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Sponsors: Martin, Matthew J., Ramirez-Rosa, Carlos
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Committee on Environmental Protection and Energy
Chicago City Council February 1, 2023

ORDINANCE AMENDING TITLE 2 OF THE MUNICIPAL CODE OF CHICAGO REGARDING TRANSPARENCY IN LONG-TERM CITY CONTRACTS

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

SECTION 1. Title 2 of the Municipal Code of Chicago is hereby amended by adding a new Chapter 2-166, as follows:

CHAPTER 2-166 TRANSPARENCY IN LONG-TERM CITY CONTRACTS

2-166-010 Purpose and intent.

This Chapter shall be known and may be cited as the "Transparency in Long-Term City Contracts Ordinance". It is the purpose of this Chapter and the policy of the City: (i) to subject proposed franchise agreements, as defined herein, to more rigorous evaluation and more meaningful public scrutiny; (ii) to ensure that Chicagoans receive appropriate benefit from franchise agreements; and (iii) to provide greater access to data reporting and other pertinent information regarding franchise agreements.

2-166-020 Definitions.

Whenever used in this Article, the following words and phrases shall have the following meanings:

"Commissioner" means the City's Commissioner of Assets, Information, and Services, or any head of a City department that assumes the rights, powers, duties, obligations, and responsibilities of the Commissioner of Assets, Information, and Services with respect to public utility franchise agreements.

"Department" means the Department of Assets, Information, and Services, or any City department that assumes the rights, powers, duties, obligations, and responsibilities of the Department of Assets, Information,

and Services with respect to public utility franchise agreements.

"Electric utility" means the distribution, transmission, or other delivery of electricity, regardless of its source, for use or consumption within the City.

"Franchise agreement" means an authorization, or renewal, extension, or amendment thereof, issued by the City, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of an electric utility in the City.

"Franchisee" means the person selected to construct or operate an electric utility in the City pursuant to a franchise agreement.

"Independent Advisor" means an individual or firm with expertise in evaluating financial, operational and/or legal issues arising in connection with proposed electric utility franchise.

"Post" means to post in a prominent, readily locatable, and viewable location on the City's website for public review.

"Utility facility" means any property, land, structures, equipment, materials, and supplies, used in or useful for the production, generation, purchase, transmission, distribution or sale of electric energy and the direction, administration, supervision, conduct or accounting for all of the same, whether owned or held by a franchisee under lease, license, contract, joint use, or joint ownership agreement or claim of right.

2-166-030 Franchise agreement requirements.

No franchise agreement shall be entered into by the City unless and until all of the following conditions have been met:

a) The Commissioner shall, and is hereby authorized to, engage one or more Independent Advisors to prepare a report assessing the proposed franchise agreement. The compensation paid to any Independent Advisor pursuant to this engagement shall not depend, directly or indirectly, on whether the proposed franchise agreement is approved by City Council. The Independent Advisor(s) shall disclose any direct financial relationship with the selected franchisee prior to the execution of the franchise agreement. The report shall evaluate: (1) whether consideration of the proposed franchise agreement is in the best interests of the City and its residents; (2) whether the process of selecting the proposed franchisee was fair and transparent; and (3) whether the proposed franchise agreement provides the City and its residents fair value, including any potential effects on the rates for electrical utility services charged to City residents. In preparing the report, the Independent Advisor(s) shall consult with the Department. The Department shall provide to the Independent Advisor(s), upon request, information pertinent to the proposed franchise agreement. The primary Independent Advisor shall be engaged a minimum of ninety days prior to the City Council vote on an ordinance approving a proposed franchise agreement.

b) The City shall utilize a competitive process to select each franchisee.

c) Each franchise agreement shall be structured in a manner that preserves the right of the public to continued access to and use of electricity on fair, nondiscriminatory terms, and shall include an explicit statement of the measures that the Contractor commits to undertake to meet those goals.

d) The franchisee shall be required to provide funding for the City's oversight related to the franchise agreement.

2-166-040 City Council process; approval required.

