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TO: Detroit City Council
FROM: David Whitaker, Director
Legislative Policy Division
DATE: October 12, 2020
RE: **Comprehensive Report on the Community Benefits Ordinance Process**



This report is in response to Councilmember Tate’s September 24, 2020 memorandum requesting the Legislative Policy Division (LPD) to provide a comprehensive analytical report on staff’s findings pertaining to all meetings related to proposed amendments to Chapter 12 of the 2019 Detroit City Code, *Community Development Article VIII, Community Benefits*, commonly known as the “Community Benefits Ordinance.”

This report will provide a detailed timeline laying out how recommended revisions to the Community Benefits Ordinance were received, considered, revised, and vetted by council staff, members of the general public, development community, and the administration. Additionally, this report will provide a synopsis of recommended revisions that have the concurrence of both members of the general public as well as the development community based on the September 2019 community survey, and public forums which have taken place in January and July of 2020 respectively.

BACKGROUND

In November of 2016, the Proposal B ballot initiative passed with 53% of the vote, effectuating the enactment of the City of Detroit’s Community Benefits Ordinance (CBO) Ordinance No. 35-16. The expressed purpose of this ordinance is to garner “*outreach and engagement that promotes transparency and accountability and ensures development projects in the City of Detroit benefit and promote economic growth and prosperity for all residents.*”

Section 12-8-3, subsection (a)(5) of the ordinance states that *“the City Council shall appoint a liaison from the Legislative Policy Division to monitor the community engagement process and provide updates to the City Council.”*

To date, there have been twelve development projects which have met the criteria for a Tier 1 Development Project¹ as defined by the Community Benefits Ordinance. Under the provisions of Section 12-8-3, subsection (a)(5) LPD has assigned a staff person to serve as Council's liaison to ensure that the provisions of the ordinance are being carried out in accordance with the spirit and intent of the ordinance. At the conclusion of each Community Benefits process, LPD staff has provided a comprehensive report detailing the processes of the community engagement process along with recommendations of how the process can be improved to ensure maximum community participation.

While LPD staff has the mandated responsibility to oversee the CBO process as Council's liaison, several members of the general public have taken it upon themselves to engage in the ad hoc oversight of these proceedings as well. Most notably among the groups formed are “Detroit People's Platform,” and “Equitable Detroit Coalition.”

Pursuant to Section 12-109 of the City Charter, such an ordinance adopted through initiative proceedings may be amended or repealed by the City, after a period of twelve (12) months after the date of the election at which it was adopted.

In January 2018 Equitable Detroit Coalition and Detroit People's Platform submitted twelve recommended amendments to the Community Benefits Ordinance to the Detroit City Council for your consideration (attached). In a memorandum dated July 23, 2018, LPD staff submitted an additional nine recommended amendments to further strengthen the resolve and community engagement aspects of the Community Benefits Ordinance (attached).

Subsequently, several memorandums from various Councilmember's offices were submitted to the Planning and Economic Development Standing Committee for consideration and inclusion in a revisionary draft of the Community Benefits Ordinance. In total sixty-four recommended revisions were submitted to Your Honorable Body for consideration. Forty-three of the recommended revisions were submitted by members of the Council are summarized and annotated in LPD's October 1, 2018 report (attached).

¹ *Tier 1 Development Project* means a development project in the City that is expected to incur the investment of Seventy-five Million Dollars (\$75,000,000) or more during the construction of facilities, or to begin or expand operations or renovate structures, where the developer of the project is negotiating public support for investment in one or both of the following forms:

- (1) Any transfer to the developer of City-owned land parcels that have a cumulative market value of One Million Dollars (\$1,000,000) or more (as determined by the City Assessor or independent appraisal), without open bidding and priced below market rates (where allowed by law); or
- (2) Provision or approval by the City of tax abatements or other tax breaks that abate more than One Million Dollars (\$1,000,000) of City taxes over the term of the abatement that inure directly to the Developer, but not including Neighborhood Enterprise Zone tax abatements.

Upon receiving the October 1, 2018, LPD report, the staff was instructed to convene a legislative workgroup comprised of the various Councilmember's legislative staff to review and consider each of the sixty-four recommended revisions. The meetings of the legislative workgroup took place in the Legislative Policy Division's offices in Suite 208 of the Coleman A. Young Municipal Center between October 2018 and February 2019 resulting in a total of seven meetings. The work product of those legislative workgroup meetings resulted in the sixty-four recommendations being paired down to seventeen items. A chart showing each of the recommendations, along with which office offered said recommendations were utilized during the working group meetings. Votes were taken in which a simple majority was needed for a recommendation to be included in the working group's final recommendations to Council (attached).

During the duration of the legislative workgroup, the office of Council Member Benson requested that the Law Department opine on the legality and or permissibility of each of the recommendations being considered. The Law Department submitted a memorandum dated February 7, 2019, in which they cite which items to date had been withdrawn from consideration, therefore did not require a legal opinion, as well as which items were matters of public policy and have no direct legal implications. The conclusions offered in the Law Department's memorandum show that none of the sixty-four recommended revisions had direct legal implications (attached).

A copy of a PowerPoint presentation presented to the Planning and Economic Development Standing Committee showing the final recommendations of the working group and by what number of votes each recommendation was either met with support or opposition is attached for your review (attached). To solicit widespread community buy-in on the seventeen recommended revisions, LPD working with the Department of Innovation and Technology (DoIT) created a community survey to gauge the level of support from the community at large. The survey was posted on the Detroit City Council's website as well as the website for the Legislative Policy Division for September 2019. Additionally, an electronic link to the survey was shared with each Councilmember's office and sent out to a list of approximately 1,500 individuals whose information had been collected by the Planning and Development Department as having previously attended any of the Community Benefits processes to date.

Of the 1,500 or so solicited responses, only 76 respondents participated in the survey. That equates to a return rate of 5.06%. In statistical studies, a return rate of at least 60% would be needed to conduct a valid poll. That being said, the results of the community survey were compiled into a PowerPoint presentation and shared with Your Honorable Body in October 2019, one year after convening of the legislative workgroup (attached). At the request of the Planning and Economic Development Standing Committee, a city-wide community forum was scheduled for January 30, 2020, to share the results of the survey and to solicit additional feedback on the recommended revisions. LPD submitted a report dated March 11, 2020, which summarizes the process the working group had undertaken to that point in addition to the findings and feedback from the January 30, 2020, city-wide community forum which took place at the IBEW Local Union 58 located at 1358 Abbott Street (attached).

On July 22, 2020, LPD staff conducted another community forum targeted specifically for members of the development community who might find themselves subject to the provisions of the Community Benefits Ordinance. The feedback and concerns expressed during that community forum are detailed in staff's August 26, 2020, supplemental report (attached).

ANALYSIS

In reviewing the totality of the information received there are seven areas in which concurrence was reached by the general public as well as the development community in regards to proposed recommendations advanced from the legislative working group. There was widespread support for several other recommended changes to the ordinance, however, concurrence was not reached on all aspects of the proposed revision. In regards to those areas where total concurrence was reached those amendments are as follows:

Proposed amendment No. 2

2. Sec. 14-12-2 of the City of Detroit's Community Benefits Ordinance defines the "Enforcement Committee" as a committee led by the City's Corporation Counsel and composed of representatives from the Planning and Development Department, Law Department, Human Rights Department, and other relevant City departments as determined by the Planning Director.

The proposed revisions to this section would read as follows:

Enforcement Committee means a committee led by the City's Corporation Counsel and composed of representatives from the Planning and Development Department, Law Department, **Department of Civil Rights, Inclusion and Opportunity, City Council's Legislative Policy Division, the Neighborhood Advisory Council Chair of the respective Tier 1 Development Project**, and other relevant City departments as determined by the Planning Director.

The chair of each Neighborhood Advisory Committee shall be an ex-officio member of the related Enforcement Committee.

Proposed amendment No. 5

5. Sec. 14-12-3(a)(2) of the City of Detroit's Community Benefits Ordinance states:
 - (2) The City Clerk shall forward notice of the public meeting via First Class Mail no less than 10 days before such meeting to all City of Detroit residents within three hundred radial feet of the Tier 1 Project. The notice shall include:
 - a. The time, date, and location of the public meeting;
 - b. General information about the Tier 1 Project;
 - c. A description of the Impact Area and the location of the Tier 1 Project;
 - d. Information related to potential impacts of the Tier 1 Project and possible mitigation strategies; and

The proposed revisions to this section would read as follows:

- (2) The City Clerk shall forward notice of the public meeting via First Class Mail no less than 10 days before such meeting to all City of Detroit residents within three hundred radial feet of the Tier 1 Project **Impact Area**. The notice shall include:
 - a. The time, date, and location of the public meeting;

- b. General information about the Tier 1 Project;
- c. A description of the Impact Area and the location of the Tier 1 Project;
- d. Information related to potential impacts of the Tier 1 Project and possible mitigation strategies; and

Proposed amendment No. 8

8. Sec. 14-12-3(b)(2) of the City of Detroit’s Community Benefits Ordinance states:
- (2) All residents over the age of 18 that reside in the Impact Area are eligible for nomination.

The proposed revisions to this section would read as follows:

- (2) All residents over the age of 18 that reside in the Impact Area are eligible for nomination.
Any person who is an agent, employee, or official of the developer must disclose their relationship to the developer prior to selection to the NAC.

Proposed amendment No. 9

9. Sec. 14-12-3(b)(4) of the City of Detroit’s Community Benefits Ordinance states:
- (4) If the Planning Director receives less than nine nominations, the Planning Director may seek out additional nominations from individuals that live outside the Impact Area but within the City Council district or districts where the Tier 1 Project is located.

The proposed revisions to this section would read as follows:

- (4) If the NAC receives less than nine nominations, **the City Council Member in whose district contains the largest portion of the Impact Area may seek out individuals that live outside the Impact Area but within the City Council District or Districts where the Tier 1 Project is located.**

Proposed amendment No. 13

13. Sec. 14-12-3(d)(2) of the City of Detroit’s Community Benefits Ordinance states:
- (2) The Community Benefits Report shall contain:
- a. A detailed account of how notice was provided to organize the public meeting.
 - b. A list of the NAC members, and how they were selected.
 - c. An itemized list of the concerns raised by the NAC.
 - d. A method for addressing each of the concerns raised by the NAC, or why a particular concern will not be addressed.

The proposed revisions to this section would read as follows:

- (2) The Community Benefits Report shall contain:

- a. A detailed account of how notice was provided to organize the public meeting.
- b. A list of the NAC members, and how they were selected.
- c. An itemized list of the concerns raised by the NAC.
- d. A method for addressing each of the concerns raised by the NAC, or why a particular concern will not be addressed.
- e. **A detailed list of community outreach strategies used to solicit and record feedback.**

Proposed amendment No. 16

16. Sec. 14-12-3(f)(1)a.iv. of the City of Detroit’s Community Benefits Ordinance states:

- (1) An Enforcement Committee shall be established to monitor Tier 1 Projects.
 - a. The Enforcement Committee shall be comprised of, at minimum, the following four individuals:
 - i. Corporation Counsel for the City of Detroit; or their designee.
 - ii. a representative from the Planning and Development Department;
 - iii. a representative from the Law Department;
 - iv. a representative from the Human Rights Department.

The proposed revisions to this section would read as follows:

- (1) An Enforcement Committee shall be established to monitor Tier 1 Projects.
 - a. The Enforcement Committee shall be comprised of, at minimum, the following **six** individuals:
 - i. Corporation Counsel for the City of Detroit; or their designee.
 - ii. a representative from the Planning and Development Department;
 - iii. a representative from the Law Department;
 - iv. a representative from the **Department of Civil Rights, Inclusion and Opportunity.**
 - v. **a representative from City Council’s Legislative Policy Division;**
 - vi. **the Neighborhood Advisory Council Chair of the respective Tier 1 Development Project.**

Proposed amendment No. 17

17. Sec. 14-12-4 of the City of Detroit’s Community Benefits Ordinance states:

Sec. 14-12-4. Tier 2 Projects².

² Tier 2 Development Project means a development project in the City that does not qualify as a Tier 1 Project and is expected to incur the investment of \$3,000,000.00 or more, during the construction of facilities, or to begin or expand operations or renovate structures, where the developer is negotiating public support for investment in one or both of the following forms:

- (1) Land transfers that have a cumulative market value of \$300,000.00 or more, as determined by the City Assessor or independent appraisal, without open bidding and priced below market rates; or
- (2) Tax abatements that abate more than \$300,000.00 of City taxes over the term of the abatement that inure directly to the developer, but not including Neighborhood Enterprise Zone tax abatements.

- (a) Developers shall:
 - (1) Partner with the City, and when appropriate, a workforce development agency to promote the hiring, training and employability of Detroit residents consistent with State and Federal Law.
 - (2) Partner with the Planning Director to address and mitigate negative impact that the Tier 2 Project may have on the community and local residents.
- (b) The Developer's commitment as identified in Subsection (a) of this section shall be included in the development agreements related to any land transfers or tax abatements associated with the Tier 2 Project for which the Developer seeks approval.

The proposed revisions to this section would read as follows:

Sec. 14-12-4. Tier 2 Projects.

- (a) Developers shall:
 - (1) Partner with the City, and when appropriate, a workforce development agency to promote the hiring, training and employability of Detroit residents consistent with State and Federal Law.
 - (2) Partner with the Planning Director to address and mitigate negative impact that the Tier 2 Project may have on the community and local residents.
- (b) The Developer's commitment as identified in Subsection (a) of this section shall be included in the development agreements related to any land transfers or tax abatements associated with the Tier 2 Project for which the Developer seeks approval.
- (3) The remaining 80% of the total sales price from Tier 2 property sales shall be evenly divided among the Neighborhood Improvement Fund and the Skilled Trades Fund.**

OTHER CONSIDERATIONS

In addition to the above-referenced text amendments, there were other areas of concurrence in regards to the process undertaken to vet modifications to the Community Benefits Ordinance. Given the low-level participation in the community survey, both members of the general public and the development community requested that the survey be reissued to allow additional responses to be submitted. It is believed that with additional time, and greater publicity of the survey the results will be undisputable.

Additionally, both members of the general public as well as those in the development community believe that the legislative workgroup would have benefited from "their" attendance during the workgroup sessions. Particularly those that submitted recommended revisions, they would have liked an opportunity to provide clarifying statements in regards to their recommendations.

Through the course of staff's engagement with the community regarding revising to the CBO, it had been stated that several developments failed to occur within the City of Detroit because of the existence of the Community Benefits Ordinance. LPD staff has requested the Detroit Economic Growth Corporation to substantiate those claims if possible. To date, no corroborating evidence has been provided.

Finally, it has been stated by members of the development community that the \$1M threshold for the value of a tax abatement is not congruent with the investment level of \$75M or even the \$50M threshold as recommended by the legislative workgroup. We have asked the DEGC to provide a written analysis in this regard.

Among the recommendations from the legislative workgroup which do not merit an amendment to text of the ordinance, however, has been met with widespread support is the recommendation that a best practices procedures manual be produced by the Planning and Development Department. It is recommended that the manual include the following language “The City and the DEGC shall provide the NAC with all relevant information pertaining to any public subsidies being sought by the Developer including but not limited to the specific abatements, dollar amounts and duration of the subsidy, as well as the proposed abatement district maps.”

If you have any additional questions, please reach out to our office directly.

Attachments

Equitable Detroit Coalition/Detroit People’s Platform Recommendations
LPD July 23, 2018 Report
LPD October 1, 2018 Report
Legislative Workgroup Chart
Law Departments February 7, 2019 Memorandum
LPD Community Benefits PowerPoint Legislative Working Group Presentation
LPD Community Benefits PowerPoint Survey Results
LPD March 11, 2020 Report
LPD August 26, 2020 Report

Attachment A

(Equitable Detroit Coalition/Detroit People's Platform Recommendations –January 2018)



RECOMMENDATIONS FOR AMENDMENTS

Detroit Community Benefits Ordinance

January, 2018

In November 2016, Detroit became the first city in the nation to have a community benefits ordinance. Detroit's Community Benefits Ordinance (CBO) became law as a result of a 2016 ballot initiative. The ballot initiative grew out of a 3-year grassroots campaign by the Equitable Detroit Coalition, a coalition of more than 32 groups and volunteers from across the seven (7) city council districts. The Coalition was created to address Detroit's inequitable development practice which includes utilizing public money and other public incentives for private economic development projects that benefit the city's wealthy and white developers rather than the majority black population many of whom currently live at or below the federal poverty level.

The Michigan Chapter of the American Planning Association defines a community benefits agreement as a legally binding contract negotiated between a host community and a developer that allows monitoring and accountability and legal recourse for negotiated benefits. A guiding principle for community benefits is that project benefits should match local needs, becoming part of the development project and improving the quality of life for the current residents of the host community. Three major concepts are essential in a genuine community benefits agreement. The final agreement must:

- **Inclusivity** Maximize inclusiveness in the development process, to allow a variety of community representation in the process.
- **Enforcement** Determine what can be enforced regarding the developer and the project.
- **Accountability** Hold government representatives accountable to allow the community to have a voice in how public money is being spent on economic development in their neighborhoods.

Since the enactment of the Community Benefits Ordinance in November 2016, six(6) projects have completed the Community Benefits Ordinance (CBO): The Free Press Building, The Pistons Practice Facility, the Herman Kiefer Development, The Monroe Blocks/Book Building, and The Hudson's Site.

There has been a total of \$2.4 billion of investment and \$832 million of incentives since the CBO was enacted. \$2.1 billion of the investments and \$74 million of the incentives are from the Transformational Brownfield projects.

Projects	Total Investment	Total Incentive	TIF (DDA & TBP)	NEZ	PA 210	PA 328	OPRA	Brownfield
Pistons	\$83,000,000	\$63,587,201	\$34,500,000		\$7,459,192	\$1,073,432		\$20,554,577
Herman Kiefer	\$143,000,000	\$47,767,476						\$47,767,476
Detroit Free Press Rehabilitation	\$69,663,000	\$7,029,190						\$7,029,190
Hudson	\$908,980,541	\$216,706,764	\$188,740,071	\$9,974,081	\$17,992,612			
Monroe Blocks	\$830,091,215	\$351,227,936	\$316,130,062	\$8,301,177	\$26,796,697			
Book Building and Tower	\$311,444,245	\$72,811,370	\$62,582,813	\$3,496,729			\$6,731,828	
One Campus Martius Expansion	\$94,782,781	\$73,524,024	\$73,524,024					
Total	\$2,440,961,782	\$832,653,961						

Sources: 5/18/2017 LPD Pistons Brownfield; 5/18/2017 LPD Pistons PA 210; 5/5/2017 City of Detroit Pistons CBO Agreement Report; 6/13/2017 LPD Herman Kiefer Brownfield; 7/13/2017 City of Detroit Former Free Press Building CBO Agreement Report; 11/8/2017 LPD Transformational Brownfield Supplemental Report 2; 11/7/2017 LPD Transformational Brownfield Supplemental Report; 10/30/2017 LPD Transformational Brownfield Plan for Hudson's Block/Monroe Block, etc.; 11/9/2017 LPD Community Benefits Ordinance Report Hudson's Block

Detroit People's Platform has monitored the CBO processes for each of these developments. Staff and volunteers have participated in roughly 60 meetings during this time period. Those meetings included public hearings, Neighborhood Advisory Council (NAC) meetings, full City Council meetings, and City Council Planning and Economic Committee hearings and meetings. The summary of the findings is the basis for the recommendations to amend the current Community Benefit Ordinance below.

Inclusivity

Problem: Investment Threshold limits are too high

- The tiers created by the current ordinance establish investment thresholds that are too high, allowing many developments to avoid the CBO process. This prevents residents from providing important input regarding transformational developments and public investments in their neighborhoods.

Amend To: Align threshold limits to reflect the average development project cost/investment - The tiers required for CBO participation should be lowered to projects with \$300,000 of public investment, and the top tier should be lowered to investments of \$50,000,000 or more. Requiring more developments that receive public investment to undergo the CBO would allow more communities to secure material benefits from their public investments.

Inclusivity

Problem: NAC members are predominately chosen by city officials

- Under the current ordinance, City officials select 7 of the 9 NAC members. The City's power in selecting the majority of NAC members restricts authentic community engagement and community empowerment in the development process.

Amend To: Revise NAC Member Selection Process

- The NAC should be predominantly residents elected by their community, rather than residents appointed by the city. NAC members should consist of Community members, Non-profits, & Small Businesses located in the census tract or impact area. This would provide community a more authentic voice and inclusion in the development process.

Problem: No Conflict of Interest or Conflict of Effort Language for NAC Membership

- Neighborhood Advisory Councils for some developments have included residents that may have conflict of interests with their NAC responsibility of prioritizing community concerns

Amend To: Add Specific Conflict of Interest & Conflict of Effort Language for NAC

Conflict of Interest - Residents who have competing affiliations or interests that may result in the perception or the reality of an increased risk of bias or poor judgment in upholding the NAC Member responsibility to prioritize the interests of community residents over the interests of city officials and developers, should be restricted from serving on the NAC. This may include current or past employment affiliated with the developer or the city.

Conflict of Effort - Residents who have affiliations with entities that create competing responsibilities or threaten to jeopardize the NAC Member responsibility to prioritize the interest of community residents over the interest of city officials and developers, should also be restricted from serving on the NAC.

Problem: Insufficient Area of Notice

- The current CBO requires that notice of the commencement of the CBO process must be provided to residents within 300 radial feet of a project. This is roughly the length of 2 city blocks. This constraint prohibits many residents who will be impacted by the development from receiving notice about the development and public meetings.

Amend To: Enlarge the Notice Area

- The notice area should be expanded to include the entire project census tract area. This would permit more residents to gain awareness of the project, participate in the NAC, and provide input in the CBO process.

Enforcement/Lack of Transparency

Problem: No Legally Binding Community Benefits Agreement Created

- Under the current ordinance, the CBO process may be finalized without the creation of a community benefits agreement. The ordinance only requires the creation of a report by the planning director titled "Community Benefits Report". This report provided information about the meetings held pursuant to the ordinance. The community benefits report for the six development projects observed have not contained any legally binding community benefits agreements. The community benefits report has also failed to provide any details related to the debates between residents and developers during the CBO process that failed to result in a real community benefits agreement.

Amend To: Require Creation of a Legally Binding Community Benefits Agreement

- The result of the CBO process must be a legally binding contractual agreement between the NAC and the Developer. A CBO Report should document the final results of the CBO process, which should be the creation of a legally binding community benefits agreement signed by the developer and the NAC. The CBO process should not be permitted to close until a community benefits agreement is created through authentic negotiation between community members and developers which includes specific and tangible benefits advocated for by the community.

Problem: CBO Process is Too Short

- NAC members from each of the six development projects monitored have expressed a need for more time in the CBO process. These NAC members felt the process was rushed and did not allow them the time necessary to carry out their duties under the CBO, including communicating with community members about development projects and gathering feedback about community concerns.

Amend To: Lengthen CBO Process

- The CBO process should be extended to a timeline of several months, rather than a few weeks. This will help the NAC to feel less rushed and allow them the time necessary to fully uphold their responsibilities under the CBO. The process should close when a negotiated agreement has been reached between the NAC and the developer, rather than according to an arbitrary deadline.

Enforcement/Lack of Transparency

Problem: NAC Members are not provided a clear definition of what constitutes real community benefits

- There is a great deal of misinformation being provided to NAC members about the definition of community benefits and what NACs are allowed to discuss. (Ex: During the CBO process for the Hudson Site and Monroe Blocks and Book Building & Tower, NAC members were advised by Planning and Development Department (PDD) that they should restrict community concerns to issues related only to construction inconveniences such as noise pollution, light pollution, traffic congestion, sidewalk closings, etc.)

Amend To: Provide Examples of real Community Benefits

- The NAC should be provided with a list of examples of legally binding community benefits agreements that have been created by communities and developers in other cities. This list should feature benefits covering a wide range of issue areas including (but not limited to) affordable housing, transit, schools, environmental impacts, jobs, infrastructure, public space, historical preservation, retail development, beautification, etc. This would help NAC to understand the types of community benefits they might pursue during the CBO process.

Problem: The City and developers do not provide the NAC with the necessary documents necessary to fulfill the responsibilities of the NAC

- NAC members from each of the six development projects monitored have expressed a need for more information and transparency regarding developments undergoing the CBO process. NAC members have expressed that they did not received all of the documents they needed to sufficiently understand development projects in a way that enabled them to truly negotiate. Common complaints raised were denial of documents by the city and developer due to claims that certain documents are private and the documents often are often received too late for serious consideration.

Amend To: Mandate that the City & developers Provide NAC with Documents

- The NAC cannot carry out its duty of representing the community's best interest without the information necessary to make well-informed decisions related to development agreements and the amount of public investment in a project. Important documents should automatically be provided to NAC members. The NAC should receive these essential documents within 48 hrs of their selection. All other documents requested during the process should be provided within 48 hours of such requests. This will provide the NAC greater transparency with adequate time for review. (Example of Relevant Documents: Detroit Community Benefits Ordinance, development agreements between the city and developer, details of project financing/ project proforma, developer's RFP response, all renderings related to the project, But/For Economic Analysis conducted by DEGC, all environmental studies, documents related to brownfield funding, etc.)

Enforcement/Lack of Transparency

Problem: Negotiations are prohibited in the current CBO process

- The current ordinance does not require any negotiation between the developer and NAC. Therefore, no negotiation have occurred in any of the six development projects monitored. This is evidenced by the fact that there are no trade-offs made by the developer. Further, it is evident that the NACs have no influence over issues such as: what community benefits are presented to the developer, how many times the NAC is permitted to meet with the developer, when the CBO process is declared completed, or approval of the final Community Benefits Report submitted to City Council.

Amend To: Require Authentic Negotiations between Developer & NAC

- The ordinance should require the developer to receive NAC approval in order to consider the CBO process complete including approval of the Community Benefits Report that is presented to City Council for the final vote on public investment. This revised process would incentive the developer to engage in true negotiations and compromise with the NAC regarding community concerns and desired benefits presented. This requirement would also provide a method for the NAC to have more power and influence in the CBO process, and secure genuine community benefits in exchange for the developer's receipt of public investment.

Problem: No Penalty for Noncompliance

- The current ordinance does not outline specific penalties for developer noncompliance with the CBO ordinance.

Amend To: Require compliance by developers in exchange for public funding

- The ordinance should restrict developers who do not participate in the CBO process in good faith from receiving requested public benefits for their development projects. Developers who refuse to negotiate or provide any of the community benefits requested by the NAC, should not be permitted to present their development to city council for public investment approval. The ordinance should also include provisions that automatically trigger clawbacks and suspensions of public investment in the case of developer noncompliance.

Lack of Accountability

Problem: City officials have not assisted a single NAC in creating an authentic community benefits agreement

- PDD representatives lack the motivation and skills to facilitate an authentic community engagement process. DPP representatives stated during a public meeting that their only role under the CBO was to convene meetings and create a report (Ex: Wigel/Midtown West NAC Meeting Jul. 11, 2017) City representatives have also verified that development deals have been signed prior to the completion of the CBO process (Ex: Herman Kiefer CBO Process).

Amend To: Exclude the City from Facilitation Role - PDD's failure to comprehend its responsibilities as a facilitator under the CBO creates a conflict of interest, whereby the city has a contract with a developer that it wishes to protect, while simultaneously acting as facilitator of CBA negotiations between community and the same developer. Such a conflict of interest has hindered the creation of a CBA, resulting instead in a CBO process where negotiations are absent and transparency is rare. The City should be removed from the role of facilitator and the process guided by the community and developer.

Problem: No guidelines for determining whether a developer should qualify for exemption from the ordinance

- The current ordinance lacks guidelines for determining how to evaluate a developer's request for exemption from the ordinance. This result in a lack of transparency about criteria for exemption from the CBO process that informs all parties including residents, the city officials and developers.

Amend To: Qualification Guidelines for Exemption

- Language should be added to the ordinance to specify the circumstances that must be present for a developer to qualify for exemption from the CBO process. This language should include requirements that the developer provide detailed evidence of how they attempted to comply with the ordinance, and how their compliance has been hindered such that adhering to the CBO process is not feasible.

Submitted by:
Equitable Detroit Coalition
January, 2018

Attachment B

(LPD July 23, 2018 Report)

David Whitaker, Esq.
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TO: The Honorable Detroit City Council

FROM: David Whitaker, Director
Legislative Policy Division (LPD) Staff

DATE: July 23, 2018

RE: **Community Benefits Ordinance Amendments**

As Council Members know, Detroit voters approved a ballot measure designated Proposition B, as the attached alternative “Community Benefits Ordinance” in the November 8, 2016 election. Pursuant to Section 12-109 of the City Charter, such an ordinance adopted through initiative proceedings may be amended or repealed by the City, after a period of twelve (12) months after the date of the election at which it was adopted. Therefore, if Council wishes to amend the existing “Community Benefits Ordinance”, it is free to do so at this time.

The City’s limited experience to date with implementation of the ordinance designated as Proposition B has generated calls for further reforms. In LPD’s judgment, the community engagement procedures specified in this ordinance would benefit from amendments intended, in general, to provide more time for Neighborhood Advisory Councils (NAC) established by the ordinance to become informed about the development proposals at issue and formulate their proposals on behalf of the community, and to require that more useful, relevant, timely and comprehensive information be provided to the NAC. Also, the name of the ordinance should be changed to reflect its actual terms as a local law requiring community engagement in the course of large developments that are supported by public money, in order to avoid misleading the public regarding the scope and purpose of this ordinance.¹

¹ Other, more substantive changes – such as the threshold amounts for public support of private investment, or even the addition of required benefits via enforceable contracts with community advocates, as in a traditional Community Benefits Agreement - beyond the community engagement procedures called for in the ordinance, would of course be within Council’s authority. But LPD takes no position recommending such structural changes. Although LPD believes that a full discussion of “community benefits” in

LPD recommends the following changes to the Community Benefits Ordinance:

- 1) **That the title be amended to “Community Engagement Ordinance”** (Change the word “Benefits” under Article XII to the word “Engagement”. In Section 14-12-1(b), change the language to “This article shall be known as the Detroit Community Engagement Ordinance”.) The administration has indicated that the benefits to the community from development deals arise from the deals themselves, as negotiated by the administration. On the other hand, the American Planning Association and others in the national community benefits movement define “Community Benefits Agreements” as enforceable legal contracts between developers who receive tax support for their investments, and affected community representatives. Changing the name of the ordinance would reflect its actual terms, which do not call for legally enforceable “Community Benefits Agreements” in the accepted sense of the term.
- 2) **That the number of community meetings be amended from stating “at least one” to “no fewer than five.”** (In Section 14-12-3(a)(1), change “at least one” to “no fewer than five”.)
- 3) **That the procedures for the selection of the NAC be revised, so that at the inaugural meeting an overview of the process and presentation from the developer are given, and that community members nominated to the NAC present at the second meeting, prior to a vote on the members of the NAC, rather than at the conclusion of the first meeting.** (Change the entire subsection 14-12-3(c)(1) to read as follows: “At the first meeting of the NAC, the developer shall provide an overview of the community engagement process, and the details of the proposed development. At the second meeting of the NAC, any proposed NAC member(s) nominated by residents shall be permitted to present their ideas and suggestions regarding the community engagement process and the proposed development, before the members of the NAC are elected”.)
- 4) **That a list of alternate NAC members be generated and maintained by the Planning and Development Department, in the event that an elected or appointed NAC member is unable to fulfil their duties.** (Add a new subsection 14-12-3(b)(6) to read as

connection with the ordinance adopted by the voters as Proposition B would be beyond the scope of this referral, it should be noted that to date the procedures adopted as a result of this ballot initiative and the ordinance have not resulted in any substantial community benefits, if indeed they can be credited with generating any community benefits at all. This evaluation, based on LPD staff’s ordinance-mandated participation in the community engagement processes established by the ordinance to date, in turn leads to the question of whether or not the significant staff time and other resources devoted to these procedures can be justified, for a process that effectively produces little or no benefit. In addition to improving the accuracy of the ordinance’s title, substituting the word “engagement” for “benefits” in the name of the ordinance would therefore be expected to result in substantial savings of staff time and other resources that could be devoted to adequate public community engagement, rather than a fruitless, hollow and impractical discussion of nonexistent benefits.

follows: “The Planning and Development Department shall maintain a list of alternate NAC members to be appointed in the event that an elected or appointed NAC member is, for whatever reason, unable to serve on the NAC”.)

