

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 **in**equity 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

1 (5) 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
15 the state of Colorado, and the city intends to collect and evaluate data related to implementation of
16 this ordinance and by the end of 2020 evaluate whether initial enforcement mechanisms enacted
17 herein effectively secure payment of wages required hereby to workers and whether additional
18 enforcement mechanisms are necessary to ensure compliance with Denver’s minimum wage
19 ordinance; and

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

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

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

25 Sec. 20-___. –Denver minimum wage.

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

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

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

- 1 (2) The Denver minimum wage, exclusive of fringe benefits and any other deductions or
2 credits 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
13 corresponding to the prior year's increase, if any, in the Consumer Price Index (Urban
14 Wage Earners and Clerical Workers, Denver-Aurora-Lakewood) or its successor index as
15 published by the U.S. Department of Labor or its successor agency ("CPI"). Annually
16 thereafter, on the first of January, the Denver minimum wage rate shall increase by an
17 amount corresponding to the 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)
19 is not performed physically within the geographic boundaries of the city; (2) is performed by a
20 worker totaling less than four hours in any given week for a particular employer within the
21 geographic boundaries of the city; or (3) occurs in the city solely for the purpose of traveling
22 through Denver from a point of origin outside of the city to a destination outside of Denver, with no
23 employment-related or commercial stops in the city except for refueling or the worker's personal
24 meals or errands.

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

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

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

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

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

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

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

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

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

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

32 (g) *Retaliation strictly prohibited.* No employer shall interfere with, restrain, deny, assist
33 another person or entity, or attempt to deny the exercise of any right protected under this division.

1 Any attempted or actual retaliation shall be regulated as follows:

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

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

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

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

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

1 reviewable as follows:

- 2 (1) Any employer who disputes any determination made by or on behalf of the city pursuant to
3 the authority of the auditor, which determination adversely affects such employer, may
4 petition the auditor for a hearing concerning such determination no later than thirty (30)
5 days after having been notified of any such determination. Compliance by an employer
6 with the provisions of this **Section 20-__ (h)(1)** shall be a jurisdictional prerequisite to
7 appeal any determination made by the auditor pursuant to this division, and failure of
8 compliance shall forever bar any such appeal. The foregoing in no way shall preclude or
9 limit a worker from initiating a private cause of action pursuant to this division.
- 10 (2) The auditor shall designate as a hearing officer a person retained by the city for appeal
11 purposes.
- 12 (3) The petition for a hearing shall be in writing, and the facts and figures submitted shall be
13 submitted under oath or affirmation either in writing or orally at a hearing scheduled by the
14 hearing officer. The hearing, if any, shall take place in the city, and notice thereof and the
15 proceedings shall otherwise be in accordance with rules and regulations issued by the
16 auditor. The petitioner shall bear the burden of proof, and the standard of proof shall
17 conform with that in civil, nonjury cases in state district court.
- 18 (4) The designated hearing officer may hold hearings pursuant to this division, subpoena
19 witnesses and compel their attendance, administer oaths and take the testimony of any
20 person under oath and compel witnesses to produce for examination books and papers
21 related to the subject matter of the appeal.
- 22 (5) Following a hearing, the hearing officer shall make a final determination. Such final
23 determination shall be considered a final order and may be reviewed under Rule 106(a)(4)
24 of the state rules of civil procedure by the employer or by the city. A request for
25 reconsideration of the determination may be made if filed in writing with the hearing officer
26 within fifteen (15) days of the date of a final determination, in which case the hearing
27 officer shall review the record of the proceedings, and the determination shall be
28 considered a final order upon the date the hearing officer rules on the request for
29 reconsideration.
- 30 (6) The district court of the second judicial district of the State of Colorado shall have original
31 jurisdiction in proceedings to review all questions of law and fact determined by the
32 hearing officer by order or writ under Rule 106(a)(4) of the state rules of civil procedure.
33 (i) *Recordkeeping requirements and inspection.* All employers shall retain sufficient payroll

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

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

1 civil enforcement action **initiated** pursuant to this division.

2 **Section 2.** A new Section 20-___, Division _____ of Article IV of the Denver Revised
3 Municipal Code shall be added and read as follows:

4 Sec. 20-___. – Enforcement, penalties **and costs**.

5 (a) *Enforcement.*

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

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

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

32 **(4) The auditor is authorized to enforce findings and orders made pursuant to this division and**
33 **collect any and all assessed and unpaid penalties and other amounts from employers who**

1 violate any of the terms of this division either informally, or by action initiated in state
2 district court.

3 (b) *Penalties*. Any employer subject to the requirements of this division shall as a penalty pay
4 to the city an amount as set forth below for each worker for each day they are paid less than the
5 Denver minimum wage for the performance of work.

