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MEMORANDUM

TO: Mayor Edmonds and Members of City Council

FROM: Daniel J. DuChene, Assistant Ypsilanti City Attorney

DATE: August 7, 2018

SUBJECT: Community Benefits Ordinance – Council Consideration on Special Meeting for August 29, 2018

Councilmember Murdock, with the support of councilmembers Robb and Richardson, have requested a special meeting for 7 p.m. on August 29, 2018, for the consideration of a Community Benefits Ordinances. In requesting this meeting, a draft ordinance with revisions to the most recent draft of the CBO was forwarded for review.

I have reviewed these revisions and incorporated them into the attached proposed ordinance. Per the request and discussions with Councilmember Murdock, I have made some slight revisions to this newly proposed language. Notably, I have corrected numbering and internal references, edited for inconsistent or redundant language and sections, and formatted for form. I have not made any substantive changes.

With that said, I would like to offer an opinion and advice as to some of the changes to the proposed ordinance provided. The main point for City Council to consider is that its authority to require a community benefits agreement would be provided under its discretionary authority, not its police powers. With that in mind, the proposed changes to the definitions contained in Section 30-501 that require a community benefits agreement when any publicly owned land is sold or leased, whether owned by the City or not, is outside of the authority of the City of Ypsilanti. Unless the land is owned by the City of Ypsilanti, it cannot require that the parties of the sale or lease enter into a CBA. Therefore, I would strongly advise that this language not be included in any adopted ordinance.

Along these same lines, the current proposed ordinance removes the word "voluntary" from the definition of a community benefits agreement. If memory serves, this word was used in the definition provided as a model to this office. It is my understanding that the agreement is voluntary in the same meaning as a PUD agreement, in that the request

cc: City Manager



from the developer is voluntary in and of itself. Otherwise, an agreement or contract is unenforceable if it is involuntary. However, this being the case (that the agreement would be voluntary regardless of the definition), I do not have a strong opinion whether the word be included or not. But, I would advise that it is.

My final point is in regard to the proposed phrasing concerning the selection of members from the community to the ad-hoc committee under Section 30-527 (as currently numbered). For brevity, there is proposed an initial "kick-off" informational meeting before the ad-hoc committee is selected. The proposed language changes that "recommendations" to the Mayor are made at this meeting to "nominations." Upon further consideration I think "suggestions" might be a better term. Particularly, my concern here is that this initial meeting is not a meeting where any formal action should take place because there is no delegated body to make such determinations. Regardless, the term nomination may indicate the formality and procedure that are generally applicable in such an instance ("Nominations are open. – I nominate so and so. – Do you accept? – Is there a second? -All those in favor, etc.") This would be outside the scope of authority for such a meeting. Again, I don't have a strong opinion on the matter. But, I would advise that the ordinance adopted is as clear and unambiguous as possible.

The remaining changes to the proposed ordinance are policy considerations that are up to the determination of City Council. Please let me know if you have any questions, comments, or concerns.



Resolution No. 2018-226
August 29, 2018

RESOLVED BY THE COUNCIL OF THE CITY OF YPSILANTI:

THAT An ordinance to amend Chapter 30 "Community Development" of the Ypsilanti City Code to add a new Article VII, entitled "Community Benefits." be approved on First Reading.

OFFERED BY: _____

SUPPORTED BY: _____

YES:

NO:

ABSENT:

VOTE:



**CITY OF YPSILANTI
NOTICE OF ADOPTED ORDINANCE
Ordinance No. 1325**

An ordinance to amend Chapter 30 "Community Development" of the Ypsilanti City Code to add a new Article VII, entitled "Community Benefits."

1. THE CITY OF YPSILANTI HEREBY ORDAINS that Chapter 30 "Community Development" of its Code of Ordinances be amended to add a new Article VII to read as follows:

ARTICLE VII – COMMUNITY BENEFITS

DIVISION 1. – GENERALLY

Sec. 30-500. – Purpose

- (a) It shall be the policy of the City of Ypsilanti to require, wherever feasible, proportional community benefits as a condition of significant public support for development in the form of subsidies, tax abatements, below-market priced land, or other enhanced public resources.
- (b) This Article shall be known as the "City of Ypsilanti Community Benefits Ordinance."

Sec. 30-501. – Definitions

The following words, terms, and phrases when used in this Article shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Community Benefits mean the amenities, benefits, commitments, or promises to the City of Ypsilanti by a Developer, as discussed further in Section 30-515 of this Article.

