

1 **BY AUTHORITY**

2 ORDINANCE NO. _____
3 SERIES OF 2019

COUNCIL BILL NO. CB19-0163
COMMITTEE OF REFERENCE:
Finance & Governance

5 **A BILL**

6 **For an ordinance adding a new Division 3.75 of Article IV, Minimum Wage**
7 **Protections for Workers Associated with City Contracts.**

8
9 **WHEREAS**, the health and welfare of all Denver residents is benefited and advanced when city
10 workers and workers performing services pursuant to city contracts are paid a wage which enables
11 them to live above the federal poverty line;

12 **WHEREAS**, the City seeks to confront the issue of wage equity and cost of living affordability in
13 the community to the extent currently permitted pursuant to Colorado law;

14 **WHEREAS**, the City has historically demonstrated leadership on pay-equity issues;

15 **WHEREAS**, the City contracts with private sector employers to provide various services to the
16 City and also by contract authorizes covered services to occur on city property;

17 **WHEREAS**, the Denver Revised Municipal Code requires payment of certain wages with
18 respect to designated city contracts, however no minimum wage for numerous types of covered
19 services has previously been established;

20 **WHEREAS**, City Council finds that a new division should be added to require that parties
21 contracting with the city pay covered workers no less than a designated city minimum wage;

22 **WHEREAS**, Colorado law prohibits municipalities from establishing jurisdiction-wide laws with
23 respect to minimum wage;

24 **WHEREAS**, the City seeks to impact wage rates in its capacity as a contracting party for
25 procurement of services and as a property owner;

26 **WHEREAS**, in addition to requiring payment of the city minimum wage in all future covered
27 contracts, the City shall seek to review, prioritize and renegotiate existing contracts with a remaining
28 term in excess of one year to prospectively pay covered workers at least the city minimum wage more
29 quickly;

30 **WHEREAS**, the City shall formulate and implement a plan to address existing contracts within
31 one year of the effective date of this bill to ensure prompt and equitable treatment for as many
32 potentially-covered workers as possible; and

33 **WHEREAS**, the city's renegotiation efforts for existing contracts shall prioritize contracts based
34 on amount, duration and the number of workers positively impacted by a requirement to pay the city

1 minimum wage.

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

4 **Section 1.** A new Section 20-82, Division 3.75 of Article IV of the Denver Revised Municipal
5 Code shall be added and read as follows:

6 Sec. 20-82. – Payment of city minimum wage.

7 (a) *Required.* Subject to the terms of this division, every person or entity that provides any of
8 the following services: concession services; catering services; maintenance services; ramp and
9 cargo services; hospitality services; miscellaneous services; or security services as defined in this
10 division (“Covered Services”) to the city, or on city property for more than 30 consecutive days in a
11 calendar year, or pursuant to a negotiated contractual requirement, shall pay all covered workers
12 not less than a “City Minimum Wage” as calculated pursuant to subsection (c) for covered work.

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

28 (c) *Calculation of city minimum wage.*

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

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

33 i. Beginning July 1, 2019: \$13 (thirteen dollars) per hour;

34 ii. Beginning July 1, 2020: \$14 (fourteen dollars) per hour; and

35 iii. Beginning July 1, 2021 \$15 (fifteen dollars) per hour.

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

9 (4) In order to prevent inflation from eroding the value of the city's minimum wage rate, on July
10 1, 2022, the city minimum wage rate shall increase by an amount corresponding to the prior
11 year's increase, if any, in the Consumer Price Index (Urban Wage Earners and Clerical
12 Workers, Denver-Aurora-Lakewood) or its successor index as published by the U.S.
13 Department of Labor or its successor agency ("CPI"). Annually thereafter, on the first of
14 July, the city's minimum wage rate shall increase by an amount corresponding to the prior
15 year's increase, if any, in CPI.

