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THE “ADMINISTRATIVE HUB” STRATEGY FOR STREAMLINING PROPERTY MAINTENANCE ENFORCEMENT EFFORTS

I. BACKGROUND

To improve the capacity of municipal building department to stabilize a deteriorating housing stock, the Metropolitan Mayors Caucus cluster municipalities (“Municipalities”) have discussed the creation of a regional administrative support center (“Administrative Hub” or “Hub”). The following memorandum outlines various options for structuring and utilizing an Administrative Hub to enforce property maintenance codes. As the concept is further developed with participating Municipalities, this analysis will be focused and ultimately turn into a draft intergovernmental agreement.

In addition to the legal issues outlined in this memo, the Municipalities should consider options for financing the Administrative Hub. While financing is a vital issue, this memo focuses primarily on the legal and functional aspects of the Hub. Model by-laws and a menu of potential financing options are included to introduce the next phase of this on-going discussion.

II. DISCUSSION

A. Legal Support for the Administrative Hub

The legal support for intergovernmental enforcement of property code violations is set forth in an earlier memorandum, dated May 6, 2014. For background discussion of intergovernmental cooperation, please review the May 6, 2014 memorandum. Building off previous memoranda, we focus the following discussion on the Hub’s proposed function and the specific statutory authority for using the Administrative Hub as an “agent” for the municipality.

B. Proposed Function of the Administrative Hub

At the outset, the Administrative Hub should focus on the following key functions: 1) Preparing documents to record liens; 2) Research title issues and identify interested parties; 3) Prepare applications for No Cash Bid applications; 4) Assist demolition and abandonment actions; and 5) Assist administrative adjudication and filing of judgment liens. Each task has a significant administrative component that would benefit from the Hub’s specialized focus and economies of scale. With the Hub compiling title reports and necessary supporting documentation, Municipalities can focus on inspections and enforcement. As a result, municipalities should improve

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efficiency of administration (reducing costs), and expand their capacity to identify and cite property code violations (increased revenue and improvement in housing stock).

1. Preparing Priority Liens for Members

For vacant structures, municipal liens for property maintenance costs can be perfected (i.e. notice and recording) in a manner that gives the lien priority status over all other liens, except taxes. While priority liens are not a silver bullet, they do strengthen the municipalities' position with regard to other interested parties in the property, such as mortgage holders. Without a priority lien, banks and mortgagees can avoid the legal responsibility for addressing property code violations. When a municipality enforces its code using priority liens, the bank is forced to address the property maintenance issue to preserve their interest in the property and maintain control over its disposition.

A municipality may file a lien on an abandoned property to recover the costs it has incurred repairing, maintaining, or enclosing the property. See 65 ILCS 5/11-20-15.1. A municipality may recover the costs it incurs removing weeds, trees, bushes and grass, exterminating pests, removing garbage, boarding up, or putting a fence around an abandoned residential property. *Id.* This statute defines "abandoned residential property" to be any type of permanent residential dwelling unoccupied for ninety days in which the municipality has been unable to contact the property's owner. *Id.*

To enforce this lien, the municipality must file in the county recorder's office a statement detailing: 1) a description of the abandoned residential property; 2) the costs the municipality has incurred to repair or enclose the property; 3) the date on which the municipality incurred these costs; and 4) how the municipality incurred these costs. *Id.* All of the costs the municipality incurs are combined into one lien, which maintains priority status over other liens. *Id.* The municipality must maintain detailed records of all its expenses repairing or maintaining the property. *Id.*

These records must indicate the date on which the property was first observed as abandoned, the actions taken by the municipality to contact the property's legal owners, including the date that these actions were taken, a statement that no contact was made with the property's legal owners, a dated certification describing the work performed, a copy of any agreements with third parties to perform this work, all invoices and vouchers used to pay for this work, a statement as to whether a competitive bidding process was used, and a copy of the proposals submitted by the bidders for this work. *Id.* The municipality must present these records at the foreclosure sale in order to maintain the priority status of its lien. *Id.* The municipality may not file a lien if a party with an interest in the property states that it will repair the property and begins these efforts within thirty days. *Id.*

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The Hub could work with municipal building departments to prepare all necessary supporting documents for a wide range of liens and other enforcement actions. The Administrative Hub could streamline the process by preparing form documents, researching title information, and focusing the efforts municipal building departments. With the paperwork being compiled by the Hub, the municipal staff can focus on additional property inspections and maintenance activity.

2. Title Reports to Support Code Enforcement Efforts

Whether preparing notices, enforcement documents or liens, Hub staff could streamline title searches for municipalities. The Hub staff can focus on performing title searches and, thus, process searches much quicker and more efficiently than municipal staff that has competing obligations. Moreover, Hub staff could create connections and agency relationships with title companies to reduce time and cost of title reports. All of these efforts would assist building departments as they issue citations, adjudicate violations and perfect liens.

