

1 **BY AUTHORITY**

2
3 ORDINANCE NO. _____
4 SERIES OF 2019

COUNCIL BILL NO. CBXX-XXXX
COMMITTEE OF REFERENCE:
Government & Finance

6 **A BILL**

7 **For an ordinance adding a new Division 3.75 of Article IV, Minimum Wage**
8 **Protections for Workers Associated with City Contracts.**

9
10 **WHEREAS**, the health and welfare of all Denver residents is benefited and advanced when city
11 workers and workers performing services pursuant to city contracts are paid a wage which enables
12 them to live above the federal poverty line;

13 **WHEREAS**, the City seeks to confront the issue of wage equity and cost of living affordability in
14 the community to the extent currently permitted pursuant to Colorado law;

15 **WHEREAS**, the City has historically demonstrated leadership on pay-equity issues;

16 **WHEREAS**, the City contracts with private sector employers to provide various services to the
17 City and also by contract authorizes covered services to occur on city property;

18 **WHEREAS**, the Denver Revised Municipal Code requires payment of certain wages with
19 respect to designated city contracts, however no minimum wage for numerous types of covered
20 services has previously been established;

21 **WHEREAS**, City Council finds that a new division should be added to require that parties
22 contracting with the city pay covered workers no less than a designated city minimum wage;

23 **WHEREAS**, Colorado law prohibits municipalities from establishing jurisdiction-wide laws with
24 respect to minimum wage;

25 **WHEREAS**, the City seeks to impact wage rates in its capacity as a contracting party for
26 procurement of services and as a property owner;

27 **WHEREAS**, in addition to requiring payment of the city minimum wage in all future covered
28 contracts, the City shall seek to review, prioritize and renegotiate existing contracts with a remaining
29 term in excess of one year to prospectively pay covered workers at least the city minimum wage more
30 quickly;

31 **WHEREAS**, the City shall formulate and implement a plan to address existing contracts within
32 one year of the effective date of this bill to ensure prompt and equitable treatment for as many
33 potentially-covered workers as possible; and

34 **WHEREAS**, the city’s renegotiation efforts for existing contracts shall prioritize contracts based
35 on amount, duration and the number of workers positively impacted by a requirement to pay the city
36 minimum wage.

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

39 **Section 1.** A new Section 20-82, Division 3.75 of Article IV of the Denver Revised Municipal
40 Code shall be added and read as follows:

41 Sec. 20-82. – Payment of city minimum wage.

42 (a) *Required.* Subject to the terms of this division, every person or entity that provides any of
43 the following services: concession services; catering services; maintenance services; ramp and
44 cargo services; hospitality services; miscellaneous services; or security services as defined in this
45 division (“Covered Services”) to the city, or on city property for more than 30 consecutive days in a
46 calendar year, or pursuant to a negotiated contractual requirement, shall pay all covered workers
47 not less than a “City Minimum Wage” as calculated pursuant to subsection (c) for covered work.

48 (b) *Contract specifications.* Every covered contract with a maximum contract amount in excess of
49 fifty thousand dollars (\$50,000.00) shall contain a provision requiring that all covered workers
50 shall be paid not less than the city minimum wage calculated pursuant to subsection (c) for all
51 covered work. The city minimum wage shall be paid pursuant to a covered contract from and
52 after the date it satisfies the criteria described in this division. For any city contract that is not a
53 covered contract, but upon renewal, amendment, or otherwise qualifies as a covered contract at
54 a later date, the city minimum wage requirement shall be mandatory from and after the date that
55 a city contract qualifies as a covered contract pursuant to this division. Increases in the city
56 minimum wage subsequent to the date of a covered contract for a term not to exceed one (1)
57 year shall not be mandatory on either the contractor or any other person or entity. Except as
58 provided in this division, in no event shall any increase in the city minimum wage result in any
59 increased liability on the part of the city, and the possibility and risk of any such increase is
60 assumed by all contractors entering into any covered contract with the city. Notwithstanding the
61 foregoing, the city may negotiate, in particular covered contracts, to reimburse a contractor for
62 increased city minimum wage rates. Decreases in the city minimum wage subsequent to the
63 date of a covered contract shall not be permitted.

