

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
(CENTRAL DIVISION)

Civil Action No.:

HOMETOWN BANK, A COOPERATIVE BANK	)
COUNTRY BANK FOR SAVINGS	)
EASTERN BANK	)
AVIDIA BANK	)
NORTH BROOKFIELD SAVINGS BANK	)
ROLLSTONE BANK & TRUST and	)
SOUTHBRIDGE SAVINGS BANK	)
	)
Plaintiffs	)
	)
v.	)
	)
CITY OF WORCESTER and	)
CITY OF LYNN	)
	)
Defendants	)

**COMPLAINT FOR DECLARATORY  
JUDGMENT AND REQUEST  
FOR PRELIMINARY INJUNCTION**

I. INTRODUCTION

Now come the Plaintiffs, seven (7) banks having existing residential mortgages in the City of Worcester and/or the City of Lynn and request this Honorable Court to issue a Declaratory Judgment regarding the validity of and to enjoin the enforcement of the following ordinances: the Ordinance Amending the Ordinance to Establish a Bill of Rights for Homeowners in the City of Lynn (“Lynn Ordinance”) and an Ordinance to Repair the Impact of the Foreclosure Crisis on the City of Worcester (“Worcester Ordinance”) (collectively the “Ordinances”). Copies of the Ordinances are attached hereto as Exhibits “1” and “2” respectively.

The Ordinances include provisions which conflict with existing state laws, improperly impose a tax on the Plaintiffs, and/or substantially impair the rights of the Plaintiffs under existing contracts in violation of the U.S. Constitution. The Ordinances are substantially similar to a foreclosure ordinance enacted by the City of Springfield ("Springfield Ordinance"). The Springfield Ordinance was challenged by several local banks. Although upheld by the District Court, the Court of Appeals for the First Circuit certified the following two (2) questions to the Supreme Judicial Court: whether the Springfield Ordinances are preempted in whole or in part by existing laws and regulations and whether the mandatory bond constitutes an illegal tax. The First Circuit retained jurisdiction of the cause of action. A copy of the Order of the First Circuit is attached hereto as Exhibit "3". In December, 2013, the First Circuit issued a stay of the enforcement of the Springfield Ordinance. The Supreme Judicial Court has solicited amicus briefs and oral argument has not yet been scheduled. A copy of the stay Order is attached hereto as Exhibit "4".

As the Ordinances are substantially similar to the Springfield Ordinance, the Plaintiffs seek a Declaratory Judgment that the Ordinances are invalid and, based on the stay issued by the First Circuit, the Plaintiffs seek an injunction enjoining enforcement of the Ordinances until the First Circuit issues an order on the validity of the Springfield Ordinance.

## II. FACTS

1. The Plaintiff, Hometown Bank, a Cooperative Bank, is a banking institution organized under the laws of the Commonwealth of Massachusetts with a place of business at 31 Sutton Avenue, Oxford, Worcester County, Massachusetts ("Hometown").
2. The Plaintiff, Country Bank for Savings, is a banking institution organized under the laws of the Commonwealth of Massachusetts with a place of

business at 75 Main Street, Ware, Hampshire County, Massachusetts (“CBS”).

3. The Plaintiff, Eastern Bank, is a banking institution organized under the laws of the Commonwealth of Massachusetts with a place of business at 195 Market Street, Lynn, Essex County, Massachusetts (“Eastern”).
4. The Plaintiff, Avidia Bank, is a banking institution organized under the laws of the Commonwealth of Massachusetts with a place of business at 42 Main Street, Hudson, Middlesex County, Massachusetts (“Avidia”).
5. The Plaintiff, North Brookfield Savings Bank, is a banking institution organized under the laws of the Commonwealth of Massachusetts with a place of business at 35 Summer Street, North Brookfield, Worcester County, Massachusetts (“North Brookfield”).
6. The Plaintiff, Rollstone Bank, is a banking institution organized under the laws of the Commonwealth of Massachusetts with a place of business at 780 Main Street, Fitchburg, Worcester County, Massachusetts (“Rollstone”).
7. The Plaintiff, Southbridge Savings Bank is a banking institution organized under the laws of the Commonwealth of Massachusetts with a place of business at 253-257 Main Street, Southbridge, Worcester County, Massachusetts (“Southbridge”).
8. The Defendant, the City of Worcester, is a municipality located in, and existing under the laws of the Commonwealth of Massachusetts with offices at 455 Main Street, Worcester, Worcester County, Massachusetts (“Worcester”).

9. The Defendant, the City of Lynn, is a municipality located in, and existing under the laws of the Commonwealth of Massachusetts, with offices at 3 City Hall Square, Lynn, Essex County, Massachusetts (“Lynn”).
10. This Court has jurisdiction of this matter pursuant to 28 U.S.C. §2201 and 28 U.S.C. §1331.
11. Venue is appropriate pursuant to 28 U.S.C. 1391 and Local Rule 40.1 (D)(1)(b).
12. At all times material to this action, one or more of the Plaintiffs have been and will be engaged in the business of lending to homeowners in Lynn and/or Worcester.
13. At all times material to this action, one or more of the Plaintiffs have been and will be engaged in the business of entering into mortgage agreements or have entered into mortgage agreements with homeowners in Lynn and/or Worcester.
14. At all times material to this action, one or more of the Plaintiffs have been and will be engaged in foreclosing on mortgages in the event a borrower defaults under the mortgage agreements in Lynn and/or Worcester.

Lynn Ordinance

15. In or about March, 2014, the Lynn Ordinance was amended to define “Responsible Party” as:

“Responsible Party” shall mean:

Every Person, entity, servicer, property manager, or real estate broker, who or which, alone or severally with others:

1. has care, charge or control of Property, including but not limited to any dwelling, dwelling unit, mobile dwelling unit or parcel of land, vacant or otherwise, including a mobile home park, or any administrator, executor, trustee or guardian of the estate of the holder of legal title; or
  2. Is a Mortgagee of any such Property who has filed a Complaint with the Land Court or Superior Court pursuant to Massachusetts Soldiers’ and Sailors’ Civil Relief Act (St. 1943, c. 57 (1943), as amended through St. 1988, c. 142), including its successors or assigns; or
  3. Is an agent, trustee or other Person appointed by the courts and vested with possession or control of any such Property;
  4. Is a Mortgagee who has made entry on any such Property, pursuant to the terms of the Mortgage, in order to make repairs upon Mortgagor’s failure to do so.
16. Responsible Parties are required to take the following actions:
- A. Maintenance and registration of Vacant, Foreclosing and Foreclosed Properties. All Responsible Parties shall:
    - (1) Maintain the Property in accordance with the Massachusetts State Sanitary Code, the Massachusetts State Building Code and all specialized codes incorporated therein, and any City ordinances concerning the maintenance of Property and the Lynn Zoning Ordinances; and

- (2) Provide the Fire Chief and ISD Director with the name, local (within 20 miles of the Property) address, and telephone number of a Responsible Party who can be contacted in case of emergency. The Responsible Party shall cause the name and contact number to be marked on the front of the Property as may be required by the Fire Chief or ISD Director; and
- (3) Maintain liability insurance on the Property and furnish the ISD Director with a copy of said certificate of insurance; and,
- (4) Provide a cash bond acceptable to the ISD Director, in the sum of not less than ten thousand (\$10,000) dollars, to secure the continued maintenance of the Property until it is no longer Vacant, Foreclosing or Foreclosed as defined by this Ordinance, and remunerate the City for any expenses incurred in inspecting, securing, marking or making safe such Property and, if applicable, the Property in which it is located. A portion of said bond shall be retained by the City as a fee to administer this Section. Pursuant to this Section, each Responsible Party must provide a bond for each Vacant, Foreclosing or Foreclosed Property it controls in the City.
- (5) The cash bond requirement shall be waived if the Responsible Party is headquartered in the Commonwealth, is not a subsidiary of an entity headquartered outside the Commonwealth, and has recorded at the Southern Essex Registry of Deeds five (5) or fewer Foreclosure Deeds for Residential Properties in the City in the prior calendar year.
- (6) Notify the ISD Director and Fire Chief in writing when the Property is sold or transferred. Upon satisfactory compliance with the provisions of Section 13, the ISD Director shall issue a certificate of compliance. Said certificate shall be valid for the length of time prescribed by the ISD Director and noted thereon; provided

however, the certificate shall be subject to continued compliance with the provisions of this section.

- B. Maintenance and registration of Properties where ISD has deemed a Property to be abandoned by the Mortgagor but is still occupied. If ISD determines that a Property has been abandoned by the Mortgagor but Occupants remain, and conditions of disrepair threaten the health and safety of the occupants: ISD shall notify the Responsible Party of the conditions of disrepair in writing. The Responsible Party will then have fifteen (15) days to comply with the requirements set forth in Section 13:00(A).
- C. Maintenance of Vacant Properties. In addition to the requirements of Section 13:00(A), the Responsible Party, within fifteen (15) days of the property becoming vacant, shall:
  - (1) As may be required by the Fire Chief, file one set of space utilization floor plans for any Buildings on said Vacant Property with the Fire Chief and one set of said plans with the ISD Director. The Responsible Party shall certify space utilization plans as accurate twice annually, in January and July; and
  - (2) Remove from the Vacant Property, to the satisfaction of the Fire Chief, hazardous material, as that term is defined in M.G.L. c. 21K, as that statute may be amended from time to time; and
  - (3) At the discretion of the ISD Director, secure all windows and door openings and ensure that the Property is secured from all unauthorized entry continuously in accordance with the United States Fire Administration, National Arson Initiative Board up Procedures or provide twenty-four (24) hour on-site security personnel on the Property; and,
  - (4) Post "No Trespassing" signs on the Property; and

