



June 10, 2024

To whom it may concern:

I am writing on behalf of the Community Economic Defense Project, which provides anti-displacement services, including eviction and foreclosure defense, to Denver residents. We are a city contractor and are in full support of the Denver Auditor having the tools needed to ensure accountability and transparency. The Denver Auditor serves an important function for our city and the work of the office should not be hindered. Subpoena power will allow the City Auditor to require necessary records be provided to comply with an audit.

We are supportive of audits because we believe they deliver better results for both taxpayers and program beneficiaries. Expanded audit power has the potential to improve service delivery and deliver better outcomes. It is imperative the City of Denver has the power to audit the work of contractors, to ensure that our neighbors are getting the help and support they need.

While many public entities in Colorado have subpoena power that is unfettered, Denver's proposed ordinance has guardrails to add an extra check on the ability for the office to obtain records. One of these guardrails ensures that an administrative law judge can deny access to records that are deemed confidential or irrelevant to the audit. We feel this covers any concerns that the council might have regarding unchecked power.

We find that audits help ensure a level playing field – that contractors are not cutting corners to get ahead creating unfair competition. Audits that are conducted with full and accurate information should be completed with the intent of rewarding good conduct and discouraging poor performance. Under current law, entities can withhold information necessary for an audit, frustrating their efforts and causing an audit to end. Existing law does not properly protect taxpayers' investment in our city. We urge you to fix this loophole in the law. If you have any further questions, please do not hesitate to reach out to me at: zach@cedproject.org

Sincerely,

Zach Neumann

Zach Neumann
Co-Founder and Co-CEO, CEDP

OFFICE OF THE AUDITOR

AUDIT SERVICES DIVISION

CITY AND COUNTY
OF DENVER



2024 AUDIT PLAN



TIMOTHY M. O'BRIEN, CPA,
DENVER AUDITOR

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+ ACCEDA A NUESTRO PLAN DE AUDITORÍAS EN ESPAÑOL EN [DENVERGOV.ORG/AUDITOR](https://denvergov.org/auditor)

AUDITOR'S LETTER



I am pleased to present the Denver Auditor's 2024 Audit Plan for the City and County of Denver. As we welcome Mayor Mike Johnston's new administration, I look forward to our new and continuing audit work being a resource for all city leaders and the community we serve. When given due consideration, audit work is a powerful and insightful tool for using the public's limited resources more efficiently, effectively, and equitably.

This year's 2024 Audit Plan once again incorporates performance, financial, information technology, cybersecurity, and contract compliance risks, along with audit analytics techniques into our integrated auditing approach. My team of professionals adheres to the highest standards and is recognized as leaders in the nation for local government auditing work. The 2024 Audit Plan delivers value and impact for Denver and will be conducted with the highest professional standards.

In the age of artificial intelligence and more aggressive hackers than ever, I am making protection of the city's data — including personally identifiable information and proprietary information that belongs to our constituents — one of my top priorities. As a result, I am directing my team to take on several new cybersecurity and technology projects in the year ahead. This includes evaluating how city leaders look at cybersecurity risks, how employees and others access the city's networks, and how the city manages outdated technology.

We also received outstanding support and engagement from the community this year, leading to several community-driven planned audits. New audits on the list connected to community input include looking at how the Department of Public Safety manages overtime and secondary employment. I am also adding audits of the city's 311 services and the Climate Protection Fund.

As with every year, some audits listed in our plan were started this year and will be completed in 2024. These include audits of the security of city voting systems, city shelters, and airport concessions contracting. Examining management and the use of resources at Denver International Airport — with large amounts of money dedicated to major construction projects — remains a high priority going into 2024.

Our ongoing audit work is based on a thorough risk-assessment process — informed by the public, city leaders, current events, and previous audit findings. My team will also continue to work on construction audits, financial audits, and contract oversight in the year to come.

Our function as an independent agency assuring accountability for the people we serve could not be more important.

The independent audit function serves as a tool for good government, transparency, and accountability in the city. My office's professional assessment of city operations acts as a safeguard for taxpayer dollars, and it is a reminder for every city agency to expect proper scrutiny.

Our audit recommendations are intended to help city agencies find ways to improve the work they do. When agencies take our work seriously and make expeditious changes, everyone wins.

As a certified public accountant, I am bound by a code of ethics and professional standards. In determining the 2024 Audit Plan, I bring the obligations of my professional license as well as the voters' trust.

The Audit Plan is a flexible document that may change throughout the year because of unexpected circumstances and emerging risks. In any year, changes could impact the Audit Plan arising from the need for emergency audits, changes or delays in scheduling, or decreased risks because of changes and improvements within city organizations.

I look forward to the year ahead as we continue delivering independent, transparent, and professional oversight, thereby conserving the public's investment in the City and County of Denver. I am committed to providing ongoing information on how public dollars are spent and how government operates on behalf of everyone who cares about the city, including its residents, workers, and decision-makers.

I thank the residents of Denver for their support of a comprehensive Audit Plan. Please feel free to contact me with questions at auditor@denvergov.org or 720-913-5000.

Sincerely,

Denver Auditor Timothy M. O'Brien, CPA



2024 PLANNED AUDITS

Security of City Voting Systems

<i>Clerk and Recorder's Office</i>	This audit will assess how well city voting systems comply with security requirements and how well the Denver Elections Division safeguards election equipment and data from attacks. This may include reviewing policies and procedures for security systems, information technology general controls, and equipment-monitoring processes.
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Concessions Contract

<i>Denver International Airport</i>	As part of our audit series on contracts and agreements, this audit will review an airport concessions contract to evaluate and ensure performance, value, and proper city oversight.
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Employment Practices

Community audit idea

<i>Department of Public Safety</i>	This audit will review how the Department of Public Safety approves, allocates, and makes use of secondary employment and overtime for its employees.
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Professional Services Contract Management

<i>Citywide</i>	This audit will review how the city manages standard and on-call contracts for professional services.
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Information Technology Risk Management

<i>Technology Services</i>	This audit will assess how well the city's Technology Services agency and other city agencies maintain a risk management database. This may include assessing the city's compliance with its own risk management policy and comparing Technology Services' efforts with industry frameworks and best practices.
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Paramedic Response Times

<i>Denver Fire Department</i>	This audit will assess the response times of Denver Health's ambulance services within the Denver Fire Department. This may include reviewing Denver Health's operating agreement with the city and evaluating response-time data and industry standards.
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2024 PLANNED AUDITS

continued

PROPworks Software System

Denver International Airport

This audit will review the internal controls for PROPworks, a software system the airport uses for multiple revenue streams. This may include assessing the airport's related information technology general controls.

City Shelters

Community audit idea

Department of Housing Stability

This audit will assess the efficiency and effectiveness of the city's system for sheltering people experiencing homelessness.

City Vehicle Management

Department of Transportation & Infrastructure

This audit will evaluate the city's fleet management program. This may include reviewing how the city maintains and replaces city vehicles and assessing inventory management and internal controls over fuel distribution.

Employee Separation Process

Department of Finance

This audit will review the process for how city employees separate from the city when their jobs end. This may include reviewing how accurately and quickly the city pays out former employees' paid time off, sick time, and vacation time.

Caring for Denver Foundation

Community audit idea

Department of Public Health and Environment

This audit will review the city's oversight of the Caring for Denver Foundation. This may include reviewing fund management practices, compliance with city ordinance, and policies and procedures.

Certifying Disadvantaged Businesses

Denver Economic Development & Opportunity

This audit will review how the city certifies and renews businesses owned by people of color, women, and other disadvantaged populations. This may include reviewing the city's monitoring processes, the competitive contracting process, and how well the city is achieving stated goals.

City and County of Denver Self-Insured Drug Plan

Office of Human Resources

This audit will review the effectiveness of the city's self-insured drug plan. This may include reviewing costs associated with premiums, drug costs, and plan accessibility and to what extent the plan benefits city employees.



Court Information Technology General Controls

Denver County Court

This audit will evaluate information technology general controls for Denver County Court such as user access, domain controls, effectiveness of policies and procedures, and previously identified risks. This may include reviewing the court's data center.

Denver 311 Services

Community audit idea

Technology Services

This audit will assess whether the Denver 311 service adequately directs calls to appropriate agencies, addresses questions, and documents comments from residents and community members.

Climate Protection Fund

Community audit idea

Office of Climate Action, Sustainability, & Resiliency

This audit will review how well the agency is achieving its goals for the voter-initiated Climate Protection Fund and how well it is complying with fund use requirements. This may also include analyzing outputs and outcomes for fund spending.

Scientific & Cultural Facilities Tier 1

Denver Museum of Nature & Science

Continuing our series on the city's Scientific & Cultural Facilities District Tier 1 recipients, this audit will explore city oversight and the efficiency, effectiveness, and financial operations of the museum under its cooperative agreement with the city.

Network Access

Technology Services

This audit will review change management and access controls for the city's network.

Hiring Process

Civil Service Commission

This audit will review the hiring process for civil service employees, which is integral to efficiently and effectively recruiting and hiring new job candidates for Denver's police and fire departments.

Outdated Technology Infrastructure

Citywide

This citywide audit will assess technology that is approaching or has reached the end of its useful life. This may include assessing the city's proactive strategies and planning and evaluating to what extent city systems are patched and updated in a timely manner.

Organizational Culture

Citywide

This audit will compare agency leaders' desired culture for the City and County of Denver with the actual state of culture within city agencies to help leaders address potential impacts on agency operations.

2024 PLANNED AUDITS

continued



Software Applications

Denver Human Services

This audit will assess the risks associated with unpatched systems or unmanaged devices within Denver Human Services. This may include exploring how many in-house applications the agency has and assessing those applications for information technology general controls.

Cybersecurity

Citywide

This continued assessment program examines the city's vulnerability to cybersecurity attacks and security breaches using information from previous results and by addressing newly identified potential risk areas.

Construction Audits

Citywide

This continued series of audits focuses on various risks in city construction projects and practices such as rules and regulations, project management, and internal controls. We may choose to look at projects at the airport, city capital construction projects, or bond projects.

Financial Audits

Citywide

These audits will review city agencies' accounting processes such as by assessing compliance with standards and internal control requirements. This may include reviewing specific transactions, accounts, and financial reporting practices.

Contracts and Agreements

Citywide

As required under the Denver Charter, this continued audit series will review selected city contracts and agreements to evaluate and ensure performance, value, and proper city oversight.

Grant Audits

Citywide

The continuation of this audit series will review selected city grants for compliance with grant terms and expenditures.

2024 Follow-Up Audits

Citywide

All audits by the Auditor's Office provide recommendations for improvement, to which the audited agency must agree or disagree. For recommendations that the responsible entity agreed to implement, we complete a follow-up audit after the agreed-upon implementation date. Each follow-up audit will assess the status and quality of implementation for each recommendation.





PLAN DESCRIPTION

The vision of the Audit Services Division of the Denver Auditor’s Office is to deliver value and impact for Denver by performing audits that follow the highest professional standards. Our office’s mission is to deliver independent, transparent, and professional oversight — safeguarding and improving the public’s investment in the City and County of Denver. Our work is performed on behalf of everyone who cares about the city — including its residents, workers, and decision-makers.

We produce impactful, objective, and quality audits that strengthen evolving city operations and services, and we foster an internal culture of innovation, continuous improvement, and inclusion and engagement.

The independent audit function is key to transparency and accountability in Denver’s government. Denver’s elected Auditor serves as a check and balance in the strong-mayor system. The Auditor and the Auditor’s Office provide an important and valued function for Denver, a responsibility that requires a high level of expertise and professionalism.

The 2024 Audit Plan reflects Auditor O’Brien’s steadfast commitment to an overall positive impact of the Denver Auditor’s Office on behalf of Denver’s residents, businesses, and visitors.

AUDITING UNDER THE DENVER CHARTER

The Denver Charter says the Auditor shall conduct:

- *Financial and performance audits of the City and County of Denver in accordance with generally accepted government auditing standards;*
- *Audits of individual financial transactions, contracts, and franchises; and*
- *Audits of financial and accounting systems and procedures, including records systems, revenue identification, and accounting and payment practices, for compliance with generally accepted accounting principles, best financial management practices, and any applicable laws and regulations governing the financial practices of the City and County of Denver.*



PLAN DESCRIPTION *continued*

The 2024 Audit Plan ensures broad audit coverage throughout the city while also addressing specific performance, financial, contractual, information technology, and regulatory risks. According to the charter, the ultimate decision to perform any audit is at the sole discretion of the Auditor. Our approach to scheduling audits is flexible and subject to change throughout the year based on newly identified risks.

