

To: Members of Economic Development Committee  
From: Peter Rickman  
Date: April 14, 2015  
re: Proprietary Interest Protection Agreement Ordinance

At the meeting of April 15, 2015 the Economic Development Committee will take up file number 37898, which would establish an ordinance regarding proprietary interest protection agreements for projects in which the City participates. As a supporter of this legislation with extensive knowledge about such policies but being unable to attend the meeting and testify, I drafted this memo to address a few points. First, this memo provides a description of the policy and its practical impacts; second, the memo addresses some matters of importance to the Economic Development Committee.

### Proprietary Interest Protection Agreement Requirement Policy Background

Governmental bodies establish proprietary interest protection agreement requirements to ensure that business or financial interests of governments are protected in instances where those governmental bodies participate in development projects. The “proprietary” interest of the local governmental body (e.g. a City) is akin to that of any other private party that holds a business or financial interest in a project. Policies establishing proprietary interest protection agreement requirements have been used in other communities (see below) either on an ad hoc or prospective basis; i.e. some governmental bodies have required proprietary interest protection agreements for individual projects in a reactive manner while others have set in ordinance or statute or administrative order such requirements in instances where the governmental body has a proprietary interest.

Local governments hold, retain or acquire a proprietary interest when they participate in a project as a financier or lender, and sometimes when leasing real property. For example, the use of tax incremental financing on a project is a relatively standard circumstance in which a City would have a proprietary interest. It should be noted that on its face, proprietary interest protection agreement requirement policies only apply when a governmental body holds, retains or acquires a proprietary interest, and in no other circumstances.

Proprietary interest protection agreement requirements protect the business or financial interests of governmental bodies against the adverse impacts of adversarial labor relations on the premises of developments in which the governmental body participates (i.e. holds, retains or acquires a proprietary interest). In the event that contentious labor relations during the course of union organizing by workers employed on the premises in “end-use” employment (i.e. the long-term employment, as opposed to the construction labor) ripens into outright conflict, economic action by labor organizations inclusive of strikes, pickets and boycotts can threaten the operation of a firm on the premises. This in turn can compromise the business or financial interest of the governmental body, in that the lease, loan, or other revenue payments to the governmental body could be threatened by the labor strife.

Proprietary interest protection agreement requirement policies (PIPARPs) establish an obligation of a developer for a project in which the governmental body participates to ensure that no labor organization engages in economic action (e.g. strikes, pickets, boycotts, etc) on the premises of the project. The policies extend the obligation through successorship, tenancy or operations contracts for the duration of

the proprietary interest of the governmental body (but no longer). These policies fall into one of three categories. First, PIPARPs can require that the covered developer secure from a labor organization that expressly indicates that it will seek to organize workers on the premises of the project an agreement including forbearance by the labor organization against strikes, pickets, boycotts or any other economic action. Second, PIPARPs can require the same, but spell out additional key terms of that agreement to effectuate it. In practice, as consideration for the pledge of forbearance against economic action, labor organizations have standard form agreements that include these key terms (see below). [*Note: file number 37898 would establish a PIPARP of the second variety.*] Third, PIPARPs can require that certain types of or all “end-use” employers establish a collective bargaining relationship. The third is most extensive, and is relatively uncommon. The first and second are far more common; in addition, the first and second type effectively end in the same place: the developer and the labor organization form a private agreement covering the terms of “labor peace” as it is often called. These terms typically include the following: employer neutrality during the course of union organizing (i.e. no coercion, threats, intimidation), majority sign-up recognition, arbitration of disputes that arise, and implementing provisions. These agreements, in sum, establish a “fair process” for the course of any union organizing campaign that may take place; again, this is upon notice from a labor organization that it will seek to organize covered employees, and in no way do these policies express preference for or against unionization. The policy requires that a process be developed by the developer and the labor organization such that the proprietary interests of the governmental body are not compromised or threatened by economic action that arises during contentious and adversarial labor relations.

In practice, these requirements play out in a few key ways. First, as noted above, they result in relatively standard (private party) agreements between developers and labor organizations. Second, they result in prospective compliance; i.e. the developers and any labor organization involved fashion the agreements prior to the development going forward. In reality, any organizing that would take place happens at the outset, and not years down the line. Any potential employer has clear expectations about what may or may not be required. Third, they result in agreements covering a certain type of “end-use” employee; namely, low-wage service-sector workers, like those in the food service, hospitality, janitorial, and security industries, and in some limited parts of the retail industry.

The advent of PIPARPs came about following particularly contentious labor relations in the hospitality and property service industries. These situations of labor strife significantly and adversely impacted not only the firms directly involved as well as the local governmental bodies (and their interests), but also the industries as a whole and the local economies. PIPARPs were developed as a policy innovation that since spread across the country. Now, PIPARPs are used to head off damaging and unproductive labor strife and its many adverse impacts, in recognition of, not only the obvious interests of the governmental bodies in protecting its fiscal security and business and financial interests, but also of the fact that at a time of large and growing low-wage employment giving rise to persistent and advancing poverty and income inequality, low-wage service-sector workers naturally would and are organizing into unions, including with a rising tide of labor unrest. PIPARPs protect against the negative impacts that could accrue to governmental bodies, their communities, developers, labor organizations and workers, and do so in a manner balancing interests fairly.