16 (d) *Exclusions.* Absent a negotiated contractual requirement, this division shall not apply to:
17 intergovernmental agreements; any participant in an employment program certified by the city; any
18 contract for state or federally mandated services or for services subject to statutory rate-setting;
19 loans made by the city; entities who are subject to a wage-commitment agreement; persons or
20 entities not providing covered services to the city pursuant to a contractual relationship directly with
21 the city whose provision of covered services on city property occurs for less than seven consecutive
22 days in a calendar year and 30 total days in a calendar year; the purchase and sale by the city of
23 real property or goods; persons providing volunteer services that are uncompensated except for
24 reimbursement of expenses such as meals, parking or transportation; qualified small business
25 contractors; except with respect to catering services, persons whose work pursuant to a covered
26 contract is limited solely to the role of a supplier; or city contracts which contemplate work to be
27 performed such as a license or permit to use city-owned land that are neither a revenue or
28 expenditure contract.

29 (e) *Third Party Complaints.* Subject to any rules and regulations that may be issued by the
30 auditor, any person or third party, including an employee of a contractor, may submit a complaint
31 of a violation of this division to the auditor. The burden of demonstrating to the auditor's satisfaction
32 that a violation has occurred rests with the person or third party making the complaint and shall be
33 demonstrated by a preponderance of the evidence. Any such complaint shall be made in writing
34 to the auditor and shall include all information relied upon by such person. If a person making a
35 complaint pursuant to this subsection is unable to reasonably file her or his complaint in writing, a

1 complainant may request the auditor to assist him or her with documenting any allegations to
2 satisfy the written complaint requirement. The auditor shall investigate credible complaints, shall
3 notify any contractor alleged to have violated this division of any credible complaint, and shall
4 provide a summary of findings regarding any such complaint to both the complainant and the
5 contractor. Any determination by the auditor pursuant to this division is reviewable by the
6 complained-of party, pursuant to subsection (g). Any complaint must be submitted to the auditor
7 within one year of the date the contractor was alleged to have violated the requirements of this
8 division, and shall include: the worker's name and/or the name of their duly authorized
9 representative, if applicable; the worker's contact information; and a detailed statement of the
10 contractor's alleged violation of the requirements of this division, including all supporting
11 documentation demonstrating a violation. Contractor shall be subject to penalties and other
12 consequences pursuant to this division for any actual violation(s) that occurred within one year of
13 the date a credible complaint was first and timely submitted to the auditor pursuant to this division
14 and within three years of the date an audit of a covered contract is initiated by the auditor.

15 (f) *Retaliation strictly prohibited.* No contractor shall interfere with, restrain, deny, assist
16 another person or entity, or attempt to deny the exercise of any right protected under this division.
17 Any attempted or actual retaliation shall be regulated as follows:

18 (1) No contractor or any other person shall take any adverse action against any person because
19 the person has exercised in good faith rights described in this division. Such rights include,
20 but are not limited to, the right to make inquiries about rights protected under this division;
21 the right to inform contractor, a union, or similar organization, and/or the person's legal
22 counsel or any other person about an alleged violation of this division; the right to file a
23 written complaint with the auditor; the right to cooperate with the auditor in any investigations
24 pursuant to this division; the right to testify in a proceeding related to an investigation
25 pursuant to this division; the right to refuse to participate in an activity that would result in a
26 violation of city, state, or federal law; and the right to oppose any policy, practice, or act that
27 is unlawful pursuant to this division.

28 (2) No contractor or any other person shall communicate to a person exercising rights protected
29 under this division, directly or indirectly, the willingness to inform a government employee
30 that the person is not lawfully in the United States, or to report, or to make an implied or
31 express assertion of a willingness to report, suspected citizenship or immigration status of
32 an employee or a family member of the employee to a federal, state, or local agency because
33 the employee has exercised a right pursuant to this division.

