

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2019

COUNCIL BILL NO. CB19-1237
COMMITTEE OF REFERENCE:
Finance & Governance

A BILL

For an ordinance adding a new Chapter 58, Wages.

WHEREAS, despite a state-wide minimum wage rate, many working Denver residents struggle to afford the basic necessities of life;

WHEREAS, the health and welfare of all Denver residents is benefited and advanced when workers are paid a wage which enables them to earn a livable wage and establish self-sufficiency;

WHEREAS, the city seeks to confront the issue of wage inequity and cost of living affordability in the community;

WHEREAS, the city has historically demonstrated leadership on pay-equity issues;

WHEREAS, during the 2019 legislative session the Colorado legislature empowered local governments to establish a jurisdiction-wide minimum wage in accordance with certain requirements and restrictions mandated by state law;

WHEREAS, the Denver Revised Municipal Code requires payment of certain wages with respect to city contracts, however no jurisdiction-wide minimum wage was previously permitted pursuant to state law;

WHEREAS, ensuring that workers in Denver can support themselves and their families benefits the Denver economy and the well-being of the city;

WHEREAS, addressing the minimum wage needs of workers is a matter of significant local concern;

WHEREAS, studies of local minimum wage laws have demonstrated that jurisdiction-wide minimum wage laws can increase earnings for workers without negatively affecting overall employment;

WHEREAS, the city has consulted with surrounding local governments and extensively engaged with community stakeholders, including chambers of commerce, small and large businesses, businesses that employ tipped workers, workers, labor unions and numerous community groups;

WHEREAS, the city engaged with hundreds of community stakeholders by facilitating five (5) publicly-advertised open town hall meetings, by conducting open office hours to discuss minimum wage related-issues, and has met with dozens of community leaders to receive and consider advice

1 and feedback related to a Denver minimum wage;

2 **WHEREAS**, the city throughout its expansive outreach efforts solicited, received and
3 considered feedback, and revisited the terms of this ordinance based on stakeholder feedback;

4 **WHEREAS**, city council finds that a new chapter should be added to city code to require
5 employers throughout Denver to compensate workers no less than the Denver minimum wage
6 established herein;

7 **WHEREAS**, the city has enjoyed robust economic growth for a prolonged period, and if the
8 local economy is materially impaired subsequent to the effective date of this ordinance, and found
9 by the city not capable of reasonably-sustaining future increases to the minimum wage in effect
10 pursuant to this ordinance, the city will review and evaluate the appropriateness of future increases
11 to Denver’s minimum wage; and

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

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

15 **Section 1.** A new Chapter 58 - Wages, Article I. – In General, Section 58-1. – 58-15. of
16 the Denver Revised Municipal Code shall be added and read as follows:
17 Secs. 58-1. – 58.15. – Reserved.

18 **Section 2.** A new Chapter 58 - Wages, Article II. – Minimum Wage, Section 58-16. of the
19 Denver Revised Municipal Code shall be added and read as follows:
20 Sec. 58-16. –Denver minimum wage.

21 (a) *Required.* Subject to the terms of this article, every employer shall ensure its workers are
22 paid not less than the “Denver Minimum Wage” as calculated pursuant to Section 58-16(b) for work
23 performed in accordance with this article.

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

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

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

- 29 i. Beginning January 1, 2020: \$12.85 (twelve dollars and eighty-five cents) per hour;
- 30 ii. Beginning January 1, 2021: \$14.77 (fourteen dollars and seventy-seven cents) per hour;
- 31 and
- 32 iii. Beginning January 1, 2022: \$15.87 (fifteen dollars and eighty-seven cents) per hour.

1 (3) Tips regularly and actually received by a food and beverage worker may be applied to an
2 employer's obligation to pay such food and beverage worker the Denver minimum wage.
3 However, no more than \$3.02 per hour in tip income ("Tip Credit") may be used to partially
4 offset payment of the Denver minimum wage.

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

12 (5) In order to prevent inflation from eroding the value of the city's minimum wage rate, on
13 January 1, 2023, the Denver minimum wage rate shall increase by an amount corresponding
14 to the prior year's increase, if any, in the Consumer Price Index (Urban Wage Earners and
15 Clerical Workers, Denver-Aurora-Lakewood) or its successor index as published by the U.S.
16 Department of Labor or its successor agency ("CPI"). Annually thereafter, on the first of
17 January, the Denver minimum wage rate shall increase by an amount corresponding to the
18 prior year's increase, if any, in CPI.

