

REPORT OF THE HARTFORD TAX LIEN TASK FORCE



MARCH 31, 2013

ADAM CLOUD, CITY TREASURER
MARC NELSON, CITY TAX COLLECTOR
DESMOND SINCLAIR, AUDITOR
REX FOWLER
WILLIAM BREETZ

**REPORT TO
THE HARTFORD COURT OF COMMON COUNCIL
FROM THE TAX LIEN TASK FORCE**

MARCH 31, 2013

I INTRODUCTION On February 14, 2013 the City Council adopted a resolution creating the Tax Lien Task Force; that resolution is attached as **Exhibit A** to this Report. The members of the Task Force are:

Adam Cloud	City Treasurer, Secretary of the Pension Commission
Desmond Sinclair	Auditor – Office of Internal Audit
Rex Fowler	Hartford Resident, Executive Director of the Hartford Community Loan Fund, Inc.
Marc Nelson	City Tax Collector & Elected Employee Member of the City Pension Commission [non-voting]
William Breetz	Hartford resident, retired President of CT Urban Legal Initiative, Inc., former special counsel to City of Waterbury regarding tax liens

The Task Force met three times: on March 7, 14 and March 21. At our March 21st meeting in the offices of the City Treasurer, we were joined by Mr. Gary Draghi, Director of Investments for the Hartford Municipal Employees’ Retirement Fund (the ‘MERF’).

At each of our meetings, the Task Force was ably assisted by representatives of the Corporation Counsel’s office, including at various times, L. John Van Norden, Deputy Corporation Counsel; Gina Varano, Assistant Corp Counsel; and Demar Osbourne, Associate Corporation Counsel. The Task Force was also assisted by Mr. James Sargent, Assistant to Council President Shawn T. Wooden.

The Task Force expresses special thanks for the efforts of the City Tax Collector in assembling considerable data related to this Report in a very short time at the request of Task Force members.

II. SUMMARY This Report from the Tax Lien Task Force first describes the relevant facts concerning the City’s current practices involving tax lien sales. We note the City’s former practice of not assigning the tax liens to third parties, which had the effect of retaining future years’ interest for the benefit of the City. We then describe why the practice of selling those liens, which developed in 2007 as a means of filling budget shortfalls without increasing the mil rate, has the unintended consequence of foregoing the substantial interest that the City would earn if it was able to retain those liens. We also note that in past years, the City had been known to sell certain tax liens to various parties at a discount – a practice which has properly been discontinued under the current administration.

The Report also describes the City's current use of Tax Deed sales for liens it has not sold, the City's simultaneous current practice of bulk lien sales to for-profit companies such as American Tax Funding and XSPAND, and why it is important for the City to avoid selling its liens widely to many different entities.

The Report notes that under current law, third parties who buy the City's tax liens are entitled to enforce those liens in the same manner as would the City if the City had retained those liens. It also notes that, from the perspective of the defaulting homeowner, the costs of foreclosure by third party lien holders would be generally comparable to the costs that the City would charge if the City were the foreclosing party.

The Report next identifies several significant consequences of the City's recent sales of its tax liens. They include: (i) an explanation of why third party lien purchasers insist on the right to buy subsequent liens on the properties where they have already purchased tax liens; (ii) the effect of the City's right of first refusal when a third party lien holder wishes to sell that lien; (iii) the benefits to the City of selling liens in bulk to established companies in the business of buying such liens; (iv) the limitation on the City's ability to compromise a tax lien, and the theoretical advantage that a sale of the liens to a third party might offer in that regard; (v) the fact that the City in the last several years has reduced its annual tax lien sales; (vi) the likelihood that in this fiscal year, the City will have to resume the sale of tax liens in order to meet a budget shortfall; and (vii) the fact that foreclosures of tax liens are currently increasing throughout the City, but especially in certain north and south end neighborhoods.

The Task Force believes that the primary objective of the Office of the Tax Collector is to collect all taxes due to the City from current property owners. Improving rates of tax collection should always take priority over the capture of potentially increased revenues through any lien sale mechanism.

In those instances where the current property owners have not paid the taxes in a timely way, however, the Report identifies three potential policy goals that the City Council might pursue: one is to increase revenue that the City might realize by capturing the 18% interest on unpaid taxes that accrue to the owner of the tax lien until that lien is paid off; presently, that interest is lost when the lien is sold to an unrelated third party lien purchaser. The Report discusses and evaluates in varying degrees five options that the Task Force identified for capturing some or all of that interest.

A second potential policy objective would be to increase the rate of collection on delinquent tax payers prior to any lien disposition. This would reduce the need to sell liens while also reducing the potential foreclosure activity resulting from lien sales. As detailed below, the Task Force believes this can be accomplished primarily through enhancements in the City's notification process to delinquent tax payers. Implementation of a quarterly payment option for seniors along with promotion of existing online payment options could be additional tools to reduce delinquencies and subsequent lien sales.

Finally, a third potential policy goal would be to make reasonable efforts to reduce the number of foreclosures currently occurring as a consequence of lien sales, especially among owner-

occupants. The Task Force believes this could best be accomplished through early intervention efforts to include opportunities for financial counseling and to enter into payment plans or refinancing agreements for those tax lien obligations with third party lenders selected by the City. This subject is also discussed below.

Because of time constraints, the Task Force was unable to complete its evaluation of the various options that the Report describes. However, if the Council were so inclined, and subject to the availability of the current members, the Task Force would be willing to continue its work in the future.

III RECOMMENDATIONS The Resolution creating the Task Force included four tasks upon which we were directed to make recommendations:

1. The feasibility of self-financing City tax liens and/or financing City tax liens with Hartford base vendors and minority vendors;
2. The feasibility of establishing quarterly tax payments for our elderly residents;
3. The feasibility of online tax payments for all City taxes and fees; and
4. The steps necessary to improve notice to City residents of delinquent taxes and a way for online information to be accurate with respect to delinquent taxes.

This report addresses each of these tasks in the order listed in the resolution.

