

**BY AUTHORITY**

ORDINANCE NO. \_\_\_\_\_  
SERIES OF 2016

COUNCIL BILL NO. \_\_\_\_\_  
COMMITTEE OF REFERENCE:  
Finance & Governance

**A BILL**

**For an ordinance amending Sections 20-76 and 20-77 of Chapter 20 of the Denver Revised Municipal Code regarding prevailing wage and debarment.**

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

**Section 1.** That Section 20--76 of the Denver Revised Municipal Code shall be amended by deleting the language stricken and adding the language underlined as follows:

**Sec. 20-76. - Payment of prevailing wages.**

(a) *Required.* Every worker, mechanic or other laborer employed by any contractor or subcontractor in the work of drayage or of construction, alteration, improvement, repair, maintenance or demolition of on any public building or public work city-owned or leased building or on any city-owned land, pursuant to a contract by or in behalf of the city, or for any agency of the city, or financed in whole or in part by the city, or any agency of the city, or engaged in the work of a doorkeeper, caretaker, cleaner, window washer, porter, keeper, janitor, or in similar custodial or janitorial work in connection with the operation of any such city owned or leased building or the prosecution of any such public work by or in behalf of the city, or for any agency of the city, or financed in whole or in part by the city, or any agency of the city, shall be paid not less than the wages and fringe benefits prevailing for the same class and kind of work in the Denver metropolitan area as determined by the career service board under subsection (c). The Denver metropolitan area shall be determined by the career service board. This section shall not apply to any participant in a youth employment program certified by the city where the participant is employed in non-construction work, including the work of materials furnishing, servicing and maintenance of any city-owned or city-leased public building or on city-owned land public work and the work of landscaping that is not performed in connection with the construction or renovation of a public city-owned or city-leased building; nor shall this section apply to situations where there is no contract directly requiring or permitting the work

1 described above, or contracts that are neither a revenue or expenditure contract contemplating  
2 such work, such as a licenses or permits to use city-owned land.

3 (b) *Contract specifications.* ~~The specifications for every~~ Every contract with an aggregate  
4 value, including all change orders, amendments or other alterations to the value, in excess of  
5 two thousand dollars (\$2,000.00) to which the city or any of its agencies is a party which  
6 requires the performance of work involving drayage or involving construction, alteration,  
7 improvements, repairs, maintenance or demolition of any ~~public building or public work~~ city-  
8 owned or leased building or on any city-owned land, or which requires the performance of the  
9 work of a doorkeeper, caretaker, cleaner, window washer, porter, keeper, janitor, or similar  
10 custodial or janitorial work in connection with the operation of any such public building or the  
11 prosecution of any such public work, shall contain a provision stating that the minimum wages  
12 to be paid for every class of laborer, mechanic and worker shall be not less than the scale of  
13 wages from time to time determined to be the prevailing wages under subsection (c). Every  
14 contract based upon these specifications shall indicate the actual date of bid or proposal  
15 issuance, if applicable, or the date of the written encumbrance if no bid/proposal issuance date  
16 is applicable. Contracts shall also contain a stipulation that the contractor or subcontractor  
17 shall pay mechanics, laborers and workers employed directly upon the site of the work the full  
18 amounts accrued at time of payment, computed at wage rates not less than those stated or  
19 referenced in the specifications, and any addenda thereto, on the actual date of bid ~~opening~~  
20 issuance, or in effect on the date of grant of permit for performance of such work under  
21 D.R.M.C. section 49-171 et seq., or on the date of the written encumbrance purchase order ,  
22 as applicable, for contracts let by informal procedure under D.R.M.C. section 20-63(b),  
23 regardless of any contractual relationship which may be alleged to exist between the  
24 contractor or subcontractor and such laborers, mechanics and workers. Increases in prevailing  
25 wages subsequent to the date of the contract for a period not to exceed one (1) year shall not  
26 be mandatory on either the contractor or subcontractors. Future ~~increases~~ changes in  
27 prevailing wages on contracts whose period of performance exceeds one (1) year shall be  
28 mandatory for the contractor and subcontractors only on the yearly anniversary date of the  
29 contract. ~~However, as to contracts in effect as of March 1, 2011, future increases in~~  
30 ~~supplemental wage rates for the heavy construction, highway construction and building~~  
31 ~~construction trades approved and published by the career service board shall not become~~  
32 ~~mandatory on the contractor or subcontractors until the second anniversary of the date of~~  
33 ~~publication of the increased supplemental wage rates by the board.~~ Except as provided below,  
34 in no event shall any increases in prevailing wages over the amounts thereof as stated in such  
35 specifications result in any increased liability on the part of the city, and the possibility and risk

