COMMENTS

LEGAL MODELS FOR PUBLIC-PRIVATE CITY GREENING PARTNERSHIPS

by Daniel J. Metzger

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Cities are significantly hotter than their surrounding areas. That difference, known as the "urban heat island" effect, is driven in significant part by the dark-colored buildings, sidewalks, roadways, and similar surfaces that dominate urban spaces, absorbing solar energy and later radiating it outward as thermal energy that heats the nearby air.[1] Reduced vegetation in urban environments compounds the issue.

But there are straightforward tools available today to combat this phenomenon—replacing dark-colored roofing and pavement with more reflective alternatives, expanding the tree canopy, and installing other vegetative features like bioswales, rain gardens, and urban meadows. Called here "smart surfaces," these tools are a group of technologies and design priorities that aim to mitigate the effects of climate change, especially extreme heat, excessive rainfall, and flooding, in a cost-effective way by increasing the reflectivity, permeability, and vegetation of certain urban areas.

This Comment suggests and describes one avenue through which cities and local community-based organizations (CBOs) could tackle extreme heat: partnering with one another to transform paved surfaces into green or reflective ones. Partnerships of this kind could combine the resources and desire to create green spaces that nongovernmental groups offer with cities' large portfolios of property. Although there appear to be no such programs currently operating that are expressly designed for smart surfaces, the examples of comparable, existing programs described below explain models for how this could work in a variety of settings.

I. Background

A. *Tackling Urban Heat With Smart Surfaces*

Smart surfaces work by increasing outdoor surfaces' reflectivity and permeability. For example, roofing materials with high reflectivity decrease the amount of solar energy translated into indoor spaces, directly reducing heat stored and obviating some of the need to operate air conditioners that exacerbate urban heat by transferring indoor heat outside. Trees and other forms of vegetation are more reflective than asphalt surfaces and further reduce urban heat through evaporative processes.[2] Across a whole city, smart surfaces strategies can offer significant cooling in a cost-effective way.[3] These are proven, rapidly implementable ways that cities can increase livability, adapt to the changing climate, and move toward meeting mitigation goals.[4]

On individual buildings and in particularly hot neighborhoods, the effect of smart surfaces can be even more pronounced than in the city at large. That is particularly important because the zoning rules (both past and present) that have caused and still contribute to segregation have increased the density of low-income neighborhoods without preserving features that maintain livability in those areas, like dense tree canopy. As a result, those neighbor-

Author's Note: Thanks to all my colleagues at the Sabin Center for workshopping the idea for this Comment, and to Amy E. Turner, Romany Webb, and Brittany Gentry for their invaluable editorial help.

1. Francisco J. Doblas-Reyes et al., *Linking Global to Regional Climate Change*, *in* Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change 1363, 1454 (Valérie Masson-Delmotte et al. eds., Cambridge Univ. Press 2021), https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_Chapter10.pdf:
   > [T]hree main factors contribute to [the urban heat island effect's] development . . . : (i) three-dimensional urban geometry including building density and plan area, street aspect ratio and building height; (ii) thermal characteristics of impervious surfaces; and (iii) anthropogenic heat release, either from building energy consumption, especially waste heat from air conditioning systems, or as direct emissions from industry, traffic, or human metabolism.

2. Joseph L. Moss et al., *Influence of Evaporative Cooling by Urban Forests on Cooling Demand in Cities*, 37 Urb. Forestry & Urb. Greening 65 (2019), https://www.sciencedirect.com/science/article/pii/S1618866717304661; Athanasios Paschalis et al., *Urban Forests as Main Regulator of the Evaporative Cooling Effect in Cities*, 2 AGU Advances e2020AV000303 (2021), https://agupubs.onlinelibrary.wiley.com/doi/full/10.1029/2020AV000303.

3. Greg Kats & Rob Jarrell, Smart Surfaces Coalition, Cooling Cities, Slowing Climate Change, and Enhancing Equity: Costs and Benefits of Smart Surfaces Adoption for Baltimore 18 (2021), https://smartsurfacescoalition.org/s/Baltimore-Draft-Document92022_Reduced.pdf.

4. Gabriella Mickel, *Reimagining Parking: Unlikely Spaces for Climate Resilience*, Yale Env't Rev. (Jan. 2, 2024), https://environment-review.yale.edu/reimagining-parking-unlikely-spaces-climate-resilience. Many of the benefits smart surfaces offer are adaptation ones, like dealing with extreme heat events, changing rainfall patterns, and increased severity of storms. But by increasing the energy efficiency of spaces and reducing heat overall, smart surfaces also reduce energy demand—primarily the demand created by air conditioning—and so can reduce carbon dioxide emissions.

hoods are often the hottest in a city, are more subject to the health impacts of extreme heat, and are paying more for air conditioning where it is available. Smart surfaces can help target those problems precisely where they are the most severe, making these interventions powerful tools to combat heat inequity.

Legal requirements to use smart surfaces technologies in at least some settings already exist in most states,[5] and a large coalition of nonprofits, academic research centers, and health organizations are actively promoting their benefits.[6] Still, significant gaps in implementation remain.

B. *City-CBO Partnerships to Increase Smart Surfaces Deployment*

Cities and CBOs, working together, are primed to fill some of the gaps in smart surfaces deployment. This Comment proposes public-private partnerships to help overcome them. City-owned lots—which often exacerbate urban heat—are paradigmatic examples of dark, impervious surfaces that could be reimagined as green spaces that enhance livability.[7] Through agreements with cities, members or staff from nongovernmental organizations could undertake smart surfaces projects of various kinds on these lots.

