

1 **BY AUTHORITY**

2
3 ORDINANCE NO. _____
4 SERIES OF 2021

COUNCIL BILL NO. 21-0818
COMMITTEE OF REFERENCE:
Finance and Governance

6 **A BILL**

7 **For an ordinance concerning non-displacement of workers hired by contractors**
8 **who provide essential services on city property.**
9

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

11
12 **WHEREAS**, on May 21, 2009, the former Mayor of the city and county of Denver adopted
13 Executive Order No. 136, Non-displacement of Qualified Workers under City Contracts and
14 which was continued *inter alia* by Mayor Hancock in 2011, that requires a successor contractor
15 to retain qualified workers during a transition period between contractors and successor
16 contractors;

17 **WHEREAS**, Executive No. Order 136 promotes the city and county of Denver's interests
18 in economy and efficiency by providing the benefits of an experienced and trained work force
19 that is familiar with the city's personnel, facilities and requirements;

20 **WHEREAS**, while the COVID-19 pandemic exacerbated the displacement of workers and
21 families, Executive No. Order 136 highlighted the loss of institutional knowledge, skills, and
22 efficiencies caused by unnecessary worker turnover during periods of transition in contractors;

23 **WHEREAS**, retaining an experienced workforce creates both cost savings to businesses
24 and stability to workers which contributes to stabilization of the economy;

25 **WHEREAS**, this ordinance will maximize economic stability, gain more efficiencies, and
26 provide further stability to the health, safety, and welfare of workers providing essential services
27 on city property.

28 **Section 1.** That Chapter 58 is renamed by adding the language underlined as follows:

29 **Chapter 58 – WAGES AND WORKER PROTECTIONS**

30 **Secs.58-19 – 58-30 -Reserved.**

31 **Section 2.** That a new article III be added to Chapter 58 to read as follows:

32 **Sec. 58-31. -Intent.**

33 The city has an interest in the retention of an experienced and trained workforce that is
34 familiar with the city's personnel, facilities, and other city requirements. Worker retention
35 provides cost savings to businesses and protects the health, safety, and welfare of workers by

1 reducing unnecessary turnover caused by change in contractors when such workers are
2 otherwise qualified and satisfactorily performing the functions of the job.

3 **Sec. 58-32. -Definitions.**

4 (a) "Change in control" means any sale, assignment, transfer, contribution, or other
5 disposition of all or substantially all of the assets or equity of a covered contractor.

6 (b) "City property" means any city-owned or leased real property including but not
7 limited to buildings, venues, concert halls, parks, land, airports, and any rented portions thereof,
8 but does not include city right of way with infrastructure located thereupon or within that are
9 owned, operated or maintained by a separate entity.

10 (c) "Covered contract or contractor" means entities, contractors or subcontractors who
11 provide the following essential services on city property.

12 1. Child-care;

13 2. Janitorial, custodian, window cleaner;

14 3. Parking lot cashiers, clerks, and attendants;

15 4. Security; and,

16 5. Services enumerated below that are specific to the airport:

17 a. Airline catering which means the preparation and delivery of prepared and
18 packaged food and beverages for an air carrier at the airport for in-flight consumption regardless
19 of whether some or all of the preparation does not occur on city property;

20 b. Baggage handlers whether serving the terminal, below the wing, or for cargo;

21 c. Cabin and lavatory cleaning and readiness;

22 d. Custodial and food and beverage services in an airport lounge or reception room
23 with access restricted to select passengers;

24 e. Exterior underwing aircraft cleaning and readiness, including ramp, cargo, fuelers,
25 waste extractors but excluding mechanics;

26 f. Passenger assistance including queue direction and skycaps; and,

27 g. Personal assistance for airport passengers, including wheelchair assistance.

28 The term "covered contractor" does not include entities, contractors or subcontractors who
29 provide essential services on city property solely on a temporary basis for special events.

30 (d) "Covered worker" means workers hired and/or employed under a covered
31 contractor or its subcontractor who perform one or more of the essential services described in
32 subsection (c) on city property but does not include persons employed in an executive,
33 administrative, or professional capacity.

34 (e) "Successor contractor" means any person that has entered into a covered contract

1 for services that are the same or substantially the same or performed in the same location as
2 those provided by its predecessor or when the city or a covered contractor elects to contract out
3 such services.

4 **Sec. 58-33. -Non-displacement of qualified workers.**

5 When a covered contract expires, or a change in control occurs or an entity enters into a
6 covered contract for essential services previously performed by another covered contractor, and
7 a successor contract is entered into for substantially similar services in a similar location, the
8 successor contractor must offer covered workers of the former covered contract a right of first
9 refusal of employment in accordance with the requirements below.

