City of Detroit

CITY COUNCIL

LEGISLATIVE POLICY DIVISION

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HONORABLE CITY COUNCIL

FROM: David Whitaker, Director
Legislative Policy Division Staff

DATE: May 28, 2021

RE: Analysis of the 17 Proposed Amendments to the Community Benefits Ordinance

Introduction

Regarding the 17 proposed amendments to the Community Benefits Ordinance (CBO) City Council is currently deliberating over, Council President Pro Tem Mary Sheffield requested the following:

- Legislative Policy Division (LPD) conduct a thorough analysis of all 17 proposed amendments to the CBO, including a legal review and general impact of each.
- Office of the Chief Financial Officer (OCFO) conduct a fiscal analysis of all 17 proposed amendments to the CBO and the budgetary implications of each.

To assist LPD's review of the 17 proposed amendments to the CBO, LPD reviewed the following documents:

- OCFO's fiscal impact report on the 17 proposed amendments to the CBO (Attachment I).
- Detroit Economic Growth Corporation's (DEGC) responses to LPD questions on lower threshold recommendations regarding the CBO (Attachment II).

- Planning and Development Department's (PDD) responses to LPD questions on lower threshold recommendations regarding the CBO (Attachment III).

- Law Department's February 7, 2019 memorandum on the proposed CBO amendments (Attachment IV).

In this report below please find LPD's analysis of the aforementioned recommendations.

In addition, LPD suggests that representatives from the PDD, DEGC, Jobs, Economy & Detroit at Work team, Law, and the OCFO be present whenever your Honorable Body schedules a discussion regarding the 17 proposed amendments to the CBO for input and to address Council's questions.

Proposed amendment No. 1

> 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
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> (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.

LPD's general comments (prior to receipt of fiscal impact analyses from OCFO, DEGC and PDD):

The lowering of the investment threshold from $75,000,000 to $50,000,000 would likely result in an increase in hours worked by City of Detroit employees. Based on the average investment amount of developments that have received tax abatements between 2013 and 2018 when the governmental working group concluded its work; a $50,000,000 threshold would result in approximately 10% of the developments seeking tax abatements being subject to the CBO process. On average there are 20 such developments per year, which could result in approximately two developments going through the CBO process if the current development trends continue. While this number seems lower than anticipated it averages the number of developments between 2013 and 2018.

As has been stated in the Office of the Chief Financial Officer's November 16, 2018 providing a fiscal impact perspective on proposed community benefits modifications (Attachment V), in 2017-2018 there were 13 projects which would have been impacted by the revised threshold

compared to only 7 under the current ordinance. For context, 3 of 7 projects were the large-scale transformative development for the Hudson's Site, Monroe Block, and Ford Corktown Campus. The magnitude of those projects was 15 to 16 times the size of the proposed $50 million threshold.

Information from the OCFO Fiscal Impact report:

1. The OCFO's fiscal impact report concludes "Of the 17 suggested amendments to the Community Benefits Ordinance (CBO), 7 were found to have a fiscal impact to the City budget. Reducing the current investment threshold for Tier 1 projects from $75 million to $50 million would have the largest impact by influencing the decision making of potential developers. Regardless of what decision developers make, the amendments would have a **negative fiscal impact** on the City budget."

2. The 7 proposed amendments found to have a fiscal impact to the City's budget are: amendment 1 (major impact), amendment 2 (minor impact), amendment 3 (minor staffing impact), amendment 5 (minor impact), amendment 13 (minor impact), amendment 14 (minor impact), amendment 16 (overlaps with amendment 2), and amendment 17 (major impact). Based on conversation with OCFO staff, LPD concurs with these 7 proposed amendments having either a major or minor fiscal impact on the City's budget.

3. LPD finds the assumptions the OCFO made in section 5.3 of its fiscal impact report to be reasonable.

4. In section 5.4 Fiscal Impact of its fiscal impact report, OCFO indicates "Our analysis illustrates developers with a $50 million to $75 million project choosing one of two outcomes, not to develop in Detroit or develop in Detroit with a larger tax abatement to offset their CBO costs as part of the standard "but for" reasoning."

5. Table 1 in the OCFO's fiscal impact report estimates the lost potential revenue if $50 M - $75 M projects relocate to avoid CBO process (i.e., "not to develop in Detroit" decision), as depicted below:

Table 1

Lost potential revenue of $50M - $75M projects relocate to avoid CBO process [3]

Impact of Amendment 1 (in dollars)

	FY22	FY23	FY24	FY25
Forgone Income Tax [1]	$ 465,080	$ 887,581	$ 1,370,655	$ 1,884,871
Forgone Property Tax [2]	7,526	16,024	24,709	33,585
Total Revenue Impact	**$ 472,605**	**$ 903,605**	**$ 1,395,364**	**$ 1,918,456**

Notes

1 Potential income tax includes estimated construction worker income taxes, income taxes from direct and indirect workers, and income taxes from net new residents per DEGC analysis.

2 Potential property taxes are net of property tax abatements.

3 Assumes an additional 2 projects per year will qualify for Tier 1 status by lowering investment threshold from $75M to $50 based on average frequency since CBO inception.

*Data used is the average revenue impact from 2018 and 2019 projects between $50M and $75M. as previously estimated by DEGC

6. Table 2 in the OCFO's fiscal impact report shows the impacts of developers instead choosing to develop in Detroit with a larger tax abatement to offset additional CBO costs, as depicted below:

Table 2

Additional costs if $50M - $75M projects move forward with CBO process [1]

Impact of Amendments 1, 5, and 16 (in dollars)

	FY22	FY23	FY24	FY25
Developer Costs/Minimum Additional Tax Abatement	$ 210,500	$ 214,710	$ 219,004	$ 223,384
Costs with Potential CBO Home Repair Program Benefit [2]	135,259	137,964	140,724	143,538
Active CBO Staffing Costs[3]	22,893	23,350	23,817	24,294
Ongoing CBO Compliance Staffing Costs[3]	473,722	966,393	1,478,581	2,010,870
Mailing Notice Costs [4]	5,474	5,474	5,474	5,474
Total Tier 1 CBO costs	**$ 847,847**	**$ 1,347,891**	**$ 1,867,600**	**$ 2,407,560**

Notes

1 Assumes an additional 2 projects per year will qualify for Tier 1 status by lowering investment threshold from $75M to $50 based on average frequency since CBO inception.

2 Assumes of the 2 projects per year requiring a $50M to $75M investment, one will have a CBO home repair program.

3 Staffing costs were estimated by using time commitments from past CBOs as provided by DEGC, HRD, JET, PPD, CRIO, DON, and Detroit at Work.

4 Mailing costs are estimated with average mailing cost per household, occupied household density, average census tract size.

7. LPD feels developers choosing "not to develop in Detroit" is the "worse case scenario". In section 5.5 of its fiscal impact report under "Unqualified Considerations", OCFO observes "With available data, only two fiscal impacts of developers' decision making with the Tier 1 threshold changes were possible. If implemented, the observed effect would be some combination of the impacts shown in Table 1 and Table 2."

   LPD feels this is more likely the case, where developers will continue to develop in the City of Detroit, based on the number of economic development projects coming before Council even during the COVID-19 pandemic. The number of projects could escalate as the local economy improves as the coronavirus comes under more control based on a greater number of people in the City and in metro-Detroit become vaccinated.

