

1 BY AUTHORITY

2 ORDINANCE NO. _____
3 SERIES OF 2022

COUNCIL BILL NO. 22-1614
COMMITTEE OF REFERENCE:

4
5 A BILL

6 **For an ordinance amending Chapter 58 of the Denver Revised Municipal Code to**
7 **provide a civil penalty for the offense of wage theft and clarifying enforcement**
8 **provisions for wage violations in connection therewith.**
9

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

11
12 **Section 1.** A new article I, chapter 58 of the Denver Revised Municipal Code is hereby
13 enacted as follows:

14 **ARTICLE I – Wages.**

15 **Division 1 – IN GENERAL.**

16 **Sec. 58-1. – Defined terms.**

17 Except as otherwise provided in this chapter, the following words and phrases shall have the
18 following meanings:

19 (1) *Adverse action* means denying a job or promotion, demoting, terminating, failure to rehire
20 after a seasonal interruption of work, threatening, penalizing, retaliating, engaging in unfair
21 immigration-related practices, filing a false report with a government agency, changing an
22 employee's status to a nonemployee, and any other negative change to an aspect of employment,
23 including modification of pay, work hours, responsibilities, or other material change in the terms or
24 conditions of a person's employment.

25 (2) *Aggrieved party* means a worker or other person who suffers tangible or intangible harm
26 due to an employer or other person's violation of this article.

27 (3) *City* means the City and County of Denver.

28 (4) *Complaint* means a complaint submitted pursuant to section 58-3(a).

29 (5) *Employ, employed, or employed by* means to suffer or permit to work.

30 (6) *Employer* means any corporation, proprietorship, partnership, nonprofit, joint venture,
31 association, individual, limited liability company, business trust, or any person or group of persons,
32 and any of the foregoing who employ a worker acting directly or indirectly in the interest of an
33 employer in relation to a worker, and any successor thereof.

34 (7) *Payroll records* means records kept by an employer documenting the number of hours

1 worked by each worker, the wage paid to such workers, any deductions made from workers' wages
2 including, but not limited to, any tax withholdings, and the net amount of wages received by any such
3 worker.

4 (8) *Successor* means any person to whom an employer quitting, selling out, exchanging, or
5 disposing of a business sells or otherwise conveys in bulk and not in the ordinary course of the
6 employer's business, a major part of employer's property, whether real or personal, tangible or
7 intangible, of the employer's business. For purposes of this definition, person means an individual,
8 receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, company,
9 limited liability company, association, joint venture, or any other legal or commercial entity.

10 (9) *Wage investigation* means an investigation into violations of this article by the auditor
11 pursuant to a complaint or an investigation absent a credible complaint. A wage investigation is
12 commenced upon the filing of a complaint with the auditor or an employer's receipt of the notice of
13 an investigation absent a complaint.

14 (10) *Work* means any services performed on behalf of or for the benefit of an employer or
15 other person, for pay, whether on an hourly, piecework, commission, time, task, or other basis.

16 (11) *Worker* means a natural person performing work, and includes, but is not limited to: full
17 time employees, part-time employees, temporary workers, agents, and any other persons
18 performing work on behalf of or for the benefit of an employer or other person.

19 **58-2. – Employer Responsibilities.**

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

28 (b) *Retaliation strictly prohibited*.

29 (1) *Rights*. No person shall take any adverse action against any person because the
30 person has exercised in good faith rights described in this article, including:

- 31 a. the right to file and pursue a private cause of action alleging a violation;
- 32 b. making inquiries about rights protected;
- 33 c. informing an employer, a union or similar organization, the person's legal

1 counsel, and/or any other person about an alleged violation;

2 d. filing a written complaint with the auditor;

3 e. cooperating with the auditor in any wage investigations;

4 f. testifying in a proceeding related to a wage investigation; and

5 g. refusing to participate in or opposing an activity that would result in a violation
6 of city, state, or federal law.

7 (2) No person shall directly or indirectly make an implied or express communication to
8 any person exercising rights under this article of their will or intent to inform a government agency of
9 the protected person, or the protected person's family members' immigration or citizenship status.

