

Resisting Renoviction and Displacement Through Cultural Land Trusts: Art and Performance Spaces, Pop-Ups, DIYs, and Protest Raves in Vancouver

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This Article draws on ethnographic fieldwork to explore the use of cultural land trusts as local urban resistance to the displacement of arts and culture spaces in Vancouver. Cultural land trusts shift power back to relationally marginalized and displaced communities whose voices frequently fail to figure equitably within decision-making processes affecting their urban landscape. Cultural land trusts draw on the community land trust and community ownership structure with the goal of preserving affordable access to land and space for arts and culture in the city. As previously marginalized portions of the city space are “retaken” by a city, areas that have provided affordable performance, rehearsal, and live/work spaces for the arts sector are becoming less available. Their absence threatens the economic and cultural potential of art and the physical dimensions necessary for the sustainability of urban art and culture.

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INTRODUCTION: “THE WORLD DOESN’T WANT ENOUGH OF YOUR
PRODUCT FOR YOU TO PAY THE RENT.”¹

Gathered outside of the \$73.1-million-dollar home of Lululemon founder Chip Wilson, over sixty East Vancouver artists and activists attended a “Rave Against Renovictions” to protest “renoviction” notices served to arts and culture spaces by Wilson’s development company, Low Tide Properties. Arguing with the protestors gathered outside of his home, Wilson replied, “But you’re not making enough money, right? . . . The world doesn’t want enough of your product for you to pay the rent.”² While the clash between these two groups is but one example of current conflicts over the use, displacement, preservation, and (re)development of contested city space, it was Wilson’s reply to the protestors that catapulted the event into local Vancouver news.

Drawing on ethnographic fieldwork conducted in Vancouver, this Article will explore the use of cultural land trusts to resist the displacement of arts and culture spaces and shift power back to relationally marginalized communities whose voices frequently fail to figure equitably within decision-making processes affecting their urban landscape.³ Cultural land trusts draw on the community land trust and community ownership structure with the goal of preserving affordable access to land and space for arts and culture in the city. As cities redevelop and previously less desirable or marginalized portions of the city space are “retaken,” areas that have provided affordable performance, rehearsal, and live/work spaces for the arts and culture sector are becoming increasingly less available. This change is happening despite the economic and cultural transformative potential of art and the physical (and virtual) dimensions necessary for the sustainability of art and culture within the urban context.

“Renovictions” or “demovictions” lead to the unwilling displacement of tenants by large-scale renovation permitted through an act like the provincial (British Columbia) Residential Tenancy Act.⁴ Renovictions frequently involve the eviction of tenants due to a *purported* large-scale

1. For a video clip that was taken at the event and picked up by local news outlets, see Simon Little, *The World Doesn’t Want Enough of Your Product’: Chip Wilson, Artists, Spar Over Renovictions*, GLOBAL NEWS (Aug. 13, 2019, 2:17 AM), <https://globalnews.ca/news/5751613/chip-wilson-renoviction-protest>.

2. *Id.*

3. For an in-depth description of methodology following an urban legal-anthropology approach, see SARA GWENDOLYN ROSS, *LAW AND INTANGIBLE CULTURAL HERITAGE IN THE CITY* 52-70 (2020).

4. Residential Tenancy Act, R.S.B.C. 78/2002 (Can.); *see also* CITY OF VANCOUVER, *MAKING SPACE FOR ARTS AND CULTURE – DRAFT VANCOUVER CULTURAL INFRASTRUCTURE PLAN 18* (2019), <https://vancouver.ca/files/cov/making-space-for-arts-and-culture.pdf> (describing major renovations made in city-owned cultural spaces).

renovation, enabling the landlord to raise the rent of the new space whether or not a large-scale renovation has in fact taken place. This kind of increased pressure on and displacement of spaces for arts, culture, and community cultural wealth—especially mid-size to smaller spaces—continues to occur in cities such as Vancouver despite the local government’s efforts to encourage and sustain alternative spaces for art, culture, and performance. In Vancouver, the most recent representation of art expansion efforts includes its newly adopted ten-year cultural plan *Culture|Shift – Blanketing the City in Arts and Culture*, which prioritizes a “No Net Loss, Plus!” approach to preserving existing spaces of art, culture, and performance. These spaces include studios, music hubs, and the affordable housing needed by artists for a sustainable urban environment of art, culture, and creativity. As a different step towards resisting displacement processes, the goals of developing a cultural land trust are the long-term security of tenure in a neighborhood, as well as cultural equity and sustained cultural employment. A cultural land trust can also serve as a means of managing additional challenges posed by problematic property-tax assessments based on the “highest and best” use of property and a triple net lease structure, where spaces of art and culture are priced out of a burgeoning neighborhood or postindustrializing city space despite their community and cultural value.

This Article will also turn to the power-shifting potential of direct community involvement in the shaping and design of community space that exists within the cultural land trust structure. Precarity, vulnerability, and insecurity of tenure are frequently interconnected in the operation of relationally marginalized community spaces. The greater community involvement in ownership and long-term security of tenure that cultural land trusts offer can have a transformative effect by addressing the harms of displacement as well as providing meaningful support to the spaces of art and culture that bring meaning to city life. Urban property, and property in general, can represent power as well as security. But property as power and property as security “are undifferentiated in legal ideology.”⁵ Rather, “[b]oth are seen as accidental by-products of the equal distribution of rights.”⁶

As Roger Cotterrell asserts, it is important to understand how the concept of property and its ideological mechanisms can and do work in the law, especially where the concept of property can quietly shape the distribution of access, use, and power in a city without being overtly applied in this manner.⁷ Here, it is also important to understand how the technical

5. Roger Cotterrell, *Power, Property and the Law of Trusts: A Partial Agenda for Critical Legal Scholarship*, 14 J.L. & Soc’y, 77, 87 (1987).

6. *Id.*

7. *Id.* at 83.

functions and concept of property can be employed.⁸ Legal tools provided by property law can be utilized in a counterhegemonic manner through this exercise.⁹ Applicable to the clash between the protesters and Chip Wilson, Cotterrell notes that “the security of access of all citizens to the basic resources of well-being might be thought to be a more secure foundation of equal freedom than is the ability of some to exercise unlimited property-power over others.”¹⁰ On this note, he suggests that “[a] major part of the project of critical study of property law (and of trust law as a part of it) must surely be the exploration of the relationship between property as power and property as security.”¹¹ The cultural land trust as a power-wielding property-law mechanism opens possibilities for access to security and sustainability for arts, culture, community, and performance spaces. This is especially true for spaces that might be deemed less profitable where “highest and best use” or the market value of a space and its (re)development profit-potential can dominate the design, planning and policy decisions made by local government.

This Article will proceed in six parts. Part I will explore the displacement processes at play in cities such as Vancouver, examining their effects on marginalized communities and alternative art spaces before Part II explores a selection of local Vancouver examples. Drawing on international legal frameworks and the human right to culture, Part III will turn to a discussion of why the sustainability of city art and culture spaces matters. This discussion will be followed by an examination of local Vancouver attempts to address the ongoing displacement of these spaces, including Vancouver’s most recent strategic plan for culture, and relevant challenges. Part IV will then turn towards property law and trusts, setting the stage with a discussion of the community land trust model before delving into an examination of the cultural land trust structure. Part V will turn back to the power-shifting potential of the cultural land trust model. Finally, Part VI discusses the broader spatial and power-shifting potential of cultural land trusts to address displacement experienced by relationally marginalized groups in cities.

I. DISPLACEMENT PROCESSES

This Part discusses a selection of processes and policies that can lead to the displacement of spaces for art, culture, and performance in the city—notably alternative spaces and spaces generated and utilized by marginalized communities—and concludes with a brief contextualization of the role and value of these spaces.

8. *Id.*

9. ROSS, *supra* note 3, at 42-44.

10. Cotterrell, *supra* note 5, at 87.

11. *Id.*

A. Renovictions and Demovictions

“Renoviction” and “demoviction” are terms used to describe the unwilling displacement of tenants for the sake of a large-scale renovation.¹² But, in reality, renovictions involve the eviction of tenants due to a *purported* large-scale renovation that ultimately allows a landlord to raise the rent of the newly “renovated” space, whether or not a large-scale renovation has in fact been carried out.¹³ In a report integrated into *Culture|Shift: Blanketing the City in Arts and Culture—Vancouver’s new Culture Plan for 2019 to 2029—Vancouver’s recent Making Space for Arts and Culture: Draft Vancouver Cultural Infrastructure Plan* identifies the upward trend in renovictions taking place in Vancouver.¹⁴ The report links this process to significant increases in rent and property taxes, as well as the competition arts and culture spaces encounter when faced with development and redevelopment pressure due to the higher-value land use potential that their spaces carry, especially within Vancouver’s industrial zones.¹⁵ This Cultural Infrastructure Plan is based on a 2018 report of the same name (itself derived from the 2018 *Key Gaps in Vancouver’s Cultural Infrastructure* report) presented to Vancouver City Council that “examines in depth the current state of Vancouver’s arts and cultural spaces, and lays out the City’s long term vision and commitment to address [the] acute space challenges.”¹⁶ The plan suggests that “[t]he City . . . prioritize the preservation of arts and cultural spaces, including production spaces, music and performance spaces that hold or foster specific cultural-heritage traditions, intangible cultural assets and industrial land used for art production and other industrial uses.”¹⁷ The report also warns that “[t]he present gap in preservation efforts may risk the loss of spaces that are sorely needed and heavily utilized.”¹⁸ The document’s “Goal 4: Expand Tools to Prevent Displacement and Secure Spaces” notes the doubling and tripling of commercial rents that has led to displacement by renoviction and also observes that in just the prior year, over sixteen studios were lost within Vancouver’s industrial zones, where about 300 artists have already been displaced or remain in danger of being displaced.¹⁹

12. See Residential Tenancy Act, *supra* note 4; see also CITY OF VANCOUVER, *supra* note 4, at 18.

13. See, e.g., *Baumann v. Aarti Investments*, [2018] BCSC 636, ¶ 40 (Can.) (defining renoviction as “making an unusually long list of repairs after earlier failing to secure an increase in the rent by consent”); see also Residential Tenancy Act, *supra* note 4, at § 49(6)(b) (“A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following: . . . renovate or repair the rental unit in a manner that requires the rental unit to be vacant.”).

