

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2023

COUNCIL BILL NO. CB23-0060
COMMITTEE OF REFERENCE:
Finance and Governance

A BILL

For an ordinance repealing the requirement to include a “worker without authorization” clause in city contracts, and related provisions, from the Denver Revised Municipal Code.

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

Section 1. Division 5 of Article IV of Chapter 20, D.R.M.C., is repealed as follows:

DIVISION 5. - CONFIRMATION OF LAWFUL EMPLOYMENT STATUS BY CITY CONTRACTORS

Sec. 20-90. – Purpose.

~~In accordance with HB 21-1075, codified at § 8-17.5-101, et seq., C.R.S., as amended, the State of Colorado prohibited political subdivisions of the state from entering into or renewing any public contract for services with a contractor who knowingly employs or subcontracts with a worker without authorization to perform work under the contract. Among other things, HB 21-1075 requires contractors to confirm the employment eligibility of all employees who are newly hired to perform work under the public contract for services through the federal E-verify program. The purpose of this division 5 is to clarify and confirm the applicability of the requirements of HB 21-1075 to certain contracts entered into by the City and County of Denver. This division is also intended to provide supplemental local procedures for enforcing the requirements of HB 21-1075 in regard to city contractors.~~

Sec. 20-90.1. – Definitions.

~~As used in this division 5, unless the context otherwise requires:~~

~~(1) *Auditor* means the auditor of the City and County of Denver.~~

~~(2) *E-verify program* means the electronic employment verification program created in Public Law 104-208 and expanded in Public Law 108-156, as amended, and jointly administered by the United States Department of Homeland Security and the Social Security Administration, or its successor program.~~

~~(3) *CDLE* means the Colorado Department of Labor and Employment.~~

~~(4) *Contract* means:~~

1 a. ~~Any public contract for services between the city and a contractor within the meaning~~
2 ~~of section 8-17.5-101(6), C.R.S., as amended; or~~

3 b. ~~Any contract or a purchase authorization between the city and a contractor for~~
4 ~~construction, alteration, improvement, repair, maintenance or demolition of any public building or~~
5 ~~public work by or on behalf of the city.~~

6 (5) ~~Contractor means a person having a contract with the city.~~

7 (6) ~~Newly hired for employment means hired to work in the United States since the~~
8 ~~effective date of the contract.~~

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

10 (a) ~~Prior to executing a contract, each prospective contractor shall certify that, at the time~~
11 ~~of the certification, it does not knowingly employ or contract with a worker without authorization who~~
12 ~~will perform work under the contract and that the contractor will participate in the e-verify program in~~
13 ~~order to confirm the employment eligibility of all employees who are newly hired for employment to~~
14 ~~perform work under the contract.~~

15 (b) ~~Each contract shall include a provision that the contractor shall not:~~

16 (1) ~~Knowingly employ or contract with a worker without authorization to perform work~~
17 ~~under the contract; or~~

18 (2) ~~Enter into a contract with a subcontractor that fails to certify to the contractor that the~~
19 ~~subcontractor shall not knowingly employ or contract with a worker without authorization to perform~~
20 ~~work under the contract.~~

21 (c) ~~Each contract shall also include the following provisions:~~

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

25 (2) ~~A provision that prohibits the contractor from using the e-verify program procedures to~~
26 ~~undertake pre-employment screening of job applicants while the contract is being performed and~~
27 ~~that otherwise requires the contractor to comply with any and all federal requirements related to use~~
28 ~~of the e-verify program including, by way of example, all program requirements related to employee~~
29 ~~notification and preservation of employee rights;~~

30 (3) ~~A provision that, if the contractor obtains actual knowledge that a subcontractor~~
31 ~~performing work under the contract knowingly employs or contracts with a worker without~~
32 ~~authorization, the contractor shall be required to:~~

1 a. ~~Notify the subcontractor and the city within three (3) days that the contractor has actual~~
2 ~~knowledge that the subcontractor is employing or contracting with a worker without authorization;~~
3 ~~and~~

4 b. ~~Terminate the subcontract with the subcontractor if within three (3) days of receiving~~
5 ~~the notice required pursuant to sub-subparagraph a. of this subparagraph (3) the subcontractor does~~
6 ~~not stop employing or contracting with the worker without authorization; except that the contractor~~
7 ~~shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor~~
8 ~~provides information to establish that the subcontractor has not knowingly employed or contracted~~
9 ~~with a worker without authorization.~~

10 (4) ~~A provision that requires the contractor to comply with any reasonable request by the~~
11 ~~CDLE or the auditor made in the course of an investigation that the CDLE is undertaking pursuant~~
12 ~~to the authority established in section 8-17.5-102, C.R.S., as amended, or that the auditor is~~
13 ~~undertaking pursuant to section 20-90.3.~~

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

20 **Sec. 20-90.3. - Powers of the auditor.**

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

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

32 **Sec. 20-90.4. - Reporting requirements.**

1 If any ~~contract is terminated pursuant to subsection 20-90.2(d), the head of the department~~
2 ~~or agency administering the contract shall report the termination to the Colorado Secretary of State~~
3 ~~in accordance with section 8-17.5-102(4), C.R.S., as amended, and shall also report the termination~~
4 ~~to the Immigration and Customs Enforcement division of the United States Department of Homeland~~
5 ~~Security or its successor agency.~~

6 **Sec. 20-90.5. - Compliance with federal law.**

7 (a) ~~The city shall not deem a contractor or subcontractor to be in material breach of a~~
8 ~~contract if the contractor or subcontractor establishes that it has complied with the employment~~
9 ~~verification provisions prescribed by federal law and the e-verify requirement prescribed by this~~
10 ~~division 5.~~

11 (b) ~~When investigating a complaint, performing an audit, or otherwise enforcing the~~
12 ~~requirements of this division 5, the city shall not attempt independently to make a final determination~~
13 ~~on whether an employee is authorized to work in the United States, recognizing that any such~~
14 ~~determination must be made by federal officials in accordance with federal law.~~

15 (c) ~~A contractor that establishes that it has complied in good faith with the employment~~
16 ~~verification requirements set forth in federal law and the e-verify requirements set forth in this division~~
17 ~~shall, in any action to enforce the requirements of this division 5, have an affirmative defense that~~
18 ~~the employer did not knowingly employ a worker without authorization.~~

19 (d) ~~Nothing in this division 5 shall be construed as requiring a contractor to violate any~~
20 ~~terms of participation in the e-verify program.~~

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COMMITTEE APPROVAL DATE: January 24, 2023

MAYOR-COUNCIL DATE: January 31, 2023

PASSED BY THE COUNCIL: _____

_____ - PRESIDENT

APPROVED: _____ - MAYOR _____

ATTEST: _____ - CLERK AND RECORDER,
EX-OFFICIO CLERK OF THE
CITY AND COUNTY OF DENVER

NOTICE PUBLISHED IN THE DAILY JOURNAL: _____; _____

PREPARED BY: Troy Bratton, Assistant City Attorney DATE: February 2, 2023

Pursuant to section 13-9, D.R.M.C., this proposed ordinance has been reviewed by the office of the City Attorney. We find no irregularity as to form and have no legal objection to the proposed ordinance. The proposed ordinance is not submitted to the City Council for approval pursuant to § 3.2.6 of the Charter.

Kerry Tipper, Denver City Attorney

BY: _____, Assistant City Attorney DATE: _____