10 (3) Proof of retaliation shall be sufficient upon a showing that an employer or person
11 has taken an adverse action against a person and the person's exercise of rights protected in this
12 article was a motivating factor in the adverse action. If the adverse action occurs within ninety (90)
13 days of the person's exercise of rights protected in this article—or in the case of seasonal work that
14 ended before the close of a 90-day period the employer fails to rehire the former worker at the next
15 opportunity for work in the same position—retaliation shall be presumed, but shall be rebuttable by
16 clear and convincing evidence that the adverse action was taken for a lawful purpose.

17 (c) *Recordkeeping requirements and inspection.*

18 (1) *Required.* All employers shall retain payroll records concerning work performed for
19 a period of at least three (3) years.

20 (2) *Production of payroll records per auditor request.*

21 a. Pursuant to a wage investigation or a private right of action, the auditor may
22 request a certified copy of payroll records for all workers for a three (3) year period from an employer.
23 Payroll records produced pursuant to this subsection shall be accompanied by a sworn statement
24 from the employer attesting that records provided are a true and correct copy of the requested payroll
25 records, that payments were made to workers as set forth in the payroll records, and that all workers
26 have been paid at least the Denver minimum wage or the wage promised, whichever is higher, for
27 all work or alternately a detailed description of all instances and ways in which the foregoing
28 requirements were not fully satisfied and all explanations therefore.

29 b. If the auditor does not receive the certified payroll records and accompanying
30 sworn statement within 30 days, the auditor shall notify an employer of the failure to furnish records.
31 An employer shall be penalized unless the failure to furnish the payroll records is a good faith error
32 corrected within ten (10) days of notice.

33 c. The auditor shall notify an employer of any materially false information

1 contained in the certified payroll records or accompanying sworn statement discovered by the
2 auditor. Additionally, an employer shall notify the auditor of any materially false information contained
3 in the certified payroll records and accompanying sworn statement discovered after it has been
4 submitted to the auditor. An employer shall be penalized unless such materially false information is
5 corrected within ten (10) days of notice or of discovering the error.

6 **Sec 58-3. Complaints and investigation.**

7 Except as otherwise provided in this article, complaints, investigation, and enforcement of
8 violations of any division in this article shall be conducted as follows:

9 (a) *Complaints.*

10 (1) *Submission.* Any person may submit a written complaint of a violation of this article
11 to the auditor. A complaint submitted by a third-party shall only contain the items required in
12 subsection (a)(1)c. and d. of this section, while a complaint submitted by a worker shall include:

- 13 a. the worker's name and/or the name of their duly authorized representative, if
14 applicable;
- 15 b. the worker's contact information;
- 16 c. a detailed statement of the employer or other person's alleged violation,
17 including readily available supporting documentation demonstrating a violation; and
- 18 d. any additional information requested by the auditor or pursuant to rules issued
19 by the auditor.

20 (2) *Assistance.* If a worker filing a complaint is unable to reasonably file her or his
21 complaint in writing, that worker may request the auditor to assist him or her with documenting any
22 allegations to satisfy the written complaint requirement.

23 (3) *Determination of credibility.* The burden of demonstrating to the auditor's
24 satisfaction that a violation has occurred rests with the person making the complaint and shall be
25 demonstrated by a preponderance of the evidence. If a complaint is deemed credible by the auditor,
26 the auditor shall notify the complained-of-party and shall provide a summary of findings regarding
27 any such complaint to the complained-of-party, worker, and complainant, if applicable.

28 (b) *Investigations in the absence of a complaint.* The auditor may initiate an investigation into
29 violations of this article absent a complaint if there is a reasonable basis to believe that a violation
30 occurred. A reasonable basis exists if:

31 (1) The owner or partial owner of a legal entity has violated the terms of this article with
32 respect to another entity with common ownership interests;

33 (2) A pattern and practice, including, but not limited to, receipt of multiple credible

1 complaints filed against a particular industry, demonstrates an increased likelihood that certain
2 workers within an industry are regularly not paid wages;

3 (3) The auditor receives credible information from a governmental agency that
4 demonstrates an increased likelihood that a particular employer or industry has failed to comply with
5 the terms of this article; or

6 (4) The auditor, relying upon data collected or received by the city, establishes a
7 reasonable basis to conclude that a particular person or industry is likely to have failed to comply
8 with the terms of this article.

9 (c) *Limitation of actions.* Any complaint must be submitted to the auditor within three (3) years
10 of the date of an alleged violation of this article.

