

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 a long history of embracing equal pay for equal work, and finds that
8 it is in the best interest of the city and workers that all persons be paid not less than the minimum
9 wage regardless of age or ability/disability, but that where minors are enrolled in a certified youth
10 employment program that meets the criteria established by this ordinance and DEDO they are
11 receiving valuable educational, training and/or career development benefits that justify up to a 15%
12 reduction in the minimum wage paid only to youth under the age of 18 enrolled in such certified
13 programs, and that no person other than such minors shall be exempted from the requirement that
14 all workers be paid the minimum wage for work performed;

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

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

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

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

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

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

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

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

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

5 i. Beginning January 1, 2020: \$12.85 (twelve dollars and eighty-five cents) per hour;

6 ii. Beginning January 1, 2021: \$14.77 (fourteen dollars and seventy-seven cents) per hour;

7 and

8 iii. Beginning January 1, 2022: \$15.87 (fifteen dollars and eighty-seven cents) per hour.

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

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

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

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

1 (d) *Worker Complaints*. Subject to any rules and regulations that may be issued by the auditor,
2 any worker may submit a complaint of a violation of this article by her or his employer to the auditor.
3 The burden of demonstrating to the auditor’s satisfaction that a violation has occurred rests with the
4 person making the complaint and shall be demonstrated by a preponderance of the evidence. Any
5 such complaint shall be made in writing to the auditor and shall include all information relied upon
6 by such person. If a worker filing a complaint pursuant to this Section 58-16(d) is unable to
7 reasonably file her or his complaint in writing, a complainant may request the auditor to assist him
8 or her with documenting any allegations to satisfy the written complaint requirement. A worker may
9 also consult with an attorney or other third-party for assistance when filing a complaint. The auditor
10 shall prioritize complaints received pursuant to rules established by the auditor and may investigate
11 any credible complaints. For any credible complaint investigated by the auditor, the auditor shall
12 notify any employer alleged to have violated this article of any credible complaint, and shall provide
13 a summary of findings regarding any such complaint to both the complainant and the employer. Any
14 determination by the auditor pursuant to this article is reviewable by the complained-of party,
15 pursuant to Section 58-16(h). Any complaint must be submitted to the auditor within one year of the
16 date the employer was alleged to have violated the requirements of this article, and shall include:
17 the worker’s name and/or the name of their duly authorized representative, if applicable; the worker’s
18 contact information; a detailed statement of the employer’s alleged violation of the requirements of
19 this article, including readily available supporting documentation demonstrating a violation; and any
20 additional information requested by the auditor or pursuant to rules issued by the auditor. Employers
21 shall be subject to penalties and other consequences pursuant to this article for any actual
22 violation(s) that occurred within one year of the date a credible complaint was first and timely
23 submitted to the auditor pursuant to this Section 58-16(d) and within three years of the date an
24 investigation of an employer by the auditor (not limited to a specific complaint) is initiated following
25 the earlier of receipt of a credible worker complaint concerning a specific employer by the auditor,
26 referral of a complaint from the State of Colorado or any agency thereof, referral of a complaint from
27 a city agency specifically authorized to receive complaints made pursuant to this article, or filing of
28 a private right of action by a worker against an employer pursuant to this article. At any time, the
29 auditor may refer a worker complaint to an appropriate state or federal agency to coordinate
30 resources with respect to such complaint or otherwise assist a worker alleging a violation of this
31 article or other law.

32 (e) *Third party complaints*. Subject to any rules and regulations that may be issued by the
33 auditor, any person or entity may submit a complaint of a violation of this article to the auditor. The

