



PARTNERSHIP
for
Working Families



Delivering Community Benefits through Economic Development:

A GUIDE FOR ELECTED AND APPOINTED OFFICIALS



Major economic development projects and infrastructure investment can present both tremendous opportunities and significant threats for communities and residents. Using a community benefits approach, as a local government official you have powerful tools available to ensure that these projects provide the greatest social, economic and environmental benefits while also not harming surrounding neighborhoods.

In short, *community benefits* are assets available through economic development that meet real community needs. Examples include community access to living wage jobs, affordable housing, health and community services and open space.

This guide describes what you can do as a local government official to help advance community benefits. The approaches discussed here cover the spectrum from long range planning and policy to actions you can take with regard to individual projects and investments. The guide focuses on the following five core strategies:

- Demand strong community benefits in government agreements with developers;
- Encourage negotiation of private community benefits agreements between developers and community coalitions;
- Enact ordinances and policies establishing baseline community benefits for future projects;
- Incorporate community benefits into land use planning and policy; and
- Convene key stakeholders to reach agreement on community benefits principles for future projects.

The Community Benefits Law Center and the Partnership for Working Families have written extensively about the community benefits approach to development. For information about that approach, including specific information about a variety of benefits that might be included in major projects, visit www.forworkingfamilies.org/campaigns/CBA.

Each of these strategies can contribute to delivery of community benefits, and each has limitations as well. The right approach in each situation will depend on political context, the specifics of proposed projects, community concerns, and many other factors. For each strategy, this guide lays out when to use it, examples of the strategy in practice, issues that require your special attention as an elected or appointed official, and legal considerations.



DEMAND STRONG COMMUNITY BENEFITS IN GOVERNMENT AGREEMENTS WITH DEVELOPERS AND IN CONDITIONS PLACED ON PROJECTS.

Virtually every large development project involves a lengthy, complex negotiation between a public entity and a developer. This negotiation will result in legally binding determinations of most of the important aspects of the project, including:

- What the developer or prime contractor is required to build, and what else it is permitted to build;
- What support the public entity will provide to the project, such as land sale or lease, tax credits, cash subsidy, project financing, infrastructure support, relaxation of land use controls (e.g. through variances, zone changes, density bonuses); and
- What community benefits the developer and any its contractors and eventual tenants will provide, such as local hiring, payment of living wages, construction or preservation of affordable housing, open space, etc.

The results of negotiations over community benefits can ultimately be reflected in several kinds of documents, including contracts with developers and conditions placed on the project during the land use approval process. As an elected or appointed official, you may have a very significant role in shaping those contracts and conditions. You can ask for and work to include community benefits.

When to Use this Strategy



This strategy is particularly effective when the local government is a participant in the project and has a contractual relationship with the developer (for example, because the local government will lease land to the developer on which the project will be built, or provide direct financial assistance). In that setting, the local government has a relatively free hand to negotiate for community benefits terms. Local governments face more legal constraints on their actions when their only relationship to the project is as a land use regulator placing conditions on project approvals. (This issue is discussed in more detail below.) That said, as an elected or appointed official, you should demand that every project deliver strong community benefits, while understanding the framework of what kinds of benefits you can demand in particular circumstances.

Examples of the Strategy in Action

Many agreements pertaining to large development projects have included some community benefits requirements. One recent example comes from Oakland, CA, where the Jobs Policies for the \$800 million redevelopment of the Oakland Army Base established requirements for local hire, disadvantaged hire, living wages, limitations on use of temp workers, and community oversight and enforcement. The Jobs Policies resulted from extensive work between city staff, city councilmembers and a broad range of community stakeholders. The policies were included as terms of the Disposition and Development Agreement between Oakland and the project developer and made binding on project contractors and tenants. The city and community groups also entered into a cooperation agreement under which the groups agreed to support the project in exchange for assurances about the delivery of community benefits.