The collective effect of projects like this could be significant. Although limited data are available, most local governments own large amounts of land within their city limits.[8] A significant portion of that land is typically vacant or underutilized.[9] Estimates for how much vacant land exists in cities vary, but may be as high as 16%.[10]

Projects like this could range from relatively fast, low-investment opportunities to significant efforts that radically transform a space. At the low-cost end, projects on paved properties might be as simple as painting reflective coatings onto pavement; on unpaved properties, the work could be planting trees or other vegetation. Higher investment opportunities could include depaving projects that rip out unused hard surfaces to create open green space,[11] community solar projects, and more intensive upgrades of unpaved areas to make functioning parks that community members can enjoy as both recreational spaces and foils to the urban heat island effect, or other forms of green infrastructure.

C. *Cross-Cutting Legal Issues*

City-CBO partnerships have to work within applicable legal parameters. Foremost, cities need to find authority in their state constitutions, statutes, or charters to enter into arrangements of the kind described here. Although cities enjoy a significant degree of control over their own property, arrangements that involve a city giving away property will need to address constitutional provisions—present in almost every state's constitution—that proscribe local governments from making gifts to specific private parties.[12] These provisions—usually termed "public purpose" limits—typically require a city to carefully examine the purpose for which it would transfer property to a private party, and the identity of the future owner. Where these constitutional limits exist, state law often creates exemptions allowing a local government to give property to a private entity if doing so advances a public good.[13]

5. *See, e.g.*, Cool Roof Rating Council, *Codes and Standards by U.S. Jurisdiction*, https://coolroofs.org/resources/codes-programs-standards-2 (last updated Apr. 15, 2025); U.S. Environmental Protection Agency, *Heat Island Community Actions Database*, https://perma.cc/RV8B-Z2TJ (last updated Aug. 9, 2024); Smart Surfaces Policy Tracker, *Home Page*, https://smartsurfacespolicy.org/ (last visited Aug. 8, 2025).
6. Smart Surfaces Coalition, *Mission and Values*, https://smartsurfacescoalition.org/mission-and-values (last visited Aug. 8, 2025); Brigid Deegan & Monica Gregory, *NLC Kicks Off 2023 Smart Surfaces Resilient Infrastructure Technical Assistance Program*, Nat'l League Cities (July 28, 2023), https://www.nlc.org/article/2023/07/28/nlc-kicks-off-2023-smart-surfaces-resilient-infrastructure-technical-assistance-program/; American Public Health Association, *Cities for Smart Surfaces Project: Transforming Urban Environments*, https://www.apha.org/topics-and-issues/climate-health-and-equity/smart-surfaces (last visited Aug. 8, 2025); American Lung Association, *Smart Surfaces and Lung Health*, https://www.lung.org/clean-air/climate-change/smart-surfaces (last visited Aug. 8, 2025).
7. *See* Thami Croeser et al., *Finding Space for Nature in Cities: The Considerable Potential of Redundant Car Parking*, 2 npj Urb. Sustainability art. 27 (2022), https://www.nature.com/articles/s42949-022-00073-x.
8. Daniel B. Rosenbaum, *Confronting the Local Land Checkerboard*, 56 U. Rich. L. Rev. 665, 668-69 (2021) (noting that "local governments own vast amounts of land," even though "there are no national-level studies of local public ownership"); *see also* Municipal Art Society of New York, Public Assets: City-Owned and Leased Properties 9, 15 (2016), https://www.mas.org/wp-content/uploads/2018/03/colp-report.pdf (finding the city of New York owns or leases more than 14,000 properties covering about one-third of the city's land area).
9. *See, e.g.*, Municipal Art Society of New York, *supra* note 8, at 9 (reporting that 22% of New York City's city-owned or leased properties have "no current use"); Alissa Walker, *This Interactive Map Shows LA's Publicly Owned Properties*, Curbed L.A. (July 3, 2019), https://la.curbed.com/2019/7/3/20681291/map-public-property-los-angeles ("There are about 22,000 vacant lots in Los Angeles, about 10 percent of which are owned by the city.").
10. Galen D. Newman et al., *A Current Inventory of Vacant Urban Land in America*, 21 J. Urb. Design 302, 315 (2016), https://www.tandfonline.com/doi/full/10.1080/13574809.2016.1167589 ("Currently, on average, nearly one-sixth of a city's territory is considered vacant and 4% of all addresses are vacant.").
11. *See* Chris Baraniuk, *The Cities Stripping Out Concrete for Earth and Plants*, BBC (Feb. 23, 2024), https://www.bbc.com/future/article/20240222-depaving-the-cities-replacing-concrete-with-earth-and-plants.
12. *See, e.g.*, Cal. Const. art. XVI, §6 (prohibiting the state and any local government from giving "any public money or thing of value to any individual, municipal or other corporation whatever"); N.Y. Const. art. VII, §8 ("[M]oney of the state shall not be given or loaned to or in aid of any private corporation or association, or private undertaking . . . ."); La. Const. art. VII, §14 ("[T]he funds, credit, property, or things of value of the state or of any political subdivision shall not be loaned, pledged, or donated to or for any person, association, or corporation, public or private.").
13. *See* Richard Briffault, *The Disfavored Constitution: State Fiscal Limits and State Constitutional Law*, 34 Rutgers L.J. 907, 914 (2003) ("Today, state constitutional 'public purpose' requirements are largely rhetorical. State legislatures define what public purposes are and receive great deference when they determine that a particular program promotes the public purpose.").

