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# Subpoena Power for Auditor's Office on Wage Theft Investigations

Budget and Policy Committee, April 1, 2024  
Council Members Flynn, Sawyer, Parady  
and Denver Auditor's Office



**DENVER**  
OFFICE OF CITY COUNCIL

# Current Law

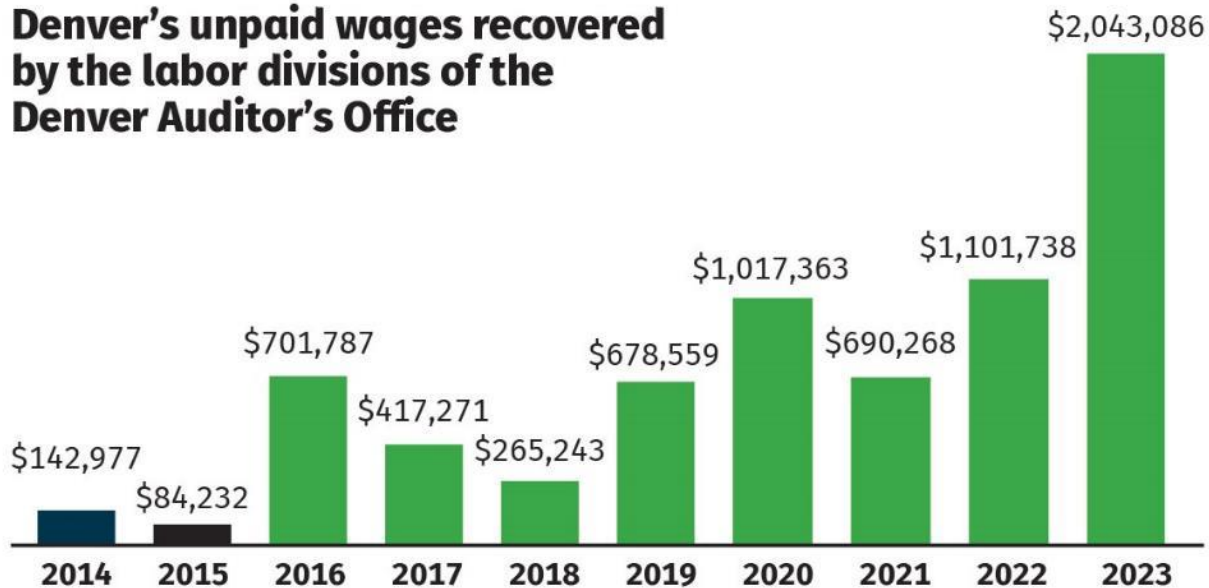
- Denver law requires the Auditor's Office (AO) to enforce Denver's prevailing wage, minimum wage, and civil wage theft ordinances.
- Denver law grants the AO access to records necessary to conduct and fulfill these duties.
- Denver's Auditor is the only elected official without subpoena authority.

The lack of sufficient means to obtain records impedes the Auditor's Office from completing its statutorily required duties in enforcing wage law provisions.

# Denver Labor

NUMBER OF WORKERS HELPED IN 2023	3,500
TOTAL NUMBER OF CASES FOR MINIMUM WAGE AND PREVAILING WAGE IN 2023	586

## Denver's unpaid wages recovered by the labor divisions of the Denver Auditor's Office



## Problem to Solve

Employers sometimes refuse to produce the information necessary for the auditor to proceed with wage investigations.

- Delays in producing information or refusal to produce documents in wage enforcement investigations can keep workers from getting paid the wages they earned in a timely manner.
- Applies to investigations into alleged failures to pay prevailing or minimum wages, and wage theft.



## Why subpoena power

- Denver law grants the Auditor's Office access to all city and contractor records necessary to conduct and fulfill its auditing duties.
- It gives the Auditor's Office a tool to pursue necessary information when it is not otherwise provided.

# Examples of wage investigation impairment

These employers 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 non-compliance. Subpoena power would provide a more efficient path to compliance.*

# Audit analytics and cybersecurity

- A central point of Auditor O'Brien's work has focused on developing new data analytics tools to modernize how we audit.
- Using automation, machine learning, and scripting languages, we can efficiently sort through thousands or even millions of datapoints in a fraction of the time and with greater reliability than if we relied solely on older audit techniques.

