



MEMORANDUM

TO: Mayor and Council Members

FROM: Rodney Gonzales, Assistant City Manager
Veronica Briseño, Assistant City Manager

DATE: October 27, 2022

SUBJECT: **Staff Concerns Regarding October 27, 2022, Agenda Item 41 Relating to Real Estate**

Attached are the staff comments assembled from various departments regarding Version 4 for this agenda item. After reviewing Version 4, staff remains unable to support the agenda item. The draft resolution is in its fourth iteration within four weeks. Many staff from multiple departments have suspended other work and meetings to prioritize the review of each draft. However, there is concern regarding the speed at which this broad-reaching resolution is moving and a concern for not providing a thorough review. Additionally, the draft resolution has a depth of detail for a policy document such that there is concern for the resolution inadvertently delving into operational matters by virtue of the detail.

Another concern is that, to staff's knowledge, the Austin Economic Development Corporation (AEDC) Board and staff have not provided formal feedback regarding the draft resolution to City staff nor to all of Council. As a recent partner incorporated to create and support development of affordable housing, redevelopment, revitalization and other priority projects and goals of the City, the AEDC will be a key partner in real estate matters. Like how City departments are providing feedback to the draft resolution, a more robust review would incorporate feedback from the AEDC staff through a joint review with City staff of the areas noted below.

Key areas for AEDC review:

- Ground Leases Versus Fee-Simple Sales
 - There were three national models used to guide the structure, governance, and funding of the AEDC. All three national models generate monies from real estate by turning assets into a more productive use. As such, a key role of the AEDC is to fulfill the role of a public developer—managing public real estate and public/private partnerships on behalf of the City to achieve inclusive growth policies.
 - AEDC Board and Staff should provide their perspective on this facet of the draft resolution.
- Leasing Facilities for Community Needs
 - At Council's request, the AEDC is currently leading the Cultural Trust and Creative Space Bond Program. As part of the program, the AEDC is working with community organizations

- to identify land or buildings to be acquired or land on which buildings would be constructed by the AEDC on behalf of the City with these bond proceeds.
 - AEDC Board and Staff should provide their perspective on this facet of the draft resolution and whether there is an impact to the work regarding the Cultural Trust.
- Current Appraisals
 - As indicated on Page 10 of the [July 31, 2020 Staff Memo to Council on recommendations for creating the AEDC](#), control of property via direct ownership of the AEDC or through an interlocal agreement, the success of the AEDC is premised on its ability to obtain control of City-owned property without competitive bidding. The AEDC requires either complete ownership, or a pre-negotiated interlocal agreement allowing access and authority to negotiate transactions utilizing property.
 - The AEDC Board and Staff should provide their perspectives on this facet of the draft resolution.
- Land Use Considerations
 - Like the statement above, the success of the AEDC is premised on its ability to obtain control of City-owned property either through complete ownership or a pre-negotiated interlocal agreement.
 - The AEDC Board and Staff should provide their perspective on this facet of the draft resolution that requests the initiation of zoning for certain City-owned parcels.
- Joint Uses and Collaborations
 - As indicated above, a key role of the AEDC is to fulfill the role of a public developer—managing public real estate and public/private partnerships on behalf of the City to achieve inclusive growth policies.
 - The AEDC Board and Staff should provide their perspective on this facet of the draft resolution.
- Achieve Council-Approved Priorities for All Property
 - This section of the draft resolution implements certain requirements for leases of City-owned property and development or redevelopment of City-owned property.
 - As indicated on Page 15 of the [July 31, 2020 Staff Memo to Council on recommendations for creating the AEDC](#), it is contemplated that AEDC will execute a contract with the City of Austin every year. To ensure that the AEDC has equal if not greater successes than best practice models explored in Task 2, the AEDC will need nearly complete autonomy in its work with limited restrictions. Unlike the community benefit requirements embedded in current City programs such as Chapter 380, procurement requirements above State law requirements, minimum wage requirements and others, the AEDC requirements for each property are contemplated to be agreed upon in the annual contracting process with the City. In some cases, the AEDC will not have the identical requirements of other COA projects due to the nature of its contracts. This will allow the nimbleness and flexibility found in best practice models needs to be present for the AEDC. Beyond what is legally required, the AEDC can certainly make reasonable attempts to achieve various community benefit goals beyond the requirements; however, mandates for the entity to exactly parallel all COA policies would pose risks and challenges to fully utilizing the benefits of creating the AEDC.

- The AEDC Board and Staff should provide their perspective on this facet of the draft resolution.

Staff will be available at tomorrow's Council meeting to provide responses to further Council questions regarding the draft resolution.

Attachment: City Department Staff Comments Regarding Version 4 of Agenda Item #41

cc: Spencer Cronk, City Manager
Anne Morgan, City Attorney

City Department Staff Comments Regarding Version 4 of Agenda Item #41

RESOLUTION NO.