A. THE FEASIBILITY OF SELF- FINANCING CITY TAX LIENS AND/OR FINANCING CITY TAX LIENS WITH HARTFORD BASE VENDORS AND MINORITY VENDORS

1. Current Practices and Issues Involving Tax Lien Sales The following facts are relevant to understanding the current issues concerning tax lien sales:

- a. Before 2007, the City did not assign its delinquent real estate tax liens to third parties; instead, it retained its liens until it decided that the liens needed to be enforced. As a result, the City generally included the statutory 18% annual interest on these liens in the City's budget as income. However, when a taxpayer failed to pay the taxes due, enforcement took the form of a Tax Deed Sale.
- b. A Tax Deed Sale does not sell the tax lien, rather it sells the actual property - subject to the owner's six-month right of redemption. It is important to keep this distinction in mind when considering the role of lien assignments in the overall budgeting and fiscal health of the City. Clearly, the assignment of tax liens results in the loss of future revenue that would have been recovered in the form of interest collected on a go-forward basis – once the lien is assigned to a third party, it is the lien-holder that stands to collect that interest, which accrues pursuant to state law at the annual rate of eighteen percent (18%).
- c. Since 2007, because of the cash requirements of the City and the desire to minimize tax increases as the City's annual budget increased, the City resorted to selling its liens, generally at full value for both the principal amount due and the accrued but unpaid

interest. After the first year in which lien sales were used to fill a current year budget gap, the revenues from lien sales became a budgeted line-item – each year a certain amount of anticipated revenue was budgeted as derived from lien sales and those dollars were then included in the City’s budget for that year. Again, the purchaser of the liens was entitled to all interest that became due on those liens after the sale. If the taxpayer remained delinquent and foreclosure became necessary in order to collect the taxes, then the purchaser was also entitled to recover whatever costs it incurred during the process of the foreclosure; these costs included a title search, legal fees, filing costs with the court, marshal fees for serving legal papers, and related sums. Together, these fees are often substantial.

d. In addition, in years past, the City from time to time sold its tax liens at a discount; to the knowledge of the Task Force members, however, that has not occurred during the tenure of the City’s current Tax Collector, and it is the City’s current strategy to either assign its tax liens at full value, including principal, interest and accrued fees or, in appropriate cases where the City has not sold tax liens on particular parcels, to auction those parcels in a Tax Deed Sale, as described above.

e. A person who buys the City’s tax liens is entitled to the same rights and remedies at law regarding the enforcement of those liens as was the municipality. Thus, it is fully within the buyer’s legal rights to foreclose on the lien and collect all principal, interest, costs and fees associated with the foreclosure. If the City were to foreclose on the lien, it too would seek recovery of the principal, interest, costs and fees associated with the foreclosure action.

f. The Task Force believes that the third party tax lien buyer and the City would incur the same fees in any foreclosure action, namely attorney’s fees (generally \$1,500 – \$2,000 per action), court filing fees (\$300.00 per case), marshal service of process fees (approx. \$30-50 per person), title search (approx. \$125.00). Although these fees in the aggregate, together with the unpaid interest, can exceed the principal amount of the tax, the costs and fees assessed against the homeowner/taxpayer are primarily a function of the foreclosure process and statutorily authorized fees. Stated differently, the Task Force believes that the total amount that the homeowner is required to pay in a tax lien foreclosure action are likely to be more or less the same, regardless of whether the City sell its tax lien and the buyer forecloses or the City retains the lien and thereafter forecloses in its own name.

g. It is true that a party foreclosing its tax liens – whether the City, ATF, XSPAND or any other owner of the lien – is authorized by statute to assess additional fees in a foreclosure action, but those fees may not be “unreasonable” or “excessive”. To the knowledge of the Task Force, buyers of the City’s tax liens do not presently appear to be engaged in that practice.

h. In recent years, the City has been assigning its tax liens in bulk sales to one of two companies: either to American Tax Funding, LLC, with principal offices in Jupiter, Florida (“ATF”) – a privately owned company with significant funding capital provided

by major lenders such as Wells Fargo Bank – or to Plymouth Park Tax Services LLC, doing business as XSPAND which is a wholly-owned subsidiary of J.P. Morgan Chase (‘XSPAND’). Although both companies purchased liens from the City in June, 2012, we understand XSPAND has recently exited this line of business. If true, this would leave the City with only one approved purchaser of its liens.

i. There are a number of significant related consequences of the City’s existing contracts with the companies that have been recent purchasers of those liens. Among the consequences are these:

1. The Right of First Refusal - If the City sells a lien on a property in one tax year – say, the 2008 tax lien on the property at 1 Smith Street – then the City is required to offer to sell all the tax liens for later years on 1 Smith Street - say, years 2009, 2010 and 2011 – to the same lien buyer until such time as the owner of 1 Smith Street completely pays all the taxes due on that property. This is done so that the lien buyer is protected from having a so-called ‘junior tax lien’ with regard to the newer tax liens that accrue. This “right of first refusal” that a lienholder has is a central theme in lien-assignments nationally. Lien-buyers will not invest in the transaction if they do not also receive the right to purchase future delinquent taxes on the same parcel, because they could lose their superior lien position and be at risk of being foreclosed-out of their investment if the later tax liens on that parcel were to be foreclosed by the Tax Collector or a subsequent, but different, owner of the newer lien.¹

This right of first refusal is extinguished when the taxpayer pays off the base lien. In other words, there is only a right to purchase subsequent taxes if the taxpayer has not resolved the first lien assigned, and so on. Tax Liens that are purchased pursuant to a holder’s right of first refusal are referred to as “SUBSEQUENTS” or “Subsequent Liens”. They are to be distinguished from “NEW LIENS” or “BASE LIENS”, because the former must be sold by the City each year, contractually, but NEW liens need not be.