- 5) **That attendance at NAC meetings for all elected and appointed NAC members is mandatory. Should a member fail to attend an alternate may be selected.** (Add the following language to subsection 14-12-3(b)(5): “Attendance at all NAC meetings by all elected and appointed NAC members shall be mandatory. If a member fails to attend an NAC meeting, an alternate may be appointed by the NAC”.)
- 6) **That at the inaugural meeting for the CBO that the developer present “how” their development qualified with specificity, i.e., total investment amount, and which tax incentives are being sought.** (Change the entire subsection 14-12-3(c)(2) to read as follows: “At the first meeting of the NAC, the developer shall provide a specific explanation of how the proposed development qualifies for public support of investment, the total amount of private investment involved, and the statutory authorizations and amounts of all tax abatements or incentives sought for the proposed development”.)
- 7) **If the proposed development includes residential housing, that at least 20% affordability at 80% Area Median Income (AMI) be incorporated into a single-site development.** (Add a new section 14-12-3(7): “If the proposed development includes residential housing, then at least 20% of the units for a single site shall be designated as affordable housing, defined as affordable by those earning at least 80% of Area Median Income (AMI)”.)
- 8) **That at the second meeting of the NAC, the NAC members are provided with an informational package from the developer detailing the level of environmental remediation the site may need, including but not limited to: Phase I and Phase II environmental studies (if available), Commercial Rehabilitation Facility District application (if applicable), Obsolete Property Rehabilitation District application (if applicable), and Brownfield Redevelopment District application (if applicable).** (Add a new section 14-12-3(c)(4): “At the second meeting of the NAC, the developer shall provide NAC members with an informational package detailing the level of environmental remediation the site may need, including but not limited to: Phase I and Phase II environmental studies (if available), Commercial Rehabilitation Facility District application (if applicable), Obsolete Property Rehabilitation District application (if applicable), and Brownfield Redevelopment District application (if applicable)”.)
- 9) **That a webpage be created and maintained detailing the specifics of the development along with a projected timeline on the Planning and Development Departments website for each development project subject to the ordinance, which also contains the contact information for the PDD project manager and general contact information for the developer.** (Add a new section 14-12-3(c)(5): “The Planning and

Development Department shall create and maintain a page on the City’s web site detailing the specifics of the development, along with a projected timeline, for each development project subject to this article. The web page shall also contain the contact information for the PDD project manager and general contact information for the developer”.)

The Equitable Detroit Coalition, sponsors of the original Proposition A Community Benefits Ordinance that was defeated by Proposition B, has provided the attached critical report regarding their observations of the first six projects subjected to the ordinance. Based on these experiences, they propose 12 amendments that would, in effect, convert the Proposition B community engagement ordinance into a “true” community benefits ordinance, featuring reforms like enforceable community benefits agreements and independent community participation without mediation by City government. As noted in footnote 1, LPD understands these substantive transformations of the Proposition A community engagement policy to be beyond the scope of this particular referral. However, such further reaching amendments would be within Council’s authority, and if Council Members seek any particular amendments, whether suggested by the Equitable Detroit Coalition or anyone else, they could be drafted in response to specific referral of those items to the Law Department and/or LPD.

If Council has any other questions or concerns regarding this subject, LPD will be happy to provide further research and analysis upon request.

Attachment C

(LPD October 1, 2018 Report)

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TO: The Honorable Detroit City Council

FROM: David Whitaker, Director 
Legislative Policy Division Staff

DATE: October 1, 2018

**RE: RECOMMENDED REVISIONS TO THE COMMUNITY BENEFITS
ORDINANCE**

This report follows the Legislative Policy Division's (LPD) report dated July 23, 2018 (attached) in which LPD staff provided a list of recommendations which would either strengthen or revise the city's current Community Benefits Ordinance (CBO) process as outlined in Chapter 14 of the 1984 Detroit City Code, Community Development, Article 12 – Community Benefits.

In a memorandum dated August 30, 2018 Council President Pro Tem Mary Sheffield requested that LPD incorporate the aforementioned recommendations and others in a draft ordinance to be considered by the Committee of the Whole. At the Planning and Economic Development Standing Committee meeting of September 6, 2018, Chairman Tate requested that interested Councilmembers submit their lists of recommended revisions to the Community Benefits Ordinance to LPD by Friday, September 21, 2018 for consideration.

To date, responses have been received from the offices of Councilmembers' Jones, McCalister and Castañeda-López. Below please find the recommended changes to the Community Benefits Ordinance as presented by each respective Council Member.

Member Sheffield

- The title of the ordinance be changed to "Community Engagement Ordinance."
- Section 14-12-3(a)(1) be revised to state that the number of required community meetings be changed to "no fewer than five (5), unless a majority of the NAC deems otherwise."

- Section 14-12-3(c) be revised to read as follows: “At the first meeting of the NAC, the developer shall provide an overview of the community engagement process, and the details of the proposed development. At the second meeting of the NAC, any proposed NAC member(s) nominated by residents shall be permitted to present their ideas and suggestions regarding the community engagement process and the proposed development, before the members of the NAC are elected.”
- That language be added to subsection 14-12-3(b)(5) stating: “Attendance at all NAC meetings by all elected and appointed NAC members shall be mandatory. If a member fails to attend an NAC meeting, an alternative may be appointed by the NAC as a permanent replacement member.”
- Subsection 14-12-3(c)(2) should read: “At the first meeting of the NAC, the developer shall provide a specific explanation of how the proposed development qualifies for public support of investment, the total amount of private investment involved, and the statutory authorizations and amounts of all tax abatements or incentives sought for the proposed development.”
- That a new section be added, 14-12-3(7) that should read: “If the proposed development includes residential housing, then at least 20% of the units for a single site shall be designated as affordable housing, defined as affordable by those earning at least 80% of Area Median Income.”
- That a new section be added, 14-12-3(c)(5) that should read: “The Planning and Development Department shall create and maintain a page on the City’s web site detailing the specifics of the development, along with a projected timeline, for each development project subject to this article. The webpage shall also contain the contact information for the PDD project manager and general contact information for the developer.”
- That the public notice area should be expanded to include the entire project census tract(s) area. This would increase awareness of projects.

Staff would like to note that as it relates to this particular request, the “impact area” is comprised of the project area as well as the entirety of the census tract(s) in which the project area is located. Public notice which is sent out via the City Clerk’s office per the ordinance is sent out to all residents and property owners within the impact area as well as 300 radial feet outside of the impact area. If a greater effort is desired by council in this regard, the notice section of the ordinance should be amended to reflect council’s wishes.

- That the developer shall provide a list to the NAC of examples of legally binding community benefits agreements that have been created by communities and developers in other cities.
- That under section 14-12-2, the investment threshold for a Tier 1 Development be lowered from \$75,000,000 to \$50,000,000.

Member McCalister

- That the ordinance title remain “Community Benefits Ordinance” rather than “Community Engagement Ordinance.”
- That Section 14-12-3(b)(5) be revised to state that “elected and appointed NAC members must attend at least 75% of the scheduled meetings.”
- That, where applicable, the NAC Community Benefits report include recommendations for green space and green design, stormwater management, alternative energy generation, transit and walkability, historical preservation, regional destination planning, local food systems, inclusionary housing and employment and training.
- That the investment threshold under Section 14-12-2 as defined for a “Tier 1” Development Project be lowered from \$75,000,000 to \$50,000,000.
- That Sec. 14-12-2 Definitions be revised to read as follows: “Tier 2” Development Project means a development project in the City of Detroit that does not qualify as a Tier 1 Project and is expected to incur the investment of Three Hundred Thousand (\$300,000) dollars or more during the construction of facilities, or to begin or expanding operations or renovate structures, where the developer is negotiating public support for investment for investment in one or both of the following (1) Land transfers that have a cumulative market value of Thirty Thousand Dollars (\$30,000) or more (2) Tax abatements that abate more than Thirty Thousand Dollars (\$30,000) of City of Detroit Taxes over the term of the abatement that incur directly to the Developer, but not including Neighborhood Enterprising Zone Tax abatements.”
- That Sec. 14-12-3 Tier 1 Projects (3) In addition to the notice requirement contained in Subsection (2) of this section, the Planning Director shall work with the District or Districts Council Member(s) or the Council Members’ designee where the Tier 1 Project is located and at least one At-Large Council Member to ensure that local residents, businesses, and organizations, especially those located in the Impact Area and those expected to be directly impacted by the Tier 1 project are informed of the public meeting.
- That Sec. 14-12-3 Neighborhood Advisory Council 3 (b) be amended so that three members are selected by the Planning Director from the resident of the Impact Area Chosen from the resident nominated Candidates, with preference given to individuals the Planning Director expects to be directly impacted by the Tier 1 Project.
- That Sec. 14-12-3 Neighborhood Advisory Council 3 c., be amended so that three members are selected by the Council Member in whose district contains the largest portion of the Impact Area from the resident nominated candidates.
- That Sec. 14-12-3 Neighborhood Advisory Council (4) be amended so that if the NAC receives less than nine nominations, the City Council Member of the Impact Area may seek out individuals that live outside the Impact Area but within the City Council District or Districts where the Tier 1 Project is located.

- That Sec. 14-12-3 Tier 1 (7) be amended so that if the developer is unable to meet the mandated 51% Detroit resident hiring requirement shall provide support funding for training assistance for Detroit residence in apprenticeship, trade and vocational and technical training and certifications.
- That Sec. 14-12-5 Exemptions; Section 1 be stricken.

President Jones

- The title should remain as Community Benefits Ordinance. The threshold limits should be aligned to reflect the average development project cost/investment –
 - 1(a) The tiers required for CBO participation should be lowered to projects with \$300,000 of public investment, and the top tier should be lowered to investments of \$50,000,000 or more. Requiring more developments that receive public investment to undergo the CBO.
- Recommending that a new section be added in which it is made clear that the CBO process must be a legally binding contractual agreement between the NAC and the developer. A CBO report should document the final results of the CBO process, which should be the creation of a legally binding community benefits agreement signed by the developer and the NAC. The CBO process should not be permitted to close until a community benefits agreement is created through authentic negotiation between community members and developers which includes specific and tangible benefits advocated for by the community.
- The NAC should have “no fewer than six (6) community meetings, unless a majority of the NAC deems otherwise”.
 - 2(a) The NAC should be appointed by their community within their census track and not by the city.
- During the first meeting those that are interested in being NAC members should be identified and during the second meeting, those interested in being NAC members must come formally prepared to state their interest in the NAC.
 - 3(a) *Residents who have competing affiliations or interests that may result in the perception or the reality of an increased risk of bias or poor judgment in upholding the NAC Member responsibility to prioritize the interests of community residents over the interests of city officials and developers, should be restricted from serving on the NAC. This may include current or past employment affiliated with the developer or the city. Residents who have affiliations with entities that create competing responsibilities or threaten to jeopardize the NAC Member responsibility to prioritize the interest of community residents over the interest of city officials and developers, should also be restricted from serving on the NAC.*
- There should be one alternate selected by the community. The person with the third highest votes from the community should be listed at the alternate person. This

person must agree to be present at all meetings and will be notified by the Planning Department when they are needed to formally replace a NAC member.

- It is recommended that a NAC member not be absent for more than “one” meeting. Additional absences could disqualify one from further being a NAC member.
- That all essential documents to be provided and/or emailed to the NAC Members, District and At-Large City Council members within 48 hrs. of the NAC selection. This will provide the NAC greater transparency with adequate time for review. (Example of Relevant Documents: Detroit Community Benefits Ordinance, development agreements between the city and developer, details of project financing/ project proforma, developer's RFP response, all renderings related to the project, But/For Economic Analysis conducted by DEGC, all environmental studies, documents related to brownfield funding, etc.)
- In regards to LPD’s recommendation that if a proposed development includes residential housing, that a least 20% affordability at 80% Area Median Income (AMI) be incorporated into a single-site development; it is believed that this item should be included in the inclusionary zoning ordinance and the in the CBO ordinance.
- In regards to the proposed addition of Section 14-12-3(c)(4) The ordinance should restrict developers who do not participate in the CBO process in good faith from receiving requested public benefits for their development projects. Developers who refuse to negotiate or provide any of the community benefits requested by the NAC, should not be permitted to present their development to City Council for public investment approval. The ordinance should also include provisions that automatically trigger clawbacks and suspensions of public investment in the case of developer noncompliance

Member Castañeda-López

- Section 14-12-2 “Tier 1 Development Project” be lowered from \$75,000,000 down to \$50,000,000.
- In Section 14-12-3(a)(4), strike and replace with, “At the initial public meeting (**Meeting #1**), the Planning Director will present in detail on the CBO process, how the NAC fits within that broader process, the responsibilities of the NAC and the proposed timeline for the NAC meetings. The Planning Department shall discuss previous NACs and share outcomes and best practices learned from them. The meeting/workshop, shall allow for the community to ask questions and learn about the upcoming CBO process. The Developer shall not be present at this first meeting.
- In Section 14-12-3(b)(1), strike and replace with, “A second public meeting (**Meeting #2**) will be held to focus on the proposed development consisting of a Developer presentation with a question and answer period. At this meeting, the Planning Director will begin

accepting nominations for the NAC. No names will be accepted to this list of nominations after voting has begun in Meeting #3.”

- In Section 14-12-3(c)(1), strike and replace with, “In addition to the meetings required in subsections (a)(1) and (b)(1) of this section, the Planning Director shall facilitate at least five meetings between the NAC and the Developer to allow the NAC to learn more details about the project and to provide an opportunity for the NAC to make the Developer aware of concerns raised by the NAC.” Add subsection “a.” The meetings between the NAC and Developer shall follow the subsequent schedule with additional meetings added as agreed upon between the NAC and Planning Director:
 - i. **Meeting #3 – NAC Empaneling and Training:** NAC elections by the community and appointments announced by City Council and the Planning Director. After the NAC is empaneled, the Planning Director shall conduct a NAC workshop for the NAC members detailing responsibilities, available support from the City, communication and outreach best-practices, and community engagement expectations.
 - ii. **Meeting #4 – Developer Presentation:** Developer presentation detailing the project followed by a NAC and community Question & Answer period.
 - iii. **Meeting #5 – NAC Benefits Request:** NAC presents their findings and Community Benefits requests.
 - iv. **Meeting #6 – Developer Response:** Developer responds to the NAC’s requests with a Community Benefits Offer.
 - v. **Meeting #7 – Final Meeting:** NAC and Developer present areas of agreement and any outstanding concerns.
 - vi. There shall be a minimum of one week between each meeting except between meetings #3, #4, and #5, which shall have a minimum of two weeks in between to allow for greater community outreach by the NAC.
- In Section 14-12-3(b)(2), which pertains to eligibility for serving on the NAC, strike “18” and replace with “16”.
- In Section 14-12-3(b)(2), add “Any person who stands to receive a pecuniary benefit from the development or is otherwise employed by the Developer is ineligible to serve on the NAC.”
- In Section 14-12-3(b)(3), which outlines the composition of the NAC, under “a.” replace “two” with “seven” members being selected by the residents of the impact area. Under “b.” replace “four” with “one” member being selected by the Planning Director. Maintain “one” selection by the district Council Member in “c.”, and strike “d.” removing the selections currently outlined in it and replace with a new “d.” stating that “The appointments to the NAC must be individuals that had been previously nominated by the residents as mentioned in 14-12-3(b)(1) unless fewer than 9 residents were nominated.”
- Add the following at the end of Section 14-12-3(c)(1): “The Developer must present to the members of the NAC, at a minimum, how the proposed project will utilize green infrastructure, create jobs for Detroiters, detail which tax incentives they are seeking with specific amounts, and to what extent the project will feature subsidized/discounted/affordable housing and/or commercial space.”

- In Section 14-12-3(c) add a subsection (4) containing the following, “The Administration will provide the NAC with a Community Needs Assessment or a Target Market Analysis of the Impact Area conducted by a third party prior to the final meeting of the NAC. The report is to be shared with City Council and made public.”
- In Section 14-12-3(c) add a subsection (5) containing the following, “The City and the DEGC shall provide the NAC with all relevant information pertaining to any public subsidies being sought by the Developer including but not limited to the specific abatements, dollar amounts and duration of the subsidy, as well as the proposed abatement district maps.”
- In Section 14-12-3(d)(2) add a new subsection “e.” as “A comprehensive detailing of community outreach strategies used by the NAC to solicit and record feedback.”
- I support Council President Pro Tem Sheffield’s proposed amendment to add a Section 14-12-3(7) which ends with “defined as affordable by those earning at least 80% of Area Median Income” and offer a friendly amendment to replace “at least” with “no more than”.
- In Section 14-12-3(f)(9)b.ii. Add, “If the Council determines that the Developer is in noncompliance with the Community Benefits Provision it may suspend all forms of public investment to the Developer by a simple majority of Council after receiving at least three monthly updates from the Enforcement Committee as outlined in 14-12-3(f)(9)b.i.”

This matter was initially scheduled for a discussion before the Planning and Economic Development Standing Committee for Thursday, September 27, 2018 at 10:45 a.m., however, additional recommendations from Council members had not yet been received. This matter has been postponed until Thursday, October 4, 2018 at which time each recommendation will be considered for inclusion into the ordinance. The Committee meeting of Thursday, October 4, 2018 will be noticed as possibility containing a quorum. Of course, LPD will provide an integrated draft of the amended ordinance as directed by City Council.

If Council has any other questions or concerns regarding the subject, LPD will be happy to provide further research and analysis upon request.

Attachment D

(Legislative Workgroup Chart)

Conrad Position	URS Recommendations/Status	Councilmember Balfanz Recommendations	Councilmember McCalister Recommendations	Council President Brenda Jones Recommendations	Councilmember Calandra-Lewis Recommendations	Councilmember Jones' Ayes Recommendations	Councilmember Justlman Recommendations	Councilmember Andrea Jones Recommendations	Councilmember James Tate Recommendations	Action
15	Sec. 14-12-3(b)(4) - If the Planning Director receives less than nine nominations, the Planning Director may seek out additional nominations from individuals that live outside the Impact Area but within the City Council District or districts where the Tier 1 Project is located.	N/A	N/A	That Sec. 14-12-3 Neighborhood Advisory Council (4) be amended so that if the NAC receives less than nine nominations, the City Council Member of the Impact Area may seek out individuals that live outside the Impact Area but within the City Council District or Districts where the Tier 1 Project is located.	N/A	N/A	N/A	N/A	N/A	Adopted - The McCalister recommendation was approved with a 9-0 vote.
16	Sec. 14-12-3(b)(5) - All actions of the NAC may be taken with the consent of a majority of NAC members serving.	That language be added to subsection 14-12-3(b)(5) stating: "Attendance at all NAC meetings by all elected and appointed NAC members shall be mandatory. If a member fails to attend an NAC meeting, an alternate may be appointed by the NAC as a permanent replacement member."	That language be added to subsection 14-12-3(b)(5) stating: "Attendance at all NAC meetings by all elected and appointed NAC members shall be mandatory. If a member fails to attend an NAC meeting, an alternate may be appointed by the NAC as a permanent replacement member."	That Section 14-12-3(b)(5) be revised to state that "elected and appointed NAC members must attend at least 75% of the scheduled meetings."	It is recommended that a NAC member not be absent for more than "one" meeting. Additional absences could disqualify one from further being a NAC member.	N/A	N/A	N/A	N/A	Adopted - "Attendance at all NAC meetings by all elected and appointed NAC members shall be mandatory, unless advance notice is provided. More than one (1) absence could disqualify one from further being a NAC member. If a member fails to attend an NAC meeting, an alternate may be appointed by the NAC as a permanent replacement member, at the discretion of the NAC."
17	Sec. 14-12-3(c) [2] - City Council by a 2/3 vote of members present or the Planning Director may facilitate additional meetings which the Developer, or the Developer's designee, shall participate in as directed.	Subsection 14-12-3(c)(2) should read: "At the first meeting of the NAC, the developer shall provide a specific explanation of how the proposed development qualifies for public support of investment, the total amount of private investment involved, and the statutory authorizations and amounts of all tax abatements or incentives sought for the proposed development."	Subsection 14-12-3(c)(2) should read: "At the first meeting of the NAC, the developer shall provide a specific explanation of how the proposed development qualifies for public support of investment, the total amount of private investment involved, and the statutory authorizations and amounts of all tax abatements or incentives sought for the proposed development."	N/A	That all essential documents to be provided and/or emailed to the NAC Members, District and At Large City Council members within 48 hrs. of the NAC selection. This will provide the NAC greater transparency with adequate time for review. (Example of Relevant Documents: District Community Benefits Ordinance, development agreements between the city and developer, details of project financing/profit split, developer's BRF response, all relevant related to the project, but for Economic Analysis conducted by DEGC, all environmental studies, documents related to rezoning, etc.)	N/A	N/A	N/A	N/A	Adopted - The City and the DEGC shall provide all essential documents to the NAC Members, District and At Large City Council members within 72 hrs. of the NAC selection including but not limited to the District Community Benefits Ordinance, development agreements between the city and developer, project financing/profit split, developer's BRF response, all relevant related to the project, but for Economic Analysis conducted by DEGC, all environmental studies, documents related to rezoning, etc.
18	N/A	That a new section be added: 14-12-3(f) that includes residential housing, then at least 20% of the units for a single site shall be designated as affordable housing, defined as affordable by those earning at least 80% of Area Median Income.	That a new section be added: 14-12-3(f) that includes residential housing, then at least 20% of the units for a single site shall be designated as affordable housing, defined as affordable by those earning at least 80% of Area Median Income.	N/A	in regards to HUD's recommendation that if a proposed development includes residential housing, that at least 20% of affordable or 80% Area Median income (AMI) be incorporated into a single site development, it is believed that this item should be included in the inclusionary zoning ordinance and not in the CMO ordinance.	Support Council President Pro-Tem Clifffield's proposed amendment to add a Section 14-12-3(f) which ends with "defined as affordable by those earning at least 80% of Area Median Income" and offer a friendly amendment to replace "at least" with "no more than".	N/A	N/A	Withdrawn	
19	N/A	That a new section be added, 14-12-3(i) that should read: "The Planning and Development Department shall create and maintain a page on the City's web site detailing the specifics of the development, along with a projected timeline, for each development project subject to this article. The webpage shall also contain the contact information for the POD project manager and general contact information for the developer."	That a new section be added, 14-12-3(i) that should read: "The Planning and Development Department shall create and maintain a page on the City's web site detailing the specifics of the development, along with a projected timeline, for each development project subject to this article. The webpage shall also contain the contact information for the POD project manager and general contact information for the developer."	N/A	N/A	N/A	N/A	N/A	N/A	Failed 4-4 citing that POD already maintains a page for each development.
20	Sec. 14-12-2, Definitions & Sec. 14-12-3(a)(1) Staff would like to note that as it relates to this particular request, the "Impact area" is comprised of the project area as well as the entirety of the census tracts in which the project area is located. Public notice which is sent out via the City Clerk's office and the ordinance is sent out to all residents and property owners within the impact area as well as 300 radial feet outside of the impact area. If a greater effect is desired by council in this regard, the notice section of the ordinance should be amended to reflect council's wishes.	N/A	That the public notice area should be expanded to include the entire project census tract(s) - this would increase awareness of the public meeting.	That Sec. 14-12-3 Item 4 Projects (3) in addition to the notice requirement contained in subsection (2) of this section, the Planning Director shall meet with the District or District Council Member (2) on the Council Member's designee within the Tier 1 Project located and at least one At-Large Council Member to ensure that local residents, business, and organizations especially those located in the Impact Area and those expected to be directly impacted by the Tier 1 project are informed of the public meeting.	N/A	N/A	N/A	N/A	N/A	Adopted - It was recommended by Council President Jones' Office that 14-12-3(a)(1) be amended to state "Impact area." "1) The City Clerk shall forward notice of the public meeting via First Class Mail no less than 10 days before such meeting to all City of Detroit residents within three hundred radial feet of the Tier 1 Project Impact Area."
21	N/A	N/A	That the developer shall provide a list to the NAC of examples of legally binding community benefits agreements that have been created by communities and developers in other cities.	N/A	N/A	N/A	N/A	N/A	N/A	Withdrawn - It has been recommended that a "best practices manual" be created and this language be incorporated into the manual.
22	Sec. 14-12-3(d)(2) The Community Benefits Report shall contain: (A) A detailed account of how notice was provided to organize the public meeting, (B) A list of the NAC members, and how they were selected, (C) An itemized list of the concerns raised by the NAC, (D) A method for addressing each of the concerns raised by the NAC, or why a particular concern will not be addressed.	N/A	N/A	That, where applicable, the NAC Community Benefits report include recommendations for green space and green design, stormwater management, alternative energy generation, transit and walkability, historical preservation, regional destination planning, local food systems, recreation, housing and employment and training.	N/A	N/A	N/A	N/A	N/A	Withdrawn - It has been recommended that a "best practices manual" be created and this language be incorporated into the manual.
23	Sec. 14-12-3(e) [1] All development agreements made between the Developer and the City related to the land transfers or tax abatements associated with a Tier 1 Project shall include the Community Benefits Provision, which shall include:	N/A	N/A	That Sec. 14-12-3 Tier 1 (1) be amended so that if the developer is unable to meet the mandated 50% Detroit resident hiring requirement shall provide support funding for training assistance for Detroit residents in apprenticeship, trade, and vocational and technical training and certifications.	N/A	N/A	N/A	N/A	N/A	Withdrawn
24	N/A	Section 14-12-3(b) be revised to read as follows: "At the first meeting of the NAC, the developer shall provide an overview of the community engagement process, and the details of the proposed development. At the second meeting of the NAC, any proposed NAC members nominated by residents shall be permitted to present their ideas and suggestions regarding the community engagement process and the proposed development, before the members of the NAC are elected."	Section 14-12-3(b) be revised to read as follows: "At the first meeting of the NAC, the developer shall provide an overview of the community engagement process, and the details of the proposed development. At the second meeting of the NAC, any proposed NAC members nominated by residents shall be permitted to present their ideas and suggestions regarding the community engagement process and the proposed development, before the members of the NAC are elected."	N/A	in regards to the proposed addition of Section 14-12-3(f) The ordinance should require developers to either participate in the CMO process or good faith to meeting requested public bodies for their development project.	Developers who fail to register or provide any of the community benefits requested by the NAC should not be permitted to proceed with development in City Council and include provisions that community engagement and development be done in a timely and open manner.	N/A	N/A	It was recommended that section 14-12-3(e) [1] be amended to state "shall" instead of "may."	
25	N/A	Section 14-12-3(b) be revised to read as follows: "At the first meeting of the NAC, the developer shall provide an overview of the community engagement process, and the details of the proposed development. At the second meeting of the NAC, any proposed NAC members nominated by residents shall be permitted to present their ideas and suggestions regarding the community engagement process and the proposed development, before the members of the NAC are elected."	Section 14-12-3(b) be revised to read as follows: "At the first meeting of the NAC, the developer shall provide an overview of the community engagement process, and the details of the proposed development. At the second meeting of the NAC, any proposed NAC members nominated by residents shall be permitted to present their ideas and suggestions regarding the community engagement process and the proposed development, before the members of the NAC are elected."	N/A	In Section 14-12-3(c) add a subsection (4) containing the following: "The Administration will provide the NAC with a Community Needs Assessment or a Target Market Analysis of the Impact Area conducted by a third party prior to the final meeting of the NAC. This report is to be shared with City Council and made public."	N/A	N/A	N/A	Adopted - The language recommended by Stafffield is being merged with the language on line 17. If made available, this language should also be added to the best practices procedures.	
26	N/A	Section 14-12-3(b) be revised to read as follows: "At the first meeting of the NAC, the developer shall provide an overview of the community engagement process, and the details of the proposed development. At the second meeting of the NAC, any proposed NAC members nominated by residents shall be permitted to present their ideas and suggestions regarding the community engagement process and the proposed development, before the members of the NAC are elected."	Section 14-12-3(b) be revised to read as follows: "At the first meeting of the NAC, the developer shall provide an overview of the community engagement process, and the details of the proposed development. At the second meeting of the NAC, any proposed NAC members nominated by residents shall be permitted to present their ideas and suggestions regarding the community engagement process and the proposed development, before the members of the NAC are elected."	N/A	In Section 14-12-3(c) add a subsection (5) containing the following: "The City and the DEGC shall provide the NAC with all relevant information pertaining to any public subsidies being sought by the Developer including but not limited to the specific abatements, dollar amounts and duration of the subsidy, as well as the proposed abatement district maps."	N/A	N/A	N/A	Recommendation - That this language is added to the best practices procedures manual.	
27	Sec. 14-12-3(d)(2) The Community Benefits Report shall contain: (A) A detailed account of how notice was provided to organize the public meeting, (B) A list of the NAC members, and how they were selected, (C) An itemized list of the concerns raised by the NAC, (D) A method for addressing each of the concerns raised by the NAC, or why a particular concern will not be addressed.	N/A	N/A	N/A	In Section 14-12-3(d)(2) add a new subsection "e," as "A comprehensive detailing of community outreach strategies used by the NAC to solicit and record feedback."	N/A	N/A	N/A	Adopted as amended - In Section 14-12-3(d)(2) add a new subsection "e," as "A detailing list of community outreach strategies used to solicit and record feedback."	
28	Sec. 14-12-3(d)(3) The Planning Director, where possible, shall provide a copy of the Community Benefits Report to the NAC prior to submission to City Council.	N/A	N/A	N/A	Upon receiving the proposal for community benefits from the developer, "The NAC will have no less than one week to review the Community Benefits Agreement before being asked by the City to vote or sign a letter in support of the proposed benefits."	N/A	N/A	N/A	Adopted - The NAC amendment was adopted as submitted with the recommendation of a "one week" review time with a 6-3 vote.	
29	Sec. 14-12-3(f)(1)a.iv. A representative from the Human Rights Department.	N/A	N/A	N/A	Amend Sec. 14-12-3(f)(1)a.iv. Definitions by striking "Human Rights Department" and inserting "Department of Civil Rights, Inclusion and Opportunity."	N/A	N/A	N/A	Adopted	

Comment Position	UDJ Recommendations/Status	Councilmember Burkhead Recommendations	Councilmember McCallister Recommendations	Council President Brenda Jones Recommendations	Councilmember Catalano-Lewis Recommendations	Councilmember James' Avera Recommendations	Councilmember Justi Benson Recommendations	Councilmember Andrea Bates Recommendations	Councilmember James Tate Recommendations	Action
<p>30</p> <p>Sec. 14-12(9)(B) - If City Council finds that the Enforcement Committee has not made reasonable efforts, City Council shall make specific finding to the Enforcement Committee on the steps that need to be taken to comply with the Community Benefits Provision. (3) The Enforcement Committee shall provide City Council and the public monthly updates on compliance actions until City Council adopts a resolution declaring that the Developer is in compliance with the Community Benefits Provision or has taken adequate steps to mitigate violations. (2) City Council may hold additional hearings related to enforcement of the Community Benefits Provision as needed.</p>	N/A	N/A	N/A	N/A	<p>In Section 14-12-3(9)(b) Add: "If the Council determines that the Developer is in non-compliance with the Community Benefits Provision it may suspend all forms of public involvement to the Developer by a simple majority of Council after receiving at least three monthly updates from the Enforcement Committee as outlined in 14-12-3(9)(b)(c)." N/A</p>	N/A	N/A	N/A	<p>Withdrawn - Considering that there are already clawback provisions in the state statutes.</p>	
<p>31</p> <p>Sec. 14-12-5 - The requirements of this ordinance may be waived by resolution of the City Council upon submission by either the Planning Director or the Developer identifying reasons that the requirements of this ordinance are impractical or infeasible and identifying how the Developer will otherwise provide community benefits.</p>	N/A	N/A	That Sec. 14-12-5 Exemptions, Section 1 be stricken.	N/A	N/A	N/A	N/A	N/A	<p>Failed - 1-8</p>	
<p>32</p> <p>Sec. 14-12-5 - The requirements of this ordinance may be waived by resolution of the City Council upon submission by either the Planning Director or the Developer identifying reasons that the requirements of this ordinance are impractical or infeasible and identifying how the Developer will otherwise provide community benefits.</p>	N/A	N/A	N/A	N/A	N/A	N/A	N/A	<p>That language be added creating a subsection (3) which would read as follows: For Tier 2 Development Projects triggered by public support in the form of land transfers with a market value of Three Hundred Thousand Dollars or more, and priced below market value, what share of proceeds related to the transfer of land allocated to the Neighborhood Improvement Fund.</p>	<p>Adopted - Spivey Amendment. Adopted - The request that the BON remaining from Tier 2 property sales be evenly divided among the Neighborhood Improvement Fund and the Skilled Trades Fund was approved in a 3-4 vote.</p>	

Attachment E

(Law Departments February 7, 2019 Memorandum)



CITY OF DETROIT
LAW DEPARTMENT

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MEMORANDUM

DATE: February 7, 2019
TO: Honorable City Council *LTC*
FROM: Lawrence Garcia, Corporation Counsel
Ericka Savage Whitley, Assistant Corporation Counsel
City of Detroit Law Department
RE: **Proposed Amendments to the Community Benefits Ordinance**

The Legislative Policy Division (LPD) has compiled a spreadsheet of proposed amendments to the Community Benefits Ordinance (CBO), listed by Council Member. A legislative staff work group was formed and met to analyze the proposed amendments. LPD has updated the spreadsheet with the work group's recommendations. City Council, through Council Member Benson, has requested the Law Department provide a legal opinion on the proposed amendments in conjunction with the recommendations made by the legislative work group. The Law Department is responding to the proposed amendments by line item, as set forth in the spreadsheet provided by LPD.

Background

The Community Benefits Ordinance ("CBO") is an initiative proposed by City Council and approved by the voters of the City of Detroit in 2016. It applies to Tier 1 projects that:

- Involve the investment of \$75 million or more in value; and
- Receive \$1 million or more in property tax abatements; or
- Receive \$1 million or more in value of city land sale or transfer.

It mandates the following:

- (a) Community Engagement Process for Public Meeting. Section 14-12-3(a).
- requires at least one public meeting;
 - requires notice to Impact Area residents;
 - requires the Planning Director to present the project;
 - requires City Council to appoint a liaison from LPD;
 - does not specify that the NAC or Developer be present;
 - does not specify how additional meetings are to be approved.
- (b) Neighborhood Advisory Council ("NAC"). Section 14-12-3(b).
- (c) Engagement with Developer. Section 14-12-3(c).



- requires the Planning Director to facilitate at least one meeting between the NAC and the Developer to allow the NAC to learn more details about the project and to provide an opportunity for the NAC to make Developer aware of concerns raised by the NAC.
- (d) Community Benefits Report (“CBR”). Section 14-12-3(d).
(e) Development Agreement. Section 14-12-3(e).
(f) Enforcement. Section 14-12-3(f).

