PUSHING COMMUNITY BENEFITS UPSTREAM

A DETROIT CONTEXT AND CASE STUDY

With Contributions from the Sugar Law Center for Economic and Social Justice

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The City of Detroit is experiencing a real-estate investment boom unlike anything seen in the last half century. As of this writing, there is nearly $5.1 billion dollars of investment in the Downtown, Midtown, and New Center corridors, alone. To some, the emergence of new businesses and the restoration of historic structures signals the return of economic vitality and growth. But to many others - those whose homes and livelihoods are in the path of this development - it feels more like an occupation than an opportunity. The primary question Detroit must confront is, how do we make sure that the much-needed investment in the City does not simply benefit a privileged few, but also those who have lived here through the days of disinvestment and decline?

The inclusion of explicit physical and economic benefits in the development process offers a solution, in part, to this dilemma. And it is not without precedent; the movement for community benefits has seen a growing momentum since the turn of the century. In cities across the country, communities and real estate developers have shown a willingness to communicate, negotiate, and achieve more equitable outcomes for vulnerable populations. Here in Detroit, we have even memorialized these ideals in a first-of-its-kind Community Benefits Ordinance (CBO). Yet, community benefits are still often hamstrung in cities like Detroit because of limited or last-minute coordination with the rest of the development process.

The following report considers, first, the admissibility of community benefits in the legal context of Michigan. It then explores various Community Benefits Agreements (CBAs) across the country - examples are drawn from Milwaukee, Atlanta, and New Rochelle - including their adoption and enforcement mechanisms, in order to propose new approaches to community benefits in Detroit. Our aim is to propose ways to move the community benefits process earlier in the chain of development, so that community members are assured a piece of the economic pie, and developers are assured a building process without unexpected hiccups. The hope is that by institutionalizing the expectation of community benefits through a variety of avenues, a larger swath of developments across the city will be included in the process, rather than only the largest and most expensive.

The report concludes by describing several cross-cutting approaches that are applicable to many different CBA scenarios and can be dovetailed with the potential insertion points found throughout the document. Taken together, these measures can evolve Detroit's burgeoning community benefits movement and ensure an effective way for communities to advocate their preferences and encourage Detroit to be a more prosperous and equitable city in the future.
SECTION I

A PRIMER ON COMMUNITY BENEFITS AND DETROIT
Q: WHAT ARE COMMUNITY BENEFITS?

In the real-estate development context, community benefits describe a wide range of returns that a developer might provide for a community surrounding a new development. These go beyond the classic “trickle-down” model of job creation and increased economic activity; these benefits are designed to expressly represent the needs and wants of the community, as established through robust public participation in the planning process. While the scale and type of benefits achieved depends on the size of the development and the bargaining power of the community, among other things, it is common for large-scale developments to provide the following community benefits:

- Affordable housing minimum requirements or set-asides
- The provision of a living wage for temporary and permanent workers
- Environmentally-friendly design and construction
- Preferential hiring and renting policies for local residents
- Refurbishment of public green space
- Creation of an escrow account or trust fund for future community projects
- Minority business growth and retention
- Dedicated arts or community space

Some of these benefits are built into the design and construction of the physical part of the development, while others are meant to support the broader interests of social and economic revitalization of the surrounding area. In many cases the developer bears the responsibility of providing these benefits, yet it is possible that businesses renting space in a new development may instead be asked to achieve these benefits.

Q: WHAT ARE COMMUNITY BENEFITS AGREEMENTS (CBAS)?

When a community is solidly organized - often through a coalition of community-based organizations, organized labor, and faith-based groups - and has gained bargaining power, it may pursue a legally-binding contract with a developer in order to realize community benefits. These contracts, Community Benefits Agreements (CBAs), are negotiated between an elected or appointed body of community representatives and a developer. The exchange is meant to be mutually beneficial, as the developer receives the full-throated support of the community in its public-relations efforts and its dealings with regulating government bodies.

The drafting of concrete language is both an advantage and essential part of any successful CBA. Rather than vague commitments to community engagement and neighborhood revitalization, strong contracts provide a menu of benefits with explicit thresholds and timetables. In setting all the expectations forward, community members and developers alike can be promised transparency in the progress of the development. Economic development organizations, meanwhile, can use the clear-cut language of CBAs to measure the success of benefits like job creation, minority business ownership, or living wage requirements.

Ideally, CBAs are negotiated ahead of the development process, before a development agreement is officially reached between the municipal government and a developer. Inside of a CBA, the coalition of community groups and the developer draft the language together, and this language is enforceable by either the coalition or, in the case of a CBA contained within a development agreement, by the municipality. If the stipulations of an agreement are breached, the CBA may provide for a number of responses, including clawbacks of public monies spent on the project and the withholding of building permits or rezoning.

Q: DOES DETROIT DO CBAS?

To date, CBAs in Detroit have taken varied forms and shapes, with varied results for community members. Some have been privately negotiated between the community and the developer, as in the case of the West Grand Boulevard Collaborative (WGBC) signing an agreement with Henry Ford Health Systems and Cardinal Health. Others have been negotiated with government actors, as in the cases of Flex-N-Gate and the Gordie Howe International Bridge. Whether public or private, these agreements have historically been ad hoc, one-off deals.

Detroit is the first and only large city in America to have a Community Benefits Ordinance (CBO). The ordinance, passed in 2016, requires projects costing $75 million or more and receiving $1 million or more in public incentives to complete a community benefits report. This report advises City Council while they negotiate and reach an agreement with the developer. The community benefits report is influenced by a nine-member Neighborhood Advisory Committee (NAC). The passage of the current CBO meant forgoing another ordinance proposal, which would have included lower project cost thresholds and agreements directly between developers and community representatives. Projects that have fallen under the scope of the current CBO include the Herman Kiefer Development, Midtown West, and the former Hudson's site, among others.
Q: DOES THE CBO MEAN EQUITABLE DEVELOPMENT IN DETROIT?

The CBO is an important step in ensuring that development in Detroit benefits the existing residents, while continuing to pave the way for economic growth and diversification by attracting new residents. Perhaps more importantly, the passage of the CBO is a message to residents that the City is committed to equitable development and making certain that public monies don’t simply accrue in the pockets of large developers.

As stated above, the CBO is not triggered until certain thresholds for development or public subsidy are met. When a project falls below the tier one trigger threshold of $75 million, it means that it may be left to tier two status and thus excluded from the same community engagement requirements, despite possibly having just as important consequences for surrounding neighborhoods. When developments do meet the tier one threshold, the resulting contracts are entered into by the developer and the City, rather than community coalitions. Community groups have pushed for amendments to the CBO to address these issues, including lowering the trigger threshold, ratifying contracts between developers and NACs, and more rigorous penalties for developer non-compliance.

Q: WHY PUSH COMMUNITY BENEFITS UPSTREAM?

The purpose of this report is not to criticize any existing community benefits agreements or ordinances, but rather to propose a new and complimentary way forward. Both the private CBA and CBO processes in Detroit aim to realize important benefits for communities; they are integral to Detroit becoming a leader in the equitable development movement. But there is more that we can do.

A challenge we have seen thus far is that these processes can elicit confrontation between developers and communities. Communities may feel frustrated at being shut out of the development process until the “eleventh hour,” while developers may view certain community benefits as stifling and impractical to the success of their project. Under the current CBO framework, by the time developers and community groups meet to discuss community benefits, the developer has often already begun site design and acquiring financing. Moving community benefits upstream can potentially bridge this disconnect, setting forth clear standards and limiting unexpected misalignments in project development.
PUSHING COMMUNITY BENEFITS UPSTREAM OFFERS A HOST OF ADVANTAGES IN THE DEVELOPMENT PROCESS:

DEVELOPERS CAN MORE EASILY INCLUDE COMMUNITY BENEFITS OF GREATER SIGNIFICANCE

The earlier community benefits are inserted into the language of development, the more effectively developers can deliver on these benefits. This means including benefits in their site plans and pro formas, reaching out to labor unions, and hiring consultants or contractors to fulfill provisions mitigating environmental impact. Admittedly, much of the work ahead of the community benefits movement is changing the culture of real-estate development; as benefits are moved upstream, they become a natural fact of doing business, and so developers will be prepared to commit to them or even propose their own where competition exists between developers for a given parcel.

COMMUNITY BENEFITS CAN BE IMPLEMENTED WITH MORE PROJECTS

Varying development standards, zoning overlays, RFP/RFQ requirements, and TIF requirements can all be applied to projects that vary greatly in size from large to small, without extra burden to developer. Rather than requiring community benefits from only the largest or most-publicly-funded development projects, this variety of channels means that any project with a significant impact on the surrounding area can be asked to provide benefits. This includes parcel development standards, which can deliver more benefits on an ongoing basis without continually struggling to gain cooperation and consensus among community groups and developers for each new development project.

DEVELOPMENT PROJECTS CAN HAVE GREATER ACCOUNTABILITY AND TRANSPARENCY

Establishing community benefits early in the process creates transparent benchmarks for the developer to follow. It also allows the community to hold the developer and government accountable when final site designs don’t align with original project specifications. By creating these standards early on, developers cannot claim that they were not aware of them, while communities cannot create new standards so late in the process that it inhibits the work of the developer. It also allows community members a chance at meaningful and productive contributions to a proposed development project.

DEVELOPMENT PROJECTS CAN HAPPEN MORE QUICKLY

Working with community and city officials in the beginning can streamline the development process. It can make community engagement less contentious and the process more predictable. Communities can throw their full support behind development projects before paperwork is submitted to regulating bodies, which means speedier approval of zoning changes, necessary permits, and variances. Governments can even go a step further and offer speedier approval processes for developers that enter into CBAs early on in the development process.

COMMUNITY COALITIONS CAN BUILD GREATER CAPACITY AND READINESS

When community benefits must be agreed upon early and more often, community coalitions are more likely to stay in constant contact, rather than getting together for one-off CBAs and afterwards allowing established relationships to atrophy. This means expanding their reach and interconnectedness, while always being ready to represent their communities in new benefits agreements. Greater communication between community groups facilitates greater rewards for the communities they represent.
SECTION II

AUTHORITY, POTENTIAL PREEMPTION BY STATE LAW, & TAKINGS ISSUES
AUTHORITY, POTENTIAL PREEMPTION BY STATE LAW, & TAKINGS ISSUES

When a local government looks to adopt an ordinance, administrative rule, or policy that requires community benefits, legal questions often arise. First, is the question whether a local government has the power to adopt community benefits requirements. Second, is the question whether an existing state law blocks the local government from exercising their power in the area of community benefits. Finally, community benefits requirements that impose a certain use or otherwise limit the use of an owner’s property raise the question whether the requirements amount to a taking of the owner’s property under the United States and Michigan constitutions.

