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TO: The Honorable Detroit City Council

FROM: David Whitaker, Director 
Legislative Policy Division (LPD) Staff

DATE: July 23, 2018

RE: **Community Benefits Ordinance Amendments**

As Council Members know, Detroit voters approved a ballot measure designated Proposition B, as the attached alternative “Community Benefits Ordinance” in the November 8, 2016 election. Pursuant to Section 12-109 of the City Charter, such an ordinance adopted through initiative proceedings may be amended or repealed by the City, after a period of twelve (12) months after the date of the election at which it was adopted. Therefore, if Council wishes to amend the existing “Community Benefits Ordinance”, it is free to do so at this time.

The City’s limited experience to date with implementation of the ordinance designated as Proposition B has generated calls for further reforms. In LPD’s judgment, the community engagement procedures specified in this ordinance would benefit from amendments intended, in general, to provide more time for Neighborhood Advisory Councils (NAC) established by the ordinance to become informed about the development proposals at issue and formulate their proposals on behalf of the community, and to require that more useful, relevant, timely and comprehensive information be provided to the NAC throughout the development project. Also, the name of the ordinance should be changed to reflect its actual terms as a local law requiring community engagement in the course of large developments that are supported by public money, in order to avoid misleading the public regarding the scope and purpose of this ordinance.¹

¹ Other, more substantive changes – such as the threshold amounts for public support of private investment, or even the addition of required benefits via enforceable contracts with community advocates, as originally proposed in Proposition A - beyond the community engagement procedures called for in the instant

LPD recommends the following changes to the current so-called “Community Benefits Ordinance”:

- 1) **That the title be amended to “Community Engagement Ordinance”** (Change the word “Benefits” under Article XII to the word “Engagement”. In Section 14-12-1(b), change the language to “This article shall be known as the Detroit Community Engagement Ordinance”.) The administration has indicated that the benefits to the community from development deals arise from the deals themselves, as negotiated by the administration. On the other hand, the American Planning Association and others in the national community benefits movement define “Community Benefits Agreements” as enforceable legal contracts, between developers who receive tax support for their investments, and affected community representatives. Changing the name of the ordinance would reflect its actual terms, which do not call for legally enforceable “Community Benefits Agreements” in the accepted sense of the term.
- 2) **That the number of community meetings be amended from stating “at least one” to “no fewer than five.”** (In Section 14-12-3(a)(1), change “at least one” to “no fewer than five, unless a majority of the NAC deems otherwise”.)
- 3) **That the procedures for the selection of the NAC be revised, so that at the inaugural meeting an overview of the process and presentation from the developer are given, and that community members nominated to the NAC present at the second meeting, prior to a vote on the members of the NAC, rather than at the conclusion of the first meeting.** (Change the entire subsection 14-12-3(c)(1) to read as follows: “At the first meeting of the NAC, the developer shall provide an overview of the community engagement process, and the details of the proposed development. At the second meeting of the NAC, any proposed NAC member(s) nominated by residents shall be permitted to present their ideas and suggestions regarding the community engagement process and the proposed development, before the members of the NAC are elected”.)

ordinance, would of course be within Council’s authority. Although LPD believes that a full discussion of “community benefits” in connection with the ordinance adopted by the voters as Proposition B would be beyond the scope of this referral, it should be noted that to date the procedures adopted as a result of this ballot initiative and the ordinance have not resulted in any substantial community benefits, if indeed they can be credited with generating any community benefits at all. This evaluation, based on LPD staff’s ordinance-mandated participation in the community engagement processes established by the ordinance to date, in turn leads to the question of whether or not the significant staff time and other resources devoted to these procedures can be justified, for a process that effectively produces little or no benefit. In addition to improving the accuracy of the ordinance’s title, substituting the word “engagement” for “benefits” in the name of the ordinance would therefore be expected to result in substantial savings of staff time and other resources that could be devoted to adequate public community engagement, rather than a fruitless, hollow and impractical discussion of nonexistent benefits.

