

**SECTION ZERO: Introduction**

BOARD BILL NO. \_\_\_\_\_ INTRODUCED BY

An Ordinance to require the provision of community benefits and executed Community Benefits Agreements for certain development projects seeking public support for investments above certain threshold levels; including certain exemptions; providing penalties and provisions for enforcement; and containing a severability clause.

WHEREAS, it is vital that communities benefit from urban development, particularly when the public is asked to assist in that development;

WHEREAS, public tax dollars from and public investment by citizens support development in the form of tax incentives, therefore, residents are stakeholders and have a right and a responsibility to be actively involved in the development process;

WHEREAS, tax incentives awarded without formalized community involvement could benefit the developer, but leave the community’s residents out of the process;

WHEREAS, other cities, including Detroit, Michigan and Cambridge, Massachusetts, have demonstrated that Community Benefits Agreements and a Community Benefits Fund can help to ensure that tax incentives and development benefit the whole community;

WHEREAS, current and future developments in the City of East St. Louis offer the opportunity for community members to be active participants in the development process;

WHEREAS, thoughtful, intentional community participation can complement the already established vehicles and infrastructure—including government, business, and the non-profit organizations—whose niche has been to facilitate development, but who may not necessarily advocate for equity;

BE IT ORDAINED BY THE CITY OF EAST ST. LOUIS AS FOLLOWS:

**SECTION ONE. Purpose; Title.**

(a) It shall be the policy of the City of East St. Louis to require proportional community benefits when providing significant public subsidies or incentives for development projects in the form of tax abatement, tax increment financing, grants, or the sale or provision of City assets and services at below-market-value costs.

(b) This article shall be known as the “City of East St. Louis Community Benefits Ordinance.”

**SECTION TWO. Definitions.**

(a) “Affordable Housing” means housing in which monthly costs amount to no more than 30% of household income for eligible households within the census tract in which the development project is located.

**SAMPLE CBA ORDINANCE**



(b) “Annual Median Income” or “AMI” means an economic measure that can be applied to one household, or aggregated across a large group such as a county, city, or the whole country to track economic trends as measured by the US Census Bureau.

(c) “Census Tract” or “census tract” means small, relatively permanent statistical subdivisions of a county or equivalent entity that are updated by local participants prior to each decennial census as part of the Census Bureau’s Participant Statistical Areas Program.

(d) “City” means the City of East St. Louis including all departments, divisions, and agencies, of the City of East St. Louis including, but not limited to: **[LIST ANY RELEVANT CITY AGENCIES]**.

(e) “Community Benefits” means the amenities, benefits, commitments, or promises described in Section Three and Section Four of this Ordinance, which may be incorporated into a Development Agreement.

(f) “Community Benefits Agreement” or “CBA” means a legally enforceable contract as described in Section Three of this Ordinance.

(g) “Community Benefits Fund” means a dedicated fund for developments in Census tracts with more than 34.5% poverty as measured by the US Census Bureau and described in Section 5 of the Ordinance.

(h) “Community Benefits Fund Committee” means the committee appointed by the Mayor and charged with the allocation of monies from the Community Benefits Fund as described in Section 5 of this Ordinance.

(i) “Contractor” means any person, firm, partnership, limited liability company, corporation, joint venture, proprietorship, or other entity that enters into a contract for performance of construction work on the development project within the Host Community, including subcontractors of any tier.

(j) “Developer” means a person, corporation, or business entity who invests in and develops the urban or suburban potentialities of real estate.

“Development” means a tract of land that has been made available or usable through construction.

(l) “Development Agreement” means, for the purposes of this Ordinance, the agreement or agreements between the City and the developer pursuant to which the City provides or commits Public Support for Investment for a Tier 1 Development Project, Tier 2 Development Project, or High Impact Development Project, regardless of the label or title affixed to such agreement.

(m) “Eligible households” means holds earning less than 30% of the area median income.

(n) “Facilitator” means a non-profit organization, or a coalition of non-profit organizations, working to increase investment and development in low-income and communities of color with community residents, who is charged with convening and moderating meetings of the Host Committee Community.

(1) The Facilitator shall be chosen by the **[City of East St. Louis Economic Development Department]** on a bi-annual basis following a request for proposal (“RFP”) process. The RFP committee for this RFP process shall be composed of an appointee of the Mayor of the City of East St. Louis, an appointee of the **[FINANCIAL OFFICE]** of the City of East St. Louis, an appointee of the **[HEAD OF CITY**

**COUNCIL**], an appointee from **CHAIR OF DEVELOPMENT COMMITTEE AND ANY OTHER RELEVANT COMMITTEES**].

(2) The Facilitator shall notify the following individuals of any Host Committee meeting, and permit them to attend and participate in the meetings:

a. an individual employed by fair housing organization that seeks to prevent housing discrimination on the basis of race, color, nationality, religion, gender, disability or familial

b. an individual employed by an organization whose mission is to address racial and economic disparity in the East St. Louis region, and its successor;

c. an individual appointed by the Superintendent of East St. Louis Public Schools

d. an individual appointed by **ESTL ECONOMIC DEVELOPMENT DEPARTMENT**].