34 (3) It shall be a rebuttable presumption of retaliation if a contractor or any other entity or person
35 takes an adverse action against a person within 90 days of the person's exercise of rights

1 protected in this division. However, in the case of seasonal work that ended before the close
2 of a 90-day period, the presumption also applies if the contractor or other person or entity
3 fails to rehire a former employee at the next opportunity for work in the same position. The
4 contractor may rebut this presumption with clear and convincing evidence that the adverse
5 action was taken for a lawful purpose.

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

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

- 14 (1) Any contractor who disputes any determination made by or on behalf of the city pursuant to
15 the authority of the auditor, which determination adversely affects such contractor, may
16 petition the auditor for a hearing concerning such determination no later than thirty (30) days
17 after having been notified of any such determination. Compliance with the provisions of this
18 subsection shall be a jurisdictional prerequisite to any action brought under the provisions
19 of this division, and failure of compliance shall forever bar any such action.
- 20 (2) The auditor shall designate as a hearing officer a person retained by the city for that purpose.
- 21 (3) The petition for a hearing shall be in writing, and the facts and figures submitted shall be
22 submitted under oath or affirmation either in writing or orally at a hearing scheduled by the
23 hearing officer. The hearing, if any, shall take place in the city, and notice thereof and the
24 proceedings shall otherwise be in accordance with rules and regulations issued by the
25 auditor. The petitioner shall bear the burden of proof, and the standard of proof shall conform
26 with that in civil, nonjury cases in state district court.
- 27 (4) Following a hearing, the hearing officer shall make a final determination. Such final
28 determination shall be considered a final order and may be reviewed under Rule 106(a)(4)
29 of the state rules of civil procedure by the petitioner or by the city. A request for
30 reconsideration of the determination may be made if filed in writing with the hearing officer
31 within fifteen (15) days of the date of a final determination, in which case the hearing officer
32 shall review the record of the proceedings, and the determination shall be considered a final
33 order upon the date the hearing officer rules on the request for reconsideration.

1 (5) The district court of the second judicial district of the State of Colorado shall have original
2 jurisdiction in proceedings to review all questions of law and fact determined by the hearing
3 officer by order or writ under Rule 106(a)(4) of the state rules of civil procedure.

4 (h) *Recordkeeping requirements and inspection.* All contractors pursuant to a covered contract
5 shall retain sufficient payroll records pertaining to all covered workers for a period of at least three
6 years. Contractors shall allow the auditor access to such records following a complaint determined
7 credible by the auditor, or in connection with an audit of a covered contract, at a reasonable time
8 during normal business hours to ensure compliance with the requirements of this division. Should a
9 contractor not maintain or retain adequate records documenting the manner and amount of wages
10 paid, or not allow the auditor reasonable access to such records, there shall be a presumption,
11 rebuttable by clear and convincing evidence, that the contractor violated this division for the periods
12 and for each employee for whom adequate records were not retained or access to such records was
13 not timely provided.

14 **Section 2.** A new Section 20-83, Division 3.75 of Article IV of the Denver Revised Municipal
15 Code shall be added and read as follows:

16 Sec. 20-83. – Enforcement and penalties.

17 (a) *Enforcement.*

18 (1) Following notification of a complaint determined credible by the auditor or in connection with
19 an audit of a covered contract, a contractor shall furnish to the auditor, upon the auditor's
20 request, a true and correct electronically-certified copy of the payroll records of all covered
21 workers employed pursuant to the applicable covered contract, by the contractor and also
22 by any person or entity performing covered work pursuant to the covered contract. Such
23 payroll records shall include information documenting the number of hours worked by each
24 covered worker employed pursuant to the contract for covered work, the hourly wage of such
25 covered workers for covered work, any deductions made from covered worker wages, and
26 the net amount of wages received by each covered worker for all covered work.