19 (c) *Exclusions*. In accordance with Colorado law, this article shall not apply to work that: (1) is
20 not performed physically within the geographic boundaries of the city; (2) is performed by a worker
21 totaling less than four hours in any given week for a particular employer within the geographic
22 boundaries of the city; or (3) occurs in the city solely for the purpose of traveling through Denver
23 from a point of origin outside of the city to a destination outside of Denver, with no employment-
24 related or commercial stops in the city except for refueling or the worker's personal meals or errands.

25 (d) *Worker Complaints*. Subject to any rules and regulations that may be issued by the auditor,
26 any worker may submit a complaint of a violation of this article by her or his employer to the auditor.
27 The burden of demonstrating to the auditor's satisfaction that a violation has occurred rests with the
28 person making the complaint and shall be demonstrated by a preponderance of the evidence. Any
29 such complaint shall be made in writing to the auditor and shall include all information relied upon
30 by such person. If a worker filing a complaint pursuant to this Section 58-16(d) is unable to
31 reasonably file her or his complaint in writing, a complainant may request the auditor to assist him
32 or her with documenting any allegations to satisfy the written complaint requirement. A worker may
33 also consult with an attorney or other third-party for assistance when filing a complaint. The auditor

1 shall prioritize complaints received pursuant to rules established by the auditor and may investigate
2 any credible complaints. For any credible complaint investigated by the auditor, the auditor shall
3 notify any employer alleged to have violated this article of any credible complaint, and shall provide
4 a summary of findings regarding any such complaint to both the complainant and the employer. Any
5 determination by the auditor pursuant to this article is reviewable by the complained-of party,
6 pursuant to Section 58-16(h). Any complaint must be submitted to the auditor within one year of the
7 date the employer was alleged to have violated the requirements of this article, and shall include:
8 the worker's name and/or the name of their duly authorized representative, if applicable; the worker's
9 contact information; a detailed statement of the employer's alleged violation of the requirements of
10 this article, including readily available supporting documentation demonstrating a violation; and any
11 additional information requested by the auditor or pursuant to rules issued by the auditor. Employers
12 shall be subject to penalties and other consequences pursuant to this article for any actual
13 violation(s) that occurred within one year of the date a credible complaint was first and timely
14 submitted to the auditor pursuant to this Section 58-16(d) and within three years of the date an
15 investigation of an employer by the auditor (not limited to a specific complaint) is initiated following
16 the earlier of receipt of a credible worker complaint concerning a specific employer by the auditor,
17 referral of a complaint from the State of Colorado or any agency thereof, referral of a complaint from
18 a city agency specifically authorized to receive complaints made pursuant to this article, or filing of
19 a private right of action by a worker against an employer pursuant to this article. At any time, the
20 auditor may refer a worker complaint to an appropriate state or federal agency to coordinate
21 resources with respect to such complaint or otherwise assist a worker alleging a violation of this
22 article or other law.

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

1 of party, pursuant to Section 58-16(h). Any complaint must be submitted to the auditor within one
2 year of the date an employer was alleged to have violated the requirements of this article, and shall
3 include: a detailed statement of the employer's alleged violation of the requirements of this article,
4 including readily available supporting documentation demonstrating a violation; and any additional
5 information requested by the auditor or pursuant to rules issued by the auditor. Employers shall be
6 subject to penalties and other consequences pursuant to this article for any actual violation(s) that
7 occurred within one year of the date a credible third-party complaint was first and timely submitted
8 to the auditor pursuant to this Section 58-16(e) and within three years of the date an investigation of
9 an employer by the auditor (not limited to a specific complaint) is initiated following receipt of a
10 credible third-party complaint concerning a specific employer by the auditor. At any time, the auditor
11 may refer a third-party complaint to an appropriate state or federal agency to coordinate resources
12 with respect to such complaint or otherwise secure assistance for persons or entities alleging a
13 violation of this article or other law.

