

BY AUTHORITY

ORDINANCE NO. 20240813
SERIES OF 2024

COUNCIL BILL NO. 24-0813
COMMITTEE OF REFERENCE:
FINANCE & GOVERNANCE

A BILL

For an ordinance amending Chapter 20 to authorize the Auditor to issue investigatory subpoenas to city contractors in connection with an internal audit.

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

Section 1. That chapter 20, article XI shall be amended by adding the language underlined to read as follows:

Sec. 20-276. - Internal audits.

(a) Access to personnel, property, and records. The auditor shall be provided access, in a timely manner to officers, employees, records, and property of entities as may be necessary to conduct an audit or perform audit duties as provided in section 20-275 of the D.R.M.C. Contractors with the city that have a contractual obligation to provide information shall provide access in a timely manner to the contractor's officers, employees, records, and property of entities as may be necessary to conduct an audit or perform audit duties.

(b) Subpoenas. ~~The auditor~~ The auditor, after approval from the audit committee, is authorized to issue a subpoena to contractors with the city that have a contractual obligation to provide information to compel the production of records or tangible evidence in the contractor's custody if such records or tangible evidence are relevant in connection with a financial or performance audit under section 20-275. 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 shall first submit a written request for the production of records or tangible evidence to the contractor and shall respond to any attempt to confer. If the contractor does not produce the requested records or tangible things within fourteen (14) calendar days or as otherwise provided by contract, the auditor~~ the auditor, after approval from the audit committee, may issue a subpoena compelling production. Both the written request and subpoena shall be served as provided in the contract with the entity for service of other notices, or if no such provision exists, 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



1 not limited to, the Colorado Secretary of State. Unless otherwise provided for in the contract with
2 the entity, notice or service shall be deemed complete seven (7) calendar days after mailing.

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

11 (3) *Authority of hearing officer.* Upon receipt of a motion filed pursuant to subsection
12 (2), the hearing officer shall schedule a date, time, and location for a hearing on the motion. The
13 hearing officer may waive the fourteen (14) day filing deadline and may modify or quash the
14 subpoena and waive the penalty upon a finding that the contractor did not receive actual notice
15 of the subpoena. The hearing officer may also quash or modify the subpoena and waive the
16 penalty upon a finding that the production would be unduly burdensome, that the requested
17 records or tangible things are protected by a common law or statutory privilege, that the
18 subpoena is vague, that the production would require disclosure of a trade secret or other
19 confidential research, development, or commercial information, that production would violate
20 privacy rights of the contractor or a third party, that the records or tangible evidence sought are
21 not relevant to an individual financial transaction, contract, or franchise between the contractor
22 and the City that is within the subject of an internal audit under section 20-275, that the
23 contractor does not have a contractual obligation to provide the information contained in the
24 requested records or tangible evidence, or that the production would violate any other federal,
25 state, or local law. The hearing officer may also issue a protective order governing the
26 production of such records or tangible things in the hearing officer's discretion. A protective order
27 shall be consistent with the provisions of the Colorado Open Records Act, C.R.S. § 24-72-201 *et*
28 *seq.*, as amended. Any final decision shall be tailored to address the issues raised in the motion
29 or otherwise identified by the hearing officer.

30 (4) *Qualifications of hearing officer.* Any person designated to serve as an
31 administrative hearing officer shall be subject to the standards of conduct set forth in the
32 Colorado Code of Judicial Conduct and is subject to disqualification for bias, prejudice, interest,
33 or for any other reason for which a judge may be disqualified in a court of law.

1 (5) Production. A contractor shall produce records or tangible things subject to a
2 subpoena issued by the auditor no later than fourteen (14) calendar days after completion of
3 service, or as otherwise provided in a hearing officer's final decision.

4 (6) Penalties and enforcement. The auditor is authorized to issue administrative
5 citations to contractors for failure to comply with a subpoena issued under this subsection as
6 provided in article XII, chapter 2 of the Code.

7 (7) County court. The auditor may petition the county court for enforcement of the
8 subpoena after the exhaustion of any administrative remedies. The filing of any such petition
9 shall stay the penalty authorized pursuant to subsection (6).