14. CITY OF VANCOUVER, *supra* note 4, at 8.

15. *Id.*

16. *Id.* at 1.

17. *Id.*

18. *Id.*

19. *Id.* at 27.

B. Property Taxes and Triple Net Leases

A further barrier in avoiding displacement arises with the property taxes and triple net leases that arts and cultural spaces encounter. Property taxes in Vancouver, for example, are based on the assessed value of property determined by a property's potential "highest and best use" or full-market value, which consists of the most likely use of a property in order to lead to the highest value return.²⁰ This poses a problem for artists using spaces in ways other than what has been assessed as the "highest and best" use for the space, as these artists then face property taxes that are incommensurate with the actual income generated by the use of the property. As Vancouver's new Cultural Infrastructure Plan describes, "For underdeveloped properties, the unrealized development potential could result in significant property tax implications. A one-story industrial space may have the development potential of a seven-story building and is assessed for property taxes on that higher value, potential future use."²¹

As (re)development interests increase within the industrial and postindustrial zones where many arts and cultural spaces are currently located, there is frequently a spike in assessed value causing a property's rent or lease to increase by tens of thousands of dollars from one year to the next.²² Further, where the majority of these spaces are rented or leased, usually on a monthly basis, the triple net lease system structure that defines most of these arrangements results in an agreement where the tenant pays all three "nets"—real estate taxes, building insurance, and property maintenance costs—alongside what would normally be paid within a rental agreement.²³

C. Valuing Alternative Art Spaces for Marginalized Community Use, Growth, and Inclusion

While the availability of affordable spaces for community, cultural, arts, and music events is bleak in cities like Vancouver and continues to decrease, renovictions and demovictions are a further blow to already marginalized spaces, as well as the much-needed communities that gather within them. With the existence of spaces designed for greater diversity and alternative art, performance, and culture, new demographics of attendees can find space and community. For example, events and spaces curated or ran by BIPOC and nonbinary artists, musicians, DJs, and so on can serve to

20. See also *id.* at 28 (describing property assessment practices in British Columbia).

21. *Id.*

22. For example, leading up to the development of the new Cultural Infrastructure Plan, Vancouver City Staff conducted a review of the property taxes paid by eleven arts studios and found that their property taxes increased by over 77% in the prior five years, with one studio experiencing a \$60,000 increase in rent in one year. *Id.*

23. See also *id.* (describing the effect of triple net leases).

centralize marginalized communities in terms of cultural spaces and practices that are accessible and available in a city and decentralize more conventional and relationally dominant cultural spaces, practices, and communities.²⁴

A more meaningful form of inclusivity that builds community in this way does not necessarily have a comparably high profit-building capability to other uses of property. However, it serves an essential purpose for including relationally marginal groups, individuals, communities, music, and art within a larger urban landscape of more conventionally mainstream and less relationally vulnerable spaces and events that may not be experiencing the same degree of spatial displacement or accessibility barriers to physical space for gatherings and events.²⁵ Through curating arts, cultural, and community events and “parties,” groups are able to create a platform that transcends their events and spaces while also serving as a nourishing “third place” for organizers, participants, attendees, performers, and so on.²⁶ While the availability of space for alternative generators and participators within the arts, culture, and creative industries is particularly vital, it continues to be at risk of displacement

II. LOCAL EXAMPLES OF THREATENED SPACES FOR ART, CULTURE, PERFORMANCE, AND COMMUNITY

This Part turns back to the scenario described at the outset of the Article. The “protest rave” that took place, and the interaction that protesters had with Chip Wilson, is an example of local community agitation against and frustration with the ongoing displacement of art, culture, and performance space, and the lack of options available to avoid displacement. This Part will then turn to a few examples of spaces for art, culture, and performance that were displaced around the time the protest rave took place.

A. Community Response to Displacement: The Protest Rave

The protesters stood gathered around turntables and speakers.

24. See also BOAVENTURA DE SOUSA SANTOS, EPISTEMOLOGIES OF THE SOUTH: JUSTICE AGAINST EPISTEMICIDE 118-36 (2014); Sara Ross, *Buen Vivir and Subaltern Cosmopolitan Legality in Urban Cultural Governance and Redevelopment Frameworks: The Equitable Right to Diverse Iterations of Culture in the City and a New Urban Legal Anthropological Approach*, 5 CITY U.H.K. L. REV. 55 (2015).

25. In terms of viewing this phenomenon through the lens of subaltern cosmopolitanism, see, for example, Boaventura de Sousa Santos & Cesar A. Rodriguez-Garavito, *Law, Politics, and the Subaltern in Counter-Hegemonic Globalization*, in LAW AND GLOBALIZATION FROM BELOW: TOWARDS A COSMOPOLITAN LEGALITY 1, 6 (Boaventura de Sousa Santos & Cesar A. Rodriguez-Garavito, eds., 2005) See also Ross, *supra* note 24.

26. On “third places,” see RAY OLDENBURG, *THE GREAT GOOD PLACE: CAFES, COFFEE SHOPS, BOOKSTORES, BARS, HAIR SALONS AND OTHER HANGOUTS AT THE HEART OF A COMMUNITY* (2d ed. 1997). See also Lisa T. Alexander, *Hip-Hop and Housing: Revisiting Culture, Urban Space, Power & Law*, 63 HASTINGS L.J. 803 (2012).

“We’ve all been forced out,” explained one of the protesters.

“Yeah, but you know what?” Chip Wilson responded, “So have I. When I was young . . .”

At this point the protesters began to talk over Wilson’s explanation. They gave each other knowing looks, and mockingly echoed him: “When I was young . . . when *I* was young . . . when I was *young* . . . I have such stories . . .”

Faltering, Wilson eventually continued on.

“Listen, when I was young . . . No, listen . . . I had many attempts to do . . . I tried to do many clothing . . . No . . . Because . . .”

And then Wilson crystalized his point: “I didn’t get here without making a lot of mistakes and having failed many times, and many times I couldn’t make rent because I didn’t have a product that people actually wanted to buy!”

“But this isn’t about a commodity! This is about community and arts!” one protestor exclaimed.

“Well, I know,” Wilson replied.

But did he? Another protestor chimed in: “I had a product that *was* extremely popular, that was packed *every single weekend*, and you *still* renovicted me.”

Wilson’s face twisted, and he laughed in response.

“But you’re not making enough money, right? . . . The world doesn’t want enough of your product for you to pay the rent!”

One of the protesters attempted to summarize Wilson’s response. “So, in other words, unless you’re a millionaire, a billionaire . . .”

The protester who had previously described their well-attended event and sought-after product began to offer a further explanation. “But I was paying the rent! You didn’t give me the option . . . Your company didn’t give me the option of paying the rent!”

This comment drew additional laughs from Wilson as he turned his back on the protesters and provided a final response. “Anyway, you guys are great. Love ya. Take care.”

As Wilson walked away, back to his walled complex, one of the protesters glumly called after him.

“We’ll be here when you need us!”²⁷

B. The Osito Project

The Osito Project was “[a]n arts, cultural and music space in the heart of East Van,” with a stated “ethos” of “Unity, Acceptance, Tolerance, Community, Creativity, Growth, Integrity, Good Times, Good Vibes.”²⁸

27. Little, *supra* note 1.

28. *ositoevents*, *online*, RESIDENT ADVISOR, www.residentadvisor.net/profile/ositoevents.

Osito Events—the special events run out of the Osito Project’s space—is described as “[a]n East Van based events company pairing underground electronic music with #partybear attitude.”²⁹ #partybear alludes to their mascots—gigantic stuffed teddy bears (“osito” being the Spanish word for little bear or teddy bear) that featured prominently in the space.

The Osito Project provided space for local DJs to perform, hone their craft, and connect with other DJs, musicians, artists, and attendees seeking to listen and dance to their music in a safe space. Signs around the venue alluded to the underground nature of the space, providing the following instructions: “You were never here. Please take photos but please DO NOT use location tag. Thanks for being a stellar party bear.” Further instructions were provided for arriving by taxi or ride share. The Osito Project requested via their social media channels, through which a significant part of their event promotion took place, that attendees be dropped off at a nearby intersection in order for the space to remain under the radar. As they explained, “Let’s do our part to keep the underground scene, underground.” Upon receiving the address after contacting the organizers for location details, a first-time attendee is instructed to look for a non-descript sign on a garage door. Just to the left of this, there is a door, and the attendee is instructed to “knock, knock, come up the stairs.”

Attempts to utilize Google Maps, or another mapping function, were futile. Searching for the Project’s location and events space simply yielded a different location, far away from the actual space.

On July 16th, 2020, the Osito Project made the following announcement via their social media channels:

Yesterday was a day we knew would come at some point in 2020. It was the day we got evicted because the building we call home has been for sale all year. Yesterday was the day the building sold. And yesterday was the day that we, at Osito, lost our home.

It’s with heavy hearts that we share this news with all of our friends and family. Forget the word followers as we are all in this together.

Osito began as there is a huge void in Vancouver for safe and positive arts and cultural places. There is a great need for them in our community. A place to share music and dance to reset our souls. To share art and self expression without judgement.

We have felt the love from each and everyone of your beautiful faces every time you pop by say hello.

Thank you for holding space for our mission and supporting local start-ups.

Our new mission is to find these Giant Osito’s (Oso Grandes!) a

29. *Id.* (appearing in the description accompanying purchase of a ticket to an Osito Project event).

new home! If you know a space that would work for us please reach out! Don't worry friends, we will come back bigger and better than ever before, this is only the beginning!