64 (c) *Calculation of city minimum wage.*

- 65 (1) City council hereby declares that it is in the best interest of the city to protect workers'
66 bargaining power and establish a city minimum wage that shall be paid to the various
67 covered workers identified in this division.
- 68 (2) The city minimum wage, exclusive of fringe benefits, shall be calculated as follows:
69 i. Beginning July 1, 2019: \$13 (thirteen dollars) per hour;
70 ii. Beginning July 1, 2020: \$14 (fourteen dollars) per hour; and
71 iii. Beginning July 1, 2021 \$15 (fifteen dollars) per hour.
- 72 (3) Tips actually received by a particular worker may be applied to a contractor or other person
73 or entity's obligation to pay the city minimum wage. However, no more than \$3.02 per hour
74 in tip income ("Tip Credit") may be used to partially offset payment of the city minimum wage
75 for a given day, and only then for persons who directly and customarily receive tips until
76 June 30, 2022. Beginning on July 1, 2022, the tip credit shall be increased by an amount
77 corresponding to the prior year's increase, if any, in CPI as hereinafter defined. In no event
78 shall the tip credit increase to an amount that would allow payment of a wage less than that
79 required by state or federal law.
- 80 (4) In order to prevent inflation from eroding the value of the city's minimum wage rate, on July
81 1, 2022, the city minimum wage rate shall increase by an amount corresponding to the prior
82 year's increase, if any, in the Consumer Price Index (Urban Wage Earners and Clerical
83 Workers, Denver-Aurora-Lakewood) or its successor index as published by the U.S.
84 Department of Labor or its successor agency ("CPI"). Annually thereafter, on the first of
85 July, the city's minimum wage rate shall increase by an amount corresponding to the prior
86 year's increase, if any, in CPI.
- 87 (d) *Exclusions.* Absent a negotiated contractual requirement, this division shall not apply to:
88 intergovernmental agreements; any participant in an employment program certified by the city;
89 any contract for state or federally mandated services or for services subject to statutory rate-
90 setting; loans made by the city; entities who are subject to a wage-commitment agreement;
91 persons or entities not providing covered services to the city pursuant to a contractual
92 relationship directly with the city whose provision of covered services on city property occurs for
93 less than seven consecutive days in a calendar year and 30 total days in a calendar year; the
94 purchase and sale by the city of real property or goods; persons providing volunteer services
95 that are uncompensated except for reimbursement of expenses such as meals, parking or
96 transportation; qualified small business contractors; except with respect to catering services,
97 persons whose work pursuant to a covered contract is limited solely to the role of a supplier; or

98 city contracts which contemplate work to be performed such as a license or permit to use city-
99 owned land that are neither a revenue or expenditure contract.

100 (e) *Third Party Complaints*. Subject to any rules and regulations that may be issued by the auditor,
101 any person or third party, including an employee of a contractor, may submit a complaint of a
102 violation of this division to the auditor. The burden of demonstrating to the auditor's satisfaction
103 that a violation has occurred rests with the person or third party making the complaint and shall
104 be demonstrated by a preponderance of the evidence. Any such complaint shall be made in
105 writing to the auditor and shall include all information relied upon by such person. If a person
106 making a complaint pursuant to this subsection is unable to reasonably file her or his complaint
107 in writing, a complainant may request the auditor to assist him or her with documenting any
108 allegations to satisfy the written complaint requirement. The auditor shall investigate credible
109 complaints, shall notify any contractor alleged to have violated this division of any credible
110 complaint, and shall provide a summary of findings regarding any such complaint to both the
111 complainant and the contractor. Any determination by the auditor pursuant to this division is
112 reviewable by the complained-of party, pursuant to subsection (g). Any complaint must be
113 submitted to the auditor within one year of the date the contractor was alleged to have violated
114 the requirements of this division, and shall include: the worker's name and/or the name of their
115 duly authorized representative, if applicable; the worker's contact information; and a detailed
116 statement of the contractor's alleged violation of the requirements of this division, including all
117 supporting documentation demonstrating a violation. Contractor shall be subject to penalties
118 and other consequences pursuant to this division for any actual violation(s) that occurred within
119 one year of the date a credible complaint was first and timely submitted to the auditor pursuant
120 to this division and within three years of the date an audit of a covered contract is initiated by
121 the auditor.