I. Michigan Cities Have the Power to Adopt Community Benefits Requirements

Under Michigan’s constitution and state laws such as the Home Rule Cities Act, local governments have broad general powers to adopt ordinances, administrative rules, and policies to promote the health, safety, and welfare of their communities. Michigan courts have found that cities are granted general police powers that are as broad as the police powers possessed by the state. ‘Police power’ is a legal phrase describing the power of a governmental unit to regulate for the health, safety, and welfare of the community. It is the basis upon which regulatory ordinances, administrative rules, and policies are adopted.

Additionally, when local governments act as a market participant, local governments have additional independent powers. A local government is commonly found to be acting as a ‘market participant’ whenever the local government itself engages in commercial activity such as contracting for services or goods, buying or selling property, or subsidizing private business. When the local government acts as a market participant, it generally can set the terms under which it will enter into contracts, transfer property, and transact with developers and private contractors. These powers can be even broader than the general grant of police powers.

Local governments in Michigan have broad general powers to regulate for the health, safety and welfare of their communities and to set the terms of development agreements and property transfers. Possessing these general powers alone, however does end the inquiry. States such as Michigan often grant broad regulatory powers to local governments, but then may take back those powers in specific subject areas, often for the purpose of maintaining uniform practices throughout the state. As a result, an examination is also required to determine whether existing state law has pulled back local governments’ power to regulate in the area of community benefits. This is a question of preemption.

II. Potential Preemption Issues

Preemption is sometimes raised when community benefits requirements are proposed in a local ordinance, administrative rule, or policy. Preemption is a legal term describing the effect that laws passed by a higher governmental authority can have on the laws, regulations, and policies of lower governmental units. Preemption occurs when the regulation of a lower government authority conflicts with an existing law of a higher governmental authority. When that occurs, the lower governments’ regulation is found to be preempted by the other law and the regulation would be found invalid.

Preemption occurs in two ways. Local government regulations are preempted by state law when the regulation either: 1) directly conflicts with a provision of state law; or 2) concerns a field entirely occupied by a state statutory scheme of regulation.

A direct conflict arises when a local regulation prohibits an act which state law permits, or permits an act which a state law prohibits. In other words, local governments cannot forbid what the state legislature has expressly allowed and cannot authorize what they have forbidden. The mere fact that a local government imposes additional requirements beyond minimal requirements imposed by state law does not typically create a conflict giving rise to a question of preemption.

Preemption by a state regulatory scheme requires an examination of the scheme’s express language, legislative history, its pervasiveness, and the nature of the subject matter regulated. Courts will examine and weigh these factors to determine whether the state’s regulations were intended to occupy the entire field that is the subject of the local regulation. The mere existence of a state statute concerning the same subject matter as a local regulation does not give rise to preemption. Rather, there must be evidence that the state intended to occupy the entire field of regulation or that subject matter to create uniformity throughout the state.

In the context of community benefits, preemption concerns may arise in the context of state zoning laws. State zoning laws have not generally been found to preempt community benefits requirements.


Michigan’s Zoning Enabling Act is a state law that seeks to establish the ability of local governments to regulate the development and use of land within their boundaries. Among other subjects, the Act
allows for the adoption of zoning ordinances; the establishment of zoning districts; sets forth the duties and powers of certain officials; and provides for the assessment and collection of fees.

The Zoning Enabling Act specifically permits local governments to establish zoning ordinances that regulate the development of land within its jurisdiction to ensure that use of the land promotes the health, safety and welfare of the public.

The Zoning Enabling Act itself does not give rise to preemption issues. If community benefits requirements are incorporated into a zoning ordinance however, various legal issues may arise. Most notably, in relation to fees charged to developers. The Act expressly permits local governments to charge reasonable fees as a condition of granting authority to use, erect, alter, or locate buildings within a zoning district. The scope of permissible fees that may be assessed as part of a community's zoning regulations is uncertain, however they are likely to be reviewed in light of the costs to the local government that are associated with the permitting process and the project. Local government zoning regulations that impose direct fees unrelated to such local government costs may be found preempted by the Zoning Enabling Act.

Local government fees however are not limited to zoning regulations. Local governments’ fees can impact developers in a wide variety of ways. In the context of community benefits, local government requirements that impose fees upon developers will be analyzed to determine whether the charge is a permissible fee for services or whether the charge is a disguised tax.

**B. Fees vs. Taxes**

Distinguishing between permissible regulatory fees and improper taxes involves weighing of specific facts related to the fees charged. Regulatory fees are generally characterized as a charge exchanged for a service provided by the local government or for another benefit conferred by the local government. There must be a reasonable relationship between the amount of the fee and the value of the service or benefit provided. Taxes are generally characterized as an exaction (i.e. charge, assessment, etc.) imposed for the purpose of raising revenue for the local government. Taxes inure to the benefit of all – including the persons taxed. In contrast, regulatory fees inure to the benefit of the persons or groups who pay the fee.

Michigan courts will look to three factors to determine whether a charge is a permissible regulatory fee or a potentially impermissible tax. Under the first factor, courts will look to the primary purpose of the charge. Courts will ask whether it primarily serves a regulatory purpose or a general revenue raising purpose. The second factor requires courts to examine whether the fee is proportionate to services or benefits provided by the local government. Finally, the court will examine voluntariness, analyzing whether the charged party is able to refuse or limit their use of local government's service or benefit.

Under these factors, permissible fees will primarily serve a regulatory purpose. The fee will be proportionate to the services or benefit conferred by the local government and the fee is paid voluntarily. Taxes on the other hand will serve a general revenue raising purpose; will be assessed without regard to specific services or benefits provided; and cannot be avoided or limited by the actions of the charged party.

Whether local government fees that are charged to developers in the context of community benefits requirements are permissible regulatory fees or impermissible taxes is highly dependent on the facts. The language of any such local ordinance, administrative rule, or policy should be crafted to explicitly show the government’s regulatory purpose and the benefits conferred to developers.

Notably, otherwise valid local government regulations that have the effect of increasing costs to developers will generally not be analyzed under a regulatory fee versus impermissible tax analysis. Rather, such indirect costs will be analyzed to determine whether the regulation amounts to an unconstitutional taking of private property.

**C. Regulations & Unconstitutional Takings**

Provisions found in the United States and Michigan constitutions bar local governments from taking private property without just compensation. On a development project, the property owner may claim that their property has effectively been taken when zoning permits or other regulations limit the use of the property or otherwise impose restrictive conditions on their use of the property. The issue commonly arises when the government directly regulates the permissible uses of an owner's land and when, as a condition of granting a permit, a local government requires easements across the property for public use or a set aside of part of the property for specific uses that benefit the public.

Generally, a regulation restricting the permissible uses of an owner's land is permissible unless the regulation does not advance legitimate state interests or denies an owner the economic use of the land. A reduction in the value of property alone generally
does not amount to a regulatory taking. Likewise, requiring a property owner to obtain a permit or license to alter the use of their land is generally permissible. When a permit imposes conditions on an owner’s use of the land, additional issues arise.

A local government can condition the granting of a permit upon the property owner’s agreement to a public easement or set aside when two conditions are met. First there must be a sufficient nexus (i.e. relationship/connection) between a legitimate governmental interest and the condition imposed by the local government. Second, the imposed condition must be roughly proportional to the impacts of the owner’s proposed use of the property. Court rulings make clear that the rule permits local governments to insist that landowners bear the full costs of the impacts of proposed development, while preventing local governments from leveraging their legitimate interests to obtain ends that are unrelated to a development’s impacts.

As a result, community benefits restrictions that are imposed as a condition of granting a permit to an existing landowner must be drafted with these principles in mind. The purposes served by community benefits requirements will be found to be a legitimate governmental interest and, in most instances, there is likely to be a sufficient nexus to the required community benefits required. However, there must also be rough proportionality between the requirements imposed and the impacts of the development. This need to demonstrate rough proportionality and an essential nexus is often referred to as the “Nolan/Dollan test.” In other words, the impacts of the project should be analyzed and the community benefits that are required as part of the approval process must be developed with the intent to mitigate those impacts.

As stated, in order for community benefits provisions to be implemented as a condition for specific project approval, the provisions must meet the Nolan/Dollan test. However, a local government can avoid a Nolan/Dollan legal challenge if it is acting as a marketplace actor. As the Partnership for Working Families explains:

The [Nolan/Dollan] requirement does not apply to situations in which the government is in a contractual relationship with the developer, as when the local government leases land or provides subsidy for the project and wants to include community benefits measures in the lease or subsidy agreement.2

III. Some Strategies to Overcome Legal Barriers Raised by Specific Requirements

A local government’s community benefits requirements can be crafted in numerous ways to avoid much of the analysis described above. Most notably, local government requirements for a meaningful community engagement process whereby a voluntary community benefits agreement is reached between community representatives and the developer do not raise significant issues of state preemption, fees versus taxes, or constitutional takings under existing law. Local permitting that strongly encourages, but does not require, such an agreement would likely avoid this type of legal analysis by a reviewing court. Private parties are free to enter into such agreements and preemption, fees versus taxes, and takings analysis simply do not apply to agreements voluntarily reached between private parties.

If a local government’s ordinance, administrative regulation, or policy required the privately negotiated agreement to be incorporated into the development agreement and permitted governmental enforcement of its terms, preemption and takings analysis, to the extent it would occur at all, would likely only occur at the time that the local government brought an enforcement action and, at that time, would likely be confined to the particular provisions that the government sought to enforce. In other words, the court would review whether the local government has the power to enforce the specific provisions that it sought to enforce. The court’s determination would not impact the enforceability of the agreement by the community itself.

Aside from the enforcement of private agreements, the local government has broad authority to enter into development agreements as a marketplace actor. In such circumstances, the local government is entering into a contract that confers benefits on a private party in exchange for the developer’s promise to build. The contract is a negotiated agreement conferring rights and imposing obligations on each of the parties.