1 of any such increase is assumed by all contractors entering into any such contract with the  
2 city. Notwithstanding the foregoing, the city may determine and may expressly provide in the  
3 context of specific ~~service~~ agreements that the city will reimburse the contractor at the  
4 increased prevailing wage rate(s). Decreases in prevailing wages subsequent to the date of  
5 the contract for a period not to exceed one (1) year shall not be permitted. Decreases in  
6 prevailing wages on contracts whose period of performance exceed one (1) year shall not be  
7 effective except on the yearly anniversary date of the contract.

8 (c) *Determination of prevailing wages.*

9 (1) The city council hereby declares that it is in the best interests of the city to have a  
10 uniform determination of the prevailing wages to be paid to the various classes of laborers,  
11 mechanics and workers which will be required in the performance of work covered by this  
12 section.

13 (2) The city council hereby finds and concludes that the federal government, in  
14 implementing the Davis-Bacon Act (40 U.S.C. § 276a to 276a-5), possesses and  
15 exercises a superior capability with superior resources to ascertain the basic rate of pay,  
16 overtime, and other benefits which accurately represent the current prevailing rate of  
17 wages for work covered by that federal law. The career service board shall determine that  
18 the prevailing wages applicable to the various classes of laborers, mechanic, and workers  
19 covered by this section and the Davis-Bacon Act correspond to the prevailing wage  
20 determinations made pursuant to that federal law as the same may be amended from time  
21 to time. The board shall undertake to keep and maintain copies of prevailing wage  
22 determinations made pursuant to the Davis-Bacon Act (40 U.S.C. § 276a to 276a-5) and  
23 any amendments to that federal law. The board shall also keep and maintain such other  
24 information as shall come to its attention concerning wages paid in the Denver  
25 metropolitan area. ~~If the board has reason to believe that a prevailing wage determination~~  
26 ~~made pursuant to that federal law is substantially different from wages paid in the Denver~~  
27 ~~metropolitan area based upon other information, it shall so inform the city council for their~~  
28 ~~consideration and action by ordinance.~~ The provisions of this section shall supersede any  
29 differing provisions of that federal law, except when that federal law is applicable  
30 independent of this section.

31 (3) It shall be the duty of the career service board to determine, after hearing, the  
32 prevailing wages for the various classes of laborers, mechanics, and workers which will be  
33 required in the performance of work covered by this section but not be covered by the  
34 Davis-Bacon Act, which determinations shall be made at least annually, and as frequently  
35 as may be considered necessary by the career service board in order that the

1 determination which is currently in effect shall accurately represent the current prevailing  
2 rates of wages. Prior to making such determination, the career service board shall give  
3 reasonable public notice of the time and place of the hearing concerning such proposed  
4 determination and shall afford to all interested parties the right to appear before it and to  
5 present evidence. "Prevailing wages" shall mean, for each class of work covered by this  
6 section, but not covered by the Davis-Bacon Act, the rate of pay and the overtime and  
7 other benefits granted to such full-time workers in the Denver metropolitan area. The rates  
8 shall be determined using the same method as used for those classes which are covered  
9 by the Davis-Bacon Act. Should this method cause a reduction in compensation of any  
10 class of workers, the career service board will review the appropriateness of using this  
11 methodology and may recommend to city council a different method for establishing  
12 prevailing wage rates.

