

KEY FOCUS AREA: Economic Vibrancy
AGENDA DATE: September 11, 2013
COUNCIL DISTRICT(S): 1, 2, 3, 4, 5, 6, 7, 8
DEPARTMENT: Housing/Community Services
CMO: Theresa O'Donnell, 671-9195
MAPSCO: N/A

SUBJECT

Authorize an amendment to the Program Statement for the Dallas Urban Land Bank Demonstration Program to align the Program Statement with 2013 state statute changes including reducing the number of housing units constructed by a qualified participating developer from three to one, expanding the definition of an eligible adjacent property owner to include any owner of adjacent property, before completion of the four-year period, permitting the transfer of property not suitable for development to the taxing entities or to be sold directly to a political subdivision or nonprofit organization and permitting grocery store development with a minimum of 6,000 square feet of enclosed space that offers for sale fresh produce and other food items for home consumption – Financing: No cost consideration to the City

BACKGROUND

This item will authorize an amendment to the Program Statement for the Dallas Urban Land Bank Demonstration Program to align the Program Statement with 2013 state statute changes. The number of housing units constructed by a qualified participating developer will be reduced from three to one. The definition of an eligible adjacent property owner will be expanded to include any owner of adjacent property. Before completion of the four-year period, the transfer of property not suitable for development to the taxing entities will be permitted. The sale directly to a political subdivision or nonprofit organization will also be permitted before completion of the four-year period. A grocery store development with a minimum of 6,000 square feet of enclosed space that offers for sale fresh produce and other food items for home consumption will be permitted.

PRIOR ACTION/REVIEW (Council, Boards, Commissions)

On January 28, 2004, the Dallas City Council established the Dallas Housing Acquisition and Development Corporation (DHADC) as its land bank, approved the Program Statement, authorized amendments to the Articles of Incorporation and By-Laws of the DHADC, and authorized an interlocal contract with the affected taxing jurisdictions for participation in the Dallas Urban Land Bank Demonstration Program by Resolution No. 04-0458.

On May 26, 2004, the Dallas City Council authorized a contract with the DHADC for the provision of land bank services as set forth in the amended Program Statement for the Dallas Urban Land Bank Demonstration Program approved by the City Council on January 28, 2004, by Resolution No. 04-1726.

On November 10, 2004, the City Council approved an amendment to the Program Statement for the Dallas Urban Land Bank Demonstration Program to prohibit the placement of industrialized housing on any property sold by Dallas Housing Acquisition and Development Corporation to a developer by Resolution No. 04-3193.

On February 22, 2006, the City Council approved an amendment to the Program Statement for the Dallas Urban Land Bank Demonstration Program to delete the requirement that the Investment Committee review the developer's proposals to purchase lots from Dallas Housing Acquisition and Development Corporation by Resolution No. 06-0632.

On October 8, 2008, the City Council approved an amendment to the Program Statement for the Dallas Urban Land Bank Demonstration Program to align the program with 2007 State statute changes including reducing the delinquent taxes from six consecutive years to five total years, adding uninhabitable vacant buildings or residences to the site assessment criteria and eliminating the community meeting requirement if the properties are packaged in groups of 10 or fewer lots by Resolution No. 08-2770.

On September 23, 2009, the City Council approved an amendment to the Program Statement for the Dallas Urban Land Bank Demonstration Program to align the program with 2009 State statute changes including permitting the sale of non-developable property to eligible adjacent property owners, permitting the sale of two adjacent properties to a developer if at least one of the properties is developable and permitting a developer to exchange a property purchased from the Land Bank with any other property owned by the developer with agreement to construct an affordable house by Resolution No. 09-2312.