WHEREAS, the City of Austin is one of the largest owners of land within the Austin area, owning real property throughout its jurisdiction within each of the ten City Council districts;

WHEREAS, as the governing body of the City, the City Council is entrusted with the responsibility and authority to purchase, sell, and lease of real property on behalf of the City;

WHEREAS, decades of City plans and multiple Council-approved policies have identified vacant or otherwise underutilized City-owned land and facilities as opportunities to expand community services and generate opportunities for basic necessities and Council priorities, such as affordable and family-friendly housing;

WHEREAS, the Strategic Housing Blueprint, for example, identifies strategic opportunities for the use of City-owned land, such as community land trusts and the co-location of housing alongside or within City facilities such as libraries and community centers to build and generate long-term affordable housing at deeper levels of affordability in areas of the city where land costs and property taxes are higher;

WHEREAS, the City's Families and Children Task Force and the later work group identified the importance of collaboration between the City, school districts, and other stakeholders to develop affordable, family-sized housing and other basic needs for families, such as childcare facilities, to retain and provide stability for families within the City;

WHEREAS, the City Council desires to establish a consistent, reliable, and transparent process that incorporates earlier Council review, evaluation, consideration, and approval of real estate transactions and redevelopment proposals for City-owned land to ensure that the City's policies and goals are prioritized within the City's overall real estate management strategy;

WHEREAS, earlier City Council input into decisions related to the long-term use, acquisition, and disposition of real estate will ensure that Council-approved policy and community benefits are incorporated into the negotiations of such

transactions before significant staff time and resources are spent on a proposal;

WHEREAS, earlier City Council input into decisions can help improve efficiencies throughout a proposed real estate transaction by ensuring the transaction is consistent with Council direction at the beginning and avoid delays at the end of the transaction, when delays can be more problematic;

WHEREAS, Resolution 20121011-076 directed the City Manager bring forward an enhanced review process for potential real estate sales of City-owned land, including community outreach and consideration of all relevant City plans and policies, from small-area plans to the Imagine Austin Comprehensive Plan;

WHEREAS, the Austin Climate Equity Plan, the Austin Strategic Mobility Plan, and the Downtown Austin Parking Strategy all articulate the need to manage the City's parking facilities in a manner that promotes a multi-modal transportation system and helps generate revenue for overall mobility improvements;

WHEREAS, as the stewards of the City's real property, the City Council has a responsibility to its taxpayers to obtain the best value, both in terms of price and efficiency, of the use of the City's real estate interests;

WHEREAS, on August 3, 2018, the Housing Department issued a memorandum stating that the Economic Development Department (EDD), building upon the "portfolio approach" of repositioning City-owned property, would comprehensively evaluate sites and make actionable recommendations for City Council consideration in order to leverage City Council policy objectives for each site and the portfolio as a whole;

WHEREAS, Resolution No. 20161103-045 directed the City Manager to ensure that the City's Strategic Facilities Governance Team work with other local governmental and quasi-governmental entities, including the Austin Independent School District, Travis County, Capital Metro, and Austin Community College, on creating a process for identifying opportunities within each entity's real estate portfolio for coordination on facilities and redevelopment of public land and identification of opportunities for joint-use agreements, with the aim of achieving shared priority policy goals, such as creating affordable and permanent supportive housing, supporting transportation goals, or supporting space for

creatives; and

WHEREAS, Resolutions 20220728-94 and 20220901-89 identified the need to create spaces for cultural arts and live music to preserve Austin's unique and distinctive identity, contribute to the city's overall character, quality of life and economy, and generate rich, social, cultural and economic benefits;

WHEREAS, in 2016 and 2017, the Downtown Austin Alliance worked with City transportation staff and other stakeholders on the development of the "Downtown Austin Parking Strategy," which recommended that the City design and implement a performance-based parking management program in which staff would have authority to adjust rates and regulations at least annually to meet approved availability targets; and

WHEREAS, Resolution 20220915-055 directed the City Manager to assess the parking rates charged at the Austin Convention Center to ensure consistency with the City's overall transportation and financial policies;

WHEREAS, Resolution 20161013-008 directed the City Manager to identify properties within the City's real estate portfolio suitable for development as affordable housing, mixed use housing developments, and emergency shelter;

WHEREAS, Resolution No. 20170216-040 directed the City Manager to bring forward for Council consideration specific proposals for creating an economic development corporation or similar entity that could create or support development of affordable housing, redevelopment, revitalization and other priority projects and goals of the City;

WHEREAS, Resolution No. 20201203-046 directed the City Manager to bring forward such action as is appropriate to contract with the Austin Economic Development Corporation (AEDC) to manage the funds, as set forth in the Texas Tax Code Chapter 351 for the purpose of implementing, as a project, Iconic Cultural Preservation, restoration, acquisition, construction, improvement, enlarging, equipping, repairing, operations, and maintenance as provided for under Texas Tax Code; and

WHEREAS, the Austin Economic Development Corporation is well situated to act on behalf of the City in redevelopment opportunities to maximize the

community benefits and further municipal goals;

WHEREAS, the following policies are intended to provide a general framework for the use of City-owned properties, respect the primary functions of the various City departments, enterprises, and City-owned entities, provide flexibility when needed, and to align with any legal requirements pertaining to the funding sources related to the acquisition and/or management of the City facilities;

WHEREAS, several of the policies contained in this Resolution are restate existing policy or practice, such as favoring ownership over leasing; these policies are included to ensure that such policies and the progress made toward achieving them are prioritized in the ongoing management of the City's real estate portfolio; **NOW, THEREFORE**,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN

The City Manager is hereby directed to manage the City's real estate interests, on a prospective basis, according to the following Council-approved policies.

