

1 BY AUTHORITY

2 ORDINANCE NO. _____
3 SERIES OF 2023

COUNCIL BILL NO. 23-1046
COMMITTEE OF REFERENCE:
4 Finance & Governance

5
6 A BILL

7
8 **For an ordinance amending Section 20-76, Division 3, Article IV, Chapter 20 of the**
9 **Denver Revised Municipal Code transferring the authority to determine the**
10 **prevailing wage paid to certain workers on city contracts and in city buildings**
11 **from the Career Service Board to the Auditor.**
12

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

14 **Section 1.** That division 3, article IV, Chapter 20 of the D.R.M.C. shall be amended by deleting
15 the language stricken and adding the language underlined, to read as follows:

16 **Sec. 20-76. – Payment of prevailing wages.**

17 (a) *Required.* Every worker, mechanic or other laborer employed by any contractor or subcontractor
18 in the work of drayage or of construction, alteration, improvement, repair, maintenance or demolition
19 on any city-owned or leased building or on any city-owned land, pursuant to a contract by or in behalf
20 of the city, or for any agency of the city, or financed in whole or in part by the city, or any agency of the
21 city, or engaged in the work of a doorkeeper, caretaker, cleaner, window washer, porter, keeper,
22 janitor, or in similar custodial or janitorial work in connection with the operation of any such city-owned
23 or leased building by or in behalf of the city, or for any agency of the city, or financed in whole or in part
24 by the city, or any agency of the city, shall be paid not less than the wages and fringe benefits
25 prevailing for the same class and kind of work in the Denver metropolitan area as determined by the
26 ~~career service board~~ auditor under subsection (c). The Denver metropolitan area shall be determined
27 by the ~~career service board~~ auditor. This section shall not apply to any participant in a youth
28 employment program certified by the city where the participant is employed in non-construction work,
29 including the work of materials furnishing, servicing and maintenance of any city-owned or leased
30 building or on city-owned land and the work of landscaping that is not performed in connection with the
31 construction or renovation of a city-owned or leased building; nor shall this section apply to situations
32 where there is no contract directly requiring or permitting the work described above, or contracts that
33 are neither a revenue or expenditure contract contemplating such work, such as licenses or permits to
34 use city-owned land.

35 (b) *Contract specifications.* Every contract with an aggregate value, including all change orders,

1 amendments or other alterations to the value, in excess of two thousand dollars (\$2,000.00) to which
2 the city or any of its agencies is a party which requires the performance of work involving drayage or
3 involving construction, alteration, improvements, repairs, maintenance or demolition of any city-owned
4 or leased building or on any city-owned land, or which requires the performance of the work of a
5 doorkeeper, caretaker, cleaner, window washer, porter, keeper, janitor, or similar custodial or janitorial
6 work in connection with the operation of any such public building or the prosecution of any such public
7 work, shall contain a provision stating that the minimum wages to be paid for every class of laborer,
8 mechanic and worker shall be not less than the scale of wages from time to time determined to be the
9 prevailing wages under subsection (c). Every contract based upon these specifications shall include
10 the actual date of bid or proposal issuance, if applicable, or the date of the written encumbrance if no
11 bid/proposal issuance date is applicable. Contracts shall contain a stipulation that the contractor or
12 subcontractor shall pay mechanics, laborers and workers employed directly upon the site of the work
13 the full amounts accrued at time of payment, computed at wage rates not less than those stated or
14 referenced in the specifications, and any addenda thereto, on the actual date of bid issuance, or on the
15 date of the written encumbrance, as applicable, for contracts let by informal procedure under
16 D.R.M.C. section 20-63(b), regardless of any contractual relationship which may be alleged to exist
17 between the contractor or subcontractor and such laborers, mechanics and workers. Increases in
18 prevailing wages subsequent to the date of the contract for a period not to exceed one (1) year shall
19 not be mandatory on either the contractor or subcontractors. Future changes in prevailing wages on
20 contracts whose period of performance exceeds one (1) year shall be mandatory for the contractor and
21 subcontractors only on the yearly anniversary of the actual date of bid or proposal issuance, if
22 applicable, or the date of the written encumbrance if no bid/proposal issuance date is applicable.
23 Except as provided below, in no event shall any increases in prevailing wages over the amounts
24 thereof as stated in such specifications result in any increased liability on the part of the city, and the
25 possibility and risk of any such increase is assumed by all contractors entering into any such contract
26 with the city. Notwithstanding the foregoing, the city may determine and may expressly provide in the
27 context of specific agreements that the city will reimburse the contractor at the increased prevailing
28 wage rate(s). Decreases in prevailing wages subsequent to the date of the contract for a period not to
29 exceed one (1) year shall not be permitted. Decreases in prevailing wages on contracts whose period
30 of performance exceed one (1) year shall not be effective until the yearly anniversary of the actual date
31 of bid or proposal issuance, if applicable, or the date of the written encumbrance if no bid/proposal
32 issuance date is applicable.

33 (c) *Determination of prevailing wages.*

34 (1) The city council hereby declares that it is in the best interests of the city to have a

1 uniform determination of the prevailing wages to be paid to the various classes of laborers, mechanics
2 and workers which will be required in the performance of work covered by this section.