27 (2) Payroll records produced pursuant to subsection (a)(1) shall be accompanied by a sworn
28 statement of the contractor that the document is a true and correct copy of the payroll records
29 of all covered workers performing covered work pursuant to the covered contract, that
30 payments were made to all covered workers as set forth in the payroll records, that no
31 deductions were made other than those described in such records, and that all covered
32 workers employed pursuant to the covered contract, either by the contractor or another
33 person or entity, have been paid at least the city minimum wage for all covered work or
34 describe in detail all instances in which the foregoing requirements were not fully satisfied.

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

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

20 (5) For all covered contracts, following notification of a complaint determined credible by the
21 auditor or in connection with an audit of city contracts, a contractor shall provide to the
22 auditor a list of all persons and entities who have performed covered work as well as any
23 known person or entity who will be performing any covered work pursuant to a covered
24 contract within ten (10) days of the auditor's written request.

25 (6) Nothing in this division shall restrict the auditor's authority to investigate city contracting
26 practices. In connection with any audit of a covered contract, the auditor may require a
27 contractor to provide, upon written request, documents described in this division that must
28 be provided to the auditor upon notification of a credible complaint related to a covered
29 contract. Further, any third-party submission of a credible complaint shall not require the
30 auditor to initiate a full audit of any particular party or contract. The auditor's role in
31 investigating and issuing findings related to a credible complaint pursuant to 20-82(e) shall
32 be in accord with the terms of this division.

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

- 1 (1) The amount of the penalty shall be determined by the auditor based on consideration of both
2 of the following:
- 3 a. Whether the failure of the contractor to pay the correct wage rate was a good faith
4 mistake and, if so, the error was corrected within thirty (30) days of the date it was
5 brought to the attention of the contractor.
- 6 b. Whether the contractor has a prior record of failing to meet the requirements of this
7 division.
- 8 (2) The contractor's penalty shall be fifty dollars (\$50.00) for each day, or portion thereof, for
9 each covered worker paid less than the city minimum wage rate for covered work, unless
10 the failure of the contractor to ensure payment of the city minimum wage rate was a good
11 faith mistake and, if so, the error was corrected within thirty (30) days of the date it was
12 brought to the attention of the contractor.
- 13 (3) The contractor's penalty shall be two thousand five hundred dollars (\$2,500.00) for a
14 violation, plus seventy-five dollars (\$75.00) for each day, or portion thereof, for each covered
15 worker paid less than the city minimum wage rate for covered work, if the contractor has
16 been assessed a penalty, but not more than two (2) other penalties, within the previous three
17 (3) years for failure to comply with the terms of this division, unless all such penalties were
18 subsequently withdrawn or overturned during the previous three (3) years pursuant to this
19 division.
- 20 (4) The contractor's penalty shall be five thousand dollars (\$5,000.00) for a violation, plus one
21 hundred dollars (\$100.00) for each day, or portion thereof, for each covered worker paid less
22 than the city minimum wage rate for covered work, if the contractor has been assessed three
23 (3) or more other penalties within the previous three (3) years for failure to comply with the
24 terms of this division, unless any such penalties were subsequently withdrawn or overturned
25 resulting in two (2) or fewer penalties during the previous three (3) years pursuant to this
26 division.
- 27 (5) The contractor's penalty shall be one thousand dollars (\$1,000.00) for each violation if a
28 contractor fails to furnish the auditor a complete and certified payroll for which any covered
29 worker employed by the contractor or other person or entity has performed any covered
30 work pursuant to a covered contract, unless the failure of the contractor to furnish the auditor
31 a complete and certified payroll was a good faith mistake and, if so, the error was corrected
32 within thirty (30) days of the date the auditor notifies the contractor of such failure. This
33 penalty shall be imposed in conjunction with penalties imposed under subsections (b)(2)-
34 (4), and shall apply whether or not the covered work was performed by contractor employees
35 or another person or entity.

