



Office of the City Clerk

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Legislation Text

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Amendment of Municipal Code Title 2 by adding new Chapter 2-164, and modifying Sections 2-8-035, 2-32-035 and 2-56-050 regarding privatization of City assets and services
Joint Committee: Finance; Budget and Government Operations

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OFFICE OF THE MAYOR

CITY OF CHICAGO

RAHM EMANUEL MAYOR

July 29, 2015

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

Ladies and Gentlemen:

At the request of the Budget Director and the Chief Financial Officer, I transmit herewith, together with Alderman Sawyer and others, an ordinance amending various provisions of the Municipal Code regarding privatization of City assets and services.

Your favorable consideration of this ordinance will be appreciated.

Mayor

Very truly yours,

ORDINANCE

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

SECTION 1. The Municipal Code of Chicago is hereby amended by adding a new Chapter 2-164 as follows:

CHAPTER 2-164 PRIVATIZATION - TRANSPARENCY, ACCOUNTABILITY AND PERFORMANCE

2-164-010 Purpose and intent.

This chapter shall be known and may be cited as the "Privatization Transparency, Accountability and Performance Ordinance." It is the purpose of this chapter and the policy of the city: (i) to subject the proposed sale, lease, or concession of significant City assets to careful evaluation and meaningful public scrutiny, and to ensure that Chicagoans receive appropriate benefit from such transactions; and (ii) to ensure that Chicagoans receive high-quality public services with due regard for cost to the taxpayers of the City and for both public and private sector workers who may provide such services.

ARTICLE I - ASSET TRANSACTIONS

2-164-020 Definitions.

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

"Affected Department" means a City department authorized to manage an Asset that is subject to a Transaction.

"Asset" means any stationary physical infrastructure that: (i) the City owns, or exercises significant control over, at the time of a contemplated Transaction; (ii) is used by the public and provides a significant public service; and (iii) produces, or is capable of producing, revenue through its use.

"CFO" means the City's Chief Financial Officer.

"Contractor" means a person who enters into a Transaction with the City.

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

"Laid off" means involuntarily separated from employment with the City as a direct result of a Transaction or Privatization Agreement.

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

"Privatization Agreement" shall have the meaning set forth in Article II of this Chapter.

"Transaction" means the City's sale, lease, or concession of an Asset that: (i) has a term of at least 20 years; (ii) provides for total consideration to the City of at least \$400,000,000 over such term; (iii) divests the City of day-to-day control, or limits such control, over the Asset for the term, with or without providing for continuing City oversight regarding the Asset; and (iv) requires the Contractor to use the Asset for the same purpose or

purposes for which it was used prior to the Transaction. The term "Transaction" shall not include City infrastructure subject to a privatization that took effect prior to the effective date of this Article.

2-164-030 Transaction requirements.

No Transaction shall be entered into by the City unless and until all of the following conditions have been met.

a) The CFO shall, and is hereby authorized to, engage one or more Independent Advisors to prepare a report assessing the proposed Transaction. The compensation paid to any Independent Advisor pursuant to this engagement shall not depend, directly or indirectly, on whether the proposed Transaction closes. The Independent Advisor(s) shall disclose any direct financial relationship with the selected Contractor prior to the execution of the Transaction agreement. The report shall evaluate: (1) whether consideration of the proposed Transaction is in the best interests of the City and its residents; (2) whether the process of selecting the proposed Contractor for the Transaction was fair and transparent; and (3) whether the proposed Transaction provides the City fair value. In preparing the report, the Independent Advisor(s) shall consult, as necessary, with any Affected Departments. Such departments shall provide to the Independent Advisor(s), upon request, information pertinent to the proposed Transaction, including any potential effects on City employees. The primary Independent Advisor shall be engaged a minimum of ninety days prior to the city council vote on an ordinance approving a proposed transaction.

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

c) Each Transaction shall be structured in a manner that preserves the right of the public to continued access to and use of the Asset 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 Contractor shall be required to provide funding for the City's oversight related to the Transaction and the Asset.

2-164-040 City council process; approval required.

Each Transaction shall require approval by a vote of the city council, and shall be subject to the following public review schedule:

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a) at the time the City issues a request for qualification ("RFQ") for a Transaction, the CFO shall post the RFQ and shall notify the Chairmen of the City Council Committee on the Budget and Government Operations, and Committee on Finance, 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 Transaction.