- (5) Maintain the Property in accordance with this section, free of overgrowth, trash and debris, and pools of stagnant water, and ensure that structures are maintained in a structurally sound condition; and
- D. Signs and markings. When required pursuant to this section, signs or markings shall be applied on the front of the Property, and elsewhere as the Fire Chief and ISD Director may require, at or about the second floor level and shall not be placed over doors, windows, or other openings. All signs/markings shall be visible from the street and, when requested by the Fire Chief or ISD Director, shall be placed on the sides and rear of the Property. Signs/Markings shall be a minimum of 24 inches by 24 inches, with lines of two-inch width, and shall have a reflective background, or be painted with reflective paint, in contrasting colors. Signs/Markings shall be applied directly on the surface of the Property and shall state the date of posting and the most recent date of inspection by the Fire Chief and ISD Director.
- E. Properties without Certificate of Compliance. The ISD Director, upon being informed of the existence of a Vacant, Foreclosing or Foreclosed Property without a Certificate of Compliance, shall cause notice to issue to the Responsible Party of the status of said Property and shall order said Responsible Party to immediately obtain a Certificate of Compliance. If any responsible Party fails to comply with said order, the ISD Director or agents thereof may enter the Property to inspect, and further may seek court orders to enter upon the premises to secure, clean and remove any pools of stagnant water.
- F. Expenses. The Responsible Party of a Vacant, Foreclosing or Foreclosed Property who fails to obtain a Certificate of Compliance as required herein, shall be liable to the City for expenses incurred by the City in securing such Property, for removing rubbish and overgrowth, and/or for abating stagnant pools of water. The ISD Director shall provide the Responsible Party with a written statement of all costs associated with inspecting, securing and marketing the Property, and removing rubbish or overgrowth, or



abating stagnant pools of water. If the Responsible Party fails to pay or reimburse the City within seven days of notice of expenses, the City shall draw down upon the bond paid by the Responsible Party as required in section A (11), above. If there is no bond available, the ISD Director shall record the notice of claim in the Southern Essex Registry of Deeds (or the Land Court Department) forthwith, and shall have the right to file a civil action in the Northeast Division Housing Court to establish a lien on the Property for the balance due.

- G. Duty to maintain Property. No Responsible Party for a Vacant, Foreclosing, Foreclosed Property shall allow said Property to become or remain unsecured, or to contain an accumulation of rubbish, or to contain overgrowth, or to have a stagnant pool of water. If it appears that any vacant or foreclosing Property is unsecured, contains rubbish, overgrowth, or a stagnant pool of water, the ISD Director shall send written notification to the Responsible Party, requiring that the Responsible Party promptly secure the Property, remove the rubbish or overgrowth, or abate the stagnant pool of water.
- H. If the Responsible Party fails to comply with any order issued pursuant to Section 13, the ISD Director may immediately seek to obtain the proceeds secured by the bond filed pursuant to Section 13:00 A (4) herein and shall enter upon the premises and cause the Property to be inspected, secured and marked, and further may seek court orders to enter upon the premises to secure, clean, and remove any rubbish or overgrowth, or abate any pools of stagnant water or otherwise enforce the sanitary code.
- I. Nuisance referral. All unsecured Vacant, Foreclosing or Foreclosed Properties shall be immediately referred to the ISD Director for a determination relative to whether the Property is a nuisance or dangerous pursuant to M.G.L. c. 139 and procedures promulgated thereunder.

17. The Lynn Ordinance requires mortgagees to participate in a mediation program upon transmittal of the statutory notice pursuant to G.L. c. 244, §35A. This obligation to mediate is not required by state law governing foreclosures.
18. The Lynn Ordinance requires the recording of a Certificate of Mediation Completion with the Southern Essex Registry of Deeds simultaneously with the recording of the documents required by G.L. c. 244, §15. This is not required by state law governing foreclosures.
19. Responsible Parties, as defined in the Lynn Ordinance, must comply with the requirements described in Paragraph 16(A)-(D) and (G) in order to obtain a Certificate of Compliance from the ISD Director.
20. Failure to obtain a Certificate of Compliance exposes Responsible Parties to expenses incurred by Lynn for maintaining the subject property.
21. Failure to comply with any order issued under Section 13 exposes a Responsible Party to a fine of Three Hundred and 00/100 (\$300.00) Dollars per day, criminal liability, equitable remedies and loss of some or all of the mandatory Ten Thousand and no/100 (\$10,000.00) Dollar cash bond.

Worcester Ordinance

22. The Worcester Ordinance defines owner of real property as follows:
  - (1) has legal or equitable title to any real property, including, but not limited to a dwelling, dwelling unit, mobile dwelling unit, or parcel of land, vacant or otherwise, including a mobile home park; or

- (2) has care, charge or control of real property, including but not limited to any dwelling, dwelling unit, mobile dwelling unit or parcel of land, vacant or otherwise, including a mobile home park, or any administratrix, trustee or guardian of the estate of the holder of legal title; or
  - (3) is a mortgagee of any such property;
  - (4) is an agent, trustee or other person appointed by the courts and vested with possession or control of any such property; or
  - (5) is an officer or trustee of the association of unit owners of a condominium. Each such person is bound to comply with the provisions of these minimum standards as if he were the owner. However, "owner" shall not mean a condominium association created pursuant to General Laws chapter 183A to the extent that such association forecloses on or initiates the foreclosure process for unpaid assessments due or owing to the association; or
  - (6) every person who operates a rooming house; or
  - (7) is a trustee who holds, owns or controls mortgage loans for mortgage-backed securities transactions and has initiated the foreclosure process; or
  - (8) has recorded a complaint to foreclose with the registry of deeds.
23. Under the Worcester Ordinance, mortgagees are required to take the following actions:
1. Provide written notification to the director and the fire chief of the status of such property, including in such notice, the name, address and telephone number of the owner; the location of the property; the length of time the building has been vacant; the estimated time the building will remain vacant; and the nature of the contents of the building; and
  2. As may be required by the fire chief, file one set of space utilization floor plans for any buildings on said

property with the fire chief and one set of said plans with the director. The owner shall certify space utilization plans as accurate twice annually, in January and July; and,

3. Remove from the property, to the satisfaction of the fire chief, hazardous material, as that term is defined in Massachusetts General Laws, chapter 21K, as that statute may be amended from time to time; and,
4. At the discretion of the fire chief or director, secure all windows and door openings and ensure that the building is secured from all unauthorized entry continuously in accordance with the United States Fire Administration, National Arson Initiative Board up Procedures or provide twenty-four (24) hour on-site security personnel on the property. When a vacant or foreclosing property is located within a complex of buildings owned by a single owner, twenty-four (24) hour on-site security shall be provided within the building or within the complex wherein the building is located; and,
5. Post "No Trespassing" signs on the property. Said signs shall be no smaller than 8 inches by 11 inches with lettering no smaller than 2 inches high, and shall be visible from the street. However, this requirement may be waived by the director upon written request from the owner or designee; and
6. Maintain the property in accordance with Chapter 8, § 42 of these Ordinances, free of overgrowth, trash and debris, and pools of stagnant water, and ensure that structures are maintained in a structurally sound condition; and
7. If the property is vacant, drain all water from the plumbing and turn off all electricity between September 15 and June 15 of each calendar year to guard against burst pipes and fires; however, this requirement may be waived by the director upon written request from the owner or designee; and,
8. Maintain the property in accordance with all other relevant state codes and local regulations concerning the maintenance of property; and,

9. Provide the fire chief and director with the name, local address, and telephone number of a responsible person who can be contacted in case of emergency. The owner shall cause the name and contact number to be marked on the front of the property as may be required by the fire chief or director; and
  10. Maintain liability insurance on the property and furnish the director with a copy of said certificate of insurance; and,
  11. Provide a cash bond acceptable to the director, in the sum of not less than five thousand dollars, to secure the continued maintenance of the property throughout its vacancy and remunerate the city for any expenses incurred in inspecting, securing, marking or making such building safe. A portion of said bond shall be retained by the city as an administrative fee to fund an account for expenses incurred in inspecting, securing and marking other such buildings that are not in compliance with this Section. Any owner of a vacant or foreclosing property providing a bond pursuant to this section must also provide bonds for all other vacant or foreclosing properties it owns in the City.
  12. Notify the director and fire chief in writing when the property is sold or transferred.
- 
24. Failure to comply with these requirements expose mortgagees, including the Plaintiffs, to fines in the amount of Three Hundred (\$300.00) and no/100 Dollars per day, loss of all or a portion of a Five Thousand (\$5,000.00) and no/100 Dollars mandatory cash bond and criminal liability.
  25. Mortgagees who are not in possession of the real estate have no legal right to enter such real estate. Some of the obligations imposed upon the Plaintiffs require that such mortgagees enter the property. This entry exposes Plaintiffs to trespass actions by mortgagors.

26. The Ordinances mandate mediation as a prerequisite to the foreclosure process. This is not required by state foreclosure ordinances.
27. The Ordinances are invalid as they are preempted in whole or in part by Massachusetts foreclosure statutes (Mass. Gen. Laws ch. 244, §§1 *et seq.*), the state sanitary code (Mass. Gen. Laws, ch. 111) and Mass. Gen. Laws ch. 21E, and additionally as they impose an unlawful tax in violation of the Constitution of the Commonwealth of Massachusetts and violate the Contracts Clause under the U.S. Constitution.
28. An actual controversy exists between each of the Plaintiffs and/or Worcester and/or Lynn.

WHEREFORE, the Plaintiffs request judgment:

1. That the Ordinances be declared invalid and unconstitutional;
2. That Worcester and Lynn be enjoined from enforcing the Ordinances until the First Circuit issues its order on the Springfield Ordinance; and
3. That this Court grant such other relief as it deems just and proper.