(o) “Local Source Hiring Program” means a program implementing a written agreement between the Developer, the City of East St. Louis, and the **JOBS TRAINING AGENCY** that, to the extent consistent with federal and state law, includes provisions to promote the hiring, training, and employability of residents in the City of East St. Louis and people employed within the Host Community before the Development. Any such program shall include opportunities for residents of the City of East St. Louis and people employed with the Host Community before the Development to be employed in the construction of the Development and to be employed in connection with the Development after construction has completed.

(p) “High Impact Development Project” means any development project that is reasonably expected to produce a significant impact on human health or the environment in the Host Community because of the nature of the Development, the Host Community, or some other factor. **EAST ST. LOUIS ECONOMIC DEVELOPMENT AGENCY** shall submit its recommendation regarding whether any Development should be considered a High Impact Development Project to the East St. Louis City Council. The City Council, in its sole discretion, shall determine whether a project is a High Impact Development Project as set forth in Section Three of this Ordinance.

(q) “Host Community” means all people who reside, own property, or are employed within any Census Tract where the Development is physically located and may include people who reside, own property, or are employed within adjacent Census Tracts as may be determined by the Host Community Committee in accordance with this Ordinance.

(r) “Host Community Committee” means the committee that negotiates the CBA.

(1) The Host Community Committee shall consist of, at minimum:

a. an individual(s) appointed by the neighborhood association in the neighborhood where the project is located, if established;

b. an appointee(s) of the Community Development Corporation representing the area where the project is located, if established;

c. an individual appointed by any business district(s) or association(s) where the project is located, if established;

d. A representative from the City Council;

e. an individual(s) appointed by the Committee Facilitator that is affiliated with a non-profit organization that advocates for, is located in, or works in collaboration with the community where the project is located;

f. individuals from other City or neighborhood organizations chosen by the Facilitator to advocate for the needs of the Host Community; and

g. an individual appointed by [EAST ST. LOUIS ECONOMIC DEVELOPMENT AGENCY].

(2) No person who is employed by or an owner of the developer or the law firm representing the developer shall be a member of the Host Community Committee, or anyone in the immediate family of any such employee or owner.

(3) No person shall be a member of the Host Community Committee whose membership would otherwise be a conflict of interest or create the appearance of impropriety.

(4) The Host Community Committee shall operate by majority vote of a quorum of committee members. A quorum shall consist of a majority of the appointed members to the Host Community Committee.

(5) The Host Community Committee shall establish by-laws.

(5) All documents in the name of the Host Community Committee shall be executed by the Chair or, in the Chair's absence, an appointee of the Chair.

(s) "Inclusionary zoning" means market rate housing projects in Census Tracts with less than 20% poverty, based upon the most recent data from the US Census Bureau, where the developer designates a certain percentage of units for Affordable Housing based upon the following formula:

(1) 20% of Affordable units shall go to 30.% or below of AMI;

(2) 30% of Affordable units shall go to Max AMI at 50%;

(3) 30% Affordable units shall go to Max AMI at 60%;

(4) 20% Affordable units shall go to Max AMI at 80%

(t) "Projects" means a High Impact Development Project, a Tier 1 Project, or a Tier 2 Project.

(u) "Public Support for Investment" means:

(1) The City directly or indirectly transferring to the developer City-owned land parcels that have a cumulative fair market value of Three Hundred Thousand Dollars (\$300,000) or more (based upon an appraisal obtained by [ESTL ECO DEVO AGENCY]), without open bidding or sold for below the fair market value; or

(2) The City providing or approving tax abatements, TIFs, or grants for the benefit of the Developer cumulatively valued at Three Hundred Thousand Dollars (\$300,000) or more.

(v) “RFP” shall mean the Request for Proposal process specified by City ordinance as modified to include a RFP committee as described herein;

(w) IS THERE A **WORKFORCE DEVELOPMENT DEPARTMENT** shall mean \_\_\_\_\_

(x) **EAST ST. LOUIS ECO DEVO AGENCY** shall mean \_\_\_\_\_

(y) “Small business” shall mean a business with 50 or fewer full-time or part-time employees..