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

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

d) at least 7 days prior to the city council vote on an ordinance approving a proposed Transaction, the council committee having jurisdiction over the Transaction shall hold a hearing on the proposed Transaction. At least 23 days before that committee hearing takes place: (i) the CFO shall provide to the committee the report prepared pursuant to subsection (a) of section 2-164-030 and shall post a notice that includes: (1) a brief description of the public purpose(s) underlying the Transaction; (2) a summary of the report referred to in subsection (a) of section 2-164-030; and (3) a timeline for the execution and closing of the Transaction; and (ii) the Budget Director shall provide to the committee a document indicating the anticipated use of the funds to be received by the City from the Transaction.

2-164-050 Intergenerational fairness fund.

Except with regard to Inherently Intergenerational Transactions, the Budget Director shall establish a discrete fund to hold at least ten percent (for purposes of this section, such amount to be termed "Fund") of the Eligible Proceeds to the City from each Transaction structured as a lease or concession that has a term of thirty years or more. Fund monies may be invested by the Treasurer in accordance with his customary standards and practices, but shall be kept segregated from other City funds. The City shall not expend Fund monies until either: (i) one-half of the term of the Transaction has run, or (ii) the City Council, by a % vote, approves the expenditure. For purposes of this section: the term "Eligible Proceeds" shall mean principal remaining after payment of Transaction-related expenses, debt service and reserves, and shall not include any investment earnings on such principal, and the term "Inherently Intergenerational" shall mean a Transaction whose proceeds are wholly dedicated to and invested in intergenerational obligations and assets, examples of which include City infrastructure improvement or pension funding.

2-164-060 Eligibility of contractors.

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Each selected proposed Contractor shall submit to the City, prior to the Committee hearing on a proposed Transaction, an Economic Disclosure Statement, which shall also be submitted by associated entities as required by that Statement and associated Rules.

2-164-070 Annual performance reports.

a) All Contractors shall submit annual performance reports to the City and the Affected Department that: (i) describe the financial performance of the Asset over the past year; and (ii) establish the extent to which the Contractor is in compliance with the terms of the Transaction. Each such report shall include detailed information regarding the Contractor's compliance with any MBE, WBE, residency, and EEO/Affirmative Action requirements pursuant to the Transaction, as well as the number of employees engaged by the Contractor and the Contractor's agents to perform work related to the Asset and/or the Transaction.

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

2-164-080 Ongoing oversight and long-term protections.

a) The Office of Inspector General shall have jurisdiction over any Contractor with respect to that Contractor's performance pursuant to the Transaction.

b) Each Transaction structured as a lease shall include a requirement that the Asset be returned to the City in a good state of repair upon the termination of the Transaction.

2-164-090 Assistance for laid-off city employees.

In the event any City employees are laid off as a direct result of a Transaction or Privatization Agreement, the City shall comply with the terms of any applicable collective bargaining agreement addressing the treatment of and benefits afforded to such laid-off employees. In addition, the Contractor shall interview any such employee who is qualified for a vacant position related to the Asset and who applies, no later than six months after the date the Transaction is closed and in a manner that complies with the Contractor's hiring procedures, for that position.

2-164-100 Administration.

The CFO, in consultation with all Affected Departments, is authorized to administer this Article. This authority includes the power to adopt all necessary and reasonable rules and regulations.

ARTICLE II - PRIVATIZATION CONTRACTS

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2-164-200 Definitions.

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

"Affected Department" or "Department" means a City Department performing a Service that is subject to a Privatization Contract.

"Contractor" means a person that enters into a Privatization Contract with the City.

"Cost-effectiveness Study" or "Study" means an economic analysis performed by the Office for the purpose of comparing the fully allocated costs of providing the contracted service by the proposed Contractor and by City personnel, any analysis of the projected savings anticipated as a result of the contracting out, and such other considerations the Budget Director considers relevant. The analysis shall include in the projected cost of the proposed Contract any continuing City costs associated with the service, such as the costs of inspection, supervision and monitoring.

"Laid off" shall have the meaning set forth in Article I of this Chapter.

"Office" shall mean the City's Office of Budget and Management.

"Post" shall have the meaning set forth in Article I of this Chapter.

"Privatization Contract" or "Contract" means a contract between the City and a Contractor for the Contractor to take over the performance of any Service performed prior to the Contract by personnel employed by an Affected Department, in lieu of such personnel. The term "Privatization Contract" shall not include:

a) a contract whose maximum permitted expenditure over the life of the contract is less than \$3,000,000.

b) a contract for services that in the judgment of the Budget Director, in consultation with the Affected Department, are of such a highly specialized or technical nature that the necessary expert knowledge, experience, and ability are not available in the City workforce, have not historically been performed by City employees, and it is not practicable to hire the needed personnel.

c) a contract for services that are incidental to the purchase or lease of real or personal property, including, but not limited to, agreements to service or maintain leased or rented office equipment or computers.