Community Benefits Agreement means a contract negotiated and agreed to by the City of Ypsilanti and a Developer to provide Community Benefits in return for the receipt of a Public Support.

Department means the City of Ypsilanti Economic and Community Development Department, or its successor department.

Developer means any person, firm, partnership, limited liability company, corporation, joint venture, proprietorship, or other entity that is the purchaser or lessee in the Sale or Lease of City or Other Publicly Owned Land, the recipient of a Financial Incentive, or any combination thereof, including sub-contractors.

Financial Incentive means cash or near-cash assistance provided on the discretionary basis of the City of Ypsilanti to attract or retain a Project. These benefits principally encompass tax and economic incentives provided by federal, state, or local governmental bodies, as discussed further in Section 30-514 of this Article.

Interested Councilmember means a member of the Ypsilanti City Council representing the ward in which a Project is proposed to be located.

Project means either a Tier 1 Project or Tier 2 Project.

Public Support means a Financial Incentive of \$50,000 or more or the Sale or Lease of City or Publicly Owned Land for a price of at least \$10,000 below market value, as determined by the City Assessor.

Quadruple Bottom Line Philosophy means the effect a Project may have on the well-being of the community in terms of cultural vitality, social equity, economic prosperity, and environmental sustainability. This includes the Public Support and Community Benefits agreed to as part of the Project.

Registered Group means any group or organization with at least one member that is a resident of the City of Ypsilanti that files their contact information with the Department to receive notification under this Article. The Department shall keep this information on file. The Registered Group shall be responsible for the accuracy of the information submitted to the Department.

Sale or Lease of City or Other Publicly Owned Land means the conveyance of title of real property from the City or other public entity to a purchaser or a lease of City or other public property to a lessee. The conveyance of City rights-of-way, conveyances under the Property Disposition Policy, and the conveyance or lease of properties less than one-quarter (1/4) of an acre in size are not included in this definition.

Tier 1 Project means any project, development, or redevelopment in which the Developer is requesting Public Support in the form of a Financial Incentive in an amount of \$50,000 or more and less than \$250,000.

Tier 2 Project means any project, development, or redevelopment in which the Developer is requesting Public Support in the form of a Financial Incentive in an amount greater than \$250,000 or in the form of the Sale or Lease of City or Other Publicly Owned Land.

Secs. 30-502 – 30-510. - Reserved.

DIVISION 2. – Community Benefits Agreement Required

Sec. 30-511. A Community Benefits Agreement is required between the City of Ypsilanti and a Developer prior to Ypsilanti City Council’s final approval of Public Support. City Council may grant preliminary approval of Public Support subject to the execution of a Community Benefits Agreement.

Sec. 30-512. The following minimum standards shall be required of any Community Benefits Agreement:

- (a) Legally enforceable and the result of the procedure specified under Division 3 of this Article.
- (b) The Community Benefits provided reflect the scale of and be in proportion to the Public Support approved.
- (c) Identify specific methods with regard to monitoring and compliance with the provisions of the Community Benefits Agreement.
- (d) Provide for enforcement terms and specific remedies upon the breach or non-compliance of a party. Such remedies may include, without limitation, specific performance, liquidated damages, claw backs, or revocation or withdrawal of Public Support.
- (e) Where possible, provide a means to measure, value, and assess the factors discussed in Section 30-513 of this Division.
- (f) Inclusion of local small businesses, minority-owned business enterprises, women-owned business enterprises, and other relevant business organizations in pre-bid meetings and conferences with advance notice.
- (g) Compliance of Developer with the living wage or prevailing wage requirements, as applicable, provided for in Chapter 2, Article VI of this Code of Ordinances.
- (h) No outstanding back taxes, fines, or liens are owed to the City.
- (i) Compliance of Developer with the provisions contained in Chapter 58, Article III, Division 1 of this Code of Ordinances, regarding employment discrimination.

Sec. 30-513. Guided by a Quadruple Bottom Line Philosophy, the following factors should be considered in the consideration, deliberation, and approval of a Community Benefits Agreement:

- (a) The potential value a Project may bring to the community.
- (b) The potential impact a Project will have on the community.
- (c) The profitability of a Project.
- (d) Identification of potential sites of cultural, historical, or archeological significance, as well as the protection and preservation of such sites.