ANALYSIS

The following line items relate to whether existing CBO provisions should be amended and/or new provisions be added. “**Line Item**” is the current CBO provision, “**Proposed Amendments**” and “**Action**” reflect text copied directly from the spreadsheet prepared by LPD and inserted into this document for ease of reference. The “**Opinion**” section was prepared by the Law Department.

Line Item 1. Sec. 14-12-1. Purpose; Title (b) - This article shall be known as the "Detroit Community Benefits Ordinance.

Proposed Amendments:

- Change the title to Community Engagement Ordinance (LPD)
- Change the title to Community Engagement Ordinance (Sheffield)
- Leave the title as Community Benefits Ordinance (McCalister)
- Leave the title as Community Benefits Ordinance (Lopez)
- Leave the title as Community Benefits Ordinance (Ayers)
- Leave the title as Community Benefits Ordinance (Benson)
- Leave the title as Community Benefits Ordinance (Spivey)
- Leave the title as Community Benefits Ordinance (Tate)

Action: The work group has withdrawn this line item from consideration, therefore a legal opinion is not necessary.

Line Item 2. Sec. 14-12-2. Definitions - Tier 1 Development Project means a development project in the City that is expected to incur the investment of Seventy-five Million Dollars (\$75,000,000) or more during the construction of facilities, or to begin or expand operations or renovate structures, where the developer of the project is negotiating public support for investment in one or both of the following forms:...

Proposed Amendment:

- “That the investment threshold under Section 14-12-2 as defined for a ‘Tier 1’ Development Project be lowered from \$75,000,000 to \$50,000,000.” (Sheffield, McCalister, Jones, Castaneda-Lopez)

Action: Per LPD, “the work group recommended that the threshold amount for a Tier 1 Development be lowered from \$75 Million to \$50 Million based on the average investment amount



from 2013 to the Present. The \$50 Million Threshold would result in approximately 10% of the developments being subject to the CBO process.”

Opinion: Lowering the investment threshold is a matter of public policy and does not have any direct legal implications. If the threshold is lowered, it is advisable to 1) determine the number of projects that would qualify under the new threshold, 2) evaluate the feasibility of administering an increased number of NACs in the future, and 3) consider the probable impact that an expansion of the CBO would have on development activity.

Line Item 3. Sec. 14-12-2. Definitions - Enforcement Committee means a committee led by the City's Corporation Counsel and composed of representatives from the Planning and Development Department, Law Department, Human Rights Department, and other relevant City departments as determined by the Planning Director.

Proposed Amendments:

- Amend by adding: "The chair of each Neighborhood Advisory Committee shall be an ex-officio member of the related Enforcement Committee." (Ayers)
- Amend Sec. 14-12-2 by striking "Human Rights Department" and inserting "Department of Civil Rights, Inclusion and Opportunity." (Benson)

Action: The work group has recommended to adopt the proposed amendments.

Opinion: The amendment proposed by CM Benson is a matter of policy and does not have any direct legal implications.

Law advises against the amendment proposed by CM Ayers because appointing the chair of a NAC to the Enforcement Committee creates a conflict of interest. Under Section 14-12-3(f)(4), the NAC is responsible for reviewing any allegations of violations of the Community Benefits Provision provided to it by the community, and then reporting violations to the Enforcement Committee for action. "Upon receipt of written notification of allegations of violation from the NAC, the Enforcement Committee shall investigate such allegations and shall present their written findings to the NAC..." Section 14-12-3(f)(5) (Emphasis added).

The Enforcement Committee is required to investigate the NAC's allegations and provide a written report. It poses a conflict for a NAC Member to also participate in the investigation. Even as an ex-officio member of the Enforcement Committee, the NAC Member would be able to participate in discussions that may include particular actions of the NAC.

Line Item 4. Sec. 14-12-2. Definitions - Tier 2 Development Project means a development project in the City that does not qualify as a Tier 1 Project and is expected to incur the investment of Three Million Dollars (\$3,000,000) or more, during the construction of facilities, or to begin or expand operations or renovate structures, where the Developer is negotiating public support for investment in one or both of the following forms:



(1) Land transfers that have a cumulative market value of Three Hundred Thousand Dollars (\$300,000) or more (as determined by the City Assessor or independent appraisal), without open bidding and priced below market rates; or

(2) Tax abatements that abate more than Three Hundred Thousand Dollars (\$300,000) of City taxes over the term of the abatement that inure directly to the Developer, but not including Neighborhood Enterprise Zone tax abatements.

Proposed Amendments:

- That Sec. 14-12-2 Definitions be revised to read as follows: "Tier 2 Development Project means a development project in the City of Detroit that does not qualify as a Tier 1 Project and is expected to incur the investment of Three Hundred Thousand (\$300,000) dollars or more during the construction of facilities, or to begin or expanding operations or renovate structures, where the developer is negotiating public support for investment for investment in one or both of the following:

(1) Land transfers that have a cumulative market value of Thirty Thousand Dollars (\$30,000) or more....

(2) Tax abatements that abate more than Thirty Thousand Dollars (\$30,000) of City of Detroit Taxes over the term of the abatement that incur directly to the Developer, but not including Neighborhood Enterprising Zone Tax abatements." (McCalister)

- "The tiers required for CBO participation should be lowered to projects with \$300,000 of public investment for Tier 2 Projects." (Jones)

Action: Per LPD, "the McCalister/Jones amendment to lower the Tier 2 threshold from \$3 Million to \$300,000 was recommended for approval by the working group in a 5-4 vote."

Opinion: Lowering the investment threshold is a matter of public policy and does not have any direct legal implication. If the threshold is lowered, it is advisable to: 1) determine the number of projects that would have qualified under the new threshold since the CBO was adopted, and 2) consider the cost/benefit analysis for investors to participate in the CBO process with a land transfer or tax abatement valued at \$30,000, and 3) consider the probable impact that an expansion of the CBO would have on development activity.

Line Item 5. No current language to be amended. Proposes to add a new provision.

Proposed Amendment:

- "A CBO report should document the final results of the CBO process, which should be the creation of a legally binding community benefits agreement signed by the developer and the NAC. The CBO process should not be permitted to close until a community benefits agreement is created through authentic negotiation between community members and developers which includes specific and tangible benefits advocated for by the community." (Jones)



Action: The work group has pinned this line item.

Opinion: The Law Department advises against the proposed amendment for multiple reasons. First, creating a legally binding Community Benefits Agreement between the developer and the NAC is expressly prohibited under the CBO. Section 14-12-3(e)(2) states that, “the Developer shall not be required to enter into a legally binding agreement with any individual or organization other than the City for the express purpose of fulfilling the requirements of this ordinance or other City-mandated community engagement processes.” (Emphasis added).

Second, the NAC is not a legal entity authorized to enter agreements on behalf of the City. A NAC is appointed on a project-to-project basis and maintains an advisory role to City Council by engaging with the Developer and participating in the enforcement process. Nothing grants a NAC the authority to act upon any recommendations to effectuate or formulate public policy. Only City Council can approve Development Agreements on behalf of the City of Detroit. The CBO requires that City Council receive a Community Benefits Report from the Planning Director with the issues raised by the NAC for the project. The Planning Director is charged with developing methods to address concerns, while recognizing that the NAC’s concerns may not always be addressed. The only mandate related to the CBO is that the Planning Director must respond to the NAC’s concerns. The CBO does not empower the NAC to act independently with the Developer or implement methods to address concerns. See *Davis v. City of Detroit Fin. Review Team*, 296 Mich App 568, 821 N.W.2d 896 (2012) for a full analysis on how advisory boards are not “decision” making bodies.

Authorizing the NAC to enter into legally binding agreements on behalf of the City would create a vast number of policy concerns susceptible to legal scrutiny. Please read the following excerpt from a 2014 memorandum that Corporation Counsel (Melvin Butch Hollowell) provided to the Planning and Economic Development Committee regarding Community Benefits Agreements:

There has been extensive litigation surrounding CBAs, (e.g., presently in New York City and Sacramento) including lawsuits by negotiations with the developer, with one of the legal theories being that *one representative of the community cannot bind another*, or is in some way not truly representative of the community, lawsuits by the developers for illegal extractions and against developers for breach, and against the municipality as a named defendant in almost every instance.

Other litigation pivots on accountability. Complaints have been filed in state and federal court regarding conflict of interest, e.g., - how is the Host Community defined and selected (neighborhoods often have multiple census tracts); is there an election, and what are the rules; *what is the accountability of the Host Communities to the voters of the whole district and the whole city; what is the liability of the city if the Host Community negotiates a provision for the CBA which violates the charter, ordinance, or state or federal law.*



Further, to be valid, the CBA must be able to satisfy the 'consideration' element required for all legally enforceable contracts. This becomes a significant legal hurdle as *it is the city, not the Host Community that provides the promise*. A host community or member thereof has been held to have no standing unless expressly granted that right by statute or legislation. *Branch v. Riverside Park*, NY 2010); *Alicea v NYC* (1988).

Then there is also the question of who drafts the legal documents for the Host Community which the City is bound to enforce? How are they compensated? If they are sued for malpractice or breach, is the city bound to provide and pay for malpractice or breach, is the city bound to provide and pay for the costs legal fees? Again, we assume a Plaintiff's lawyer will name the Host Community and the City as well. Is the city contemplating extending government immunity to the Host Community? Who pays the cost of litigation when a Host Community member is individually sued for a CBA provision negotiated when said provision is contained in a city development agreement?

Requiring a developer to provide unrelated benefits in exchange for Host Community Approval was ruled illegal by the U.S Supreme Court in Nollan v. California Coastal Commission, 483 U.S. 825 (1987)

(Emphasis added.)

Third, the Community Benefits Provision is already legally binding because it is incorporated into the Development Agreement. See Section 14-12-3(e)(1). The CBP is defined as "the agreement made by and between the Planning Director and the Developer which specifically addresses the issues raised by the NAC." See Section 14-13-2. The Planning Director is charged with addressing the NAC's concerns in the CBP. City Council, as the deliberative body authorized to approve development agreements on behalf the City, has the discretion to decide whether the CBP is sufficient or if negotiations should continue. Additionally, Section 14-13-3(c)(2) states that "City Council by a 2/3 vote of members present...may facilitate additional meetings which the Developer, or the Developer's designee, shall participate in as directed." Therefore, under the current law, City Council may facilitate as many meetings as necessary to ensure that tangible community benefits are negotiated.

Lastly, the current CBO already includes enforcement mechanisms to uphold the terms of the Community Benefits Report. So, in addition to being impermissible for reasons previously stated, contractual agreements between NACs and Developers are not necessary for enforcement purposes.

Line Item 6. Sec. 14-12-3. Tier 1 Projects. (a)(1) Prior to submitting to City Council a request for approval of Land transfers or Tax abatements related to a Tier 1 Project, the Planning Director shall hold at least one public meeting in the Impact Area as defined in this Section.



Proposed Amendments:

- “Section 14-12-3(a)(1) be revised to state that the number of required community meetings be changed to ‘no fewer than five (5), unless a majority of the NAC deems otherwise.’” (LPD)
- “Section 14-12-3(a)(1) be revised to state that the number of required community meetings be changed to ‘no fewer than five (5), unless a majority of the NAC deems otherwise.’” (Sheffield)
- “The NAC should have ‘no fewer than six (6) community meetings, unless a majority of the NAC deems otherwise.’” (Jones)

Action: The work group has recommended that “Section 14-12-3(a)(1) be revised to state that the number of required community meetings be changed to ‘no fewer than five (5), unless a majority of the NAC deems otherwise.’”

Opinion: The Law Department has no opinion as to the substance of the proposed amendments, as it is a policy decision. However, the proposed amendments appear to intermingle different provisions of the CBO, particularly Section 14-12-3(a)(1) and Section 14-12-3(c)(1).

Section 14-12-3(a)(1) does not require that the NAC participate, or be appointed, prior to the Community Engagement meeting. Therefore, the language “unless a majority of the NAC deems otherwise” is not a valid amendment unless the CBO is also amended to require: 1) that the NAC be appointed prior to the Community Engagement Meeting, and 2) that the NAC facilitates the Community Engagement meeting, instead of the Planning Director.

Increasing the number of Community Engagement Meetings under 14-12-3(a)(1) does not have legal implications, as the number of required meetings is a policy decision. If the number of required meetings is increased, Law’s recommendation would be to: 1) determine the various costs and staff time associated with providing notice to residents of the Impact Area prior to each public meeting, 2) evaluate the feasibility of administering an increased number of Community Engagement Meetings, and 3) consider the probable impact that increased community meetings would have on development activity if there are lengthy delays in scheduling meetings.

Line Item 7. Sec. 14-12-3(a)(4) - Engagement with Developer. At the public meeting, the Planning Director will present general information about the Tier 1 Project, discuss ways in which the Tier 1 Project is anticipated to impact the local community, and ways in which the Developer and the Planning Director plan to address or mitigate these impacts.

Proposed Amendment:

- “In Section 14-12-3(a)(4), strike and replace with, “At the initial public meeting (Meeting #1), the Planning Director will present in detail on the CBO process, how the NAC fits within that broader process, the responsibilities of the NAC and the proposed timeline for the NAC meetings. The Planning Department shall discuss previous NACs and share outcomes and best practices learned from them. The meeting/workshop, shall allow for the community to ask questions and learn about the upcoming CBO process. The Developer shall not be present at this first meeting.” (Castaneda-Lopez)



Action: The work group has recommended amending Section 14-12-3(a)(4) to add language, “At the initial public meeting (Meeting #1), the Planning Director will present in detail on the CBO process, how the NAC fits within that broader process, the responsibilities of the NAC and the proposed timeline for the NAC meetings. The Planning Department shall discuss previous NACs and share outcomes and best practices learned from them. The meeting/workshop, shall allow for the community to ask questions and learn about the upcoming CBO process. The Developer shall not be present at this first meeting.”

Opinion: The Law Department advises against excluding participants from the community engagement process because it is a public meeting. Section 14-12-3(a)(2) requires the City Clerk to mail notice “to all City of Detroit residents within three hundred radial feet of the Tier 1 Project.” Additionally, Section 14-12-3(a)(3) requires the Planning Director to work with City Council to “ensure that local residents, businesses, and organizations...and those expected to be directly impacted by the Tier 1 project are informed of the public meeting.” Therefore, the spirit of the Community Engagement Meeting is to include anyone impacted by the project, which may include the Developer. In some instances the Developer, or an agent of the Developer, may reside in the Impact Area and would be required to receive public notice.

Secondly, the NAC should propose the timeline for NAC meetings, not the Planning Director. At the time of the initial public meeting, the NAC may not be nominated or formed. The Law Department advises that the Planning Director solicit nominations to the NAC during the Community Engagement Meeting(s).

Lastly, the proposed amendment assumes that there will be additional public meetings under Section 14-12-3(a) for any given Tier 1 project. Currently the CBO only requires “at least one” public meeting.

Law Proposed Amendments:

- At the initial public meeting, the Planning Director will present the CBO process in detail and how the NAC fits within that broader process. The meeting shall allow for the community to ask questions and learn about the upcoming CBO process.
- At the initial public meeting or any subsequent public meeting, but prior to accepting nominations for NAC Members, the Planning Department shall discuss the responsibilities of the NAC, as well as previous outcomes and best practices learned from NACs.

Line Item 8. Sec. 14-12-3(c)(1) - Engagement with Developer. (1) In addition to the meeting required in Subsection (a)(1) of this section, the Planning Director shall facilitate at least one meeting between the NAC and the Developer to allow the NAC to learn more details about the project and to provide an opportunity for the NAC to make Developer aware of concerns raised by the NAC. (2) City Council by a 2/3 vote of members present or the Planning Director may facilitate additional meetings which the Developer, or the Developer’s designee, shall participate in as directed. (3) As part of community engagement the developer, or their designee, shall be required to meet as directed.



Proposed Amendments:

- Section 14-12-3(c) be revised to read as follows: “At the first meeting of the NAC, the developer shall provide an overview of the community engagement process, and the details of the proposed development. At the second meeting of the NAC, any proposed NAC Member(s) nominated by residents shall be permitted to present their ideas and suggestions regarding the community engagement process and the proposed development, before the members of the NAC are elected.” (LPD)
- Section 14-12-3(c) be revised to read as follows: “At the first meeting of the NAC, the developer shall provide an overview of the community engagement process, and the details of the proposed development. At the second meeting of the NAC, any proposed NAC Member(s) nominated by residents shall be permitted to present their ideas and suggestions regarding the community engagement process and the proposed development, before the members of the NAC are elected.” (Sheffield)
- “During the first meeting those that are interested in being NAC members should be identified and during the second meeting, those interested in being NAC members must come formally prepared to state their interest in the NAC.

3(a) Residents who have competing affiliations or interests that may result in the perception or the reality of an increased risk of bias or poor judgment in upholding the NAC Member responsibility to prioritize the interests of community residents over the interests of city officials and developers, should be restricted from serving on the NAC. This may include current or past employment affiliated with the developer or the city. Residents who have affiliations with entities that create competing responsibilities or threaten to jeopardize the NAC Member responsibility to prioritize the interest of community residents over the interest of city officials and developers, should also be restricted from serving on the NAC.” (Jones)

Action: Per LPD, “the work group has recommended to not move forward with this proposed amendment because it is addressed by line item 6 to Section 14-12-3(a)(1).”

Line Item 9. Sec. 14-12-3(b)(1) - The Planning Director will accept nominations to the NAC from any person that resides in the Impact Area.

Proposed Amendments: None. The spreadsheet has strikethrough language.

Line Item 10. Sec. 14-12-3(b)(3) - The NAC shall consist of nine members, selected as follows: (a) Two Members selected by residents of the Impact Area chosen from the resident nominated candidates; (b) Four Members selected by the Planning Director from the resident nominated candidates, with preference given to individuals the Planning Director expects to be directly impacted by the Tier 1 Project; (c) One Member selected by the Council Member in whose district contains the largest portion of the Impact Area from the resident nominated candidates; and (d) One Member selected by the At-Large Council Members from the resident nominated candidates.



Proposed Amendments:

- “2(a) The NAC should be appointed by their community within their census track and not by the city.” (Jones)
- “2(a) The NAC should be appointed by their community within their census track and not by the city.” (Castaneda-Lopez)
- “That three members should be selected by the respective Council members, i.e., two At-Large, one by the district Council member; three by the host community; three by the administration, via the Planning and Development Department.” (Tate)

Action: Per LPD, “the work group has recommended to adopt the Tate amendment that the NAC be selected by the Community, Council and the administration proportionately.”

Opinion: Amending how the NAC is selected is more a matter of public policy with no apparent legal implications. All three of the proposed amendments reduce the Planning Director’s role in the selection process. The amendments proposed by President Jones and CM Castaneda-Lopez eliminate the City Council and Planning Director from selecting NAC Members. The amendment proposed by CM Tate increases the number of selections by the residents of the Impact Area from two to three, and reduces the Planning Director’s selection by one.

If adopted, the proposed amendments should use language consistent with the current provisions in the CBO. The language “three by the host community” should be replaced with “three by residents of the Impact Area.” And the language “within their census track” should be replaced with “within the Impact Area.”

Line Item 10.5. No current language to be amended. Proposes to add a new provision.

Proposed Amendment:

- “Should Council have the flexibility to select NAC Members from outside of the list of nominees?” (Jones)

Action: Per LPD, the work group recommends to adopt an amendment from CM Benson “to allow the administration in addition to Council to select NAC members from outside of the list of nominees by a vote of 7-2.”

Opinion: NAC Members are selected from a list of nominees within the Impact Area. However, Section 14-12-3(b)(4) states that “if the Planning Director receives less than nine nominations, the Planning Director may seek out additional nominations from individuals that live outside the Impact Area but within the City Council district or districts where the Tier 1 Project is located.” If the intent is to allow the City Council Member whose district contains most of the project to also select a NAC Member from outside of the Impact Area, then that is a policy decision that does not have any direct legal implications. However, it is advisable to be specific and identify how selections may be made outside of the Impact Area even if nine or more nominations are received. It also advisable to be specific and identify the priority for selecting nominees outside of the Impact Area, in the event only one selection is available.



Line Item 11. No current language to be amended. Proposes to add a new provision.

Proposed Amendment:

- “There should be one alternate selected by the community. The person with the third highest votes from the community should be listed as the alternate person. This person must agree to be present at all meetings and will be notified by the Planning Department when they are needed to formally replace a NAC member.” (Jones)

Action: The work group recommends adopting this proposed amendment.

Opinion: Adding an alternate NAC Member is a matter of public policy and does not have any direct legal implications. Section 14-12-3(b)(3)(a) states that two Members of the NAC shall be selected by residents of the Impact Area. Therefore, a third resident may be selected as an alternate. However, the language “with the third highest votes from the community” should be amended to language consistent with the language in the CBO, “from the Impact Area.”

The proposed amendment says an alternate “should” be selected, indicating some discretion by the residents of the Impact Area not to select an alternate.

If adopted, the proposed amendment should be less restrictive to allow a person “with the next highest votes who is able and willing to serve.” to serve as the alternate, in the event that the third highest vote getter is not available.

Finally, if adopted, the proposed amendment to “formally replace a NAC Member” should specify whether the alternate replaces a NAC Member on a permanent basis, or on a case-by-case basis, at the discretion of the NAC.

Law Proposed Amendment: The residents of the Impact Area may select a third person from the resident nominated candidates to serve as an alternate NAC Member. The alternate should be the person with the next highest votes who is able and willing to serve. The alternate must agree to be present at all NAC meetings and will be notified by the Planning Director when he or she is needed to replace a NAC Member.

Line Item 12. Sec. 14-12-3(c)(1) - In addition to the meeting required in Subsection (a)(1) of this section, the Planning Director shall facilitate at least one meeting between the NAC and the Developer to allow the NAC to learn more details about the project and to provide an opportunity for the NAC to make Developer aware of concerns raised by the NAC.

Proposed Amendment:

- Add the following at the end of Section 14-12-3(c)(1): “The Developer must present to the members of the NAC, at a minimum, how the proposed project will utilize green infrastructure, create jobs for Detroiters, detail which tax incentives they are seeking with specific amounts, and to what extent the project will feature subsidized/discounted/affordable housing and/or commercial space.” (Castaneda-Lopez)



Action: Per LPD, the work group recommended to adopt the following by a 6-3 vote: “The Developer and the relevant city departments must present to the members of the NAC, at a minimum, how the proposed project may utilize green infrastructure, create jobs for Detroiters, detail which tax incentives they are seeking with specific amounts, and to what extent the project will feature subsidized/discounted/affordable housing and/or commercial space. These recommendations may include but are not limited to noise, traffic, dust mitigation.”

Opinion: To the extent that the proposed amendment would require the Developer to provide additional information to the NAC, and not necessarily to commit to any substantive community benefits, then the proposed amendment is a matter of policy and does not have any direct legal implications. The proposed amendment should not, however, be construed as requiring the Developer to provide any specific community benefits without some guarantee of some nexus and rough proportionality between such community benefits and the impacts of the Tier 1 project on the community.

Line Item 13. Sec. 14-12-3(b)(2) - All residents over the age of 18 that reside in the Impact Area are eligible for nomination.

Proposed Amendment:

- “In Section 14-12-3(b)(2), which pertains to eligibility for serving on the NAC, strike ‘18’ and replace with ‘16.’” (Castaneda-Lopez)

Action: The work group has recommended not to move forward with this proposed amendment.

Line Item 14. Sec. 14-12-3(b)(2) - All residents over the age of 18 that reside in the Impact Area are eligible for nomination.

Proposed Amendment:

- “In Section 14-12-3(b)(2), add ‘Any person who stands to receive a pecuniary benefit from the development or is otherwise employed by the Developer is ineligible to serve on the NAC.’” (Castaneda-Lopez)

Action: Per LPD, the work group has recommended to approve the following by a 9-0 vote, “any person who is an agent, employee, or official of the developer must disclose their relationship prior to selection to the NAC.”

Opinion: Requiring NAC nominees to disclose any relationship to the Developer is a policy decision. However, it is advisable to clarify whether being an agent, employee or official of the Developer automatically disqualifies a nominee from being selected.

Second, a NAC Member is a City appointee and would be subject to the City’s ethical standards absent amendments to the CBO. Section 2-106.1 through 2-106.5 of the 2012 Detroit City Charter applies Ethical Standards of Conduct to all “Public Servants including the Mayor, City Council Members, City Clerk, appointive officers, appointees, employees and contractors.” Law



recommends providing each NAC Member with a copy of the City's Ethical Standards of Conduct when selected and/or during the nomination process.

Line Item 15. Sec. 14-12-3(b)(4) - If the Planning Director receives less than nine nominations, the Planning Director may seek out additional nominations from individuals that live outside the Impact Area but within the City Council district or districts where the Tier 1 Project is located.

Proposed Amendment:

- "That Sec. 14-12-3 Neighborhood Advisory Council (4) be amended so that if the NAC receives less than nine nominations, the City Council Member of the Impact Area may seek out individuals that live outside the Impact Area but within the City Council District or Districts where the Tier 1 Project is located." (McCalister)

Action: The work group has recommended to adopt the proposed amendment by a vote of 9-0.

Opinion: This proposed amendment clarifies Line Item 10 by stating that less than 9 nominations have to be received for City Council to select an individual outside of the Impact Area. Amending how the NAC is selected is a policy decision, however the Law Department advises against the proposed amendment, because currently, the CBO designates the Planning Director to accept nominations from any person that resides in the Impact Area. The proposed amendment shifts responsibility from the Planning Director to seek additional nominations to "the Council Member of the Impact Area," but more than one City Council Member may represent the Impact Area. If adopted, the language should be consistent with Section 14-12-3(b)(3)(c), which states that the Council Member "whose district contains the largest portion of the Impact Area" may select a NAC Member. The proposed amendment also does not consider at-large Council Members, who may each select one NAC Member from the Impact Area.

Law Proposed Amendment: If the Planning Director receives less than nine nominations, the Planning Director may seek out additional nominations from individuals that live outside the Impact Area but within the City Council district or districts where the Tier 1 Project is located, in coordination with Council Members who represent any portion of the Impact Area.

Line Item 16: Sec. 14-12-3(b)(5) - All actions of the NAC may be taken with the consent of a majority of NAC members serving.

Proposed Amendments:

- "That language be added to subsection 14-12-3(b)(5) stating: 'Attendance at all NAC meetings by all elected and appointed NAC Members shall be mandatory. If a Member fails to attend an NAC meeting, an alternative may be appointed by the NAC as a permanent replacement member.'" (LPD)
- "That language be added to subsection 14-12-3(b)(5) stating: 'Attendance at all NAC meetings by all elected and appointed NAC Members shall be mandatory. If a member fails to attend an NAC meeting, an alternative may be appointed by the NAC as a permanent replacement member.'" (Sheffield)



- "That Section 14-12-3(b)(5) be revised to state that 'elected and appointed NAC members must attend at least 75% of the scheduled meetings.'" (McCalister)
- "It is recommended that a NAC member not be absent for more than 'one' meeting. Additional absences could disqualify one from further being a NAC member." (Jones)

Action: The work group has recommended the following amendment, "Attendance at all NAC meetings by all elected and appointed NAC members shall be mandatory, unless advance notice is provided. More than one (1) absence could disqualify one from further being a NAC member. If a member fails to attend an NAC meeting, an alternate may be appointed by the NAC as a permanent replacement member, at the discretion of the NAC."

Opinion: The proposed amendments to adopt attendance requirements are a matter of public policy and do not have any direct legal implications.

The CBO does not currently regulate selecting an alternate. The proposed amendments by LPD, President Pro Tem Sheffield, and President Jones conflict with Line Item 11, which proposes that the alternate be the third highest vote getter from the nominated residents of the Impact Area and notified by the Planning Director. This line item appoints an alternate at the discretion of the NAC.

The terms "appointed" and "elected" do not correspond with the current language of the CBO, Section 14-12-3(b). The term "selected" should be used for consistency, unless the CBO is amended to require that NAC Members are elected. The only reference to the term "appoint" in the CBO is in 14-12-3(a)(5) and states that City Council shall appoint a liaison from the Legislative Policy Division to monitor the Community Engagement process and provide updates to the City Council.

Law Proposed Amendment: NAC Members shall attend all NAC meetings, unless advance notice is provided. If a NAC Member fails to attend more than one (1) meeting, an alternate may be appointed as a permanent replacement, at the discretion of the NAC."

Line Item 17. Sec. 14-12-3(c)(2) - City Council by a 2/3 vote of members present or the Planning Director may facilitate additional meetings which the Developer, or the Developer's designee, shall participate in as directed.

Proposed Amendment:

- "That all essential documents to be provided and/or emailed to the NAC Members, District and At-Large City Council members within 48 hrs. of the NAC selection. This will provide the NAC greater transparency with adequate time for review. (Example of Relevant Documents: Detroit Community Benefits Ordinance, development agreements between the city and developer, details of project financing/ project proforma, developer's RFP response, all renderings related to the project, But/For Economic Analysis conducted by DEGC, all environmental studies, documents related to brownfield funding, etc.)" (Jones)



Action: The work group has recommended that the following amendment be adopted, "The City and the DEGC shall provide all essential documents to the NAC Members, District and At-Large City Council members within 72 hrs. of the NAC selection including but not limited to the Detroit Community Benefits Ordinance, development agreements between the city and developer, projected revenue, developer's RFP response, all renderings related to the project, But/For Economic Analysis conducted by DEGC, all environmental studies, documents related to brownfield funding, etc."

Opinion: This proposed amendment would require certain document disclosures within 72 hours of a NAC being selected, which is a matter of public policy that does not have any direct legal implications to the extent that the documentation is available and rationally related to the development project. It is not advisable to use "the City shall provide" because the function of the NAC and City Council is to act on behalf of the City. The Planning Director administers most of responsibility under the CBO, therefore the language should specify who bears particular responsibilities (Planning Director, DEGC, etc...), while understanding that some documentation may come from the Planning Director and other documentation may come from DEGC.

Law Proposed Amendment: Within 72 hours of the NAC being selected, the Planning Director and Detroit Economic Growth Corporation shall provide...

Line Item 18. No current language to be amended. Proposes to add a new provision.

Proposed Amendments:

- That a new section be added, 14-12-3(7) that should read: "If the proposed development includes residential housing, then at least 20% of the units for a single site shall be designated as affordable housing, defined as affordable by those earning at least 80% of Area Median Income." (LPD)
- That a new section be added, 14-12-3(7) that should read: "If the proposed development includes residential housing, then at least 20% of the units for a single site shall be designated as affordable housing, defined as affordable by those earning at least 80% of Area Median Income." (Sheffield)
- "Support Council President Pro Tem Sheffield's proposed amendment to add a Section 14-12-3(7) which ends with 'defined as affordable by those earning at least 80% of Area Median Income' and offer a friendly amendment to replace 'at least' with 'no more than.'" (Castaneda-Lopez)

Action: Per LPD, "this item was pinned for a legal opinion on the Sheffield recommendation. A friendly amendment was accepted by Sheffield's staff from RCL's staff that language be added to the end of this section which reads: '...for the period of the abatement.'"

Opinion: The proposed amendments are improper for multiple reasons. First, as noted previously, the NAC maintains an advisory role to City Council by engaging with the Developer and participating in the enforcement process. Nothing grants the NAC the authority to act upon any



recommendations to effectuate or formulate public policy. Only City Council can approve Development Agreements on behalf of the City of Detroit.

Second, the City is prohibited by state law from imposing rent control. Public Act 226 of 1988 limits the powers of the City to control the amount of rent charged for leasing private residential property. Public Act 585 of 2018, effective on March 28, 2019, specifies that the City may implement “*voluntary incentives*” to increase the supply of moderate- or low-cost private residential property available for lease. As such, the proposed language “shall be designated as affordable housing” is not advised. Under PA 585, the City would have to create a plan or program that incentivizes voluntary participation, and not tie-bar affordable housing to the CBO process. Arguably, the CBO would not qualify as a voluntary incentive because the developer has no ability to opt out of the process if the project qualifies as Tier 1. See Section 14-12-3(c)(3). “[a]s part of community engagement the developer, or their designee, *shall be required* to meet as directed.” The CBO complies with state law by stating in Section 14-12-3(e)(3) that “the Developer may *voluntarily* enter into any contract or agreement related to the Tier 1 Project that does not pose a conflict of interest with the City.”

Third, the proposed amendments do not differentiate between residential housing and leased residential housing. PA 585 and the City’s Inclusionary Housing Ordinance (Detroit Municipal Code Section 14-2-1 et. seq.) only apply to housing units for lease. A requirement that the City Developers designate affordable housing for sale to people earning less than 80% Area Median Income would be constitutionally suspect.

Line Item 19. No current language to be amended. Proposes to add a new provision.

Proposed Amendments:

- That a new section be added, 14-12-3(c)(5) that should read: “The Planning and Development Department shall create and maintain a page on the City’s web site detailing the specifics of the development, along with a projected timeline, for each development project subject to this article. The webpage shall also contain the contact information for the PDD project manager and general contact information for the developer.” (LPD)
- That a new section be added, 14-12-3(c)(5) that should read: “The Planning and Development Department shall create and maintain a page on the City’s web site detailing the specifics of the development, along with a projected timeline, for each development project subject to this article. The webpage shall also contain the contact information for the PDD project manager and general contact information for the developer.” (Sheffield)

Action: Per LPD, “the work group has recommended not to move forward with the proposed amendments because Planning and Development already maintains a page for each development.”