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d) a contract under circumstances in which a private contractor is necessary to protect against a conflict of interest or to ensure independent and unbiased findings in circumstances where an outside perspective is clearly needed.

e) a contract under circumstances in which a private contractor can provide equipment, materials, facilities, or support services that cannot readily be provided by the City in the location where the service is to be performed.

f) a contract for services that are of an urgent, temporary, or occasional nature.

g) a sole source contract or intergovernmental agreement.

h) a contract under circumstances in which privatization is the result of the loss or diminution of federal or state grant funding in an amount sufficient to significantly affect the level or quality of the service, in the judgment of the Budget Director in consultation with the Affected Department, and the Affected Department has received ninety (90) or fewer days' notice from the grantor of the final notice of award.

(i) a City service subject to a privatization that took effect prior to the effective

date of this Article.

(j)(1) a contract, purchase order or agreement for the demolition, construction, repair or improvement of any building, bridge, roadway, sidewalk, alley, railroad or other structure or infrastructure, awarded by any officer or agency of the City other than the City Council, and whose cost is to be paid from funds belonging to the City and any bonds, grants, loans, or other funds made available by or through the Federal government or the State or any of its political subdivisions, and (2) any associated services of a planning, architecture or engineering firm involved in the planning, design, feasibility study, or management of the project.

"Service" means any City-provided function, operation or service, but shall not include any Asset, as that term is defined in Article I of this Chapter.

2-164-210 Privatization Contract requirements.

The awarding of a Privatization Contract is permissible when all of the following conditions are first met:

(a) The Office shall prepare a Cost-effectiveness Study. Before finalizing the Study, the Office, together with the Affected Department, shall notify and consult with an individual representative duly designated by each affected collective bargaining unit(s) that has members employed in the Department. Those portions of the Study subject to public review pursuant to the Freedom of Information Act, as well as any information to which the collective bargaining representative is entitled pursuant to the Illinois Public Labor Relations Act, shall be made available to any such collective bargaining unit(s) upon written request. Any such unit(s) may,

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within ten (10) business days of receiving the Study, provide written comment or response, which may include a proposal to maintain the delivery of the Service(s) at issue by City employees, to the Office and the Affected Department. Those written comments or response, together with any assessment thereof by the Office, will be included with the Cost-effectiveness Study and provided to the City Council prior to a City Council vote on a proposed privatization.

b) The City Council Committee on the Budget and Government Operations holds one or more hearings on any proposed privatization and the associated Cost-effectiveness Study.

c) The City shall utilize a competitive process to award each Contract. The bid preference for city-based businesses set forth in Section 2-92-412 shall be included in that process.

d) **The City Council approves the privatization by majority vote. 2-164-**

220 Eligibility of Contractors.

Each selected proposed Contractor shall submit to the City an Economic Disclosure Statement, which shall also be submitted by associated entities as required by that Statement and associated Rules.

2-164-230 Performance reports.

All Contractors shall submit annual performance reports to the Office, which upon receipt shall post such reports. Such performance reports shall be supplied to the appropriate City Council Committee upon request and shall include, but not be limited to: (a) an affirmation of compliance with Federal, State and City labor, non-discrimination, affirmative action, unemployment, occupational safety and health, environmental protection and workers' compensation laws; (b) the disclosure of any adjudicated finding of a material violation of any of the foregoing labor laws; and (c) a copy of the Contractor's most recent EEO-1 report for the Services, where such report is required of the Contractor by law. Such reports shall be public documents available for public inspection.

For each Privatization Contract, the Affected Department shall every two years complete an evaluation of the Contractor's performance on issues including but not limited to: timeliness, quality of performance, actual costs, the Contractor's ability to work within the allotted cost and the accuracy of the Contractor's billing, safety, the quality of the working relationship between the Contractor and the Affected Department, the quality of the Contractor's required documentation, and any substantively significant modification of the Privatization Contract, documenting the nature and reason for the modification. The Affected Department shall submit the evaluation to the Office, which upon receipt shall post the non-confidential portions of the report.

2-164-240 Assistance for laid-off city employees.

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In the event any City employees are laid off as a direct result of a Privatization Contract, Section 2-164-090 shall apply.

Nothing in this Chapter shall be construed to replace or diminish the rights of City of Chicago employees as specified in their collective bargaining agreements.

2-164-250 Administration.

The Budget Director, in consultation with all Affected Departments, is authorized to administer this Article. This authority includes the power to adopt all necessary and reasonable rules and regulations.

