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## INFORMAL STAFF REPORT TO MAYOR AND CITY COUNCIL

### **SUBJECT:**

Community Benefits Agreement and Ordinance

### **EXECUTIVE SUMMARY:**

"At its simplest, a CBA is a legal contract between a developer and a set of nongovernmental groups whose support the developer considers necessary to obtain key public approvals or subsidies" (Wolf-Powers, Laura (2010) 'Community Benefits Agreements and Local Government: A Review of Recent Evidence', Journal of the American Planning Association, First published on: 23 February 2010 (iFirst)). Community Benefits Agreements are usually framed as a private agreement between developers and resident groups, or coalitions directly affected by a specific development project. These agreements can detail multiple benefits, such as local hiring goals, living wage requirements, job training programs, and affordable housing requirements that the developer will provide to the community. In turn, the community groups or coalitions involved agree to support the project.

A Community Benefits Ordinance (CBO) is a specific ordinance that requires private developers to proactively engage with the community to identify community benefits, address potential negative impacts, and negotiate a Community Benefits Agreement with the community for developer(s) to provide certain commitments associated with proposed projects. CBOs are most applicable to projects that need zoning entitlements and/or public financing to make the projects come to fruition.

The current City practice recommends developers conduct public engagement with neighborhoods and community organizations related to development projects.

### **BACKGROUND:**

On December 2, 2022, CM McGee made a 2-minute pitch for a Work Session regarding Community Benefit Agreements that did not receive the four votes necessary to proceed.

*"Community Benefit Agreements are a way to bridge the gap between developers and the community in which they want to develop in. It gives all parties a say in building the neighborhood they want to live in. I would like to have a work session on Community Benefit Agreements, including Where have CBA's been enacted? What do they require and for what size and scale of project? Do they work successfully? Could a CBO (Ordinance)*

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*potentially be helpful in Denton or in parts of Denton, perhaps in vulnerable communities like SEDNA?”*

On June 6, 2023, CM Meltzer made a 2-minute pitch and received support for an Informal Staff Report regarding Community Benefit Agreements “so council can evaluate whether a CBO might be a useful tool to help Denton develop in uniquely Denton ways with the guidance of Denton neighborhoods”.

*“With the intense development pressure in Denton, the objective of this pitch is to help sensitive neighborhoods and developers get on the same side and formally agree, with proper successors and assigns language, on how new development will benefit those neighborhoods. In an individual case, it’s called a community benefits agreement, a CBA, and involves the two parties with no role for the city. Sometimes CBAs result in community amenities like preserved green space and trails. Sometimes they result in a percentage of rental units being made affordable, or local training and hiring. It could be an effort to address a food desert. It’s up to the parties.*

*The concept of a community benefits ordinance, a CBO, would be to require the developers of a project that’s a) above a certain scale and b) in a neighborhood that’s under a small area plan to make good faith efforts to achieve a CBA as part of their process. The other party would be an existing neighborhood association or, if one doesn’t exist, there would be a process to assist an ad hoc association to be formed for that purpose.*

*CBO’s already exist in other places. My ask is for staff to help us learn what has worked and what hasn’t, under what circumstances, and what the different approaches have been so council can evaluate whether a CBO might be a useful tool to help Denton develop in uniquely Denton ways with the guidance of Denton neighborhoods.”*

## **DISCUSSION:**

Staff reviewed Community Benefits Agreements: Definitions, Values, and Legal Enforceability By Julian Gross ([\*Journal of Affordable Housing Vol. 17:1–2 Fall 2007/Winter 2008\* pp.35-58](#)) and a [CBA Toolkit](#) adapted from this research . Staff also reviewed Policy, Ordinance and Agreements from cities including Cleveland OH, Detroit MI, Philadelphia PA, Richmond VA, and St. Petersburg FL.

While it is more common for local officials to encourage such negotiations, only a few jurisdictions are experimenting with requiring such negotiations. An evaluation of the lessons learned are provided below.