Key Points of Focus for Public Officials



- ▶ **Enable Extensive Community Involvement.** Actually delivering the right set of benefits to communities requires substantial community involvement. There are several ways that you can bring community into the process to achieve optimal results.
 - **Front End Input.** As a local official, you can and should receive input from a wide range of stakeholders regarding community priorities related to development. Community residents and workers and groups that work with them provide a critical source of input and legitimacy around measures intended to benefit their communities. Engaging with these stakeholders as early as possible also promotes transparency around the project.
 - **Commitments to Community.** Local governments can enter into cooperation agreements with community groups that protect those groups' interests in the delivery of community benefits included in government agreements with developers.
 - **Ongoing Community Involvement.** Often the *community involvement* phase of a process is at the front end, but the final deal (including many of the community benefits) is negotiated late in the day. Make sure you have a framework in place for ongoing community involvement, and are willing to create a process for the community input up until the final deal is cut.
 - **Community Oversight.** Agreements can be used to establish a monitoring and oversight committee, with community membership. There are many ways to structure such committees, from purely advisory bodies to ones having true enforcement power.
 - **Community Enforcement.** Elected and appointed officials are often rightly concerned that future administrations may not be as committed to enforcing community benefits commitments. Community groups and individuals can help ensure implementation and enforcement, if given the power. Living wage measures routinely provide direct enforcement rights to covered workers. Similarly, some affordable housing requirements provide enforcement rights to individuals living in rent-restricted units. In legal terms, these are *third-party beneficiary* provisions, and local governments can include them in contracts with developers or in conditions imposed on projects.

- ▶ **Insist on Effective, Enforceable Measures.** Even though it can feel like an accomplishment just to put some community benefits language in an agreement, the devil is often in the details. Merely aspirational standards and loopholes can render good intentions completely ineffective. As a public official, you can and should make clear to staff, negotiators and the developer that community benefits commitments are just as important as other deal points for the public entity, and give sufficient attention to that aspect of their negotiations with developers, using concrete input from stakeholders. More specifically, you can:
 - *Include frequent reporting requirements*, with reports made publicly available;
 - Include a statement that parties with community benefits responsibilities will *provide any information* requested by the public entity that is relevant to determining compliance;
 - *Specify concrete consequences* for noncompliance, such as liquidated damages, termination of contracts, and so forth;

- *Avoid weasel words that undermine real implementation, such as “good faith efforts,” “to the extent feasible and practicable,” “commercially reasonable efforts;” and*
- *Make sure you know who (i.e. what agency or entity) is responsible for enforcing the agreement, and that they have the resources and capacity to carry out that task.*

► **Be Prepared to Adjust to the Realities of Projects and Politics.** Not every project or political setting will easily permit inclusion of a complete package of binding community benefits terms in a single government agreement. Some large development projects obtain approvals in phases, and it may not be clear what the project will contain or what the developer can commit to up front. It is, of course, best for all community benefits to be finalized as a package prior to the initial project approvals, allowing the community and the developer to have clear expectations about what the project will deliver. But where this isn't possible, you should be prepared to determine whether any specific community benefits that depend on future project phases that are not yet defined can be effectively addressed in the context of future approvals.

Legal Issues

► **Community Benefits Included in Project Conditions.**

The June 2013 U.S. Supreme Court decision in *Koontz v St. John's River Water Management District* makes clear that local government conditions placed on a development project on an ad hoc or adjudicatory basis as a part of the land use approval process must have an essential nexus with and rough proportionality to the impact of the project that the condition is intended to address. This requirement



is often referred to as the *Nollan/Dolan* test based on the court decisions establishing the requirement. The requirement applies to monetary conditions like affordable housing fees as well as non-monetary conditions like the provision of public space in the project. Public officials seeking to advance community benefits through the land use approval process should consult with counsel to ensure their efforts will survive legal challenge.

The requirement does not apply to situations in which the government is in a contractual relationship with the developer, as when the local government leases land or provides subsidy for the project and wants to include community benefits measures in the lease or subsidy agreement.



ENCOURAGE NEGOTIATION OF A PRIVATE COMMUNITY BENEFITS AGREEMENT BETWEEN THE DEVELOPER AND A COMMUNITY COALITION.

A private community benefits agreement (CBA) is a legally-binding contract between a developer and a set of community-based organizations; the public entity is *not a party to a private CBA*.

Under this type of agreement, the developer typically agrees to provide specified community benefits if the proposed project is approved and built, and the community signers typically waive any legal claims regarding governmental approval of the project and agree to provide support for (or to refrain from opposing) project approvals. Community groups may also make other commitments, like facilitating the provision of community services or outreach.

Effective CBAs produce win-win outcomes, improving a project's community benefits to the point where it receives broad support, and providing developers with legally-binding support commitments and claims releases from credible community representatives. There are numerous examples of CBAs that were negotiated voluntarily by developers and community groups, resulting in projects with strong community benefits commitments and for which governmental approval was met with strong public commendation and support from a wide range of community stakeholders.

The traditional land use process often doesn't include space or opportunity to talk about or address issues that community members – and elected officials – care about the most. Everything from the structure of formal land use approval to legal constraints on government action work against good dialogue and solutions. But when the community and developers negotiate privately, outside of the government process, they can address a full array of needs and concerns. In this sense, negotiation of a private CBA offers a valuable alternative to the traditional land use approval process.

