



RECOMMENDATIONS FOR AMENDMENTS

Detroit Community Benefits Ordinance

January, 2018

In November 2016, Detroit became the first city in the nation to have a community benefits ordinance. Detroit's Community Benefits Ordinance (CBO) became law as a result of a 2016 ballot initiative. The ballot initiative grew out of a 3year grassroots campaign by the Equitable Detroit Coalition, a coalition of more than 32 groups and volunteers from across the seven (7) city council districts. The Coalition was created to address Detroit's inequitable development practice which includes utilizing public money and other public incentives for private economic development projects that benefit the city's wealthy and white developers rather than the majority black population many of who currently live at or below the federal poverty level.

The Michigan Chapter of the American Planning Association defines a community benefits agreement as a legally binding contract negotiated between a host community and a developer that allows monitoring and accountability and legal recourse for negotiated benefits. A guiding principle for community benefits is that project benefits should match local needs, becoming part of the development project and improving the quality of life for the current residents of the host community. Three major concepts are essential in a genuine community benefits agreement. The final agreement must:

- **Inclusivity** Maximize inclusiveness in the development process, to allow a variety of community representation in the process.
- **Enforcement** Determine what can be enforced regarding the developer and the project.
- **Accountability** Hold government representatives accountable to allow the community to have a voice in how public money is being spent on economic development in their neighborhoods.

Since the enactment of the Community Benefits Ordinance in November 2016, six(6) projects have completed the Community Benefits Ordinance (CBO): The Free Press Building, The Pistons Practice Facility, the Herman Kiefer Development, The Monroe Blocks/Book Building, and The Hudson's Site.

There has been a total of \$2.4 billion of investment and \$832 million of incentives since the CBO was enacted. \$2.1 billion of the investments and \$74 million of the incentives are from the Transformational Brownfield projects.

Projects	Total Investment	Total Incentive	TIF (DDA & TBP)	NEZ	PA 210	PA 328	OPRA	Brownfield
Pistons	\$83,000,000	\$63,587,201	\$34,500,000		\$7,459,192	\$1,073,432		\$20,554,577
Herman Kiefer	\$143,000,000	\$47,767,476						\$47,767,476
Detroit Free Press Rehabilitation	\$69,663,000	\$7,029,190						\$7,029,190
Hudson	\$908,980,541	\$216,706,764	\$188,740,071	\$9,974,081	\$17,992,612			
Monroe Blocks	\$830,091,215	\$351,227,936	\$316,130,062	\$8,301,177	\$26,796,697			
Book Building and Tower	\$311,444,245	\$72,811,370	\$62,582,813	\$3,496,729			\$6,731,828	
One Campus Martius Expansion	\$94,782,781	\$73,524,024	\$73,524,024					
Total	\$2,440,961,782	\$832,653,961						

Sources: 5/18/2017 LPD Pistons Brownfield; 5/18/2017 LPD Pistons PA 210; 5/5/2017 City of Detroit Pistons CBO Agreement Report; 6/13/2017 LPD Herman Kiefer Brownfield; 7/13/2017 City of Detroit Former Free Press Building CBO Agreement Report; 11/8/2017 LPD Transformational Brownfield Supplemental Report 2; 11/7/2017 LPD Transformational Brownfield Supplemental Report; 10/30/2017 LPD Transformational Brownfield Plan for Hudson's Block/Monroe Block, etc.; 11/9/2017 LPD Community Benefits Ordinance Report Hudson's Block

Detroit People’s Platform has monitored the CBO processes for each of these developments. Staff and volunteers have participated in roughly 60 meetings during this time period. Those meetings included public hearings, Neighborhood Advisory Council (NAC) meetings, full City Council meetings, and City Council Planning and Economic Committee hearings and meetings. The summary of the findings is the basis for the recommendations to amend the current Community Benefit Ordinance below.

Inclusivity

Problem: Investment Threshold limits are too high

- The tiers created by the current ordinance establish investment thresholds that are too high, allowing many developments to avoid the CBO process. This prevents residents from providing important input regarding transformational developments and public investments in their neighborhoods.

Amend To: Align threshold limits to reflect the average development project cost/ investment

- The tiers required for CBO participation should be lowered to projects with \$300,000 of public investment, and the top tier should be lowered to investments of \$50,000,000 or more. Requiring more developments that receive public investment to undergo the CBO would allow more communities to secure material benefits from their public investments.