   LPD feels the decision "not to develop in Detroit could be a possibility, but the Administration needs to speak on the basis for this statement. Is this something that they are hearing from developers or are the margins for development that tight? Regarding going

with "a larger tax abatement," this is questionable, given the fact that the limits of the abatements are dictated by statute and are standard.

For Council's edification, DEGC's perspective on the impact of a lower threshold to $50 M - $75 M (Attachment II) and PDD's perspective on the lower threshold (Attachment III) are provided.

Proposed amendment No. 2

> *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.**

LPD's general comments (prior to receipt of fiscal impact analyses from OCFO, DEGC and PDD):

Generally, there are no concerns with the proposed composition of the Enforcement Committee. The Human Rights Department has been changed to the Department of Civil Rights, Inclusion and Opportunity, which is a non-substantive change. City Council's Legislative Policy Division has been added to the Enforcement Committee, primarily because LPD serves as Council's Liaison during the NAC process. The current ordinance does not require that a Chairperson be selected for each NAC, however, the proposed revision does contemplate the selection of a Chairperson as well as the seating of that Chairperson of their respective Enforcement Committee.

In the Law Department's February 7, 2019 memorandum (Attachment IV) they advise against the inclusion of the chair of a NAC to the Enforcement Committee. 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. The Law Department is of the opinion that 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. Staff will note that the intent behind having the Chair of the NAC as an ex-officio member is to ensure that the concerns of the impact area are accurately

communicated to the Enforcement Committee. The role of the Enforcement Committee is to investigate complaints raised against the developer, not the NAC.

Information from the OCFO Fiscal Impact report:

Table 4 from the OCFO fiscal impact report shows that adding CRIO staff for Enforcement Committee results in a minor fiscal impact to the City's budget, as depicted below:

Table 4

Additional costs for new projects within current Tier 1 thresholds[1]

Impacts of Amendments 5 and 16 (in dollars)

	FY22	FY23	FY24	FY25
CRIO staff for Enforcement Committee[2]	$ 959	$ 470	$ 978	$ 998
Mailing Notice Costs[3]	5,747	5,747	5,747	5,747
Total Tier 1 CBO costs	$ 6,706	$ 6,217	$ 6,725	$ 6,745

Notes

1 Assumes an average of 4 projects per year based on average frequency since CBO inception.

2 Assumes 4 additional staff hours needed for each annual meeting.

3 Mailing costs are estimated with average mailing cost per household, occupied household density, average census tract size.

Proposed amendment No. 3

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.

LPD's general comments (prior to receipt of fiscal impact analyses from OCFO, DEGC and PDD):

The proposed lowering of the Tier 2 Development Project threshold amount from $3,000,000 to $300,000 is anticipated to increase the number of projects in which the developer shall 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, as well as partner with the Planning Director to address and mitigate negative impact that the Tier 2 Project may have on the community and local residents.

This proposed amendment may add additional staff time to the Planning and Development Department and may need to be considered from a budgetary standpoint, however, this proposed amendment will not add to the development timeline.

Conversations between the development community and the Planning and Development, CRIO, and other city agencies should be ongoing to address and mitigate negative impacts and to promote the hiring, training, and employability of Detroit residents. This should not be viewed as a negative or adverse requirement.

Information from the OCFO:

Based on LPD's conversation with the OCFO, lowering the threshold of Tier 1 projects from $3 million to $300,000 would result in a minor staffing impact on the City's budget.

Information from DEGC:

In Attachment II, DEGC indicates "Currently, all projects that receive tax abatements are evaluated as a Tier 2 project. That is, each project that receives a property tax incentive must partner with the City's workforce development agency to promote hiring, training, and employability of Detroit residents consistent with State and Federal Law AND partner with the Planning Director to address and mitigate negative impacts that the project may have on the community and local residents. All projects that receive a property tax incentive must partner with CRIO and the Skilled trades Taskforce, and in many cases also partner with Detroit at Work regarding hiring. Additionally, each project that receives a property tax incentive must receive Master Plan Approval from the Planning Department before it can move forward with approval. Given that all projects that receive tax abatements are currently undergoing a Tier 2 project process and we have already accounted for this additional process in our staffing time, we do not anticipate an increase in DEGC's administrative costs based on this amendment."

Information from PDD:

In Attachment III, PDD indicates:

a. "Each Tier 2 project goes through PDD Design Review at an administrative cost of $6,688.85.
b. Assuming an additional six Tier 2 CBO projects per year under the reduced threshold of $300,000 – to $3 million the added PDD administrative costs per year would be: $40,133.10"

Proposed amendment No. 4

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.**

LPD's general comments (prior to receipt of fiscal impact analyses from OCFO, DEGC and PDD):

The proposed increase of required meetings from one to no fewer than five is anticipated to increase staff time for both the Planning and Development Department and the Legislative Policy Division. An analysis would have to be done to identify the budgetary implications on the Planning and Development Department, LPD, and CRIO.

During the community engagement forums held in January and July of 2020 members of the development, the community has expressed concerns over the increase in required meetings citing increased costs associated with paid consultants, and staff attending the meetings.

Information from the OCFO:

Based on LPD's conversation with the OCFO, current staffing levels should be able to accommodate the increase in public hearings.

Information from DEGC:

In Attachment II, DEGC indicates "For all Tier I CBO related projects, the DEGC allocates a minimum of three staff members to support the project and the overall Community Engagement Process. The bulk of the time is collectively shared by a Real Estate Manager and a Fiscal Analyst. Additionally, a Director level staff member provides strategic guidance and direction on Tier I CBO Projects.

In review of historical data and the current pipeline of activity, should the Tier I CBO Threshold be reduced to $50M, the DEGC would be required to hire new staff to support the new activity resulting from increased community engagement and the development of customized fiscal and economic impact analyses. The new allocation of staffing is expected to initially increase budgetary cost by $160,000 annually."

Information from PDD:

In Attachment III, PDD indicates:

a. Each additional CBO Tier 1 project results in P&DD administrative costs of

$37,942.95

b. Assuming 2 additional Tier 1 projects per year at the reduced threshold of $50 million, additional P&DD administrative costs of the Tier 1 process would equal to $75,885.90.

Information from LPD:

Fortunately, during the FY 2022 budget process, Council approved the addition of two Planners for LPD. The addition of this staff should enable LPD to absorb any increase in the CBO activity should the CBO amendments be approved by your Honorable Body.

Proposed amendment No. 5

(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

LPD's general comments (prior to receipt of fiscal impact analyses from OCFO, DEGC and PDD):

The "Impact Area" is defined 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. Presently the City Clerk shall forward notice of the public meeting(s) 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. By changing the notice requirement to the "Impact Area" the cost of postage and printed materials will increase substantially. Additional funds may need to be identified to assist the Clerk's office in meeting the demand of providing this required notice, particularly when considering the increased number of meetings from one to no fewer than five.