When to Use this Strategy



Private CBAs offer a means of supplementing government conditions on project approval. Thus, a private CBA can be especially useful when community stakeholders demand things that can't be provided through governmental processes. A private CBA may also function like a settlement agreement and create a negotiated solution where there are credible legal challenges to the project. Winning a CBA can strengthen the voice of community groups and create a culture of community involvement in economic development decisions, which in turn can help you in your efforts to advance community interests.

There may also be situations where it becomes clear that the conditions are not present that will allow for a strong private CBA. For example, community groups may lack the necessary leverage or capacity, or simply have opted not to put in the resources for a CBA campaign. The other strategies set forth in this guide provide options for local officials who need to play a more substantial role in ensuring strong community benefits on major projects.

Examples of this Strategy in Action

In April 2013, the Kingsbridge Armory Redevelopment Alliance (KARA), a broad-based coalition of community organizations, entered into a comprehensive CBA regarding the redevelopment of the Kingsbridge Armory in the Northwest Bronx. The project, an ice sports center, will include nine hockey rinks, a 5,000-seat arena and a 50,000-square-foot community space. Shortly after announcement of the CBA, the developer who had entered into the agreement was selected by the City of New York to build the project.

Under the CBA, the developer agreed to:

- Living wages for all workers in the project;
- Targeted and local hire for construction and operations jobs;
- More than \$8 million in contributions to a community fund;
- A grant program for local businesses that employ large numbers of local workers;
- Local contracting, M/WBE utilization, and local procurement requirements;
- Extensive green building measures and community consultation on environmental issues;
- Priority community access to the project's athletic facilities; and
- Formal structures for community-based oversight and enforcement of CBA commitments.



Kingsbridge provides an excellent example of the kind of comprehensive and effective solutions that can come about through a private CBA. It is also worth noting that the actions of local officials helped set the backdrop for negotiation of the CBA. A prior developer of the same site refused to agree to community benefits demands after extensive community work. In part on that basis, the City Council declined to approve the prior developer's proposed project.

Key Points of Focus for Public Officials

Given the many successful examples and the widespread interest in CBAs, many public officials would like to promote the use of private CBAs as large projects move through the development process. As an elected or appointed official, you can take several steps to maximize the positive outcomes of private CBA negotiations. These steps allow elected officials strike the right balance between promotion of CBAs and direct involvement in the CBA process.

- ▶ **Keep All Parties Informed.** You can provide a vital service by making sure community representatives have all the details about the proposed project as it moves through the process. Community representatives need this information in a timely manner in order to negotiate a CBA and participate effectively in public hearings. Effective, thorough CBAs take time to negotiate. If important details are released only just prior to an approval vote, there will likely be no time for strong negotiation or for good compromises to emerge. Instead, late release of details generally leads to a request for a delay in approval votes, and tough decisions for you.



- ▶ **Advance Community Interests, Don't Create Conditions of Approval.** Expressly making a developer's entry into a private CBA a condition of project approval may create significant legal risks for the CBA (see the discussion of *Community Benefits Included in Project Conditions* above). However, you may of course take community views into account in considering major land use decisions. You can and should make clear to developers and the public that you will heavily weigh the community's perspective in deciding whether to support a project, including projects where the developer and community groups are negotiating a private CBA.
- ▶ **Allow Community and Developer to Freely Negotiate.** You may be understandably tempted to facilitate, or give structure to, or even get directly involved with CBA negotiations between community groups and developers. Yet such involvement can actually hamper the process, put you in difficult political positions, and create legal risks for any resulting private CBA.
 - *Allow the Parties to Self-Select.* The CBA process rewards community groups with credibility and capacity, because those are the parties with whom the developer has the greatest incentive to negotiate. When public officials start making decisions about which groups are at the table, it leads to difficult questions about legitimacy and inclusion and can undermine community leverage in negotiations. However, you can provide a service by sharing your views with the developer about which community representatives or coalitions are truly representing community interests (as opposed, in particular, to their own financial interests).
 - *Enable Organic Negotiation.* Many public officials who want to see community benefits have contemplated requiring CBAs, or at least CBA negotiations, for major projects. Unfortunately, this well-intentioned step may undercut the basic goals of CBAs and lead to hollow negotiations and weak agreements. It's worth noting that none of the private CBAs that have delivered broad community support for proposed projects resulted from formal government requirement or initiation of a CBA process. In contrast, there has been strong public criticism of several CBAs that resulted from processes in which public officials used a heavy hand.
- ▶ **Continue to Press for Community Benefits in Project Conditions and Government Agreements.** While a private CBA can be of tremendous value in improving a project's community benefits commitments, it does not supplant the local government addressing community benefits issues in its own agreement with the developer. A public entity is responsible to a wider range of stakeholders than any single group or coalition. A private CBA supplements – but does not replace! – a public entity's negotiation of community benefits in its agreement with a developer or in conditions it imposes on the project.