Line Item 20. 14-12-3(a)(2) - The City Clerk shall forward notice of the public meeting via First Class Mail no less than 10 days before such meeting to all City of Detroit residents within three hundred radial feet of the Tier 1 Project.



Proposed Amendment:

- "The City Clerk shall forward notice of the public meeting via First Class Mail no less than 10 days before such meeting to all City of Detroit residents within three hundred radial feet of the ~~Tier 1 Project~~ Impact Area." (Jones)

Action: The work group has recommended to adopt the proposed amendment.

Opinion: Amending notice requirements of the public meeting is a policy decision and does not have any direct legal implications. Section 14-12-2 of the CBO defines the Impact Area as "an area determined by the Planning Director that includes all census tracts or census block groups in which the Tier 1 Project is located, and any other areas as determined by the Planning Director." The proposed amendment allows greater flexibility for public notice requirements because the Planning Director has discretion to determine the size of the Impact Area. Currently, the CBO requires that public notice be mailed to Detroit residents within 300 hundred radial feet of the project.

Line Item 21. Not applicable. Per LPD, this line item has been withdrawn.

Line Item 22. Sec. 14-12-3(d)(2) The Community Benefits Report shall contain: (a) A detailed account of how notice was provided to organize the public meeting. (b) A list of the NAC members, and how they were selected. (c) An itemized list of the concerns raised by the NAC. (d) A method for addressing each of the concerns raised by the NAC, or why a particular concern will not be addressed.

Proposed Amendment:

- Per LPD, this line item has been withdrawn and "it has been recommended that a 'best practices manual' be created and this language be incorporated into the manual."

Line Item 23. Sec. 14-14-3(e)(1) - All development agreements made between the Developer and the City related to the land transfers or tax abatements associated with a Tier 1 Project shall include the Community Benefits Provision, which shall include:

Proposed Amendment: The work group has recommended not to move forward with this proposed amendment.

Line Item 24. Sec. 14-12-3(e)(1)(a) Enforcement mechanisms for failure to adhere to Community Benefits Provision, that may include but are not limited to, clawback of City-provided benefits, revocation of land transfers or land sales, debarment provisions and proportionate penalties and fees; and

Proposed Amendment:

- That section 14-12-3(e)(1)(a) be amended to state "shall" instead of "may." (Spivey)

Action: The work group has recommended to adopt the proposed amendment.



Opinion: The proposed amendment creates a stricter requirement that enforcement mechanisms for failure to adhere to the Community Benefits Provision be mandatory. The CBO currently lists the mechanisms that “may” be used to enforce, which is a policy decision. However, there may be legal implications if the proposed language is interpreted that each of the listed enforcement mechanisms be imposed for every violation of the CBP. It is advisable to require that at least one enforcement mechanism be imposed when the CBP is violated.

Law Proposed Amendment: Enforcement mechanisms for failure to adhere to Community Benefits Provision shall include, but not limited to, one or more of the following: clawback of City-provided benefits, revocation of land transfers or land sales, debarment provisions and proportionate penalties and fees; and

Line Item 25. No current language to be amended. Proposes to add a new provision.

Proposed Amendment:

- Section 14-12-3(c) be revised to read as follows: “At the first meeting of the NAC, the developer shall provide an overview of the community engagement process, and the details of the proposed development. At the second meeting of the NAC, any proposed NAC member(s) nominated by residents shall be permitted to present their ideas and suggestions regarding the community engagement process and the proposed development, before the members of the NAC are elected.” (Sheffield)

Action: Per LPD, “The language recommended by Sheffield is being merged with the language on line item 8. If made available, this language should also be added to the best practices procedures.”

Line Item 26. No current language to be amended. Proposes to add a new provision.

Proposed Amendment:

- In Section 14-12-3(c) add a subsection (5) containing the following, “The City and the DEGC shall provide the NAC with all relevant information pertaining to any public subsidies being sought by the Developer including but not limited to the specific abatements, dollar amounts and duration of the subsidy, as well as the proposed abatement district maps.” (Castaneda-Lopez)

Action: The work group recommended that this language be added to the best practices procedures manual.

Line Item 27. Sec. 14-12-3(d)(2) The Community Benefits Report shall contain: (a) A detailed account of how notice was provided to organize the public meeting. (b) A list of the NAC members, and how they were selected. (c) An itemized list of the concerns raised by the NAC. (d) A method for addressing each of the concerns raised by the NAC, or why a particular concern will not be addressed.



Proposed Amendment:

- “Add a new subsection (e), ‘A detailing of community outreach strategies used to solicit and record feedback.’” (Castaneda-Lopez)

Action: The work group has recommended to adopt the proposed amendment.

Opinion: Requiring the Community Benefits Report to include a detailing of community outreach strategies used to solicit and record feedback is a policy decision that does not have any direct legal implications.

Line Item 28. Sec. 14-12-3(d)(3) The Planning Director, where possible, shall provide a copy of the Community Benefits Report to the NAC prior to submission to City Council.

Proposed Amendment:

- Upon receiving the proposal for community benefits from the developer, "The NAC will have no less than one week to review the Community Benefits Agreement before being asked by the City to vote or sign a letter in support of the proposed benefits." (Castaneda-Lopez)

Action: Per LPD, “the work group recommended to adopt the proposed amendment with a ‘one week’ review time with a 6-3 vote.”

Opinion: Section 14-12-3(d) regulates the Community Benefits Report that the Planning Director is required to submit to City Council. The proposed amendment seems to impose two new requirements, 1) that the NAC have at least one week to review the CBR, and 2) that the NAC will vote or sign a letter in support of the CBR. Requiring that the NAC have a week to review the CBO is a policy decision and does not have any direct legal implications. However the language “before being asked by the City to vote or sign a letter” is not advisable because the CBO does not require any deliberative action by the NAC. The proposed amendment also assumes that the City will “ask” the NAC to vote or sign a letter, which is also not a requirement. Rather, Section 14-13-3(d)(4) of the CBO requires the Planning Director to “ensure an expeditious community engagement process...” and “work with City Council to assure that...all of the approvals required of City Council may be considered simultaneously and subject to one approval vote.” Section 14-13-3(d)(5). If adopted, it is advisable to evaluate the feasibility of imposing deliberative action by the NAC and consider the probable impact that it may have on development activity.

Line Item 29. Sec. 14-12-3(f)(1)(a)(iv) A representative from the Human Rights Department.

Proposed Amendment:

- Strike "Human Rights Department" and insert "Department of Civil Rights, Inclusion and Opportunity." (Benson)

Action: The work group has recommended to adopt this recommendation.



Opinion: The amendment proposed by CM Benson is a matter of policy and does not have any direct legal implications.

Line Item 30. Sec. 14-12(f)(9)(b)(ii) - If City Council finds that the Enforcement Committee has not made reasonable efforts, City Council shall make specific finding to the Enforcement Committee on the steps that need to be taken to comply with the Community Benefits Provision. (i) The Enforcement Committee shall provide City Council and the NAC monthly updates on compliance actions until City Council adopts a resolution declaring that the Developer is in compliance with the Community Benefits Provision or has taken adequate steps to mitigate violations. (ii) City Council may hold additional hearings related to enforcement of the Community Benefits Provision as needed.

Proposed Amendment:

- Add, "if the Council determines that the Developer is in noncompliance with the Community Benefits Provision it may suspend all forms of public investment to the Developer by a simple majority of Council after receiving at least three monthly updates from the Enforcement Committee as outlined in 14-12-3(f)(9)(b)(i)." (Castaneda-Lopez)

Action: Per LPD, "the work group has recommended to withdraw the proposed amendment, considering that there are already claw-back provisions."

Line Item 31. Sec. 14-12-5 - The requirements of this ordinance may be waived by resolution of the City Council upon submission by either the Planning Director or the Developer identifying reasons that the requirements of this ordinance are impractical or infeasible and identifying how the Developer will otherwise provide community benefits.

Proposed Amendment:

- That Sec. 14-12-5 Exemptions; Section 1 be stricken. (McCalister)

Action: The work group has recommended not to move forward with this proposed amendment.

Line Item 32.

Tier 2 Development Project means a development project in the City that does not qualify as a Tier 1 Project and is expected to incur the investment of Three Million Dollars (\$3,000,000) or more, during the construction of facilities, or to begin or expand operations or renovate structures, where the Developer is negotiating public support for investment in one or both of the following forms:

- (1) Land transfers that have a cumulative market value of Three Hundred Thousand Dollars (\$300,000) or more (as determined by the City Assessor or independent appraisal), without open bidding and priced below market rates; or





(2) Tax abatements that abate more than Three Hundred Thousand Dollars (\$300,000) of City taxes over the term of the abatement that inure directly to the Developer, but not including Neighborhood Enterprise Zone tax abatements.

Proposed Amendments:

- “That language be added creating a subsection (3) which would require all proceeds from Tier 2 property sales be allocated to the Neighborhood Investment Fund.” (Spivey)

Action: Per LPD, “the work group has recommended to adopt the proposed amendment with the request that the 80% remaining from Tier 2 property sales be evenly divided among the Neighborhood Improvement Fund and the Skilled Trades Fund was approved in a 5-4 vote.”

Opinion: The Law Department advises against this proposed amendment. Substantive regulations must not be included in definitional statutory language.

Attachment F

(LPD Community Benefits PowerPoint Legislative Working Group Presentation)

Community Benefits Ordinance

Recommended Changes



Line 1

Sec. 14-12-1(b) - Title

- Legislative Policy Division
- Council President Pro Tem Sheffield
- Council Member McCalister
- Council President Jones



Action

- **Adopted** - The recommendation from the working group is to leave the title as **Community Benefits Ordinance - Adopted**.

Line 2

Sec. 14-12-2. Definitions – “Tier 1 Development Project

Existing Text

- Tier 1 Development Project means a development project in the City that is expected to incur the investment of Seventy-five Million Dollars (\$75,000,000) or more during the construction of facilities, or to begin or expand operations or renovate structures, where the developer of the project is negotiating public support for investment in one or both of the following forms:...

Councilmember Sheffield Recommendations

- That the investment threshold under Section 14-12-2 as defined for a “Tier 1” Development Project be lowered from \$75,000,000 to \$50,000,000.

Sec. 14-12-2. Definitions – “Tier 1 Development Project” continued

Councilmember McCalister Recommendations

- That the investment threshold under Section 14-12-2 as defined for a “Tier 1” Development Project be lowered from \$75,000,000 to \$50,000,000.

Council President Brenda Jones Recommendations

- That the investment threshold under Section 14-12-2 as defined for a “Tier 1” Development Project be lowered from \$75,000,000 to \$50,000,000.

Sec. 14-12-2. Definitions – “Tier 1 Development Project” continued

Councilmember Castaneda Lopez Recommendations

- That the investment threshold under Section 14-12-2 as defined for a “Tier 1” Development Project be lowered from \$75,000,000 to \$50,000,000.

Action

- Pinned - Awaiting the average dollar amount of investment for tax incentive developments for the DEGC.

Line 3

Sec. 14-12-2. Definitions – “Enforcement Committee”

Existing Text

- Enforcement Committee means a committee led by the City's Corporation Counsel and composed of representatives from the Planning and Development Department, Law Department, Human Rights Department, and other relevant City departments as determined by the Planning Director.

Councilmember Janee' Ayers Recommendations

- Amend by adding: "The chair of each Neighborhood Advisory Committee shall be an ex-officio member of the related Enforcement Committee."

Sec. 14-12-2. Definitions – “Enforcement Committee” continued

Councilmember Scott Benson Recommendations

- Amend Sec. 14-12-2 by striking "Human Rights Department" and inserting "Department of Civil Rights, Inslusion and Opportunity."

Action

- **Adopted - The recommendation is to amend - Sec. 14-12-2 by striking "Human Rights Department" and inserting "Department of Civil Rights, Inclusion and Opportunity."**
- **Also to amend this section by adding: "The chair of each Neighborhood Advisory Committee shall be an ex-officio member of the related Enforcement Committee." It was also recommended that the composition of the Enforcement Committee be expanded to include the Council Liaison from LPD. A further amendment would need to be made to require that each NAC elect a Chair.**

Line 4

Sec. 14-12-2. Definitions – “Tier 2 Development Project”

Existing Text

- Tier 2 Development Project means a development project in the City that does not qualify as a Tier 1 Project and is expected to incur the investment of Three Million Dollars (\$3,000,000) or more, during the construction of facilities, or to begin or expand operations or renovate structures, where the Developer is negotiating public support for investment in one or both of the following forms:
 - (1) Land transfers that have a cumulative market value of Three Hundred Thousand Dollars (\$300,000) or more (as determined by the City Assessor or independent appraisal), without open bidding and priced below market rates; or
 - (2) Tax abatements that abate more than Three Hundred Thousand Dollars (\$300,000) of City taxes over the term of the abatement that inure directly to the Developer, but not including Neighborhood Enterprise Zone tax abatements.

Councilmember McCalister Recommendations

- That Sec. 14-12-2 Definitions be revised to read as follows: “Tier 2” Development Project means a development project in the City of Detroit that does not qualify as a Tier 1 Project and is expected to incur the investment of Three Hundred Thousand (\$300,000) dollars or more during the construction of facilities, or to begin or expanding operations or renovate structures, where the developer is negotiating public support for investment for investment in one or both of the following
 - ~~(1) Land transfers that have a cumulative market value of Thirty Thousand Dollars (\$30,000) or more~~
 - ~~(2) Tax abatements that abate more than Thirty Thousand Dollars (\$30,000) of City of Detroit Taxes over the term of the abatement that incur directly to the Developer, but not including Neighborhood Enterprising Zone Tax abatements.”~~

Sec. 14-12-2. Definitions – “Tier 2 Development Project” continued

Council President Brenda Jones Recommendations

- The tiers required for CBO participation should be lowered to projects with \$300,000 of public investment for Tier 2 Projects.

Action

- Pinned - Awaiting the average dollar amount of investment for tax incentive developments for the DEGC.

Line 5

Recommended Addition

Council President Brenda Jones Recommendations

- Recommending that a new section be added in which it is made clear that the CBO process must be a legally binding contractual agreement between the NAC and the developer.

A CBO report should document the final results of the CBO process, which should be the creation of a legally binding community benefits agreement signed by the developer and the NAC. The CBO process should not be permitted to close until a community benefits agreement is created through authentic negotiation between community members and developers which includes specific and tangible benefits advocated for by the community.

Action

- Pinned - Awaiting feed back from the respective Council offices as to if this is intent of the Council. Should this language be adopted the definition of "Community Benefits" would be expanded.

Line 6

Sec. 14-12-3. Tier 1 Projects(a)(1)

LPD Recommendations/Analysis

- Section 14-12-3(a)(1) be revised to state that the number of required community meetings be changed to “no fewer than five (5), unless a majority of the NAC deems otherwise.”

Councilmember Sheffield Recommendations

- Section 14-12-3(a)(1) be revised to state that the number of required community meetings be changed to “no fewer than five (5), unless a majority of the NAC deems otherwise.”

Sec. 14-12-3. Tier 1 Projects (a)(1) continued

Council President Brenda Jones Recommendations

- ~~The NAC should have “no fewer than six (6) community meetings, unless a majority of the NAC deems otherwise”.~~

Action

- Adopted - Section 14-12-3(a)(1) be revised to state that the number of required community meetings be changed to “no fewer than five (5), unless a majority of the NAC deems otherwise.”

Line 7

Sec. 14-12-3 (c)(1). – Engagement with Developer

Existing Text

- Sec. 14-12-3(a)(4) - Engagement with Developer. (4)At the public meeting, the Planning Director will present general information about the Tier 1 Project, discuss ways in which the Tier 1 Project is anticipated to impact the local community, and ways in which the Developer and the Planning Director plan to address or mitigate these impacts.

Councilmember Castaneda Lopez Recommendations

- In Section 14-12-3(a)(4), ~~strike and replace with~~, “At the initial public meeting (~~Meeting #1~~), the Planning Director will present in detail on the CBO process, how the NAC fits within that broader process, the responsibilities of the NAC and the proposed timeline for the NAC meetings. The Planning Department shall discuss previous NACs and share outcomes and best practices learned from them. The meeting/workshop, shall allow for the community to ask questions and learn about the upcoming CBO process. The Developer shall not be present at this first meeting.

Action

- **Adopted - In Section 14-12-3(a)(4), Add language to the section, “At the initial public meeting (Meeting #1), the Planning Director will present in detail on the CBO process, how the NAC fits within that broader process, the responsibilities of the NAC and the proposed timeline for the NAC meetings. The Planning Department shall discuss previous NACs and share outcomes and best practices learned from them. The meeting/workshop, shall allow for the community to ask questions and learn about the upcoming CBO process. The Developer shall not be present at this first meeting.**

Line 8

Sec. 14-12-3 (c)(1). “Engagement with Developer”

Existing Text

- Sec. 14-12-3(c)(1) - Engagement with Developer. (1) In addition to the meeting required in Subsection (a)(1) of this section, the Planning Director shall facilitate at least one meeting between the NAC and the Developer to allow the NAC to learn more details about the project and to provide an opportunity for the NAC to make Developer aware of concerns raised by the NAC. (2) City Council by a 2/3 vote of members present or the Planning Director may facilitate additional meetings which the Developer, or the Developer’s designee, shall participate in as directed. (3) As part of community engagement the developer, or their designee, shall be required to meet as directed.

LPD Recommendations/Analysis

- Section 14-12-3(c) be revised to read as follows: “At the first meeting of the NAC, the developer shall provide an overview of the community engagement process, and the details of the proposed development. At the second meeting of the NAC, any proposed NAC member(s) nominated by residents shall be permitted to present their ideas and suggestions regarding the community engagement process and the proposed development, before the members of the NAC are elected.”

Sec. 14-12-3 (c)(1). “Engagement with Developer” continued

Councilmember Sheffield Recommendations

- Section 14-12-3(c) be revised to read as follows: “At the first meeting of the NAC, the developer shall provide an overview of the community engagement process, and the details of the proposed development. At the second meeting of the NAC, any proposed NAC member(s) nominated by residents shall be permitted to present their ideas and suggestions regarding the community engagement process and the proposed development, before the members of the NAC are elected.”

Council President Brenda Jones Recommendations

- ~~During the first meeting those that are interested in being NAC members should be identified and during the second meeting, those interested in being NAC members must come formally prepared to state their interest in the NAC.~~

~~3(a) Residents who have competing affiliations or interests that may result in the perception or the reality of an increased risk of bias or poor judgment in upholding the NAC Member responsibility to prioritize the interests of community residents over the interests of city officials and developers, should be restricted from serving on the NAC. This may include current or past employment affiliated with the developer or the city. Residents who have affiliations with entities that create competing responsibilities or threaten to jeopardize the NAC Member responsibility to prioritize the interest of community residents over the interest of city officials and developers, should also be restricted from serving on the NAC.~~

Sec. 14-12-3 (c)(1). “Engagement with Developer” continued

Councilmember Castaneda Lopez Recommendations

- ~~Amend Sec. 14-12-3(c)(1) in order to have the official NAC meetings facilitated by an outside third party such as Doing Development Differently in Metro Detroit (D4) or other non-profit organizations rather than the Planning Department or the Department of Neighborhoods.~~

Action

- Pinned - awaiting clarity from President Jones' office.

Line 9

Sec. 14-12-3(b)(1). “Engagement with Developer”

Existing Text

- Sec. 14-12-3(b)(1) - The Planning Director will accept nominations to the NAC from any person that resides in the Impact Area.

Councilmember Castaneda Lopez Recommendations

- ~~In Section 14-12-3(b)(1), strike and replace with, “A second public meeting (Meeting #2) will be held to focus on the proposed development consisting of a Developer presentation with a question and answer period. At this meeting, the Planning Director will begin accepting nominations for the NAC. No names will be accepted to this list of nominations after voting has begun in Meeting #3.”~~

Action

- Withdrawn

Line 10

Sec. 14-12-3(b)(3). “Engagement with Developer”

Existing Text

- Sec. 14-12-3(b)(3) - The NAC shall consist of nine members, selected as follows: (a) Two Members selected by residents of the Impact Area chosen from the resident nominated candidates; (b) Four Members selected by the Planning Director from the resident nominated candidates, with preference given to individuals the Planning Director expects to be directly impacted by the Tier 1 Project; (c) One Member selected by the Council Member in whose district contains the largest portion of the Impact Area from the resident nominated candidates; and (d) One Member selected by the At-Large Council Members from the resident nominated candidates.

Councilmember McCalister Recommendations

- ~~That Sec. 14-12-3 Neighborhood Advisory Council 3 (b) be amended so that three members are selected by the Planning Director from the resident of the Impact Area Chosen from the resident nominated Candidates, with preference given to individuals the Planning Director expects to be directly impacted by the Tier 1 Project.~~

~~That Sec. 14-12-3 Neighborhood Advisory Council 3 (c), be amended so that three members are selected by the Council Member in whose district contains the largest portion of the Impact Area from the resident nominated candidates.~~

Sec. 14-12-3(b)(3). “Engagement with Developer” continued

Council President Brenda Jones Recommendations

- 2(a) The NAC should be appointed by their community within their census track and not by the city.

Councilmember Castaneda Lopez Recommendations

- 2(a) The NAC should be appointed by their community within their census track and not by the city.

Sec. 14-12-3(b)(3). “Engagement with Developer” continued

Council Member James Tate’s Recommendation

- That three members should be selected by the respective Council members, i.e., two At- Large, one by the district Council member; three by the host community; three by the administration, via the Planning and Development Department.

Action

- Pinned - awaiting feed back from Council in terms of the selection process for the NAC.

Line 10.5

Recommended Amendment

Request for clarification from Council
President Brenda Jones

- Should Council have the flexibility to select NAC Members from outside of the list of nominees?

Action

- Pinned- this will be determined based on the outcome of the manner in which NAC members are selected.

Line 11

Recommended Addition

Council President Brenda Jones Recommendations

- There should be one alternate selected by the community. The person with the third highest votes from the community should be listed as the alternate person. This person must agree to be present at all meetings and will be notified by the Planning Department when they are needed to formally replace a NAC member.

Action

- **Adopted** - However, this will be determined based on the outcome of the manner in which the NAC is selected.

Line 12

Sec. 14-12-3 (c)(1) - “Engagement with Developer”

Existing Text

- **Sec. 14-12-3(c)(1)** - In addition to the meeting required in Subsection (a)(1) of this section, the Planning Director shall facilitate at least one meeting between the NAC and the Developer to allow the NAC to learn more details about the project and to provide an opportunity for the NAC to make Developer aware of concerns raised by the NAC.

Councilmember Castaneda Lopez Recommendations

- ~~In Section 14-12-3(c)(1), strike and replace with, “In addition to the meetings required in subsections (a)(1) and (b)(1) of this section, the Planning Director shall facilitate at least five meetings between the NAC and the Developer to allow the NAC to learn more details about the project and to provide an opportunity for the NAC to make the Developer aware of concerns raised by the NAC.” Add subsection “a.” The meetings between the NAC and Developer shall follow the subsequent schedule with additional meetings added as agreed upon between the NAC and Planning Director: (referr to LPD report).~~

Add the following at the end of Section 14-12-3(c)(1):
“The Developer must present to the members of the NAC, at a minimum, how the proposed project will utilize green infrastructure, create jobs for Detroiters, detail which tax incentives they are seeking with specific amounts, and to what extent the project will feature subsidized/discounted/affordable housing and/or commercial space.”

Action

- **Pinned** - It has been recommended that the following language be considered: These recommendations may included but are not limited to noise, traffic, dust mitigation.

Line 13

Sec. 14-12-3(b)(2). “Engagement with Developer”

Existing Text

- Sec. 14-12-3(b)(2) - All residents over the age of 18 that reside in the Impact Area are eligible for nomination.

Councilmember Castaneda Lopez Recommendations

- In Section 14-12-3(b)(2), which pertains to eligibility for serving on the NAC, strike “18” and replace with “16”.

Action

- Failed 3-4

Line 14

Sec. 14-12-3(b)(2). “Engagement with Developer”

Existing Text

- Sec. 14-12-3(b)(2) - All residents over the age of 18 that reside in the Impact Area are eligible for nomination.

Councilmember Castaneda Lopez Recommendations

- In Section 14-12-3(b)(2), add “Any person who stands to receive a pecuniary benefit from the development or is otherwise employed by the Developer is ineligible to serve on the NAC.”

Action

- Pinned

Line 15

Sec. 14-12-3(b)(4). “Engagement with Developer”

Existing Text

- Sec. 14-12-3(b)(4) - If the Planning Director receives less than nine nominations, the Planning Director may seek out additional nominations from individuals that live outside the Impact Area but within the City Council district or districts where the Tier 1 Project is located.

Councilmember McCalister Recommendations

- That Sec. 14-12-3 Neighborhood Advisory Council (4) be amended so that if the NAC receives less than nine nominations, the City Council Member of the Impact Area may seek out individuals that live outside the Impact Area but within the City Council District or Districts where the Tier 1 Project is located.

Action

- Pinned - Combining language with line 10

Line 16

Sec. 14-12-3(b)(5). “Engagement with Developer”

Existing Text

- Sec. 14-12-3(b)(5) - All actions of the NAC may be taken with the consent of a majority of NAC members serving.

LPD Recommendations/Analysis

- That language be added to subsection 14-12-3(b)(5) stating: “Attendance at all NAC meetings by all elected and appointed NAC members shall be mandatory. If a member fails to attend an NAC meeting, an alternative may be appointed by the NAC as a permanent replacement member.”

Sec. 14-12-3(b)(5). “Engagement with Developer” continued

Councilmember Sheffield Recommendations

- That language be added to subsection 14-12-3(b)(5) stating: “Attendance at all NAC meetings by all elected and appointed NAC members shall be mandatory. If a member fails to attend an NAC meeting, an alternative may be appointed by the NAC as a permanent replacement member.”

Councilmember McCalister Recommendations

- That Section 14-12-3(b)(5) be revised to state that “elected and appointed NAC members must attend at least 75% of the scheduled meetings.”

Sec. 14-12-3(b)(5). “Engagement with Developer” continued

Council President Brenda Jones Recommendations

- It is recommended that a NAC member not be absent for more than “one” meeting. Additional absences could disqualify one from further being a NAC member.

Action

- **Adopted - "Attendance at all NAC meetings by all elected and appointed NAC members shall be mandatory, unless advance notice is provided. More than one (1) absence could disqualify one from further being a NAC member. If a member fails to attend an NAC meeting, an alternate may be appointed by the NAC as a permanent replacement member, at the discretion of the NAC."**

Line 17

Sec. 14-12-2. Definitions

Existing Text

- Sec. 14-12-3(c)(2) - City Council by a 2/3 vote of members present or the Planning Director may facilitate additional meetings which the Developer, or the Developer's designee, shall participate in as directed.

LPD Recommendations/Analysis

- ~~Subsection 14-12-3(c)(2) should read: "At the first meeting of the NAC, the developer shall provide a specific explanation of how the proposed development qualifies for public support of investment, the total amount of private investment involved, and the statutory authorizations and amounts of all tax abatements or incentives sought for the proposed development."~~

Sec. 14-12-2. Definitions

Councilmember Sheffield Recommendations

- ~~Subsection 14-12-3(c)(2) should read: “At the first meeting of the NAC, the developer shall provide a specific explanation of how the proposed development qualifies for public support of investment, the total amount of private investment involved, and the statutory authorizations and amounts of all tax abatements or incentives sought for the proposed development.”~~

Council President Brenda Jones Recommendations

- That all essential documents to be provided and/or emailed to the NAC Members, District and At-Large City Council members within 48 hrs. of the NAC selection. This will provide the NAC greater transparency with adequate time for review. (Example of Relevant Documents: Detroit Community Benefits Ordinance, development agreements between the city and developer, details of project financing/ project proforma, developer's RFP response, all renderings related to the project, But/For Economic Analysis conducted by DEGC, all environmental studies, documents related to brownfield funding, etc.)

Action

- **Adopted - The City and the DEGC shall provide all essential documents to the NAC Members, District and At-Large City Council members within 72 hrs. of the NAC selection including but not limited to the Detroit Community Benefits Ordinance, development agreements between the city and developer, projected revenue, developer's RFP response, all renderings related to the project, But/For Economic Analysis conducted by DEGC, all environmental studies, documents related to brownfield funding, etc.**

Line 18

Recommended Addition

LPD Recommendations/Analysis

- That a new section be added, 14-12-3(7) that should read: “If the proposed development includes residential housing, then at least 20% of the units for a single site shall be designated as affordable housing, defined as affordable by those earning at least 80% of Area Median Income.”

Councilmember Sheffield Recommendations

- That a new section be added, 14-12-3(7) that should read: “If the proposed development includes residential housing, then at least 20% of the units for a single site shall be designated as affordable housing, defined as affordable by those earning at least 80% of Area Median Income.”

Recommended Addition continued

Council President Brenda Jones Recommendations

- ~~In regards to LPD's recommendation that if a proposed development includes residential housing, that a least 20% affordability at 80% Area Median Income (AMI) be incorporated into a single-site development; it is believed that this item should be included in the inclusionary zoning ordinance and not in the CBO ordinance.~~

Councilmember Castaneda Lopez Recommendations

- Support Council President Pro Tem Sheffield's proposed amendment to add a Section 14-12-3(7) which ends with "defined as affordable by those earning at least 80% of Area Median Income" and offer a friendly amendment to replace "at least" with "no more than".

Action

- Pinned - awaiting a legal opinion on the Sheffield recommendation.
- A friendly amendment was accepted by Sheffield's staff from RCL's staff that language be added to the end of this section which reads: "...for the period of the abatement."

Line 19

Recommended Addition

LPD Recommendations/Analysis

- That a new section be added, 14-12-3(c)(5) that should read: “The Planning and Development Department shall create and maintain a page on the City’s web site detailing the specifics of the development, along with a projected timeline, for each development project subject to this article. The webpage shall also contain the contact information for the PDD project manager and general contact information for the developer.”

Councilmember Sheffield Recommendations

- That a new section be added, 14-12-3(c)(5) that should read: “The Planning and Development Department shall create and maintain a page on the City’s web site detailing the specifics of the development, along with a projected timeline, for each development project subject to this article. The webpage shall also contain the contact information for the PDD project manager and general contact information for the developer.”

Action

- Failed 4-4 citing that PDD already maintains a page for each development.

Line 20

Sec. 14-12-2. Definitions & Sec. 14-12-3(a)(2)

Existing Text

- Sec. 14-12-2. Definitions & Sec. 14-12-3(a)(2) - Staff would like to note that as it relates to this particular request, the “impact area” is comprised of the project area as well as the entirety of the census tract(s) in which the project area is located. Public notice which is sent out via the City Clerk’s office per the ordinance is sent out to all residents and property owners within the impact area as well as 300 radial feet outside of the impact area. If a greater effort is desired by council in this regard, the notice section of the ordinance should be amended to reflect council’s wishes.

Councilmember Sheffield Recommendations

- ~~That the public notice area should be expanded to include the entire project census tract(s) area. This would increase awareness of projects.~~

Sec. 14-12-2. Definitions & Sec. 14-12-3(a)(2)

Councilmember McCalister Recommendations

- ~~• That Sec. 14-12-3 Tier 1 Projects (3) In addition to the notice requirement contained in Subsection (2) of this section, the Planning Director shall work with the District or Districts Council Member(s) or the Council Members' designee where the Tier 1 Project is located and at least one At-Large Council Member to ensure that local residents, businesses, and organizations, especially those located in the Impact Area and those expected to be directly impacted by the Tier 1 project are informed of the public meeting.~~

Action

- Adopted - It was recommended by Council President Jones' Office that 14-12-3(a)(4) be amended to state "impact area."

Line 21

Recommended Addition

Councilmember Sheffield Recommendations

- ~~That the developer shall provide a list to the NAC of examples of legally binding community benefits agreements that have been created by communities and developers in other cities.~~

Action

- **Withdrawn** - It has been recommended that a "best practices manual" be created and this language be incorporated into the manual.

Line 22

Sec. 14-12-3(d)(2). “Community Benefits Report”

Existing Text

- Sec. 14-12-3(d)(2) The Community Benefits Report shall contain: (a) A detailed account of how notice was provided to organize the public meeting. (b) A list of the NAC members, and how they were selected. (c) An itemized list of the concerns raised by the NAC. (d) A method for addressing each of the concerns raised by the NAC, or why a particular concern will not be addressed.

Councilmember McCalister Recommendations

- ~~That, where applicable, the NAC Community Benefits report include recommendations for green space and green design, stormwater management, alternative energy generation, transit and walkability, historical preservation, regional destination planning, local food systems, inclusionary housing and employment and training.~~

Action

- **Withdrawn** - It has been recommended that a "best practices manual" be created and this language be incorporated into the manual.

Line 23

Action

- Pinned - awaiting an opinion from the Law Department regarding the legality of this recommendation

Sec. 14-12-3(c)(1). “Engagement with Developer”

Existing Text

- Sec. 14-14-3(e)(1)All development agreements made between the Developer and the City related to the land transfers or tax abatements associated with a Tier 1 Project shall include the Community Benefits Provision, which shall include:

Councilmember McCalister Recommendations

- That Sec. 14-12-3 Tier 1 (7) be amended so that if the developer is unable to meet the mandated 51% Detroit resident hiring requirement shall provide support funding for training assistance for Detroit residence in apprenticeship, trade and vocational and technical training and certifications.