Until then, we have 4 weekends left to crush it and make the most of our space, Osito Project, and what a project is has BEEN!

Confirmed dates for Osito Project Lives Summer Series, only 50 tix per party get em quick! Released at the beginning of each week:

Sat July 18

Sat July 25

Sat Aug 1

Sat Aug 8 ✨Closing✨

Thank you all for your support over the last year since we launched Osito Events! We wouldn't be here without all of YOU, the Party Bears and the local DJ talent here in the city we call home!!!

[#ositoevents](#)

[#ositoproject](#)

[#ositolives](#)

[#vancouverunderground](#)

[#vancouverdj](#)

[#vancouvernightlife](#)

C. Other Displaced Spaces

The Osito Project is just one example of an art, music, and performance space that the protesters were alluding to in their confrontation with Chip Wilson. Other examples of recently displaced spaces of art, culture, and performance, as well as others under imminent threat, include 333, Vancouver Art and Leisure (VAL) Society (its Main Street location, then its replacement LAB location, and then its subsequent replacement home at the Central Studios venue), Little Mountain Comedy Gallery, Toast Collective, SBC, Red Gate, China Cloud Studios, the Clubhouse, Dolly Disco—the list continues.

Focusing solely on the visual art spaces within Vancouver's Eastside Arts District, the Eastside Culture Crawl's recent study *A City Without Art?* noted that 152 buildings that were used as working spaces for the visual arts had been lost or converted to a non-arts, culture, or performance use.³⁰ This amounts to a loss of just under half of all the spaces used by artists in the District over the last ten years.³¹ Vancouver's Eastside Arts District, as the study identifies, is one of the areas in Vancouver that is experiencing a postindustrial shift within manufacturing and industrial zones that are gradually being converted and rezoned to include mixed-use residential

30. (City of Vancouver, making space for arts and culture) at 27.

31. (City of Vancouver, making space for arts and culture) at 27.

space, and it's one of the sites where renovictions are rampant.

III. WHY SPACES OF ART AND CULTURE IN A CITY MATTER

Zooming out to a larger global context, our shared global recourse in times of crisis is to use music, arts, and culture as an important mechanism for social cohesion.³² As the following Part will explore, the increasing pressures of rapid urbanization, postindustrial redevelopment, and mixed-use rezoning of formerly marginal or unwanted zones of a city that is leading to their displacement is exacerbated by the decreasing availability of accessible, affordable, sustainable spaces for music, art, and culture. These processes are damaging to a human right to culture in the city as it is formulated within international guiding frameworks, which will be discussed at the end of this Part.

A. Alternative Spaces of Art, Culture, and Community in a City

A city's spaces of art, culture, and community can take a variety of shapes. Generally, their size and proximity to more mainstream, white, or male cultural practices leads to a greater likelihood of protection from and lessened likelihood of exposure to displacement in a city due to redevelopment initiatives, gentrification processes, or lack of funding. Whether grassroots, alternative, or relationally marginal spaces of art and culture take the form of Do-It-Yourself (DIY) venues, small performance spaces, coffee shops with live music, nightclubs, artist studios, or galleries, much of their value, as well as the value of larger, less relationally marginal spaces of art and culture like the city's principal theater, is the community cultural wealth generated within the walls of these "third places."³³

DIY venues like the Osito Project and numerous other Vancouver venues are especially vulnerable to the loss of their space and spend much of their life attempting to prevent the imminent loss of their current space or searching for a new space. DIY genres of alternative art, culture, and performance spaces can often be simultaneously classified as a commercial, residential, and industrial space, resulting in increased difficulty navigating municipal licensing and permits as they do not easily fit within defined categories for permitted operation within local zoning bylaws, building

32. SOUND DIPLOMACY, MUSIC CITIES RESILIENCE HANDBOOK (2020). *See also id.* at 6.

33. *See generally* OLDENBURG, *supra* note 26; Ross, *supra* note 3; Alexander, *supra* note 26, at 807, 829-30; MIRANDA CAMPBELL, OUT OF THE BASEMENT: YOUTH CULTURAL PRODUCTION IN PRACTICE AND POLICY (2013). For examples of third places, see Heather E. McLean & Barbara Rahder, *The Exclusionary Politics of Creative Communities: The Case of Kensington Market Pedestrian Sundays*, 22 CAN. J. URB. RSCH. 90 (2013); Katherine N. Rankin, Kuni Kamizake & Heather McLean, *Toronto's Changing Neighborhoods: Gentrification of Shopping Streets*, in GLOBAL CITIES, LOCAL STREETS: EVERYDAY DIVERSITY FROM NEW YORK TO SHANGHAI 140, 154, 159 (Sharon Zukin, Philip Kasinitz & Xiangming Chen, eds., 2016).

safety codes, and so on.³⁴

Beyond the issue of access to a permanent space for alternative art, culture, and performance venues, roving pop-ups in unconventional and temporary spaces can serve as an interim solution—recently made more viable by efforts like the City of Vancouver’s revisions to its arts events licensing process.³⁵ The city’s policy report recommending the City Council permanently adopt the Arts Event Licence Pilot Program notes the importance of alternative art, culture, and community spaces in a city:

Conventional venues such as a theatres or halls are not always suitable for smaller performances or audiences, limited budgets, or the artistic intent of site-specific works. There is a growing demand for alternative venues for innovative works that allow audiences to engage in new ways. In the past, the producer who wished to hold a show in a space not designed for assembly (for example, rehearsal studios, warehouses, factories, etc.) was faced with a dilemma: either undertake a number of potentially complex City approvals and costly building upgrades, or operate outside City safety and other regulations.³⁶

B. The Human Right to Culture in the City

The public and private dimensions of our human right to culture in the city can play out in the realm of a city’s cultural plans or cultural strategies, as well as attempts by private actors to develop initiatives that protect access to spaces of art and culture via mechanisms that harness the tools of property law—for example, through the formation and application of a cultural land trust structure.³⁷ Cities provide us with the critical mass needed for cultural practices to flourish and for the development of spaces and communities for transgressive, marginalized, subcultural, and minority groups. But superimposing groups, their cultural interests, their cultural practices, and their property rights on conflicts between contested use and value interests can lead to unequal treatment within local governance processes, policies, and law.³⁸ Improving social justice in order to realize

34. For more on DIY spaces, urban law, and the city, see Sara Ross, *Transgressive DIY (“Do-It-Yourself”) Spaces, Mixed Virtual/Physical Affinity Spaces, and Building Code Vigilantism*, 13 ALBANY GOV’T L.J. 233 (2019).

35. See *infra* Part V.

36. General Manager of Community Services, Culture: Report Back on the Arts Events License Pilot Program 3 (Sept. 21, 2015) (policy report to Vancouver City Council).

37. See *infra* Section VI.

38. See U.N.-HABITAT, HABITAT III ISSUE PAPER #6: URBAN RULES AND LEGISLATION 2 (May 31, 2015). For an orienting discussion of use-value versus exchange-value in the urban context, see JOHN R. LOGAN & HARVEY L. MOLOTCH, *URBAN FORTUNES: THE POLITICAL ECONOMY OF PLACE* (1987); and LAAM HAE, *THE GENTRIFICATION OF NIGHTLIFE AND THE RIGHT TO THE CITY: REGULATING SPACES OF SOCIAL DANCING IN NEW YORK* 5-6 (2012). See also IRIS MARION YOUNG, *JUSTICE AND THE POLITICS OF DIFFERENCE* (1990); DAVID HARVEY, *SOCIAL JUSTICE AND THE CITY*, (revised ed. 2009); ALISON YOUNG, *STREET ART, PUBLIC CITY: LAW, CRIME AND THE URBAN IMAGINATION* (2014); MARIANA VALVERDE, *EVERYDAY LAW ON THE STREET: CITY GOVERNANCE IN AN AGE OF DIVERSITY* (2012); MARIANA VALVERDE, *Taking Land Use Seriously: Toward an Ontology of*

the potential of international human rights frameworks within cities requires municipal legal complexes, and the urban development they shape, to better represent and sustain the distinctive cultures that make up a city. This includes the “third places” outside of work and home where cultural community wealth is generated and contributes to the meaningfulness of a city or neighborhood as well as the possibility of a good and decent life in a city.³⁹

The human right to culture in the city is formulated in a variety of international guiding frameworks developed for national as well as local city governments to draw on in addressing the need for cultural diversity, equality, and the necessary ingredients for current and future sustainable urban development.⁴⁰ The “law in action” of what appears in these guiding international frameworks can be much different than the “law on the books” within the local context, such as a city’s officially adopted cultural policy designed for promoting, sustaining, or capitalizing on a city’s public and private cultural and artistic resources through “creative city” branding. “Law in action” also includes how zoning bylaws are designed and enforced, whether mixed-use developments that introduce residential property into a postindustrial space account for increases in property taxes and noise complaints, and how land use tools like height and density bonuses and public-community amenity contributions are structured and negotiated with private developers, their local development applications, and construction bids.⁴¹ Local cultural policy and urban law can serve as an indicator of the success of a city in responding to or implementing the international guiding frameworks noted above.

IV. A CITY’S ATTEMPTS TO ADDRESS ONGOING DISPLACEMENT OF SPACES OF ART, CULTURE, AND PERFORMANCE

As former Vancouver City Councillor Heather Deal stated: “In my mind, we will not survive the next 50 years as a growing city if we don’t have

Municipal Law, 9 LAW, TEXT, CULTURE 34 (2005); PAUL CHATTERTON & ROBERT HOLLANDS, *URBAN NIGHTSCAPES: YOUTH CULTURES, PLEASURE SPACES AND CORPORATE POWER* (2003).