GENERAL NOTE AND EXCLUSIONS

This resolution applies to the development, redevelopment, sale, acquisition, leasing, and disposition of City-owned real estate. As a point of emphasis, the following guidance is provided to the City Manager to assist in the implementation of these policies:

- **Prospective Basis**. Nothing in this Resolution is intended to alter the terms and conditions of existing agreements, including exclusive negotiation agreements and leases that have already been executed or are otherwise at a significant stage of negotiation, such as those City-sponsored developments located in Colony Park, on St. John's Avenue, and on Ryan Drive, or those which have received sufficient policy directive through prior City Council action, such as direction provided through the budget amendment process related to the acquisition of a facility for temporary shelter. Lease renewals and extensions should align with this Resolution's policies, to the extent such renewals and extensions are not automatic.

Staff Comments

- Please clarify if there are other projects (such as Health South and the related

parking garage) that have Council approval to proceed that are covered by this section.

- Please specify if this is intended to encompass projects that don't necessarily require an Exclusive Negotiations Agreement (ENA).
- Ordinary Course of City Business. The policies in this Resolution should not impair the City's ability to conduct its standard, day-to-day practices in the ordinary course of City business for the acquisition or purchase of real estate interests associated with providing basic City services, such as acquiring right-of-way and other easements, parkland, and other real estate interests dedicated through the City's development permitting processes or for the provision of basic utility, drainage, or transportation infrastructure associated with a Council-approved Capital Improvement Project plan. For purposes of clarification, this Resolution is not intended to apply to real estate being acquired and/or developed with utility infrastructure for the provision of water, electricity, or other utilities (including, but not limited to, power plants, water treatment plants, and wastewater treatment plants), where it is unlikely that the co-location of other community benefits would be achievable; however, it is intended to apply to the development and redevelopment of office space for such utilities, such as the Austin Water Utility and Austin Energy headquarters. Similarly, this Resolution is not intended to impact the standard operations of the Austin-Bergstrom International Airport; however, it is intended to apply, to the extent allowed under applicable laws, to leasing internal spaces for retail vendors and restaurants and for the development of commercial uses on airport land.
- Transactions that Require City Council Approval. This Resolution applies to transactions that require the approval of the City Council and not those otherwise within the City Manager's authority under the City Charter or City Code.
- Consistency with Applicable Laws and Bond/Financial Requirements. All real estate transactions should continue to be consistent with the City Charter, City Code, and state and federal laws, as well as any requirements established by bond or covenant. To the extent there are any conflicts with the requirements of this Resolution and such laws or requirements, those laws and requirements prevail.

PROCEDURAL POLICIES

- **Transparency in Real Estate Transactions and Solicitations.** Transparency should be a central focus of all real estate transactions and real estate-related solicitations. As a general policy, the City Manager should err on the side of transparency and post for public review materials containing the relevant details for a proposed transaction or solicitation prior to any City Council action with sufficient time for public review and input. Due to the sensitive nature of real estate transactions and as consistent with state law, the City Manager will need to provide some details about a proposed real estate transaction or solicitation in executive session to protect the City's negotiating position and/or other third parties' interests, proprietary or otherwise.

Staff Comments

- Please specify if it is contemplated that departments will need to have RFQs drafted prior to seeking Council approval on a procurement methodology (i.e. CMAR)?
 - *Transparency in Solicitations.* When drafting RFPs, RFQs, and other solicitations, the City Manager should structure such solicitations so that project-specific details within a response can be shared publicly prior to Council making its selection; for example, in a mixed-use development, details related to the number of units, bedroom mix, levels of affordability, revenue-sharing, proposed uses, and other community benefits should be made public prior to Council action. Nothing in this provision is meant to require the disclosure of proprietary information of a respondent.
- **Earlier Council Input.** To ensure maximum efficiency in the City's process and consistency with Council direction, the City Manager shall seek the City Council's input within the early stages of the City's decision-making process concerning the development, redevelopment, acquisition, sale, or lease of real estate.
 - *Solicitations for Development & Redevelopment.* Prior to issuing any Request for Proposal (RFP), Request for Qualification (RFQ), or other similar solicitation concerning the development or redevelopment of

City-owned real estate, the City Manager should provide the City Council with an opportunity to review the proposed draft solicitation, with sufficient time to allow the City Council to take action as a body on modifications to such solicitation prior to its release. The City Manager may choose to provide its recommendation for the draft solicitation to the City Council via a memorandum, so long as the City Council has one week before the posting deadline of the next regularly scheduled City Council Meeting to submit an Item From Council, if desired, to make modifications to the solicitation prior to the solicitation's release. Significant amendments to a solicitation, following its initial release, should follow the same process.