Legal Issues

► **In Some Circumstances, a CBA May Be a Condition of Approval, Subject to Legal Constraints.**

One issue the Supreme Court did not squarely address in its decision in *Koontz* is at what point a local government's demands become *conditions* to which the *Nollan/Dolan* standard (discussed on page 5) applies. Local governments regularly and extensively discuss with developers features they would like to see in a project, although only some of those features may ultimately be memorialized as formal conditions of approval or project components. Because of the Court's lack of clarity on this point, and until lower courts have a chance to weigh in, you should be aware that discussions about CBAs for projects where the government is not using its contract power (such as through a lease, subsidy agreement or development agreement) may create a risk of legal challenge to any resulting CBA as a project condition that does not satisfy the *Nollan/Dolan* test.



ENACT ORDINANCES AND POLICIES ESTABLISHING BASELINE COMMUNITY BENEFITS FOR FUTURE PROJECTS.

Lots of elected leaders who have been through challenging community benefits processes around individual projects are finding real value in setting a community benefits baseline for all projects. All the preceding approaches assume you are negotiating case-by-case. But as a public official, you can help establish baseline law or policy that sets minimum standards around issues of common concern, such as local hiring, local contracting, job quality, or affordable housing, to name a few.

In many places, such measures may be a logical next step after ordinances establishing wage or hiring requirements for government service contracts or public works construction contracts, and simply expand coverage to reach publicly-subsidized development projects or other projects where the government has a contractual relationship or proprietary interest. Many community benefits policies cover projects receiving public subsidy over a certain dollar threshold. Some policies cover projects over a certain size that require certain types of discretionary approvals, whether or not they are subsidized.

Public entities have adopted community benefits policies establishing requirements for local hiring, living wages, affordable housing, local business utilization, and other community benefits. Community benefits go beyond simple mitigation of impacts of a project (like traffic or utility impact mitigation fees), instead entailing affirmative benefits to neighborhoods and people, justifying public subsidies and/or discretionary approvals of large projects. More consistent standards made possible by such policy also offer developers greater predictability, allowing them to plan for and build in community benefits expectations.

When to Use This Strategy



One good reason to establish a law or policy for multiple projects is that community consensus has emerged around the need to address a recurring issue with development projects. Such consensus, and the political ripeness of policy, may be apparent when multiple CBAs on major projects address similar issues. This occurred in Los Angeles, where CBAs negotiated on several redevelopment projects paved the way for policies at the City's redevelopment agency addressing affordable housing and construction jobs.

Examples of This Strategy in Action

In January 2012, the Los Angeles County Metropolitan Transit Agency adopted a Construction Careers Policy and master Project Labor Agreement with targeted hiring measures. The policy and PLA will apply to projects in a 30-year, multi-billion dollar transit build out, generating over 23,400 construction jobs in the first 5 years. The policy and PLA set aside 40% of these jobs for residents of high-poverty communities and low-income individuals with multiple barriers to employment, while ensuring high quality training and decent working conditions and wages for all workers on the projects.



Local policy can also address multiple issues in economic development. In 2004, the Milwaukee County Board of Supervisors adopted the Park East Redevelopment Compact, attaching standards and criteria for proposals to develop 16 acres of previously undeveloped prime real estate owned by the county. The compact requires developers to pay prevailing wages, and favors proposals that include affordable housing, contracting with disadvantaged business enterprises, training and apprenticeship opportunities, green building principles, and that benefit companies and workers from Milwaukee County.

Key Points of Focus for Public Officials

Community benefits policies require the same close attention to detail and collaboration with community that effective government agreements and conditions require. Inadequate planning and resources for implementation, bad drafting, inadequate monitoring and reporting systems, and limited enforcement rights can all undercut hard-won policy victories. Involvement of community stakeholders in policy development and implementation can go a long way toward avoiding these problems.