1 burden of demonstrating to the auditor's satisfaction that a violation has occurred rests with the
2 person or entity making the complaint and shall be demonstrated by a preponderance of the
3 evidence. Any non-worker complaint shall be made in writing to the auditor and shall include all
4 information relied upon by such person or entity. The auditor shall prioritize complaints received
5 pursuant to rules established by the auditor and may investigate any credible complaints. For any
6 credible complaint investigated by the auditor, the auditor shall notify any employer alleged to have
7 violated this article of any credible complaint, and shall provide a summary of findings regarding any
8 such complaint to both the complainant (unless the complaint was filed anonymously) and the
9 employer. Any determination by the auditor pursuant to this article is reviewable by the complained-
10 of party, pursuant to Section 58-16(h). Any complaint must be submitted to the auditor within one
11 year of the date an employer was alleged to have violated the requirements of this article, and shall
12 include: a detailed statement of the employer's alleged violation of the requirements of this article,
13 including readily available supporting documentation demonstrating a violation; and any additional
14 information requested by the auditor or pursuant to rules issued by the auditor. Employers shall be
15 subject to penalties and other consequences pursuant to this article for any actual violation(s) that
16 occurred within one year of the date a credible third-party complaint was first and timely submitted
17 to the auditor pursuant to this Section 58-16(e) and within three years of the date an investigation of
18 an employer by the auditor (not limited to a specific complaint) is initiated following receipt of a
19 credible third-party complaint concerning a specific employer by the auditor. At any time, the auditor
20 may refer a third-party complaint to an appropriate state or federal agency to coordinate resources
21 with respect to such complaint or otherwise secure assistance for persons or entities alleging a
22 violation of this article or other law.

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

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

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

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

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

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

10 (g) *Retaliation strictly prohibited.* No employer shall interfere with, restrain, deny, assist another
11 person or entity, or attempt to deny the exercise of any right protected under this article. Any
12 attempted or actual retaliation shall be regulated as follows:

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

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

30 (3) It shall be a rebuttable presumption of retaliation if an employer or any other entity or person
31 takes an adverse action against a person within 90 days of the person’s exercise of rights
32 protected in this article. However, in the case of seasonal work that ended before the close
33 of a 90-day period, the presumption also applies if the employer or other person or entity

1 fails to rehire a former worker at the next opportunity for work in the same position. The
2 employer may rebut this presumption with clear and convincing evidence that the adverse
3 action was taken for a lawful purpose.

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

9 (h) *City-initiated enforcement; appeals.* Any determination of the auditor related to the payment
10 of the Denver minimum wage and an employer's strict adherence to the requirements of this article
11 including, but not limited to, determinations of worker status, determinations of underpayment or
12 misreporting, and the imposition of penalties pursuant to this article shall be reviewable as follows:

- 13 (1) Any employer who disputes any determination made by or on behalf of the city pursuant to
14 the authority of the auditor, which determination adversely affects such employer, may
15 petition the auditor for a hearing concerning such determination no later than thirty (30) days
16 after having been notified of any such determination. Compliance by an employer with the
17 provisions of this Section 58-16(h)(1) shall be a jurisdictional prerequisite to appeal any
18 determination made by the auditor pursuant to this article, and failure of compliance shall
19 forever bar any such appeal. The foregoing in no way shall preclude or limit a worker from
20 initiating a private cause of action pursuant to this article.
- 21 (2) The auditor shall designate as a hearing officer a person retained by the city for appeal
22 purposes.
- 23 (3) The petition for a hearing shall be in writing, and the facts and figures submitted shall be
24 submitted under oath or affirmation either in writing or orally at a hearing scheduled by the
25 hearing officer. The hearing, if any, shall take place in the city, and notice thereof and the
26 proceedings shall otherwise be in accordance with rules and regulations issued by the
27 auditor. The petitioner shall bear the burden of proof, and the standard of proof shall conform
28 with that in civil, nonjury cases in state district court.
- 29 (4) The designated hearing officer may hold hearings pursuant to this article, subpoena
30 witnesses and compel their attendance, administer oaths and take the testimony of any
31 person under oath and compel witnesses to produce for examination books and papers
32 related to the subject matter of the appeal.

1 (5) Following a hearing, the hearing officer shall make a final determination. Such final
2 determination shall be considered a final order and may be reviewed under Rule 106(a)(4)
3 of the state rules of civil procedure by the employer or by the city. A request for
4 reconsideration of the determination may be made if filed in writing with the hearing officer
5 within fifteen (15) days of the date of a final determination, in which case the hearing officer
6 shall review the record of the proceedings, and the determination shall be considered a final
7 order upon the date the hearing officer rules on the request for reconsideration.