FISCAL INFORMATION

No cost consideration to the City

September 11, 2013

WHEREAS, on January 28, 2004, the City Council established the Dallas Housing Acquisition and Development Corporation (DHADC) as its land bank for the purpose of acquiring, holding and transferring unimproved real property under Subtitle A, Title 12, Local Government Code, Chapter 379C and: 1) approved the City of Dallas Urban Land Bank Demonstration Program Plan; 2) approved the Program Statement for the Dallas Urban Land Bank Demonstration Program; 3) authorized amendments to the Articles of Incorporation and By-Laws of the DHADC; and 4) authorized an interlocal contract with the affected taxing jurisdictions for participation in the Dallas Urban Land Bank Demonstration Program by Resolution No. 04-0458; and

WHEREAS, on May 26, 2004, the City Council authorized a contract with the DHADC for the provision of land bank services as set forth in the amended Program Statement for the Dallas Urban Land Bank Demonstration Program approved by the City Council on January 28, 2004, by Resolution No. 04-1726; and

WHEREAS, on November 10, 2004, the City Council approved an amendment to the Program Statement for the Dallas Urban Land Bank Demonstration Program to prohibit the placement of industrialized housing on any property sold by Dallas Housing Acquisition and Development Corporation to a developer by Resolution No. 04-3193; and

WHEREAS, on February 22, 2006, the City Council approved an amendment to the Program Statement for the Dallas Urban Land Bank Demonstration Program to delete the requirement that the Investment Committee review the developer's proposals to purchase lots from Dallas Housing Acquisition and Development Corporation by Resolution No. 06-0632; and

WHEREAS, on October 8, 2008, the City Council approved an amendment to the Program Statement for the Dallas Urban Land Bank Demonstration Program to reduce the delinquent taxes from six consecutive years to five total years, add uninhabitable vacant buildings or residences to the site assessment criteria and eliminate the community meeting requirement if the properties are packaged in groups of 10 or fewer lots by Resolution No. 08-2770; and

WHEREAS, on September 23, 2009, the City Council approved an amendment to the Program Statement for the Dallas Urban Land Bank Demonstration Program to permit the sale of non-developable property to eligible adjacent property owners, permit the sale of two adjacent properties to a developer if at least one of the properties is developable and permit a developer to exchange a property purchased from the Land Bank with any other property owned by the developer with agreement to construct an affordable house by Resolution No. 09-2312; and

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WHEREAS, the City Council desires to approve an amendment to the Program Statement for the Dallas Urban Land Bank Demonstration Program (Exhibit "A") to align the Program Statement with 2013 state statute changes including reducing the number of housing units constructed by a qualified participating developer from three to one, expanding the definition of an eligible adjacent property owner to include any owner of adjacent property, before completion of the four-year period, permitting the transfer of property not suitable for development to the taxing entities or to be sold directly to a political subdivision or nonprofit organization and permitting grocery store development with a minimum of 6,000 square feet of enclosed space that offers for sale fresh produce and other food items for home consumption; **NOW, THEREFORE,**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

Section 1. That the amendment to the Program Statement for the Dallas Urban Land Bank Demonstration Program, as shown on Exhibit "A", which aligns the Program Statement with 2013 state statute changes including reducing the number of housing units constructed by a qualified participating developer from three to one, expanding the definition of an eligible adjacent property owner to include any owner of adjacent property, before completion of the four-year period, permitting the transfer of property not suitable for development to the taxing entities or to be sold directly to a political subdivision or nonprofit organization and permitting grocery store development with a minimum of 6,000 square feet of enclosed space that offers for sale fresh produce and other food items for home consumption is approved.

Section 2. That this resolution shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so resolved.

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Program Purpose: To acquire, hold and transfer real property for affordable housing development to house low- and moderate-income households and to stabilize distressed communities. Property may be developed for home ownership or rental. Also, property may be developed for grocery stores with a minimum of 6,000 square feet.

The Dallas Housing Acquisition and Development Corporation (DHADC) is the Land Bank approved by the City Council for accomplishment of the program purpose. The DHADC will operate under the Articles of Incorporation and By-laws approved by the Dallas City Council and amendments authorized by the City Council from time to time. The DHADC will maintain properties it acquires in compliance with City of Dallas Code requirements.