Similar public-purpose concepts shape cities' leasing and permitting authority on municipal property.[14] Cities generally have authority to lease municipal property, derived from state statute, the city's charter, or both.[15] Doing so may face political obstacles in cases in which a city council must pass a resolution or ordinance prior to leasing municipal property.[16] But those guardrails are, in general, navigable, and leasing and permitting arrangements can (and in fact do) allow projects like the kinds described here.

In addition, most states have passed enabling legislation that specifically authorizes certain sub-state entities—often including transportation agencies and not uncommonly including local governments—to enter into public-private partnerships.[17] The scope of this kind of legislation varies from state to state, and some of the partnerships described here may trigger formal requirements that stipulate what kinds of terms must be included in a partnership agreement or that prescribe (sometimes onerous) steps in a procurement process. Further, some of the partnerships described may also be informally described as public-private partnerships but fall short of the formal requirements described in legislation. Helpfully, state public-private partnership legislation usually permits and incentivizes, but does not require, that cities follow a specific formula for formalizing these partnerships.[18]

Projects that can successfully navigate these concerns will still need to be designed in a way that achieves the goals of the parties involved in a particular project. Doing so can involve answering several questions: Who retains ownership of the property after a project is complete? Which party bears responsibility if something goes wrong? How does either party secure the other's commitment to long-term impact? And how will the parties resolve the project-specific zoning and permitting issues that accompany construction work that produces waste, implicates groundwater management rules, and may trigger variances or building permit review?

The sections that follow describe arrangements between a city and a CBO that each answer these critical questions, though to varying degrees, beginning with arrangements that transfer the fewest and most impermanent ownership-type rights and proceeding toward arrangements under which cities permanently give up all ownership of a vacant lot.[19]

II. Limited, Temporary Licenses to Complete a Specific Project

Cities around the United States operate "Open Streets" programs that allow local groups to temporarily shift how certain areas in the city (particularly local streets) are used. In New York City, for example, the city partners with local groups to block access to certain streets for set periods of time, typically weekend days in the summer, to allow pedestrians more recreational space.[20] The city runs an application process through which a CBO can seek permission to block off a street.[21] If approved, the group takes responsibility for ensuring certain safety criteria are met—most notably, access for emergency responders—and for managing temporary signage and barriers that mark the street as closed.[22]

Similar programs exist in other cities in the United States.[23] "Clean and Green" programs are another example of one-off, relatively informal partnerships under which volunteers can do work on city-owned land. Chicago's Clean and Green program loans tools and provides trash bags to community groups willing to collect garbage from vacant lots.[24]

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14. 10 McQuillin Municipal Corporations §28:47 (3d ed. 2025) ("[L]easing and permitting the use of municipal property is usually authorized, provided that the public interest is served, or at least is not destroyed or diminished.").
15. *See, e.g.*, Or. Rev. Stat. §271.390(2) ("A public body or a council of governments may enter into contracts for the leasing, rental or financing of any real or personal property."); Wash. Rev. Code §39.33.015(1) ("Any . . . municipality, or political subdivision . . . may transfer, lease, or otherwise dispose of . . . property for a public benefit purpose . . . including a no cost transfer."); Portland, Or., Charter §1-104 ("The City may sell, dispose of or exchange any buildings, structures or property, real or personal, which it owns or may acquire not needed for public use, by negotiation, bid, auction or any other method the City finds appropriate.").
16. *See, e.g.*, Phoenix, Ariz., Charter ch. IV, §2(39) ("[L]eases [of land, buildings, or part thereof owned by the City] shall be approved by ordinance of the City Council."); Portland, Or., Charter §1-104 ("Favorable vote of at least nine (9) Councilors are [sic] necessary for any ordinance authorizing such sale, disposal or exchange.").
17. *See* National Conference of State Legislatures, Building-Up: How States Utilize Public-Private Partnerships for Social & Vertical Infrastructure (2017), https://www.ncsl.org/transportation/building-up-how-states-utilize-public-private-partnerships-for-social-vertical-infrastructure ("As of February 2016, [National Conference of State Legislatures] is aware of 38 states which have some form of P3 [public-private partnership-] enabling legislation on the books.").
18. *See, e.g.*, Fla. Stat. Ann. §287.05712(4) (allowing, but not requiring, a Florida city or county to "enter into an agreement with a private entity, or a consortium of private entities, for the building, upgrading, operating, ownership, or financing of facilities"); N.C. Gen. Stat. Ann. §143-128.1C:
    > *If* the governmental entity determines in writing that it has a critical need for a capital improvement project, the governmental entity *may* . . . participate in the acquisition, construction, ownership, leasing, and operation of a public-private project, or of specific facilities within such a project, including the making of loans and grants from funds available to the governmental entity for these purposes.

