



Office of the Chicago City  
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O2012-52

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City Council Document Tracking Sheet

<b>Meeting Date:</b>	1/18/2012
<b>Sponsor(s):</b>	Emanuel, Rahm (Mayor)
<b>Type:</b>	Ordinance
<b>Title:</b>	Intergovernmental agreement with County of Cook regarding joint enforcement
<b>Committee(s) Assignment:</b>	Committee on Budget and Government Operations

BUDG.



OFFICE OF THE MAYOR  
CITY OF CHICAGO

RAHM EMANUEL  
MAYOR

January 18, 2012

TO THE HONORABLE, THE CITY COUNCIL  
OF THE CITY OF CHICAGO

Ladies and Gentlemen:

At the request of the Commissioner of Business Affairs and Consumer Protection, I transmit herewith an ordinance authorizing the execution of an intergovernmental agreement with the County of Cook regarding joint enforcement.

Your favorable consideration of this ordinance will be appreciated.

Very truly yours,

A handwritten signature in cursive script that reads "Rahm Emanuel".

Mayor

## ORDINANCE

**WHEREAS**, Article VII, Section 10 of the Illinois Constitution, the Illinois Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.*, and other applicable law permit and encourage units of local government to cooperate with and support each other in the exercise of their authority and the performance of their responsibilities; and

**WHEREAS**, the County of Cook, Illinois (the "County") and the City of Chicago, Illinois (the "City") share the common goals of ensuring that natural and legal persons fully comply with those laws through which said County and City protect the public health and serve those who reside, visit, and conduct business in their respective boundaries; and

**WHEREAS**, the County and the City share the common goal of ensuring that those who reside, visit, and conduct business in their respective boundaries are not called upon to pay more than their fair share of taxes; and

**WHEREAS**, the County and the City share the common goal of ensuring that businesses who comply with the law regarding taxes and other matters do not suffer from unfair competition from those businesses who do not comply with said laws; and

**WHEREAS**, the County and the City likewise share the common goals of exercising their authority, fulfilling their responsibilities, and promoting operations in an efficient and cost-effective manner; and

**WHEREAS**, the County and the City each have enacted a tax upon the retail sale or use of cigarettes, the payment of which is evidenced, pursuant to an intergovernmental agreement entered into by the parties on January 12, 2010, by a single stamp on each package of cigarettes sold within the City and the County; and

**WHEREAS**, the County and the City, pursuant to an intergovernmental agreement adopted by the County Board of Commissioners and the City Council of the City on October 4, 2011 and October 5, 2011, respectively, are extensively collaborating in the enforcement of their cigarette tax ordinances; and

**WHEREAS**, in said collaboration, the County and the City have identified and wish to pursue additional means and mechanisms to collaborate to a greater degree and to reduce duplicative efforts in enforcing their respective cigarette-tax ordinances; and

**WHEREAS**, the County and City wish to further reduce the cost of administering their separate cigarette-tax ordinances by sharing their investigative, prosecutorial, and administrative-hearing resources; and

**WHEREAS**, the County and the City wish to cross designate investigators, attorneys, administrative hearing officers, and revenue collectors for these aforementioned purposes; and

**WHEREAS**, the County and the City wish to enter into an intergovernmental agreement in substantially the form attached as Exhibit A (the "Agreement") whereby the County and the City will accomplish the above-stated goals; now, therefore,

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:**

**SECTION 1.** The above recitals are expressly incorporated in and made a part of this ordinance as though fully set forth herein.

**SECTION 2.** The Corporation Counsel, or designee, is authorized to execute and deliver the Agreement, and such other documents as are necessary, between the City of Chicago and the County of Cook, which Agreement may contain such other terms as are deemed necessary or appropriate by the parties executing the same on the part of the City.

**SECTION 3.** The Corporation Counsel, or designee, is further authorized, in accordance with the provisions of the Agreement, to renew or extend the term of the Agreement beyond its original termination date, and to execute and deliver the renewed or extended Agreement, and such other documents as are necessary, between the City of Chicago and the County of Cook, which renewed or extended Agreement may contain such other terms as are deemed necessary or appropriate by the parties executing the same on the part of the City.