Information from the OCFO Fiscal Impact report:

Table 4 from the OCFO fiscal impact report shows that noticing the public hearing of Tier 1 projects per City of Detroit residents within 300 feet of the project impact area results in a minor fiscal impact to the City's budget, as depicted below:

Table 4

Additional costs for new projects within current Tier 1 thresholds[1]

Impacts of Amendments 5 and 16 (in dollars)

	FY22	FY23	FY24	FY25
CRIO staff for Enforcement Committee[2]	$ 959	$ 470	$ 978	$ 998
Mailing Notice Costs[3]	5,747	5,747	5,747	5,747
Total Tier 1 CBO costs	$ 6,706	$ 6,217	$ 6,725	$ 6,745

Notes

1 Assumes an average of 4 projects per year based on average frequency since CBO inception.

2 Assumes 4 additional staff hours needed for each annual meeting.

3 Mailing costs are estimated with average mailing cost per household, occupied household density, average census tract size.

Proposed amendment No. 6

(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.**

LPD's general comments (prior to receipt of fiscal impact analyses from OCFO, DEGC and PDD):

This proposed amendment is largely a non-substantive change. Many of the items required in this proposed revision are already implemented as a part of the Planning and Development initial presentation during the CBO process.

In the Law Department's February 7, 2019 memorandum they advise against prohibiting the Developer from attending the first meeting. The information presented to the community by the Planning and Development Department about past and best practices may also be beneficial to the developer. Additionally, prohibiting any member of the public from attending an officially sanctioned public meeting would be a violation of the Open Meetings Act. The developer has the right to participate and speak during public comment as a member of the public, therefore prohibiting their attendance would be ill-advised.

Information from OCFO:

Based on LPD's conversation with OCFO, amendment 6 will have no fiscal impact on the City's budget.

Proposed amendment No. 7

(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

LPD's general comments (prior to receipt of fiscal impact analyses from OCFO, DEGC and PDD):

This proposed change allows for greater equity in the composition of the NAC. While all members of the NAC are residents of the Impact Area there has been a request from members of the public to have the ability to select the NAC solely by a vote of the residents in the Impact Area rather than a selection from the Administration and Council representatives. This proposed amendment allows for an equal selection of NAC members among the Community, Council, and Administration.

The selection of an alternate member has been determined to be a part of best practices resulting from the Michigan Central Depot CBO process. This section is designed to formalize this process. The amendment as presented 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.

Information from OCFO:

Based on LPD's conversation with OCFO, amendment 7 will have no fiscal impact on the City's budget.

Proposed amendment No. 8

(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.**

LPD's general comments (prior to receipt of fiscal impact analyses from OCFO, DEGC and PDD):

This section is largely a non-substantive change. There are no anticipated adverse outcomes from requiring the disclosure of existing relationships between potential NAC members and the developer. Staff believes that a revision to this language should be made clarifying that any disclosure should be made to the impact community, rather than to the developer. Additionally, those subject to the disclosure requirement should include those that have any direct or indirect pecuniary interest in the development project.

Information from OCFO:

Based on LPD's conversation with OCFO, amendment 8 will have no fiscal impact on the City's budget.

Proposed amendment No. 9

(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.**

LPD's general comments (prior to receipt of fiscal impact analyses from OCFO, DEGC and PDD):

This proposed amendment expands the area in which the Council may seek additional NAC representatives and gives that responsibility to Council rather than the Planning Director.

Information from OCFO:

Based on LPD's conversation with OCFO, amendment 9 will have no fiscal impact on the City's budget.

Proposed amendment No. 10

(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.

LPD's general comments (prior to receipt of fiscal impact analyses from OCFO, DEGC and PDD):

This proposed amendment allows for the replacement of a NAC member for failure to attend all required meetings. The intent is to ensure that all NAC members are fully informed of all developments which may have occurred during the NAC process prior to making a recommendation regarding the CBO process.

Information from OCFO:

Based on LPD's conversation with OCFO, amendment 10 will have no fiscal impact on the City's budget.

Proposed amendment No. 11

(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.**

LPD's general comments (prior to receipt of fiscal impact analyses from OCFO, DEGC and PDD):

This section is largely a non-substantive change. Many of the items required in this proposed revision are already implemented as a part of the Planning and Development's final presentation during the CBO process.

Information from OCFO:

Based on LPD's conversation with OCFO, amendment 11 will have no fiscal impact on the City's budget.

Proposed amendment No. 12

(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.**

LPD's general comments (prior to receipt of fiscal impact analyses from OCFO, DEGC and PDD):

This section should not adversely impact the CBO process. Each of the items referenced should be readily available and accessible prior to the CBO process beginning. These requested items should aid the NAC in making informed decisions about what impacts the development might have on their communities. This information is not intended to arbitrarily set an investment amount for community benefits based on the investment amount, as no such objective has been outlined in the ordinance. The CBO Process should not begin until the Development is ripe and the essential documents have been prepared and are ready for distribution to the Council and NAC.

Information from OCFO:

Based on LPD's conversation with OCFO, amendment 12 will have no fiscal impact on the City's budget.

Proposed amendment No. 13

(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.

LPD's general comments (prior to receipt of fiscal impact analyses from OCFO, DEGC and PDD):

This section is largely a non-substantive change. The item listed is intended to help strengthen the CBO process for current and future developments.

Information from OCFO:

Based on LPD's conversation with OCFO, amendment 13 will have a minor fiscal impact on the City's budget.

Proposed amendment No. 14

(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.**

LPD's general comments (prior to receipt of fiscal impact analyses from OCFO, DEGC and PDD):

There do not appear to be any adverse impacts associated with this proposed amendment. The findings and recommendations of the NAC should be codified in the development agreement which is presented to the City Council for your consideration. This proposed amendment lays out the first reference to an NAC signing a letter in support of the proposed benefit. There have been concerns over letters submitted by NAC's which have not been signed by all members of the Council. Is the intent to have unanimous consent, or to simply have a simple majority? Either way, the intent should be spelled out in this section.

Information from OCFO:

Based on LPD's conversation with OCFO, amendment 14 will have a minor fiscal impact on the City's budget.

Proposed amendment No. 15

(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

LPD's general comments (prior to receipt of fiscal impact analyses from OCFO, DEGC and PDD):

This proposed amendment makes clawbacks, revocation of land transfers and land sales, debarment provisions, and proportionate penalties and fees, a requirement, rather than an option, for failure to adhere to Community Benefit Provisions.

Information from OCFO:

Based on LPD's conversation with OCFO, amendment 15 will have no fiscal impact on the City's budget.

Proposed amendment No. 16

(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.

LPD's general comments (prior to receipt of fiscal impact analyses from OCFO, DEGC and PDD):

Generally, there are no concerns with the proposed composition of the Enforcement Committee. The Human Rights Department has been changed to the Department of Civil Rights, Inclusion and Opportunity, which is a non-substantive change. City Council's Legislative Policy Division has been added to the Enforcement Committee, primarily because LPD serves as Council's Liaison during the NAC process. The current ordinance does not require that a Chairperson be selected for each NAC, however, the proposed revision does contemplate the selection of a Chairperson as well as the seating of that Chairperson of their respective Enforcement Committee.

In the Law Department's February 7, 2019 memorandum (Attachment IV) they advise against the inclusion of the chair of a NAC to the Enforcement Committee. 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 provided 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.