    (emphases added).
19. Information on the examples described here was collected by desktop research of information publicly available on the Internet. While efforts have been made to ensure that the information is accurate and current, programs like the ones described here begin and end regularly. This Comment should not be relied on as a definitive statement about the availability or nature of any specific opportunity it describes. Instead, it is intended to serve as a guide to (1) help city officials interested in greening their vacant lots to design programs that will achieve their goals, and (2) aid CBOs in formulating practical, detailed requests to their cities to create new programs to the same ends.
20. New York City Department of Transportation, *Open Streets*, https://www.nyc.gov/html/dot/html/pedestrians/openstreets.shtml (last visited Aug. 8, 2025).
21. NYC Open Streets, *Open Streets Program 2025 Application*, https://perma.cc/VTB6-V6LL (last visited Aug. 8, 2025).
22. New York City Department of Transportation, *supra* note 20.
23. *E.g.*, City of Boston, Massachusetts, *Open Streets Boston*, https://www.boston.gov/departments/transportation/open-streets-boston (last visited Aug. 8, 2025).
24. Chi311, *Clean and Green Program*, https://311.chicago.gov/s/article/Clean-and-Green-Program?language=en_US (last visited Aug. 8, 2025); City of Chicago, Illinois, *Clean & Green*, https://www.chicago.gov/city/en/depts/streets/supp_info/clean---green.html (last visited Aug. 8, 2025).

These programs transfer virtually no ownership rights at all—just access, within certain time frames and for a certain purpose. The city's burden is primarily administrative, reviewing applications and determining whether particular spaces are appropriate and feasible for the program, but also includes making barriers or other pieces of equipment available and, at least in theory, some monitoring of whether the program goals are being met.

A version of the same program oriented toward promoting the kinds of smart surfaces described above could allow a community group to apply for temporary access to a particular space to apply reflective paint or to restore vegetation missing from unpaved vacant lots. The city could also provide equipment for gardening or applying reflective pavement coatings. The city could grant access either on a one-time or a recurring basis to maintain any improvements made.

This kind of highly limited, relatively short-term arrangement can be designed with very few barriers to entry. New York City's Open Streets application, for example, is relatively simple and does not require legal or engineering expertise to complete.[25] A group's application and use of the lot for a smart surfaces project would change the nature of the land and so may merit more scrutiny than an Open Streets program, but those applications could be reviewed and later managed administratively at a relatively low cost compared to efforts that involve transferring title or negotiating more complex contracts. Because this kind of program does not involve transferring permanent property rights, it may be put into place in many instances without legislation. And as a further benefit, the city retains the option to use the same lot in whatever way it chooses in the future without any new limitations.

The limited, temporary license model does have its drawbacks. Requiring a local community group to manage projects may skew access to the program toward wealthier neighborhoods with well-resourced community groups and fail to achieve environmental justice goals.[26] Impermanent access rights for this purpose may also fail to achieve long-lasting benefit. Surface transformations that require maintenance, for example, may languish after their initial installation. And potential partners may be wary that the city can sell the lot to a developer or otherwise repurpose the land if the need arises, which could adversely affect the program's ability to garner interest in the future.[27]

III. Standardized Permitting for Longer-Term Control

Cities can also grant community groups temporary control over vacant lots through more formalized permitting programs. Permits generally require increased detail about who is applying and the project's specifics at the application stage relative to the informal licenses described above, and these applications may include requirements described in guidance or legislation that are applicable to permittees and the permit issuer. Many of the existing models for programs of this kind are geared toward establishing community gardens, but they also serve as models for other community greening efforts.

Adopt-A-Lot programs, for example, allow community groups to access and modify vacant, city-owned lots in order to clean up a site, build a community garden, or create a recreational space.[28] Under Baltimore's Adopt-A-Lot program, a city resident can apply to develop a green space on a vacant city-owned lot. Successful applicants are granted a renewable license to access the lot for a period of one year.[29] The application is free. Licensees do not pay taxes on the lots in use and do not take on any ownership rights.[30] Adopt-A-Lot programs are also in effect in a handful of other jurisdictions around the country.[31]

Comparable permitting structures exist in a number of other jurisdictions as well, offering varying degrees of certainty and formality for permittees. For example, Troy, New York's code authorizes a community garden permitting program under which applicants can obtain a one-year permit to occupy vacant city land for the sole purpose of building a community garden.[32] The code requires a permittee both to maintain liability insurance with limits approved by a city attorney, and to indemnify the city for any liability arising out of the permittee's use of the land.[33] When the permit expires, the community garden group has to return the land in "as good condition as it was when the

25. New applicants in 2024, for example, had to provide a site plan (for which the city's Department of Transportation provided a template); a management, staffing, and operations plan; a community outreach plan; letters of support from community stakeholders; and if the applicant was requesting funding—which is not guaranteed—a budget proposal.
26. Devin Callahan, *Open Streets NYC Review*, N.Y. League Conservation Voters (July 15, 2022), https://nylcv.org/news/open-streets-nyc-review/:
> In a survey done in 2021 by Transportation Alternatives, it was found that 84% of Open Streets in the Bronx and 69% of Open Streets in Queens were non-operational. Moreover, the survey also determined that open streets in Black and Latino communities were much more likely to lack useful barriers that prevent drivers from entering the streets.

