

BY AUTHORITY

ORDINANCE NO. _____

COUNCIL BILL NO.

CB10-0612

SERIES OF _____

COMMITTEE OF

REFERENCE:

AS AMENDED 8-9-10

ECONOMIC

DEVELOPMENT

A BILL

For an ordinance adding a new Division 5 to Chapter 20, Article IV, D.R.M.C., requiring certain city contractors to confirm the lawful employment status of their employees

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

Section 1. That Article IV of Chapter 20, D.R.M.C. (Contracts, Purchases, Conveyances) shall be amended by adding a new Division 5, to read as follows:

DIVISION 5

Confirmation of Lawful Employment Status by City Contractors

Sec. 20-90 Purpose.

Pursuant to HB 06-1343, 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 an illegal alien to perform work under the contract. Among other things, HB 06-1343 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 06-1343 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 06-1343 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:
 - a. Any public contract for services between the city and a contractor within the meaning of § 8-17.5-101 (6), C.R.S., as amended; or
 - b. Any contract or a purchase authorization between the city and a contractor for construction, alteration, improvement, repair, maintenance or demolition of any public building or public work by or on behalf of the city.
- (5) *“Contractor”* means a person having a contract with the city.
- (6) *“Newly hired for employment”* means hired to work in the United States since the effective date of the contract.

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

(a) Prior to executing a contract, each prospective contractor shall certify that, at the time of the certification, it does not knowingly employ or contract with an illegal alien who will perform work under the contract and that the contractor will participate in the e-verify program in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the contract.

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

(1) Knowingly employ or contract with an illegal alien to perform work under the contract; or

(2) Enter into a contract with a subcontractor that fails to certify to the contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under the contract.

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

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

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

(3) A provision that, if the contractor obtains actual knowledge that a subcontractor performing work under the contract knowingly employs or contracts with an illegal alien, the contractor shall be required to:

a. Notify the subcontractor and the city within three days that the contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

b. Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to sub-subparagraph (A) of this subparagraph (III) the subcontractor does not stop employing or contracting with the illegal alien; except that the contractor shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to

establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

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

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

Sec. 20-90.3 Powers of the Auditor

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

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

Sec. 20-90.4 Reporting requirements.

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

Sec. 20-90.5 Compliance with federal law.

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

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

(c) A contractor that establishes that it has complied in good faith with the employment verification requirements set forth in federal law and the e-verify requirements set forth in this ordinance shall, in any action to enforce the requirements of this Division 5, have an affirmative defense that the employer did not knowingly employ an illegal alien.

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

Section 2. This ordinance shall take effect October 1, 2010 and shall govern contracts entered into by the city on and after said date.

Section 3. On or before October 1, 2011 and October 1, 2012, the City Council shall request from the Auditor and the Mayor a report concerning the results of the adoption and implementation of this ordinance including relevant statistics and other information to allow the Council to assess the impacts and the effectiveness of this ordinance.

COMMITTEE APPROVAL DATE: _____, 2010.

MAYOR-COUNCIL DATE: _____, 2010.

PASSED BY THE COUNCIL _____
2010

_____ - PRESIDENT

APPROVED: _____ - MAYOR _____ 2010

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

DENVER

NOTICE PUBLISHED IN THE DAILY JOURNAL _____ 2010; _____ 2010

PREPARED BY: David W. Broadwell, Asst. City Attorney; DATE: July 22, 2010

Pursuant to section 13-12, 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.

City Attorney

BY: _____, _____ City Attorney

DATE: _____