Information from the OCFO Fiscal Impact report:

Table 4 from the OCFO fiscal impact report shows that adding CRIO staff for Enforcement Committee results in a minor fiscal impact to the City's budget, as depicted below:

Table 4

Additional costs for new projects within current Tier 1 thresholds[1]

Impacts of Amendments 5 and 16 (in dollars)

	FY22	FY23	FY24	FY25
CRIO staff for Enforcement Committee[2]	$ 959	$ 470	$ 978	$ 998
Mailing Notice Costs[3]	5,747	5,747	5,747	5,747
Total Tier 1 CBO costs	$ 6,706	$ 6,217	$ 6,725	$ 6,745

Notes

1 Assumes an average of 4 projects per year based on average frequency since CBO inception.

2 Assumes 4 additional staff hours needed for each annual meeting.

3 Mailing costs are estimated with average mailing cost per household, occupied household density, average census tract size.

Information from LPD:

Fortunately, during the FY 2022 budget process, Council approved the addition of two Planners for LPD. The addition of this staff should enable LPD to absorb any increase in the CBO activity should the CBO amendments be approved by your Honorable Body.

Proposed amendment No. 17

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 Readiness Fund.

LPD's general comments (prior to receipt of fiscal impact analyses from OCFO, DEGC and PDD):

This proposed provision would require the balance of funds from Tier 2 land acquisitions to be divided evenly among the Neighborhood Improvement Fund and the Skilled Trades Readiness Fund. Considering that the investment threshold has been lowered from $3,000,000 to $300,000 may result in additional monies to these funds. An analysis should be done to determine what impact such an action would have on the General Fund.

Information from the OCFO Fiscal Impact report:

OCFO indicates in its fiscal impact report: "The combination of lowering the Tier 2 investment threshold and reallocating 80% of proceeds from Tier 2 project land sales will have a negative impact on general fund revenue as shown in Table 3. In 2019 and 2020, land sales with proceeds between $3 million and the proposed lower threshold of $300,000 totaled $2 million, on average. If 80% of those proceeds went to the Neighborhood Improvement Fund and the Skilled Trades Fund instead, the General Fund would see a loss $1.6 million per fiscal year if current land sale activity continues. Staffing costs varies with each project and will have a fiscal impact, but difficult to quantify and forecast with available data."

Table 3

Tier 2 Project Land Sales to be Reallocated to NIF and Skilled Trade Fund

Impacts of Amendments 3 and 17 (in dollars)

	FY22	FY23	FY24	FY25
80% of average land sales of $3M to $300k projects	$ 1,604,800	$ 1,604,800	$ 1,604,800	$ 1,604,800

Notes

Assumes an additional 4 projects per year will qualify for Tier 2 status by lowering land sales threshold from $3M to $300k based on average frequency since CBO inception.

If you have any additional questions, please feel free to contact us directly.

Attachments

cc: Nicole Sherard-Freeman, Group Executive-Jobs, Economy & Detroit at Work
Kevin Johnson, President and Chief Executive Officer, DEGC
Kenyetta Hairston-Bridges, Executive Vice President Economic Development & Investment Services DEGC
Glen Long, CFO & Vice President Administration DEGC
Lawrence Garcia, Corporation Counsel, Law

Ericka Savage Whitley, Assistant Corporation Counsel, Law
Katy Trudeau, Acting Director, PDD
Jay Rising, CFO
Tanya Stoudemire, Chief Deputy CFO
Steven Watson, Deputy CFO/Budget Director
Avery Peoples, Mayor's Office

Attachment I

OCFO's Fiscal Impact Report on the 17 Proposed Amendments to the CBO

OFFICE OF THE
CHIEF FINANCIAL OFFICER
OFFICE OF BUDGET

Coleman A. Young Municipal Center
2 Woodward Avenue, Suite 1106
Detroit, Michigan 48226

Phone 313•224•6260
www.detroitmi.gov

May 20, 2021

Honorable Mary Sheffield, Council President Pro Tem
Detroit City Council
Coleman A. Young Municipal Center
2 Woodward Avenue
Detroit, MI 48226

Re: Fiscal Impact of Proposed Amendments to the Community Benefits Ordinance

Dear Council President Pro Tem Sheffield:

Please see attached Fiscal Impact Statement prepared by the Office of Budget for the above referenced item, pursuant to CFO Directive 2018-101-029: Fiscal Impact Statements. Upon review, please do not hesitate to contact me to discuss further.

Best regards,

Steven Watson
Deputy CFO / Budget Director

Att: CFO Fiscal Impact Statement No. 2021-110-011

cc: Honorable Detroit City Council
Jay B. Rising, Acting CFO
John Naglick, Jr., Chief Deputy CFO/Finance Director
Tanya Stoudemire, Chief Deputy CFO/Policy & Administration Director
Avery Peeples, City Council Liaison
David Whitaker, Director-Legislative Policy Division

Office of the Chief Financial Officer

Coleman A. Young Municipal Center
2 Woodward Avenue, Suite 1100
Detroit, Michigan 48226

Phone: 313 -628-2535
Fax: 313 -224-2135
www.detroitmi.gov

CFO FISCAL IMPACT STATEMENT
NO. 2021-110-011

SUBJECT: Fiscal Impact of Proposed Amendments to the Community Benefits Ordinance
PREPARED BY: Office of the CFO – Office of Budget
DATE ISSUED: May 20, 2021

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1. AUTHORITY

   1.1. State of Michigan Public Act 279 of 1909, Section 4s(2)(d), as amended by Public Act 182 of 2014, states the chief financial officer shall submit in writing to the mayor and the governing body of the City his or her opinion on the effect that policy or budgetary decisions made by the mayor or the governing body of the City will have on the City's annual budget and its four-year financial plan.

   1.2. CFO Directive No. 2018-101-029 Fiscal Impact Statements states that the CFO shall issue Fiscal Impact Statements for all items requiring fiscal impact statements, as defined in that Directive, to provide financial information to the Mayor and the City Council as they consider action on proposed local policy or budgetary decision items.

2. PURPOSE

   2.1. To provide financial information to the Mayor and the Detroit City Council as they consider the effect of proposed amendments the Community Benefits Ordinance (the "CBO Amendments").

3. OBJECTIVE

   3.1. This Memorandum serves as the report on the fiscal impact of the CBO Modifications to the City's annual budget for FY 2021 and four-year financial plan for FY 2022 – FY 2025 (the "City budget").

4. SCOPE

   4.1. This Memorandum is not intended to convey any statements nor opinions on the advisability of the proposal, except for those components that have or may have a fiscal impact on the City budget.

   4.2. This fiscal impact analysis is based on the proposal as described below in Section 5 of this Memorandum. Should the proposal change prior to final approval, an updated CFO Memorandum on its fiscal impact would need to be issued.

5. STATEMENT

   5.1. Conclusion: Of the 17 suggested amendments to the Community Benefits Ordinance (CBO), 7 were found to have a fiscal impact to the City budget. Reducing the current investment threshold for Tier 1 projects from $75 million to $50 million would have the largest impact by influencing the decision making of potential developers. Regardless of what decision developers make, the amendments would have a **negative fiscal impact** on the City budget.