INTEGRATED AUDITING

Integrated audits incorporate elements of performance, financial, and information technology auditing. This produces a more effective outcome through a holistic audit approach with a focus on improving governance, compliance, performance, and operations.

Integrated auditing incorporates diverse approaches, including:

- **PERFORMANCE AUDITING** | We identify opportunities to improve the efficiency and effectiveness of city activities. Our performance audits also assess the viability or strength of the internal control environment of the city's agencies and programs. We analyze policies, evaluate programs, and assess the city's ability to mitigate risk. We may also select performance audits that align with the city's major strategic initiatives.
- **FINANCIAL AUDITING** | The 2024 Audit Plan continues our focus on the overall financial management and fiscal activities of the city. These audits will assess the financial internal control environment, compliance with city policies, financial governance, accounting and reporting practices, and high-risk financial transactions.
- **INFORMATION TECHNOLOGY AUDITING** | Our audits will continue to address identified information technology risks by focusing on the effectiveness of the city's cybersecurity defenses, data protection, data privacy, and management of critical systems and applications.
- **CONTRACT COMPLIANCE AUDITING** | The 2024 Audit Plan reflects a continued emphasis on auditing city contracts for compliance with contract terms and fulfillment of the scope of work.

AUDIT ANALYTICS AND CONTINUOUS AUDITING

As part of Auditor O'Brien's original vision for the Auditor's Office, the Audit Analytics Program expands the office's risk assessment and auditing capabilities and continues leading-edge audit practices to provide greater value and impact. Using data science tools, auditors sort through large numbers of transactions and entire datasets to identify the highest risks.

- **AUDIT ANALYTICS** | The Auditor's Office uses quantitative and qualitative risk-finding analytics of audit-related data and applies survey and sampling methodologies to support audit teams working with many different topics and sources of information. Audit analytics can be used to ensure data is accurate, consistent, and complete; to identify, analyze, and create visual representations of anomalies and patterns; to build statistical models; and to synthesize analytical results in audit reports.
- **CONTINUOUS AUDITING** | Continuous auditing is an audit analytics method that allows auditors to directly connect with city data systems, use an entire data population rather than samples, and automate ongoing analyses of that data. These ongoing analyses of data systems are used to identify high-risk areas and to test controls in the city's financial and operational systems in a timely fashion. The information gained from continuous auditing helps inform audits and our annual risk assessment. It also helps audit teams improve efficiencies in planning and fieldwork by identifying trends and exceptions earlier than through traditional audit methods.



PLAN DESCRIPTION

continued



ANTI-FRAUD FOCUS

The city's management is responsible for establishing internal controls to detect and prevent fraud for each city entity. Although fraud detection is not a primary responsibility of the Auditor's Office, our audits consider the possibility that fraud, waste, or abuse may be occurring.

AUDIT FOLLOW-UP PROGRAM

Audit follow-up activities are conducted for every audit to assess whether city personnel implemented the agreed-upon audit recommendations for improvement and impact.

The Auditor's Office regularly issues follow-up audit reports to the Audit Committee and the City and County of Denver's operational management. These reports show the status of audit findings and our recommendations for improved business practices.

Our office measures the rates at which agencies accept our recommendations and then implement them. These are indicators of how well the city uses information from our audit reports to address identified risks and enhance efficiency, effectiveness, and economy of city operations.

FOCUS ON FLEXIBILITY, TRANSPARENCY, AND RESPONSIVENESS

Although the Auditor's Office operates independently from other city entities, Auditor O'Brien and Auditor's Office leadership meet regularly throughout the year with City Council members, the mayor, other elected officials, city agency leaders, neighborhood and community groups, and civic leaders to solicit input regarding risks. Our objective is to improve services and stewardship of city resources.



AUDIT SELECTION PROCESS

DETERMINING WHAT TO AUDIT

Developing the annual Audit Plan is an ongoing process — conducted by assembling ideas from a variety of internal and external sources, examining a broad range of city activities and data, and then assessing risk factors in tandem with additional considerations. This approach results in a diverse list of agencies, programs, activities, services, systems, grants, and contracts that auditors examine to determine whether these are operating efficiently, effectively, and in accordance with both the law and any defined requirements. Some agencies could be audited more frequently than others depending on the level of assessed risks and outcomes of previous audits.

In developing a list of potential audits and other types of analyses, ideas come from a variety of sources:

- **ASSESSMENTS** of operations and controls in previous internal and external audit reports, including independent audits of the city's Annual Comprehensive Financial Report, single audits, and audit management letters.
- **INPUT** from community members, elected officials, Audit Committee members, external auditors, and agency managers and staff.
- **CONSIDERATION** of current local events, financial conditions, major capital projects, and public policy issues.
- **CONSIDERATION** of risks identified in other local governments' audits that could also emerge in Denver.

A robust audit plan assesses a broad range of city activities and entities including:

- **ORGANIZATIONAL UNITS** within a city agency, such as a division or a department.
- **INDIVIDUAL** city programs and offices.
- **TRANSACTION CYCLES OR PROCESSES** that affect more than one city function or agency, such as contract procurement, purchasing, cash handling, fines, taxes, and assessments or key technology processes.
- **INDIVIDUAL FINANCIAL STATEMENT ACCOUNTS OR TRANSACTIONAL ACTIVITIES**, such as grant programs, construction projects in progress, tax-funded programs, and special revenue funds.
- **CITY FUNCTIONS** that operate like for-profit entities, such as Denver International Airport and other entities associated with enterprise funds.



AUDIT SELECTION PROCESS *continued*

- **CONTRACTS AND AGREEMENTS** between the city and third parties, including cultural facilities and non-profit organizations.

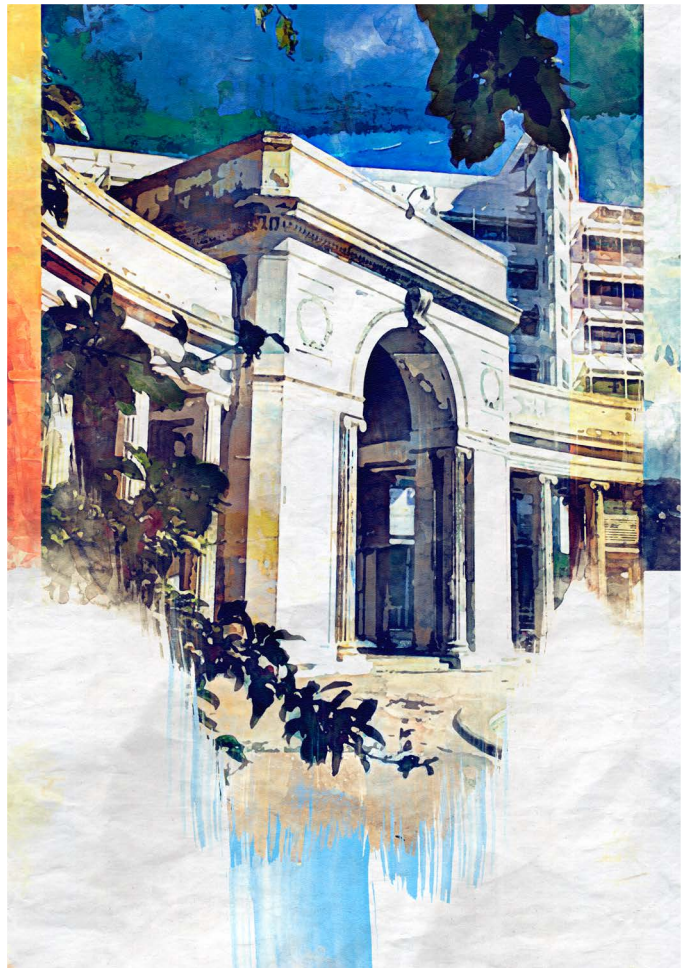
Our office identifies and prioritizes potential audits and other assessments using a risk-based approach by examining a variety of factors that may expose the city to fraud, misappropriation of funds, liability, or reputational harm. Accordingly, we assess risk factors by reviewing:

- Significant changes that have occurred in the city.
- Time since the last audit of an area.
- Size of the agency, program, activity, or contract.
- Size of the budget.
- Compliance and regulations.
- Pending or recent legislation.
- Complexity of transactions.
- Fiscal sustainability.
- Critical information technology systems, including hardware and software.
- Management accountability.
- Quality of internal control systems.
- Age of programs, operations, or contracts.
- Public health and safety.
- Critical infrastructure.
- Short- and long-term strategic risks.
- Equity.
- Related litigation.
- Relevant case law.
- Emerging risk areas.

We periodically evaluate and modify risk factors as necessary.

After we finalize the Audit Plan, new information may come to light during the year. Unanticipated events may occur, and initiatives, priorities, and risks within the city may change. The flexible nature of the Audit Plan as a living document provides the discretion to change course when it is in the best interest of the city.

The Auditor's Office extends its gratitude and appreciation to the Mayor's Office, Denver City Council, Audit Committee, leaders of city agencies, and members of the public for providing input on the 2024 Audit Plan and for supporting the general mission of our office throughout the year.





The Audit Services Division of the Denver Auditor's Office provides independent oversight of how tax dollars and other funding resources are spent on the city's many services, initiatives, and programs. Article V of the Denver Charter establishes this independence and provides for the Auditor's general authority and duties. The charter also establishes the Audit Committee, through which we report our audit findings.

OUR HISTORY

Originally, the Auditor served as the general accountant for the city, maintaining the city's financial records and paying city expenses, including payroll. In November 2006, Denver voters approved an amendment to the city charter, completely changing the duties of the Auditor that had been in place since 1904. Based on this charter revision, accounting and payroll functions moved in June 2007 to the Controller's Office under the chief financial officer. This revision, plus other ordinances, authorized the Auditor to conduct audits of any entity that uses city or county dollars. Today, Denver's elected Auditor oversees one of the most structurally independent government audit functions in the country.

Several key components serve as the cornerstone for Denver's auditing framework. These elements provide the Auditor with the independence that results in the office's ability to conduct meaningful audits.

- **ELECTED AUDITOR** | The City and County of Denver has an elected Auditor who is independent from all other elected officials and operational management.

- **AUDIT COMMITTEE** | The Denver Charter establishes an independent Audit Committee, chaired by the Auditor, with six other members appointed by the mayor, members of the City Council, and the Auditor.
- **COMPREHENSIVE ACCESS** | The Denver Charter and city ordinance authorize the Auditor to have access to all officers, employees, records, and property maintained by the City and County of Denver and to all external entities, records, and personnel related to their business interactions with the city.
- **AUDIT RESPONSE REQUIREMENTS** | City ordinance requires that audited agencies formally respond to all audit findings and recommendations, establishing the Auditor's ability to work in conjunction with these agencies while maintaining independence.
- **ADHERENCE TO PROFESSIONAL AUDIT STANDARDS** | The Auditor's Office conducts all audits in accordance with Generally Accepted Government Auditing Standards published by the U. S. Comptroller General. These standards contain requirements and guidance on important topics such as ethics, objectivity, and independence.





City and County of Denver

201 West Colfax Avenue, #705 • Denver, Colorado 80202
(720) 913-5039 • DenverGov.org/Auditor



March 20, 2024

Christoph Heinrich, Director
Denver Art Museum
100 W. 14th Ave. Parkway
Denver, CO 80204

Director Heinrich,

I am pleased we have made progress in expressing the value of access to information for my office's work. However, I want to reiterate that when the art museum and other organizations choose to use public resources, they must be held accountable to the public first and foremost. The private sector should not be held to a different standard of record production than those who operate with the assistance of millions of public dollars.

I also want to take this opportunity to correct the record related to our 2021 Denver Art Museum audit.

As noted in the official record of the report, the audit was impaired because museum officials restricted access to complete records from the museum's collections management system, ARGUS. For example, the museum restricted access to dollar values, provenance, and party names — as well as several notes fields — such as those related to provenance, insurance, and cost. On-site access was insufficient for our team to assess data reliability and analyze the data using our sophisticated auditing tools.