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

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

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

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

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

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

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

1 attempted or actual retaliation shall be regulated as follows:

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

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

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

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

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

- 1 misreporting, and the imposition of penalties pursuant to this article shall be reviewable as follows:
- 2 (1) Any employer who disputes any determination made by or on behalf of the city pursuant to
- 3 the authority of the auditor, which determination adversely affects such employer, may
- 4 petition the auditor for a hearing concerning such determination no later than thirty (30) days
- 5 after having been notified of any such determination. Compliance by an employer with the
- 6 provisions of this Section 58-16(h)(1) shall be a jurisdictional prerequisite to appeal any
- 7 determination made by the auditor pursuant to this article, and failure of compliance shall
- 8 forever bar any such appeal. The foregoing in no way shall preclude or limit a worker from
- 9 initiating a private cause of action pursuant to this article.
- 10 (2) The auditor shall designate as a hearing officer a person retained by the city for appeal
- 11 purposes.
- 12 (3) The petition for a hearing shall be in writing, and the facts and figures submitted shall be
- 13 submitted under oath or affirmation either in writing or orally at a hearing scheduled by the
- 14 hearing officer. The hearing, if any, shall take place in the city, and notice thereof and the
- 15 proceedings shall otherwise be in accordance with rules and regulations issued by the
- 16 auditor. The petitioner shall bear the burden of proof, and the standard of proof shall conform
- 17 with that in civil, nonjury cases in state district court.
- 18 (4) The designated hearing officer may hold hearings pursuant to this article, subpoena
- 19 witnesses and compel their attendance, administer oaths and take the testimony of any
- 20 person under oath and compel witnesses to produce for examination books and papers
- 21 related to the subject matter of the appeal.
- 22 (5) Following a hearing, the hearing officer shall make a final determination. Such final
- 23 determination shall be considered a final order and may be reviewed under Rule 106(a)(4)
- 24 of the state rules of civil procedure by the employer or by the city. A request for
- 25 reconsideration of the determination may be made if filed in writing with the hearing officer
- 26 within fifteen (15) days of the date of a final determination, in which case the hearing officer
- 27 shall review the record of the proceedings, and the determination shall be considered a final
- 28 order upon the date the hearing officer rules on the request for reconsideration.
- 29 (6) The district court of the second judicial district of the State of Colorado shall have original
- 30 jurisdiction in proceedings to review all questions of law and fact determined by the hearing
- 31 officer by order or writ under Rule 106(a)(4) of the state rules of civil procedure.
- 32 (i) *Recordkeeping requirements and inspection.* All employers shall retain sufficient payroll
- 33 records concerning work performed for a period of at least three years. After a worker or third-party

1 complaint determined credible by the auditor has been received, referral of a complaint from the
2 State of Colorado or any agency thereof, referral of a complaint from a city agency specifically
3 authorized to receive complaints made pursuant to this article, pursuant to an investigation in
4 accordance with Section 58-16(f), or a private right of action has been initiated by a worker against
5 an employer pursuant to this article, the employer shall promptly allow the auditor access to such
6 records at a reasonable time during normal business hours to review and assess employer's
7 compliance with the requirements of this article. The auditor's review of an employer's records
8 following receipt of a credible worker or third-party complaint, referral of a complaint from the State
9 of Colorado or any agency thereof, referral of a complaint from a city agency specifically authorized
10 to receive complaints made pursuant to this article, pursuant to an investigation in accordance with
11 Section 58-16(f), or initiation of a private right of action shall not be limited to workers who have filed
12 complaints. Should an employer not maintain or retain adequate records documenting the manner
13 and amount of wages paid for work performed pursuant to this article, or not allow the auditor
14 reasonable access to such records within thirty (30) days of an auditor request, there shall be a
15 presumption, rebuttable by clear and convincing evidence, that the employer violated this article for
16 the periods and for each worker for whom adequate records were not retained or access to such
17 records was not timely provided.

