

1 **BY AUTHORITY**

2 ORDINANCE NO. _____

COUNCIL BILL NO. 24-0476

3 SERIES OF 2024

COMMITTEE OF REFERENCE:

4 **AMENDED 4-29-2024**

FINANCE & GOVERNANCE

5 **A BILL**

6 **FOR AN ORDINANCE AMENDING CHAPTER 58 TO AUTHORIZE THE AUDITOR**
7 **TO ISSUE INVESTIGATORY SUBPOENAS IN CONNECTION WITH THE**
8 **ENFORCEMENT OF CERTAIN WAGE VIOLATIONS.**

9
10 **BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:**

11 **Section 1.** That chapter 58, article I, division 1 shall be amended by adding the language
12 underlined to read as follows:

13 **Sec. 58-4. - Enforcement and penalties.**

14 (a) *Notice.* Notice or service provided for in this article shall be sent via first class mail
15 to the most recent mailing address provided to the auditor or contained in the records of any
16 municipal, state, or federal agency, including, but not limited to, the Colorado Secretary of State.
17 Notice or service shall be deemed complete seven (7) calendar days after mailing.

18 (b) *Enforcement.* The auditor is authorized to assess civil penalties pursuant to this
19 article as provided in article XII, chapter 2 of the Code, provided however the procedures for
20 enforcement, penalty, and appeals shall be as specified in this article.

21 (c) *Subpoenas.* The auditor is authorized to issue a subpoena to compel the production
22 of records or tangible things in the custody of an employer if such records or tangible things are
23 relevant in connection with investigation or enforcement under this article. For the purposes of
24 this subsection, records shall have the same meaning as provided in the Colorado Rules of Civil
25 Procedure ("C.R.C.P."), Rule 45.

26 (1) *Issuance.* The auditor may issue a subpoena for certified payroll records only if the
27 employer is subject to penalty for a failure to comply with section 58-2(c)(2)(b). For all other
28 records or tangible things, the auditor shall first submit a written request for the production to the
29 employer and shall respond to any attempt to confer. If the employer does not produce the
30 requested records or tangible things within fourteen (14) calendar days, the auditor may issue a
31 subpoena compelling production. Both the written request and subpoena shall be served as
32 provided in subsection (a).

1 (2) Motion to modify, quash, or for protective order. Upon issuance of any subpoena
2 under this section, the auditor shall appoint a hearing officer to render a final decision pursuant to
3 subsection (3). Any employer subject to subpoena issued by the auditor may file a motion with the
4 hearing officer requesting that the subpoena be modified or quashed, or that the hearing officer
5 enter a protective order governing the production of such records or tangible things. Such motion
6 shall be filed within fourteen (14) calendar days of the completion of service of the subpoena. The
7 filing of any such motion shall stay the penalty authorized pursuant to subsection (d)(1) and the
8 deadline for production specified in subsection (4-5).

9 (3) Authority of hearing officer. Upon receipt of a motion filed pursuant to subsection (2)
10 the hearing officer shall schedule a date, time and location for a hearing on the motion. The hearing
11 officer may waive the fourteen (14) day filing deadline and may modify or quash the subpoena
12 and waive the penalty upon a finding that the employer did not receive actual notice of the
13 subpoena. The hearing officer may also quash or modify the subpoena and waive the penalty
14 upon a finding that the production would be unduly burdensome, that the requested records or
15 tangible things are protected by a common law or statutory privilege, that the subpoena is vague,
16 that the production would require disclosure of a trade secret or other confidential research,
17 development, or commercial information, that production would violate privacy rights of the
18 employer or a third party, or that the production would violate any other federal, state, or local law.
19 The hearing officer may also issue a protective order governing the production of such records or
20 tangible things in the hearing officer's discretion. A protective order shall be consistent with the
21 provisions of the Colorado Open Records Act, C.R.S. § 24-72-201 et seq., as amended. Any final
22 decision shall be tailored to address the issues raised in the motion or otherwise identified by the
23 hearing officer.

