

ORDINANCE NO. 03-22 N.S.

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RICHMOND
AMENDING ARTICLE XV OF THE MUNICIPAL CODE OF THE CITY OF
RICHMOND. THIS ORDINANCE ESTABLISHES A COMMUNITY BENEFITS
POLICY**

The City Council of the City of Richmond do ordain as follows:

SECTION 1. Amendment of Article XV. Article XV of the Municipal Code of the City of Richmond is hereby amended by adding a Chapter 15.04 to read as follows:

CHAPTER 15.04

COMMUNITY BENEFITS POLICY

Sections:

15.04.816.010 Purpose

15.04.816.020 Definitions

15.04.816.030 Application

15.04.816.040 Baseline Community Benefits

15.04.816.050 Enhanced Transparency and Review Procedures

15.04.816.060 Community Benefits Fund

15.04.816.070 Competitive Selection Processes

15.04.816.080 Exceptions and Limitations

15.04.816.010 Purpose.

This article establishes baseline community benefits commitments and review procedures for certain large development projects. Due to the impact on public funds, property, City planning, and community interests, public-private projects for which public or private parties request substantial, discretionary public contributions are appropriate for minimum community benefits requirements. In addition, enhanced approval processes, allowing additional time for evaluation and input of community benefits commitments and terms of public agreements, are appropriate for large public-private projects, in order to provide increased transparency and opportunity for public consideration. This article shall apply to and affect only specified projects for which public or private parties negotiate voluntary agreements with the City. Nothing in this article affects obligations to comply with requirements of the Richmond Municipal Code that apply absent any such agreements.

15.04.816.020 Definitions.

For purposes of this article, the following terms shall have the following meanings, and shall include both singular and plural usages.

- (a) “City Assistance Agreement” means a contract negotiated between the City and the developer of a public-private project, setting forth the support, assistance, or other commitments by the City to the developer that indicate the project’s status as public-private project pursuant to the definition set forth below. A development agreement constitutes a City Assistance Agreement.
- (b) “Construction employer” means a contractor or subcontractor employing workers in construction of a public-private project, and performing more than \$25,000 worth of work on the public-private project.
- (c) “Project employer” means a business or other entity that employs at least three workers for at least 20 hours per week on site of a public-private project, once a use or occupancy permit has been issued applicable to the site. Project employers may include tenants, subtenants, contractors, and subcontractors. Project employers do not include construction employers.
- (d) “Public-private project” means a development project or proposed development

project advanced by a public or private entity (i) receiving or proposed to receive financial aid, assistance, or funding from the City, including any public financing or contribution, such as loans, loan guarantees, tax credits, or infrastructure construction, valued at more than \$100,000; (ii) receiving or proposed to receive a transfer of ownership of or lease of right to occupy any City-owned real property, including rights-of-way or street vacation, whether at or below market rate; or (iii) that is or is proposed to be the subject of a development agreement.

15.04.816.030 Application.

This article shall apply only to public-private projects as defined herein. It shall not be implemented through regulatory requirements imposed on public-private projects, and is not a term of such requirements. Commitments regarding community benefits shall be set forth in a City Assistance Agreement negotiated on a voluntary basis by project proponents, such as a development agreement, subsidy agreement, or another type of project-specific and voluntary contract, with such agreement finalized prior to or contemporaneously with approval of the public-private project itself. To the extent provisions of this ordinance conflict with provisions of other City ordinances, provisions of this ordinance shall prevail.

15.04.816.040 Baseline Community Benefits.

The City shall include the following community benefits requirements as terms of any City Assistance Agreement that it enters into with regard to any public-private project.

- (a) Project employers and construction employers shall comply with hiring practices required of an “Employer” under the City’s Local Employment Program (Municipal Code, Chapter 2.56).
- (b) Project employers and construction employers shall compensate employees as would be required for a “Contractor” under the City of Richmond Living Wage Ordinance (Municipal Code, Chapter 2.60).
- (c) Project employers and construction employers shall comply with hiring practices required of a contractor under the City’s ordinance Banning The Requirement To Provide Information Of Prior Criminal Convictions On All Employment Applications (Municipal Code, Chapter 2.65).
- (d) Project participants such as developers, facilities managers, large tenants, and prime construction contractors shall notify Richmond businesses, Richmond small businesses, and Richmond nonprofit businesses (each as defined in the Richmond Business Opportunity Ordinance (Municipal Code, Chapter 2.50)) of contracting and procurement opportunities in construction and operation of the public-private project, by appropriate means designed to maximize awareness of these opportunities.
- (e) For all non-construction contracts worth over \$25,000, the awarding party (whether developer, property manager, tenant, or other project participant) shall make a “good faith effort,” as defined in the Richmond Business Opportunity Ordinance, to award at least 25% of awarded contracts to bona fide Richmond businesses, Richmond small businesses, and Richmond nonprofit businesses (each as defined in the Richmond Business Opportunity Ordinance and as certified by the City).
- (f) The Project developer shall make a financial contribution to the Community Benefits Fund, in an amount to be negotiated by the City and the developer.