Staff Comments

- While providing somewhat more separation between Staff and Council, this revised approach will still add weeks or months to a Solicitation's timeline (Historically, it has been Council that has expressed the most concern with the timeliness of these procurements.). Like the previous approach, the revised approach does not account for possible Council disagreement(s), and the postponement(s) of any IFCs to correct Solicitation contents, etc. As the IFC to correct is postponed, so to would the Solicitation (or Amendment).
- In EDD's experience, the RFP/RFQ is infused with the key elements arising from years of community engagement outlining the vision for the property and hence the goals for the procurement predicated on past resolutions and Council goals. Changes at the Council dais have the potential of overriding those goals and past Council direction. Additionally community engagement processes that develop RFP/RFQ vision and goals are not only predicated on past policy resolutions but also market context, physical and environmental constraints and financial feasibility. Council deliberations on changing the language of the RFP/RFQ would not have the benefit of an appreciation of the full understanding of this context. Changes could therefore seek items that the market could not or would not financially or physically deliver.
- Please clarify if there is possibility to focus on projects that are developing and/or redeveloping for a purpose other than the current use or a municipal purpose.
 - Acquisition and Sale/Lease of City-Owned Property. Prior to engaging in formal negotiations with a third party (i.e., a non-City-affiliated entity) to purchase, acquire, sell, lease or dispose of City-owned real

property, the City Manager shall solicit input from the City Council on the overall basic terms, conditions, and objectives of the proposed transaction. Except in the case of absolute necessity or extreme urgency, the request for authorization to negotiate the proposed transaction shall not be posted on the same meeting date as the request for execution of such transaction so that Council and the public can review the terms. This policy should not preclude the City Manager from engaging in preliminary discussions with a third party to ensure basic levels of mutual interest.

Staff Comments

- Staff is unclear on “formal negotiations.” Negotiation occurs under an ENA to develop the terms that would be brought forward to Council for consideration in a term sheet or Master Development Agreement (MDA) document. Staff can't bring forward basic terms without formal negotiation with the party. Council policy through prior Council resolutions already directs the City Manager to solicit market interest to secure the community vision and resolution directing the City Manager to enter into exclusive negotiation with a preferred master developer to deliver on specified community benefits.
 - Council Review of Offer to Acquire/Lease City Property. If the City receives a good faith offer from a third party to acquire, purchase, or lease a tract of City-owned land or a portion of a City-owned facility, the City Manager shall inform the City Council of such offer by memorandum or via discussion during Executive Session, as consistent with State law, at the earliest available opportunity and in time for Council to direct action if they choose to do so. For purposes of this policy, a good faith offer expressly excludes (i) offers to acquire, purchase, or lease land that cannot be alienated without a public vote, such as City parkland, unless the City Manager believes it is in the interest of the City for the City Council to consider such a request; and (ii) offers to purchase or lease City-owned real estate significantly below market value, unless the City Manager believes it is in the interest of the City for the City Council to consider such a request.

Staff Comments

- (ii) appears to be a revision from a previous version that seems to remove the City Manager's discretion on whether to bring offers to purchase forward. With this language, we would need to bring forward offers to purchase flood buyout lots of which there are 100's across the City.
 - *Council Review of Offers to Sell/Donate Real Estate to City.* At the earliest available opportunity, by memorandum or via discussion during executive session, as consistent with State law, the City Manager shall inform the City Council of (i) an offer made by another governmental entity to sell or lease to the City land or real estate interests owned by such governmental entity; and (ii) a good faith offer from a third party, other than a governmental entity, to sell or donate real estate interests to the City (outside those acquisitions or donations made in the ordinary course of business described above).
- **Ground-Leases Favored Over Fee-Simple Sales.** As a general policy, the City should seek to protect its long-term, ownership interests in land and other real property owned by the City and City-affiliated entities. In lieu of selling City-owned property as fee simple to third-party (non-City-affiliated) entities, the City Manager should first consider the use of long-term leases or ground leases. If the City Manager recommends to the City Council that the City sell its ownership interests in fee simple, the recommendation must be accompanied by justification and a financial analysis explaining the benefits of the recommended course of action. This policy is not meant to impair the City's ability to transfer real estate interests amongst City departments, enterprises, or other City-affiliated entities.
- **Ownership Favored Over Leasing.** As a general policy, the City should own its facilities and avoid, when reasonably prudent, becoming a tenant on long-term leases. This policy should not prevent the City Manager from presenting to the City Council leasing opportunities that make sense from a business perspective, meet an immediate need, or help improve basic services for Austin residents and customers of Austin's enterprise departments. By May 1, 2023, the City Manager should present to the City Council with an inventory of spaces leased by the City of Austin and a plan

on phasing out such leases.