The DHADC will comply with the requirements of the Public Information and Open Meetings provisions of the State Government Code, and will keep accurate minutes of its meetings. The DHADC will keep accurate records and books of account that conform with generally accepted principles of accounting and that clearly reflect the income and expenses of the DHADC and all transactions in relation to its property. The DHADC will file with the City, not later than December 30th, annual audited financial statements prepared by a certified public accountant.

Dallas Urban Land Bank Demonstration Program

For acquisition and sale of tax-foreclosed properties, the DHADC shall operate in compliance with the Dallas Urban Land Bank Demonstration Program Plan ("Land Bank Plan"), approved annually by the Dallas City Council, and Subtitle A, Title 12, Local Government Code, Chapter 379C, Urban Land Bank Demonstration Program ("Code"). The Land Bank Plan describes the City's methods for allowing the officer charged with selling unimproved real property ordered sold pursuant to the foreclosure of a tax lien to sell certain eligible real property by private sale for purposes of affordable housing development, which may include either home ownership or rental housing, or grocery store development with a minimum of 6,000 square feet of enclosed space that offers for sale fresh produce and other food items for home consumption. Lots may contain rental housing units above a retail/commercial/office development for rent to low and moderate income tenants. The Land Bank Plan includes the City's plan for development of tax-foreclosed properties acquired by the DHADC.

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City Manager Responsibilities

The City of Dallas will adopt a Land Bank Plan annually. The City Manager or his/her designee will recommend the Land Bank Plan, in compliance with the Code, for City Council approval. The Land Bank Plan will consider other housing plans adopted by the City, including the comprehensive plan submitted to the United States Department of Housing and Urban Development ("HUD") and all fair housing plans and policies adopted or agreed to by the City. The Land Bank Plan will include:

1. A list of community development organizations eligible to participate in the right of first refusal provided by the Land Bank Plan;
2. A list of parcels of real property that may become eligible for sale to the Land Bank during the upcoming year;
3. The City's plan for affordable housing development on those parcels of real property;
4. The sources and amounts of funding anticipated to be available from the City at the time the Land Bank Plan is adopted or subsequently approved; and
5. Beginning with Fiscal Year 2004-05, the first year in which property is anticipated to be sold to qualified participating developers, the sale price of the properties to be sold.

The City Manager, or his/her designee, will identify properties that may become eligible for sale to the DHADC Land Bank from the Sheriff's sale for inclusion in the Land Bank Plan. Prior to a recommendation to the DHADC for tax-foreclosure in anticipation of Land Bank acquisition, each property will be assessed as to its suitability for development as described in the Land Bank Plan. In making an assessment of site suitability for affordable housing/grocery store development under the Urban Land Bank Demonstration Program, several factors will be reviewed, including but not limited to the following:

1. Are there delinquent taxes on the property for a total of at least five years?
2. Is the market value of the property as specified in the judgment of foreclosure less than the total amount due under the judgment, including all taxes, penalties, and interest plus the value of non-tax liens held by a taxing unit and awarded by the judgment, court costs, and cost of the sale?

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3. Is the property unimproved or vacant or improved with an uninhabitable occupied structure?
4. Is the physical site of a size, shape and topography appropriate to build the proposed housing/grocery store?
5. Is the property location desirable for housing/grocery store development?
6. Are there building restrictions such as flood plain prohibitions?
7. Location in a special planning or zoning district, such as an historic district, should be noted early in the process in order to understand possible development requirements that will be necessary should the Land Bank acquire the property.

The City Manager, or his/her designee, will annually identify properties potentially eligible for sale to the DHADC Land Bank under the Dallas Urban Land Bank Demonstration Program and obtain approval of the participating taxing jurisdictions.

The City Manager, or his/her designee, will review all proposals recommended by the DHADC for purchase and development of Land Bank property, recommend proposals for approval to the City Council and notify the DHADC of those proposals approved by the City Council.

The City Manager will annually review DHADC requests for funding, if any, and will include a recommendation of that amount, if any, that he determines to be appropriate in his annual budget recommendation to the Dallas City Council.