**SECTION 4.** Chapter 2-14 of the Municipal Code of the City of Chicago is hereby amended by deleting the language stricken through and by inserting the language underscored, as follows:

**2-14-010 Department of administrative hearings – Establishment and composition.**

There is hereby established an office of the municipal government to be known as the department of administrative hearings which shall be authorized to conduct administrative adjudication proceedings for departments and agencies of the city, and for other units of government acting pursuant to intergovernmental agreements with the city.

The department shall be administered by a director, who shall be appointed by the mayor, subject to approval by the city council, and staffed by administrative law officers and other employees as may be provided for in the annual appropriation ordinance.

The provisions of Division 2.1 of Article 1 of the Illinois Municipal Code are hereby adopted and incorporated into this chapter as if fully set forth herein.

**2-14-030 Powers and duties of the director.**

The powers and duties of the director of the department of administrative hearings shall include:

*(Omitted text is unaffected by this ordinance)*

(5) establishing a system for hearing of grievances brought by tenants of the Chicago Housing Authority against the authority and/or its property managers, all in accordance with an intergovernmental agreement between the City of Chicago and the Chicago Housing Authority;

(6) establishing systems for adjudicating matters pursuant to intergovernmental agreements entered into between the City of Chicago and other units of government;

and

~~(6)~~ (7) establishing any other necessary rules and regulations as may be required to carry out the provisions of this chapter.

**2-14-160 Environmental safety and consumer affairs hearings division.**

(a) The department of administrative hearings shall operate a system of administrative adjudication of violations of ordinances, and similar matters pursuant to section 2-14-030(6), regulating business affairs and consumer protection, public health and safety, streets and sanitation, transportation, aviation and the environment.

*(Omitted text is unaffected by this ordinance)*

**2-14-190 Municipal hearings division – Jurisdiction**

(a) The department of administrative hearings is authorized to establish a system of administrative adjudication for the enforcement of all provisions of the Municipal Code, and similar matters pursuant to section 2-14-030(6), that are not adjudicated by the vehicle, buildings, environmental safety or consumer affairs hearings divisions, except that it shall not adjudicate violations of the following chapters and sections: chapter 4-92 (Massage Establishments and Massage Services); chapter 4-144 (Weapons); and Section 7-28-190 (Health Nuisances – Throwing Objects into Roadways).

*(Omitted text is unaffected by this ordinance)*

**SECTION 5.** To the extent that any ordinance, resolution, rule, order or provision of the Municipal Code of Chicago, or part thereof, is in conflict with the provisions of this ordinance, the provisions of this ordinance shall control. If any section, paragraph, clause or provision of this ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any other provisions of this ordinance.

**SECTION 6.** This ordinance shall be in full force and effect from and after the date of its passage and approval.

**EXHIBIT A TO THE ORDINANCE**

**FORM OF  
INTERGOVERNMENTAL AGREEMENT  
BETWEEN COOK COUNTY,  
THE COOK COUNTY STATE'S ATTORNEY AND  
THE CITY OF CHICAGO**

This Intergovernmental Agreement ("Agreement"), dated as of \_\_\_\_\_, 2012, is made by and between the County of Cook, a body politic and corporate and home-rule unit of government under the Constitution and laws of the State of Illinois, having its principal offices at 118 North Clark Street, Chicago, Illinois 60602 ("County"), on behalf of the President of the Cook County Board of Commissioners and the Cook County State's Attorney, and the City of Chicago ("City"), an Illinois municipal corporation and home-rule unit of government under the Constitution and laws of the State of Illinois, having its principal offices at 121 North LaSalle Street, Chicago, Illinois 60602.