- **Avoid Long-term Vacancy of City Facilities.** As a general policy, the City should attempt to establish active uses within its facilities to avoid long-term vacancy and underutilization of the City's real estate resources. If the City Manager anticipates that a facility will sit vacant for a long period of time, the City Manager should consider temporary use options, such as civic space, temporary housing, **pop-up art galleries or retail**, and other short-term uses of the space that could benefit the community without affecting the long-term plans for the use of the space. In the event that the City Manager believes a temporary use for vacant facility is cost prohibitive, the City Manager may report such information to the City Council. The City Manager should prepare an annual report for the City Council of City facilities that are vacant or significantly under-utilized, beginning on February 1, 2023. The City Manager shall develop a metric for assessing which facilities are significantly underutilized that takes into account factors such as the building's location, vacant or unused office space, and other opportunities for use of the space.

Staff Comments

- Would recommend clarifying this to City-owned Facilities. City facilities could be defined to include leased spaces. In leased spaces, the City can only change the use subject to landlord approval.
- These uses (pop-up art galleries or retail) would presumably require short-term lease agreements. Would these agreements be subject to the open/competitive process detailed below? The time to develop and issue a solicitation may preclude these short-term temp uses.
- **Leasing Facilities for Community Needs.** The City Manager is directed to establish a fair, transparent, and openly competitive process for the leasing of City-owned facilities. When entering into new leases with nonprofit organizations (or, on a rare occasion, for-profit entities) at a discounted or subsidized rate, such leases should articulate clear outcomes and community benefits and incorporate metrics to ensure that City objectives are being achieved. Where appropriate, the lease should be structured on a short-term basis to provide an opportunity for such organization to build a sustainable foundation without becoming reliant on long-term City subsidization. This policy does not impact long-term leases already

approved by the City Council. The City Manager shall return to City Council with this recommended process by February 1, 2023. Without limitation to the foregoing, if the City is leasing space to a for-profit entity for a below-market rate, such as those currently leased by the Austin Convention Center, then, as part of the backup material for the item to approve of such lease, the City Manager shall quantify the market value for Council and provide the rationale for **how the lease relates to a municipal purpose.**

Staff Comments

- Please confirm if the first sentence is intended to nullify the non-profit lease policy finalized in February.
- Return to Council by February 1, 2023 with a process may be an aggressive timeline. As an example, it took 9 months to arrive at the non-profit lease policy.
- Which leases are referred to in the “currently leased by Austin Convention Center...” statement? All leases at ACCD facilities are established based on market studies and not for a below-market rate.
- Relates to the last sentence “how the lease relates to a municipal purpose” is this a requirement? How is “municipal purpose” defined in this Resolution? As an example, the lease revenue at ACCD garages support the overall operations of the Convention Center, which is a municipal purpose.

- **Current Appraisals.** Prior to executing a contract for the sale or long-term ground lease of any City-owned real property, the City Manager shall obtain an appraisal from a qualified appraiser, with expertise in the area of the property and type of property that is to be sold or leased, concerning the present value of the property, so that the City Council can review comparables when evaluating the recommended price under the proposed transaction. If a proposed transaction extends beyond one year, the appraisal should be updated within sixty (60) days prior to any contract extension, with an opportunity for the City Council to reevaluate the price under the contract, unless market conditions have remained largely unchanged during that period.
- **Right of Way Vacation and Encroachment and License Agreements.** Consistent with Resolution 20140807-092, the preservation of right-of-way represents a significant long-term value for a growing city with significant

infrastructure needs and other Imagine Austin priorities such as place making. As such, any agreements that would alienate such right-of-way (or portions of such right-of-way) should reflect such long-term value and opportunity costs. The City Manager shall review current calculations and review best practices from other cities for assessing the value of right-of-way, including alleys and air rights over right-of-way, and provide recommendations for alternative methods of valuation no later than May 1, 2023.

Staff Comments

- This issue will be touched upon by item #64 on the 10/27 addendum.
- **Transfers Between City Departments and City-Affiliated Entities.** When transferring real estate from a City-affiliated entity such as Austin Energy to a City department or vice versa, the general policy should be that the value of the property should be set no greater than the initial purchase price plus the costs of the maintenance of the property after such acquisition. This policy should not prevent the City Manager from recommending alternative valuations with sufficient justification and rationale.
- **Land Use Considerations.**
 - *Rezoning on City-Owned Land.* In the event that a City-owned property intended to be sold or ground-leased (i) is zoned as Public (P) based district zoning or (ii) requires a rezoning to use the property for the intended—or likely—use of the property, the City Manager should request that the City Council initiate rezoning of such property prior to marketing such property for sale or lease. Nothing in this policy is meant to preclude the City Manager from engaging in public input processes prior to initiating such zoning requests.
 - *Due Diligence.* Prior to presenting a proposal to the City Council for the purchase or acquisition of land, the City Manager will assemble a broad-based team of staff to assess the applicable land use requirements as part of standard due diligence for the property. Such assessment should include the impacts of any overlays, such as the Airport Overlay Zone or any legal covenants or other restrictions tied to the property.

