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# Community Benefit Agreements in Charlotte, NC

**What They are, Why They are Legal, and Why They are  
Essential**

Housing Justice Coalition CLT in Partnership and Solidarity  
with the Charlotte Community Benefits Coalition  
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## **CBA's in Charlotte, North Carolina: What They are, Why They are Legal, and Why They are Essential**

*The purpose of this memo is to serve as an informational guide on Community Benefit Agreements (CBAs). This memo defines CBAs, outlines their importance, and provides legal analysis showing that CBAs are legal in North Carolina. This guide is intended to address misinformation on CBAs and is part of a wider effort to create and build a community-oriented and driven development process that works for all neighborhoods here in Charlotte NC.*

### **What is a CBA: The Contract and “the Deal”**

CBA's are contractual agreements between two entities whereby benefits or amenities are provided as part of the contract. A developer can enter into a direct contract with a community group, a local municipality, a small business etc.

CBA's emerge from a process of negotiation and the subsequent contractual agreement. Therefore, CBAs occur anytime a developer negotiates with a local government, a non-profit, or a community group whereby the developer provides some sort of mutually agreed upon benefit in exchange for community support or a promise of no community opposition, for the developer's project. CBAs also occur when a developer negotiates and enters into a contract with the City to provide an amenity or benefit as part of the conditional rezoning process or similarity situated zoning regulation.

### **CBAs: A Direct Agreement between Communities and Developers**

The negotiation between differing parties as part of the CBA “process,” like all contract negotiation, is based on the interests and leverage of the parties involved. There is no law in NC that prevents a local government from creating incentives for developers as part of the land use decision-making process. These incentives can include community benefits. If developers reject community benefit incentives and refuse to engage in the process of negotiating with a neighborhood or community, the developer can petition city council directly for project approval. When City Council engages in decision making on a proposed development, citizen concerns can be brought to the table. This process occurs with regularity under the current conditional zoning framework, but most historically disadvantaged communities in Charlotte's “Wedge,”<sup>1</sup> are not able to take advantage of this process. Strong CBA language in the 2040 Comprehensive Plan and a CBA regulatory framework in the Unified Development Ordinance (UDO) will add equity, uniformity, and equal access to this process for all Charlotte neighborhoods.

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<sup>1</sup> The Wedge consists of West, North and East Charlotte and connotes the parts of the city that have received considerably less public and private investment.

Legality and political expediency are not synonymous. The well-established developer lobby here in Charlotte has consistently maintained, with no evidence, that CBAs are illegal. Misinformation is a political tactic that seeks to bury a conversation before it starts. The conversation on community benefits is timely, necessary and will not disappear because it may challenge the perceived power of certain interest groups.

CBAs are legal but resistance to them stemming from interests' groups or from those that lack political imagination effectively invite political questions. Political questions should be left to the political process which includes the drafting of the plan, the hearing, comment process, and ultimately elected officials voting on the Comprehensive Plan, UDO, Place-Types Maps etc.

### **The legality of CBAs in North Carolina**

**CBAs are legal in North Carolina, even as a Dillon's rule state,<sup>2</sup> for the following reasons:**

1. Broad authorization is given to municipalities, in spite of Dillon's rule, to regulate zoning, which allows for municipalities to attach conditions to zoning. (N.C. Gen. Stat. § 160D) This process occurs generally when public funding is requested for a project as part of a petition by a developer.
2. Broad authorization from the State Legislature is not required for CBAs because they are contractual by nature.
3. Even if CBAs did require authorization they are allowed under conditional zoning (N.C. Gen. Stat. § 160D 701-703).
4. There is no court case that places CBAs outside the purview of cities to engage in contractual negotiations with a developer as part of proposed project, or as part of the regulatory framework for conditional zoning and/or regulatory zoning.