Each franchise agreement shall require approval by a vote of the City Council in accordance with State law, and shall be subject to the following public review schedule:

(a) at the time the City issues a request for qualification ("RFQ") for a franchise agreement, the Commissioner shall post the RFQ and shall notify the Chair of the City Council Committee on Environmental Protection and Energy, or its successor committee, once the posting has

occurred. The RFQ must be posted a minimum of ninety days prior to the City Council vote on an ordinance approving a proposed franchise agreement.

b) at the time the City issues the RFQ referenced in subsection (a), the Commissioner shall post a concise, plain-English summary of the contemplated franchise agreement, which shall include a description of the proposed franchise agreement purpose and potential public benefits, any changes from the current franchise agreement, and a mailing address, email address, web page or other vehicle by which interested members of the public can comment on the proposed franchise agreement.

c) after the issuance of the RFQ and before the City Council vote on an ordinance approving a proposed franchise agreement, the City shall host a public meeting at which interested members of the public can comment on the proposed franchise agreement.

d) at least 7 days prior to the City Council vote on an ordinance approving a proposed franchise agreement, the City Council Committee on Environmental Protection and Energy, or its successor committee having jurisdiction over franchise agreements, shall hold a hearing on the proposed franchise agreement. At least 23 days before the committee hearing takes place: (i) the Commissioner shall provide to the committee the report prepared pursuant to subsection (a) of Section 2-164-270 and shall post a notice that includes: (1) a brief description of the public purpose(s) underlying the franchise agreement; (2) a summary of the report referred to in subsection (a) of Section 2-164-270; and (3) a timeline for the execution of the franchise agreement; and (ii) the Budget Director shall provide to the committee a document indicating the anticipated use of any funds to be received by the City under the proposed franchise agreement.

2-166-050 Eligibility of contractors.

Each proposed franchisee shall submit to the City, prior to the committee hearing on a proposed franchise agreement, an Economic Disclosure Statement, which shall also be submitted by associated entities as required by such Economic Disclosure Statement and associated rules.

2-166-060 Annual Performance Reports.

a) In addition to any other reports required by law, all franchisees shall submit annual performance reports to the City and the Department that: (i) describe the performance of the electric utility over the past year; (ii) the condition of any utility facilities; and (iii) establish the extent to which the franchisee is in compliance with the terms of the franchise agreement. Each such report shall include detailed information regarding the franchisee's compliance with any applicable MBE, WBE, residency, and EEO/Affirmative Action requirements pursuant to the franchise agreement, as well as the number of employees engaged by the franchisee and the franchisee's agents to perform work related to the franchise agreement or utility facilities.

b) The Department shall provide for the posting and maintenance of the information required under subsection (a) of this section.

2-166-070 Ongoing Oversight And Long-Term Protections.

(a) The Office of Inspector General shall have jurisdiction over any franchisee with respect to that franchisee's performance pursuant to the franchise agreement.

(b) Each franchise agreement shall include a requirement that all utility facilities be kept in a good state of repair until the termination of the franchise agreement, or the transfer or other conveyance of any utility facility to the City.

2-166-080 Use of proceeds; limitations on use of compensation and other benefits under a franchise agreement.

a) All monetary compensation to be paid under a franchise agreement, or any other agreement entered into between the City and a franchisee or an affiliate of a franchisee in connection with or as consideration for entering into a franchise agreement, shall be paid to the City, and not to any third party. The Budget Director shall establish a discrete fund to hold at least 80% of any funds or other monetary compensation the City receives under any such agreements. Fund monies may be invested by the Treasurer in accordance with their customary standards and practices, but shall be kept segregated from other City funds. The City may only expend monies in the fund for the advancement of the City's Climate Action Plan, for green energy infrastructure, for the reestablishment of the Department of the Environment, or for any related purpose.

b) Nothing in this Section shall limit any non-monetary compensation, such as required improvements to utility facilities, the direct provision of goods or services to City residents, job creation requirements, preference for hiring City residents, training programs, or similar benefits or services provided to City residents pursuant to a franchise agreement, or any other agreement entered into between the City and a franchisee or an affiliate of a franchisee in connection with or as consideration for entering into a franchise agreement.

2-166-090 Administration.

The Commissioner is authorized to administer this Article. This authority includes the power to adopt all necessary and reasonable rules and regulations.

SECTION 2. This ordinance shall take effect upon passage.

Alderman, 47th Ward