13 If there is insufficient data available in the Denver metropolitan area to determine the rate of  
14 pay and the overtime and other benefits or should comparable classes of work not be  
15 performed within the Denver metropolitan area for each class of work covered by this section  
16 and not covered by the Davis-Bacon Act, the career service board shall refer to the Service  
17 Contract Labor Act of 1965, as amended (41 U.S.C. § 351 et seq.) to determine the rate of  
18 pay and the overtime and other benefits.

19 (4) The office of human resources shall issue clarifications or interpretations of the  
20 prevailing wages, and shall provide the auditor any issued clarification or interpretation. If the  
21 auditor does not advise the executive director of human resources in writing that it disagrees  
22 with any issued clarification or interpretation within 30 days, the clarification/interpretation  
23 shall be final. If the auditor advises the executive director of human resources in writing that  
24 it disagrees with the clarification or interpretation, then the auditor and the executive director  
25 of human resources shall meet to resolve the conflict and, with approval of the career  
26 service board, the office of human resources shall issue a final agreed upon clarification or  
27 interpretation, or may withdraw the clarification or interpretation, as appropriate.

28 (d) *Mandatory contract provisions; enforcement.*

29 (1) Every contract covered by this section shall contain a provision requiring the  
30 contractor and every subcontractor under such contract to pay every worker, mechanic  
31 and laborer employed under such contract not less than the scale of wages as provided  
32 for under subsections (b) and (c).

33 (2) Such contract shall further require the contractor and subcontractors to pay all  
34 construction workers, mechanics and other laborers at least once a week the full amounts

1 of wages accrued at the time of payment, computed at wage rates not less than those  
2 stated in the specifications; except that the contractor and subcontractors shall make such  
3 payments to janitorial or custodial workers, and oil and gas employees and contractors, at  
4 least biweekly.

5 (3) Every such contract shall further provide that the contractor shall post in a prominent  
6 and easily accessible place at the site of the work the scale of wages to be paid by the  
7 contractor and all subcontractors working under the contractor, and that complaints by  
8 third parties, including employees of contractors and subcontractors, of violations may be  
9 submitted to the auditor, pursuant to subsection (f).

10 (4) The contract shall further provide that if the contractor or any subcontractor shall fail to  
11 pay such wages as are required by the contract, the manager of finance shall not approve  
12 a warrant or demand for payment to the contractor until the contractor furnishes the  
13 auditor evidence satisfactory to the auditor that such wages so required by the contract  
14 have been paid. Nothing herein shall preclude the manager of finance from approving a  
15 partial warrant or demand for payment to the contractor to the extent the auditor has been  
16 furnished evidence satisfactory to the auditor that one or more subcontractors has paid  
17 such wages required by the contract, even if the contractor has not furnished evidence  
18 that all of the subcontractors have paid wages as required by the contract. Any contractor  
19 or subcontractor may utilize the following procedure in order to satisfy the requirements of  
20 this section:

21 a. The contractor or subcontractor may submit to the auditor, for each worker,  
22 mechanic or other laborer to whom such wages are due, a check, as required by the  
23 auditor. Such check shall be payable to that worker, mechanic or other laborer, or to  
24 the City and County of Denver so it is negotiable by either of those parties. Each such  
25 check shall be in an amount representing the difference between the accrued wages  
26 required to be paid to that worker, mechanic or other laborer by the contract and the  
27 wages actually paid by the contractor or subcontractor.

28 b. If any check submitted pursuant to paragraph (4)a. of this subsection cannot be  
29 delivered to the worker, mechanic or other laborer within a reasonable period of time  
30 as determined by the auditor, then it shall be negotiated by the city and the proceeds  
31 deposited in the auditor's unclaimed prevailing wages special trust fund. Nothing in  
32 this subsection shall be construed to lessen the responsibility of the contractor or  
33 subcontractor to attempt to locate and pay any worker, mechanic or other laborer to  
34 whom wages are due.