## Potentially Of Interest to EDC

Based upon some initial conversation, input and feedback, a few key points arose that seem worth addressing. What follows touches upon these and other relevant points for the EDC, although not necessarily covering the full gamut of what issues may come up for discussion.

***PIPARPs are in place in a number of communities and do not adversely impact development.*** Across the country a variety of diverse communities have established PIPARPs. In these communities, economic development has not been hampered on account of the PIPARPs. In fact, many of these communities are amongst some of the hottest development markets in the nation, and the industries affected have not slowed down. Major cities like Los Angeles, Minneapolis (and St. Paul), Philadelphia, and San Francisco have PIPARPs on the books. Communities with similarities to Madison on key factors do too: the District of Columbia, Pittsburgh, and San Jose, for example. In addition, cities like Chicago, Oakland, Phoenix, Portland, Seattle and many more have used ad hoc PIPARPs on major projects. No one would argue that development in these communities lags; in fact, they are amongst the pace-setters for commercial office, large-scale residential, hospitality, and retail development. Whether major cities or those with similarities based upon economic, social, cultural and other characteristics, these examples can rest easy any concern about adverse impacts to development in Madison.

***PIPARPs mostly touch workers outside of the scope of major economic development initiatives.*** As noted above, in practice, the industries and sectors affected by PIPARPs are those that employ low-wage service workers. Again, these industries and sectors, in communities with PIPARPs, have not seen a decline in development. The developments that involve, for example, hospitality projects or large commercial office space (i.e. where janitors and security guards might be employed through a sub-contractor) are place-based and related to other local economic conditions. These developments proceed or not based upon these other factors, not upon potential labor costs that might be affected by employee unionization. Competition in these industries or sectors is within-market, not across markets (e.g. within Madison, not Madison versus Milwaukee or Minneapolis); the presence of PIPARPs leads to competition based upon quality, not labor cost minimization. In addition, PIPARPs can actually provide advantages, as described below, in within-market competition.

Perhaps more importantly, the nature of PIPARPs as affecting these low-wage service-sector workers, means that largely they do not affect the major economic development initiatives pursued by a governmental body. As communities, including Madison, focus on competitive advantages across markets or on building clusters (e.g. biotechnology), economic development initiatives follow. Because PIPARPs do not affect these aspects of local development approaches, they are at worst benign in the context of how the policies impact market competitiveness or individual employers in high-priority industries or sectors, and thus, economic development initiatives and economic development in total.

***PIPARPs do not disadvantage developers and employers.*** PIPARPs apply to firms employing workers that would and are natural subjects of union organizing efforts. The presence of PIPARPs does not create some incentive (or disincentive, for that matter) for union organizing; they are neutral on that count. They merely reflect the reality of likely union organizing efforts and establish a fair, transparent, and equitable process for employee determination of union representation preferences. In so doing, they minimize risk not only to governmental bodies involved but also to the employers; contentious labor

relations that rise to the level of economic action like strikes, pickets and boycotts, etc. harm those employers and create within-market competitive disadvantages. It should be noted that coverage of PIPARPs only applies to firms that seek and receive governmental subsidies; any firm is free to not to do so, and not be subject to the requirements. Also to be noted: PIPARPs establish predictability and a level playing field for prospective developers and employers, and in minimizing risk actually advantage these developers and employers.

***PIPARPs can advantage development projects.*** Oftentimes, major development projects themselves are contentious. Interests get pitted against one another; a frank evaluation would say that sometimes these break down along lines of “pro-development” forces against “progressive” forces, particularly in Madison. PIPARPs create the possibility of some of the “progressive” forces to become “pro-development,” particularly on certain projects (if not on an ongoing basis) because of the possibility that low-wage workers will benefit from good, family-supporting, union-represented jobs that result. Often times, unions involved representing otherwise low-wage, service-sector workers have strong ties with other progressive forces and can help align unique-but-helpful coalitions to advance major projects. Development decisions are political; PIPARPs can realign the politics such that unions representing otherwise-low-wage workers join as partners with developers (and other allies) to push projects through in a contentious environment or set of circumstances.

\*\*\*

As the EDC takes up the proprietary interest protection agreement requirement policy, the body can do so knowing that: (1) these policies, through the rigor of real-world application in a diverse set of communities, including many with striking similarities to key elements of Madison, do not adversely affect economic development; (2) no matter how much oppositional rhetoric has been put forward by their previous opponents elsewhere that did not turn out to be true and no matter how much is put forward in the context of the discussion about a Madison PIPARP, economic development will not be adversely impacted; (3) where the EDC has great interest in a set of economic development strategies, the PIPARP will have no impact (adverse or otherwise) whatsoever -- except to prevent damaging, embarrassing economic action like strikes, pickets and boycotts that not only would otherwise disrupt business but also harm the reputation of the city.