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

11 (i) *Recordkeeping requirements and inspection.* All employers shall retain sufficient payroll
12 records concerning work performed for a period of at least three years. After a worker or third-party
13 complaint determined credible by the auditor has been received, referral of a complaint from the
14 State of Colorado or any agency thereof, referral of a complaint from a city agency specifically
15 authorized to receive complaints made pursuant to this article, pursuant to an investigation in
16 accordance with Section 58-16(f), or a private right of action has been initiated by a worker against
17 an employer pursuant to this article, the employer shall promptly allow the auditor access to such
18 records at a reasonable time during normal business hours to review and assess employer's
19 compliance with the requirements of this article. The auditor's review of an employer's records
20 following receipt of a credible worker or third-party complaint, referral of a complaint from the State
21 of Colorado or any agency thereof, referral of a complaint from a city agency specifically authorized
22 to receive complaints made pursuant to this article, pursuant to an investigation in accordance with
23 Section 58-16(f), or initiation of a private right of action shall not be limited to workers who have filed
24 complaints. Should an employer not maintain or retain adequate records documenting the manner
25 and amount of wages paid for work performed pursuant to this article, or not allow the auditor
26 reasonable access to such records within thirty (30) days of an auditor request, there shall be a
27 presumption, rebuttable by clear and convincing evidence, that the employer violated this article for
28 the periods and for each worker for whom adequate records were not retained or access to such
29 records was not timely provided.

30 (j) *Private right of action, authorization and scope.* Within three (3) years of an alleged violation
31 of this article, any aggrieved party may bring a civil action in a court of competent jurisdiction against
32 an employer alleged to have violated this article, and, upon prevailing, shall be entitled to such legal
33 and equitable relief as may be appropriate to fully remedy the violation including, without limitation:

1 the payment of any wages unlawfully withheld and any unpaid overtime based on those wages
2 (including amounts that accrued after the filing of the civil action), interest on unpaid wages and
3 overtime compensation at a rate of 12 percent per annum from the date such wages were first due,
4 the payment of an additional sum as a penalty in the amount of \$100 to each worker whose rights
5 under this article were violated for each day that the violation occurred or continued, liquidated
6 damages in an amount equal up to three times the amount of unpaid wages and overtime
7 compensation in connection with such wages, reinstatement of employment (if applicable) and/or
8 other injunctive relief, and shall be awarded reasonable attorney fees and costs. Nothing in this
9 Section 58-16(j) shall be interpreted as restricting, precluding, or otherwise limiting a separate or
10 concurrent investigation by the auditor of an alleged violation of this article pursuant to city code.
11 Jeopardy shall not attach as a result of any administrative or civil enforcement action initiated
12 pursuant to this article.

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

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

16 (a) *Enforcement.*

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

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

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

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

12 (b) *Penalties.* Any employer subject to the requirements of this article shall as a penalty pay to
13 the city an amount as set forth below for each worker for each day they are paid less than the Denver
14 minimum wage for the performance of work.

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

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

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

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

28 (3) An employer's penalty shall be an amount not less than one thousand dollars (\$1,000.00)
29 and not greater than two thousand five hundred dollars (\$2,500.00) for a violation, plus an
30 amount not less than ten (\$10) and not greater than seventy-five dollars (\$75.00) for each
31 day, or portion thereof, for each worker paid less than the Denver minimum wage rate for
32 work, if the employer has been assessed a penalty, but not more than two (2) other penalties,
33 within the previous three (3) years of the date of the complaint or notice of an investigation

1 is provided to employer for failure to comply with the terms of this article, unless all such
2 penalties were subsequently withdrawn or overturned during the same three (3) year period
3 pursuant to this article.

4 (4) An employer's penalty shall be an amount not less than two thousand five hundred dollars
5 (\$2,500.00) and not greater than five thousand dollars (\$5,000.00) for a violation, plus an
6 amount not less than fifty dollars (\$50.00) and not greater than one hundred dollars
7 (\$100.00) for each day, or portion thereof, for each worker paid less than the Denver
8 minimum wage rate for work, if the employer has been assessed three (3) or more other
9 penalties within the previous three (3) years of the date of the complaint or notice of an
10 investigation is provided to employer for failure to comply with the terms of this article, unless
11 any such penalties were subsequently withdrawn or reversed resulting in two (2) or fewer
12 penalties during the same three (3) year period pursuant to this article.