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

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

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

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

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

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

- 1 (5) An employer's penalty shall be one thousand dollars (\$1,000.00) for each instance in
2 which any employer fails to furnish the auditor a complete and certified payroll for any
3 worker filing a complaint against employer pursuant to this division, unless the failure of
4 the employer to furnish the auditor a complete and certified payroll was a good faith
5 mistake and, if so, the error was corrected within ten (10) days of the date the auditor
6 notifies employer of such failure. This penalty shall be imposed in conjunction with
7 penalties imposed under Section 20-____(b)(2)-(4), and shall apply whether or not the work
8 was performed by worker directly for an employer or for another person or entity on the
9 employer's behalf.
- 10 (6) An employer's penalty shall be one thousand dollars (\$1,000.00) for each incident of false
11 reporting in connection with a certified payroll not corrected within ten (10) days of the date
12 the auditor notifies the employer of such report. A certified payroll shall be determined to
13 be a false report when information related to hours worked or wages paid reported on a
14 certified payroll is not identical to supportive documentation, including payments issued to
15 workers, timecards maintained by employer, invoices for work performed issued to other
16 persons or entities, and tax documents. This penalty shall be imposed in conjunction with
17 penalties imposed under Section 20-____(b)(2)-(5).
- 18 (7) An employer's penalty shall be one thousand dollars (\$1,000.00) for each violation should
19 an employer be found by the auditor to have violated any obligation of employer described
20 in this division and not otherwise described in Section 20-____(b)(2)-(6).
- 21 (8) An employer who is found by the auditor pursuant to this division to have failed to ensure
22 payment of the Denver minimum wage to a worker for work shall, within thirty (30) days of
23 notice of a violation from the auditor, or if applicable, thirty (30) days from any final order
24 pursuant to Section 20-____(h), attempt in good faith to locate and pay any such worker all
25 wages required pursuant to this division. Failure by any employer to attempt in good faith
26 to locate and ensure payment of any underpaid worker in compliance with the terms of this
27 Section 20-____(b)(8) shall for any underpayment to a worker greater than fifty dollars
28 (\$50.00) result in a penalty of five thousand dollars (\$5,000.00) for each such violation. If
29 an employer is able to adequately document to auditor its good faith efforts to locate and
30 timely pay a worker all wages owed within forty five (45) days from any final order pursuant
31 to Section 20-____(h) it shall not be subject to further penalty if it is unable to reasonably
32 locate or pay a worker all Denver minimum wages owed and strictly complies with Section
33 20-____(b)(9)-(13). Any finding or penalty for failure to timely pay a worker, or attempt in

1 good faith to locate and timely pay a worker amounts owed pursuant to this **Section 20-**
2 **___(b)(8)** shall be subject to review pursuant to Section 20-___ **(h)**.

3 (9) Any employer who is found by a final order to have failed to pay a worker or workers all
4 amounts owed pursuant to this division and who is unable to timely locate and pay any
5 amount owed to a worker may submit to the auditor, for each worker to whom wages are
6 due, a check payable to that worker or to the City of Denver in a manner that is negotiable
7 by either the worker or the city. Each such check shall be for the amount of the difference
8 between wages owed a worker pursuant to this division and the amount actually paid to
9 that worker.

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

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

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

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

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

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

1 Sec. 20-____. – Miscellaneous.

2 (a) *Workers; intent.* The intent of this division is to ensure the payment of at least the Denver
3 minimum wage to as many workers as possible in accordance with limitations imposed by
4 Colorado law. It is not the intent of this division to **apply the Denver minimum wage to work**
5 **performed by independent contractors, or** reduce any differing wage requirements established by
6 federal or state law or that arise from or in connection with federal or state funding. Any greater
7 wage requirements shall be controlling in the event of a conflict between a federal or state wage
8 requirement and the requirements of this division.

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

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

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

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

1 “Aggrieved party” means a worker or other person who suffers tangible or intangible harm
2 due to an employer or other person’s violation of this division;

3 “City” shall mean the City and County of Denver;

4 “Complaint” shall mean a complaint submitted pursuant to Section 20-____(d) or Section 20-
5 ____ (e);

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

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

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

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

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

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

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

32 (e) The provisions of this division are declared to be separate and severable. If any clause,
33 sentence, paragraph, subdivision, section, subsection or portion of this division, or the application

1 thereof to any employer, person, entity or circumstance is preempted or otherwise prohibited by
2 federal or state law or is held to be invalid, it shall not affect the validity of the remainder of this
3 division, or the validity of its application to other persons or circumstances.

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

5

6

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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: _____