1 c. Any valid, verified claim for prevailing wages that is actually received by the city  
2 through negotiation of any check submitted pursuant to paragraph (4)a. of this  
3 subsection must be made prior to two (2) years after the date of the last  
4 underpayment by the contractor or any subcontractor to the worker, mechanic or  
5 other laborer to whom such wages were due. After such date, the city shall no longer  
6 be liable for payment. The city, as trustee, shall pay such claimant only the amount of  
7 the check that is actually negotiated, regardless of any dispute as to any additional  
8 amount of wages owing to the worker, mechanic or other laborer. No interest shall be  
9 paid by the city on any funds received or disbursed pursuant to this subsection.

10 d. On the last working day of each month, the amount of any claim for which the city  
11 is no longer liable shall be credited to the general fund, except as otherwise required  
12 by law.

13 e. The auditor shall maintain a list of all unclaimed, city-negotiated prevailing wage  
14 checks for which the city is liable. Such list shall be updated monthly and shall be  
15 available for inspection at the office of the auditor.

16 (5) Every such contract shall further provide that the contractor shall furnish to the auditor  
17 each pay period during which work is in progress under the contract a true and correct  
18 electronically-certified copy of the payroll records of all workers, laborers and mechanics  
19 employed under the contract, either by the contractor or subcontractors. Such payroll  
20 records shall include information showing the number of hours worked by each worker,  
21 laborer or mechanic employed under the contract, the hourly pay of such worker, laborer  
22 or mechanic, any deductions made from pay, and the net amount of pay received by each  
23 worker, laborer or mechanic for the period covered by the payroll.

24 ~~(6) It shall further be provided in such contract that the copy of the payroll record shall be~~  
25 ~~accompanied by a sworn statement of the contractor that the copy is a true and correct~~  
26 ~~copy of the payroll records of all mechanics, laborers or other workers working under the~~  
27 ~~contract, either for the contractor or subcontractors, that payments were made to the~~  
28 ~~workers, laborers and mechanics as set forth in the payroll records, that no deductions~~  
29 ~~were made other than those set forth in such records, and that all workers, mechanics and~~  
30 ~~other laborers employed on work under the contract, either by the contractor or by any~~  
31 ~~subcontractor, have been paid the prevailing wages as set forth in the contract~~  
32 ~~specifications.~~

33 (6) Every such contract shall also provide that the contractor will provide to the city a list of  
34 all subcontractors who will be providing any services under the contract.

1 (7) Every such contract shall further provide that if any laborer, worker or mechanic  
2 employed by the contractor or any subcontractor under the contract has been or is being  
3 paid a rate of wages less than the rate of wages required by the contract to be paid as  
4 aforesaid, the city may, by written notice to the contractor, suspend or terminate the  
5 contractor's right to proceed with the work, or such part of the work as to which there has  
6 been a failure to pay the required wages, and in the event of termination, may prosecute  
7 the work to completion by contract or otherwise, and the contractor and any sureties shall  
8 be liable to the city for any excess costs occasioned the city thereby.

9 (e) *Penalties.* Any contractor or subcontractor subject to the requirements of this section shall  
10 as a penalty pay to the City and County of Denver an amount as set forth below for each ~~week,~~  
11 ~~or portion thereof,~~ payroll period for each worker paid less than the applicable prevailing wage  
12 rates.

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

- 15 a. Whether the failure of the contractor or subcontractor to pay the correct wage rate  
16 was a good faith mistake and, if so, the error was corrected within thirty (30) days of  
17 the date brought to the attention of the contractor or subcontractor.
- 18 b. Whether the contractor or subcontractor has a prior record of failing to meet its  
19 prevailing wage obligations.

20 (2) The penalty shall be fifty dollars (\$50.00) ~~twenty dollars (\$20.00)~~ for each week, or  
21 portion thereof, for each worker paid less than the prevailing wage rate, unless the failure  
22 of the contractor or subcontractor to pay the correct rate of prevailing wages was a good  
23 faith mistake and, if so, the error was corrected within thirty (30) days of the date brought  
24 to the attention of the contractor or subcontractor.

