



City of Chicago



O2017-7122

Office of the City Clerk

Document Tracking Sheet

Meeting Date:	10/11/2017
Sponsor(s):	Emanuel (Mayor)
Type:	Ordinance
Title:	Intergovernmental agreement with State Attorney's Office regarding prosecution of certain violations
Committee(s) Assignment:	Committee on Budget and Government Operations

Budget

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OFFICE OF THE MAYOR
CITY OF CHICAGO

RAHM EMANUEL
MAYOR

October 11, 2017

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

Ladies and Gentlemen:

At the request of the Corporation Counsel, I transmit herewith an ordinance authorizing the execution of an intergovernmental agreement with the State Attorney's Office regarding prosecution of certain violations.

Your favorable consideration of this ordinance will be appreciated.

Very truly yours,

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

Mayor

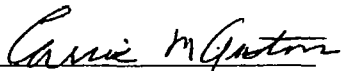
CHICAGO, November 15, 2017

To the President and Members of the City Council:

Your Committee on the Budget and Government Operations, having had under consideration an Ordinance authorizing the execution of an intergovernmental agreement between the City of Chicago and the County of Cook State's Attorney's Office relating to the prosecution of certain violations ; and having had the same under advisement, begs leave to report and recommend that Your Honorable Body pass the Ordinance transmitted herewith.

This recommendation was concurred in by a viva voce vote of the members of the Committee.

~~members of the Committee with~~ ~~dissenting vote(s).~~

(Signed) 
Carrie M. Austin
Chairman

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

WHEREAS, the CCSAO 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 City has enacted numerous ordinances to protect the health of safety of the public and which are punishable as either fine-only offenses or criminal misdemeanors under the Municipal Code of Chicago (the "MCC"); and

WHEREAS, the CCSAO prosecutes violations of other various criminal offenses under the laws of the State of Illinois that are similar to or consistent with some of the ordinances codified in the MCC; and

WHEREAS, in said collaboration, the CCSAO 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 prosecuting criminal misdemeanors at circuit court branch courts located in the City; and

WHEREAS, the City wishes to designate CCSAO attorneys to prosecute certain designated MCC ordinance violations at circuit court branch courts located in the City; and

WHEREAS, the CCSAO and the City wish to enter into an intergovernmental agreement in substantially the form attached as Exhibit A (the "Agreement") whereby the CCSAO 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's execution and delivery of the Agreement with a retroactive effective date of September 19, 2017, is hereby approved and authorized, with such other terms as are deemed necessary or appropriate by the Corporation Counsel. The Corporation Counsel, or designee, is further authorized to execute and deliver such other documents deemed necessary or appropriate by the Corporation Counsel, or designee, to effectuate the purposes of the Agreement.

EXHIBIT A

Form of Intergovernmental Agreement
Between the City of Chicago and the Cook County State's Attorney's Office

(See attached)

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

This Intergovernmental Agreement ("Agreement"), dated as of September 19, 2017, is made by and between the Cook County State's Attorney's Office, a body politic under the Constitution and laws of the State of Illinois, having its principal offices at 69 West Washington Street, Chicago, Illinois 60602 ("CCSAO"), and the City of Chicago, by and through its Department of Law ("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 CCSAO and the City share the common goals of ensuring that natural and legal persons fully comply with those laws through which said CCSAO and City protect the public health and safety and serve those who reside, visit, and conduct business in their respective boundaries; and

WHEREAS, the CCSAO 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 City has enacted numerous ordinances to protect the health of safety of the public and which are punishable as either fine-only offenses or criminal misdemeanors under the Municipal Code of Chicago ("MCC"); and

WHEREAS, the CCSAO prosecutes violations of other various criminal offenses under the laws of the State of Illinois that are similar to or consistent with some of the ordinances codified in the MCC; and

WHEREAS, in said collaboration, the CCSAO 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 prosecuting criminal misdemeanors at circuit court branch courts located in the City; and

WHEREAS, the City wishes to designate CCSAO attorneys to prosecute certain designated MCC ordinance violations at circuit court branch courts located in the City;

NOW THEREFORE, in consideration of the promises, covenants, terms and conditions set forth in this Agreement, the sufficiency of which are hereby acknowledged, the CCSAO 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 CCSAO or the City, and the term "parties" shall refer to both.

IV. TERM

This Agreement shall commence on the date of execution by the Cook County State's Attorney, and the City's Corporation Counsel after approval is obtained by the Chicago City Council. Any signatory to this Agreement may terminate it at any time upon sixty (60) days' written notice to the other signatories.

