

1 BY AUTHORITY

2 ORDINANCE NO. \_\_\_\_\_  
3 SERIES OF \_\_\_\_\_

COUNCIL BILL NO. \_\_\_\_\_  
COMMITTEE OF REFERENCE:

4  
5 A BILL

6  
7 For an ordinance adding a new Division 5 to Chapter 20, Article IV, D.R.M.C., requiring  
8 certain city contractors to confirm the lawful employment status of their employees  
9

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

11  
12 **Section 1.** That Article IV of Chapter 20, D.R.M.C. (Contracts, Purchases, Conveyances) shall  
13 be amended by adding a new Division 5, to read as follows:

14  
15 **DIVISION 5**

16 **Confirmation of Lawful Employment Status by City Contractors**

17  
18 **Sec. 20-90. Purpose.**

19  
20 Pursuant to HB 06-1343, codified at § 8-17.5-101, *et seq.*, C.R.S., as  
21 amended, the state of Colorado prohibited political subdivisions of the state from  
22 entering into or renewing any public contract for services with a contractor who  
23 knowingly employs or subcontracts with an illegal alien to perform work under the  
24 contract. Among other things, HB 06-1343 requires contractors to confirm the  
25 employment eligibility of all employees who are newly hired to perform work under  
26 the public contract for services through the federal E-verify program. The purpose of  
27 this Division 5 is to clarify and confirm the applicability of the requirements of HB 06-  
28 1343 to certain contracts entered into by the City and County of Denver. This  
29 Division is also intended to provide supplemental local procedures for enforcing the  
30 requirements HB 06-1343 in regard to city contractors.

31  
32 **Sec. 20-91. Definitions.**

33  
34 As used in this Division 5, unless the context otherwise requires:

- 1
- 2 (1) “*Auditor*” means the Auditor of the City and County of Denver
- 3
- 4 (2) “*E-verify program*” means the electronic employment verification program created
- 5 in Public Law 104-208 and expanded in Public Law 108-156, as amended, and
- 6 jointly administered by the United States department of homeland security and the
- 7 social security administration, or its successor program.
- 8
- 9 (3) “CDLE” means the Colorado Department of Labor and Employment.
- 10
- 11 (4) “*Contract*” means:
- 12
- 13 a. Any public contract for services between the city and a contractor within
- 14 the meaning of § 8-17.5-101 (6), C.R.S., as amended; or
- 15
- 16 b. Any contract or a purchase authorization between the city and a contractor
- 17 for construction, alteration, improvement, repair, maintenance or demolition of any
- 18 public building or public work by or on behalf of the city, or for any agency of the city,
- 19 or financed in whole or in part by the city or any agency of the city to which the
- 20 provision of section 20-76 of this code applies.
- 21
- 22 (5) “*Contractor*” means a person having a contract with the city.
- 23
- 24 (6) “*Newly hired for employment*” means hired to work in the United States since the
- 25 effective date of the contract.
- 26
- 27

28 **Sec. 20-92. Verification and certification of employment eligibility under city**

29 **contracts.**

30

31 (a) Prior to executing a contract, each prospective contractor shall certify that,

32 at the time of the certification, it does not knowingly employ or contract with an illegal

33 alien who will perform work under the public contract for services and that the

1 contractor will participate in the e-verify program in order to confirm the employment  
2 eligibility of all employees who are newly hired for employment to perform work under  
3 the contract.

4  
5 (b) Each contract shall include a provision that the contractor shall not:

6  
7 (1) Knowingly employ or contract with an illegal alien to perform work under  
8 the contract; or

9  
10 (2) Enter into a contract with a subcontractor that fails to certify to the  
11 contractor that the subcontractor shall not knowingly employ or contract with an  
12 illegal alien to perform work under the contract.

13  
14 (c) Each public contract for services shall also include the following provisions:

15  
16 (1) A provision stating that the contractor has confirmed the employment  
17 eligibility of all employees who are newly hired for employment to perform work under  
18 the public contract for services through participation in the e-verify program;

19  
20 (2) A provision that prohibits the contractor from using the e-verify program  
21 procedures to undertake pre employment screening of job applicants while the public  
22 contract for services is being performed;

23  
24 (3) A provision that, if the contractor obtains actual knowledge that a  
25 subcontractor performing work under the public contract for services knowingly  
26 employs or contracts with an illegal alien, the contractor shall be required to:

27  
28 a. Notify the subcontractor and the city within three days that the contractor has  
29 actual knowledge that the subcontractor is employing or contracting with an illegal  
30 alien; and