122 (f) *Retaliation strictly prohibited*. No contractor shall interfere with, restrain, deny, assist another
123 person or entity, or attempt to deny the exercise of any right protected under this division. Any
124 attempted or actual retaliation shall be regulated as follows:

125 1) No contractor or any other person shall take any adverse action against any person
126 because the person has exercised in good faith rights described in this division. Such rights include,
127 but are not limited to, the right to make inquiries about rights protected under this division; the right
128 to inform contractor, a union, or similar organization, and/or the person's legal counsel or any other
129 person about an alleged violation of this division; the right to file a written complaint with the auditor;
130 the right to cooperate with the auditor in any investigations pursuant to this division; the right to testify
131 in a proceeding related to an investigation pursuant to this division; the right to refuse to participate

132 in an activity that would result in a violation of city, state, or federal law; and the right to oppose any
133 policy, practice, or act that is unlawful pursuant to this division.

134 2) No contractor or any other person shall communicate to a person exercising rights
135 protected under this division, directly or indirectly, the willingness to inform a government employee
136 that the person is not lawfully in the United States, or to report, or to make an implied or express
137 assertion of a willingness to report, suspected citizenship or immigration status of an employee or a
138 family member of the employee to a federal, state, or local agency because the employee has
139 exercised a right pursuant to this division.

140 3) It shall be a rebuttable presumption of retaliation if a contractor or any other entity or person
141 takes an adverse action against a person within 90 days of the person's exercise of rights protected
142 in this division. However, in the case of seasonal work that ended before the close of a 90-day
143 period, the presumption also applies if the contractor or other person or entity fails to rehire a former
144 employee at the next opportunity for work in the same position. The contractor may rebut this
145 presumption with clear and convincing evidence that the adverse action was taken for a lawful
146 purpose.

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

151 (g) *Review.* Any determination of the auditor related to the payment of the city minimum wage,
152 and a contractor's strict adherence to the requirements of this division including, but not limited
153 to, determinations of covered worker status, determinations of underpayment or misreporting,
154 and the imposition of penalties pursuant to this division shall be reviewable as follows:

155 1) Any contractor who disputes any determination made by or on behalf of the city pursuant
156 to the authority of the auditor, which determination adversely affects such contractor,
157 may petition the auditor for a hearing concerning such determination no later than thirty
158 (30) days after having been notified of any such determination. Compliance with the
159 provisions of this subsection shall be a jurisdictional prerequisite to any action brought
160 under the provisions of this division, and failure of compliance shall forever bar any such
161 action.

162 2) The auditor shall designate as a hearing officer a person retained by the city for that
163 purpose.

164 3) The petition for a hearing shall be in writing, and the facts and figures submitted shall
165 be submitted under oath or affirmation either in writing or orally at a hearing scheduled

166 by the hearing officer. The hearing, if any, shall take place in the city, and notice thereof
167 and the proceedings shall otherwise be in accordance with rules and regulations issued
168 by the auditor. The petitioner shall bear the burden of proof, and the standard of proof
169 shall conform with that in civil, nonjury cases in state district court.

170 4) Following a hearing, the hearing officer shall make a final determination. Such final
171 determination shall be considered a final order and may be reviewed under Rule
172 106(a)(4) of the state rules of civil procedure by the petitioner or by the city. A request
173 for reconsideration of the determination may be made if filed in writing with the hearing
174 officer within fifteen (15) days of the date of a final determination, in which case the
175 hearing officer shall review the record of the proceedings, and the determination shall
176 be considered a final order upon the date the hearing officer rules on the request for
177 reconsideration.

