



## MEMORANDUM

**TO:** Mayor and Council

**FROM:** Rebecca Giello, Interim Director, Economic Development Department

**DATE:** August 17, 2018

**SUBJECT:** Response to Council Resolution 20180215-082

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The purpose of this memo is to provide response to Council resolution 20180215-082, which directed the City Manager to:

- 1) ... analyze and provide next steps for collaboration and support of a community arts stabilization trust, the "Austin Cultural Trust", that creates, through purchase and long-term lease, affordable spaces that supports artists and arts organizations, preserves historic and iconic cultural buildings and spaces for creative and cultural uses, and functions in a way that provides for cultural assets to exist in all parts of the city.
- 2) ... review potential modifications to Ordinance 20090312-005 to potentially allow economic development incentives for built, mixed-use properties having a retail component with vacant underutilized space and further develop a program providing strategies to utilize vacant retail and commercial space in support of creative endeavors that enhance mixed-use, commercial properties and their surrounding communities.
- 3) ... explore and provide options, whether public or private, to enable micro loans for Austinites to invest in and own local art products as is made available through similar successful models in Sydney Australia, England, the Netherlands and Tasmania.
- 4) ... explore and provide options, whether public or private, to continue and expand the pilot program to enable micro loans and grants for space needs.
- 5) ... explore and provide options in CodeNext to incentivize "Art Facilities" along corridors, Imagine Austin Comprehensive Plan centers, other pedestrian-oriented streets, and existing arts spaces

The attached information serves as collective staff response to the resolution.

Please contact me at (512) 974-3045 or Meghan Wells, Cultural Arts Division Manager, at (512) 974-9314, with any questions.

cc: Spencer Cronk, City Manager  
Elaine Hart, Chief Financial Officer  
Greg Canally, Deputy Chief Financial Officer

## **CULTURAL TRUST, CULTURAL ASSET MAPPING PROJECT, COMMUNITY REVITALIZATION, INCENTIVE TOOLS, REAL ESTATE DISPOSITION**

Both the public sector and private sector play important roles in the development of space that remains affordable for a variety of producers over the long term. Innovative partnerships marry the patient capital originating from government and private philanthropy and entrepreneurial skill to shoulder risk from developers to deliver projects offering creatives affordable, long-term leases or ownership opportunities. The Cultural Arts Division's *Thriving in Place* report outlines several ways to leverage these partnerships, including creation of a cultural trust as one option to explore.

A private-sector lead cultural trust structured appropriately can orchestrate resources and skills from government agencies, private developers, community leaders and wide array of philanthropic and private capital sources for this specific purpose.

### *Framework:*

A Cultural Trust is a nonprofit or quasi-governmental corporation – depending on its relationship to the City - that would, broadly, secure (purchase and manage) permanent space for arts and culture organizations and businesses that bring social and economic value to Austin. The entity's mission enables artists to sustain the creativity and capacity necessary to promote culturally vibrant neighborhoods, and preserves the cultural assets which have been formative in building Austin's character, history, and reputation.

A Cultural Trust could be conceived and structured in a variety of ways, depending on the variety of political, legal, and operational permutations. The following draft framework outlines how such an entity might be created and operated for the good of the community in Austin, but is not exclusive to other options which might influence the nature of its function.

### *Mission and Operational Function:*

The Cultural Trust would, at the heart of its mission:

- Empower cultural organizations the resources to stabilize their facility asset costs and find sustainable pathways to long-term prosperity
- Drive a new investment strategy and focus philanthropic giving in order to preserve and sustain creative live and work spaces and businesses
- Serve a mix of cultural and creative individuals, organizations and businesses, artists, musicians, and a community of people that is diverse by age, race, gender, economic status and cultural background
- Contribute to neighborhood strength and cohesion with arts and cultural heritage at the center of economic and community development, through a community-driven process
- Leverage public and private resources to achieve its mission and goals of expanding equitable and accessible creative infrastructure

The Cultural Trust could, operationally:

- Privately acquire properties to sustain arts across the city (i.e., lease or sell back to long-term operators) in order to preserve historical cultural assets and create new community creative spaces and businesses

- Pool private and public sources of funding into a source of patient capital whose low interest rate and terms of repayment would lessen the cost of construction and/or business operations
- Build the capacity of individuals and cultural organizations/businesses to lease or own property
- Bundle leases to sustain affordable rents for those not prepared to buy
- Provide low-interest loans for creative and cultural spaces and businesses to relocate or avoid displacement (or expand/restructure existing capital debt)
- Cultivate its own sources of capital and diverse funding sources over time in order to provide scalable and systemic relief to all members of the creative community experiencing threats of displacement

#### *Formation and Governance:*

As with any start up business, a detailed business and operations plan would guide early formation of the cultural trust. Early stage investment would fund the “ramp-up” of business operations, including the hiring of a skilled and seasoned Executive Director and first projects. The risk tolerance of the board of directors will help inform the nature of these first projects that could range from the acquisition of land for development, loans to creative businesses and/or provision of technical assistance to creative nonprofit organizations. The high cost of land requires thoughtful care to minimize carrying and development costs should the trust pursue a development project in its first years of formation. Creative partnerships between philanthropy, private development interests, and government will be important to set up the business operations of the trust for long-term success.