THE PLAINTIFFS,  
AVIDIA BANK, ET AL,  
By their attorney,

/s/ Tani E. Sapirstein  
Tani E. Sapirstein, Esq.  
FEDERAL BAR NO. 21160  
BBO No. 236850  
SAPIRSTEIN & SAPIRSTEIN, P.C.  
1350 Main St., 12<sup>th</sup> Floor  
Springfield, MA 01103  
Tel. (413) 827-7500  
Fax (413) 827-7797  
Email: [Tani@sandslaw.com](mailto:Tani@sandslaw.com)

Dated: June 30, 2014

JS 44 (Rev. 12/12)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

Hometown Bank, A Cooperative Bank, et al

(b) County of Residence of First Listed Plaintiff Worcester  
(EXCEPT IN U.S. PLAINTIFF CASES)

**DEFENDANTS**

City of Worcester and  
City of Lynn

County of Residence of First Listed Defendant Worcester  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)  
Tani E. Sapirstein, Esq. Sapirstein & Sapirstein PC  
1350 Main St. Springfield MA 01103  
413/827-7500

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Nat a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input checked="" type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

**V. ORIGIN** (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 USC §1331

Brief description of cause:  
Violation of the Contracts Clause/Declaratory Judgment

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMANDS n/a CHECK YES only if demanded in complaint: JURY DEMAND:  Yes  No

**VIII. RELATED CASE(S) IF ANY**

(See instructions): JUDGE First Circuit Court of Appeals DOCKET NUMBER 12-1917

DATE 6/30/14

SIGNATURE OF ATTORNEY OF RECORD

Tani E. Sapirstein, Esq.

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_



**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

**EXHIBIT # 1**

**UNFINISHED BUSINESS:**

**Ordinance Committee Report of March 4, 2014:**

An Ordinance Amending the Ordinance to Establish a Bill of Rights for Homeowners in the City of Lynn

**IN THE YEAR TWO THOUSAND FOURTEEN AN ORDINANCE AMENDING THE  
ORDINANCE TO ESTABLISH A BILL OF RIGHTS FOR HOMEOWNERS IN THE CITY OF  
LYNN**

**SECTION 1:00      PURPOSE**

Unsecured and unmaintained vacant properties foreclosing properties and foreclosed properties present a danger to the safety and welfare of public safety officers, the public, occupants, abutters, and neighborhoods and, as such, constitute a public nuisance. This Ordinance is enacted to promote the health, safety and welfare of the public, to protect and preserve the quiet enjoyment of occupants, abutters, and neighborhoods, and to minimize hazards to public safety personnel inspecting or entering such properties.

**SECTION 2:00      DEFINITIONS**

For the purposes of this article, the following words shall, unless the context clearly requires otherwise, have the following meanings:

*"CERTIFICATE OF COMPLIANCE"* shall mean a certificate issued by the ISD Chief to the Responsible Party for a Vacant, and/or Foreclosing and/or Foreclosed Property upon compliance with the provisions of Section 13.

*"CERTIFICATE OF MEDIATION COMPLETION"* shall mean a certificate issued by the Mediation Program Manager upon Good Faith Effort in mediation if a mutually-agreeable commercially reasonable alternative to foreclosure cannot be reached. The Certificate of Mediation Completion shall be signed by authorized representatives of both the Mediation Program Manager and the City.

*"CITY"* shall mean City of Lynn.

*"COMMERCIALLY REASONABLE ALTERNATIVE"* shall mean an alternative based on a comparison of the net present value of receiving payments pursuant to a modified mortgage loan, or the likely financial recovery from other foreclosure alternatives, to the anticipated net recovery following foreclosure incorporating an assessment of the borrower's current circumstances, including, without limitation, the borrower's current income, debts, and obligations.

*"DAYS"* shall mean consecutive calendar days.

*"ENTITY"* shall mean a business organization, or any other kind of organization, including without limitation, a corporation, partnership, trust, limited liability corporation, limited liability partnership, joint venture, sole proprietorship, or any other category of organization, and any employee, agent, servant or other representative of such entity.

"*EVICTION*" shall mean any action, without limitation, by a Foreclosure Sale Purchaser of Residential Property which is intended to compel an occupant to vacate or to be constructively evicted from such Residential Property

"*FAIR MARKET RENT*" shall mean an amount equal to that established by the most recent United States Census Bureau American Community Survey for the City of Lynn, which shall be fair market value only, for a unit of comparable size in the area in which the Residential Property is located.

"*FIRE CHIEF*" shall mean the chief of the Lynn Fire Department or his or her designee.

"*FORECLOSED PROPERTY*" shall mean a property on which a Foreclosure Deed has been recorded until such property has been purchased from a Mortgagee or its Mortgage Servicer.

"*FORECLOSING PROPERTY*" shall mean a property on which the Mortgagee or its agent has filed a Complaint with the Land Court or Superior Court pursuant to the Massachusetts Service Members Civil Relief Act until such time as a Foreclosure Deed has been recorded in the Southern Essex Registry of Deeds.

"*FORECLOSURE*" shall mean termination of a Mortgagor's equity of redemption in property, by action, bill in equity, entry, and/or power of sale.

"*FORECLOSURE SALE*" shall mean the foreclosure of a Mortgage of a Residential Property pursuant to a power of sale in a mortgage and as described in M.G.L. c. 244.

"*FORECLOSURE SALE PURCHASER*" shall mean a Foreclosing Owner as defined below, or a person or entity who purchases Residential Property from a Foreclosing Owner and not intending to reside or have a family member reside in such Residential Property as the primary residence.

"*FORECLOSING OWNER*" shall mean an entity that both:

A. Held or owned a Mortgage Loan in the Property at any point prior to the foreclosure of the Property or is the subsidiary, parent, or agent of, or otherwise is related to any entity which held or owned the Mortgage in the Property at any time prior to the foreclosure of the Property; and

B. Holds title to this Property that it acquired at a foreclosure sale or by any other method of foreclosure and holds a security interest in three or more Mortgage Loans.

For purpose of this definition, the phrase 'holds title' shall include an entity which holds title in any capacity, directly or indirectly, without limitation, whether in its own name, as trustee, or as beneficiary.

"*GOOD FAITH EFFORT*" shall mean each party to the Mediation is present, has decision-making authority to negotiate and agree upon a Commercially Reasonable Alternative to Foreclosure, provides required documentation, and actively participates in the Mediation process.

"*HOMEOWNER*" see definition of Mortgagor defined by this section.

"*ISD DIRECTOR*" shall mean the Director of the Inspectional Services Department for the City of Lynn.

"*JUST CAUSE*" shall mean at least one of the following:

- A. The Occupant has failed to timely pay last established rent prior to the Foreclosure Sale; and if no rent has been established, reasonable use and occupancy charges shall be established by Fair Market Rent, but only if the Foreclosure Sale Purchaser notified the Occupant in writing on or about the time of the recording of the foreclosure deed or a reasonable time thereafter, of the amount of rent or use and occupancy that was to be paid and to whom it was to be paid;
- B. The Occupant has violated an obligation or covenant of the occupancy other than the obligation to surrender possession upon proper notice and has failed to cure such violation within a reasonable time after having received written notice thereof from the Foreclosure Sale Purchaser;
- C. The Occupant is committing or permitting to exist a nuisance in, or is causing substantial damage to, the Property, or is creating a substantial interference with the quiet enjoyment of other occupants;
- D. The Occupant is convicted of using or permitting the unit to be used for any illegal purpose;
- E. The Occupant has refused to provide reasonable access to the Property to the Foreclosure Sale Purchaser for the purpose of making necessary repairs or improvement required by the laws of the United States, the Commonwealth or any subdivision thereof, or for the purpose of inspection as permitted or required by agreement or by law or for the purpose of showing the rental housing unit to a prospective purchaser.

*"MEDIATION CONFERENCE"* shall mean the formal discussion and negotiation undertaken by the parties in a Good Faith Effort to negotiate and agree upon a Commercially Reasonable Alternative to foreclosure, and held in the City or at a location mutually convenient to the parties. Both the Mortgagor and Mortgagee or its Mortgage Servicer must be physically present for the Mediation Conference unless telephone participation is mutually agreed upon and the Mediation Program Manager certifies that the Mortgagor has been made aware of his or her right to an in-person Mediation Conference. The Mortgagor shall be allowed to have a lawyer, an interpreter, and up to three additional persons of his or her choosing present at the Mediation Conference. The Mortgagor shall be notified of this right at the time the Mediation Conference is scheduled by the Mediation Program Manager.

*"MEDIATION PROGRAM"* shall mean the foreclosure mediation program established in the City pursuant to this article and described in Section 4:00.

*"MEDIATION PROGRAM MANAGER"* shall mean a neutral not-for-profit organization, attorney, or qualified third party experienced in the mediation of the foreclosure process, familiar with all programs available to help homeowners avoid foreclosure, knowledgeable of the mortgage foreclosure laws of the Commonwealth of Massachusetts, and having no ownership interest or management interest in residential housing in the City other than their primary residence. The Mediation Program Manager shall sign a user agreement with the City authorizing the receipt and use of personal and financial information for the purposes of the Mediation Program only. The Mediation Program Manager shall ensure the security and confidentiality of any and all information received or exchanged under the program consistent with applicable federal, state, and City laws. Access to such program information shall be limited to those officers and employees of the organization who require the information to properly perform services under the Mediation Program, and that the organization and its officers and employees may not access, modify, use or disseminate such information for inconsistent or unauthorized purposes.

"*MEDIATOR*" shall mean an individual:

- A. Whose training complies with the qualification standards for neutrals specified in the guidelines for training mediators adopted by the Supreme Judicial Court of Massachusetts pursuant to Rule 8 of the Uniform Rules for Dispute Resolution; and
- B. Who has completed training on foreclosure mediation; and
- C. Who has a working knowledge of all federal, state, and City programs available to help homeowners retain their homes

"*MORTGAGE DOCUMENTS*" shall include the promissory note, including any allonges, additional pages, and other evidence of all endorsements; mortgage; loan agreement; assignments (recorded and unrecorded); powers of attorney granted by the Mortgagee or Homeowner to entities acting on its behalf; and any other documents evidencing or securing a Mortgage Loan.

"*MORTGAGE LOAN*" shall mean a loan, in the form of a promissory note, to one or more natural persons, or to a nominee trust or residential trust on behalf of one or more natural persons, made for non-commercial purposes and secured wholly or partially by a mortgage on residential property in the City which is the principal residence of one or more borrowers of the loan or their family members, or in the case of a nominee trust, one or more of the beneficiaries of the trust.