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

181 (h) *Recordkeeping requirements and inspection.* All contractors pursuant to a covered contract
182 shall retain sufficient payroll records pertaining to all covered workers for a period of at least three
183 years. Contractors shall allow the auditor access to such records following a complaint determined
184 credible by the auditor, or in connection with an audit of a covered contract, at a reasonable time
185 during normal business hours to ensure compliance with the requirements of this division. Should a
186 contractor not maintain or retain adequate records documenting the manner and amount of wages
187 paid, or not allow the auditor reasonable access to such records, there shall be a presumption,
188 rebuttable by clear and convincing evidence, that the contractor violated this division for the periods
189 and for each employee for whom adequate records were not retained or access to such records was
190 not timely provided.

191 **Section 2.** A new Section 20-83, Division 3.75 of Article IV of the Denver Revised Municipal
192 Code shall be added and read as follows:

193 Sec. 20-83. – Enforcement and penalties.

194 (a) *Enforcement.*

195 (1) Following notification of a complaint determined credible by the auditor or in connection with
196 an audit of a covered contract, a contractor shall furnish to the auditor, upon the auditor's
197 request, a true and correct electronically-certified copy of the payroll records of all covered
198 workers employed pursuant to the applicable covered contract, by the contractor and also
199 by any person or entity performing covered work pursuant to the covered contract. Such

200 payroll records shall include information documenting the number of hours worked by each
201 covered worker employed pursuant to the contract for covered work, the hourly wage of such
202 covered workers for covered work, any deductions made from covered worker wages, and
203 the net amount of wages received by each covered worker for all covered work.

204 (2) Payroll records produced pursuant to subsection (a)(1) shall be accompanied by a sworn
205 statement of the contractor that the document is a true and correct copy of the payroll records
206 of all covered workers performing covered work pursuant to the covered contract, that
207 payments were made to all covered workers as set forth in the payroll records, that no
208 deductions were made other than those described in such records, and that all covered
209 workers employed pursuant to the covered contract, either by the contractor or another
210 person or entity, have been paid at least the city minimum wage for all covered work or
211 describe in detail all instances in which the foregoing requirements were not fully satisfied.

212 (3) Contractors shall post in a place which is prominent and easily accessible to covered workers
213 the city minimum wage to be paid to covered workers for covered work, and that complaints
214 by third parties, including employees of contractors or other entities, of violations may be
215 submitted to the auditor. Contractors shall display the posting in English and also in any
216 primary language spoken by at least ten percent of the employees at the work-place or job
217 site. If display of a poster is not feasible, including situations when an employee does not
218 have a regular workplace or job site, contractors may provide the information on an individual
219 basis, in an employee's primary language, in physical or electronic form that is reasonably
220 conspicuous and accessible.

221 (4) If any covered worker employed by a contractor or any other person or entity pursuant to a
222 covered contract has been or is being paid a rate of wages less than the city minimum wage
223 for covered work, the city may, at its option, by written notice to the contractor, withhold
224 further payment to the contractor, suspend the contractor's right to proceed with work,
225 suspend access to city property, suspend such part of the work or access as to which there
226 has been a failure to pay the city minimum wage rate for covered work, or terminate the
227 contract. In the event of suspension or contract termination, the contractor shall be liable to
228 the city for any and all costs related to such contract termination or suspension, including,
229 but not limited to all costs incurred by the city to complete work or provide services
230 contemplated by the contract.

231 (5) For all covered contracts, following notification of a complaint determined credible by the
232 auditor or in connection with an audit of city contracts, a contractor shall provide to the
233 auditor a list of all persons and entities who have performed covered work as well as any

234 known person or entity who will be performing any covered work pursuant to a covered
235 contract within ten (10) days of the auditor's written request.

236 (6) Nothing in this division shall restrict the auditor's authority to investigate city contracting
237 practices. In connection with any audit of a covered contract, the auditor may require a
238 contractor to provide, upon written request, documents described in this division that must
239 be provided to the auditor upon notification of a credible complaint related to a covered
240 contract. Further, any third-party submission of a credible complaint shall not require the
241 auditor to initiate a full audit of any particular party or contract. The auditor's role in
242 investigating and issuing findings related to a credible complaint pursuant to 20-82(e) shall
243 be in accord with the terms of this division.

244 (b) *Penalties.* Any contractor subject to the requirements of this division shall as a penalty pay
245 to the city an amount as set forth below for each covered worker for each day they are paid less
246 than the city minimum wage for the performance of covered work.