11 **Sec. 58-4. Enforcement and penalties.**

12 (a) *Notice.* Notice provided for in this article shall be sent via first class mail to the most recent
13 mailing address provided to the auditor or contained in the records of any municipal, state, or federal
14 agency, including but not limited to the Colorado Secretary of State. Notice shall be deemed
15 complete seven (7) calendar day after mailing.

16 (b) *Enforcement.* The auditor is authorized to assess civil penalties pursuant to this article as
17 provided in article XII, chapter 2 of the Code, provided however the procedures for enforcement,
18 penalty, and appeals shall be as specified in this article.

19 (c) *Penalties.* The following shall be imposed in conjunction with any other penalties imposed
20 under this article:

21 (1) A penalty of up to one thousand dollars (\$1,000.00) shall be imposed for failure to
22 furnish the auditor a complete and certified payroll pursuant to section 58-2(c)(2)(b).

23 a. Should an employer not maintain or retain adequate payroll records, or not
24 allow the auditor access in the manner or time allowed by section 58-2(c)(2)(b), there shall be a
25 presumption, rebuttable by clear and convincing evidence, that the employer violated this article for
26 the periods and for each worker for whom adequate records were not retained or access to such
27 records was not timely provided.

28 (2) A penalty of one thousand dollars (\$1,000.00) shall be imposed for each incident
29 of materially false information contained in certified payroll produced pursuant to section 58-
30 2(c)(2)(c).

31 (3) A penalty of five thousand dollars (\$5,000.00) shall be imposed for each instance
32 of retaliation pursuant to section 58-2(b).

33 (4) A penalty of one thousand dollars (\$1,000.00) may be imposed for a violation of

1 any obligation described in this article which does not otherwise have a penalty assigned.

2 (d) *Unpaid penalties.*

3 (1) Penalties assessed under this article shall be due and payable thirty (30) days after
4 notice. The failure to pay penalties assessed pursuant to this article within thirty (30) days after notice
5 may result in the imposition of a late fee of up to twenty-five dollars (\$25.00) and interest at a rate of
6 ten (10) percent per annum.

7 (2) The auditor is further authorized to collect any and all unpaid penalties assessed
8 pursuant to this article, either informally, or as provided for by section 53-403 of the Code; provided,
9 however, that no action in court shall be filed to collect amounts determined by the auditor to be
10 owing under this article more than three (3) years after the date the auditor provided notice to the
11 employer or other person of the amounts owing.

12 **Sec. 58-5. Appeals.**

13 Notwithstanding the provisions in section 2-286, any determination of the auditor related to
14 this article shall be reviewable as follows:

15 (a) Any person may petition the auditor for a hearing concerning the determination to assess
16 a civil penalty pursuant to this article. Such petition shall be submitted in writing to the auditor for a
17 hearing no later than thirty (30) days after notice of any such determination. Compliance with the
18 provisions of this section shall be a jurisdictional prerequisite to appeal any determination made by
19 the auditor pursuant to this article, and failure to comply shall bar any such appeal. Appeals to the
20 auditor from any notice or order shall stay all administrative enforcement proceedings. However,
21 nothing in this section shall preclude or limit a worker from initiating a private cause of action pursuant
22 to this article.

23 (b) The auditor is authorized to appoint one or more hearing officers to certify the record or a
24 summary thereof as required by the auditor, along with the hearing officer's findings, conclusions,
25 and decision. The hearing, if any, shall take place in the city, and notice thereof and the proceedings
26 shall otherwise be in accordance with rules and regulations issued by the auditor. The designated
27 hearing officer may hold hearings pursuant to this article, subpoena witnesses and compel their
28 attendance, administer oaths and take the testimony of any person under oath, and compel
29 witnesses to produce for examination books and papers related to the subject matter of the appeal.
30 The facts and figures submitted shall be submitted under oath or affirmation either in writing or orally
31 at a hearing scheduled by the hearing officer. The petitioner shall bear the burden of proving the
32 allegations in the petition by a preponderance of the evidence. Following a hearing, if any, the
33 hearing officer shall make a final determination, which may be reviewed under Rule 106(a)(4) of the

1 Colorado Rules of Civil Procedure.

2 **Sec. 58-6. Private right of action.**

3 (a) Within three (3) years of the date an alleged violation of this article any aggrieved party
4 may bring a civil action in a court of competent jurisdiction against an employer alleged to have
5 violated this article. Upon prevailing, the aggrieved party shall be entitled to such legal and equitable
6 relief as may be appropriate to fully remedy the violation including, without limitation:

