

CHAPTER 355  
COMMUNITY PARTICIPATION IN DEVELOPMENT AGREEMENTS

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**355-1. Definitions.** In this chapter:

1. DEPARTMENT means department of city development or other city department partnering on a private construction project.

2. DIRECT FINANCIAL ASSISTANCE means the value of below-market land sales, any direct subsidies to developers and city expenditures for private improvements, with a combined value of \$1 million or more, as determined by the commissioner of the department, targeted specifically to a project. It includes the value of tax increment financing and below-market-rate loans provided by the city.

3. UNEMPLOYED OR UNDEREMPLOYED means that the resident has worked less than 1200 hours in the preceding 12 months or has not worked in the preceding 15 days or, regardless of employment status, has household income at or below the federal poverty guidelines as adjusted by the Wisconsin department of public instruction to define eligibility for reduced lunch in public schools.

**355-3. Requirements for Projects Receiving Direct Financial Assistance.** All persons or entities receiving direct financial assistance for projects approved after August 8, 2009, shall comply with this chapter in the implementation of such projects.

**355-5. Application Process.**

1. All developers seeking direct financial assistance for a project shall complete an application in the form provided by the department.

2. Once the application has been completed, the department and the city comptroller shall provide to the common council an analysis of the project's financial feasibility, market assumptions, rate of return, and jobs impact, including wage and benefit information. The department shall further provide a separate report discussing the quality of proposed building and site design, the impact of the project on the city's historic building stock, and the project's sustainable features, including use of alternative energy sources and recycled and low-impact materials, creation of public open space, incorporation of transit- and pedestrian-oriented design features and amenities, and eligibility for certification under the Leadership in Energy and Environmental Design Green Building Rating System or other national certification.

3. Any resolution proposing direct financial assistance shall include a term sheet outlining the conditions under which such assistance is to be provided.

4. The department shall negotiate development agreements governing the implementation of projects for which direct financial assistance is approved. Such agreements shall incorporate the conditions contained in the term sheet approved by the common council. No city funds may be released for any project governed by this chapter without the approval of a term sheet and execution of a development agreement. Development agreements shall require compliance with all provisions of ss. 355 7 to 355 13, except that the common council may by resolution impose lesser or different requirements.

5. Any developer seeking direct financial assistance for a project shall prepare a report, to be attached to the application required by sub. 1, on the estimated cost of including solar power and other sustainable features as part of the project. This report shall also include an estimate of the amount of time that would be required to recover the cost of the solar-power features through energy-cost savings. The environmental collaboration office established under s. 310-3 shall develop and provide administrative procedures and technical assistance for this report, and shall provide information on financing options, including property assessed clean energy (PACE) financing, to the developer.

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### 355-7. Participation of City Residents.

1. REQUIREMENTS. Recipients of direct financial assistance shall:

a. Ensure compliance with aspects of the development agreement regarding the use of unemployed and underemployed residents for construction of the project. For the purpose of this section, "worker hours" includes work performed by persons filling apprenticeship and on-the-job training programs and excludes the number of hours of work performed by all non-Wisconsin residents.

b. Ensure that all of the recipients' contracts with contractors and sub-contractors for the project include a provision in which such contractor or subcontractor certifies that it knows of the provisions of this section, intends to comply with them and authorizes the city to enforce its terms.

c. Require that contractors and subcontractors maintain personnel records listing the name, address, race and gender of all employees utilized for each construction contract, and any records demonstrating that the employees utilized by the contractors and subcontractors in meeting the requirements of this section are residents of the city. These records shall be maintained for 7 years after the contractor or subcontractor has received final payment under its construction contract, and shall be made available to the office of equity and inclusion for inspection upon reasonable notice.

2. ADMINISTRATION. The department of city development and office of equity and inclusion shall be responsible for the planning, implementation and enforcement of this section.

a. Prior to submitting a proposed term sheet for a project, the commissioner of city development, in consultation with the office of equity and inclusion or such other entity as may be designated by the city from time to time, shall determine the appropriate level of participation of unemployed and underemployed residents of the city for the project to reflect the job or trade categories required for the project and the pool of available certified and qualified workers within each job or trade category. The total appropriate level of participation shall be presumed to be 40%, unless the commissioner determines there is sufficient reason to impose a lesser requirement. The recipient of direct financial assistance shall submit a city resident utilization plan and gap analysis detailing how the level of

required participation will be achieved. Up to one-third of required worker hours may be achieved by documenting the use of unemployed or underemployed residents on projects undertaken by the developer where such compliance is not required, or by hiring unemployed or underemployed residents on a full-time permanent basis for non-construction job categories connected to the project. Such adjustments must be proposed in an affidavit on a form provided by the department setting forth the facts upon which the request for adjustment is based.