39. See OLDENBURG, *supra* note 26; Ross, *supra* note 24; Santos, *supra* note 24; DOLORES HAYES, *URBAN LANDSCAPES AS PUBLIC HISTORY* (1997); James Michael Buckley & Donna Graves, *Tangible Benefits from Intangible Resources: Using Social and Cultural History to Plan Neighborhood Futures*, 82 J. AMER. PLAN. ASS’N 152 (2016); Alexander, *supra* note 26, at 829-30; CAMPBELL, *supra* note 33.

40. These include, for example, the UNESCO 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions, the 2007 UN Declaration on the Rights of Indigenous Peoples, the 2000 European Charter for the Safeguarding of Human Rights in the City, as well as UN-Habitat’s *New Urban Agenda* and the UN’s 2015 International Guidelines on Urban and Territorial Planning.

41. See, e.g., Ute Lehrer & Peter Pantalone, *The Sky is Not the Limit: Negotiating Height and Density in Toronto’s Condominium Boom*, in *THE ROUTLEDGE HANDBOOK ON SPACES OF URBAN POLITICS* 85 (Kevin Ward et al, eds., 2018); SHOSHANAH GOLDBERG-MILLER, *PLANNING FOR A CITY OF CULTURE: CREATIVE URBANISM IN TORONTO AND NEW YORK* (2017); see also SHARON ZUKIN, *NAKED CITY: THE DEATH AND LIFE OF AUTHENTIC URBAN PLACES* 234, 236 (2010); Hae, *supra* note 38; Johannes Novy & Clair Colomb, *Urban Tourism and Its Discontents: An Introduction*, in *PROTEST AND RESISTANCE IN THE TOURIST CITY 1* (Johannes Novy & Clair Colomb, eds., 2017).

creative minds here. Creativity is how to mitigate challenges that come our way, and we need brains that know how to think that way.”⁴²

This Part will delve into Vancouver’s growing understanding of the value and importance of its alternative spaces of art, culture, and performance and some of its attempts to address the identified trend of displacement faced by these spaces. As we will see, these attempts encountered numerous challenges including the need to balance increased support for innovation in creativity and art with minimum life safety, licensing, and building code standards within these same spaces, which can further threaten their sustainability.

A. Revising Special Event Licensing and Pop-Up Performances in Unconventional Space

Even prior to its identification of the worrying trend of renovictions and the rapid displacement of precarious art spaces, the City of Vancouver noted the existence of alternative art spaces such as DIY spaces and pop-up events in its 2015 revisions to its arts event licensing processes for the purpose of supporting “pop-up performances in unconventional spaces.”⁴³ Events of this sort that take place in unconventional and temporary spaces can serve as an interim solution to an ongoing loss of permanent space. The licensing revisions followed public engagement processes, public hearings, and a two-year pilot program with the objective of supporting alternative spaces and events in order to increase accessibility and inclusivity for the relatively high concentration of artists in Vancouver, despite the high cost of rent and accessible space.⁴⁴ After the City Council unanimously voted to pass the motion to make the pilot program permanent, then-City Councillor Heather Deal emphasized the importance of creative minds for the City in order to be able to navigate the challenges that the next fifty years will bring as Vancouver continues to grow.⁴⁵

Demonstrating the City’s evolving understanding of the diverse shapes alternative art spaces can take, the definition of performance and art is left open-ended in order to encompass a diverse array of events.⁴⁶ The policy report on the pilot program provided some examples of the events that

42. Hollie McGowan, *Vancouver’s Pilot Program is More than a Victory for the City’s Right to Party*, VICE (Jan. 21, 2016), <https://www.vice.com/en/article/53adm8/vancouvers-pilot-program-is-more-than-a-victory-for-the-citys-right-to-party>.

43. The pilot program and resulting revisions to the arts-event licensing process grew out of Vancouver’s last Culture Plan (in place from 2008-2018) and the desire to identify strategies for enabling the creation and sustainability of cultural spaces in the city. This process also involved the 2009 Regulatory Review on Live Performance—a set of community roundtables that drew on the insight of individuals from within Vancouver’s art, culture, and creative industries sector and sought to pinpoint regulatory barriers as well as opportunities for the creation of cultural spaces.

44. McGowan, *supra* note 42.

45. *Id.*

46. *See, e.g., id.*

occurred as a result of the two-year pilot:

[A] 24-hour drawing event at an artist-run centre (Project Space); a clown showcase series in an artist studio (Dusty Flowerpot Society); and a variety of music performances, often with album releases, in a retail store (Antisocial Skateboard Shop), a vacant bank-turned-warehouse historic building, and several production studios (Red Gate Arts Society, etc.) . . . , new works [seen] at exhibition/book launches in a pop-up gallery (West End Arts) and a studio (Van East Studio). In a shared rehearsal studio, an established theatre company (Theatre Replacement) hosted over a hundred arts presenters, artists and producers to see and share excerpts of tour-ready works and projects in development (PushOFF 2014 at Progress Lab 1422).⁴⁷

As the summary of the 2013 *Report on Art and Culture Indoor Event Pilot Program* explained, “The Pilot seeks to streamline the City permit approval process for small-scale, arts and culture indoor events . . . in existing buildings. The Pilot will make it procedurally and regulatorily easier for arts and culture groups to deliver arts events featuring live performance, while maintaining assurances of basic life safety and neighbourhood fit.”⁴⁸

The revisions to the arts-event licensing process involved implementing a special category for these spaces within the available options for private property event permits. Some of the unconventional spaces that the category includes are studios, garages, warehouses, factories, offices, shops, or parking lots. Further, the addition of “temporary indoor events” to the arts-event license bylaw was an important step in centralizing and streamlining the city’s approval process for licensing one-off events. It was also a particularly important step in acknowledging that the current building and fire code at the time were designed only for permanent uses despite the temporary nature of the events in question, the result of which had been unnecessarily onerous requirements for those seeking a temporary events license, leading these licensing applications to be prohibitive for arts, culture, and community organizations in terms of both cost and creative energy.⁴⁹

Where gatherings were previously considered under Vancouver’s Building By-law as an “assembly use” regardless of small- or large-scale attendance and the intermittent or permanent nature of the use, this resulted in the need for all gatherings to meet the highest building safety standards under the bylaw, which sometimes could mean the need for an entire

47. General Manager of Community Services, *supra* note 36, at 4.

48. Directors of Cultural Services, Licenses and Inspections, Arts and Culture Indoor Events Pilot Program (Feb. 4, 2013) (policy report to Vancouver City Council).

49. Managing Director of Cultural Services & Director of Licenses & Inspections, Cultural Services Regulatory Review for Live Performance Venues: Phase I (Jan. 18, 2011) (administrative report to the Vancouver Standing Committee on City Services and Budgets).

building to be upgraded. The result of this, per the evidence gathered during the pilot program, was that events might either simply not occur, be cancelled, or be held without a permit—going “underground” and operating without adherence or city guidance as to what might be considered minimum life safety standards. These minimum standards might include a mandated number of exits with clear exit signage, emergency lighting, sufficient fire detection and protection mechanisms, satisfactory evacuation procedures and plans, structural sufficiency, and so on.⁵⁰

The pilot program and the resulting bylaw revisions ultimately placed capacity restrictions at 250 people depending on the size of the venue. While this capacity allowance does not necessarily impose a limitation to a venue’s operation, the guidelines for the frequency of events up to only three days per month limits the licensing category’s applicability to arts and culture spaces that identify primarily as event and performance spaces.⁵¹ It bears noting that the initial pilot program stipulated that the frequency of events could be no more than two days per month and that speakers from the public at the hearings leading up to implementation of the pilot program argued that this number should be increased to eight per month.⁵² At the same time, operators of “full-time” music and art venues with regular events and permanent liquor licenses were wary of the potential competition that would be created by events operating more frequently or permanently in “part-time” music and art venues run out of studios for supplementary support of creation otherwise taking place in the space.⁵³

B. Cracks in the Licensing Revisions

(1) Some Drawbacks for Venues

In discussing licensing revisions, it is also important to note that sanctioning under a city’s legal frameworks may not be desirable for every space or community, but their availability is the first step towards equitable treatment. The positive outcomes for alternative spaces and events to have the option of becoming sanctioned outweigh the negative outcomes, but understanding these negative outcomes is helpful in designing applicable policies and legislation. For example, operating in an underground manner can shelter an alternative art, performance, or event space from groups or individuals who may wish to target these spaces due to their tendency to

50. Directors of Cultural Services, *supra* note 48.

51. *See, e.g., Arts Events Licence*, CITY OF VANCOUVER, <https://vancouver.ca/doing-business/arts-event-licence.aspx>.

52. *See, e.g.,* Directors of Cultural Services, *supra* note 48; VANCOUVER CITY COUNCIL, PUBLIC HEARING MINUTES (Mar. 12-13, 2013); *see also* VANCOUVER CITY COUNCIL, PUBLIC HEARING MINUTES 2-3 (Oct. 20, 2015) (considering an increase in the frequency of events from two to three days per month).

53. *See, e.g.,* General Manager of Community Services, *supra* note 36, at 5.

provide a welcoming and safe space for individuals, groups, and communities excluded by more mainstream arts and culture spaces. DIY operators and attendees, for example may express an understandable wariness to the increased visibility or discoverability that can accompany licensing and official channels—such as becoming more easily targeted as an LGBTQ-friendly space.⁵⁴

One example of how alternative venues and spaces can be targeted through vigilantism was a local controversy that took place not long after the arts-event licensing revisions were made. The owner and operator of a LGBTQ nightclub hired private investigators to use hidden cameras to record footage inside of a competing pop-up event operated by a venue utilizing the temporary arts-event license.⁵⁵ The intention of the video footage (taken despite signs throughout the venue explicitly disallowing photography) was to question how the new license was being used and whether the art and performance taking place at the event really constituted “art” as defined in the bylaw—which was purposefully left relatively open to interpretation.⁵⁶ That both the operator of the venue hosting the pop-up event as well as the owner and operator of the nightclub were active public participants in the hearings leading up to the implementation of the new arts-event license was an additional layer to the controversy—especially as the venue owner and operator who hired the investigators was the only speaker to express concerns about the implementation of the licensing framework.⁵⁷

But the benefits for alternative spaces and events in being able to operate in a city-sanctioned manner are nonetheless significant. The need to dodge law enforcement or avoid reports of unsanctioned events exacerbate the risk of forced closure or displacement. Even more significant is that falling through the cracks of licensing and zoning regulations can result in significant physical danger due to a lack of venue-genre-appropriate

54. See, for example, the rash of building-code vigilantism—an organized cyber-targeting of specific buildings carried out by examining online photos and videos to identify and report potential building-code infractions to have targeted spaces shut down. This occurred in Canada and the United States, intended maliciously to force the closure of DIY and LGBTQ spaces after the deadly fire at the artist-run live/work Ghost Ship warehouse in Oakland, California. Ross, *supra* note 34. These events took place not long after the special-event policy in Vancouver was made permanent.

