



Legal Minute

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A Seat at the Table: How Community Groups Can Use CBAs for Concessions from Developers

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What is a community benefit agreement (CBA)?

A CBA is a contract between a developer of a large-scale development project and one or more community organizations that allows the community affected by the development to reap some benefits. CBAs are powerful resources for community groups because they get a seat at the table during the planning and the permit process. CBAs are also legally binding. CBAs have been used to leverage government subsidies to developers for affordable housing, environmental improvements, and living wage requirements for employees working in or on the development. In exchange for the benefits provided in CBAs, community groups promise not to oppose the development and to support proposed projects before government bodies and the community. Some CBAs are also incorporated into a city's agreement with the developer, ensuring that a city or government entity has the legal right to enforce the agreement between the developer and the community.

Giving community groups a seat at the table may face opposition from both developers and city leaders. Developers may be reluctant to negotiate for CBAs because the added cost of providing public benefits ultimately adds to the cost of development. City leaders may also oppose CBAs because leaders may see them as a deterrent for developers to develop and as a detriment to economic expansion in their communities. The organization of a unified broad base of community advocates is the key to the success of a CBA. If a unified group opposes the development, the cost for the developer and the political cost for elected officials increase substantially.

What provisions can be included in a CBA?

The following list provides provisions that could be included in a CBA:

Quality Jobs for Workers - A CBA may include requirements for living wage, worker retention, union positions, local hiring, job training, or responsible contractor provisions.

Community Services - A CBA may include the establishment of a health clinic, childcare center, community/youth center, or park and neighborhood improvement fund provisions.

Environmental Improvement/Mitigation - A CBA may include provisions that ensure that developers fund parks, manage construction and traffic, or mitigate unwelcome impacts from the development.

Affordable Housing - A CBA may include provisions that require affordable housing units, linkage fees associated with development, donation of land for housing, low or no interest housing loans, contributions by the developer to relocation benefits, or responsible landlord policies.

Community Involvement - A CBA may include provisions giving community input in the selection of commercial tenants and the development process in general.

The Basics: How does the CBA process start?

Interested community members negotiate CBAs *before* the development agreement is executed between the developer and the government. Community members identify the impact of a proposed development and begin to organize. These members include residential groups, community organizations, housing and employment advocates, labor unions, and technical service providers who may want to negotiate with the developer for certain benefits. Members weigh the impacts of the development and create a detailed list of ways the development could benefit the community. The time it takes community groups to organize a CBA varies depending on the project.

The Steps: How can a community group develop a CBA?

- 1) **Organize a body of interested community groups and members.** Consider forming a board or coalition of representatives from each group who will serve as spokespersons for interested groups.
- 2) **Create a community development plan.** Develop a plan that details the community's goals for the agreement, the range of projects the community desires, and the level of importance of those projects.
- 3) **Consider how any funding resulting from a CBA should be applied to community projects.** Involve members of the community to develop a consensus on how to fund projects in the community development plan.
- 4) **Negotiate with the developer.** In exchange for supporting the project, negotiate terms relating to job training, mitigating the environmental impact of the development, or hiring requirements for the developer and future commercial tenants of the development.
- 5) **Put the agreement in writing.** Once an agreement is reached, sign a written agreement drafted with the help of an attorney representing the community organizations. If possible, include the CBA into the developer's agreement with the city so that the CBA becomes enforceable by the government entity that is subsidizing the development.
- 6) **Enforce the agreement.** If the developer fails to make good on the promises in the CBA, the community can sue the developer. If the government entity has incorporated the CBA, they can enforce the agreement as well.
- 7) **Implement the benefits provided for in the CBA.** Implementation depends on the CBA. If the benefit is a one-time payment for a neighborhood improvement such as a park, then the board should make sure the park is built. However, if the benefit is hiring a certain number of community residents, as the case is for local hiring programs, the developer may have to actively recruit and interview residents to meet the employment requirement once development begins. The CBA may also include specific implementation provisions.
- 8) **Abide by the terms of the agreement.** Community groups should be ready and willing to comply with the terms of the agreement. If splinter groups or a community dissident opposes the development, these problems can derail the agreement and negate trust.

What are the advantages and disadvantages of CBAs?

ADVANTAGES

Community Involvement - CBAs allow communities to play an active role in shaping the development process in communities. CBAs also make the development process transparent for communities, giving them the opportunity to understand and assess the promises made by developers.

Enforceability - CBAs legally bind developers to the promises they make before development begins, which saves the CBA organizers a great deal of time, energy, and money during and after the approval process.

Efficiency - CBAs provide information and input in the beginning stages of a development.

DISADVANTAGES

Organizational Capacity - Successful CBAs require increased community organizational capacity.

Coalition Conflicts - Community groups must resolve basic structural issues such as which members make up the group or coalition that will represent the larger community body, how decisions will be made, and how competing priorities will be resolved before negotiating with developers.

Legal Expenses - Written agreements and legal documents can be expensive if community groups do not have access to a pro bono attorney.

Conclusion

Each CBA is unique, giving community groups the opportunity to have a voice in shaping a project, tailoring it to the area's needs, and enforcing the developer's pre-development promises. Many communities have utilized or have attempted to utilize CBAs. Although not all CBAs or attempted CBAs have been successful, CBAs are a new, effective tool to obtain mutually beneficial results for communities and developers. A list of resources discussing CBAs is available on our website at www.texasbar.org.