

1 **BOARD BILL NO. 160CS INTRODUCED BY PRESIDENT LEWIS E. REED,**
2 **ALDERMAN SAMUEL MOORE, ALDERWOMAN KACIE STARR TRIPLETT,**
3 **ALDERMAN TERRY KENNEDY, ALDERMAN ANTONIO FRENCH,**
4 **ALDERMAN SCOTT OGILVIE, ALDERMAN FRANK WILLIAMSON,**
5 **ALDERMAN FREEMAN BOSLEY, SR., ALDERMAN CRAIG SCHMID**
6 An ordinance pertaining to mortgage foreclosure intervention; and containing a penalty,
7 severability and emergency clause.

8 **WHEREAS**, the national residential property foreclosure crisis has manifested
9 itself in the City of St. Louis by negatively impacting property values, reducing the City
10 of St. Louis' tax base, imposing increasing burdens upon the City of St. Louis' budget,
11 and impeding the orderly assessment of value and the collection of real property taxes;
12 and

13 **WHEREAS**, unsecured and unmaintained properties present a danger to the
14 health, safety and welfare of the public, including public safety officers, occupants,
15 abutters, and neighborhoods, and as such, constitute a public nuisance; and

16 **WHEREAS**, jurisdictions across the country are currently using foreclosure
17 mediation programs to successfully facilitate mutually beneficial alternatives to
18 foreclosure and the Board of Aldermen is of the view that mediation in advance of
19 foreclosures will be beneficial to homeowners, lenders and to all of City of St. Louis;

20 **BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:**

21 **SECTION ONE. Definitions.** Unless the context otherwise requires, as used in this
22 Ordinance:

23 1. "Homeowner" means the individual(s) owning and whose principal place of
24 residence is a Residential Property and who is/are the borrower(s) under the promissory
25 note secured by the Deed of Trust on such Residential Property that is subject to
26 foreclosure under Ch. 443 RSMo.

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1 2. “Residential Property” means real property that is located within the City of St. Louis
2 on which is situated either a single-family dwelling, or one or more condominium or co-
3 op units, or a structure containing not more than four residential units. 3. “Lender”
4 means a person or entity which has advanced funds for a loan to a Homeowner secured
5 by a deed of trust on a Residential Property. For the purpose of this Ordinance, “Lender”
6 shall include any servicer of mortgage loans, trustee named in the deed of trust or a duly
7 appointed successor trustee.

8 4. “Notice of Foreclosure” means a written notice sent to the Homeowner of
9 Lender’s intent to foreclose according to the provisions of Chapter 443 R.S. Mo.

10 5. “Notice of Right to Request Mediation” means a written notice sent to the
11 Homeowner informing the Homeowner of the right to participate in a Mediation
12 Conference pursuant to this Ordinance.

13 6. “Mediation Coordinator” means the person or entity designated by the Mayor and
14 the Comptroller of the City of St. Louis, acting on behalf of said City, to manage the
15 mortgage foreclosure intervention program established by this Ordinance, pursuant to a
16 contract with the City for such purposes.

17 7. “Mediation Conference” means the meeting between a Homeowner and Lender,
18 in accordance with the requirements of this Ordinance, for the purpose of effectuating a
19 mutually beneficial alternative to foreclosure.

20 8. “Presiding Mediator” means the person designated by the Mediation Coordinator
21 to oversee and facilitate the Mediation Conference.

22 9. “Certificate of Compliance” means a certificate in a form promulgated by the
23 Mediation Coordinator and approved by the City Counselor that is awarded to the Lender

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1 by the Mediation Coordinator, certifying that the Lender complied with this Ordinance
2 and is eligible to record the foreclosure deed without penalty.