55. Vancouver Art and Leisure Society is a self-described “radical artist-run society devoted to presentation, programming, and advocacy of art and leisure in unconventional spaces and ways.” *About*, VANCOUVER ART & LEISURE, <https://www.vanartleisure.com/-about>.

56. See also John Woodward, *Hidden Cameras Allegedly Catch Sex, Safety Violations at Vancouver Party*, CTV NEWS (Nov. 24, 2015), <https://bc.ctvnews.ca/hidden-cameras-allegedly-catch-sex-safety-violations-at-vancouver-party>; Nick Eagland, *Drug Use, Sex, Overcrowding: Did Party Go Too Far?*, PROVINCE (Nov. 25, 2015), <https://www.pressreader.com/canada/the-province/20151124/281479275325064>; Brian Hutchinson, *Manager of Vancouver Gay Nightclub Admits He Sent Private Investigators to Rival’s City-Licensed Sex Party*, NAT’L POST (Dec. 4, 2015), <https://nationalpost.com/news/canada/manager-of-vancouver-gay-nightclub-admits-he-sent-private-investigators-to-rivals-city-licensed-sex-party>.

57. VANCOUVER CITY COUNCIL, PUBLIC HEARING MINUTES (Oct. 20, 2015). See also McGowan, *supra* note 42; *Arts Events Licence*, *supra* note 51.

capacity, fire, or building codes.⁵⁸ Meaningful inclusion of alternative events within urban legal frameworks also opens the possibility for the city and licensing and bylaw officers to work with spaces to ensure they are up-to-code and compliant with applicable regulations.⁵⁹

(2) *Limited Long-Term Effects and Other Initiatives Towards Long-Term Artist Studio Tenure*

In terms of the long-term effects of enabling the special events that successfully took place through the pilot program, many of these events took place in spaces that nonetheless remained under threat of displacement—some of which were ultimately displaced after the report celebrating these events and the success of the pilot program.⁶⁰ Working for the sustainability of alternative art, culture, and performance events does not necessarily address the sustainability of the venues themselves.

The special-event licensing revision did not address the insecurity of tenure and short-term rental space, the lack of affordable space, climbing costs based on triple net lease structures, property value assessment, and little community ownership of art spaces. However, the city's attention to licensing begins to acknowledge the vulnerability and precarity of Vancouver's private spaces for art and culture that exacerbates the displacement of these spaces, as well as the artists that characterize these spaces. The increased awareness apparent through this licensing was eventually expanded on more fully within Vancouver's *2019-2029 Culture Plan* documents and appendices such as, notably, a *Cultural Infrastructure Plan* that identifies the long-term potential of the cultural-land-trust structure in this regard.⁶¹

Before this, however, the *2009 Artist Studio Regulatory Review* was launched around the same time as the arts-event licensing study, pilot program, and revisions.⁶² While the same shortage of affordable and suitable space persists despite this review, the resulting bylaw amendment expanded the approved usage of existing industrial space such that work-only artists' studios were included.⁶³ Unfortunately, this did not account for ongoing renoviction processes, highest- and best-use property tax assessments, or the triple net lease structure.⁶⁴ However, to implement the

58. See, for example the deadly fire at the artist-run live/work Ghost Ship warehouse in Oakland, California that happened during a pop-up music event not long after the permanent implementation of Vancouver's revised special event licensing framework. Ross, *supra* note 34.

59. See, e.g., Eagland, *supra* note 56.

60. For example, the Red Gate Arts Society.

61. CITY OF VANCOUVER, *supra* note 4, at 4, 7, 8, 9.

62. See, e.g., Managing Director of Cultural Services, Artist Studio Regulatory Review (Sept. 27, 2011) (administrative report to the Standing Committee on City Services and Budgets).

63. *Id.*

64. General Manager of Planning and Development Services, Proposed Amendments to the Zoning and Development By-law to Support Artist Studios in Industrial Areas (Jan. 7, 2013) (policy report)

revisions, the 2013 policy report from the General Manager of Planning and Development Services concerning the “Proposed Amendments to the Zoning and Development By-law to Support Artist Studios in Industrial Areas” highlighted the long-term need to “[e]xplore the use of covenants and other tools to preserve studio spaces in artist studio buildings” in order to address one of the key issues at stake—“Artist Tenure in their Studios.”⁶⁵ The latter demonstrates the City’s growing interest in the cultural land trust as a potential tool that appears in its most recent Culture Plan documents.

C. A New Plan for Art and Culture: “No Net Loss, Plus!”

The most recent City-generated efforts to curb the displacement of spaces for art, culture, and performance appear in Vancouver’s new ten-year culture plan for 2019-2029: *Culture|Shift – Blanketing the City in Arts and Culture* and its associated documents—*Making Space for Arts and Culture: Cultural Infrastructure Plan* and *Vancouver Music Strategy*—presented by City staff to the City Council in 2019.⁶⁶ The new plan’s presentation stretched over a few days in order to include numerous members of the public who wished to speak to the plan and the process leading up to the plan’s development, as well as to express varying degrees of hope and skepticism regarding the plan’s future implementation. Questions from the Council followed the contributions from the public and concluded with a vote in favor of approving the new cultural plan.

Despite unsurprising and continued displacement in the wake of the Council’s approval, one of the key goals that stands out in the new plan is a commitment to a “No Net Loss, Plus!” approach to preserving spaces for art and culture in the city.⁶⁷ The culture plan and its associated documents take note of the rising trend of renovictions due to the doubling and tripling of commercial rents befalling alternative spaces for art, culture, and performance in Vancouver, as well as the sector’s increased vulnerability with precarious short-term rentals, little community ownership, and displacement in general.⁶⁸ More than sixteen studios were lost from within Vancouver’s industrial zones the previous year, and about 300 artists either continue to face imminent displacement or have already been displaced.⁶⁹ As the Cultural Infrastructure Plan highlights, these vulnerabilities are amplified “for artist studios, private presentation spaces, and live music

65. *Id.* at 2.

66. CITY OF VANCOUVER, *CULTURE|SHIFT – BLANKETING THE CITY IN ARTS & CULTURE—VANCOUVER CULTURE PLAN 2019-2029* (2019) [hereinafter *CULTURE|SHIFT*]; CITY OF VANCOUVER, *supra* note 4; CITY OF VANCOUVER, *VANCOUVER MUSIC STRATEGY - DRAFT FINAL REPORT* (2019) [hereinafter *MUSIC STRATEGY*]; General Manager of Engineering Services, Special Event Policy Framework (Aug. 30, 2019) (policy report to City of Vancouver).

67. *CULTURE|SHIFT*, *supra* note 66; CITY OF VANCOUVER, *supra* note 4.

68. *Id.* at 7, 27.

69. *Id.* at 27.

performance spaces such as for music and LGBTQ2+ events.”⁷⁰

The Cultural Infrastructure Plan further acknowledges the difficulties faced through increases in rent and problematic property tax assessments based on highest- and best-use (full-market value) that place the arts and culture sector in a losing competition with other industries or development potential that might better maximize the profit potential of the land. This is highlighted as a process within Vancouver’s industrial zones that contributes to development and redevelopment pressure.⁷¹ The role of the triple net lease structure is identified where landlords can shift the resulting tax burden of unrealized development potential (or “existing use”) onto the tenants who must then not only pay tax on the space they are renting but must also pay tax on the development potential of the space.⁷² City staff note in their report on the new plan that “[t]his issue has become more acute given the active commercial real estate activities experienced in Metro Vancouver in recent years [where i]t is extremely challenging for the arts, cultural, and other non-profit sectors to afford the high rents and taxes, and still remain viable in their neighborhoods.”⁷³

The “No Net Loss, Plus!” approach, applied specifically to music spaces in the city, emphasizes the need for “affordable, safe, and accessible places to create, produce, experience, and share music” where “[m]usic produced, presented, and performed in non-traditional spaces is an integral part of Vancouver’s music scene and requires further consideration and support.”⁷⁴ Other priorities within Vancouver’s Music Strategy linked to the need for these kinds of music spaces are to elevate “the voices of underrepresented groups” and amplify “all genres and music cultures in the city.”⁷⁵

As the new Music Strategy notes, Vancouver’s numerous City-owned and operated affordable music and arts spaces—achieved by the City through major rezonings—do not face the same insecurity brought about by short-term rental space, the general lack of access to affordable space in Vancouver, little community ownership of spaces, and redevelopment processes, which places Vancouver’s arts and cultural nonprofits and private spaces in a more vulnerable position and contributes to the displacement of artists and workers.⁷⁶ Ownership of art, culture, performance, and community space can make an immense difference for those operating these spaces in terms of the long-term sustainability of arts and culture spaces outside of (often) larger, publicly funded arts spaces or

70. *Id.* at 7.

71. *Id.* at 27, 28.

72. *Id.* at 28.

73. *Id.*

74. MUSIC STRATEGY, *supra* note 66, at 11, 26; *see also id.* at 17.

75. *Id.* at 11.