25 (3) The penalty shall be two thousand five hundred dollars (\$2,500.00) for a violation, plus  
26 seventy-five dollars (\$75.00) ~~thirty-five dollars (\$35.00)~~ for each week, or portion thereof,  
27 for each worker paid less than the prevailing wage rate, if the contractor or subcontractor  
28 has been assessed a penalty, but not more than two (2) other penalties, within the  
29 previous three (3) years for failing to meet its prevailing wage obligations on a separate  
30 contract, unless those penalties were subsequently withdrawn or overturned.

31 (4) The penalty shall be five thousand dollars (\$5,000.00) for a violation, plus one  
32 hundred dollars (\$100.00) ~~fifty dollars (\$50.00)~~ for each week, or portion thereof, for each  
33 worker paid less than the prevailing wage rate, if the contractor or subcontractor has been  
34 assessed three (3) or more other penalties within the previous three (3) years for failing to

1 meet its prevailing wage obligations on separate contracts, unless those penalties were  
2 subsequently withdrawn or overturned.

3 (5) The penalty shall be five hundred dollars (\$500.00) for each week, or portion thereof,  
4 for each week where a contractor or subcontractor fails to furnish the auditor any certified  
5 payrolls where any worker, laborer or mechanic employed by the non-reporting contractor  
6 or subcontractor has performed any work under a contract subject section (b), unless the  
7 failure of the contractor or subcontractor to furnish the auditor any certified payrolls was a  
8 good faith mistake and, if so, the error was corrected within thirty (30 ) days of the date  
9 brought to the attention of the contractor or subcontractor. This penalty shall not be  
10 imposed in conjunction with penalties imposed under sections (e)(2)-(4).

11 (6) The penalty shall be fifty dollars (\$50.00) for each week or portion thereof, for each  
12 incident of false reporting on a certified payroll, not corrected within fifteen (15) days of the  
13 date the false report was brought to the attention of the contractor or subcontractor. A  
14 certified payroll shall be determined to be a false report when information related to hours  
15 worked or wages paid reported on a certified payroll is not identical to supportive  
16 documentation, including paychecks issued to employees, timecards maintained by  
17 contractors and subcontractors, invoices for work performed issued to contractors or the  
18 city, and tax documents. This penalty shall be imposed in addition to penalties imposed  
19 under sections (e)(2)-(5).

20 (f) *Third Party Complaints.* Subject the provision in this section and any rules and  
21 regulations that may be issued by the auditor, a third party, including an employee of a  
22 contractor or subcontractor, may submit a complaint of a violation of this section to the  
23 auditor. The burden of demonstrating to the auditor's satisfaction that a violation has  
24 occurred or the rebuttable of such presumption rests with the third party making the  
25 complaint, and shall be demonstrated by a preponderance of the evidence. Any such  
26 complaint shall be made in writing to the auditor and shall include all information relied  
27 upon by such party. The auditor shall notify in writing any person alleged to have violated  
28 the section of such complaint. The auditor will investigate credible complaints and provide  
29 a response of its findings of any such complaint to both the complainant and the person  
30 who is identified as violating the section. Any determination by the auditor pursuant to this  
31 section is reviewable by the complained-of party, pursuant to subsection (g).

32 (g) *Review.* Any determination of the auditor related to the imposition of prevailing wage,  
33 including determinations of applicable employment classifications and wages,  
34 determinations of underpayment or misreporting, and the imposition of penalties shall be  
35 reviewable as follows:

1 ~~The determination of the auditor as to the imposition and amount of the penalty shall be~~  
2 ~~reviewable as follows:~~

