

## MEMORANDUM

TO: City Council

FROM: Housing Advisory Committee

RE: Land Bank Ordinance

DATED: \_\_\_\_\_, 2024

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### **I. Introduction**

The Housing Advisory Committee (“HAC”) recommends adoption of the enclosed Land Bank Ordinance (the “Ordinance”). The purpose of this memorandum is to provide background information and more detailed explanations for certain portions of the Ordinance.

Land Banks were first formed following migration out of urban areas in the 1970s. The purpose of these entities was to convert vacant, abandoned and tax delinquent properties into “productive use.” This broad term allowed for a variety of uses, from recreational spaces to commercial development. In recent years, the purpose of land banks has evolved from general “revitalization” of property to the specific goal of creating and preserving affordable housing.

Virginia followed national trends. In response to the heightening of migration out of urban areas in the 1990s, the Virginia General Assembly adopted legislation that allowed localities themselves to purchase tax delinquent properties. Subsequently, with the passage of the Virginia Land Bank Entities Act in 2016, the purpose of land banking shifted towards affordable housing.

In 2018, Richmond passed its own land bank ordinance. It designated the Maggie Walker Community Land Trust (MWCLT) to serve as the land bank for the City of Richmond. Other localities have also made inroads.

### **II. Advantages of Land Banks**

The main advantages of land banks are the following:

- (1) Property held by these entities is tax exempt.
- (2) Land banks can receive funding through a tax recapture process. For example, Section 15.2-7509(C) of the Code of Virginia allows for land banks to receive up to 50% of the real property taxes collected on property it has conveyed for a period of up to 10 years.

- (3) Using funds from the tax recapture process, land banks' own financing, borrowing and bonding ability, land banks can act quickly and efficiently, largely if not independent of the reliance on funding by localities. By contrast, local nonprofits are often hamstrung by existing bureaucracies and the specificity of the terms and conditions of grants and donations. These slow processes currently give private, for-profit developers a market advantage that results in missed opportunities for the creation and preservation of affordable housing.
- (4) Localities can directly transfer property they receive through the tax foreclosure process to land banks, allowing land banks to intentionally redevelop such property for specified purposes, such as, for the creation and preservation of affordable housing. This direct transfer process gives land banks a market advantage over private actors. In addition, the transfer process avoids the restrictions often placed on municipalities when they directly redevelop property themselves.

The HAC is composed of executive directors of local housing nonprofits, the director of the Housing Authority, and a variety of community members with relevant professional expertise and lived experience. On May 15, 2024, the HAC unanimously recommended adoption of the enclosed Ordinance; the advantages of a land bank will further the City's goal of creating and preserving affordable housing.

### **III. History of Charlottesville Land Bank Ordinance**

In response to the newly adopted Virginia Land Bank Entities Act, and the City's renewed focus on affordable housing, on November 20, 2017, City Council requested that City staff engage with the HAC, and the community at large, to explore the creation of a Land Bank Corporation. HAC, City staff, and subcommittees of HAC met several times before presenting a land bank ordinance to City Council on April 16, 2018 and May 21, 2018. That version was not ultimately adopted, and in retrospect it's just as well: conditions on the ground have evolved substantially, and the present version is more suited to meet the moment and adjust to future conditions.

In 2017 and 2018, the Comprehensive Regional Housing Study and Needs Analysis had not yet been published and the Charlottesville Affordable Housing Plan had not yet been adopted. There were anxieties regarding how "affordable" would be defined, and that such definition may leave out the deepest affordability levels, and those most in need. It was also unclear how the Land Bank Corporation would fit within the City's larger strategy for tackling housing affordability.

In March 2019, the Comprehensive Regional Housing Study and Needs Analysis was published. It evidenced what many already knew, that the largest number of families are those most "severely cost-burdened" living at or below 50% of the area median income. Community conversations began to center those most in need.

Two years later, the City adopted the Affordable Housing Plan. The Affordable Housing Plan explicitly states that within 3-5 years, the City should “establish a land bank.” With the adoption of the Affordable Housing Plan, the context within which the land bank would operate became clearer. The Affordable Housing Plan asserts that “the primary benefit of a land bank is the ability to abate property taxes.” Further, “[a] land bank would complement new land use policies that expand the amount of land eligible for denser residential development and supplement other subsidy tools by reducing land costs for new development.” As a simple example, property slated for affordable housing redevelopment could be transferred to the land bank, which would reduce carrying costs since real property taxes would be abated. Lower carrying costs for the project means that there either would be the need for less subsidy (and therefore more money for other projects/housing) and/or deeper affordability levels could be reached. Moreover, with the establishment of the land bank, property could be purchased by the land bank directly instead of initially by a private developer, providing for much greater flexibility in financing and development. The restructuring of residential zoning in the City literally provides a ripe landscape for the Land Bank to facilitate smaller scale projects on lots and sublots.

During the prior effort to produce an ordinance, there were community concerns regarding the relationship of the Charlottesville Redevelopment and Housing Authority (“CRHA”) to a newly formed land bank. Many were concerned with both CRHA’s past inefficacy as well as its lack of empowerment, and a sense that the City was infringing on the prerogatives of the Authority. Again, the landscape is different today: CRHA has completed the Crescent Hall renovation and the first phases of the South First Street redevelopment; it has opened up its voucher waitlist, and has acquired a number of important properties that are slated for redevelopment. The HAC was mindful to address the concerns regarding the prior ordinance in crafting the current iteration.