- ▶ **Capacity for Implementation.** Having the necessary buy-in, expertise and resources at the local government staff level is key to effective implementation of community benefits policy. You can help ensure that these elements are in place by working with staff. Even where this isn't possible, it is still important to anticipate and build in methods for meeting the administrative needs of staff implementing community benefits.
- ▶ **Clear, Complete Coverage.** Community benefits policies should clearly state which projects and entities are covered, and provide mechanisms by which obligations may attach to all the intended



parties. For example, a policy setting living wage standards for employees of commercial tenants and service contractors on subsidized development projects should specify how the wage obligations will bind – through contract terms, say – those employers.

- ▶ **Robust Monitoring and Reporting.** Community benefits policies should provide for frequent, accurate reporting of compliance information by covered entities, and should make that information publicly available.
- ▶ **Community Enforcement.** As with negotiation of terms of development agreements, you should pay careful attention to the question of who can enforce community benefits policies. Living wage ordinances routinely give affected workers the right to enforce living wage commitments against covered employers. Similarly, affordable housing policies generally give residents of affordable housing units the ability to enforce affordability commitments. This approach can dramatically strengthen the overall enforcement regime; and its use should be expanded to other types of community benefits, like local hiring and local business utilization requirements.

Legal Issues

- ▶ **Nollan/Dolan May Hamper Application of Community Benefits Ordinances and Policies in Some States.** In many states, regulations of *general applicability*, as distinct from conditions set for particular projects, do not have to satisfy the *Nollan/Dolan* test. If challenged as a *regulatory taking*, these regulations must satisfy a much more nebulous (and less rigorous) test set forth by the Supreme Court in the *Penn Central* case. Thus, in those states, local governments may adopt baseline community benefits laws without having to show a nexus and rough proportionality to the impacts of all projects on which they may be imposed. However, the Supreme Court's decision in *Koontz* has left some attorneys wondering whether all monetary fees imposed on development must satisfy *Nollan/Dolan*, even if imposed as a straightforward operation of a law of general applicability.



- ▶ **Work with Local Counsel to Understand the Legal Parameters on Community Benefits Measures.** Of course, other legal considerations apply to baseline community benefits laws as well. Law or policy that favors particular groups, such as local residents, local businesses or disadvantaged individuals may implicate certain constitutional standards. Local measures that set standards in the areas of job quality or environmental standards may be preempted by federal or state laws addressing the same issue. It is thus important to obtain the guidance of counsel in developing community benefits policies. It is also important to remember that local community benefits laws and policies are in place in cities and counties across the country and that almost any legal consideration can be addressed in a way that advances community benefits goals.

For more information about legal issues related to targeted hiring measures, visit www.forworkingfamilies.org/resources/targeted-hiring-measures-and-privileges-and-immunities-clause



INCORPORATE A COMMUNITY BENEFITS FRAMEWORK INTO LAND USE PLANNING AND POLICY.

Your local government’s basic approach to planning and land use can make a major difference in whether and how economic growth and major investments enable all members of the community to prosper. Cities that plan in advance comprehensively, rather than simply respond to developer-driven projects, are better positioned to ensure that development benefits all facets of the community, including those who are low-income. Comprehensive planning also gives communities a venue to engage in a real dialogue around how they want “growth” in their particular communities to look and to bring a long-term neighborhood vision to the table early enough for that vision to be included in a meaningful way. Many cities now utilize comprehensive planning to foster successful, sustainable, and shared growth.

There are a number of tools available to municipalities that want to engage in comprehensive planning in a way that helps realize community benefit. Cities can set a community benefits frame around development early in the process and support public participation, by, among other things, requiring developers to produce community impact reports assessing the impact of their project on the local community. Cities can further use the zoning code, regulatory incentives and land value capture methods to enhance their leverage in seeking community benefits. Finally, cities can even directly incorporate community benefit requirements into land use controls such as specific plans and community plan overlay ordinances. The structure of these tools and how a city can use them is explained below.

- **Requiring Community Impact Reports.** Requiring developers to provide community impact reports (CIRs) can enhance the land use process by ensuring that useful information about the true value of a project is available to everyone. In a community impact report, the developer, sometimes in partnership with community and government, must accurately describe the overall fiscal impact of a project, as well as the number, type and quality of jobs the project will create, the number of affordable housing units the project will include and other indicators of the project’s impact on the neighborhood. The results of such a report can provide a basis for well-informed public debate about the merits of the proposed project, and can provide high road developers a venue in which to highlight the benefits of the proposed project.
- **Using Regulatory Incentives and Land Value Capture Mechanisms to Enhance Community Benefits.** Cities can use their zoning and regulatory schemes to incentivize developers to include community benefits in new development. For example, a city may relax certain land use requirements, such as the maximum floor area ratio or minimum on-site parking, in exchange for the inclusion of community benefits such as affordable housing, park space, or targeted hiring.