5.2. Background: The Community Benefits Ordinance (CBO) was enacted in November 2016 as a ballot initiative with the purpose of "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." To do so, the CBO established two tiers of mandated developer engagement with the City and the community. Tier 1 projects, which incur an investment of $75 million or greater or request at minimum $1 million in City government assistance in the form of land sales or tax abatements, must participate in City organized meetings with residents in the project impact area to establish community benefits and mitigate negative impacts set in a community benefit agreement. Tier 2 projects, which do not qualify for Tier 1 but incur an investment of $3 million or greater or request at minimum $300,000 in City assistance, are required to partner with City staff for workforce development and to mitigate negative impacts as codified in a development agreement.

Since inception, twelve projects have gone through the Tier 1 process with involvement from multiple City departments, residents, and community advocacy groups. 64 amendments were received to the CBO as of October, 2018 and were pared down to 17 amendments by recommendation of a workgroup led by Legislative Policy Division from October 2018 to January 2019. Of the 17 amendments, 7 are expected to have a fiscal impact. The impacts are centered primarily on the change in the Tier 1 investment threshold being lowered to $50 million and staffing needs to accommodate new projects within the lowered boundary.

5.3. Assumptions: The following assumptions are made in development of this analysis:

(a) Lowering the investment threshold for Tier 1 projects from $75 million to $50 million would require two additional projects per year to conduct community benefit meetings. This assumption is based on the average number of projects with an investment size between $50 million and $75 million since CBO inception.

(b) Lowering the investment threshold for Tier 2 projects from $3 million to $300,000 would require four additional projects per year to meet CBO guidelines. This assumption is based on the average number of projects with an investment size between $3 million and $300,000 since CBO inception.

(c) Of the two projects with an investment size between $50 million and $75 million, one per year will have CBO home repair program benefit in their community agreement.

(d) CBO compliance cost for any project will not end within the four-year time frame of this analysis, thus costs are cumulative.

(e) Assumes proposed amendments are implemented in Fiscal Year 2022.

5.4. Fiscal Impact: Our analysis illustrates developers with a $50 million to $75 million project choosing one of two outcomes, not to develop in Detroit or develop in Detroit with a larger tax abatement to offset their CBO costs as part of the standard "but for" reasoning. For simplicity, the following analysis shows all developers in the four-year timeframe choosing the same outcome. The loss from developers choosing a different site would be forgone income tax revenue and property tax revenue as shown in Table 1. The income tax loss is inclusive of construction jobs, new jobs created by the project, and indirect jobs related to commercial activity from the project. The property tax loss is net of tax abatements. The forgone revenue streams are continuous and cumulative through the 4-year timeframe. The estimated impact is based on the average of the last 9 projects with investment sizes falling between $50 million and $75 million and includes residential, commercial, industrial, mixed-use, and hotel projects. For relative scale, the impact would be similar to losing two projects in similar size to the Dakkota-Kettering plant project per year. The Dakkota-Kettering project had an investment size of $66.95 million and created an estimated 419 jobs.

Table 1

Lost potential revenue if $50M - $75M projects relocate to avoid CBO process [3]

Impact of Amendment 1 (in dollars)

	FY22	FY23	FY24	FY25
Forgone Income Tax [1]	$ 465,080	$ 887,581	$ 1,370,655	$ 1,884,871
Forgone Property Tax [2]	7,526	16,024	24,709	33,585
Total Revenue Impact	**$ 472,605**	**$ 903,605**	**$ 1,395,364**	**$ 1,918,456**

Notes

[1] Potential income tax includes estimated construction worker income taxes, income taxes from direct and indirect workers, and income taxes from net new residents per DEGC analysis.

[2] Potential property taxes are net of property tax abatements.

[3] Assumes an additional 2 projects per year will qualify for Tier 1 status by lowering investment threshold from $75M to $50 based on average frequency since CBO inception.

*Data used is the average revenue impact from 2018 and 2019 projects between $50M and $75M as previously estimated by DEGC

Table 2 shows the impacts of developers instead choosing to develop in Detroit with a larger tax abatement to offset additional CBO costs. The majority of the costs in this outcome are city staffing, involving DEGC, HRD, JET, PPD, CRIO, DON, and Detroit at Work. Staffing costs can be broken down into two categories: staffing needs during an active CBO, which are non-recurring, and staffing needs for CBO compliance, which are recurring. The recurring CBO compliance costs are cumulative, following the assumption of 2 additional projects per year as detailed in section 5.3. Home repair program grants have often been a component of community benefit agreements and are highlighted separately as a likely potential staffing cost that has a finite 12 to 14-month

implementation timeline. For simplicity, the city staffing costs for that component are confined to one fiscal year.

Table 2

Additional costs if $50M - $75M projects move forward with CBO process [1]

Impact of Amendments 1, 5, and 16 (in dollars)

	FY22	FY23	FY24	FY25
Developer Costs/Minimum Additional Tax Abatement	$ 210,500	$ 214,710	$ 219,004	$ 223,384
Costs with Potential CBO Home Repair Program Benefit [2]	135,259	137,964	140,724	143,538
Active CBO Staffing Costs[3]	22,893	23,350	23,817	24,294
Ongoing CBO Compliance Staffing Costs[3]	473,722	966,393	1,478,581	2,010,870
Mailing Notice Costs [4]	5,474	5,474	5,474	5,474
Total Tier 1 CBO costs	**$ 847,847**	**$ 1,347,891**	**$ 1,867,600**	**$ 2,407,560**

Notes

[1] Assumes an additional 2 projects per year will qualify for Tier 1 status by lowering investment threshold from $75M to $50 based on average frequency since CBO inception.

[2] Assumes of the 2 projects per year requiring a $50M to $75M investment, one will have a CBO home repair program

[3] Staffing costs were estimated by using time commitments from past CBOs as provided by DEGC, HRD, JET, PPD, CRIO, DON, and Detroit at Work.

[4] Mailing costs are estimated with average mailing cost per household, occupied household density, average census tract size.

The combination of lowering the Tier 2 investment threshold and reallocating 80% of proceeds from Tier 2 project land sales will have a negative impact on general fund revenue as shown in Table 3. In 2019 and 2020, land sales with proceeds between $3 million and the proposed lower threshold of $300,000 totaled $2 million, on average. If 80% of those proceeds went to the Neighborhood Improvement Fund and the Skilled Trades Fund instead, the General Fund would see a loss $1.6 million per fiscal year if current land sale activity continues. Staffing costs varies with each project and will have a fiscal impact, but difficult to quantify and forecast with available data.

Table 3

Tier 2 Project Land Sales to be Reallocated to NIF and Skilled Trade Fund

Impacts of Amendments 3 and 17 (in dollars)

	FY22	FY23	FY24	FY25
80% of average land sales of $3M to $300k projects	$ 1,604,800	$ 1,604,800	$ 1,604,800	$ 1,604,800

Notes

Assumes an additional 4 projects per year will qualify for Tier 2 status by lowering land sales threshold from $3M to $300k based on average frequency since CBO inception.

Lastly, Table 4 shows the known additional costs to projects requiring a CBO within existing Tier 1 investment thresholds. The two known drivers include the staff hours related to the additional representative from Civil Rights, Inclusion, and Opportunity (CRIO) and mailing notice costs from the change in notification area.