- 1 (6) The contractor's penalty shall be one thousand dollars (\$1,000.00) for each incident of false
2 reporting in connection with a certified payroll not corrected within fifteen (15) days of the
3 date the auditor notifies the contractor of such report. A certified payroll shall be determined
4 to be a false report when information related to hours worked or wages paid reported on a
5 certified payroll is not identical to supportive documentation, including payments issued to
6 workers, timecards maintained by contractor or other persons or entities, invoices for work
7 performed issued to other persons or entities or the city, and tax documents. This penalty
8 shall be imposed in conjunction with penalties imposed under subsections (b)(2)-(5).
- 9 (7) The contractor's penalty shall be one thousand dollars (\$1,000.00) for each violation should
10 a contractor be found by the auditor to have violated any obligation of contractor described
11 in this division and not otherwise described in subsections (b)(2)-(6).
- 12 (8) A contractor who is found by the auditor pursuant to this division to have failed to ensure
13 payment of the city minimum wage to a covered worker for covered work shall, within thirty
14 (30) days of notice of a violation from the auditor, or if applicable, thirty (30) days from any
15 final order pursuant to Section 20-82 (g), attempt in good faith to locate and pay any such
16 covered worker all wages required pursuant to this division. Failure by any contractor to
17 attempt in good faith to locate and ensure payment of any underpaid covered worker in
18 compliance with the terms of this subsection shall for any underpayment to a covered worker
19 greater than fifty dollars (\$50.00) result in a penalty of five thousand dollars (\$5,000.00) for
20 each such violation. If a contractor is able to adequately document its good faith efforts to
21 locate and timely pay a covered worker pursuant to this subsection it shall not be subject to
22 further penalty if it is unable to reasonably locate or pay a covered worker all city minimum
23 wages owed. Any finding or penalty for failure to timely pay a covered worker, or attempt in
24 good faith to locate and timely pay a covered worker amounts owed pursuant to this
25 subsection shall be subject to review pursuant to Section 20-82(g).

26 **Section 3.** A new Section 20-84, Division 3.75 of Article IV of the Denver Revised Municipal
27 Code shall be added and read as follows:

28 Sec. 20-84. – Miscellaneous.

29 (a) *Covered workers; intent.* The intent of this division is to ensure the payment of a city minimum
30 wage to an expanded number of workers providing services to the city, or on city property pursuant
31 to a covered contract, or pursuant to a negotiated contractual requirement. Unless specifically
32 negotiated, it is not the city's intent to impose wage requirements for city contracts, or work pursuant
33 to an otherwise covered contract (excepting catering services), that involves only the purchase of
34 goods and non-professional services considered to be ancillary to the purchase of goods. For the
35 purposes of this division, and except as described below, unless a city contract contains a negotiated

1 contractual requirement specifying otherwise, a broker, entity or person that only supplies goods
2 and/or transportation services incident to delivering goods to city property (including the use of
3 common carriers) is considered a supplier and is not performing covered work pursuant to this
4 division. Notwithstanding the foregoing, the provision of catering services is not the mere provision
5 of goods pursuant to this division and may qualify as a covered service. It is also not the intent of
6 this division to reduce any differing wage requirements established by federal or state law or that
7 arise from or in connection with federal or state funding utilized or disbursed by the city, and such
8 greater wage requirements and restrictions shall be controlling in the event of a conflict between a
9 federal or state wage requirement and the requirements of this division. To the extent a federal or
10 state law or agreement involving state or federal funding prevents or restricts application of this
11 division for a particular contract, the terms of this division shall be limited to the extent it may be
12 applied and enforced consistent with such restrictions. For purposes of clarity, the term city contract
13 shall apply to use and lease agreements, services contracts, and other forms of agreement not
14 excluded by the terms of this division.

15 (b) *Covered Contracts*. Except as described in Section 20-84(f), this division shall not apply to
16 contracts executed by the city on or before the effective date of this ordinance, contracts for which
17 procurement was initiated prior to the effective date of this ordinance, but which were executed after
18 the effective date of this ordinance, and any renewals of the foregoing contracts, unless such
19 contracts contain a negotiated contractual requirement or explicitly require a contractor to comply
20 with future changes in law.

