

PROPOSED COMMUNITY BENEFITS ORDINANCE LANGUAGE

AN ORDINANCE to amend Chapter 14 of the 1984 Detroit City Code, *Community Development*, by adding Article XII, titled *Community Benefits*, which consists of Sections 14-12-1 through 14-12-7, to provide for the purpose and applicability of this article; to provide for definitions of terms used in this article; to require provision of Community Benefits and executed Community Benefits Agreements for certain development projects seeking public support for investments above certain threshold levels; to provide for exemptions for applicability of the article, and to provide for penalties and enforcement of the article.

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 14-12-7, to read as follows:

CHAPTER 14. COMMUNITY DEVELOPMENT

ARTICLE XII. Community Benefits

Sec. 14-12-1. Purpose; Title

- (a) It shall be the policy of the City of Detroit to require, wherever feasible, proportional community benefits as a condition of significant public support for development in the form of subsidies, tax abatements, below-market priced land, or other enhanced public resources.
- (b) This article shall be known as the “Detroit Community Benefits Ordinance.”

Sec. 14-12-2. Definitions

- (a) “Community Benefits” means the amenities, benefits, commitments, or promises described in Section 14-12-3(a)(1)b. and in Section 14-12-4.
- (b) “Community Benefits Agreement” means the legally enforceable contract negotiated and agreed to as set forth in Section 14-12-3(a)(1).
- (c) “Contractor” means any person, firm, partnership, limited liability company, corporation, joint venture, proprietorship, or other entity that enters into a contract for performance of construction work on the development project within the Host Community, including subcontractors of any tier.
- (d) “Detroit Business” shall mean any of the following businesses, as defined in Section 18-5-1 of this code:
- (1) Detroit-based business
 - (2) Detroit-headquartered business
 - (3) Detroit-resident owned business

(e) “Development Agreement” means, for the purposes of this Article, the agreement or agreements between the City and the developer pursuant to which the City provides or commits Public Support for Investment for a Tier 1 Development Project, Tier 2 Development Project, or High Impact Development Project, regardless of the label or title affixed to such agreement.

(f) “High Impact Development Project” means any development project that, because of the nature of the development and/or the Host Community, is reasonably expected to produce disproportionately high and adverse human health or environmental impacts, including social, esthetic, economic, physical, chemical, or biological impacts, in the Host Community. Determination of whether a project is a High Impact Development Project shall be made by City Council as set forth in Section 14-12-3(a)(3).

(g) “Host Community” means the community within the census tract(s) where the development project is physically located and may also include communities within adjacent census tracts that may be adversely affected by the activities of the development project, as determined by the agreement among members of the Host Community representative organization to a Community Benefits Agreement, but shall in no case be smaller than the census tract where the development project is physically located.

(h) “Public Support For Investment” means either or both of:

(1) direct or indirect transfer to the developer of city-owned land parcels 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 or priced below market rates (where allowed by law); or

(2) Provision or approval by the City of other forms of public subsidies to the developer, including but not limited to tax abatements or grants, that are cumulatively valued at Three Hundred Thousand Dollars (\$300,000) or more, but not including Neighborhood Enterprise Zones.

(i) “Tier 1 Development Project” means a development project in the City of Detroit that is expected to incur the investment of Fifteen Million Dollars (\$15,000,000) or more during the construction of facilities or plant, or to begin or expand operations or renovate structures.

(j) “Tier 2 Development Project” means a development project in the City of Detroit that is expected to incur the investment of more than Three Million Dollars (\$3,000,000), but less than Fifteen Million Dollars (\$15,000,000), during the construction of facilities or plant, or to begin or expand operations or renovate structures.

Sec. 14-12-3. Providing Community Benefits; Community Benefits Agreements; when required.

(a) Upon submission of a site plan for a Tier 1 Development Project to the Planning and Development Department or its successor, if the developer intends to seek Public Support for Investment in the project it shall notify the department, and the department shall then forthwith request that a written notice be generated by the City Clerk’s office, informing the Host Community of the proposed project and of a scheduled organizational meeting. The first organizational meeting for purposes of forming the Host Community representative organization to negotiate and execute a Community Benefits Agreement shall be called by the City Council Member or Members in whose district(s) the project is located. The Council Member(s) shall schedule and call the first organizational meeting of the Host Community for purposes of forming the Host Community representative organization within twenty-one (21) days of the date of notice informing the Host Community of the proposed project. Other than hosting the meeting, Council members and other City officials shall have no direct involvement in the processes of forming the Host Community representative or negotiating the Community Benefits Agreement. The following

standards and requirements shall apply to providing Community Benefits as a condition of receiving Public Support for Investment:

