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Date: May 3, 2017 at 11:25:31 AM EDT

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Cc: boardofaldermen@somervillema.gov

Subject: Changes to the Community Benefits Committee Ordinance

May 3, 2017

To the members of the Legislative Matters Committee:

We respectfully submit the following as suggested changes to the Community Benefits Committee ordinance presented by the mayor on April 13. **Our proposed changes aim to do two things: strengthen the independent neighborhood council, and ensure that the developer will negotiate a binding community benefits agreement (CBA) with the community.** If these two objectives are not accomplished, the ordinance does not deliver what we as a community and you as a board have been asking for.

The original ordinance does not include any mechanism for negotiation of a CBA directly with a developer for the benefits that are most needed to address displacement. These things include more affordable housing units, living-wage jobs and training opportunities for local residents, a right to return for displaced businesses, and a multi-purpose community center. A needs assessment should be undertaken to understand the true cost of these benefits; LOCUS did not complete a needs assessment during their process. Some of the benefits require upfront investment or consistent funding, not the slow trickle of resources promised by the development covenant.

As SRA member Anne Tate said at the April 27 SRA meeting when she voted against approval of the MLDA, if US2 is not prepared to commit resources to things negotiated in the CBA beyond the \$1.60/sf negotiated in the covenant, then the CBA is not worth much. Consultant Barry Abramson claimed that there is no money left on the table for additional contributions by US2, and US2 confirmed this at the Land Use Committee meeting on May 2. We are not satisfied with this assessment, since no one in the community has been able to view US2's financial documents. **We want an explicit commitment from US2 that they are prepared to commit resources to a CBA. Otherwise, it can hardly be said that they are prepared to negotiate "in good faith."** We have lost confidence in the City's ability to run a benefits process that prioritizes the community's needs over the developer's interests.

We understand that the ordinance is based on the Community Preservation Act, which has been successful in Somerville. However, the CPA committee is supported by existing state legislation, and deals with a larger pool of resources (\$10.7 million since CPA was approved 5 years ago). By contrast, this ordinance creates an unnecessarily

complex process to oversee only \$3.6 million over the 30-year course of US2's development.

With that in mind, we respectfully propose the changes outlined in the attached document.

Sincerely,

Union United coalition

DRAFT
CITY OF SOMERVILLE
ADMINISTRATIVE ORDER/ORDINANCE NO. 2017-____
IN THE BOARD OF ALDERMEN: _____
SOMERVILLE ~~COMMUNITY~~ BENEFITS COMMITTEE

Be it ordained by the Board of Aldermen, in session assembled, that Article __, Section __ of the Code of Ordinances of the City of Somerville, is hereby amended by insertion of the following:

I. Purpose

It shall be the policy of the City of Somerville to require, wherever feasible, proportional community benefits as a condition of significant public support for development in the form of subsidies, tax abatements, investments in infrastructure, below-market priced land, or other enhanced public resources.

II. Definitions

“Applicant” shall mean a community based organization, association, or other entity applying to the city to provide or undertake a program of community benefits subject to a grant agreement ~~or~~, contract ~~or~~ **Community Benefits Agreement**. For purposes of this chapter, the city may join with one or more applicants in submitting a funding request hereunder. ~~A neighborhood council may not be an applicant hereunder.~~

“Community Based Organization” shall mean a non-profit entity registered pursuant to 26 U.S.C 501(c)(3) organized to undertake, administer, provide or perform one or more community benefits.