"*MORTGAGE SERVICER*" shall mean an entity which administers or services or at any point administered or serviced the Mortgage Loan; provided, however, that such administration or servicing shall include, but not be limited to, calculating principal and interest due on the mortgage loan, assessing fees and costs onto a mortgagor's loan account, collecting regular payments from the mortgagor, acting as escrow agent for the owner of the Mortgage Loan or foreclosing on a Mortgage Loan in the event of a default.

"*MORTGAGEE*" shall mean an entity that is the present holder of the Mortgage Loan.

"*MORTGAGOR*" shall mean a natural person or residential trust who received a Mortgage Loan secured by a Residential Property located in the City, and for whom such Residential Property is his/her principal residence.

"*NET RECOVERY FOLLOWING FORECLOSURE*" shall mean a monetary value that includes, but is not limited to, projected costs from:

- A. Delinquency, interest, fees incurred by the date of foreclosure sale based on average length of Massachusetts foreclosure process;
- B. Costs of all legally required actions to foreclose and percentage loss from foreclosure sale;
- C. Meeting all sanitary code requirements;
- D. Property maintenance;
- E. Eviction; and
- F. Other ownership costs until projected sale or re-sale to third party purchaser.

"*OCCUPANT*" shall mean any person or group of persons, including the Mortgagor, who occupied Residential Property prior to a Foreclosure Sale.

"*PARTIES*" shall mean the Mortgagor and the Mortgagee or its Mortgage Servicer.

"*PERSON*" shall mean any individual, corporation, partnership, limited liability partnership, limited liability company, trust or other entity.

"*PROPERTY*" means any real property, residential or commercial, or portion thereof, located in the City, including building or structures situated on the property.

"*RESIDENTIAL PROPERTY*" shall mean real property located in the City that is either a single-family dwelling or a structure containing not more than four residential units, and shall also include a residential condominium unit or a residential co-op unit.

"*RESPONSIBLE PARTY*" shall mean:

Every Person, entity, servicer, property manager, or real estate broker, who or which, alone or severally with others:

1. Has care, charge or control of Property, including but not limited to any dwelling, dwelling unit, mobile dwelling unit or parcel of land, vacant or otherwise, including a mobile home park, or any administrator, executor, trustee or guardian of the estate of the holder of legal title; or
2. Is a Mortgagee of any such Property who has filed a Complaint with the Land Court or Superior Court pursuant to the Massachusetts Soldiers' and Sailors' Civil Relief Act (St. 1943, c. 57 (1943), as amended through St. 1988, c. 142), including its successors or assigns; or
3. Is an agent, trustee or other Person appointed by the courts and vested with possession or control of any such Property;
4. Is a Mortgagee who has made entry on any such Property, pursuant to the terms of the Mortgage, in order to make repairs upon Mortgagor's failure to do so.

"*VACANT PROPERTY*" shall mean structure or building not legally occupied.

"*UNIT*" or "*RESIDENTIAL UNIT*" shall mean the room or group of rooms within a Property, located in the City, which is used or intended for use as a residence by one household.

**SECTION 3:00**      **MANDATORY MEDIATION BEFORE FORECLOSURE ON RESIDENTIAL PROPERTIES**

Notwithstanding any general or special law to the contrary, all Mortgagees who have sent the Notice of the Right to Cure pursuant to M.G.L. c. 244, § 35A pertaining to Residential Property in the City shall be required to engage in a Mediation Program as set out in this Ordinance.

**SECTION 4:00**      **ESTABLISHMENT OF A MEDIATION PROGRAM**

The City is hereby empowered to establish such Mediation Program, in accordance with this Ordinance, and promulgate additional regulations as necessary and appropriate to implementing such a Mediation Program utilizing a Mediation Program Manager approved by the City Solicitor to mediate between the Mortgagee and Mortgagor. Such Mediation shall be facilitated by a Mediation Program Manager, approved by the City Solicitor according to procedures established by this Ordinance. The City Solicitor is hereby authorized and empowered to enter into an agreement with a Mediation Program Manager.

**SECTION 5:00**      **SCOPE OF MEDIATION PROGRAM**

- A. The Mediation Program shall provide mediation prior to all Foreclosures of Residential Property in which the Mortgagor(s) or Mortgagor(s)'s family resides. The Program shall address all issues reasonably related to a Foreclosures on Residential Property, including but not limited to all Commercially Reasonable Alternatives to Foreclosure. The Parties are required to make a Good Faith Effort in Mediation as defined in this Ordinance. Mediations conducted pursuant to the Program shall use the calculations, assumptions and forms that are established by or are a made available through:
- (1) The Federal Deposit Insurance Corporation and published in the Federal Deposit Insurance Corporations Loan Modification Program Guide available on the Federal Deposit Insurance Corporation's publicly accessible website;
  - (2) The Home Affordable Modification Program;
  - (3) Any modification program that a Mortgagee may use which is based on accepted principles and the safety and soundness of the institution and recognized by the National Credit Union Administration, the Division of Banks;
  - (4) The Federal Housing Authority; or
  - (5) Similar federal loan modification programs.
- B. The City Solicitor's Office shall provide for a means of evaluating and selecting qualified Mediation Program Managers. The City Solicitor's Office shall also provide for a means of assessing and evaluating annually the City's Mediation Program, including reports and data related to:
- (1) The number of Mortgagors who are notified of Mediation;
  - (2) The number of Mortgagors who attend mediation and who receive counseling or assistance;
  - (3) The number of Certificates of Mediation completion issued under the Program; and
  - (4) The results of the Mediation Program, including the number of loans restructured, number of principal write-downs, total value of principal write-downs, number of interest rate reductions and, to the extent such information is available, the number of mortgagors who default on mortgages within a year after restructuring, and the number of short sales and any other alternatives to foreclosure.



- B. The City Solicitor's Office may terminate a Mediation Program Manager's participation in the Mediation Program for good cause. In such case, the Mediation Program Manager shall deliver to the City Solicitor's Office all records and information in its possession for appropriate preservation and storage.

**SECTION 6:00**      **CONFIDENTIALITY IN MEDIATION**

Except for financial information otherwise permitted by law to be disclosed, any financial statements or information provided to the City or its approved independent counseling agencies or provided to the Mortgagee or its Mortgage Servicer or Mortgagor during the course of Mediation in accordance with this Ordinance is confidential and shall not be available for public inspection. Any financial statement or information required to reasonably facilitate the Mediation shall be made available as necessary to the mediator and to the attorneys or representatives, if any, of the parties to the Mediation. Any financial statement or information designated as confidential under this section shall be kept separate and apart from other papers and matters not the subject of the mediation. No Mortgagee or its Mortgage Servicer shall be required to disclose information in violation of M.G.L. c. 93H, and 201 CMR 17. No information provided by the Mortgagor in the course of the Mediation may be used by the Mortgagee or its Mortgage Servicer or its Agents in a subsequent legal proceeding.

**SECTION 7:00**      **NOTICE**

For the purpose of the Mediation Program established by the City, a Mortgagee shall send a copy of all notices given to a Mortgagor pursuant to M.G.L. c. 244 § 35A(g), (h) which relate to Residential Property in the City, to the City of Lynn c/o The City Solicitor, Lynn City Hall, 3 City Hall Square, Lynn, MA 01901, within ten (10) days of giving such notices to a Mortgagor. The receipt by the City of said notice, or of a request for mediation from the Mortgagor made within fifteen (15) days of receipt of a Mortgagor's notice pursuant to M.G.L. c. 244 § 35A(g), (h), shall constitute the beginning of the Mediation process as set forth in this Ordinance. At that time the City Solicitor shall notify a Mortgagee and a Mortgagor of their rights and responsibilities under this Ordinance regarding Mediation. It is the intent and purpose of this Ordinance that Mediation commence no later than 45 days of the Mortgagor receiving notice of his or her right to cure as provided in M.G.L. c. 244, § 35A(g) and (h). The City Solicitor's Office shall refer the matter for Mediation to an approved Mediation Program Manager, which shall have the responsibility of assigning a mediator and scheduling the parties to immediately commence mediation pursuant to this Ordinance. The mediation shall proceed with the parties' Good Faith Effort to negotiate and agree upon a Commercially Reasonable Alternative to Foreclosure. The mediation shall continue without delay until completion, but shall in no way constitute an extension of the foreclosure process, nor an extension of the right to cure period. Notwithstanding the limitation in the previous sentence, the mediation may be extended by mutual agreement.

**SECTION 8:00**      **ADMINISTRATION OF MEDIATION PROGRAM**

The Mediation Program established by this Ordinance shall include, and be not limited to, the following steps:

- A. The parties shall participate in a mandatory Mediation Conference at a location mutually convenient to the parties. All Parties and/or their respective representatives present at said Mediation Conference must have authority to enter into any agreements renegotiating the mortgage that is the subject of the foreclosure, or to otherwise resolve the pending foreclosure.