Staff Comments

- In reference to *Rezoning on City-Owned Land* section. The marketing of the property for sale or lease occurs through the RFP/RFQ competitive solicitation based on the community's vision and Council policy underpinning the solicitation. Council initiating rezoning of the property prior to receiving market input from the RFP responses could impair timely negotiations and create a regulatory barrier preventing obtaining the best value that comes through selection and negotiation with a preferred developer. This item should provide flexibility to staff to determine the optimal time to rezone the property based on the nature of the transaction, market input and negotiation stage.

PARTNERSHIPS

- **Joint Uses and Collaboration.** As a general policy, the City should focus on maximizing the value and use of its City-owned land by identifying opportunities to deploy City-owned property for multiple purposes and involving multiple departments or City entities. This multi-use policy should not apply to properties not well suited for development, such as land acquired for flood plain and water quality protection, parkland, and conservation purposes.

Staff Comments

- Is it possible to consider the addition of “or those restricted to a single use.”
 - *Development of Policies and Guidelines.* The City Manager should develop policies and guidelines for internal use to help refine its assessment of the long-term real estate needs of the various departments and enterprises and to identify opportunities for joint use in future developments and redevelopments. On a quarterly basis, the City Manager should prepare an assessment of the various real estate-related needs of the various City departments, enterprise funds, and City-affiliated entities to help identify opportunities for joint-use facilities. The City Manager should also regularly consult with other public entities, such as Travis County, Central Health, and the various public school districts to develop parameters for the consideration of potential partnerships on joint use facilities to serve overall community needs. These policies and guidelines should

consider the possibility of land swaps between City departments, enterprises, and City-affiliated entities and other public entities.

Staff Comments

- Please clarify if it is contemplated that this section suggests that departments may have to relinquish their property for another use regardless of their plans for the property.
 - *Individual Projects.* As part of its initial planning for the development or redevelopment of a site, the City Manager should evaluate whether such property is well-suited for a joint-use facility, per the policies and guidelines referenced above. Prior to recommending to the City Council a project for the development or redevelopment of a single use on City-owned land, the City Manager should provide a memorandum to the City Council explaining (i) the recommendation to proceed with a single use, including a general assessment of the unmet real estate needs of the City that were considered but not selected as a compatible joint use; and (ii) a summary of the outreach efforts to Travis County and the applicable public school district.

Staff Comments

- Please clarify what is intended by initial planning. Which part of the redevelopment phase? During design? Before the RFQ / RFP is released?
- **Identify Opportunities.** The City Manager is directed to work, collaborate, and consult with the Austin Economic Development Corporation and the Austin Housing Finance Corporation on a continuous basis to evaluate the available supply and inventory of City-owned land and facilities and to identify potential opportunities to develop, redevelop, and co-locate income-restricted housing development, where appropriate, and other Council-adopted priorities, such as child-care centers, alongside City facilities. As part of this work, the City Manager shall annually update the City's inventory of real properties and provide such inventory to the Austin Economic Development Corporation and the Austin Housing Finance Corporation.

Staff Comments

- Please clarify the intention of "where appropriate?" Will departments have an opportunity to engage in conversations about the use of their property/facilities?
- In reference to "real properties", can it be revised to real properties that are either developable or ripe for redevelopment? The City's list of real properties numbers in the thousands.
- **Partner with Austin Economic Development Corporation.** Prior to the issuance of any Request for Proposal (RFP), Request for Qualification (RFQ), or other similar solicitation concerning the development, redevelopment, or ground-leasing of City-owned real property, the City Manager is directed to meet with the Austin Economic Development Corporation (AEDC) to review the objectives of the proposed solicitation and evaluate opportunities for partnership. On a semi-annual basis, the City Manager shall report to the City Council the progress of such partnership, including offering the Austin Economic Development Corporation the ability to provide their direct feedback to the City Council as part of the report or briefing.

Staff Comments

- AEDC and the City have an interlocal agreement and any priority projects for the City can be identified in the agreement. Additionally, the AEDC provides an annual report to the City which highlights projects that are in their portfolio.
- Please clarify if "redevelopment" can be further defined to be limited to those redevelopment projects that are contemplated to a use other than their current municipal purpose.
 - Nothing in this policy is intended to require the City Manager to partner with the AEDC. If the City Manager recommends conducting the solicitation without coordination or use of the Austin Economic Development Corporation (AEDC), the City Manager may recommend an alternative path to the City Council so long as the recommendation includes a general explanation on why a partnership would not be recommended, a brief summary of the conversations that took place with AEDC, and an outline of the

process the City Manager intends to use to perform the solicitation, including a designation of the department to act as the lead for the solicitation.