A local ordinance, administrative regulation, or policy could require community benefits to be negotiated into development agreements. The specific benefits would then be negotiated and agreed to between the parties on a case-by-case basis, in tandem with a genuine community engagement process. Under this scenario, the specific terms of the development agreement would likely be subject to preemption analysis but there were be no issues with respect to fees versus taxes or unconstitutional takings. The fees versus taxes issue would be moot because any payments from the developer or contractors would be found to be in exchange for the benefits conferred by the local government. There would be no issue of an unconstitutional takings because the local government
would be found to have provided just compensation in the form of the incentives provided to the developer.

A local ordinance, administrative regulation, or policy that requires a genuine community engagement process leading to a private community benefits agreement or that takes advantage of the local government’s power to act in the marketplace are just two examples of various strategies that can be readily employed to mitigate perceived issues with preemption, fees versus taxes, and/or a takings issues, to extent such issues might exist with the requirements that a local government seeks to adopt.

1. While cities have the broadest powers among local governments, similar state laws exist that grant various powers to counties, townships, and villages.

We at D4 propose inserting comprehensive community benefits language into RFPs and passing stand-alone development standards for large publicly owned development sites. Detroit can do more than require strict land use and physical design requirements when requesting proposals from developers. This can be implemented by adding meaningful community benefit principles as an addendum to existing selection criteria or including them as guiding principles for all developments.

**TIF DISTRICTS**

We at D4 propose exploring various ways TIF authorities, memorialized in the Michigan’s TIF statutes, can be tied to community benefits. While Brownfield funds are unlikely to be vehicles for additional community benefits, a number of other statutes provide the possibility of infusing benefit standards parallel to the statutes’ intended purposes.

**INCENTIVE ZONING**

We at D4 propose exploring the feasibility of creating incentive zoning overlays that reward community benefits with additional tax abatement and/or regulatory relief. There are national examples for creating clear, predictable, and transparent systems for rewarding an array of community benefits based on volume and type. We further propose exploring the feasibility of inserting community benefit interests into the Planned Development District review and/or petitioning processes.
CROSS CUTTING CONCEPTS

RFQS VS. RFPS

We at D4 propose expanding the use of RFQs in place of RFPs, in order to create more flexible public-private partnerships with opportunity to co-create coherent visions for equitable development. By placing these expectations into initial development documents, Detroit can entrench these values into its planning ethos.

SOCIAL IMPACT ASSESSMENTS AND COMMUNITY IMPACT REPORTS

We at D4 propose requiring developers to publicly disclose aspects of their project through Community Impact Reports. We encourage inserting these reporting requirements into RFPs, development standards, City approval processes, and/or the existing Community Benefits Ordinance. We also propose exploring the creation of social impact criteria that can be used to perform Social Impact Assessments for development, even if that criteria is simply a “checklist” of considerations used when evaluating a project’s approval.

COMMUNITY ENGAGEMENT ORDINANCES

We at D4 propose that the City of Detroit enact policies requiring community engagement as part of the site review and/or any zoning petition process, in similar fashion to the Ann Arbor Citizen Participation Ordinance. Community engagement triggers for “major projects” should be tied to project scale rather than total development cost. We also propose working with Detroit’s nonprofit community development sector to create City-sanctioned guidelines, standards, and methodology for community engagement.
SECTION III

INSERTION POINTS
Parcel Development Standards and RFPs

I. The Basics

Parcel development standards refer to a set of community benefits standards that apply to every aspect of potential development in a given area. Rather than negotiating from scratch for a new community benefits agreement with every development, local governments can create a cohesive vision for development in multiple parcels by instituting a consistent protocol for new developers to follow; developers can build this expectation into their pro formas, minimizing the need to retroactively adjust their numbers based on separate individual review processes.

The institution of consistent standards across several contiguous parcels not only normalizes community benefits in the development process, but it also creates legal mechanisms by which communities and cities can enforce the completion of these benefits. This approach involves a government entity, such as a city or county, using its powers of land acquisition and then selling the land to a developer as a market actor.

Municipally owned land is often marketed to potential developers through a Request for Proposals (RFP), whereby a developer responds to a list of requested development criteria laid out by the government. This is a procurement mechanism that helps cities in comparing similar projects based on approach and price. The design and development standards set by RFPs, including the regulation of architecture, open space, public space, and strategy, are general and transparent enough that many developers are able to meet them.

Community Benefit considerations can be inserted into municipal RFPs or simply passed outright through parcel development standards if an RFP process is not being used.

II. Best Practice: Milwaukee Park East Redevelopment Compact

The Park East Freeway development in Milwaukee was the continuation of massive freeway builds in the 1960s that intended to encircle the City’s downtown core. By the mid-1970s, financing for the project had slowed to a crawl, leaving a one-mile long, elevated spur that remained underutilized, inviting blight and devaluing properties. In 1999, the State of Wisconsin, Milwaukee County, and the City approved the removal of the spur, opening up 64 acres of at-grade real-estate. While the City Council voted against attaching a CBA to its land, the County decided to reach out to community groups to put together an agreement for its 16 acres of land. This result is known as the Milwaukee Park East Redevelopment Compact (PERC), and is one of the nation’s broadest multi-parcel development standards agreements.

The cornerstone development in the PERC area is the Wisconsin Entertainment and Sports Center, which will be home to the Milwaukee Bucks of the National Basketball Association. While only a portion of the development is on County land, the development will include progressive labor practices, which include raising the minimum wage to $15 per hour by 2023, hiring at least 50% of workers from neighborhoods with high unemployment, and supporting workers in their right to unionize.

The PERC operates as an iterative addendum to land contracts for parcels on the land. Each compact is slightly different, depending on the needs of the residents and the area or the size of the development. Common standards include:

- Competitive Development Agreements
- Cooperation with existing organizations
- Enhanced apprenticeship and training programs
- Local employment and coordination
- Prevailing wages and employment data disclosure
- Affordable housing
- Green space and green design

It is clear that pushing community benefits upstream delivers advantages to municipalities, developers, and community members. Less clear is exactly how and where to insert these potential changes into existing development processes. Various progressive approaches from across the country offer examples for Detroit - ranging in scale and type - though it will be important to consider the city’s unique political and legal context when considering some of these changes.

D4 makes the following recommendations based on exhaustive case study research, interviews with policy experts and decision-makers, and a survey of Detroit’s development climate.
Competitive development agreements guarantee that Milwaukee County will not simply sell the land for the highest price, but will instead seek proposals that offer the “greatest future benefit in jobs, tax base and image for the community, as well as, a fair price.” Attached to this is the expectation that developers considered for contracts will fulfill the provisions of the PERC, so that only those developers with the organizational capacity to do so are considered.

Expectations for the fulfillment of the PERC ordinance are written into the Requests for Proposal (RFPs) that the County releases for available parcels of land. In writing these provisions into the RFP process, the County makes certain that developers are aware of the direction that development is expected to take, and can work this into their pro forma calculations and timelines for development.

While the PERC runs parallel with the effective dates of the Tax Increment District (TID) that overlays the Park East Redevelopment area, it is not legally attached to it. That is, the TID is the creation of the municipal government and in no way does its tax authority support the provisions of the PERC. Officially, the requirements of the PERC are written into the land contract that the developer enters into with the County, and therefore makes legally enforceable the use of clawbacks, revocations of land, penalties and fees, and the withholding of development approvals.
III. Parcel Development Standards & RFPs in Detroit

The RFP process for land development in Detroit is largely handled by either the City’s Housing and Revitalization Department (HRD) or the Detroit Economic Growth Corporation (DEGC). These documents include points systems for the categories of development strategy, project design, and financial leverage; the projects are expected to be driven by Guiding Development Principles, which are “committed to advancing design excellence in all projects to produce an equitable, sustainable...living environment.” City Council passes standards for how municipally-owned land can be developed. The planning department then negotiates with developers regarding potential features of a development project, some of which are ultimately memorialized in a development contract. It is important to note that these negotiations and agreements can happen with or without an official RFP process.

The most important ingredient in the creation of successful parcel development standards, as admitted by the Milwaukee County Director of Economic Development Aaron Hertzberg, is a supportive government body. In the case of the PERC, it was the County. At the time of this writing, the Detroit City government is currently in the process of finalizing its purchase of the largest contiguous property in the City: the 142 acre historic State Fairgrounds on Woodward and Eight Mile Road. There is a distinct possibility that this area is eventually divided into several parcels. But even if it isn’t subdivided, the former State Fairgrounds provides an opportunity to be an important precedent for broad development standards in Detroit. However, it requires an amenable and progressive City Council to set such a precedent.

We at D4 propose inserting comprehensive community benefits language into RFPs and passing stand-alone development standards for large publicly owned development sites. Detroit can do more than require strict land use and physical design requirements when requesting proposals from developers. This can be implemented by adding meaningful community benefit principles as an addendum to existing selection criteria or including them as guiding principles for all developments.

TIF DISTRICTS

I. The Basics

Tax Increment Financing (TIF) is an economic development tool used by municipalities to spur investment in neighborhoods that would otherwise be undeveloped. TIF legislation is often tailored to meet certain site conditions, like encouraging the restoration of blighted properties or decontaminating brownfield sites. The “if not, but for” principle justifies this investment by arguing that if not for a given subsidy, an area would not grow economically. TIF districts use an initial public investment to bolster an area, including parcel assembly, demolitions, or environmental remediations, in the hopes that private developers will then continue building up the property.

The initial government investment is then recouped through the dedication of incremental tax revenue from properties within the TIF district, while the base tax revenue continues to be shared amongst various city functions. TIFs have become among the most popular of economic development tools because they offer dedicated revenue streams, flexibility in projects, and local control. They are particularly useful in potentially delivering community benefits because of the latter. In most states, municipalities are uniquely gifted the power to establish TIF districts, which means that these are out of the scope of federal and state funding mandates, and thus likely to be out of the scope of federal and state preemptions.

II. Best Practice: The Atlanta Beltline

The Atlanta Beltline, first envisioned in 1999 as a graduate thesis at Georgia Tech University, is “a planned loop of 22 miles of modern streetcar, 33 miles of multi-use trail, and 2,000 acres of parks.” As of 2016 it has spurred over $3 billion dollars in private economic redevelopment, and offers a variety of recreational opportunities for residents, including free fitness classes, a linear arboretum, and an urban farm. With its anticipated completion, in 2030, the Beltline will connect 45 intown neighborhoods via a system of railroad corridors that formerly encircled the City.