(z) “East St. Louis Business” shall mean:

(1) A business where seventy-five percent (75%) or more of its employees work in or reside in the City of East St. Louis;

(2) A business where a significant part of the business’s leadership, including its Chief Executive Officer or equivalent, is housed in offices in the City of East St. Louis; or

(3) A business where a majority of voting shares are owned by residents of the City of East St. Louis.

(aa) “Tier 1 Development Project” means a development project in the City of East St. Louis that **[ESTL ECO DEVO AGENCY]** estimates will require the developer to spend Fifteen Million Dollars (\$15,000,000) or more, including equity, debt, and incentives;

(bb) “Tier 2 Development Project” means a development project in the City of East St. Louis that **[ESTL ECO DEVO AGENCY]** estimates will require the developer to spend more than Three Million Dollars (\$3,000,000), but less than Fifteen Million Dollars (\$15,000,000), or a development project for which **[ESTL ECO DEVO AGENCY]** estimates that the developer will receive more than One Million Dollars (\$1,000,000) in public support.

(cc) “Workforce Development” means a development project with tax incentives totaling more than \$1,000,000 in forgone revenue in the City of East St. Louis shall require that 10 percent of all labor hours are to be performed by residents of East St. Louis.

**SECTION THREE. Providing Community Benefits; Community Benefits; Agreements; when required.**

(a) Upon submission of a site plan for a Tier 1 Development Project to **[ESTL ECO DEVO AGENCY]**, the Developer shall notify **[ESTL ECO DEVO AGENCY]** if the Developer intends to seek Public Support for Investment in connection with the Development. **[ESTL ECO DEVO AGENCY]** shall then notify the Facilitator and the CITY COUNCIL.

(b) The first organizational meeting for purposes of forming the Host Community Committee shall be called by the CITY COUNCIL. Except where other laws may require otherwise, the Facilitator shall notify the Host Community of the date, time, and place of a meeting to organize the Host Community Committee within twenty-one (21) days of the date of the **[ESTL ECO DEVO AGENCY]** notice informing

the Facilitator of the proposed project, and the meeting shall be held within 28 days of the date of notice informing the Host Community of the proposed project. The meeting shall be publicized on the East St. Louis City Website at least five (5) days before the meeting date. Other than hosting the meeting, the CITY COUNCIL Member(s) and other City employees or elected officials shall not be involved in forming the Host Community Committee or negotiating the Community Benefits Agreement. The Facilitator shall be responsible for ensuring the Host Community Committee's compliance with the Sunshine Law, if applicable, and, if necessary, shall have the assistance of the [EAST ST LOUIS City Counselor's Office] in said compliance.

(c) The Host Community Committee shall be responsible for holding a minimum of two (2) public meetings about the proposed development. The first meeting shall be to notify the public and receive input on community benefits for the development prior to negotiations with the developer. The second meeting shall be to receive feedback on the agreed upon community benefits agreement before it is sent to the CITY COUNCIL.

(d) The following standards and requirements shall apply to providing Community Benefits as a condition of receiving Public Support for Investment:

(1) Tier 1 Development Project.

a. The Developer of any Tier 1 Development Project who seeks Public Support for Investment shall enter a legally enforceable Community Benefits Agreement with the Host Community Committee.

b. The Community Benefits Agreement shall provide for Community Benefits as negotiated by the parties, and shall specifically address each of the following:

(1) targeted benefits or appropriately negotiated employment opportunities, including meeting minimum workforce development requirements;

(2) Inclusionary Zoning;

(3) quality of life or environmental mitigations such as lead abatement, Brownfield Cleanup or adherence to any adopted city plans.

(4) neighborhood improvements, infrastructure, and amenities, and

(5) community representation for the benefit of the Host Community in the development and post-development processes.

(2) The Developer shall include a copy of the executed Community Benefits Agreement with the request for CITY COUNCIL approval for the Public Support for Investment. The failure to include such a copy shall result in denial of approval for any Public Support for Investment.

(e) Tier 2 Development Project. The Developer of any Tier 2 Development Project who seeks Public Support for Investment shall execute a Community Benefits Agreement with the Host Community Committee except as provided herein.

(1) If no Community Benefits Agreement is executed after a good faith attempt by the Developer, the developer shall adopt and implement a Local Source Hiring Program and contribution of no less than 1% of the Development Project costs to the Community Benefits Fund, the terms of which shall be included in the Development Agreement.

(2) The Developer shall include a copy of the executed Community Benefits Agreement or the terms of the First Choice Hiring Program and Contribution to the Community Benefits Fund with the request for CITY COUNCIL approval for the Public Support for Investment. The failure to include such a copy shall result in denial of approval for any Public Support for Investment.