Sec. 30-514. The following is a non-exhaustive list of potential programs in which Financial Incentives may derive:

Brownfield Redevelopment Financing Act 381 of 1996 (MCL 125.2651 et seq)

Commercial Redevelopment Act 255 of 1978 (MCL 207.651)

Commercial Rehabilitation Act 210 of 2005 (MCL 207.841 et seq)

Corridor Improvement Authority Act 280 of 1995 (MCL 125.2871 et seq)

Historical Neighborhood Tax Increment Finance Authority Act 530 of 2004 (MCL 125.2841 et seq)

Local Development Financing Act 281 of 1986 (MCL 125.2151 et seq)

Obsolete Property Rehabilitation Act 146 of 2000 (MCL 125.2781 et seq)

Plant Rehabilitation and Industrial Development Districts Act 198 of 1974 (MCL 207.551 et seq)

Principal Shopping Districts and Business Improvement Districts Act 120 of 1961 (MCL 125.981 et seq)

Sec. 30-515. The following is a non-exhaustive list of potential Community Benefits that could be included in a Community Benefits Agreement:

A. Tier 1

1. Providing, either on-site or off-site, additional recreational activities, parks, open space, public service enhancements, or public infrastructure improvements for the City of Ypsilanti and its residents. This includes public transportation services and infrastructure.
2. Incorporation of green or sustainable energy elements into the Project or the promotion of such investments throughout the City of Ypsilanti.
3. Unbundling of construction work into bid sizes that will allow local small businesses level competition, without restricting the project timelines. Assistance with access to bonding, lending, insurance, access to capital, procurement, and other types of capacity-related assistance where necessary and when available.
4. Provide for the cleanup of contamination on site as required by the Michigan Department of Environmental Quality.

B. Tier 2

1. Work with Michigan Works, the SBDC, and other similarly situated organizations to help provide training, development, and preparation for potential contractual and hiring opportunities for local small businesses, minority-owned business enterprises, women-owned business enterprises, and other relevant business organizations and chambers.

2. Providing or supporting educational and/or mentoring activities that provide or enhance employment opportunities for local residents and youth through the Ypsilanti Community Schools, Washtenaw Community College, or other educational programs.
3. Creation or financial support of, either on-site or off-site, mixed or low-income housing units.

Sec. 30-516. Classification of a businesses as local, small, minority-owned business enterprise, or women-owned business enterprise, shall be guided by the provisions of Chapter 2, Article VI, Division 2, Section 2-303 of this Code of Ordinances with regard to local businesses and the U.S. Small Business Administration eligibility criteria for small businesses, minority-owned business enterprises, and women-owned business enterprises. Businesses discussed in this Section may file their contact information with the Department. The Department shall keep this information on file to be shared with Developers for the purposes of engagement as discussed in this Division. Such businesses shall be responsible for the accuracy of the information submitted to the Department. The Department shall also provide Developers with information regarding other organizations and agencies that the Department knows to track and keep information similar to that discussed in this Section.

Sec. 30-517. Community Benefits Agreements for Tier 1 Projects must meet the minimum standards discussed in Section 30-512 of this Article and provide for at least two Community Benefits contained in Section 30-515(A) of this Division or one Community Benefit contained in Section 30-515(B) of this Division. Community Benefits Agreements for Tier 2 Projects must comply with all of the requirements of Tier 1 Projects and provide for at least two Community Benefits contained in Section 30-515(C) of this Division. Projects may provide for direct funding, to the City of Ypsilanti or other relevant stakeholders, for the purposes of meeting Community Benefits requirements.

Sec. 30-518. City Council has the discretion to approve a Community Benefits Agreement that provides for one or more Community Benefit not described in Section 30-515 of this Division in substitution for one or more Community Benefit that is so described. If exercising its discretion under this Section, City Council shall determine under which tier in Section 30-515 the alternative Community Benefit would qualify.

Secs. 30-519 – 30-525. - Reserved.

DIVISION 3. – Procedure

Sec. 30-526. Upon a Developer's request for Public Support, Developer shall meet with the Department to review the request and determine the information needed and the procedure required for compliance with this Article. This may include the review or request of any plans, investigations, studies, or inspections. Particularly, plans, sketches, drawings, etc.; pro forma or financial statements; environmental,

geotechnical, or property surveys or reports; studies, assessments, or reports regarding impacts on public services and infrastructure, traffic and land use, and potential sites of cultural, historical, or archeological significance; or any other information deemed relevant by the Department may be reviewed if such exists or may be requested if the Department deems it appropriate.