SECTION 2. Section 2-56-050 of the Municipal Code of Chicago is hereby amended by adding the language underscored, as follows:

2-56-050 Conduct of city officers, employees and other entities.

(a) The powers and duties of the inspector general shall extend to the conduct of the following: (a) except as limited in this section all elected and appointed officers of the city government in the performance of their official duties; (b) except as limited in this section, all employees of the city government in the performance of their official duties; (c) all contractors and subcontractors in the providing of goods or services to the city pursuant to a contract, which shall include Contractors to Transactions pursuant to Section 2-164-080; (d) business entities in seeking contracts or certification of eligibility for city contracts; and (e) persons seeking certification of eligibility for participation in any city program. Notwithstanding anything to the contrary contained herein, the office of inspector general shall have no power or authority over any member of the city council, or any city council employee, as defined in Section 2-55-010. If the office of inspector general receives

any complaint alleging misconduct, inefficiency or waste against any member of the city council or any city council employee, as defined in Section 2-55-010, the inspector general shall promptly transmit said complaint to the legislative inspector general. Nothing in this section shall preclude the inspector general from referring a complaint or information to the legislative inspector general, the appropriate sister agency, or the appropriate federal, state or local law enforcement authorities.

(Omitted text is unaffected by this amendment)

SECTION 3. Section 2-8-035 of the Municipal Code of Chicago is hereby amended by adding the language underscored, as follows:

2-8-035 Sale or lease of city assets - Ordinance requirements.

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(a) Every ordinance that contains a provision for the sale or lease of any city asset, including revenue streams from that asset, whose anticipated revenue from the sale or lease of the asset is greater than \$100,000,000 but less than \$400,000,000 shall not be given final consideration by the city council until at least 15 days after its introduction into the city council or direct introduction into a city council committee. Transactions involving city assets where the anticipated revenue is \$400,000,000 or more shall be subject to the requirements set out in Chapter 2-164 of this Code.

(Omitted text is not affected by this ordinance)

SECTION 4. Section 2-32-035 of the Municipal Code of Chicago is hereby amended by adding the language underscored, as follows:

2-32-035 City Asset Lease Agreements (C.A.L.A.) disclosure ordinance.

(a) The following City Asset Lease Agreement documents and any future lease agreements worth more than \$10,000,000 shall be made publicly available as electronic, searchable files on the City of Chicago's, Department of Finance website:

1. The ordinances establishing the leasing of or long-term concession concerning the Chicago Skyway Toll Bridge System, the Chicago Downtown Public Parking System, and the Chicago Metered Parking System.

2. Any introduced legislation pertaining to proposed City asset lease agreements, worth more than \$10,000,000 including all attachments and any amendments thereof, prior to its referral to the appropriate Chicago City Council Committee.

3. Any future City asset lease agreements approved by the Chicago City Council and worth more than \$10,000,000 including all attachments, and any amendments thereof.

4. A separate accounting document detailing the allocation of lease proceeds including, but not

necessarily limited to, appropriations, investments, interest income earned, and distributions to future budget years. This document should also detail the payment of all fees and expenses related to the lease transaction. Additionally, the document should list the names and fees paid to all financial consultants, auditors and/or financial institutions hired by the city to invest and manage City asset lease proceed funds.

5. A quarterly update of the accounting document for each city asset lease agreement. The Chief Financial Officer/Comptroller shall submit such update to the Chairman of the Committee on Finance and/or post such update on the Department of Finance's website, and shall appear before that Committee to present the status of each agreement where appropriate or necessary.

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(b) In addition to the requirements set forth in subsection (a) of this section, any future lease agreements worth \$400,000,000 or more shall be subject to the requirements set out in chapter 2-164 of this Code.

SECTION 5. If any provision, clause, sentence, or paragraph of this ordinance, or the application thereof, is held invalid by a court of competent jurisdiction, such invalidity shall not affect the other provisions of this ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

SECTION 6. This ordinance shall be effective upon passage and publication, and shall apply to Transactions and Privatization Contracts executed thereafter.

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(b) In addition to the requirements set forth in subsection (a) of this section, any future lease agreements worth \$400,000,000 or more shall be subject to the requirements set out in chapter 2-164 of this Code.

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SECTION 6. This ordinance shall be effective upon passage and apply to Transactions and Privatization Contracts executed thereafter.

SECTION 5. If any provision, clause, sentence, or paragraph of this ordinance, or the application thereof, is held invalid by a court of competent jurisdiction, such invalidity shall not affect the other provisions of this ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.