(f) High Impact Development Project.

(1) The Developer of any High Impact Development Project who seeks Public Support for Investment shall enter a Community Benefits Agreement.

(2) Determination of whether a project is a High Impact Development Project shall be made by a finding of THE CITY COUNCIL expressed in a resolution, after a public hearing requested by a resident of the Host Community and duly noticed and conducted for the purpose of ascertaining whether the project meets the definition of a High Impact Development Project. The CITY COUNCIL may call on the assistance of the **EAST ST. LOUIS PLANNING DEPT**, and other resources to assist in its determination.

(3) In its resolution classifying that the development is a High Impact Development Project, the CITY COUNCIL shall provide whether the project shall be treated as a Tier 1 or Tier 2 development project.

(4) The Developer and residents of the Host Community shall be entitled to speak at the public hearing.

#### **SECTION FOUR. Community Benefits.**

The following is a non-exclusive list of examples of Community Benefits that may be considered on a voluntary basis for inclusion in a Community Benefits Agreement, or in a Development Agreement:

(a) Education, such as:

(1) Hold Harmless the East St. Louis Public School system through paying the school district portion of abated taxes,

(2) Creation of an education fund to support the City's high schools, community colleges, and other educational programs.

(3) Adult education programs operated by qualified administration or an administrative collaboration of organizations that benefit residents of the Host Community.

(4) Actively supporting educational activities that provide employment opportunities for residents of the Host Community.

(5) Providing annual Contractor readiness training for East St. Louis Businesses.

(6) Hosting annual Contractor information and networking sessions about upcoming contracting opportunities in the City of East St. Louis.

(7) Providing program materials, training and support for East St. Louis Public Schools or other educational institutions in the Host Community.

(8) Providing employment and career mentoring opportunities for youths who reside in the Host Community.

(b) Land Use Programs, such as:

(1) Actively promoting City real estate and investment opportunities in the Host Community through appropriate real estate investment agencies or entities;

(2) Providing additional recreational activities, parks, educational services, environmental amenities, housing capacity or other benefits in the Host Community;

(3) Providing funds for demolition, stabilization, or rehabilitation of abandoned homes or other structures in the Host Community;

(4) Small Business Inclusion and Participation, such as:

a. Targeted outreach within the Host Community for East St. Louis-based small businesses, minority-owned business enterprises, women-owned business enterprises and relevant business organizations and chambers;

b. Inclusion of a Small Businesses, minority-owned business enterprises, women-owned business enterprises and relevant business organizations in pre-bid meetings and conferences with advance notice;

c. Hosting annual procurement, contracting and hiring forums with information and networking sessions about upcoming procurement, contracting and hiring opportunities with the procurement department and other appropriate departments and agencies in the City of East St. Louis;

d. Meeting with small businesses, minority-owned business enterprises, women-owned business enterprises and relevant business organizations to train, develop and prepare for potential contractual opportunities;

e. Unbundling of construction work into bid sizes that will allow Small Businesses level competition, without restricting the project timelines.

f. Assistance with access to bonding, lending, insurance, access to capital, procurement and other types of capacity-related assistance where necessary and available;

g. Development of a small business incubator space within the Host Community;

h. implementation of the Local Source Hiring Program;

(5) A community needs assessment regarding the Host Community at the developer's expense;



- (6) Expansion of city services such as trash pick-up and grass cutting;
  - (7) An environmental and/or public health assessment of the impacts of the proposed development at the developer's expense;
  - (8) Affordable and accessible housing;
  - (9) Inclusionary zoning;
  - (10) Wheelchair accessible;
  - (11) Accommodations for families with five or more members; and/or
  - (12) Affordable home ownership opportunities.
- (c) Provisions that require periodic reporting, the frequency to be determined by the parties, of activities and ongoing monitoring of compliance by the parties throughout the course of the project and published on the City of East St. Louis website on an annual basis.
- (d) Provisions that require the parties to periodically meet and confer, the frequency to be determined by the parties, and disclose the parties' activities and the status of compliance to the Host Community residents, and that require periodic public meetings with the opportunity for input and comments by Host Community stakeholders.