Action

- Pinned - awaiting an opinion from the Law Department regarding the legality of this recommendation

Line 24

Recommended Addition

LPD Recommendations/Analysis

- Section 14-12-3(c) be revised to read as follows: “At the first meeting of the NAC, the developer shall provide an overview of the community engagement process, and the details of the proposed development. At the second meeting of the NAC, any proposed NAC member(s) nominated by residents shall be permitted to present their ideas and suggestions regarding the community engagement process and the proposed development, before the members of the NAC are elected.”

Council President Brenda Jones Recommendations

- In regards to the proposed addition of Section 14-12-3(c)(4) The ordinance should restrict developers who do not participate in the CBO process in good faith from receiving requested public benefits for their development projects.

Developers who refuse to negotiate or provide any of the community benefits requested by the NAC, should not be permitted to present their development to City Council for public investment approval. The ordinance should also include provisions that automatically trigger clawbacks and suspensions of public investment in the case of developer noncompliance.

Recommended Addition

Council Member Spivey Recommendation

- It was recommended that section 14-12-3(e)(1)(a) be amended to state "shall" instead of "may."

Action

- Adopted - the recommendation from Council Member Spivey that section 14-12-3(e)(1)(a) be amended to state "shall" instead of "may."

Line 25

Recommended Addition

LPD Recommendations/Analysis

- Section 14-12-3(c) be revised to read as follows: “At the first meeting of the NAC, the developer shall provide an overview of the community engagement process, and the details of the proposed development. At the second meeting of the NAC, any proposed NAC member(s) nominated by residents shall be permitted to present their ideas and suggestions regarding the community engagement process and the proposed development, before the members of the NAC are elected.”

Councilmember Castaneda Lopez Recommendations

- ~~In Section 14-12-3(c) add a subsection (4) containing the following, “The Administration will provide the NAC with a Community Needs Assessment or a Target Market Analysis of the Impact Area conducted by a third party prior to the final meeting of the NAC. The report is to be shared with City Council and made public.”~~

Action

- **Adopted** - The language recommended by Sheffield is being merged with the language on line 17. If made available, this language should also be added to the best practices procedures.

Line 26

Recommended Addition

LPD Recommendations/Analysis

- ~~• Section 14-12-3(c) be revised to read as follows: “At the first meeting of the NAC, the developer shall provide an overview of the community engagement process, and the details of the proposed development. At the second meeting of the NAC, any proposed NAC member(s) nominated by residents shall be permitted to present their ideas and suggestions regarding the community engagement process and the proposed development, before the members of the NAC are elected.”~~

Councilmember Castaneda Lopez Recommendations

- In Section 14-12-3(c) add a subsection (5) containing the following, “The City and the DEGC shall provide the NAC with all relevant information pertaining to any public subsidies being sought by the Developer including but not limited to the specific abatements, dollar amounts and duration of the subsidy, as well as the proposed abatement district maps.”

Action

- Recommendation - That this language is added to the best practices procedures manual.

Line 27

Sec. 14-12-3(d)(2). “Community Benefits Report”

Existing Text

- Sec. 14-12-3(d)(2) The Community Benefits Report shall contain: (a) A detailed account of how notice was provided to organize the public meeting. (b) A list of the NAC members, and how they were selected. (c) An itemized list of the concerns raised by the NAC. (d) A method for addressing each of the concerns raised by the NAC, or why a particular concern will not be addressed.

Councilmember Castaneda Lopez Recommendations

- In Section 14-12-3(d)(2) add a new subsection “e.” as “A ~~comprehensive~~ detailing of community outreach strategies used ~~by the NAC~~ to solicit and record feedback.”

Action

- Adopted as amended - In Section 14-12-3(d)(2) add a new subsection “e.” as “A detailing list of community outreach strategies used to solicit and record feedback.”

Line 28

Sec. 14-12-3(d)(3). “Community Benefits Report”

Existing Text

- Sec. 14-12-3(d)(3) The Planning Director, where possible, shall provide a copy of the Community Benefits Report to the NAC prior to submission to City Council.
- Upon receiving the proposal for community benefits from the developer, "The NAC will have no less than one week to review the Community Benefits Agreement before being asked by the City to vote or sign a letter in support of the proposed benefits."

Action

- Pinned - awaiting feed back from Council regarding the amount of time allocated for feed back, either 48 or 72 hours of review.

Line 29

Sec. 14-12-3(f)(1). “Engagement with Developer”

Existing Text

- Sec. 14-12-3(f)(1)a.iv. A representative from the Human Rights Department.

Councilmember Scott Benson Recommendations

- Amend Sec. 14-12-3(f)(1)a.iv. Definitions by striking "Human Rights Department" and inserting "Department of Civil Rights, Inclusion and Opportunity."

Action

- Adopted

Line 30

Sec. 14-12-3(f)(9)(b). “Enforcement Committee”

Existing Text

- Sec. 14-12-3(f)(9)(b) - If City Council finds that the Enforcement Committee has not made reasonable efforts, City Council shall make specific finding to the Enforcement Committee on the steps that need to be taken to comply with the Community Benefits Provision. (i) The Enforcement Committee shall provide City Council and the NAC monthly updates on compliance actions until City Council adopts a resolution declaring that the Developer is in compliance with the Community Benefits Provision or has taken adequate steps to mitigate violations. (ii) City Council may hold additional hearings related to enforcement of the Community Benefits Provision as needed.

Councilmember Castaneda Lopez Recommendations

- ~~In Section 14-12-3(f)(9)b.ii. Add, “If the Council determines that the Developer is in noncompliance with the Community Benefits Provision it may suspend all forms of public investment to the Developer by a simple majority of Council after receiving at least three monthly updates from the Enforcement Committee as outlined in 14-12-3(f)(9)b.i.”~~

Action

- **Withdrawn** - Considering that there are already clawback provisions in the state statutes.

Line 31

Sec. 14-12-5. “Exemptions”

Existing Text

- Sec. 14-12-5 - The requirements of this ordinance may be waived by resolution of the City Council upon submission by either the Planning Director or the Developer identifying reasons that the requirements of this ordinance are impractical or infeasible and identifying how the Developer will otherwise provide community benefits.

Councilmember McCalister Recommendations

- That Sec. 14-12-5 Exemptions; Section 1 be stricken.

Action

- Failed - 1-8

Line 32

Sec. 14-12-2. “Definitions”

Existing Text

- Tier 2 Development Project means a development project in the City that does not qualify as a Tier 1 Project and is expected to incur the investment of Three Million Dollars (\$3,000,000) or more, during the construction of facilities, or to begin or expand operations or renovate structures, where the Developer is negotiating public support for investment in one or both of the following forms:
 - (1) Land transfers that have a cumulative market value of Three Hundred Thousand Dollars (\$300,000) or more (as determined by the City Assessor or independent appraisal), without open bidding and priced below market rates; or
 - (2) Tax abatements that abate more than Three Hundred Thousand Dollars (\$300,000) of City taxes over the term of the abatement that inure directly to the Developer, but not including Neighborhood Enterprise Zone tax abatements.

Councilmember Spivey Recommendations

- That language be added creating a subsection (3) which would read as follows:
 - For Tier 2 Development Projects triggered by public support in the form of land transfers with a market value of Three Hundred Thousand Dollars or more, and priced below market rates, shall have all proceeds related to the transfer of land allocated to the Neighborhood Improvement Fund.

Action

- **Adopted - Spivey Amendedment .**
- **Pinned - A request was made by the office of Council President Jone's Office that the Skilled Trades Fund receive a portion of the Funding.**

Attachment G

(LPD Community Benefits PowerPoint Survey Results)

Community Benefits Ordinance Survey

Overview and Results



Presented by
Detroit City Council's Legislative Policy Division

Timeline

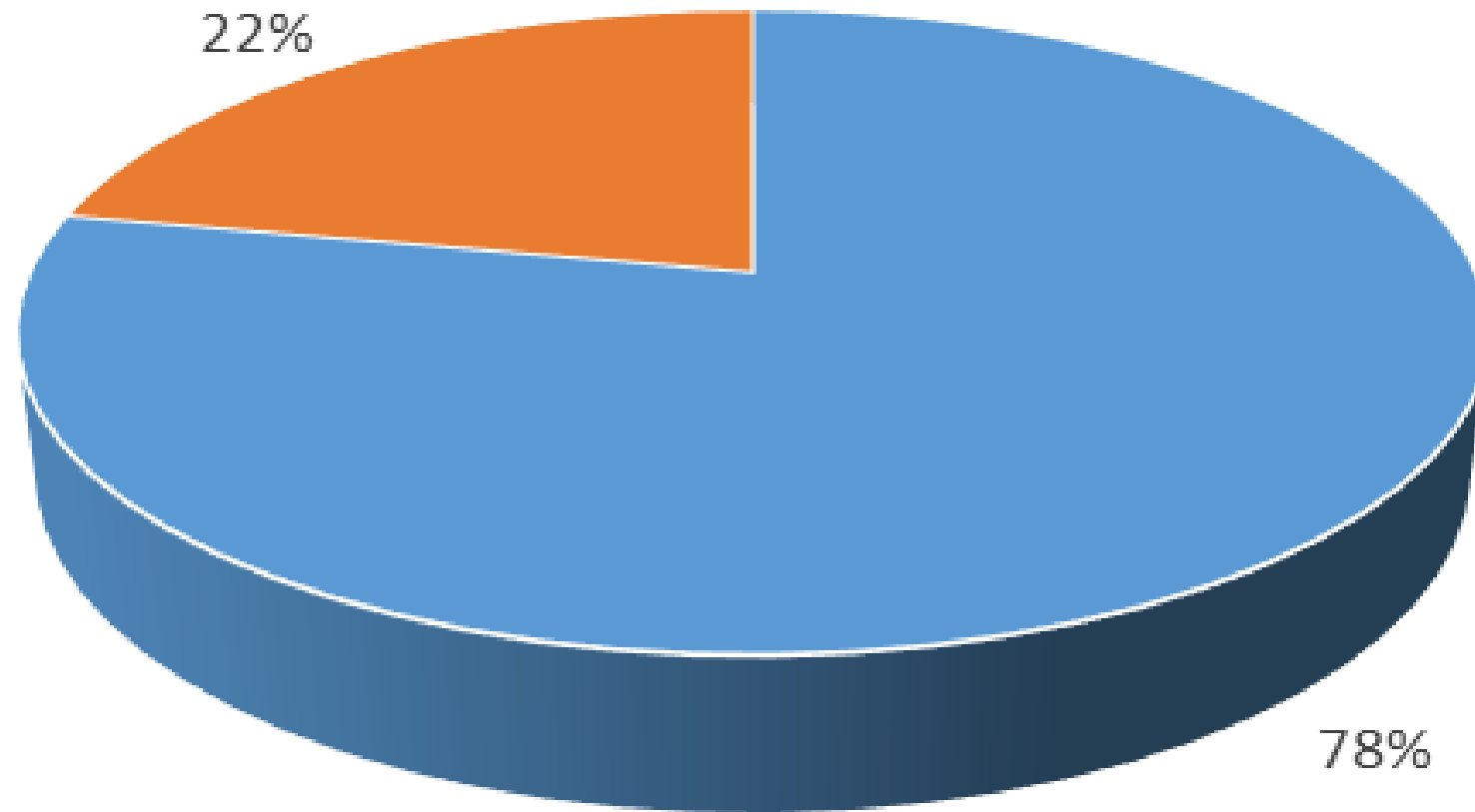
- October 2018 – Working Group Convened
- April 2019 – Working Group Concluded
- August 2019 – Community Benefits Survey sent out to 1,500 interested parties and posted on the City of Detroit website
- September 2019 – CBO Survey closed
- January 2020 – City wide stakeholders meeting
- September/October 2020 – Draft Ordinance submitted to Council

1. Tier 1 Development Project – Sec. 14-12-2

Tier 1 Development Project means a development project in the City that is expected to incur the investment of **Fifty** Million Dollars (**\$50,000,000**) or more during the construction of facilities, or to begin or expand operations or renovate structures, where the developer of the project is negotiating public support for investment in one or both of the following forms:

- (1) Any transfer to the developer of City-owned land parcels that have a cumulative market value of One Million Dollars (\$1,000,000) or more (as determined by the City Assessor or independent appraisal), without open bidding and priced below market rates (where allowed by law); or
- (2) Provision or approval by the City of tax abatements or other tax breaks that abate more than One Million Dollars (\$1,000,000) of City taxes over the term of the abatement that inure directly to the Developer, but not including Neighborhood Enterprise Zone tax abatements.

1. Tier 1 Development Project



■ Yes ■ No

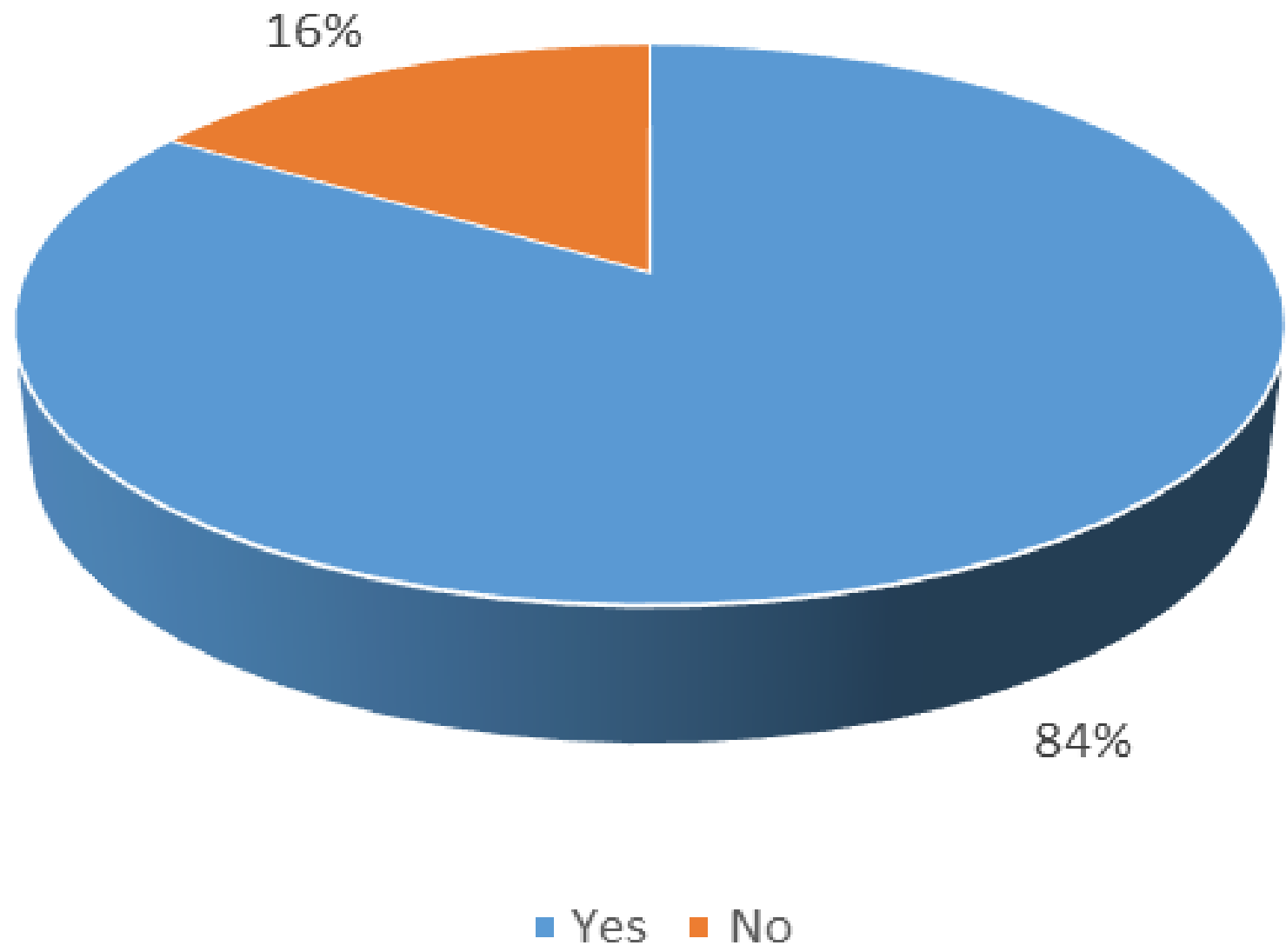
2. Enforcement Committee – Sec. 14-12-2

The proposed revisions to this section would read as follows:

Enforcement Committee means a committee led by the City’s Corporation Counsel and composed of representatives from the Planning and Development Department, Law Department, Department of Civil Rights, Inclusion and Opportunity, City Council’s Legislative Policy Division, the Neighborhood Advisory Council Chair of the respective Tier 1 Development Project, and other relevant City departments as determined by the Planning Director.

The chair of each Neighborhood Advisory Committee shall be an ex-officio member of the related Enforcement Committee.

2. Enforcement Committee

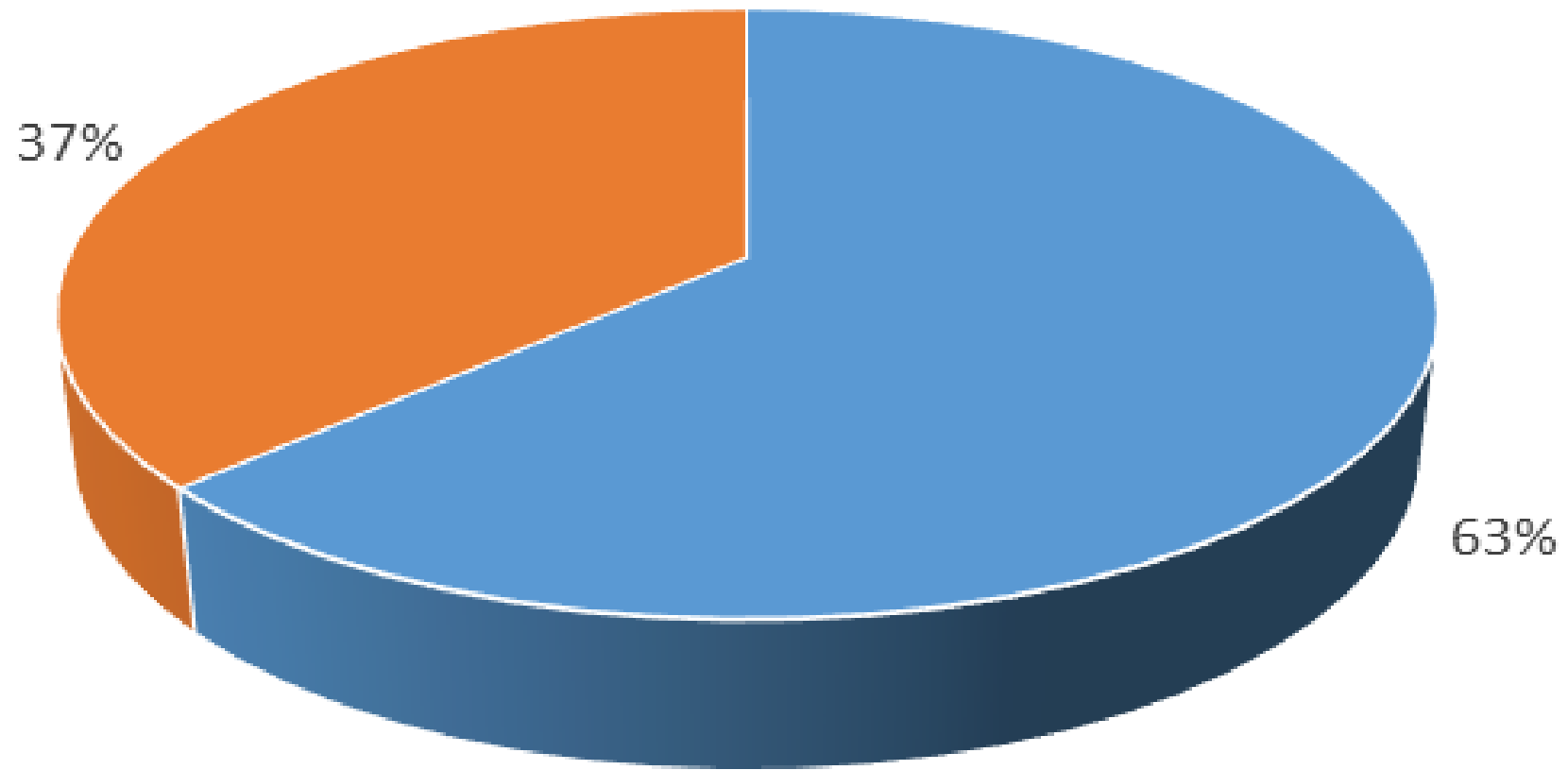


3. Tier 2 Development Project – Sec. 14-12-2

Tier 2 Development Project means a development project in the City that does not qualify as a Tier 1 Project and is expected to incur the investment of **Three-Hundred Thousand Dollars (\$300,000)** or more, during the construction of facilities, or to begin or expand operations or renovate structures, where the Developer is negotiating public support for investment in one or both of the following forms:

- (1) Land transfers that have a cumulative market value of Three Hundred Thousand Dollars (\$300,000) or more (as determined by the City Assessor or independent appraisal), without open bidding and priced below market rates; or
- (2) Tax abatements that abate more than Three Hundred Thousand Dollars (\$300,000) of City taxes over the term of the abatement that inure directly to the Developer, but not including Neighborhood Enterprise Zone tax abatements.

3. Tier 2 Development Project



■ Yes ■ No

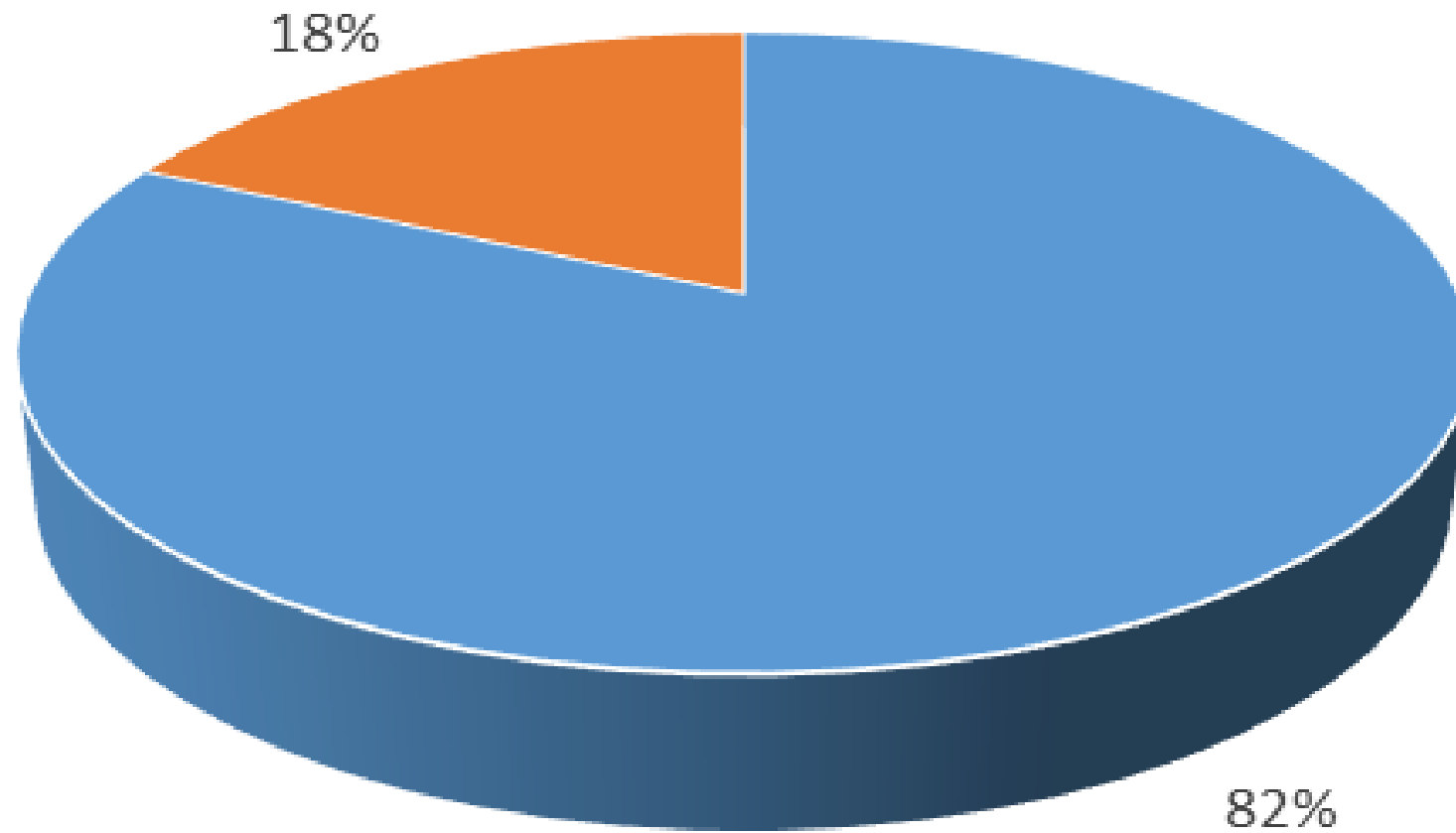
4. Community Engagement Process – Sec. 14-12-3

Sec. 14-12-3. Tier 1 Projects.

(a) *Community Engagement Process for Public Meeting.*

(1) Prior to submitting to City Council a request for approval of Land transfers or Tax abatements related to a Tier 1 Project, the Planning Director shall hold **no fewer than five (5)** public meetings in the Impact Area as defined in this Section, **unless a majority of the NAC deems otherwise.**

4. Community Engagement Process

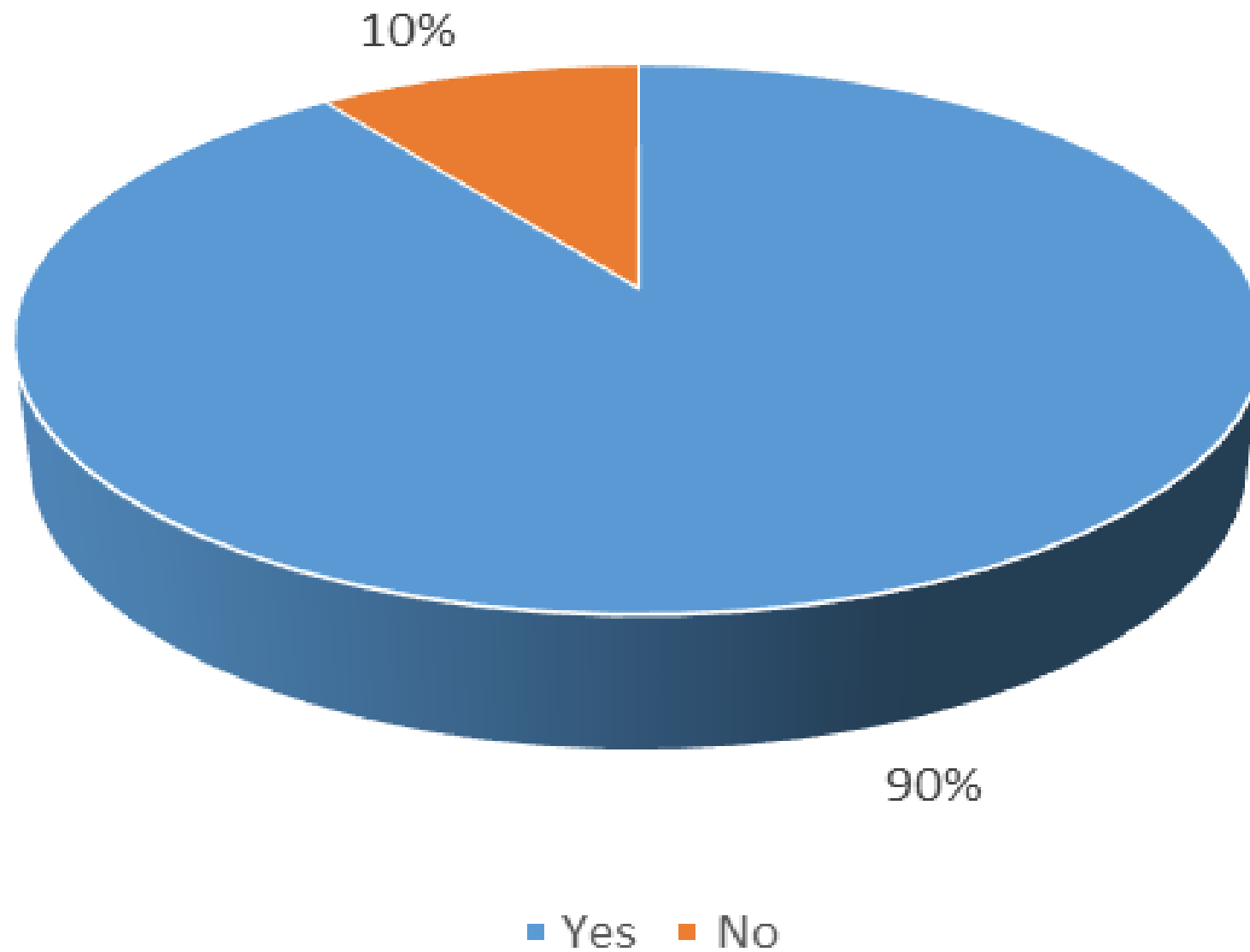


■ Yes ■ No

5. Meeting Notice – Sec. 14-12-3(a)(2)

- (2) The City Clerk shall forward notice of the public meeting via First Class Mail no less than 10 days before such meeting to all City of Detroit residents within three hundred radial feet of the Tier 1 Project **Impact Area**. The notice shall include:
- a. The time, date and location of the public meeting;
 - b. General information about the Tier 1 Project;
 - c. A description of the Impact Area and the location of the Tier 1 Project;
 - d. Information related to potential impacts of the Tier 1 Project and possible mitigation strategies; and

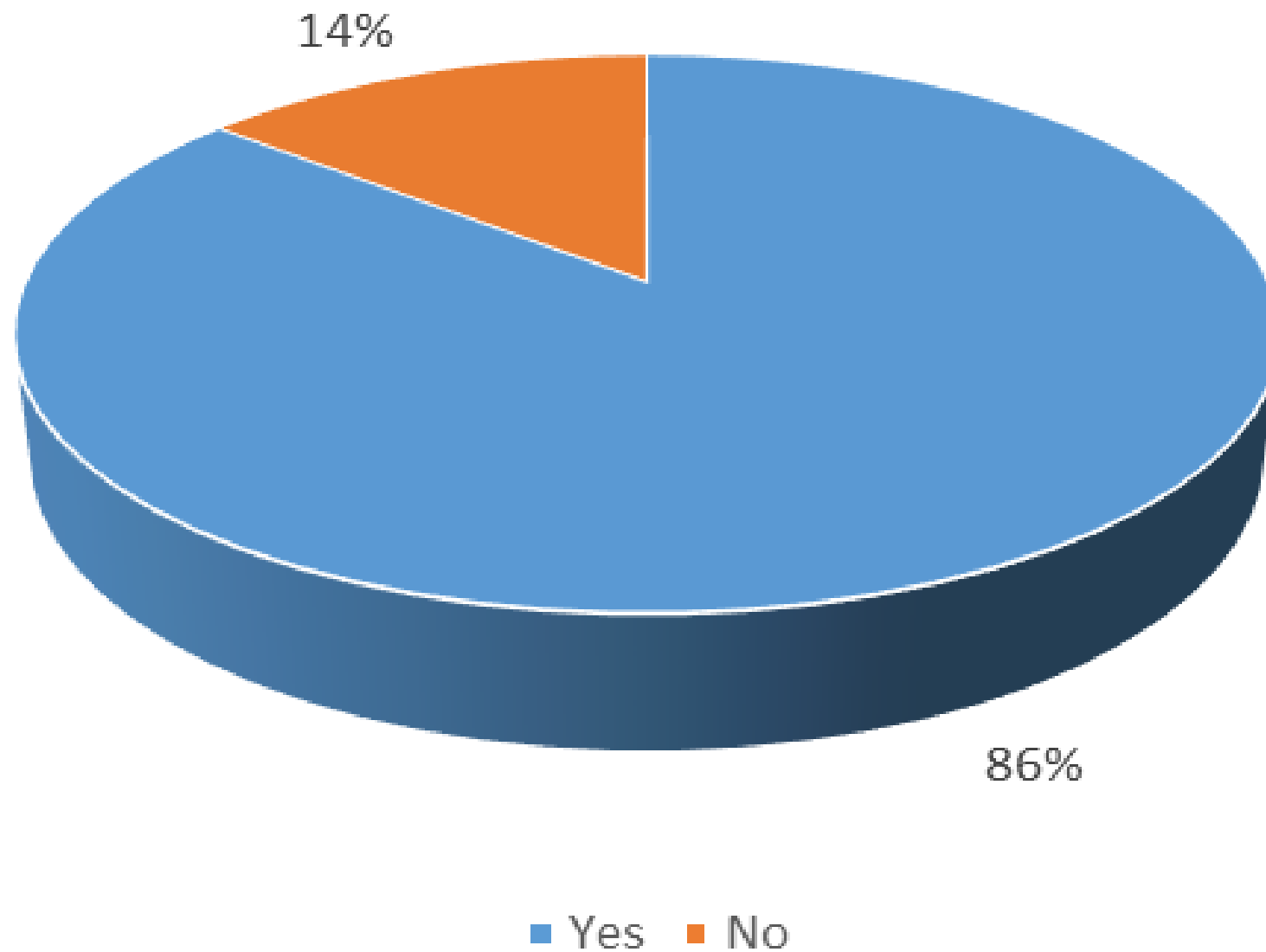
5. Meeting Notice



6. Presentation of the CBO Process and NAC Roles – Sec. 14-12-3(a)(4)

- (4) At the public meeting, the Planning Director will present general information about the Tier 1 Project, discuss ways in which the Tier 1 Project is anticipated to impact the local community, and ways in which the Developer and the Planning Director plan to address or mitigate these impacts. At the initial public meeting the Planning Director will present in detail on the CBO process, how the NAC fits within that broader process, the responsibilities of the NAC and the proposed timeline for the NAC meetings. The Planning Department shall discuss previous NACs and share outcomes and best practices learned from them. The meeting/workshop, shall allow for the community to ask questions and learn about the upcoming CBO process. The Developer shall not be present at this first meeting.