- 3 1. Any person who disputes any determination made by or on behalf of the city  
4 pursuant to the authority of the auditor, which determination adversely affects  
5 such person, may petition the auditor for a hearing concerning such  
6 determination no later than thirty (30) days after having been notified of any such  
7 determination. Compliance with the provisions of this subsection shall be a  
8 jurisdictional prerequisite to any action brought under the provisions of this  
9 section, and failure of compliance shall forever bar any such action.
- 10 2. The auditor shall designate as a hearing officer a person retained by the city for  
11 that purpose.
- 12 3. The petition for a hearing shall be in writing, and the facts and figures submitted  
13 shall be submitted under oath or affirmation either in writing or orally at a hearing  
14 scheduled by the hearing officer. The hearing, if any, shall take place in the city,  
15 and notice thereof and the proceedings shall otherwise be in accordance with  
16 rules and regulations issued by the auditor. The petitioner shall bear the burden  
17 of proof, and the standard of proof shall conform with that in civil, nonjury cases  
18 in state district court.
- 19 4. Thereupon, the hearing officer shall make a final determination. Such final  
20 determination shall be considered a final order and may be reviewed under Rule  
21 106(a)(4) of the state rules of civil procedure by the petitioner or by the city. A  
22 request for reconsideration of the determination may be made if filed with the  
23 hearing officer within fifteen (15) days of the date of determination, in which case  
24 the hearing officer shall review the record of the proceedings, and the  
25 determination shall be considered a final order upon the date the hearing officer  
26 rules on the request for reconsideration. The nonprevailing party shall be  
27 responsible for and shall pay the costs of the hearing, including the costs of the  
28 hearing officer and the hearing reporter.
- 29 5. The district court of the second judicial district of the State of Colorado shall have  
30 original jurisdiction in proceedings to review all questions of law and fact  
31 determined by the hearing officer by order or writ under Rule 106(a)(4) of the  
32 state rules of civil procedure.
- 33 6. Failure to pay outstanding penalties that are not pending appeal and are owed to  
34 the city pursuant to this section shall be grounds for suspension or revocation of  
35 any license issued by the city until fully paid.

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**Section 2.** That Section 20-77 of the Denver Revised Municipal Code shall be amended by deleting the language stricken and adding the language underlined as follows:

**Sec. 20-77. - Debarment from city contracting due to certain violations of law.**

(a) *In general.* A contractor shall be subject to debarment and disqualification from the award of any contract upon a determination that grounds for debarment exist as provided in this section.

(b) *Definitions.* As used in this section:

(1) *Contract* shall mean a contract or a purchase order authorization ~~between the city and a contractor~~ for construction, alteration, improvement, repair, maintenance or demolition of any ~~public building or public work~~ any city-owned or leased building or performed on city-owned land by or on behalf of the city, or for any agency of the city, or financed in whole or in part by the city or any agency of the city, and includes subcontracts.

(2) *Contractor* shall mean a contractor, subcontractor or supplier of any tier under a contract.

(3) *Debarment board or board* shall mean a board consisting of the manager of public works, the manager of aviation, the manager of general services, the director of the division of small business opportunities, and the auditor. In the event any member of the board has a conflict hearing a particular matter, the conflicted member will delegate his or her duties as a member of the debarment board to another individual within his or her department or division.

(c) *Grounds for debarment.* As used in this section, "grounds for debarment" shall mean the occurrence within the three (3) years immediately preceding a report as provided in subsection (d) of:

(1) A willful failure or refusal of a contractor to pay prevailing wages in violation of section 20-76. In any proceeding arising under this section, a "willful failure or refusal" may be proven by evidence that the contractor has intentionally or repeatedly paid less than the required prevailing wage(s), either under the same contract or under two (2) or more contracts, including subcontracts.

(2) Intentional or repeated violations of the obligations imposed upon the contractor by contract provisions that substantially conform to the requirements of subsection 20-76(d).

1 (3) Any suspension or termination of a contract by the city or any agency thereof due to  
2 a violation of section 20-76.