In order for the Trust to be created and become operational as soon as possible, it could be formed as a supporting organization under the aegis of an existing nonprofit organization whose mission supports this type of work. The supporting organization would need to file as a 501(c)(3) organization, with its own governing board, but the majority of that board would be members of the umbrella nonprofit organization to ensure mission alignment as well as efficient operations that might be shared or subsumed by one organization or the other (such as accounting and other “back office” functions). Other members of the board could represent early financial or resource contributors, the City and the community. Clear articles of incorporation and organizational bylaws with carefully developed accompanying administrative procedures would guide board governance and the operation of the Trust.

#### *Funding:*

The Trust would have pathways for both strategic investment to utilize private sources of financial support: using patient capital to generate an agreed-upon rate of return to individuals, foundations, banks, and institutional investors over a 20- or 30-year time period through down-market sales (akin to a Real Estate Investment Trust) as well as tax-deductible philanthropic giving (individual, foundation, or other) aligned with donor interest. The City, as long-term partner, could provide ongoing operational support for the organization, capital, and other forms of invested resources. The capital needed to grow the property portfolio would need to ramp up over time, with fund development, equity re-investment, and strategic real estate deals that allow recapture of value back to the creative community.

The Trust could maintain several fund categories depending on specific interest of investors, philanthropists, board members, and/or alignment with different aspects of community need. For instance, if restricted donations were put forward to support stabilization of existing music venues (e.g., Neighborly Bonds or through an individual donor), a fund could be created with those program

parameters as guiding principles, so that resources were acquired and utilized to support that specific need. Separate funds could be maintained to support broader or narrower community needs, according to investment or philanthropic intent. However, in consideration of any specific parameters, it will be important to create and administer all funds with an equity lens in order to serve the needs of marginalized communities and so that further community displacement does not result.

#### *Disposition of Real Estate:*

A key factor in being able to offer long term affordable commercial space is how the land is acquired and taxed and how much of those costs is passed through to the future tenants or owners of the creative economy. The Trust could facilitate the development of affordable creative space through a wide variety of real estate acquisition and leasehold strategies:

- Receiving donations of privately owned land;
- Purchasing land or entering into site control to facilitate the purchase of land;
- Leasing the land at below market rate from a governmental entity;
- Partnering with the City or its local government corporation, and thereby leverage the governmental powers of the governmental entity;
- Entering into a legal partnership with a private developer for the strategic purchase of land.

Land could be managed through the umbrella nonprofit's holding company or that of a local government corporation to enable the supporting organization to act as fee developer and/or management entity. A local government corporation (LGC), created through City Council action, is a nonprofit organization endowed with powers and privileges conferred by City Council and enabled through various state statutes. Cities often have economic development corporations, housing finance corporations, redevelopment authorities, etc. that are essentially types of local government corporations established by the City to carry out different public purposes. The powers that a corporation has depends on what state statutes serve as the policy foundation for City Council action.

The City Council directed the City Manager to provide recommended legal framework, governance, and resources to review as part of formation, and in response to Resolution 201720216-40. The Economic Development Department provided information in a memo from Executive Leadership to Mayor and Council on January 29, 2018 that discussed investigation into the use of local government corporations to further stated City Council policies for economic development. A forthcoming memo with an accompanying report on this research and recommended actions will be provided to Mayor and Council before October 31, 2018.

A local government corporation can partner with an externally controlled and founded nonprofit Cultural Trust. The Trust could acquire property for redevelopment and place the deed in trust so that the property is taken off the market and protected from changes in ownership that may put creative use at risk, such as in the case of San Francisco's Community Arts Stabilization Trust (CAST), the Oakland Community Land Trust, and Toronto's Artscape, among others.