The need for information about provenance was clear, as we needed to establish the location and stewardship of art belonging to the City and County of Denver — and therefore to the people of Denver. In fact, even with the impairment, we identified pieces of art belonging to the city that were sold or mislabeled.

According to paragraph 3.110 of the Generally Accepted Government Audit Standards (GAGAS) that the Denver Charter requires my office to follow, auditors must use a mindset "in which auditors assume that management is neither dishonest nor of unquestioned honesty." Furthermore, paragraph 8.101 of GAGAS says auditors must use their professional judgment to determine whether the evidence provided is sufficient. And paragraph 8.13 of GAGAS says, "The sufficiency and appropriateness of evidence needed and tests of evidence are determined by the auditors based on the audit objectives, findings, and conclusions." In this case, the restricted access prevented auditors from collecting sufficient evidence for all our planned analyses.

Lastly, I want to make clear that the drafted unified ordinance includes strict safeguards to ensure confidential information remains secure in the hands of my administration and all future Auditors.

I appreciate the collaboration and support of several members of the City Council, and I encourage them to continue moving forward with seeking full access to information for my office for the good of the City and County of Denver and the people we all serve.

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy M. O'Brien".

Denver Auditor Timothy M. O'Brien, CPA



City and County of Denver

201 West Colfax Avenue, #705 • Denver, Colorado 80202
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CC: Finance & Governance Committee

Councilwoman Amanda Sawyer, Chair, Finance & Governance Committee

Councilwoman Shontel Lewis, Vice-Chair, Finance & Governance Committee

Councilwoman Amanda Sandoval

Councilman Paul Kashmann

Councilwoman Serena Gonzales-Gutierrez

Councilwoman Flor Alvidrez

Councilwoman Jamie Torres

Auditor's Office Subpoena Power Bill



The problem:

Despite the right to information, audited parties — city agencies or contractors under audit as well as employers subject to wage investigations — sometimes refuse to produce necessary information.

- We seek to address ongoing issues related to:
 - Agencies rejecting access to documents and information the Denver Charter duly entitles the Auditor to when needed for an audit.
 - Noncompliance with records requests during wage investigations.
 - The failure of existing tools to guarantee requested records are produced.
 - Failure to produce records for audits delays our work and adds significant cost to report production. One day of lost time for a small audit team of four costs taxpayers approximately \$2,388.
 - Delays in producing information or refusal to produce documents can keep workers from getting paid the wages they earned in a timely manner. Every day without money matters to the hardworking individuals in our community who are supporting their families, neighborhoods, and our economy. They struggle to pay rent, utilities, and all the other costs of living in an expensive metro area.
- DENVER LABOR EXAMPLES:**
- In late 2022 our team worked on a case involving an employer who provided documentation that we believed was incomplete. Because some documents were provided, we could not fine the employer and because we did not have subpoena power we could not dig deeper. In 2023, a class action lawsuit showed there were likely hundreds of workers at this employer who were experiencing wage violations.
 - These workers were members of vulnerable groups and have almost certainly been paid less than minimum wage and haven't been paid overtime or provided with paid sick leave. This caused them real harm as they struggled to buy food and pay rent. The Denver Auditor's Office might have been able to help sooner with subpoena power.
 - Examples of employers who were fined for not providing necessary information for wage investigations:
 - Afterwork Maintenance
 - Anthony's Pizza & Pasta
 - Dee Tacko INC
 - First Class Housekeeping & Maid Service
 - JMC Cleaning Services
 - Mexicanisima Mexican Restaurant
 - My Freight LLC
 - Randstad North America, INC
 - Tri-M Electric

Currently, the Civil Wage Theft Ordinance allows a fine of \$1,000 for refusing to produce certified payroll records — an amount that has proven too small to induce compliance.

TURN OVER FOR MORE →

Timothy M. O'Brien, CPA | Denver Auditor

For a copy of this report, visit denverauditor.org or call the Auditor's Office at (720) 913-5000.



AUDIT SERVICES EXAMPLES:

AUDIT	RECORDS REQUESTED	RESISTANCE FACED
Denver Art Museum	Requested full access to inventory system.	Only extremely limited access was granted, resulting in incomplete information received for inventory testing. An on-site review under supervision of records was not sufficient for Generally Accepted Government Auditing Standards or our use of advanced audit analytics technology.
Airport – Westin Hotel	Requested case file documentation.	Information was never provided. The vendor wanted to provide edited, aggregated, and adjusted information. Neither the city nor the Auditor’s Office could determine whether the vendor was complying with the terms of its contract.
Denver Preschool Program	Requested procedures for education data from the tax-funded nonprofit.	Late in the audit, members of the board of directors inserted themselves into reviews of information being submitted. This caused significant delay.
Rocky Mountain Human Services	Requested records about subcontractor activities.	Subcontractors that receive mill levy funds were about a month late in providing the requested information.
Airport Security	Requested Sensitive Secured Information (SSI) maintained by airport security.	Although TSA indicated its approval of our access, airport security personnel independently limited our access. This impacted the effectiveness and efficiency of the audit.

SAFEGUARDS:

- The Auditor’s Office works daily with confidential, protected, proprietary, and sensitive data and records. We produce confidential cybersecurity work and work with personally identifiable information as a matter of course. All this information is protected under Denver law and is secure in the hands of our staff.
- Subpoena power would not give the Auditor’s Office access to information more secure than the information it already handles every day.
- The new bill reiterates the confidentiality protections included in the Charter-required Generally Accepted Government Auditing Standards.
- It also includes adherence to standards from the National Institute of Standards and Technologies Security and Privacy, thanks to the suggestion from Councilman Flynn and his team.
- The audit software used to store workpapers has been vetted by the city’s Technology Services agency and is compliant with ISO 27001, PCI DSS Level 1, SSAE-16/ ISAE 3402 SOC 1, SOC 2 & 3, and HIPAA.
- The proposed ordinance will provide the Auditor’s Office with the most limited subpoena power of any agency with such authority in the city.
- Under the proposed ordinance change, the Auditor would be limited to subpoena only information expressly needed to perform statutory duties.

The solution:

- Grant the Auditor the authority to subpoena information with three notable limitations:
 - The authority would be expressly limited to the performance of one of the Auditor’s statutory duties.
 - Due process guarantees would protect against unreasonable requests.
- Grant the Auditor authority to request and waive penalties for a party’s failure to comply with a subpoena.
- Provide the subpoenaed party the right to object before a neutral, third-party administrative hearing officer.

BENEFITS:

- Using subpoena power would positively change the conversation with employers and auditees.
- It would allow for more tools in the Auditor’s toolbox during the process and better ensure the transparency and accountability the Auditor is meant to provide Denver constituents.
- It is a no-cost, more incremental solution to prevent audit delays.



Timothy M. O’Brien, CPA | Denver Auditor

From: Spiegeland, Michael <Michael.Spiegeland@marriott.com>
Sent: Thursday, December 06, 2018 4:01 PM
To: Romines, Frank - CAO CL0357 Assistant City Attorney Senior <Franklin.Romines@denvergov.org>
Cc: Taylor, Max - DEN <Max.Taylor@flydenver.com>
Subject: [EXTERNAL] RE: Follow-up on Westin Audit

I'll send another message to our business team to see where we stand.

Michael Spiegeland
Vice President and Senior Counsel
Marriott International, Inc.
Marriott Law
Office: 301-380-0548

From: Romines, Frank - CAO CL0357 Assistant City Attorney Senior
<Franklin.Romines@denvergov.org>
Sent: Thursday, December 6, 2018 5:24 PM
To: Spiegeland, Michael <Michael.Spiegeland@marriott.com>
Cc: Taylor, Max - DEN <Max.Taylor@flydenver.com>
Subject: RE: Follow-up on Westin Audit

Michael,

Hello. Wanted to check in with you and try to understand next steps re: access to/review of the below. The Auditor's office has advised that they are close to the point of closing fieldwork due to

an impediment in their ability to further audit, which will be reported as a limitation.

Would like to try to work together to avoid it having to come to that.

Please advise,
fdr

Frank Romines
Assistant City Attorney - Sr.
City and County of Denver
720.913.3223 (o) franklin.romines@denvergov.org

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Practice temporarily authorized pending admission under C.R.C.P. 205.6

From: Spiegeland, Michael <Michael.Spiegeland@marriott.com>
Sent: Friday, November 30, 2018 6:17 PM
To: Romines, Frank - CAO CL0357 Assistant City Attorney Senior <Franklin.Romines@denvergov.org>
Cc: Taylor, Max - DEN <Max.Taylor@flydenver.com>
Subject: [EXTERNAL] Re: Follow-up on Westin Audit

Thank you Frank. Very much appreciated. I will look at Monday morning.

Sent from my iPhone

On Nov 30, 2018, at 8:10 PM, Romines, Frank - CAO CL0357 Assistant City Attorney Senior <Franklin.Romines@denvergov.org> wrote:

Michael,

To follow up on the CORA information forwarded on Wednesday and our discussion from Tuesday, please find below an itemized breakdown of four different categories of information relevant to the City's on-going audit. The first bucket involves information the audit team has had access to, but to date, has not been allowed to make copies of (only notes). The second category involves items for which some, or limited, information has been made available, but not all necessary information has been provided. No copies were permitted for the review of any partial information provided. The third category describes items the audit team has not been provided

access to for their review. The fourth matter involves another audit document that is needed for purposes of the City's audit.

At your request, and for each category of information, the Auditor has provided an explanation of the need for the requested information *in italics*.

I'm guessing you had your hands full today given the news, but I would very much appreciate an opportunity to discuss the below with you early next week. The City's audit has been on-going for several weeks at this point, and the team's ability to timely complete the process is contingent on finding a mutually-agreeable solution to access/retention of the below.

Please let me know when would be a good time for you next week to advance this matter.

fdr

Items the City has been able to review in full on-site and take limited notes on, but not retain copies of source documentation

1. SOC-1 Report (need full copy):
 - *This information confirms the reliability of financial data after systems were converted from Starwood to Marriott.*
2. Cash Management:
 - *To satisfy portions of all objectives, primarily Objective A, related to financial transaction testing.*
3. Discounts, Comps, Refunds/Credits:
 - *To satisfy portions of all objectives, primarily Objective A, related to financial transaction testing.*

Items the City has not been able to obtain in full, review and/or copy

1. Summary Risk Assessment Report (need full copy for airport Westin):
 - Specific results were not allowed to be reviewed, only aggregate data and procedure steps.
 - *To verify Marriott's internal control structure.*
2. Employee Handbooks (need table of contents and relevant excerpts if full copy not available):
 - *To satisfy Objective C – internal controls related to employee management.*
3. Policies and Procedures related to the following:
 - Financial Internal Controls (reconciliations, data entry and review, documentation requirements, segregation of duties).