PRIORITIES

- **Achieve Council-Approved Priorities for All Property.** The Council seeks to achieve the maximum value (community benefits and/or revenue) for the use of City-owned property. The City Manager shall thus incorporate the following **baseline requirements** within each lease of City-owned property and each Request for Proposal (RFP), Request for Qualification (RFQ), or other solicitation concerning the development or redevelopment of City-owned real estate:

Staff Comments:

- Please clarify "baseline requirements" or "baseline goals" as referred to in the Achieve Council-Approved Priorities / Solicitations section.
 - All construction on a City-owned property, whether performed by a City employee or a contractor, must be certified by a third-party to verify that the construction project either (i) complies with or exceeds the City requirements under the Better Builder Certification program, as published for the then-current year, or (ii) complies with or exceeds a similar program, if approved by ordinance, that establishes comparable requirements for (a) the payment of a living wage; (b) completion of OSHA-10 training; (c) workers' compensation; (d) hiring goals from local craft training programs; (e) compliance with all applicable state, federal, and local laws; and (f) independent on-site monitoring. For purposes of this policy, the third-party certification and on-site monitoring may be performed by an employee of the City or a City-affiliated entity.
 - All construction on a City of Austin-owned property should comply with the requirements of the City's Minority-Owned and Women-Owned Business Enterprise Procurement Program in Chapters 2-9A, 2-9B, 2-9C, and 2-9D of the City Code.

- Any lease to a commercial tenant or operator using City-owned real property shall incorporate a requirement that such tenant must comply with the City's living wage standards and shall incorporate a revenue sharing provision.

Staff Comments:

- If this is to apply to projects for which developers or other management entities hold leases to tenants in City-owned or formally City-owned space, this requirement would hinder the ability to secure tenants, particularly non-profit social service tenants and low-cost childcare operators. Certain industries such as restaurants and potentially other industry sectors currently cannot comply with the new living wage rate or require a stepladder, progressive timeline to achieve the living wage rate. Furthermore, the application of community benefits such as living wage and requirements for construction activities (e.g., tenant build-out) to comply with various Council priorities will not be something that an appraiser will be able to account for in a fair market rent study. These requirements will likely result in higher construction and operating costs for a prospective tenant. Accordingly, staff would anticipate needing to discount the proposed rental rate as an enticement for future tenants.
- This requirement will also make it more difficult to secure tenants that operate creative spaces (e.g., art galleries, dance studios, etc.) because they are typically unable to pay living wage rates to all hired staff. Increased operational costs (including labor costs) are a major contributing factor for creative spaces closing in Austin and/or relocating from Austin to neighboring jurisdictions.
- This will be difficult to negotiate for stand-alone revenue leases. Tenants try to avoid percentage leases and overall local market still supports mostly fixed rental rates. Percentage leases introduce an audit obligation that will require extra staff effort. And, when tenants agree to percentage rent, they typically demand a much lower base rent with the idea being that the base + the percentage adds up to the market rate. If implemented, FSD – Real Estate would anticipate the number of prospective tenants to significantly decrease and lease procurement and negotiation timelines to increase.
- This provision makes sense only under certain structures particularly when the City has invested upfront in infrastructure or some other portion of "equity-like" investment. Staff suggests a possible rewording to "shall

incorporate a provision that permits the City to share in the increases in value or revenue beyond an initial base."

- Significant concern for those businesses who might not be able to comply by this. Additionally, please clarify what "revenue-sharing provision entail?

Alternate Recommendations: If the City Manager recommends diverging from these standards or desires to achieve the proposed results through alternative methods, the City Manager must provide justification and financial analysis along with such recommendation.

- **Achieve Council-Approved Priorities / Solicitations.** In addition to the above **baseline goals**, the City Manager is directed to incorporate the following baseline target goals within each Request for Proposal (RFP), Request for Qualification (RFQ), or other solicitation concerning the development or redevelopment of City-owned real estate:
 - For a solicitation that incorporates housing, the solicitation should include, as baseline target goals, the following guidelines:
 - 85% of the total number of units as income-restricted housing;
 - A significant share of the income-restricted units should be family-sized units (e.g., 2- and 3-bedrooms) with an affirmative marketing plan to match larger units with households that need them;
 - The project should incorporate the City's standard source of income and tenant protections, as well as a preference policy for current and former residents with generational ties to the City; and
 - The project should incorporate deep levels of affordability (e.g., rental rates based upon 50% MFI and below) and/or permanent supportive housing.

Staff Comments:

- When the City engages the community on a vision process for the project, this requirement could supersede or at best limit other community benefits community stakeholder may desire to have on the property. This provision may make financially unfeasible the delivery of other community benefits. The market may in and of itself ascertain that delivering only the baseline

required percentage of income restricted and family friendly units cost prohibitive and could result in lowering the ability to secure income restricted units in a timely fashion on the property.

- As consistent with Resolution No. 20120301-051 and Resolution No. 20210826-108, all new City facilities and City-sponsored projects oriented to the public should include family-friendly features, such as creative play spaces, nature-based play areas, and interactive art spaces.