- 4) **That a list of alternate NAC members be generated and maintained by the Planning and Development Department, in the event that an elected or appointed NAC member is unable to fulfil their duties.** (Add a new subsection 14-12-3(b)(6) to read as follows: “The Planning and Development Department shall maintain a list of alternate NAC members to be appointed in the event that an elected or appointed NAC member is, for whatever reason, unable to serve on the NAC”.)
- 5) **That attendance at NAC meetings for all elected and appointed NAC members is mandatory. Should a member fall to attend an alternate may be selected.** (Add the following language to subsection 14-12-3(b)(5): “Attendance at all NAC meetings by all elected and appointed NAC members shall be mandatory. If a member fails to attend an NAC meeting, an alternate may be appointed by the NAC as a permanent replacement member”.)
- 6) **That at the inaugural meeting that the developer present “how” their development qualified with specificity, i.e., total investment amount, and which tax incentives are being sought.** (Change the entire subsection 14-12-3(c)(2) to read as follows: “At the first meeting of the NAC, the developer shall provide a specific explanation of how the proposed development qualifies for public support of investment, the total amount of private investment involved, and the statutory authorizations and amounts of all tax abatements or incentives sought for the proposed development”.)
- 7) **If the proposed development includes residential housing, that at least 20% affordability at 80% Area Median Income (AMI) be incorporated into a single-site development.** (Add a new section 14-12-3(7): “If the proposed development includes residential housing, then at least 20% of the units for a single site shall be designated as affordable housing, defined as affordable by those earning at least 80% of Area Median Income (AMI)”.)
- 8) **That at the second meeting of the NAC, the NAC members are provided with an informational package from the developer detailing the level of environmental remediation the site may need, including but not limited to: Phase I and Phase II environmental studies (if available), Commercial Rehabilitation Facility District application (if applicable), Obsolete Property Rehabilitation District application (if applicable), and Brownfield Redevelopment District application (if applicable).** (Add a new section 14-12-3(c)(4): “At the second meeting of the NAC, the developer shall provide NAC members with an informational package detailing the level of environmental remediation the site may need, including but not limited to: Phase I and Phase II environmental studies (if available), Commercial Rehabilitation Facility District application (if applicable), Obsolete Property Rehabilitation District application (if applicable), and Brownfield Redevelopment District application (if applicable)”.)

- 9) **That a webpage be created and maintained detailing the specifics of the development along with a projected timeline on the Planning and Development Departments website for each development project subject to the ordinance, which also contains the contact information for the PDD project manager and general contact information for the developer.** (Add a new section 14-12-3(c)(5): “The Planning and Development Department shall create and maintain a page on the City’s web site detailing the specifics of the development, along with a projected timeline, for each development project subject to this article. The web page shall also contain the contact information for the PDD project manager and general contact information for the developer”.)

The Equitable Detroit Coalition, sponsors of the original Proposition A Community Benefits Ordinance that was defeated by Proposition B, has provided the attached critical report regarding their observations of the first six projects subjected to the ordinance. Based on these experiences, they propose 12 amendments that would, in effect, convert the Proposition B community engagement ordinance into a “true” community benefits ordinance, featuring reforms like enforceable community benefits agreements and independent community participation without mediation by City government. As noted in footnote 1, LPD understands these substantive transformations of the Proposition A community engagement policy to be beyond the scope of this particular referral. However, such further reaching amendments would be within Council’s authority, and if Council Members seek any particular amendments, whether suggested by the Equitable Detroit Coalition or anyone else, they could be drafted in response to specific referral of those items to the Law Department and/or LPD.

If Council has any other questions or concerns regarding this subject, LPD will be happy to provide further research and analysis upon request.

**NOTICE OF
ENACTMENT OF ORDINANCE**
To THE PEOPLE OF DETROIT,
MICHIGAN.

Through an initiative submitted by City Council resolution, the people of the City of Detroit adopted the following ordinance at the November 8, 2016 General Election:

**ORDINANCE NO. 35-16
CHAPTER 14.
COMMUNITY DEVELOPMENT
ARTICLE XII.
COMMUNITY BENEFITS**

IT IS HEREBY ORDAINED BY THE PEOPLE OF THE CITY OF DETROIT THAT:

Section 1. Chapter 14 of the 1984 Detroit City Code, *Community Development*, is amended by adding Article XII, *Community Benefits*, which consists of Sections 14-12-1 through 14-12-5, to read as follows:

**CHAPTER 14.
COMMUNITY DEVELOPMENT
ARTICLE XII.
COMMUNITY BENEFITS**

Sec. 14-12-1. Purpose; Title.