3 (4) Any violation of any applicable city or state law establishing journeyman to apprentice  
4 ratios for the performance of work distinctive to a specific craft or trade or requiring  
5 licensing for the performance of any type of construction work, when such violation  
6 occurred in the course of a contract, and when such violation demonstrates an intent  
7 by a contractor to evade the requirements of section 20-76 for the payment of  
8 prevailing wages.

9 (5) Any violations described in D.R.M.C. section 28-77.

10 (6) The term "grounds for debarment" shall not include any isolated or insubstantial  
11 violation of law that is promptly corrected by a contractor in accordance with the  
12 requirements of the city.

13 (d) *Reports to debarment board.* ~~The auditor and any other~~ Any official officer or employee of  
14 the city responsible for enforcing the laws set forth in paragraph (4) of subsection (c) of  
15 this section, or for the administration of the contracts of the city shall promptly report to the  
16 debarment board in writing any grounds for debarment coming to the attention of the  
17 ~~auditor or such other official officer or employee.~~ Submittal of such a report to the board  
18 by an officer or employee who is on the board or who works under any member of the  
19 board shall not disqualify on its own that board member from serving his or her duties on  
20 the board with regard to the submitted report.

21 (e) *Debarment investigation; notice to contractor.*

22 (1) Following the receipt of a report of grounds for debarment under subsection (d), the  
23 debarment board shall conduct an investigation. ~~The board may call upon the mayor's~~  
24 ~~office of contract compliance to assist in such investigation, and the mayor's office of~~  
25 ~~contract compliance shall cooperate with the board if so requested.~~ After the board  
26 has made an initial investigation of the facts and circumstances underlying the report,  
27 the board shall send a written notice of investigation to the contractor against whom  
28 the report was made. Such notice shall be sent by certified mail, return receipt  
29 requested, and shall contain a concise statement of the report and the underlying  
30 facts and circumstances as they appear to the debarment board at the time of the  
31 notice. The notice shall inform the contractor that it has twenty (20) business days in  
32 which to respond to the board in writing.

33 (2) The contractor's response shall include a statement of the following:

34 (i) Which, if any, of the facts cited in the notice the contractor does not contest;

1 (ii) Any facts not included in the notice which the contractor believes to be relevant  
2 to the investigation;

3 (iii) The contractor's statement of the facts and circumstances relevant to the report  
4 and investigation; and

5 (iv) Any mitigating factors related to the grounds for debarment.

6 (3) After receipt of the contractor's written response, the debarment board shall meet with  
7 the contractor to discuss and review the facts and circumstances relevant to the report  
8 under investigation. The board may meet more than once with the contractor during the  
9 investigation. The contractor may be represented by counsel at such meeting(s), and may  
10 present documentation and exhibits to the board for the board's consideration.

11 (4) It is not the intent of this subsection (e) that the debarment board shall conduct  
12 informal or formal hearings during the investigation, but rather that the contractor against  
13 whom the report is made shall have the opportunity to be notified of the investigation and  
14 to present information relevant to the report. If a contractor does not timely respond to a  
15 notice of investigation sent under this subsection (e), the board shall proceed with the  
16 investigation.

17 (f) *Determination of debarment.* Following the investigation under subsection (e) of this  
18 section, and after consultation with the city attorney, the debarment board may determine that  
19 no further action is required, or may debar a contractor from consideration for any contract  
20 upon the affirmative vote of at least three (3) members of the board for a period of up to three  
21 (3) years. If the board determines to debar a contractor, then the board shall send a written  
22 notice of debarment by certified mail, return receipt requested, to the contractor, and the notice  
23 shall inform the debarred contractor of the right to appeal the decision administratively in  
24 accordance with subsection (h) of this section.

25 (g) *Effect of debarment determination.* A debarment determination shall take effect thirty (30)  
26 days after the contractor receives notice of the determination unless an appeal is filed during  
27 that time in accordance with subsection (h) of this section. After the debarment decision takes  
28 effect, the contractor debarred shall remain debarred unless a court or the board orders  
29 otherwise or until the debarment period specified in the determination expires. A debarment  
30 shall disqualify the contractor from the award of any contract during the period of debarment,  
31 and shall be binding upon any and all city departments and agencies responsible for the award  
32 of contracts.