Staff Comments:

- What is contemplated by the phrase “oriented to the public” as this is not a defined term.
 - As consistent with Resolution 20210826-108, all new City facilities and City-sponsored projects should include affordable, high-quality child care, especially child care facilities that serve infants and toddlers and accept vouchers. The City Manager shall work with United Way Success by Six and other professionals to articulate criteria for “affordable child care,” present this proposed definition to the Early Childhood Council for recommendations, and then bring to City Council for approval by March 1, 2023.

Staff Comments:

- Please clarify whether this applies to facilities that are not “oriented to the public?” Is it contemplated that new facilities such as fire stations or police substations be required to have childcare facilities?

Alternate Recommendations: If the City Manager recommends diverging from these standards (including, without limitation, the target affordability goal) or desires to achieve the proposed results through alternative methods, the City Manager must provide justification and financial analysis along with such recommendation. For a solicitation that does not incorporate housing, the City Manager shall include an explanation of the considerations to not include housing, such as land use compatibility.

Staff Comments:

- Please clarify what is intended to constitute a financial analysis?
 - Please clarify what may be considered as other considerations besides land use compatibility for not including housing.
-
- **Public Review Period.** Prior to placing an item on the City Council agenda for the execution of a contract resulting from any RFP, RFQ, or other solicitation concerning the development, redevelopment, or leasing of City-owned real property, the City Manager shall give a public briefing to Council with an opportunity to receive public input no later than one week prior to Council consideration of the contract. This public process should follow the City's standard anti-lobbying procedures. The presentation from the City Manager should include an explanation of how the recommended action incorporates community benefits and Council direction, as applicable. And, for projects that include housing, the recommendation should detail the proposed goals for housing on the site, including the total number of income-restricted dwelling units, target affordability levels, unit sizes, housing types, and other considerations consistent with the Strategic Housing Blueprint.
 - **City-Owned Parking.** The City Manager shall make recommendations on a parking management strategy that deploys a centralized management system or strategy. As part of its recommendation, the City Manager should recommend whether the City-owned parking facilities (including those serving enterprise funds) should be managed under a centralized management system or under a consistent centralized management strategy to ensure consistency with parking-related goals as stated under the Austin Climate Equity Plan, Austin Strategic Mobility Plan, and other Council-approved policies and to improve the overall financial health of the relevant City departments or enterprises. This parking management strategy should address all City-owned parking, including on-street (metered, valet, etc.) and off-street parking (parking garages, City buildings). Nothing in this Resolution is intended to suggest that all parking must be treated identically; rather, the City should deploy its parking in strategic ways to achieve stated objectives and as consistent with bond and financing requirements and applicable law. For example, parking rates set at the airport might diverge dramatically from parking rates set in Downtown Austin, due to various bond requirements, applicable laws, or

strategic objectives. Prior to Council approval of each fiscal year's budget, the City Manager should recommend adjustments in parking rates in compliance with applicable laws for each facility and provide revenue projections.

Staff Comments:

- Staff would request the following modification to the first sentence: *"The City Manager shall make recommendations on a parking management strategy that deploys a centralized management system or strategy, as consistent with bond financing requirements and applicable law."*
- Please clarify if it is contemplated that an adjustment in parking rates be required every year even if not recommended as part of the budget process.

BE IT FURTHER RESOLVED

If necessary to achieve the above-referenced parking policy, the Council authorizes the City Manager to hire a consultant to study peer cities and comparable governmental entities to make recommendations for the best mechanism to consolidate the City's parking facilities, parking garages, and assets into one entity with the authority to leverage untapped parking supply and to standardize parking rates based on applicable laws, the most current competitive market conditions, and the necessity to cover costs for providing these services. The City Manager should report back to the City Council by May 1, 2023, with the progress of this study.

BE IT FURTHER RESOLVED

That the City Manager is directed to recommend policies for developing and using small tracts of City-owned land (e.g., less than 2 acres in size) that might help achieve the geographic dispersion of affordable housing and other Council-adopted priorities. The City Manager shall report back to Council on this issue by February 1, 2023.

BE IT FURTHER RESOLVED

That the City Manager is directed to prepare a briefing for City Council discussion, prior to November 17, 2022, to discuss partnering with the Austin Economic Development Corporation on potential projects. Prior to such meeting, the City

Manager shall provide to the City Council a memorandum with the status of the ongoing work related to the redevelopment of the City-owned properties located at 505 Barton Springs Road (aka, One Texas Center), 124 W. 8th Street, 3002 Guadalupe, and 411 Chicon. The November 17, 2022, agenda should provide the City Council with an opportunity to provide guidance, via a posted action item, on the future development of such properties.

Staff Comments:

- EDD and AEDC intend to brief Council on the status of the Cultural Trust Fund projects during the November 29 work session. A briefing with AEDC prior to this date might not be feasible.
- Staff would request contemplation to include the requested information in the annual report that AEDC provides to the City Council on the agreed upon cadence in the agreement.