18 (j) *Private right of action, authorization and scope.* Within three (3) years of an alleged violation
19 of this article, any aggrieved party may bring a civil action in a court of competent jurisdiction against
20 an employer alleged to have violated this article, and, upon prevailing, shall be entitled to such legal
21 and equitable relief as may be appropriate to fully remedy the violation including, without limitation:
22 the payment of any wages unlawfully withheld and any unpaid overtime based on those wages
23 (including amounts that accrued after the filing of the civil action), interest on unpaid wages and
24 overtime compensation at a rate of 12 percent per annum from the date such wages were first due,
25 the payment of an additional sum as a penalty in the amount of \$100 to each worker whose rights
26 under this article were violated for each day that the violation occurred or continued, liquidated
27 damages in an amount equal up to three times the amount of unpaid wages and overtime
28 compensation in connection with such wages, reinstatement of employment (if applicable) and/or
29 other injunctive relief, and shall be awarded reasonable attorney fees and costs. Nothing in this
30 Section 58-16(j) shall be interpreted as restricting, precluding, or otherwise limiting a separate or
31 concurrent investigation by the auditor of an alleged violation of this article pursuant to city code.
32 Jeopardy shall not attach as a result of any administrative or civil enforcement action initiated
33 pursuant to this article.

1 **Section 2.** A new Chapter 58 - Wages, Article II. – Minimum Wage, Section 58-17. of the
2 Denver Revised Municipal Code shall be added and read as follows:

3 Sec. 58-17. – Enforcement, penalties and costs.

4 (a) *Enforcement.*

5 (1) Following notification of a worker or third-party complaint determined credible by the auditor,
6 a complaint referred to the auditor in accordance with this article, or pursuant to an
7 investigation in accordance with Section 58-16(f), an employer shall furnish to the auditor,
8 upon the auditor's request, a true and correct certified copy of the payroll records of all
9 workers in accordance with the terms of this article. Such payroll records shall reflect the
10 entire period of record keeping required by this article, and include information documenting
11 the number of hours worked by each worker, the hourly wage paid such workers, any
12 deductions made from worker wages including but not limited to any tax withholdings, and
13 the net amount of wages received by any such worker.

14 (2) Payroll records produced pursuant to Section 58-17(a)(1) shall be accompanied by a sworn
15 statement of the employer that records provided are a true and correct copy of the requested
16 payroll records pursuant to this article, that payments were made to workers as set forth in
17 the payroll records, that no deductions were made other than those described in such
18 records, and that any worker identified in a complaint and any other workers for whom the
19 auditor has requested the production of records have been paid at least the Denver minimum
20 wage for all work or a detailed description of all instances and ways in which the foregoing
21 requirements were not fully satisfied and all explanations therefore.

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

29 (4) The auditor is authorized to enforce findings and orders made pursuant to this article and
30 collect any and all assessed and unpaid penalties and other amounts from employers who
31 violate any of the terms of this article either informally, or by action initiated in state district
32 court.

33 (b) *Penalties.* Any employer subject to the requirements of this article shall as a penalty pay to

1 the city an amount as set forth below for each worker for each day they are paid less than the Denver
2 minimum wage for the performance of work.

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

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

8 b. Whether the employer has previously failed to satisfy the requirements of this article.

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

16 (3) An employer's penalty shall be an amount not less than one thousand dollars (\$1,000.00)
17 and not greater than two thousand five hundred dollars (\$2,500.00) for a violation, plus an
18 amount not less than ten (\$10) and not greater than seventy-five dollars (\$75.00) for each
19 day, or portion thereof, for each worker paid less than the Denver minimum wage rate for
20 work, if the employer has been assessed a penalty, but not more than two (2) other penalties,
21 within the previous three (3) years of the date of the complaint or notice of an investigation
22 is provided to employer for failure to comply with the terms of this article, unless all such
23 penalties were subsequently withdrawn or overturned during the same three (3) year period
24 pursuant to this article.

25 (4) An employer's penalty shall be an amount not less than two thousand five hundred dollars
26 (\$2,500.00) and not greater than five thousand dollars (\$5,000.00) for a violation, plus an
27 amount not less than fifty dollars (\$50.00) and not greater than one hundred dollars
28 (\$100.00) for each day, or portion thereof, for each worker paid less than the Denver
29 minimum wage rate for work, if the employer has been assessed three (3) or more other
30 penalties within the previous three (3) years of the date of the complaint or notice of an
31 investigation is provided to employer for failure to comply with the terms of this article, unless
32 any such penalties were subsequently withdrawn or reversed resulting in two (2) or fewer
33 penalties during the same three (3) year period pursuant to this article.