31  
32 b. Terminate the subcontract with the subcontractor if within three days of receiving  
33 the notice required pursuant to sub-subparagraph (A) of this subparagraph (III) the  
34 subcontractor does not stop employing or contracting with the illegal alien; except

1 that the contractor shall not terminate the contract with the subcontractor if during  
2 such three days the subcontractor provides information to establish that the  
3 subcontractor has not knowingly employed or contracted with an illegal alien;  
4

5 (4) A provision that requires the contractor to comply with any reasonable  
6 request by the CDLE or the Auditor made in the course of an investigation that the  
7 CDLE is undertaking pursuant to the authority established in § 8-17.5-102, C.R.S.,  
8 as amended, or that the Auditor is undertaking pursuant to section 20-93.  
9

10 (d) If a contractor violates a provision of the contract required pursuant to  
11 subsections (b) or (c) of this section, the city may terminate the contract for a breach  
12 of the contract. If the contract is so terminated, the contractor shall be liable for  
13 actual and consequential damages to the city. Any such termination of a contract  
14 due to a violation of this section may also, at the discretion of any city department or  
15 agency responsible for soliciting contract bids and proposals, constitute grounds for  
16 disqualifying the violator from submitting bids or proposals for future contracts with  
17 the city.  
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## 20 **Sec. 20-93. Powers of the Auditor**

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22 (a) The Auditor may investigate whether a contractor is complying with the  
23 contract provisions required pursuant to section 20-93. The Auditor may conduct on-  
24 site inspections where a public contract for services is being performed, request and  
25 review documentation that proves the citizenship of any person performing work on  
26 the contract, or take any other reasonable steps that are necessary to determine  
27 whether a contractor is complying with the provisions of the contract required  
28 pursuant to section 20-92. The Auditor shall receive complaints of suspected  
29 violations of a provision of a public contract for services required pursuant to section  
30 20-92 and shall have discretion to determine which complaints, if any, are to be  
31 investigated.  
32

33 (b) The Auditor shall notify the head of the department or agency responsible  
34 for administering the contract if the Auditor suspects that there has been a breach of

1 a provision in a public contract for services required pursuant to section 20-92.

2  
3 **Sec. 20-94. Reporting requirements.**

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5 If any contract is terminated pursuant to subsection 20-92 (c), the head of the  
6 department or agency administering the contract shall report the termination to the  
7 Colorado secretary of state in accordance with section 8-17.5-102 (4), C.R.S., as  
8 amended, and shall also report the termination to the Immigration and Customs  
9 Enforcement division of the United States Department of Homeland Security or its  
10 successor agency.

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12  
13 **Sec. 20-94. Compliance with federal law.**

14  
15 (a) The city shall not deem a contractor or subcontractor to be in material  
16 breach of a contract if the contractor or subcontractor establishes that it has  
17 complied with the employment verification provisions prescribed by federal law and  
18 the e-verify requirement prescribed by this Division 5.

19  
20 (b) When investigating a complaint, performing an audit, or otherwise  
21 enforcing the requirements of this Division 5, the city shall not attempt independently  
22 to make a final determination on whether an employee is authorized to work in the  
23 United States, recognizing that any such determination must be made by federal  
24 officials in accordance with federal law.

25  
26 (c) A contractor that establishes that it has complied in good faith with the  
27 employment verification requirements set forth in federal law and the e-verify  
28 requirements set forth in this ordinance shall, in any action to enforce the  
29 requirements of this Division 5, have an affirmative defense that the employer did not  
30 knowingly employ an illegal alien.

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32 (d) Nothing in this Division 5 shall be construed as requiring a contractor to  
33 violate any terms of participation in the e-verify program.

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**Section 2.** This ordinance shall take effect September 1, 2010 and shall govern contracts entered into by the city on and after said date.

COMMITTEE APPROVAL DATE: \_\_\_\_\_, 2010.

MAYOR-COUNCIL DATE: \_\_\_\_\_, 2010.

PASSED BY THE COUNCIL \_\_\_\_\_ 2010

\_\_\_\_\_ - PRESIDENT

APPROVED: \_\_\_\_\_ - MAYOR \_\_\_\_\_ 2010

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

NOTICE PUBLISHED IN THE DAILY JOURNAL \_\_\_\_\_ 2010; \_\_\_\_\_ 2010

PREPARED BY: David W. Broadwell, Asst. City Attorney; DATE: June 2, 2010

Pursuant to section 13-12, 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.

City Attorney

BY: \_\_\_\_\_, \_\_\_\_\_ City Attorney

DATE: \_\_\_\_\_