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

28 (d) *Responsibility of contractor*. For a particular covered contract a contractor may engage
29 subcontractors, individuals and other entities: to fulfill some or all of contractor's contractual
30 obligations to the city; to perform covered services on city property pursuant to a covered contract;
31 or in connection with an otherwise covered contract. Contractor shall be solely responsible for
32 ensuring payment of the city minimum wage to any and all agents and/or others performing covered
33 services on contractor's behalf or on city property pursuant to a covered contract for purposes of
34 compliance with this division. Contractor shall also be solely responsible for ensuring payment of
35 the city minimum wage if required to do so by a negotiated contractual requirement for purposes of

1 compliance with this division. Contractors may seek indemnification or recovery from third parties
2 for penalties a contractor incurs for failure to comply with the requirements of this division. However,
3 any such rights shall in no way excuse a contractor from taking whatever steps are necessary to
4 ensure compliance with this division by all persons providing services or engaging in covered work
5 pursuant to a covered contract, nor serve as a basis for contractor to avoid payment of any monetary
6 penalties or occurrence of other consequences for violations of this division.

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

8 “Catering Services” shall mean services involving any of the following: preparation, packaging
9 and delivery of meals for in-flight service to flight passengers; food inspection; cleaning of dishes,
10 utensils or glassware; or cleaning or operation of facilities used for the preparation, packaging, or
11 storage of meals;

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

13 “City Contract” shall mean a written contract between the city and a third party;

14 “City Property” shall mean any city owned or leased buildings and any city-owned land.

15 “Complaint” shall mean a third-party complaint submitted pursuant to Section 20-82(e);

16 “Concession Services” shall mean services involving any of the following: the commercial
17 provision of consumer goods or services to the public, including but not limited to: food and beverage
18 services; cashier services; wait services; retail sales; retail customer services; lounge operation;
19 kiosk operation; or concession cleaning services;

20 “Contractor” shall mean the entity or person that enters into a covered contract with the city;

21 “Covered Contract” shall mean any city contract with a maximum contract amount in excess
22 of fifty thousand dollars (\$50,000.00) by which: (1) a covered worker provides covered services to
23 the city; (2) which authorizes any covered services to occur on city property for more than 30
24 consecutive days in a calendar year; or (3) which contains a negotiated contractual requirement;

25 “Covered Work” shall mean covered services performed pursuant to a covered contract for
26 which the city minimum wage is required to be paid pursuant to this division;

27 “Covered Worker” shall mean a person performing covered work, and as further described in
28 Section 20-84(d), includes persons employed by contractors, subcontractors, individuals and other
29 entities fulfilling all or part of a contractor’s contractual obligations to the City pursuant to a covered
30 contract, which perform covered services on city property pursuant to a covered contract, and
31 persons performing covered services in connection with a negotiated contractual requirement;

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

33 “Employee” shall include, but not be limited to full-time employees, part-time employees,
34 temporary workers, independent contractors and any other person employed by contractor or
35 another person or entity to perform covered work;

1 “Goods” shall mean all things (including specially manufactured goods) which are movable
2 during the term of a covered contract that are for sale other than the money in which the price is to
3 be paid, investment securities, and things in action;

4 “Hospitality Services” shall mean services involving any of the following: hotel cleaning or
5 housekeeping; laundry; hotel desk clerk; or hotel porter;

6 “Intergovernmental Agreement” shall mean any contract between the city and another
7 governmental or quasi-governmental entity;

8 “Maintenance Services” shall mean services involving any of the following conducted on city
9 property: custodial; janitorial; window washing; aircraft cabin cleaning; solid waste removal; repairs;
10 weed control; pest control; or recycling;

11 “Miscellaneous Services” shall mean services involving any of the following: providing
12 customer services as a ticketing agent, bag drop attendant or skycap; parking lot operation services;
13 transporting or driving passengers via shuttle, wheelchair or cart; working as a cab starter; providing
14 towing services; handling passenger baggage; or rental car-related activities, including but not
15 limited to work performed by attendants, technicians, detailers/cleaners, and dispatchers;

16 “Negotiated Contractual Requirement” shall mean a mutually-negotiated term in a city
17 contract that specifically requires a contractor to impose the terms of this division on persons or
18 entities performing covered services not for the city or which otherwise would not constitute covered
19 work pursuant to this division.

