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Community Benefits Agreements

Abstract

Community Benefits Agreements (CBA's) are legally enforceable contracts between community groups and developers in which community groups promise to support the developers in seeking approvals, permits, or subsidies, and the developers promise to provide certain benefits to the surrounding community. CBA's are outgrowths of the civil rights, labor, and community organizing movements. CBA's often represent community-based unionism, where organized labor supports initiatives beyond the walls of the workplace and the collective bargaining agreement.

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COMMUNITY BENEFITS AGREEMENTS

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What are Community Benefits Agreements?

Community Benefits Agreements (CBA's) are legally enforceable contracts between community groups and developers in which community groups promise to support the developers in seeking approvals, permits, or subsidies, and the developers promise to provide certain benefits to the surrounding community.¹

What is the history of CBA's?

CBA's are outgrowths of the civil rights, labor, and community organizing movements. CBA's often represent community-based unionism, where organized labor supports initiatives beyond the walls of the workplace and the collective bargaining agreement.²

What are some benefits that are included in CBA's?

- Environmental considerations
- Living wage requirements
- First-source hiring preferences and job training³
- Assurance of minority hiring⁴
- Community voice in decision making
- Parks and child care centers
- Affordable housing⁵

What purpose do CBA's serve?

Community groups use CBA's to ensure that development projects actually deliver the benefits they promise as well as to ensure that these projects do not end up

harming the areas they are intended to help. CBA's also reduce the likelihood that public funds will be wasted or misdirected. Development projects often receive large sums of money in the form of government subsidies. To reduce the chances this money will profit only that developer and not improve the economic conditions of the area, CBA's attempt to hold developers accountable for the promises they make. CBA's also hold governments accountable for the subsidies they give out by providing some transparency to the process of doling out subsidies. Additionally, CBA's provide community residents with a voice in decisions about the landscape of their community.⁶



What makes for a successful CBA?

A CBA that has a broad range of support from a number of community groups will likely succeed. Having a history of success with CBA's makes the negotiating process for future CBA's easier and more likely to be successful.⁷

How are CBA's enforced?

CBA's are enforced as binding contracts by the parties that have agreed to them. When a CBA is part of a larger development agreement the government can enforce it. Development agreements are contracts between developers and the government that outline what subsidies the government will give to the developer. There are usually specific provisions within the CBA that identify how the CBA provisions will be monitored for compliance and enforced.⁸

Why are CBA's beneficial?

- CBA's allow for community input into the planning and cultivation of development projects. This allows historically ignored groups, such as non-English speakers, the impoverished, and minorities, to participate.
- CBA's prevent developers from making false promises in order to win support for their projects. With CBA's, developers must deliver on the promises they make as there is a legally enforceable document to hold them accountable.
- CBA's put developers' promises to the community in writing - making it easier to monitor how closely the developers abide by their promises.
- CBA's bring community groups together.
- CBA's speed up the process of gaining approval for development projects by allowing community groups to voice their concerns up front as opposed to holding special hearings. CBA's foster cooperation between developers and community interests unlike many projects that create adversaries and prolong the approval process with fighting over the various interests' positions.

- CBA's allow governments to monitor and measure the good that these development projects are doing for their constituent communities.⁹
- CBA's are private contracts. They achieve policy goals of providing living wages, making business more environmentally friendly, and holding government accountable for the subsidies it disperses without the need for legislation. Additionally, sometimes the community coalition's success at negotiating CBA's can be the impetus for public support for legislation on issues, such as living wages and affordable housing, that are addressed in the CBA.¹⁰

What are some problems associated with CBA's?

- If the community coalition that engages in negotiation with the developer does not have enough leverage, there is a risk it will lose and set a bad precedent within the community.
- Developers may view past CBA's as setting the maximum level of what must be offered to the community while community groups may view past CBA's as setting the minimum level of what they will seek.
- To create a legally enforceable document community groups usually hire a lawyer and incur legal expenses. There are some lawyers who may do this pro bono. Legal clinics and the National Lawyers Guild can provide referrals to lawyers (see www.nlg.org).¹¹
- Critics view CBA's as creating a situation where the local government is overreaching beyond its authority by requiring developers to meet the conditions in a CBA. This criticism is usually brought up when the local government is overly involved in the negotiation of the CBA.¹²

Why is it important for community coalitions to be broad-based and connected to other community groups?