2. The Tax Collector is reluctant to sell tax liens to multiple purchasers of liens for a variety of reasons; chief among those reasons are:

- So long as the City is selling liens in bulk, the City can and does avoid the problem of buyers seeking to ‘cherry pick’ the lien sales;
- By selling to only a few buyers, the City’s administrative costs are lower; and

¹ The issue of competing lien priorities among tax liens on the same parcel is a complex area of real estate law that is not resolved by current law in this state. A recent trial court decision in Waterbury that was not appealed held that the oldest tax liens on a parcel had priority over more recent tax liens on that same parcel; however, in the absence of a definitive decision by the CT Supreme Court or a statutory change, lien buyers are likely to continue to insist upon the right to buy subsequent tax liens on that parcel.

- By selling in bulk, the City can command at least 100% of the value of the liens being sold, and may in the future be able to command a premium, reflecting the generally very high quality of an 18% interest return on liens which have the highest possible priority – that is, if there is a foreclosure of the property subject to a tax lien, the tax lien holder receives 100% of the sales proceeds until the tax lien is fully paid before any other lien holder receives anything.
 - Bulk lien-buyers have the appropriate servicing platform, policies and procedures, and expertise needed to service complex negotiable instruments such as tax liens.
3. If the lien purchaser wishes to sell a particular lien, the City has a right of first refusal regarding that sale, but otherwise must allow the sale. However, if the City wants to buy back the tax lien, it must do so at full value, including principal, interest and fees. The City typically would have no reason to repurchase the lien; its only options would be to either hold the tax liens indefinitely, or to foreclose the tax lien, since a compromise of the tax liability is not permitted under state law. As a result, the City rarely chooses to exercise its option.
4. By state law, the Tax Collector cannot compromise any tax liability for any taxpayer, whether it be the principal amount of the tax or any accrued interest. While that interest rate is very high, particularly in light of current market rates of interest, the only remedy available to the City for struggling home owners, other than a tax credit for enumerated groups, is a repayment plan for the back taxes at an 18% interest rate.²
5. Whether held by the City or sold to a third party, it is essential that the owner of the liens engage the services of a skilled servicing staff – either as employees or contracted out to a third party – to be certain that the liens are administered in a transparent, accurate and efficient manner. The City presently enjoys this capacity through a combination of staff and outsourcing services, and both ATF and XSPAND have similar capacities. If any entity other than the City or the existing lien purchasers were to be considered, the City would have to confirm that an adequate servicing platform were in place.
6. During an analysis of the 2009 liens sold to ATF, the City auditor who is a member of the Task Force observed several liens with unpaid principal amounts under \$1,000.00. In the auditor’s opinion, these liens are immaterial to the City budget shortfall and should have been retained by the City. The auditor has proposed that the Task Force recommend to City Council that each lien sold to a third party should be above a certain unpaid principal amount and that the Tax

² This situation may be changing; *see* footnote 4 below.

Collector should make every effort to purge those that are below the recommended amount.

Because this recommendation from the auditor has been made after the Task Force's last meeting, the Task Force members collectively have had no opportunity to discuss this proposal as a group. However, we have included the recommendation here in order that the Report might incorporate all recommendations from all members of the Task Force; if the work of the Task Force is continued, we will consider this proposal further.

7. Mayor Segarra's policy since taking office has been to reduce the City's reliance on year-end bulk lien sales. Consistent with that policy, since Mr. Nelson became Tax Collector in 2008, the annual sale of tax liens has declined from \$10 million dollars of liens in the 2008-09 tax year to roughly \$3 million in the 2011-2012 tax year; these figures are shown in **Exhibit B-1**. Furthermore, the City's collection rate for current year taxes has steadily increased over those same years, so that the actual dollar amount of tax collections, which were less than the budgeted amounts in 2008-09, are now higher than the budgeted amounts, and the total amounts of collected tax revenues each year have steadily increased over the last four years; this data is shown in **Exhibit B-2**.

8. Despite these favorable changes, the City's current 2012-2013 budget includes \$ 7 million in anticipated lien sales. The Tax Collector therefore anticipates that he is likely to be required to assign \$7 million in tax liens before the end of this fiscal year, reversing the trend shown in **Exhibit B-1**.

9. The City is currently experiencing a substantial increase in the number of residential foreclosures and is at risk of higher numbers of foreclosures in the near future. We have attached a map showing both the number of tax liens throughout the City that have been sold to ATF, and the number of liens that are actually in foreclosure; *see* **Exhibit C**.

The critical data is that, as of January 9, 2013, there were 1,023 properties in the City subject to tax liens that ATF owned; of these, 202 properties were at some stage in the foreclosure process. It is useful to note, however, that throughout much of the foreclosure process, taxpayers may still be able to enter into payment plans with American Tax Funding; ATF has been willing to offer such plans for relatively short amortization periods.³

³ The standard terms of the ATF payment plans –which generally require repayment of all sums due over a relatively short period - may not be suitable for all delinquent taxpayers, even though the total interest to be paid by those taxpayers may be considerably less than the taxpayers might pay in some alternative refinancing plans. There is some evidence that because of the relatively large monthly payments required under the ATF payment plans, they may not be sustainable for some property owners and the taxpayer falls back into foreclosure 6-12 months after entering into the original plan.

While the tax liens and foreclosures exist in every neighborhood in the City, they are clearly predominant in North Hartford – specifically in Blue Hills, Northeast, Upper Albany and Clay Arsenal – and in several South End neighborhoods.

2. **The Goal and the Options** The Task Force’s members believe that if the City were able to structure a mechanism that would capture the “going-forward” 18% interest on the tax liens that are now being sold, while simultaneously being able to include in the City’s budget the principal amounts received for the sold liens under the current practice, that would plainly provide a positive economic outcome for the City. For example, if the City were somehow able to sell \$10 million in tax liens this year and also capture the 18% interest that would become due next year on those unpaid liens, the City would gain \$1.8 million dollars in additional revenue. (For illustrative purposes only, our example assumes a 100% collection rate on delinquent taxes.)