3. Facilitating “No Cash” Bids and Forfeiture Purchases

For tax delinquent properties, the municipality has the option of directly acquiring the property via the “No Cash” bid scavenger and forfeiture sales. 35 ILCS 200/21-90; 21-145. During the County scavenger sale, municipalities have an opportunity to acquire tax delinquent property with no money down (i.e. “No Cash Bid”). 35 ILCS 200/21-90; 35 ILCS 200/21-145; 35 ILCS 200/21-260, *et seq.* In Cook County, the scavenger sales occur every other year and include properties that have been delinquent for two or more years. The highest bidder—typically the municipality—is awarded a certificate of purchase, which can be turned into deeds after the redemption period. 35 ILCS 200/21-145.

Using the tax sale process, municipalities control vacant and abandoned houses without lengthy demolition and abandonment proceedings. Unfortunately, the process of filing No Cash Bid petitions is tedious and, therefore, used sparingly. With help of the Administrative Hub, municipalities could prepare petitions for No Cash bids on a long list of problem properties. The Hub could help identify tax delinquent properties and prepare the bi-annual No Cash Bid application on behalf of member municipalities. Once acquired, the municipality could transfer the property to a regional Land Bank or manage the property itself.

4. Preparing Supporting Documents for Demolition and Abandonment Proceedings

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Like the No Cash bid process, municipalities underutilize their authority to repair, demolish and control properties that have been abandoned and contain dangerous conditions. To assist member municipalities, the Hub can help prepare supporting documents and notices outlined below:

a. *Demolition by Court Order: 65 ILCS 5/11-31-1(a)*

The Illinois Municipal Code permits “[t]he corporate authorities of [a] municipality [to] demolish, repair, or enclose or cause the demolition, repair, or enclosure of dangerous and unsafe buildings or uncompleted or abandoned buildings within the territory of the municipality.” 65 ILCS 5/11-31-1(a). Prior to doing so, municipalities must take the following steps.

(1) The municipality’s chief code official should declare the property dangerous or unsafe and prepare a written report detailing the particular conditions on the property.

(2) The municipality must mail written notice to the owner(s) of record and all lienholders¹ that the building is in an unsafe condition and must be repaired or demolished. The notice should detail the unsafe conditions identified by the municipality’s chief code official. The Hub could help locate the owners of record and prepare notices for member municipalities.

(3) If the owners or lienholders do not remedy the violations within 15 days of receiving the notice, the municipality may petition the circuit court for an order authorizing the municipality to take action (e.g., demolition, repair, etc.) to address the property.² The petition must identify the unsafe and dangerous conditions that must be addressed. The Hub could help prepare the petition and gather supporting documentation from the members.

(4) The municipality will attend a hearing, which statute requires to be expedited, and obtain a court order to take action regarding the property. Within 180 days of demolishing the structure, the municipality should file a notice of lien for demolition costs, attorneys’ fees and court costs. A lien filed within 180 days takes priority over all liens other than taxes and may be enforced by foreclosure proceedings. 65 ILCS 5/11-31-1(a). The Hub could help prepare legal documents, if necessary.

¹ If a municipality cannot determine the identity or whereabouts of the owners or lien holders, the municipality may provide notice to the person in whose name the property was last assessed.

² Alternately, the municipality may petition the court for an order requiring the property owner to repair or demolish the property, although it may be challenging to obtain compliance from a non-responsive property owner.

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b. Demolition by Notice: 65 ILCS 5/11-31-1(e)

Municipalities may also follow an expedited process to remove certain buildings that constitute a continuing hazard to the community. See 65 ILCS 5/11-31-1(e). The expedited process applies only to buildings that are three stories or less in height (as defined by the municipality's building code), and only to those buildings that the municipality's chief code official determines to be "open and vacant and an immediate and continuing hazard to the community." *Id.* Assuming these conditions are met, the municipality must:

(1) Post notice on the front of the building on a sign measuring no less than two feet by two feet stating that the municipality may demolish or repair the building if it is not otherwise demolished or repaired by the owner or lienholders.

(2) Within 30 days of posting notice on the building, the municipality must:

(a) send by certified mail a notice to all owners of record and lienholders identifying the municipality's intent to demolish or repair the building unless the owners or lienholders demolish or repair the building;

(b) publish in a newspaper for three consecutive days a notice identifying the property's address and PIN, an acknowledgment that the property constitutes an immediate and continuing hazard, and a statement that the municipality intends to repair or demolish the building if the owners and lienholders fail to do so; and

(c) record the notice sent to the owners and lienholders with the recorder of deeds.

