

1 **BY AUTHORITY**

2 ORDINANCE NO. \_\_\_\_\_  
3 SERIES OF 2010

COUNCIL BILL NO. CB10-0345  
COMMITTEE OF REFERENCE:  
FINANCE

4  
5 **A BILL**

6 **For an Ordinance creating Section 20-76(e) of Division 3 of Article IV of Chapter**  
7 **20, Treatment of Employees Associated with City Contracts, concerning**  
8 **prevailing wage penalties.**

9  
10 **WHEREAS**, Division 3 of Article IV of Chapter 20 provides requirements for the  
11 payment of prevailing wages to employees associated with City contracts; and,

12 **WHEREAS**, the City Council finds that Section 20-76(e) should be created to authorize  
13 the Auditor to assess penalties against contractors paying workers less than prevailing wages.

14 **NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF**  
15 **DENVER:**

16 **Section 1.** Section 20-76(e) of the Denver Revised Municipal Code shall be created  
17 and be read as follows:

18 **“Sec. 20-76(e) Penalties.** Any contractor or subcontractor subject to the requirements of this  
19 section shall as a penalty pay to the City and County of Denver an amount as set forth below for  
20 each week, or portion thereof, for each worker paid less than the applicable prevailing wage  
21 rates.

22 (1) The amount of the penalty shall be determined by the auditor based on consideration of  
23 both of the following:

- 24 (i) Whether the failure of the contractor or subcontractor to pay the correct wage rate was  
25 a good faith mistake and, if so, the error was corrected within thirty (30) days of the  
26 date brought to the attention of the contractor or subcontractor.
- 27 (ii) Whether the contractor or subcontractor has a prior record of failing to meet its  
28 prevailing wage obligations.

29 (2) The penalty shall be twenty dollars (\$20) for each week, or portion thereof, for each  
30 worker paid less than the prevailing wage rate, unless the failure of the contractor or  
31 subcontractor to pay the correct rate of prevailing wages was a good faith mistake and, if so,  
32 the error was corrected within thirty (30) days of the date brought to the attention of the  
33 contractor or subcontractor.

1 (3) The penalty shall be thirty-five dollars (\$35) for each week, or portion thereof, for each  
2 worker paid less than the prevailing wage rate, if the contractor or subcontractor has been  
3 assessed a penalty, but not more than two other penalties, within the previous three years for  
4 failing to meet its prevailing wage obligations on a separate contract, unless those penalties  
5 were subsequently withdrawn or overturned.

6 (4) The penalty shall be fifty dollars (\$50) for each week, or portion thereof, for each worker  
7 paid less than the prevailing wage rate, if the contractor or subcontractor has been assessed  
8 three or more other penalties within the previous three years for failing to meet its prevailing  
9 wage obligations on separate contracts, unless those penalties were subsequently withdrawn  
10 or overturned.

11 (5) The determination of the auditor as to the imposition and amount of the penalty shall be  
12 reviewable as follows:

13 (i) Any person who disputes any determination made by or on behalf of the city pursuant  
14 to the authority of the auditor, which determination adversely affects such person, may  
15 petition the auditor for a hearing concerning such determination no later than thirty (30)  
16 days after having been notified of any such determination. Compliance with the  
17 provisions of this subsection shall be a jurisdictional prerequisite to any action brought  
18 under the provisions of this section, and failure of compliance shall forever bar any  
19 such action.

20 (ii) The auditor shall designate as a hearing officer a person retained by the city for that  
21 purpose.

22 (iii) The petition for a hearing shall be in writing, and the facts and figures submitted shall  
23 be submitted under oath or affirmation either in writing or orally at a hearing scheduled  
24 by the hearing officer. The hearing, if any, shall take place in the city, and notice  
25 thereof and the proceedings shall otherwise be in accordance with rules and  
26 regulations issued by the auditor. The petitioner shall bear the burden of proof, and the  
27 standard of proof shall conform with that in civil, nonjury cases in state district court.

28 (iv) Thereupon, the hearing officer shall make a final determination. Such final  
29 determination shall be considered a final order and may be reviewed under Rule  
30 106(a)(4) of the state rules of civil procedure by the petitioner or by the city. A request  
31 for reconsideration of the determination may be made if filed with the hearing officer  
32 within fifteen (15) days of the date of determination, in which case the hearing officer  
33 shall review the record of the proceedings, and the determination shall be considered a

1 final order upon the date the hearing officer rules on the request for reconsideration.  
2 The non-prevailing party shall be responsible for and shall pay the costs of the hearing,  
3 including the costs of the hearing officer and the hearing reporter.

4 (v) The district court of the second judicial district of the State of Colorado shall have  
5 original jurisdiction in proceedings to review all questions of law and fact determined by  
6 the hearing officer by order or writ under Rule 106(a)(4) of the state rules of civil  
7 procedure.

8 (vi) Failure to pay outstanding penalties that are not pending appeal and are owed to the  
9 city pursuant to this section shall be grounds for suspension or revocation of any  
10 license issued by the city until fully paid.”

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12  
13 COMMITTEE APPROVAL DATE: May 5, 2010

14 MAYOR-COUNCIL DATE: May 11, 2010

15 PASSED BY THE COUNCIL \_\_\_\_\_ 2010

16 \_\_\_\_\_ - PRESIDENT

17 APPROVED: \_\_\_\_\_ - MAYOR \_\_\_\_\_ 2010

18 ATTEST: \_\_\_\_\_ - CLERK AND RECORDER,  
19 EX-OFFICIO CLERK OF THE  
20 CITY AND COUNTY OF DENVER

21  
22 NOTICE PUBLISHED IN THE DAILY JOURNAL \_\_\_\_\_ 2010; \_\_\_\_\_ 2010

23 PREPARED BY: Daniel B. Slattery- Assistant City Attorney DATE: \_\_\_\_\_

24 Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of the  
25 City Attorney. We find no irregularity as to form, and have no legal objection to the proposed  
26 ordinance. The proposed ordinance is not submitted to the City Council for approval pursuant to §  
27 3.2.6 of the Charter.

28  
29 David R. Fine, City Attorney for the City and County of Denver

30 BY: \_\_\_\_\_, \_\_\_\_\_ City Attorney

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