13 (5) An employer's penalty shall be up to one thousand dollars (\$1,000.00) for each instance in
14 which any employer fails to furnish the auditor a complete and certified payroll for any worker
15 filing a complaint against employer pursuant to this article, unless the failure of the employer
16 to furnish the auditor a complete and certified payroll was a good faith mistake and, if so,
17 the error was corrected within ten (10) days of the date the auditor notifies employer of such
18 failure. This penalty shall be imposed in conjunction with penalties imposed under Section
19 58-17(b)(2)-(4), and shall apply whether or not the work was performed by worker directly
20 for an employer or for another person or entity on the employer's behalf except as described
21 in 58-18(c).

22 (6) An employer's penalty shall be one thousand dollars (\$1,000.00) for each incident of false
23 reporting in connection with a certified payroll not corrected within ten (10) days of the date
24 the auditor notifies the employer of such report. A certified payroll shall be determined to be
25 a false report when information related to hours worked or wages paid reported on a certified
26 payroll is not identical to supportive documentation, including payments issued to workers,
27 timecards maintained by employer, invoices for work performed issued to other persons or
28 entities, and tax documents. This penalty shall be imposed in conjunction with penalties
29 imposed under Section 58-17(b)(2)-(5).

30 (7) An employer's penalty shall be five thousand dollars (\$5,000.00) for each violation of Section
31 58-16(g). This penalty shall be imposed in conjunction with penalties imposed under Section
32 58-17(b)(2)-(6).

- 1 (8) An employer's penalty shall be one thousand dollars (\$1,000.00) for each violation should
2 an employer be found by the auditor to have violated any obligation of employer described
3 in this article and not otherwise described in Section 58-17(b)(2)-(7).
- 4 (9) An employer who is found by the auditor pursuant to this article to have failed to ensure
5 payment of the Denver minimum wage to a worker for work shall, within thirty (30) days of
6 notice of a violation from the auditor, or if applicable, thirty (30) days from any final order
7 pursuant to Section 58-16(h), attempt in good faith to locate and pay any such worker all
8 wages required pursuant to this article. Failure by any employer to attempt in good faith to
9 locate and ensure payment of any underpaid worker in compliance with the terms of this
10 Section 58-17(b)(9) shall for any underpayment to a worker greater than fifty dollars (\$50.00)
11 result in a penalty of five thousand dollars (\$5,000.00) for each such violation. If an employer
12 is able to adequately document to auditor its good faith efforts to locate and timely pay a
13 worker all wages owed within forty five (45) days from any final order pursuant to Section
14 58-16(h) it shall not be subject to further penalty if it is unable to reasonably locate or pay a
15 worker all Denver minimum wages owed and strictly complies with Section 58-17(b)(10)-
16 (14). Any finding or penalty for failure to timely pay a worker, or attempt in good faith to
17 locate and timely pay a worker amounts owed pursuant to this Section 58-17(b)(9) shall be
18 subject to review pursuant to Section 58-16(h).
- 19 (10) Any employer who is found by a final order to have failed to pay a worker or workers all
20 amounts owed pursuant to this article and who is unable to timely locate and pay any amount
21 owed to a worker may submit to the auditor, for each worker to whom wages are due, a
22 check payable to that worker or to the City of Denver in a manner that is negotiable by either
23 the worker or the city. Each such check shall be for the amount of the difference between
24 wages owed a worker pursuant to this article and the amount actually paid to that worker.
- 25 (11) Any check submitted pursuant to Section 58-17(b)(10) shall be negotiated by the city and
26 the proceeds deposited in the auditor's unclaimed minimum wage special trust fund.
27 Nothing in Section 58-17(b)(10)-(14) shall be construed to lessen an employer's
28 responsibility to attempt in good faith to locate and pay all workers all wages due pursuant
29 to this article.
- 30 (12) Any valid, verified claim by a worker for payment from the auditor's unclaimed minimum
31 wage special trust fund must be made prior to three (3) years after the date of the most
32 recent underpayment of wages by employer to the worker to whom such wages were due.
33 After such date, the city shall no longer be liable for payment. The city, as trustee, shall pay

1 such claimant only the amount of the check concerning such claimant that is actually
2 negotiated pursuant to Section 58-17(b)(11), regardless of any dispute as to any additional
3 amount of wages owed by an employer to the claimant. No interest shall be paid by city on
4 any funds received or disbursed pursuant to Section 58-17(b)(10)-(14).