20 “Procurement” shall mean a competitive selection process by which the city identifies a vendor
21 for provision of services to the city.

22 “Qualified Small Business Contractor” shall mean a contractor that is a bona fide small
23 business enterprise or non-profit entity that employs twenty-five (25) or fewer total full-time
24 equivalents at any point during the term of a covered contract, including all of its divisions,
25 subsidiaries, joint ventures, parent companies, and subsidiaries of parent companies and only
26 applies to contractors for covered contracts with a maximum contract amount less than five hundred
27 thousand dollars (\$500,000.00);

28 “Ramp and Cargo Services” shall mean services involving any of the following: guiding aircraft
29 in and out of the airport; coordinating aircraft loading and unloading positions; positioning and
30 operating passenger, baggage, and cargo loading and unloading devices; handling baggage and
31 cargo; screening cargo; aircraft maintenance; fueling and towing aircraft; cleaning ramp areas; or
32 servicing aircraft equipment, mechanics and lavatories;

33 “Security Services” shall mean services involving any of the following: general city property
34 security; security of personal property located on city property, including but not limited to passenger
35 aircraft; terminal security; or parking security;

1 “Supplier” shall mean a broker, entity or person not providing catering services that only
2 supplies goods and/or transportation services incident to delivering those goods to city property
3 (including the use of common carriers); and

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

6 “Use and Lease Agreement” shall mean a lease of real property by an air carrier that
7 authorizes commercial activity on city property.

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

17 (f) The city shall not extend the term of or amend a city contract that is not subject to the terms
18 of this division due solely to the timing of contract formation as described in 20-84(b), if city code,
19 executive order or city charter requires council approval of such extension or amendment unless
20 such extension or amendment requires compliance by contractor with the terms of this division
21 during any extended term or subsequent to amendment or city council makes an express finding
22 that such city contract should be extended or amended without a requirement that the contractor
23 subsequently comply with the terms of this division. In addition to the foregoing, when a use and
24 lease agreement is not subject to the terms of this division: (1) solely due to the timing of contract
25 formation as described in 20-84(b); and (2) contains a right allowing the city to extend the then-
26 current term of the use and lease agreement at the city’s discretion; then the city shall not exercise
27 a discretionary option to extend the current term of such use and lease agreement unless contractor
28 agrees to amend the use and lease agreement in a manner so that it is subject to this division during
29 any and all extended term(s).

30 (g) The city may suspend or debar a contractor from participation in city contracting for a period
31 as may be determined by the city, in its sole discretion, based upon grounds of violating this division,
32 and pursuant to such suspension and debarment procedures as may be established by the city and
33 as set forth in Denver Revised Municipal Code Section 20-77. In that event, the city shall regard as
34 nonresponsive any bid, proposal or competitive selection process proposal received during such
35 time period that includes the contractor.

1 (h) The provisions of this division are declared to be separate and severable. If any clause,
2 sentence, paragraph, subdivision, section, subsection or portion of this division, or the application
3 thereof to any contractor, person, entity or circumstance is preempted or otherwise prohibited by
4 federal or state law or is held to be invalid, it shall not affect the validity of the remainder of this
5 division, or the validity of its application to other persons or circumstances.

6 **Section 4.** This ordinance shall be effective March 16, 2019.
7

8 **BALANCE OF PAGE INTENTIONALLY LEFT BLANK**

1 COMMITTEE APPROVAL DATE: February 26, 2019

2 MAYOR-COUNCIL DATE: February 26, 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: February 28, 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: _____