

Ordinance No. 297-2023 AS AMENDED

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 190A, Sections 190A.01 through 190A.07, relating 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, the City of Cleveland OEO analyzed non-compliance of Economic Development projects from 2019-2023 and found: \$13.9 million in lost wealth creation opportunities for MBE and FBE contractors (\$8.9 million and \$6.1 million, respectively); 358 full-time employment opportunities lost for Cleveland residents; and assuming those employees would have made at least \$20/hour, \$14.4 million in lost wages and \$359,000 in lost payroll taxes; 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

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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

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

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ordinance principles and the need to continue encouraging economic development in the City and meet the scheduling needs of development projects; and

WHEREAS, the City of Cleveland will work with prospective developers selecting sites and provide flexibility regarding how community benefits apply to development projects when the City is competing against other jurisdictions for the establishment of a new facility that will create new jobs or for specified retention/relocation of a business enterprise that will retain jobs; and

WHEREAS, the Administration and City Council intend to convene stakeholders, including business, labor, construction, education, minority business servicing organizations, and other organizations, to forge a shared approach to the implementation of this ordinance through a Memorandum of Understanding; 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:

Section 1. That the Codified Ordinances of Cleveland, Ohio 1976, are supplemented by enacting new Sections ~~191A.01 through 191A.07~~ 190A.01 through 190A.07 as follows:

~~Chapter 191A~~ Chapter 190A **Community Benefits Agreements**

~~191A.01~~ Definitions
~~Section 190A.01~~ Definitions

For purposes of this Chapter:

(a) “City Financial Assistance” means any City-funded grant, loan, tax increment financing, residential multi-family tax abatement in compliance with Ordinance No. 482-2022, passed March 25, 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~~ benefits, or commitments described in Sections ~~191A.02 and 191A.03~~ 190A.02 and 190A.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
~~Section 190A.02~~ Community Benefits Agreement Required

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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 that provides~~ 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, including architectural and engineering design, 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 Development 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 Development Project;

~~(f) Providing~~ Additionally, the agreement shall require the Developer to provide 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. Developers.

~~191A.03~~ Community Benefits for Large Development Projects
~~Section 190A.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~~ 190A.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;

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(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 Development Project, to the extent feasible;

(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 plans for items listed above.~~

(n) Providing work opportunities for formerly incarcerated persons and at-risk youth;

(o) Meeting other community needs related to the Development Project;

(p) Contribution to a community equity fund designated by the Director of Finance with all expenditures requiring legislative approval;

(q) Any other negotiated community benefits, including but not limited to those enumerated in the regulations and procedures promulgated under Section 190A.06;

(r) Implementation plan for items listed above; and

(s) This section shall not apply to Development Projects under \$75,000,000 receiving only a residential multi-family tax abatement as City Financial Assistance; however, the community benefits agreement requirements of Section 190A.02 and Ordinance No. 482-2022, passed March 25, 2022, Section 3 shall apply to such Development Projects.”.

~~Section 191A.04~~ Section 190A.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.~~

Reviewing Community Benefits commitments for proposed Development Projects as presented by the Departments, based on community and developer input,

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prior to passage of legislation by City Council authorizing City Financial Assistance for such projects.

Section 191A.05 Section 190A.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.

(d) The Office of Equal Opportunity (OEO) shall develop and maintain lists of the following: 1) Certified MBEs, FBEs, and CSBs and the types of services they provide; 2) Mentorship and apprenticeship programs; and 3) Training programs for laborers. These resources shall be posted on the websites of OEO, the Department of Economic Development, and the Department of Community Development, and shall be provided to any Developer seeking City Financial Assistance upon request, updated quarterly by OEO, and reviewed annually by the Cleveland Citywide Development Corporation (CCDC) and City Council.

Section 191A.06 Section 190A.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~~ 190A.02 requirements for qualifying proposed Development Projects.

Section 191A.07 Section 190A.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.~~ any one or more of the following, as provided in the CBA, subject to applicable notice and cure provisions: denial or termination of City Financial Assistance; proportional recovery of previously provided financial assistance; and/or stipulated damages to be deposited into a community equity fund designated by the Director of Finance. All expenditures from this community equity fund shall require legislative authority from City Council.

Section 2. This ~~new Chapter 191A shall not apply to Development Projects where Chapter 190A shall not apply to a Development Project for which 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.~~

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Section 3. That to allow the Directors sufficient time to promulgate regulations and procedures under ~~191A.06, new Chapter 191A~~ 190A.06, this Chapter 190A 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.~~ Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

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**REPORT
after second Reading**

By Council Members Griffin and Santana

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_____ **READ FIRST TIME** _____ **REPORTS**

and referred to _____

by the council _____

CITY CLERK

_____ **READ SECOND TIME** _____
by the council _____

CITY CLERK

_____ **READ THIRD TIME** _____
by the council _____

PRESIDENT

CITY CLERK

APPROVED

MAYOR