V. DESIGNATION OF ATTORNEYS

A. From a list of names as from time to time produced by the CCSAO, the City's Corporation Counsel shall from time to time designate, with the approval of the CCSAO, 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 the following City ordinances:

1. Distribution of Tobacco Products – MCC Section 4-64-181
2. Prohibition of Certain Tobacco Transactions – MCC Section 4-64-191
3. Peddler Offenses – MCC Section 4-244-030
4. Animals to be restrained – MCC Section 7-12-030
5. Disorderly Conduct – MCC Section 8-4-010
6. Narcotics Loitering – MCC Section 8-4-017
7. Gang Loitering – MCC Section 8-4-015
8. Breach of the Peace – MCC Section 10-36-050
9. Obstruction of Traffic – MCC Section 9-80-180
10. Drinking on the Public Way – MCC Section 8-4-030
11. Vandalism – MCC Section 8-4-060
12. Public Urination or Defecation – MCC Section 8-4-081
13. Damage to Public Property – MCC Section 8-4-120
14. Solicitation of Unlawful Business – MCC Section 10-8-515
15. Music and Amplified Sound – MCC Section 8-32-070
16. Enforcement of Chicago Park District Ordinances – MCC Section 10-36-185
17. Enforcement of Chicago Transit Authority Ordinance – MCC Section 10-6-526
18. Discharging toy firearms; Replica air guns – MCC Section 8-24-040

- 19 Sale or possession of deadly weapons – MCC Section 8-24-020.
20. Such other MCC sections that may be mutually agreed to by the parties designated pursuant to Section VI of this Agreement.

The City's designee(s) under Section VI.A. of this Agreement, shall have the sole authority to determine when to permit designated CCSAO attorneys to prosecute any offenses of the above City ordinances and to determine when City attorneys shall retain responsibility for the prosecution of any such offenses.

- B. The CCSAO authorizes its Assistant State's Attorneys, when designated, to participate in matters pertaining to the City ordinances to be prosecuted pursuant to Section V.A. of this Agreement, as part of their duties as Assistant State's Attorneys.

VI. 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 September 19, 2017, 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. In the event that a person is found guilty for the violation of a City ordinance in a hearing conducted by a judge at a circuit court branch court located in the City and such person elects to appeal the conviction to a higher court, the City shall be responsible for all matters related to such appeal.

VII. TRAINING

The CCSAO shall ensure that designated attorneys 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 attorneys have been designated.

VIII. 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. The CCSAO 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 designated hereunder.

IX. INDEMNIFICATION

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

X. 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, 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, employees, attorneys, agents or assigns, arising out of, or from, or otherwise relating, directly or indirectly, to this Agreement.

XI. MISCELLANEOUS TERMS

- A. **Force Majeure.** Neither the CCSAO 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 CCSAO 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 CCSAO

Kimberly M. Foxx
Cook County State's Attorney
69 West Washington Street
Chicago, Illinois 60602

To the City

Edward N. Siskel, Corporation Counsel
Office of Corporation Counsel
121 North LaSalle Street, Suite 600
Chicago, Illinois 60602

- 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 CCSAO 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 CCSAO 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 CCSAO and the City shall not become effective unless authorized by the City Council. This Agreement constitutes a legal, valid and binding agreement, enforceable against the CCSAO 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 CCSAO 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 CCSAO includes the CCSAO's officers, employees, attorneys,

agents and assigns; and iii) a reference to the City includes its aldermen, 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: _____
Edward N. Siskel
Corporation Counsel

COOK COUNTY STATE'S ATTORNEY EXECUTION: The undersigned, on behalf of the State's Attorney of Cook County, Illinois, a body politic of the State of Illinois, hereby accepts the foregoing Intergovernmental Agreement:

_____ Dated: _____
Kimberly M. Foxx
Cook County State's Attorney

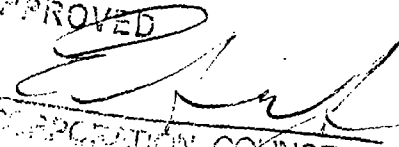
Approved as to Form

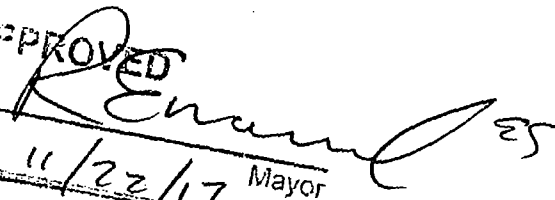
Assistant State's Attorney

Assistant Corporation Counsel

SECTION 3. To the extent that any ordinance, resolution, rule, order or provision of the MCC, 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 4. This ordinance shall be in full force and effect from and after the date of its passage and approval.

APPROVED

CORPORATION COUNSEL

APPROVED

11/22/17 Mayor