a-1. At least one quarter of the appropriate level of participation required in par. a shall be performed by unemployed or underemployed residents who maintain their permanent residence in zip codes established as high-poverty, as determined by the city clerk on January 1 every three years beginning in 2017, in consultation with the department of administration and based on income guidelines established by the U.S. department of housing and urban development for poverty relief and housing block grant programs. Every worker hour exceeding this requirement shall count for one-and-a-half hours toward the requirement of par. a.

a-2. If a developer cannot meet the participation requirements of par. a, the appropriate level of participation may, at the discretion of the office of equity and inclusion, be met by utilizing unemployed or underemployed residents to work on concurrent projects in any Wisconsin county, provided those residents began their employment on projects in the city.

a-3. The hours worked by a resident who meets the definition of unemployed or underemployed solely under the 15-day provision of s. 355-1-3 shall not be credited toward meeting the appropriate level of participation required in par. a unless the resident had not worked on the same project for the same contractor or subcontractor prior to the 15-day period.

b. Prior to the release of funds, the office of equity and inclusion shall confirm that all contractors and subcontractors, prior to commencement of their work, have submitted an affidavit in the form supplied by the office of equity and inclusion from employees utilized to meet the requirements of this section, stating that the employee is unemployed or underemployed and is a resident of the city.

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c. During the construction of any project covered by this section, the office of equity and inclusion shall:

c-1. Monitor compliance with the provisions of this section.

c-2. Confirm that all developers, contractors and subcontractors have submitted construction contract time reports listing workers by name, race, gender, residential address, work classification and hours worked at least once every 3 months during the course of their work and within 10 days following completion of their work.

c-3. Arrange for an independent audit with respect to the residents preference program, to be performed every 3 years, by a certified accounting firm licensed to perform audits in the state of Wisconsin, or by the city comptroller.

c-4. Confirm that developers, contractors and subcontractors are utilizing the first-source employment program, as provided in s. 355-11.

**2.5. RECORDKEEPING.** The department of city development and office of equity and inclusion shall ensure that all data required for reporting under this section are maintained in a centralized labor or contract compliance software system, as provided in s. 370-3-5.

**3. REPORTING.** The office of equity and inclusion, in coordination with the department of city development, the department of public works and the residents preference program review commission, shall prepare, on or before October 1 of each year, a residents preference program report on the efforts of recipients of direct financial assistance in achieving the goals of the program for development agreements. The performance report shall include the following:

a. The number and dollar amount of all development agreements executed.

b. The number and dollar amount of development agreements which incorporated a residency requirement and the percentage of unemployed or underemployed resident worker hours required as well as the number of worker hours worked or performed.

c. If not all development agreements included a residency requirement or if some agreements contained a requirement of less than 40% of worker hours, the reason for this difference.

d. Information relating to worker hours by zip code, race, gender, trade and hourly wage.

e. Full disclosure of the office of equity and inclusion's reasons for adjusting the participation percentage goal for individual categories of work.

f. The percentage of total hours worked by city, non-city and non-state residents for contracts which included the residency requirement.

g. Information to assist the common council in its annual reappraisal of the residents preference program pursuant to s. 309-41-4, including the number of individual participants by job type, the number of new city residents hired during the year under the program and the number of program participants who advanced to apprenticeships or on-the-job training programs.

**355-9. Apprenticeship and On-The-Job Trainee Requirements.**

**1. REQUIREMENT.** a. Recipients of direct financial assistance shall employ, and shall require their contractors and subcontractors to employ, apprentices and on-the-job trainees in the performance of all construction contracts and subcontracts for the project entered into by the recipient, contractor or subcontractor in accordance with the maximum ratio of apprentices to journeymen established by the Wisconsin department of workforce development, and in accordance with the following requirements:

a-1. One-quarter of the apprentices and on-the-job trainees required under par. a, as measured in worker hours, shall be unemployed or underemployed residents of the city, as defined in s. 355-1-3. For every worker hour exceeding the requirements of this paragraph, one-and-a-half hours shall be credited toward the requirements of s. 355-7-2-a.

a-2. Of the apprentice and on-the-job trainee worker hours required under par. a-1, at least 40 percent shall be attributable to unemployed or underemployed residents residing in zip codes established as high-poverty, as determined by the city clerk on January 1 every three years beginning in 2017, in consultation with the department of administration and based on income guidelines established by the U.S. department of housing and urban development for poverty relief and housing block grant programs.

a-3. Apprentice and on-the-job trainee worker hours of a resident who meets the definition of unemployed or underemployed solely under the 15-day provision of s. 355-1-3 shall not be credited toward meeting the contract participation requirements of par. a unless the resident had not worked on the same project for the same contractor or subcontractor prior to the 15-day period.