- C. Said Mediation Conference shall be scheduled at a time and place to be determined by the Mediation Program Manager, but not later than 45 days following the Mortgagor's receipt of his or her notice of right to cure under M.G.L. c. 244, §35A (g) and (h). The Parties will be sent notice under the Mediation Program by certified and first class mail at the Parties' last known address(es), if any, or if none, then to the address to which the tax collector last sent the tax bill for the Property. The notice shall contain the following declaration on the first page in English, Spanish, Cambodian, Russian, Greek, Vietnamese, French, Haitian Creole, and in any other language which the Mortgagee or its Mortgage Servicer knows is the Mortgagor's primary language, and any other language deemed appropriate by the Mediation Program Manager: "The City of Lynn has a mediation program that may help you negotiate more affordable mortgage payments and avoid foreclosure however there is no express or implied guarantee foreclosure will be avoided. Have this notice translated at once and contact us for help." If a Mortgagor does not respond to the initial notice, the Mediation Program Manager shall, to the extent possible, utilize additional outreach methods to supplement mailed notices.
- C. Prior to the scheduled Mediation Conference, the Mortgagor shall be assigned a City-approved loan counselor. If the Mortgagor is already working with a City-approved loan counselor, no assignment is necessary. However, such loan counselor must agree to work with the Mortgagor during the mediation process in accordance with the provisions of this Ordinance.
- The Mortgagor shall be encouraged to attend a group orientation, if available, prior to the Mediation Conference. Such orientations shall be scheduled as necessary at times convenient to Mortgagors. Interpretation shall be offered to Mortgagors ahead of time, and provided at the orientation if deemed necessary by the Mortgagor. The following shall be invited to participate in the design and implementation of the orientation: Mediation Program Manager, one or more local legal services organizations, and one or more community organizations operating in the City that provide advocacy and peer-to-peer support for distressed homeowners.
- The orientation shall familiarize Mortgagors with the full range of options that are available as Commercially Reasonable Alternatives to foreclosure, with the foreclosure process, and with obligations of Mortgagee or its Mortgage Servicers under the Mediation Program.
- D. The Mortgagor and Mortgagee or its Mortgage Servicer shall cooperate in all respects with the Mediation Program Manager. The Mortgagor shall complete any and all loan resolution proposals and applications as appropriate and provide evidence of all current income. The Mortgagee or its Mortgage Servicer's representative shall bring and make available the Mortgage Documents, as well as a detailed accounting of the outstanding balance, costs and fees.
- E. If, after two attempts by the Mediation Program Manager to contact the Mortgagor by mail, the Mortgagor fails to respond to the Mediation Program Manager's request to appear for the Mediation Conference, the requirements of this Ordinance will be deemed to be satisfied upon verification by the City-approved Mediation Program Manager that the required notice was sent. If these conditions are met, a Certificate of Mediation Completion shall be issued promptly, signed by authorized representatives of both the Mediation Program Manager and the City, and distributed to the Mortgagee or Mortgage Servicer by the City directly.
- F. If it is determined, after a Good Faith Effort, that the Parties cannot come to a mutually agreeable, Commercially Reasonable Alternative to foreclosure, such Good Faith Effort on behalf of the Mortgagee or its Mortgage Servicer shall be deemed to satisfy the requirements of this Ordinance. A Certificate of Mediation Completion pursuant to this article shall be issued promptly, signed by authorized representatives of both the Mediation Program Manager and the

City, and distributed to the Mortgagee or Mortgage Servicer by the City directly, authorizing the Mortgagee or its Mortgage Servicer to proceed with a Foreclosure in accordance with the terms of the Mortgage and the relevant statutes.

**SECTION 9:00**      **MEDIATION PROGRAM FEE**

The City Solicitor is hereby authorized to approve and from time to time revise, with the agreement of the Mediation Program Manager, reasonable and appropriate administrative fees and mediation fees to be charged to the Mortgagee or its Mortgage Servicer for the services attendant to administering the Mediation Program established under this Ordinance. Any fees assessed pursuant to this Ordinance shall not be charged to the Mortgagor. The administrative fees and mediation fees will be paid directly to the Mediation Program Manager. It is intended there will be no cost of this Mediation Program to be borne by the City.

**SECTION 10:00**      **RECORDING OF CERTIFICATE FOR FORECLOSURE BY SALE**

After a foreclosure by sale of a Residential Property in the city, and either prior to or simultaneous with the recording requirements of M.G.L. c. 244, § 15, a seller shall file the Certificate of Mediation Completion with the Southern Essex Registry of Deeds.

The City's Solicitor shall periodically request from the Southern Essex Register of Deeds information regarding attempts to record pursuant to M.G.L. c. 244, § 15 without complying with the recording requirements of this Ordinance.

**SECTION 11:00**      **RECORDING OF CERTIFICATE FOR FORECLOSURE BY ENTRY**

In the case of a No foreclosure by entry of a Residential Property in the City either prior to or simultaneous with the recording, the requirements of M.G.L. c. 244, § 2, a copy of the Certificate of Mediation shall be filed with the Southern Essex County Registry of Deeds.

The City's Solicitor shall periodically request from the Southern Essex Register of Deeds information regarding attempts to record pursuant to M.G.L. c. 244, § 2 without complying with the recording requirements of this Ordinance.

**SECTION 12:00**      **MEDIATION PROGRAM VIOLATIONS AND PENALTIES**

- A. A Mortgagee or its Mortgage Servicer's failure to comply with any and all sections 3:00 through 11:00 of this Ordinance shall result in a fine of three hundred (\$300) dollars payable to the City, for each instance of a violation, to be charged to the Mortgagee or its Mortgage Servicer in accordance with M.G.L. c. 40, § 21. The City shall be solely responsible for assessing and collecting all fines pursuant to this Ordinance. The Mediation Program Manager shall provide timely information to the City in order to determine whether a fine should be assessed.
- B. Every calendar day of noncompliance with sections 3.00 through 11.00 of this Ordinance shall constitute a separate violation subject to the penalties described under this section, up until the end of the right-to-cure period given under a lawful notice pursuant to M.G.L. c. 244, § 35A (g) and (h).
- C. Said fine or fines under this section shall be recovered by indictment or complaint pursuant to M.G.L. c. 40, § 21.

D. No fines pursuant to this Ordinance shall be charged to the Mortgagor either directly or indirectly.

**SECTION 13:00**      **SECURING AND MAINTAINING VACANT, FORECLOSING AND FORECLOSED PROPERTIES**

A. Maintenance and registration of Vacant, Foreclosing and Foreclosed Properties. All Responsible Parties shall:

- (1) Maintain the Property in accordance with the Massachusetts State Sanitary Code, the Massachusetts State Building Code and all specialized codes incorporated therein, and any City ordinances concerning the maintenance of Property and the Lynn Zoning Ordinances; and
- (2) Provide the Fire Chief and ISD Director with the name, local (within 20 miles of the Property) address, and telephone number of a Responsible Party who can be contacted in case of emergency. The Responsible Party shall cause the name and contact number to be marked on the front of the Property as may be required by the Fire Chief or ISD Director; and
- (3) Maintain liability insurance on the Property and furnish the ISD Director with a copy of said certificate of insurance; and,
- (4) Provide a cash bond acceptable to the ISD Director, in the sum of not less than ten thousand (\$10,000) dollars, to secure the continued maintenance of the Property until it is no longer Vacant, Foreclosing or Foreclosed as defined by this Ordinance, and remunerate the City for any expenses incurred in inspecting, securing, marking or making safe such Property and, if applicable, the Property in which it is located. A portion of said bond shall be retained by the City as a fee to administer this Section. Pursuant to this Section, each Responsible Party must provide a bond for each Vacant, Foreclosing or Foreclosed Property it controls in the City.
- (5) The cash bond requirement shall be waived if the Responsible Party is headquartered in the Commonwealth, is not a subsidiary of an entity headquartered outside the Commonwealth, and has recorded at the Southern Essex Registry of Deeds five (5) or fewer Foreclosure Deeds for Residential Properties in the City in the prior calendar year.
- (6) Notify the ISD Director and Fire Chief in writing when the Property is sold or transferred. Upon satisfactory compliance with the provisions of Section 13, the ISD Director shall issue a certificate of compliance. Said certificate shall be valid for the length of time prescribed by the ISD Director and noted thereon; provided however, the certificate shall be subject to continued compliance with the provisions of this section.

B. Maintenance and registration of Properties where ISD has deemed a Property to be abandoned by the Mortgagor but is still occupied. If ISD determines that a Property has been abandoned by the Mortgagor but Occupants remain, and conditions of disrepair threaten the health and safety of the occupants: ISD shall notify the Responsible Party of the conditions of

disrepair in writing. The Responsible Party will then have fifteen (15) days to comply with the requirements set forth in Section 13:00(A).

- C. Maintenance of Vacant Properties. In addition to the requirements of Section 13:00(A), the Responsible Party, within fifteen (15) days of the property becoming vacant, shall:
- (1) As may be required by the Fire Chief, file one set of space utilization floor plans for any Buildings on said Vacant Property with the Fire Chief and one set of said plans with the ISD Director. The Responsible Party shall certify space utilization plans as accurate twice annually, in January and July; and
  - (2) Remove from the Vacant Property, to the satisfaction of the Fire Chief, hazardous material, as that term is defined in M.G.L. c. 21K, as that statute may be amended from time to time; and,
  - (3) At the discretion of the ISD Director, secure all windows and door openings and ensure that the Property is secured from all unauthorized entry continuously in accordance with the United States Fire Administration, National Arson Initiative Board up Procedures or provide twenty-four (24) hour on-site security personnel on the Property; and,
  - (4) Post "No Trespassing" signs on the Property; and
  - (5) Maintain the Property in accordance with this section, free of overgrowth, trash and debris, and pools of stagnant water, and ensure that structures are maintained in a structurally sound condition; and
- D. Signs and markings. When required pursuant to this section, signs or markings shall be applied on the front of the Property, and elsewhere as the Fire Chief and ISD Director may require, at or above the second floor level and shall not be placed over doors, windows, or other openings. All signs/markings shall be visible from the street and, when requested by the Fire Chief or ISD Director, shall be placed on the sides and rear of the Property. Signs/Markings shall be a minimum of 24 inches by 24 inches, with lines of two-inch width, and shall have a reflective background, or be painted with reflective paint, in contrasting colors. Signs/Markings shall be applied directly on the surface of the Property and shall state the date of posting and the most recent date of inspection by the Fire Chief and ISD Director.
- E. Properties without Certificate of Compliance. The ISD Director, upon being informed of the existence of a Vacant, Foreclosing or Foreclosed Property without a Certificate of Compliance, shall cause notice to issue to the Responsible Party of the status of said Property and shall order said Responsible Party to immediately obtain a Certificate of Compliance. If any Responsible Party fails to comply with said order, the ISD Director or agents thereof may enter the Property to inspect, and further may seek court orders to enter upon the premises to secure, clean and remove any pools of stagnant water.
- F. Expenses. The Responsible Party of a Vacant, Foreclosing or Foreclosed Property who fails to obtain a Certificate of Compliance as required herein, shall be liable to the City for expenses incurred by the City in securing such Property, for removing rubbish and overgrowth, and/or for abating stagnant pools of water. The ISD Director shall provide the Responsible Party with a written statement of all costs associated with inspecting, securing

and marking the Property, and removing rubbish or overgrowth, or abating stagnant pools of water. If the Responsible Party fails to pay or reimburse the City within seven days of notice of expenses, the City shall draw down upon the bond paid by the Responsible Party as required in section A (1), above. If there is no bond available, the ISD Director shall record the notice of claim in the Southern Essex Registry of Deeds (or the Land Court Department) forthwith, and shall have the right to file a civil action in the Northeast Division Housing Court to establish a lien on the Property for the balance due.

