

1 BY AUTHORITY

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

COUNCIL BILL NO. CB10-0612  
COMMITTEE OF REFERENCE:  
ECONOMIC DEVELOPMENT

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 of HB 06-1343 in regard to city contractors.

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32 **Sec. 20-90.1 Definitions.**

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

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2 (1) “*Auditor*” means the Auditor of the City and County of Denver

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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.

19  
20 (5) “*Contractor*” means a person having a contract with the city.

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22 (6) “*Newly hired for employment*” means hired to work in the United States since the  
23 effective date of the contract.

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26 **Sec. 20-90.2 Verification and certification of employment eligibility under city**  
27 **contracts.**

28  
29 (a) Prior to executing a contract, each prospective contractor shall certify that,  
30 at the time of the certification, it does not knowingly employ or contract with an illegal  
31 alien who will perform work under the contract and that the contractor will participate  
32 in the e-verify program in order to confirm the employment eligibility of all employees  
33 who are newly hired for employment to perform work under the contract.

1  
2 (b) Each contract shall include a provision that the contractor shall not:

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4 (1) Knowingly employ or contract with an illegal alien to perform work under  
5 the contract; or

6  
7 (2) Enter into a contract with a subcontractor that fails to certify to the  
8 contractor that the subcontractor shall not knowingly employ or contract with an  
9 illegal alien to perform work under the contract.

10  
11 (c) Each contract shall also include the following provisions:

12  
13 (1) A provision stating that the contractor has confirmed the employment  
14 eligibility of all employees who are newly hired for employment to perform work under  
15 the contract through participation in the e-verify program;

16  
17 (2) A provision that prohibits the contractor from using the e-verify program  
18 procedures to undertake pre-employment screening of job applicants while the  
19 contract is being performed;

20  
21 (3) A provision that, if the contractor obtains actual knowledge that a  
22 subcontractor performing work under the contract knowingly employs or contracts  
23 with an illegal alien, the contractor shall be required to:

24  
25 a. Notify the subcontractor and the city within three days that the  
26 contractor has actual knowledge that the subcontractor is employing or  
27 contracting with an illegal alien; and

28  
29 b. Terminate the subcontract with the subcontractor if within three days of  
30 receiving the notice required pursuant to sub-subparagraph (A) of this  
31 subparagraph (III) the subcontractor does not stop employing or  
32 contracting with the illegal alien; except that the contractor shall not  
33 terminate the contract with the subcontractor if during such three days the  
34 subcontractor provides information to establish that the subcontractor has

1 not knowingly employed or contracted with an illegal alien.

2  
3 (4) A provision that requires the contractor to comply with any reasonable  
4 request by the CDLE or the Auditor made in the course of an investigation that the  
5 CDLE is undertaking pursuant to the authority established in § 8-17.5-102, C.R.S.,  
6 as amended, or that the Auditor is undertaking pursuant to section 20-90.3.

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

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18 **Sec. 20-90.3 Powers of the Auditor**

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20 (a) The Auditor may investigate whether a contractor is complying with the  
21 contract provisions required pursuant to section 20-90.2. The Auditor may conduct  
22 on-site inspections where a contract is being performed, request and review  
23 documentation that proves the citizenship of any person performing work on the  
24 contract, or take any other reasonable steps that are necessary to determine  
25 whether a contractor is complying with the provisions of the contract required  
26 pursuant to section 20-90.2. The Auditor shall receive complaints of suspected  
27 violations of a provision of a contract required pursuant to section 20-90.2 and shall  
28 have discretion to determine which complaints, if any, are to be investigated.

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30 (b) The Auditor shall notify the head of the department or agency responsible  
31 for administering the contract if the Auditor suspects that there has been a breach of  
32 a provision in the contract required pursuant to section 20-90.2.

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2 **Sec. 20-90.4 Reporting requirements.**  
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4           If any contract is terminated pursuant to subsection 20-90.2 (d), the head of  
5 the department or agency administering the contract shall report the termination to  
6 the Colorado secretary of state in accordance with section 8-17.5-102 (4), C.R.S., as  
7 amended, and shall also report the termination to the Immigration and Customs  
8 Enforcement division of the United States Department of Homeland Security or its  
9 successor agency.  
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12 **Sec. 20-90.5 Compliance with federal law.**  
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14           (a) The city shall not deem a contractor or subcontractor to be in material  
15 breach of a contract if the contractor or subcontractor establishes that it has  
16 complied with the employment verification provisions prescribed by federal law and  
17 the e-verify requirement prescribed by this Division 5.  
18

19           (b) When investigating a complaint, performing an audit, or otherwise  
20 enforcing the requirements of this Division 5, the city shall not attempt independently  
21 to make a final determination on whether an employee is authorized to work in the  
22 United States, recognizing that any such determination must be made by federal  
23 officials in accordance with federal law.  
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25           (c) A contractor that establishes that it has complied in good faith with the  
26 employment verification requirements set forth in federal law and the e-verify  
27 requirements set forth in this ordinance shall, in any action to enforce the  
28 requirements of this Division 5, have an affirmative defense that the employer did not  
29 knowingly employ an illegal alien.  
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31           (d) Nothing in this Division 5 shall be construed as requiring a contractor to  
32 violate any terms of participation in the e-verify program.  
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**Section 2.** This ordinance shall take effect October 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: July 22, 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: \_\_\_\_\_