One well-known version of this approach is inclusionary upzoning. Cities across the country have engaged in upzoning to allow developers to build taller buildings, create greater development density or undertake residential development in what were formerly industrial or commercial zones. Many local governments have used upzoning to help address the shortage of affordable housing. According to a survey from the Center for Housing Policy, many of the over 500 mandatory or voluntary inclusionary housing policies in place nationwide are linked to inclusionary upzoning.¹

Cities are also using land value capture tools to support their efforts to advance community benefits. Land value capture mechanisms allow increases in private land values generated by a city's investment in infrastructure and development or by changes to the regulatory regime to be "captured" in the form of revenue to finance the cost of public goods or community benefits that have a connection to the development project. For example, a city may measure the increase in the value of the underlying land associated with the grant of a specific economic development plan or upzoning. That increase in value can be used as a basis to negotiate with the developer of the benefitted parcel for living wages, affordable housing or community or cultural spaces. Land value capture schemes allow municipalities to take advantage of moments when the real estate market is appreciating and developers are incentivized to work with city officials to capture the benefits of increases in land value.²

- **Including Community Benefits Provisions in Specific Plans, Overlay Zones and Other Land Use Controls.** Cities have continued to develop neighborhood or even sub-neighborhood level land use plans and controls to help guide development. Customarily, these tools have focused on traditional development subjects, such as building envelope and project design, traffic flow, and project type. Increasingly, however, local officials have sought to use these mechanisms to incorporate measures that advance community benefits of the type more typically included in CBAs, government agreements, or citywide policy. Among the planning tools used by local government for this purpose are specific plans and Community Plan Implementation Overlays (CPIOs), which give government officials and community and neighborhood stakeholders the opportunity to memorialize and document both their short and long-term vision for a neighborhood.

When to Use This Strategy



As with Strategy #3, you may be best off pursuing this strategy once it has been shown that a community benefits approach can succeed at the individual project level, and the relevant staff understand and have gotten comfortable with that approach. However, it is also true that efforts to improve long range planning and public participation in transparent government can have their own momentum for reasons unrelated to community benefits. Be prepared that you may find yourself having to force discussion of community benefits into *smart growth* or other land use planning conversations. The Partnership and its affiliates have developed strategies to advance community benefits in land use policy. Don't hesitate to contact our staff and legal team about how to think about these strategies.

Examples of This Strategy in Action

- **Incorporating Community Benefit Negotiations into the Land Use Process.** In 2010, Santa Monica, California adopted the Land Use Element and Circulation Elements (LUCE) as part of its General Plan, which establishes the city's land use, design and transportation vision. The LUCE generally sets a maximum base height of 32 feet, and in some cases, a maximum density or Floor Area Ratio (FAR).³ In order for a development to exceed these base standards, the project is required to incorporate features that will contribute to Santa Monica's "overall social, cultural, cultural, physical, transportation and environmental goals."⁴

The city established three approval tiers tied to the type of development request, its location and level of intensity. Projects that meet applicable requirements and do not exceed the base standards receive ministerial approval. Other projects fall into one of two discretionary tiers, both of which require a developer's application to provide for community benefits in order to receive approval to increase the project's height and/or floor area. In tier three, which covers most major projects, the city negotiates a development agreement, including with regard to the community benefits that will be included in those projects.⁵ The city's list of desired community benefits includes additional on-site affordable housing, additional fees for transportation improvements, and fees for public space and childcare facilities.



Santa Monica also makes use of the land value capture tool as a part of the LUCE process. The city requires developers to demonstrate the enhanced value of the land resulting from any relaxation of land use requirements on a project. The developer's analysis is released to the public and the public is invited to provide comment on the pending proposal. This land value capture data provides the city with additional leverage when negotiating over the inclusion of community benefits into development agreements.

The value of a program like the one implemented by Santa Monica is that it puts the city in a strong negotiating posture with regard to most major development projects. It further gives local officials a clear sense of the value of the project to the public. However, even with a system like this in place, it's up to you as a local official to negotiate a deal that delivers community benefits. Santa Monica housing advocates have expressed concern that the system has not created a sufficient supply of affordable housing in the face of increasing unemployment and stagnant wages. This has resulted in long waiting lists for the few affordable housing opportunities that are available for middle and low income families.