- G. Duty to maintain Property. No Responsible Party for a Vacant, Foreclosing, Foreclosed Property shall allow said Property to become or remain unsecured, or to contain an accumulation of rubbish, or to contain overgrowth, or to have a stagnant pool of water. If it appears that any vacant or foreclosing Property is unsecured, contains rubbish, overgrowth, or a stagnant pool of water, the ISD Director shall send written notification to the Responsible Party, requiring that the Responsible Party promptly secure the Property, remove the rubbish or overgrowth, or abate the stagnant pool of water.
- H. If the Responsible Party fails to comply with any order issued pursuant to Section 13, the ISD Director may immediately seek to obtain the proceeds secured by the bond filed pursuant to Section 13:00 A (4) herein and shall enter upon the premises and cause the Property to be inspected, secured and marked, and further may seek court orders to enter upon the premises to secure, clean, and remove any rubbish or overgrowth, or abate any pools of stagnant water or otherwise enforce the sanitary code.
- I. Nuisance referral. All unsecured Vacant, Foreclosing or Foreclosed Properties shall be immediately referred to the ISD Director for a determination relative to whether the Property is a nuisance or dangerous pursuant to M.G.L. c. 139 and procedures promulgated thereunder.
- J. Notice. Notices required pursuant to this section shall be served in one of the following manners:
- (1) Personally on any Responsible Party, or on the contact person specified by such Responsible Party pursuant to Section 13:00A(2); or
  - (2) Left at the last and usual place of abode of any Responsible Party who is an individual; or
  - (3) Sent by certified or registered mail, return receipt requested, to the principal place of business within or without the Commonwealth of any Responsible Party who is an entity, if such principal place of business is known; or,
  - (4) The contact person identified by such Responsible Party pursuant to Section 13:00A (2); or
  - (5) Sent by certified or registered mail, return receipt requested, to any contact person specified by the Responsible Party pursuant to Section 13:00 A (2), at the address specified by the Responsible Party pursuant to Section 13:00 A (2).
- K. Enforcement: violations and penalties. Failure to comply with any provision of Section 13:00 shall be punished by a fine of \$300 pursuant to M.G.L. c. 40 § 21D, with each day of violation constituting a separate offense.

Section 13:00 may also be enforced by civil, criminal process or noncriminal process, including injunctive relief. The ISD Director and Fire Chief shall be enforcing persons for purposes of this section.

**SECTION 14:00**      **PREVENTING UNNECESSARY VACANCIES OF CERTAIN FORECLOSED RESIDENTIAL PROPERTIES IN THE CITY OF LYNN**

- A. Post-Foreclosure Occupant Eviction. Notwithstanding any general or special law to the contrary, a Foreclosure Sale Purchaser shall not evict an Occupant except for just cause, unless a binding purchase and sale agreement has been executed for a bona fide third party to purchase the Residential Property from said Foreclosure Sale Purchaser.
- B. Penalties. Any Foreclosure Sale Purchaser who evicts or attempts to evict Occupants in violation of any provisions of this Ordinance shall be punished by a fine of not less than \$300 dollars. Each eviction done in violation of this Ordinance constitutes a separate offense.
- C. Jurisdiction. The Lynn District Court, Essex Superior Court, and Northeast Housing Courts shall have jurisdiction over an action arising from this Ordinance and shall have jurisdiction in equity to restrain any such violation. No Occupant shall be evicted in violation of any provision of this Ordinance. It shall be a defense to eviction that the Foreclosure Sale Purchaser attempted to evict an Occupant in violation of any provision of this Ordinance.
- D. Conflict of Laws. Any provision of federal law relating to rental units owned, operated or subsidized by the federal government which are inconsistent with or contrary to the provisions of this Ordinance shall supersede the provisions of this Ordinance. Where not inconsistent, the provisions of federal law shall apply in conjunction with the provisions of this Ordinance.
- E. Exemption. This Section shall not apply if the Foreclosure Sale Purchaser is a lender of Mortgage Loans headquartered in the Commonwealth, is not a subsidiary of an entity headquartered outside the Commonwealth, and has recorded at the Southern Essex Registry of Deeds five (5) or fewer Foreclosure Deeds for Residential Properties in the City in the prior calendar year.

**SECTION 15:00**      **INDEMNIFICATION**

The City of Lynn shall indemnify, hold harmless and defend (including payment of reasonable attorney fees and costs) the Mediation Program Manager and their mediators, officers, administrators, agents, servants and employees, from any and all claims against the Mediation Program Manager and their mediators, officers, administrators, agents, servants and employees, arising out of their service as Mediation Program Manager pursuant to the terms of this Ordinance, including, but not limited to, any challenges that may be made as to the legality of or implementation of this Ordinance. Excluded however are any claims against the Mediation Program Manager and their mediators, officers, administrators, agent, servants and employees for their sole negligence, willful or wrongful act or omission, or an act or omission constituting gross negligence.

**SECTION 16:00**      **INCONSISTENT ORDINANCES**

All Ordinances or parts of ordinances inconsistent herewith are hereby repealed.

**SECTION 17:00**      **TIME OF TAKING EFFECT**

This ordinance shall take effect thirty-one (31) days after its final adoption as advertised.

**SECTION 18:00**      **SEVERABILITY**

In the event any part of this ordinance shall be held invalid, such invalidity shall not invalidate the whole ordinance but the remaining provisions of this ordinance shall not be affected thereby.

**Motion made by Councilor Capano and seconded by Councilor Colucci to adopt permanently.**

**Motion carried by the following yea and nay vote:**

**11 YES 0 NO**

**CHAKOUTIS / CRIGHTON / LOZZI** Ordered that the City of Lynn will accept the ownership and responsibility for all required maintenance for the Traffic Signals to be installed at the intersection of Boston Street and Ford Street by Tropic Star Development which was a condition of the issuance of a Special Permit to permit for a pharmacy at 47, 55, and 65 Boston Street. Further ordered that the City of Lynn will assume all required maintenance of improvements to existing Traffic Signals located at: Boston Street at Washington Street, Boston Street at Franklin Street, Western Avenue at Washington Street and Western Avenue at Franklin Street. Said acceptance is specifically subject to the approval by the Inspectional Services Director that said installation and repairs comply with all applicable rules and regulations relating to traffic signals and that the installation and repairs have been undertaken in a good workmanlike manner.

**Motion made by Councilor Chakoutis and seconded by Councilor Lozzi to adopt permanently.**

**Motion carried by the following yea and nay vote:**

**11 YES 0 NO**

**COMMITTEE REPORTS:**

**Report of the March 11, 2014 Committee on Ways and Means recommending the following:**

Ordered that the City Comptroller take the following actions:

Transfer the sum of Fifty Thousand Dollars and Zero Cents (\$50,000.00) from the Reserve Account to the Assessors Expense/Outside Professional account.

**Councillor Colucci attached the following Emergency Preamble:**

**WHEREAS, A Special Emergency exists involving the peace, health and safety of the people or their property in the City of Lynn.**



**EXHIBIT # 2**

**AN ORDINANCE TO REPAIR THE IMPACT OF THE FORECLOSURE CRISIS  
ON THE CITY OF WORCESTER**

Be it ordained by the City Council of the City of Worcester as follows

{Chapter of Municipal laws to amend} is hereby amended by deleting the section and inserting the following new section:

**SECTION I: Facilitating Mediation of Mortgage Foreclosures of Owner Occupied Residential Real Property in City of Worcester**

Section 1. Unsecured and unmaintained properties and especially vacant properties present a danger to the safety and welfare of public safety officers, the public, occupants, abutters and neighborhoods, and as such, constitute a public nuisance. This section is enacted to promote the health, safety and welfare of the public, to protect and preserve the quiet enjoyment and health of occupants, abutters and neighborhoods, and to minimize hazards to public safety personnel inspecting or entering such properties.

Section 2. For the purposes of this Act, the following words shall, unless the context clearly requires otherwise, have the following meanings:

*"Certificate of Mediation Completion"* shall mean a certificate issued by the Mediation Program Manager upon Good Faith Effort in mediation if a mutually-agreeable commercially reasonable alternative to foreclosure cannot be reached.

*Commercially Reasonable Alternative* – an alternative based on a comparison of the net present value of receiving payments pursuant to a modified mortgage loan or the likely financial recovery from other foreclosure alternatives to the anticipated net recovery following foreclosure incorporating an assessment of the borrower's current circumstances, including without limitation the borrower's current income, debts and obligations.

*"Days"* shall mean consecutive calendar days.

*"Entity"* shall mean a business organization, or any other kind of organization, including without limitation, a corporation, partnership, trust, limited liability corporation, limited liability partnership, joint venture, sole proprietorship, or any other category of organization, and any employee, agent, servant or other representative of such entity.

*"Foreclosure"* shall mean termination of a Mortgagor's equity of redemption in property, by action, bill in equity, entry, and/or power of sale.

*"Foreclosure Sale"* shall mean the foreclosure of a Mortgage of a Residential Property pursuant to a power of sale in a mortgage and as described in M.G.L. c. 244.

*"Good Faith Effort"* shall mean each party to the Mediation is present, has decision-making authority to negotiate and agree upon a Commercially Reasonable Alternative to Foreclosure, provides required documentation, and actively participates in the Mediation process.

