BY AUTHORITY

ORDINANCE NO. _____ COUNCIL BILL NO. 22-0625

SERIES OF 2022 COMMITTEE OF REFERENCE:

Finance & Governance

A BILL

For an ordinance clarifying wage requirements in the city.

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

Section 1. That chapter 20, article IV, division 3.5, shall be repealed in its entirety.

Section 2. That chapter 20, article IV, division 3.75 shall be amended by deleting the language stricken and adding the language underlined, to read as follows:

Secs. 20-80 – 20-81. Reserved

Sec. 20-82. - Payment of ~~city~~ contract minimum wage.

(a) *Required.* Subject to the terms of this division, every person or entity that provides any of the following services: concession services; catering services; maintenance services; ramp and cargo services; hospitality services; miscellaneous services; or security services as defined in this division ("covered services") to the city, or on city property for more than thirty (30) consecutive days in a calendar year, or pursuant to a negotiated contractual requirement, shall pay all covered workers not less than a "~~city~~ contract minimum wage" as calculated pursuant to subsection (c) for covered work.

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

Decreases in the ~~city~~ contract minimum wage subsequent to the date of a covered contract shall not be permitted.

(c) *Calculation of ~~city~~ contract minimum wage.*

(1) City council hereby declares that it is in the best interest of the city to protect workers' bargaining power and establish a ~~city~~ contract minimum wage that shall be paid to the various covered workers identified in this division.

(2) The ~~city~~ contract minimum wage, exclusive of fringe benefits, shall be calculated as follows:

(3) Tips actually received by a ~~particular~~ food and beverage worker may be applied to a contractor or other person or entity's obligation to pay the ~~city~~ contract minimum wage. However, no more than three dollars and two cents ($3.02) per hour in tip income ("tip credit") may be used to partially offset payment of the ~~city~~ contract minimum wage for a given day., ~~and only then for persons who directly and customarily receive tips until June 30, 2022. Beginning on July 1, 2022, the tip credit shall be increased by an amount corresponding to the prior year's increase, if any, in CPI as hereinafter defined. In no event shall the tip credit increase to an amount that would allow payment of a wage less than that required by state or federal law.~~

(4) In order to prevent inflation from eroding the value of the ~~city's~~ contract minimum wage rate, on January 1, 2023~~July 1, 2022~~, the ~~city~~ contract minimum wage rate shall increase to an amount equal to the Denver Minimum Wage as provided in section 58-16(b). Annually thereafter, on the first of January, the contract minimum wage rate shall increase by an amount corresponding to the increase in the Denver Minimum Wage. ~~the prior year's increase, if any, in the Consumer Price Index (Urban Wage Earners and Clerical Workers, Denver-Aurora-Lakewood) or its successor index as published by the U.S. Department of Labor or its successor agency ("CPI"). Annually thereafter, on the first of July, the city's minimum wage rate shall increase by an amount corresponding to the prior year's increase, if any, in CPI.~~

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

Sec. 20-83. - Enforcement and penalties.

(a) *Enforcement.*

(2) Payroll records produced pursuant to subsection (a)(1) shall be accompanied by a sworn statement of the contractor that the document is a true and correct copy of the payroll records of all covered workers performing covered work pursuant to the covered contract, that payments were made to all covered workers as set forth in the payroll records, that no deductions were made other than

those described in such records, and that all covered workers employed pursuant to the covered contract, either by the contractor or another person or entity, have been paid at least the ~~city~~ contract minimum wage for all covered work or describe in detail all instances in which the foregoing requirements were not fully satisfied.

(3) Contractors shall post in a place which is prominent and easily accessible to covered workers the ~~city~~ contract minimum wage to be paid to covered workers for covered work, and that complaints by third parties, including employees of contractors or other entities, of violations may be submitted to the auditor. Contractors shall display the posting in English and also in any primary language spoken by at least ten (10) percent of the employees at the work-place or job site. If display of a poster is not feasible, including situations when an employee does not have a regular workplace or job site, contractors may provide the information on an individual basis, in an employee's primary language, in physical or electronic form that is reasonably conspicuous and accessible.

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

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

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

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

or overturned during the previous three (3) years pursuant to this division.

(4) The contractor's penalty shall be five thousand dollars ($5,000.00) for a violation, plus one hundred dollars ($100.00) for each day, or portion thereof, for each covered worker paid less than the ~~city~~ contract minimum wage rate for covered work, if the contractor has been assessed three (3) or more other penalties within the previous three (3) years for failure to comply with the terms of this division, unless any such penalties were subsequently withdrawn or overturned resulting in two (2) or fewer penalties during the previous three (3) years pursuant to this division.