If community coalitions are not inclusive of a range of community groups that may have an interest in a certain development project happening in a certain way, there is a risk that a community group that is not involved will continue to oppose the developer even after the CBA is passed. The developer may then believe that the community coalition violated its end of the contract because the developer will not know that this community group was not part of the contract.¹³

Why are CBA's becoming more common?

- Increased emphasis on bringing people back to cities
- Emphasis on "smart growth" principles. "Smart growth" refers to the idea that development should proceed in an environmentally and socially conscious manner focusing on equity and sustainability.
- Decrease in federal aid for low-income housing and other community development initiatives created a vacuum filled by private developers. CBA's ensure that private developers do not ignore larger public concerns.¹⁴

- Increasing density in urban areas translates into redevelopment projects in areas already populated. Such projects raise distinct concerns, including displacement and gentrification.¹⁵

What are the legal issues that may arise in connection with CBA's?



Enforceability

Legally, contracts are enforceable by their signatories. Some advocates encourage the practice of having all community groups sign onto the CBA instead of having them sign together as a coalition. This way, if the coalition disbands or if it is not possible to verify which groups are members of the coalition, the individual signatories will still be able to enforce the agreement. It remains to be seen whether or not individuals within the community can enforce a CBA as a third-party beneficiary.¹⁶

Who is bound by a CBA

If a CBA intends to bind all of the developer's future tenants, contractors, and buyers, the language used to do so should be very clear, especially if these parties are not signatories to the CBA. Sometimes the CBA will require these parties to sign a CBA.¹⁷

Where can I look for guidance and technical support in creating a CBA?

The organization that negotiated the first CBA, the Lost Angeles Alliance for a New Economy, formed the Partnership for Working Families by bringing together other groups in Oakland, San Diego, and San Jose. The Partnership for Working Families began its technical assistance network in 2004 with the help of Good Jobs First, the AFL-CIO, and other groups from Denver, Milwaukee, Seattle, New York, Boston, and Atlanta. For information about these groups and the technical assistance network see www.californiapartnership.org or www.goodjobsfirst.org.¹⁸

How can CBA's be used in Buffalo, N.Y.?

Bass Pro, a "big box" retailer, is planning on opening a new store in Buffalo's downtown waterfront area as part of Buffalo's waterfront redevelopment project. The Erie Canal Harbor Development Corporation, a subsidiary of Empire State Development that is leading the waterfront redevelopment, estimates on its website that Bass Pro will create 300 jobs and that the average gross payroll per job will be \$22,500.¹⁹ The Bass Pro project is being heavily subsidized with public money, and, so there is an opportunity for the various community groups that have been critical of this project to use a CBA to seek promises that will ensure that the jobs that will be created pay more than the poverty level wages they are currently set to produce, to ensure that local residents are first in line for these jobs, to ensure that employees will get full-time hours, and to address environmental concerns that may arise.



¹ AFL-CIO, *Economic Development and Community Benefit Agreements*, available at http://www.aflcio.org/issues/legislativealert/stateissues/upload/econ_development.pdf.

² Greg LeRoy and Anna Purinton, *Community Benefits Agreements: Ensuring That Urban Redevelopment Benefits Everyone*, (2005), available at <http://www.communitybuilders.ro/library/studies/community-benefits-agreements-ensuring-that-urban-redevelopment-benefits-everyone-by-greg-leroy-and-anna-purinton/view>.

³ Julian Gross, Greg LeRoy, and Madeline Janis-Aparicio, *Community Benefits Agreements Making Development Projects Accountable*, (2005), available at, <http://www.goodjobsfirst.org/pdf/cba2005final.pdf>.

⁴ Patricia E. Salkin, *Understanding Community Benefit Agreements: Opportunities and Traps for Developers, Municipalities and Community Organizations*, (2007), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1025724.

⁵ Gross, *supra* note 4.

⁶ AFL-CIO, *supra* note 1.

⁷ *Id.*

⁸ Gross, *supra* note 3.

⁹ *Id.*

¹⁰ LeRoy, *supra* note 2.

¹¹ Gross, *supra* note 3.

¹² Salkin, *supra* note 4.

¹³ Gross, *supra* note 3.

¹⁴ Salkin, *supra* note 4.

¹⁵ LeRoy, *supra* note 2.

¹⁶ Salkin, *supra* note 4.

¹⁷ *Id.*

¹⁸ LeRoy, *supra* note 2.

¹⁹ Erie Canal Harbor Development Corporation, available at http://www.eriecanalharbor.com/project_status.asp.