



City of Chicago



O2018-2393

Office of the City Clerk

Document Tracking Sheet

Meeting Date:	3/28/2018
Sponsor(s):	Burke (14) Laurino (39)
Type:	Ordinance
Title:	Amendment of Municipal Code Chapter 2-92 by adding new Section 2-92-613 prohibiting City contractors from entering into nondisclosure agreements involving sexual harassment
Committee(s) Assignment:	Committee on Workforce Development and Audit

Committee on Workforce Development and Audit

ORDINANCE

WHEREAS, the City of Chicago is a home rule unit of government pursuant to the 1970 Illinois Constitution, Article VII, Section 6(a); and

WHEREAS, pursuant to its home rule power, the City of Chicago may exercise any power and perform any function relating to its government and affairs including the power to regulate for the protection of the public health, safety, morals, and welfare; and

WHEREAS, women across the nation have united through a social media campaign sharing their stories of sexual harassment and assault by using the hashtag #MeToo; and

WHEREAS, in the wake of the #MeToo cultural movement, powerful men are not the only perpetrators of sexual misconduct, and in fact, women have started the #WhatAboutUs hashtag to demonstrate that sexual harassment is rampant among blue-collar employment as well; and

WHEREAS, the #MeToo and #WhatAboutUs movements have spread into courts, workplaces, legislative bodies, universities, and factories bringing the topic and its severity to the forefront of American conversations; and

WHEREAS, one of the mechanisms that perpetrators of sexual assault and sexual harassment utilize to silence their victims is nondisclosure or nondisparagement agreements (“NDAs”); and

WHEREAS, NDAs prevent the disclosure of facts that help establish a cause of action for civil damages for sexual offenses such as sexual assault, sexual harassment, or harassment or discrimination based on sex; and

WHEREAS, Zelda Perkins, who worked as Harvey Weinstein’s assistant in Miramax’s London office in the late 1990s, came forward in October of 2017 as a victim of sexual harassment and cast light on how egregious NDAs can be in silencing and shaming victims; and

WHEREAS, the agreement Ms. Perkins and one of her colleagues signed in 1998 called for a 250,000 pounds (\$400,000 at the time) payout, therapy for Mr. Weinstein “for as long as his therapist deems necessary,” as well as other measures aimed at protecting others from his behavior such as: (1) within six months of the agreement with Ms. Perkins, Miramax would appoint three “complaint handlers” who would investigate future harassment allegations; (2) provide proof that the staff were informed about the new procedures; and (3) if a complaint against Mr. Weinstein occurred within two years of the agreement and resulted in a settlement of either 35,000 pounds or six months’ salary, Miramax agreed to report the matter to Disney; and

WHEREAS, the NDA in Ms. Perkins’ settlement meant that she had no way of knowing whether Miramax fully complied with it and she recently stated, “I want to call into question the legitimacy of agreements where the inequality of power is so stark and relies on money rather than morality;” and

WHEREAS, Bill O'Reilly, a former FOX News conservative political commentator, was another celebrity that utilized NDAs to silence women that accused him of sexual harassment in the workplace; and

WHEREAS, all six NDAs against Mr. O'Reilly have totaled about \$45 million, including one for \$32 million; and

WHEREAS, employment lawyers have said that these NDAs involving harassment allegations often contain strict confidentiality and nondisparagement clauses that have created a culture of silence and allowed this type of misconduct to continue; and

WHEREAS, NDAs are not limited to legal settlements, and in fact, they are increasingly found in standard employment contracts in many industries, including technology employment contracts, venture investment firms, and start-ups including some of the biggest companies in Silicon Valley such as Google; and

WHEREAS, for example, the technology start-up world has been roiled by accounts of workplace sexual harassment, and NDAs have played a significant role in keeping those accusations secret, allowing harassers to move to another firm and harass again, keeping women, future employers, and business partners in the dark about the harassers' history; and

WHEREAS, according to Orly Lobel, a law professor at the University of San Diego, NDAs have become so common that the Equal Employment Opportunity Commission which enforces federal discrimination laws, and the National Labor Relations Board, a federal agency that protects workers' rights, have been evaluating whether they discourage workers from speaking up about wrongdoing or filing lawsuits; and