33 (h) *Appeals.*

1 (1) Any contractor who disputes any determination of debarment made pursuant to this  
2 section may petition the debarment board for a hearing concerning such determination no  
3 later than thirty (30) days after having been notified of any such determination.

4 Compliance with the provisions of this subsection shall be a jurisdictional prerequisite to  
5 any action brought under the provisions of this section, and failure of compliance shall  
6 forever bar any such action.

7 (2) The debarment board shall designate a hearing officer to hold such hearing, and shall  
8 be represented before the hearing officer by the city attorney.

9 (3) Such petition shall be filed in writing, and the facts and figures submitted shall be  
10 submitted under oath or affirmation either in writing or orally at a hearing scheduled by the  
11 hearing officer. The hearing, if any, shall take place in the city, and notice thereof and the  
12 proceedings shall otherwise be in accordance with rules and regulations issued by the  
13 board. The petitioner shall bear the risk of non-persuasion, and the standard of proof shall  
14 conform to that in civil, non-jury cases in state district court.

15 (4) Thereupon, the hearing officer shall make a final determination. Such final  
16 determination shall be considered a final order of the hearing officer and may be reviewed  
17 under Rule 106(a)(4), C.R.C.P. by the petitioner or by the city.

18 (5) The district court of the second judicial district of the state shall have original  
19 jurisdiction in proceedings to review all questions of law and fact determined by the  
20 hearing officer by order or writ under Rule 106(a)(4) C.R.C.P.

21 (6) Any appeal of a debarment determination shall automatically stay the effect of the  
22 debarment until the appeal is finally resolved.

23 (i) *Debarment list.* The debarment board shall maintain a list of any and all contractors  
24 debarred in accordance with this section and shall promptly notify the auditor, the mayor, the  
25 city council, the manager of public works, the manager of aviation, the manager of parks and  
26 recreation, the director of the division of small business opportunity, and the manager of  
27 general services of any additions or deletions to the debarment list.

28 (j) *Mandatory contract provision.* Every contract shall contain a provision prohibiting the  
29 contractor from hiring any subcontractor that is currently debarred by the city in accordance  
30 with this section.

31 (k) *Other remedies preserved.* The operation of the debarment process under this section 20-  
32 77 shall not preempt or supersede existing remedies or penalties for violation of prevailing  
33 wage, building code or other city laws and regulations, or other discretionary activities of  
34 appropriate city officials with respect to contract issues that may be provided by law.

1 (l) Guidelines; rules and regulations. The debarment board is authorized to promulgate  
2 guidelines and rules and regulations as may be necessary to effectuate the purposes of  
3 this section 20-77.

4  
5 Section 3. This ordinance shall be effective January 1, 2017.

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1 COMMITTEE APPROVAL DATE: October 19, 2016  
2 MAYOR-COUNCIL DATE: October 25, 2016  
3 PASSED BY THE COUNCIL: \_\_\_\_\_, 2016

4 \_\_\_\_\_ - PRESIDENT

5 APPROVED: \_\_\_\_\_ - MAYOR \_\_\_\_\_, 2016

6 ATTEST: \_\_\_\_\_ - CLERK AND RECORDER,  
7 EX-OFFICIO CLERK OF THE  
8 CITY AND COUNTY OF DENVER

9 NOTICE PUBLISHED IN THE DAILY JOURNAL: \_\_\_\_\_, 2016; \_\_\_\_\_, 2016

10 PREPARED BY: Deanne Durfee, Assistant City Attorney DATE: October 27, 2016

11 Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of  
12 the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed  
13 ordinance. The proposed ordinance is not submitted to the City Council for approval pursuant to  
14 §3.2.6 of the Charter.

15 Kristin M. Bronson, Denver City Attorney

16 BY: \_\_\_\_\_, \_\_\_\_\_ City Attorney DATE: \_\_\_\_\_, 2016