

BY AUTHORITY

ORDINANCE NO. 414

COUNCIL BILL NO. CB10-0612

SERIES OF 2010

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
- 2 (1) “*Auditor*” means the Auditor of the City and County of Denver
- 3
- 4 (2) “*E-verify program*” means the electronic employment verification program created
- 5 in Public Law 104-208 and expanded in Public Law 108-156, as amended, and
- 6 jointly administered by the United States department of homeland security and the
- 7 social security administration, or its successor program.
- 8
- 9 (3) “CDLE” means the Colorado Department of Labor and Employment.
- 10
- 11 (4) “*Contract*” means:
- 12
- 13 a. Any public contract for services between the city and a contractor within
- 14 the meaning of § 8-17.5-101 (6), C.R.S., as amended; or
- 15
- 16 b. Any contract or a purchase authorization between the city and a contractor
- 17 for construction, alteration, improvement, repair, maintenance or demolition of any
- 18 public building or public work by or on behalf of the city.
- 19
- 20 (5) “*Contractor*” means a person having a contract with the city.
- 21
- 22 (6) “*Newly hired for employment*” means hired to work in the United States since the
- 23 effective date of the contract.
- 24
- 25

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

27 **contracts.**

28

29 (a) Prior to executing a contract, each prospective contractor shall certify that,

30 at the time of the certification, it does not knowingly employ or contract with an illegal

31 alien who will perform work under the contract and that the contractor will participate

32 in the e-verify program in order to confirm the employment eligibility of all employees

33 who are newly hired for employment to perform work under the contract.

1
2 (b) Each contract shall include a provision that the contractor shall not:

3
4 (1) Knowingly employ or contract with an illegal alien to perform work under
5 the contract; or

6
7 (2) Enter into a contract with a subcontractor that fails to certify to the
8 contractor that the subcontractor shall not knowingly employ or contract with an
9 illegal alien to perform work under the contract.

10
11 (c) Each contract shall also include the following provisions:

12
13 (1) A provision stating that the contractor has confirmed the employment
14 eligibility of all employees who are newly hired for employment to perform work under
15 the contract through participation in the e-verify program;

16
17 (2) A provision that prohibits the contractor from using the e-verify program
18 procedures to undertake pre-employment screening of job applicants while the
19 contract is being performed **and that otherwise requires the contractor to comply**
20 **with any and all federal requirements related to use of the e-verify program**
21 **including, by way of example, all program requirements related to employee**
22 **notification and preservation of employee rights;**

23
24 (3) A provision that, if the contractor obtains actual knowledge that a
25 subcontractor performing work under the contract knowingly employs or contracts
26 with an illegal alien, the contractor shall be required to:

27
28 a. Notify the subcontractor and the city within three days that the
29 contractor has actual knowledge that the subcontractor is employing or
30 contracting with an illegal alien; and

31
32 b. Terminate the subcontract with the subcontractor if within three days of
33 receiving the notice required pursuant to sub-subparagraph (A) of this
34 subparagraph (III) the subcontractor does not stop employing or

1 contracting with the illegal alien; except that the contractor shall not
2 terminate the contract with the subcontractor if during such three days the
3 subcontractor provides information to establish that the subcontractor has
4 not knowingly employed or contracted with an illegal alien.

5
6 (4) A provision that requires the contractor to comply with any reasonable
7 request by the CDLE or the Auditor made in the course of an investigation that the
8 CDLE is undertaking pursuant to the authority established in § 8-17.5-102, C.R.S.,
9 as amended, or that the Auditor is undertaking pursuant to section 20-90.3.

10
11 (d) If a contractor violates a provision of the contract required pursuant to
12 subsections (b) or (c) of this section, the city may terminate the contract for a breach
13 of the contract. If the contract is so terminated, the contractor shall be liable for
14 actual and consequential damages to the city. Any such termination of a contract
15 due to a violation of this section may also, at the discretion of any city department or
16 agency responsible for soliciting contract bids and proposals, constitute grounds for
17 disqualifying the violator from submitting bids or proposals for future contracts with
18 the city.

19
20
21 **Sec. 20-90.3 Powers of the Auditor**

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

32
33 (b) The Auditor shall notify the head of the department or agency responsible
34 for administering the contract if the Auditor suspects that there has been a breach of

1 a provision in the contract required pursuant to section 20-90.2.
2
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4

5 **Sec. 20-90.4 Reporting requirements.**
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7 If any contract is terminated pursuant to subsection 20-90.2 (d), the head of
8 the department or agency administering the contract shall report the termination to
9 the Colorado secretary of state in accordance with section 8-17.5-102 (4), C.R.S., as
10 amended, and shall also report the termination to the Immigration and Customs
11 Enforcement division of the United States Department of Homeland Security or its
12 successor agency.
13
14

15 **Sec. 20-90.5 Compliance with federal law.**
16

17 (a) The city shall not deem a contractor or subcontractor to be in material
18 breach of a contract if the contractor or subcontractor establishes that it has
19 complied with the employment verification provisions prescribed by federal law and
20 the e-verify requirement prescribed by this Division 5.
21

22 (b) When investigating a complaint, performing an audit, or otherwise
23 enforcing the requirements of this Division 5, the city shall not attempt independently
24 to make a final determination on whether an employee is authorized to work in the
25 United States, recognizing that any such determination must be made by federal
26 officials in accordance with federal law.
27

28 (c) A contractor that establishes that it has complied in good faith with the
29 employment verification requirements set forth in federal law and the e-verify
30 requirements set forth in this ordinance shall, in any action to enforce the
31 requirements of this Division 5, have an affirmative defense that the employer did not
32 knowingly employ an illegal alien.
33

1 (d) Nothing in this Division 5 shall be construed as requiring a contractor to
2 violate any terms of participation in the e-verify program.
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4

5 **Section 2.** This ordinance shall take effect October 1, 2010 and shall govern contracts entered
6 into by the city on and after said date.
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8

9 **Section 3.** On or before October 1, 2011 and October 1, 2012, the City Council shall
10 request from the Auditor and the Mayor a report concerning the results of the adoption and
11 implementation of this ordinance including relevant statistics and other information to allow
12 the Council to assess the impacts and the effectiveness of this ordinance.
13

14 COMMITTEE APPROVAL DATE: _____, 2010.

15 MAYOR-COUNCIL DATE: _____, 2010.

16 PASSED BY THE COUNCIL [Signature] August 9 2010

17 _____ - PRESIDENT

18 APPROVED: [Signature] - MAYOR Aug. 10, 2010

19 ATTEST: [Signature] **ACTING MAYOR** - CLERK AND RECORDER,
20 EX-OFFICIO CLERK OF THE
21 CITY AND COUNTY OF DENVER
22

23 NOTICE PUBLISHED IN THE DAILY JOURNAL Aug. 6, 2010; Aug. 13, 2010
24

25 PREPARED BY: David W. Broadwell, Asst. City Attorney; DATE: July 22, 2010
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27 Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of the
28 City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
29 ordinance. The proposed ordinance is **not** submitted to the City Council for approval pursuant to §
30 3.2.6 of the Charter.
31

32 City Attorney
33 BY: [Signature], [Signature] City Attorney
34 DATE: 8/9/2010
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36