see also Brianna Perry, *NYC DOT to Dedicate $30 Million to Supporting NYC's Open Streets Program*, Secret NYC (May 18, 2023), https://secretnyc.co/budget-support-open-streets-program/.
27. Community Law Center, Adopt-A-Lot Agreements: Legal Issues to Consider (2012), https://communitylaw.org/wp-content/uploads/2012/07/adopt-a-lot-memo.pdf; Becky Lundberg Witt, *Urban Agriculture and Local Government Law: Promises, Realities, and Solutions*, 16 U. Pa. J. L. & Soc. Change 221, 226 (2013), https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1153&context=jlasc.
28. *See, e.g.*, Baltimore City Department of Housing & Community Development, *Adopt-A-Lot Program*, https://dhcd.baltimorecity.gov/nd/adopt-lot-program (last visited Aug. 8, 2025).
29. Community Law Center, *supra* note 27.
30. Baltimore City Department of Housing & Community Development, *supra* note 28.
31. Jersey City, New Jersey, *Adopt-A-Lot Community Gardens*, https://www.jerseycitynj.gov/cityhall/DPW/recycle/adopt-a-lot (last visited Aug. 8, 2025); City of Newark, New Jersey, *Adopt a Lot*, https://www.newarknj.gov/card/adopt-a-lot (last visited Aug. 8, 2025); Calhoun County [Michigan] Land Bank Authority, *Adopt-A-Lot*, https://calhounlandbank.org/adopt-a-lot/ (last visited Aug. 8, 2025); City of Pittsburgh, Pennsylvania, *Adopt-A-Lot*, https://www.pittsburghpa.gov/Business-Development/City-Planning/Planning-Programs/Adopt-A-Lot (last updated Apr. 23, 2025).
32. Troy, N.Y., Code §§83-9 to -16.
33. *Id.* §83-15(E).

permit was issued, reasonable wear and tear excepted, and all debris from the surface of said land must be removed."[34]

The city of Austin, Texas' Community Gardens Program is another example of a permit program (somewhat more complex) that allows residents to use city-owned land for community gardens.[35] Austin's program requires a group interested in pursuing a city-supported garden to engage in a series of check-ins with the city's community gardens coordinator, to draft garden rules and a membership agreement, and to have a budget, fundraising plan, and timeline.[36]

Applicants must also have a nonprofit sponsor that agrees to provide insurance coverage for the garden and receive a city water bill, and they must submit a separate application for a tap permit to water the garden.[37] Applicants must also execute a license agreement with the city containing, per the city's code, "a provision allowing the city to terminate the license agreement without cost to the city, and not earlier than 30 calendar days after issuing a written notice of the termination to the non-profit organization."[38] Finally, the code provides that the annual permit can be automatically renewed if neither party has acted to terminate it.[39]

A permitting program could draw on the best features of these examples to create avenues for more use of cool pavements, meadows, gardens, green infrastructure, and other smart surfaces. Standard code provisions could provide certainty and predictability for applicants regarding which lots are eligible, what permit terms apply, and what kinds of projects will be approved. Permit terms could be calibrated to be long enough for a permittee to complete a project and to justify the resources needed to do the work. For smart surfaces projects that could be completed quickly, like applying reflective coatings to paved surfaces or planting trees, the term could be a matter of weeks. For more involved smart surfaces projects like creating community gardens, urban meadows, or green infrastructure like bioswales and rain gardens, the term could extend over several years.

Formalized permitting programs offer several advantages compared to looser, short-term arrangements. They can include clear guidance on the criteria under which an application will be evaluated, the terms that will apply in a permit, and even, as Troy, New York, does, provide a standard form of the permit or permit application.[40] A program like this does not require the city to transfer ownership of the land at issue, which could help applicants avoid the legal needs associated with full title. And the terms of a permit can apportion liability in whatever way a city deems necessary, ranging potentially from liability only for claims arising from a group's own activities to full liability for anything that takes place on the land while under a permittee's control.

Permitting programs can be set up simply enough to avoid requiring community groups to obtain professional legal or architectural support to apply. And both the application processes and the permits themselves can take into account environmental justice parameters in decisions about what permits to issue, which sites to make available, whether and at what amount fees will be assessed, and where city resources to support permittees might be spent.

The examples above also highlight potential drawbacks. A formalized procedure can include—as in the case of Austin's community garden provisions—significant administrative obstacles that will hinder less-resourced applicants. Permits often require applicants to pay fees and may not provide the long-term assurance that their projects will remain in place long enough to justify the upfront investment. Critics of Baltimore's program have pointed out that the city can give notice that it is reclaiming a parcel at any time and for any reason.[41] In addition, licensees in that program must agree to take on all liability "in any way connected with or arising from the activities carried on at the . . . property."[42]

IV. Land Leases

Another way that cities can give control over vacant city-owned lots to community partners is through longer-term leases. Leases can have similar terms to licenses and permits, but as used here describe arrangements that are typically for one year or longer, that may be tailored to each situation, and that give the lessee full control of the property being leased.

In addition to the city's Adopt-A-Lot program,[43] Baltimore has a program for entering into longer-term community garden leases. Eligible applicants must be qualified—by having a specified amount of experience with urban farming—and can enter into five-year leases on city-owned land. Under standard terms, the leases impose a cost on lessees of $100/year, include that the city must provide tenants with a minimum of 18 months' notice if the city is not renewing the lease, and provide that tenants under these leases enjoy a 90% reduction in property taxes for which they would otherwise be responsible.[44]

In a comparable program, the National Park Service (NPS) leases land to farmers in the Cuyahoga Valley National Park. The park's "Countryside Initiative" invites farmers to lease property in the park on which to live and