Sec. 30-527. The following procedure is required for the development of Community Benefits Agreements for all Projects.

A. The Department shall coordinate with the Developer and Interested Councilmembers to call and hold a community participation meeting, which shall be chaired by an Interested Councilmember. The purpose of this meeting shall be to inform the community about the Project and to allow the community to discuss potential Community Benefits. Particularly, the scope of the request for Public Support, the information discussed in Section 30-526 of this Division, and the provisions and procedures of this Article shall be shared with the Community. There shall be time at this meeting for those present to ask questions, discuss and identify among themselves potential Community Benefits, and nominate resident members for the ad-hoc committee discussed in Section 30-527(B) of this Division. Applications for appointment shall be made available for resident members of the ad-hoc committee discussed in Section 30-527(B) of this Division. The Developer shall be present at this meeting to present information and answer questions. Notice of this meeting shall be provided as required by this Division no less than 30 days in advance. This meeting shall be subject to the Open Meetings Act and its records subject to the Freedom of Information Act. If this meeting is held on a weekday, it shall not begin prior to 6 p.m.

B. Within 15 days of the community participation meeting discussed in Section 30-527(A) of this Division, City Council shall establish an ad-hoc committee consisting of one Interested Councilmember; a representative of the Sustainability Commission; a representative of the Planning Commission; a representative of the Human Relations Commission and five residents of the City of Ypsilanti. City Council shall select the Interested Councilmember among themselves to serve on the committee. Likewise, each board or commission shall select a member among the respective body to serve on the committee. The mayor, subject to the approval of City Council, shall appoint the remaining five members of the committee with at least three members being selected from those nominated at the community participation meeting identified above. In making such appointments, the Mayor and City Council should be guided by the relevant community interests with regard to the specific aspects of the Project. Such interests could include, but are not limited to, the geographic location of the Project as well as relevant demographic and socio-economic factors. 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 committee member responsibility to prioritize the interests of community residents should be restricted from serving on the committee. This may include current or past employment affiliated with

the developer. This committee is subject to the Open Meetings Act and its records subject to the Freedom of Information Act.

C. Once established, the City Manager shall designate a staff liaison to the committee described in Section 30-527(B) of this Division. Additionally, the City Attorney's office should be available to advise and assist the committee. The staff liaison will provide ad hoc committee members with all documentation necessary for compliance with this Article, as identified in Section 30-526 of this Division, within 48 hours of their selection. All other documents requested by the ad hoc committee during the process should be provided within 48 hours of such requests.

D. After the committee described in Section 30-527(B) of this Division is established, it shall meet at least twice within 60 days. The purpose of these meetings is to identify Community Benefits mutually agreed upon with the Developer and make a recommendation to City Council. Within these 60 days, the committee shall provide a recommended Community Benefits Agreement for consideration by City Council. The Developer may produce and deliver a response for consideration by City Council within 15 days of the issuance of the recommendation. Upon the request of the committee or the Developer, respectively, City Council may grant an extension to the deadlines described herein. The City Manager, in his or her sole discretion, may direct employees and departments of the City to review and report to the committee concerning specific aspects of a proposed Community Benefits Agreement. Likewise, the City Manager, in his or her sole discretion, may direct employees and departments of the City to review a recommended Community Benefits Agreement issued by the committee and report to City Council. Notice for meetings of the committee shall be provided as required by this Division no less than seven days in advance.

Sec. 30-528. After the procedures discussed in this Division, City Council shall hold a public hearing regarding the proposed Community Benefits Agreement no less than 15 days prior to its consideration by City Council.

Sec. 30-529. Notice of all meetings discussed in this Division shall be published according to Section 11.13 of the City Charter. In addition, such notice shall be sent by mail or personal delivery to all Registered Groups; the Developer; to all persons to whom real property is assessed within 300 feet of the property boundary of where the Project is located; and to the occupants of all structures within 300 feet of where the Project is located. If the name of an occupant is not known, the term "occupant" may be used in making notification. Notification need not be given to more than one occupant of a structure, except that if a structure contains more than one dwelling unit or spatial area owned or leased by different individuals, partnerships, businesses, or organizations, one occupant of each unit or special area shall receive notice. Such notice shall include the following:

- (a) Description of the nature of the meeting. This description shall include a brief summary of the Project and the Public Support requested, the relevant

requirements and procedures of this Article, and the purpose for which the particular meeting is being held.

