

Ordinance No. 297-2023

By Council Members Griffin and Santana

AN EMERGENCY ORDINANCE

To supplement the Codified Ordinances of Cleveland, Ohio, 1976, by enacting new Chapter 191A, Sections 191A.01 through 191A.07, related to Community Benefits Agreements.

WHEREAS, this Council recognizes the gap between supply and demand in the construction and development industry, economic market failures, barriers to entry for communities of color and women, and stark racial and socioeconomic disparities that exist in the Cleveland community, and the high cost we all pay for not reaching parity; and

WHEREAS, this Council values the principles of diversity, equity and inclusion, and desires to consider those principles and practices in legislation authorizing public funding for construction and development projects; and

WHEREAS, to further these principles, this Council is working with the Administration to improve compliance with and reporting of the existing Office of Equal Opportunity Minority Business Enterprise, Female Business Enterprise, and Cleveland Area Small Business (MBE, FBE, and CSB) contracting and resident employment goals, as well as maximizing tangible benefits to Cleveland's communities and citizens through Community Benefits Agreements to correct market failures; and

WHEREAS, the City of Cleveland OEO's 2021 Annual Report reported that 6.5% of the City's prime contracts were awarded to MBEs; 21% were awarded to FBEs; and 45% were awarded to CSBs; and

WHEREAS, from 2014 to 2018, of \$1.1 Billion in prime contract spending by Cuyahoga County, only 51.5 Million, or 4.62% was awarded to Minority and/or Women-owned Business Enterprises (MWBE) firms as prime contractors; 4.03% of the total MWBE contracts went to White female-owned firms, and only 0.59% of the awards were received by MBEs; and

WHEREAS, numerous cities, including Philadelphia, Detroit, Boston, St. Louis, and South Fulton, Georgia have enacted ordinances or adopted policies and practices that require developers seeking local government funding to contractually provide community benefits; and

WHEREAS, with Resolution No. 954-2022, adopted September 26, 2022, this Council established a working committee with the Administration and community stakeholders, including the Office of Equal Opportunity, Departments of Economic Development, Community Development, and Community Relations Board, to consider implementing a City policy and ordinance to ensure that developers seeking city support and financial assistance for development projects contractually provide maximized, tangible benefits to Cleveland's communities and citizens; and

WHEREAS, to develop a City policy and ordinance, the working committee studied existing policies and ordinances, current and expanded City community benefits and practices, potential required and optional benefits, balancing the need for predictability with flexibility; criteria based on natural breaks in development project size, cost, and location, city-wide and neighborhood benefits, development contracting and legislative processes, and effective community-engagement processes; and

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WHEREAS, the working committee also recommended improved reporting practices and greater public access to workforce and community benefits data and information through quarterly Office of Equal Opportunity reports to Council's Finance, Diversity, Equity and Inclusion Committee, Administration provision of Community Benefits Agreements to Council to include in the publicly available legislative file, and creation of a centrally located, publicly available dashboard of workforce and community benefits data, including revenue to OEO-certified firms, revenue to Cleveland residents, and tangible community benefits – disaggregated by race and gender, as appropriate; and

WHEREAS, the working committee held three focus groups with construction and development-industry stakeholders for discussion and input on community benefits that nearly 100 individuals attended; and

WHEREAS, the focus groups identified as working well in the construction ecosystem: the abundance of development opportunities coming into Cleveland; the increased awareness of the need for diversity, equity, and inclusion in the construction sector; and the greater sense of collaboration taking place within the construction sector and between the sector and local government; and

WHEREAS, the focus groups identified as not working well in the construction ecosystem: workforce-related issues such as the lack of a talent pipeline (human capital) that keeps pace with the growth and diversification of construction demand; limited capacity of training and business development resources – especially for women and communities of color; and many structural barriers including slow local government processes, slow payment of contractors, and redundant certification processes; and

WHEREAS, individual stakeholders stated that the community benefits process should be accountable, flexible, impactful, and should have compliance and evaluation procedures; and

WHEREAS, the City of Cleveland supports efforts to increase Cleveland's workforce participation in the skilled trades; and acknowledges the ongoing industry efforts to increase participation, including through Cuyahoga Community College's Adult Pre-Apprenticeship Program, Max Hayes' school to work agreements, Cleveland Building & Construction Trades Council and Construction Employers Association's Cleveland Builds pre-apprenticeship program, career pathways supported by the Built Environment Collaboration Partners, and other programs; and