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

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

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

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

16 Sec. 58-18. – Miscellaneous.

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

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

32 (c) *Responsibility of employer.* An employer may engage agents, subcontractors, individuals
33 and other entities to perform work on the employer's behalf. Each employer shall be solely

1 responsible for ensuring payment of the Denver minimum wage to any and all agents and/or persons
2 performing work on an individual employer's behalf for purposes of compliance with this article.
3 Employers may seek indemnification or recovery from third parties for penalties an employer incurs
4 for failure to comply with the requirements of this article. However, any such rights shall in no way
5 excuse an employer from taking whatever steps are necessary to ensure compliance with this article
6 by all persons engaging in work on behalf of or for the benefit of an employer, nor serve as a basis
7 for an employer to avoid payment of any monetary penalties or occurrence of other consequences
8 for violation(s) of this article. Expressly excluded from the requirements of this Section 58-18(c) is
9 work performed on behalf of an employer that is an individual person and that is exclusively limited
10 to work performed for home improvement purposes by another entity or person that qualifies as an
11 employer pursuant to this article.

12 (d) *Data collection and analysis.* The auditor shall track complaints and investigations during
13 each calendar year, beginning January 1, 2020, and by March 31 of the following year issue a written
14 report to City Council reporting on enforcement metrics and assessing the efficacy of this article to
15 ensure full payment of the Denver minimum wage for work performed and also to make
16 recommendations respecting any changes to this article the auditor believes necessary to promote
17 full and prompt payment of the Denver minimum wage to workers.

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

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

25 "Aggrieved party" means a worker or other person who suffers tangible or intangible harm
26 due to an employer or other person's violation of this article;

27 "Certified youth employment program" shall mean a program certified by the Denver
28 Economic Development & Opportunity ("DEDO") agency that provides unemancipated minors
29 employment opportunities in conjunction with a curriculum designed to develop enumerated skills
30 and competencies of unemancipated minors. Any such program shall adhere with rules, regulations
31 and certification requirements issued by DEDO and provide skills development above and beyond
32 the time spent simply performing work in the job.

33 "City" shall mean the City and County of Denver;

1 "Complaint" shall mean a complaint submitted pursuant to Section 58-16(d) or Section 58-
2 16(e);

3 "Employ, employed, or employed by" means to suffer or permit to work;

4 "Employer" shall mean any corporation, proprietorship, partnership, nonprofit, joint venture,
5 association, individual, limited liability company, business trust, or any person or group of persons,
6 and any of the foregoing acting directly or indirectly in the interest of an employer in relation to a
7 worker, and any successor thereof;

8 "Food and beverage worker" shall mean a worker for any business or enterprise that prepares
9 and offers for sale food or beverages for consumption either on or off an employer's physical
10 premises;

11 "Successor" shall mean any person to whom an employer quitting, selling out, exchanging, or
12 disposing of a business sells or otherwise conveys in bulk and not in the ordinary course of the
13 employer's business, a major part of employer's property, whether real or personal, tangible or
14 intangible, of the employer's business. For purposes of this definition, "person" means an individual,
15 receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, company,
16 limited liability company, association, joint venture, or any other legal or commercial entity;

17 "Tips" shall mean a verifiable sum presented directly and customarily by customers as a gift
18 or gratuity in recognition of some service performed for customers by the person receiving the tip;

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

23 "Work" shall mean any services performed on behalf of or for the benefit of an employer
24 whether on an hourly, piecework, commission, time, task, or other basis but shall not include services
25 performed as an independent contractor; and

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

32 (e) The provisions of this article are declared to be separate and severable. If any clause,
33 sentence, paragraph, subdivision, section, subsection or portion of this article, or the application

1 thereof to any employer, person, entity or circumstance is preempted or otherwise prohibited by
2 federal or state law or is held to be invalid, it shall not affect the validity of the remainder of this
3 article, or the validity of its application to other persons or circumstances.

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

5

6

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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: _____, Assistant City Attorney DATE: _____