“Community Benefits” shall mean the provision of programs or services that directly benefit Somerville residents including but not limited to (i) ~~fostering the creation of new jobs and local hiring programs in Somerville;~~ (ii) ~~maintaining and promoting local businesses with a focus on minimizing displacement due to the development;~~ (iii) ~~creating multi-functional community spaces, including green space;~~ (iv) ~~providing open technologies, connectivity, and policies to support a shared innovation platform;~~ (v) ~~improving quality of life by bolstering social capital and community resilience;~~ (vi) ~~preventing displacement of low-income people in Union Square resulting from speculation and development and~~ (vii) ~~such other matters as the neighborhood council may deem appropriate.~~ **human services, the arts, cultural enrichment, sustainability measures, public health, preventing and mitigating commercial and residential displacement, housing, educational programs focused on science, technology, engineering, and other areas of community enrichment.**

“Community Benefits Agreement” shall mean a legally binding contract negotiated between a duly recognized neighborhood council or interim neighborhood council and the developer of a High-Impact Development Project.

~~“Community Somerville Benefits Committee”~~ or “Committee” shall mean the committee

established by this chapter and appointed by the mayor subject to board of aldermen approval to identify community benefits needs of the residents of Somerville based on the priorities established by the neighborhood council(s) or neighborhood advisory committee(s) and to solicit and evaluate applications for the provision of said services by qualified applicants in order to make recommendations to the mayor for the allocation of ~~Community Benefits Somerville~~ Benefits Fund for the award of grant agreements or contracts for the provision of said services.

~~“Community Benefits Somerville Benefits Funds” or “Funds” shall mean any funds offered to and received by the City in connection with any agreements entered into with the City by which funds are given to and held by the City to be expended for community benefits or other related purposes. Funds allocated to mitigate development impacts in a specific neighborhood shall be deposited into a neighborhood-specific community benefits stabilization fund sub-account.~~

~~“Funding Priorities” shall mean funding goals recommended by the neighborhood council, or neighborhood advisory committee if no neighborhood council has been recognized by the board of aldermen for that neighborhood, for the expenditure of community benefits funds in Somerville. shall mean funding goals determined by periodic needs assessments to be conducted by the committee and approved by the board of aldermen for the expenditure of community benefits funds in Somerville.~~

“Funding Request” shall mean a proposal by an Applicant to enter into a grant agreement or contract to provide or undertake a program of community benefits consistent with or in furtherance of the funding priorities. A funding request shall not seek community benefits funds for an Applicant’s capital or infrastructure projects or general operational expenses except as otherwise provided herein.

“Funding Recommendation” shall mean the recommendations of the community benefits committee for appropriations of specific amounts from the community benefits stabilization fund or applicable neighborhood-specific fund to implement a funding request(s). Funding recommendation(s) shall be submitted to the ~~board of aldermen and mayor.~~

“High Impact Development Project” means any development project that meets one or both of the following requirements:

- 1) because of the nature of the development and/or the Host Community, is reasonably expected to produce disproportionately high and adverse human health or environmental impacts, including social, esthetic, economic, physical, chemical, or biological impacts, in the Host Community.
- 2) Requires a Coodinated Development Special Permit as defined in the Somerville Zoning Ordinance.
- 3) direct or indirect transfer to the developer of city-owned land parcels or other forms of public subsidies to the developer, including but not limited to tax abatements or grants

Determination of whether a project is a High Impact Development Project shall be made by the Board of Aldermen expressed in a resolution, after a public hearing duly noticed and conducted. The developer and residents of the impacted neighborhood shall be entitled to speak at the public hearing.

“Interim Neighborhood Council” shall mean an open, inclusive, transparent and duly democratic temporary organization with all the characteristics, principles, duties, and obligations of a neighborhood council, as defined herein, which has been duly recognized by the board of aldermen for a period not to exceed the earlier to occur of (a) the formation of a neighborhood council; or (b) six months from the date of formal recognition.