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

249 a. Whether the failure of the contractor to pay the correct wage rate was a good faith
250 mistake and, if so, the error was corrected within thirty (30) days of the date it was
251 brought to the attention of the contractor.

252 b. Whether the contractor has a prior record of failing to meet the requirements of this
253 division.

254 (2) The contractor's penalty shall be fifty dollars (\$50.00) for each day, or portion thereof,
255 for each covered worker paid less than the city minimum wage rate for covered work, unless
256 the failure of the contractor to ensure payment of the city minimum wage rate was a good
257 faith mistake and, if so, the error was corrected within thirty (30) days of the date it was
258 brought to the attention of the contractor.

259 (3) The contractor's penalty shall be two thousand five hundred dollars (\$2,500.00) for a
260 violation, plus seventy-five dollars (\$75.00) for each day, or portion thereof, for each covered
261 worker paid less than the city minimum wage rate for covered work, if the contractor has
262 been assessed a penalty, but not more than two (2) other penalties, within the previous
263 three (3) years for failure to comply with the terms of this division, unless all such penalties
264 were subsequently withdrawn or overturned during the previous three (3) years pursuant to
265 this division.

266 (4) The contractor's penalty shall be five thousand dollars (\$5,000.00) for a violation, plus

267 one hundred dollars (\$100.00) for each day, or portion thereof, for each covered worker paid
268 less than the city minimum wage rate for covered work, if the contractor has been assessed
269 three (3) or more other penalties within the previous three (3) years for failure to comply
270 with the terms of this division, unless any such penalties were subsequently withdrawn or
271 overturned resulting in two (2) or fewer penalties during the previous three (3) years
272 pursuant to this division.

273 (5) The contractor's penalty shall be one thousand dollars (\$1,000.00) for each violation if
274 a contractor fails to furnish the auditor a complete and certified payroll for which any covered
275 worker employed by the contractor or other person or entity has performed any covered
276 work pursuant to a covered contract, unless the failure of the contractor to furnish the auditor
277 a complete and certified payroll was a good faith mistake and, if so, the error was corrected
278 within thirty (30) days of the date the auditor notifies the contractor of such failure. This
279 penalty shall be imposed in conjunction with penalties imposed under subsections (b)(2)-
280 (4), and shall apply whether or not the covered work was performed by contractor
281 employees or another person or entity.

282 (6) The contractor's penalty shall be one thousand dollars (\$1,000.00) for each incident of
283 false reporting in connection with a certified payroll not corrected within fifteen (15) days of
284 the date the auditor notifies the contractor of such report. A certified payroll shall be
285 determined to be a false report when information related to hours worked or wages paid
286 reported on a certified payroll is not identical to supportive documentation, including
287 payments issued to workers, timecards maintained by contractor or other persons or
288 entities, invoices for work performed issued to other persons or entities or the city, and tax
289 documents. This penalty shall be imposed in conjunction with penalties imposed under
290 subsections (b)(2)-(5).

291 (7) The contractor's penalty shall be one thousand dollars (\$1,000.00) for each violation
292 should a contractor be found by the auditor to have violated any obligation of contractor described
293 in this division and not otherwise described in subsections (b)(2)-(6).

294 (8) A contractor who is found by the auditor pursuant to this division to have failed to ensure
295 payment of the city minimum wage to a covered worker for covered work shall, within thirty (30)
296 days of notice of a violation from the auditor, or if applicable, thirty (30) days from any final order
297 pursuant to Section 20-82 (g), attempt in good faith to locate and pay any such covered worker all
298 wages required pursuant to this division. Failure by any contractor to attempt in good faith to locate
299 and ensure payment of any underpaid covered worker in compliance with the terms of this
300 subsection shall for any underpayment to a covered worker greater than fifty dollars (\$50.00) result

301 in a penalty of five thousand dollars (\$5,000.00) for each such violation. If a contractor is able to
302 adequately document its good faith efforts to locate and timely pay a covered worker pursuant to
303 this subsection it shall not be subject to further penalty if it is unable to reasonably locate or pay a
304 covered worker all city minimum wages owed. Any finding or penalty for failure to timely pay a
305 covered worker, or attempt in good faith to locate and timely pay a covered worker amounts owed
306 pursuant to this subsection shall be subject to review pursuant to Section 20-82(g).