3 (2) The city council hereby finds and concludes that the federal government, in implementing
4 the Davis-Bacon Act (40 U.S.C. §§ ~~3141 et seq. 276a to 276a-5~~) (“Davis-Bacon Act”), possesses and
5 exercises a superior capability with superior resources to ascertain the basic rate of pay, overtime, and
6 other benefits which accurately represent the current prevailing rate of wages for work covered by that
7 federal law. ~~The career service board shall determine that the~~ prevailing wages applicable to the
8 various classes of laborers, mechanics, and workers covered by this section and the Davis-Bacon Act
9 shall correspond to the prevailing wage determinations made pursuant to that federal law as the same
10 may be amended from time to time. ~~The board~~ auditor shall undertake to keep and maintain copies of
11 prevailing wage determinations made pursuant to the Davis-Bacon Act (~~40 U.S.C. § 276a to 276a-5~~)
12 and any amendments to that federal law. ~~The board~~ auditor shall also keep and maintain such other
13 information as shall come to its attention concerning wages paid in the Denver metropolitan area. The
14 provisions of this section shall supersede any differing provisions of that federal law, except when that
15 federal law is applicable independent of this section.

16 (3) It shall be the duty of the ~~career service board~~ auditor to determine, ~~after hearing,~~
17 prevailing wages for the various classes of laborers, mechanics, and workers which will be required in
18 the performance of work covered by this section but not be covered by the Davis-Bacon Act, which
19 determinations shall be made at least annually, and as frequently as may be considered necessary by
20 the ~~career service board~~ auditor in order that the determination which is currently in effect shall
21 accurately represent the current prevailing rates of wages. “Prevailing wages” shall mean, for each
22 class of work covered by this section, but not covered by the Davis-Bacon Act, the rate of pay and the
23 overtime and other benefits granted to such full-time workers in the Denver metropolitan area.

24 1. The auditor may refer to the Service Contract Labor Act of 1965, as amended (41 U.S.C.
25 § 6701 et seq.) to determine the rate of pay and the overtime and other benefits for each class of work
26 covered by this section and not covered by the Davis-Bacon Act.

27 2. ~~Prior to making such determination, the career service board shall give reasonable public~~
28 ~~notice of the time and place of the hearing concerning such proposed determination and shall afford to~~
29 ~~all interested parties the right to appear before it and to present evidence. “Prevailing wages” shall~~
30 ~~mean, for each class of work covered by this section, but not covered by the Davis-Bacon Act, the rate~~
31 ~~of pay and the overtime and other benefits granted to such full-time workers in the Denver metropolitan~~
32 ~~area. The rates shall be determined~~ The auditor may also determine the prevailing wages for various
33 classes of laborers, mechanics, and workers covered by this section and not covered by the Davis-
34 Bacon using the same method as used for those classes which are covered by the Davis-Bacon Act.

1 3. Should either of the above ~~this methods~~ cause a reduction in compensation of any class
2 of workers, the ~~career service board~~ auditor will review the appropriateness of using theis methodology
3 and may recommend to city council a different method for establishing prevailing wage rates.

4
5 ~~If there is insufficient data available in the Denver metropolitan area to determine the rate of pay and~~
6 ~~the overtime and other benefits or should comparable classes of work not be performed within the~~
7 ~~Denver metropolitan area for each class of work covered by this section and not covered by the Davis-~~
8 ~~Bacon Act, the career service board shall refer to the Service Contract Labor Act of 1965, as amended~~
9 ~~(41 U.S.C. § 351 et seq.) to determine the rate of pay and the overtime and other benefits.~~

10 (4) If the prevailing wage for a class of work covered by the Davis-Bacon Act or this section
11 has been stagnant for five (5) or more years, the auditor shall update the prevailing wage for that class
12 of work and ensure that the rate of pay and the overtime and benefits granted to such full-time workers
13 is consistent with the market rate for such workers in the Denver metropolitan area. This procedure
14 shall use the same method as used under the Davis-Bacon Act.

15 (45) ~~The office of human resources~~ auditor shall issue clarifications or interpretations of the
16 prevailing wage, ~~and shall provide the auditor any issued clarification or interpretation. If the auditor~~
17 ~~does not advise the executive director of human resources in writing that it disagrees with any issued~~
18 ~~clarification or interpretation within thirty (30) days, the clarification/interpretation shall be final. If the~~
19 ~~auditor advises the executive director of human resources in writing that it disagrees with the~~
20 ~~clarification or interpretation, then the auditor and the executive director of human resources shall meet~~
21 ~~to resolve the conflict and, with approval of the career service board, the office of human resources~~
22 ~~shall issue a final agreed upon clarification or interpretation, or may withdraw the clarification or~~
23 ~~interpretation, as appropriate.~~

24 **Sec. 2-80. – Rules and regulations.**

25 The auditor may promulgate reasonable rules and regulations pertaining to third-party complaints as
26 well as the notice and procedure for hearings required or permitted under this division.

27
28 [BALANCE OF PAGE INTENTIONALLY LEFT BLANK]

29

1 COMMITTEE APPROVAL DATE: August 1, 2023
2 MAYOR-COUNCIL DATE: August 8, 2023 by Consent
3 PASSED BY THE COUNCIL August 21, 2023

4  _____ - PRESIDENT

5 APPROVED: Michael C. Johnston - MAYOR Aug 22, 2023
Michael C. Johnston (Aug 22, 2023 16:59 MDT)

6 ATTEST: _____ - CLERK AND RECORDER,
7 EX-OFFICIO CLERK OF THE
8 CITY AND COUNTY OF DENVER
9

10 NOTICE PUBLISHED IN THE DAILY JOURNAL _____

11 PREPARED BY: Anshul Bagga, Assistant City Attorney ; DATE: August 10, 2023

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

16
17 Kerry Tipper, Denver City Attorney

18
19 BY: Anshul Bagga, Assistant City Attorney DATE: Aug 10, 2023