3 **SECTION TWO. Contract for Mediation Coordinator.** – The Mayor and Comptroller
4 of the City of St. Louis, acting on behalf of said City, are authorized to contract with a
5 person or entity to serve as a Mediation Coordinator. The contract shall require the
6 Mediation Coordinator to provide all services established for the position by this
7 Ordinance; shall provide for the Mediation Coordinator and Presiding Mediators to be
8 compensated solely by the fees established by this Ordinance; and shall contain such
9 other terms and conditions as are approved by the City Counselor.

10 **SECTION THREE. Notification requirements.**

11 1. The Lender, or any other person authorized to conduct a sale of the Homeowner’s
12 Residential Property pursuant to Chapter 443 R.S.Mo., shall, if desirous of filing a
13 Certificate of Compliance pursuant to Section Six, contemporaneously provide to the
14 Homeowner and the Mediation Coordinator a Notice of Right to Request Mediation
15 which informs the Homeowner of the Homeowner’s right to participate in a Mediation
16 Conference by sending a request for same to the Mediation Coordinator within twenty
17 days of mailing of the Notice of Right to Request Mediation; except, however, that no
18 such notice shall be required if the Lender has received a Certificate of Compliance for
19 the same Residential Property following notice to the same Homeowner within the
20 preceding twelve months. Such notice shall be provided to Homeowner concurrently
21 with the Lender’s “Notice of Foreclosure” according to the provisions of Chapter 443
22 R.S.Mo., and shall include a form promulgated by the Mediation Coordinator and
23 approved by the City Counselor for the Homeowner to make a written request for

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1 mediation under this Ordinance. The Notice of Right to Request Mediation provided to
2 the Mediation Coordinator shall be accompanied by payment to the Mediation
3 Coordinator of a fee of one hundred dollars (\$100.00).

4 2. Homeowner shall have twenty (20) days from mailing by Lender of the Notice of
5 Right to Request Mediation to complete and return to Mediation Coordinator the form
6 requesting mediation.

7 3. Within fifteen (15) days of receipt of the Notice of Foreclosure and the Notice of Right
8 to Request Mediation, the Mediation Coordinator shall make and document at least three
9 (3) attempts to contact the Homeowner to inform the Homeowner of the right to
10 participate in a Mediation Conference and to explain the mediation process. The
11 explanation shall include advising the Homeowner of the Homeowner's right to request a
12 Mediation Conference in writing, within twenty (20) days from the mailing by Lender of
13 the Notice of Right to Request Mediation and Notice of Foreclosure.

14 4. If the Homeowner either fails to request a Mediation Conference within twenty (20)
15 days of the mailing of the Notice of Foreclosure and Notice of Right to Request
16 Mediation OR advises the Mediation Coordinator in writing of the Homeowner's waiver
17 of the right to participate in a Mediation Conference OR has otherwise failed to comply
18 with the requirements imposed herein upon Homeowners, the Lender shall be deemed to
19 have satisfied the requirements of this Ordinance so long as the Lender has made the
20 required \$100.00 payment, and the Mediation Coordinator shall issue the Lender a
21 Certificate of Compliance within one (1) business day.

22 **SECTION FOUR. Mediation Procedures.**

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1 1. Upon the written request of the Homeowner to participate in a Mediation Conference,
2 the Mediation Coordinator shall schedule a Mediation Conference for a date within sixty
3 (60) days of the date on which the Lender mailed the notices required by this Ordinance,
4 and shall designate a Presiding Mediator, time, date and location for the Mediation
5 Conference, and shall advise both the Lender and the Homeowner of same. Upon receipt
6 of such information, the Lender shall submit a mediation fee of three hundred fifty
7 dollars (\$350.00) to the Mediation Coordinator not less than seven (7) business days prior
8 to the Mediation Conference and shall comply with all duties imposed upon Lenders
9 hereunder if desirous of filing a Certificate of Compliance.

10 2. The written request to participate in the Mediation Conference by the Homeowner
11 shall be deemed to be consent by the Homeowner for a continuance of the foreclosure
12 sale for forty-two days as allowed under Section 443.355(2) R.S.Mo.