The City Manager is authorized to implement the Dallas Urban Land Bank Demonstration Program in accordance with this Program Statement and establish guidelines and procedures to operate the Program.

DHADC Responsibilities

Following City recommendation of a property for acquisition by the DHADC Land Bank, the City and DHADC will coordinate with the legal service provider for the filing of a tax lawsuit subject to the consent of the participating taxing jurisdictions. The City will notify the participating taxing jurisdictions of properties referred to the legal service provider for a tax lawsuit. If the judgment in the tax lawsuit authorizes sale of the property to the Land Bank, DHADC will purchase the property from the officer charged by the Court with the sale of the property for an amount consistent with the sale price authorized in the interlocal agreement with the participating taxing jurisdictions.

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The Land Bank must sell property to a qualified participating developer within the four-year period following the date of acquisition. If after four years a qualified participating developer has not purchased the property, the property shall be transferred from the Land Bank to the taxing entities. Property not suitable for development may be transferred to the taxing entities or be sold directly to a political subdivision or nonprofit organization prior to completion of the four-year period.

Notwithstanding any other right of first refusal granted by the Code, if the Land Bank determines that a property owned by the Land Bank is not appropriate for residential development, the Land Bank shall first offer the property for sale to an eligible adjacent owner according to the terms and conditions developed by the Land Bank consistent with the Code. ~~Notwithstanding any other right of first refusal granted by the Code, the Land Bank shall first offer this property for sale to an eligible adjacent property owner according to terms and conditions developed by the Land Bank consistent with the Code.~~ The Land Bank shall sell the property to an eligible adjacent property owner for the lesser of (1) the fair market value for the property determined by the appraisal district in which the property is located or (2) the sales price recorded in the annual plan. An “eligible adjacent property” owner means a person who owns property located adjacent to property owned by the Land Bank ~~and has owned the adjacent property and continuously occupied that property as a primary residence for the two-year period preceding the date of the sale~~ and satisfies eligibility requirements adopted by the Land Bank. The DHADC is also authorized to submit bids at the Sheriff’s sale of tax-foreclosed real property.

Once the DHADC has acquired, at its determination, a sufficient number of properties for sale within a specific geographic area, the DHADC will hold a community meeting to seek public input on the development of the properties if the number of properties to be sold in a group to a developer is greater than ten properties. The DHADC will schedule the meeting at a time and date that allows for the attendance of the City Councilmember(s) representing the community in which the properties are located. Public notice of the meeting will be provided by DHADC to property owners and residents within 200 feet of the properties to be sold.

The DHADC will issue a Request for Proposals (RFP) for the purchase and development, which may include either home ownership or rental housing or grocery stores, of the properties identified by the DHADC as being ready for sale as presented at the community meeting. The RFP will include information as to the community input from the community meeting and the development requirements of the City, the Code and the Land Bank Plan.

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The DHADC Board will consider proposals and approve the sale of the property to a developer, subject to City Council approval. The DHADC will schedule a second community meeting, if the number of properties to be sold in a group to a developer is greater than ten properties, with the same notification requirements as described above for a developer who is not a community housing development organization with a right of first refusal as defined in the Code. At this second meeting, the DHADC and the recommended developer will present its development proposal to the community for additional comment. The DHADC Board may consider the additional community input.

The Land Bank may sell two adjacent properties that are owned by the Land Bank to a qualified participating developer if at least one of the properties is eligible for residential development and the developer agrees to replat the two adjacent properties as one property that is appropriate for residential development.

The DHADC may permit a qualified participating developer to exchange a property purchased from the Land Bank with any other property owned by the developer if the developer agrees to construct on the other property affordable housing for low income households as provided by the Code and the other property will be located in a planned development incorporating the property originally purchased from the Land Bank or another location as approved by the Land Bank. The Land Bank shall adjust the Deed Restrictions under Code Section 379C.010 for each of the properties exchanged by this Code.