“Neighborhood Advisory Committee” shall mean the advisory committee(s) appointed by the Mayor **and approved by the Board of Aldermen** in the absence of a recognized neighborhood council **or interim neighborhood council** to identify community benefits needs and priorities for a specific neighborhood ~~or neighborhoods or citywide~~. **The Neighborhood Advisory Committee shall, to the extent possible, represent the diversity of the neighborhood and make special efforts to seek out and listen to a broad array of community opinions.**

“Neighborhood Council” shall mean an open, inclusive, transparent and duly democratic organization or non-profit organization recognized by the board of aldermen as representing a particular Somerville neighborhood. In order to be granted official recognition by the board of aldermen, a neighborhood council shall:

(a) Be organized with a corporate purpose ~~to maintain and improve the health, safety and welfare of all Somerville residents and to implement~~ compatible with the goals of the city’s comprehensive plan and the neighborhood plan adopted for the neighborhood represented, ~~along with any other purpose as determined in the neighborhood council’s bylaws,~~ with special attention given to the members of the community for whom quality of life and permanence in the community may be harder to attain, ~~including environmental justice populations, residents facing mobility, age and/or other personal and family challenges, and members of the community at risk of displacement;~~

(b) Clearly define the neighborhood area represented;

(c) Undertake review of and deliberation on planning, zoning, development, community benefits and other material matters of neighborhood oversight and operations, and clearly and openly communicate the results of such efforts to the community, city government and others;

(d) Make special efforts to seek out and listen to a broad array of community opinions with regard to policy and practices that may affect the neighborhood and its residents;

(e) Observe all laws, regulations, and commonly held ethical standards, including recusal of any **board** member who may have a direct or indirect conflict of

interest, whether personal, financial, or organizational. Failure to observe such laws, regulations, and standards may result in revocation of official recognition of the neighborhood council by the board of aldermen, after notice and a public hearing.

(f) be empowered to negotiate a Community Benefits Agreement in good faith with a developer before a Coordinated Development special permit is granted in order to receive funding and support for anti-displacement initiatives beyond the scope of the Somerville Benefits Fund. This shall not prevent the Somerville Benefits Fund from supplementing the initiatives agreed upon in any Community Benefits Agreement.

~~“Neighborhood Council Funding Priorities” shall mean funding goals recommended by the neighborhood council, or neighborhood advisory committee if no neighborhood council has been recognized by the board of aldermen for that neighborhood, for the expenditure of community benefits funds in Somerville.~~

~~“Neighborhood Specific Fund” a sub-account of the community benefits stabilization fund containing monies allocated as mitigation for development in a specific neighborhood.~~

III. *Somerville Community Benefits Committee*

(a) There is hereby established a ~~citywide community~~ benefits committee (“committee”), consisting of nine voting members who are residents of Somerville.

(b) No member shall serve more than two consecutive three year terms. In order to stagger the terms of the members, the initial appointment of one-third of the members shall be for one year; one third shall be for two years; and one-third for three years.

(c) Members of the committee shall serve without compensation and shall be classified as special municipal employees for the purposes of Chapter 268A of the Massachusetts General Laws.

IV. *Announcement of Open Positions*

There shall be a public announcement of any open positions, with at least a three week period for submittal of an application to the mayor. The names and a brief summary describing each candidate’s qualifications shall be posted on the city website for at least two weeks. The members of the committee should include ~~residents~~ ~~citizens~~ who have demonstrated interest in economic development and workforce development, preventing and mitigating displacement of residents and businesses, empowering residents to create and sustain community, and ensuring that developments deliver benefits to the community.

V. *Establishment of Nominating Committee*

(a) Applications to serve on the ~~community-Somerville~~ benefits committee shall be reviewed by a nominating committee. The nominating committee shall consist

of ~~six members~~ ~~three members~~, as follows:

- (1) One member to be appointed by the mayor;
- (2) One member to be appointed by the board of aldermen; and
- (3) ~~Four members of the general public not City employees or currently holding elected or appointed positions, for a term of 3 years, as appointed by the Mayor, subject to Board of Alderman approval. Each Neighborhood Council shall have one representative on the nominating committee.~~

(b) The nominating committee shall make recommendations for committee membership which shall ensure that there is city-wide representation. ~~Ideally, committee members shall have expertise interest in one or more of the following areas: community benefits, preventing and mitigating displacement, finance and development, planning and zoning, open space/sustainability, housing, traffic/engineering, human services, culture and the arts.~~ Committee members shall reflect the diversity of Somerville. The nominating committee shall forward its recommendations for appointment to the mayor. Appointments by the mayor to the community benefits committee shall be subject to board of aldermen approval.