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b. In determining whether the requirements of par. a are appropriate for insertion in specification for a particular project, the department of administration may consider the nature of the work, whether the project is of short duration and whether their work will involve trades which do not have apprentices or on the job trainees.

**2. MONITORING AND ENFORCEMENT.** The department of administration shall:

a. Monitor the performance of each contractor or subcontractor with respect to the ratio of apprentices to journeymen and on-the-job trainees to non-trainees employed on the construction contract during performance of the construction contract.

b. Confirm that all developers have maintained records concerning their contractors' and subcontractors' apprenticeship and on-the-job training programs, which shall be retained for 7 years after the project has concluded. These records shall be made available to the department of administration for inspection upon reasonable notice.

c. Confirm that recipients, contractors and subcontractors submit contract time reports showing compliance with any contract requirements imposed in accordance with this section at least once every 3 months during the course of their work and within 10 days following completion of their work.

### **355-11. First-Source Employment Utilization.**

**1. DEFINITIONS.** In this section "first-source employment program" means an employment program operated by the city or its designee which is to be utilized as contractors' first source for recruiting applicants for both new and replacement employment.

**2. RECIPIENT OF DIRECT FINANCIAL ASSISTANCE.** Recipients of direct financial assistance shall require all of their contractors and subcontractors on the project to utilize the first-source employment program, subject to the following:

a. Prior to announcing or advertising a position for work which shall be performed as a result of a construction contract, construction subcontract or of a new employment position, a contractor or subcontractor shall notify the office of equity and inclusion, or its designee, about the position, including a general description and the minimum requirements for qualified applicants.

b. The contractor or subcontractor shall not make any public announcement or advertisement for a period of 10 business days after notification to the office of equity and inclusion or its designee, of the availability of the position.

c. The office of equity and inclusion or its designee shall maintain a database of job opportunities subject to this section and shall provide information on these job opportunities to all city residents.

d. The advance notice period required by par. b shall be waived if there are no qualified candidates to refer to the contractor or subcontractor. The office of equity and inclusion or its designee, shall notify the contractor of this waiver within 5 business days of being informed of the job availability.

e. The office of equity and inclusion or its designee shall institute a tracking system and record which applicants were interviewed, which applicants were not interviewed and which applicants were hired for positions subject to this subsection.

**3. FIRST SOURCE RECRUITMENT AGREEMENT.** The office of equity and inclusion shall confirm that each construction contract for a project entered into by a recipient of direct financial assistance requires contractors and subcontractors to enter into a first-source recruitment agreement with the city or its designee which shall apply for the duration of the contract. A first-source recruitment agreement shall require:

a. Utilization of the city's first-source employment program as the first source for recruitment and referral of applicants for new and replacement employment.

b. Allowing the city's first-source employment program a minimum of 10 business days to refer applicants to contractors. Contractors may apply for a waiver of the 10-day requirement in emergency situations. Waivers may only be granted by the office of equity and inclusion or its designee.

c. The contractor or subcontractor to interview and consider qualified applicants referred by the office of equity and inclusion or its designee before interviewing others.

**4. HIRING DECISIONS.** Contractors and subcontractors shall retain the right to make all final hiring decisions.

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**5. COMPLIANCE NOT REQUIRED.** First-source recruitment agreements shall not require contractors or subcontractors to comply with this section if job vacancies or newly-created positions are filled by transfer or promotion from existing staff or from a file of qualified applicants previously referred by the office of equity and inclusion or its designee.

**6. DISTRIBUTION OF INFORMATION.** The department and the office of equity and inclusion shall distribute information about the first-source employment program to all developers of commercial, industrial and mixed-use projects in the city, including all developers not receiving direct financial assistance.

**7. ENFORCEMENT.** The office of equity and inclusion shall monitor compliance with this section.

**355-13. Other Requirements.**

**1. CASH FLOW AND COST-SAVINGS PARTICIPATION.** When determined feasible by the commissioner, development agreements shall include provisions under which the city benefits financially from either lower-than-expected project costs or higher-than-expected project cash flow.