307 **Section 3.** A new Section 20-84, Division 3.75 of Article IV of the Denver Revised Municipal Code
308 shall be added and read as follows:

309 **Sec. 20-84. – Miscellaneous.**

310 (a) *Covered workers; intent.* The intent of this division is to ensure the payment of a city minimum
311 wage to an expanded number of workers providing services to the city, or on city property
312 pursuant to a covered contract, or pursuant to a negotiated contractual requirement. Unless
313 specifically negotiated, it is not the city's intent to impose wage requirements for city contracts,
314 or work pursuant to an otherwise covered contract (excepting catering services), that involves
315 only the purchase of goods and non-professional services considered to be ancillary to the
316 purchase of goods. For the purposes of this division, and except as described below, unless a
317 city contract contains a negotiated contractual requirement specifying otherwise, a broker, entity
318 or person that only supplies goods and/or transportation services incident to delivering goods to
319 city property (including the use of common carriers) is considered a supplier and is not
320 performing covered work pursuant to this division. Notwithstanding the foregoing, the provision
321 of catering services is not the mere provision of goods pursuant to this division and may qualify
322 as a covered service. It is also not the intent of this division to reduce any differing wage
323 requirements established by federal or state law or that arise from or in connection with federal
324 or state funding utilized or disbursed by the city, and such greater wage requirements and
325 restrictions shall be controlling in the event of a conflict between a federal or state wage
326 requirement and the requirements of this division. To the extent a federal or state law or
327 agreement involving state or federal funding prevents or restricts application of this division for
328 a particular contract, the terms of this division shall be limited to the extent it may be applied and
329 enforced consistent with such restrictions. For purposes of clarity, the term city contract shall
330 apply to use and lease agreements, services contracts, and other forms of agreement not
331 excluded by the terms of this division.

332 (b) *Covered Contracts.* Except as described in Section 20-84(f), this division shall not apply to
333 contracts executed by the city on or before the effective date of this ordinance, contracts for
334 which procurement was initiated prior to the effective date of this ordinance, but which were

335 executed after the effective date of this ordinance, and any renewals of the foregoing contracts,
336 unless such contracts contain a negotiated contractual requirement or explicitly require a
337 contractor to comply with future changes in law.

338 (c) *Application of division to Prevailing Wage and Living Wage.* Nothing in this division shall be
339 deemed to lessen any obligations of contractors to comply with the Denver Revised Municipal Code
340 concerning payment of prevailing wage and living wage to covered workers. Should a prevailing
341 wage or living wage requirement for covered work be greater than the city minimum wage
342 requirement, the greater wage rate shall be paid. If the city minimum wage requires payment of a
343 higher wage rate than an applicable prevailing wage or living wage requirement for covered work,
344 the city minimum wage shall be paid to any covered worker for all covered work.

345 (d) *Responsibility of contractor.* For a particular covered contract a contractor may engage
346 subcontractors, individuals and other entities: to fulfill some or all of contractor's contractual
347 obligations to the city; to perform covered services on city property pursuant to a covered contract;
348 or in connection with an otherwise covered contract. Contractor shall be solely responsible for
349 ensuring payment of the city minimum wage to any and all agents and/or others performing covered
350 services on contractor's behalf or on city property pursuant to a covered contract for purposes of
351 compliance with this division. Contractor shall also be solely responsible for ensuring payment of
352 the city minimum wage if required to do so by a negotiated contractual requirement for purposes of
353 compliance with this division. Contractors may seek indemnification or recovery from third parties
354 for penalties a contractor incurs for failure to comply with the requirements of this division. However,
355 any such rights shall in no way excuse a contractor from taking whatever steps are necessary to
356 ensure compliance with this division by all persons providing services or engaging in covered work
357 pursuant to a covered contract, nor serve as a basis for contractor to avoid payment of any monetary
358 penalties or occurrence of other consequences for violations of this division.