7 (1) the payment of any wages unlawfully withheld (including amounts that accrued after
8 the filing of the civil action);

9 (2) interest on unpaid wages and overtime compensation at a rate of twelve (12)
10 percent per annum from the date such wages were first due;

11 (3) a penalty in the amount of one hundred dollars (\$100.00) to each worker whose
12 rights under this article were violated for each day that the violation occurred or continued;

13 (4) liquidated damages in an amount equal up to three (3) times the amount of unpaid
14 wages and overtime compensation in connection with such wages;

15 (5) reinstatement of employment (if applicable) and/or other injunctive relief; and

16 (6) shall be awarded reasonable attorney fees and costs.

17 (b) Nothing in this section shall be interpreted as restricting, precluding, or otherwise limiting
18 a separate or concurrent wage investigation by the auditor.

19 **Sec. 58-7. – Rulemaking.**

20 The auditor may promulgate rules pertaining to signage, the filing of a complaint, conducting
21 a wage investigation, and appeals.

22 ~~Reserve—58-8 – 58-12.~~

23

24 **Section 2.** That a new division 2, chapter 58 of the Denver Revised Municipal Code shall be added
25 to read as follows:

26 **Division 2 – DENVER MINIMUM WAGE.**

27 **Sec. 58-13. – Defined Terms.**

28 In addition to the definitions set forth in section 58-1, the following words and phrases shall have the
29 following meanings:

30 (1) *Certified youth employment program* means a program certified by the Denver Economic
31 Development & Opportunity (DEDO) agency that provides unemancipated minors employment
32 opportunities in conjunction with a curriculum designed to develop enumerated skills and
33 competencies of unemancipated minors. Any such program shall adhere with rules, regulations and

1 certification requirements issued by DEDO and provide skills development above and beyond the
2 time spent simply performing work in the job.

3 (2) *Food and beverage worker* means a worker for any business or enterprise that prepares
4 and offers for sale food or beverages for consumption either on or off an employer’s physical
5 premises.

6 (3) *Tips* means a verifiable sum presented directly and customarily by customers as a gift or
7 gratuity in recognition of some service performed for customers by the person receiving the tip.

8 (4) *Unemancipated minor* means a person less than eighteen (18) years of age who does not
9 maintain sole or primary responsibility for his or her own support, is not married or domiciled
10 separately from his or her parents or guardian, and is unable to show that his or her well-being is
11 substantially dependent on being gainfully employed.

12 **Sec. 58-14. – Workers; intent.**

13 The intent of this article is to ensure the payment of at least the Denver minimum wage to as
14 many workers as possible in accordance with limitations imposed by Colorado law. It is not the intent
15 of this article to apply the Denver minimum wage to work performed by independent contractors, or
16 reduce any differing wage requirements established by federal or state law or that arise from or in
17 connection with federal or state funding. Any greater wage requirements shall be controlling in the
18 event of a conflict between a federal or state wage requirement and the requirements of this article.

19 **Sec. 58-15. Denver minimum wage.**

20 (a) *Required.* Subject to the terms of this division, every employer shall ensure its workers
21 are paid not less than the “Denver Minimum Wage” as calculated pursuant to this section for work
22 performed in accordance with this division. Any agreement providing for indemnifications or recovery
23 from third parties shall in no way excuse an employer from taking whatever steps are necessary to
24 ensure compliance by all persons engaging in work on behalf of or for the benefit of an employer,
25 nor serve as a basis for an employer to avoid payment of any monetary penalties or occurrence of
26 other consequences for violation(s) of this division.

27 (b) *Exclusions.* This division shall not apply to:

- 28 (1) Work performed by independent contractors while acting solely in such capacity;
- 29 (2) Work performed by persons providing volunteer services that are uncompensated
30 except for reimbursement of expenses such as meals, parking, or transportation; or
- 31 (3) Work not performed physically within the geographic boundaries of the city;
- 32 (4) Work performed by a worker totaling less than four (4) hours in any given week for
33 a particular employer within the geographic boundaries of the city; or

1 (5) Work performed in the city solely for the purpose of traveling through the city from
2 a point of origin outside of the city to a destination outside of the city, with no employment-related or
3 commercial stops in the city except for refueling or the worker's personal meals or errands.