(1) **Tier 1 Development Project.**

1. For any proposed Tier 1 Development Project that requests or proposes the receipt of Public Support For Investment, the developer shall engage Host Community residents for purposes of entering into a legally enforceable Community Benefits Agreement between the developer and representative residents, businesses and nonprofit organizations, collectively comprising the Host Community representative party to the Community Benefits Agreement.
2. The Community Benefits Agreement shall provide for Community Benefits as negotiated by the parties, and shall specifically address each of the following:

(1) targeted benefits

(2) low- and moderate-income housing,

(3) quality of life or environmental mitigations,

(4) neighborhood, infrastructure and amenities, and

(5) community representation for the benefit of the Host Community in the development and post-development processes.

Although the Community Benefits Agreement shall specifically address each of the above issues, that does not mean that the parties are required to reach an agreement providing any particular benefit, only that each of the above subjects must be recognized in the written agreement using language agreed upon by the parties.

1. Unless good cause is shown by a developer that it should receive an exemption as provided in Section 14-12-5, the developer shall include a copy of the executed Community Benefits Agreement with the request for City Council approval for the Public Support For Investment. Violation without good cause shown by a developer shall result in denial of approval for any such Public Support for Investment.

(2) **Tier 2 Development Project.** For any proposed Tier 2 Development Project that requests or proposes the receipt of Public Support For Investment, the developer may but is not required to engage the Host Community residents to execute a Community Benefits Agreement describing the Community Benefits to be provided by the developer in the manner described by Section 14-12-3(1). If no Community Benefits Agreement is executed, however, the developer shall adopt and implement a Community Benefits Package, the terms of which shall be included in the Development Agreement.

(3) **High Impact Development Project.** For any proposed High Impact Development Project that requests or proposes the receipt of Public Support For Investment, Detroit City Council may determine that the requirements of Section 14-12-3(a)(1) shall apply. Determination of whether a project is a High Impact Development Project shall be made by finding of City Council expressed in a resolution, after a public hearing requested by a resident of the Host Community and duly noticed and conducted for the purpose of ascertaining whether the projects meets the definition of a High Impact Development Project. City Council may call on the assistance of the City Planning Commission, the Planning Department, and

other resources to assist in its determination. The developer and residents of the Host Community shall be entitled to speak at the public hearing.

Sec. 14-12-4. Community Benefits

(a) The following is a non-exclusive list of examples of Community Benefits that may be considered on a voluntary basis for inclusion in a Community Benefits Agreement, or in a Development Agreement:

(1) Educational Programs, such as:

1. Education in the City's high schools, community colleges and other educational programs.

b. One or more adult education programs operated by one or more qualified administration or an administrative collaboration comprised of organizations that benefit residents of the Host Community, including but not limited to agencies such as the Partnership for Diversity and Opportunity in Transportation.

1. Actively supporting educational activities that provide employment opportunities for residents of the Host Community, including but not limited to programs through federal funds received annually and allocated by agencies such as the State's Michigan Works! Partner, Detroit Employment Solutions Corporation, or another appropriate agency or entity.
2. Providing annual Contractor readiness training for Detroit Businesses, through the United States Department of Transportation Bonding Education Program or other relevant training opportunities.
3. Hosting annual Contractor information and networking sessions about upcoming contracting opportunities with the Michigan Department of Transportation in the City of Detroit.
 1. Providing program materials, training and support for Detroit Public Schools/CTE (DPS) or other educational institutions in the Host Community.
 2. Providing employment and career mentoring opportunities for youths who reside in the Host Community, including but not limited to the Michigan Department of Transportation's Youth Development and Mentoring Program.

(2) Land Use Programs:

1. Actively promoting City real estate and investment opportunities in the Host Community through agencies such as the Michigan Prospectus or another appropriate real estate investment agency or entity.
2. Providing additional recreational activities, parks, educational services, environmental amenities, housing capacity or other benefits in the Host Community.
3. Providing funds for demolition of abandoned homes or other structures in the Host Community.

