

Special Report

# Domain Chapter 380 Agreement

March 2018



The Chapter 380 agreement between the City of Austin and the Domain was signed in June 2003 and is anticipated to end in October 2028. The agreement includes provisions for:

- Affordable housing – the City has a process in place to review income requirements for the 42 affordable units at the Domain, but City staff did not document what information was viewed or used to support those reviews. The City recently engaged a third-party to conduct the affordability reviews which were in progress as of February 2018.
- Job creation – City staff certifies the number of jobs on an annual basis, but information about job types, wages, and turnover is not part of the agreement and is largely not available.
- Local business assistance – the Domain set aside a fund to assist local businesses to locate at the Domain and seven local businesses initially signed leases. At least five businesses received assistance from the fund, but none remain open. The other two businesses were still operating at the Domain as of February 2018.

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## Objective

The objective of this special request was to determine:

1. What is the timeline for the Chapter 380 agreement?
2. Regarding agreed upon affordable housing units, what underlying support is collected and reviewed regarding applicable affordability requirements?
3. Regarding creation of permanent new jobs, what types of jobs were created and at what wage? Have the positions counted in the agreement turned over and, if so, with what frequency?
4. Regarding support for local small business, what local businesses were recruited to locate at the Domain? What is/was their tenure?

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## Background

Chapter 380 of the Texas Government Code allows municipalities to provide loans or grants of public money to encourage economic development. In June 2003, the City of Austin (City) executed a Chapter 380 economic development agreement with EGP Management, L.L.C.<sup>1</sup> to develop what is now known as the first phase of the Domain. With the City's permission, the developer has assigned its rights and obligations under the agreement several times, most recently to The Domain Mall, LLC, a subsidiary of Simon Property Group, Incorporated.

Through the Chapter 380 agreement, the City promised to pay the Domain developer portions of the sales and property tax revenues generated from the project over time. In return, the Domain developer agreed to meet certain requirements, including:

- Complying with S.M.A.R.T. Housing<sup>2</sup> requirements including making at least 10% of rental units affordable to households at or below 65% of Median Family Income (section 4(c)),
- Creating at least 1,100 permanent jobs upon project completion (section 4(d)), and
- Designating and allocating a \$1 million "Domain Fund" to assist small, local businesses to locate at the Domain (section 4(b)).

The City's Economic Development Department (EDD) monitors the terms of the Chapter 380 agreement with yearly monitoring. In addition, a third party conducts yearly reviews of EDD's monitoring and confirms the outcomes per the agreement. The City's Neighborhood Housing and Community Development (NHCD) department monitors compliance with the affordable housing requirements of the agreement and has recently contracted with a separate third party to perform this function.

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City staff conducts yearly monitoring of the Chapter 380 agreement which is supplemented by third party reviews.

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<sup>1</sup> In late 2003, Travis County also executed an economic development agreement with EGP Management, L.L.C. under Chapter 381 of the Texas Government Code.

<sup>2</sup> The S.M.A.R.T. Housing acronym refers to Safe, Mixed-income, Accessible, Reasonably-priced, and Transit-oriented.

# What We Learned

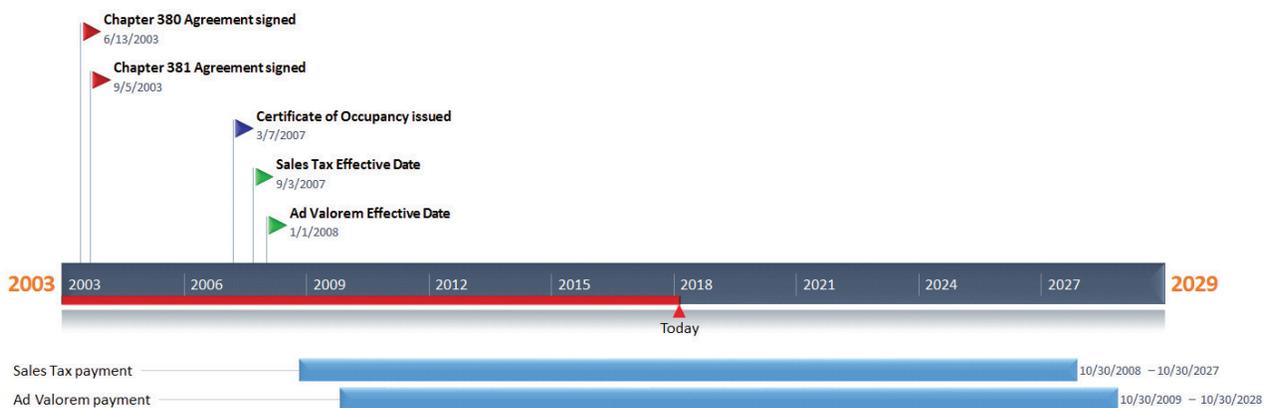
## What is the timeline for the agreement?