VI. *Election of Chairperson*

The committee shall annually elect one of its members to serve as chairperson and may elect such other officers, adopt procedural rules and regulations and establish any subcommittees as it deems appropriate. A committee member may serve as chairperson for no more than two consecutive years.

VII. *Powers and Duties of the Somerville Benefits Committee*

To carry out its responsibilities under this chapter, the committee shall:

- (1) Identify community benefits needs of the residents of Somerville based on the priorities established by various neighborhood councils or neighborhood advisory committees.
 - (i) ~~The principal vehicle for accomplishing this for the Neighborhood-Specific Funds shall be biannual meetings with each Neighborhood Council or Neighborhood Advisory Committee.~~
 - (ii) ~~At said meeting immediately preceding each annual funding cycle, the Neighborhood Council shall present a plan with their top three priorities (ranked for preference) for neighborhood-specific funding, and the committee shall choose from among those priorities as described below.~~
- (2) Evaluate and make recommendations to the mayor for the award of grant agreements or contracts for the provision or undertaking of community benefits to be paid for from the community benefits stabilization fund consistent with the neighborhood council funding priorities and in furtherance of the funding priorities.
- (3) Establish rules, regulations and guidelines to provide for the proper administration

and implementation of the committee's responsibilities.

(4) Conduct an annual public hearing and additional public hearings as needed to prioritize needs, possibilities and resources regarding community benefits. Subject to and consistent with the funding priorities and neighborhood council funding priorities, the committee shall consider the following guiding principles:

- (i) Fund programs or services that directly benefit Somerville residents.
- (ii) Emphasize neighborhood funding priorities informed by the outcomes of a needs assessment.
- (iii) Consider the impact of development projects on neighborhoods.
- (iv) Consider other public resources allocated to a neighborhood in order to better understand unmet needs and identify gaps.
- (v) Prioritize funding for applicants with a history of promoting collaboration, partnership and collective impact.
- (vi) Establish a transparent, inclusive, and collaborative process.

(5) Develop a standard form of application for funding requests.

(6) Evaluate funding requests for the provision of community benefits.

(i) No less than seventy-five (75%) percent of any funds paid to mitigate development in a specific neighborhood shall be allocated to benefit that neighborhood; provided, however, that the committee may vote to allocate a higher percentage of such monies to such neighborhood, with the balance to be allocated city-wide. Services and programs provided in a specific neighborhood shall be accessible to all eligible Somerville residents.

(ii.) The committee shall accept funding requests from city-wide applicants for disbursements from the city-wide fund.

(iii.) The committee shall prioritize funding recommendations from the city-wide fund in accordance with the funding priorities established by the city-wide needs assessment.

(iv) The committee shall reject funding requests submitted for an applicant's capital or infrastructure projects or general operational expenses, unless such operational funding directly provides for an expansion of the applicant's initiatives. Notwithstanding the foregoing, an applicant's funding request budget may include reasonable overhead attributable to the provision of the program services to be funded.

(v) In subsequent years, if initial community benefits funding priorities have been met, the committee may elect to allow funding requests for renewable grants to

returning nonprofit providers that have an excellent performance evaluation record and programmatic success.

(vi) Funding requests may be used to supplement initiatives negotiated and duly agreed upon in a Community Benefits Agreement.

(vii) For Neighborhood-Specific Funds, the committee shall choose from the top three priorities from each Neighborhood Council plan, selecting one or more and deciding how to allocate for each. If the committee deems all the plan and priorities inconsistent with the guiding principles, the Neighborhood Council shall be notified and given the opportunity to reevaluate and resubmit its priorities. Any further disputes shall be settled in a timely manner by an independent arbitrator.