As an example of how this could work, the Trust could purchase an existing property that allows a current arts tenant to maintain occupancy of their building, which was at risk of sale to private investors, and ultimately to assume full ownership. The Trust's acquisition would allow the organization to remain in its existing location as an anchor community arts organization whose mission is embedded in the community in which it is located. Over the next few months, the Trust staff would oversee a renovation

project allowing the arts organization to maximize its space to advance its mission. The property may also need upgrades to existing mechanical, electrical, plumbing, structural, and fire and life safety systems for Code compliance. The Trust will match the organization with its own low-interest loan program, the help of a technical service provider or assistance from a community lender, to build the organization's financial capacity, to purchase the building after a period of time (7-10 years).

The key to successful redevelopment models is integration into the community context in which a development can continue to serve the public and the neighborhood in which it thrives. As Artscape has evolved in its 32 years of operation, it stated that at a key juncture, "the scope of its support to artists shifted from being a landlord providing cheap space with a good lock on the door to a community developer striving to provide a broader set of enabling conditions including a platform for collaboration, proximity to services and amenities, connection to local communities and access to markets among other services and amenities." This deep understanding and respect of community relationships and history to avoid gentrification and displacement is of foundational importance.

Baltimore Arts Realty Corporation (BARCO) rebuilds Baltimore neighborhoods by transforming underutilized real estate into attractive and affordable spaces for creative people and organizations. Through this mission-driven, community reinvestment model, BARCO has, to date, leveraged more than \$19 million in investment to create 60,000 square feet of space for artists, makers, and performers in Baltimore's Station North Arts & Entertainment District including Open Works and The Motor House.

#### *Other Models to Examine:*

Further examination of resources and discussions with partners would be necessary to build out and launch an operational Trust for Austin, but successful models in Austin and beyond could help Austin's opportunity in this area take shape (see below). It would be helpful to receive consulting services from these organizations or contract with a consultant who is familiar with the work of these organizations to help Austin shape its intermediary.

- Affordable Central Texas (ACT) ([affordablectx.org](http://affordablectx.org))
- Community Arts Stabilization Trust (CAST) ([cast-sf.org](http://cast-sf.org))
- Spaceworks, NYC ([spaceworksnyc.org](http://spaceworksnyc.org))
- Toronto Artscape ([torontoartscape.org](http://torontoartscape.org))
- Baltimore Area Realty Corporation (<https://www.rwdfoundation.org/our-work/2017/8/12/barco>)

## **CULTURAL ASSET MAPPING PROJECT**

In order to position the City of Austin for meaningful and relevant policy and program development, the Cultural Arts Division embarked on a Cultural Asset Mapping Project (CAMP) in 2016 to identify the places and resources that are important to Austin's cultural identity and creativity. CAMP visited each of Austin's 10 Council districts asking participants to map places that had cultural and creative value to them. Through district meetings, DIY CAMP mapping kits, and an online interactive map, staff compiled over 3,000 data points depicting cultural assets like theaters, music venues, landmarks, and more.

The CAMP Report is downloadable from the [Cultural Arts Division website](#), and contains profiles highlighting cultural facilities in each Council District, heatmaps showing concentration of cultural facilities like theaters, music venues, etc., demographic segmentation of Austin's creative sector, and

creative sector trends and economic impact. The CAMP data are also available on the [City's open data portal](#) for use by the community, developers, planners, etc.

As a complement to the CAMP Report, staff created [Thriving in Place](#), a primer on place-based economic development for cultural spaces. *Thriving in Place* offers an introduction to district planning and organization for place-based development such as cultural districts, and examples of site-specific strategies aimed at preserving cultural spaces and their surrounding communities. The *Thriving in Place* guide includes several redevelopment approaches that might be applied to an Austin context.

Additionally, the Cultural Arts Division has implemented the recent [Creative Space Survey](#) to update those findings and serve as an annual data collection effort to maintain information on space needs within the creative community. The Creative Space Survey was first implemented in the summer of 2017 with plans to collect data on creative space needs as an ongoing exercise. Staff is collecting data from individual cultural organizations through the Creative Space Study in order to show the depth and breadth of creative community space needs, and to provide to the community seeking organizations to match with redevelopment and investment opportunities. In its work to create place-based revitalization, especially through the Economic Development Policy revision, the Economic Development Department envisions a pre-development analysis that will capture necessary financial and related information that proves organizational readiness for land acquisition or real estate deal-making.