34. *Id.* §83-15(H).
35. *See generally* Austin, Tex., Code §§14-7-1 to -35.
36. City of Austin, Texas, *Community Garden Permit Guide*, https://www.austintexas.gov/parks-and-recreation/community-garden-permit-guide (last visited Aug. 8, 2025).
37. *Id.*; *see also* Austin, Tex., Code §25-9-99.
38. Austin, Tex., Code §14-7-22.
39. *Id.* §14-7-32.
40. Troy, N.Y., Code §§83-9 to -16.
41. Community Law Center, *supra* note 27; Community Law Center, *Adopt-A-Lot Agreements*, https://communitylaw.org/urbanagriculturelawproject/urbanagriculturelawprojectadopt-a-lot-agreements/ (last visited Aug. 8, 2025).
42. Witt, *supra* note 27.
43. *See* Center for Agriculture and Food Systems, *Farmer Story: Hillen Homestead*, https://farmlandaccess.org/hillen-homestead/ (last visited Aug. 8, 2025) (comparing Adopt-A-Lot and leasing conditions in Baltimore).
44. Baltimore Office of Sustainability, *Urban Agriculture*, https://www.baltimoresustainability.org/projects/baltimore-food-policy-initiative/home-grown-baltimore/urban-agriculture-2/ (last visited Aug. 8, 2025).

operate small farms.[45] The individual leases for each of these projects do not appear to be publicly available, but a model lease available from NPS provides for a 60-year term and includes a provision for the lessee to commit to using the property only for specified agricultural purposes.[46]

Negotiating every lease individually could be a burden for the parties involved in smart surfaces projects—like planting trees, replacing pavements with green or reflective alternatives, and other green infrastructure projects. To help reduce that burden, leases for those kinds of projects could include a set of standard terms that would cover typical arrangements while allowing for the terms to be customized where the particular needs (and capacity) of the parties make unique arrangements a priority. By negotiating for a sufficiently long term, the parties to the lease could provide for enough certainty to invest in the property with assurance that the benefits will be enjoyed for long enough to justify the initial cost.

That may be critical where a CBO would only be willing to take up a greening project with assurance that the work being done will have a lasting impact. Long-term assurance may also support tenants' access to grants that would only be available for projects that can remain in place for several years. And to avoid a city's concerns about removing land from the tax base, a city government could retain the option to sell or otherwise develop the land at an appropriate time after the lease terminates. Questions about apportioning liability for damage to the property, conditions regarding the type of work to be performed, and a structure for renewing the lease could all be built into the agreement the parties strike.

There are, of course, equity and other considerations associated with land leases to CBOs. Negotiating a lease with the city could require professional legal help, and may be difficult to manage for community groups with limited resources or for groups that are informally structured. City approval to enter into a lease may require significant internal review, including city council approval, which could result in substantial delays. And even though a city could negotiate an option to terminate a lease or decline to renew one, interfering with the ongoing existence of a popular project is likely to garner criticism from interested community members even if the city is abiding by the terms of the original lease.

Using leases in this way is understudied and would benefit from additional research and tools for parties interested in pursuing this approach. Model leases that cater to smart surfaces projects, guidance on navigating a city's lease approval processes, and tools for cities to streamline those processes to the extent possible under state law would help advance leasing for smart surfaces projects.

V. Transfer of Land Ownership

The approaches discussed earlier in this Comment can address situations in which one or both of the parties involved is averse to a land transfer. But for situations where both parties are on board, there is a range of ways a city may give up control of land.

For community groups, taking full title to a lot has the advantages of proving long-term certainty about what will take place on the lot and more control over the timing and design of the work. Taking full title also offers the advantage of shifting the value of land into the hands of community groups, allowing such groups to share in any increase to property values resulting from their work and counteracting forces that have stripped low-income groups of the ability to own property. By capturing some of those benefits, arrangements of this kind may also increase local buy-in.

The challenges with land transfers could be significant. For cities, giving up title to property, even vacant land, may trigger layers of review that are time-consuming to navigate. Programs for dispossessing city land may, for example, require city councils to approve of each individual sale.[47] In addition, a community garden will typically generate less tax revenue than a more extensive development project, so giving up title to land may mean the city never generates the tax revenue that it would if it were otherwise developed.

Further, if the community group's work is poorly executed, cleaning up that space may be harder when the city no longer holds title. For community groups, challenges could include finding upfront resources sufficient to purchase the property, which might entail fundraising, and would require a legal entity capable of retaining ownership. Community groups could bear the responsibility for taxes on the lot, as well as liability concerns that apply to any property owner.

Despite these real concerns, there may be situations in which taking full title of land makes the most sense. Further, there are mechanisms that could help mitigate the drawbacks of this approach without losing all of its benefits within the overall umbrella of transferring title to a lot in question.

A. *Transfer to a Land Trust*

A city can transfer ownership of land to a land trust, in some cases at a discounted cost to the trust or at no cost at all. A land trust could facilitate programs drawing on the advantages of any of the models described above—an Open Streets model, in which land bank property is made temporarily available for a short-term smart surfaces project; a permitting structure where outside groups could take over control of land trust property for a longer-term com-

45. NPS—Cuyahoga Valley National Park, *Farms*, https://www.nps.gov/cuva/learn/farms.htm (last updated Sept. 24, 2024).

46. NPS, Cuyahoga Valley Countryside Initiative Program Lease Agreement No. CUVA 200, https://perma.cc/8D98-5DHZ (last visited Aug. 8, 2025).

47. City of Schenectady, New York, *City Owned Vacant Lots*, https://www.cityofschenectady.com/659/City-Owned-Vacant-Lots (last visited Aug. 8, 2025).

munity garden or park project; or even a lease for however long the trust and CBO deem desirable.