(7) Conduct a city-wide needs assessment of community benefits funding priorities every five (5) years.

VIII. *Aldermanic Approval of Funding Recommendations*

(a) In order to identify Somerville's most pressing community benefits needs, the board of aldermen shall periodically assess the committee's funding priorities based in part on a needs assessment conducted every five years by the committee.

(b) In each fiscal year, the board of aldermen shall make such appropriations from the ~~Community Benefits~~ Somerville Benefits Fund as it deems necessary for the administrative and operating expenses of the committee, including funds necessary for the city-wide needs assessment to be undertaken by the committee.

(c) After receiving the committee's funding recommendations from the mayor, the board of aldermen shall take such action and authorize such appropriations from the community benefits stabilization fund.

(d) In the event that the committee initially proposes that a project be funded by the community benefits stabilization fund and that initial proposal is rejected or reduced by the board of aldermen, the committee shall be given one opportunity to respond to such actions by the board of aldermen and/or to adjust the scope and terms of any proposed project prior to a final decision by the board of aldermen as to the allocation of community benefits stabilization fund for the given year.

IX. *Recognition of the Neighborhood Council*

At such time as a neighborhood council or interim neighborhood council seeks official recognition, it shall submit to the board of aldermen and mayor copies of any organizational documents, a board membership list showing the community affiliations of its board members, a map delineating the neighborhood to be represented by the council, and such other materials evidencing the council's commitment to the principles set forth above. Upon receipt of such filings from the mayor, the board of aldermen shall hold a public hearing to consider the council's request for official recognition. The board of aldermen shall grant formal recognition to only one neighborhood council for each neighborhood. Upon formal recognition by the board of aldermen, the council shall

receive a stipend to defray its administrative and operating expenses. The amount of such stipend shall be fixed by the board of aldermen but all councils shall receive the same amount. The council shall annually resubmit its credentials to the board of aldermen for renewal of its recognized status.

Concurrently with each such renewal, the board of aldermen shall grant the annual stipend to such council. Each recognized interim council shall receive a one-time stipend equal to an amount equal to one-half the annual stipend.

X. Community Benefits Agreements

Upon submission of a Coordinated Development Special Permit request (or comparable permit request) for a Development Project to the SPGA or its successor, the SPGA shall then forthwith request that a written notice be generated by the City Clerk's office, informing the Neighborhood Council of the proposed project. The following standards and requirements shall apply to providing Community Benefits as a condition of receiving a Coordinated Development Special Permit:

For any proposed High Impact Development Project, the developer shall engage the Neighborhood Council in good faith for purposes of entering into a legally enforceable Community Benefits Agreement between the developer and the Neighborhood Council. The Community Benefits Agreement shall provide for Community Benefits as negotiated by the parties.

The developer shall include a copy of the executed Community Benefits Agreement with the request for approval for the Coordinated Development Special Permit. Violation without good cause shown by a developer shall result in denial of approval for any such Public Support for Investment.

XI. City as Third Party Beneficiary.

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 may, in its discretion, enforce the Community Benefits Agreement. Any Development Agreement shall not preclude, prevent, or otherwise limit the Neighborhood Council or its successors 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.

XII. Penalties for Noncompliance; Enforcement

The provisions of this ordinance are prescriptive in nature, and are set forth as required conditions to request, provision, and receipt of Coordinated Development Special Permit. Material failure to comply with the provisions of this Article may result in denial, suspension, terminate, and revocation, or withdrawal of the Coordinated Development Special Permit. Except when obtained through substantial and material misrepresentation or fraud, the resolution of the SPGA approving the Coordinated Development Special Permit shall be evidence of compliance with the provisions of this Article, and thereafter remedies shall be limited to enforcement of the Community Benefits Agreement and/or Development Agreement.

XIII. Effective Date

This chapter shall take effect upon its passage.

Approved:

President, Board of Aldermen