(8) A contractor who is found by the auditor pursuant to this division to have failed to ensure payment of the ~~city~~ contract minimum wage to a covered worker for covered work shall, within thirty (30) days of notice of a violation from the auditor, or if applicable, thirty (30) days from any final order pursuant to Section 20-82(g), attempt in good faith to locate and pay any such covered worker all wages required pursuant to this division. Failure by any contractor to attempt in good faith to locate and ensure payment of any underpaid covered worker in compliance with the terms of this subsection shall for any underpayment to a covered worker greater than fifty dollars ($50.00) result in a penalty of five thousand dollars ($5,000.00) for each such violation. If a contractor is able to adequately document its good faith efforts to locate and timely pay a covered worker pursuant to this subsection it shall not be subject to further penalty if it is unable to reasonably locate or pay a covered worker all ~~city~~ contract minimum wages owed. Any finding or penalty for failure to timely pay a covered worker, or attempt in good faith to locate and timely pay a covered worker amounts owed pursuant to this subsection shall be subject to review pursuant to Section 20-82(g).

Sec. 20-84. – Miscellaneous.

(a) Covered workers; intent. The intent of this division is to ensure the payment of a ~~city~~ contract minimum wage to an expanded number of workers providing services to the city, or on city property pursuant to a covered contract, or pursuant to a negotiated contractual requirement. Unless specifically negotiated, it is not the city's intent to impose wage requirements for city contracts, or work pursuant to an otherwise covered contract (excepting catering services), that involves only the purchase of goods and non-professional services considered to be ancillary to the purchase of goods. For the purposes of this division, and except as described below, unless a city contract contains a negotiated contractual requirement specifying otherwise, a broker, entity or person that only supplies goods and/or transportation services incident to delivering goods to city property (including the use of common carriers) is considered a supplier and is not performing covered work pursuant to this division. Notwithstanding the foregoing, the provision of catering services is not the mere provision of goods pursuant to this division and may qualify as a covered service. It is also not the intent of this division to reduce any differing wage requirements established by federal or state law or that arise from or in

connection with federal or state funding utilized or disbursed by the city, and such greater wage requirements and restrictions shall be controlling in the event of a conflict between a federal or state wage requirement and the requirements of this division. To the extent a federal or state law or agreement involving state or federal funding prevents or restricts application of this division for a particular contract, the terms of this division shall be limited to the extent it may be applied and enforced consistent with such restrictions. For purposes of clarity, the term city contract shall apply to use and lease agreements, services contracts, and other forms of agreement not excluded by the terms of this division.

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

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

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

"Covered work" shall mean covered services performed pursuant to a covered contract for which the ~~city~~ contract minimum wage is required to be paid pursuant to this division;

"Wage-commitment agreement" shall mean a mutually-negotiated contract between the city and a third party non-profit entity ("counterparty") whereby counterparty agrees to pay all persons employed directly by counterparty at least the then-current ~~city~~ contract minimum wage within six (6) months of the respective deadlines specified in 20-82(c) for any and all types of work. To preserve an exemption from the terms of this division, counterparty shall further require in all of counterparty's contractual agreements and relationships with other persons or entities entered into subsequent to the effective date of this ordinance, that any person who provides covered services to counterparty or in connection with a contract with counterparty, be paid a wage equal to or greater than the then-current ~~city~~ contract minimum wage for all covered work as defined in this division.

Section 3. That chapter 58, article II, section 58-16, D.R.M.C. shall be amended by deleting the language stricken and adding the language underlined, to read as follows:

(b) *Calculation of Denver minimum wage.*

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

Section 4. That chapter 58, article II, section 58-17, D.R.M.C. shall be amended by deleting the language stricken and adding the language underlined, to read as follows:

(a) *Enforcement.*

(4) The auditor is authorized to enforce findings and orders made pursuant to this article and collect any and all assessed and unpaid penalties and other amounts from employers who violate any of the terms of this article either informally, or ~~by action initiated in state district court~~ as provided for by section 53-403 of the Code; provided, however, that no action in court shall be filed to collect amounts determined by the auditor to be owing under this article more than three (3) years after the date the auditor provided notice to the employer of the amounts owing.

(5) Notifications to employers provided for in this article shall be sent via first class mail to the most recent mailing address of the employer provided by a worker or third party who has filed a complaint or contained in the records of any municipal, state or federal agency, including but not limited to the Colorado Secretary of State. Notice shall be deemed complete upon the seventh

calendar day after mailing.

(b) *Penalties.* Any employer subject to the requirements of this article shall as a penalty pay to the city an amount as set forth below for each worker for each day they are paid less than the Denver minimum wage for the performance of work. Penalties shall be due and payable thirty (30) days after an employer is notified of them. The failure to pay penalties assessed within thirty (30) days of notification may result in the imposition of a late fee of up to twenty-five dollars ($25.00) and interest at a rate of ten (10) percent per annum.

Section 5. That chapter 58, article II, section 58-18, D.R.M.C. shall be amended by deleting the language stricken and adding the language underlined, to read as follows:

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

COMMITTEE APPROVAL DATE: May 24, 2022

MAYOR-COUNCIL DATE: May 31, 2022 by Consent

PASSED BY THE COUNCIL June 20, 2022

_____ - PRESIDENT

APPROVED: _____ - MAYOR Jun 23, 2022

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

NOTICE PUBLISHED IN THE DAILY JOURNAL _____; _____

PREPARED BY: Anshul Bagga; DATE: May 3, 2022

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

Kristin M. Bronson, Denver City Attorney

BY: _____, Assistant City Attorney DATE: Jun 1, 2022