Following City Council approval, each sale of property acquired by the DHADC Land Bank as a result of a tax-foreclosure lawsuit will comply with the Code and Land Bank Plan with regard to deed restrictions on the property for development, occupancy and use of property by qualified low- and moderate-income households. The DHADC may release the deed restrictions placed on the property upon compliance by the developer.

The DHADC shall prohibit the placement of industrialized housing or industrialized buildings, as those terms are defined in Chapter 1202 of the Texas Occupations Code, as may be amended, on any real property or part thereof sold by the DHADC to a Qualified Participating Developer or builder and shall enforce such prohibition by deed restriction, approved as to form by the City of Dallas City Attorney.

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Annually, not later than the date established by the City Manager, the DHADC will submit a request to the City for funding for the acquisition of property, legal services for tax lawsuits, operations of the DHADC Land Bank, and maintenance of the properties acquired. To support its request, the DHADC will determine:

1) the number of properties anticipated to be acquired during the upcoming fiscal year and the anticipated cost of acquisition; 2) the projected cost of legal services; 3) the projected administrative and operating costs; 4) the projected maintenance cost of properties held and to be acquired by the DHADC Land Bank and the anticipated period of time that the properties will be held; 5) the projected number of properties to be sold during the upcoming fiscal year and the sale price for the properties; and 6) the availability of non-City resources to cover such costs.

In making its funding request to the City, the DHADC will recommend pricing for the sale of the lots such that the revenues from the DHADC Land Bank sale of acquired properties will cover the legal service, operating and property maintenance costs and City funds will be for property acquisition only.

For purposes of evaluating the effectiveness of the Dallas Urban Land Bank Demonstration Program, the DHADC will submit an annual performance report to the City not later than November 1st of each year in which the DHADC sells property under the Dallas Urban Land Bank Demonstration Program. The performance report will include the information required by the Code and the Land Bank Plan.

The DHADC will maintain in its records for inspection a copy of the sale settlement statement for each property sold by a qualified participating developer and a copy of the first page of the mortgage note with the interest rate and indicating the volume and page number of the instrument as filed with the County Clerk. For each property developed as rental housing, the DHADC will maintain in its records for inspection a copy of the annual occupancy report filed by the owner. The DHADC will provide copies of the performance report to the taxing units who were parties to the judgment of foreclosure and will provide notice of the availability of the performance report for review to the organizations and neighborhood associations identified by the City as serving the neighborhoods in which properties sold to the DHADC Land Bank under the Urban Land Bank Demonstration Program are located. The DHADC and the City will maintain copies of the performance report available for public review.

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Acquisition of property not qualified for land bank tax foreclosure

The DHADC may undertake land acquisition, assemblage, maintenance and sale for affordable housing development of properties that do not qualify for tax foreclosure and acquisition under the Dallas Urban Land Bank Demonstration Program.

For property acquisition other than those under the Dallas Urban Land Bank Demonstration Program (DULBDP):

1. The DHADC may not use City funds to pay more than fair market value, based upon an independent property appraisal, for real property acquired;
2. The DHADC may not pay more than \$10,000 for a property, including closing costs, without specific City Council approval of the acquisition;
3. Property that is not acquired through the DULBDP may be sold for no more than the appraised value and costs of sale and for no less than the sale price approved by the City Controller for land bank lots in the annual plan for the DULBDP ~~Dallas Urban Land Bank Demonstration Program~~. Property sales must comply with the occupancy restrictions of the DULBDP and must be approved by City Council;
4. If funding for such acquisition is provided under the Dallas Residential Development Acquisition Loan Program or similar affordable housing or economic development program of the City of Dallas, DHADC actions will be governed by the City Council resolution authorizing the contract, the City Council approved Program Statement for the City Program under which the funding is provided, the terms of the contract between the City and the DHADC; and
5. The proceeds from the sale of property acquired under contract with the City of Dallas that is not acquired under the DULBDP ~~Dallas Urban Land Bank Demonstration Program~~ shall be considered program income to the City of Dallas program and funding source and shall be returned to the City unless specifically authorized otherwise in the contract between the City of Dallas and the DHADC.