

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2019

COUNCIL BILL NO. CB19-
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

1 minimum wage related-issues, and has met with dozens of community leaders to receive and
2 consider advice and feedback related to a Denver minimum wage;

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

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

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

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

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

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

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

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

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

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

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

- 30 i. Beginning January 1, 2020: \$12.85 (twelve dollars and eighty-five cents) per hour;
- 31 ii. Beginning January 1, 2021: \$14.77 (fourteen dollars and seventy-seven cents) per hour;
- 32 and
- 33 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
14 corresponding to the prior year's increase, if any, in the Consumer Price Index (Urban
15 Wage Earners and Clerical Workers, Denver-Aurora-Lakewood) or its successor index as
16 published by the U.S. Department of Labor or its successor agency ("CPI"). Annually
17 thereafter, on the first of January, the Denver minimum wage rate shall increase by an
18 amount corresponding to the 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
25 errands.

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

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

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

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

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

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

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

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

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

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

33 (g) *Retaliation strictly prohibited.* No employer shall interfere with, restrain, deny, assist

1 another person or entity, or attempt to deny the exercise of any right protected under this article.
2 Any attempted or actual retaliation shall be regulated as follows:

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

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

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

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

32 (h) *City-initiated enforcement; appeals.* Any determination of the auditor related to the
33 payment of the Denver minimum wage and an employer's strict adherence to the requirements of

1 this article including, but not limited to, determinations of worker status, determinations of
2 underpayment or misreporting, and the imposition of penalties pursuant to this article shall be
3 reviewable as follows:

4 (1) Any employer who disputes any determination made by or on behalf of the city pursuant to
5 the authority of the auditor, which determination adversely affects such employer, may
6 petition the auditor for a hearing concerning such determination no later than thirty (30)
7 days after having been notified of any such determination. Compliance by an employer
8 with the provisions of this Section 58-16(h)(1) shall be a jurisdictional prerequisite to
9 appeal any determination made by the auditor pursuant to this article, and failure of
10 compliance shall forever bar any such appeal. The foregoing in no way shall preclude or
11 limit a worker from initiating a private cause of action pursuant to this article.

12 (2) The auditor shall designate as a hearing officer a person retained by the city for appeal
13 purposes.

14 (3) The petition for a hearing shall be in writing, and the facts and figures submitted shall be
15 submitted under oath or affirmation either in writing or orally at a hearing scheduled by the
16 hearing officer. The hearing, if any, shall take place in the city, and notice thereof and the
17 proceedings shall otherwise be in accordance with rules and regulations issued by the
18 auditor. The petitioner shall bear the burden of proof, and the standard of proof shall
19 conform with that in civil, nonjury cases in state district court.

20 (4) The designated hearing officer may hold hearings pursuant to this article, subpoena
21 witnesses and compel their attendance, administer oaths and take the testimony of any
22 person under oath and compel witnesses to produce for examination books and papers
23 related to the subject matter of the appeal.

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

1 (6) 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
3 hearing officer by order or writ under Rule 106(a)(4) of the state rules of civil procedure.

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

23 (j) *Private right of action, authorization and scope.* Within three (3) years of an alleged
24 violation of this article, any aggrieved party may bring a civil action in a court of competent
25 jurisdiction against an employer alleged to have violated this article, and, upon prevailing, shall be
26 entitled to such legal and equitable relief as may be appropriate to fully remedy the violation
27 including, without limitation: the payment of any wages unlawfully withheld and any unpaid
28 overtime based on those wages (including amounts that accrued after the filing of the civil action),
29 interest on unpaid wages and overtime compensation at a rate of 12 percent per annum from the
30 date such wages were first due, the payment of an additional sum as a penalty in the amount of
31 \$100 to each worker whose rights under this article were violated for each day that the violation
32 occurred or continued, liquidated damages in an amount equal up to three times the amount of
33 unpaid wages and overtime compensation in connection with such wages, reinstatement of

1 employment (if applicable) and/or other injunctive relief, and shall be awarded reasonable attorney
2 fees and costs. Nothing in this Section 58-16(j) shall be interpreted as restricting, precluding, or
3 otherwise limiting a separate or concurrent investigation by the auditor of an alleged violation of
4 this article pursuant to city code. Jeopardy shall not attach as a result of any administrative or civil
5 enforcement action initiated pursuant to this article.