### **Legal Reasoning and Analysis**

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<sup>2</sup> "North Carolina is among a minority of states that have not adopted constitutional "home rule" for its localities. This means that there is no broad delegation of power to localities through the state constitution. At the same time, the legislature has granted localities broad police powers through statute." (page 3, *Local Minimum Wage Regulations in North Carolina*, Professor Rick Su of the UNC School of Government. July 2, 2020).

Despite the fact that CBAs as private agreements do not require broad authorization by the State Legislature in North Carolina, localities must still identify specific statutory authority that grants them the power to enact CBAs as part of a zoning or regulatory process.

The authority to enact CBAs is found within the power of municipalities to regulate zoning broadly (N.C. Gen. Stat. § 160D.) The authority to enact CBAs fall within several Articles of N.C. Gen. Stat. § 160D, specifically Article 5, Article 6 and Article 7. While Article 5 and Article 6 provide authority for municipalities to enact CBAs as part of a Comprehensive Plan (N.C. Gen. Stat. § 160D-501) and as part of a development ordinance or regulation (N.C. Gen. Stat. § 160D-601), the primary means by which CBAs have been implemented is through the conditional zoning process outlined in Article 7. Article 7 explicitly allows a local municipality to require specific conditions as part of zoning regulation as long as the petitioner consents to the conditions in writing. “Property may be placed in a conditional district only in response to a petition by all owners of the property to be included. Specific conditions may be proposed by the petitioner or the local government or its agencies, but only those conditions approved by the local government and consented to by the petitioner in writing may be incorporated into the zoning regulations.” (N.C. Gen. Stat. § 160D -703(b).

**Here, the statute grants municipalities broad powers to include any and all conditions to which a petitioner agrees as part of a conditional zoning district. Based on this application of law the city has the power to create zones through the UDO and/or Place-Types Mapping process whereby a petitioner must at least consider engaging in a CBA.** Additionally, if a petitioner exercises its right to reject these conditions the City can utilize the standard conditional zoning process whereby the petition must be approved by the City Council after a public hearing and a community meeting.

#### **North Carolina Example of CBA Regulation as Part of Zoning Ordinance**

Asheville’s current Unified Development Ordinance utilizes a CBA process in the form of a Public Benefits Table for its Hotel Overlay District (Ashville UDO section 7-9-7). This table lists specific conditions a developer must meet based on a points system. Several of the incentives include affordable housing, the provision of living wages, and contracting with women- or -minority owned businesses. This table requires that 50% of the points come from contributions to affordable housing or reparations via a Reparations Fund. A newly formed Design and Review Committee is tasked with ensuring that hotels built within these districts conform to the

Benefits Table. If a developer does not opt into the Public Benefits Table they must petition City Council directly to approve the project.<sup>3</sup>

### **Local Examples of CBAs**

CBAs are (frequently) used in North Carolina and in Charlotte, NC. Based on the facts and analysis laid out above the City of Charlotte very often engages in CBAs, but these agreements are generally with politically well-connected communities in the “Wedge” of Charlotte.

A striking example of a CBA as part of the conditional rezoning process outlined above, is the Ballantyne Rezoning - 2019-115 by Northwood Development. Not only did this project include City funding, but the City’s Economic Development Department negotiated directly with Northwood Development for the implementation of certain conditions demanded by Ballantyne residents.

Another major example of a CBA is the Brooklyn Reimagined project, whereby significant public investment in the project was conditioned on certain community benefits being provided.

Other local examples include the 7<sup>th</sup> St rezoning in Downtown and the redevelopment of Eastland Mall, wherein the developer must negotiate a deal with the County to develop the old Eastland Mall site which is County-owned land.

### **CBAs and Public Investment in underserved Areas**

The City must invest directly in communities as part of a Community Benefits Process. The City has an obligation to use its economic resources, including the land it owns and funding it sets aside for development, to promote CBAs wherein developers must invest in underserved and rapidly gentrifying communities. Community-led organizations should also be afforded opportunities to acquire funding and land directly from the City/County through a Community Benefits process (e.g. expanding access to the Housing Trust Fund).