359 (e) *Definitions.* For purposes of this division the following definitions shall apply:

360 "Catering Services" shall mean services involving any of the following: preparation, packaging
361 and delivery of meals for in-flight service to flight passengers; food inspection; cleaning of dishes,
362 utensils or glassware; or cleaning or operation of facilities used for the preparation, packaging, or
363 storage of meals;

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

365 "City Contract" shall mean a written contract between the city and a third party;

366 "City Property" shall mean any city owned or leased buildings and any city-owned land.

367 "Complaint" shall mean a third-party complaint submitted pursuant to Section 20-82(e);

368 "Concession Services" shall mean services involving any of the following: the commercial

369 provision of consumer goods or services to the public, including but not limited to: food and beverage
370 services; cashier services; wait services; retail sales; retail customer services; lounge operation;
371 kiosk operation; or concession cleaning services;

372 “Contractor” shall mean the entity or person that enters into a covered contract with the city;

373 “Covered Contract” shall mean any city contract with a maximum contract amount in excess
374 of fifty thousand dollars (\$50,000.00) by which: (1) a covered worker provides covered services to
375 the city; (2) which authorizes any covered services to occur on city property for more than 30
376 consecutive days in a calendar year; or (3) which contains a negotiated contractual requirement;

377 “Covered Work” shall mean covered services performed pursuant to a covered contract for
378 which the city minimum wage is required to be paid pursuant to this division;

379 “Covered Worker” shall mean a person performing covered work, and as further described in
380 Section 20-84(d), includes persons employed by contractors, subcontractors, individuals and other
381 entities fulfilling all or part of a contractor’s contractual obligations to the City pursuant to a covered
382 contract, which perform covered services on city property pursuant to a covered contract, and
383 persons performing covered services in connection with a negotiated contractual requirement;

384 “Employ, Employed, or Employed By” means to suffer or permit to work;

385 “Employee” shall include, but not be limited to full-time employees, part-time employees,
386 temporary workers, independent contractors and any other person employed by contractor or
387 another person or entity to perform covered work;

388 “Goods” shall mean all things (including specially manufactured goods) which are movable
389 during the term of a covered contract that are for sale other than the money in which the price is to
390 be paid, investment securities, and things in action;

391 “Hospitality Services” shall mean services involving any of the following: hotel cleaning or
392 housekeeping; laundry; hotel desk clerk; or hotel porter;

393 “Intergovernmental Agreement” shall mean any contract between the city and another
394 governmental or quasi-governmental entity;

395 “Maintenance Services” shall mean services involving any of the following conducted on city
396 property: custodial; janitorial; window washing; aircraft cabin cleaning; solid waste removal; repairs;
397 weed control; pest control; or recycling;

398 “Miscellaneous Services” shall mean services involving any of the following: providing
399 customer services as a ticketing agent, bag drop attendant or skycap; parking lot operation services;
400 transporting or driving passengers via shuttle, wheelchair or cart; working as a cab starter; providing
401 towing services; handling passenger baggage; or rental car-related activities, including but not
402 limited to work performed by attendants, technicians, detailers/cleaners, and dispatchers;

403 “Negotiated Contractual Requirement” shall mean a mutually-negotiated term in a city
404 contract that specifically requires a contractor to impose the terms of this division on persons or
405 entities performing covered services not for the city or which otherwise would not constitute covered
406 work pursuant to this division.

407 “Procurement” shall mean a competitive selection process by which the city identifies a vendor
408 for provision of services to the city.

409 “Qualified Small Business Contractor” shall mean a contractor that is a bona fide small
410 business enterprise or non-profit entity that employs twenty-five (25) or fewer total full-time
411 equivalents at any point during the term of a covered contract, including all of its divisions,
412 subsidiaries, joint ventures, parent companies, and subsidiaries of parent companies and only
413 applies to contractors for covered contracts with a maximum contract amount less than five hundred
414 thousand dollars (\$500,000.00);