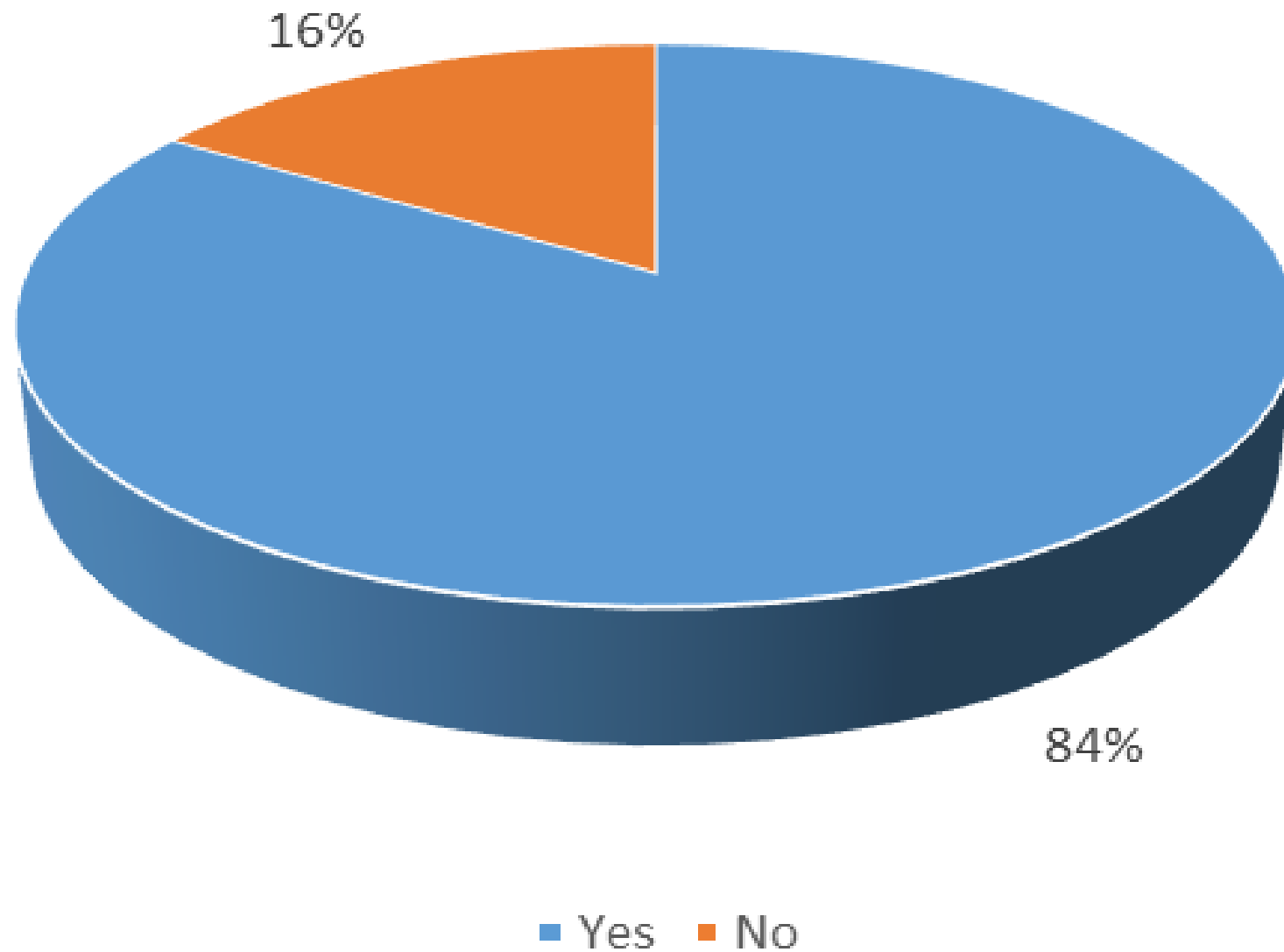
6. Presentation of the CBO Process & NAC Role



7. NAC Members – Sec. 14-12-3(b)(3)

- (3) The NAC shall consist of nine members, selected as follows:
- a. **Three** Members selected by residents of the Impact Area chosen from the resident nominated candidates;
 - b. **Three** Members selected by the Planning Director from the resident nominated candidates, with preference given to individuals the Planning Director expects to be directly impacted by the Tier 1 Project;
 - c. One Member selected by the Council Member in whose district contains the largest portion of the Impact Area from the resident nominated candidates; and
 - d. One Member selected by the At-Large Council Members from the resident nominated candidates.
 - e. **The Planning and Development Director as well as the Council Member in whose district contains the largest portion of the Impact Area, and the At-Large Council Members are permitted to select NAC members from outside of the list of resident nominated candidates, however those selected must reside within the impact area.**
 - f. **There should be one alternate selected by the community. The person with the third highest votes from the community should be listed as the alternate person. This person must agree to be present at all meetings and will be notified by the Planning Department when they are needed to formally replace a NAC member.**

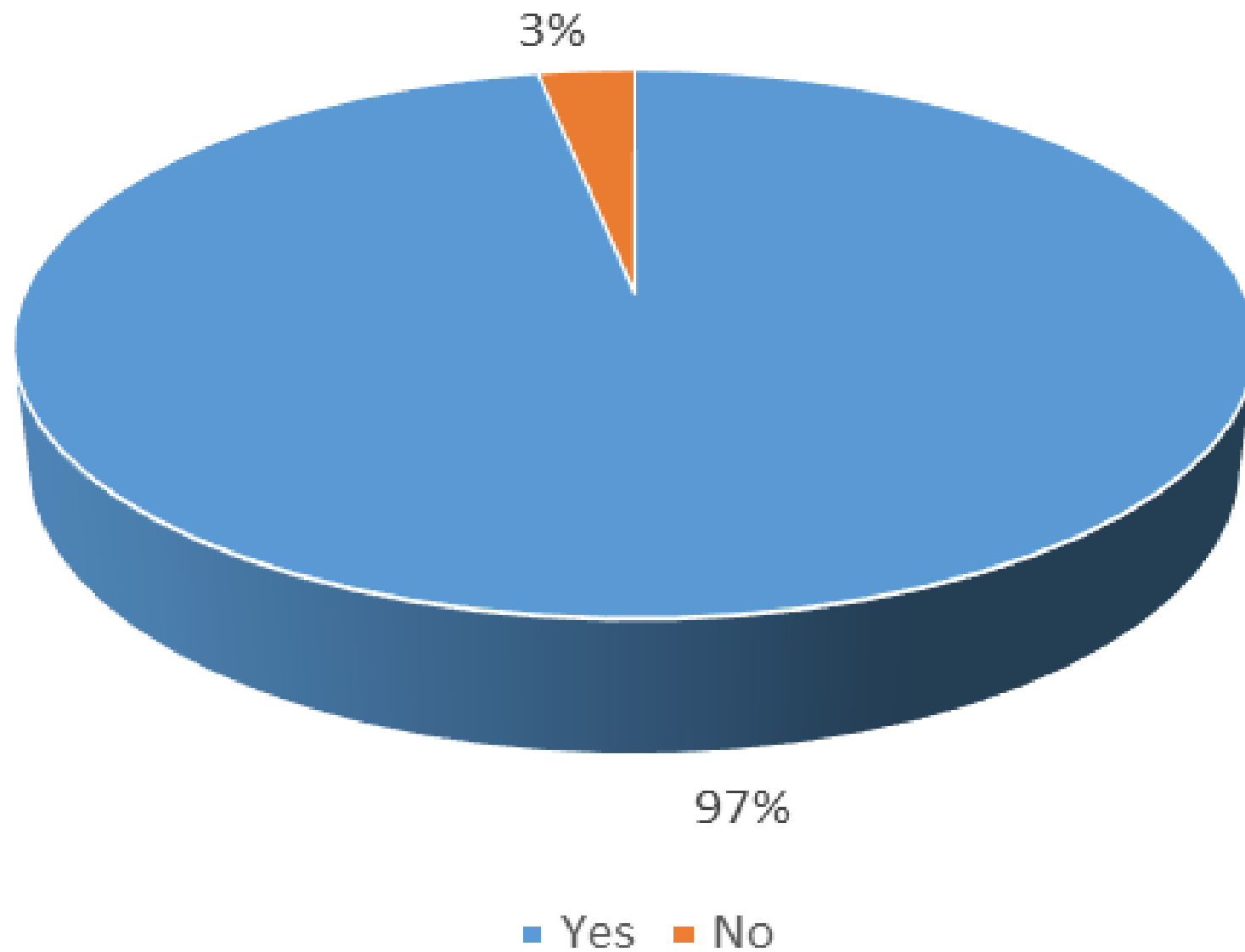
7. NAC Members



8. NAC Impact Area – Sec. 14-12-3(b)(2)

- (2) All residents over the age of 18 that reside in the Impact Area are eligible for nomination. **Any person who is an agent, employee, or official of the developer must disclose their relationship to the developer prior to selection to the NAC.**

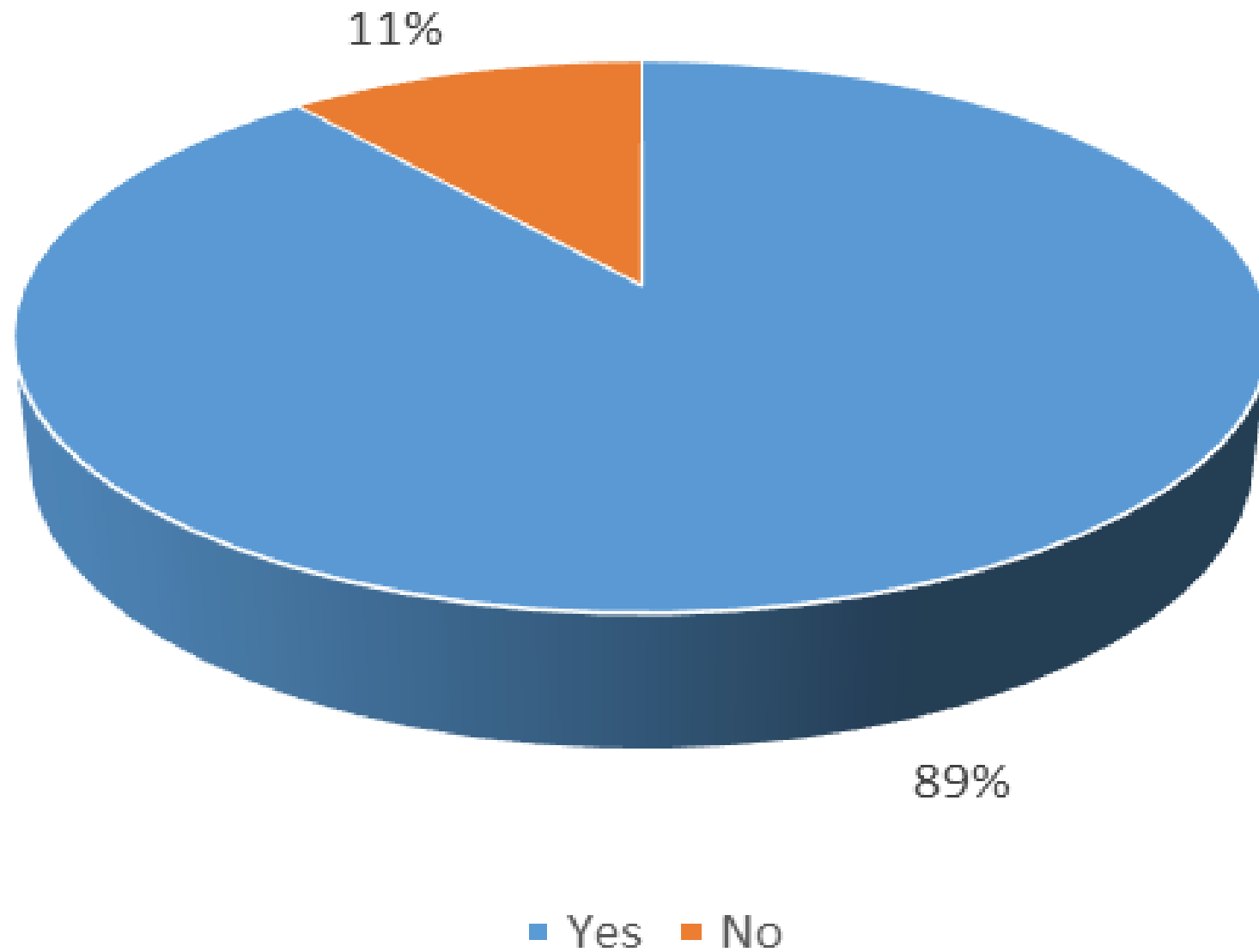
8. NAC Impact Area



9. NAC Nominations – Sec. 14-12-3(b)(4)

- (4) If the NAC receives less than nine nominations, the City Council Member in whose district contains the largest portion of the Impact Area may seek out individuals that live outside the Impact Area but within the City Council District or Districts where the Tier 1 Project is located.

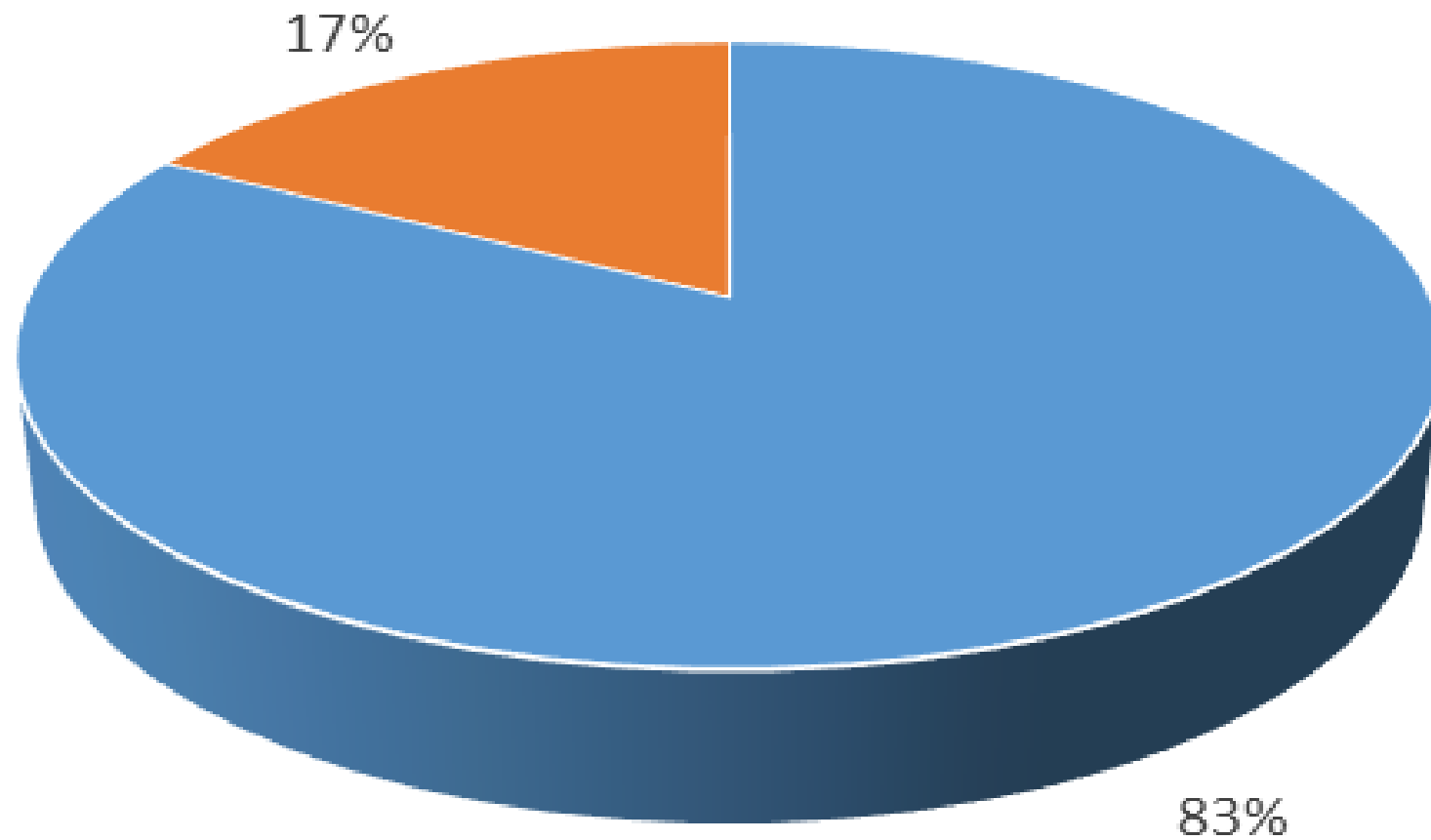
9. NAC Nominations



10. NAC Actions/Consent – Sec. 14-12-3(b)(5)

- (5) All actions of the NAC may be taken with the consent of a majority of NAC members serving. Attendance at all NAC meetings by all elected and appointed NAC members shall be mandatory, unless advance notice is provided. More than one (1) absence could disqualify one from further being a NAC member. If a member fails to attend an NAC meeting, an alternate may be appointed by the NAC as a permanent replacement member, at the discretion of the NAC.

10. NAC Actions Consent



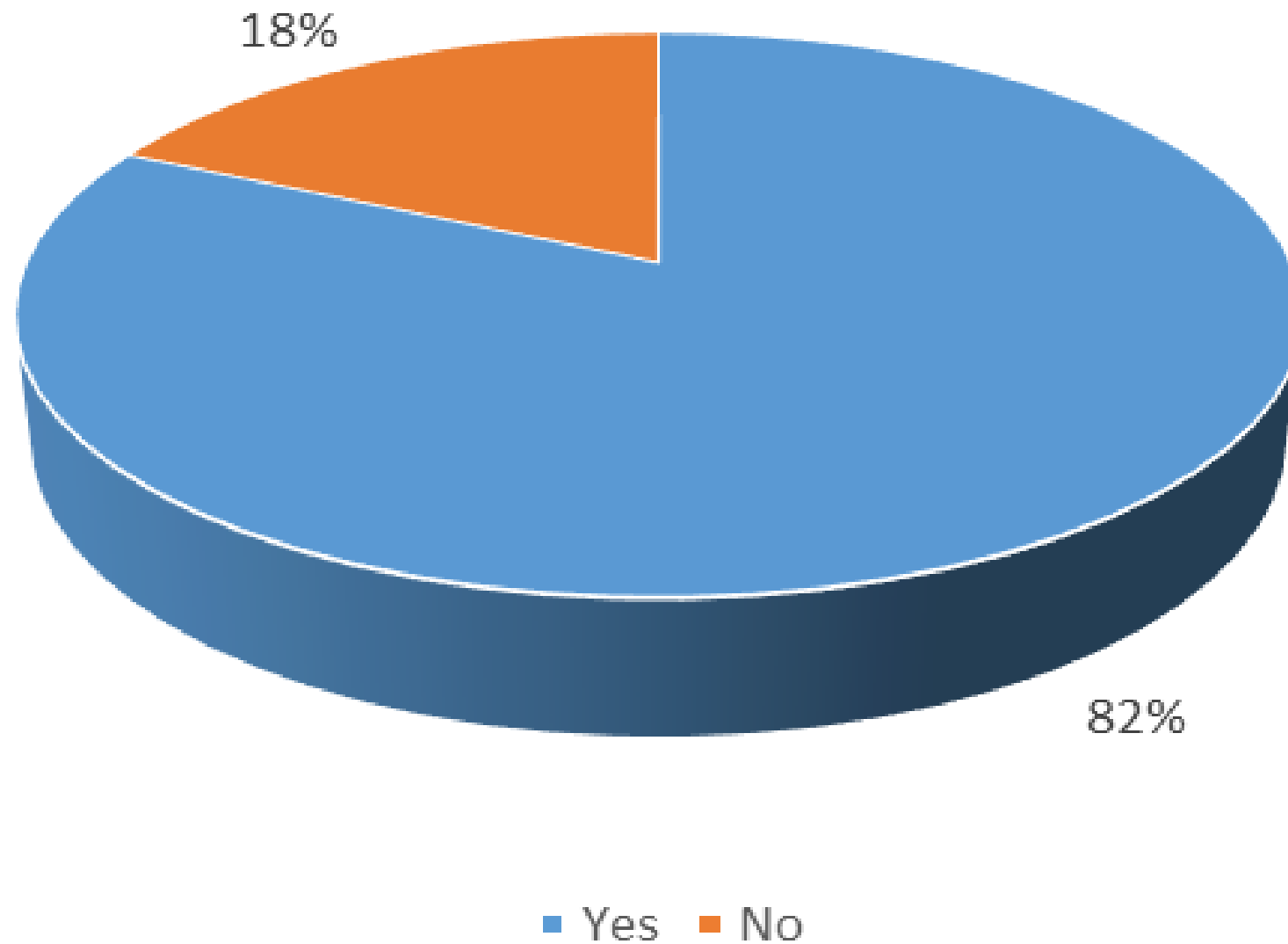
■ Yes ■ No

11. Meetings between the Developer and the NAC – Sec. 14-12-3(c)(1)

(c) Engagement with Developer.

(1) The Planning Director shall facilitate **no fewer than five (5) meetings** between the NAC and the Developer **as required in Subsection (a)(1)** to allow the NAC to learn more details about the project and to provide an opportunity for the NAC to make Developer aware of concerns raised by the NAC. **The Developer and the relevant city departments must present to the members of the NAC, at a minimum, how the proposed project may utilize green infrastructure, create jobs for Detroiters, detail which tax incentives they are seeking with specific amounts, and to what extent the project will feature subsidized/discounted/affordable housing and/or commercial space. These recommendations may included but are not limited to noise, traffic, dust mitigation.**

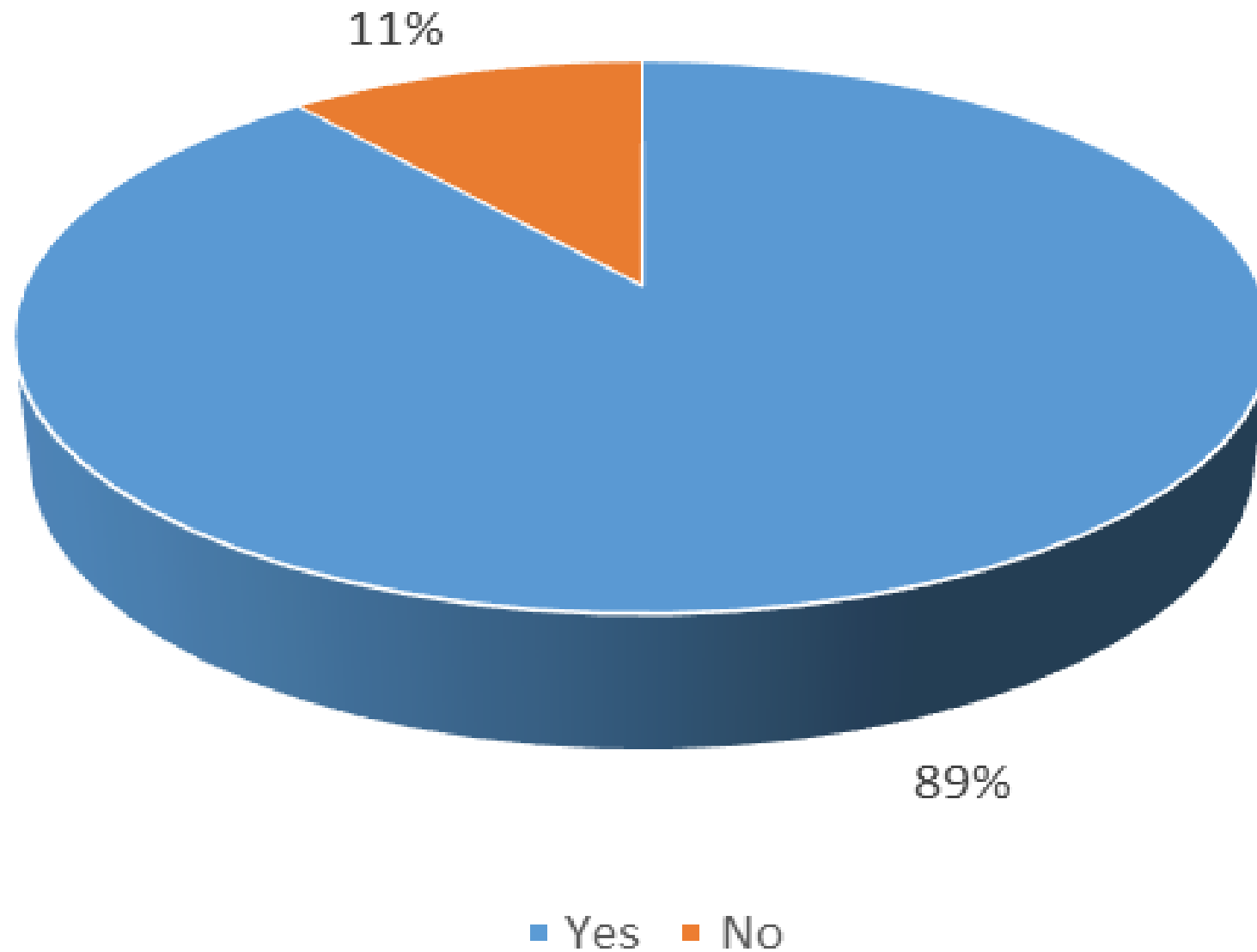
11. Meetings between the NAC and Developer



12. Additional Meetings by 2/3 vote – Sec. 14-12-3(c)(2)

- (2) City Council by a 2/3 vote of members present or the Planning Director may facilitate additional meetings which the Developer, or the Developer's designee, shall participate in as directed. **The City and the DEGC shall provide all essential documents to the NAC Members, District and At-Large City Council members within 72 hrs. of the NAC selection including but not limited to the Detroit Community Benefits Ordinance, development agreements between the city and developer, projected revenue, developer's RFP response, all renderings related to the project, But/For Economic Analysis conducted by DEGC, all environmental studies, documents related to brownfield funding, etc.**

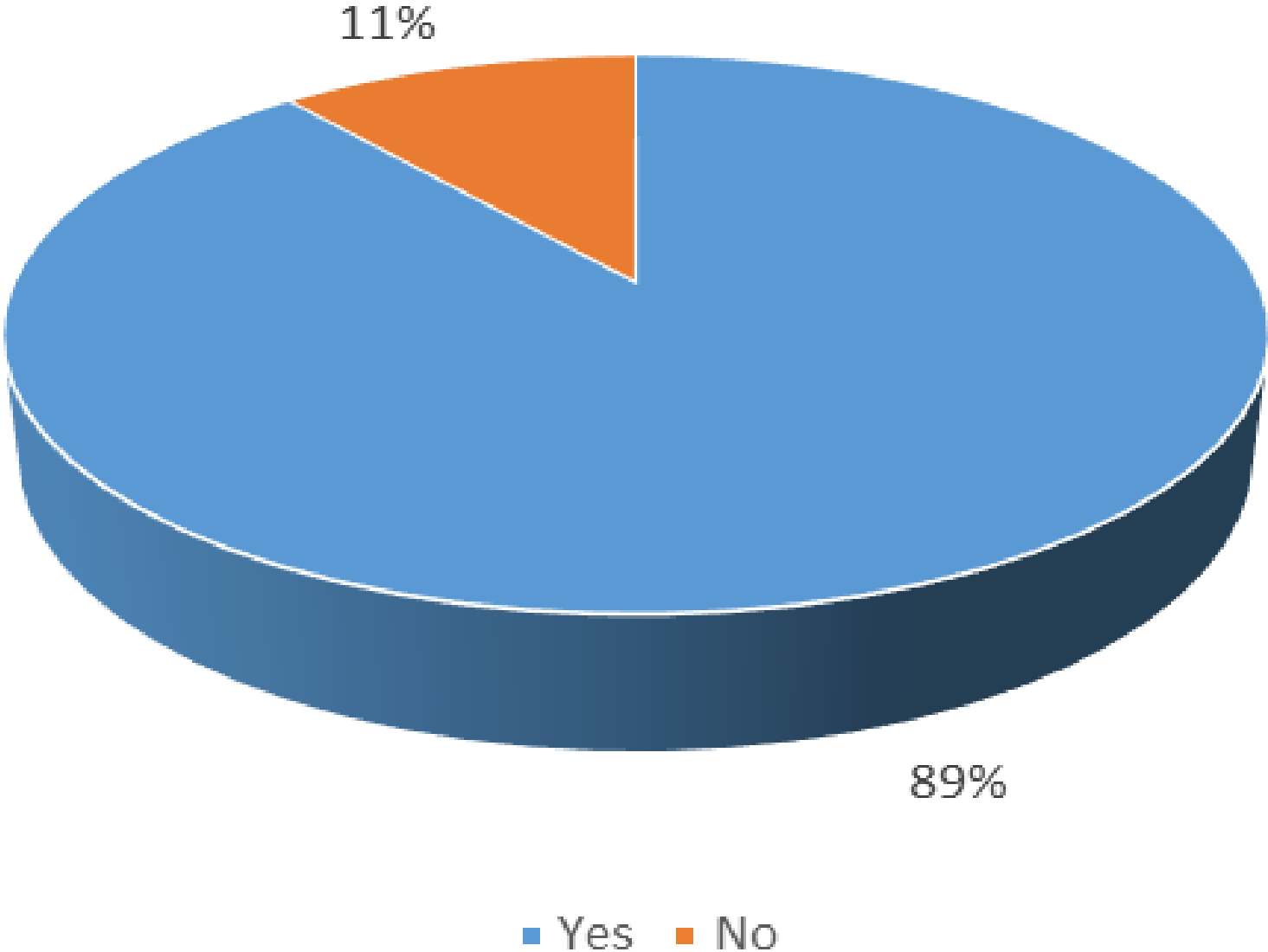
12. Additional Meetings by 2/3 vote



13. CBO Report Content – Sec. 14-12-3(d)(2)

- (2) The Community Benefits Report shall contain:
- a. A detailed account of how notice was provided to organize the public meeting.
 - b. A list of the NAC members, and how they were selected.
 - c. An itemized list of the concerns raised by the NAC.
 - d. A method for addressing each of the concerns raised by the NAC, or why a particular concern will not be addressed.
 - e. A detailed list of community outreach strategies used to solicit and record feedback.