The Chapter 380 agreement between the City and the Domain is anticipated to end on October 30, 2028, which is when the City is scheduled to make the final payment based on property taxes collected at the Domain.

The agreement was signed by the parties and became enforceable on June 13, 2003. The agreement term runs until the maximum payment amount<sup>1</sup> has been reached or twenty years after the Ad Valorem Effective Date (January 1, 2008), whichever is earlier. In the agreement, ad valorem taxes refer to property taxes. Due to the timing of tax payments, the agreement extends the term to the date of the City's final payment to the Domain. The City's first property tax payment to the Domain was October 30, 2009 and the twentieth and final payment is scheduled for October 30, 2028.

Based on information provided by EDD, it seems unlikely that the City will reach the maximum payment amount before October 2028. Exhibit 1 shows a timeline of the agreement and includes the payment dates for the sales tax and property tax generated at the Domain.

**Exhibit 1: The Timeline of the Chapter 380 Agreement Begins in 2003 and is Anticipated to End in 2028**



SOURCE: Office of the City Auditor analysis of EDD documentation, January 2018.

**Regarding agreed upon affordable housing units, what underlying support is collected and reviewed regarding applicable affordability requirements?**

According to NHCD, there are forty-two residential units identified as affordable in accordance with the 10% affordability and S.M.A.R.T. Housing guidelines at two properties located at the Domain. The S.M.A.R.T. Housing program requires that landlords complete forms estimating the lessee's yearly income. That form should be supported by at least two months of paystubs, at least six months of bank statements if the lessee is self-employed, as well as any other evidence of additional support and payments including unemployment compensation, pensions or annuities, spousal support, and Social Security benefits.

<sup>1</sup> The maximum payment amount in the Chapter 380 agreement is \$25 million which may be reduced based on payments made by Travis County under their Chapter 381 agreement (maximum payment amount of \$5 million). Both amounts are calculated on a net present value basis when discounted at an annual rate of seven and one-half percent (7.5%).

NHCD appears to have conducted an on-site review at both properties located at the Domain in March 2016. A year later, NHCD sent letters to each property notifying them that they were “compliant with the terms of the affordability component” of the Chapter 380 agreement. We were unable to review what support was collected to reach those compliance findings. NHCD staff asserted that the employee conducting the reviews only viewed materials and did not collect or document any supporting evidence of compliance. In addition, we were unable to determine what materials were viewed since the NHCD employee who performed the compliance work is no longer employed by the City.

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The current NHCD contractor is collecting documentation to support their affordable housing compliance reviews.

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A current NHCD contractor, Blueprint Housing Solutions, is now conducting compliance reviews for the two Domain properties for 2017. We verified that the contractor had collected some of the support noted above, including paystubs, for one of the two properties. However, both reviews were still in progress and their documentation process was not complete as of the date of this special request report.

Also, we noted that S.M.A.R.T. Housing units are typically required to be leased as affordable housing for a five year period. As shown in Exhibit 2, staff indicated that the affordability period for the Domain units coincides with the length of the Chapter 380 agreement.

**Exhibit 2: Affordability Timeline for Identified Housing Units at the Domain**



SOURCE: Office of the City Auditor analysis of NHCD documentation, January 2018.

**Regarding creation of permanent new jobs, what types of jobs were created and at what wage? Have the positions counted in the agreement turned over and if so, with what frequency?**

The Chapter 380 agreement between the City and the Domain calls for the creation of 1,100 permanent jobs. We did not find a definition in the agreement for what “permanent” means. Also, the agreement does not require that the Domain report or the City monitor the types of jobs created or the wages and turnover associated with those jobs. We contacted a representative from Simon Property Group, the parent company of the Domain, who noted that detailed information about job types, wages, or turnover for the jobs created at the Domain were not available. They did note that job type categories at the Domain include retail, custodial services, security and safety, and food service.

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The Chapter 380 agreement does not include provisions related to the types, wages, and turnover of the jobs created.

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EDD staff conducts yearly monitoring of the number of jobs created at the Domain using information from Tenant Employment Reports. However, staff indicated that some employers at the Domain do not provide information about jobs, so complete information about all jobs at the

Domain is not available. Instead, staff verifies a sample of the jobs reported and prorates that figure to the total number of jobs reported. The latest report from EDD verified 1,107 jobs, but staff indicated that this number would likely be higher if more job information was available.