- Some of these specific items are captured in other P&Ps; however, the city has been provided no information related to segregation of duties.
- *To satisfy portions of all objectives, primarily Objective A, related to financial transaction testing.*

Information the City has not been able to review and/or obtain

1. RubinBrown Results (need copy when complete):
 - Pending completion, but we also have not been privy to the complete scope of work or methodology.
 - *To avoid duplication of efforts, to verify HMA Section 2.13 internal controls and provide assurances as to the internal control structure.*
2. List of trainings required of airport Westin employees for sampling period (need full list):
 - *To satisfy Objective C – internal controls related to employee management (HMA 2.13).*
3. List of airport Westin employees required to attend trainings and documentation to verify attendance (need full list):
 - *To satisfy Objective C – internal controls related to employee management (HMA 2.13).*
4. Full list or index of all Marriott P&P (need copy, will use for sampling purposes):
 - Auditor, pre-selected some common financial policies and procedures for review.
 - *To satisfy Objectives A, B, and C – internal controls related to financial transactions, inventory, performance management, client satisfaction, and employee management (HMA 2.13).*
5. Policies and Procedures related to the following (need copies of each):
 - The pricing tool, ROS.
 - *To gain assurance over how the hotel prices itself using data and in comparison to the market, as well as to understand financial sustainability. To satisfy objective B, including part of the budget review and approval process and internal controls section 2.13 in the HMA.*
 - Conducting Inventory and performing reconciliations.
 - *To satisfy Objective A related to FFE inventory controls, particularly as it relates to loss of inventory and P&L accuracy. Relates to internal controls section 2.13, as well, in HMA.*
 - Travel.
 - *Section of the HMA – 2.21.a.viii related to travel and reimbursement.*

- Handling negative feedback/reviews/customer service results (Jack indicated that there may be a SOP within the customer relations department).
- *This satisfies Objective B regarding performance management, specifically HMA sections 2.13 related to internal controls and 2.02 related to operating standards. The operating standard includes guest satisfaction.*
- Employee training.
- *To satisfy Objective C – internal controls related to employee management (HMA 2.13)*

6. Financial transaction support:

- Team provided a request in Excel for transactional support for sample of financial transactions, including both expenses and revenues to satisfy Objective A .
- Jack had indicated that supporting documentation for several transactions included in the sample could not be provided.
 - Jack was to provide the original excel sheet back to the auditors with an indication as to which sample transactions he would not provide documentation for and an explanation as to why – this has not been done.
- Limited documentation for some transactions was provided, but frequently not enough to suffice the testing step. Documentation is generally from another system as opposed to the original supporting document (i.e., invoices, etc.) and doesn't *provide assurances as to the allowability or accuracy of transactions.*

Additional items that are needed

- Audit conducted by Bleser and Associates.
- *The scope appears similar to City's audit.*

Frank Romines
 Assistant City Attorney - Sr.
 City and County of Denver
 720.913.3223 (o) franklin.romines@denvergov.org

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Practice temporarily authorized pending admission under C.R.C.P. 205.6



City and County of Denver

201 West Colfax Avenue, #705 • Denver, Colorado 80202
(720) 913-5039 • denvergov.org/DenverLabor



Lydia Prado, PhD, Denver Preschool Program Board of Directors Chair
Elsa Holguín, Denver Preschool Program President & CEO
Via: email

April 26, 2024

Dear leaders of the Denver Preschool Program,

My office appreciated meeting with President & CEO Elsa Holguín on April 3. We felt we had a very productive conversation to address concerns and ask for the Denver Preschool Program's support for the common-sense and moderate tool of subpoena power.

Although we have made no representation about your support for subpoena power since then, I am dismayed today to learn there were so many lingering issues that were not brought up either during that meeting, during the preschool program's board meeting that we made ourselves available for, or in response to our follow-up emails asking if there were any additional concerns we could help address.

First, I would like to say that we stand by our 2019 "Denver Preschool Program" audit as an example of a delay that a city partner caused and that we would have preferred to avoid. That audit took roughly eight months to complete, and our documentation shows at least three communications directly with the board and three additional communications with Denver Preschool Program leaders. We were asked by members of the City Council to give examples of delayed audits, and this was one.

Nevertheless, our follow-up report in 2020 celebrated the board's success in implementing all our recommendations, and we have since considered that matter closed. We want to reiterate that we see the Denver Preschool Program as a valuable city partner and are grateful that you have expressed the intent to cooperate with our office in the future, should the need ever arise.

Additionally, as we expressly explained in the April 3 meeting, the subpoena power bill would not allow us to subpoena subcontractors. Your providers and vendors would not be subject to the subpoena power. It applies to contractors who have signed an agreement with the city, including the requisite audit clause.

As we also discussed in the meeting, we are adding extra protections for confidential data into the draft bill to ensure that not only my administration but all who follow must adhere to strict confidentiality for any sensitive information. Our audit workpaper system has been vetted by Technology Services and is HIPAA-compliant, among many other high standards. We deal with highly confidential information every day and treat it with the care that the Denver Charter and our professional standards require.

I appreciate and agree with your desire to have an independent third party provide oversight. If any subpoenaed party feels that a request for information is too broad or includes sensitive information that needs additional protection, it is expressly written into the draft bill that an independent hearing officer can issue a protective order or modify or quash the subpoena. As Ms. Holguín said when we met with her, the inclusion of an administrative law judge in the draft bill “creates fairness and equality.” Therefore, characterizing a subpoena as a “unilateral demand” is inaccurate and does not align with the conversation we previously had with your organization.

Finally, there is no process for us to obtain a subpoena through the City Attorney’s Office. Again, during the April 3 meeting, we explained our only recourse when a contractor refuses to provide information is to file a lawsuit. The City Attorney’s Office has no power to independently issue a subpoena during an audit. I wish the preschool program leaders had asked us about this idea in their many opportunities to do so.

I am disappointed that despite our good-faith efforts to have a dialogue with the Denver Preschool Program and answer all concerns, the conversation has gone down this path. My staff and I would appreciate and welcome the opportunity for further conversations, as I am confident our proposal addresses all your concerns.

Subpoena power is a moderate, intermediate step for getting information from city partners without damaging relationships through our only current recourse: a lawsuit. We believe this tool is in the best interest of the city, our city partners like the Denver Preschool Program, and the public we serve. We hope you will reconsider your position, and we remain ready and willing to continue to answer your questions and address your concerns in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy M. O'Brien", written over a light blue horizontal line.

Timothy M. O'Brien, CPA
Denver Auditor

CC: Michael Johnston, Mayor
Denver City Council
Kerry Tipper, City Attorney
Dwight Jones, Executive Director, Office of Children's Affairs
Dominick Moreno, Deputy Chief of Staff
Denver Preschool Program Board of Directors
Erin Brown, Vice Chair
Chris Daues
Anne Rowe
Andrea Albo
Michael Baker
Nathaniel Cradle
Keshia Allen Horner
Jennifer Rodriguez-Luke
Councilwoman Amanda Sandoval
Zaki Robbins



Office of the Comptroller
Josh Pasch, City Auditor

100 N. Holliday St., Room 321
Baltimore, Maryland 21202

Denver City Council
1237 Bannock St. Room 451
Denver, CO 80202
Via: email

June 14, 2024

Dear Honorable Members of the Denver City Council,

I am writing this letter in support of granting subpoena power to the Denver Auditor.

A government audit function, operating under applicable government auditing standards such as the *Government Auditing Standards*, plays a key role in effective governance, public accountability, and transparency. The efficiency and effectiveness of an audit department is significantly affected by the ability to obtain documentation from an auditee. Complete documentation is necessary to conclude on the audit testing performed and to render an accurate conclusion. Sometimes documentation is not provided or not provided in a timely manner. This can delay the completion of the audit or reduce the ability to identify issues that are relevant to the audit objective.

We understand concerns of having the power to obtain records beyond those relevant to the audit objectives. The following points should address those concerns:

- Granting the Denver Auditor the power to subpoena records for vendors contracting with the City, when the contracts include a right to audit clause, does not add to the authority of the Auditor to request vendor records beyond what is already contractually allowed. It is a tool to obtain all relevant information in a timely manner.
- Limiting the subpoena power to contractors with contracts with the City, coupled with controls such as appointment of an independent hearing officer address concerns of subpoena power exceeding the scope and objective of the audit.

If you would like to discuss further, please do not hesitate to contact me by telephone at 410-396-4782 or by email at josh.pasch@baltimorecity.gov.

Sincerely,

Josh Pasch

Josh Pasch, CPA
City Auditor
City of Baltimore



April 9, 2024

Denver Auditor's Office
201. W. Colfax Ave. #705
Denver, CO
80202

Dear Auditor O'Brien:

The Denver Metro Chamber of Commerce supports Bill 24-0476 authorizing the Auditor to issue investigatory subpoenas in connection with the enforcement of certain wage violations.

The promotion of economic vitality and prosperity in the City and County of Denver is at the core of the Denver Metro Chamber of Commerce's mission. We firmly believe that fair labor practices are essential to a thriving business environment, and the proposed ordinance aligns with our commitment to fostering an equitable and conducive climate to attract and retain business.

We recognize the importance of upholding wage regulations for workers. By ensuring that employees are compensated fairly and in compliance with the law, we enhance productivity, foster consumer confidence and attract investment to our city. This furthers the Chambers vision of economic empowerment for every Coloradan.

While we take pride in endorsing Bill 24-0476 and its principles, we maintain our opposition to granting additional or universal subpoena power to the Auditor. The proposed extension of subpoena authority beyond wage enforcement presents a significant concern, as it would afford the Auditor extensive discretion without sufficient oversight. Even with good intentions, such unchecked authority could potentially be misused in the future. Additionally, this proposal imposes an undue burden on both the business and nonprofit sectors, particularly those engaged in contracts with the City. This threat undermines Denver's standing as a favorable environment for conducting business.

The proposed ordinance represents a significant step forward in safeguarding the rights of workers while promoting economic prosperity in Denver. We urge the City and County Council to enact this measure without additional subpoena expansion.

Thank you for your diligent efforts and thoughtful consideration regarding our concerns about expanding subpoena power.

Sincerely,



Carly West
Vice President of Government Affairs



COLORADO CROSS-DISABILITY COALITION

June 6, 2024

Dear Denver City Council Members

I am writing on behalf of The Colorado Cross-Disability Coalition which represents over 5000 people with disabilities in Colorado and has the mission of advocating for social justice for people with all types of disabilities. Our organization is in full support of the Denver Auditor having all tools necessary to ensure accountability and transparency in our city contracts using taxpayer dollars. The Denver Auditor serves an important function for our city and the work of the office should not be hindered. Subpoena power will allow the City Auditor to require necessary records be provided to comply with an audit.

While many public entities in Colorado have subpoena power that is unfettered, Denver's proposed ordinance has guardrails to add an extra check on the ability for the office to obtain records. One of these guardrails ensures that an administrative law judge can deny access to records that are deemed confidential or irrelevant to the audit. We feel this covers any concerns that the council might have regarding unchecked power. Our members rely on city services contracted by city agencies to function properly. There are times when companies that are contractors feel like they can fail to fully follow Colorado and federal anti-discrimination laws even though regulations, such as Title 2 of the Americans with Disabilities Act (that applies to state and local government) are clear that a government entity cannot contract their way out of compliance. To assure equitable delivery of services the function of a government auditor is imperative. **It is the definition of lack of equity to force the disability community member to have to individually raise each concern**, often to a bureaucracy like the State Civil Rights Commission or the US Department of Justice that is not responsive. Most disabled people do not have access to attorneys. Moreover, some programs perform below expectations and do not do what taxpayers and voters expect. Performance audits are a way to address this in a way that makes real improvements. We want to see the problems fixed. The Denver Auditor has done this with several disability programs in the past. The auditor is hampered in doing their job as effectively as possible without the ability to get the information they need in a timely manner.

In our work, we find that ***audits help ensure a level playing field*** – that contractors are not cutting corners to get ahead creating unfair competition. Audits that are conducted with

full and accurate information should be completed with the intent of rewarding good conduct and discouraging poor performance. Under current law, entities can withhold information necessary for an audit, frustrating their efforts and causing an audit to end. Existing law does not properly protect taxpayers' investment in our city. We urge you to fix this loophole in the law.

If you have any further questions, please reach out to me.

Sincerely,

[Julie Reiskin](#), LCSW

Co-Executive Director (and Denver Resident)



**COLORADANS FOR THE
COMMON GOOD**

Making Democracy Work

Denver City Council
1437 Bannock St Rm 451
Denver, CO 80202

Dear Councilmembers,

Coloradans for the Common Good (CCG) and labor allies support expanding subpoena power to the Denver Auditor's Office to properly enforce the city's wage theft protections *and* ensure accountability of how public dollars are spent. Councilmembers Parady and Sawyer endorsed a comprehensive ordinance to address our concerns.

As you prepare to discuss these topics at today's Budget & Policy Committee in two separate ordinances, we want to clarify our position on both 24-0442 and 24-0443.

While we initially found 24-0442 (subpoena power for wage theft investigations only) lacking in meaningful enforcement, we are confident that it can be improved. We encourage you to clearly articulate the punishments for not complying with a subpoena as *\$1,000 per day*. We have heard your support of our efforts to protect Denver workers from abuse and theft - meaningful penalties and enforcement will make that support real.

We also support 24-0443 (subpoena power for performance audits) because CCG represents working families that have been victims of wage theft AND even more families that rely on effective delivery of city services. Subpoena power for wage theft AND performance audits is necessary to ensure the City and County is following through on the commitments it makes to our collective membership and all Denverites.

Sincerely,

Coloradans for the Common Good

Colorado Cross Disability Coalition

Centro de los Trabajadores

Sheetmetal Workers Local 9

UFCW Local 7

Community Organizations in Support of Subpoena Power

April 22, 2024

Last year, community, faith, and labor organizations came together to get justice for those that are victims of wage theft. We celebrated the wage theft ordinance passage, but in short order, we realized we did not have all the tools necessary to enforce the ordinance. Specifically, the ability to compel companies accused of wage theft to turn over payroll records.

