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Legislation Text

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Chicago City Council October 7, 2020
REFERRED TO Committee on Budget and Government Operations

ORDINANCE

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

SECTION 1. Title 1 of the City Code is hereby amended by inserting a new Chapter 1-26, as follows:

1-26-010 Purpose and Intent.

This Chapter shall be known and may be cited as the "Chicago Administrative Procedure Ordinance". It is the purpose of this Chapter to ensure a minimum set of standards for the promulgation of rules by City departments to ensure that rulemaking by City departments is transparent and open to public participation, and that such rules are clear and accessible to the public so that residents and businesses in the City of Chicago are aware of the rules governing their conduct.

1-26-020 Definitions.

As used in this Chapter, the following terms shall have the following meanings:

"Adopt" or "adoption", with respect to a rule, means to promulgate and adopt a new rule and to amend or repeal an existing rule.

"Declaratory ruling" means a record that interprets or applies a provision of the Code administered by a City department or states whether or in what manner a rule, declaratory ruling, guidance document, or order issued by the City department applies to the petitioner or a particular set of facts alleged.

"Final rule" means a rule adopted, amended, or repealed under Sections 1-26-060 through 1-26-090, or an emergency rule adopted under Section 1-26-130.

"Guidance document" means a record of general applicability, developed by a City department, that lacks the force of law but states the City department's current approach to, or interpretation of, law, or describes how and when the City department will exercise discretionary functions.

"Law" means the U.S. Constitution, the Illinois constitution, any federal or State statute, any judicial decision or other court order, this Code, any rules issued pursuant to the foregoing, and any other legal authority that is binding on the applicable City department.

"Rule" shall have the meaning ascribed to that term in Section 1-4-090 of the Code, provided that for the purpose of this Chapter, "rule" shall not include: (i) statements or communications that relate only to the internal management or personnel of a City department and do not materially affect the private rights of or procedures available to the public; (ii) an intergovernmental or interdepartmental memorandum, directive, or communication that does not affect the private rights of or procedures available to the public; (iii) statements or

communications

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concerning the allocation of City department resources or personnel; (iv) statements that establish criteria or guidelines to be used by the staff of a City department in performing audits, investigations, or inspections, settling commercial disputes, negotiating commercial agreements, or defending, prosecuting, or settling cases, if disclosure of the criteria or guidelines would enable persons violating the law to avoid detection, facilitate disregard of requirements imposed by law, or give an improper advantage to persons that are in a position that is adverse to the City; (v) rules relating to the use of public ways and property when the substance of such rules is indicated to the public by means of signs or signals; (vi) a declaratory ruling issued in accordance with Section 1-26-140; or (vii) a guidance document issued in accordance with Section 1-26-150.

"Rulemaking" means the process for the adoption of a new rule or the amendment or repeal of an existing rule.

1-26-030 Application; Authority.

This Chapter shall apply to all rules adopted by a City department after March 1, 2021. In the event that any federal or State law expressly requires a procedure that is inconsistent with any provisions of this Chapter, the procedure required by such federal or State law shall control. No City department shall adopt a rule except pursuant to this Chapter. Each such rule shall be simply written, using plain language where possible.

1-26-040 Negotiated Rulemaking.

Prior to issuing an advance notice under Section 1-26-050, a City department may gather information relevant to the subject matter of a potential rulemaking proceeding and may solicit comments and recommendations from members of the public known to have an interest in the subject matter of the proposed rulemaking. '

A City department may engage in negotiated rulemaking by appointing a committee to comment or make recommendations on the subject matter of a proposed rulemaking under active consideration within the applicable City department. In making appointments to the committee, the City department shall make reasonable efforts to establish a balance in representation among members of the public known to have an interest in the subject matter of the proposed rulemaking. Notice of a meeting of the committee must be published in accordance with the Illinois Open Meetings Act. Any meeting of a committee appointed under this section shall be open to the public.

A committee appointed under this section, in consultation with one or more City department representatives, shall attempt to reach a consensus on the terms or substance of a proposed rule. The committee shall present the consensus recommendation, if any, to the City department. The City department shall consider whether to use such consensus recommendation as the basis for a proposed rule under this Chapter, but the City department is not obligated to propose or adopt such recommendation.

Nothing in this Chapter shall prohibit a City department from soliciting information prior to posting an advance notice of proposed rulemaking or during the rulemaking process outlined in this Chapter. Nothing in this section shall relieve a City department from complying with the other provisions of this Chapter.

This section shall not be construed to create a private right of action to enforce its provisions. Inadvertent failure to comply with this section shall not result in the invalidation of any rule.

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1-26-050 Advance Notice of Proposed Rulemaking.