The baseline community benefits requirements are described above do not preclude negotiation of additional project-specific community benefits to be provided by public-private projects.

15.04.816.050 Enhanced Transparency and Review Procedures.

The City shall implement the following procedures for review of City Assistance Agreements for public-private projects.

- (a) The City shall make available to the public at least 14 days prior to City Council consideration of approval of the proposed City Assistance Agreement:
 - 1. a summary of: any community benefits commitments to be required of the project,

including terms related to the requirements of article 15.04.816.040; project components and uses; and terms of any public financial support or contribution, transfer or lease of real property, and/or development agreement; and

2. complete terms of the proposed City Assistance Agreement and other project documents setting forth the information required to be summarized in section (a)(1), above.

(b) After release of material described in subsection (a), and at least seven days prior to City Council consideration of approval of the proposed City Assistance Agreement, the City Council shall hold at least one public study session to review and receive public input regarding the material described in section (a) above.

15.04.816.060 Community Benefits Fund.

(a) Establishment. The City shall establish, cause establishment of, or utilize a fund that can administer and expend financial contributions intended to be used for community benefits, provided by developers of public-private projects. Funds may also be contributed from other public and private sources, including project participants, public entities, and philanthropic donations. The fund may be operated by the City, or may be established at and operated by a private nonprofit foundation or other nonprofit third-party administrator. The City may adapt and utilize for this purpose an existing fund administration and oversight structure such as that of the Richmond Environmental Community and Investment Agreement (ECIA) Community Grants Program and the ECIA Grant Review Ad Hoc Committee.

(b) Purposes. Monies from the Community Benefits Fund may be expended to advance, implement, and administer the following purposes:

1. provision of local services to improve quality of life and provide economic opportunity;
2. workforce development and small business assistance at the neighborhood level;
3. providing amenities for public use;
4. programming and activation of public space;
5. support implementing actions of existing city plans (i.e. General Plan, Climate Action Plan, Health in All Policies, etc.);
6. represent interests of community members demonstrably impacted by proposed developments; and
7. provision of other public and community services at low-or no cost to beneficiaries, to advance the public good.

15.04.816.070 Competitive Selection Processes.

When the City issues a request for qualifications, request for proposals, or other solicitation of materials regarding proposed development projects that may qualify as public-private projects, the City shall require each respondent to provide a document summarizing community benefits it would provide. This document shall be in a form as required by the City, to allow the City and the public to compare responses for a particular solicitation and between different City projects.

15.04.816.080 Exceptions and Limitations.

(a) Requirements of this article that conflict with requirements imposed by state or federal project funding sources shall not apply.

(b) Noncompliance with this article does not invalidate City approval of a proposed project or City Assistance Agreement.

(c) City Council may waive application of one or more provisions of section 15.04.816.040 (Baseline Community Benefits) with a finding that attributes of the proposed project make compliance with the provision(s) infeasible or unnecessary, and that the project as a whole provides appropriate community benefits.

(d) City Council may waive application of one or more provisions of section 15.04.816.050 (Enhanced Transparency and Review Procedures) with a finding that unusual circumstances related to project deadlines make the timeframe of section 15.04.816.050 infeasible, and that alternative notice and approval requirements provide sufficient opportunity for review and analysis of project aspects described in section 15.04.816.050.

SECTION 2. Severability.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such a decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the unconstitutionality or invalidity of any section, subsection, subdivision, paragraph, sentence, clause or phrase.

SECTION 3. Effective Date.

This ordinance shall be effective 30 days after its final passage and adoption.

First introduced at a regular meeting of the City Council of the City of Richmond held January 18, 2022, and finally passed and adopted at a regular meeting held February 1, 2022, by the following vote:

AYES: Councilmembers Bates, Jimenez, Martinez, McLaughlin, Willis, Vice Mayor Johnson III, and Mayor Butt.
NOES: None.
ABSTENTIONS: None.
ABSENT: None.

PAMELA CHRISTIAN
CLERK OF THE CITY OF RICHMOND
(SEAL)

Approved:

THOMAS K. BUTT
Mayor

Approved as to form:

DAVE ALESHIRE
Interim City Attorney

State of California }
County of Contra Costa : ss.
City of Richmond }

I certify that the foregoing is a true copy of **Ordinance No. 03-22 N.S.**, finally passed and adopted by the City Council of the City of Richmond at a regular meeting held on February 1, 2022.

Pamela Christian, Clerk of the City of Richmond