(3) Small Business Inclusion and Participation:

1. Targeted outreach within the Host Community for Detroit-based small businesses, minority-owned business enterprises, women-owned business enterprises and relevant business organizations and chambers.
2. Inclusion of Host Community Detroit-based small businesses, minority-owned business enterprises, women-owned business enterprises and relevant business organizations in pre-bid meetings and conferences with advance notice.

3. Hosting annual procurement, contracting and hiring forums with information and networking sessions about upcoming procurement, contracting and hiring opportunities with the procurement department and Detroit Economic Growth Corporation in the City of Detroit.
4. Meet with Host Community Detroit-based small businesses, minority-owned business enterprises, women-owned business enterprises and relevant business organizations to train, develop and prepare for potential contractual opportunities.
5. Unbundling of construction work into bid sizes that will allow Detroit-based small businesses level competition, without restricting the project timelines. Assistance with access to bonding, lending, insurance, access to capital, procurement and other types of capacity-related assistance where necessary and available.

(4) Provisions that require periodic reporting, the frequency to be determined by the parties, of activities and ongoing monitoring of compliance by the parties throughout the course of the project.

a. Provisions that require the parties to periodically meet and confer, the frequency to be determined by the parties, and disclose the parties' activities and the status of compliance to the Host Community residents, and that require periodic public meetings with the opportunity for input and comments by Host Community stakeholders.

b. A community needs assessment regarding the Host Community at the developer's expense.

c. An environmental and/or public health assessment of the impacts of the proposed development at the developer's expense.

1. Specified remedies for violation of the Community Benefits Agreement, which unless otherwise agreed to by the parties, may include, without limitation specific performance, liquidated damages, claw backs, or revocation or withdrawal of tax abatement and public subsidies, either directly by the City of Detroit, or by application to the Michigan Tax Tribunal or Michigan Tax Commission, as provided by law.

Sec. 14-12-5. Exemptions

(a) The developer may request from the City Council a resolution exempting it from the requirement of entering a Community Benefits Agreement by demonstrating that:

(1) Identifying a Host Community representative organization to negotiate with on behalf of the Host Community is infeasible or impractical; or

(2) Good faith negotiations have occurred for a reasonable time period, but negotiations have reached an intractable impasse; or

(3) Other exigencies make entering a Community Benefits Agreement infeasible in the particular instance.

(b) To request an exemption, the developer shall

(1) Provide to the City Council in writing the basis of its request,

(2) State with particularity the efforts made by the developer to engage the Host Community and the efforts to reach accord on a Community Benefits Agreement, and

(3) Document how it will otherwise seek to implement the purpose of this Article to provide Community Benefits.

Sec. 14-12-6. City as Third-Party Beneficiary; Development Agreement.

(1) A Community Benefits Agreement under this Section shall include a provision that the City is an intended Third Party Beneficiary and as such the City may, in its discretion, enforce the Community Benefits Agreement. Any Development Agreement shall not preclude, prevent, or otherwise limit the Host Community representative party or its successors from having standing to enforce a Community Benefits Agreement. This subsection shall not be interpreted to change, alter, or diminish the legal and equitable duties, rights, and remedies of the parties to the Community Benefits Agreement.

Sec. 14-12-7. Penalties for Noncompliance; Enforcement;

(1) The provisions of this Article are prescriptive in nature, and are set forth as required conditions to request, provision, and receipt of Public Support For Investment for Tier 1 Development Projects, Tier 2 Development Projects, and High Impact Development Projects. Material failure to comply with the provisions of this Article may result in denial, suspension, terminate, and revocation, or withdrawal of Public Support For Investment, but shall not be subject to the penalties set forth in Sec 1-1-9 of this code. Except, when obtained through substantial and material misrepresentation or fraud, the resolution of City Council approving the Public Support For Investment shall be evidence of compliance with the provisions of this Article, and thereafter remedies shall be limited to enforcement of the Community Benefits Agreement and/or Development Agreement.

Section 2. This ordinance is hereby declared necessary to preserve the public peace, health, safety, and welfare of the People of the City of Detroit.

Section 3. All ordinances or parts of ordinances that conflict with this ordinance are repealed.

Section 4. In the event this ordinance is passed by two-thirds (2/3) majority of City Council Members serving, it shall be given immediate effect and become effective upon publication in accordance with Section 4-118 of the 2012 Detroit City Charter. Where this ordinance is passed by less than a two-thirds (2/3) majority of City Council Members serving, it shall become effective on the thirtieth (30) day after enactment or on the first business day thereafter in accordance with Section 4-118 of the 2012 Detroit City Charter.