(3) If the building is not repaired or demolished within 30 days of mailing the notice to the owners and lienholders, or within 30 days of the last day of publication of the notice, whichever is later, and no owner or lienholder seeks court intervention and serves a complaint on the municipality's chief executive officer, the municipality may demolish or repair the building. Such demolition or repair must occur within 120 days from the date the notice to owners and lienholders was sent.

(4) The municipality may file a lien within 180 days of demolition or repair for the costs incurred. The lien has priority over the parties (i.e., the owners and lienholders) that received the notice of the municipality's intent to demolish or repair (see 2(a)).

The Hub could help locate the owners of record and prepare notices for member municipalities, prepare legal documents and provide other administrative assistance.

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c. Abandonment: 65 ILCS 5/11-31-1(d)

Municipalities may obtain title to a property by having a court declare the property to be abandoned. See 65 ILCS 5/11-31-1(d). Properties must meet certain conditions before a court will declare them abandoned. Namely, the property must be (i) tax delinquent for 2 or more years; or (ii) have water service bills that are 2 or more years overdue; and (iii) the property is not occupied by persons legally in possession; and (iv) the property is in a dangerous and unsafe condition. *Id.* Municipalities with properties meeting these criteria should take the following steps.

(1) The municipality's chief code official should declare the property dangerous or unsafe and prepare a written report detailing the property's conditions and deficiencies.

(2) Prepare a petition naming the property owner(s) and all lienholders as defendants. The petition must identify the property's dangerous and unsafe conditions, and all defendants must be served with process in accordance with Section 2-206 of the Illinois Code of Civil Procedure. Further, notice of the petition shall be served on all defendants by certified or registered mail.

(3) At the hearing, the municipality must prove that the dangerous and unsafe conditions exist. If the property owner does not enter an appearance or enters an appearance and waives his rights (i.e., he admits that he abandoned the property), the court will declare the property abandoned.

(4) The municipality must then send notice by certified or registered mail to all persons with an interest in the property stating that title will transfer to the municipality 30 days after the date of the notice unless an interest holder (i) files with the court a request to demolish or repair the building; or (ii) the property owner files an appearance and proves that he does not intend to abandon the property.³

(5) If no parties appear, the municipality should file a petition requesting a judicial deed transferring the property's title to the municipality. The judicial deed extinguishes all ownership interests and liens relating to the property. 65 ILCS 5/11-31-1(d).

³ If the owner appears and the court finds that he does not intend to abandon the property, the court will vacate its abandonment order. The municipality may then amend its complaint to seek demolition under 65 ILCS 5/11-31-1(a) or may request that the court order the owner to demolish structures located on the property.

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The Hub could help locate the owners of record and prepare notices for member municipalities, prepare legal documents and provide other administrative assistance.

d. Remediation by Court Order: 65 ILCS 5/11-31-1(f)

Municipalities may also seek the court's permission to remediate environmental contamination on abandoned properties. See 65 ILCS 5/11-31-1(f). This statute considers a property to be abandoned if (i) the property has been tax delinquent for 2 or more years; and (ii) the property is unoccupied by persons legally in possession. If a municipality suspects that an abandoned property is contaminated with petroleum or other hazardous substances, it should:

(1) Petition the circuit court for an order authorizing an inspection of the property. The petition should present "preliminary evidence" indicating the "presence or likely presence" of a hazardous substance or a "substantial threat" of a release of a hazardous substance on, in, or under abandoned property. Preliminary evidence includes evidence of past use, visual inspections and records of past investigations.

(2) If the inspection reveals that the property does not meet the applicable remediation standards, the municipality should ask the court for authorization to remediate. All hearings held under this statute are expedited.

(3) All costs incurred by the municipality inspecting abandoned properties (other than sites that are found not to be contaminated) and remediation, including court costs and attorneys' fees, may be recorded as a lien against the property. This lien has priority over all other liens except tax liens if it is recorded within 180 days of the completion of inspection, testing or remediation. The municipality may foreclose on the lien to recover its costs. 65 ILCS 5/11-31-1(f).

The Hub could help locate the owners of record and prepare notices for member municipalities, prepare legal documents and provide other administrative assistance.

5. Assist Adjudication and Judgment Liens

Both home rule and non-home rule municipalities (with circuit court involvement) can lien property for adjudicated code violations. 65 ILCS 5/1-2.1-8; 1-2.2-55. The Hub can provide administrative support for Municipalities as they adjudicate code violations locally or in a circuit court. The Hub can also assist municipalities as they turn administrative judgments into liens. Finally, the Hub could serve as a joint administrative adjudicator to keep the process in house and streamline the path from citation to judgment lien.