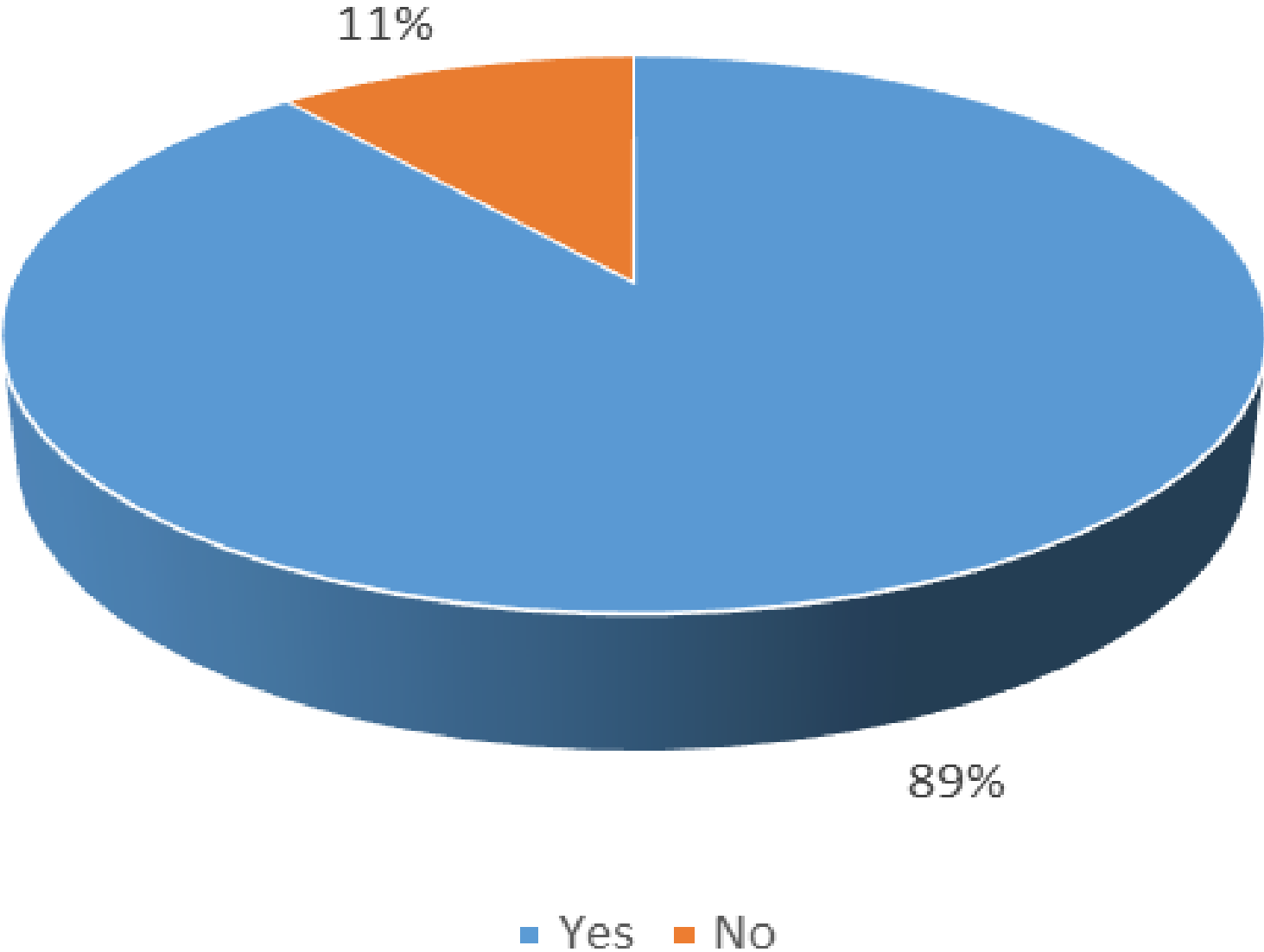
13. Community Benefits Report Content



14. CBO Report to NAC – Sec. 14-12-3(d)(3)

- (3) The Planning Director, where possible, shall provide a copy of the Community Benefits Report to the NAC prior to submission to City Council. **The NAC will have no less than one week to review the Community Benefits Agreement before being asked by the City to vote or sign a letter in support of the proposed benefits.**

14. Community Benefits Report to NAC

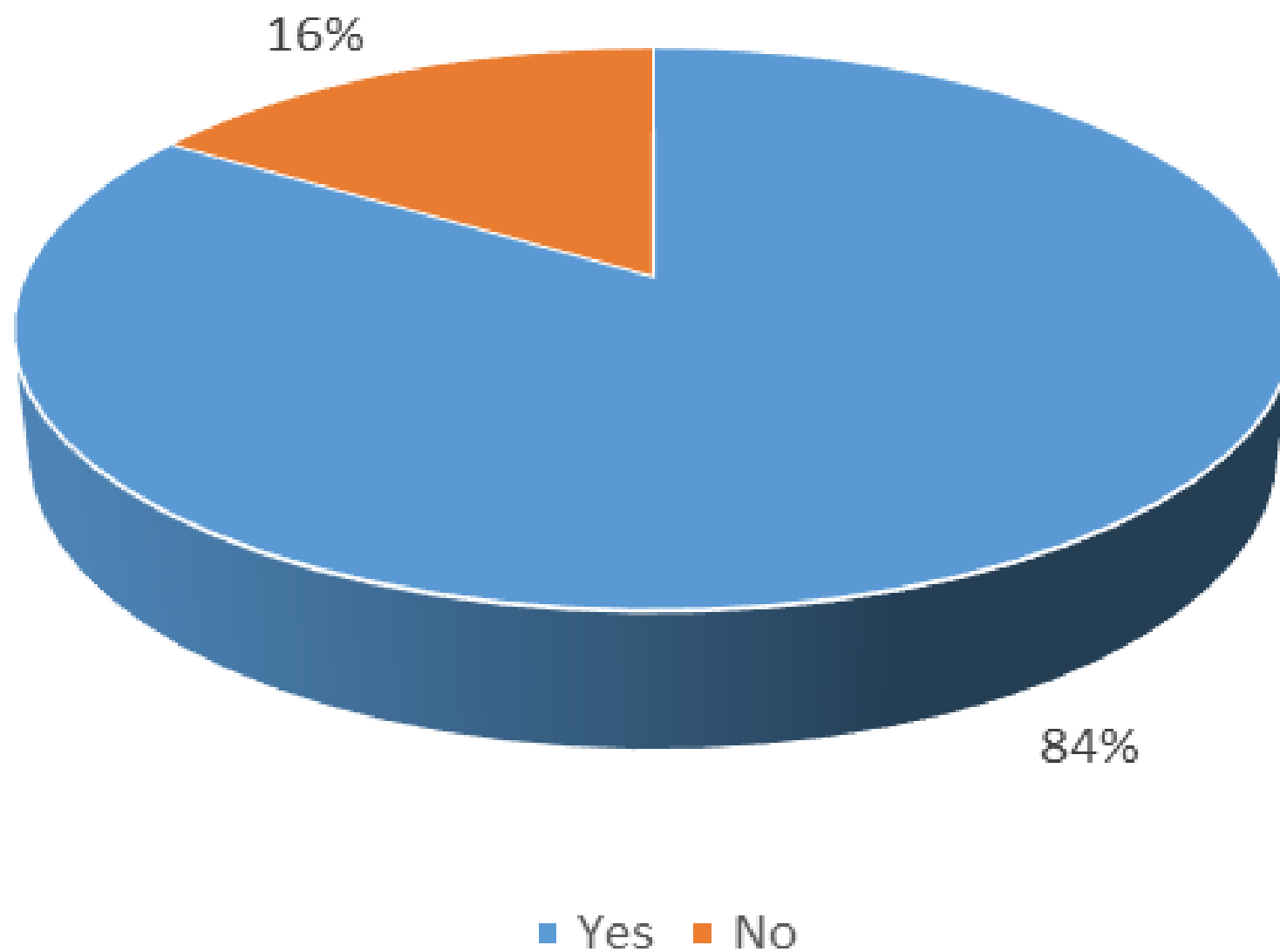


15. Development Agreement – Sec. 14-12-3(e)(1)(a)

(e) *Development Agreement.*

- (1) All development agreements made between the Developer and the City related to the land transfers or tax abatements associated with a Tier 1 Project shall include the Community Benefits Provision, which shall include:
 - a. Enforcement mechanisms for failure to adhere to Community Benefits Provision, that **shall** include but are not limited to, clawback of City-provided benefits, revocation of land transfers or land sales, debarment provisions and proportionate penalties and fees; and

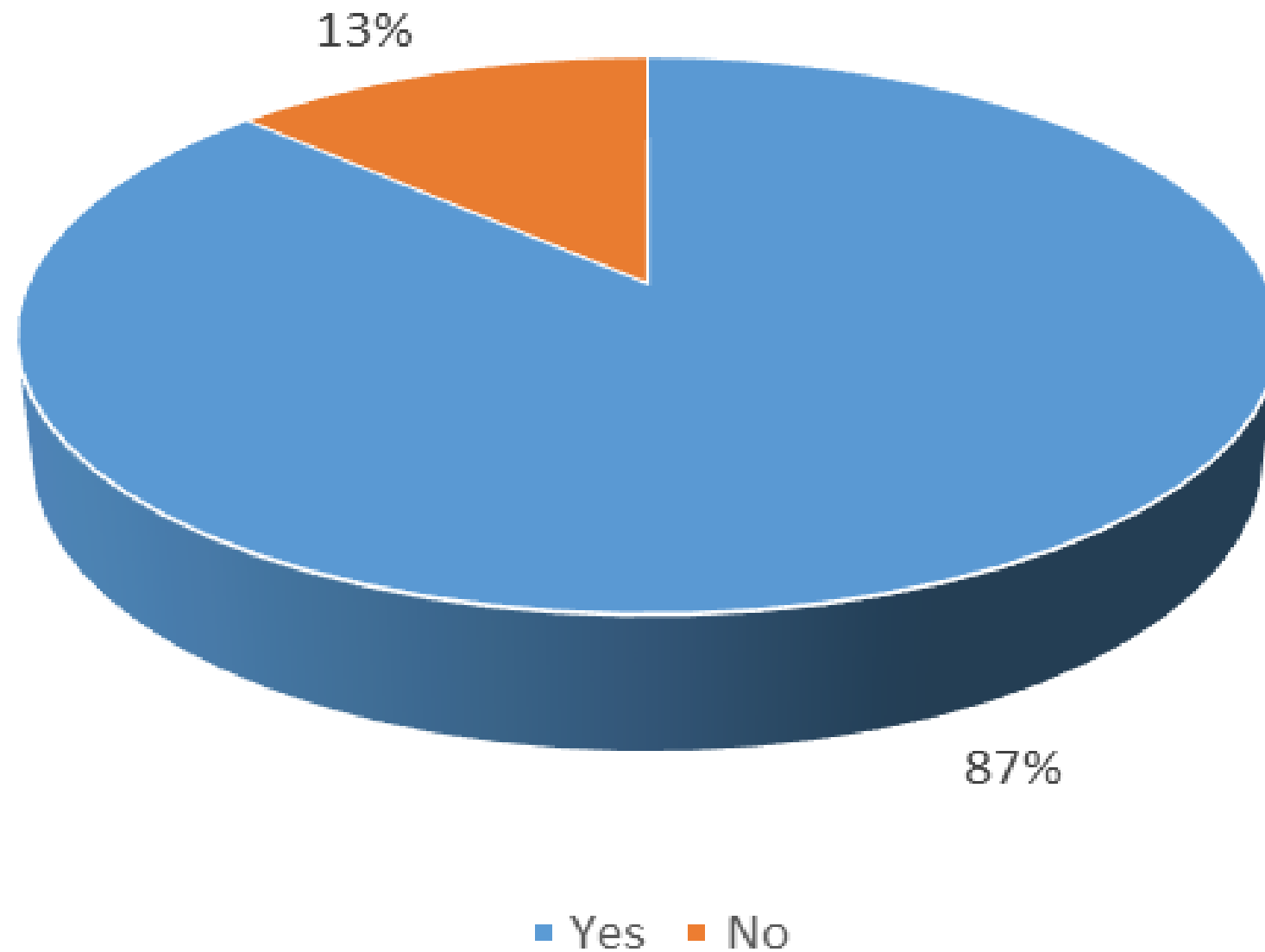
15. Development Agreement



16. Enforcement Committee Composition – Sec. 14-12-3(f)(1)a.iv.

- (1) An Enforcement Committee shall be established to monitor Tier 1 Projects.
 - a. The Enforcement Committee shall be comprised of, at minimum, the following four individuals:
 - i. Corporation Counsel for the City of Detroit; or their designee.
 - ii. a representative from the Planning and Development Department;
 - iii. a representative from the Law Department;
 - iv. a representative from the **Department of Civil Rights, Inclusion and Opportunity.**

16. Enforcement Committee Composition

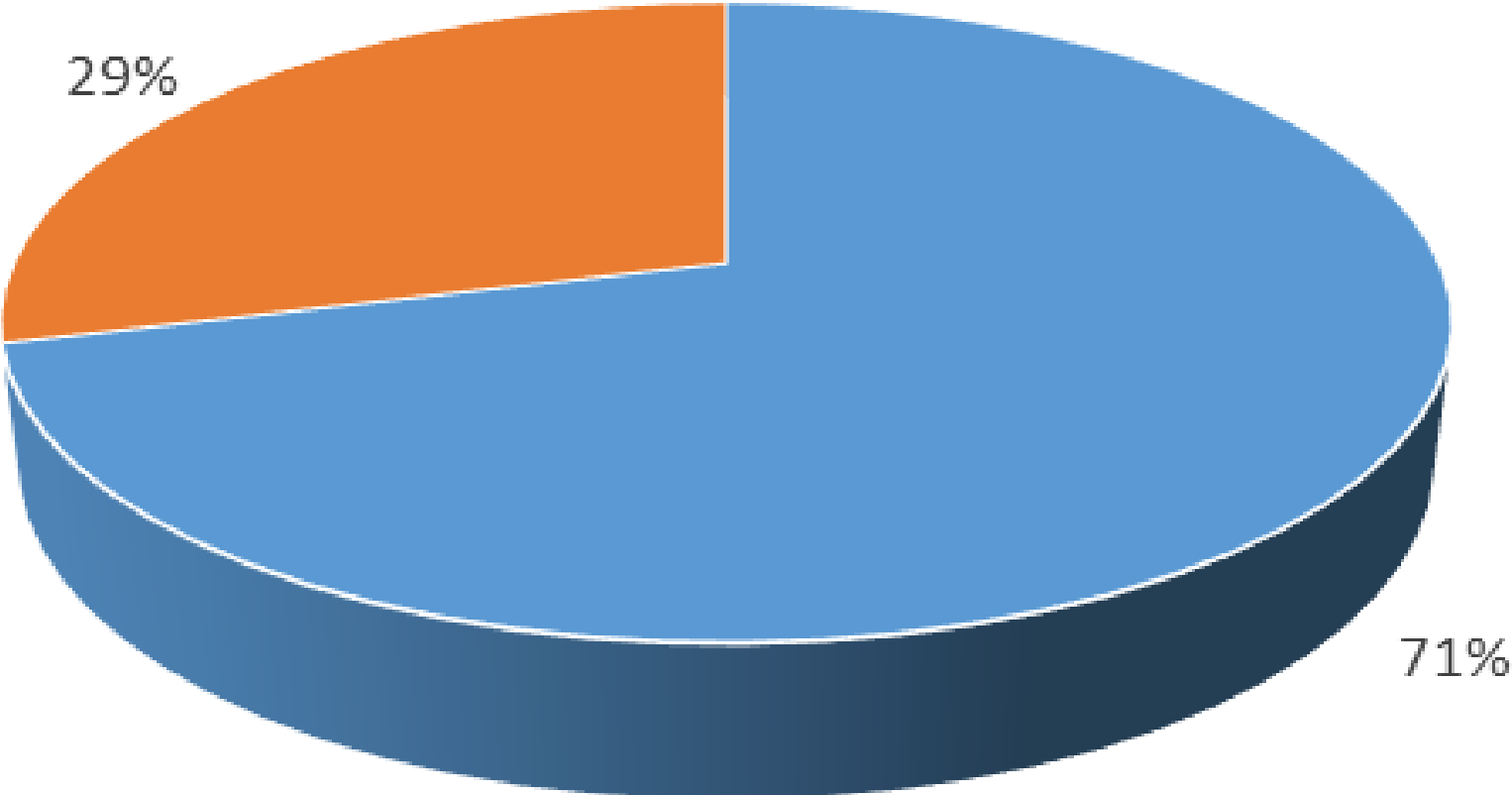


17. Division of Revenue for Tier 2 Developments – Sec. 14-12-4

Sec. 14-12-4. Tier 2 Projects.

- (a) Developers shall:
 - (1) Partner with the City, and when appropriate, a workforce development agency to promote the hiring, training and employability of Detroit residents consistent with State and Federal Law.
 - (2) Partner with the Planning Director to address and mitigate negative impact that the Tier 2 Project may have on the community and local residents.
- (b) The Developer's commitment as identified in Subsection (a) of this section shall be included in the development agreements related to any land transfers or tax abatements associated with the Tier 2 Project for which the Developer seeks approval.
- (3) The remaining 80% of the total sales price from Tier 2 property sales shall be evenly divided among the Neighborhood Improvement Fund and the Skilled Trades Fund.**

17. Division of Revenue for Tier 2 Developments



■ Yes ■ No

Attachment H

(LPD March 11, 2020 Report)

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Director
Irvin Corley, Jr.
Executive Policy Manager
Marcell R. Todd, Jr.
Senior City Planner
Janese Chapman
Deputy Director

John Alexander
LaKisha Barclift, Esq.
M. Rory Bolger, Ph.D., AICP
Elizabeth Cabot, Esq.
Tasha Cowen
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Jennifer Reinhardt
Rebecca Savage
Sabrina Shockley
Thomas Stephens, Esq.
David Teeter
Theresa Thomas
Kathryn Lynch Underwood

TO: The Honorable Detroit City Council

FROM: David Whitaker, Director
Legislative Policy Division Staff

DATE: March 11, 2020

**RE: RECOMMENDED REVISIONS TO THE COMMUNITY BENEFITS
ORDINANCE**

This report follows the Legislative Policy Division's (LPD) report dated October 1, 2018 (attached) in which LPD staff provided a list of recommendations which would either strengthen or revise the city's current Community Benefits Ordinance (CBO) process as outlined in Chapter 12 of the 2019 Detroit City Code, Community Development, Article VIII – Community Benefits.

Since that time, Council instructed LPD staff to conduct a series of legislative staff work group meetings in order to vet, revise, and ultimately provide a recommendation on the 62 recommended revisions previously submitted to City Council for your consideration.

Legislative Staff Work Group Summary

In October 2018, the aforementioned working group was convened, concluding its work in April 2019, after a series of 7 meetings. These meetings resulted in the initial 62 recommended revisions being decreased to 17 proposed recommended changes.

In February 2019 the Law Department submitted a memorandum in response to a request from Council Member Scott Benson for a legal opinion in regards to the proposed amendments to the Community Benefits Ordinance (attached).

Community Benefits Ordinance Survey Summary

Between June 2019 and August 2019, an online Community Benefits Ordinance Survey soliciting the communities support or opposition to the proposed revisions was created through

the Department of Information and Technology (DoIT), and sent out to over 1,500 interested parties, and posted on the City of Detroit’s website. The list of 1,500 plus individuals who received the survey electronically was compiled from the signatures and email addresses pulled from each the sign-in sheets circulated for the 12 Community Benefits Neighborhood Advisory Committee processes which have taken place to-date.

In September 2019 the Community Benefits Ordinance survey was closed resulting in 76 responses to the survey questions, which are further detailed in this report. Upon reviewing the results of the survey and taking into account the limited number of responses received LPD staff was instructed to facilitate a City Wide Community Benefits Ordinance Stakeholders meeting, which took place on Thursday, January 30, 2020.

The balance of this report details the results of the online survey in terms of the percentage of respondents who were either in support or opposition of the proposed recommended amendments. The proposed language resulting from the legislative staff work group sessions along with the initial language from Ordinance No. 35-16 is also included in its entirety as a frame of reference.

Community Benefits Ordinance Survey Results

Proposed amendment No. 1

1. Sec. 14-12-2 of the City of Detroit Community Benefits Ordinance defines a “Tier 1 Development Project” as a development project in the City that is expected to incur the investment of Seventy-five Million Dollars (\$75,000,000) or more during the construction of facilities, or to begin or expand operations or renovate structures, where the developer of the project is negotiating public support for investment in one or both of the following forms:
 - (1) Any transfer to the developer of City-owned land parcels that have a cumulative market value of One Million Dollars (\$1,000,000) or more (as determined by the City Assessor or independent appraisal), without open bidding and priced below market rates (where allowed by law); or
 - (2) Provision or approval by the City of tax abatements or other tax breaks that abate more than One Million Dollars (\$1,000,000) of City taxes over the term of the abatement that inure directly to the Developer, but not including Neighborhood Enterprise Zone tax abatements.

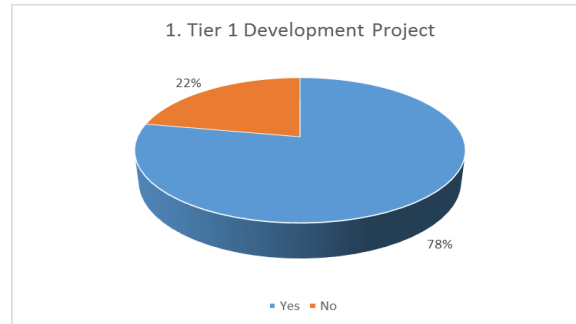
The proposed revision to the section would read as follows:

Tier 1 Development Project means a development project in the City that is expected to incur the investment of **Fifty** Million Dollars (**\$50,000,000**) or more during the construction of facilities, or to begin or expand operations or renovate structures, where the developer of the project is negotiating public support for investment in one or both of the following forms:

- (1) Any transfer to the developer of City-owned land parcels that have a cumulative market value of One Million Dollars (\$1,000,000) or more (as determined by the

- City Assessor or independent appraisal), without open bidding and priced below market rates (where allowed by law); or
- (2) Provision or approval by the City of tax abatements or other tax breaks that abate more than One Million Dollars (\$1,000,000) of City taxes over the term of the abatement that inure directly to the Developer, but not including Neighborhood Enterprise Zone tax abatements.

The resulting response to this recommended change was 78 % in support, and 22 % in opposition.



Proposed amendment No. 2

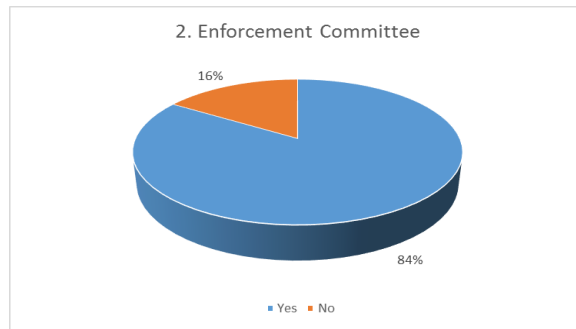
2. Sec. 14-12-2 of the City of Detroit’s Community Benefits Ordinance defines the “Enforcement Committee” as a committee led by the City’s Corporation Counsel and composed of representatives from the Planning and Development Department, Law Department, Human Rights Department, and other relevant City departments as determined by the Planning Director.

The proposed revisions to this section would read as follows:

Enforcement Committee means a committee led by the City’s Corporation Counsel and composed of representatives from the Planning and Development Department, Law Department, **Department of Civil Rights, Inclusion and Opportunity, City Council’s Legislative Policy Division, the Neighborhood Advisory Council Chair of the respective Tier 1 Development Project**, and other relevant City departments as determined by the Planning Director.

The chair of each Neighborhood Advisory Committee shall be an ex-officio member of the related Enforcement Committee.

The resulting response to this recommended change was 84% in support, and 16% in opposition.



Proposed amendment No. 3

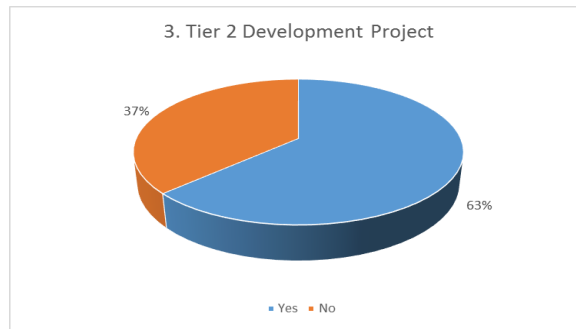
3. Sec. 14-2-2 of the City of Detroit’s Community Benefits Ordinance defines a “Tier 2 Development Project” as a development project in the City that does not qualify as a Tier 1 Project and is expected to incur the investment of Three Million Dollars (\$3,000,000) or more, during the construction of facilities, or to begin or expand operations or renovate structures, where the Developer is negotiating public support for investment in one or both of the following forms:
- (1) Land transfers that have a cumulative market value of Three Hundred Thousand Dollars (\$300,000) or more (as determined by the City Assessor or independent appraisal), without open bidding and priced below market rates; or
 - (2) Tax abatements that abate more than Three Hundred Thousand Dollars (\$300,000) of City taxes over the term of the abatement that inure directly to the Developer, but not including Neighborhood Enterprise Zone tax abatements.

The proposed revisions to this section would read as follows:

Tier 2 Development Project means a development project in the City that does not qualify as a Tier 1 Project and is expected to incur the investment of **Three-Hundred Thousand Dollars (\$300,000)** or more, during the construction of facilities, or to begin or expand operations or renovate structures, where the Developer is negotiating public support for investment in one or both of the following forms:

- (1) Land transfers that have a cumulative market value of Three Hundred Thousand Dollars (\$300,000) or more (as determined by the City Assessor or independent appraisal), without open bidding and priced below market rates; or
- (2) Tax abatements that abate more than Three Hundred Thousand Dollars (\$300,000) of City taxes over the term of the abatement that inure directly to the Developer, but not including Neighborhood Enterprise Zone tax abatements.

The resulting response to this recommended change was 63% in support, and 37% in opposition.



Proposed amendment No. 4

4. Sec. 14-12-3 of the City of Detroit’s Community Benefits Ordinance under Tier 1 Projects subsection (a)(1) states:

Sec. 14-12-3. Tier 1 Projects.

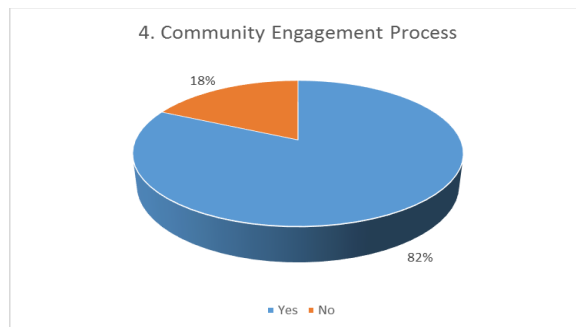
- (a) Community Engagement Process for Public Meeting.
 - (1) Prior to submitting to City Council a request for approval of Land transfers or Tax abatements related to a Tier 1 Project, the Planning Director shall hold at least one public meeting in the Impact Area as defined in this Section.

The proposed revisions to this section would read as follows:

Sec. 14-12-3. Tier 1 Projects.

- (a) *Community Engagement Process for Public Meeting.*
 - (1) Prior to submitting to City Council a request for approval of Land transfers or Tax abatements related to a Tier 1 Project, the Planning Director shall hold **no fewer than five (5) public meetings** in the Impact Area as defined in this Section, **unless a majority of the NAC deems otherwise.**

The resulting response to this recommended change was 82% in support, and 18% in opposition.



Proposed amendment No. 5

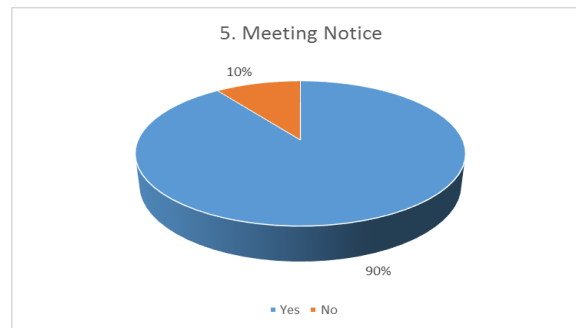
5. Sec. 14-12-3(a)(2) of the City of Detroit’s Community Benefits Ordinance states:

- (2) The City Clerk shall forward notice of the public meeting via First Class Mail no less than 10 days before such meeting to all City of Detroit residents within three hundred radial feet of the Tier 1 Project. The notice shall include:
 - a. The time, date and location of the public meeting;
 - b. General information about the Tier 1 Project;
 - c. A description of the Impact Area and the location of the Tier 1 Project;
 - d. Information related to potential impacts of the Tier 1 Project and possible mitigation strategies; and

The proposed revisions to this section would read as follows:

- (2) The City Clerk shall forward notice of the public meeting via First Class Mail no less than 10 days before such meeting to all City of Detroit residents within three hundred radial feet of the Tier 1 Project **Impact Area**. The notice shall include:
 - a. The time, date and location of the public meeting;
 - b. General information about the Tier 1 Project;
 - c. A description of the Impact Area and the location of the Tier 1 Project;
 - d. Information related to potential impacts of the Tier 1 Project and possible mitigation strategies; and

The resulting response to this recommended change was 90% in support, and 10% in opposition.



Proposed amendment No. 6

6. Sec. 14-12-3(a)(4) of the City of Detroit’s Community Benefits Ordinance under “Engagement with Developer” states in part:

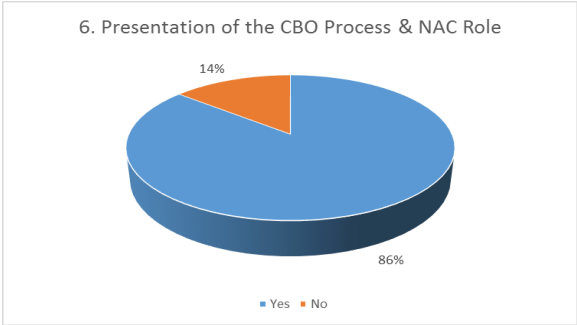
- (4) At the public meeting, the Planning Director will present general information about the Tier 1 Project, discuss ways in which the Tier 1 Project is anticipated to impact the local community, and ways in which the Developer and the Planning Director plan to address or mitigate these impacts.

The proposed revisions to this section would read as follows:

- (4) At the public meeting, the Planning Director will present general information about the Tier 1 Project, discuss ways in which the Tier 1 Project is anticipated to impact the local community, and ways in which the Developer and the Planning Director plan to address or mitigate these impacts. **At the initial public meeting the Planning Director will present in detail on the CBO process, how the**

NAC fits within that broader process, the responsibilities of the NAC and the proposed timeline for the NAC meetings. The Planning and Development Department shall discuss previous NACs and share outcomes and best practices learned from them. The meeting/workshop shall allow for the community to ask questions and learn about the upcoming CBO process. The Developer shall not be present at this first meeting.

The resulting response to this recommended change was 86% in support, and 14% in opposition.



Proposed amendment No. 7

7. Sec. 14-12-3(b)(3) of the City of Detroit’s Community Benefits Ordinance states:

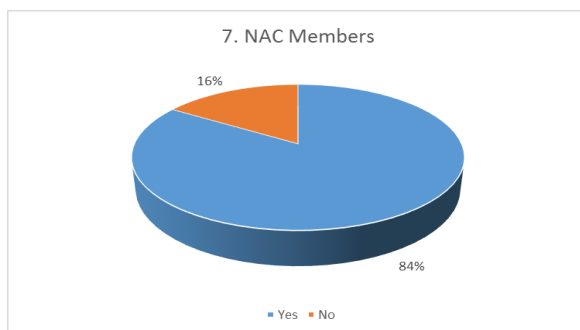
- (3) The NAC shall consist of nine members, selected as follows:
 - a. Two Members selected by residents of the Impact Area chosen from the resident nominated candidates;
 - b. Four Members selected by the Planning Director from the resident nominated candidates, with preference given to individuals the Planning Director expects to be directly impacted by the Tier 1 Project;
 - c. One Member selected by the Council Member in whose district contains the largest portion of the Impact Area from the resident nominated candidates; and
 - d. One Member selected by the At-Large Council Members from the resident nominated candidates.

The proposed revisions to this section would read as follows:

- (3) The NAC shall consist of nine members, selected as follows:
 - a. **Three** Members selected by residents of the Impact Area chosen from the resident nominated candidates;
 - b. **Three** Members selected by the Planning Director from the resident nominated candidates, with preference given to individuals the Planning Director expects to be directly impacted by the Tier 1 Project;
 - c. One Member selected by the Council Member in whose district contains the largest portion of the Impact Area from the resident nominated candidates; and
 - d. One Member selected by the At-Large Council Members from the resident nominated candidates.

- e. The Planning and Development Director as well as the Council Member in whose district contains the largest portion of the Impact Area, and the At-Large Council Members are permitted to select NAC members from outside of the list of resident nominated candidates, however those selected must reside within the impact area.
- f. There should be one alternate selected by the community. The person with the fourth highest votes from the community should be listed as the alternate person. This person must agree to be present at all meetings and will be notified by the Planning Department when they are needed to formally replace a NAC member.

The resulting response to this recommended change was 84% in support, and 16% in opposition.



Proposed amendment No. 8

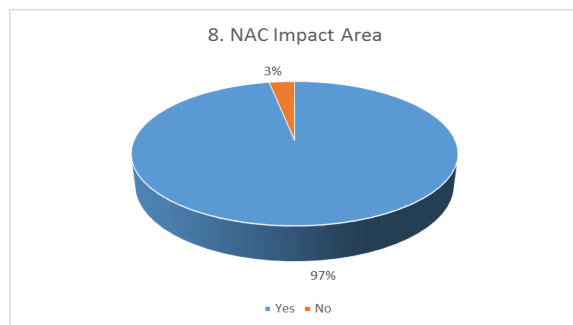
8. Sec. 14-12-3(b)(2) of the City of Detroit’s Community Benefits Ordinance states:

- (2) All residents over the age of 18 that reside in the Impact Area are eligible for nomination.

The proposed revisions to this section would read as follows:

- (2) All residents over the age of 18 that reside in the Impact Area are eligible for nomination. Any person who is an agent, employee, or official of the developer must disclose their relationship to the developer prior to selection to the NAC.

The resulting response to this recommended change was 97% in support, and 3% in opposition.



Proposed amendment No. 9

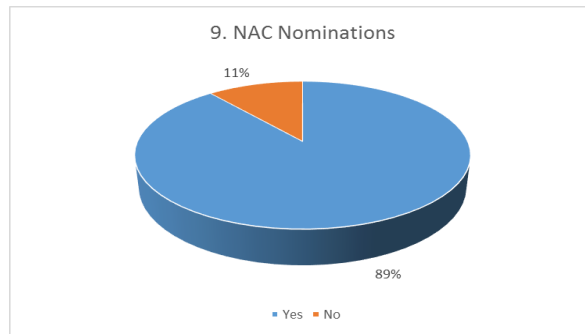
9. Sec. 14-12-3(b)(4) of the City of Detroit’s Community Benefits Ordinance states:

- (4) If the Planning Director receives less than nine nominations, the Planning Director may seek out additional nominations from individuals that live outside the Impact Area but within the City Council district or districts where the Tier 1 Project is located.

The proposed revisions to this section would read as follows:

- (4) If the NAC receives less than nine nominations, **the City Council Member in whose district contains the largest portion of the Impact Area may seek out individuals that live outside the Impact Area but within the City Council District or Districts where the Tier 1 Project is located.**

The resulting response to this recommended change was 89% in support, and 11% in opposition.