**SECTION FIVE. Establishment of a Community Benefits Fund.**

- (a) The [ESTL FINANCIAL OFFICE] shall establish a Community Benefits Fund. Developments in a Stable Host Community shall contribute to a Community Benefits Fund as part of a Community Benefits Agreement. The Developer of any Development in a Census Tract with less than 20% poverty as measured by the US Census Bureau shall contribute to the Community Benefits Fund in the following ways:
- (1) The Developer shall make a payment of 1% of the maximum amount of TIF Notes allowed to be issued by the City pursuant to the Development Agreement, which shall be paid within ten (10) days of executing the 6 Development Agreement;
  - (2) The City Council shall cap all tax abatements at 75% in Stable Host Communities
- (b) The City shall spend the Community Benefits Fund in the following ways in Census tracts that are 34.5% or more poverty as measured by the US Census Bureau:
- (1) for the operations, development, and planning of Community Development Corporations,
  - (2) funding for organizations promoting the implementation of this Ordinance,
  - (3) the maintenance and operations for community recreation centers,
  - (4) supporting the demolition, stabilization, or rehabilitation of abandoned homes or other structures;

(c) The Mayor shall appoint a Community Benefits Fund Committee to oversee the allocation of the revenue generated into the Community Benefits Fund.

(1) The Community Benefits Fund Committee shall consist of no more than nine people and no less than seven people, and at least 50 percent of the Community Benefits Fund Committee members shall reside in Census Tracts with more than 34.5% poverty. The Committee Benefits Fund Committee shall include, at minimum:

- a. A representative of fair housing organization that seeks to prevent housing discrimination on the basis of race, color, nationality, religion, gender, disability or familial status;
- b. A representative from the CITY COUNCIL;
- c. A representative from East St. Louis Public Schools;
- d. an individual appointed by [ESTL ECO DEVO AGENCY].

(2) The Community Benefits Fund Committee shall hold no less than four public hearings in census tracts with more than 34.5% poverty as determined by the US Census Bureau to determine funding priorities on an annual basis.

**SECTION SIX. Remedies in Community Development Agreements.**

Specified remedies for violation of the Community Benefits Agreement, which unless otherwise agreed to by the parties, may include, without limitation specific performance, liquidated damages, clawbacks, or revocation or withdrawal of tax abatement and public subsidies. The above examples shall be specifically set forth as potential remedies in any Community Benefits Agreement.

**SECTION SEVEN. Exemptions.**

(a) The developer for a Tier 2 project may request from the CITY COUNCIL a resolution exempting it from the requirement of entering a Community Benefits Agreement by demonstrating that the Developer and the Host Community Committee have engaged in good faith negotiations for more than 180 days but negotiations have reached an intractable impasse;

(b) To request an exemption, the Developer shall:

- (1) Provide to the CITY COUNCIL in writing the basis of its request,
- (2) State with particularity the efforts made by the developer to engage the Host Community and the efforts to reach accord on a Community Benefits Agreement, and
- (3) Document how the Developer will seek to implement the purpose of this Ordinance to provide Community Benefits.

(c) Within 30 days of the request for exemption from the Developer, the Facilitator shall submit to the clerk of the CITY COUNCIL a written report for the reasons that negotiations reached an intractable impasse.

**SECTION EIGHT. City as Third-Party Beneficiary to Development Agreement.**

A Community Benefits Agreement under this Section shall include a provision that the City is an intended Third Party Beneficiary and as such the City shall enforce the Community Benefits Agreement. Any Development Agreement shall not preclude, prevent, or otherwise limit the Host Community Committee or any member thereof from having standing to enforce a Community Benefits Agreement. This subsection shall not be interpreted to change, alter, or diminish the legal and equitable duties, rights, and remedies of the parties to the Community Benefits Agreement.

**SECTION NINE. Penalties for Noncompliance and Enforcement.**

The provisions of this Ordinance are prescriptive in nature, and are set forth as required conditions to request, provision, and receipt of Public Support for Investment for Tier 1 Development Projects, Tier 2 Development Projects, and High Impact Development Projects. Material failure to comply with the provisions of this Ordinance may result in denial, suspension, termination, and revocation, or withdrawal of Public Support for Investment. Except when obtained through substantial and material misrepresentation or fraud, an ordinance or a resolution of the CITY COUNCIL approving the Public Support for Investment shall be evidence of compliance with the provisions of this Ordinance, and thereafter remedies shall be limited to enforcement of the Community Benefits Agreement and/or Development Agreement.

**SECTION TEN. Severability Clause.**

The provisions of this Ordinance shall be severable. In the event that any provision of this Ordinance is found by a court of competent jurisdiction to be unconstitutional, the remaining provisions of this Ordinance are valid unless the court finds the valid provisions of this Ordinance are so essentially and inseparably connected with, and so dependent upon, the void provision that it cannot be presumed that the CITY COUNCIL would have enacted the valid provisions without the void ones or unless the Court finds that the valid provisions, standing alone, are incomplete and incapable of being executed in accordance with the legislative intent.