## **OTHER TARGETED INTERVENTIONS**

City staff have been diligent in implementing a number of important policy and programmatic mechanisms to increase the supply of affordable commercial space for artistic activity and support small businesses. Work has been completed and is underway to expand the City's ability to partner with the private sector in the stabilization of the creative ecosystem in a number of ways. The development process is being designed to include targeted interventions to support:

- Incentive Policy Development
- Leveraging City-owned Real Estate
- Microloans and Grants
- Capacity Building/ Technical Assistance/ Predevelopment
- Regulatory Streamlining / Facilitation

### *Incentive Policy Development*

On March 2, 2017, City Council passed Resolution 20170302-034 to initiate a stakeholder consultation process and develop recommendations for revising the City's Economic Development Policy. This policy provides direction for staff to bring forward programs to be developed to support business expansion and place-based revitalization and would encourage participation by creative businesses. Staff is requesting Council Action on August 30, 2018 to approve items which would create a clear policy framework to present a real estate gap financing program for City Council consideration in the next 12 months to address the commercial rent affordability crisis facing the creative and artistic community.

### *Leveraging City-Owned Real Estate*

Past City Council actions provide guidance on those benefits and therefore becomes the basis on the portfolio strategy. Past City Council resolutions and most recently in [Council Strategic Direction 2023](#) clearly articulate the public benefits the repositioning of City-owned property should achieve: affordable

housing, emergency shelter, creative and cultural music and art space, healthy food production or sale, parks and open space, mixed-use and transit-serving development and public health services. An interdepartmental team has evaluated these aspirational public benefits for each property against the property's unique physical, regulatory and locational attributes and other community policy objectives. CAMP data were utilized in the analysis and selection of sites suitable for near term competitive disposition for affordable commercial space. The result of this comparison ultimately determined whether a property is suitable in the near term to be competitively positioned for redevelopment.

The City staff memo to City Council dated August 3, 2018, summarized the results of this analysis and next steps for the redevelopment of high priority opportunity parcels. The memo identified the below properties to move forward to competitively position in the near term:

- 6909 Ryan Drive
- 906 E. St. Johns (Home Depot) in conjunction with 7211 N. I-35 (Chrysler)
- 4800 Bolm Road
- 2201 Grove Boulevard - Austin Energy East Riverside property (contingent on the identification of an alternative site for the Austin Energy headquarters as contemplated in Resolution 20180628-035).

The beneficial impact of the positioning of these properties can be further enhanced by utilizing other types of economic development tools and partnership structures, such as local economic development incentives and/or partnering with a cultural trust entity.

#### *Microloans and Grants*

There are currently no public or private sector programs within Austin that provide micro loans to invest in or own local art products. Many local artists are open to providing payment plans for arts patrons seeking to acquire artwork. Research into the programs in other countries mentioned in the resolution did not produce any viable programmatic models to consider.

However, the City has implemented (and currently operates) some loan programs to help with affordable creative space. In September 1989, City Council created the **Music Industry Loan Program** (Resolution 19890921-067) to help the local music community, with \$225,000 allocated to the program as a revolving loan fund, administered by City of Austin staff that later moved into the Economic Development Department. The program provided a guarantee to banks loaning to qualified applicants (which could be individuals, businesses, or non-profits) that would pay the bank 50% of any amount still left on the loan if the loan went into default. That City of Austin loan guarantee therefore increased the number of loans that banks made to our local music community.

The City of Austin eventually expanded the program to allow applicants from creative sectors other than just music, and the program was then re-named the **Creative Industries Loan Guarantee Program** in 2003 and administered by City of Austin staff who later moved into the Economic Development Department. One full-time job needed to be created or two full-time jobs needed to be retained for each \$15,000 that the applicant received in loan funds. All of the loans made under this program were paid in full, so the City of Austin never had to expend any of those funds for a default. The funding for this loan guarantee program was eventually reallocated to other music-related efforts because those efforts were deemed to be a more immediate priority at that time.

The Music and Entertainment Division (MED) of the Economic Development Department currently administers the **Music Venue Assistance Loan Program (MLVP)**, which aims to develop a sustainable ecosystem of live music venues relying on innovation and community collaboration to lessen sound impact on neighbors, while preserving their cultural assets and building capacity to earn more money.

MLVP currently provides loans of up to \$35,000 for sound mitigation and impact improvement. MED has proposed expanding this scope in 2018 to allow for larger loans supporting any capital improvement leading to additional revenue streams, ranging from renovations allowing for increased occupancy to adding such capacity as a kitchen or patio. The proposed scope expansion (anticipated for release in September 2018) would also allow for funds to be used to open new live music venues in all areas of Austin that currently allow for this land use.

Besides increased revenue generation and expanded programming, venue improvements paid for by MLVP could potentially leverage longer-term leases, since landlords could agree to longer terms in exchange for the improvements. For instance, a venue's investment in a commercial kitchen or fire sprinkler system to expand its business or occupancy adds value to the property and potentially can be leveraged to negotiate longer-term leases.