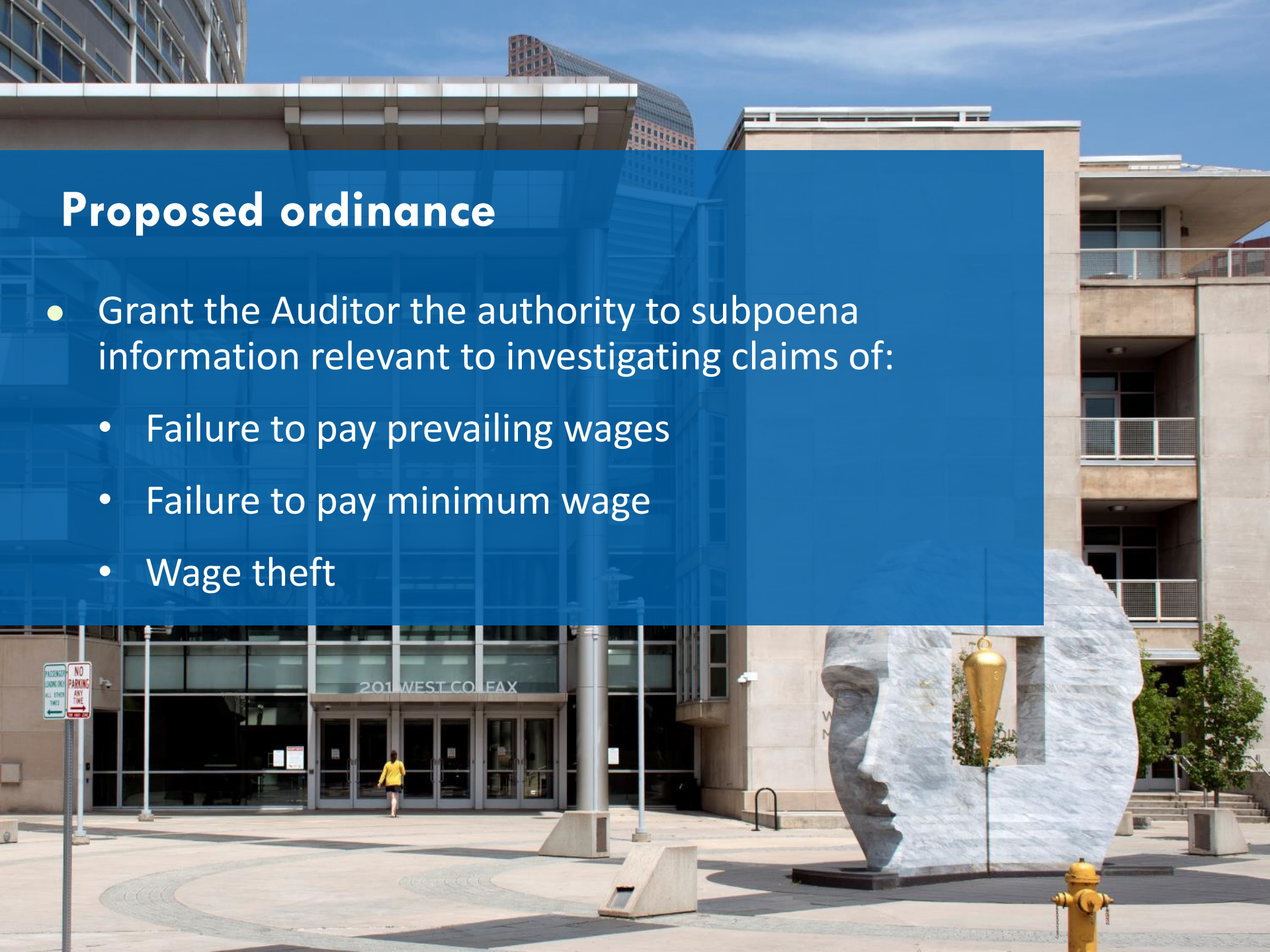
# Audit analytics and cybersecurity

- The Denver Auditor's Office is held up as exemplary among our peers in government auditing across the country for using these analytics tools effectively.
- 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 auditors and wage investigators.



# Proposed ordinance

- Grant the Auditor the authority to subpoena information relevant to investigating claims of:
  - Failure to pay prevailing wages
  - Failure to pay minimum wage
  - Wage theft