After months of conversations with groups that were opposed to the wage ordinance last year, the ordinance has been altered to address their concerns without taking away necessary tools to be effective. Groups that were opposed to the passage of the wage theft ordinance are now supportive of subpoena power for that very ordinance. Many are pleased to see those cheating the system and getting an unfair advantage in the marketplace, held accountable.

This year, even without subpoena power, the Denver Auditor's Office recovered just over \$2.04 million dollars. These are earnings that go directly into the economy to support not only families but local businesses. The City of Denver can do even more after the passage of subpoena power this month. We urge you to stand in support of our community and businesses to ensure accountability for all doing business in Denver and support subpoena power for the Denver Auditor's office.

With all our support,

Colorado Cross Disability Coalition

United Food and Commercial Workers Local 7

Sheetmetal, Air, Rail, and Transportation Local 9

Denver Area Labor Federation

Communications Workers of America 7777

Western States Regional Council of Carpenters

Colorado Building and Construction Trades

Service Employees International Union Local 105

El Centro de los Trabajadores

Coloradans for the Common Good

Laborers International Union of North America Local 720

Colorado Fiscal Institute



100 W. 14th Avenue Pkwy
Denver, CO 80204-2788
720-865-5000
DENVERARTMUSEUM.ORG

March 18, 2024

Denver Auditor Timothy O'Brien
201 West Colfax, Suite 705
Denver, CO 80202

Dear Auditor O'Brien,

Thank you for the opportunity to weigh in on the proposed ordinance providing subpoena power to the Office of the Auditor.

We understand that the ordinance references wage claims, as well as internal audits, and we would like to make clear that the Museum supports the important work of the auditor's office in recovering wages owed to employees. If there have been barriers to that work that this ordinance would eliminate, we support that aspect and urge City Council to focus the ordinance on wage claims.

When this ordinance was proposed the first time, in 2021, the Denver Art Museum audit was held up as an example to support your request for subpoena power. For the record, we provided your team with unrestricted access to our systems and information onsite, and paid staff to be there to ensure you were able to obtain any information you needed as required by the City Charter. As an organization who has navigated disagreement with the Auditor about methods for accessing information, we believe this ordinance has far-reaching, unintended consequences for private organizations working with the City.

Internal audits can be conducted for any organization with a contractual relationship to the City. Including that scope in this ordinance puts all third parties doing business with the City who are eager to comply with an audit in the unfortunate position of having to vigorously defend their responsibility to keep proprietary or confidential information secure.

City Council diligently reviewed this proposal in its first presentation in 2021 and thoughtfully amended it to allow onsite review of confidential or proprietary information by the auditor as an effective compromise to these concerns. We urge City Council to consider focusing this ordinance on wage claims alone in order to allow for more consideration of the potential impact on third parties related to audits.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Heinrich".

Christoph Heinrich
Frederick and Jan Mayer Director
Denver Art Museum



CC: Finance & Governance Committee

Councilwoman Amanda Sawyer, Chair, Finance & Governance Committee
Councilwoman Shontel Lewis, Vice-Chair, Finance & Governance Committee
Councilwoman Amanda Sandoval
Councilman Paul Kashmann
Councilwoman Serena Gonzales-Gutierrez
Councilwoman Flor Alvidrez
Councilwoman Jamie Torres



100 W. 14th Avenue Pkwy
Denver, CO 80204-2788
720-865-5000
DENVERARTMUSEUM.ORG

April 19, 2021

Re: Council Bill 21-0078: Auditor Subpoena Power

Denver City Council Financial & Governance Committee Members:

I have come to learn that the Denver Art Museum audit is being inaccurately cited as a primary example in support of Denver Auditor Tim O'Brien's request for subpoena power. After reviewing the information being presented by the Auditor, I feel it is my responsibility to accurately describe the situation regarding the audit that took place between May 2020 and January 2021, a process welcomed by the Museum.

Auditor O'Brien stated in his audit report that the Denver Art Museum limited the audit team's access to information related to its art collection database. This is factually inaccurate. The audit team was provided full and unrestricted access to the database onsite at the Museum. The audit team requested to copy the database, which includes confidential and sensitive information, and to remove a digital copy from the Museum, which would have resulted in the Museum breaching its duties as the guardian of that information. This request was respectfully declined by the Museum based on its legal and fiduciary responsibilities under the agreements with donors and the accreditation standards we abide by. To be clear, the Museum made all information available to the audit team, but the Auditor was unwilling to find a workable solution and thus was not satisfied with the method through which the information was provided. This does not constitute a limitation on the audit, as stated by the Auditor.

Through the City Attorney's Office, the Museum and the Auditor agreed that additional onsite access to the full database for the audit team, along with providing specific requested reports, would enable the audit to proceed without limitation. Additional access was offered, requested reports were generated and delivered in a timely way and it was the Museum's understanding that it had fully satisfied the needs of the audit team. Upon receipt of the draft audit report, the Museum discovered several references to the lack of access to the database and it proposed revisions to the language to reflect the circumstances more accurately. Our formal, published response to the audit report (excerpted below) reiterates our understanding that we had complied fully with the audit. This issue was resolved through the City Attorney's Office, which is an effective process currently available to the Auditor, without the need for subpoena power.

"Our commitment to our responsibility as custodians of our collection, and the information we rely on to keep, manage and care for those collections, created a difference in opinion between the Museum and the Auditor, which is characterized in the report as a limitation to collections information provided to the audit team. It is critical to the Museum to clarify that the audit team had full, unrestricted onsite access to all collection database records for as long as they deemed necessary, as well as dedicated

Museum staff to support their research. The Museum's inability to provide a digital copy of the complete database for offsite use by the audit team stems from our obligation to maintain security and confidentiality of the data identical to the security of the objects they represent; however, the Museum fulfilled, to the extent possible, all formal requests for data from the audit team in a timely way, including additional requests made following the formal end to fieldwork. The Museum understood that it had ultimately met the needs of the audit team through multiple onsite sessions with the database and information shared through requested reports."

At your March 23 Finance & Governance meeting, the Auditor referenced donor information within the collections database and stated "We were not allowed to see those data fields in their database. They would not allow us to look at that kind of information." This statement is inaccurate and misleading. The audit team had full onsite access to every field of information in the database for every object currently or previously owned by the Denver Art Museum.

As a partner to the City and County of Denver, the Museum is committed to practices and policies that support transparency and service to the citizens and I want to assure you that the Auditor had complete access to the information as you consider the proposed ordinance. We would be happy to answer any questions or provide any information necessary now, or in the future, related to this issue or the Museum overall. I appreciate your allowing me to share these additional facts regarding the Museum's audit.

Sincerely,



Christoph Heinrich
Director, Denver Art Museum

CC:

Councilman Jolon Clark, Council President
Councilwoman Kendra Black, Chair, Finance & Governance Committee
Councilwoman Candi CdeBaca
Councilman Kevin Flynn
Councilman Chris Herndon
Councilman Chris Hinds
Councilwoman Robin Kniech
Councilwoman Debbie Ortega
Councilwoman Amanda Sandoval
Councilwoman Amanda Sawyer
Councilwoman Jamie Torres
Auditor Tim O'Brien
Mayor Michael B. Hancock



DATE: June 17, 2024
TO: Denver City Council
1237 Bannock St. Room 451
Denver, CO 80202
FROM: Andy Hanau, San Diego City Auditor
SUBJECT: **Denver Auditor Subpoena Authority**

Dear Denver City Councilmembers:

Unrestricted access to records, data, and personnel is essential to independent auditors such as the Denver Auditor serving the public and taxpayers. I encourage you to support adding subpoena authority to support the Denver Auditor's ability to improve the efficiency, effectiveness, and equity of services and transparency in the use of public money.

In San Diego, voters have strongly supported a strong, independent Office of the City Auditor. Specifically, San Diego's City Charter includes the following provisions:

- The City Auditor may investigate any material claim of financial fraud, waste, or impropriety within any City department and for that purpose may summon any officer, agent, or employee of the City, any claimant or other person, and examine him or her upon oath or affirmation relative thereto.
- The City Auditor must have access to, and authority to examine any and all records, documents, systems and files of the City and other property of any City department, office, or agency.
- It is the duty of any officer, employee, or agent of the City having control of such records to permit access to, and examination thereof, upon the request of the City Auditor or his or her authorized representative.
- It is also the duty of any such officer, employee, or agent to fully cooperate with the City Auditor, and make full disclosure of all pertinent information.

These provisions are critical to the San Diego Office of the City Auditor serving our residents and taxpayers, who have the right to know how their government is performing and how their money is being spent.

In Denver's case, Auditor O'Brien notes his office has experienced impairments to audits by contractors working with the city, such as redacted information in requested audit documentation, having to view information only on site as controlled by the audited entity,

or outright refusal to provide the requested information at all.

These impairments are unacceptable under government auditing standards and best practices, and threaten the Denver Auditor's ability to uncover inefficiencies and improprieties that may be occurring within City and County of Denver government. Residents and taxpayers expect and deserve an efficient, effective, equitable, and transparent City and County of Denver government, and subpoena authority will help ensure the Denver Auditor has the ability to verify whether this is the case.

Sincerely,



Andy Hanau
San Diego City Auditor



COLORADO BUILDING AND CONSTRUCTION TRADES COUNCIL, AFL-CIO

4704 HARLAN, SUITE 220, DENVER, CO 80212
Phone 303-936-3301
www.cbctc.com

June 6, 2024

Dear Denver City Council members,

I am writing on behalf of the Colorado Building and Construction Trades Council which is comprised of 24 Craft Local Unions who represent 14 national and international Unions. These Local Unions make up the nucleus of some 30,000 skilled working men and women in the state. Our organization is in full support of the Denver Auditor having all tools necessary to ensure accountability and transparency in our city contracts using taxpayer dollars. The Denver Auditor serves an important function for our city and the work of the office should not be hindered by refusals from entities to provide the records necessary.

In an April 2023 Audit of the Great Hall, the Auditor “identified some instances where procurements seemed unfair or not competitive, as well as instances where the airport was overcharged. Meanwhile, the airport does not have a standard process to select the best project delivery method for its construction projects and ensure consistent management of complex projects like the Great Hall renovations.”

Union contractors rely on the ability to compete on a level playing field against other contractors with good quality workers paid a living wage and benefits. Bidding processes that do not follow the laws required to ensure taxpayer dollars are used to benefit Colorado, only hurt our state and the airport construction quality. In such circumstances, wage theft can occur due to the quality of the contractors and their subcontractors.

While many public entities in Colorado have subpoena power that is unfettered, Denver’s proposed ordinance has guardrails to add an extra check on the ability for the office to obtain records. One of these guardrails ensures that an administrative law judge can deny access to records that are deemed confidential or irrelevant to the audit. We feel this covers any concerns that the council might have regarding unchecked power.

In our work, we find that audits help ensure a level playing field – that contractors are not cutting corners to get ahead creating unfair competition. Under current law, entities can withhold information necessary for an audit, frustrating their efforts and causing an audit to end. Existing law does not properly protect taxpayers’ investment in our city. We urge you to fix this loophole in the law.

If you have any further questions, please reach out to me at: 303-717-8270.

Sincerely,

Jason Wardrip
Business Manager



DENVER AREA LABOR FEDERATION
925 S NIAGARA ST, #660 ~ DENVER, CO 80224
720.316.6203 ~ INFO@DENVERLABOR.ORG ~ WWW.DENVERLABOR.ORG

June 6, 2024

Dear Councilwoman Parady,

I hope this letter finds you well. I am writing to you on behalf of the Denver Area Labor Federation, an organization representing over 50 different local affiliated unions comprised of nearly 90,000 workers and citizens and their families throughout the Denver metro area. These individuals are the backbone of our economy, driving progress and prosperity within our city and state.

Our organization stands in **full support** of ensuring that the Denver auditor has all the necessary tools to guarantee accountability and transparency on city contracts, which utilize taxpayer dollars. The role of the Denver auditor is crucial, and the work of their office should be unhindered - totally free from limitations imposed by entities unwilling to provide essential records for accountability.