Inclusivity

Problem: NAC members are predominately chosen by city officials

- Under the current ordinance, City officials select 7 of the 9 NAC members. The City's power in selecting the majority of NAC members restricts authentic community engagement and community empowerment in the development process.

Amend To: Revise NAC Member Selection Process

- The NAC should be predominantly residents elected by their community, rather than residents appointed by the city. NAC members should consist of Community members, Non-profits, & Small Businesses located in the census track or impact area. This would provide community a more authentic voice and inclusion in the development process.

Problem: No Conflict of Interest or Conflict of Effort Language for NAC Membership

- Neighborhood Advisory Councils for some developments have included residents that may have conflict of interests with their NAC responsibility of prioritizing community concerns

Amend To: Add Specific Conflict of Interest & Conflict of Effort Language for NAC

Conflict of Interest - Residents who have competing affiliations or interests that may result in the perception or the reality of an increased risk of bias or poor judgment in upholding the NAC Member responsibility to prioritize the interests of community residents over the interests of city officials and developers, should be restricted from serving on the NAC. This may include current or past employment affiliated with the developer or the city.

Conflict of Effort - Residents who have affiliations with entities that create competing responsibilities or threaten to jeopardize the NAC Member responsibility to prioritize the interest of community residents over the interest of city officials and developers, should also be restricted from serving on the NAC.

Problem: Insufficient Area of Notice

- The current CBO requires that notice of the commencement of the CBO process must be provided to residents within 300 radial feet of a project. This is roughly the length of 2 city blocks. This constraint prohibits many residents who will be impacted by the development from receiving notice about the development and public meetings.

Amend To: Enlarge the Notice Area

- The notice area should be expanded to include the entire project census tract area. This would permit more residents to gain awareness of the project, participate in the NAC, and provide input in the CBO process.

Enforcement/Lack of Transparency

Problem: No Legally Binding Community Benefits Agreement Created

- Under the current ordinance, the CBO process may be finalized without the creation of a community benefits agreement. The ordinance only requires the creation of a report by the planning director titled "Community Benefits Report". This report provided information about the meetings held pursuant to the ordinance. The community benefits report for the six development projects observed have not contained any legally binding community benefits agreements. The community benefits report has also failed to provide any details related to the debates between residents and developers during the CBO process that failed to result in a real community benefits agreement.

Amend To: Require Creation of a Legally Binding Community Benefits Agreement

- The result of the CBO process must be a legally binding contractual agreement between the NAC and the Developer. A CBO Report should document the final results of the CBO process, which should be the creation of a legally binding community benefits agreement signed by the developer and the NAC. The CBO process should not be permitted to close until a community benefits agreement is created through authentic negotiation between community members and developers which includes specific and tangible benefits advocated for by the community.

Problem: CBO Process is Too Short

- NAC members from each of the six development projects monitored have expressed a need for more time in the CBO process. These NAC members felt the process was rushed and did not allow them the time necessary to carry out their duties under the CBO, including communicating with community members about development projects and gathering feedback about community concerns.

Amend To: Lengthen CBO Process

- The CBO process should be extended to a timeline of several months, rather than a few weeks. This will help the NAC to feel less rushed and allow them the time necessary to fully uphold their responsibilities under the CBO. The process should close when a negotiated agreement has been reached between the NAC and the developer, rather than according to an arbitrary deadline.

Enforcement/Lack of Transparency

Problem: NAC Members are not provided a clear definition of what constitutes real community benefits

- There is a great deal of misinformation being provided to NAC members about the definition of community benefits and what NACs are allowed to discuss. (Ex: During the CBO process for the Hudson Site and Monroe Blocks and Book Building & Tower, NAC members were advised by Planning and Development Department (PDD) that they should restrict community concerns to issues related only to construction inconveniences such as noise pollution, light pollution, traffic congestion, sidewalk closings, etc.)

Amend To: Provide Examples of real Community Benefits

- The NAC should be provided with a list of examples of legally binding community benefits agreements that have been created by communities and developers in other cities. This list should feature benefits covering a wide range of issue areas including (but not limited to) affordable housing, transit, schools, environmental impacts, jobs, infrastructure, public space, historical preservation, retail development, beautification, etc. This would help NAC to understand the types of community benefits they might pursue during the CBO process.

Problem: The City and developers do not provide the NAC with the necessary documents necessary to fulfill the responsibilities of the NAC

- NAC members from each of the six development projects monitored have expressed a need for more information and transparency regarding developments undergoing the CBO process. NAC members have expressed that they did not received all of the documents they needed to sufficiently understand development projects in a way that enabled them to truly negotiate. Common complaints raised were denial of documents by the city and developer due to claims that certain documents are private and the documents often are often received too late for serious consideration.