WHEREAS, this Council and the Administration want to maximize benefits to our neighborhoods by requiring developers seeking City financial assistance to contractually provide community benefits; and

WHEREAS, the City of Cleveland will work with the local development community to implement this ordinance expeditiously consistent with both the ordinance principles and the need to continue encouraging economic development in the City and meet the scheduling needs of development projects; and

WHEREAS, this ordinance constitutes an emergency measure providing for the immediate preservation of the public peace, property, health or safety; now, therefore,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CLEVELAND:

Ordinance No. 297-2023

Section 1. That the Codified Ordinances of Cleveland, Ohio 1976, are supplemented by enacting new Sections 191A.01 through 191A.07 as follows:

Chapter 191A Community Benefits Agreements

191A.01 Definitions

For purposes of this Chapter:

- (a) “City Financial Assistance” means any grant, loan, tax increment financing, residential multi-family tax abatement in compliance with Ordinance No. 482-2022, Section 3, below market-value land transfer, and/or City-funded capital infrastructure improvements associated with a development project;
- (b) “Community Benefits Agreement” or “CBA” means a legally enforceable agreement between the City of Cleveland and the Developer that provides community benefits;
- (c) “Community Benefits” means the amenities, benefits, commitments, or promises described in Sections 191A.02 and 191A.03 of this Chapter;
- (d) “Developer” means any person, firm, partnership, limited liability company, corporation, joint venture, proprietorship, or other entity that proposes a Development Project, excluding public improvement projects, in the City of Cleveland; and
- (e) “Development Project” means new construction of and alterations to buildings and structures located in the City.

191A.02 Community Benefits Agreement Required

To receive City Financial Assistance of \$250,000 or more towards a Development Project, a Developer shall enter into an agreement with the appropriate City director providing at least the following Community Benefits:

- (a) A plan to meet Minority Business Enterprise, Female Business Enterprise, and Cleveland Area Small Business (MBE, FBE, and CSB) participation goals, consistent with Chapter 187, from any or all of the following, including at team leadership, preconstruction, construction, trade and craft sub-contractor, professional services, real estate and property management and/or post-project hiring levels;
- (b) A plan to meet resident and low-income resident employment goals the City establishes for each Project;
- (c) Participation in mentor/protégé programs for certified MBEs, FBEs, CSBs and residents;
- (d) Registered apprenticeship and internship opportunities for adult Cleveland residents and City of Cleveland community college students that are Cleveland residents; and providing pre-apprenticeship, internship, and/or information and networking session opportunities for City of Cleveland high school graduates and students that are Cleveland residents;
- (e) A commitment to meet periodically with community stakeholders to gain community input on the development project; and

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(f) Providing quarterly reports to the Office of Equal Opportunity (OEO) regarding compliance with the above workforce, contracting and subcontracting, and community benefits commitments, in addition to and coordination with the reports required by Codified Ordinance Section 187.24, in the spirit of collaboration and partnership with OEO that serves as a resource to developers.

191A.03 Community Benefits for Large Development Projects

To receive City Financial Assistance of \$250,000 or more towards a Development Project expected to cost \$20,000,000.00 or more, a Developer shall enter into an Agreement providing the Community Benefits required in Section 191.02 of this Chapter, and additionally include those of the following development-specific Community Benefits, as determined by the director of the applicable department in consultation with the Developer, in that Agreement:

(a) Joint-venture, co-development, and owner's representative opportunities for MBEs, FBEs, and CSBs;

(b) Associate partner opportunities for MBEs, FBEs, and CSBs;

(c) Promotion, support, and participation in workforce collaborations, similar to those supported in the manufacturing, information technology, and healthcare sectors, that expand job opportunities for communities of color and women;

(d) Hosting job fairs and contractor information and networking sessions about upcoming contracting opportunities;

(e) Unbundling construction work into smaller bid packages of sizes suitable for competition by MBE, FBE, and CSB firms;

(f) Facilitating access to bonding, financing, insurance, and other capacity-building assistance to MBEs, FBEs, and CSBs;

(g) Promoting opportunities for investment in the Development Project, including but not limited to community investment trusts and community land ownership;

(h) Incorporating LEED principles, and additional sustainable business practices, into the design and construction of the Development Project;

(i) Providing neighborhood infrastructure and safety improvements, including but not limited to curbs, street paving, sidewalks, multi-purpose and bicycle paths, pedestrian traffic-calming measures, parks and greenspace, landscaping, lighting, security cameras, bicycle racks, signage, public art, and blight removal, to the extent not provided by the City or other public entity;