In addition, if the City’s policy goals also included an effort to provide some relief to the City’s struggling taxpayers, it could choose to develop a program to sell tax liens to another entity pursuant to a contract providing that the entity would buy the liens from the City and in some form – yet to be developed – compromise the principal amount or pay a reduced interest rate on terms to be agreed on. Our point here is that a tax lien sale to a third party is currently the only means to offer relief from the interest rate liability which the City itself cannot legally waive.⁴

Further, it may be feasible to combine both goals, by adopting one of the various options described below in order to retain some or all of the 18% future interest that the City now foregoes when it assigns its liens to ATF or XSPAND,

The challenge facing the City is to, first, develop a City policy and, second, find an appropriate legal mechanism to accomplish that policy. The Task Force considered the following five options. In each case, these examples assume that the City was considering the sale of \$10 million in tax liens.

A. The City retains title to the tax liens and borrows money from a local lender, pledging those liens as collateral for repayment of the loan.

This seemed like the simplest and most attractive device; by borrowing the \$10 million, at for example, five percent interest, the City would have the \$10 million to include in its budget and then would ‘earn’ an additional \$1.8 million in interest on those retained liens. If the \$500,000 cost of the interest were deducted from the earned interest, the City would still have a net increase of \$1.3 million dollars in interest income which would be available to reduce its next year’s budget.

Unfortunately, according to the Tax Collector, the City could not treat the \$10 million in borrowed funds as income, because the borrowing would not amount to a ‘true sale’ under applicable accounting rules. In order to be treated as a ‘true sale’, the Tax Collector

⁴ This outcome may soon change; the Tax Collector has advised the Task Force that there is currently a pending bill in front of the State Legislature which, if passed, would provide a local option to municipalities to reduce the annual rate of interest accruing on delinquent taxes from 18% to 12%.

understands that the liens would have to be sold to a party whose financial books are not consolidated with the City's books for accounting purposes. Thus, even though the City would have the \$10 million in cash, and even though the City would have 'true' net income of \$1.3 million in additional interest, the device of simply retaining title to the liens and borrowing against them would not satisfy the standard needed for achieving the desired goal.

The Task Force believes that the Corporation Counsel should be asked, first, to confirm this understanding and second, to prepare an analysis to guide the Council as it considers the other options available to the City.

B. The City sells the tax liens to the Municipal Employees' Retirement Fund (the "MERF") and brings the \$10 million into its budget. The MERF treats the purchase price as an investment and retains all or some of the earned 18% interest. The City benefits by the (presumed) reduced contribution required in its annual pension contributions to the MERF.

This outcome would satisfy the 'true sale' test and the City would therefore be able to treat the \$10 million as income. The interest earned by the MERF would also benefit the City's taxpayers, since the interest exceeds by a considerable amount the average return on the MERF's other investments, and thus could over time reduce the pension contributions that the City needs to make each year.

The City Treasurer and his staff, while not rejecting further consideration of this option, point out a number of valid issues which might pose substantial obstacles to this outcome. They include:

First, with few exceptions, the MERF does not traditionally purchase discrete assets for its own account. This would require the Pension Commission to approve a policy change, and the Commission might be reluctant to embark on such an unfamiliar form of investment.

Second, the MERF does not presently have the requisite servicing capacity and would have to explore this issue further.

Third, ownership of tax liens owed by City residents would potentially expose the Treasurer to requests for political exceptions to strict lien enforcement, which would pose a conflict with his fiduciary duty to the MERF. A means would have to be in place to insulate the Treasurer from any such conflicts; this could include, for example, use of an outside servicer to service liens held by the MERF.

C. The City sells the tax liens to a trust that does not consolidate its finances with the City. The Trust would borrow the purchase price from a third party lender – either the MERF or an independent lender - and, by the terms of the trust, presumably would pay some or all of the earned 18% interest to the City. Such a transaction should be treated as a 'true sale' and thus would enable the City to bring the \$10 million into its budget.

This form of transaction has been undertaken by a number of municipalities and States, with some of the best known examples being New York City, New York State and Philadelphia. While it would achieve the desired objective, it would be complex to create, would take some time, would incur substantial start-up costs, would require some careful consideration of the terms of the trust and the selection of trustees, and may require enabling legislation from the General Assembly.

The City Treasurer noted that there were existing trusts which are under the Treasurer's supervision and that a similarly structured trust created for the purpose of holding tax liens could be utilized.

From the Task Force's perspective, a trust that was overseen by a known fiduciary would be advantageous. However, while the foregoing obstacles were not insurmountable, and while the concept of a supervised trust seemed appealing, the Task Force and Corporation Counsel were simply unable to fully evaluate this option in the time available.

D. The City sells the tax liens to an 'independent' business entity such as a non-stock corporation or a limited liability company - rather than a trust – but one which also does not consolidate its finances with the City. Like the Trust, such an entity would borrow the purchase price from a third party lender – either the MERF or an independent lender - and, by the terms of its contract with the City, presumably would pay some or all of the earned 18% interest to the City. Such a transaction would be treated as a 'true sale' and thus would enable the City to bring the \$10 million into its budget.

Again, the Task Force believes that such a structure has the potential to achieve the desired end, but was unable in the available time to consider the advantages and disadvantages of such an arrangement, and whether there were existing entities that might be suitable for these purposes.

The Task Force did discuss at least two existing organizations that may have potential for fulfilling this role, but did not discuss the possibility with either of them; therefore, they are not named in this report. We note that such an entity could be a Hartford-based or minority-owned enterprise, and thus address another of the goals identified in the original resolution creating the Task Force.

E. In a so-called 'hybrid' arrangement, the City would sell its tax liens to the MERF, a trust or an 'independent' business entity such as a non-stock corporation or a limited liability company. The purchasing entity, rather than simply negotiating for loan funds from a private lender and then administering the liens either with staff or pursuant to a contract with an independent servicer, would enter into an arrangement with a lender/servicer that would make a 'non-recourse' loan to the lien purchaser and guarantee a certain level of return on the liens. For its part, the lender/servicer in this hybrid arrangement would expect to retain a substantially larger share of the annual 18% interest than the lien purchaser would

likely pay to an independent private lender. Again, such a transaction should be treated as a ‘true sale’ and thus would enable the City to bring the \$10 million into its budget and retain some of the interest that it now foregoes in a sale to ATF.