**I. RECITALS**

**WHEREAS**, Article VII, Section 10 of the Illinois Constitution, the Illinois Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.*, and other applicable law permit and encourage units of local government to cooperate with and support each other in the exercise of their authority and the performance of their responsibilities; and

**WHEREAS**, the County and the City share the common goals of ensuring that natural and legal persons fully comply with those laws through which said County and City protect the public health and serve those who reside, visit, and conduct business in their respective boundaries; and

**WHEREAS**, the County and the City share the common goal of ensuring that those who reside, visit, and conduct business in their respective boundaries are not called upon to pay more than their fair share of taxes; and

**WHEREAS**, the County and the City share the common goal of ensuring that businesses who comply with the law regarding taxes and other matters do not suffer from unfair competition from those businesses who do not comply with said laws; and

**WHEREAS**, the County and the City likewise share the common goals of exercising their authority, fulfilling their responsibilities, and promoting operations in an efficient and cost-effective manner; and

**WHEREAS**, the County and the City each have enacted a tax upon the retail sale or use of cigarettes, the payment of which is evidenced, pursuant to an intergovernmental agreement entered into by the parties on January 12, 2010, by a single stamp on each package of cigarettes sold within the City and the County; and

**WHEREAS**, the County and the City, pursuant to an intergovernmental agreement adopted by the County Board of Commissioners and the City Council on October 4, 2011 and October 5, 2011, respectively, are extensively collaborating in the enforcement of their cigarette tax ordinances; and

**WHEREAS**, in said collaboration, the County and the City have identified and wish to pursue additional means and mechanisms to collaborate to a greater degree and to reduce duplicative efforts in enforcing their respective cigarette-tax ordinances; and

**WHEREAS**, the County and City wish to further reduce the cost of administering their separate cigarette-tax ordinances by sharing their investigative, prosecutorial, and administrative-hearing resources; and

**WHEREAS**, the County and the City wish to cross designate investigators, attorneys, administrative hearing officers, and revenue collectors for these aforementioned purposes;

**NOW THEREFORE**, in consideration of the promises, covenants, terms and conditions set forth in this Agreement, the sufficiency of which are hereby acknowledged, the County and the City agree as follows:

## **II. INCORPORATION OF RECITALS**

The above recitals are incorporated into this Agreement as if fully set forth herein.

## **III. "PARTY" DEFINED**

For the purposes of this Agreement, the term "party" shall refer to the County or the City, and the term "parties" shall refer to both.

## **IV. TERM**

This Agreement shall commence on the date of execution by the County Board President, the County State's Attorney, and the City's Mayor after approval is obtained from the Cook County Board and the Chicago City Council. Any signatory to this Agreement may terminate it at any time upon ninety (90) days' written notice to the other signatories.

## **V. CROSS DESIGNATIONS OF INVESTIGATORS**

- A. From a list of names as from time to time produced by the County's Director of Revenue, the City's Commissioner of Business Affairs and Consumer Protection shall from time to time designate, in writing, one or more County revenue investigators as City investigators with all of the powers and authority necessary for the enforcement of City ordinances with respect to cigarette taxes.
- B. From a list of names as from time to time produced by the City's Commissioner of Business Affairs and Consumer Protection, the County's Director of Revenue shall from time to time designate in writing, one or more City revenue investigators as County investigators with all of the powers and authority necessary for the enforcement of County ordinances with respect to cigarette taxes.
- C. The City and County authorize their investigators, when cross designated, to enforce the other's ordinances related to cigarette taxes as part of their duties as an investigator for their employer.

**VI. CROSS DESIGNATIONS OF ADMINISTRATIVE HEARING OFFICERS**

- A. From a list of names as from time to time produced by the County's Director of Administrative Hearings, the City's Director of Administrative Hearings shall from time to time designate, in writing, one or more County administrative hearing officers as City administrative hearing officers with all of the powers and authority necessary for hearing matters pertaining to the enforcement of City ordinances with respect to cigarette taxes.
- B. From a list of names as from time to time produced by the City's Director of Administrative Hearings, the County's Director of Administrative Hearings shall from time to time designate, in writing one or more City administrative hearing officers as County administrative hearing officers with all of the powers and authority necessary for hearing matters pertaining to the enforcement of County ordinances with respect to cigarette taxes.
- C. The City and County authorizes their administrative hearing officers, when cross designated, to hear matters pertaining to the other's ordinances related to cigarette taxes as part of their duties as an administrative hearing officer for the party who employs them or contracts for their services.

