

1 **BY AUTHORITY**

2 ORDINANCE NO. _____
3 SERIES OF 2021

COUNCIL BILL NO. CB21-XXXX
COMMITTEE OF REFERENCE:
FINANCE & GOVERNANCE

5 **A BILL**

6 **For an ordinance reorganizing and amending Chapter 20, Article XI of the**
7 **Denver Revised Municipal Code regarding Auditor subpoena power in**
8 **connection with performance of internal audits and investigations and**
9 **enforcement of prevailing and minimum wage.**

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

11 **Section 1.** That section 20-278 of the Denver Revised Municipal Code shall be
12 amended and reorganized by adding the language underlined and deleting the language
13 stricken to read as follows:

14 Sec. 20-278~~9~~. - Auditor's annual budget.

15 **Section 2.** A new Section 20-278 of the Denver Revised Municipal Code shall be added
16 which is comprised of the language underlined and read as follows:

17 **Sec. 20-278. – Records and subpoenas**

18 (a) In connection with performance of audits as provided in section 20-275 of the D.R.M.C.,
19 and in connection with investigations and/or enforcement of D.R.M.C. section 20-76 and
20 sections 58-16, 58-17 and 58-18, the auditor may request production of books and records
21 from persons and entities and testimony from persons knowledgeable of books and records
22 requested. The auditor may subpoena documents and witnesses if a written request for
23 production of books, records and/or testimony made to a person or entity other than a city
24 officer or employee has not been fully complied with for fifteen (15) calendar days or more from
25 the date a request was issued.

26 (b) The auditor may serve a subpoena authorized by this section as provided in C.R.C.P. 4(e)
27 or by certified mail to the subpoenaed party at the last address of the person or entity known to
28 the auditor.

29 (c) Any subpoena issued pursuant to this section shall provide at least fifteen (15) calendar
30 days for compliance. Any party receiving a subpoena shall be entitled to file an appropriate
31 pleading in the district court of the second judicial district to contest production of part or all of
32 the documents or testimony subpoenaed, provided it does so within fifteen (15) calendar days
33 of issuance of the subpoena. All documents and testimony that is not subject to a timely

1 written pleading contesting production in accordance with this subsection (c) shall be
2 produced. Prior to filing an initial pleading contesting a subpoena, the subpoenaed party shall
3 provide a written notice to the auditor which specifies in detail all legal grounds upon which the
4 subpoenaed party contends the subpoena to be improper and also describes in detail what
5 documents or testimony are not being timely produced. If a pleading seeks modification of a
6 subpoena, any documents or testimony not specifically objected to shall be timely produced in
7 accordance with the subpoena and any failure to do so shall be a violation of this section.

8 (d) Should a party fail to comply with a subpoena, or a pleading in accordance with subsection
9 (c) be filed, the auditor may apply to the district court of the second judicial district for review
10 and enforcement of a subpoena issued pursuant to this section.

11 (e) It shall be unlawful for any person or entity to refuse to obey a subpoena issued by the
12 auditor. Failure to obey a subpoena shall constitute a non-criminal violation of the code and
13 any violator shall be assessed a penalty of up to one thousand dollars (\$1,000) for each day a
14 failure to produce books, records and/or testimony shall continue. If a timely pleading is filed
15 consistent with the terms of subsection (c), penalties for noncompliance, with respect to
16 documents and testimony subject to relief requested therein only, shall not begin to accrue
17 until the subpoenaed party fails to timely comply with any court-ordered production.

18 (f) No penalty for failure to comply with an auditor subpoena shall apply if the auditor and
19 subpoenaed party reach a mutual agreement concerning the timing and scope of documents
20 or testimony to be produced and production and/or testimony is proffered consistent with that
21 agreement. Additionally, and no more than once in any three (3) year period, should the
22 Auditor find that any failure to obey a subpoena issued to a particular person or entity pursuant
23 to this section was the result of a good faith mistake, and the person or entity immediately and
24 fully complies with the subpoena after notification by the auditor's office, the penalty described
25 in this section may be waived in the discretion of the auditor.

26 (g) The auditor shall track subpoenas issued pursuant to this section during each calendar
27 year, if any. No later than March 31 of the following year, the auditor shall submit a written
28 report to City Council documenting the number of subpoenas issued in the prior calendar year.

29 **Section 3.** That section 20-279 of the Denver Revised Municipal Code shall be
30 amended and reorganized by adding the language underlined and deleting the language
31 stricken to read as follows:

32 Sec. 20-27980. – Audit committee terms and vacancies.

1 **Section 4.** That section 20-280 of the Denver Revised Municipal Code shall be
2 amended and reorganized by adding the language underlined and deleting the language
3 stricken to read as follows:

4 Sec. 20-2801. – Audit committee oversight of external audit.

5 **Section 5.** That section 20-281 of the Denver Revised Municipal Code shall be
6 amended and reorganized by adding the language underlined and deleting the language
7 stricken to read as follows:

8 Sec. 20-2812. – Audit committee and contract countersignatures.

9 **Section 6.** That section 20-282 of the Denver Revised Municipal Code shall be
10 amended and reorganized by adding the language underlined and deleting the language
11 stricken to read as follows:

12 Sec. 20-2823. – Audit committee meetings.

13 **Section 7.** This ordinance shall be effective immediately upon its final passage and
14 publication, as provided by the Charter.

15

1 COMMITTEE APPROVAL DATE: _____

2 MAYOR-COUNCIL DATE: _____

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: Franklin Romines, Assistant City Attorney DATE: _____

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 Kristin M. Bronson, Denver City Attorney

16 BY: _____, Assistant City Attorney DATE: _____