4 (c) *Calculation of Denver minimum wage.*

5 (1) City council hereby declares that it is in the best interest of the city to establish the
6 Denver minimum wage that shall be paid to workers in the manner described in this article.

7 (2) The Denver minimum wage, exclusive of fringe benefits and any other deductions
8 or credits except as described in this article, shall be calculated as follows:

9 a. Beginning January 1, 2020: Twelve dollars and eighty-five cents (\$12.85) per
10 hour;

11 b. Beginning January 1, 2021: Fourteen dollars and seventy-seven cents
12 (\$14.77) per hour; and

13 c. Beginning January 1, 2022: Fifteen dollars and eighty-seven cents (\$15.87)
14 per hour.

15 (3) Tips regularly and actually received by a food and beverage worker may be applied
16 to an employer's obligation to pay such food and beverage worker the Denver minimum wage.
17 However, no more than three dollars and two cents (\$3.02) per hour in tip income (tip credit) may be
18 used to partially offset payment of the Denver minimum wage.

19 (4) Employers may pay wages for work performed equal to the then-current Denver
20 minimum wage reduced on an hourly basis by up to fifteen (15) percent when compensating
21 unemancipated minor workers for work performed pursuant to a certified youth employment
22 program. The Denver economic development and opportunity agency may issue rules and
23 regulations related to certification and maintenance of eligibility of an employer as a certified youth
24 employment program. The foregoing shall not affect any tip credit offset prescribed by this article,
25 which shall also be permitted.

26 (5) In order to prevent inflation from eroding the value of the Denver minimum wage
27 rate, on January 1, 2023, the Denver minimum wage rate shall increase by an amount corresponding
28 to the prior year's increase, if any, in the Consumer Price Index (Urban Wage Earners and Clerical
29 Workers, Denver-Aurora-Lakewood) or its successor index as published by the U.S. Bureau of Labor
30 Statistics Department of Labor or its successor agency (CPI) observed between the first half of 2021
31 and the first half of 2022, as calculated by the manager of finance. Annually thereafter, on the first
32 of January, the Denver minimum wage rate shall increase by an amount corresponding to the
33 increase, if any, in CPI observed between the first half of the year two (2) years prior and the first

1 half of the year prior to the effective date of the increase, as calculated by the manager of finance.

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

10 **Sec. 58-16. Enforcement; Minimum wage special trust fund.**

11 (a) *Complaint, investigation, and enforcement.* Complaints, investigations, and enforcement
12 of violations under this division shall be conducted as provided in division 1. Penalties under this
13 division shall be in addition to those provided in division 1.

14 (b) *Non-cumulative remedy.* Where a violation of this division also constitutes a violation of
15 division 3, the auditor may only assess penalties under either this division or division 3, but not both.

16 (c) *Payment of withheld wages.*

17 (1) *Payment owed.* The auditor shall order an employer in violation of this division to
18 pay the aggrieved party any wages unlawfully withheld, including amounts that accrued after the
19 filing of a complaint.

20 (2) *Duty to locate and pay worker.* Withheld wages shall be due to the worker and
21 payable thirty (30) days after notice of an order to pay wages or a final determination. An employer
22 shall make a good faith attempt to locate and pay the worker prior to the thirty (30) day deadline
23 identified herein. Such attempts to locate and pay the worker shall be documented, and if the worker
24 is not located and paid, the employer shall notify the auditor and provide such documentation,
25 together with the required payment to the special minimum wage fund, no later than fifteen (15) days
26 after the thirty (30) day deadline identified herein.

27 (3) *Special wage theft fund.*

28 a. Any employer or other person who is unable to locate a worker pursuant to
29 subsection (c)(2) shall submit to the auditor, for each worker to whom wages are due, a check
30 payable to that worker or to the City of Denver in a manner that is negotiable by either the worker or
31 the city. Any check submitted as payment of a penalty for violation of this article shall be negotiated
32 by the city and the proceeds deposited in the auditor's unclaimed wage theft special trust fund.