- 1 (5) An employer's penalty shall be up to one thousand dollars (\$1,000.00) for each instance in
2 which any employer fails to furnish the auditor a complete and certified payroll for any worker
3 filing a complaint against employer pursuant to this article, unless the failure of the employer
4 to furnish the auditor a complete and certified payroll was a good faith mistake and, if so,
5 the error was corrected within ten (10) days of the date the auditor notifies employer of such
6 failure. This penalty shall be imposed in conjunction with penalties imposed under Section
7 58-17(b)(2)-(4), and shall apply whether or not the work was performed by worker directly
8 for an employer or for another person or entity on the employer's behalf except as described
9 in 58-18(c).
- 10 (6) An employer's penalty shall be one thousand dollars (\$1,000.00) for each incident of false
11 reporting in connection with a certified payroll not corrected within ten (10) days of the date
12 the auditor notifies the employer of such report. A certified payroll shall be determined to be
13 a false report when information related to hours worked or wages paid reported on a certified
14 payroll is not identical to supportive documentation, including payments issued to workers,
15 timecards maintained by employer, invoices for work performed issued to other persons or
16 entities, and tax documents. This penalty shall be imposed in conjunction with penalties
17 imposed under Section 58-17(b)(2)-(5).
- 18 (7) An employer's penalty shall be five thousand dollars (\$5,000.00) for each violation of Section
19 58-16(g). This penalty shall be imposed in conjunction with penalties imposed under Section
20 58-17(b)(2)-(6).
- 21 (8) An employer's penalty shall be one thousand dollars (\$1,000.00) for each violation should
22 an employer be found by the auditor to have violated any obligation of employer described
23 in this article and not otherwise described in Section 58-17(b)(2)-(7).
- 24 (9) An employer who is found by the auditor pursuant to this article to have failed to ensure
25 payment of the Denver minimum wage to a worker for work shall, within thirty (30) days of
26 notice of a violation from the auditor, or if applicable, thirty (30) days from any final order
27 pursuant to Section 58-16(h), attempt in good faith to locate and pay any such worker all
28 wages required pursuant to this article. Failure by any employer to attempt in good faith to
29 locate and ensure payment of any underpaid worker in compliance with the terms of this
30 Section 58-17(b)(9) shall for any underpayment to a worker greater than fifty dollars (\$50.00)
31 result in a penalty of five thousand dollars (\$5,000.00) for each such violation. If an employer
32 is able to adequately document to auditor its good faith efforts to locate and timely pay a
33 worker all wages owed within forty five (45) days from any final order pursuant to Section

1 58-16(h) it shall not be subject to further penalty if it is unable to reasonably locate or pay a
2 worker all Denver minimum wages owed and strictly complies with Section 58-17(b)(10)-
3 (14). Any finding or penalty for failure to timely pay a worker, or attempt in good faith to
4 locate and timely pay a worker amounts owed pursuant to this Section 58-17(b)(9) shall be
5 subject to review pursuant to Section 58-16(h).

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

12 (11) Any check submitted pursuant to Section 58-17(b)(10) shall be negotiated by the city and
13 the proceeds deposited in the auditor's unclaimed minimum wage special trust fund.
14 Nothing in Section 58-17(b)(10)-(14) shall be construed to lessen an employer's
15 responsibility to attempt in good faith to locate and pay all workers all wages due pursuant
16 to this article.

17 (12) Any valid, verified claim by a worker for payment from the auditor's unclaimed minimum
18 wage special trust fund must be made prior to three (3) years after the date of the most
19 recent underpayment of wages by employer to the worker to whom such wages were due.
20 After such date, the city shall no longer be liable for payment. The city, as trustee, shall pay
21 such claimant only the amount of the check concerning such claimant that is actually
22 negotiated pursuant to Section 58-17(b)(11), regardless of any dispute as to any additional
23 amount of wages owed by an employer to the claimant. No interest shall be paid by city on
24 any funds received or disbursed pursuant to Section 58-17(b)(10)-(14).

25 (13) On the last working day of each calendar month, the amount of any claim for which the city
26 is no longer liable pursuant to Section 58-17(b)(12) shall be credited to the general fund,
27 except as otherwise required by law.

28 (14) The auditor shall maintain a list of all unclaimed, city-negotiated minimum wage checks
29 received. Such list shall be updated monthly, and shall be available for inspection at the
30 office of the auditor.