76. CITY OF VANCOUVER, *supra* note 4, at 4, 7, 8, 9, 33; MUSIC STRATEGY, *supra* note 66, at 38.

less marginal voices, art, and performance genres.⁷⁷ In addition to the Music Strategy document, Vancouver's Cultural Infrastructure Plan also acknowledges the amplified vulnerability and risk of displacement on LGBTQ2+ artist studios, events, and music performances spaces.⁷⁸ The potential of what is proposed within Vancouver's new culture plan is significant, but its realization over the coming years will ultimately speak to its success.

V. THE CULTURAL LAND TRUST

This Part will discuss cultural land trusts and provide a brief overview of a variety of different examples where this framework has been implemented. In basic terms, a common-law trust is a legal relationship and equitable obligation where legal title to the trust property is granted to a trustee to hold for the benefit of another.⁷⁹ Property rights can be legal, equitable, or both. The trustee is the full owner and holds legal title to the trust property while the beneficiaries hold an equitable interest in the trust property and are owners of the trust property in equity.⁸⁰ Finally, the settlor is the party who establishes the trust. In term of these three roles, it is also possible to be the settlor, trustee, and beneficiary of the same trust.⁸¹

A. Community Land Trusts

Before delving into cultural land trusts, it is first helpful to consider the community land trust model. While community land trusts, or community-owned land trusts, can be used for an assortment of aims, a social purpose usually forms their overarching objective.⁸² They utilize the trust instrument as a tool for social justice within the urban setting with aims of democratic ownership of land by local communities in order to preserve the land's long-term community affordability and access to housing, property, and space by removing the land from the market and curbing speculation and inflation processes that hinder affordability.⁸³ Community land trusts enable land to be sequestered in perpetuity or for set period of time to be used for a specific

77. CITY OF VANCOUVER, *supra* note 4, at 33.

78. *Id.* at 7.

79. *See generally* BRUCE ZIFF, PRINCIPLES OF PROPERTY LAW 260-63 (7th ed. 2018).

80. *Id.*; *see also* DONOVAN WATERS, LAW OF TRUSTS (2012).

81. WATERS, *supra* note 80, at 5.

82. ZIFF, *supra* note 79, at 227; *see also* Ayda Agha, *Perpetual Affordability and Community Control of Land*, in CANADIAN HOUSING AND RENEWAL ASSOCIATION CONGRESS SESSION SERIES 2-3 (2018).

83. For examples of community land trusts, *see generally* CENTER FOR COMMUNITY LAND TRUST INNOVATION, <https://cltweb.org>; COMMUNITY LAND TRUST, www.cltrust.ca. *See also* ON COMMON GROUND: INTERNATIONAL PERSPECTIVES ON THE COMMUNITY LAND TRUST (John Emmeus Davis, Line Algoed & Maria E. Hernandez-Torrales, eds., 2020); John Emmeus Davis, *Common Ground: Community-Owned Land as a Platform for Equitable and Sustainable Development*, 51 U.S.F. L.REV 1, 2 (2017).

purpose.⁸⁴ Like trusts in general, community land trusts are flexible legal instruments that differ structurally between jurisdictions.⁸⁵ Marginalized communities have been able to utilize the community land trust as a tool for social justice within the urban setting in order to preserve the land's long-term community affordability.

Shaped by “community-led development of individually owned buildings on community-owned land,”⁸⁶ community land trusts are generally comprised of three components: (1) a non-profit organization acting on behalf of a local community that acquires parcels of land and becomes the landowner; (2) distinct parties who lease or buy the buildings and whose ownership interests are restricted by use and sale limitations which prioritize affordability; and (3) the local community that consults on the non-profit organization's development of the land.⁸⁷ Even though a trust, in principle, creates an equitable obligation binding the trustee to hold real or personal property through legal or equitable title for the benefit of a beneficiary,⁸⁸ most community land trusts tend to be variations of a long-term lease with a divided ownership model where the community land trust owns the land but leases buildings for a long-term period to defined groups.⁸⁹

While community land trusts are becoming increasingly sought after as a “place-based” local grassroots tool for sustainable local urban development, they are also encouraged within international guidelines for sustainable urban development, such as UN-Habitat's *New Urban Agenda* where community land trusts are identified as a potential “cooperative solution” in the list of tools available for preventing “arbitrary forced evictions and displacements.”⁹⁰

(1) Community Land Trust Example: Parkdale, Toronto

The Parkdale Neighbourhood Land Trust (PNLT) is a community land trust created in Toronto, intended to alleviate poverty and a lack of affordable housing as well as to preserve the socioeconomic and cultural

84. See also Agha, *supra* note 8282, at 2-3.

85. See, e.g., Ernest Vaudry & Susan Altschul, *Using Civil Law Trusts for Affordable Housing: A Community Land Trust Model*, 106 REVUE NOTARIAT 75, 77 (2004).

86. Davis, *supra* note 83, at 2.

87. *Id.*

88. ZIFF, *supra* note 79, at 216; WATERS, *supra* note 80, at 5.

89. Vaudry & Altschul, *supra* note 85, at 87-88.

90. U.N. Habitat III Res. 71/256, *The New Urban Agenda* 27-28 (Oct. 20, 2016). The *New Urban Agenda* is “a resource for every level of government, from national to local; for civil society organizations; the private sector; constituent groups; and for all who call the urban spaces of the world ‘home.’” The resource helps these actors work towards “a shared vision for a better and more sustainable future – one in which all people have equal rights and access to the benefits and opportunities that cities can offer, and in which the international community reconsiders the urban systems and physical form of our urban spaces to achieve this.” *Id.* See also Davis, *supra* note 83.

diversity of the Parkdale neighborhood which has faced rapid change and urban (re)development.⁹¹ While the concept of PNLT was generated in 2010, it became a non-profit corporation in 2014 and has yet to attain charitable status.⁹² Beyond its concern with affordable housing for the community, PNLT is an interesting example of a community land trust to draw on when shaping a cultural land trust due to its ongoing community participation and focus on acquiring and sustaining access to community property for purposes other than housing—such as community-oriented initiatives and non-profit organizations—to provide social, community, and commercial spaces that help generate and sustain vibrant, healthy, and meaningful communities.⁹³ An example of this is the Milky Way Garden—a shared urban agricultural space and PNLT’s first community-owned parcel of land.⁹⁴

B. Concept, Structure, and Application of the Cultural Land Trust

As the Cultural Infrastructure Plan emphasizes, displacement processes and their effects on artists are particularly critical within Vancouver as the Canadian city with the highest number of artists per capita and British Columbia as the Canadian province with highest number of working artists, but where sixty-three percent of the City’s artists report an income of less than \$40,000 a year, artists have a median income of \$22,000 per year, and where the majority of the City’s artists live below the poverty line.⁹⁵ The potential for cultural land trusts in this context is specifically acknowledged under the Culture Plan’s “New Approaches,” which include “[e]xploring ways to support planning and development of a community-led cultural land trust including seed funding, and investigating new ways to partner with the cultural community on development, and—in some cases—shared ownership of amenity facilities secured through development,”⁹⁶ and is also identified under Goal 6 of the Cultural Infrastructure Plan regarding the need to “Increase Community Ownership and Support a Cultural Land Trust.”⁹⁷ Goal 3 further lists “Support Community-Led Ownership and Community-Led Projects” under Strategic Direction 4 “Affordable,

91. PARKDALE NEIGHBOURHOOD LAND TRUST, www.pnlt.ca.

92. *Id.*

93. *Id.*

94. PARKDALE NEIGHBOURHOOD LAND TRUST & GREENEST CITY, MILKY WAY TSEYSHING (GARDEN): A COMMUNITY OWNED SHARED URBAN AGRICULTURE SPACE FOR PARKDALE (May 2016), http://www.pnlt.ca/wp-content/uploads/2016/05/MILKY-WAY-GARDEN-TSEYSHING_Info-Page_2017.pdf.

95. CITY OF VANCOUVER, *supra* note 4, at 6; *see also Mapping Artists and Cultural Workers in Canada’s Large Cities*, HILL STRATEGIES RSCH. INC. (Feb. 9, 2010), <https://hillstrategies.com/resource/mapping-artists-and-cultural-workers-in-canadas-large-cities>.

96. CULTURESHIFT, *supra* note 66, at 2.

97. CITY OF VANCOUVER, *supra* note 4, at 33.

Accessible, Secure Space,”⁹⁸ and the Music Strategy’s Recommendation 7 suggests the City “[s]upport increased community ownership of music spaces and development of a potential City-endorsed Cultural Land Trust.”⁹⁹

Similar to community land trusts, cultural land trusts draw on community land ownership models largely in response to the wider space-affordability crisis in cities with climbing real estate prices, rent, property taxes, and insecurity of tenure for arts and culture workers and organizations.¹⁰⁰ Cultural land trusts provide a tool that can be utilized by groups, communities, non-profit organizations, and operators of cultural spaces and events to create, preserve, or safeguard urban spaces for art, music, performance, and creation. While many creative city-oriented culture plans may focus on creative *placemaking* as a dynamic instigator of vibrant art and community spaces in a city, cultural land trusts speak to the equal importance of creative *placekeeping* to ensure that already thriving vibrant art communities are not displaced.¹⁰¹

(1) Local Government Participation and Contribution, Public-Private Partnerships, and a Cultural Spaces Fund

Cultural land trusts represent a private-law mechanism for groups, communities, and cultural spaces to deal with gaps in a city’s effective localization of the human right to culture and cultural spaces by enabling the creation, preservation, and safeguarding of these spaces despite local urban law and policy. The cultural land trust structure further provides a potentially helpful mechanism for cities themselves to work to address this same gap by supporting or instigating the development of a cultural land trust. While the community or cultural land trust might typically be held and managed by a non-profit organization, it is also possible for governments to maintain a land trust or do so through an arms-length organization. For example, in terms of community land trusts that operate in a similar manner, Vancouver has partnered with the Community Land Trust—an arm’s-length organization of the Co-operative Housing Federation of BC—which acquires, holds, and develops land for permanently affordable homes for a broad spectrum of incomes and households.¹⁰²

98. CULTURESHIFT, *supra* note 66, at 66-67.

99. MUSIC STRATEGY, *supra* note 66, at 40.

100. See, e.g., CITY OF VANCOUVER, *supra* note 4, at 33; Brian McBay & Keith Jardine, *Cultural Land Trust Study – Update*, 221A (Apr. 9, 2019), https://221a.ca/wp-content/uploads/2019/05/2019-04-CLT_Study-Slide_Presentation.pdf.