In 2017, in response to the City Council's 2016 Music and Creative Ecosystem Omnibus Resolution (20160303-019) related to easing affordability for Austin's creative sector, the **Art Space Assistance Program (ASAP)** was created, administered by the Cultural Arts Division of the Economic Development Department. The purpose of the program was to provide assistance to local creative sector nonprofits facing financial difficulties due to rising property costs and costs associated with tenant improvements that were required because of City Code compliance issues.

The program received \$200,000 in one-time funds, and 11 local creative sector nonprofits received grants through the program. Information provided by the grant recipients has shown that specific goals of the program, such as job retention and proactive outreach to increase involvement and engagement with women and communities of color, are being achieved. Furthermore, evidence supports that ASAP is enabling the grant recipients to become more financially stable, not just in the short term, but longer term as well, because the grants are allowing the recipients to use the funding that would have otherwise gone for rent or tenant improvements for revenue-generating purposes instead.

It is also clear from recent examples such as Pump Project, Salvage Vanguard Theatre, Flatbed Press, Co-Lab, Tapestry Dance, and many others who lost their leases and are being forced to move, that there is still an urgent need to continue the ASAP. More than \$500,000 in requests from qualified applications were received in ASAP's pilot year.

#### *Capacity Building/ Technical Assistance/ Predevelopment*

Further, in addition to financial relief needed to defray drastic hikes in rent and taxes for creative organizations and businesses, there is a need to provide specific training in business acumen, organizational governance, diversified revenue development, donor cultivation, and long-term financial planning for the creative community. The Community Arts Stabilization Trust and the Northern California Community Loan Foundation provide specialized real estate consulting and training to artists and arts organizations in the San Francisco Bay Area. The Capacity Building Program, operated by the Cultural Arts Division, offers some limited funds for this type of training, but is in its last year of earmarked funding in the proposed FY 19 budget.



### *Regulatory Streamlining / Facilitation*

The Economic Development Department has worked closely with the CodeNEXT team to submit recommended revisions and will continue to work with land development staff on incorporating the below concepts into the Land Development Code:

- Inclusion of “Performance Venue/Theater” and “Live Music Venue” in General Terms and Phrases (Section 23-2M-1030) as Pedestrian Oriented Uses.
- Defining the following as eligible community benefits within the Downtown Density Bonus Program: Library, Museum, Public Art Gallery, Live Music Venue, Studio, Performance Venue/Theater
- Creation of a “Performance Venue/Theater” land use definition including performing arts theaters, music venues (with alcohol sales 50% or less of total revenue), and movie theaters and expand that use along main street zones, corridors, and Imagine Austin centers
- Allowing alcohol sales as accessory use if under 51% of total revenue to support arts facilities subsidizing costs through alcohol sales
- Expanding and refining “Live/Work” and “Work/Live” uses within commercial/industrial zones

Additional requests have been made by the Economic Development Department to define “Live Music Venue” as a term and land use distinct from “Bar/Nightclub” to distinguish venues and cultural facilities making 51% or more of their revenue from alcohol sales. Those recommendations are currently under discussion and could benefit from an interdepartmental working group to refine criteria and definitions surrounding a Live Music Venue use.

An inter-Department working group between the Development Services Department, Planning and Zoning Department, and the Economic Development Department has been initiated to form to discuss those recommendations as well as other specific recommendations such as the formation of a cultural asset certification program, additional cultural space incentive options within the land development code, and permitting and code compliance barriers for creative spaces. It is anticipated that this working group will continue to work on issues supporting a shared interest in public safety, code compliance, streamlining City processes, and sustaining the creative community.

### **CULTURAL SPACE LIAISON/OMBUDSMAN**

There are staff in several Divisions of the Economic Development Department who, as a portion of their job duties, assist musicians and small businesses with information and interdepartmental City contacts and community resources related to regulatory and development activities. There have been ongoing and well-documented concerns from the community regarding the need to have dedicated assistance from the City to help navigate Code citations/compliance, permitting, development processes, and other regulatory requirements that affect the creative community. However, there is no single dedicated staff person to act as a Cultural Space Liaison or ombudsman for arts nonprofits and others in the creative community. Other cities do support this type of position, however: Seattle has a full-time Cultural Spaces Liaison, London has an Office of Cultural Spaces at Risk, and Baltimore Mayor’s Task Force on Safe Spaces (2017) calls for an Ombudsman. Austin’s Music and Creative Ecosystem Stabilization Recommendations (2016) also included a dedicated ombudsman for creative businesses.