(a) The City is committed to community outreach and engagement that promotes transparency and accountability and ensures development projects in the City of Detroit benefit and promote economic growth and prosperity for all residents.

(b) This article shall be known as the "Detroit Community Benefits Ordinance."

Sec. 14-12-2. Definitions.

Community Benefits Provision means the agreement made by and between the Planning Director and the Developer which specifically addresses the issues raised by the NAC.

Enforcement Committee means a committee led by the City's Corporation Counsel and composed of representatives from the Planning and Development Department, Law Department, Human Rights Department, and other relevant City departments as determined by the Planning Director.

Impact Area means an area determined by the Planning Director that includes all census tracts or census block groups in which the Tier 1 Project is located, and any other areas as determined by the Planning Director.

NAC means the Neighborhood Advisory Council.

Planning Director means the Director of the City of Detroit's Planning and Development Department, or a member of the Planning Director's staff working on behalf of the Planning Director.

Tier 1 Development Project means a development project in the City that is expected to incur the investment of Seventy-five Million Dollars (\$75,000,000) or more during the construction of facilities, or to begin or expand operations or renovate structures, where the developer of the project is negotiating public support for investment in one or both of the following forms:

(1) Any transfer to the developer of City-owned land parcels that have a cumulative market value of One Million Dollars (\$1,000,000) or more (as determined by the City Assessor or independent appraisal), without open bidding and priced below market rates (where allowed by law) or

(2) Provision or approval by the City of tax abatements or other tax breaks that abate more than One Million Dollars (\$1,000,000) of City taxes over the term of the abatement that inure directly to the Developer, but not including Neighborhood Enterprise Zone tax abatements.

Tier 2 Development Project means a development project in the City that does not qualify as a Tier 1 Project and is expected to incur the investment of Three Million Dollars (\$3,000,000) or more, during the construction of facilities, or to begin or expand operations or renovate structures, where the Developer is negotiating public support for investment in one or both of the following forms:

(1) Land transfers that have a cumulative market value of Three Hundred Thousand Dollars (\$300,000) or more (as determined by the City Assessor or independent appraisal), without open bidding and priced below market rates; or

(2) Tax abatements that abate more than Three Hundred Thousand Dollars (\$300,000) of City taxes over the term of the abatement that inure directly to the Developer, but not including Neighborhood Enterprise Zone tax abatements.

Sec. 14-12-3. Tier 1 Projects.

(a) *Community Engagement Process for Public Meeting*

(1) Prior to submitting to City Council a request for approval of Land transfers or Tax abatements related to a Tier 1 Project, the Planning Director shall hold at least one public meeting in the Impact Area as defined in this Section.

(2) The City Clerk shall forward notice of the public meeting via First Class Mail no less than 10 days before such meeting to all City of Detroit residents within three hundred radial feet of the Tier 1 Project. The notice shall include:

a. The time, date and location of the public meeting;

b. General information about the Tier 1 Project;

c. A description of the Impact Area and the location of the Tier 1 Project;

d. Information related to potential impacts of the Tier 1 Project and possible mitigation strategies; and

(3) In addition to the notice requirement contained in Subsection (2) of this section, the Planning Director shall work with the District Council Member or Members representing the district or districts where the Tier 1 Project is located and at least one At-large Council Member to ensure that local residents, businesses, and organizations, especially those located in the Impact Area and those expected to be directly impacted by the Tier 1 project are informed of the public meeting.

(4) At the public meeting, the Planning Director will present general information about the Tier 1 Project, discuss ways in which the Tier 1 Project is anticipated to impact the local community, and ways in which the Developer and the Planning Director plan to address or mitigate these impacts.