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

1 **Section 4.** A new Chapter 58 - Wages, Article II. – Minimum Wage, Section 58-18. of the
2 Denver Revised Municipal Code shall be added and read as follows:

3 Sec. 58-18. – Miscellaneous.

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

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

19 (c) *Responsibility of employer.* An employer may engage agents, subcontractors, individuals
20 and other entities to perform work on the employer's behalf. Each employer shall be solely
21 responsible for ensuring payment of the Denver minimum wage to any and all agents and/or persons
22 performing work on an individual employer's behalf for purposes of compliance with this article.
23 Employers may seek indemnification or recovery from third parties for penalties an employer incurs
24 for failure to comply with the requirements of this article. However, any such rights shall in no way
25 excuse an employer from taking whatever steps are necessary to ensure compliance with this article
26 by all persons engaging in work on behalf of or for the benefit of an employer, nor serve as a basis
27 for an employer to avoid payment of any monetary penalties or occurrence of other consequences
28 for violation(s) of this article. Expressly excluded from the requirements of this Section 58-18(c) is
29 work performed on behalf of an employer that is an individual person and that is exclusively limited
30 to work performed for home improvement purposes by another entity or person that qualifies as an
31 employer pursuant to this article.

32 (d) *Data collection and analysis.* The auditor shall track complaints and investigations during
33 each calendar year, beginning January 1, 2020, and by March 31 of the following year issue a written

1 report to City Council reporting on enforcement metrics and assessing the efficacy of this article to
2 ensure full payment of the Denver minimum wage for work performed and also to make
3 recommendations respecting any changes to this article the auditor believes necessary to promote
4 full and prompt payment of the Denver minimum wage to workers.

5 (e) *Definitions.* For purposes of this article, the following definitions shall apply:

6 “Adverse Action” shall mean denying a job or promotion, demoting, terminating, failure to
7 rehire after a seasonal interruption of work, threatening, penalizing, retaliating, engaging in unfair
8 immigration-related practices, filing a false report with a government agency, changing an
9 employee’s status to a nonemployee, and any other negative change to an aspect of employment,
10 including modification of pay, work hours, responsibilities, or other material change in the terms or
11 conditions of a person’s employment;

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

14 “Certified youth employment program” shall mean a program certified by the Denver
15 Economic Development & Opportunity (“DEDO”) agency that provides unemancipated minors
16 employment opportunities in conjunction with a curriculum designed to develop enumerated skills
17 and competencies of unemancipated minors. Any such program shall adhere with rules, regulations
18 and certification requirements issued by DEDO and provide skills development above and beyond
19 the time spent simply performing work in the job.

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

21 “Complaint” shall mean a complaint submitted pursuant to Section 58-16(d) or Section 58-
22 16(e);

23 “Employ, employed, or employed by” means to suffer or permit to work;

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

28 “Food and beverage worker” shall mean a worker for any business or enterprise that prepares
29 and offers for sale food or beverages for consumption either on or off an employer’s physical
30 premises;

31 “Successor” shall mean any person to whom an employer quitting, selling out, exchanging, or
32 disposing of a business sells or otherwise conveys in bulk and not in the ordinary course of the
33 employer’s business, a major part of employer’s property, whether real or personal, tangible or

1 intangible, of the employer’s business. For purposes of this definition, “person” means an individual,
2 receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, company,
3 limited liability company, association, joint venture, or any other legal or commercial entity;

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 “Unemancipated minor” shall mean a person less than 18 years of age who does not maintain
7 sole or primary responsibility for his or her own support, is not married or domiciled separately from
8 his or her parents or guardian, and is unable to show that his or her well-being is substantially
9 dependent on being gainfully employed.

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

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

19 (e) The provisions of this article are declared to be separate and severable. If any clause,
20 sentence, paragraph, subdivision, section, subsection or portion of this article, or the application
21 thereof to any employer, person, entity or circumstance is preempted or otherwise prohibited by
22 federal or state law or is held to be invalid, it shall not affect the validity of the remainder of this
23 article, or the validity of its application to other persons or circumstances.

24 **Section 5.** This ordinance shall be effective January 1, 2020.

25 **BALANCE OF PAGE INTENTIONALLY LEFT BLANK**
26

1 COMMITTEE APPROVAL DATE: November 12, 2019.
2 MAYOR-COUNCIL DATE: N/A.
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: November 13, 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: Kristin J. Crawford, Assistant City Attorney DATE: Nov 14, 2019