Table 4

Additional costs for new projects within current Tier 1 thresholds[1]

Impacts of Amendments 5 and 16 (in dollars)

	FY22	FY23	FY24	FY25
CRIO staff for Enforcement Committee[2]	$ 959	$ 470	$ 978	$ 998
Mailing Notice Costs[3]	5,747	5,747	5,747	5,747
Total Tier 1 CBO costs	$ 6,706	$ 6,217	$ 6,725	$ 6,745

Notes

[1] Assumes an average of 4 projects per year based on average frequency since CBO inception.

[2] Assumes 4 additional staff hours needed for each annual meeting.

[3] Mailing costs are estimated with average mailing cost per household, occupied household density, average census tract size.

5.5. Unquantified Considerations: With available data, only two fiscal impacts of developers' decision making with the Tier 1 threshold changes were possible. If implemented, the observed effect would be some combination of the impacts shown in Table 1 and Table 2. In combination with external market pressures moving against developers, CBO costs could make the Table 1 outcome, where developers choose another city, more likely. Developers could choose to limit the amount of investment for a potential project so that it falls just under the $50 million threshold and avoids the required community benefit meetings. There not enough data to accurately capture incremental potential revenue per dollar invested, but would remain a loss nevertheless. Known developer costs for CBO meetings as quantified in Table 2 are the minimum costs for a developer as part of the Tier 1 CBO process. There will likely be additional cost to the developer based on commitments outlined in the community benefit agreement. Developers are likely to hedge these unknown costs in the form of more tax abatements on top of their known costs.

APPROVED

Steven Watson, Deputy CFO / Budget Director

Attachment II

Detroit Economic Growth Corporation's (DEGC) Responses to LPD Questions on Lower Threshold Recommendations Regarding the CBO

City of Detroit
CITY COUNCIL
LEGISLATIVE POLICY DIVISION
208 Coleman A. Young Municipal Center
Detroit, Michigan 48226
Phone: (313) 224-4946 Fax: (313) 224-4336

TO: Kevin Johnson, President and Chief Executive Officer, DEGC

FROM: David Whitaker, Director
Legislative Policy Division

DATE: March 2, 2021

RE: Questions on Lower Threshold Recommendations Regarding the Community Benefits Ordinance

City Council is in the process of reviewing 17 proposed recommendations to modify the current Community Benefits Ordinance (CBO). Council President Pro-Tem Mary Sheffield has requested the Legislative Policy Division (LPD) to conduct a thorough analysis of the 17 recommendations. Two recommendations would lower threshold amounts. We have the following questions on the two recommendations:

Proposed amendment No. 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 3 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.

Questions/requests:

1. Please provide the number of developments between $50 million and $75 million and at $75 million and over from 2013 to 2020 to give LPD a sense of the number of developments between $50 and $75 million that could be subject to the CBO.
   From 2013 to 2020 there were fifteen (15) projects between $50 million and $75 million.
   From 2013 to 2020 there were fifteen (15) projects greater than $75 million.

2. How many entities have started projects with an investment between $50-$75 million since the enactment of the CBO? How many of those entities with projects between $50-$75 million have volunteered to undertake the Tier 1 CBO process?
   Since the enactment of the CBO, there has been twelve (12) projects with an investment between $50-$75 million. Of those twelve (12) projects, three (3) have gone through the Tier 1 CBO process.

3. Has the DEGC been able to quantify whether the proposed threshold reduction will have a negative impact on developers going forward with projects between $50-$75 million? If so, what were the findings?
   The necessity to conduct a minimum of 6 community meetings because of lowering the CBO threshold to projects between $50 to $75 Million will require additional developer's staff time, fees spent on consultants and increases to overall development costs as well as contribute to the inherent risk associated with development. The added risk is principally centered around the uncertainty that a project will not proceed as planned if a CBO agreement is not reached with the community. Moreover, time added to the development process impacts the ability for developers to secure necessary state/federal resources to effectuate development, thus leading to lender and equity source uncertainty and possible unwillingness to commit capital to projects.

(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.

Questions/requests:

1. What is the number of Tier 2 developments since the enactment of the CBO?
   Since the enactment of the CBO there have been fifty-eight (58) projects that meet the qualifications for Tier 2 projects.

2. Please provide the number of developments between $300,000 ~~million~~ and $3 million and at $3 million and over from 2013 to 2020 to give LPD a sense of the number of developments between $300,000 and $3 million that could be subject to the CBO.
   From 2013 to 2020 there were forty-six (46) projects between $300,000 and $3 million. From 2013 to 2020 there were one-hundred ten (110) projects at $3 million and greater, excluding those projects that are $75 million or greater. Furthermore, from 2013 to 2020 there were ninety-five (95) projects at $3 million or greater, but less than $50 million.

3. How many entities have started projects with an investment between $300,000-$3 million since the enactment of the CBO? How many of those entities with projects between $300,000-$3 million have volunteered to undertake the Tier 2 CBO process?
   Since the enactment of the CBO there has been twenty-two (22) projects with an investment between $300,000-$3 million. Of those twenty-two (22) projects, all twenty-two (22) have volunteered to undertake the Tier 2 CBO process. That is, each project that receives a property tax incentive must partner with the City's workforce development agency to promote hiring, training, and employability of Detroit residents consistent with State and Federal Law AND partner with the Planning Director to address and mitigate negative impacts that the project may have on the community and local residents. All projects that receive a property tax incentive must partner with CRIO and the Skilled trades Taskforce, and in many cases also partner with Detroit at Work regarding hiring. Additionally, each project that receives a property tax incentive must receive Master Plan Approval from the Planning Department before it can move forward with approval.

4. Has the DEGC been able to quantify whether the proposed threshold reduction will have a negative impact on developers going forward with projects between $300,000-$3 million? If so, what were the findings?

   As mentioned, each project that receives a property tax incentive must partner with the City's workforce development agency to promote hiring, training, and employability of Detroit residents consistent with State and Federal Law AND partner with the Planning Director to address and mitigate negative impacts that the project may have on the community and local residents. All projects that receive a property tax incentive must partner with CRIO and the Skilled trades Taskforce, and in many cases also partner with Detroit at Work regarding hiring. As such, these requirements already ensure good corporate citizenry of developers

Lowering the CBO threshold will mostly impact mid-size scale mixed use, office, and retail development as well as mid-size scale industrial and manufacturing facilities. These types of development projects are undertaken by smaller to midsize developers and businesses that are not as well capitalized as large companies (i.e., FCA). This will also impact the City's ability to attract regionally based and out-state corporate users and manufacturing companies as we compete against other regions and states and, above all, the suburbs of Detroit. For industrial projects, certainty and speed in the development schedule drive the decision to locate. A CBO requirement for mid-sized industrial projects would boost the appeal of non-Detroit alternatives that offer far less uncertainty to the process of establishing operations.

4. If the threshold for Tier 1 projects is reduced to $50 million, what is the anticipated increase in administrative costs the DEGC would face?
For all Tier I CBO related projects, the DEGC allocates a minimum of three staff members to support the project and the overall Community Engagement Process. The bulk of the time is collectively shared by a Real Estate Manager and a Fiscal Analyst. Additionally, a Director level staff member provides strategic guidance and direction on Tier I CBO Projects.

   In review of historical data and the current pipeline of activity, should the Tier I CBO Threshold be reduced to $50M, the DEGC would be required to hire new staff to support the new activity resulting from increased community engagement and the development of customized fiscal and economic impact analyses. The new allocation of staffing is expected to initially increase budgetary cost by $160,000 annually.

