

As amended



MINUTES

**Committee of the Whole
Thursday, December 8, 2016 @ 10:00 a.m.
Council Chambers, City Hall 10th Floor**

CALL TO ORDER

The Committee was called to order at 10:07 a.m.

PRESENT

Council Member Brown Clarke, Chair
Council Member Yorko, Vice-Chair
Council Member Houghton-excused
Council Member Hussain-excused
Council Member Dunbar
Council Member Washington
Council Member Spitzley
Council Member Wood

Council Member Brown Clarke excused Council Member Hussain and Houghton.

OTHERS PRESENT

Sherrie Boak, Council Staff
Jim Smiertka, City Attorney
Assistant City Attorney
Karl Dorschimer, LEAP
Price Dobernack
Eric Farrington
Pat Gillespie
Chris Keck
Mark Mello
Lance Fralm
Bob Long
Fred Frederickson
Brian Brannick
Chris Karkins
Jason Kilora
Elaine Womboldt

Council Member Spitzley asked for clarification on the planned process for review of the latest draft in front of them dated December 8, 2016.

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Council Member Brown Clarke clarified that the Committee of the Whole will be discussing and making recommendations back to the Committee on Development & Planning because that Committee has not discharged it so they will have final changes and bring back to Council for a final vote. At the last Council meeting on December 8, 2016 Council Member Dunbar requested input from all Council Members, so it was also sent to Committee of the Whole. Any suggestions from this meeting will be forwarded back to the Committee on Development and Planning and City Attorney for their December 20, 2016 meeting. Council Member Washington noted that her intention as D & P Chairperson is to have the last discussion on the ordinance at the December 20, 2016 Committee meeting.

Council Member Spitzley stepped away from the meeting at 10:16 a.m.

Council Member Washington asked for all the comments to be brought forward and the Committee will discuss them, then the Committee on Development and Planning will finalize the document for adoption.

Council Member Spitzley returned to the meeting at 10:17 a.m.

ORDINANCE – Transparency in the Bidding and Opening of Bids for Projects that Receive Certain Economic Incentives Approved by the Lansing City Council

Council Member Washington recapped her changes from the December 8, 2016 Council meeting. Those included changes to page 3, line 14 where “in appropriate venues” was added, line 16-17 on page 3 was eliminated; page 6 line 16 eliminated “and the city council”.

Council Member Washington then outlined the process she would hold during this meeting which included public comment first, then comments and suggestions from Council Members . The public was encouraged to comment and identify the problem language referencing the page and line in the document for clarity.

Public Comment

Mr. Dobernack acknowledged the Council Members for their work, and offered two comments on the ordinance. One being eliminating public bid opening and secondly incorporating the surrounding areas. Mr. Dobernack spoke in support of the ordinance.

Mr. Womboldt spoke in support of the ordinance and open bid process.

Mr. Japinga stated he believed that the ordinance in conjunction with the current executive order from 2008 provide duplication. There should be focus on how all groups move forward together. Mr. Japinga spoke in opposition to industrial exemptions. Lastly he asked for definitions and clarity on the process.

Council Member Washington asked for privilege to be the first Member to speak after public comment.

Mr. Gillespie, first noted he was not speaking on behalf of all developers, but for his firm. Mr. Gillespie spoke in agreement with the union, wanting open, fair, transparent and local workers. Mr. Gillespie pointed out where he had language issues in the ordinance, including the approval process, finance and paying, and supported Brownfields and Historic sites. Regarding the concerns on the financing aspect, he noted there are developer incentives, if incentives are not in place they can't be financed. Secondly, he stated his opinion that the ordinance does not

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state who will determine if the contractor is in compliance or not, and when is that determination made.

Council Member Spitzley stepped away from the meeting at 10:33 a.m.

Mr. Gillespie continued on outlined his process, and asked the Committee for an answer to how long they think the review of their process would take, and if the process will apply to every bid or just the original bid.

Council Member Spitzley returned to the meeting at 10:34 a.m.

Mr. Gillespie concluded by affirming he supports most of the proposed ordinance, but his opinion is that it lacks some items.

Mr. Schrader asked for the ordinance to address the minimum investment this ordinance would apply to.

Mr. Long supported the earlier comments by Mr. Dobernick, and asked for open, fair and transparent bidding.

Council Member Spitzley respectively asked Council President Brown Clarke for the Committee to discuss the ordinance before responding to the public comments. Council President Brown Clarke concurred there would be a discussion in total, no engagement with the public comments, then all comments will go back to the Committee on Development & Planning. Council Member Washington concurred that was her intent. Council Member Wood asked for responses to some public comments that were made for clarification.

Council Member Washington acknowledged Council Member Yorko because she had stated she needed to leave the meeting. Council Member Yorko had no comments at this time.

Council Member Washington clarified for the public that the ordinance was written so the appeal process was through the City Attorney office, and Council Member Dunbar would address the actual appeal process proposed. The only thing to appeal would be if the contractor did not put it out to bid, along with an open bid. Council Member Washington spoke in support of exempting industrial projects, and agreed to add language to specify that a project under \$750,000 would be exempt, and \$25,000 to be exempt from the bid process. She spoke in support of public opening of the bids, and briefly detailed what "open bid process" would entail including posting the bid, make public when those bids would be opened, and opening the bids in a public setting. The contractor would not have to make a decision on the bid at that time. Council Member Washington reminded the group of the Executive Order from 2008 that addresses so the universal agreement, therefore to make any changes it needs to be done in an ordinance.

Council Member Brown Clarke asked for details on the timing, and if the process is at the beginning of the bid submission and how the language is captured. Mr. Smiertka noted the language was not directly in there, they would have to set up a monitoring process. The ordinance applies from the commencement of construction to the completion of the project. The City Attorney office will draft appeal language.