**2. PAYMENTS IN LIEU OF TAXES.** When direct financial assistance is provided to a project in the form of tax incremental financing, the development agreement shall require a payment in lieu of taxes with respect to any parcel or building within the project that is or becomes exempt from real property taxes. This provision shall be incorporated into a covenant running with the land.

**3. WAGE REQUIREMENTS.** A development agreement shall include provisions requiring, unless precluded by s. 66.0903, Wis. Stats., that an employee who performs work that is funded by financial assistance from the city receive, at a minimum, a living wage as defined in s. 310-13-2-a. The department of administration shall monitor compliance with this subsection.

**4. SMALL BUSINESS ENTERPRISES.**  
**a.** The developer of any project receiving direct financial assistance from the city shall use a small business enterprises as defined in s. 370-1-23 for project expenditures in a total aggregate dollar amount equal to the following.

- a-1. Construction: 25%.
- a-2. The purchase of goods and services: 25%.

a-3. The purchase of professional services: 18%.

**b.** The requirement to use small business enterprises shall be included in a written agreement between the city and the entity receiving the direct financial assistance.

**c.** A business that is certified with Milwaukee County, the state of Wisconsin or the U.S. federal government as a disadvantaged, emerging or small business enterprise, or some other program that in the discretion of the chief equity officer of the office of equity and inclusion is comparable to the city's small business enterprise program, shall qualify as a small business enterprise for the purposes of this chapter, and shall be included when determining compliance with the subsection.

**5. COMMUNITY PARTICIPATION ENFORCEMENT.** Every development agreement subject to the requirements of this chapter shall include a provision indicating that if the developer fails to comply with all community participation provisions of ss. 355-7 to 355-9, the commissioner shall cause financial assistance to be withheld, reduced or reimbursed to the city. The provision shall include:

**a.** A schedule of intermediate phases of the project to be used for reporting on compliance with the provisions of ss. 355-7 to 355-9.

**b.** Benchmarks for the actual participation by city residents in compliance with all provisions of ss. 355-7 to 355-9 following the completion of each intermediate phase of the project, including any credit for worker hours achieved on other projects under s. 355-7-2-a.

**c.** A formula setting forth the amount of financial assistance that the commissioner shall withhold, reduce or require to be reimbursed to the city if the actual participation by city residents is less than the benchmark at each intermediate phase of the project. No adjustment to the financial assistance shall be required if the total participation by city residents at the completion of an intermediate phase exceeds the sum of the benchmarks for all completed intermediate phases of the project.

**d.** A requirement that any financial assistance that is withheld, reduced or required to be reimbursed to the city in accordance with this subsection may be reinstated or returned after the developer remedies any deficiency in the required participation or with the approval of the common council.

## **355-17 Community Participation In Development Agreements**

**355-17. Sanctions. 1. GENERAL.** Every development agreement subject to the requirements of this chapter shall contain language indicating that if a developer receiving financial assistance is not in compliance with the requirements of this chapter or if any document submitted to the city by a developer receiving financial assistance, a contractor or subcontractor under this chapter contains false, misleading, fraudulent information, the department of administration may seek prosecution under s. 355-19 and shall impose sanctions which shall include one or more of the following:

a. Imposition of a requirement that remedial efforts be undertaken by developers for the remaining portion of a project where initial reports demonstrate non-compliance with the resident preference hours required for the project.

b. Specific performance or specified remedies under any written agreement pertaining to small business enterprise participation or first-source recruitment agreement.

c. Remedies available to the city under a development agreement for such non-compliance.

d. Withholding of payments.

e. Termination, suspension or cancellation of the contract or agreement in whole or in part.

f. After a due process hearing, denial of right to enter into agreements with the city for 2 years.

**2. RESIDENT PREFERENCE HOURS.** Any sanction imposed that arises from non-compliance with resident preference hours, other than a forfeiture under s. 355-19 or withholding of payments, shall be subject to approval by the common council.

**355-19. Penalty.** Any person, firm or corporation knowingly engaging in fraud, misrepresentation or in any attempt, direct or indirect, to evade the provisions of this chapter by providing false, misleading or fraudulent information shall, upon conviction, forfeit not less than \$2,000 nor more than \$5,000 together with the costs of prosecution.

For legislative history of chapter 355, contact the Municipal Research Library.

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