The Task Force has not explored this option in great detail; it is included here only as an example of what appear to be other choices that further exploration may uncover. Again, the Task Force believes that such a structure has the potential to achieve the desired end, but was unable in the available time to consider the advantages and disadvantages of such an arrangement, and whether there were existing entities that might be suitable for these purposes. The Task Force understands, however, that such a model has been developed and could be explored if deemed desirable.

B. THE FEASIBILITY OF ALLOWING OPTIONAL QUARTERLY TAX PAYMENTS FOR ELDERLY RESIDENTS.

1. Hartford previously collected taxes under a quarterly system, before moving to the current semi-annual collection cycle. For some time, dating back to the later days of the Perez administration, the consensus among staff was that (i) there was a prohibitive administrative cost associated with billing quarterly, (ii) such costs could not legally be shifted to the tax bill (ie: taxpayer elects to pay quarterly and agrees to a nominal processing fee) without state enabling legislation, and (iii) there would also be a ‘cost’ on the revenue side by virtue of declining interest collections (on bills not paid timely under a semi-annual cycle). Taken together, these direct and indirect cost arguments formed the chief arguments against quarterly billing.

2. The question presented to this Task Force today, however, is whether Hartford could return to a quarterly framework *simply for elderly taxpayers who apply for and receive the City’s elderly tax credit*, while retaining the current semi-annual collection cycle for all other taxpayers. We conducted our analysis from the point-of-view of this being potentially executed as part of the City’s overall “Elderly Tax Relief Program”; from that perspective, the Task Force believes that, if implemented, an optional quarterly payment system could be quite helpful to our senior citizens who are on fixed incomes, and would not impose an undue economic burden on the City.

3. First, in responding to the argument that such a program would impose direct costs on the City, we first sought to determine how many residents would be entitled to take advantage of the program. We consulted with the City Assessor, who informs us that there are about 1100 elderly taxpayers who apply for and receive the City’s elderly tax credit. That’s a small fraction of the total number of taxpayers, and the Task Force believes that sending a couple of extra bills a year to such a small number of individuals is relatively insignificant.

4. We have the same reaction to the related argument that such a system would impose indirect costs on the City in the form of lost interest resulting from a delay in the City’s receipt of the second half of each existing semi-annual payment. While it is true that the City would experience a three month delay in the receipt of half of each semi-annual payment, we point out, again, that this would be a relatively small subset of all the City’s taxpayers. Further, we do not think that a quarterly payment system would result in fewer elderly taxpayers paying their taxes. The Tax Collector’s experience is that seniors presently struggle to make the semi-annual

payments on time, despite opportunities to establish payment plans that accrue interest. Creating a system that makes periodic payments smaller is not likely to adversely affect their willingness to pay the taxes they know they have an obligation to pay.

5. It appears that the City has adequate statutory authority to create such a system, although it believes the City Council will wish to confirm that view with the Corporation Counsel. Section 12-142 of the Connecticut General Statutes permits quarterly billing, and authorizes the City to designate ‘*whether such tax shall be due and payable in a single installment or (otherwise)*’ .

Further, Section 12-129n of the Connecticut General Statutes is enabling legislation permitting a local Ordinance that provides for elderly tax relief. It authorizes the City to ‘provide real property tax relief’ to seniors. Hartford has adopted such an Ordinance, and has at times tweaked the income requirements.

The Task Force believes, subject to the opinion of the Corporation Counsel, that taken together, these two statutes can be read to give the tax collector the framework needed to offer seniors quarterly billing while preserving the semi-annual bill cycle for others. Certainly one form of “elderly tax relief” would be the extension of a less onerous collection cycle – smaller bills on a quarterly basis, that is.

6. The Tax Collector believes that such a program could be implemented with little difficulty. He believes that the City’s municipal Ordinance Section 32-18 may need to be amended, and there would be a minor cost for an enhancement to MUNIS. Also on the positive side, under other ordinances, since the City would be amending a current elderly tax relief plan, he believes the City would not need to comply with the initial requirements for an outside committee’s financial impact review (see highlighted sentence in the statute below).

7. Recommendation For the foregoing reasons, the Task Force believes that the implementation framework already exists by virtue of the City’s current elderly credit program. In other words, the City’s assessor staff already collects the forms, verifies eligibility and then sets the credit up in the system. Assuming that a senior citizen-taxpayer qualifies for the credit, it would be a simple matter to offer these taxpayers the option of paying their taxes on a quarterly rather than semi-annual basis. The option may be significant: some taxpayers may simply prefer not to change a well-established habit, while others may have taxes escrowed by mortgage servicers and may therefore not want to change their payment cycle.

If the City Council approves this change, we recommend that this be explored for implementation effective with the next Grand List, which is the list of October 1, 2013.

C. THE FEASIBILITY OF ONLINE TAX PAYMENTS FOR ALL CITY TAXES AND FEES

The Tax Collector informs the Task Force that a process currently exists that enables taxpayers to pay their real estate taxes on line. More specifically, the City website, through the Tax Collector web page links, currently allows for payment of most taxes due the City; certain taxes,

however, that are the subject of a tax deed sale or other litigation (bankruptcy, for example) may not be paid on line. Currently, delinquent real estate taxes where liens have been sold may also not be paid via the City's website, because the debt is no longer owed to the City.

Once a lien is assigned, the Tax Collector must "zero-out" the tax in order to satisfy financial accounting rules. Notes exist in the City system indicating a prior lien was assigned, but no such warning appears on the website at the individual bill level. Two years ago, the text of the notice on the website's payment page was strengthened; that language appears before a user can view a specific tax bill.

Notwithstanding these changes, the Task Force recommends that an enhancement to the MUNIS system be requested that would allow for notice at the bill level, rather than just on the entry page as a generic disclaimer. Ideally, the bill page would link to the website of the holder of the lien, or provide the contact information as a pop-up dialogue box.

The Tax Collector has indicated that he would be happy to explore enhanced means by which to alert taxpayers to the easiest means by which on line and other forms of tax payments might be accomplished.