Proposed amendment No. 10

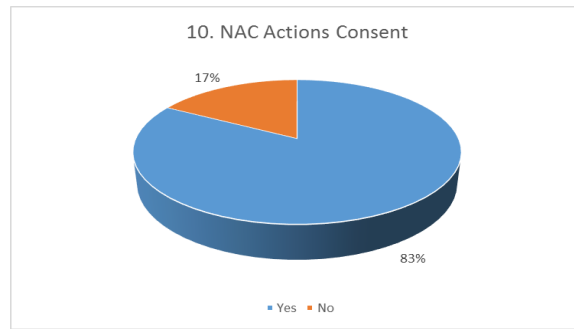
10. Sec. 14-12-3(b)(5) of the City of Detroit’s Community Benefits Ordinance states:

- (5) All actions of the NAC may be taken with the consent of a majority of NAC members serving.

The proposed revisions to this section would read as follows:

- (5) All actions of the NAC may be taken with the consent of a majority of NAC members serving. **Attendance at all NAC meetings by all elected and appointed NAC members shall be mandatory, unless advance notice is provided. More than one (1) absence could disqualify one from further being a NAC member. If a member fails to attend an NAC meeting, an alternate may be appointed by the NAC as a permanent replacement member, at the discretion of the NAC.**

The resulting response to this recommended change was 83% in support and 17% in opposition.



Proposed amendment No. 11

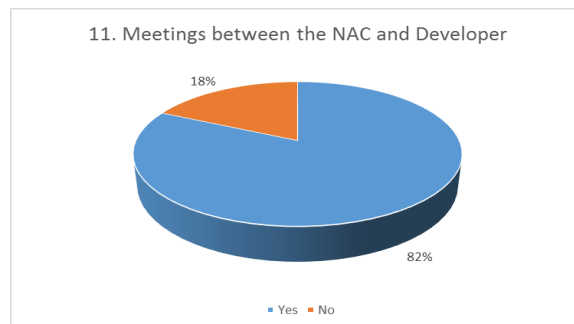
11. Sec. 14-12-3(c)(1) of the City of Detroit’s Community Benefits Ordinance states:

- (c) Engagement with Developer.
 - (1) In addition to the meeting required in Subsection (a)(1) of this section, the Planning Director shall facilitate at least one meeting between the NAC and the Developer to allow the NAC to learn more details about the project and to provide an opportunity for the NAC to make Developer aware of concerns raised by the NAC.

The proposed revisions to this section would read as follows:

- (c) Engagement with Developer.
 - (1) **The Planning Director shall facilitate no fewer than five (5) meetings between the NAC and the Developer as required in Subsection (a)(1) to allow the NAC to learn more details about the project and to provide an opportunity for the NAC to make Developer aware of concerns raised by the NAC. The Developer and the relevant city departments must present to the members of the NAC, at a minimum, how the proposed project may utilize green infrastructure, create jobs for Detroiters, detail which tax incentives they are seeking with specific amounts, and to what extent the project will feature subsidized/discounted/affordable housing and/or commercial space. These recommendations may include but are not limited to noise, traffic and dust mitigation.**

The resulting response to this recommended change was 82% in support, and 18% in opposition.



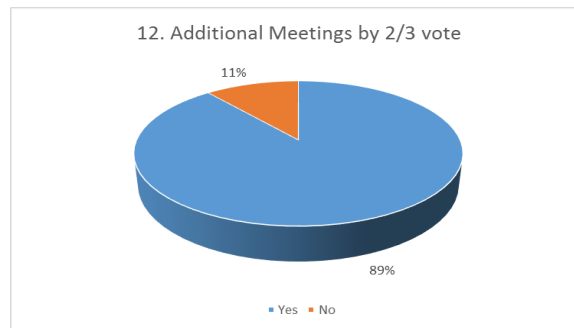
Proposed amendment No. 12

12. Sec. 14-12-3(c)(2) of the City of Detroit’s Community Benefits Ordinance states:
- (2) City Council by a 2/3 vote of members present or the Planning Director may facilitate additional meetings which the Developer, or the Developer’s designee, shall participate in as directed.

The proposed revisions to this section would read as follows:

- (2) City Council by a 2/3 vote of members present or the Planning Director may facilitate additional meetings which the Developer, or the Developer’s designee, shall participate in as directed. **The City and the DEGC shall provide all essential documents to the NAC Members, District and At-Large City Council members within 72 hrs. of the NAC selection including but not limited to the Detroit Community Benefits Ordinance, development agreements between the city and developer, projected revenue, developer's RFP response, all renderings related to the project, But/For Economic Analysis conducted by DEGC, all environmental studies, documents related to brownfield funding, etc.**

The resulting response to this recommended change was 89% in support, and 11% in opposition.



Proposed amendment No. 13

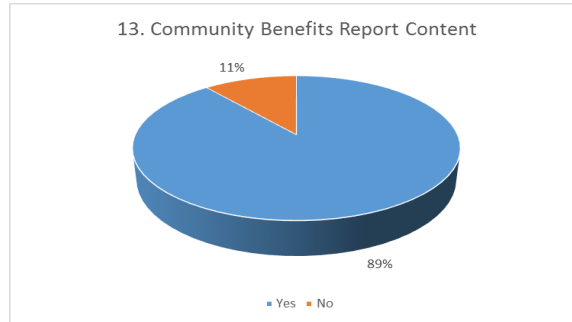
13. Sec. 14-12-3(d)(2) of the City of Detroit’s Community Benefits Ordinance states:
- (2) The Community Benefits Report shall contain:
- a. A detailed account of how notice was provided to organize the public meeting.
 - b. A list of the NAC members, and how they were selected.
 - c. An itemized list of the concerns raised by the NAC.
 - d. A method for addressing each of the concerns raised by the NAC, or why a particular concern will not be addressed.

The proposed revisions to this section would read as follows:

- (2) The Community Benefits Report shall contain:
- a. A detailed account of how notice was provided to organize the public meeting.

- b. A list of the NAC members, and how they were selected.
- c. An itemized list of the concerns raised by the NAC.
- d. A method for addressing each of the concerns raised by the NAC, or why a particular concern will not be addressed.
- e. **A detailing list of community outreach strategies used to solicit and record feedback.**

The resulting response to this recommended change was 89% in support, and 11% in opposition.



Proposed amendment No. 14

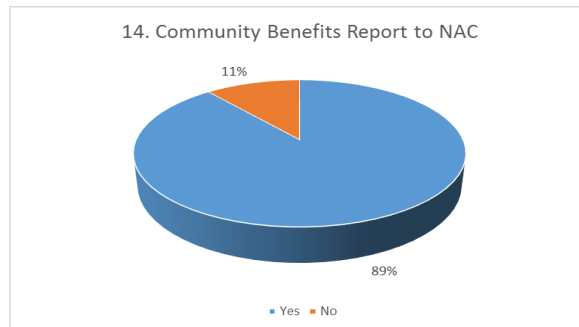
14. Sec. 14-12-3(d)(3) of the City of Detroit’s Community Benefits Ordinance states:

- (3) The Planning Director, where possible, shall provide a copy of the Community Benefits Report to the NAC prior to submission to City Council.

The proposed revisions to this section would read as follows:

- (3) The Planning Director, where possible, shall provide a copy of the Community Benefits Report to the NAC prior to submission to City Council. **The NAC will have no less than one week to review the Community Benefits Agreement before being asked by the City to vote or sign a letter in support of the proposed benefits.**

The resulting response to this recommended change was 89% in support, and 11% in opposition.



Proposed amendment No. 15

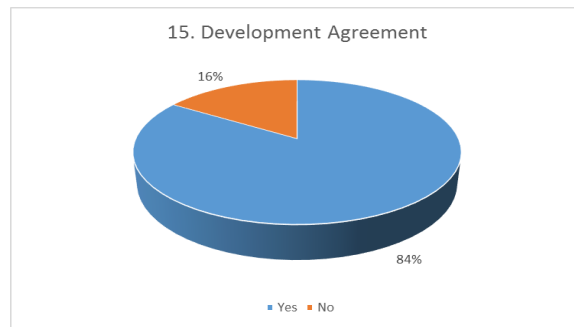
15. Sec. 14-12-3(e)(1)(a) of the City of Detroit’s Community Benefits Ordinance states:

- (e) *Development Agreement.*
 - (1) All development agreements made between the Developer and the City related to the land transfers or tax abatements associated with a Tier 1 Project shall include the Community Benefits Provision, which shall include:
 - a. Enforcement mechanisms for failure to adhere to Community Benefits Provision, that may include but are not limited to, clawback of City-provided benefits, revocation of land transfers or land sales, debarment provisions and proportionate penalties and fees; and

The proposed revisions to this section would read as follows:

- (e) *Development Agreement.*
 - (1) All development agreements made between the Developer and the City related to the land transfers or tax abatements associated with a Tier 1 Project shall include the Community Benefits Provision, which shall include:
 - a. Enforcement mechanisms for failure to adhere to Community Benefits Provision, that **shall** include but are not limited to, clawback of City-provided benefits, revocation of land transfers or land sales, debarment provisions and proportionate penalties and fees; and

The resulting response to this recommended change was 84% in support, and 16% in opposition.



Proposed amendment No. 16

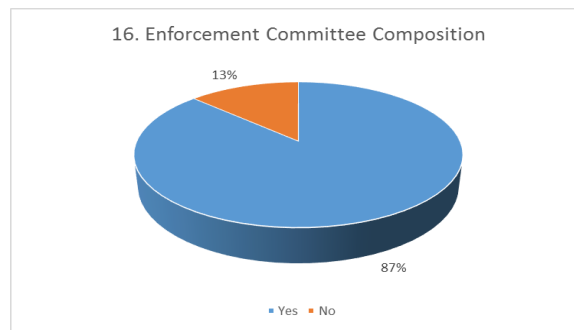
16. Sec. 14-12-3(f)(1)a.iv. of the City of Detroit’s Community Benefits Ordinance states:

- (1) An Enforcement Committee shall be established to monitor Tier 1 Projects.
 - a. The Enforcement Committee shall be comprised of, at minimum, the following four individuals:
 - i. Corporation Counsel for the City of Detroit; or their designee.
 - ii. a representative from the Planning and Development Department;
 - iii. a representative from the Law Department;
 - iv. a representative from the Human Rights Department.

The proposed revisions to this section would read as follows:

- (1) An Enforcement Committee shall be established to monitor Tier 1 Projects.
 - a. The Enforcement Committee shall be comprised of, at minimum, the following six individuals:
 - i. Corporation Counsel for the City of Detroit; or their designee.
 - ii. a representative from the Planning and Development Department;
 - iii. a representative from the Law Department;
 - iv. a representative from the **Department of Civil Rights, Inclusion and Opportunity.**
 - v. **a representative from City Council’s Legislative Policy Division;**
 - vi. **the Neighborhood Advisory Council Chair of the respective Tier 1 Development Project.**

The resulting response to this recommended change was 87% in support, and 13% in opposition.



Proposed amendment No. 17

17. Sec. 14-12-4 of the City of Detroit’s Community Benefits Ordinance states:

Sec. 14-12-4. Tier 2 Projects.

- (a) Developers shall:
 - (1) Partner with the City, and when appropriate, a workforce development agency to promote the hiring, training and employability of Detroit residents consistent with State and Federal Law.
 - (2) Partner with the Planning Director to address and mitigate negative impact that the Tier 2 Project may have on the community and local residents.
- (b) The Developer’s commitment as identified in Subsection (a) of this section shall be included in the development agreements related to any land transfers or tax abatements associated with the Tier 2 Project for which the Developer seeks approval.

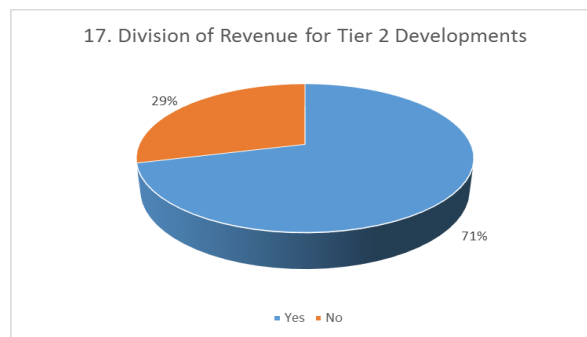
The proposed revisions to this section would read as follows:

Sec. 14-12-4. Tier 2 Projects.

- (a) Developers shall:

- (1) Partner with the City, and when appropriate, a workforce development agency to promote the hiring, training and employability of Detroit residents consistent with State and Federal Law.
- (2) Partner with the Planning Director to address and mitigate negative impact that the Tier 2 Project may have on the community and local residents.
- (b) The Developer's commitment as identified in Subsection (a) of this section shall be included in the development agreements related to any land transfers or tax abatements associated with the Tier 2 Project for which the Developer seeks approval.
- (3) The remaining 80% of the total sales price from Tier 2 property sales shall be evenly divided among the Neighborhood Improvement Fund and the Skilled Trades Fund.**

The resulting response to this recommended change was 71% in support, and 29% in opposition.



City Wide Community Stakeholders Meeting

The following summation is a detailed account of the public comments received at the Thursday, January 30, 2020 public meeting. All supporting documentation provided by members of the public in regards to their public comments and recommendations on additional changes to the Community Benefits Ordinance have been attached to this report for your review and consideration.

There were approximately 300 persons in attendance at the aforementioned community meeting. A real-time survey was provided to determine the percentage of participants in attendance who have previously participated in a CBO process, in what capacity they participated, and their level of interest in the CBO process. Additionally, participants were encouraged to contribute to the creation of two word clouds; one describing their initial thoughts about the current Community Benefits Ordinance; and two, their thoughts on what could potentially improve the community benefits process. Both of those word clouds are attached for your review, however, the appearance¹ of any lude or profane comments have been censored.

Upon completing an overview of the timeline, and the manner in which the results of the legislative work group were shared with the general public, comments were received from those in attendance. Several members of the public expressed concerns regarding the process and their desire for more transparency. While all of the written recommendations submitted by

¹ The comments submitted by members of the public are included in the word clouds, however, several letters of lude or profane comments have been concealed.

community groups such as The Detroit People’s Platform, or the Equitable Detroit Coalition served as the impetus for many of the submitted recommended changes from various Council Member’s offices, as well as staff; members of these associations voiced their desire to have been included in the legislative work group to ensure that the intent of their written requests was made clear.

In total 37 public comment cards were received, however, 39 members of the public spoke in regards to proposed changes to the Community Benefits Ordinance. Some of the comments received were additional changes that various entities would like to see enacted in a revised draft of the ordinance; separate and apart from the 17 recommended changes submitted by the legislative work group, which was the subject the city wide community stakeholders meeting.

Written as well as verbal comments were submitted by several participants. Verbatim transcriptions of the hand written comments have been included as a part of this report for your review and consideration. A summation of the verbal public comments is provided for your consideration as well.

Written public comments

“‘Where possible’ negates ‘shall’ thereby creating a totally unenforceable clause. It is, in fact which do you have? A possible mandatory, or is it a mandatory possibility? Eliminate ‘where possible’ and the ‘shall’ becomes effective...that the ‘Planning Director’ shall report on the situation, including a lack of activity.”

“Number one concern about the City Assessor’s ability and/or creditability in assessing property going to developers since residents have been over assessed on private homes. Impacted residents should determine what land/property should be given to developers.”

“NAC needs to have final say on whether agreement moves forward; PD orientation needs to include CBA highlights from around nation; NAC committee should be majority community elected; More negotiation on CBA points, not just NAC proposal developer response; LPD analyses need to be more holistic/critical, not just outdated cost-benefit that is designed to always be positive!; Developers must resubmit request if silent for too long.”

“NAC & Conflict of Interest; Taxing Authorities should weigh in on the impact of tax abatements on their entities; clear timeline.”

“This ordinance just passed 3 years ago, adding more language now will confuse people more and give companies more excuses for not dealing with Detroit.”

“RETRO ACTIVITY”

“It’s important for the CBO to be amended to be more resident-driven, inclusive, transparent, and enforceable. These amendments are a step in the right direction, but could be better. NAC should be comprised of members who are all elected by impacted residents.”

“Amend 7: Majority of the NAC must be comprised by people nominated by members of the impacted community; Amend 4: Remove clause allowing NAC to stop meetings before there have been at least 5. UNLESS the NAC is controlled by people nominated by the neighborhood;

Amend 1,3: No investment limits. CBA process should be contingent only on the use of tax incentives.”

“In regard to the notification in Project Impact areas for Tier 2, my neighborhood is so sparse that few people were notified when companies reached out to neighbors. The same radius that would result in outreach to 100 homes in more dense areas resulted in outreach to two abandoned homes, one occupied home and one church in my area. I hope that you choose to expand this outreach area or require that at least a set of numbers of homes are contacted in this ordinance.”

“I am the board chair of the Chadsey Condon Community Org. Our residents are concerned about the manner in which we are informed that public hearings / meetings are taking place by notices not being received by residents. We are also concerned about rezoning proposals being brought to council without the property studies taking place. Finally, we are concerned about community engagement taking place late in the development process only as a formality. Community engagement should be early and often.”

“The Fiat Chrysler expansion should consider the environmental impacts of the expansion reach far beyond the designated impact area. Residents should be granted funds to fortify homes against pollution, this will help decrease health disparity.”

“1) How does the CBO address land sales/swaps with third parties (e.g. Crown Enterprises) to the development that exceed \$1 million? These 3rd party deals should be included in the CBO & required to be announced prior to the CBO process. Significant land swaps resulting from these deals should be considered as an area to receive benefits.

2) What consequence is there if a developer pays an NAC member? Or if an NAC member doesn't disclose conflict of interest? The developer should be forbidden from paying NAC members.”

“I support the majority of the amendments: however I would like to see the threshold of 75,000,000 be reduced to 25,000,000. Expand seats for community to be on NAC. If developers can not give any concrete answers we should have the opt out by the City for the developer.”

“I'm happy to see many of these amendments finally make it to this stage, it's not lost on me that community concerns were ignored from the beginning. Listen to residents! But in keeping good faith and optimism that Detroit's era of 'Development at any and all costs' will at some point come to a close. In addition to many of the common sense amendments that should have been accounted for in the first place, it is imperative that conflict of interest/effort is a consideration in selection of NAC members. It is imperative that these negotiations end w/ legally binding agreements. Moreover it is time for the city of Detroit to begin taking a comprehensive view of development – and a comprehensive accounting of public funded abatements. A CBO is an opportunity for a city to develop w/and for its residents. Help us work w/developments, don't work around us.”

“I agree with these amendments as a start, but they need to be stronger. NAC should be majority comprised of residents chosen by community members, not city council. 'Impact Area' should be clearly defined, and include at least the entire city council district. All requirements for Tier 1 projects should also apply to Tier 2 projects. The whole process should be required

for every development project getting public money/benefits. No development projects should be allowed to happen without full NAC approval and an enforced requirement that the developer carry out all NAC demands/recommendations. We need strict penalties for non-compliance; including stopping the development. Fines are weak and do not deter developers from disregarding community benefits requirements.”

CBO Public Meeting Comments

The following comments are a summary (not meant to be exhaustive) of the verbal comments that were given by the public during the January 30, 2020 public meeting held by the Legislative Policy Division.

1. **Detroit Digital Justice Coalition/Equitable Detroit Coalition member**
Supports City Council amendment #12.
2. **Detroit People’s Platform member**
Supports the inclusion of the NAC chair participating on the enforcement committee.
3. **Local 1191 member**
Against the CBO. Stated that the ordinance is making it harder for development. Construction workers are losing jobs.
4. **Detroit People’s Platform member**
Asked whether there would be retroactive action available for impacts of the Q-line construction and business/neighborhood disruption?
5. **Midtown/Selden Street resident**
States that they served on a NAC in Midtown and it was a waste of time. Received no information from developer. Stated that there is no teeth to hold a developer to requests of NAC. Developer said they’d just pay the penalty. Developer was non responsive.
6. **Equitable Detroit Coalition/Detroit People’s Platform member**
Supports Council Amendment #5. City Clerk should forward notices no less than 10 days from the meeting and to residents within 300 feet, information, possible impacts etc. Definition of impact area should be included.
7. **Doing Development Differently in Detroit member**
40 organizations met to discuss the CBO. Supports expanding the NAC to include additional seats for community members + 2 seats for union representatives. Also asked: What happens if the majority of the NAC does not agree to the final CBA agreement??
8. **Citizen**
Supports Amendment #15 and believes that all development agreements shall include claw backs for noncompliance.
9. **Brightmoor resident**
Proposed New Amendment – Ordinance does not require NAC to reveal conflicts of interests currently. Ppl who have competing affiliations such as City staff, consultants etc. should be restricted from serving on the NAC. People in positions who have conflicting responsibilities or who stand to gain financially or influenced through other means should be restricted from serving on the NAC.
10. **Citizen**
Supports proposed amendments to CBO, but also advocates that minimum wage standards for jobs are at \$15 an hour when developers receive incentives. Desires to see provisions that make it easier for Detroiters to join a union.
11. **Beniteau Street resident/Detroit People’s Platform member**
Developer is unresponsive to community’s needs. \$15K a house for CBA is not enough. Desires better mitigation package for air quality. States that the information

from the Southwest Detroit Gordie Howe CBA negotiations mitigation was not shared with community. Want new roofs, central air, furnaces, foundation repair. Issues from the FCA construction include: vibrations from construction, fugitive dust, etc. Also feels that City government should have done better to mitigate impacts.

12. District 5 resident/Detroit People's Platform member

Proposed-Development Sec. 14-2-2 development project means a development that does not qualify as a tier 1 project and results in 300,000 or more.... SUPPORT

13. Charlevoix Villages Association/Fisher Street community member

Problems with current ordinance: All projects that receive public subsidies should be subject to CBO; there should be no threshold. The NAC should be comprised of majority residents of the impact area and elected by the community. The ability of the NAC to cancel meetings is a loop hole to cancel the negotiation process.

14. Sugar Law Center attorney/Detroit People's Platform member

Supports proposed amendments. Restructure the NAC to increase the number of members on the NAC to include seven community members elected by residents. Additional six would be selected from youth, two labor representatives. The members should have backgrounds in various areas of expertise. Labor representatives should be required to demonstrate knowledge of impact area.

15. Chadsey community organization member

The City and developer should not be negotiating or speaking too far in advance of the developer negotiating with the NAC. Need earlier engagement before deals are made.

16. Labor Local 1191 member

Oppose the CBO; it is a waste of taxpayer money. It is pushing developers away and keeping skill tradesmen out of work.

17. Citizen

Would like to see 300 sf impact area for Tier 2 projects in addition to outreach area of Tier 1.

Developers should have to resubmit to the City and start over if the project is delayed unreasonably. The NAC should be able to make the final decision. Negotiation between NAC and developer should more robust. The LPD financial analyses should be more critical cost/benefit analyses for projects.

18. Southwest Detroit Coalition/Equitable Detroit Coalition member

Supports the proposed amendment for lowering the threshold to \$50million. The market value land/subsidy trigger should be lowered from \$1million to \$500,000. Additional language to qualify what triggers a developer to have to participate is in CBA process: "any transfer to the developer of city owned land that includes acreage that is equal to one city of Detroit residential block."

Item #12 should specifically include all parcels to be transferred to the developer and the sale price. Lastly, all agreements should result in a legally binding community benefits agreement.

19. National Association of Black Women in Construction/Equitable Detroit Coalition member

Proposed amendment #14 Tier 2 projects should include language that speaks to a priority, that Detroit residents live in the impact area for promotion of hiring, training and apprenticeship programs and employment consistent with local state federal law. Details the developers commitment to conduct outreach for impact area and Detroit residents.

20. Equitable Detroit Coalition/ Detroit People's Platform member

Stated that the CBO process should not be permitted to conclude until a legally binding agreement agreed upon between the developer and the NAC.

21. Citizen

The measure of success for the jobs that result from the CBO process should be measured in the number of people that gain meaningful employment (i.e. journeymen) and not entry-level positions.

22. Brightmoor Connection/Equitable Detroit Coalition/ Detroit People's Platform member

Proposed additional amendment: To evaluate the projects impact on quality of life, developers must complete a scorecard that details assessments related to health, social and environmental impacts for residents that live in the impact neighborhood and surrounding areas. The scorecard shall be presented by the developer at the initial meeting of the elected NAC CBO meeting.

23. Jefferson Chalmers CDC member

Create binding rules to maintain consistency in process; hold developers accountable.

24. Corktown resident

There should be a moratorium on developer tax abatements until the \$600 million in over taxation of Detroit homeowners is reimbursed.

25. Eastside resident

Need a moratorium on tax abatements. Taxing authorities are rubber stamping abatements. Penalties and enforcement should be imposed if developer fails to deliver on commitments.

26. GreenAcres resident/ State Fairgrounds Steering Group committee member

Supports Doing Development Differently in Detroit proposed additional amendment; support all Equitable Detroit Coalition additional amendments.

27. Resident

Comment to the Union brothers; people deserve to have a job with living wage; hope that City Council will take DDP and EDC amendments seriously. Engage union workers for CBO for all.

28. Cody Rouge resident/Detroit People's Platform member

Developers should have to account for the way in which tax dollars are spent. NAC members should be representative of the leadership in the impact area community. The immediate community should be able to choose the NAC members. Developer should be held accountable for jobs. Threshold for Tier 1 projects should be \$25 million.

29. Detroit People's Platform member

Supports increasing the number of meetings; supports the Equitable Detroit Coalition amendments.

30. West Grand Boulevard Collaborative member

If developers can't do business in Detroit without subsidies then they're not good business people. We want elected officials to represent community members.

31. District 5 resident

People should have first right of first refusal for homes in the neighborhood that the Land Bank owns. Residents need to be able to vote for the NAC.

32. Detroit People's Platform member

Take back government. Citizens should be benefiting from development. Make government officials accountable.

33. Citizen

Against taxation without representation; I'm the only brown face on the construction job. I had to have multiple advocates to get the job. It should not be this hard to enter the field.

34. **Detroit Digital Justice Coalition member**

Community concerns are ignored. Development at all cost should end. CBA negotiations should result in a legally binding contract. Make developer's be accountable for abatements received.

35. **North End resident**

Desires CBO language that defines community engagement to be executed. The Land Bank should be shut down.

36. **Detroit Digital Justice Coalition member**

NAC should be majority comprised of and chosen by community. Impact area should include entire City Council District. All requirements for Tier 1 projects and meetings should apply to tier 2 and any other project receiving public subsidies. We need strict penalties for noncompliance. The CBA should be a legally binding agreement.

37. **District 5 resident**

Supports Detroit People's Platform recommendations. Too many Detroit employees involved in community meetings and not enough citizens.

38. **Citizen**

Don't take a blank check from developers.

39. **Midtown resident**

Campaigned for the NAC for the Wible CBO. Felt that the vote was rigged because some people brought their friends to vote. Doesn't agree with prioritizing development and not focusing on stormwater management and climate change issues. We need developers to help provide free internet for the city.

Conclusion

At this point in time, LPD staff is prepared to receive further direction from the Planning and Economic Development Standing Committee and City Council for next steps in this process. Council may want to review and consider the additional proposed amendments and public input that has been received and detailed in this report. There was also discussion early on in this process concerning a dialogue with the Administration related to the proposed amendments that are under consideration. LPD will proceed with next steps as directed by this Honorable Body.

Attachment I

(LPD August 26, 2020 Report)


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Executive Policy Manager
Marcell R. Todd, Jr.
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TO: Detroit City Council

FROM: David Whitaker, Director
Legislative Policy Division 

DATE: August 26, 2020

RE: **Community Benefits Ordinance Supplemental Report**

At the request of Council Member James Tate, Chairman of the Planning and Economic Development Standing Committee, the Legislative Policy Division (LPD) has given the second presentation in regards to the proposed revisions to the Community Benefits Ordinance. The July 22, 2020 presentation was given specifically to solicit feedback from commercial developers and/or consultants engaged in large scale developments within the City of Detroit who would likely be impacted by, and/or held to standards and requirements of the city's Community Benefits Ordinance's proposed revisions submitted by the Legislative Staff Work Group.

The following is an annotated account of the public testimony received from members of the public, the administration, DEGC, members of the development community, etc., and should be considered as a supplement to the March 11, 2020, LPD staff report.

CBO Public Meeting Comments

The following comments are a summary (not meant to be exhaustive) of the verbal comments that were given by the public during the July 22, 2020, public meeting held via Zoom by the Legislative Policy Division.

1. Rod Hardiman – Expressed concerns over the city's ability to ensure that a large intersection of citizens in the City of Detroit can participate in development. The proposed amendments to the ordinance add time, man-power, resources, and by lowering the threshold from \$75 million to \$50 million, more barriers are put in place for developers, particularly developers of color to participate in development. The smaller

the project is, the harder it is to absorb the extra costs needed to manage these processes as outlined in the proposed amendments to the ordinance.

In regards to the \$1 million threshold for the value of a tax abatement a question of congruence can be raised. If there was congruence between a \$50 million or \$75 million developments the tax abatement should be valued at around \$5 million rather than \$1 million. By having a \$1 million threshold the value of a development project would be lowered to approximately \$15 million to \$20 million.

It was stated that the lowering of the threshold for a Tier 2 development from \$3 million to \$300,000 would have a similar effect in stifling development in the City of Detroit.

Mr. Hardiman was generally supportive of the proposed amendments concerning community engagement, dialogue, and the addressing of community concerns. However, not supportive of amendments, such as in recommendation #15 which changes the language from “may” to “shall” which alters the spirit of the ordinance, and serves as a barrier for some developers.

2. Richard Hosey – Stated that there are in fact congruency issues between the threshold amounts and the tax abatement thresholds cited in the ordinance. Conservatively for a \$1 million tax abatement amount over a typical 15-year abatement period the development would be approximately \$10 million to \$12 million developments.

It was stated that the survey soliciting public feedback on the 17 proposed amendments which was issued to approximately 1,500 individuals within the City of Detroit, was not widely distributed or made available to members of the development community. It was recommended that the survey be reopened to allow for additional responses, considering that only 75 responses were received during the initial survey response window during September 2019.

Concerns were also expressed over balancing the needs and wants of the community as well as developers. The aim is to ensure that community objections over a specific type of development, which may not have negative or deleterious effects aren't sidelined because a host community might find the developer objectionable. The Field Street development was referenced as an example. Whereas smaller developments might not have the wherewithal to withstand community objections, larger developments, i.e., FCA, etc. are aided by existing relationships within city government. The city should be careful to not create and or support that dichotomy

3. Amin Irving – Inquired if there would be any additions to the ordinance which would help mitigate risk for the developer upon participating in the CBO process. It appears that several of the procedural amendments add to the risk of a development deal being carried out timely and on budget.

Mr. Irving was generally supportive of the proposed amendments which increase community engagement, and disclosure on the part of the developer regarding what the development will entail. However, would like to see language incorporated which states the requests of the NAC inform the ultimate development agreement rather than dictate the content of the development agreements between the developer and the City of Detroit.

4. Richard Barr – Several developers have looked at the existing Community Benefits Ordinance and have stated that this process is not for them and have simply walked away. Others have looked at the process and have not been able to determine what to make of it, given its unpredictability, and have ultimately moved forward with developments that do not meet the \$75 million threshold.

The issue with the ordinance in general is that it creates uncertainty, unpredictability, undefined costs, and undefined time which leads to projects not being developed. The CRIO report which evaluated the compliance of each of the CBO developments to date was referenced showing that many of the developments are meeting and or exceeding their targets. Mr. Barr stated that there appears to be a misconception that the CBO process is not working, and/or is being abused by developers, however, this sentiment is not supported by facts presented by City Departments such as CRIO.

Not supportive of the lower threshold from \$75 million to \$50 million. Considering that there have been 12 projects that have gone through the process since 2017, rather than boarding the scope of projects, the process should be refined to ensure it is working for the projects that meet the current criterion, to make it predictable, affordable and meets the needs of the community and the developers.

It remains unclear how the investment is measured. If it is based on hard cost, soft cost, or if there is no association between the cost of the development and the level of investment associated with the agreed-upon community benefits. There needs to be clarity on what is expected.

The reduction from \$3 million to \$300,000 for a Tier 2 development is less problematic, considering that the Tier 2 process has worked pretty well to date. The issue at hand doesn't appear to be with the large-scale Tier 1 projects, but rather with community engagement around small-scale projects, where community engagement is still being defined on a project-by-project basis, typically around the \$5 million to \$10 million projects.

Concerns were expressed over amendment #6 which would band the developer from attending the initial public meeting at which the role of the NAC would be discussed. It is believed that it sends the wrong message to developers, i.e., an "us" versus "them" mentality, which ultimately leads to a lack of trust and a lack of collaboration.

There are concerns over amendment #11 which codifies the requirement for five meetings. It is believed that there are situations where fewer meetings may be required given development timelines, etc. Additionally, large-scale developers may find the process too burdensome and opt not to move forward with a multi-million dollar development in the City of Detroit.

There are concerns over amendment #12 which required the disclosure of financial information, environmental information, etc., most of which are proprietary and may be under non-disclosure agreements. The NAC should be able to rely upon DEGC, HRD, MEDC, and others to do their jobs in regards to financial reporting, rather than having proformas shared with the NAC on the front-end.

5. Amir Faruqui. – Development in the City of Detroit has slowed dramatically over the past two years, and developers should be seen as community partners who need assistance rather than predatory entities that come into communities to harm.
6. Rian Barnhill – Stated that the City should focus on incentivizing the types of development the City would like to see rather than making it more difficult for development to occur. The City wants to see more equitable development and the ordinance should make it easier rather than harder.

Conclusion

At this point, LPD staff is prepared to receive further direction from the Planning and Economic Development Standing Committee for the next steps in this process. The City Council may want to review and consider the additional proposed amendments and public input that has been received and detailed in this and the original report. There was also discussion early on in this process concerning dialogue with the Administration related to the proposed amendments that are under consideration. LPD will proceed with the next steps as directed by this Honorable Body.