24 (4) Qualifications of hearing officer. Any person designated to serve as an administrative
25 hearing officer shall be subject to the standards of conduct set forth in the Colorado Code of
26 Judicial Conduct and is subject to disqualification for bias, prejudice, interest, or for any other
27 reason for which a judge may be disqualified in a court of law.

28 (4-5) Production. An employer shall produce records or tangible things subject to a
29 subpoena issued by the auditor no later than fourteen (14) calendar days after completion of
30 service, or as otherwise provided in a hearing officer's final decision.

31 (5-6) County court. The auditor may petition the county court for enforcement of the
32 subpoena after the exhaustion of any administrative remedies. The filing of any such petition shall
33 stay the penalty authorized pursuant to subsection (d)(1).

1 (ed) *Penalties.* The following shall be imposed in conjunction with any other penalties
2 imposed under this article:

3 (1) A penalty of up to one thousand dollars (\$1,000.00) shall be imposed for failure to
4 furnish the auditor a complete and certified payroll pursuant to section 58-2(c)(2)(b) or for failure
5 to comply with a subpoena issued pursuant to subsection (c). Each day the failure to furnish payroll
6 records or comply with a subpoena continues shall constitute a separate offense as provided in
7 section 1-13(c). a.—Should an employer not maintain or retain adequate payroll records, or not
8 allow the auditor access in the manner or time allowed by section 58-2(c)(2)(b), there shall be a
9 presumption, rebuttable by clear and convincing evidence, that the employer violated this article
10 for the periods and for each worker for whom adequate records were not retained or access to
11 such records was not timely provided.

12 (2) A penalty of one thousand dollars (\$1,000.00) shall be imposed for each incident of
13 materially false information contained in certified payroll produced pursuant to section 58-
14 2(c)(2)(c).

15 (3) A penalty of five thousand dollars (\$5,000.00) shall be imposed for each instance of
16 retaliation pursuant to section 58-2(b).

17 (4) A penalty of one thousand dollars (\$1,000.00) may be imposed for a violation of any
18 obligation described in this article which does not otherwise have a penalty assigned.

19 (de) *Unpaid penalties.*

20 (1) Penalties assessed under this article shall be due and payable thirty (30) days after
21 notice. The failure to pay penalties assessed pursuant to this article within thirty (30) days after
22 notice may result in the imposition of a late fee of up to twenty-five dollars (\$25.00) and interest at
23 a rate of ten (10) percent per annum.

24 (2) The auditor is further authorized to collect any and all unpaid penalties assessed
25 pursuant to this article, either informally, or as provided for by section 53-403 of the Code;
26 provided, however, that no action in court shall be filed to collect amounts determined by the
27 auditor to be owing under this article more than three (3) years after the date the auditor provided
28 notice to the employer or other person of the amounts owing.

29 **Sec. 58-8. - Rulemaking.**

30 The auditor may promulgate such reasonable rules and regulations as may be necessary
31 for the purpose of administering and enforcing the provisions of this article pertaining to signage,
32 the filing of a complaint, conducting a wage investigation, and appeals.


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COMMITTEE APPROVAL DATE: April 9, 2024

MAYOR-COUNCIL DATE: April 16, 2024

PASSED BY THE COUNCIL: April 29, 2024

 _____ - PRESIDENT

APPROVED: Michael C. Johnston - MAYOR May 2, 2024
Michael C. Johnston (May 2, 2024 14:58 MDT)

ATTEST: _____ - CLERK AND RECORDER,
EX-OFFICIO CLERK OF THE
CITY AND COUNTY OF DENVER

NOTICE PUBLISHED IN THE DAILY JOURNAL: _____ ; _____

PREPARED BY: Anshul Bagga, Assistant City Attorney DATE: April 18, 2024

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

Kerry Tipper, Denver City Attorney

BY: Anshul Bagga, _____ City Attorney DATE: April 30, 2024