Land trusts are extremely common throughout the United States. According to the Land Trust Alliance, they number more than 1,200 and protect more land than all national parks combined.[48] They also offer a huge degree of customizability. Because these are usually private, nonprofit entities, land trusts have the flexibility to develop a wide range of programs to facilitate smart surfaces projects.

Existing programs through land trusts, for example, offer the advantage of allowing title to rest with an organization that has an established structure for conducting its work, and that likely has appropriate infrastructure in place to manage tax concerns and liability for property in its portfolio. In Chicago, for example, the NeighborSpace land trust takes title to land[49] and then executes partnership agreements with local groups that want to develop gardens.[50] In Cleveland, the land bank will lease land that it owns to a community garden or other greening project for $1/year.[51]

Under an approach like this one, the city's potential long-term concerns around losing control of land remain salient, but the burden of ownership does not have to rest with a community group interested in a greening project. Where the land trust can shoulder administrative burdens, a group interested in a greening project but lacking the resources to fully own a particular property may not be excluded from participating in these kinds of partnerships. Existing partnership agreements of this kind are generally not publicly available, so having additional models and best practices would help make this avenue more widely available.

B. *Land Trust as a Pass-Through Vehicle*

If applicable law allows it, a land trust could also take title to land for a limited period of time and then pass that title on to community groups or individuals. For example, a 2019 Philadelphia ordinance reformed how the city handles vacant land.[52] Among other changes, the bill clarified that disposition of city property broadly includes any transfer of "one or more interests in real property" (but not including a leasehold interest), and that the city, through the Philadelphia Land Bank, could dispose of vacant property without a competitive bidding process if a nonprofit applicant "seeks the property for use as . . . open space."[53] The code further provides that the land bank can then dispose of property at a nominal price for certain uses, including for use as open space.[54]

This model could achieve similar advantages as the full transfer of title directly to a community group—long-term certainty, wealth transfer, and freedom to design greening projects with fewer limitations. For CBOs working in this space, this can mean a decreased risk of a project being later redeveloped in ways that contradict the original smart surfaces project's intention. Using a land trust as an intermediary can provide a city the opportunity to outsource some of the work of determining to whom a lot should ultimately be transferred. Relatedly, a land trust could maintain a role in making resources available for CBOs that have become owners of property, further reducing the burden a CBO might otherwise face as it tries to get greening projects started.

C. *Low-/No-Cost Transfer in Fee Simple for Community Development*

Finally, cities can sell or donate vacant lots directly to interested community groups. Given the limited resources of most nonprofit organizations, this Comment assumes buying city property at fair market value is not a viable option for pursuing smart surfaces projects. There are, however, programs that transfer city property at a reduced cost (or no cost at all) to nonprofit partners. Even though cities are generally not empowered to make gifts to private parties, state laws in some instances provide for special circumstances under which a city can give away land where doing so achieves a broader public purpose.[55]

Transfers of this kind can take a variety of forms. In Chicago, for example, a CBO can buy city land to create a community space at 10% of market value, provided certain conditions are met.[56] Jacksonville operates a "Surplus Property Donation Program"[57] under which, every three years, the city undertakes its own inventory of property that it owns that may be suitable for developing affordable housing.[58] The city will then donate property for, among

48. Land Trust Alliance, *Gaining Ground: United States*, https://landtrustalliance.org/land-trusts/gaining-ground/united-states (last visited Aug. 8, 2025).
49. NeighborSpace, *Becoming a NeighborSpace Garden: FAQ*, http://neighborspace.org/get-involved/becoming-a-neighborspace-garden-frequently-asked-questions/ (last visited Aug. 8, 2025).
50. NeighborSpace, *Partnership Agreement Document*, http://neighbor-space.org/get-involved/documents/ (last visited Aug. 8, 2025).
51. City of Cleveland, Ohio, *Cleveland Land Bank*, https://www.clevelandohio.gov/city-hall/departments/community-development/programs-services/cleveland-land-bank (last visited Aug. 8, 2025).
52. Bill 190606-AA (Phila., Pa. 2019), https://phila.legistar.com/LegislationDetail.aspx?ID=3991752&GUID=14725D10-0311-4DE9-8907-7FE25A3D562B&Options=ID|Text|&Search=190606.
53. Phila., Pa., City Code §16-404(2)(d)(.2).
54. *Id.* §16-404(3)(b)(.2); Philadelphia Land Bank, Disposition Policies 4 (2020), https://k05f3c.p3cdn1.secureserver.net/wp-content/uploads/Resources/Philadelphia-Land-Bank-Disposition-Policies-2020.pdf.
55. For example, local governments in Illinois selling or leasing land may accept either "the high bid or any other bid determined to be in the best interest of the city or village," provided certain procedures are followed. 65 Ill. Comp. Stat. 5/11-76-2. Similarly, local governments in Texas are authorized to dispose of land below market value if doing so serves a public purpose and the sale includes terms that enforce using the land for that public purpose. Tex. Loc. Gov't Code §272.001(*l*)(2).
56. City of Chicago, Illinois, *Open Space*, https://www.chicago.gov/city/en/sites/block-builder/home/application-guide/open-space.html (last visited Aug. 8, 2025).
57. City of Jacksonville, Florida, *Surplus Property Donation Program*, https://www.jacksonville.gov/departments/neighborhoods/housing-and-community-development/surplus-property-donation-program (last visited Aug. 8, 2025).
58. Fla. Stat. Ann. §125.379.

other purposes, "pocket parks, neighborhood supported commercial uses, and similar uses supportive of affordable housing."[59] Further, under some states' laws, land banks or other nonprofit organizations can have the option of placing a priority bid in certain tax foreclosure auctions that operates as a right of first refusal.[60] And programs to transfer city land to CBOs may make a distinction between buildable and non-buildable lots, with easier requirements for the latter.[61]

These kinds of programs are not going to be feasible for every city property that could benefit from smart surfaces work. Where they are though, taking advantage of options for undervalue property transfers solves the most obvious challenge associated with CBOs taking title to city property—the significant money that may be required upfront. Groups taking advantage of a program like this would still need to have the capacity to hold title and manage tax and liability issues.