(b) A legal description or address of the property which the Project is located.

(c) Statement of when and where the meeting will be held.

(d) Statement of when and where comments will be received.

Sec. 30-530. The procedure provided for in this Division shall comply with the City of Ypsilanti Public Participation Policy when applicable.

Secs. 30-531 – 30-545. - Reserved.

DIVISION 4. – Miscellaneous Provisions

Sec. 30-546. Upon the request of a Developer, City Council may adopt a resolution exempting the Developer from the requirement of entering into a Community Benefits Agreement by demonstrating that the Project and execution of a Community Benefits Agreement is infeasible or impractical. To request such an exemption, the Developer shall:

(a) Provide City Council, in writing, the basis of its request.

(b) State, with particularity, the good-faith efforts the Developer has made to engage in the process of developing and executing a Community Benefits Agreement.

(c) Document how the Developer will otherwise seek to implement the purpose of this Article.

Sec. 30-547. If a Community Benefits Agreement provides for direct funding, either to the City of Ypsilanti or another relevant stakeholder, the Community Benefits Agreement recommended or approved shall provide for the limitations of spending such funding and the methods for monitoring, reporting, and approving its use. If a Community Benefits Agreement provides for direct funding to an entity other than the City of Ypsilanti, the Community Benefits Agreement recommended or approved shall particularly identify such entity. Additionally, such an entity should be engaged in the process of developing a recommended or approved Community Benefits Agreement and possibly execute the Community Benefits Agreement as a third-party beneficiary.

Sec. 30-548. The provisions of this Article are prescriptive in nature and are set forth as required conditions for the requesting, provisioning, and receiving of Public Support for a Project. Material failure to comply with the provisions of this Article may result in denial, suspension, termination, revocation, or withdrawal of Public Support, but shall not be subject to the penalties, sanctions, or remedies set forth in Section 1-15 of this Code of Ordinances. Except when obtained through substantial and material misrepresentation or fraud, the resolution of City Council approving the Public Support

for a Project shall be evidence of compliance with the provisions of this Article. Thereafter, remedies shall be limited to enforcement of the Community Benefits Agreement.

Secs. 30-549 – 30-575. - Reserved.

2. Severability. If any clause, sentence, section, paragraph, or part of this ordinance, or the application thereof to any person, firm, corporation, legal entity, or circumstances, shall be for any reason adjudged by a court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not effect, impair, or invalidate the remainder of this Ordinance and the application of such provision to other persons, firms, corporations, legal entities, or circumstances by such judgment shall be confined in its operation to the clause, sentence, section, paragraph, or part of this Ordinance thereof directly involved in the case or controversy in which such judgment shall have been rendered and to the person, firm, corporation, legal entity, or circumstances then and there involved. It is hereby declared to be the legislative intent of this body that the Ordinance would have been adopted had such invalid or unconstitutional provisions not have been included in this Ordinance.

3. Repeal. All other Ordinances inconsistent with the provisions of this Ordinance are, to the extent of such inconsistencies, hereby repealed.

4. Savings Clause. The balance of the Code of Ordinances, City of Ypsilanti, Michigan, except as herein or previously amended, shall remain in full force and effect. The repeal provided herein shall not abrogate or affect any offense or act committed or done, or any penalty or forfeiture incurred, or any pending fee, assessments, litigation, or prosecution of any right established, occurring prior to the effective date hereof.

5. Copies to be available. Copies of the Ordinance are available at the office of the city clerk for inspection by, and distribution to, the public during normal office hours.

6. Publication and Effective Date. The City Clerk shall cause this Ordinance, or a summary of this Ordinance, to be published according to Section 11.13 of the City Charter. This Ordinance shall become effective after publication at the expiration of 30 days after adoption.

MADE, PASSED AND ADOPTED BY THE YPSILANTI CITY COUNCIL THIS _____ DAY OF _____, 2018.

Frances McMullan, City Clerk

Attest

I do hereby confirm that the above Ordinance No. _____ was published according to Section 11.13 of the City Charter on the _____ day of _____, 2018.

Frances McMullan, City Clerk

CERTIFICATE OF ADOPTING

I hereby certify that the foregoing is a true copy of the Ordinance passed at the regular meeting of the City Council held on the _____ day of _____, 2018.

Frances McMullan, City Clerk

Notice Published: _____

First Reading: _____

Second Reading: _____

Published: _____

Effective Date: _____