**VII. CROSS DESIGNATION OF ATTORNEYS**

- A. From a list of names as from time to time produced by the State's Attorney, the City's Corporation Counsel shall from time to time designate, in writing, one or more Assistant Cook County State's Attorneys as Special Assistant Corporation Counsels with all of the powers and authority necessary for representing the City at hearings pertaining to the enforcement of City ordinances with respect to cigarette taxes.
- B. From a list of names as from time to time produced by the City's Corporation Counsel, the Cook County State's Attorney shall from time to time designate, in writing, one or more City Assistant Corporation Counsels as Special Assistant State's Attorneys with all of the powers and authority necessary for representing the County at hearings pertaining to the enforcement of County ordinances with respect to cigarette taxes.
- C. The City and the State's Attorney each authorizes its Assistant Corporation Counsels and Assistant State's Attorneys respectively, when cross designated, to participate in matters pertaining to the City's and County's ordinances related to cigarette taxes as part of their duties as Assistant Corporation Counsels and Assistant State's Attorneys for their respective employers.

**VIII. CROSS DESIGNATIONS OF REVENUE COLLECTORS**

- A. From a list of names as from time to time produced by the County's Director of Revenue, the City's Director of Finance shall from time to time designate, in writing, one or more County revenue collectors as City revenue collectors with all of the powers and authority necessary for the collection of revenue due under City ordinances with respect to cigarette taxes.
- B. From a list of names as from time to time produced by the City's Director of Finance, the County's Director of Revenue shall from time to time designate, in writing, one or more City revenue collectors as County revenue collectors with all of the powers and authority



necessary for the collection of revenue due under County ordinances with respect to cigarette taxes.

- C. The City and County authorize their revenue collectors, when cross designated, to collect and disburse to the other party revenue due under each other's ordinances related to cigarette taxes as part of their duties as a revenue collector for their employer. For purposes of this Section VIII, "revenue collectors" shall mean those administrative or clerical staff who accept payments of tax, interest, costs, fines, etc. for processing and not attorneys or outside counsel employed by the parties, investigators or administrative hearing officers.

#### **IX. ADMINISTRATION, IMPLEMENTATION**

- A. Each signatory shall immediately designate in writing a person who shall, on their behalf, take all steps necessary to ensure that the collaborative initiative authorized by this Agreement is successfully commenced no later than \_\_\_\_\_, and to further ensure the successful administration of said initiative. Such persons so designated shall work cooperatively to develop such policies, procedures, processes and documents as are necessary or helpful for the purposes of this Agreement, including, but not limited to: those regarding the dismissal, reduction, or settlement of tickets, cases, complaints, fines, or penalties; maintaining and exchanging records of citations, judgments, and the amount of fines and penalties imposed and received; the enforcement of judgments; the collection of fines, penalties and costs; the allocation of payments; and tracking the amounts due and the amounts paid.
- B. Unless a different arrangement is established under those policies and procedures aforementioned in Paragraph IX(A) of this Agreement, tickets or complaints issued by a particular cross-designated investigator shall be referred to and heard by hearing officers employed or retained by the party who employs said cross-designated investigator.
- C. In the event that a respondent seeks judicial review of a decision rendered in an administrative hearing brought hereunder, each party shall determine who shall represent that party in said judicial review.
- D. In the event that a respondent is found liable for the violation of a party's ordinance in a hearing conducted by a hearing officer employed or contracted by the other party, the party who employs or contracts with said hearing officer shall afford said respondent the opportunity to pay such fines, penalties, and costs as are due the other party. In the event that said respondent does not pay such fines, penalties, and costs after the close of the applicable appeal period, the party who employs or contracts with said hearing officer shall forward such documents and information as are sufficient for the other party to collect such fines, penalties, and costs, and otherwise enforce the finding of liability.