Along with the establishment of a Beltline Redevelopment Area, the Atlanta City Council approved the creation of a Tax Allocation District (TAD). The TAD’s boundaries are coincidental with the boundaries of the Redevelopment Area, with its proceeds going to the reimbursement of improvements made within the area. Eligible uses for the funds include capital costs of public improvements like streets, bridges, utilities, parks, trails, and arts and cultural facilities. Unlike most tax-based redevelopment districts, the ordinance also includes provisions for specific community benefits:

- 15% of the proceeds of each TAD bond go to an affordable housing trust fund, which is used for the creation of affordable housing within the redevelopment area; the City hopes to build 5,600 units of affordable housing by project’s end, with a housing trust fund advisory board helping to guide the direction of this construction.
The establishment of an “Economic Incentives Fund,” which is collected through the issuance of each TAD bond and seeks to incentivize private development in portions of the Beltline Redevelopment Area that have historically “experienced unemployment, poverty, or little or no commercial, retail or residential growth or investment.”

A list of community benefit principles and policies agreed upon through community input and approved by the City Council; this list includes 12 “Guiding Principles,” including mixed-income housing, green space and environmental sustainability, business and economic development, and accessibility.

For the full document passed by the Atlanta City Council, please see Appendix B

The attachment of community benefit language to a tax authority is a concept that is fairly unique, and even more unique on such a large development. While the concept is admittedly modeled after the Milwaukee Park East Redevelopment Compact discussed earlier in this report, it differs in the sense that money generated through the issuance of tax bonds is directly funneled to the fulfillment of specific benefits for the existing residents.

III. TIF Districts In Detroit

Most TIF funding in the City is advanced through the Detroit Brownfield Redevelopment Authority (DBRA), which requires very specific eligible activities for the remediation of the land. The DBRA is funded through the Michigan Strategic Fund (MSF), which complicates further any potential to insert community benefits into the tax authority, since a change in the provisions of Brownfield Redevelopment in the City would mean a change across the entire state. After extensive conversations with leaders and policymakers in Detroit, we found that the replication of an Atlanta Beltline benefits model would be logistically and politically infeasible through Brownfield TIFs.

It is, however, possible that the City add community benefit language to a tax authority independent of the strictures of Brownfield redevelopment. The following table lists 10 acts that provide for the use of TIF:

<table>
<thead>
<tr>
<th>TIF Statutes in Michigan</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Act</strong></td>
</tr>
<tr>
<td>197 of 1975</td>
</tr>
<tr>
<td>450 of 1980</td>
</tr>
<tr>
<td>281 of 1986</td>
</tr>
<tr>
<td>381 of 1996</td>
</tr>
<tr>
<td>280 of 2005</td>
</tr>
<tr>
<td>94 of 2008</td>
</tr>
<tr>
<td>486 of 2008</td>
</tr>
<tr>
<td>250 of 2010</td>
</tr>
<tr>
<td>530 of 2004</td>
</tr>
<tr>
<td>61 of 2007</td>
</tr>
</tbody>
</table>
Attached to the stated purpose of each of these TIFs is the provision that allows a municipality to establish a plan with the “broad purpose of promoting economic growth.” Cities like Atlanta and Milwaukee have shown that the inclusion of explicit community benefits beyond physical design can produce economic growth: projects advance through approval processes quicker, newly-employed local workers provide benefit to the surrounding businesses, more diverse neighborhoods attract continued investment, etc. The open language of these statutes provides room for interpretation and can provide a vehicle for a broad range of community benefits.

We at D4 propose exploring various ways TIF authorities, memorialized in the Michigan’s TIF statutes, can be tied to community benefits. While Brownfield funds are unlikely to be vehicles for additional community benefits, a number of other statutes provide the possibility of infusing benefit standards parallel to the statutes’ intended purposes.

**INCENTIVE ZONING**

**I. The Basics**

In incentive zoning, the ‘sticks’ of traditional zoning are replaced with ‘carrots’ that are meant to produce win-win scenarios for cities and developers alike. Municipalities offer additional development capacity - often in the form of a relaxation of zoning restrictions - in exchange for public improvements or economic stimulus. Popular asks of the developer include the incorporation of public green space in design standards, affordable housing, and historic preservation. Because of its flexibility and voluntary nature, incentive zoning is among the most widely-used community benefit mechanisms.

Incentive zoning offers a number of advantages in the development context. First and foremost, it cultivates public-private partnerships, wherein the two sides have parallel interests. These relationships can help municipalities make the most of limited resources, using instead their regulatory authority to enhance development. Second, incentive zoning offers developers of unpopular projects an opportunity to diminish opposition while, simultaneously, receiving a benefit. Incentive zoning also provides municipalities with a buffer to a potential Nollan/Dolan challenge, since the actions of the local government are not punitive, but instead are voluntary and therefore cannot be understood as an exaction.

Because of its voluntary nature, there is no way to ensure the widespread efficacy of an incentive zoning program. Developers may decide that the additional development capacity is not worth the additional investment in public benefits being asked of them. In fact, many studies involving the impact of incentive zoning on affordable housing have returned lackluster results. To help ensure the success of such programs, municipalities should consider a few important concepts:

- Targeting areas with higher relative densities, so that developers are motivated to exchange public improvements for regulatory relief or additional tax abatement.
- The menu of potential public improvements should reflect the needs of the community, specifically seeking to provide benefits that a city could not achieve on its own.
- The type and design of incentives should reflect the local context; market conditions should factor into the going rate for a piece of development capacity.
- Where possible, the incentives offered through these programs should be paired with other city and state incentives, so that the potential benefits for developers are great enough to induce them into a partnership.

**II. Best Practice: New Rochelle DOZ**

The Downtown Overlay Zone (DOZ) plan of New Rochelle, New York, covers 279 acres of real estate and permits over 12 million sq. ft. of new construction and 6,370 new residential units. The DOZ offers provisions for design standards that deal with assemblages of land, frontage, and building height, as well as, incentives for developers that opt-into the plan early. What is distinctive about the DOZ, though, is its emphasis on community benefits and affordable housing.

In the DOZ, structures are designated into one of three Development Standard levels depending on their scale. Based on this designation, and the district in which they are located, these developments are then eligible for a certain amount of Community Benefit Bonuses. A menu of community benefits is provided inside of the DOZ, which can be applied at the developer’s discretion. Depending on the type of community benefit chosen by the developer, a number of municipal entities then decide how completely a developer has provided the benefit. These entities range from the Historic Preservation Board to the Planning Board to the Commissioner of Development.
# New Rochelle Development Standards for DOZ Districts

<table>
<thead>
<tr>
<th>Development Standard 1</th>
<th>Development Standard 2</th>
<th>Development Standard 3</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Site and Building Height Requirements</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total Site Frontage Min.</strong></td>
<td>50 feet</td>
<td>100 feet</td>
</tr>
<tr>
<td><strong>Site Area Minimum</strong></td>
<td>5,000 SF</td>
<td>10,000 SF</td>
</tr>
<tr>
<td><strong>Building Height</strong></td>
<td>2 stories min 8 stories max</td>
<td>2 stories min 24 stories max</td>
</tr>
<tr>
<td>D0-1</td>
<td>2 stories min 4 stories max</td>
<td>2 stories min 12 stories max</td>
</tr>
<tr>
<td>D0-2</td>
<td>2 stories min 2 stories max</td>
<td>2 stories min 4 stories max</td>
</tr>
<tr>
<td>D0-3</td>
<td>2 stories min 2 stories max</td>
<td>2 stories min 4 stories max</td>
</tr>
<tr>
<td>D0-4</td>
<td>2 stories min 2 stories max</td>
<td>2 stories min 4 stories max</td>
</tr>
<tr>
<td>D0-5</td>
<td>2 stories min 2 stories max</td>
<td>2 stories min 4 stories max &amp; 55 feet max</td>
</tr>
<tr>
<td>D0-6</td>
<td>2 stories min 2 stories max</td>
<td>2 stories min 4 stories max</td>
</tr>
</tbody>
</table>

**Street Wall Height & Stepback**
- See Street Wall Height at Sec 175.11 E(3) and Stepbacks at Sec. 175.11 E(4)

**Parking**
- Standards- See Article XIV- Off-Street-Parking and Loading
- Placement- See DOZ minimum requirements in Sec 175.11

**Min side yard from residential districts**
- No building may be constructed within 20 feet of a side yard adjoining a parcel in the R2-7.0 or RMF-0.4 Districts.

**Rear yard setback at residential districts**
- Where any parcel is contiguous to a parcel within the R2-7.0 or RMF-0.4 district, the rear yard shall be a minimum of 30 feet.