Proposed amendment No. 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:

and business owners. Moreover, this process includes public hearings whereby the community has an opportunity to voice any concerns or questions regarding a proposed project. Any additional process would be a deterrent to development, particularly to small and minority developers engaged in projects outside the CBD/Midtown/Lafayette Submarkets. They would have to undergo an additional step that is not required today to achieve similar results of the process in place.

If the threshold for Tier 2 projects is reduced to $300,000, what is the anticipated increase in administrative costs the DEGC would face?
Currently, all projects that receive tax abatements are evaluated as a Tier 2 project. That is, each project that receives a property tax incentive must partner with the City's workforce development agency to promote hiring, training, and employability of Detroit residents consistent with State and Federal Law AND partner with the Planning Director to address and mitigate negative impacts that the project may have on the community and local residents. All projects that receive a property tax incentive must partner with CRIO and the Skilled trades Taskforce, and in many cases also partner with Detroit at Work regarding hiring. Additionally, each project that receives a property tax incentive must receive Master Plan Approval from the Planning Department before it can move forward with approval. Given that all projects that receive tax abatements are currently undergoing a Tier 2 project process and we have already accounted for this additional process in our staffing time, we do not anticipate an increase in DEGC's administrative costs based on this amendment.

Please note that President Pro-Tem Sheffield has also requested the Office of the Chief Financial Officer (OCFO) to prepare a fiscal impact study regarding the 17 proposed modifications to the CBO. So, much of the information you provide in your responses to the questions above could be incorporated in some fashion in OCFO's fiscal impact study.

It would be great for you to provide your responses within a month since LPD is expected to provide City Council a report on the 17 recommendations by May 12, 2021.

Thank you for your responses to our questions!

cc: City Council Members
Nicole Sherard-Freeman, Group Executive-Jobs, Economy & Detroit at Work
Kenyetta Hairston-Bridges, Executive Vice President Economic Development & Investment Services DEGC
Glen Long, CFO & Vice President Administration DEGC
Katy Trudeau, Acting Director, PDD
Jay Rising, CFO
Tanya Stoudemire, Chief Deputy CFO
Steven Watson, Deputy CFO/Budget Director
Avery Peoples, Mayor's Office

Attachment III

Planning and Development Department's (PDD) Responses to LPD Questions on Lower Threshold Recommendations Regarding the CBO

City of Detroit
CITY COUNCIL
LEGISLATIVE POLICY DIVISION
208 Coleman A. Young Municipal Center
Detroit, Michigan 48226
Phone: (313) 224-4946 Fax: (313) 224-4336

TO: Katy Trudeau, Acting Director, PDD KT

FROM: David Whitaker, Director
Legislative Policy Division

DATE: March 2, 2021

RE: Questions on Lower Threshold Recommendations Regarding the Community Benefits Ordinance

City Council is in the process of reviewing 17 proposed recommendations to modify the current Community Benefits Ordinance (CBO). Council President Pro-Tem Mary Sheffield has requested the Legislative Policy Division (LPD) to conduct a thorough analysis of the 17 recommendations. Two recommendations would lower threshold amounts. We have the following questions on the two recommendations:

Proposed amendment No. 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 3 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.

Questions/requests:

1. **Has PDD been able to quantify whether the proposed threshold reduction will have a negative impact on developers going forward with projects between $50-$75 million? If so, what were the findings?**

   The proposed Tier 1 threshold reduction would negatively impact developers by subjecting additional medium-sized projects to the substantial predevelopment costs of a CBO process. More broadly, the Planning and Development Department (PDD) believes reducing the Tier 1 CBO threshold will have a chilling effect on the Detroit market and weaken Detroit's competitiveness against national and regional alternatives for job-creating investments.

   Development in Detroit is already costly and complicated compared to other markets. Rather than encourage investment that brings jobs to Detroit's neighborhoods and grows the City's tax base, an additional process will have the opposite effect. The additional costs imposed by a CBO process – both in terms of predevelopment dollars and project schedule – will discourage development. The perceived risk that a CBO could derail a project after $1 million or more of at-risk predevelopment dollars are already spent, along with the uncertainty around process costs and cost impacts, creates hesitancy among equity investors. The project schedule impacts also complicate and increase the costs of financing, leading to further delay and possible project downscaling or cancellation.

   Table 2 of the Budget Office's fiscal impact analysis found that a two-month CBO process will cost developers $105,250 in additional predevelopment costs. This is a significant increase for medium-sized projects. Because these additional costs would be funded by at-risk cash, imposing them will have a disproportionately negative

impact on emerging developers who do not have the same equity capabilities as established developers. The staff time, fees spent on consultants, and increases to overall development and capital carrying costs of a CBO can be less painfully absorbed by well-capitalized companies like FCA that will bear them to advance big-ticket projects. For emerging developers looking to embark on their first medium-sized project, these additional costs could be prohibitive. But costs to developers are only one part of the story.

Any processes that make development in Detroit slower and riskier undercut the city's competitiveness for job-creating investments. Particularly for industrial developments, speed and predictability above all else drive the decision to locate new facilities investments. Detroit is not only competing nationally for these jobs; we are competing with our suburban neighbors. A CBO requirement for medium-sized industrial projects would add uncertainty and at least two months to the schedule of a Detroit location as compared to that of a suburban alternative.

If the Tier 1 threshold had been lowered to $50 million beginning in 2018, nine additional development projects would have been subjected to a CBO process. Those projects are expected to directly create 1,700-plus jobs. The $66 million Dakkota Integrated Systems project alone will create over 400 jobs with a hiring priority for Detroiters. The City and its residents need every one of these investments. Future job-creating investment might locate elsewhere if a CBO requirement adds time and risk to the project schedule.

To invest in Detroit, developers and companies need predictability. Lowering the Tier 1 threshold introduces serious costs and uncertainty for $50-75 million projects. And, along with other major amendments, it more broadly signals instability into the market — namely, that the CBO process could continue to evolve, over time. Before Council takes action on these amendments, PDD would recommend that additional input from developers be solicited and reviewed. Although the Legislative Policy Division (LPD) circulated an evaluation and survey to a select group of 1,500, only 76 (5%) responded and of those respondents only a very small amount were actual developers. While PDD has used this opportunity to speak to impacts on developers, we are hopeful that additional direct input will contribute to Council's deliberations.