101. For more on creative placekeeping, see, e.g., National Endowment for the Arts, *Creative Placemaking*, NAT’L ENDOWMENT FOR ARTS, <https://www.arts.gov/impact/creative-placemaking>; Roberto Bedoya, *Spatial Justice: Rasquachification, Race and the City*, CREATIVE TIME REPS. (Sept. 15, 2014), <https://creativetimereports.org/2014/09/15/spatial-justice-rasquachification-race-and-the-city>; Ross, *supra* note 3, at 203-05.

102. See COMMUNITY LAND TRUST, www.cltrust.ca.

The central feature of the cultural land trust, as with the community land trust, is the community-led component as the non-profit holding the trust is community-based. As a result, decision-making tends to be more directly community-based as well. In terms of the involvement of local government, however, it is possible to maintain community centrality while receiving support via a partnership rather than direct government involvement. This structure largely reflects what is envisioned within Vancouver's new culture plan.

A local government can shape its support for a cultural land trust in a number of ways depending on the cultural land trust's stage of development. Early on, for example, administrative or financial support might be provided while a cultural land trust is being planned or set up,¹⁰³ or ongoing operations might be supported through grants from the city or tax assessments designed specifically for art, culture, and performance spaces within the cultural land trust.¹⁰⁴ A particular project or specific aspect of a project might receive a grant or low-interest loan from the city or benefit from the donation of a parcel of city-owned land.¹⁰⁵ Land use tools such as density bonusing and public amenity contributions might be leveraged by a city in working with private developers to support a cultural land trust's acquisition and preservation of land or buildings.¹⁰⁶

While direct government involvement and "creative city" development strategies can sometimes be exploitative of local arts and culture stakeholders and lead to preferential treatment of particular kinds of art, culture, and performance,¹⁰⁷ it can also yield a number of advantages. Where a local government itself initiates a cultural land trust, benefits might result in more direct access to local subsidies as well as provincial and federal subsidies, which can be harnessed for land or building acquisition by the trust.¹⁰⁸ More direct involvement of municipal government in a cultural land trust may also increase the likelihood of the trust benefiting from city-imposed regulations on private developers that take the shape of affordable space provision for art, culture, and performance or inclusionary zoning.¹⁰⁹

Turning back to Vancouver's new Culture Plan documents, the Cultural

103. JOHN EMMEUS DAVIS & RICK JACOBUS, LINCOLN INST. LAND POL'Y, THE CITY-CLT PARTNERSHIP: MUNICIPAL SUPPORT FOR COMMUNITY LAND TRUSTS 10-14 (June 2008).

104. *Id.* at 19-27.

105. *Id.* at 15-18.

106. *Id.*

107. Heather E. McLean, *Cracks in the Creative City: The Contradictions of Community Arts Practice*, 38 INT'L J. URB. REG'L RSCH. 2156 (2014).; ZUKIN, *supra* note 41; Sara Ross, *Making a Music City: The Commodification of Culture in Toronto's Urban Redevelopment, Tensions Between Use-Value and Exchange-Value, and the Counterproductive Treatment of Alternative Cultures Within Municipal Legal Frameworks*, 27 J.L. & SOC. POL'Y 116, 126 (2017); DAVIS & JACOBUS, *supra* note 103, at 33.

108. *See, e.g.*, DAVIS & JACOBUS, *supra* note 103, at 33.

109. CITY OF VANCOUVER, *supra* note 4, at 33-34.

Infrastructure Plan describes the role of a “Cultural Spaces Fund” to generate capital investment for funding large-scale cultural space projects, such as a cultural land trusts, that would procure and (re)develop large shared commercial and industrial spaces, and enable funding to be leveraged to “ensure the long-term viability of artistic venues and cultural spaces, and increase the economic viability of artists who live and work in the city.”¹¹⁰ The Cultural Infrastructure Plan identifies this City-held and generated fund for cultural space (with an interest-bearing reserve) as a mechanism through which the City can partner with arts groups and organizations on significant space acquisition and expansion projects that secure tenure for arts, culture, and performance venues.¹¹¹ Beyond negotiating in-kind cultural space provisions with developers through public-community amenity, for example, the Cultural Infrastructure Plan identifies this fund as a mechanism to shift towards negotiating secure cash contributions from developers in a manner similar to that currently utilized to negotiate for affordable housing provision and childcare.¹¹² The Plan further notes that the fund would provide a mechanism to leverage significantly more funding from the private sector as well as provincial and national levels of government, and it would also provide access to conventional loans and mortgages via financial institutions.¹¹³

C. Examples of Cultural Land Trusts

Drawing on some of the work done by 221A, a local Vancouver organization, the following Section provides an overview of several examples of cultural land trusts to demonstrate the various ways in which they can be structured, how public-private partnerships have been utilized, and the context where they have been applied. Turning first to Vancouver, 221A has been conducting a cultural land trust study for potential local application. More broadly, 221A works with artists and designers on projects and research oriented towards improving the social, cultural, and ecological infrastructure in the Vancouver.¹¹⁴ Here, 221A has identified the potential of the cultural land trust for creating long-term security of tenure in a neighborhood, alongside sustained cultural employment and cultural equity for artists and arts organizations despite the ongoing pressure created

110. *Id.*

111. *Id.*

112. *Id.*

113. Regarding national-level funding in particular, the document highlights a recent announcement from the Government of Canada that a further \$300 million over a ten-year period would be available through the Canada Cultural Spaces Fund to provide additional support to creative and cultural spaces. *Id.* at 34. The Canada Cultural Spaces Fund “typically provides more than 50% of the funding to local non-profit infrastructure projects, and has provided \$18 million in funding to Vancouver-based projects since being launched in 2017,” which makes the fund a highly significant funding partner for local initiatives to create or preserve creative spaces in the City. *Id.*

114. *See About, 221A*, <https://221a.ca/about>.

by escalating real-estate prices.¹¹⁵ The study considers a number of examples of cultural land trusts in other cities that are at various stages of development and provides a sample of the range of different forms a cultural land trust might take.

For example, created in 2013 by the Kenneth Rainin Foundation, San Francisco's Community Arts Stabilization Trust (CAST) is structured as a holding company and utilizes public-private partnerships to work towards its aims. CAST emphasizes the role of community-based arts as a central tool for equitable urban socioeconomic (re)development and neighborhood revitalization and seeks to mitigate the effects of displacement on San Francisco and Oakland's artist communities facing significant increases in demand for and cost of physical space.¹¹⁶ In order to secure permanent space for a range of arts- and culture-oriented groups as well as "art-anchored institutions," CAST draws on philanthropic grants and the U.S. federal, community-revitalization-oriented New Markets Tax Credit Program in order to subsidize rental costs for arts organizations.¹¹⁷ By collaborating with local government and private developers, CAST is able to acquire permanent physical space for arts and culture use through restrictive covenants within deeds.¹¹⁸ With an eye to future sustainability, CAST also helps arts and culture institutions develop their financial capacity to potentially acquire their space from CAST while nonetheless utilizing multi-tenant leases to maintain below-market rental opportunities for arts institutions unable to purchase their own space. Thus, CAST operates as a permanent "place-keeper" for artistic, creative, and culture-oriented use of the space.¹¹⁹

As another example, the Workshops and Artist Studio Provision Scotland (WASPS) is a registered charity funded by a range of public and private sources to provide artists, arts organizations, and creative businesses with affordable space with the larger intent of benefiting the greater public alongside current and future generations of Scottish artists. WASPS currently has twenty buildings that were previously unused or underused that they have now redeveloped. The WASPS Trust acquires property and owns it in trust for the arts community while WASPS Ltd. then rents out affordable space to a range of artists, arts charities, and those working in creative industries. Thirteen trustees and directors from varied backgrounds steer WASPS Ltd, the WASPS Trust, and WASPS Creative Industries C.I.C. (the community interest company owned by WASPS Ltd.).¹²⁰

115. *Id.*

116. *See* COMMUNITY ARTS STABILIZATION TRUST, <https://cast-sf.org>.

117. *See also* COMMUNITY DEV. FIN. INSTS. FUND, <https://www.cdfifund.gov>.

118. *See* COMMUNITY ARTS STABILIZATION TRUST, <https://cast-sf.org>.

119. *Id.*

120. *See* WASPS, <https://www.waspsstudios.org.uk>.

The Creative Land Trust is a charitable organization set up to address the ongoing loss, need for, and rising cost of creative workspace and artist studios in London. The Creative Land Trust operates with the goal of securing affordable workspace for artists in perpetuity by purchasing or acquiring buildings freehold through long-term leases via community infrastructure levies that can be set on new developments and directed towards funding community facilities, services, and infrastructure¹²¹ or through section 106 agreements (case-by-case planning obligations).¹²² The Creative Land Trust operates as an independent social enterprise led by a steering group. It receives support from the office of the Mayor of London, the Arts Council of England, Bloomberg Philanthropies, and Outset Contemporary Art Fund.

A further example drawn from the Vancouver context is the Hogan's Alley community land trust project. While the principle focus of the Hogan's Alley Trust is towards a community land trust, it also reflects the aims of a cultural land trust where spaces for community gathering, celebration, art, dance, knowledge sharing, and historical research are also envisioned. A similar desire and need for the inclusion of community space also shaped some of the aims of the Parkdale Neighbourhood Land Trust.