WHEREAS, according to an employment lawyer, Nancy E. Smith, "employees increasingly have to give up their constitutional right to speak freely about their experiences if they want to be part of the work force;" and

WHEREAS, on December 4, 2017, State Senator Loretta Weinberg of New Jersey introduced SB 3581 that would bar provisions in employment contracts that waive certain rights or remedies to a claim of discrimination, retaliation, or harassment; and

WHEREAS, on December 7, 2017, a group of State Senators in Pennsylvania introduced SB 999 that would ban any contracts or agreements for nondisclosure of sexual misconduct; and

WHEREAS, on January 3, 2018, State Senator Connie M. Leyva of California introduced SB 820 banning NDAs involving sexual assault, sexual harassment, and sexual discrimination cases and said, "[s]ecret settlements in sexual assault and related cases can jeopardize the public – including other potential victims – and allow perpetrators to escape justice just because they have the money to pay the cost of the settlements;" and

WHEREAS, on February 1, 2018, a group of State Senators in Washington introduced SB 5996-S that prohibits an employer from requiring an employee, as a condition of employment, to sign a NDA or other document that prevents the employee from disclosing sexual harassment or sexual assault occurring in the workplace, at work-related events, and off the employment premises; and

WHEREAS, NDAs continue to silence victims of sexual assault and sexual harassment by keeping the issue out of public and law enforcement scrutiny; and

WHEREAS, the Chicago City Council stands with workers to ensure that businesses in our city conform with the mission to foster a safe workplace and prevent harassers from hiding behind NDAs; now, therefore,

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

SECTION 1. Chapter 2-92 of the Municipal Code of Chicago is hereby amended by inserting Section 2-92-613 as follows:

2-92-613 Contracts requiring nondisclosure agreement.

A. Definitions.

For the purpose of this section, the following terms shall have the following meanings:

“Contractor” means any person or business entity that seeks to enter into a contract for goods and/or services with the City, and includes all partners, affiliates and joint ventures of such person or entity.

“Nondisclosure agreement” means a civil settlement or an employment contract, agreement, or condition that prohibits disclosure for sexual offenses such as sexual assault, sexual harassment, or harassment or discrimination based on sex.

B. Requirements.

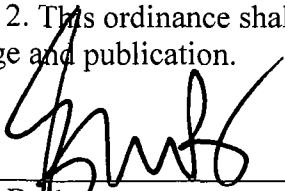
1. No contractor, or entity awarded a contract with the City, or any renewal or extension thereof, may enter into any nondisclosure agreement related to a civil action for an act of sexual assault; an act of sexual harassment; an act of workplace sexual harassment or discrimination based on sex, or failure to prevent an act of workplace sexual harassment or discrimination based on sex; and an act of retaliation against a person for reporting sexual harassment or discrimination based on sex.

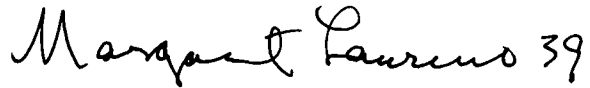
2. No contractor, or entity awarded a contract with the City, or any renewal or extension thereof, shall require an employee, as a condition of employment, to sign a nondisclosure agreement, waiver, or other document that prevents the employee from disclosing sexual assault or sexual harassment occurring in the workplace, at work-related events coordinated by or through the employer, or between employees, or between an employer and an employee, on or off the employment premises.

C. *Non-compliance*. Failure to comply with this Section shall render the contract voidable at the option of the City Council. A contractor that fails to comply with the provisions of this Section may be deemed ineligible to do business with the City.

E. *Severability*. If any provision, clause, sentence, paragraph, or part of this Section or application thereof to any person or circumstance, shall for any reason be adjudged by a court of competent jurisdiction to be unconstitutional or invalid, said judgment shall not affect, impair or invalidate the remainder of this Section and the application of such provision to other persons or circumstances, but shall be confined in its operation to the provision, clause, sentence, paragraph, section, or part thereof already involved in the controversy in which such judgment has been rendered and to the person and circumstances affected thereby.

SECTION. 2. This ordinance shall be in full force and effect one hundred and eighty (180) days after passage and publication.



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