At least 14 days prior to the posting of a proposed rule in accordance with Section 1-26-060, a City department seeking to adopt a rule must post notice of its intent to adopt a rule on the City of Chicago Rules and Regulations Portal and in a prominent location on the City department's website. Such notice is not required for the adoption of an emergency rule under Section 1-26-130. Such notice must include the subject matter of the proposed rule, the legal authority of the City department to adopt the proposed rule, and the date the proposed rule will be posted to the City of Chicago Rules and Regulations Portal and the City department's website. The City department shall also electronically submit such notice to the Mayor, the Corporation Counsel, each Alderman, the Legislative Reference Bureau, the Council Office of Financial Analysis, and any person who has filed a request to receive notices of rules on the applicable subject matter on an annual basis, provided that the inadvertent failure of a City Department to comply with this electronic submission requirement shall not result in the invalidation of any rule.

1-26-060 Posting of Proposed Rule.

At least 30 days before the adoption of a rule, the applicable City department shall post the proposed rule on the City of Chicago Rules and Regulations Portal and at a prominent location on the City department's website. The notice must include: (1) a short explanation of the purpose of the proposed rule; (2) a citation or reference to the specific legal authority authorizing the proposed rule; (3) the text of the proposed rule; (4) how a copy of the full text of any regulatory analysis of the proposed rule may be obtained; (5) where, when, and how a person may comment on the proposed rule; (6) a citation to and summary of each scientific or statistical study, report, or analysis that served as a basis for the proposed rule, together with an indication of how the full text of the study, report, or analysis may be obtained; and (7) a copy of the impact assessment required under Section 1-26-070. The City department shall also electronically submit the proposed rule to the Mayor, the Corporation Counsel, each Alderman, the Legislative Reference Bureau, the Council Office of Financial Analysis, and any person who has filed a request to receive notices of rules on the applicable subject matter on an annual basis, provided that inadvertent failure to comply with this electronic submission requirement shall not result in the invalidation of any rule.

1-26-070 Impact Assessment.

Each City department shall conduct an impact assessment prior to posting each proposed rule under Section 1-26-060. Such impact assessment shall, at a minimum, address the following questions in a general, plain language narrative: (1) what is the problem addressed by the rule and why is it a problem; (2) why should the City act to address such problem; (3) what are the objectives of the proposed rule; (4) what are the various options to achieve such objectives; (5) what is the economic, social, and environmental impact of the proposed rule, and who will be affected by the proposed rule; (6) how do the various options to address the objectives of the proposed rule compare to one another, including comparisons of their expected effectiveness, efficiency, and coherence of the various options; (7) what is estimated the cost to the City of the proposed rule and of any alternative options; and (8) how will the City department organize the monitoring and subsequent evaluation and reevaluation of the proposed rule. If a City department has made a good faith effort to comply with this section, a rule is not invalid solely because the impact assessment for the proposed rule is insufficient or inaccurate.

1-26-080 Public Comment Period and Procedure.

A City department proposing a rule shall specify a public comment period of at least 30 days after posting of the proposed rule under Section 1-26-060 during which a person may submit information and comment on the

proposed rule. Such information or comments may be submitted to the City department in an electronic or written format. The City department shall consider all information and comments on a proposed rule submitted pursuant to this section within the comment period. A City department may also consider any other information it receives concerning a proposed rule during the rulemaking. Any information considered by the City department must be incorporated into the rulemaking record required by Section 1-26-120. Such information need not be submitted in an electronic or written format. Nothing in this section prohibits a City department from discussing with any person at any time the subject of a proposed rule, provided that such City department discloses such person in the rulemaking record required under Section 1-26-120.

Unless a hearing is required by law, a City department is not required to hold a hearing on a proposed rule but may do so. Any such hearing must be open to the public, recorded, and held at least 10 days before the end of the public comment period. A hearing on a proposed rule may not be held earlier than 20 days after notice of its location, date, and time is posted on the City of Chicago Rules and Regulations Portal and in a prominent location on the City department's website. A City department representative shall preside over any hearing on a proposed rule.

This section shall not be construed to create a private right of action to enforce its provisions. Inadvertent failure to comply with this section shall not result in the invalidation of any rule, provided that the City department updates the applicable rulemaking record required under Section 1-26-120 within 14 days of learning of such failure.

1-26-090 Final Adoption of Proposed Rules.