33 b. Any valid, verified claim by a worker for payment from the auditor's unclaimed

1 minimum wage special trust fund must be made prior to three (3) years after the date of the most
2 recent underpayment of wages by employer to the worker to whom such wages were due. After such
3 date, the city shall no longer be liable for payment. The city, as trustee, shall pay such claimant only
4 the amount of the check concerning such claimant that is actually negotiated pursuant to this section,
5 regardless of any dispute as to any additional amount of wages owed to the claimant. No interest
6 shall be paid by city on any funds received or disbursed pursuant to this section.

7 c. On the last working day of each calendar month, the amount of any claim for
8 which the city is no longer liable pursuant to this section shall be credited to the general fund, except
9 as otherwise required by law.

10 d. The auditor shall maintain a list of all unclaimed, city-negotiated wage theft
11 checks received. Such list shall be updated monthly and shall be available for inspection at the office
12 of the auditor.

13 (d) *Penalties.*

14 (1) *Failure to pay wages.*

15 a. For a single violation of this division within a three (3) year period, the auditor
16 may assess a penalty of up to fifty dollars (\$50.00) for each day, for each worker not paid full wages
17 for work. The auditor shall waive the penalty for a first time offense if the failure of the employer to
18 pay the correct wage was a good faith mistake, the employer has not previously failed to pay a
19 worker the Denver Minimum Wage, and the error was corrected within thirty (30) days of the date
20 the employer received notice.

21 b. For a second or third violation of this division within a three (3) year period,
22 the auditor may assess a penalty of not less than one thousand dollars (\$1,000.00) and not greater
23 than two thousand five hundred dollars (\$2,500.00), plus an amount not less than ten dollars (\$10.00)
24 and not greater than seventy-five dollars (\$75.00) for each day, for each worker not paid full wages
25 for work.

26 c. For a fourth or subsequent violation of this division within a three (3) year, the
27 auditor may assess a penalty of not less than two thousand five hundred dollars (\$2,500.00) and not
28 greater than five thousand dollars (\$5,000.00), plus an amount not less than fifty dollars (\$50.00)
29 and not greater than one hundred dollars (\$100.00) for each day, for each worker not paid full wages
30 for work.

31 d. In assessing a penalty under this subsection, the auditor may consider any
32 relevant aggravating or mitigating factors, including, but not limited to, whether the failure of the
33 employer to pay the correct wage was a good faith mistake, whether the error was corrected within

1 thirty (30) days of the date the employer received notice, and whether the employer has previously
2 failed to satisfy the requirements of this division.

3 (2) *Failure to make a good faith effort to locate and pay worker.* The auditor shall issue
4 a penalty of five thousand dollars (\$5,000.00) for each failure to comply with subsection(b)(2)
5 pursuant an order or final determination, if applicable.

6 **Sec. 58-17. Data collection and analysis.**

7 The auditor shall track complaints and investigations during each calendar year, and by March
8 31 of the following year issue a written report to city council reporting on enforcement metrics and
9 assessing the efficacy of this article to ensure full payment of the Denver minimum wage for work
10 performed and also to make recommendations respecting any changes to this article the auditor
11 believes necessary to promote full and prompt payment of the Denver minimum wage to workers.

12
13 **Reserved—50-18 – 50-21.**

14
15 **Section 3.** That a new division 3, chapter 58 of the Denver Revised Municipal Code shall be added
16 to read as follows:

17 **Division 3 – CIVIL WAGE THEFT.**

18 **Sec. 58-22. – Purpose and intent.**

19 The intent of this article is to ensure the payment of earned wages to as many workers as
20 possible, and to limit and redress wage theft involving workers in accordance with limitations
21 imposed by Colorado law. It is not the intent of this article to reduce any differing wage theft
22 requirements established by federal or state law or that arise from or in connection with federal or
23 state funding, and any greater wage theft requirements and restrictions shall be controlling in the
24 event of a conflict between a federal or state wage theft requirement and the requirements of this
25 article.

26 **Sec. 58-23 – Defined terms.**

27 In addition to the definitions set forth in section 58-1, the following words and phrases shall
28 have the following meanings:(1) *Wages* means the same definition set forth in § 8-4-101, C.R.S., as
29 amended, except that it shall apply to all workers, as defined in this article.