- **Fostering Transparency in Land Use Decisions.** In October 2012, the City of Santa Ana, CA adopted a *sunshine ordinance* with the goal of improving information dissemination to the public, enhancing transparency around major government functions like planning and budgeting, and integrating public participation in local government discussions of land use, economic development projects and other city initiatives.⁶

In the context of land use proposals, Santa Ana requires that all development projects sponsored by the city and all private development receiving some form of *public subsidy*, including but not limited to a grant, rent subsidy or a lease of city-assembled land, must hold a community meeting no later than 20 days after submitting an application for administrative site plan review.⁷ The purpose of the community meeting is to examine the merits and drawbacks of a proposed development plan. Four days following the meeting, the developer must submit an affidavit to the city that the community meeting was held and provide the minutes of the community meeting.

Advocates in Santa Ana note that the community meeting process has made economic development more transparent and clearer to the public and given advocates improved access to information, allowing them to better inform the public about the impact of a particular economic development project.



Key Points of Focus for Public Officials



- ▶ **These Approaches Take Work.** Using land use policies to help advance community benefits requires careful planning and strategic coordination with city planners and commissioners. Just like in any other context, poor drafting of land use policies, inadequate implementation, poor reporting and limited enforcement can undercut long-term results. Thus policymakers and city officials should be ready for what might be a resource-intensive process if the long-term goal is to incorporate community benefits into land use laws and regulations.
- ▶ **Studies Can Help.** Localities may commission nexus and feasibility studies to support adoption of a significant new land use policy. These studies, where done well, can help preempt or counter arguments from opponents regarding the impact of policy on economic development. Such analyses can also provide details regarding what a community is likely to gain or lose through a particular development project, including but not limited to net gain or loss of housing units, jobs and other services.
- ▶ **Developing In-House Capacity.** It will take a strong team that is bought in to the mission to effectively develop and implement complex and effective planning and land use plans and policies. As a policymaker, you may well need to lead an internal effort not just to draft policy, but to ensure that your locality has the people and systems in place to drive that policy forward. For example, you will likely want to have in-house capacity for expert review of project economic analysis and feasibility studies. Similarly, you may want stronger coordination between land use planning and economic development operations within your locality.

Legal Issues

Undertaking appropriate studies in support of new land use policies can help build a sound legal defense for those policies. However, getting the right study with the right content requires careful effort and close coordination with legal counsel. Local officials sometimes assume that a *nexus study* is a necessary step on any venture into new, innovative or controversial planning policy. In fact, it might be or it might not be. It might even be detrimental to the city's legal defense. Such studies have come under increasingly aggressive legal attack from opponents of community benefits measures, so it is particularly important to work with counsel to get it right.



CONVENE KEY STAKEHOLDERS AND REACH AGREEMENT ON COMMUNITY BENEFITS PRINCIPLES FOR FUTURE PROJECTS.

Elected leaders in several communities have brought together stakeholders to reach agreement on community benefits principles in order to establish a framework for future projects. By achieving written agreement on community benefits concepts ahead of time, this approach is intended to minimize contentious battles as new concepts or circumstances arise, and establish agreed-upon political and policy baseline between stakeholders on key issues.

Processes for this type of agreement can vary, but they generally involve an extensive series of meetings with community, labor and business representatives, convened and facilitated by one or more elected officials and their staff members. One should not underestimate the sustained effort and resources it takes to drive agreement on anything other than the most general principles and uncontroversial concepts.

Documents resulting from this type of process have sometimes been termed “community benefits agreements,” although they should not be confused with legally enforceable private CBAs. If involved with this type of process, you should keep a firm understanding that negotiations are essentially aimed at a political outcome, relevant to future discussions, rather than final or enforceable commitments. When written documents are entitled “community benefits agreements” or something similar, and signed by many parties, they can take on an official air that may mislead parties and the public into thinking that agreed terms are legally binding with regard to future projects. Such misunderstanding can have the same negative consequences as the adoption of an unenforceable CBA for a major project: once the rubber hits the road those who thought that community benefits commitments were real will be rightly outraged to learn something different.

When to Use This Strategy



Because of the risks involved, and because this strategy doesn't lead to binding measures, we think of it as a fallback to the other strategies discussed in this guide. It may be an option for situations in which there are a series of anticipated projects with a common set of stakeholders, but some obstacle stands in the way of creating more effective standards. That obstacle might be strong disagreement over key details, or it might be wide variation in the projects to which the standards will apply. This consensus approach can drive agreement on key issues, enable public discussion and awareness of important community benefits issues, and allow for thorough consideration without the pressure and contention present when discussions are driven by a specific proposed project. As long as participants recognize the need to put effort into applying resulting principles to future projects, and negotiating the details of binding measures, this type of process can make a major contribution to community benefits discussions in a city.

