ASSET LEASE TAXPAYER PROTECTION ORDINANCE

Whereas, the City of Chicago is committed to promoting transparency, openness and accountability in government; and

Whereas, the decision to privatize a public asset is an important one with long-term implications for the taxpayers and government decision-makers; and

Whereas, long-term leases of vital city assets make binding policy constraints for private interests that can differ from the public interest; and

Whereas, the City Council and Mayor, when considering asset privatization should do so carefully and according to principles that put the broader public interest ahead of the desire for a short term financial gain; and

Whereas, past experience with privatization of the City's assets has demonstrated the risks of privatization and raised public concern about the benefits; and

Whereas, any proposed privatization of a public asset should be done with goals in mind that extend beyond maximizing the initial payout for the asset; and

Whereas, the City Council has a duty to ensure that both current and future taxpayers get fair value for any future asset lease agreements and that the funds are spent judiciously over the term of the lease; now therefore,

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

SECTION 1. The above recitals are expressly incorporated herein and made a part of this ordinance.

SECTION 2. Chapter 2-32 of the Municipal Code of the City of Chicago is hereby amended by inserting the language underlined as follows:

2-32-1130 Asset Lease Taxpayer Protection Ordinance

1. At the initial development to determine the valuation of a public asset for lease, sale, concession or availability payments (hereafter, the "lease"), an announcement must be provided to each city council member that includes: the goals of exploring an asset lease, the assets or types of assets under consideration, and the expected time line for next steps in the process. This requirement for announcement should be provided regardless of whether the proposal is to hire a consultant to do such valuation or the preparation of requests for proposals.
2. To ensure transparency and proper public vetting, no public asset worth more than $1 million in expected payments of all types over the life the lease will be sold or leased without the following minimum standards:

   i. One public hearing must be held at least 30 days prior to a city council vote to request bids for a lease agreement; for assets where the expected transaction price exceeds $100 million and/or the anticipated term of the lease exceeds ten years. An additional public hearing must be conducted between 31 and 60 days before a City Council vote to approve any lease that meets these thresholds; and
   ii. At least 30 days before the council final approval of a lease agreement, the exact language of the agreement must be made public record, distributed to the city council, posted on the City's website, and made available upon request; and
   iii. All pertinent documents created in the process of formulating a public asset sale or lease agreement are public record and must be made public for a minimum of 30 days prior to a City Council vote on the ordinance establishing a sale or lease agreement; this requirement extends to private subcontracts related to the lease; and
   iv. The selection of a purchaser or leaser should meet City of Chicago, County of Cook, and State of Illinois statutory requirements for open bidding and contracting; and
   v. Clearly stated allocation of the expected proceeds must be stated in the ordinance establishing a sale or lease agreement.

3. To ensure taxpayers receive fair value, no public asset worth more than $1 million will be sold or leased without an independent third-party valuation of the resource to be sold or leased. The independent third party may not receive any financial benefits from the execution of a proposed lease agreement and may not have a direct financial relationship with, or be a subsidiary of, any firms that would stand to receive financial compensation from the execution of the lease agreement. The analysis shall include:
   i. An estimate of the net present value of the asset over the proposed term of the lease; and
   ii. An estimate of the value that could be generated by public bonding against the revenue stream generated by the asset if a public entity were granted a comparable fee- or toll-hike schedule as a private entity; and
   iii. A comparison of public retention and private leasing over the life cycle of the agreement; and
   iv. An analysis of potential risks and how they would be shared.
4. To ensure the broader public interest is protected, no public asset worth more than $1 million will be sold or leased without meeting the following criteria:
   i. The City retains authority to use or alter without financial penalty the asset, or the terms of its use, to prevent adverse public health impacts; and
   ii. No lease agreement shall be longer than 30 years; and
   iii. All lease agreements must give the City the right to update the standards of any lease agreement to reflect new State or Federal regulations, orders, or mandates; and

iv. All lease agreements shall include provisions for the City to buy back a long-term lease at five year intervals at a pro-rated basis; and

v. All lease agreements longer than 15 years shall include provisions requiring the private entity to place sufficient money in escrow for the private entity to ensure a good state of repair at the time the asset is returned at the end of the lease.

SECTION 3. This ordinance shall take full force and effect immediately upon passage and final signature.

Scott Waguespack
Alderman, 32nd Ward

Joe Moore
Alderman 49th Ward

Document No. PO2009- 7084

REFERRED TO COMMITTEE ON
FINANCE

OCT - 7 2009

Miguel del Valle
City Clerk City of Chicago