30 **Sec. 58-24. – Applicability; Nonpayment of wages prohibited.**

31 (a) *Required.* It shall be a violation of this division for any employer or any other person who
32 is regularly engaged in business or commercial activity who has contracted with an employer or
33 worker, directly or indirectly, for labor from which such person is the beneficiary, including general

1 contractors, clients of staffing agencies, and labor brokers, to fail to ensure full payment of all wages
2 lawfully due to a worker by the date required by a lawful agreement or by state or federal law.
3 However, the rights created in this division shall not accrue until fourteen (14) days after the employer
4 or other person has been provided notice of the violation by either the aggrieved party or the auditor
5 and has failed to pay the wages lawfully due.

6 (b) *Joint and several liability.* An employer, or any other person who is regularly engaged in
7 business or commercial activity who has contracted with an employer or worker, directly or indirectly,
8 for labor from which such person is the beneficiary, including general contractors, clients of staffing
9 agencies, and labor brokers, shall be jointly and severally liable for the payment of any penalty
10 pursuant to a violation of this division, regardless of whether the employer is in a direct contractual
11 relationship with the person who contracted for the labor. However, the auditor shall attempt to collect
12 from the employer or person alleged to have committed the violation before attempting to collect
13 from any other party who benefitted from the work, other than a client. Only once the auditor has
14 attempted to collect from every other party may the auditor attempt to collect from a client.

15 (c) *Indemnification.* An employer or other person may seek indemnification or recovery from
16 third parties for penalties they incur for failure to comply with the requirements of this division.
17 However, any such rights shall in no way excuse an employer or other person from taking whatever
18 steps are necessary to ensure compliance with this division by all persons and entities engaging in
19 work on behalf of or for their benefit, nor serve as a basis for a person to avoid payment of any
20 monetary penalties or occurrence of other consequences for violation(s) of this division.

21 (d) *Exemptions and exclusions.* This division does not apply to any state governmental
22 agency, municipality, municipal corporation, quasi-municipal corporation, school district, or irrigation,
23 reservoir, or drainage conservation company or district organized and existing under the laws of
24 Colorado.

25 **Sec. 58-25. – Applicability of collective bargaining agreement.**

26 In the event that a worker has entered into a collective bargaining agreement with their
27 employer, then the rights created in this division do not accrue until the worker has exhausted the
28 remedies under the collective bargaining agreement. However, nothing in this section shall prohibit
29 the auditor from initiating a wage investigation prior to the exhaustion of such remedies.

30 **Sec. 58-26. –Enforcement.**

31 (a) *Complaint, investigation, and enforcement.* Complaints, investigations, and enforcement
32 of violations under this division shall be conducted as provided in division 1. Penalties under this
33 division shall be in addition to those provided in division 1.

1 (b) *Non-cumulative remedy.* Where a violation of this division also constitutes a violation of
2 division 2, the auditor may only assess penalties under either this division or division 2, but not both.

3 (c) *Payment of withheld wages.*

4 (1) *Payment owed.* The auditor shall order an employer or other person in violation of
5 this division to pay the worker any wages unlawfully withheld, including amounts that accrued after
6 the filing of a complaint, and interest on unpaid wages at a rate of twelve (12) percent per annum
7 from the date such wages were first due .

8 (2) *Treble damages.* The auditor may order an employer or other person to pay treble
9 damages in an amount equal to three (3) times the amount of unpaid wages and overtime
10 compensation in connection with such withheld wages owed to a worker.

11 (3) *Duty to locate and pay worker.* Withheld wages shall be due to the worker and
12 payable thirty (30) days after notice of an order to pay wages or a final determination, if applicable.
13 An employer or other person shall make a good faith attempt to locate and pay the worker prior to
14 the thirty (30) day deadline identified herein. Such attempts to locate and pay the worker shall be
15 documented, and if the worker is not located and paid, the employer or other person shall notify the
16 auditor and provide such documentation no later than fifteen (15) days after the thirty (30) day
17 deadline identified herein.

18 (d) *Reinstatement.* The auditor may order an employer to reinstate the employment of the
19 aggrieved party.

20 (e) *Penalties.*

21 (1) *Failure to pay wages.* For each violation of this division by an employer or other
22 person found pursuant to a wage investigation, the auditor may assess a penalty of up to twenty-five
23 thousand dollars (\$25,000.00) for each worker not paid full wages for work.