10 (8) Handling of records. The auditor shall handle records and tangible information
11 consistent with the City's Cybersecurity and Data Protection Awareness Policy and the
12 Cybersecurity and Privacy Frameworks promulgated by the National Institute of Standards and
13 Technology.

14 (9) Rules and regulations. ~~The auditor may promulgate~~ audit committee may adopt
15 such reasonable rules and regulations as may be necessary for the purpose of administering
16 and enforcing the provisions of this subsection (b) regarding the issuance of subpoenas to
17 contractors with the city that have a contractual obligation to provide such information.

18 (bc) Reporting criminal conduct. If at any time during an internal audit the auditor's
19 office discovers evidence of possible criminal conduct, it shall immediately contact the Denver
20 District Attorney's Office. Upon request, the auditor's office shall provide the Denver District
21 Attorney's Office access to all documents obtained in conjunction with the possible criminal
22 conduct, and cooperate as may reasonably be required in any resulting criminal investigation.
23 No audit report containing information related to the possible criminal conduct will issue during
24 the pendency of any criminal investigation or charges. If the Denver District Attorney's Office
25 determines that no charges will be filed, or upon the conclusion of any case brought by the
26 Denver District Attorney's Office if charges are filed, the audit report may be issued consistent
27 with subsections (ed) through (g).

28 (ed) Draft audit report. The auditor shall forward the final draft of the audit report to the
29 audited entity for review and comment regarding factual content prior to its release to the audit
30 committee. The entity must respond within fifteen (15) business days in writing and on
31 letterhead. Upon receiving a written request from the audited entity, the auditor may extend the
32 time for an entity to respond to a final draft audit report. The response of the audited entity shall
33 specify:

1 (1) Either agreement with audit findings and recommendations or reasons for
2 disagreement with findings and/or recommendations;

3 (2) Plans for implementing solutions to issues identified; and

4 (3) A timetable to complete such activities.

5 The auditor shall include the entity's response in the final report.

6 ~~(de)~~ Final internal audit report and recommendations. The auditor shall provide final
7 internal audit reports to the audit committee for review. Thereafter, the auditor shall prepare for
8 the audit committee and the mayor, manager of finance, the city attorney, and city council a final
9 report and recommendation on internal audits. The report shall contain all information required to
10 comply with government auditing standards issued by the United States Government
11 Accountability Office by the Comptroller General of the United States. The final internal audit
12 report shall be a public record when it has been released by the audit committee to the mayor,
13 the manager of finance, the city council, the audited entity, and the general public.

14 ~~(e)~~ ~~The auditor shall provide to the audit committee final internal audit reports for~~
15 ~~committee review.~~

16 ~~(f)~~ ~~The final internal audit report shall be a public record when it has been released by~~
17 ~~the audit committee to the mayor, the manager of finance, the city council, the audited entity,~~
18 ~~and the general public.~~ Confidentiality. Any preliminary audit findings or other draft documents
19 and work papers of the auditor or the audit committee shall be confidential and shall not be
20 released.

21 ~~(g)~~ Policies for corrective action. The auditor may adopt policies to ensure appropriate
22 corrective actions are being implemented by the audited entity.

1 COMMITTEE APPROVAL DATE: June 18, 2024

2 MAYOR-COUNCIL DATE: June 25, 2024

3 PASSED BY THE COUNCIL: September 9, 2024

4 *Amund P. Sandora* - PRESIDENT

5 APPROVED: *Michael C. Johnston* - MAYOR Sep 11, 2024
Michael C. Johnston (Sep 11, 2024 13:13 MDT)

6 ATTEST: *Paul Jones* - CLERK AND RECORDER,
7 EX-OFFICIO CLERK OF THE
8 CITY AND COUNTY OF DENVER

9 NOTICE PUBLISHED IN THE DAILY JOURNAL: July 11th 2024 ; September 12th 2024

10 PREPARED BY: Anshul Bagga, Assistant City Attorney DATE: June 18, 2024

11 Pursuant to section 13-9, 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.
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16 Kerry Tipper, City Attorney

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18 BY: *Anshul Bagga*, Assistant City Attorney

DATE: September 10, 2024

