER
9 NOTICE PUBLISHED IN THE DAILY JOURNAL: _____;
10 PREPARED BY: Frank Romines, Assistant City Attorney DATE: _____, 2019
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
16 Kristin M. Bronson, Denver City Attorney
17
18 BY: _____, Assistant City Attorney DATE: _____