With the City’s passage of key planning documents and the empowerment of CRHA, the role and advantages of a new City land bank entity are now clear. A newly formed land bank will complement CRHA and the City’s local nonprofits, acting as a “force multiplier” for the creation and preservation of more and deeper affordable housing.

#### **IV. Commentary on the Currently Proposed Land Bank Ordinance**

This section of the memorandum is intended to provide guidance as to the intent of certain language in the proposed Ordinance, as well as expand on some of HAC’s deliberations.

##### **(A) Decision to Establish a New Nonprofit Entity**

The Virginia Land Bank Entities Act allows for a land bank to operate as either (1) a new nonprofit, (2) a department of the City itself, or (3) through an existing nonprofit. The proposed Ordinance envisions the creation of a new nonprofit to act as the City’s land bank.

There are several restrictions on municipalities when they acquire and redevelop property themselves. For example, Section 15.2-1800(A) of the Code of Virginia authorizes a locality to

acquire real property for any “public use” as the term is defined in Section 1-219.1 of the Code of Virginia, which does not specifically reference affordable housing. In addition, as mentioned earlier, a three-fourths vote and a public hearing is required prior to the disposition of real property. By contrast, a land bank acting as a separate nonprofit can acquire and dispose of property for any purpose and according to any procedure outlined in the applicable land bank ordinance. This flexibility allows the land bank to act quickly and efficiently, guided by the overarching goal of the creation and preservation of affordable housing.

Depending on the results of an RFP process, the land bank could have acted through CRHA, the Piedmont Housing Alliance (PHA), Habitat for Humanity of Greater Charlottesville, New Hill Development Corporation, etc. However, the main role of the land bank will be to act as a facilitator for such existing affordable housing providers. In the interest of creating an honest and agile broker, the land bank should neither be operated as an arm of the City, nor function as the arm of an existing nonprofit, but as a *new* stand-alone nonprofit.

(B) Regional in the “Charlottesville Land Bank Corporation” Name

While there was some debate among members of the HAC regarding the focus of the new land bank (City property versus a broader, more regional approach), the general consensus was that the first priority should be the City. A regional focus can be adopted by the land bank at a later date as further communications with other localities develop. Both the enabling legislation and the Ordinance provide for expansion(s) with the addition of other localities, but the City is ready now, and should act now. Should other localities come into the fold, the Land Bank can revisit the issue, or better still, operate under an appropriate trade name for those transactions.

(C) Section 1. Findings. of the proposed Land Bank Ordinance

Section 1 of the proposed Ordinance relates to the purpose of the new land bank entity, namely, “the creation and preservation of affordable housing.” The Ordinance then references the Charlottesville Affordable Housing Plan so that the land bank can adapt to the updated needs/desires of the City.

The language of this section also attempted to acknowledge the tension between the goal of having an entity that is able to act quickly and efficiently with the need for a quasi-public entity to be held accountable to the public interest, providing transparency and fairness in its decision-making.

The last sentence of Section 1 states, “The Land Bank will achieve such balance by always explicitly prioritizing the creation and preservation of affordable housing over the interests of any single organization.” This sentence was added after a discussion regarding how an affordable housing provider could approach the land bank entity regarding a potential acquisition of property, and then require the land bank entity to contract with it as a condition of such acquisition. While there may be circumstances where that is clearly to everyone’s advantage, the

HAC agreed that a universal “first-come-first-serve” approach should be avoided. Instead, the new land bank entity should be guided by community benefit above the interests of any single organization.

(D) Section 7. Use and Disposition of Property. of the proposed Land Bank Ordinance

Section 7(C) states that the land bank should be guided by two policies, the first being the prioritization of the creation and preservation of affordable housing. Section 7(C)(ii) is an attempt to codify such prioritization by requiring a two-thirds approval by the board of the land bank if “use and/or disposition of property owned by the land bank entails other uses, such as market-rate housing and/or commercial/retail...” Section 7(C)(ii) also requires the justifications for such other uses to be documented in publicly available materials.

The second policy relates to the avoidance of self-dealing and fairness. Section 7(C)(ii) states that there is a presumption that the use and disposition of property owned by the land bank shall be determined through a Request for Proposal (RFP) process. To overcome this presumption, the Ordinance states that there must be approval by three-fourths of the board of the land bank. This ensures there is a fair and equitable process for determining how property the land bank owns is used and sold, while also allowing for certain exceptions when necessary.

In case of such exception as noted above, to avoid putting the interests of any single organization above any other, any contracts entered into by the Land Bank shall be limited to a reasonable contingency period specifically outlined in the board’s policies. The board of the Land Bank must approve any extension(s) beyond such specified period with a two thirds majority of the available voting members of the board of the Land Bank at a duly authorized meeting of the board, and shall only do so upon concluding that such extension is in the best interest of the community.

Section 8. Governance. of the proposed Land Bank Ordinance.

The board of the land bank should incorporate City and community representation: (1) a City Councilor, (2) a Planning Commissioner, (3) the City Manager (or his/her designee), with the majority of the seven-member board be composed of four at-large community members, at least two of which must be affordable housing beneficiaries with direct lived experience.

The one-to-one ratio between general community members and affordable housing beneficiaries is a vital component of the structure of the board. While community members with particular relevant expertise and interest are also vital, the City should prioritize filling the positions of the affordable housing beneficiaries. Finally, the City Manager designee should be a senior level employee, i.e., the Manager, a DCM or equivalent, or department head.

**V. Conclusion**

As presented in the Ordinance, this land bank is well positioned to succeed, acting as another tool in the toolbox as the City continues to tackle the affordable housing crisis facing our community.