**Regarding support for local small business, what local businesses were recruited to locate at the Domain? What is/was their tenure?**

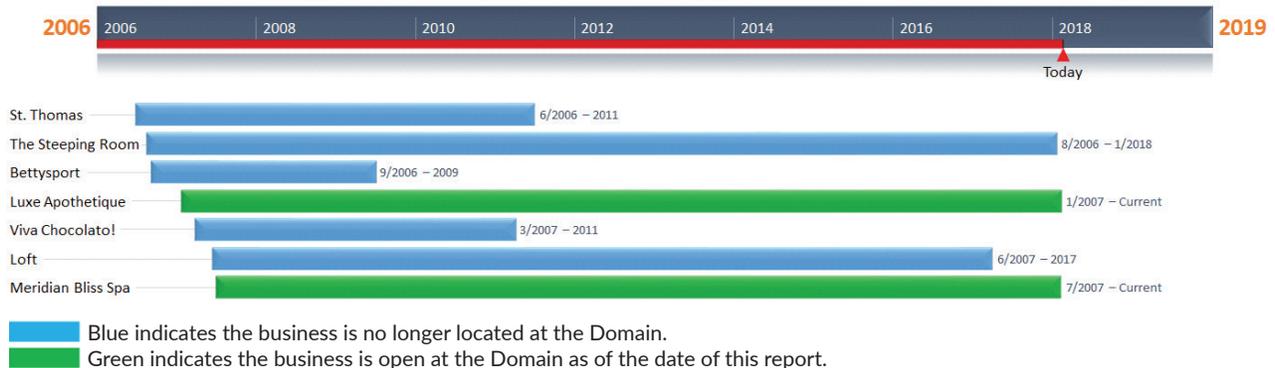
The Domain reported that twelve local businesses entered negotiations to open a location at the Domain. Ultimately, leases were executed with seven of those businesses with six opening in 2007 and the seventh opening in 2008. Of those original seven businesses, two remain open as of the date of this special request report. We also noted that other local businesses have since located at the Domain. We verified that at least one of those businesses is open as of the date of this special request report.

As noted in the Background section, the Chapter 380 agreement required that a \$1 million “Domain Fund” be created to assist small, local businesses defray costs that would normally be borne by the tenant associated with opening a space at the Domain. We saw evidence that as much as \$1.755 million was identified for assistance purposes. EDD confirmed that just over \$1 million was spent from the “Domain Fund” by July 2008 to assist five of the seven local businesses that originally located at the Domain. None of those five businesses remains open. For the two remaining businesses, we did not see evidence that they received any assistance, but EDD staff noted that the Domain was not required to provide evidence of additional assistance after they exceeded the \$1 million requirement.

Additionally, the Chapter 380 agreement noted that the leases for these businesses shall be for a five year period and an exit interview shall be conducted as long as there is a balance in the “Domain Fund.” The leases we reviewed were generally for a ten year period. Also, we did not see any evidence of “exit interviews” being conducted. However, these interviews would not have been required by the agreement since the “Domain Fund” balance was exhausted before the first local business left the Domain. Exhibit 3 shows the original seven businesses and their tenure at the Domain.



**Exhibit 3: Two of the Seven Original Small, Local Businesses Remain Open at the Domain**



SOURCE: Office of the City Auditor analysis of EDD documentation, February 2018.

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## Why We Did This Report

This report responds to a request from Council Member Pool regarding questions about the Domain Chapter 380 agreement.

Cover: The Domain, Peter L. French.

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## Scope

The scope of this project included the Chapter 380 agreement with the Domain.

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## Methodology

To complete this special request, we performed the following steps:

- evaluated the Chapter 380 agreement for terms and requirements;
- reviewed compliance reports and associated documentation;
- interviewed key staff in EDD and NHCD about City compliance procedures;
- interviewed staff at Simon Property Group, Blueprint Housing Solutions, and management of both housing properties located at the Domain; and
- conducted an on-site visit to the Domain.

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## Project Type

Special request projects conducted by the Office of the City Auditor are considered non-audit projects under Government Auditing Standards and are conducted in accordance with the ethics and general standards (Chapters 1-3).

The Office of the City Auditor was created by the Austin City Charter as an independent office reporting to City Council to help establish accountability and improve City services. Special requests are designed to answer specific questions to assist Council in decision-making. We do not draw conclusions or make recommendations in these reports.

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