D. THE STEPS NECESSARY TO IMPROVE NOTICE TO CITY RESIDENTS OF DELINQUENT TAXES AND A WAY FOR ONLINE INFORMATION TO BE ACCURATE WITH RESPECT TO DELINQUENT TAXES.

Before the City began assigning liens in 2009 – these were assignments of delinquent real estate taxes from the 2007 Grand List- the City did not require any specific form of notice to delinquent tax payers regarding the assignment of tax liens on their property.

In April, 2009, the Tax Collector implemented an improved notification process, adding specific reference in the April delinquency warning that liens could be enforced by either foreclosure, or by the assignment of the lien to third-parties. Also for the first time, dedicated telephone numbers were assigned to handle temporary increases in taxpayer calls, taxpayers were informed that they could request a payment plan, and the notice was printed in Spanish on the reverse side.

These improvements were limited, however, to the single letter that was mailed in April each year. Liens are typically recorded with the Town and City Clerk in the middle of May, and lien assignments occur in June, in order to close transactions before the end of the fiscal year. Currently, State Statute only requires one notice.

The Task Force believes that additional notices – especially if the text of those notices were rewritten to convey a greater sense of urgency and was written in simpler language - would benefit taxpayers. We discussed how many additional notices should be sent to taxpayers before the City assigns its liens to third parties as well as what the specific language might be. The Task Force noted that the majority of the concerns of taxpayers that have been brought to the attention of the City Council and the Mayor's Office have centered on claims that the taxpayers have not received notice from the lien-buyers, as distinguished from claims that notices were not mailed by the Tax Collector.

In summary, while the Task Force recognizes that the burden of knowing taxes are due rests squarely with the taxpayer, there is little cost involved to bolster notice. In fact, we believe that our recommendation of a post-assignment notice sent by the City should be funded by the lien-buyer. We also believe that additional notices sent prior to a lien being assigned, would be helpful to homeowners who are unfamiliar with the process, or who face anxiety because they do not know where to turn for help. Finally, we believe that providing information about services offered by approved organizations, such as credit counseling and refinancing opportunities, would add meaningful content to what otherwise might be viewed as just one more collection letter.

Accordingly, the Task Force makes the following recommendations.

1. Two new notices, for a total of three, should be sent to delinquent taxpayers by the Tax Collector, prior to liens being assigned to third parties. However, the Task Force does not believe that mailing by certified mail would make the receipt of notice by the taxpayer any more likely and recommends that all notices should be sent by first class regular mail.
2. Further, we recommend that the first of the three notices should be sent 60 days before the liens are assigned, then 30 days before the assignment and finally, 10 days before the assignment. The Task Force understands that state law currently requires that a first notice be sent in mid-April, and the two additional notices could contain information helpful to the taxpayer, rather than simply a warning. For example, these notices could highlight opportunities – recommended elsewhere in this Report - that the taxpayer may have to pursue credit counseling or financial planning assistance that might be available free of charge and refer to possible refinancing opportunities that could be of assistance to the homeowner, after those lenders had been vetted and selected through the City’s usual procurement process. While the drafting of specific notice language is beyond the scope of the Task Force’s mission, we also suggest that the Tax Collector and interested members of the public should meet to consider what specific language might be most informative and helpful to delinquent taxpayers.
3. There is currently a bill in the General Assembly which would require the Tax Collector to post notice of liens subject to assignment at the Town Clerk’s Office or the Tax Collector’s Office. The Task Force recommends that, even if that bill fails, the City should still post notices in both the Town Clerk’s and Tax Collector’s offices at least 30 days before tax liens are assigned. While it not at all clear that these public postings are likely to come to the attention of delinquent taxpayers, it is in fact one more step that the City can point to as making every effort to communicate with taxpayers, and the step would not be costly to the City.
4. The Task Force also wishes to address the claims of delinquent taxpayers that the purchasers of the City’s liens do not also send notice to taxpayers of the possibility of foreclosure, and that the marshal’s serving a foreclosure complaint was the first time they became aware that liens had been sold to a third-party, Accordingly, the Task Force

recommends that lien-assignment contracts (which do currently require that notice be sent), be strengthened with respect to this issue. Specifically, we recommend that the City Council consider requiring that bulk lien buyers be charged a one-time administrative fee of \$2,500 to cover the cost of the City Tax Collector sending one additional notice AFTER the transaction has closed.

Such a 'post-transaction' letter could provide important contact information concerning such matters as who the taxpayer should contact to make payment, how much were the delinquent taxes assigned to the third party, and so on. Copies of this post-transaction notice should be attached to the individual tax bill record in the MUNIS system.

IV OTHER CONSIDERATIONS The Task Force makes the following additional points regarding the assignment of the City tax liens to other entities:

- a. **Political considerations.** As we observed in discussing the MERF as a possible tax lien purchaser, it is inevitable that some property owners with unpaid taxes will seek political intervention in the foreclosure of tax liens held by the City, and a sale of the liens to an entirely independent for-profit entity, such as either ATF or XSPAND, avoids this risk. Regardless of whatever structure the City may create to retain the future interest that may accrue on unpaid tax liens, we believe it will be essential for the Council to create appropriate safeguards that would avoid this risk.
- b. **Pass Through of Servicing Fees.** State law allows a third party purchaser of tax liens to charge to the defaulting property owner the costs of engaging a third party entity to provide a servicing platform, so long as those fees are not excessive. To date, neither ATF nor XSPAND have done so, but it would be legally possible in any of the five options discussed above to do so. Such a policy presents policy choices, however: on the one hand, passing servicing fees along to the defaulting property owner increases the aggregate costs incurred by those property owners who wish to pay off their liens in order to avoid foreclosure; on the other hand, in those cases that do proceed to foreclosure, such a policy would increase the net sums retained by the City, and reduce the sums payable to the next junior lien holder, while not imposing any additional costs on the property owner, since the owner would already be losing their property through the foreclosure process.
- c. **Hartford Housing Authority** The Task Force notes that the Hartford Housing Authority ('HHA') has recently submitted a proposed Resolution to the City Council, seeking authorization to buy tax liens from the City at full value on properties facing foreclosure where HHA already holds a junior lien on that property that would presumably be invalidated in a third party foreclosure. HHA asserts that this authorization would only apply in a very few known instances.