415 “Ramp and Cargo Services” shall mean services involving any of the following: guiding aircraft
416 in and out of the airport; coordinating aircraft loading and unloading positions; positioning and
417 operating passenger, baggage, and cargo loading and unloading devices; handling baggage and
418 cargo; screening cargo; aircraft maintenance; fueling and towing aircraft; cleaning ramp areas; or
419 servicing aircraft equipment, mechanics and lavatories;

420 “Security Services” shall mean services involving any of the following: general city property
421 security; security of personal property located on city property, including but not limited to passenger
422 aircraft; terminal security; or parking security;

423 “Supplier” shall mean a broker, entity or person not providing catering services that only
424 supplies goods and/or transportation services incident to delivering those goods to city property
425 (including the use of common carriers); and

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

428 “Use and Lease Agreement” shall mean a lease of real property by an air carrier that
429 authorizes commercial activity on city property.

430 “Wage-Commitment Agreement” shall mean a mutually-negotiated contract between the city
431 and a third party non-profit entity (“Counterparty”) whereby counterparty agrees to pay all persons
432 employed directly by counterparty at least the then-current city minimum wage within six months of
433 the respective deadlines specified in 20-82(c) for any and all types of work. To preserve an
434 exemption from the terms of this division, counterparty shall further require in all of counterparty’s
435 contractual agreements and relationships with other persons or entities entered into subsequent to
436 the effective date of this ordinance, that any person who provides covered services to counterparty

437 or in connection with a contract with counterparty, be paid a wage equal to or greater than the then-
438 current city minimum wage for all covered work as defined in this division.

439 (f) The city shall not extend the term of or amend a city contract that is not subject to the terms of
440 this division due solely to the timing of contract formation as described in 20-84(b), if city code,
441 executive order or city charter requires council approval of such extension or amendment unless
442 such extension or amendment requires compliance by contractor with the terms of this division
443 during any extended term or subsequent to amendment or city council makes an express finding
444 that such city contract should be extended or amended without a requirement that the contractor
445 subsequently comply with the terms of this division. In addition to the foregoing, when a use and
446 lease agreement is not subject to the terms of this division: (1) solely due to the timing of contract
447 formation as described in 20-84(b); and (2) contains a right allowing the city to extend the then-
448 current term of the use and lease agreement at the city's discretion; then the city shall not exercise
449 a discretionary option to extend the current term of such use and lease agreement unless contractor
450 agrees to amend the use and lease agreement in a manner so that it is subject to this division during
451 any and all extended term(s).

452 (g) The city may suspend or debar a contractor from participation in city contracting for a period
453 as may be determined by the city, in its sole discretion, based upon grounds of violating this
454 division, and pursuant to such suspension and debarment procedures as may be established by
455 the city and as set forth in Denver Revised Municipal Code Section 20-77. In that event, the city
456 shall regard as nonresponsive any bid, proposal or competitive selection process proposal
457 received during such time period that includes the contractor.

458 (h) The provisions of this division are declared to be separate and severable. If any clause,
459 sentence, paragraph, subdivision, section, subsection or portion of this division, or the application
460 thereof to any contractor, person, entity or circumstance is preempted or otherwise prohibited by
461 federal or state law or is held to be invalid, it shall not affect the validity of the remainder of this
462 division, or the validity of its application to other persons or circumstances.

463 **Section 4.** This ordinance shall be effective March 16, 2019.

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465

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466 COMMITTEE APPROVAL DATE: _____.
467 MAYOR-COUNCIL DATE: _____.
468 PASSED BY THE COUNCIL _____

469 _____ - PRESIDENT

470 APPROVED: _____ - MAYOR _____

471 ATTEST: _____ - CLERK AND RECORDER,
472 EX-OFFICIO CLERK OF THE
473 CITY AND COUNTY OF DENVER

474 NOTICE PUBLISHED IN THE DAILY JOURNAL: _____, ; _____,

475 PREPARED BY: Frank Romines, Assistant City Attorney DATE:

476 Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of
477 the City Attorney. We find no irregularity as to form and have no legal objection to the proposed
478 ordinance. The proposed ordinance is not submitted to the City Council for approval pursuant to
479 §3.2.6 of the Charter.

480
481 Kristin M. Bronson, Denver City Attorney

482
483 BY: _____, Assistant City Attorney DATE: _____