

BY AUTHORITY

ORDINANCE NO. _____

COUNCIL BILL NO. CB21-0078

SERIES OF 2021

COMMITTEE OF REFERENCE:

AMENDED 5-10-21

FINANCE & GOVERNANCE

A BILL

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

WHEREAS, the Denver Auditor has certain mandatory auditing responsibilities pursuant to Denver’s charter and city code;

WHEREAS, the Denver Auditor has also been charged with enforcement of certain city wage ordinances;

WHEREAS, in recent years certain third parties have failed to timely produce documents to facilitate the efficient and timely completion of the Auditor’s duties; and

WHEREAS, when external third parties possess and refuse to voluntarily disclose information related to a performance or financial audit or are alleged to have violated Denver’s wage ordinances subpoena power will assist the Auditor in performing his or her duties as prescribed by Denver’s charter and city code.

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

Section 1. That section 20-276 of the Denver Revised Municipal Code shall be amended by adding the language underlined to read as follows:

Sec. 20-276. - Internal audits

(a) The auditor shall be provided access, in a timely manner to officers, employees, records, and property of entities as may be necessary to conduct an audit or perform audit duties as provided in section 20-275 of the D.R.M.C. Contractors with the City that have a contractual obligation to provide information shall provide access in a timely manner to the contractor’s officers, employees, records, and property of entities as may be necessary to conduct an audit or perform audit duties. The custodian of confidential and/or proprietary records or parts of records sought under this 20-276 may provide the auditor timely and reasonable access to inspect such records on site in lieu of providing copies for off-site use.

1 **Section 2.** That section 20-278 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. 20-278~~9~~. - Auditor's annual budget.

5 **Section 3.** A new Section 20-278 of the Denver Revised Municipal Code shall be added
6 which is comprised of the language underlined and read as follows:

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

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

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

19 (c) Any subpoena issued pursuant to this section shall provide at least fifteen (15) calendar
20 days for compliance. Any party receiving a subpoena shall be entitled to file an appropriate
21 pleading in the district court of the second judicial district to contest production of part or all of
22 the documents or testimony subpoenaed, provided it does so within fifteen (15) calendar days
23 of issuance of the subpoena. All documents and testimony that is not subject to a timely
24 written pleading contesting production in accordance with this subsection (c) shall be
25 produced. Prior to filing an initial pleading contesting a subpoena, the subpoenaed party shall
26 provide a written notice to the auditor which specifies in detail all legal grounds upon which the
27 subpoenaed party contends the subpoena to be improper and also describes in detail what
28 documents or testimony are not being timely produced. If a pleading seeks modification of a
29 subpoena, any documents or testimony not specifically objected to shall be timely produced in
30 accordance with the subpoena and any failure to do so shall be a violation of this section.

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

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

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

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

19 **Section 4.** That section 20-279 of the Denver Revised Municipal Code shall be
20 amended and reorganized by adding the language underlined and deleting the language
21 stricken to read as follows:

22 Sec. 20-279~~80~~. – Audit committee terms and vacancies.

23 **Section 5.** That section 20-280 of the Denver Revised Municipal Code shall be
24 amended and reorganized by adding the language underlined and deleting the language
25 stricken to read as follows:

26 Sec. 20-280~~1~~. – Audit committee oversight of external audit.

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

30 Sec. 20-281~~2~~. – Audit committee and contract countersignatures.

1 **Section 7.** That section 20-282 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. 20-2823. – Audit committee meetings.

5 **Section 8.** This ordinance shall be effective immediately upon its final passage and
6 publication, as provided by the Charter.

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8 **[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**

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1 COMMITTEE APPROVAL DATE: April 20, 2021

2 MAYOR-COUNCIL DATE: April 27, 2021 by Consent

3 PASSED BY THE COUNCIL: May 10, 2021

4 *Paul Palmer* - 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: Mitch T. Behr, Assistant City Attorney DATE: April 29, 2021

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: *Kristin J. Crawford*, Assistant City Attorney DATE: May 11, 2021