(5) City Council shall appoint a liaison from the Legislative Policy Division to monitor the community engagement process and provide updates to the City Council.

(6) The Planning Director shall provide notice to the liaison of all upcoming meetings and activities associated with the community engagement process related to the Tier 1 Project.

(b) *Neighborhood Advisory Council*

(1) The Planning Director will accept nominations to the NAC from any person that resides in the Impact Area.

(2) All residents over the age of 18 that reside in the Impact Area are eligible for nomination.

(3) The NAC shall consist of nine members, selected as follows:

a. Two Members selected by residents of the Impact Area chosen from the resident nominated candidates;

b. Four Members selected by the Planning Director from the resident nominated candidates, with preference given to individuals the Planning Director expects to be directly impacted by the Tier 1 Project;

c. One Member selected by the Council Member in whose district contains the largest portion of the Impact Area from the resident nominated candidates; and

d. One Member selected by the At-Large Council Members from the resident nominated candidates.

(4) If the Planning Director receives less than nine nominations, the Planning Director may seek out additional nominations from individuals that live outside the Impact Area but within the City Council district or districts where the Tier 1 Project is located.

(5) All actions of the NAC may be taken with the consent of a majority of NAC members serving.

(c) *Engagement with Developer*

(1) In addition to the meeting required in Subsection (a)(1) of this section, the Planning Director shall facilitate at least one meeting between the NAC and the Developer to allow the NAC to learn more details about the project and to provide an opportunity for the NAC to make Developer aware of concerns raised by the NAC.

(2) City Council by a 2/3 vote of members present or the Planning Director may facilitate additional meetings which the Developer, or the Developer's designee, shall participate in as directed.

(3) As part of community engagement the developer, or their designee, shall be required to meet as directed.

(d) *Community Benefits Report*

(1) The Planning Director shall provide a Community Benefits Report to City Council regarding the Tier 1 Project prior to the request for any approvals related to the Tier 1 Project.

(2) The Community Benefits Report shall contain:

a. A detailed account of how notice was provided to organize the public meeting.

b. A list of the NAC members, and how they were selected.

c. An itemized list of the concerns raised by the NAC.

d. A method for addressing each of the concerns raised by the NAC, or why a particular concern will not be addressed.

(3) The Planning Director, where possible, shall provide a copy of the Community Benefits Report to the NAC prior to submission to City Council.

(4) To ensure an expeditious community engagement process, the Planning Director, where possible, shall submit the initial Community Benefits Report within six weeks from the date the notice is sent of the public meeting.

(5) The Planning Director shall work with City Council to assure that, to the maximum extent possible, all of the approvals required of City Council may be considered simultaneously and subject to one approval vote.

(6) The Planning Director shall work with other City departments to facilitate that Tier 1 Projects receive expedited City-required approvals.

(e) Development Agreement.

(1) All development agreements made between the Developer and the City related to the land transfers or tax abatements associated with a Tier 1 Project shall include the Community Benefits Provision, which shall include:

a. Enforcement mechanisms for failure to adhere to Community Benefits Provision, that may include but are not limited to, clawback of City-provided benefits, revocation of land transfers or land sales, debarment provisions and proportionate penalties and fees; and

b. The procedure for community members to report violations of the Community Benefits Provision to the NAC.

c. The length of time that Annual Compliance Reports as outlined in Subsection (f)(2) of this section, are required to be submitted.

d. Continued community engagement or community meeting requirements.

(2) The Developer shall not be required to enter into a legally binding agreement with any individual or organization other than the City for the express purpose of fulfilling the requirements of this ordinance or other City-mandated community engagement processes.

(3) The Developer may voluntarily enter into any contract or agreement related to the Tier 1 Project that does not pose a conflict of interest with the City.

(f) Enforcement.

(1) An Enforcement Committee shall be established to monitor Tier 1 projects.

a. The Enforcement Committee shall be comprised of, at minimum, the following four individuals:

i. Corporation Counsel for the City of Detroit; or their designee;

ii. a representative from the Planning and Development Department;

iii. a representative from the Law Department;

iv. a representative from the Human Rights Department.

b. In addition to the members of the Enforcement Committee as identified in Subsection (1)a of this section, the Planning Director may require that other departments participate in the Enforcement Committee as needed.