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***Definitions***

- Community Benefit Agreements – Private agreements negotiated among community groups and a developer that require specific terms in exchange for local support.
- Community Benefits Ordinance (CBO) – an ordinance that requires private developers to negotiate a Community Benefits Agreement with the community for certain proposed projects.
- Development Agreements – Agreements negotiated between a municipality and a developer that require specific terms.

**When are CBO, CBA Most Applicable?**

- All developments seeking zoning entitlements (e.g. zoning changes, specific use permits);
- Affordable housing projects; and/or
- Economic development projects where public subsidies being sought (such as city tax rebates above a certain threshold; financial contributions by the City).

**Pros*****Potential Benefits to the Community***

- CBAs may give neighborhoods a more meaningful role in the development process than the opportunities the existing land use process provides for public participation; note that when properties already have zoning entitlements in place the community's negotiation power is lessened significantly.
- CBA's provide some certainty about benefits sought from the project.
- CBA's may contain considerations for:
  - Job creation;
  - Local and diverse hiring and training commitments;
  - Living wage and other benefits;
  - Support for local small businesses;
  - Improvements to open spaces, parks and playgrounds;
  - Affordable housing and rehabilitation;
  - Support for senior centers and child-care facilities;
  - Local economic incentive packages;
  - Quality of life consideration such as lighting, noise, traffic, construction hours, parking impacts; and
  - Neighborhood-serving commercial tenant space (provided market support).

***Potential Benefits to a Developer***

- Community support may reduce risk for developers by limiting potential opposition to a particular project, particularly when zoning entitlements are needed by the developer.

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## Cons

- The community may have challenges with organizing representatives to negotiate with the developer.
- CBAs are legally contracted documents thus legal counsel for the community will be necessary.
- The community may face the difficulties of legal enforceability such as who can enforce what provisions of the agreement, the agreement may not be binding to all parties, and is the agreement transferable.
- The community may have difficulties enforcing and monitoring agreements, as community population evolves and priorities change.
- Not all persons within the “community” may agree to the terms negotiated limiting the community member’s bargaining power and tactics. In addition, certain members may believe that they were excluded from the negotiation process thus potentially negating prior community efforts.
- The inexperience of community stakeholders increases the need for meetings and may be costly to the development, and costly to the community needing legal assistance throughout the negotiations.
- If the project is built yet not all provisions of the CBA are satisfied over time, then what happens to the built project?
- For affordable housing projects, requiring developers to negotiate certain requirements affiliated with their project adds time and money to the project thereby increasing costs to develop the project and reducing the number of affordable units. May create a scenario where the CBA is used by NIMBY’s to stall /weaponize projects.

## Challenges identified in Cleveland OH, Detroit MI, Philadelphia PA, Richmond VA, and St. Petersburg FL

- Communities not able to enforce CBA’s
- Large scale versus small scale development.
  - Complex negotiations: Large-scale projects often involve multiple stakeholders, including developers, local governments, and various community groups. Coordinating and reaching a consensus among these parties can be complex and time-consuming.
  - Administrative burden: Long-term commitment and monitoring.
  - Limited resources: Smaller projects may have fewer resources, making it difficult to provide substantial community benefits.
- Community coalitions require legal counsel to assist with negotiating CBAs, including having to pay for counsel services.

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- Who bears the program oversight and responsibilities to enforce CBAs and the costs associated with monitoring and enforcement?
  - Who are the agreed upon community members that can speak for the community residents and commit to (or provide) the community support? Also, not all persons within the “community” may agree to the terms negotiated, as well as certain members may believe that they were excluded from the negotiation process thus potentially negating prior community efforts.
  - Potential denial of projects/zoning change requests lacking a CBA.

**Current City Practices**

- Inform community groups of proposed developments seeking zoning entitlements;
- Encourage developers to have neighborhood meetings regarding their proposed projects; and
- Periodically negotiate community benefits in economic development agreements when City incentives are provided.

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**REQUESTOR:** Council Member Meltzer

**STAFF TIME TO COMPLETE REPORT:** 12 hours

**PARTICIPATING DEPARTMENTS:**

Development Services

Community Services