In order to adopt a final rule, a City department shall post the final rule on the City of Chicago Rules and Regulations Portal and at a prominent location on the City department's website. Each final rule must contain the text of the rule and be accompanied by a record that contains: (1) the date the final rule was adopted by the City department; (2) a reference to the specific legal authority authorizing the rule; (3) any finding required by law as a prerequisite to adoption or effectiveness of the rule; (4) an explanatory statement required under this section; and (5) the effective date of the rule. The City department shall also electronically submit the final rule to the Mayor, the Corporation Counsel, each Alderman, the Legislative Reference Bureau, the Council Office of Financial Analysis, and any person who has filed a request to receive notices of rules on the applicable subject matter on an annual basis, provided that inadvertent failure to comply with this sentence shall not result in the invalidation of any rule. A City department may not adopt a rule that differs from the rule proposed in the notice of proposed rulemaking unless the final rule is a logical outgrowth of the rule proposed in the notice.

When a City department adopts a final rule, the City department shall issue a concise explanatory statement that contains: (1) the City department's reasons for adopting the rule, including the City department's reasons for not accepting substantial arguments made in any applicable testimony and comments; (2) the reasons for any change between the text of the proposed rule and the text of the final rule; and (3) a summary of any impact assessment prepared under Section 1-26-070.

1-26-100 Legislative Oversight.

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Following the posting of a final rule under Section 1-26-090, any Alderman may file a resolution rejecting such rule. A resolution rejecting a final rule under this section must be introduced at the next regular City Council meeting following the posting of the final rule under Section 1-26-090. Such resolution may only reject the rule based upon one or more of the following reasons:

- 1) Comments raised or information submitted during the public comment period required by Section 1-26-080;
- 2) A technical defect in the rule or the rulemaking required under this Chapter; and
- 3) Information included in either the impact assessment required under Section 1-26-070 or the explanatory statement required under Section 1-26-090.

Each resolution rejecting a rule shall be referred to the City Council committee with jurisdiction over the subject matter of the applicable rule. If such subject matter falls under the jurisdiction of more than one City Council committee, the resolution may be referred to a joint committee. If a resolution rejecting a rule is not passed by City Council at the next regular City Council meeting following introduction, the final rule shall become effective in accordance with Section 1-26-110.

A City department may not propose or adopt a new rule that is in substantially the same form to any rule rejected by City Council under this section, unless the new rule is specifically authorized by ordinance or resolution enacted after the date of the resolution rejecting the original rule.

1-26-110 Effective Date of Rules.

No final rule that has been adopted by a City department shall be effective (a) until the final rule has been posted in accordance with Section 1-26-090, and (b) until after the next regular City Council meeting following the posting of the final rule. If no resolution rejecting the final rule is introduced at the next regular City Council meeting pursuant to Section 1-26-100, and all other requirements of this Chapter have been met, the final rule shall become effective the day after such meeting. If a resolution rejecting the final rule is introduced at the next regular City Council meeting pursuant to Section 1-26-100, the final rule shall not become effective until either (i) the resolution rejecting such rule fails to pass at the next subsequent regular City Council Meeting, or (ii) in the event that such resolution is passed by the City Council, until City Council authorizes the adoption of such rule, with or without any amendments, by resolution or ordinance.

1-26-120 Rulemaking Record.

Each City department shall maintain a rulemaking record for each proposed rule. The rulemaking record and materials must be readily available for public inspection in the principal office of the City Department and must be posted on the City of Chicago Rules and Regulations Portal and on the City Department's website, except to the extent that information contained therein has been redacted because it is exempted from disclosure by the Illinois Freedom of Information Act or any other applicable law. If a City department determines that any part of the rulemaking record cannot be displayed practicably or is inappropriate for public display, the City department shall describe such part and note that the part is not displayed.

A rulemaking record must contain: (1) a copy of all publications and any proceedings on which the rule is based; (2) a copy and, if prepared, an index, of all factual material, studies, and reports relied on or consulted by City department personnel in formulating the proposed or final rule; (3) any official transcript of oral presentations made in the proceeding on which the rule is based or,

if not transcribed, any audio recording or verbatim transcript of the presentations, and any memoranda summarizing the contents of the presentations prepared by the City department official who presided over the hearing; (4) a copy of all comments received by the City department during the public comment period required under Section 1-26-080; (5) a copy of the rule and impact assessment required under Section 1-26-

070; and (6) a disclosure of all members of the public consulted under Section 1-26-040, and any person the City department discussed potential changes to the proposed rule with during the public comment period who did not submit a public comment under Section 1-26-080.

Inadvertent failure to comply with this section shall not result in the invalidation of any rule, provided that the City department updates the applicable rulemaking record required under this section within 14 days of learning of such failure.

1-26-130 Emergency Rules.