24 a. *Aggravating and mitigating factors.* In assessing a penalty under this
25 subsection, the auditor may consider any relevant aggravating or mitigating factors, including, but
26 not limited to, whether the failure of the employer to pay the correct wage was a good faith mistake,
27 whether the error was corrected within thirty (30) days of the date the employer or other person
28 received notice, and whether the employer or other person has previously failed to satisfy the
29 requirements of this division.

30 (2) *Failure to make a good faith effort to locate and pay worker.* The auditor shall issue
31 a penalty of five thousand dollars (\$5,000.00) for each failure to comply with subsection (c)(3)
32 pursuant an order or final determination, if applicable.

33 **Sec 58-27. – Reporting.**

1 The auditor shall report in writing to city council by July 1 of each year, beginning in 2023,
2 regarding civil wage theft and the enforcement of this division.

3
4 **Reserved—58-28-58-30.**

5
6 **Section 4.** That article III, chapter 58 of the Denver Revised Municipal Code, entitled Worker
7 Retention is hereby amended to read as follows:

8 **ARTICLE III. – Worker Retention.**

9
10 **Section 5.** That article III, chapter 38 of the Denver Revised Municipal Code, shall be amended by
11 deleting the language stricken and adding the language underlined, to read as follows:

12 **Sec. 38-51.9. - Wage theft.**

13 (b) Definitions.

14 (1) "*Employer*" shall have the meaning set forth in D.R.M.C. section 58-18.

15 (2) "*Wages*" shall have the same definition set forth in § 8-4-101, C.R.S., as amended.

16 (3) "*Worker*" shall mean a person performing work, and includes, but is not limited to:
17 full time employees, part-time employees, temporary workers, agents, and any other person or entity
18 performing work on behalf of or for the benefit of an employer. This definition shall not apply to work
19 performed by independent contractors while acting solely in such capacity or by persons providing
20 volunteer services that are uncompensated except for reimbursement of expenses such as meals,
21 parking or transportation~~shall have the meaning set forth in D.R.M.C. section 58-18.~~ For purposes
22 of this section, a person is a "worker" rather than an independent contractor when the person is
23 economically dependent on the business to which he or she renders service, and a person is an
24 "independent contractor" when the person is, as a matter of economic fact, in business for himself
25 or herself. In making this determination, the trier of fact shall consider the totality of the
26 circumstances, and it shall be prima facie evidence that a person is a worker when:

27 a. The employer may or does exert a degree of control over the person at work,
28 such as setting working hours, controlling break and lunch times, or directing the person when and
29 where to work;

30 b. The person earns a set wage or salary or commission;

31 c. The person works exclusively for the employer, and does not provide similar
32 services to other employers; or

33 d. The person does not bring a level of skill and knowledge unique to the job,

1 but rather the employer provides on-the-job training for the work to be done.

2

3 **Section 6.** That article IV, chapter 20 of the Denver Revised Municipal Code, shall be amended by
4 deleting the language stricken and adding the language underlined, to read as follows:

5 **Sec. 20-82. - Payment of contract minimum wage.**

6 (c) Calculation of contract minimum wage.

7 (4) In order to prevent inflation from eroding the value of the contract minimum wage
8 rate, on January 1, 2023, the contract minimum wage rate shall increase to an amount equal to the
9 Denver Minimum Wage as provided in section 58-16(b)15. Annually thereafter, on the first of
10 January, the contract minimum wage rate shall increase by an amount corresponding to the increase
11 in the Denver Minimum Wage.

12

13 COMMITTEE APPROVAL DATE: _____, 2022.

14 MAYOR-COUNCIL DATE: _____, 2022.

15 PASSED BY THE COUNCIL _____ 2022

16 _____ - PRESIDENT

17 APPROVED: _____ - MAYOR _____ 2022

18 ATTEST: _____ - CLERK AND RECORDER,
19 EX-OFFICIO CLERK OF THE
20 CITY AND COUNTY OF DENVER
21

22 NOTICE PUBLISHED IN THE DAILY JOURNAL _____ 2022; _____ 2022

23

24 PREPARED BY: _____; DATE: _____

25

26 Pursuant to section 13-9, D.R.M.C., this proposed ordinance has been reviewed by the office of the
27 City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
28 ordinance. The proposed ordinance _____ **is/** _____ **is not** submitted to the City Council for approval
29 pursuant to § 3.2.6 of the Charter.
30

31 Kerry Tipper

32 City Attorney

33

34 BY: _____, _____ City Attorney DATE: _____