(2) The Enforcement Committee shall provide a biannual compliance report to the City Council and the NAC for the time period identified in the Community Benefits Provision.

(3) The Planning Director shall facilitate at least one meeting per calendar year between the NAC and the Developer to discuss the status of the Tier 1 Project for the time period identified in the Community Benefits Provision.

(4) The NAC shall review any allegations of violations of the Community Benefits Provision provided to it by the community, and may report violations to the Enforcement Committee in writing.

(5) Upon receipt of written notification of allegations of violation from the NAC, the Enforcement Committee shall investigate such allegations and shall present their written findings to the NAC based upon the following:

a. Whether the Developer is in compliance with the Community Benefits Provision; and

b. How the Community Benefits Provision will be enforced or how violations will be mitigated.

(6) The findings of the Enforcement Committee shall be presented to the NAC no later than 21 days from the date the violations were reported to the Enforcement Committee, unless the need for additional time is reported to City Council and the NAC within the original 21 day time frame.

(7) If the NAC disagrees with the findings of the Enforcement Committee or determines that the Enforcement Committee is not diligently pursuing the enforcement or mitigation steps outlined in its findings, the NAC may send notice to the Enforcement Committee, and the Enforcement Committee shall have 14 days from receipt of notice to respond to the concerns outlined.

(8) If the NAC is not satisfied with the Enforcement Committee's response, the NAC may petition the City Clerk and request that City Council schedule a hearing with opportunity for both the Enforcement Committee and the NAC to present information related to the alleged violations of the Community Benefits Provision and any enforcement or mitigation efforts that have occurred.

(9) If City Council elects to hold a hearing, or based upon the written information submitted, City Council shall determine whether the Enforcement Committee has made reasonable efforts to ensure that the Developer has complied with the Community Benefits Provision.

a. If City Council determines that the Enforcement Committee has made reasonable efforts, City Council shall notify the NAC and the Enforcement Committee of their findings.

b. If City Council finds that the Enforcement Committee has not made reasonable efforts, City Council shall make specific finding to the Enforcement Committee on the steps that need to be taken to comply with the Community Benefits Provision.

i. The Enforcement Committee shall provide City Council and the NAC monthly updates on compliance actions until City Council adopts a resolution declaring that the Developer is in compliance with the Community Benefits Provision or has taken adequate steps to mitigate violations.

ii. City Council may hold additional hearings related to enforcement of the Community Benefits Provision as needed.

Sec. 14-12-4. Tier 2 Projects.

(a) Developers shall:

(1) Partner with the City, and when appropriate, a workforce development agency to promote the hiring, training and employability of Detroit residents consistent with State and Federal Law.

(2) Partner with the Planning Director to address and mitigate negative impact that the Tier 2 Project may have on the community and local residents.

(b) The Developer's commitment as identified in Subsection (a) of this section shall be included in the development agreements related to any land transfers or tax abatements associated with the Tier 2 Project for which the Developer seeks approval.

Section 14-12-5. Exemptions.

The requirements of this ordinance may be waived by resolution of the City Council upon submission by either the Planning Director or the Developer identifying reasons that the requirements of this ordinance are impractical or infeasible and identifying how the Developer will otherwise provide community benefits.

Section 2. All ordinances, or parts of ordinances, that conflict with this ordinance are repealed.

Section 3. This ordinance is declared necessary for the preservation of the public peace, health, safety, and welfare of the People of the City of Detroit.

Section 4. The article added by this ordinance has been enacted as comprehensive local legislation. It is intended to be the sole and exclusive law regarding its subject matter, subject to provisions of state law.

(J.C.C. page):

Passed:

Approved: November 8, 2016

Certified by the Board of

County Canvassers: November 22, 2016

Published: November 29, 2016

Effective: November 29, 2016

JANICE M. WINFREY

Detroit City Clerk



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.**
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