While we appreciate recent efforts to expand the subpoena power of the auditor's office to include wage theft, we believe there is still more work to be done. We advocate for a robust subpoena authority for the Denver City Auditor's Office, as we deem it imperative to safeguard the assets of the city, its citizens and workers. We urge you to prioritize the expansion of subpoena authority for the City Auditor's Office because the existing law does not adequately protect the taxpayers and workers within our city and their investments.

Thank you for considering our perspective on this matter. We believe that by enhancing the powers of the Denver City Auditor's Office, we can better serve the interests of the people of Denver and uphold the principles of transparency and accountability.

Respectfully,

Jon Alvino
President, Denver Area Labor Federation

JA/lac
OPEIU#30
AFL-CIO



Timothy O'Brien, Denver Auditor
201 West Colfax, Suite 705
Denver, CO 80202

April 25, 2024

Dear Auditor O'Brien:

We are writing regarding your request to the City Council for general subpoena power and statements you have made concerning the Denver Preschool Program (DPP), and we believe it is crucial to correct the record on these matters.

In describing for City Council what you believe is “the problem,” you used the Denver Preschool Program as an example. You stated, “Late in the audit, members of the board of directors inserted themselves into reviews of information being submitted. This caused *significant delay*” [emphasis added]. This is simply not a true statement. We also take issue with your use of the audit of the Denver Preschool Program as an example of why you need general subpoena power.

First, the only time a board member was involved in the DPP audit was, at your specific request, when a board representative (our President) attended a meeting with you prior to the commencement of the audit. The purpose of the meeting was for you to introduce your staff who would be involved in the audit, to explain the process, and to solicit the cooperation of Denver Preschool Program.

Following that initial meeting, no further interaction or involvement was initiated by anyone from the DPP's Board of Directors with you or your staff until you submitted the draft of your report. At that time, you again requested that DPP and its representative review the draft and provide any comments before the report was finalized. Again, it simply is not true that anyone from the DPP board “inserted themselves” into your audit process.

In addition to your incorrect statement about a representative from our board's involvement in the audit, you also stated the audit was significantly delayed. We have no record of this, and we believe it is a misstatement of the facts. No one at DPP has ever

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FOR DENVER**

been advised of any concern about a delay. We were quite surprised to read of such in your statement to City Council since it simply is not accurate.

As to using DPP as an example of the need for subpoena power, this is also misplaced. The fact is DPP cooperated in every way possible with the audit, provided every single document requested, and complied with every single request without hesitation. No extraordinary measure was required by your office to obtain the records and data needed by your staff; these were provided willingly and promptly.

We are advised that various members of City Council have been informed that DPP has no objection to the proposed Ordinance, which would give the Auditor general subpoena power. Again, this is not the case. We do oppose this request. First, we are concerned about very confidential information held by our providers and vendors regarding children in the program and the financial condition of family applicants. This could very well have a chilling effect on our provider's desire to participate in DPP and on the family's willingness to apply to the program. Second, as we stated, there is no need for such power to undertake an appropriate audit as DPP has been, and continues to be, prepared to cooperate with the Auditor's office in conducting such an audit.

Finally, to the extent a subpoena becomes necessary, we believe there is already a process in place through the City Attorney's office to obtain any necessary and appropriate subpoena. This involvement of a third party to review the request and need for a subpoena and the type of material and records that would be covered will provide necessary assurances to our providers and vendors. Such assurances are impossible with simply a unilateral demand by the Auditor's office.

We would appreciate it if you would correct your statement to Council that DPP caused a delay in its audit, failed to be fully cooperative with requests for information and records, and supports the Ordinance, which, of course, it does not.

Sincerely,



Lydia Prado, PhD
Chair, Board of Directors
Denver Preschool Program



Elsa Holguín
President & CEO
Denver Preschool Program



CC: Michael Johnston, Mayor
Denver City Council
Kerry Tipper, City Attorney
Dwight Jones, Executive Director, Office of Children's Affairs
Dominick Moreno, Deputy Chief of Staff

Denver Preschool Program Board of Directors

Erin Brown, Vice Chair
Chris Daues
Anne Rowe
Andrea Albo
Michael Baker
Nathaniel Cradle
Keshia Allen Horner
Jennifer Rodriguez-Luke
Councilwoman Amanda Sandoval
Zaki Robbins

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FOR DENVER**



June 14, 2024

Dear Denver City Council Members,

I am the elected Auditor of the City of Portland. I am writing to express my support for the ordinance amending Chapter 20 to authorize the Auditor to Issue Investigatory Subpoenas to City Contractors for Internal Audits.

The Office of the Auditor, which is independent from the rest of the City of Portland's government, has strong legal authority through a number of separate, interlocking mechanisms, to examine, copy and audit a City contractor's books and records for any reason. My Office considers this a critical tool to ensure that we can conduct rigorous performance and financial audits of the City.

Government auditing standards for independence recognize that auditors should, through legal means such as the one proposed by Auditor O'Brien, have full access to records and documents related to the program or function being audited. Records related to services that a city contracts for or functions that a city may outsource to third-party contractors are critical sources of information for conducting complete and reliable audits. Ensuring that auditors have legal means to obtain the records they need to conduct their work is a vital part of ensuring meaningful audits and public trust in our work.

In addition, having strong legal rights to obtain documents from third-party contractors eliminates the potential for a city or its auditor to have to unnecessarily expend resources convincing a third-party contractor to produce documents needed for financial and performance audits. The stronger and more explicit the auditor's rights to documents, the more efficient (and cost-effective) the audit process can be.


Finally, having the ability to compel records necessary for an audit from third-party contractors also safeguards the City's resources, as well as more vulnerable members of the public. For example, if a contractor is overbilling the City, or failing to fully perform under a contract, a subpoena is a flexible tool that allows an audit to uncover this without requiring costly and burdensome contract litigation and discovery. Another

1221 SW Fourth Ave, Room 310
Portland, OR 97204
auditor.rede@portlandoregon.gov
portland.gov/auditor
503-823-4078

example—which is a recent real-world example my Office investigated—is a contractor that provides services that the public is ultimately responsible to pay for under a payment schedule set with the City. If (as we experienced in Portland) the contractor bypasses official city channels and bills the member of the public directly, there is potential for abuse, including (as we saw) overcharging members of the public, many of whom lack the means to initiate their own investigations or challenges to that overbilling. Being able to demand documents from a contractor—that the City would not otherwise have—allows the City to root out unjust and unlawful practices by its contractors, and reduces the likelihood of a contractor acting improperly in the first place.

I appreciate your consideration and efforts to safeguard the work of government auditors.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Rede', with a stylized flourish at the end.

Simone Rede
City Auditor



June 6, 2024

Denver Auditor's Office
201. W. Colfax Ave. #705
Denver, CO
80202

Dear Auditor O'Brien:

The Denver Metro Chamber of Commerce and Downtown Denver Partnership is writing to express our opposition to proposed legislation authorizing the Auditor to issue investigatory subpoenas for city contractors for performance audits.

While we support good governance and appropriate oversight, we stand firm in our objection to the expansion of subpoena power for the Auditor. Granting such authority beyond the realm of wage enforcement raises serious concerns, as it places substantial discretion in the hands of the Auditor without adequate checks and balances. Even with the best intentions, this expansion of power could be susceptible to misuse in the future, posing a threat to the integrity of governance.

Additionally, the proposed extension places undue burdens on businesses and nonprofit organizations, particularly those engaged in contracts with the City. The short compliance period of 14 days is inadequate for regulated entities to gather necessary information, assess their obligations, and formulate a comprehensive response. This deadline hinders due diligence and increases the likelihood of errors and oversights, potentially exposing businesses to unwarranted penalties and legal challenges.

We are also concerned about the potential for proprietary information to be compromised because of expanded subpoena powers. Many businesses possess sensitive data and trade secrets that, if disclosed, could have severe consequences for their competitive position, financial viability, and consumer information protection.

While the proposed bill aims to put in place safeguards to protect against unauthorized disclosure of proprietary information, we feel the protections are insufficient, giving that discretion to a third party, and posing significant risk to the confidentiality and security of sensitive business data.



Finally, we fear regulated entities will see another wave of rulemaking that goes beyond statutory authority. We urge you to reconsider the implications of extending broad subpoena powers.

While we recognize the need for oversight when it comes to city contracts, we are unable to support this approach.

Sincerely,

A handwritten signature in black ink that reads "Carly West".

Carly West, VP of Government Affairs

Denver Metro Chamber of Commerce

A handwritten signature in black ink that reads "Kourtny Garrett".

Kourtny Garrett, CEO

Downtown Denver Partnership

Jon Alvino
Business Manager

Randy Mitchell
Southern Business Agent



Lon A Comstock, Jr.
Denver Business Agent

Anthony B. Drake Garcia
Denver Business Agent/FST

June 6,

Subject: Support for the Granting of Subpoena Power to the Denver City Auditor

Dear Sarah Parady,


I write to you on behalf of the Sheet Metal Air Rail and Transportation (SMART) Union local 9 Sheet Metal Workers, to express our collective support for the expansion of granting subpoena power to the Denver City Auditors Office.

In recent times, concerns have arisen regarding procurement irregularities in contracts associated with both the Convention Center and Great Hall renovations. As a taxpayer and Citizen of Denver, Colorado, I firmly believe the bidding process for such projects must adhere strictly to the Law to ensure transparency, fairness, and accountability in the authorization of taxpayer dollars.

It is crucial that the City Auditors Office possesses all the necessary tools and authority to conduct thorough investigations into any potential mismanagement or irregularities in the public procurement process. Expanding the subpoena power for the City Auditor will significantly enhance the ability to access relevant information and documents, thereby enabling the City Auditor to carry out oversight duties effectively.

By empowering the City Auditor with subpoena authority, we can also enhance the accountability mechanisms within our city government, ensuring that taxpayer dollars are being utilized efficiently for the benefit of those individuals residing in Denver and Colorado.

Thank you for your attention to this matter. Sheet Metal Air Rail and Transportation (SMART) Union local 9 Sheet Metal Workers look forward to your support in insuring accountability and transparency in the management of public funds.

Anthony B. Drake Garcia
Business Representative/FST
Sheet Metal Workers
 Local Union #9

Business Office: 1515 W 47th Ave, Suite B, Denver, CO 80211-2339
Mailing Address: PO Box 11040, Denver, CO 80211-0040
Phone: (303) 922-1213 ~ Fax: (303) 922-1398 ~ Toll Free: (888) 831-1213
Southern Field Office: 1420 Quail Lake Loop ~ Colorado Springs, CO 80906-4650
Phone: (719) 632-1290 ~ Fax: (719) 632-6133 ~ Toll Free: (866) 304-4759

June 17, 2024

Dear Denver City Councilmembers,

I am writing on behalf of Centro de los Trabajadores (El Centro) which represents Spanish-speaking immigrant workers fighting for economic justice. Our organization is in full support of the Denver Auditor having all tools necessary to ensure accountability and transparency in our city contracts using taxpayer dollars. The Denver Auditor serves an important function for our city and the work of the office should not be hindered. Subpoena power will allow the City Auditor to require necessary records be provided to comply with an audit.

While many public entities in Colorado have subpoena power that is unfettered, Denver's proposed ordinance has guardrails to add an extra check on the ability for the office to obtain records. One of these guardrails ensures that an administrative law judge can deny access to records that are deemed confidential or irrelevant to the audit. We feel this covers any concerns that the council might have regarding unchecked power.

As a city contractor that receives funding from the taxpayers of Denver, El Centro is committed to the principles of integrity, oversight, and accountability. The Denver Auditor's Office is nationally recognized for the excellence of its work, and should have all tools necessary to conduct financial and performance audits. Councilmembers Parady and Sawyer's proposal to grant the Auditor subpoena power for audits will provide a fair, effective dispute resolution process. It will guarantee proper oversight of how public dollars are spent while safeguarding the due process rights of auditees. And, perhaps most importantly, it will ensure that all entities who receive public resources will be held to the same high standards of service that El Centro prides itself on.

In our work, we find that audits help ensure a level playing field – that contractors are not cutting corners to get ahead creating unfair competition. Audits that are conducted with full and accurate information should be completed with the intent of rewarding good conduct and discouraging poor performance. Under current law, entities can withhold information necessary for an audit, frustrating their efforts and causing an audit to end. Existing law does not properly protect taxpayers' investment in our city. We urge you to fix this loophole in the law.

If you have any further questions, please reach out.