---

1 Total sum of all Site Frontages facing Streets, excluding those Site Frontages along Pedestrian Ways.
2 Additional Bonus Heights may be achieved according to Community Benefit Bonuses Figure 175.11 C. See Section 175.11 G&H for building height standards, exceptions and permitted projections and encroachments.
3 Except: 6 story, 65’ maximum building height where shown on the DOZ Standards Map in Section 175.08
4 Except in D0-1 where minimum site area is 40,000 SF.
For developments that satisfy all of the requirements of a Development Standard as defined in Section 175.11 B(2), the following standards shall apply:

<table>
<thead>
<tr>
<th>Development Standard 1 Bonus</th>
<th>Development Standard 2 Bonus</th>
<th>Development Standard 3 Bonus</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>D0-1</strong> The total building height with Community Benefit Bonuses shall be a maximum of 605 feet</td>
<td>up to 2 Bonus stories</td>
<td>up to 4 Bonus stories</td>
</tr>
<tr>
<td><strong>D0-2</strong> The total building height with Community Benefit Bonuses shall be a maximum of 285 feet</td>
<td>up to 1 Bonus story</td>
<td>up to 2 Bonus stories</td>
</tr>
<tr>
<td><strong>D0-3</strong> The total building height with Community Benefit Bonuses shall be a maximum of 125 feet</td>
<td>No Bonus Available</td>
<td>up to 2 Bonus stories</td>
</tr>
<tr>
<td><strong>D0-4</strong> The total building height with Community Benefit Bonuses shall be a maximum of 125 feet</td>
<td>No Bonus Available</td>
<td>up to 2 Bonus stories</td>
</tr>
<tr>
<td><strong>D0-5</strong> The total building height with Community Benefit Bonuses shall be a maximum of 125 feet</td>
<td>No Bonus Available</td>
<td>up to 2 Bonus stories</td>
</tr>
<tr>
<td><strong>D0-6</strong> The total building height with Community Benefit Bonuses shall be a maximum of 65 feet</td>
<td>No Bonus Available</td>
<td>up to 2 Bonus stories</td>
</tr>
</tbody>
</table>

*Where a site has been designated on the DOZ Standard Map as a Six Story Maximum Building Height, the total building height including Community Benefit Bonuses shall be a maximum of 6 stories and 65 feet.*
## New Rochelle DOZ Community Benefit Bonuses

<table>
<thead>
<tr>
<th>Bonus Category</th>
<th>Bonus Eligibility</th>
<th>Formula</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Historic Preservation</strong></td>
<td>25%, 50% or 100% of potential bonus, base on significance of preservation at discretion of Commissioner or Development with approval by Historic Landmarks Review Board</td>
<td>Permanent preservation by developer, on- or off-site (or a combination thereof), of all or a portion of an “historically significant structure” in an “historically appropriate way” (as determined by the Commissioner of Development and approved by the historic Landmarks Review Board)</td>
</tr>
<tr>
<td><strong>Arts and Cultural Space</strong></td>
<td>25%, 50% or 100% of potential bonus, based on significance of provision, at discretion of Commissioner of Development with approval by Planning Board</td>
<td>Provision by developer, on- or off-site, of a “meaningful space” for an arts and cultural organization at a “substantial discount” for a “substantial period of time” (as determined by the Commissioner of Development and approved by the Planning Board)</td>
</tr>
<tr>
<td><strong>Community Facility</strong></td>
<td>25%, 50% or 100% of potential bonus, based on significance of provision, at discretion of Commissioner of Development with approval by Planning Board</td>
<td>Provision by developer, on- or off-site, of a “meaningful space” for a civic or educational user at a “substantial discount” for a “substantial period of time” (as determined by the Commissioner of Development and approved by the Planning Board)</td>
</tr>
<tr>
<td><strong>Transit and Parking</strong></td>
<td>Up to 100% of potential bonus, pro rata based on contribution</td>
<td>Permanent provision by developer, on-or off-site, of a “substantial number” of parking spaces open to the public at costs per space consistent with public parking offered by the City, with operating terms and allocation of economics satisfactory the City (as determined by the Commissioner of Development and approved by the Planning Board)</td>
</tr>
<tr>
<td><strong>Green</strong></td>
<td>25%, 50% or 100% of potential bonus, based on significance of provision, at discretion of Commissioner of Development with approval by Planning Board</td>
<td>Incorporation on-site of “meaningful green elements” (e.g., LEED certification, microgrid, etc.) beyond what is required by zoning or other regulations (as determined by the Commissioner of Development and approved by the Planning Board)</td>
</tr>
<tr>
<td><strong>Pedestrian Passage</strong></td>
<td>25%, or 50% of potential bonus, as per Formula</td>
<td>33 Lecount Place (“New Rock City”) Passage: 50% of potential bonus (which bonus may be taken on- or off-site) for permanent provision by developer of public passage (maintained by developer) between Lecount Place and Harrison Street, meeting guidelines set forth immediately following passage of Overlay Zone by Commissioner of Development and approved by the Planning Board</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Master Developer Passages: 50% of potential bonus (which bonus may be taken on- or off-site) for permanent provision by developer of public passages (maintained by developer) between Lecount Place and Memorial Highway, meeting guidelines set forth immediately following passage Overlay Zone by the Commissioner of Development and approved by the Planning Board</td>
</tr>
<tr>
<td></td>
<td></td>
<td>40 Memorial Highway (“Halstead New Rochelle”) Passage: 25% of potential bonus (which bonus may be taken on- or off-site) for permanent provision by developer of public passage (maintained by developer between Memorial Highway and Davison Street, meeting guidelines set forth immediately following passage of Overlay Zone by the Commissioner of Development and approved by the Planning Board</td>
</tr>
<tr>
<td><strong>Open Space</strong></td>
<td>25%, 50% or 100% of potential bonus, based on significance of provision, at discretion of Commissioner of Development with approval by Planning Board</td>
<td>Permanent provision by developer, on- and off-site, of a “meaningful public open space” (maintained by developer) open (as determined by the Commissioner of Development and approved by the Planning Board), meeting guidelines set forth immediately following passage of Overlay Zone by the Commissioner of Development and approved by the Planning Board</td>
</tr>
<tr>
<td><strong>Housing</strong></td>
<td>25%, 50% or 100% of potential bonus, based on significance of provision, at discretion of Commissioner of Development with approval by Planning Board</td>
<td>Permanent provision by developer of one of the following: • Up to 5% of units @ 60% of AMI/ 5% of units @ 80% of AMI • 11% - 20% of units @ 80% of AMI</td>
</tr>
<tr>
<td><strong>Community Benefits Fund</strong></td>
<td>Up to 100% of potential bonus, pro rata as per formula</td>
<td>Contributions by developer of applicable Community Benefits Fund Amount/gross bonus SF to Community Benefits Fund</td>
</tr>
</tbody>
</table>
New Rochelle is innovative in its nuanced approach to incentive zoning as well as providing an extremely predictable and transparent system of incentives. Where other municipalities are fairly limited in their public improvement requests, New Rochelle is not. As mentioned earlier, one of the primary drawbacks of incentive zoning is that it is voluntary at its core. To relieve this tension, the DOZ chooses to be even more flexible, rather than more stringent. By allowing developers a greater variety of community benefit options, and then calculating the reward based on a gradation of completion within each of these options, the DOZ captures developers at all scales.

In addition to Community Benefit Bonuses, the DOZ also requires a one-time Fair Share Mitigation payment, which offsets the anticipated capital and infrastructure costs associated with new development.

III. Incentive Zoning In Detroit

Incentive zoning has no significant obstacles in the Detroit context. It is simply overlay zoning, which means that a petition must be filed and approved by the City Council. The regulations and standards of this overlay zone are then memorialized in the zoning code. While other cities, such as Seattle and Boston, have had success offering additional building height in exchange for community benefits, this same tactic is unlikely to work in Detroit's current market conditions. However, an incentive zoning overlay in Detroit could offer additional tax abatements or possibly streamlined approval similar to Detroit's “Pink Zoning” concept.

“Pink Zoning Detroit”

The “Pink Zoning” program, launched in 2016 with the help of a $75,000 grant from the John S. and James L. Knight Foundation, seeks “to transform complex land use regulations into a positive force for the revitalization of our city.” Three teams are currently developing three different commercial sites. Besides proposing unique placemaking and design ideas, these teams work alongside the Planning and Development department to recommend potential changes to the City's zoning and development regulations. The aim is to find innovative solutions to the maze of archaic land use regulations and bureaucracy that often bogs down development.

For now, “Pink Zoning Detroit” is primarily concerned with lessening the burden of inflexible regulations and costly process inefficiencies for smaller revitalization projects. These include urban farms, creative projects, and small-scale rehabilitation and repurposing of disused buildings. If this first iteration proves worthwhile, “Pink Zoning” would like to eventually grow this concept to a ‘lean’ ordinance, one that would extend to many commercial corridors across the City.

Community benefits provisions could be included in the program, as long as they do not undermine the original purpose to empower non-traditional developers. However, these provisions should be written into any future ‘lean’ ordinance, along with a legal mechanism for clawbacks or forfeiture of land contracts.

Planned Development (PD) District

There are additional ways to include community benefits into Detroit's zoning practices. The Planned Development (PD) district is a zoning classification that “permits flexibility in overall development while ensuring adequate safeguards and standards.” Parcels eligible for PD designation must be at least two acres and “capable of being planned and developed as one integral unit.” The application criteria currently include design criteria that seeks to provide a benefit to the user and to the City outside of, and beyond, what the City could achieve otherwise.

Development projects seeking PD classification must be aligned with Section 503 of the Michigan Zoning Enabling Act, which means that they must perform the following functions, as according to Section 61-3-96 of the Detroit Zoning Ordinance:

I. Permit flexibility in the regulation of land development;

II. Encourage innovation in land use and variety in design, layout, and type of structures constructed;

III. Achieve economy and efficiency in the use of land, natural resources, energy, and the providing of public services and utilities, encourage useful open space; and

IV. Provide better housing, employment, and shopping opportunities that are particularly suited to the needs of residents

Because PD projects are negotiated on a case-by-case basis, possible community benefits can be easily tailored to the character of the community in which they are based. In the case that a project is receiving public investment, any possible community benefits included under this clause would be free from the scrutiny of State preemptions. It is likely that PD projects are by definition more defensible from preemption because they are variances in the existing zoning code.
We at D4 propose exploring the feasibility of creating incentive zoning overlays that reward community benefits with additional tax abatement and/or regulatory relief. There are national examples for creating clear, predictable, and transparent systems for rewarding an array of community benefits based on volume and type. We further propose exploring the feasibility of inserting community benefit interests into the Planned Development District review and/or petitioning processes.


11. Ibid.

12. Ibid.

13. Ibid.


17. Ibid
SECTION IV
CROSS-CUTTING CONCEPTS
RFQs vs. RFPs

I. The Basics

Requests for Qualifications (RFQ) are different from RFPs in that they are not bids. Whereas many RFP processes focus almost solely on soliciting the best offer according to predetermined dimensions, and also according to the greatest financial return, RFQs are, instead, qualifications-based selection processes. RFQs seek to find developers that fit best with the City’s vision for a development project and provide flexibility to work with community members to determine that vision. RFQs are less focused on the parameters of a parcel or project than on the organizational capacity and approach of a potential developer. Once a developer is chosen, the City may negotiate on the terms of the contract. If these are not met, the City can move on to the second or third choice without the rigorous justification that a competitive RFP would require.