VI. Nonaccess Models for City Facilitation

Alongside programs that outsource the work of transforming city-owned land, additional city-led efforts could facilitate updating dark, impervious surfaces to more resilient alternatives. In Phoenix, Arizona, for example, the city has piloted a reflective paving program that aims to decrease the urban heat island effect by making roadways more reflective.[62] Similar programs exist in Los Angeles[63] and San Antonio.[64]

Programs like these could readily extend beyond roadways to parking lots and other dark, paved surfaces—even those that are not under a city's direct control. Further, proceeding without a CBO partner may be the only option where no CBO partners are able to take on the work, or where the city's own limitations make contractual partnerships infeasible. Even in these instances, a city undertaking smart surfaces work could help make CBO partnerships possible in the future by increasing the trained work force and increasing public understanding of their benefit.

Cities can also develop and make available catalogs of vacant lots to better understand and socialize the heat-related damage caused by dark, impervious surfaces, and blaze a trail for future programs. In a range of jurisdictions, cataloging unused municipal property is encouraged or required by law.[65] A catalog of vacant land would not on its own remove dark surfaces, but it could provide data necessary to support the allocation for greening projects, demonstrate to policymakers the extent of the opportunity that smart surfaces present, and guide the advocacy efforts of community groups interested in this work.

VII. Conclusion

The challenge of designing effective approaches to combating extreme heat in urban settings is an urgent one, made all the more so by the inequitable way heat is distributed within cities. Replacing dark-colored, impervious surfaces with reflective or vegetative alternatives is one proven strategy to cool those areas. But cities' resources are limited.

This Comment has explored ways that cities and CBOs can join forces to tackle the cooling of cities' surfaces. The intent is to leverage a city's property and a partner's resources, even if those resources are volunteer labor. The Comment describes a set of models for how cities could structure these partnerships to best facilitate the outcomes both it and the partnering community group seek.

Although none of these models will be a perfect solution to every challenge, each provides a way of thinking about partnerships and a jumping-off point for city staff and CBOs to design an approach right for their unique situation. These partnerships stand to achieve real cooling and public health improvements in the neighborhoods that need them most, at a lower cost and faster timeline than either the city or the community group acting alone.

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59. Jacksonville, Fla., Code §122.423(c).
60. *See, e.g.*, N.Y. Not-for-Profit Corp. Law §1616:
    > [I]n the event that no municipality elects to tender a bid at [certain tax foreclosure sales] . . . the land bank may tender a bid . . . equal to the total amount of all municipal claims and liens which were the basis for the judgment . . . [and] the property shall be deemed sold to the land bank regardless of any bids by any other third parties.

    Frank S. Alexander, Local Initiatives Support Corporation, Land Bank Authorities: A Guide for The Creation and Operation of Local Land Banks 23 (2005), https://www.lisc.org/media/filer_public/2b/41/2b4173a6-c5e3-4c07-a9a8-ee022ba83a47/08092018_resource_landbankauthoritiesguideforcreationandoperation.pdf (noting that under Georgia law, the Atlanta Land Bank "has the authority (but not the obligation) to tender the minimum bid at a tax foreclosure sale (by agreeing to assume responsibility for the amount of taxes that it subsequently extinguishes)").
61. City of Rochester, New York, *Vacant Lot Sales*, https://www.cityofrochester.gov/VacantLotSales.aspx (last visited Aug. 8, 2025).
62. City of Phoenix, Arizona, *Cool Pavement Program*, https://www.phoenix.gov/administration/departments/streets/initiatives/pavement-maintenance/cool-pavement-program.html (last visited Aug. 8, 2025).
63. tsw1010, *Cool Pavement Pilot*, L.A. Bureau St. Servs. (Oct. 29, 2018), https://streetsla.lacity.org/blog/cool-pavement-pilot.
64. City of San Antonio, Texas, *Cool Pavement Program*, https://www.sanantonio.gov/PublicWorks/Projects/Cool-Pavement-Program (last visited Aug. 25, 2025).
65. *See* N.Y., N.Y., Charter §204(d) (requiring the mayor to annually prepare, among other reports submitted to the city council, "a map together with explanatory text, indicating . . . the location and current use of all city-owned real property"); Cal. Gov't Code §54230(a)(1) ("[E]ach county and each city shall make a central inventory of all surplus land, . . . and all lands in excess of its foreseeable needs, if any, . . . within the jurisdiction of the county or city that the county or city or any of its departments, agencies, or authorities owns or controls."); *cf.* Fla. Stat. Ann. §125.379 ("[E]ach county shall prepare an inventory list of all real property within its jurisdiction to which the county or any dependent special district within its boundaries holds fee simple title which is appropriate for use as affordable housing.").