

**BY AUTHORITY**

ORDINANCE NO. \_\_\_\_\_  
SERIES OF 2024

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

**A BILL**

**For an ordinance amending Chapter 20 to authorize the Auditor to issue investigatory subpoenas to city contractors in connection with an internal audit.**

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

**Section 1.** That chapter 20, article XI shall be amended by adding the language underlined to read as follows:

**Sec. 20-276. - Internal audits.**

(a) Access to personnel, property, and records. 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.

(b) Subpoenas. The auditor is authorized to issue a subpoena to contractors with the city that have a contractual obligation to provide information to compel the production of records or tangible evidence in the contractor's custody if such records or tangible evidence are relevant in connection with a financial or performance audit under section 20-275. For the purposes of this subsection, records shall have the same meaning as provided in the Colorado Rules of Civil Procedure ("C.R.C.P."), Rule 45.

(1) Issuance. The auditor shall first submit a written request for the production of records or tangible evidence to the contractor and shall respond to any attempt to confer. If the contractor does not produce the requested records or tangible things within fourteen (14) calendar days or as otherwise provided by contract, the auditor may issue a subpoena compelling production. Both the written request and subpoena shall be served as provided in the contract with the entity for service of other notices, or if no such provision exists, via first class mail to the most recent mailing address provided to the auditor or contained in the records of any municipal, state, or federal agency, including, but not limited to, the Colorado Secretary of State.

1 Unless otherwise provided for in the contract with the entity, notice or service shall be deemed  
2 complete seven (7) calendar days after mailing.

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

11 (3) *Authority of hearing officer.* Upon receipt of a motion filed pursuant to subsection  
12 (2), the hearing officer shall schedule a date, time, and location for a hearing on the motion. The  
13 hearing officer may waive the fourteen (14) day filing deadline and may modify or quash the  
14 subpoena and waive the penalty upon a finding that the contractor did not receive actual notice  
15 of the subpoena. The hearing officer may also quash or modify the subpoena and waive the  
16 penalty upon a finding that the production would be unduly burdensome, that the requested  
17 records or tangible things are protected by a common law or statutory privilege, that the  
18 subpoena is vague, that the production would require disclosure of a trade secret or other  
19 confidential research, development, or commercial information, that production would violate  
20 privacy rights of the contractor or a third party, that the records or tangible evidence sought are  
21 not relevant to an individual financial transaction, contract, or franchise between the contractor  
22 and the City that is within the subject of an internal audit under section 20-275, that the  
23 contractor does not have a contractual obligation to provide the information contained in the  
24 requested records or tangible evidence, or that the production would violate any other federal,  
25 state, or local law. The hearing officer may also issue a protective order governing the  
26 production of such records or tangible things in the hearing officer's discretion. A protective order  
27 shall be consistent with the provisions of the Colorado Open Records Act, C.R.S. § 24-72-201 et  
28 seq., as amended. Any final decision shall be tailored to address the issues raised in the motion  
29 or otherwise identified by the hearing officer.

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

1       (5) Production. A contractor shall produce records or tangible things subject to a  
2 subpoena issued by the auditor no later than fourteen (14) calendar days after completion of  
3 service, or as otherwise provided in a hearing officer's final decision.

4       (6) Penalties and enforcement. The auditor is authorized to issue administrative  
5 citations to contractors for failure to comply with a subpoena issued under this subsection as  
6 provided in article XII, chapter 2 of the Code.

7       (7) County court. The auditor may petition the county court for enforcement of the  
8 subpoena after the exhaustion of any administrative remedies. The filing of any such petition  
9 shall stay the penalty authorized pursuant to subsection (6).

10       (8) Handling of records. The auditor shall handle records and tangible information  
11 consistent with the City's Cybersecurity and Data Protection Awareness Policy and the  
12 Cybersecurity and Privacy Frameworks promulgated by the National Institute of Standards and  
13 Technology.

14       (9) Rules and regulations. The auditor may promulgate such reasonable rules and  
15 regulations as may be necessary for the purpose of administering and enforcing the provisions  
16 of this subsection (b) regarding the issuance of subpoenas to contractors with the city that have  
17 a contractual obligation to provide such information.

18       (b)(c) Reporting criminal conduct. If at any time during an internal audit the auditor's  
19 office discovers evidence of possible criminal conduct, it shall immediately contact the Denver  
20 District Attorney's Office. Upon request, the auditor's office shall provide the Denver District  
21 Attorney's Office access to all documents obtained in conjunction with the possible criminal  
22 conduct, and cooperate as may reasonably be required in any resulting criminal investigation.  
23 No audit report containing information related to the possible criminal conduct will issue during  
24 the pendency of any criminal investigation or charges. If the Denver District Attorney's Office  
25 determines that no charges will be filed, or upon the conclusion of any case brought by the  
26 Denver District Attorney's Office if charges are filed, the audit report may be issued consistent  
27 with subsections (e) through (g).

28       (e) Draft audit report. The auditor shall forward the final draft of the audit report to the  
29 audited entity for review and comment regarding factual content prior to its release to the audit  
30 committee. The entity must respond within fifteen (15) business days in writing and on  
31 letterhead. Upon receiving a written request from the audited entity, the auditor may extend the  
32 time for an entity to respond to a final draft audit report. The response of the audited entity shall  
33 specify:

1 (1) Either agreement with audit findings and recommendations or reasons for  
2 disagreement with findings and/or recommendations;

3 (2) Plans for implementing solutions to issues identified; and

4 (3) A timetable to complete such activities.

5 The auditor shall include the entity's response in the final report.

6 (de) Final internal audit report and recommendations. The auditor shall provide final  
7 internal audit reports to the audit committee for review. Thereafter, the auditor shall prepare for  
8 the audit committee and the mayor, manager of finance, the city attorney, and city council a final  
9 report and recommendation on internal audits. The report shall contain all information required to  
10 comply with government auditing standards issued by the United States Government  
11 Accountability Office by the Comptroller General of the United States. The final internal audit  
12 report shall be a public record when it has been released by the audit committee to the mayor,  
13 the manager of finance, the city council, the audited entity, and the general public.

14 ~~(e) The auditor shall provide to the audit committee final internal audit reports for~~  
15 ~~committee review.~~

16 ~~(f) The final internal audit report shall be a public record when it has been released by~~  
17 ~~the audit committee to the mayor, the manager of finance, the city council, the audited entity,~~  
18 ~~and the general public. Confidentiality. Any preliminary audit findings or other draft documents~~  
19 ~~and work papers of the auditor or the audit committee shall be confidential and shall not be~~  
20 ~~released.~~

21 (g) Policies for corrective action. The auditor may adopt policies to ensure appropriate  
22 corrective actions are being implemented by the audited entity.

23  
24 MAYOR-COUNCIL DATE: \_\_\_\_\_

25 PASSED BY THE COUNCIL: \_\_\_\_\_  
26 \_\_\_\_\_ - PRESIDENT

27 APPROVED: \_\_\_\_\_ - MAYOR \_\_\_\_\_

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

31 NOTICE PUBLISHED IN THE DAILY JOURNAL: \_\_\_\_\_ ; \_\_\_\_\_

32 PREPARED BY: Anshul Bagga, Assistant City Attorney DATE: \_\_\_\_\_

33 Pursuant to section 13-9, D.R.M.C., this proposed ordinance has been reviewed by the office of  
34 the City Attorney. We find no irregularity as to form and have no legal objection to the proposed

1 ordinance. The proposed ordinance is not submitted to the City Council for approval pursuant to §  
2 3.2.6 of the Charter.

3

4 Kerry Tipper, City Attorney

5

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

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

DRAFT