While, sometimes, RFPs and RFQs may be used together, they are usually used in place of each other. As municipalities become more and more concerned with the cohesive aesthetic or equitable development of their cities, RFQs are becoming more commonplace. As RFPs and RFQs are often the first step in making public land available to private developers, they are the ideal place in which to insert community benefits language. The first step in securing these benefits is providing more information on proposed developments to the public. This can be legally challenging in the space of and RFP or RFQ because developers may claim that these documents contain trade secrets or other sensitive information. A possible solution to this problem is the inclusion and public distribution of an executive summary or Community Impact Report that includes some of the basic information regarding the project. At a minimum, such public disclosure could include the type of development, the anticipated public investment in the project, and the number and quality of jobs associated.18

It is important that the public is informed about developments as they are being conceived. A basic knowledge of proposals can inform the potential asks that a community includes in a community benefit agreement. A mixed-use development can offer benefits in the form of affordable housing and commercial space set-asides, whereas a light industrial development can perhaps offer more in the way of workforce training. The West Oakland Army Base in Oakland, CA offers a good example of how this sort of transparency can happen through a Community Impact Report.

Besides notifying the public about a development, there is the question of how best to insert specific community benefits into an RFP or RFQ. The Milwaukee Park East Redevelopment Compact successfully integrated a community benefits agreement into its RFP process, which ensured a legal mechanism for the County if a developer did not follow through with their promises. In Atlanta, developments on parcels in the beltline are required to abide by Community Benefit Guiding Principles that are included as addendum to other requirements of the TAD.

II. RFPs, RFQs, and Community Benefits in Detroit

In Detroit, the RFP process is still rather opaque. While the RFPs themselves are made public, the proposals submitted in response are not. There is essentially no public input until a proposal is chosen and site review is complete. Inside the RFP, a list of selection criteria is weighted and used to choose a suitable developer. This list includes development strategy, design standards, financial capacity, team experience, and local hiring and participation. The RFP is informed, on the whole, by the Planning and Development Department’s Guiding Development Principles, which are not unlike the Atlanta Beltline’s Community Benefit Guiding Principles. The close analogy of these documents highlights the feasibility adding explicit community benefit language to the Detroit RFP/RFQ process.

We at D4 propose expanding the use of RFQs in place of RFPs, in order to create more flexible public-private partnerships with opportunity to co-create coherent visions for equitable development. By placing these expectations into initial development documents, Detroit can entrench these values into its planning ethos.
Social Impact Assessments and Community Impact Reports

I. The Basics

Social impacts are widely defined as anything associated with a planned project that affects or concerns people’s physical, cognitive, and emotional health at any level. This includes the health of individuals, families and households, social groups, and communities. Admittedly, the preceding definition is broad enough to potentially include nearly anything that is valued by a group of people. The following list provides a better understanding of what these impacts might feasibly include in the real estate development context:

- Changes to people’s way of life, including but not limited to their work, school, and general interaction
- Changes to the cohesion, stability, and character of a community
- Changes to people’s environment, including but not limited to the quality of air and water, the availability and quality of food, the level of hazard to which they are exposed, and access to existing resources
- Changes to their property rights or their economic livelihoods
- Changes to the extent to which people are able to participate in decisions that affect their lives
- Changes in the expected influence of a project versus the actual influence

It is important to consider that not all changes associated with development are necessarily social impacts. Modest changes that occur over the long-term in association with a development are often beneficial to communities, as these communities can absorb the changes without adverse effects. Sudden, large-scale changes, on the other hand, which may affect anything from housing prices to employment opportunities, can rightly be counted among social impacts.

Social Impact Assessments

Social Impact Assessments (SIAs) are designed to predict and counter these adverse social impacts. According to the International Association for Impact Assessment, “Social Impact Assessment is now conceived as being the process of identifying and managing the social issues of project development, and includes the effective engagement of affected communities in participatory processes of identification, assessment and management of social impacts.” While the name is evocative of Environmental Impact Assessments (EIAs), SIAs are less a clear science, and more an iterative process with community members to determine what individuals and the community as a whole sees as important to their everyday lives, and how a potential development project might affect them.

SIA involves the active engagement of the regulatory body, e.g. municipal government, local NGOs, community development corporations, and the community from the very beginning of development, long before any governmental approval is required. The process of SIA potentially involves the following activities, although this is not an exhaustive list, and the combination of activities is decided on a case-by-case basis:

- Interact and coordinate with any other assessment teams to ensure that cross-fertilization of impacts is considered in the separate assessments
- Create a community profile
- Construct a baseline, against which to measure change
- Prepare a plan to compensate community members that may be affected by the development project
- Identify ways of enhancing the benefits of the development project
- Identify stakeholders and relationships
- Facilitate community engagement process
- Educate affected communities in how they might be affected by the planned development project

After an SIA is completed, it is important to distribute the findings to both government officials and the public at large. This can be done through a Community Impact Report.

Community Impact Reports

Community Impact Reports refer to prepared documents associated with a potential development that are made publicly available early in the development process. Requirements for developers to provide Community Impact Reports can be embedded in an RFP or RFQ, or can be triggered by certain types of development (i.e. large-scale retail developments) during the site-approval phase.

Community Impact Reports vary in the type of information developers are required to disclose to the public. They can report on the type of development, the...
anticipated public investment in the project, the number and quality of jobs associated, or housing impacts, as well as the project’s ability to meet certain neighborhood needs. If a community is able to review the Community Impact Report for a potential development early on, then it can work with the municipal government or developer to address any negative effects described in the report.

As stated earlier, developers may claim that such public disclosure contains trade secrets or other sensitive information. However, if the requirements for Community Impact Reports are clearly laid out in a transparent, universally-applied manner then this can mitigate developers’ complaints.

Additionally, when considered with other measures described in this report, it is easy to envision how Community Impact Reports could publicize the results of a Social Impact Assessment or community engagement process.

II. Social Impact Assessments and Community Impact Reports in Detroit

The development context in Detroit, as noted, is often at odds with the needs and interest of the communities in which the development is happening. Community engagement efforts at the end of the development process are problematic because they do not leave adequate opportunity for developers and the City to address the real concerns of community residents. The difficulty addressing community concerns is exacerbated by no consistent format by which to assess and intervene. Just as EIAs play an important role in ensuring that a development project does not cause undue or excessive environmental damage to its physical context, the use of SIAs could similarly create a consistent framework for measuring and mitigating the social impacts of a development project.

Community Impact Reports embedded in the RFP, RFQ, or zoning petition process would provide information about new development projects far and above the requirements of the current planning practices and the CBO. As mentioned earlier, the current form of the CBO does not place an emphasis on making public the details of a project development until late in the development process. The CBO is also silent on the amount and type of information a developer is required to disclose to the Neighborhood Advisory Council (NAC), causing confusion for both the NAC and developer. Codifying a requirement for Community Impact Reports in both the CBO and throughout the planning review process would make the process more consistent, predictable, and effective.

We at D4 propose requiring developers to publicly disclose aspects of their project through Community Impact Reports. We encourage inserting these reporting requirements into RFPs, development standards, City approval processes, and/or the existing Community Benefits Ordinance. We also propose exploring the creation of social impact criteria that can be used to perform Social Impact Assessments for development, even if that criteria is simply a “checklist” of considerations used when evaluating a project’s approval.

COMMUNITY ENGAGEMENT ORDINANCES

I. The Basics

At the heart of any community benefits measure is interaction and engagement with community members. Indeed, if community benefits are generally meant to address needs within the citizenry, then public engagement is necessary to understand those needs.

Most municipal land use regulation processes have some sort of democratic or public comment mechanism. The entire development process has insertion points for public input, from initial community meetings leading to a City’s master plan, to a public hearing associated with a particular parcel’s rezoning. However, by and large, these public insertion points are not equipped to comment on community benefits or further equitable development unless explicitly set up to do so.

Neighborhood planning or master planning processes examine larger community needs, but have a broad scale of analysis, and therefore don’t directly impact specific developments. Many public hearings associated with particular sites (i.e. rezoning or zoning variances) have a granular lens, but often relegate themselves to mitigating negative effects of the individual site rather than addressing larger community need. To be effective, policy leaders must strive to identify ways for larger community needs to be discussed at the granular scale of a particular development project.

Community Engagement Ordinances are part of the solution. They can require developers to gain input from the community as they design their project, therefore enabling greater opportunity to provide community benefits. They are a possible vehicle for larger community needs to be addressed at the granular scale. There are various triggers within the development process where such an engagement process could take effect as well as various forms of engagement that could be required. It is advisable for these triggers to be
placed as early in the development process as possible. Community Engagement Ordinances can be tied to the site approval process, rezoning or variance approval, and even subsidy or tax abatement approval.

II. Best Practice: Ann Arbor Citizen Participation Ordinance

The Ann Arbor Citizen Participation Ordinance applies to any development project that would require public hearing, including “major projects,” planned development projects, or projects seeking amendments to the City's zoning map. The developer must host at least one “citizen participation meeting” prior to submitting their petition and include a summary of that meeting with the petition.

The ordinance ensures that community members learn about and have a chance to comment on a development before the developer submits their petition for City approval. This is mutually advantageous to the developer, the community, and the City. The ordinance benefits the developer because they are able to make any adjustments to their project before submitting their paperwork; the community gets greater opportunity to express its opinion; and City officials can begin to ascertain the public's opinion before the public hearing, making that hearing more effective in the end.

Ann Arbor's Citizen Participation Ordinance is a model engagement ordinance for several reasons, not the least of which is the fact that it is thorough in assisting a developer through the complicated process of community engagement. The ordinance sets the project up for success by stipulating that the developer must meet with the Planning Department before engaging the community. Impressively, the ordinance also stipulates that the developer be given City-created guidelines for engagement.

The engagement guidelines are comprehensive and offer advice on a number of components related to engagement including notice requirements, meeting location, format, and logistics. The guidelines also offer assistance around what content to put in the meeting notice and how to properly cancel the meeting if needed.

Lastly, the Ann Arbor Citizen Participation Ordinance requires that the developer must submit a summary of community engagement activities with the City petition. The engagement summary must contain the nature of the engagement, a list of community concerns, as well as how the developer plans to address any concerns brought up.

III. Community Engagement Ordinances in Detroit

There is nothing preventing Detroit from passing a Community Engagement Ordinance similar to Ann Arbor's. At the time of this writing, it has been suggested that the title of the existing Community Benefits Ordinance (CBO) be changed to “Community Engagement Ordinance,” some feeling that is a better reflection of what it is.