(j) Affordable housing units in conjunction with the Development Project and/or contribution to a fund for that purpose;

(k) Use of project financing from a financial institution that has submitted an Affidavit of Intent required under Codified Ordinance Section 178.05 and in the form contained in Section 178.07, affirming its lending and financing opportunities and defined lending program in support of residential and commercial development in Cleveland's neighborhoods;

(l) Use of Cleveland Public Power as preferred electricity provider for the Project, to the extent feasible;

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(m) A commitment to enter into a Project Labor Agreement (PLA) with one or more construction unions for the Development Project;

(n) Meeting other community needs related to the development project; and

(o) Any other negotiated community benefits, including but not limited to those enumerated in the Regulations and Procedures promulgated under Section 191.06 of this Chapter; and

(p) Implementation plan for items listed above.

Section 191A.04 Cleveland Citywide Development Corporation Advisory Review

Cleveland Citywide Development Corporation (CCDC) shall consult with and advise the appropriate Departments of Economic Development, Community Development and/or the Office of Equal Opportunity for the following purposes:

(a) Reviewing Community Benefits commitments from Developers based on community and City departmental input for proposed Development Projects; and

(b) Recommending to the Administration and City Council Community Benefits to be included in CBAs for Development Projects prior to passage of legislation authorizing City financial assistance for such projects.

Section 191A.05 Reporting and Public Dashboard

(a) The Office of Equal Opportunity shall send quarterly reports of workforce and Community Benefits compliance data to Cleveland City Council's Finance, Diversity, Equity and Inclusion Committee for review.

(b) Upon its execution, the appropriate Department shall provide a copy of each Community Benefits Agreement to the Clerk of Council to include in the legislative file attached to legislation authorizing City Financial Assistance for such Development Project.

(c) The Office of Equal Opportunity shall develop and host a publicly available dashboard of workforce and Community Benefits data, which shall include at least revenue to certified MBE, FBE, and CSB firms, revenue to Cleveland residents, and tangible Community Benefits – disaggregated by race and gender, as appropriate.

Section 191A.06 Regulations and Procedures

The Directors of Economic Development, Community Development, and the Office of Equal Employment Opportunity as appropriate (collectively, the "Directors") may promulgate regulations and procedures to carry out the provisions of this Chapter, including a scorecard evaluation process and CBA template with Section 191A.02 requirements for qualifying proposed Development Projects.

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Section 191A.07 Penalties for Noncompliance

Failure by a Developer to comply with any provisions of a CBA as determined by the City in its sole discretion may result in denial or termination of City Financial Assistance and recovery of previously provided financial assistance.

Section 2. This new Chapter 191A shall not apply to Development Projects where the City issued, prior to the effective date of this ordinance, a commitment letter for City Financial Assistance for a Development Project, but shall apply to additional City Financial Assistance for the same Development Project committed to by the City after the effective date of this ordinance.

Section 3. That to allow the Directors sufficient time to promulgate regulations and procedures under 191A.06, new Chapter 191A shall take effect 90 days after the effective date of this ordinance. The Directors shall report to Council regarding the implementation of regulations and procedures and the effectiveness of this Chapter one year after it is effective.

Section 4. That this ordinance is declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force 90 days after its passage and approval by the Mayor.

/jho
3-6-23
FOR: Council Member Griffin

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By Council Members Griffin and Santana

AN EMERGENCY ORDINANCE

To supplement the Codified Ordinances of Cleveland, Ohio, 1976, by enacting new Chapter 191A, Sections 191A.01 through 191A.07, related to Community Benefits Agreements.

READ FIRST TIME on MARCH 6, 2023

and referred to DIRECTORS of Equal Opportunity, Economic Development, Community Development, Finance, Law; COMMITTEES on Workforce Education Training and Youth Development, Development Planning and Sustainability, Finance Diversity Equity and Inclusion

REPORTS

CITY CLERK

READ SECOND TIME

CITY CLERK

READ THIRD TIME

PRESIDENT

CITY CLERK

APPROVED

MAYOR

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Published in the City Record _____

**REPORT
after second Reading**

PASSAGE RECOMMENDED BY
COMMITTEE ON
**WORKFORCE, EDUCATION,
TRAINING and YOUTH
DEVELOPMENT**

FILED WITH COMMITTEE

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COMMITTEE ON
**DEVELOPMENT, PLANNING AND
SUSTAINABILITY**

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