13 3. The Mediation Coordinator shall provide the Homeowner with a list of qualified
14 housing counselors who may assist and represent the Homeowner throughout the
15 mediation process. Nothing herein shall prevent a Homeowner from retaining an
16 attorney for the mediation process, nor require use of the housing counselors.

17 4. Not less than seven (7) business days prior to the Mediation Conference, the
18 Homeowner shall submit to the Mediation Coordinator and to the Lender the following
19 materials:

20 (a) a completed financial statement on a form provided by the Mediation
21 Coordinator and approved by the City Counselor;

22 (b) a completed Request for Mortgage Assistance form, on a form provided by the
23 Mediation Coordinator and approved by the City Counselor;

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1 (c) the Homeowner's opinion of the condition of the subject residential property;

2 and

3 (d) a statement of any offers the Homeowner has made to the Lender in an effort
4 to resolve the default of the loan.

5 5. Not less than seven (7) business days prior to the Mediation Conference, the Lender
6 shall submit to the Mediation Coordinator and to the Homeowner the following materials:

7 (a) an appraisal and/or broker's price opinion compiled not more than ninety (90)
8 days prior to the Mediation Conference;

9 (b) a written proposal to resolve the foreclosure and the evaluation methodology
10 used to determine the eligibility or non-eligibility of the Homeowner for the retention or
11 non-retention of the home;

12 (c) an estimate of the "short sale" value of the Residential Property that the
13 Lender may be willing to consider as part of the negotiation if loan modification is not
14 agreed upon; and

15 (d) a statement of any offers the Lender has made to the Homeowner in an effort
16 to resolve the default on the loan.

17 6. Not less than seven (7) business days prior to the Mediation Conference, both the
18 Lender and the Homeowner shall submit to the designated Presiding Mediator, in writing
19 and under confidential cover, a non-binding proposal for avoiding foreclosure.

20 7. Both Lender and Homeowner, or their authorized representatives, shall appear in
21 person at the Mediation Conference. Any representative appearing at the Mediation
22 Conference for the Lender must have full authority to agree to a proposed settlement,
23 loan modification, or dismissal. A Lender representative who is participating in the

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1 Mediation Conference must have real time access to the Homeowner's account
2 information and records relating to consideration of loss mitigation options; have
3 knowledge of loss mitigation and the ability to review options for the Homeowner's
4 specific type of loan; and understand the investor guidelines for the Homeowner's
5 specific loan. If the Lender is located outside the Statistical St. Louis Metropolitan Area,
6 Lender may exercise the option to participate by telephone, videoconferencing, or other
7 communication equipment. If participating by communication equipment, the Lender
8 representative must be available at all times during the Mediation Conference. Counsel or
9 other authorized individual for Lender must appear at the Mediation Conference to sign
10 documents and settlement agreements on behalf of Lender.

11 8. A continuance of a scheduled Mediation Conference will be granted by the Mediation
12 Coordinator only upon (1) written request submitted prior to the mediation upon a
13 showing of extraordinary circumstances, or (2) written agreement of the Lender and
14 Homeowner. The Mediation Coordinator may grant a continuance of the scheduled
15 mediation conference of up to eighty days from the date on which the Lender mailed the
16 required notices.

17 9. In the event the Lender and Homeowner are able to resolve the foreclosure prior to the
18 Mediation Conference, they shall forward a copy of a written settlement agreement
19 signed by Lender and Homeowner to the Mediation Coordinator and the Mediation
20 Coordinator shall issue the Lender a Certificate of Compliance within one business day.
21 If notice of settlement is received by the Mediation Coordinator at least one business day
22 prior to the Mediation Conference, the \$350 mediation fee will be refunded. Otherwise,
23 there will be no refund of any fees.

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1 10. If the Lender and Homeowner reach a settlement during the Mediation Conference,
2 the Presiding Mediator shall submit to the Mediation Coordinator a true and correct copy
3 of a settlement agreement within one business days following the Mediation Conference
4 and the Mediation Coordinator shall issue the Lender a Certificate of Compliance within
5 one (1) business days following the Mediation Conference.