While the CBO is a mechanism for community members to provide input into large development projects, a separate community engagement ordinance, modeled after Ann Arbor's, would be more effective. The CBO currently takes place toward the end of the development cycle, whereas a community engagement ordinance tied to plan review or petition submission would take effect at the beginning, thereby providing greater opportunity for community influence.

A separate community engagement ordinance would also have greater applicability over a greater number of projects than the current CBO. Even if the trigger threshold for tier one projects under the CBO is reduced from $75 million to $50 million, it still will only be applicable to large projects costing tens of millions of dollars. Ann Arbor’s ordinance sets community engagement requirements and standards for any project requiring public hearing.

Furthermore, Ann Arbor’s ordinance defines “major projects” by the scale of the project (i.e. number of residential units, square footage, and/or height) rather than the total expenditure as done in the current CBO. Tying engagement requirements to project scale more effectively captures projects that will have significant impact on surrounding communities, rather than simply targeting developers making large capital investments. As an example, a project investing heavily in environmental sustainability or historic preservation may have a higher total expenditure than other projects, but have far fewer negative community impacts. Tying the engagement requirement to project scale also prevents a developer from potentially aching engagement requirements by breaking their project into phases costing less than the trigger threshold.

A community engagement ordinance modeled after Ann Arbor would allow a variety of community members to participate in direct discourse with the developer rather than a select body of 9 individuals, most of whom are appointed. It also would put the onus for organizing and paying for engagement on the developer rather than the City government. Some have complained that the current iteration of the CBO puts an unwieldy burden on City staff and taxpayers for organizing the various Neighborhood Advisory Council meetings. If Detroit is going to enact policies requiring additional community engagements, it would be beneficial to put that cost burden onto developers.
Finally, it is worth noting that community engagement is only valuable if carried out effectively. Especially in low-income communities of color, where the memories of neighborhood destruction under the guise of urban renewal are all too fresh, engagement must be done with sincerity, accountability, and transparency. Engagement done poorly can be more damaging than no engagement at all.

Therefore, the creation of engagement guidelines and standards similar to Ann Arbor’s would be crucial to its success in Detroit. Such standards could be created in conjunction with various nonprofit and place-based organizations, some of whom could even be certified as official engagement facilitators available to consult with private developers. Detroit is fortunate to have an active nonprofit community development sector with a vast array of community engagement and facilitation experience to be tapped. Certifying and professionalising engagement methods can be mutually beneficial for the community, developers, and City government.

We at D4 propose that the City of Detroit enact policies requiring community engagement as part of the site review and/or any zoning petition process, in similar fashion to the Ann Arbor Citizen Participation Ordinance. Community engagement triggers for “major projects” should be tied to project scale rather than total development cost. We also propose working with Detroit’s nonprofit community development sector to create City-sanctioned guidelines, standards, and methodology for community engagement.


20. Ibid.

21. Ibid.


Park East Redevelopment Compact (PERC)

By Milwaukee County, Wisconsin Supervisors Johnson, Coggs-Jones, Broderick, Dimitrijevic, Clark, West, White, Holloway, Weishan, Quindel, DeBruin

A RESOLUTION
To create the Community and Economic Development (CED) Fund and adopt the Park East Redevelopment Compact (PERC) in order to provide additional sustainable community benefits for the development of the County Park East land.

WHEREAS, Milwaukee County will seek the sale of significant real estate assets, including approximately 16 acres of land in the Park East freeway corridor and these lands represent tremendous assets held in trust by Milwaukee County for the benefit of the citizens of this County. This revenue has been used in various ways, but often it has been used to offset basic operating expense or tax levy; and

WHEREAS, while offsetting tax levy to fund operating expense is a tool that is sometimes necessary, such major sales should provide a longer-term and sustainable benefit to the community. True stewardship of these major public resources requires that their sale provide a benefit for the citizens; and

WHEREAS, the redevelopment of the Park East land, by itself, using private development, will not take advantage of unique opportunities to provide sustainable community benefits especially to those in most need of jobs; and

WHEREAS, adoption of the Park East Redevelopment Compact (PERC), as provided in this resolution, will provide the best opportunity to provide increased jobs and tax base not only on this land, but also for the entire community; and

WHEREAS, this resolution also provides for the creation of a Community and Economic Development (CED) Fund, The CED (pronounced 'seed') Fund would be comprised of a series of programs designed to address 'gap' needs in the marketplace and it is not intended to reproduce resources that are available either in the commercial marketplace or through other public resources; and

WHEREAS, the CED Fund recognizes that there are areas where the market does not make available the resources required for sustainable development and by providing those resources, the Fund seeks to be a catalyst that will enable businesses to develop and grow, communities to prosper, and the lives of all of our citizens to be enriched; and WHEREAS, this Fund would be endowed with all net revenue generated by the sale of land in the Park East Corridor and be used to carry out this resolution for the Park East Redevelopment Compact (PERC); and

WHEREAS, in the future, with the exception of revenue allocated to other purposes by statute, ordinance, resolution, or budget action, revenue produced by the sale of real estate assets (except park land sales) may be allocated to the CED Fund by the County Board at the time of each sale; and

The following are some possible uses of the CED Fund:
• Minority Business Working Capital
• Small & Minority Business Contract Financing
BE IT RESOLVED that this resolution adopts the principle and creation of the Community Economic Development (CED) Fund and adopts the Park East Redevelopment Compact (PERC) with the specifics of the policies and procedures to implement this resolution to be adopted separately by the County Board; and

BE IT FURTHER RESOLVED, that the following Park East Redevelopment Compact (PERC) establishes the policies for the sale of the County's Park East land to achieve the goal of providing additional sustainable community benefits for the development of this land:

1. Competitive Development Agreements
Each parcel of Park East land will be sold through a competitive Request for Proposals (RFP) which shall be reviewed and approved by the County Board. Milwaukee County should not just sell the land for the highest price offered but rather should seek development proposals which will provide the greatest future benefit in jobs, tax base and image for the community, as well as, a fair price. The policies to carry out the PERC will be contained in the RFP and the final legal requirements will be included in each development contract. These contracts will be for 27 years or until the Tax Incremental District (TID) is terminated. (A parcel may be all or part of one or more blocks as contained in the each RFP.)

2. Cooperation with Existing Organizations
Milwaukee County will cooperate with and use existing governmental and private organizations, programs and funding sources whenever possible to carry out these PERC policies.

3. Community and Economic Development Fund (CED)
The County CED fund may be used to carry out these PERC policies whenever other funding is not available. The CED fund is described in other parts of this resolution.

4. Disadvantaged Business Enterprise (DBE)
Milwaukee County will include their current DBE policies, as they apply to county construction contracts, in all RFP's and development contracts. The Office of Community Business Development Partners shall assist in administering this provision.

5. Enhanced Apprenticeship and Training
All RFP's and development contracts shall contain additional apprenticeship and training requirements, using existing agencies whenever possible. Participation in County sponsored training shall meet county established income and residency requirements.

6. Local Employment and Coordination
Milwaukee County will hire one or more non-profit community economic development agencies to assist in coordinating the DBE, training and local employment requirements. All employment vacancies for developers, contractors, trainees, owners and tenants, who will work on the County Park East land, will be required to be provided to the County and the County's designated coordinating agencies, so that they may assist local applicants to apply for these
vacancies. This requirement will end with the TID. Milwaukee County and many in the community have as a goal that the workforce on the Park East property reflect the racial diversity of Milwaukee County. The Milwaukee County Board and the community asks and expects businesses and contractors to make a good faith effort to employ racial minorities consistent with their numbers in the County's workforce (The 2000 county census population (over age 18) was 68.7% White, 20.4% Black, 7.2% Hispanic and 3.7% other). Reports will be required to determine whether this goal is being achieved.

7. Prevailing Wages and Employment Data
All RFP's and development agreements will require the payment of prevailing wages for construction employees as is now required for most public works projects. Developers, owners and tenants will be required to provide an annual report to Milwaukee County with the number of non-construction full and part time employees working on the Park East project. Milwaukee County will develop the required report which will include the wage ranges and whether employees have health or retirement benefits. This report will be designed to help measure the job impact of the PERC. This requirement will end with the TID.

8. Affordable Housing
Milwaukee County will sponsor the construction of new affordable housing of not less than 20% of the total housing units built on the County's Park East lands but they may be built on other infill sites in the city of Milwaukee. The County, in each RFP for any given parcel, may require a different percentage of affordable housing or have no requirement at all. The County may use funds from existing housing programs along with County funds to meet this requirement.

9. Green Space and Green Design
Milwaukee County will require that green space and green design be specifically included in all proposals submitted in response to an RFP. The County will consider this information when evaluating and selecting a final developer for each parcel.

10. Community Advisory Committee and Administration
A Community Advisory Committee will be appointed by the Chairman of the County Board, after the adoption of the PERC, which shall advise the County Board on implementing the PERC policies. This committee shall continue until the Tax Incremental District is completed for the PERC area. The Director of Economic and Community Development shall assist this committee in preparing an annual report to the County Board on the effects of the PERC policies. The Director of Economic and Community Development shall administer the PERC agreements with the primary goal to achieve the desired community benefits.

BE IT FURTHER RESOLVED, that Milwaukee County should seek the input of business and community leaders to assist in carrying out the PERC and CED Fund policies.

Adopted by the Milwaukee County Board of Supervisors December 16, 2004
COMMUNITY BENEFIT GUIDING PRINCIPLES

The Guiding Principles are a broad set of rules developed to encourage, influence and support the provision of community benefits. The Community Benefit Guiding Principles were developed with input from the study group community and refined by a community-led working group, our TAD Advisory Committee and a developer focus group. These Guiding Principles coupled with other implementation tools including but not limited to, the Atlanta BeltLine Overlay, Master Plans, Equitable Development Policies and Affordable Housing Policies, will promote the inclusion of these Community Benefits in developments over the life of the project.

1. MIXED-INCOME HOUSING
Housing within the City of Atlanta “BeltLine TAD” should be mixed-income and built with the highest standards for quality and sustainability. LEED, Earth Craft and Energy Star certification is desirable whenever possible. A certain number of units should be ADA accessible.

2. TRANSPORTATION INFRASTRUCTURE
Encourage alternatives to surface parking lots such as shared parking decks, hidden decks, and multi-storied decks above and below ground. Provide bicycle racks at all new developments and facilitate pedestrian movement through improved streetscapes, intersections and trails.