Sincerely,

Mónica Rodríguez Rafael
Coordinadora del Programa de Robo de Salario





OFFICE OF THE CITY AUDITOR
KE KE'ENA O KA LUNA HŌ'OIA
1001 KAMOKILA BLVD. STE. 216, KAPOLEI, HI 96707

ARUSHI KUMAR
CITY AUDITOR
LUNA HŌ'OIA
OFFICE OF THE CITY AUDITOR
TELEPHONE: (808) 788-3134
FAX: (808) 788-3135
EMAIL: arushi.kumar@honolulu.gov

June 14, 2024

The Honorable Members of the Denver City Council
1437 Bannock Street
Room 451
Denver, Colorado 80202

Dear Council Members,

I am writing to express my strong support of the City and County of Denver Auditor's Office receiving subpoena power for their internal audit function. As the Chief Audit Executive / City Auditor of similar U.S. city and county jurisdiction – Honolulu, Hawai'i – I believe subpoena power is vital to the efficient and effective functioning of a local audit agency and of local governments overall.

Subpoena power is an indispensable tool that enables officials to obtain necessary information and documentation that is often pivotal for completing thorough and accurate government audits. The following text is copied from the current Honolulu City Charter relating to the powers, duties, and functions of the Honolulu Office of the City Auditor:

“For the purposes of carrying out any audit, the auditor shall have full, free, and unrestricted access to any city officer or employee and shall be authorized to examine and inspect any record of any agency or operation of the city, to administer oaths and subpoena witnesses and compel the production of records pertinent thereto. If any person subpoenaed as a witness or compelled to produce records shall fail or refuse to respond thereto, the proper court, upon request of the auditor, shall have the power to compel obedience to any process of the auditor and to punish, as a contempt of the court, any refusal to comply therewith without good cause.”

In our office's 21-year history, we have never had to use the full extent of our subpoena authority while carrying out an audit. We are thankful that the majority of the city departments and programs that we audit receive our requests, findings, and recommendations in the spirit they are intended: to improve the efficiency and effectiveness of services, and to increase transparency in the use of public money. It is my understanding that the Denver Auditor's Office maintains similar positive relationships and experiences with many of their auditees. However, this power is still necessary as we know that some of these departments only comply with our audit requests early in the audit process because they know the full extent of our authority and powers if they would not comply.

Additionally, even knowing our authority, some agencies are not cooperative initially. When there are instances of auditees providing excessively redacted information, severely restricting the viewing of documents, or refusing to provide documents outright, the Denver Auditor is ultimately unable to accomplish what the taxpayers of Denver have entrusted him with, which is ensuring accountability of

Denver City Council

June 14, 2024

Page 2 of 2

government programs. Local government auditors' offices across the country are expected to comply with Generally Accepted Government Auditing Standards, also known as the Yellow Book, which includes specific standards on gathering and reporting on confidential and sensitive information. As the Denver Auditor has received a rating of "Pass" on its latest Yellow Book Peer Reviews, I feel confident in the office's ability to securely handle city records that may include confidential data.

In summary, I firmly believe that empowering the Denver Auditor with subpoena power for their internal audit function will be an important step in enhancing the effectiveness and integrity of your local government. Thank you for your consideration of this crucial authority, and please feel free to contact me at 808-768-3134 with any questions.

Sincerely,

A handwritten signature in cursive script that reads "Arushi Kumar".

Arushi Kumar
Honolulu City Auditor



City and County of Denver

201 West Colfax Avenue, #705 • Denver, Colorado 80202
(720) 913-5039 • denvergov.org/DenverLabor



Denver City Council
1237 Bannock St. Room 451
Denver, CO 80202
Via: email

June 13, 2024

Dear City Council members,

I am writing to thank City Council members Sarah Parady and Amanda Sawyer for their extensive efforts as co-sponsors on the bill to provide the subpoena power tool to our government audit work. I am also writing to strongly encourage all members of City Council to pass this bill. It is both community-driven and responsive to stakeholder feedback, making it a strong path forward for effective audit work.

The City Council unanimously approved a similar bill earlier this spring that applies to private businesses all across the city. Now it's time to extend that same level of accountability to public dollars used by city partners.

This bill largely mirrors that successful subpoena power measure for Denver Labor. Approving this second bill would keep our authority uniform and equitable. We know this bill is popular with a wide array of constituents and is the right tool for the job we do.

Both bills include the right to appeal a subpoena to a neutral, third-party hearing officer. These officers are required by the law to remain unbiased and independent. They can also modify or quash a subpoena — and even add additional protections for sensitive or confidential data.

As outlined in the bill, a subpoena is a last resort, not a first step. We must first make a written request for information and allow 14 days for a response. In practice, my office spends weeks or months discussing data requests with auditees, and all parties agree to a timeline for producing information. Under this bill, **only** if an auditee refuses to produce information relevant to an audit would we issue a subpoena—and the bill guarantees that city partners will have at least an additional 14 days to respond, on top of the 14 days from our initial written request. In the event of an appeal, the neutral hearing officer can also assess whether timelines for producing records are appropriate or whether an audited entity's request for additional time is reasonable.

This bill for subpoena power in government audit work is a moderate step to allow for conflict resolution long before a lawsuit for breach of contract — which would be expensive and time consuming for both the city and any business or organization involved. The

subpoena power will make it easier for partners to work with the city because it establishes a process for efficient and unbiased contract compliance under the standard audit clause.

Additionally, thanks to stakeholder feedback in the business community, both the Denver Labor subpoena bill and the Audit Services bill include an explicit requirement for the hearing officers to remain unbiased and follow the standards of conduct set forth in the Colorado Code of Judicial Conduct. This has long been the practice of the Auditor's Office, and we are pleased to see City Council supporting these requirements on a broader basis.

On top of the protections already unanimously passed as part of the popular Denver Labor subpoena bill, co-sponsors Parady and Sawyer added additional protections to the Audit Services bill in response to stakeholder feedback:

- The fine structure is more lenient and aligns with Article XII, Chapter 2 of the Colorado Code of Judicial Conduct.
- The Auditor's Office is explicitly required to protect records not only in compliance with the city's cybersecurity and data protection awareness policy but also in alignment with National Institute of Standards and Technology frameworks.

We also want to reiterate key answers to questions from stakeholders over the past 10 months of outreach and engagement:

- This bill does not allow us to subpoena subcontractors.
- This will not extend our authority nor surprise city partners. We may only subpoena information from partners who have signed a contract with the city and agreed in that contract to supply information for audit.
- This bill is a more moderate approach than taking our valued city partners to court over breach of contract. It is a common and appropriate tool for our audit function, as demonstrated by many other government audit organizations in the country.
- Our audit workpaper system has been vetted by Technology Services and is HIPAA-compliant, among many other high standards. We deal with highly confidential information every day and treat it with the care that the Denver Charter and our professional audit standards require.
- If any subpoenaed party feels that a request for information is too broad or includes sensitive information that needs additional protection, it is expressly written into the draft bill that an independent hearing officer can issue a protective order or modify or quash the subpoena.
- We will not be able to operate under any version of a bill that violates the Generally Accepted Government Auditing Standards (GAGAS), promulgated by the U.S. Comptroller General and required by the Denver Charter.

- There is no process for us to obtain a subpoena through another city agency and other city agencies would not be able to do so because audit work does not fall under their scope of work or authority. Our only recourse when a contractor refuses to provide information is to file a lawsuit. This is a huge cost and time burden to both the city and its partners. This is what we are trying to avoid.

Subpoena power is a moderate, intermediate step to get necessary information from city partners without damaging relationships through our only current recourse: a lawsuit. This tool will assist my office in completing its statutorily required duties to perform financial and performance audits on behalf of everyone who cares about Denver. We believe this tool is in the best interest of the city and the public we serve, and we strongly encourage the City Council's support of this bill.

Sincerely,



Timothy M. O'Brien, CPA
Denver Auditor

CC: Denver City Council members
Amanda Sandoval, District 1
Kevin Flynn, District 2
Jamie Torres, District 3
Diana Romero Campbell, District 4
Amanda Sawyer, District 5
Paul Kashmann, District 6
Flor Alvidrez, District 7
Shontel Lewis, District 8
Darrell Watson, District 9
Chris Hinds, District 9
Stacie Gilmore, District 11
Sarah Parady, At-Large
Serena Gonzales-Gutierrez, At-Large



DATE: June 17, 2024
TO: Denver City Council
1237 Bannock St. Room 451
Denver, CO 80202
FROM: Andy Hanau, San Diego City Auditor
SUBJECT: **Denver Auditor Subpoena Authority**

Dear Denver City Councilmembers:

Unrestricted access to records, data, and personnel is essential to independent auditors such as the Denver Auditor serving the public and taxpayers. I encourage you to support adding subpoena authority to support the Denver Auditor's ability to improve the efficiency, effectiveness, and equity of services and transparency in the use of public money.

In San Diego, voters have strongly supported a strong, independent Office of the City Auditor. Specifically, San Diego's City Charter includes the following provisions:

- The City Auditor may investigate any material claim of financial fraud, waste, or impropriety within any City department and for that purpose may summon any officer, agent, or employee of the City, any claimant or other person, and examine him or her upon oath or affirmation relative thereto.
- The City Auditor must have access to, and authority to examine any and all records, documents, systems and files of the City and other property of any City department, office, or agency.
- It is the duty of any officer, employee, or agent of the City having control of such records to permit access to, and examination thereof, upon the request of the City Auditor or his or her authorized representative.
- It is also the duty of any such officer, employee, or agent to fully cooperate with the City Auditor, and make full disclosure of all pertinent information.

These provisions are critical to the San Diego Office of the City Auditor serving our residents and taxpayers, who have the right to know how their government is performing and how their money is being spent.

In Denver's case, Auditor O'Brien notes his office has experienced impairments to audits by contractors working with the city, such as redacted information in requested audit documentation, having to view information only on site as controlled by the audited entity,

or outright refusal to provide the requested information at all.

These impairments are unacceptable under government auditing standards and best practices, and threaten the Denver Auditor's ability to uncover inefficiencies and improprieties that may be occurring within City and County of Denver government. Residents and taxpayers expect and deserve an efficient, effective, equitable, and transparent City and County of Denver government, and subpoena authority will help ensure the Denver Auditor has the ability to verify whether this is the case.

Sincerely,



Andy Hanau
San Diego City Auditor

Beth McCann
District Attorney
Second Judicial District



370 Seventeenth St., Suite 5300
Denver, CO 80202
720-913-9000
Beth.McCann@denverda.org

June 17, 2024

Denver City Council
1437 Bannock Street, Room 451
Denver, CO 80202

Denver City Council Members

As Denver's District Attorney, and the leader of a large team of experienced attorneys, I am in full support of the Denver Auditor having all tools necessary to ensure accountability for public dollars. Denver's audit function is guaranteed under the Denver Charter and the independent examinations they conduct to serve the public.

I am writing to urge you to pass the subpoena power bill for the Auditor's audit function. The Auditor's Office should have the authority to examine how public dollars are used by those who contract with the city. City partners who have signed contracts requiring them to produce information for examination as part of an audit should be required to follow through with those contract terms.

Taking city partners to court is expensive and time consuming for all parties. Subpoena power is a widely accepted practice that leads to productive results. This is a basic tool necessary for the crucial oversight that the Auditor performs. Empowering that office to issue subpoenas will put it on even ground with other agencies across the country and at every level of government.

The bill guarantees due process protections. Many public entities in the City and County of Denver have unrestricted subpoena power. In comparison, this bill for Denver Auditor subpoena power includes extensive checks and balances to ensure appropriate use. While the Auditor's Office has subpoena power for private businesses in relation to wage theft investigations, it should have the same authority for its investigations into the use of public resources.

My office's vision includes serving the community with integrity and compassion. Like the Auditor's Office, my goals include transparency and accountability. Subpoenas are a key investigative tool that are likely to lead to successful production of information and may uncover improper use of taxpayer monies. The Auditor's Office subpoena power bill includes the option for a hearing with an administrative law judge, giving subpoenaed parties the ability to object or ask for reasonable accommodation. This tool allows for another step in the process before terminating a contract or going to court—actions that would be deeply harmful to the city's interests.

The Auditor's Office is a good partner, and our values are aligned in the pursuit of accountability and service to the community. The Denver Auditor should have complete access to information within the scope of its audit work to do an effective job for the people of Denver.