Located in East Vancouver where the displacement of art, culture, and performance space is acute, Hogan's Alley is spatially relevant to the carving out of sustainable community-oriented space for marginalized groups and communities in Vancouver. The site of Hogan's Alley comprises what used to be an alley and T-shaped intersection—officially known as Park Lane—found in the Strathcona neighborhood. It was a cultural and community hub and home to Vancouver's Black population from the early 1900s until the early 1970s when it was demolished and displaced by the City in order to construct a new viaduct.¹²³ The displacement of Hogan's Alley's community spaces and cultural institutions followed years of City-initiated processes, like rezoning, that affected property values and external perceptions of the community until the area was eventually expropriated.¹²⁴

Structurally, the Hogan's Alley Trust is part of Hogan's Alley Society, a

121. See Planning Act 2008, c. 29 (UK).

122. See Town and Country Planning Act 1990, c. 8 (UK); see also Town and Country Planning Regulations 2013, No. 3194 (UK); Community Infrastructure Levy Regulations 2010, No. 948, reg. 122, 123 (UK); see generally CREATIVE LAND TRUST, <https://www.creativelandtrust.org>; BLOOMBERG PHILANTHROPIES, <https://www.bloomberg.org>; OUTSET., <https://outset.org.uk>.

123. See generally HOGAN'S ALLEY SOC'Y, <https://www.hogansalleysociety.org>; VANCOUVER HERITAGE FOUND., <https://www.vancouverheritagefoundation.org>.

124. For an in-depth historical description of the formation and existence of Hogan's Alley, as well as its displacement by the City of Vancouver, see Stephanie Allen, *Fight the Power: Redressing Displacement and Building a Just City for Black Lives in Vancouver* 25-42 (June 12, 2019) (M.A. thesis, Simon Fraser University), <https://summit.sfu.ca/item/19420>. See also Agha, *supra* note 82, at 6 on the role of rezoning and expropriation.

non-profit organization. Hogan's Alley Trust seeks to acquire land and develop and operate a community-led land trust by drawing on public and private partnerships with the intention of addressing the displacement of Black Canadians from the historic site of Hogan's Alley. The Trust is also oriented towards eventual ownership, preservation, and operation of the current physical space of Hogan's Alley to prevent future displacement, "promote inter-generational community benefits, affordability, and [build] the capacity of racialized and marginalized communities to participate in city building."¹²⁵

VI. THE CULTURAL LAND TRUST AS SPATIAL AND POWER-SHIFTING MECHANISM

This Part discusses the broader spatial and power-shifting potential of cultural land trusts to address displacement experienced by relationally marginalized groups in cities. The community acquisition and community-led development of land in cases such as that envisioned by the Hogan's Alley Trust present a pathway towards recognizing past dislocation, displacement, and erasure of a community by local development processes, strategies, or urban-renewal initiatives.¹²⁶ In this vein, the cultural land trust (alongside the community land trust) can function as a power-shifting mechanism.

Andrea Cornwall describes space-making and the production of space for citizen participation, writing

Particular spaces may be produced by the powerful, but filled with those with alternative visions whose involvement transforms their possibilities, pushing its boundaries, changing the discourse and taking control. They may be created with one purpose in mind, and used by those who engage in it for something quite different.¹²⁷

Processes and spaces of citizen engagement and participation on local, national, and global levels are not neutral and are characterized by forms of power—from how spaces of engagement are created through initial decisions about where, how, and when processes take place; to who is invited or made aware of the process at the outset; to how and by whom the

125. See CANADIAN NETWORK COMMUNITY LAND TRUST, <http://www.communityland.ca>; HOGAN'S ALLEY SOCIETY, <https://www.hogansalleysociety.org>; Allen, *supra* note 124, at 58-64.

126. See also Allen, *supra* note 124, at 51, 58-64, 139 (detailing the growth of the idea to propose a community land trust model to Vancouver, including the Hogan's Alley Working Group's initial Land Trust Proposal letter). The community land trust proposal challenged existing community-engagement processes for the most recent City of Vancouver initiative at the time. The Northeast False Creek planning process sought to redesign and redevelop the area encompassing Hogan's Alley and the viaduct space that had displaced the community. See also HOUSING FOR ALL WORKING GROUP, CANADIAN CTR. POL'Y ALTS., KEYS TO A HOUSING SECURE FUTURE FOR ALL NOVA SCOTIANS 27 (May 2021), https://www.policyalternatives.ca/sites/default/files/uploads/publications/Nova%20Scotia%20Office/2021/05/CCPA-Housing-2021-Final_NS%20.pdf.

127. Andrea Cornwall, *Locating Citizen Power*, 33 IDS BULL. 3 (2002).

process is carried out; to what is eventually done with the input gathered from the community and how or whether this information is assessed, shaped, incorporated, and implemented.¹²⁸ As such, where participatory planning models still involve state or local government control over the community engagement process, the community ownership and community-led development model of a cultural land trust moves to a more significant shift of power from the city (and state) to a claimed and created community space emerging from a common set of concerns where a more direct community voice in decision-making can occur.¹²⁹

Sherry Arnstein's *Ladder of Citizen Participation* provides a potent image of eight types of citizen and community member participation situated along a spectrum climbing from "non-participation" at the bottom of the ladder to "citizen power" at the very top rung, with "tokenism" appearing near the middle.¹³⁰ Community participation within a cultural land trust structure tends to correspond to the upper rungs of "degrees of citizen power" while participatory planning mechanisms frequently do not figure as highly and risk falling within the rungs of "tokenism" found in the middle of the ladder.¹³¹ Within these middle rungs participants may be heard but there is a lack of means to ensure that their views will ultimately be engaged in shaping decisions and implementing policies that affect what is understood or needed by participants for sustainable urban arts and culture space.¹³²

However, within the upper rungs where community-led cultural land trusts would likely fall, there is greater potential for negotiation between traditionally dominant figures within decision-making processes (whether this is the state, private developer, or another actor) and relationally less dominant or marginal figures (such as the groups, communities, or organizations whose interests and livelihoods are bound up in a city's art, culture, and performance spaces).¹³³ Within the upper rungs, a shift of power occurs where the prevalence of state-centered values are displaced such that relationally marginal interests and values become centralized.¹³⁴ This shift of agency, power, and space-making back to the community and those operating within the arts, culture, and performance spaces is enabled by a cultural land trust structure and can begin to mitigate some of the damaging corollary effects of displacement, vulnerability, and precarity

128. John Gaventa, *Finding the Spaces for Change: A Power Analysis*, 37 IDS BULL. 23, 24-30 (2006); Cornwall, *supra* note 127, at 3; *see also* Cotterrell, *supra* note 6, at 81-83.

129. Regarding this potential as identified in the case of Hogan's Alley, *see* Allen, *supra* note 124, at 78-79. *See also* Gaventa, *supra* note 128, at 27; Cornwall, *supra* note 127.

130. Sherry R. Arnstein, *A Ladder of Citizen Participation*, 35 J. AM. INST. PLANNERS 216, 217 (1969).

131. *Id.*; *see also* Allen, *supra* note 124, at 58-64, 139.

132. Arnstein, *supra* note 130, at 217, 219-21.

133. *Id.* at 221-22.

134. *See also id.* at 222-24.

generated by a lack of security of tenure and ownership that is disproportionately experienced by relationally marginalized groups and communities.

Cornwall's description of spaces that may be initially produced and shaped by relationally dominant or "powerful" actors within a city's urban legal framework, but which can nonetheless be harnessed by what she describes as "alternative visions" that can dynamically alter and shift the potential of these spaces towards a different purpose, is similar to the potential of the common-law trust as a legal instrument that can be harnessed through the alternative vision represented by the cultural land trust structure. As part of a greater agenda for the counterhegemonic use of hegemonic legal tools and the role of critical property law, "[a] major concern of the sociological critique of property law should be to show how . . . ideological mechanisms work in the law; how the concept of property is [or can be] manipulated in legal doctrine."¹³⁵ Here, the trust as a legal instrument can be effectively used to shift power and create security in a manner that limits other powerful forces at play in a growing and (re)developing city that can overwhelm arts, culture, and community spaces, and can mitigate renoviction processes and the displacing effects of triple-net lease structures and "highest and best use" or full-market-value property tax assessments.

CONCLUSION

The trust as an existing legal instrument and cultural land trusts as a flexible new tool offer a mechanism where claimed/created community decision-making space can be used to shape an alternative vision and sustainable present and future for vibrant and alternative spaces of arts, culture, and performance.¹³⁶ Cultural land trusts can be harnessed as a property-law mechanism with application for greater community ownership of art, culture, and music spaces in a city that can be developed independently by arts groups and organizations or draw on local government support and leverage public-private partnerships in order to find ways of better preserving invaluable art, culture, and community space in the city.

Despite the aspirations a city might have for preserving and creating a sustainable environment for arts, culture and performance, the rates of displacement of these spaces indicate a struggle when it comes to implementing aspirational plans and strategies. Cultural land trusts, however, provide a viable tool towards meaningful placekeeping for arts

135. Cotterrell, *supra* note 6, at 83.

136. For further discussion on the counterhegemonic use of existing legal instruments, see Ross, *supra* note 3, at 42-44. See also Cotterrell, *supra* note 6.

and culture in a city and can further enable local government to partner with the arts and creative sector, as well as with other levels of government and private development interests, in working towards long-term security of tenure for spaces of art, culture, and performance, as well as for those working and creating in these sectors.¹³⁷ Examples of cultural land trusts in other locations might be adapted to the need of a local community's arts, culture, and performance ecosystem, such as the one in Vancouver.

Finally, the cultural land trust structure carries significant potential as a power-shifting mechanism that engages with the power dynamics bound up within the contested space of a city, unequal access and claims to urban property, and citizen participation within local decision-making processes that affect the equal treatment of different iterations of art, culture, community, and performance in the city.

137. See, e.g., Bedoya, *supra* note 101; Ross, *supra* note 3, at 203-05.