Amend To: Mandate that the City & developers Provide NAC with Documents

- The NAC cannot carry out its duty of representing the community's best interest without the information necessary to make well-informed decisions related to development agreements and the amount of public investment in a project. Important documents should automatically be provided to NAC members. The NAC should receive these essential documents within 48 hrs of their selection. All other documents requested during the process should be provided within 48 hours of such requests. This will provide the NAC greater transparency with adequate time for review. (Example of Relevant Documents: Detroit Community Benefits Ordinance, development agreements between the city and developer, details of project financing/ project proforma, developer's RFP response, all renderings related to the project, But/For Economic Analysis conducted by DEGC, all environmental studies, documents related to brownfield funding, etc.)

Enforcement/Lack of Transparency

Problem: Negotiations are prohibited in the current CBO process

- The current ordinance does not require any negotiation between the developer and NAC. Therefore, no negotiation have occurred in any of the six development projects monitored. This is evidenced by the fact that there are no trade-offs made by the developer. Further, it is evident that the NACs have no influence over issues such as: what community benefits are presented to the developer, how many times the NAC is permitted to meet with the developer, when the CBO process is declared completed, or approval of the final Community Benefits Report submitted to City Council.

Amend To: Require Authentic Negotiations between Developer & NAC

- The ordinance should require the developer to receive NAC approval in order to consider the CBO process complete including approval of the Community Benefits Report that is presented to City Council for the final vote on public investment. This revised process would incentive the developer to engage in true negotiations and compromise with the NAC regarding community concerns and desired benefits presented. This requirement would also provide a method for the NAC to have more power and influence in the CBO process, and secure genuine community benefits in exchange for the developer's receipt of public investment.

Problem: No Penalty for Noncompliance

- The current ordinance does not outline specific penalties for developer noncompliance with the CBO ordinance.

Amend To: Require compliance by developers in exchange for public funding

- The ordinance should restrict developers who do not participate in the CBO process in good faith from receiving requested public benefits for their development projects. Developers who refuse to negotiate or provide any of the community benefits requested by the NAC, should not be permitted to present their development to city council for public investment approval. The ordinance should also include provisions that automatically trigger clawbacks and suspensions of public investment in the case of developer noncompliance.

Lack of Accountability

Problem: City officials have not assisted a single NAC in creating an authentic community benefits agreement

- PDD representatives lack the motivation and skills to facilitate an authentic community engagement process. DPP representatives stated during a public meeting that their only role under the CBO was to convene meetings and create a report (Ex: Wigel/Midtown West NAC Meeting Jul. 11, 2017) City representatives have also verified that development deals have been signed prior to the completion of the CBO process (Ex: Herman Kiefer CBO Process).

Amend To: Exclude the City from Facilitation Role

- PDD's failure to comprehend its responsibilities as a facilitator under the CBO creates a conflict of interest, whereby the city has a contract with a developer that it wishes to protect, while simultaneously acting as facilitator of CBA negotiations between community and the same developer. Such a conflict of interest has hindered the creation of a CBA, resulting instead in a CBO process where negotiations are absent and transparency is rare. The City should be removed from the role of facilitator and the process guided by the community and developer.

Problem: No guidelines for determining whether a developer should qualify for exemption from the ordinance

- The current ordinance lacks guidelines for determining how to evaluate a developer's request for exemption from the ordinance. This result in a lack of transparency about criteria for exemption from the CBO process that informs all parties including residents, the city officials and developers.

Amend To: Qualification Guidelines for Exemption

- Language should be added to the ordinance to specify the circumstances that must be present for a developer to qualify for exemption from the CBO process. This language should include requirements that the developer provide detailed evidence of how they attempted to comply with the ordinance, and how their compliance has been hindered such that adhering to the CBO process is not feasible.

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The mission of **Equitable Detroit Coalition** is to foster beneficial relationships between developers and the Detroit community by facilitating open and honest dialogue and to assist developers funded by public dollars to become corporate neighbors who are transparent in their relationship with the community. **We believe that public investment entitles residents to be stakeholders.**

LEARN MORE download The Story of Detroit's Community Benefits Ordinance, **Fighting for Equity in Development.**
detroitpeoplesplatform.org/equitable-detroit-coalition-report