Notwithstanding any other provision of this Chapter, a City department may adopt an emergency rule without complying with Sections 1-26-050, 1-26-060, 1-26-070, 1-26-080, if the adoption of such a rule is necessary to address an imminent peril to the public health, safety, or welfare, the loss of federal or state funding, or in order to comply with a judicial order requiring adoption of a rule in a manner more expeditious than required under this Chapter. A finding of such imminent threat and the specific reasons for such finding must be made in writing by the City department adopting such rule. The City department shall post any emergency rule adopted under this section to the City of Chicago Rules and Regulations Portal and in a prominent location on the City department's website as soon as practicable after adoption, given the nature of the emergency. The City department shall also electronically submit the proposed rule, as soon as practicable given the nature of the emergency, to the Mayor, the Corporation Counsel, each Alderman, the Legislative Reference Bureau, the Council Office of Financial Analysis, and any person who has filed a request to receive notices of rules on the applicable subject matter on an annual basis, provided that inadvertent failure to comply with this sentence shall not result in the invalidation of any rule.

Any emergency rule adopted under this section shall be effective for no longer than 90 days, unless the City department has begun the process outlined in Sections 1-26-050, 1-26-060, 1-26-070, and 1-26-080 within such 90-day period, and includes in the notice required under Section 1-26-050 a statement that an extension of such emergency rule is necessary to afford an opportunity for notice and comment and to adopt a final rule as required under this Chapter, provided that no further such finding of an emergency may be made with respect to the same or a substantially similar rule. The adoption of an emergency rule under this section does not preclude the adoption of a non-emergency rule under this Chapter.

1-26-140 Declaratory Ruling.

A person may petition a City department for a declaratory ruling. Within 30 days of receiving such a petition, a City department shall either (a) issue a declaratory ruling, or (b) decline to issue a declaratory ruling, and include a brief statement of the reasons for declining. A declaratory ruling, if stated to be binding, is binding between the City department and the petitioner on the state of facts alleged, unless it is altered or set aside by a court upon judicial review in the manner prescribed by law. Each City department shall maintain an index of all currently effective declaratory orders issued under this section on its website, except to the extent that information contained therein has been redacted because it is exempted from disclosure by the Illinois Freedom of Information Act or any other applicable law.

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A City department may adopt rules in accordance with the Chapter, prescribing the form, procedure for submission, consideration, and dispositions of petitions for declaratory rulings under this section. Such rules may also include a requirement that a petitioner pay a filing fee, not to exceed the reasonable cost of City department review.

1-26-150 Guidance Documents.

A City department may issue guidance documents from time to time at the direction of the department head. A person may petition a City department for a guidance document, which shall have no legal effect and is merely explanatory. Any guidance document issued pursuant to this section shall not be binding on either the issuing City department or the petitioner requesting such guidance document. Each City department shall maintain on its website an index of all currently effective guidance documents issued under this section.

A City department may adopt rules in accordance with this Chapter prescribing the form, procedure for submission, consideration, and dispositions of petitions for guidance documents under this section. Such rules may also include a requirement that a petitioner pay a filing fee, not to exceed the reasonable cost of City department review.

SECTION 2. Section 2-51-050 of the City Code is hereby amended by inserting the language underscored, and by deleting the language struck through, as follows:

2-51-050 Commissioner of Assets, Information, and Services - Powers and duties -Rulemaking.

(a) Duties and responsibilities. The Commissioner of Assets, Information, and Services shall have the following duties and responsibilities:

(Omitted text unaffected by this ordinance)

53) To enter into agreements to make City applications available for download on digital application distribution platforms. The Commissioner may enter into such agreements, which may include terms as are useful, customary and appropriate for such agreements in the industry, including but not limited to indemnification of such platforms. Notwithstanding any provision of this Code to the contrary, any contracts entered into pursuant to this subsection shall be solely on such terms and conditions as are acceptable to the Commissioner. Such agreements shall be subject to approval of the Corporation Counsel as to form and legality; and

54) To maintain, in consultation with the Corporation Counsel, the City of Chicago Rules and Regulations Portal in accordance with Chapter 1-26 of this Code; and

(§4-55) To do any and all other acts which may be necessary for the implementation of other powers conferred on the Commissioner and Department under this Code.

SECTION 3. Section 4-11-100 of the City Code is hereby amended by inserting the language underscored, and by deleting the language struck through, as follows:

4-11-100 Procedures relating to promulgation of rules.

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~~In addition to the requirements of Chapter 1-26 of the Code, the Commissioner shall cause to be published in a newspaper of general circulation in the City of Chicago any proposed rule no fewer than ten days and no more than 20 days prior to the effective date thereof. The effective date of the applicable rule shall be~~

SECTION 4. Each City department shall ensure that full, correct, and complete copies of all rules adopted by such department that are currently in effect have been posted to the City of Chicago Rules and Regulations Portal no later than 30 days after the effective date of this section.

SECTION 5. Sections 1 and 3 of this ordinance shall take effect on March 1, 2021. Sections 2 and 4 of this ordinance shall take effect upon passage and publication.

GILBERT VILLEGAS Alderman,
36th Ward