Sec. 20-76. Payment of prevailing wages.

(a) *Required.* The following workers shall be paid not less than the wages and fringe benefits prevailing for the same class and kind of work in the Denver metropolitan area as determined by the auditor under subsection (c):

(1) Every worker, mechanic or other laborer employed by any contractor or subcontractor in the work of drayage or of construction, alteration, improvement, repair, maintenance or demolition:

a. On any city-owned or leased building or on any city-owned land;

b. Pursuant to a contract by or on behalf of the city;

c. For any agency of the city; or

d. Finance in whole or in part by the city, or any agency of the city.

(2) Every worker or other laborer employed by a contractor or subcontractor engaged in the work of a doorkeeper, caretaker, cleaner, window washer, porter, keeper, janitor, or in similar custodial or janitorial work:

a. In connection with the operation of any such city-owned or leased building;

b. Pursuant to a contract by or on behalf of the city;

c. For any agency of the city; or

d. Financed in whole or in part by the city, or any agency of the city.

(3) This section shall not apply:

a. Where the city transfers dedicated funds to a non-city governmental entity including, without limitation, a metropolitan district, general improvement district, or business improvement district; or

b. To development projects related to or funded in accordance with the authorization provided by a downtown development authority established pursuant to section 31-25-801, et seq. C.R.S.

The Denver metropolitan area shall be determined by the auditor. This section shall not apply to any participant in a youth employment program certified by the city where the participant is employed in non-construction work, including the work of materials furnishing, servicing and maintenance of any city-owned or leased building or on city-owned land and the work of landscaping that is not performed in connection with the construction or renovation of a city-owned or leased building; nor shall this section apply to situations where there is no contract directly requiring or permitting the work described above, or contracts that are neither a revenue or expenditure contract contemplating such work, such as licenses or permits to use city-owned land.

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

applicable, or the date of the written encumbrance if no bid/proposal issuance date is applicable. If the city loans, grants, or otherwise transfers money to a person to be used to finance, in whole or in part, a contract which requires the performance of work involving drayage, construction, alteration, improvements, repairs, maintenance, or demolition, or which requires the performance of the work of a doorkeeper, caretaker, cleaner, window washer, porter, keeper, janitor, or similar custodial or janitorial work, the city's agreement shall require the person to include the language required by this subsection and subsection (d) in any such contract.

(c) *Determination of prevailing wages.*

(1) The city council hereby declares that it is in the best interests of the city to have a uniform determination of the prevailing wages to be paid to the various classes of laborers, mechanics and workers which will be required in the performance of work covered by this section.

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

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

1. The auditor may refer to the Service Contract Labor Act of 1965, as amended (41 U.S.C. § 6701 *et seq.*) to determine the rate of pay and the overtime and other benefits for each class of work covered by this section and not covered by the Davis-Bacon Act.
2. The auditor may also determine the prevailing wages for various classes of laborers, mechanics, and workers covered by this section and not covered by the Davis-Bacon using the same method as used for those classes which are covered by the Davis-Bacon Act.
3. Should either of the above methods cause a reduction in compensation of any class of workers, the auditor will review the appropriateness of using the methodology and may recommend to city council a different method for establishing prevailing wage rates.

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

(5) The auditor shall issue clarifications or interpretations of the prevailing wage.

(d) *Mandatory contract provisions; enforcement.*

(1) Every contract covered by this section shall contain a provision requiring the contractor and every subcontractor under such contract to pay every worker, mechanic and laborer employed under such contract not less than the scale of wages as provided for under subsections (b) and (c).

(2) Such contract shall further require the contractor and subcontractors to pay all construction workers, mechanics and other laborers at least once a week the full amounts of wages accrued at the time of payment, computed at wage rates not less than those stated in the specifications; except that the contractor and subcontractors shall make such payments to janitorial or custodial workers, and oil and gas employees and contractors, at least biweekly.

(3) Every such contract shall further provide that the contractor shall post in a prominent and easily accessible place at the site of the work the scale of wages to be paid by the contractor and all subcontractors working under the contractor, and that complaints by third parties, including employees of contractors and subcontractors, of violations may be submitted to the auditor, pursuant to subsection (f).