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

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

9 (a) *Enforcement.*

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

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

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

1 worker's primary language, in a physical or electronic form that is reasonably conspicuous
2 and accessible.

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

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

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

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

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

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

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

32 (4) An employer's penalty shall be an amount not less than two thousand five hundred dollars
33 (\$2,500.00) and not greater than five thousand dollars (\$5,000.00) for a violation, plus an

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

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

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

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

28 (8) An employer's penalty shall be one thousand dollars (\$1,000.00) for each violation should
29 an employer be found by the auditor to have violated any obligation of employer described
30 in this article and not otherwise described in Section 58-17(b)(2)-(7).

31 (9) An employer who is found by the auditor pursuant to this article to have failed to ensure
32 payment of the Denver minimum wage to a worker for work shall, within thirty (30) days of
33 notice of a violation from the auditor, or if applicable, thirty (30) days from any final order

1 pursuant to Section 58-16(h), attempt in good faith to locate and pay any such worker all
2 wages required pursuant to this article. Failure by any employer to attempt in good faith to
3 locate and ensure payment of any underpaid worker in compliance with the terms of this
4 Section 58-17(b)(8) shall for any underpayment to a worker greater than fifty dollars
5 (\$50.00) result in a penalty of five thousand dollars (\$5,000.00) for each such violation. If
6 an employer is able to adequately document to auditor its good faith efforts to locate and
7 timely pay a worker all wages owed within forty five (45) days from any final order pursuant
8 to Section 58-16(h) it shall not be subject to further penalty if it is unable to reasonably
9 locate or pay a worker all Denver minimum wages owed and strictly complies with Section
10 58-17(b)(10)-(14). Any finding or penalty for failure to timely pay a worker, or attempt in
11 good faith to locate and timely pay a worker amounts owed pursuant to this Section 58-
12 17(b)(9) shall be subject to review pursuant to Section 58-16(h).

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

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

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

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

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

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

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

12 Sec. 58-18. – Miscellaneous.

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

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

28 (c) *Responsibility of employer.* An employer may engage agents, subcontractors, individuals
29 and other entities to perform work on the employer's behalf. Each employer shall be solely
30 responsible for ensuring payment of the Denver minimum wage to any and all agents and/or
31 persons performing work on an individual employer's behalf for purposes of compliance with this
32 article. Employers may seek indemnification or recovery from third parties for penalties an
33 employer incurs for failure to comply with the requirements of this article. However, any such

1 rights shall in no way excuse an employer from taking whatever steps are necessary to ensure
2 compliance with this article by all persons engaging in work on behalf of or for the benefit of an
3 employer, nor serve as a basis for an employer to avoid payment of any monetary penalties or
4 occurrence of other consequences for violation(s) of this article. Expressly excluded from the
5 requirements of this Section 58.7-18(c) is work performed on behalf of an employer that is an
6 individual person and that is exclusively limited to work performed for home improvement purposes
7 by another entity or person that qualifies as an employer pursuant to this article.

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

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

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

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

23 “Certified youth employment program” shall mean a program certified by the Denver
24 Economic Development & Opportunity (“DED0”) agency that provides unemancipated minors
25 employment opportunities in conjunction with a curriculum designed to develop enumerated skills
26 and competencies of unemancipated minors. Any such program shall adhere with rules,
27 regulations and certification requirements issued by DED0 and provide skills development above
28 and beyond the time spent simply performing work in the job.

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

30 “Complaint” shall mean a complaint submitted pursuant to Section 58-16(d) or Section 58-
31 16(e);

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

33 “Employer” shall mean any corporation, proprietorship, partnership, nonprofit, joint venture,

1 association, individual, limited liability company, business trust, or any person or group of persons,
2 and any of the foregoing acting directly or indirectly in the interest of an employer in relation to a
3 worker, and any successor thereof;

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

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

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

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

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

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

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

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

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BALANCE OF PAGE INTENTIONALLY LEFT BLANK

1 COMMITTEE APPROVAL DATE: _____, 2019.
2 MAYOR-COUNCIL DATE: _____, 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: _____, 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: _____