Sincerely,

A handwritten signature in blue ink, appearing to read "Beth McCann", followed by a long horizontal line extending to the right.

Beth McCann
Denver District Attorney



Office of the Comptroller
Josh Pasch, City Auditor

100 N. Holliday St., Room 321
Baltimore, Maryland 21202

Denver City Council
1237 Bannock St. Room 451
Denver, CO 80202
Via: email

June 14, 2024

Dear Honorable Members of the Denver City Council,

I am writing this letter in support of granting subpoena power to the Denver Auditor.

A government audit function, operating under applicable government auditing standards such as the *Government Auditing Standards*, plays a key role in effective governance, public accountability, and transparency. The efficiency and effectiveness of an audit department is significantly affected by the ability to obtain documentation from an auditee. Complete documentation is necessary to conclude on the audit testing performed and to render an accurate conclusion. Sometimes documentation is not provided or not provided in a timely manner. This can delay the completion of the audit or reduce the ability to identify issues that are relevant to the audit objective.

We understand concerns of having the power to obtain records beyond those relevant to the audit objectives. The following points should address those concerns:

- Granting the Denver Auditor the power to subpoena records for vendors contracting with the City, when the contracts include a right to audit clause, does not add to the authority of the Auditor to request vendor records beyond what is already contractually allowed. It is a tool to obtain all relevant information in a timely manner.
- Limiting the subpoena power to contractors with contracts with the City, coupled with controls such as appointment of an independent hearing officer address concerns of subpoena power exceeding the scope and objective of the audit.

If you would like to discuss further, please do not hesitate to contact me by telephone at 410-396-4782 or by email at josh.pasch@baltimorecity.gov.

Sincerely,

Josh Pasch, CPA
City Auditor
City of Baltimore

April 3, 2024

Good afternoon members of City Council,

We wanted to be sure to follow up with all of you after Monday's Budget & Policy Committee meeting to share information many of you were asking about. We are happy to continue answering additional questions if you send them to us.

- 1) There was some confusion at the meeting about what was requested from the Westin during our impaired audit. Attached is a documented email chain between Frank Romines (CAO) and Michael Spiegeland, Marriott's (then) VP and Senior Council. It specifically lists what our office was looking for and how it tied to audit scope and objectives. For example, our office did not ask for Marriott's algorithm, auditors asked for "Policies and Procedures related to... The pricing tool, ROS."
- 2) We've set up additional meetings with Visit Denver, the Hotel & Lodgers' Association, the Denver Preschool Program, Caring for Denver, Prosperity Denver, and the Women of Construction group with the American Subcontractors Association of Colorado. Here's the stakeholder list to date:

- Coloradans for the Common Good
- Colorado Cross-Disability Coalition
- Colorado Fiscal Institute
- Jobs with Justice
- El Centro Humanitario
- Denver Art Museum
- Denver Metro Chamber of Commerce
- Downtown Denver Partnership
- Colorado Bar & Restaurant Association
- Denver Botanic Gardens
- Denver Area Labor Federation
- Hispanic Contractors' Association
- Sheetmetal Workers Local 9
- UFCW Local 7
- CWA 777
- SEIU 105
- Colorado Building & Trades Council
- Southwest Mountain States Carpenters

- 3) The 2024 Audit Plan is attached. It can also be found on our website here:

<https://denvergov.org/Government/Agencies-Departments-Offices/Agencies-Departments-Offices-Directory/Auditors-Office/Audit-Services/2024-Audit-Plan>

- a. (Charter § 5.2.1 B): *Annual Work Plan; special audits.* On or before the third Monday of October of each year, the Auditor shall submit to the Mayor and City Council, for information only, an audit work plan for the ensuing fiscal year. The work plan shall identify the particular departments, agencies, programs, contracts, franchises or other matters that the Auditor has scheduled for auditing in the ensuing fiscal year. Special audits or emergency audits may be requested by the Mayor or the City Council or

proposed by the Auditor at any time; provided, however that the ultimate decision to perform any audit shall be at the sole discretion of the Auditor.

- 4) General powers of the Auditor (Charter § 5.2.1 A):
 - a. *Internal Auditing.* The Auditor shall conduct financial and performance audits of the City and County and its departments and agencies in accordance with generally accepted governmental auditing standards promulgated by the United States Comptroller General.

- 5) Internal vs. external audits & function of the Audit Committee: the Denver Auditor serves as the internal audit function for the city (as cited above), including financial and performance audits of city agencies and contracts. The Audit Committee commissions the external audit:
 - a. (Charter § 5.2.2 A): *Independent External Audit.* The Audit Committee shall annually commission an independent external audit of the finances of the City and County, to be conducted in accordance with generally accepted government auditing standards; provided, however, that the contract for the independent external auditor shall be subject to approval by the Council and execution by the Mayor as otherwise provided in this charter. The Audit Committee shall supervise the work of the independent external auditor, shall receive reports of the independent external auditor, and shall communicate the findings and recommendations of the independent external auditor to the Mayor, the Manager of Finance, the Council, and the general public.

We hope this information is helpful to you as we work with all of you on this important legislation.

Best,
Tayler



Tayler Overschmidt | Director of Communications

Denver Auditor's Office | City and County of Denver

denverauditor.org | Phone: 720-913-5033

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Beth McCann
District Attorney
Second Judicial District



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Denver, CO 80202
720-913-9000
Beth.McCann@denverda.org

June 17, 2024

Denver City Council
1437 Bannock Street, Room 451
Denver, CO 80202

Denver City Council Members

As Denver's District Attorney, and the leader of a large team of experienced attorneys, I am in full support of the Denver Auditor having all tools necessary to ensure accountability for public dollars. Denver's audit function is guaranteed under the Denver Charter and the independent examinations they conduct to serve the public.

I am writing to urge you to pass the subpoena power bill for the Auditor's audit function. The Auditor's Office should have the authority to examine how public dollars are used by those who contract with the city. City partners who have signed contracts requiring them to produce information for examination as part of an audit should be required to follow through with those contract terms.

Taking city partners to court is expensive and time consuming for all parties. Subpoena power is a widely accepted practice that leads to productive results. This is a basic tool necessary for the crucial oversight that the Auditor performs. Empowering that office to issue subpoenas will put it on even ground with other agencies across the country and at every level of government.

The bill guarantees due process protections. Many public entities in the City and County of Denver have unrestricted subpoena power. In comparison, this bill for Denver Auditor subpoena power includes extensive checks and balances to ensure appropriate use. While the Auditor's Office has subpoena power for private businesses in relation to wage theft investigations, it should have the same authority for its investigations into the use of public resources.

My office's vision includes serving the community with integrity and compassion. Like the Auditor's Office, my goals include transparency and accountability. Subpoenas are a key investigative tool that are likely to lead to successful production of information and may uncover improper use of taxpayer monies. The Auditor's Office subpoena power bill includes the option for a hearing with an administrative law judge, giving subpoenaed parties the ability to object or ask for reasonable accommodation. This tool allows for another step in the process before terminating a contract or going to court—actions that would be deeply harmful to the city's interests.

The Auditor's Office is a good partner, and our values are aligned in the pursuit of accountability and service to the community. The Denver Auditor should have complete access to information within the scope of its audit work to do an effective job for the people of Denver.

Sincerely,

A handwritten signature in blue ink, appearing to read "Beth McCann", followed by a long horizontal line extending to the right.

Beth McCann
Denver District Attorney



City and County of Denver

201 West Colfax Avenue, #705 • Denver, Colorado 80202
(720) 913-5039 • denvergov.org/DenverLabor



Denver City Council
1237 Bannock St. Room 451
Denver, CO 80202
Via: email

June 13, 2024

Dear City Council members,

I am writing to thank City Council members Sarah Parady and Amanda Sawyer for their extensive efforts as co-sponsors on the bill to provide the subpoena power tool to our government audit work. I am also writing to strongly encourage all members of City Council to pass this bill. It is both community-driven and responsive to stakeholder feedback, making it a strong path forward for effective audit work.

The City Council unanimously approved a similar bill earlier this spring that applies to private businesses all across the city. Now it's time to extend that same level of accountability to public dollars used by city partners.

This bill largely mirrors that successful subpoena power measure for Denver Labor. Approving this second bill would keep our authority uniform and equitable. We know this bill is popular with a wide array of constituents and is the right tool for the job we do.

Both bills include the right to appeal a subpoena to a neutral, third-party hearing officer. These officers are required by the law to remain unbiased and independent. They can also modify or quash a subpoena — and even add additional protections for sensitive or confidential data.

As outlined in the bill, a subpoena is a last resort, not a first step. We must first make a written request for information and allow 14 days for a response. In practice, my office spends weeks or months discussing data requests with auditees, and all parties agree to a timeline for producing information. Under this bill, **only** if an auditee refuses to produce information relevant to an audit would we issue a subpoena—and the bill guarantees that city partners will have at least an additional 14 days to respond, on top of the 14 days from our initial written request. In the event of an appeal, the neutral hearing officer can also assess whether timelines for producing records are appropriate or whether an audited entity's request for additional time is reasonable.

This bill for subpoena power in government audit work is a moderate step to allow for conflict resolution long before a lawsuit for breach of contract — which would be expensive and time consuming for both the city and any business or organization involved. The

subpoena power will make it easier for partners to work with the city because it establishes a process for efficient and unbiased contract compliance under the standard audit clause.

Additionally, thanks to stakeholder feedback in the business community, both the Denver Labor subpoena bill and the Audit Services bill include an explicit requirement for the hearing officers to remain unbiased and follow the standards of conduct set forth in the Colorado Code of Judicial Conduct. This has long been the practice of the Auditor's Office, and we are pleased to see City Council supporting these requirements on a broader basis.

On top of the protections already unanimously passed as part of the popular Denver Labor subpoena bill, co-sponsors Parady and Sawyer added additional protections to the Audit Services bill in response to stakeholder feedback:

- The fine structure is more lenient and aligns with Article XII, Chapter 2 of the Colorado Code of Judicial Conduct.
- The Auditor's Office is explicitly required to protect records not only in compliance with the city's cybersecurity and data protection awareness policy but also in alignment with National Institute of Standards and Technology frameworks.

We also want to reiterate key answers to questions from stakeholders over the past 10 months of outreach and engagement:

- This bill does not allow us to subpoena subcontractors.
- This will not extend our authority nor surprise city partners. We may only subpoena information from partners who have signed a contract with the city and agreed in that contract to supply information for audit.
- This bill is a more moderate approach than taking our valued city partners to court over breach of contract. It is a common and appropriate tool for our audit function, as demonstrated by many other government audit organizations in the country.
- Our audit workpaper system has been vetted by Technology Services and is HIPAA-compliant, among many other high standards. We deal with highly confidential information every day and treat it with the care that the Denver Charter and our professional audit standards require.
- If any subpoenaed party feels that a request for information is too broad or includes sensitive information that needs additional protection, it is expressly written into the draft bill that an independent hearing officer can issue a protective order or modify or quash the subpoena.
- We will not be able to operate under any version of a bill that violates the Generally Accepted Government Auditing Standards (GAGAS), promulgated by the U.S. Comptroller General and required by the Denver Charter.

- There is no process for us to obtain a subpoena through another city agency and other city agencies would not be able to do so because audit work does not fall under their scope of work or authority. Our only recourse when a contractor refuses to provide information is to file a lawsuit. This is a huge cost and time burden to both the city and its partners. This is what we are trying to avoid.

Subpoena power is a moderate, intermediate step to get necessary information from city partners without damaging relationships through our only current recourse: a lawsuit. This tool will assist my office in completing its statutorily required duties to perform financial and performance audits on behalf of everyone who cares about Denver. We believe this tool is in the best interest of the city and the public we serve, and we strongly encourage the City Council's support of this bill.

Sincerely,



Timothy M. O'Brien, CPA
Denver Auditor

CC: Denver City Council members
Amanda Sandoval, District 1
Kevin Flynn, District 2
Jamie Torres, District 3
Diana Romero Campbell, District 4
Amanda Sawyer, District 5
Paul Kashmann, District 6
Flor Alvidrez, District 7
Shontel Lewis, District 8
Darrell Watson, District 9
Chris Hinds, District 9
Stacie Gilmore, District 11
Sarah Parady, At-Large
Serena Gonzales-Gutierrez, At-Large