3. ALTERNATIVE TRANSPORTATION and CONNECTIVITY
All development should be pedestrian-friendly and accommodating to all modes of alternative transportation such as bikes, roller blades and wheelchairs. Every effort should be made to extend and connect each new development to the Atlanta BeltLine’s public realm with emphasis on alternative transportation modes. Encourage private developments to connect with each other, further connecting communities to communities.

4. GREEN SPACE and ENVIRONMENTAL SUSTAINABILITY
All efforts should be made to preserve existing green space and increase the quantity and quality of Atlanta BeltLine parks. Specific guidelines and practices should be developed to utilize Atlanta’s citywide infrastructure of streams and creeks, incorporating them into new developments as green space amenities.

5. MULTI-USE DEVELOPMENT
Multi-use development should be encouraged wherever possible and special consideration should be given to retaining desirable small businesses and retail establishments. Encourage new ventures currently absent from the community such as educational institutions, social and medical services and nonprofits.
6. BUSINESS and ECONOMIC DEVELOPMENT
Provide incentives and subsidies to encourage development that will provide unmet community services, such as grocery stores, urban farmers markets and pharmacies. Encourage local employment opportunities for all ages and all levels of skills and experience within these new businesses.

7. GREEN BUILDING and “GREEN” JOBS
Increase opportunities for new “green” jobs particularly by encouraging all new Atlanta BeltLine construction to meet sustainability criteria. The sustainable criteria could be either LEED or Earth Craft or Energy Star certification which may incorporate on-site renewable energy technologies whenever feasible. Consider incentives for attaining higher levels of certification such as LEED silver, gold and platinum wherever possible. Provide trash and recycling containers in appropriate places, particularly in public places.

8. PUBLIC SAFETY
Provide pedestrian and other lighting to promote safety while preserving the night sky by directing night lighting downward. Whenever possible, incorporate public safety services into any development such as police mini-precincts and allow for designated police parking with the precinct. Encourage planning of all new developments to incorporate Crime Prevention through Environmental Design principles (CPTED).

9. NEIGHBORHOOD, CIVIC LIFE and PUBLIC GATHERING PLACES
Developments of a particular size and type should provide public gathering places, large and small and make meeting space available to neighborhood and civic organizations. Priority should be given to adaptive reuse of existing structures already identified as having historic merit.

10. TECHNOLOGY
In an effort to bridge the digital divide, access to current technology should be encouraged in new multi-family residential developments such as high-speed internet, Wi-Fi access and other technological advancements as they become prevalent over time.

11. APPEARANCE and UTILITIES
All development should be encouraged to bury utilities underground and facilitate additional beautification measures throughout the Atlanta BeltLine corridor with an emphasis on litter control and removal.

12. ACCESSIBILITY
All development should be built to ensure accessibility to any persons with a disability, handicap, and/or senior citizens.
The City of Ann Arbor has adopted a Citizen Participation Ordinance (CPO) for three reasons:

**ONE:** To ensure that petitioners seeking approval of certain types of projects pursue early and effective citizen participation in conjunction with their proposed developments, giving citizens an early opportunity to learn about, understand and comment upon proposals, and providing an opportunity for citizens to be involved in the development of their neighborhood and community.

**TWO:** To provide clear expectations and formal guidance for petitioners to gather citizen comments regarding their proposals so that they may respond and attempt to mitigate any real or perceived impacts their proposed development may have on the community.

**THREE:** To facilitate ongoing communication between petitioners and interested or potentially affected citizens throughout the application review process.

An added benefit for petitioners…

The Citizen Participation Ordinance (CPO) formalizes a procedure for surfacing issues related to a petition early in the process before significant time is spent on detailed drawings.

Requiring petitioners to meet with staff and citizens prior to the petition submittal could alleviate complications from receiving comments and concerns from citizens for the first time at a public hearing.

This ordinance will provide many benefits, including minimizing the costly and time-consuming reworking of plans that often results from getting feedback late in the design development process.

### What types of projects are required to comply with the CPO?

Any proposed project that requires a public hearing needs to comply with the ordinance. This guide is for the following types of projects:

- **Planned Unit Development (PUD) Site Plan**
- **Planned Project Site Plan**
- **Rezoning**
- **Major Site Plan**

**Defined as a proposed project:**

- a. Containing over 80 residential units
- b. Over 65 feet in height
- c. Over 50,000 square feet of non-residential usable floor area
- d. That may require citizen participation depending on the scope, nature or any unique or unusual characteristics as determined by the Planning & Development Services Unit Manager.
Four Step Process: Citizen Participation
Ordinance requirements

Step ONE
Meet with Planning & Development Services Unit Staff
Make sure you know and understand the responsibilities and requirements to satisfy the ordinance.

Call a planner (734.794.6265) to schedule an appointment well before you anticipate submitting a petition. Please note: Petitions will not be accepted for review if the requirements in the ordinance are not met.

Step TWO
Prepare to Notify Citizens
Before submitting a petition there are several tasks to accomplish to meet the requirements of the citizen participation ordinance. Careful planning and scheduling will be important so your submittal is not delayed.

A) Set a Date and Place
Decide when and where you would like to hold a meeting with your site neighbors. Allow at least 10 business days between sending notices and the meeting date and 10 business days between the meeting date and the petition submission date. Make sure the location is accessible to everyone in attendance.

The following public meeting planning considerations may help ensure your meeting(s) are accessible and informative:

What:
- Determine meeting format — information-providing; information/feedback-gathering; Q&A; decision-making, etc.
- Equipment needed — projector, laptop, screen; Internet connection; microphone/speakers; easels; paper; writing utensils; handouts; business cards; sign-in sheet; directional signs to post on doors at the meeting location.

When:
Day of the week
- Consult a calendar to avoid scheduling a meeting on national or religious holidays.

- Meetings scheduled on Monday through Thursday are best. Sundays or Friday at sundown are not appropriate for meetings.

Time of day
- For general audiences, weekday early evenings are preferred.

Time of year
- In general, summer months should be avoided when possible for two main reasons: residents may be out of town and university population is sparse.

- Avoid times when downtown travel is difficult, e.g., Art Fair.

Where:
Is the venue
- on a bus line
- accessible to those with a physical challenge (barrier free parking, facility/room entrance, seating)
- adjacent to available parking
- a logical location for the meeting, based on the proposed project area
- a generally recognized “public” gathering place
- centrally located
- spacious enough for anticipated crowd volume
- equipped with seating (or will you need to bring chairs?)
- equipped with electrical outlets (if necessary)

Sample locations (partial list):
- Parks & Recreation facilities (Cobblestone, Gallup, etc.)
- Schools (University of Michigan facilities, Ann Arbor Public Schools)
- Library

B) Request Mailing Labels
Provide City staff with your site location and your e-mail address. City staff will provide you with a Word document of mailing labels that you can print and affix to postcards or envelopes. The mailing labels will include all property owners, addresses and registered neighborhood groups within 1,000 feet of the proposed petition site. Per the new
ordinance, you are responsible for the cost of mailing the notices. You can save quite a bit of money by using a postcard format rather than a first class letter format.

C) Make Sure Your Notice Conveys the Following Information:

- A statement explaining the citizen participation requirements, including an explanation of why and to whom such information is being sent, the opportunities for participation, and how the information gathered through the citizen participation process will be used by the petitioner.
- A statement that a petition is being prepared for submittal along with a written description of the proposal and a conceptual sketch of the development.
- The petitioner’s schedule for citizen participation meeting(s), the anticipated petition submittal date, and the anticipated City review and approval schedule.
- How those individuals who receive notices will be provided an opportunity to discuss the application with the petitioner and express any concerns, issues, or problems they may have with the proposed project.
- Meeting logistics: date, time, place, map and parking instructions if necessary.
- Contact name, phone number and e-mail.
- Statement regarding availability of special accommodations/instructions and how to request them. A suggested text might be: Persons with disabilities are encouraged to participate in public meetings. Accommodations, including sign language interpreters, may be arranged by contacting the (insert petitioner’s name here). Requests need to be received at least 24 hours in advance of the meeting.

D) Mail Postcards or Letters

Choose the format which works best for you and drop the cards or letters in the mail at least 10 business days before the meeting date. At the same time, provide a digital PDF copy of the card or letter so City staff can distribute it through the official City of Ann Arbor e-mail notification program (GovDelivery system).

Step THREE

The Citizen Participation Meeting

- Ten business days before your petition is submitted, you must hold at least one public meeting. City staff will not attend the meeting.

Meeting Cancellation Process

Please be considerate and post a note at the entrance of the meeting location if the meeting is being cancelled. If available, include the rescheduled meeting information and a contact name and number.

- Weather-related cancellations: As a general guideline, it is recommended for public meetings to be cancelled when the Ann Arbor Public School District cancels classes.

Step FOUR

Final Citizen Participation Report

Prepare a final report documenting your citizen participation efforts. Include the final report in a digital, PDF format with your planned project, PUD, rezoning or major site plan petition submittal package. The final report should also be mailed or e-mailed to all meeting attendees prior to submitting your petition. The report should include the following:

- Date(s) and location(s) of meeting(s), copies of all written materials prepared and provided to the public (letters, meeting notices, e-mails, newsletters, etc.).
- Number of citizens sent notices by mail, e-mail or other; number of citizens attending; and copies of attendance or sign-in sheets. Sign in sheets should include attendees’ e-mail and postal addresses.
- Summary of comments, concerns, issues or problems expressed by citizen participants; statement of how you, the petitioner, have addressed or intend to address those concerns, issues or problems, or why a concern, issue or problem cannot or will not be addressed.
PETITIONER CHECKLIST: Have you...

- Met with the Planning & Development Services Unit staff?
- Notified citizens of the public meeting at least 20 business days in advance of the petition submittal date?
- Held a Citizen Participation Meeting at least 10 business days in advance of the petition submittal date?
- Prepared a final Citizen Participation Report?
- Submitted the report with your petition submittal?

Thank you...

Thank you for your participation - we hope this process will improve communications between you and the citizens who may be affected by your plans.

For questions about these requirements, please call the City of Ann Arbor Planning & Development Services Unit staff at 734.794.6265.

The Citizen’s Participation Ordinance can be downloaded from the Planning page of the City’s Website: www.a2gov.org.
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FOR MORE INFORMATION, VISIT WWW.METRODETOIRD4.ORG