#### **X. TRAINING**

Each signatory to this Agreement shall ensure that cross-designated persons receive such training as is sufficient or necessary to enable them to fully and properly perform the functions and fulfill the responsibilities for which such persons have been cross designated.

## **XI. TAXES, INTEREST, COSTS, FINES, PENALTIES, AND FEES**

Upon the receipt of taxes, interest, costs, fines, penalties, and fees due to another party hereunder, the County and the City shall segregate such monies and disburse them with any received interest to the other party on a monthly basis, with such information, records, reports, and accounting as identified in those policies, procedures, and processes provided for in Section IX of this Agreement, and shall otherwise have or exercise no authority over them.

## **XII. COSTS**

The costs of particular administrative hearings chargeable to or paid by particular respondents may be collected and retained by the party who employees or contracts with the corresponding hearing officer.

## **XIII. EXPENSES**

- A. Each party to this Agreement shall bear its own costs of carrying out this Agreement. No party shall seek to charge or obtain reimbursement from the other party for any costs associated with this Agreement, including but not limited to such items as salaries and fringe benefits.
- B. Each party to this Agreement shall be responsible for paying the contracted amount, salaries, fringe benefits, worker's compensation, and reimbursable expenses of their employees and contractors who have been cross designated hereunder.

## **XIV. INDEMNIFICATION**

Neither party shall indemnify or hold harmless the employees or contractors of the other party under this Agreement.

## **XV. COVENANT NOT TO SUE**

Excluding any action to enforce the terms of this Agreement, each party hereby covenants and agrees that it shall not sue, institute, cause to be instituted or permit to be instituted on its behalf, or by or on behalf of its past, present or future officials, aldermen, commissioners, officers, employees, attorneys, agents or assigns, any proceeding or other action with or before any local, state and/or federal agency, court or other tribunal, against the other, its officers, aldermen, commissioners, employees, attorneys, agents or assigns, arising out of, or from, or otherwise relating, directly or indirectly, to this Agreement.

## **XVI. MISCELLANEOUS TERMS**

- A. **Force Majeure.** Neither the County nor the City shall be liable for failing to fulfill any obligation under this Agreement to the extent such failure is caused by an event beyond such party's reasonable control and which event is not caused by such party's fault or negligence. Such events shall include acts of God, acts of war or terrorism, fires, lightning, floods, epidemics, or riots.
- B. **No Joint Venture.** This Agreement shall in no event be construed in such a way that either the County or the City constitutes, or is deemed to be, the representative, agent, employee, partner, or joint venture of the other. The parties shall not have the authority to enter into

any agreement, nor to assume any liability, on behalf of the other party, nor to bind or commit the other party in any manner, except as expressly provided herein.

- C. Notice.** All notices required to be given pursuant to this Agreement shall be in writing and addressed to the parties at their respective addresses set forth below. All such notices shall be deemed duly given if personally delivered, or if deposited in the United States mail, registered or certified return receipt requested, or upon receipt of facsimile transmission. Notices given as provided herein does not waive service of summons or process.

**To the County**

Zahra Ali, Director  
Cook County Department of Revenue  
118 North Clark Street  
Chicago, Illinois 60602  
Zahra.ali@cookcountyiil.gov

Patrick Driscoll  
First Deputy State's Attorney  
5<sup>th</sup> Floor, 50 West Washington Street  
Chicago, Illinois 60602

**To the City**

Rosemary Krimbel, Commissioner  
Chicago Dept. of Business Affairs & Consumer  
Protection  
121 North LaSalle Street, Suite 805  
Chicago, Illinois 60602  
Rosemary.Krimbel@cityofchicago.org

Amer Ahmad, Comptroller  
Chicago Department of Finance  
33 North LaSalle Street, 6<sup>th</sup> Floor  
Chicago, Illinois 60602  
Amer.Ahmad@cityofchicago.org