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The process for turning municipal code citations into judgment liens is set forth in the Municipal Code and can be outlined for the Municipalities if this is a path they are interested in pursuing.

6. Assignment of Priority and Judgment Liens

In addition to prepping paperwork for municipalities, the Hub could also take assignments of municipal liens and pursue enforcement in its own name. 65 ILCS 5/11-20-15(f). While the lien statutes specifically authorize to “municipalities” to file liens, the law allows municipalities to delegate this authority to a third party, like the Hub. Pursuant to Section 11-20-15(f), “any person who performs a removal activity by the authority of the municipality may, in his or her own name, file a lien and foreclose on that lien in the same manner as a municipality under this Section.” 65 ILCS 5/11-20-15(f) (emphasis added). Typically, the “authority” addressed in 11-20-15(f) comes from the contract authorizing a contractor to perform the work on behalf of the municipality (i.e. work order, services agreement). However, municipalities could authorize the Hub, via an intergovernmental agreement, to perform removal activity when requested by the municipal building department. The provision should require that the Hub provide prior notice to the municipality and an opportunity for the Municipality to deny a specific project (i.e. 5 day period to deny in writing). The Hub could use a standard form IGA provision to set up an agency relationship with certain participating municipalities.

If the Hub begins to take on assignments, its function starts to blend with the South Suburban Land Band and Development Authority (SSLBDA). This overlap should be recognized and options for collaboration pursued. Among other options, the Hub could potentially contract with SSLBDA to accept and process lien assignments.

C. Creating the Administrative Hub

The best structure for the Administrative Hub would be an intergovernmental agency or task force. Under the Illinois Intergovernmental Cooperation Act (5 ILCS 220/1 et. seq.) (“the Act”), local governments can agree to “exercise, combine, transfer, and enjoy jointly” their “powers, privileges, functions, or authority” with the other member governments, “except where specifically and expressly prohibited by law.” 5 ILCS 220/3. An intergovernmental authority (created by an IGA) takes its power from the collective powers—home rule and non-home rule—of its members. 5 ILCS 220/2; see also, 1986 Ill. Att’y Gen. Op. 216 (1986) (outlining legal authority for intergovernmental authority that relies on home rule members to “perform the function of bond issuance for all participants.”); 1977 Op. Atty. Gen. No. S-1324 (recognizing that, pursuant to an intergovernmental agreement or contract, county and city may

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establish a joint administrative board to operate an airport and determine number, qualifications and method of selection of board members.)

Of course, there are limits on sharing certain home rule powers, as addressed in previous memos. However, the activities described above would not require exercise of home rule powers. The Hub would have necessary authority to exercise the power and “privilege” of its home rule members to perform administrative tasks and exercise property rights on behalf of municipal members. 5 ILCS 220/3; *County of Wabash v. Partee*, 241 Ill. App. 3d 59, 66 (1993); see e.g., *Rajterowski v. City of Sycamore*, 405 Ill. App. 3d 1086, 1123 (2010) appeal denied, 239 Ill. 2d 589 (2011); *Vill. of Elmwood Park v. Forest Pres. Dist. of Cook County*, 21 Ill. App. 3d 597, 601 (1974).

To be clear, the Land Bank IGA does not transfer authority from home rule member communities to non-home rule member communities. See, *Rajterowski*, 405 Ill. App. 3d at 1122-23. Rather, the Land Bank is a stand alone joint municipal agency created by the IGA. Actions taken by the Land Bank are independent of any community member.

Attached is a set of model by-laws for an intergovernmental Administrative Hub. This legal model has been successfully utilized to create numerous intergovernmental agencies in Illinois, from solid waste authorities, municipalities have set up intergovernmental authorities that operate independently, exercising the joint powers of its member communities through an IGA. Notably, the Illinois legislature has expressly recognized the validity and importance of intergovernmental authorities for certain activities, including local economic development, solid waste disposal, and drinking water distribution. See, 5 ILCS 220/3.1-3.4.⁴

D. Apportioning Legal Responsibility and Indemnification

As demonstrated in the Model By-Laws, all parties will only be liable for their own activities. Indemnification, insurance and other risk abatement provisions can be implemented to immunize both the members and Hub from the negligent actions of the other.

E. Paying for Administrative Hub Staff

Administrative Hub staff could be funded through a combination of membership dues, proceeds from enforcement actions (i.e. 25 % of all proceeds

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recovered); grants and other sources. These ideas should be discussed in a separate memorandum, with the involvement of regional supporting agencies and organizations.

III. CONCLUSION

All of the above tasks could be streamlined with assistance from an Administrative Hub, with staff experienced in title searches, document preparation and other administrative tasks.

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