

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2024

COUNCIL BILL NO. XXXX
COMMITTEE OF REFERENCE:
FINANCE & GOVERNANCE

A BILL

FOR AN ORDINANCE AMENDING CHAPTER 58 TO AUTHORIZE THE AUDITOR TO ISSUE INVESTIGATORY SUBPOENAS IN CONNECTION WITH THE ENFORCEMENT OF CERTAIN WAGE VIOLATIONS.

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

Section 1. That chapter 58, article I, division 1 shall be amended by adding the language underlined to read as follows:

Sec. 58-4. - Enforcement and penalties.

(a) *Notice.* Notice or service provided for in this article shall be sent via first class mail to the most recent mailing address provided to the auditor or contained in the records of any municipal, state, or federal agency, including, but not limited to, the Colorado Secretary of State. Notice or service shall be deemed complete seven (7) calendar days after mailing.

(b) *Enforcement.* The auditor is authorized to assess civil penalties pursuant to this article as provided in article XII, chapter 2 of the Code, provided however the procedures for enforcement, penalty, and appeals shall be as specified in this article.

(c) *Subpoenas.* The auditor is authorized to issue a subpoena to compel the production of records or tangible things in the custody of an employer if such records or tangible things are relevant in connection with investigation or enforcement under this article. For the purposes of this subsection, records shall have the same meaning as provided in the Colorado Rules of Civil Procedure ("C.R.C.P."), Rule 45.

(1) *Issuance.* The auditor may issue a subpoena for certified payroll records only if the employer is subject to penalty for a failure to comply with section 58-2(c)(2)(b). For all other records or tangible things, the auditor shall first submit a written request for the production to the employer and shall respond to any attempt to confer. If the employer does not produce the requested records or tangible things within fourteen (14) calendar days, the auditor may issue a subpoena compelling production. Both the written request and subpoena shall be served as provided in subsection (a).

1 (2) Motion to modify, quash, or for protective order. Upon issuance of any subpoena
2 under this section, the auditor shall appoint a hearing officer to render a final decision pursuant
3 to subsection (3). Any employer subject to subpoena issued by the auditor may file a motion with
4 the hearing officer requesting that the subpoena be modified or quashed, or that the hearing
5 officer enter a protective order governing the production of such records or tangible things. Such
6 motion shall be filed within fourteen (14) calendar days of the completion of service of the
7 subpoena. The filing of any such motion shall stay the penalty authorized pursuant to subsection
8 (d)(1) and the deadline for production specified in subsection (4).

9 (3) Authority of hearing officer. Upon receipt of a motion filed pursuant to subsection (2)
10 the hearing officer shall schedule a date, time and location for a hearing on the motion. The
11 hearing officer may waive the fourteen (14) day filing deadline and may modify or quash the
12 subpoena and waive the penalty upon a finding that the employer did not receive actual notice of
13 the subpoena. The hearing officer may also quash or modify the subpoena and waive the
14 penalty upon a finding that the production would be unduly burdensome, that the requested
15 records or tangible things are protected by a common law or statutory privilege, that the
16 subpoena is vague, that the production would require disclosure of a trade secret or other
17 confidential research, development, or commercial information, that production would violate
18 privacy rights of the employer or a third party, or that the production would violate any other
19 federal, state, or local law. The hearing officer may also issue a protective order governing the
20 production of such records or tangible things in the hearing officer's discretion. A protective order
21 shall be consistent with the provisions of the Colorado Open Records Act, C.R.S. § 24-72-201 et
22 seq., as amended. Any final decision shall be tailored to address the issues raised in the motion
23 or otherwise identified by the hearing officer.

24 (4) Production. An employer shall produce records or tangible things subject to a
25 subpoena issued by the auditor no later than fourteen (14) calendar days after completion of
26 service, or as otherwise provided in a hearing officer's final decision.

27 (5) County court. The auditor may petition the county court for enforcement of the
28 subpoena after the exhaustion of any administrative remedies. The filing of any such petition
29 shall stay the penalty authorized pursuant to subsection (d)(1).

30 (ed) *Penalties.* The following shall be imposed in conjunction with any other penalties
31 imposed under this article:

32 (1) A penalty of up to one thousand dollars (\$1,000.00) shall be imposed for failure to
33 furnish the auditor a complete and certified payroll pursuant to section 58-2(c)(2)(b) or for failure

1 to comply with a subpoena issued pursuant to subsection (c).a.—Should an employer not
2 maintain or retain adequate payroll records, or not allow the auditor access in the manner or
3 time allowed by section 58-2(c)(2)(b), there shall be a presumption, rebuttable by clear and
4 convincing evidence, that the employer violated this article for the periods and for each worker
5 for whom adequate records were not retained or access to such records was not timely
6 provided.

7 (2) A penalty of one thousand dollars (\$1,000.00) shall be imposed for each incident of
8 materially false information contained in certified payroll produced pursuant to section 58-
9 2(c)(2)(c).

10 (3) A penalty of five thousand dollars (\$5,000.00) shall be imposed for each instance
11 of retaliation pursuant to section 58-2(b).

12 (4) A penalty of one thousand dollars (\$1,000.00) may be imposed for a violation of
13 any obligation described in this article which does not otherwise have a penalty assigned.

14 ~~(de)~~ *Unpaid penalties.*

15 (1) Penalties assessed under this article shall be due and payable thirty (30) days
16 after notice. The failure to pay penalties assessed pursuant to this article within thirty (30) days
17 after notice may result in the imposition of a late fee of up to twenty-five dollars (\$25.00) and
18 interest at a rate of ten (10) percent per annum.

19 (2) The auditor is further authorized to collect any and all unpaid penalties assessed
20 pursuant to this article, either informally, or as provided for by section 53-403 of the Code;
21 provided, however, that no action in court shall be filed to collect amounts determined by the
22 auditor to be owing under this article more than three (3) years after the date the auditor
23 provided notice to the employer or other person of the amounts owing.

24 **Sec. 58-8. - Rulemaking.**

25 The auditor may promulgate rules pertaining to signage, the filing of a complaint, the
26 issuance of an investigatory subpoena, conducting a wage investigation, hearings and appeals.

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1 MAYOR-COUNCIL DATE: _____

2 PASSED BY THE COUNCIL: _____

3 _____ - PRESIDENT

4 APPROVED: _____ - MAYOR _____

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

8 NOTICE PUBLISHED IN THE DAILY JOURNAL: _____ ; _____

9 PREPARED BY: Anshul Bagga, Assistant City Attorney DATE: _____

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

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15 Kerry Tipper, City Attorney

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17 BY: _____, _____ City Attorney DATE: _____

DRAFT