Stephen R. Patton, Corporation Counsel  
Office of Corporation Counsel  
121 North LaSalle Street, Suite 600  
Chicago, Illinois 60602  
Stephen.Patton@cityofchicago.org

- D. Governing Law and Forum.** This Agreement shall be interpreted under, and governed by, the laws of the State of Illinois, without regard to conflicts of laws principles. Any claim, suit, action, or proceeding brought in connection with this Agreement shall be in the Circuit Court of Cook County and each party hereby irrevocably consents to the personal and subject matter jurisdiction of such court and waives any claim that such court does not constitute a convenient and appropriate venue for such claims, suits, actions, or proceedings.
- E. Entire Agreement.** This Agreement constitutes the entire agreement of the County and the City with respect to the subject matter hereof and supersedes all other prior and contemporary agreements, understandings, representations, negotiations, and commitments between the City and the County with respect to the subject matter hereof. The headings of articles, paragraphs and section in this Agreement are included for convenience only and shall not be considered by either party in construing the meaning of this Agreement.
- F. Approval Required and Binding Effect.** This Agreement between the County and the City shall not become effective unless authorized by the County Board of Commissioners and the City Council. This Agreement constitutes a legal, valid and binding agreement, enforceable against the County or the City in accordance with its terms.

- G. Waiver.** No term or provision of this Agreement shall be deemed waived, and no breach or default shall be deemed excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. No consent by any party to, or waiver of, a breach or default by the other, whether express or implied, shall constitute a consent to, waiver of, or excuse for any different or subsequent breach or default by or on the part of any party.
- H. Survival.** Any provisions of this Agreement that impose continuing obligations upon a party or, by their nature or terms, would be reasonably understood to have been intended to survive and continue in force and effect after expiration or termination of this Agreement, shall remain in force and effect after such expiration or termination for so long as so intended.
- I. Governmental Immunity.** Notwithstanding anything to the contrary set forth elsewhere in this Agreement, neither the County nor the City has, and in no event shall either of them be construed to have, waived any rights or defenses of governmental immunity that it may have with respect to any matters arising out of this Agreement or performance hereunder.
- J. Representations.** Each party represents that it has the authority to enter into this Agreement and undertake the duties and obligations contemplated by this Agreement and that it has taken or caused to be taken all necessary action to authorize the execution and delivery of this Agreement.
- K. Interpretation.** For the purpose of construing this Agreement, unless the context otherwise requires: i) words in the singular shall be deemed to include words in the plural, and vice versa; ii) a reference to the County includes the County's officers, commissioners, employees, attorneys, agents and assigns; and iii) a reference to the City includes its officers, members, employees, attorneys, agents and assign.
- L. Modification.** This Agreement may not be altered, modified or amended except by mutual agreement by the signatories, in writing.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties have hereto caused their duly authorized representatives to execute this Intergovernmental Agreement on the dates hereafter set forth below.

**CITY OF CHICAGO EXECUTION:** The undersigned, on behalf of the City of Chicago, Illinois, an Illinois municipal corporation and home rule unit of government under the Constitution and laws of the State of Illinois, hereby accepts the foregoing Intergovernmental Agreement:

\_\_\_\_\_ Dated: \_\_\_\_\_  
Rahm Emanuel  
Mayor

**COOK COUNTY EXECUTION:** The undersigned, on behalf of the County of Cook, Illinois, a body politic and corporate of the State of Illinois, hereby accepts the foregoing Intergovernmental Agreement:

\_\_\_\_\_ Dated: \_\_\_\_\_  
Toni Preckwinkle  
President, Cook County Board of Commissioners

ATTEST:

\_\_\_\_\_ Dated: \_\_\_\_\_  
David Orr  
Cook County Clerk

**STATE'S ATTORNEY'S EXECUTION:** The undersigned hereby accepts the foregoing Intergovernmental Agreement:

\_\_\_\_\_ Dated: \_\_\_\_\_  
Anita Alvarez  
State's Attorney

Approved as to Form

\_\_\_\_\_ Assistant State's Attorney  
\_\_\_\_\_ Assistant Corporation Counsel