*"Mediation Conference"* shall mean the formal discussion and negotiation undertaken by the parties in a Good Faith Effort to negotiate and agree upon a Commercially Reasonable Alternative to foreclosure, and held in the City of Worcester or at a location mutually convenient to the parties. Both the Mortgagor and Mortgagee or its Mortgage Servicer must be physically present for the Mediation Conference unless telephone participation is mutually agreed upon and the Mediation Program Manager certifies that the Mortgagor has been made aware of his or her right to an in-person Mediation Conference. The Mortgagor shall be allowed to have a lawyer, an interpreter, and up to three additional persons of his or her choosing present at the Mediation Conference. The Mortgagor shall be notified of this right at the time the Mediation Conference is scheduled by the Mediation Program Manager.

*"Mediation Program"* shall mean the foreclosure mediation program established in the City of Worcester pursuant to this article and described in Section 4:00.

*"Mediation Program Manager"* shall mean a neutral not-for-profit organization experienced in the mediation of the foreclosure process, familiar with all programs available to help homeowners avoid foreclosure, knowledgeable of the mortgage foreclosure laws of the Commonwealth of Massachusetts, and having no ownership interest or management interest in residential housing in the City of Worcester other than their primary residence. The Mediation Program Manager shall sign a user agreement with the City of Worcester authorizing the receipt and use of personal and financial information for the purposes of the Mediation Program only. The Mediation Program Manager shall ensure the security and confidentiality of any and all information received or exchanged under the program consistent with applicable federal, state, and City of Worcester laws. Access to such program information shall be limited to those officers and employees of the organization who require the information to properly perform services under the Mediation Program, and that the organization and its officers and employees may not access, modify, use or disseminate such information for inconsistent or unauthorized purposes.

*Mediator* – an individual (a) whose training complies with the qualifications standards for neutrals specified in the guidelines for training mediators adopted by the Supreme Judicial Court of Massachusetts pursuant to Rule 8 of the Uniform Rules for Dispute Resolution; and (b) who has completed training on foreclosure mediation; and (c) who has a working knowledge of all federal, state, and City of Worcester programs available to help homeowners retain their homes.

*"Mortgagee"* shall mean an entity that is the present holder of the Mortgage Loan.

*"Mortgage Documents"* shall include the promissory note, including any allonges, additional pages, and other evidence of all endorsements; mortgage; loan agreement; assignments (recorded and unrecorded); powers of attorney granted by the Mortgagee or Homeowner to entities acting on its behalf; and any other documents evidencing or securing a Mortgage Loan.

*"Mortgage Loan"* shall mean a loan, in the form of a promissory note, to one or more natural persons, or to a nominee trust or residential trust on behalf of one or more natural persons, made for non-commercial purposes and secured wholly or partially by a mortgage on residential property in the City of Worcester which is the principal residence of one or more borrowers of the loan or their family members, or in the case of a nominee trust, one or more of the beneficiaries of the trust.

*"Mortgage Servicer"* shall mean an entity which administers or services or at any point administered or serviced the Mortgage Loan; provided, however, that such administration or servicing shall include, but not be limited to, calculating principal and interest due on the mortgage loan, assessing fees and costs onto a mortgagor's loan account, collecting regular payments from the mortgagor, acting as escrow agent for the owner of the Mortgage Loan or foreclosing on a Mortgage Loan in the event of a default.

*"Mortgagor"* shall mean a natural person or residential trust who received a Mortgage Loan secured by a Residential Property located in the City of Worcester, and for whom such Residential Property is his/her principal residence.

*"Net Recovery Following Foreclosure"* shall mean a monetary value that includes, but is not limited to, projected costs from:

- A. Delinquency, interest, fees incurred by the date of foreclosure sale based on average length of Massachusetts foreclosure process;
- B. Costs of all legally required actions to foreclose and percentage loss from foreclosure sale;
- C. Meeting all sanitary code requirements;
- D. Property maintenance;
- E. Eviction; and
- F. Other ownership costs until projected sale or re-sale to third party purchaser.

*"Parties"* shall mean the Mortgagor and the Mortgagee or its Mortgage Servicer.

*"Residential Property"* shall mean real property located in the City of Worcester that is either a single-family dwelling or a structure containing not more than four residential units, and shall also include a residential condominium unit or a residential co-op unit.

Section 3. Notwithstanding any general or special law to the contrary, all Mortgagees who have sent the Notice of the Right to Cure pursuant to M.G.L. c. 244, § 35A pertaining to Residential Property in the City of Worcester shall be required to engage in a Mediation Program as set out in this Ordinance.

Section 4. The City of Worcester is hereby empowered to establish such Mediation Program, in accordance with this Ordinance, and promulgate additional regulations as necessary and appropriate to implementing such a Mediation Program utilizing a Mediation Program Manager approved by the City of Worcester to mediate between the Mortgagee and Mortgagor. Such Mediation shall be facilitated by a Mediation Program Manager, approved by the City of Worcester according to procedures established by this Ordinance. The City of Worcester is hereby authorized and empowered to enter into an agreement with a Mediation Program Manager.

Section 5.

- A. The Mediation Program shall provide mediation prior to all Foreclosures of Residential Property in which the Mortgagor(s) or Mortgagor(s)'s family resides. The Program shall address all issues reasonably related to a Foreclosure on Residential Property, including but not limited to all Commercially Reasonable Alternatives to Foreclosure. The Parties are required to make a Good Faith Effort in Mediation as defined in this Ordinance. Mediations conducted pursuant to the Program shall use the calculations, assumptions and forms that are established by or are made available through:
- (1) The Federal Deposit Insurance Corporation and published in the Federal Deposit Insurance Corporations Loan Modification Program Guide available on the Federal Deposit Insurance Corporation's publicly accessible website;
  - (2) The Home Affordable Modification Program;
  - (3) Any modification program that a Mortgagee may use which is based on accepted principles and the safety and soundness of the institution and recognized by the National Credit Union Administration, the Division of Banks;
  - (4) The Federal Housing Authority; or
  - (5) Similar federal loan modification programs.

- B. The City of Worcester is empowered to provide for a means of evaluating and selecting qualified Mediation Program Managers. The City of Worcester is also empowered to provide for a means of assessing and evaluating annually the City of Worcester's Mediation Program, including reports and data related to:
- (1) The number of Mortgagors who are notified of Mediation;
  - (2) The number of Mortgagors who attend mediation and who receive counseling or assistance;
  - (3) The number of Certificates of Mediation completion issued under the Program; and
  - (4) The results of the Mediation Program, including the number of loans restructured, number of principal write-downs, total value of principal write-downs, number of interest rate reductions and, to the extent such information is available, the number of mortgagors who default on mortgages within a year after restructuring, and the number of short sales and any other alternatives to foreclosure.
- C. The City of Worcester may terminate a Mediation Program Manager's participation in the Mediation Program for good cause. In such case, the Mediation Program Manager shall deliver to the City of Worcester all records and information in its possession for appropriate preservation and storage.

Section 6. Except for financial information otherwise permitted by law to be disclosed, any financial statements or information provided to the City of Worcester or its approved independent counseling agencies or provided to the Mortgagee or its Mortgage Servicer or Mortgagor during the course of Mediation in accordance with this article is confidential and shall not be available for public inspection. Any financial statement or information required to reasonably facilitate the Mediation shall be made available as necessary to the mediator and to the attorneys or representatives, if any, of the parties to the Mediation. Any financial statement or information designated as confidential under this section shall be kept separate and apart from other papers and matters not the subject of the mediation. No information provided by the Mortgagor in the course of the Mediation may be used by the Mortgagee or its Mortgage Servicer or its Agents in a subsequent legal proceeding.

Section 7. For the purpose of the Mediation Program established by the City of Worcester, a Mortgagee shall send a copy of all notices given to a Mortgagor pursuant to M.G.L. c. 244 § 35A(g), (h) which relate to Residential Property in the City of Worcester, to the City of Worcester, within ten (10) days of giving such notices to a Mortgagor. The City of Worcester shall receive a copy of all notices filed pursuant to G.L. c. 244 § 35A(g),(h), within ten (10) days of receipt by the Commissioner of the Division of Banks pursuant to G.L. c. 244, §35A(k) that relate to residential properties in

the City of Worcester. The receipt by the City of Worcester of said notice, or of a request for mediation from the Mortgagor made within fifteen (15) days of receipt of a Mortgagor's notice pursuant to M.G.L. c. 244 § 35A(g), (h), shall constitute the beginning of the Mediation process as set forth in this Ordinance. At that time the City of Worcester will notify a Mortgagee and a Mortgagor of their rights and responsibilities under this Ordinance regarding Mediation. It is the intent and purpose of this Ordinance that Mediation commence within 45 days of the Mortgagor receiving notice of his or her right to cure as provided in M.G.L. c. 244, § 35A(g) and (h). The City of Worcester will refer the matter for Mediation to an approved Mediation Program Manager, which shall have the responsibility of assigning a mediator and scheduling the parties to immediately commence mediation pursuant to this Ordinance. The mediation shall proceed with the parties' Good Faith Effort to negotiate and agree upon a Commercially Reasonable Alternative to Foreclosure. The mediation shall continue without delay until completion, but shall in no way constitute an extension of the foreclosure process, nor an extension of the right to cure period. Notwithstanding the limitation in the previous sentence, the mediation may be extended by mutual agreement.

Section 8. The Mediation Program established by this Ordinance shall include, and be not limited to, the following steps:

- A. The parties shall participate in a mandatory Mediation Conference at a location mutually convenient to the parties. All Parties and/or their respective representatives present at said Mediation Conference must have authority to enter into any agreements renegotiating the mortgage that is the subject of the foreclosure, or to otherwise resolve the pending foreclosure.
- B. Said Mediation Conference shall be scheduled at a time and place to be determined by the Mediation Program Manager, but not later than 45 days following the Mortgagor's receipt of his or her notice of right to cure under M.G.L. c. 244, §35A (g) and (h). The Parties will be sent notice under the Mediation Program by certified and first class mail at the Parties' last known address(es), if any, or if none, then to the address to which the tax collector last sent the tax bill for the Property. The notice shall contain the following declaration on the first page in English, Spanish, Cambodian, Russian, Greek, Vietnamese, French, Haitian Creole, and in any other language which the Mortgagee or its Mortgage Servicer knows is the Mortgagor's primary language, and any other language deemed appropriate by the Mediation Program Manager: "The City of Worcester has a mediation program that may help you negotiate more affordable mortgage payments and avoid foreclosure however there is no express or implied guarantee foreclosure will be avoided. Have this notice translated at once and contact us for help." If a Mortgagor does not respond to the initial notice, the Mediation Program Manager shall, to the extent possible, utilize additional outreach methods to supplement mailed notices.