The City can provide public money for developments in certain areas/place-types wherein a developer must engage in a process of talking to a community representative who can comment on the project.<sup>4</sup> This process can be directly linked to neighborhoods that are vulnerable to displacement and other markers of economic inequality. If the developer follows-through they get access to the public funding and if they don’t they can file a protest petition that goes to the City Council.

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<sup>3</sup> <https://www.ashevillenc.gov/news/new-asheville-hotel-development-public-benefits-table-designed-to-meet-community-needs/>

<sup>4</sup> See Charlotte Community Benefit Coalition Press Release (CBA zone demand).

## Charlotte: Slow to Change Quick to Grow

Developers Resist Change because they have enjoyed outsized political influence for too long. Charlotte is one of the worse cities in the country for upward economic mobility. The development community has yielded tremendous profit while investing very little, in comparison, into economically disenfranchised communities.

The development community is resisting change. It does not want to share its immense wealth, wealth gained through public subsidies such as City/County owned land and tax incentives, with those who stand to be negatively impacted by their actions.

Almost no developers hire people from neighborhoods that are experiencing rapid gentrification and displacement, despite the fact that many of these neighborhoods have higher than average levels of unemployment and have many cost-burdened renters below the Area Median Income (AMI).

The City must use its regulatory power to offset the harm caused by development that drives up the cost of living, and the City must pressure developers to share some of the immense publicly-subsidized wealth developers have acquired with the broader community.

## CBA's and 2040 Comprehensive Plan

CBA's are necessary for implementing the Vision Elements and the 10 aspirational goals of the Charlotte 2040 Comprehensive Plan. Charlotte currently is a deeply unequal city with divergent outcomes for individuals depending on where they grow up, attend school, and their household income level. Several studies have shown how poorly Charlotte has done in creating opportunities for intergenerational economic mobility and creating equitable opportunities for wealth-building. Charlotte has a history of housing segregation and divestment from historically African-American neighborhoods in “the Crescent.” This inequity also manifests in development decisions wherein neighborhoods in “the Wedge,”<sup>5</sup> such as Dilworth and Myers Park, are able to resist conditional rezoning petitions by developers through leveraging their political power as Charlotte’s oldest and wealthiest neighborhoods, yet neighborhoods in the Crescent are not able to exercise this same ability. **CBA's level this playing field and create uniformity and predictability in the development process while allowing “deal-making” to be beneficial to those who historically have not had a seat at the table.**<sup>6</sup>

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<sup>5</sup> The “Wedge” represents Charlotte’s oldest and most historically affluent neighborhoods. These neighborhoods exercise tremendous political clout and access that has not historically been available to neighborhoods in Charlotte’s Crescent.

<sup>6</sup> In a ten-year period (2009-2018) only 27 out of 1200 rezoning petitions have been denied by city council, and these denials are overwhelmingly in the city’s oldest, wealthiest and most politically-

CBA's are pivotal for Charlotte to become a more equitable and economically prosperous city because CBA's give all communities a greater voice in the development process. CBA's allow for direct public investment into underserved and marginalized communities through ensuring that these communities receive wealth-building amenities as part of any publicly funded development initiative.

The ultimate question is whether Charlotte is interested in addressing its ugly and sordid legacy of extracting wealth from its poorest residents and its disproportionately African-American residents.

Charlotte, at this historic juncture, is in a prime position to do something that moves toward righting the wrongs of the past and laying the groundwork for sustainable economic development. The question is whether elected officials will step up to the plate and ensure that CBA language not only remains in the Comprehensive Plan but is strengthened<sup>7</sup>and reflected in the UDO. The ball is truly in the City's court.

Please send all questions and inquiries to:

housingjusticeclt@gmail.com

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connected neighborhoods. <https://ui.uncc.edu/story/when-developers-ask-zoning-change-charlotte-usually-says-yes-0>

<sup>7</sup> The Charlotte Community Benefits Coalition will be releasing further policy proposals on CBA's for the Comprehensive Plan, the UDO and Place-Type Mapping.