Notwithstanding HHA's resolution, the Task Force understands that consideration of that resolution was not part of the charge to us from the City Council; accordingly, this Report makes no recommendation concerning it. Rather, we assume that the City Council will independently consider the proposed Resolution submitted by HHA as

part of the Council's overall review of the City's policies regarding assignment of tax liens.

- d. The feasibility of ...financing City tax liens with Hartford based vendors and minority vendors** As noted above, in the limited time available to it, the Task Force has been unable to develop a detailed recommendation regarding this issue, other than to observe, as we have, that one of the five options would be for the City to develop a contractual relationship with one or more Hartford-based vendors, whether or not owned by minority vendors, through its existing procurement process.

We also note that a considerable portion of this Report deals with various matters related to the notice which the Tax Collector provides to all property owners who are delinquent in payment on real property taxes, before the lien sale deadline date of June 20th and the end of the fiscal year on June 30th.

If the City wishes to adopt a policy designed to minimize the burdens imposed on property owners who are struggling to pay their taxes, notices from the Tax Collector could include referrals for financial counseling assistance and, in the case of homeowners, assistance through a tax lien refinance loan for eligible owners which could be developed through the City's procurement process.

The Task Force is aware of existing Hartford-based HUD-certified financial counseling agencies (e.g., Christian Activities Council, Housing Education Resource Center, Hartford Areas Rally Together, etc.) that could be considered in such a program, and the City's customary procurement effort might well identify other suitable organizations.

In the case of homeowners seeking tax lien refinance loans – perhaps to be collateralized through an assignment of the tax liens - different considerations may be appropriate. Because of the economic consequences to borrowers, the different repayment options that different lenders might offer, and the need for transparency, the procurement process would benefit from an open process before the City were to pre-qualify various lenders. While existing Hartford-based community development financial institutions, such as Connecticut Housing Investment Fund or Hartford Community Loan Fund, may be interested in offering such loans, it may be that other loan sources might also step forward if the City were to issue an RFP seeking expressions of interest.

Accordingly, if the Council determines that it wishes to develop such a policy, the Task Force recommends that the Council also consider how it proposes to select the potential vendors of such services, whether using the City's customary procurement

process or some other process to review and approve potential vendors of credit counseling and loan programs to property owners.⁵

LIST OF EXHIBITS

- Exhibit A** Copy of Council Resolution Creating the Tax Lien Task Force
- Exhibit B-1** Chart Showing Declining City Lien Sales by Dollar Volume
- Exhibit B-2** Chart Showing Increasing Tax Revenue Collections
- Exhibit C** City Map Showing American Tax Funding Tax Lien Sales and Pending Foreclosures

⁵ For example, the ‘Opportunities Hartford’ initiative in the Office of the Mayor may be an alternative resource in identifying and vetting potential partners with the capacity to provide these services.

Court of Common Council



CITY OF HARTFORD
550 MAIN STREET
HARTFORD, CONNECTICUT 06103

Shawn T. Wooden, Council President
Alexander Aponte, Majority Leader
Larry Deutsch, Minority Leader

John V. Bazzano, Town and City Clerk

Kyle K. Anderson, Councilman
Joel Cruz, Jr., Councilman
Raúl De Jesús, Jr., Councilman
Cynthia R. Jennings, Councilwoman
Kenneth H. Kennedy, Jr., Councilman
David MacDonald, Councilman

February 14, 2013

This is to certify that at a meeting of the Court of Common Council, February 13, 2013, the following RESOLUTION was passed AS AMENDED.

Whereas, A resolution was submitted to the Court of Common Council regarding the sale of tax liens; and

Whereas, The Court of Common Council expressed concern over the notification of delinquent taxes to City residents; and

Whereas, The Court of Common Council expressed concern over the fees charged City residents by the City's tax lien vendors, American Tax Funding and Expand; and

Whereas, The Court of Common Council expressed a concern that there was no Hartford based vendor or minority vendor included in the sale of City tax liens;

Whereas, The Court of Common Council has expressed several times through non financials resolutions adopted during the adoption of the budget, the need to provide the City's elderly residents with quarterly tax payment options; and

Whereas, The Court of Common Council has requested that the City provide our residents with the option to pay all their taxes on line in monthly installments if they desired as a way to help the manage their tax burden; now therefore be it

Resolved, That the Court of Common Council appoint a Council Tax Task Force that will make recommendation on the following:

1. The feasibility of self financing City tax liens and/or financing City tax liens with Hartford base vendors and minority vendors; and
2. The feasibility of establishing quarterly tax payments for our elderly residents; and
3. The feasibility of online tax payments for all City taxes and fees; and

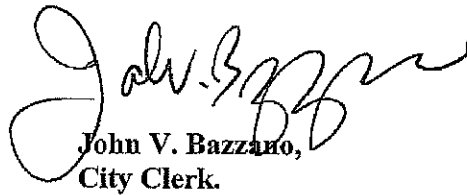
4. The steps necessary to improve notice to City residents of delinquent taxes and a way for online information to be accurate with respect to delinquent taxes; and be it further

Resolved, That a Court of Common Council Tax Task Force be established consisting of the following members: William Breetz, Rex Flower, City's Tax Collector Marc Nelson as a non voting member, City Treasurer Adam Cloud, Desmond G. Sinclair, auditor, and such other members that may be appointed by Council President; and be it further

Resolved, That the task force makes its recommendation to the Court of Common Council by March 31, 2013; and

