

BY AUTHORITY

ORDINANCE NO. _____

COUNCIL BILL NO. 21-0818

SERIES OF 2021

COMMITTEE OF REFERENCE:

Finance and Governance

A BILL

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

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

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

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

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

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

WHEREAS, this ordinance will maximize economic stability, gain more efficiencies, and provide further stability to the health, safety, and welfare of workers providing essential services

1 on city property.

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

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

4 **Secs.58-19 – 58-30 -Reserved.**

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

6 **Sec. 58-31. -Intent.**

7 The city has an interest in the retention of an experienced and trained workforce that is
8 familiar with the city’s personnel, facilities, and other city requirements. Worker retention
9 provides cost savings to businesses and protects the health, safety, and welfare of workers by
10 reducing unnecessary turnover caused by change in contractors when such workers are
11 otherwise qualified and satisfactorily performing the functions of the job.

12 **Sec. 58-32. -Definitions.**

13 (a) “Change in control” means any sale, assignment, transfer, contribution, or other
14 disposition of all or substantially all of the assets or equity of a covered contractor.

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

19 (c) “Covered contract or contractor” means entities, contractors or subcontractors who
20 provide the following essential services on city property.

- 21 1. Child-care;
- 22 2. Janitorial, custodian, window cleaner;
- 23 3. Parking lot cashiers, clerks, and attendants;
- 24 4. Security; and,

- 1 5. Services enumerated below that are specific to the airport:
- 2 a. Airline catering which means the preparation and delivery of prepared and
- 3 packaged food and beverages for an air carrier at the airport for in-flight consumption regardless
- 4 of whether some or all of the preparation does not occur on city property;
- 5 b. Baggage handlers whether serving the terminal, below the wing, or for cargo;
- 6 c. Cabin and lavatory cleaning and readiness;
- 7 d. Custodial and food and beverage services in an airport lounge or reception room
- 8 with access restricted to select passengers;
- 9 e. Exterior underwing aircraft cleaning and readiness, including ramp, cargo, fuelers,
- 10 waste extractors but excluding mechanics;
- 11 f. Passenger assistance including queue direction and skycaps; and,
- 12 g. Personal assistance for airport passengers, including wheelchair assistance.

13 The term “covered contractor” does not include entities, contractors or subcontractors who

14 provide essential services on city property solely on a temporary basis for special events.

15 (d) “Covered worker” means workers hired and/or employed under a covered

16 contractor or its subcontractor who perform one or more of the essential services described in

17 subsection (c) on city property but does not include persons employed in an executive,

18 administrative, or professional capacity.

19 (e) “Successor contractor” means any person that has entered into a covered contract

20 for services that are the same or substantially the same or performed in the same location as

21 those provided by its predecessor or when the city or a covered contractor elects to contract out

22 such services.

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

24 When a covered contract expires, or a change in control occurs or an entity enters into a

1 covered contract for essential services previously performed by another covered contractor, and
2 a successor contract is entered into for substantially similar services in a similar location, the
3 successor contractor must offer covered workers of the former covered contract a right of first
4 refusal of employment in accordance with the requirements below.

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

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

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

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

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

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

24 (d) No less than twenty (20) days before the successor contractor first performs

1 services under the covered contract, the successor contractor must make a written offer of
2 employment to each covered employee listed under subsection (a) and must state a time period
3 of not less than ten (10) days within which the employee must exercise the covered employee's
4 right of first refusal by accepting or rejecting the offer of employment. The successor contractor
5 may make offers of employment for job classifications performing essential service to individuals
6 who are not covered workers listed under subsection (a) only after complying with the
7 requirements of this subsection (d) for each covered worker listed under subsection (a) and the
8 running of the time period for response set forth in the last offer of employment made pursuant
9 to this subsection (d).

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

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

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

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

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

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

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

11 **Sec. 58-34 - Enforcement.**

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

15 (b) Private cause of action. A covered worker may bring an action in a court of
16 competent jurisdiction against the successor contractor for damages including, back pay, lost
17 wages and benefits. Violations of this chapter shall be subject to penalties of \$50.00 per worker
18 per day of violation, up to \$4,500.00 per worker. If the employee is the prevailing party in any
19 such legal action, the court must award reasonable attorney's fees and costs as part of the costs
20 recoverable.

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

24

1 COMMITTEE APPROVAL: _____, 2021.

2 MAYOR-COUNCIL DATE: _____, 2021.

3 PASSED BY THE COUNCIL _____ 2021.

4 _____ - PRESIDENT

5 APPROVED: _____ - MAYOR _____ 2021.

6 ATTEST: _____ - CLERK AND RECORDER, EX-OFFICIO CLERK OF THE
7 CITY AND COUNTY OF DENVER

8 NOTICE PUBLISHED IN THE DAILY JOURNAL _____ 2021.

9 PREPARED BY: Kirsten Crawford and Max Taylor - ASSISTANT CITY ATTORNEYS -
10 _____.

11 Pursuant to section 13-9, D.R.M.C., this proposed ordinance has been reviewed by the office of the
12 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 _____, City Attorney

16 BY: _____, _____ City Attorney - _____