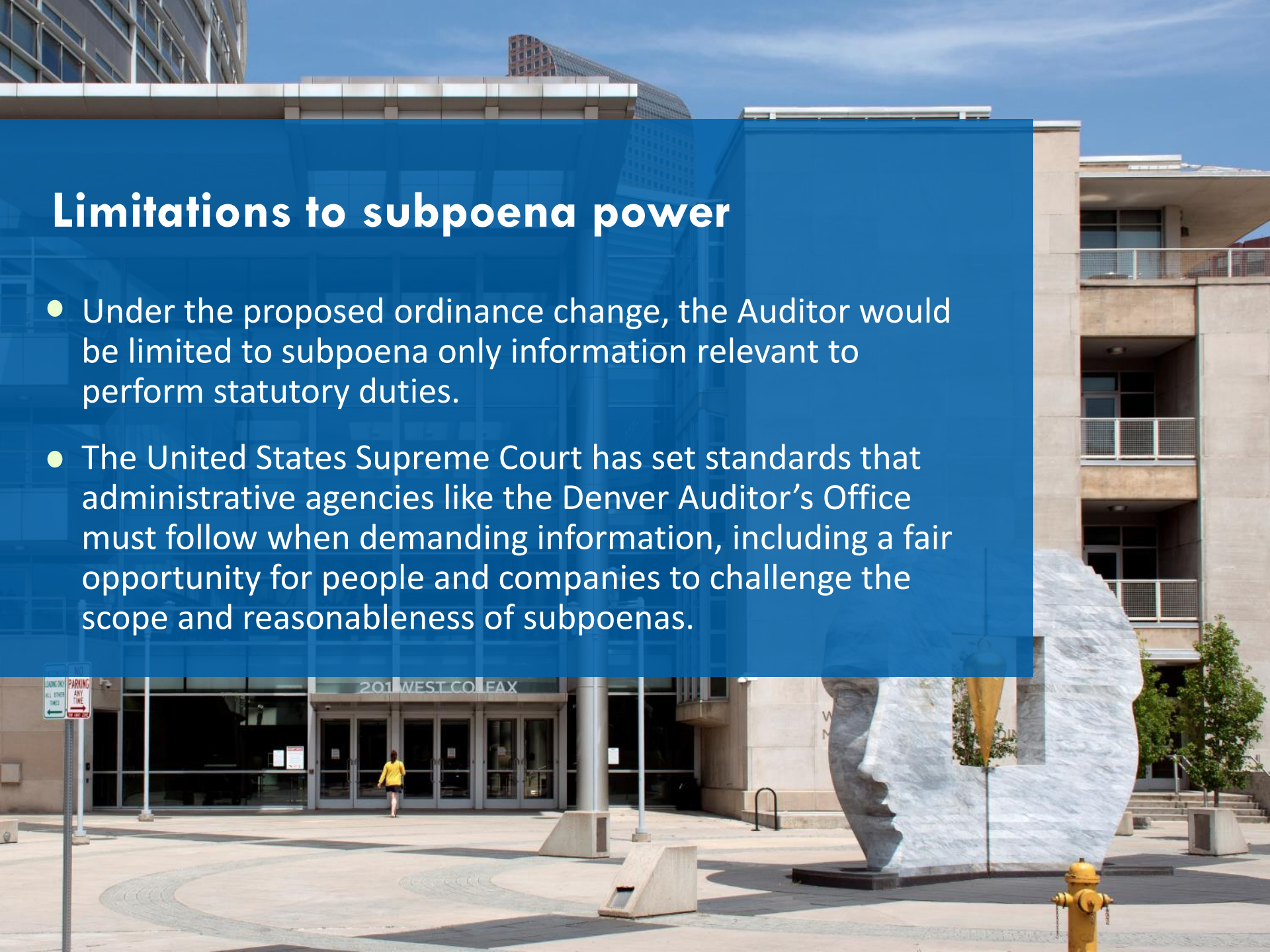
# Proposed ordinance

## CONTINUED

- Provide the subpoenaed party the right to object before a neutral, third-party administrative hearing officer.
- The hearing officer may modify or quash a subpoena, upon a finding that the production would be unduly burdensome, that the requested records or tangible things are protected by a common law or statutory privilege, that the subpoena is vague, that the production would require disclosure of a trade secret or other confidential research, development, or commercial information, that production would violate privacy rights of the employer or a third party, or that the production would violate any other federal, state, or local law.
- The hearing officer may also issue a protective order governing the production of such records or tangible things in the hearing officer's discretion.
- Grant the Auditor authority to impose and waive penalties for a party's failure to comply with a subpoena.

# Limitations to subpoena power

- Under the proposed ordinance change, the Auditor would be limited to subpoena only information relevant to perform statutory duties.
- The United States Supreme Court has set standards that administrative agencies like the Denver Auditor's Office must follow when demanding information, including a fair opportunity for people and companies to challenge the scope and reasonableness of subpoenas.



# Incorporating City Council and stakeholder input

- We have met with all members of the Denver City Council, as well as 17 additional stakeholders from business, labor, and the nonprofit community.
- Additionally, employers previously expressed concerns about the resources required to send a subpoena through the court system. As a result, the new bill includes use of an impartial hearing officer for efficient and accessible processes.

# Protecting data

- 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.
- Only the wage analysts conducting the investigations will have access to confidential records.



## Benefits

- Subpoena power puts more tools in the Auditor's toolbox for wage investigations that benefit workers.
- No-cost, incremental solution to prevent delays.
- Guarantees the production of records — not just levy fines and penalties with no guarantee of the outcome workers and constituents need.
- Encourages cooperation and permits the Auditor and the subpoenaed party to mutually agree to a time and scope for producing the requested records.



Questions?