(4) The contract shall further provide that if the contractor or any subcontractor shall fail to pay such wages as are required by the contract, the manager of finance shall not approve a warrant or demand for payment to the contractor until the contractor furnishes the auditor evidence satisfactory to the auditor that such wages so required by the contract have been paid. Nothing herein shall preclude the manager of finance from approving a partial warrant or demand for payment to the contractor to the extent the auditor has been furnished evidence satisfactory to the auditor that one or more subcontractors has paid such wages required by the contract, even if the contractor has not furnished evidence that all of the subcontractors have paid wages as required by the contract. Any contractor or subcontractor may utilize the following procedure in order to satisfy the requirements of this section:

a. The contractor or subcontractor may submit to the auditor, for each worker, mechanic or other laborer to whom such wages are due, a check, as required by the auditor. Such check shall be payable to that worker, mechanic or other laborer, or to the City and County of Denver so it is negotiable by either of those parties. Each such check shall be in an amount representing the difference between the accrued wages required to be paid to that worker, mechanic or other laborer by the contract and the wages actually paid by the contractor or subcontractor.

b. If any check submitted pursuant to paragraph (4)a. of this subsection cannot be delivered to the worker, mechanic or other laborer within a reasonable period of time as determined by the auditor, then it shall be negotiated by the city and the proceeds deposited in the auditor's unclaimed prevailing wages special trust fund. Nothing in this subsection shall be construed to lessen the responsibility of the contractor or subcontractor to attempt to locate and pay any worker, mechanic or other laborer to whom wages are due.

c. Any valid, verified claim for prevailing wages that is actually received by the city through negotiation of any check submitted pursuant to paragraph (4)a. of this subsection must be made prior to two (2) years after the date of the last underpayment by the contractor or any subcontractor to the worker, mechanic or other laborer to whom such wages were due. After such date, the city shall no longer be liable for payment. The city, as trustee, shall pay such claimant only the amount of the check that is actually negotiated, regardless of any dispute as to any additional amount of wages owing to the worker, mechanic or other laborer. No interest shall be paid by the city on any funds received or disbursed pursuant to this subsection.

d. On the last working day of each month, the amount of any claim for which the city is no longer liable shall be credited to the general fund, except as otherwise required by law.

e. The auditor shall maintain a list of all unclaimed, city-negotiated prevailing wage checks for which the city is liable. Such list shall be updated monthly and shall be available for inspection at the office of the auditor.

(5) Every such contract shall further provide that the contractor shall furnish to the auditor each pay period during which work is in progress under the contract a true and correct electronically certified copy of the payroll records of all workers, laborers and mechanics employed under the contract, either by the contractor or subcontractors. Such payroll records shall include information showing the number of hours worked by each worker, laborer or mechanic employed under the contract, the hourly pay of such worker, laborer or mechanic, any deductions made from pay, and the net amount of pay received by each worker, laborer or mechanic for the period covered by the payroll.

(6) Every such contract shall also require that the contractor will provide to the city a list of all subcontractors who will be providing any services under the contract.

(7) Every such contract shall further provide that if any laborer, worker or mechanic employed by the contractor or any subcontractor under the contract has been or is being paid a rate of wages less than the rate of wages required by the contract to be paid as aforesaid, the city may, by written notice to the contractor, suspend or terminate the contractor's right to proceed with the work, or such part of the work as to which there has been a failure to pay the required wages, and in the event of termination, may prosecute the work to completion by contract or otherwise, and the contractor and any sureties shall be liable to the city for any excess costs occasioned the city thereby.

(8) If the city loans, grants, or otherwise transfers money to a person to be used to finance, in whole or in part, a contract covered by this section, the city's contract shall state that the manager of finance shall not approve a warrant or demand for payment under the loan, grant, or other transfer unless the contractor and any subcontractors have complied with all requirements of this section.

(e) *Penalties.* Any contractor or subcontractor subject to the requirements of this section shall as a penalty pay to the City and County of Denver an amount as set forth below for each payroll period, for each worker paid less than the applicable prevailing wage rates.

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

a. Whether the failure of the contractor or subcontractor to pay the correct wage rate was a good faith mistake and, if so, the error was corrected within thirty (30) days of the date brought to the attention of the contractor or subcontractor.

b. Whether the contractor or subcontractor has a prior record of failing to meet its prevailing wage obligations.

(2) The penalty shall be fifty dollars ($50.00) for each week, or portion thereof, for each worker paid less than the prevailing wage rate, unless the failure of the contractor or subcontractor to pay the correct rate of prevailing wages was a good faith mistake and, if so, the error was corrected within thirty (30) days of the date brought to the attention of the contractor or subcontractor.

(3) The penalty shall be two thousand five hundred dollars ($2,500.00) for a violation, plus seventy-five dollars ($75.00) for each week, or portion thereof, for each worker paid less than the prevailing wage rate, if the contractor or subcontractor has been assessed a penalty, but not more than two (2) other penalties, within the previous three (3) years for failing to meet its prevailing wage obligations on a separate contract, unless those penalties were subsequently withdrawn or overturned.