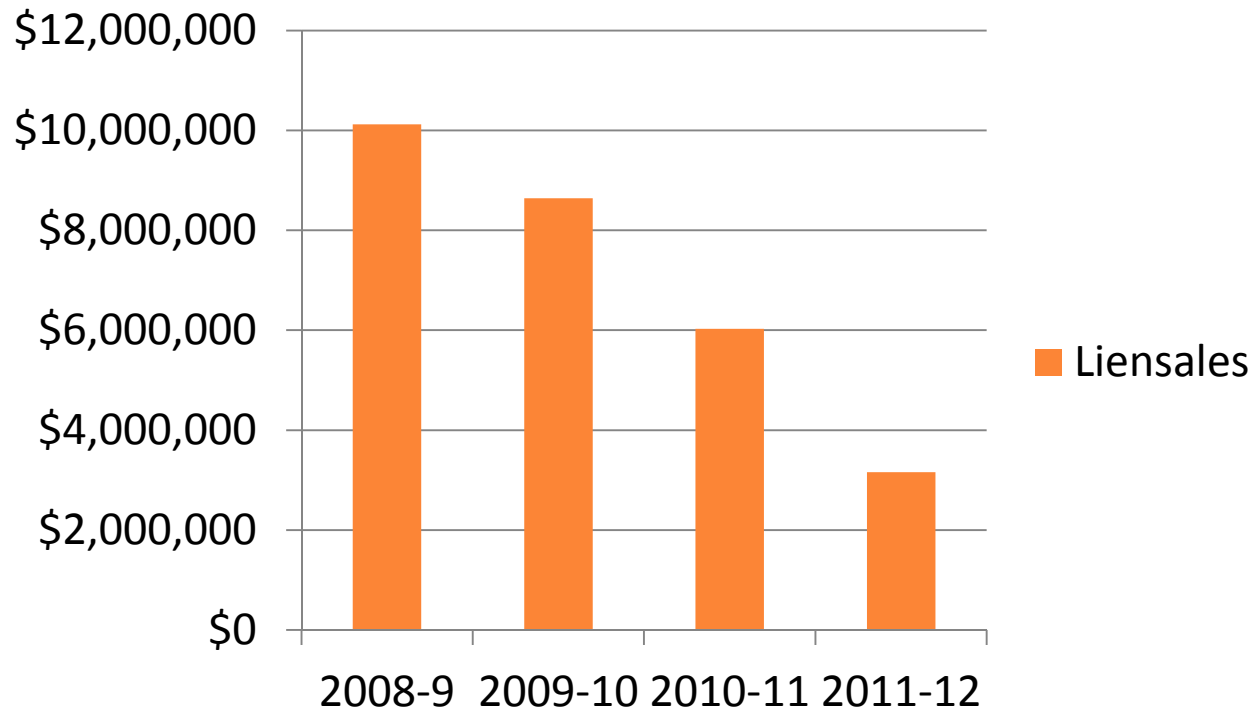
Resolved, That no tax liens shall be sold to any vendor until March 31, 2013.

Attest:


John V. Bazzano,
City Clerk.

Meeting Mayoral Objective of Reducing Reliance on Lien Sales

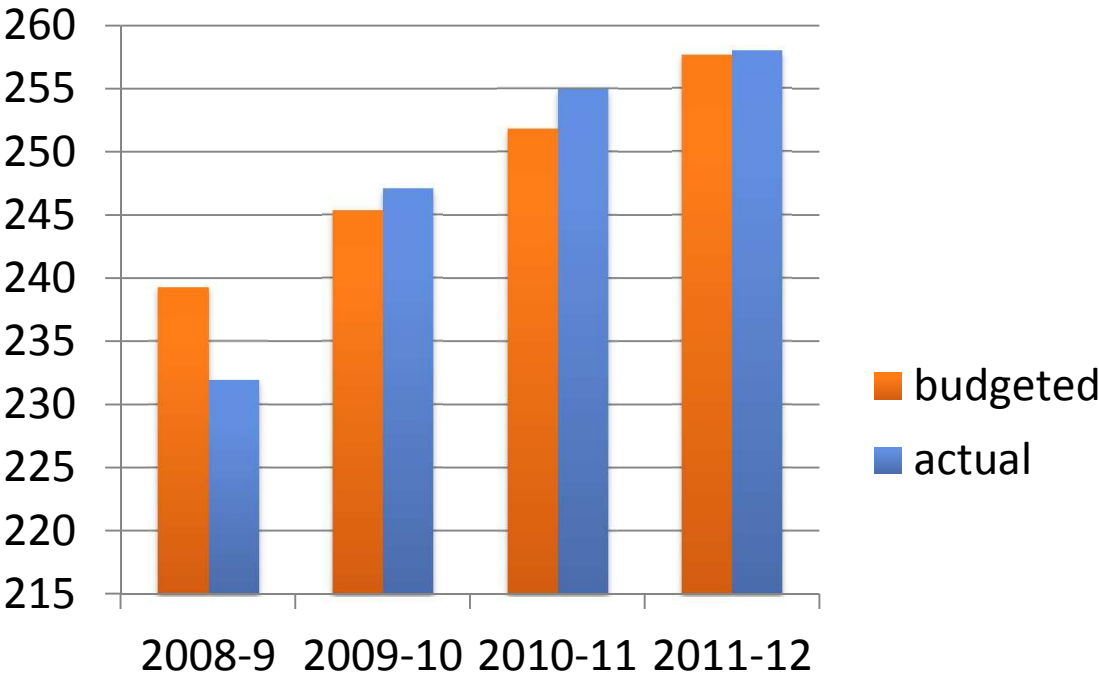
Lien-sales by Fiscal Year



Tax Collections Last Four Years (millions)

current year levy collections last four years

Adopted-to-Actual



ATF Tax Liens



434 Franklin Avenue
Hartford, CT 06114
860.296.7005

Data dated 1/09/2013

Key:

- Liens not in foreclosure ○
- Liens in foreclosure ●

Lien amounts represent P&I of individual liens, not aggregate liens on a property.
 Total Liens: 2,704 Total Properties: 1,023
 Liens/Properties in foreclosure: 859/202
 Liens (P&I) < \$10K in foreclosure: 662
 Est. Props. w/Liens (P&I) < \$10K in frclsr: 167
 Ave. Lien Size (P&I): \$5,761
 Median Lien Size (P&I): \$2,956