Examples of This Strategy in Action

In Portland, Oregon, Emerald Cities Portland led a process involving key stakeholders and city officials to create a template *Community Benefits Agreement* that addresses job quality, job access and contracting with disadvantaged businesses on construction projects in the city. The template agreement was adopted by the city council through a resolution encouraging its use on city projects and other projects. The agreement has to be modified for each project, but the model language is already in place. The agreement has been used on two city public works projects, and stakeholders are working to put it in place for other projects, including wholly private projects.



Key Points of Focus for Public Officials



As a public official, it is important for you to make sure that the public and affected parties understand exactly what this strategy means in real terms. The intent may be to essentially create model language for a wide range of projects. Or it may be to complete a first step in a process of developing binding language for a specified set of projects. Whatever the intent, you should convey it clearly.

Legal Issues

This strategy results only in a non-binding set of measures or concepts. However, all of the legal issues discussed in this guide may come into play when those measures or concepts are included in project conditions, government policy or binding agreements. It will be important to consider these legal issues even in formulating consensus so that ideas that are legal non-starters can be identified as such before they gain too much momentum.



CONCLUSION

We applaud you for your interest in making a real and significant difference for the communities you serve. Your work brings you within the movement of community benefits leaders in cities and counties throughout the country who are transforming economic development so that it benefits everyone. As this guide shows, there are many concrete steps you can take to move a community benefits agenda. Those steps include seeing (and respecting) where other leaders need to do their part and being mindful of legal pitfalls that could hurt your cause.

The Partnership for Working Families and the Community Benefits Law Center both work regularly with local officials on community benefits efforts. We want to see you succeed! Please don't hesitate to contact us.

If you found this guide useful, visit our website to access an electronic version that includes links to additional resources and examples at:

www.forworkingfamilies.org/resources/publications/cba-elected-officials

¹ Robert Hickey, "Inclusionary Upzoning" is Gaining Ground. Here's Why., Rooflines: The Shelter Force Blog, October 10, 2014. /http://www.rooflines.org/3918/inclusionary_upzoning_is_gaining_ground_heres_why/; See also Robert Hickey, Lisa Sturtevant, Emily Thaden, Achieving Lasting Affordability through Inclusionary Housing, Lincoln Institute of Land and Policy (July 2014), available at http://www.lincolinst.edu/pubs/2428_Achieving-Lasting-Affordability-through-Inclusionary-Housing;

² Nico Calavita, Land Value Capture for Affordable Housing, Presented at the 2013 National Conference on State and Local Housing Policy (2013) available at <http://www.nhc.org/media/files/Solutions2013/IC-3.Calavita.pptx>.

³ 2010 Land Use and Circulation Element (LUCE), City of Santa Monica Planning & Community Development, City of Santa Monica available at <http://www.smgov.net/Departments/PCD/Plans/2010-Land-Use-and-Circulation-Element/>.

⁴ Dyett & Bhatia Urban and Regional Planners, Santa Monica Zoning Ordinance Update Community Benefits and Incentives: Issues, Options and Case Studies, August 2012, available at <http://www.smgov.net/uploadedFiles/Departments/PCD/Zoning/Community-Benefits-Issues.pdf>.

⁵ 2010 Land Use and Circulation Element (LUCE), City of Santa Monica Planning & Community Development, City of Santa Monica available at <http://www.smgov.net/Departments/PCD/Plans/2010-Land-Use-and-Circulation-Element/>.

⁶ Santa Ana, CA., 2-153(b) (2013). Ordinance No. NS-2843. Full text available at http://www.ci.santa-ana.ca.us/documents/sunshine_ordinance.pdf.

⁷ Santa Ana, CA., Sec. 2-151(a)-(b) (2013). Ordinance No. NS-2843. Full text available at http://www.ci.santa-ana.ca.us/documents/sunshine_ordinance.pdf.

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The Partnership for Working Families is a national network of leading regional advocacy organizations who support innovative solutions to our nation's economic and environmental problems. Together we are a voice for working families, promoting policies that create quality jobs and thriving, healthy communities. We advance innovative campaigns, provide issue specific resources and share winning strategies and lessons with allies dedicated to creating a new economy that creates opportunity for all. The Partnership and affiliates share the goal of developing powerful local organizations that pursue and win campaigns that connect and enhance worker and community organizing, expand democracy and combat poverty by raising job standards and addressing the needs of low-income communities. We share a commitment to building labor and community power and base-building, developing new leaders and organizing strong regional and national alliances based on mutual self-interest and respect. We maintain a commitment to racial justice and believe that regional organizing around power-building agendas can help transform the poverty and inequality that are endemic to metropolitan regions.