6 11. If the Lender and Homeowner fail to reach a settlement during the Mediation
7 Conference, a good faith effort on behalf of the Lender shall be deemed to satisfy the
8 requirements of this Ordinance, and the Mediation Coordinator shall, within one (1) day
9 following the Mediation Conference, issue a Certificate of Compliance to the Lender if:

10 (a) the Lender sent the Notice of Foreclosure and the Notice of Right to
11 Request Mediation and forms as required by Section Three;

12 (b) the Lender provided all of the necessary paperwork as required by Section
13 Four;

14 (c) the Lender's representative who participated in the mediation had the
15 authority to negotiate and modify the loan in question, and the ability to review and
16 approve options for the Homeowner's specific type of loan as required by Section Four;
17 and

18 (d) the Lender paid all fees required by this Ordinance.

19 12. If the Lender fails to satisfy any of the requirements identified in this Ordinance, the
20 Mediation Coordinator shall not issue a Certificate of Compliance to the Lender.

21 13. All documents and discussions presented during the Mediation Conference shall be
22 deemed confidential and inadmissible in subsequent actions or proceedings as provided
23 in Section 435.014 R.S. Mo. and Missouri Supreme Court Rule 17 except to the extent

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1 needed to prosecute a violation of Section Six. Aggregate data to monitor and/or evaluate
2 the implementation of the program may be collected by the City of St. Louis.

3 **SECTION FIVE. Interaction with State law.** 1. Nothing in this Ordinance shall
4 prohibit any person from exercising the right to carry out a judicial or non-judicial
5 foreclosure sale pursuant to Chapter 443 R.S.Mo.

6 2. Nothing in this Ordinance shall be construed to create any private right of action for
7 any person or entity, or to affect title to any Residential Property to which this code
8 applies, or to interfere with any private right of action not related to mediation
9 requirement of this ordinance.

10 **SECTION SIX. Filing of Certificate of Compliance with Assessor-Penalties for**
11 **Failure to File.-**1. It shall be a violation of this ordinance for a Lender to fail either to file
12 or cause to be filed with the Assessor, a valid Certificate of Compliance for the
13 foreclosed Residential Property subject to the provisions of this Chapter, either before or
14 contemporaneously with the filing for recordation with the Recorder of Deeds any
15 instrument of conveyance of title to the foreclosed Residential Property; provided,
16 however, that the Recorder shall not refuse to file any such instrument for failure to
17 comply with this requirement; and further provided that it shall be a complete defense to
18 prosecution hereunder that the Lender has in fact complied with the requirements set
19 forth in Section Four.

20 **SECTION SEVEN. Penalty Clause.**

21 Any person, firm or corporation convicted of violating any provision of this Ordinance
22 shall be assessed a fine of up to five hundred dollars (\$500.00.) A fine assessed against
23 the Lender may not be passed on to the Homeowner.

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1 **SECTION EIGHT. Severability Clause.**

2 The provisions of this ordinance shall be severable. In the event that any provision of this
3 ordinance is found by a court of competent jurisdiction to be unconstitutional, the
4 remaining provisions of this ordinance are valid unless the court finds the valid
5 provisions of this ordinance are so essentially and inseparably connected with, and so
6 dependent upon, the void provision that it cannot be presumed that the Board of
7 Aldermen would have enacted the valid provisions without the void ones or unless the
8 Court finds that the valid provisions, standing alone, are incomplete and incapable of
9 being executed in accordance with the legislative intent.

10 **SECTION NINE. Emergency Clause.**

11 This being an ordinance for the preservation of public peace, health, and safety, it is
12 hereby declared to be an emergency measure within the meaning of Sections 19 and 20 of
13 Article IV of the Charter of the City of St. Louis and therefore shall become effective
14 immediately upon its passage and approval by the mayor.

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