- C. Prior to the scheduled Mediation Conference, the Mortgagor will be assigned a City of Worcester-approved loan counselor. If the Mortgagor is already working with a City of Worcester-approved loan counselor, no assignment is necessary. However, such loan counselor must agree to work with the Mortgagor during the mediation process in accordance with the provisions of this Ordinance.
- D. The Mortgagor and Mortgagee or its Mortgage Servicer shall cooperate in all respects with the Mediation Program Manager. The Mortgagor shall complete any and all loan resolution proposals and applications as appropriate and provide evidence of all current income. The Mortgagee or its Mortgage Servicer's representative shall bring and make available the Mortgage Documents, as well as a detailed accounting of the outstanding balance, costs and fees.
- E. If, after two attempts by the Mediation Program Manager to contact the Mortgagor by mail, the Mortgagor fails to respond to the Mediation Program Manager's request to appear for the Mediation Conference, the requirements of this Ordinance will be deemed to be satisfied upon verification by the City of Worcester-approved Mediation Program Manager that the required notice was sent. If these conditions are met, a Certificate of Mediation Completion shall be issued immediately by the Mediation Program Manager certifying that the Mortgagee or its Mortgage Servicer has satisfied the mediation requirements of this Ordinance.
- F. If it is determined, after a Good Faith Effort, that the Parties cannot come to a mutually agreeable, Commercially Reasonable Alternative to foreclosure, such Good Faith Effort on behalf of the Mortgagee or its Mortgage Servicer and/or on the behalf of the Mortgagor shall be deemed to satisfy the requirements of this Ordinance. A Certificate of Mediation Completion pursuant to this article shall be issued immediately and without delay by the Mediation Program Manager to the Mortgagee or its Mortgage Servicer and/or to the Mortgagor. The Certificate for the Mortgagee or its Mortgage Servicer, will allow the Mortgagee proceed with a Foreclosure in accordance with the terms of the Mortgage and the relevant statutes.

Section 9. The City of Worcester is hereby authorized to enact and from time to time revise by ordinance a reasonable and appropriate mediation registration fee to be charged to the Mortgagee or its Mortgage Servicer for the services attendant to administering the Mediation Program established under this Ordinance. Any fees assessed pursuant to this Ordinance shall not be charged to the Mortgagor. The mediation fees will be paid directly to the City of Worcester who will then use these fees to pay for the Mediation Program directly. It is intended there will be no cost of this Mediation Program to be borne by the City of Worcester.



Section 10. In the case of a foreclosure by sale of a Residential Property in the City of Worcester, either prior to or simultaneous with the recording requirements of M.G.L. c. 244, § 15, a seller shall file the Certificate of Mediation Completion with the Worcester Registry of Deeds.

The City of Worcester will periodically request from the Worcester Registry of Deeds information regarding attempts to record pursuant to M.G.L. c. 244, § 15 without complying with the recording requirements of this Ordinance.

Section 11. In the case of foreclosure by entry of a Residential Property in the City of Worcester either prior to or simultaneous with the recording requirements of M.G.L. c. 244, § 2, a copy of the Certificate of Mediation Completion shall be filed with the Worcester Registry of Deeds.

The City of Worcester will periodically request from the Worcester Registry of Deeds information regarding attempts to record pursuant to M.G.L. c. 244, § 2 without complying with the recording requirements of this Ordinance.

Section 12.

- A. A Mortgagee or its Mortgage Servicer's failure to comply with any and all sections 3:00 through 11:00 of this Ordinance shall result in a fine of three hundred (\$300) dollars payable to the City of Worcester, for each instance of a violation, to be charged to the Mortgagee or its Mortgage Servicer in accordance with M.G.L. c. 40, § 21.
- B. Every calendar day of noncompliance with sections 3.00 through 11.00 of this Ordinance shall constitute a separate violation subject to the penalties described under this section, up until the end of the right-to-cure period given under a lawful notice pursuant to M.G.L. c. 244, § 35A (g) and (h).
- C. Said fine or fines under this section shall be recovered by indictment or complaint pursuant to M.G.L. c. 40, § 21.
- D. No fines pursuant to this Ordinance shall be charged to the Mortgagor either directly or indirectly.

Section 13. This ordinance shall take effect thirty-one (31) days after its final adoption as advertised: Excepting that mortgagors who (1) have received their notices pursuant to M.G.L. c. 244 § 35A(g), (h) related to Residential Property in the City no more than 100 days before enactment of this ordinance and (2) notify the City more than 45 days before the end of their 150 day Right to Cure Period as defined by MGL Chapter 244, section 35A shall be eligible for mediation.

Section 14. In the event any part of this ordinance shall be held invalid, such invalidity shall not invalidate the whole ordinance but the remaining provisions of this ordinance shall not be affected thereby.

**EXHIBIT # 3**

11/22

X-Spam-Checker-Version: SpamAssassin 3.3.1 (2010-03-16) on  
plesk8.hosting.crocker.com  
X-Spam-Level:  
X-Spam-Status: No, score=-1.2 required=7.0 tests=BAYES\_00,HTML\_MESSAGE,  
MIME\_HTML\_ONLY autolearn=no version=3.3.1  
X-SBRS: None  
X-REMOTE-IP: 156.120.48.149  
X-IronPort-AV: E=Sophos;i="4.93,753,1378872000";  
d="scan'208,217";a="527436779"  
Date: Fri, 22 Nov 2013 15:31:19 -0500  
From: CA01NoticeDocketActivity@ca1.uscourts.gov  
To: tani@sandslaw.com  
Subject: 12-1917 Easthampton Savings Bank, et al v. City of Springfield  
"Court Order"

**\*\*\*NOTE TO PUBLIC ACCESS USERS\*\*\* Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing.**

**United States Court of Appeals for the First Circuit**

**Notice of Docket Activity**

The following transaction was entered on 11/22/2013 at 3:30:56 PM EST and filed on 11/22/2013

**Case Name:** Easthampton Savings Bank, et al v. City of Springfield

**Case Number:** 12-1917

**Document(s):** Document(s)

**Docket Text:**

ORDER entered by Sandra L. Lynch, Chief Appellate Judge; Norman H. Stahl, Appellate Judge and Jeffrey R. Howard, Appellate Judge. Questions certified to Massachusetts Supreme Judicial Court: 1. Are Springfield's municipal ordinances Chapter 285, Article II, "Vacant or Foreclosing Residential Property" (the Foreclosure Ordinance) or Chapter 182, Article I, "Mediation of Foreclosures of Owner-Occupied Residential Properties" (the Mediation Ordinance) preempted, in part or in whole, by those state laws and regulations identified by the plaintiffs? 2. Does the Foreclosure Ordinance impose an unlawful tax in violation of the Constitution of the Commonwealth of Massachusetts? [12-1917] (SBT)

**Notice will be electronically mailed to:**

Lee D. Goldstein  
Thomas M. Hefferon  
Thomas David Moore  
Edward M. Pikula  
Tani E. Sapirstein  
Brenda R. Sharton  
William F. Sheehan  
Anthony Ivan Wilson  
Lisa Caryl deSousa

The following document(s) are associated with this transaction:

**Document Description:**

**Original Filename:** /opt/ACECF/live/forms/12-1917\_Cert\_Order\_MA\_SJC\_mtd.pdf

**Electronic Document Stamp:**

[STAMP acecfStamp\_ID=1104935054 [Date=11/22/2013] [FileNumber=5782390-0]  
[8af7594a1e1b0acd6d8b794613acd931b52ac54da2a3b5fc0ea9252a07bfadb20788908826004a207ce59a3d3189]

**Recipients:**

- Lee D. Goldstein
- Thomas M. Hefferon
- Thomas David Moore
- Edward M. Pikula
- Tani E. Sapirstein
- Brenda R. Sharton
- William F. Sheehan
- Anthony Ivan Wilson
- Lisa Caryl deSousa

**EXHIBIT # 4**

# United States Court of Appeals For the First Circuit

---

No. 12-1917

EASTHAMPTON SAVINGS BANK, ET AL.,

Plaintiffs, Appellants,

v.

CITY OF SPRINGFIELD,

Defendant, Appellee.

---

Before

Lynch, Chief Judge,  
Stahl and Howard, Circuit Judges.

---

ORDER OF COURT

Entered: December 17, 2013

The plaintiff banks have filed a motion to stay the enforcement of the challenged Ordinances pending the final outcome of this appeal. The City of Springfield has filed an opposition. After careful review of the parties' submissions and the record, we grant plaintiffs' motion.

The City of Springfield, and anyone acting on its behalf, is enjoined from enforcing Springfield's municipal ordinances Chapter 285, Article II, "Vacant or Foreclosing Residential Property" (the Foreclosure Ordinance) and Chapter 182, Article I, "Mediation of Foreclosures of Owner-Occupied Residential Properties" (the Mediation Ordinance), until this court issues mandate.

In response to the City's contention that it will suffer harm if it is not permitted to enforce these Ordinances pending the resolution of this appeal, we note that the City has voluntarily stayed the enforcement of these Ordinances for over two years, and that it does not point to any new or emergent need to enforce them. Given the competing policy interests presented in this case, its potentially broad impact, and the pending resolution of certified questions by the Massachusetts Supreme Judicial Court, we will maintain the status quo until the final resolution of the appeal.

So ordered.

By the Court:

/s/ Margaret Carter, Clerk.

cc:

Goldstein, Lee D.  
Hefferon, Thomas M.  
Moore, Thomas David  
Pikula, Edward M.  
Sapirstein, Tani E.  
Sharton, Brenda R.  
Sheehan, William F.  
Wilson, Anthony Ivan  
deSousa, Lisa Caryl