10 (a) No less than sixty (60) days before the successor contractor begins performing
11 essential services under a covered contract, the predecessor covered contractor must supply the
12 names and contact information for its current covered workers, including the hiring date and
13 classification of each covered employee, to each of the following:

- 14 1. The successor contractor, and
- 15 2. To the entity, agency or department administering the contract or to the manager of
16 city property where relevant.

17 (b) No less than sixty (60) days before the successor contractor begins performing
18 essential services under a covered contract, the predecessor covered contractor must inform its
19 covered workers in writing that they may be eligible for transition employment with the successor
20 contractor in accordance with the requirements and procedures of this section.

21 (c) The following two exceptions shall apply to subsections (a) and (b) above:

- 22 1. If a successor contractor begins performance under a covered contract prior to
23 December 31, 2021, the predecessor contractor may provide the information required under this
24 subsections (a) and (b) within thirty (30) days before the successor contractor begins performing
25 services under a covered contract.

- 26 2. If the successor contractor is unknown within the sixty (60) days before beginning
27 services under a covered contract, the predecessor contractor may provide the information
28 required in subsections (a) and (b) within ten (10) days of execution of the successor contract.

29 (d) No less than twenty (20) days before the successor contractor first performs
30 services under the covered contract, the successor contractor must make a written offer of
31 employment to each covered employee listed under subsection (a) and must state a time period
32 of not less than ten (10) days within which the employee must exercise the covered employee's
33 right of first refusal by accepting or rejecting the offer of employment. The successor contractor
34 may make offers of employment for job classifications performing essential service to individuals

1 who are not covered workers listed under subsection (a) only after complying with the
2 requirements of this subsection (d) for each covered worker listed under subsection (a) and the
3 running of the time period for response set forth in the last offer of employment made pursuant to
4 this subsection (d).

5 (e) During a ninety (90) day worker retention period that begins on the first date a
6 successor contractor performs essential services/services under a covered contractor, a
7 successor contractor must:

8 1. Retain a covered employee who has exercised his or her right to accept
9 employment with the successor contractor except as follows:

10 a. A successor contractor may discharge a covered employee for cause;
11 and/or,

12 b. A successor contractor may determine to provide services with a reduction
13 in the number of workers as compared to its predecessor; provided, however, such successor
14 contractor must retain the predecessor's workers by seniority within job classifications unless an
15 alternative retention methodology is required by an enforceable collective bargaining agreement
16 executed prior to the enactment date of this ordinance.

17 2. Maintain a preferential hiring list of covered workers not retained initially by the
18 successor contractor, from which the successor contractor must hire from if additional workers
19 become necessary as determined in the successor contractor's discretion.

20 (f) At the end of the ninety (90) day transition worker retention period, the successor
21 contractor must perform a written performance evaluation for each covered employee retained in
22 accordance with this section. The successor contractor shall retain a copy of the written
23 performance evaluation for a period of not less than two years. If the covered employee's
24 performance during the ninety (90) day period is satisfactory, the successor contractor must offer
25 the employee continued employment under the terms and conditions established by the
26 successor contractor or as required by law.

27 Nothing in this section shall be construed to create any right or entitlement to continued
28 employment by the successor contractor for any particular period of time in excess of the ninety
29 (90) day transition employment period.

30 **Sec. 58-34 - Enforcement.**

31 (a) Complaints to city. The department or agency managing any covered contract, or
32 to the manager of city property where relevant, is responsible for receiving any complaints and
33 obtaining compliance with this ordinance.

34 (b) Private cause of action. A covered worker may bring an action in a court of

1 competent jurisdiction against the successor contractor for damages including, back pay, lost
2 wages and benefits. Violations of this chapter shall be subject to penalties of \$50.00 per worker
3 per day of violation, up to \$4,500.00 per worker. If the employee is the prevailing party in any
4 such legal action, the court must award reasonable attorney's fees and costs as part of the costs
5 recoverable.

6 (c) Predecessor Liability. Upon completion of the requirements set forth in this
7 ordinance, the predecessor contractor may not be held liable for any failure to hire a covered
8 employee by the successor contractor.

9
10 COMMITTEE APPROVAL: July 20, 2021
11 MAYOR-COUNCIL DATE: July 27, 2021
12 PASSED BY THE COUNCIL _____ August 9, 2021

13 *Steve Gilman* - PRESIDENT
14 APPROVED: _____ - MAYOR _____
15 ATTEST: _____ - CLERK AND RECORDER,
16 EX-OFFICIO CLERK OF THE
17 CITY AND COUNTY OF DENVER
18

19 NOTICE PUBLISHED IN THE DAILY JOURNAL _____:

20 PREPARED BY: Kirsten Crawford and Max Taylor, Assistant City Attorneys Date: July 29, 2021

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 Kristin M. Bronson, Denver City Attorney

26 BY: *Jonathan Griffin*, Assistant City Attorney Date: Jul 29, 2021