2. **If the threshold for Tier 1 projects is reduced to $50 million, is there an anticipated increase in the administrative cost for the proposed enforcement committee staff to monitor compliance with the CBO benefit provisions? If so, what is that cost?**

    a. Recent history of large development projects shows that the reduced Tier 1 threshold of $50 million may have resulted in two additional Tier 1 CBO projects per year (on average). For each CBO project, additional monitoring and enforcement costs include holding at least 2 public annual update meetings, post agreement, and participating in enforcement and monitoring activities which are led by CRIO. Administrative costs are for each additional Tier 1 project are as follows:

i. 2 Annual Meetings
    1. P&DD Staff Costs = $4,843.96
    2. Other City Staff (CRIO, Mayor's Office, DON, etc) = $3,508

ii. Other implementation costs associated with City Commitments from CBOs
    1. Detroit at Work = $887
    2. Housing and Revitalization = $617.40

iii. Ongoing Monitoring and Enforcement for each CBO, including biannual compliance reports – until development project is built and all CBO provisions area completed
    1. PDD Staff Costs = $1,190 annually
    2. CRIO = $2,033 annually

iv. Assuming 2 additional Tier 1 projects per year at the reduced threshold of $50 million, additional administrative cots of Tier 1 monitoring and enforcement activities would equal:
    1. $19,712.72 over 2 years for Tier 1 annual update meetings
    2. $3,223 annually until monitoring and enforcement period ends (development project is built and all CBO provisions are completed)

3. **If the threshold for Tier 1 projects is reduced to $50 million, is there an anticipated increase in the cost for P&DD to administer the CBO process due to the increase number of projects and associated CBO meetings? If so, what is that cost increase?**

    a. Each additional CBO Tier 1 project results in P&DD administrative costs of $37,942.95
    b. Assuming 2 additional Tier 1 projects per year at the reduced threshold of $50 million, additional P&DD administrative cots of the Tier 1 process would equal:
        i. $75,885.90

4. **If the threshold for Tier 1 projects is reduced to $50 million, there will be an increase in the number of projects and the meetings that will require the staffing of P&DD as well as LPD staffing, has the Administration identified any other departments that may have increased staffing requirements as a result of the proposed reduction? If so, which departments and what is the anticipated cost?**

    a. Other Departments impacted, costs are per additional Tier 1 project:
        i. Mayor's Office / Jobs and Economy Team = $1122.25
        ii. Department of Neighborhoods = $1,247.06
        iii. Detroit at Work = $6,992
        iv. Legislative Policy Division = $750.33
    b. Assuming 2 additional Tier 1 projects per year at the reduced threshold of $50 million, other City departments additional administrative cots of Tier 1 process would equal: $20,223,28

Proposed amendment No. 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.

Questions/requests:

1. **Has PDD been able to quantify whether the proposed threshold reduction will have a negative impact on developers going forward with projects between $300,000-$3 million? If so, what were the findings?**

    a. To be in compliance with the ordinance provision that Tier 2 project developers "partner with the Planning Director to address and mitigate negative impact that the Tier 2 Project may have on the community and local residents," PDD has instituted a policy that Tier 2 CBO projects complete PDD's Design Review process (aka. Concept Plan Review). Reducing the threshold on Tier 2 projects would require more smaller scale developers to complete this process, adding additional time and costs to their development projects.

2. **If the threshold for Tier 2 projects is reduced to $300,000, what is the anticipated increase in administrative costs PDD would face?**

    a. Each Tier 2 project goes through PDD Design Review at an administrative cost of $6,688.85.
    b. Assuming an additional six Tier 2 CBO projects per year under the reducted threshold of $300,000 – to $3 million the added PDD administrative costs per year would be: $40,133.10

Please note that President Pro-Tem Sheffield has also requested the Office of the Chief Financial Officer (OCFO) to prepare a fiscal impact study regarding the 17 proposed modifications to the CBO. So, much of the information you provide in your responses to the questions above could be incorporated in some fashion in OCFO's fiscal impact study.

It would be great for you to provide your responses within a month since LPD is expected to provide City Council a report on the 17 recommendations by May 12, 2021.

Thank you for your responses to our questions!

cc: City Council Members
Nicole Sherard-Freeman, Group Executive-Jobs, Economy & Detroit at Work
Kevin Johnson, President and Chief Executive Officer, DEGC
Kenyetta Hairston-Bridges, Executive Vice President Economic Development & Investment Services DEGC
Jay Rising, CFO
Tanya Stoudemire, Chief Deputy CFO
Steven Watson, Deputy CFO/Budget Director
Avery Peoples, Mayor's Office

Attachment IV

Law Department's February 7, 2019 Memo on the Proposed CBO Amendments

CITY OF DETROIT
LAW DEPARTMENT

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MEMORANDUM

DATE: February 7, 2019

TO: Honorable City Council

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 $50,000,0000." (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 <u>from the NAC</u>, the Enforcement Committee <u>shall</u> investigate such allegations and <u>shall</u> present their written findings <u>to the NAC</u>..." 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(e)(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(e)(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 NAC's 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 I 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)(e), 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 RCI'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(e)(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(e)(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(e)(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)(ii)." (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 V

Office of the Chief Financial Officer's November 16, 2018 providing a fiscal impact perspective on proposed community benefits modifications

CITY OF DETROIT
OFFICE OF THE CHIEF FINANCIAL OFFICER

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TO: Honorable Council Member Scott Benson
FROM: John W. Hill, Chief Financial Officer
SUBJECT: Response to Request for Impact of Proposed Community Benefits Modifications (memo dated September 25, 2018)
DATE: November 16, 2018

In your memorandum dated September 25, 2018, you requested the Office of the Chief Financial Officer (OCFO) provide an opinion on how the proposed modifications to the community benefits ordinance would impact the City's ability to meet its growth projections and pay its annual debt service and pension contributions. Please see the response below.

The proposed amendments include lowering the investment threshold from $75 million to $50 million for development projects subject to the community benefits ordinance process. Based on available data, of the 49 real estate development projects announced in 2017 and 2018 year to date, 13 projects would have been impacted by the revised threshold compared to only 7 under current law. For context, 3 of the 7 projects were the large-scale transformational developments for the Hudson's Site, Monroe Block, and Ford Corktown Campus. The magnitude of those projects were 15 to 16 times the size of the proposed $50 million threshold. Other proposed amendments would expand the number of required community meetings from "at least one" to "no fewer than five" (or "six" depending on the proposal).

These amendments have the potential to slow down or reduce development projects in the city, which has a direct impact on the City's economic growth and income tax revenues. An expanded community benefits ordinance would subject development projects, which often have multi-year completion times, to time-sensitive cost pressures such as labor costs, commodity prices, and potential weather impacts. Because of inflationary pressures, delays can erode the viability of development projects, leading to reduced scope, increased need for public financial support, or termination of the projects. Furthermore, additional financial and administrative burdens may make Detroit less attractive to developers in the first instance. Such adverse impacts would negatively impact the City's recovery and its ability to meet its long-term obligations.

Sustaining the City's development momentum, particularly in the neighborhoods, is vital to the City's efforts to improve its comparatively weak economic profile and grow a stable revenue base. In its November 8, 2018, report on Detroit, Moody's Investor Service said:

> *"Downtown growth is fueling rising income tax receipts with an influx of residents and affluent commuters. Income taxes, which are sensitive to economic fluctuations, are mainly generated in the downtown core. Property taxes, which are more stable and generated throughout the city, are recovering very slowly as the property tax base remains weak."*

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While development downtown has markedly improved the City's economy, measures of poverty and property values citywide remain weak. This constrains potential income tax revenue growth and deprives the City of a strong property tax as a growing and stable revenue stream. Continued development is crucial for the City's ability to meet its growth projections and pay its long-term debt service and pension contributions.

Cc: Honorable Detroit City Council
David P. Massaron, Chief Operating Officer and Senior Counsel to the Mayor
Stephanie Washington, City Council Liaison
John Naglick, Chief Deputy CFO / Finance Director
Christa McLellan, Deputy CFO / Treasurer
Tanya Stoudemire, Deputy CFO / Budget Director