Council Member Wood asked if the ordinance was not regulatory but a contractual ordinance. Mr. Smiertka admitted it was written as an addendum to the universal development agreement.

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The actual universal agreement cannot be amended because it is an Executive Order. In the process it says when a building permit is needed, a bid is required. An incentive is granted only with Resolution from Council, and an incentive is also revoked through Council. Right now every incentive that the City offers, can be revoked by Council without this proposed ordinance. Because this is a contractual ordinance it would not be immediate effect, but would give law 30 days to work with LEAP to come up with the policies to move forward.

Council Member Spitzley referred to page 2(5) which spoke to "Economic Incentive(s)" which does not apply to industrial. Industrial sources look at Brownfields and OPRA, so that too needs to be considered. She also questioned if the amount over the stated \$750,000 was economic or incentive. Council Member Spitzley went on to ask additional questions including page if Council would approve the plan and the City Attorney perform the review, what "transparent" is being compared to; page 6 line 9 "Violations" and what legal action is permissible, along with what supporting documentation is needed. Mr. Smiertka was asked if the City Attorney Office is equipped and prepared to undergo this process.

Council Member Yorko left the meeting at 11:03 a.m.

Council Member Spitzley suggested incorporating language that would state the ordinance would take effect 30 days after townships take effect on their own ordinance.

Mr. Smiertka admitted that when he first saw the ordinance it was a regulatory ordinance and that could cause issues. His only concern now is if a complaint is filed if it would withstand in court.

Council Member Brown Clarke asked Mr. Smiertka to confirm his office has the capacity to address the complaints. Mr. Smiertka confirmed that at this point in time his office has the capacity. Council Member Wood pointed out that the ordinance was re-written from a regulatory ordinance to its new format per the City Attorney office request, and therefore putting his office in the ordinance as the enforcement agency. There was a comparison made to a living wage ordinance and incentives, however that ordinance required a demonstration they were paying the wage. A concern was voiced in adding language that would have a time frame waiting on other communities to initiate their own ordinance. Council Member Brown Clarke added to the conversation that the City should have the same expectations that are being expected of the developer. Council Member Brown Clarke encouraged that LEAP still be involved in the administration part of the review. She also noted that she recently had a conversation with the Ingham County Commissioners and they informed her they had a desire to create a document that was parallel to this one. She noted that it appeared the broader discussion was occurring.

Council Member Washington pointed out to the Committee that she was not worried about chasing business out of Lansing, because the City will continue to give incentives, but she wanted local people to have chance to apply for the jobs and have the process done fairly.

Council Member Dunbar stated she had reached out to business owners, the Chamber of Commerce, and labor and looked at changes they suggested. She then went through her suggested changes, and distributed a copy of her red line version to the Committee.

These changes included adding "equal opportunity" to the purpose of the ordinance, adding "solicitation and selection" and removing "distribution, opening and awarding". Council Member Dunbar admitted her opinion is different from Council Member Washington, but she respected Council Member Washington work and opinion on the Ordinance.

Council Member Dunbar proceeded to highlight her suggestions which were to add “or” on line 19 of page 1 to clarify the *Applicant* covers if they applied or received incentives. On page 2, *Bid Quote* definition was removed, along with *Publicly Accessible Location* from page 3, then *Publicly Advertised* was changed, and a definition for *Solicitation of Bids* was added. On page 4 lines 1-9 were removed. In addition, on page 4 details were added to (C) *Requirements*. Council Member Dunbar pointed out that her research found that some information mirrored the universal development agreement. Page 5 included the removal of and rewording of additional items under (C) *Requirements*. Page 6 included the addition of a requirement that stated” if bids have already been solicited, applicant may include information to demonstrate whether and to what extent, the applicant engaged in a transparent and fair bidding process prior to application for incentives”. On Page 7 Council Member Dunbar removed items she believed were under the projects labor agreements. Also added were details on the *Complaint* process which mirrored the currently adoption Human Rights Ordinance. Lastly, Council Member Dunbar suggested ~~noted~~ that the sunset clause listed on page 8 line 14 ~~she suggested not being effective until other municipalities have a similar ordinance, if Council chose to adopt the regional contingency clause.~~

Council Member Dunbar provided her opinion that from research, was that knowing ~~who or~~ what price they pay is not the goal, and if they don’t choose local and come back for future bid, then there can be a discussion. Her opinion on the subject was that the City cannot prevent them from getting an incentive for choosing to work with local or higher cost. Some unions are sending their members to other cities, and some aren’t home at the same time.

There was a brief discussion by the Committee members and Council Member Brown Clarke asked all comments be forwarded to the Committee on Development and Planning for finalization of the ordinance.

Council Member Washington asked Mr. Smiertka if the proposed appeal process by Council Member Washington was written by the City Attorney office, and therefore done with approval from Law. Council Member Dunbar clarified that the wording in her suggestions on the appeal process was taken from the adopted Human Rights Ordinance and that was reviewed.

Council Member Wood asked if all of Council was invited to the Committee on Development and planning meeting for the final discussion. Council Member Brown Clarke told the Committee to inform Council staff of their intention to attend prior to the meeting so it could be posted appropriately. If that is the intention of the Committee then any additional Council Members can listen at the meeting but not participate.

Council Member Wood asked Mr. Smiertka his opinion on if another public hearing would be required based on the substantial changes. Mr. Smiertka could not provide an answer, stating it would depend on the material changes and the scope of the ordinance when it comes out of the Committee again.

Adjourn at 12:00 p.m.

Submitted by,

Sherrie Boak, Recording Secretary,
Lansing City Council

Approved by the Committee on January 9, 2017