(4) The penalty shall be five thousand dollars ($5,000.00) for a violation, plus one hundred dollars ($100.00) for each week, or portion thereof, for each worker paid less than the prevailing wage rate, if the contractor or subcontractor has been assessed three (3) or more other penalties within the previous three (3) years for failing to meet its prevailing wage obligations on separate contracts, unless those penalties were subsequently withdrawn or overturned.

(5) The penalty shall be five hundred dollars ($500.00) for each week, or portion thereof, for each week during which a contractor or subcontractor fails to furnish the auditor any certified payrolls where any worker, laborer or mechanic employed by the non-reporting contractor or subcontractor has performed any work under a contract subject to section (b), unless the failure of the contractor or subcontractor to furnish the auditor any certified payrolls was a good faith mistake and, if so, the error was corrected within thirty (30) days of the date brought to the attention of the contractor or subcontractor. This penalty shall not be imposed in conjunction with penalties imposed under sections (e)(2)—(4).

(6) The penalty shall be fifty dollars ($50.00) for each week, or portion thereof, for each incident of false reporting on a certified payroll, not corrected within fifteen (15) days of the date the false report was brought to the

attention of the contractor or subcontractor. A certified payroll shall be determined to be a false report when information related to hours worked or wages paid reported on a certified payroll is not identical to supportive documentation, including paychecks issued to employees, timecards maintained by contractors and subcontractors, invoices for work performed issued to contractors or the city, and tax documents. This penalty shall be imposed in addition to penalties imposed under sections (e)(2)—(5).

(f) *Third party complaints.* Subject to the provision of this section and any rules and regulations that may be issued by the auditor, a third party, including an employee of a contractor or subcontractor, may submit a complaint of a violation of this section to the auditor. The burden of demonstrating to the auditor's satisfaction that a violation has occurred or the rebuttable of such presumption rests with the third party making the complaint, and shall be demonstrated by a preponderance of the evidence. Any such complaint shall be made in writing to the auditor and shall include all information relied upon by such party. The auditor shall notify in writing any person alleged to have violated the section of such complaint. The auditor will investigate credible complaints and provide a response of its findings of any such complaint to both the complainant and the person who is identified as violating the section. Any determination by the auditor pursuant to this section is reviewable by the complained-of party, pursuant to subsection (g).

(g) *Review.* Any determination of the auditor related to the imposition of prevailing wage, including determinations of applicable employment classifications and wages, determinations of underpayment or misreporting, and the imposition of penalties shall be reviewable as follows:

(1) Any person who disputes any determination made by or on behalf of the city pursuant to the authority of the auditor, which determination adversely affects such person, may petition the auditor for a hearing concerning such determination no later than thirty (30) days after having been notified of any such determination. Compliance with the provisions of this subsection shall be a jurisdictional prerequisite to any action brought under the provisions of this section, and failure of compliance shall forever bar any such action.

(2) The auditor shall designate as a hearing officer a person retained by the city for that purpose.

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

(4) Thereupon, the hearing officer shall make a final determination. Such final determination shall be considered a final order and may be reviewed under Rule 106(a)(4) of the state rules of civil procedure by the petitioner or by the city. A request for reconsideration of the determination may be made if filed with the hearing officer within fifteen (15) days of the date of determination, in which case the hearing officer shall review the record of the proceedings, and the determination shall be considered a final order upon the date the hearing officer rules on the request for reconsideration. The nonprevailing party shall be responsible for and shall pay the costs of the hearing, including the costs of the hearing officer and the hearing reporter.

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

(6) Failure to pay outstanding penalties that are not pending appeal and are owed to the city pursuant to this section shall be grounds for suspension or revocation of any license issued by the city until fully paid.

(Code 1950, §§ 161.1A, 161.1B, 161.1C, 161.1D; Ord. No. 582-85, § 2, 10-28-85; Ord. No. 212-89, § 1, 4-17-89; Ord. No. 979-95, § 1, 11-27-95; Ord. No. 546-96, § 1, 7-1-96; Ord. No. 624-97, § 1, 9-22-97; Ord. No. 277-00, § 1, 4-3-00; Ord. No. 84-02, § 1, 1-28-02; Ord. No. 656-06, § 1, 10-9-06; Ord. No. 679-06, § 1, 10-16-06; Ord. No. 423-09, § 1, 8-3-09; Ord. No. 285-10, § 1, 5-24-10; Ord. No. 161-12, §§ 1, 2, 3-19-12; Ord. No. 387-12, § 1, 7-30-12; Ord. No. 985-16, § 1, 11-7-16; Ord. No. 35-19, § 1, 2-11-19; Ord. No. 1046-23, § 1, 8-21-23; Ord. No. 542-26, § 1, 5-11-26)

Editor's note(s)—This Ord. No. 542-26 shall not apply to any project that has received an Award Letter from the Department of Housing Stability prior to June 1, 2026.