UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ZACHARY R. CHERTOK, *et al.*,

Plaintiffs,

v.

CITY OF MEDFORD, *et al.*

Defendants.

C.A. No.: 1:26-cv-10589-GAO

PROPOSED INTERVENORS' SUPPLEMENTAL MEMORANDUM REGARDING ARTICLE III STANDING AND MOOTNESS

Proposed Intervenors respectfully submit this supplemental memorandum pursuant to the Court's request at the August 31, 2026, hearing for additional briefing addressing the following two questions: (1) whether Plaintiffs have established Article III standing; and (2) whether this action is moot in light of the City of Medford's August 27, 2026, Stipulation.

INTRODUCTION

Days before the hearing last month, the City filed a request for the Court to enter a permanent injunction, while expressly declining to concede that the Ordinance is unlawful. Plaintiffs, meanwhile, maintain that injunctive relief alone is insufficient and continue to seek a declaration that the Ordinance is legally invalid and therefore unenforceable.

The City's decision to stop defending the Ordinance does not resolve this case. First, the Stipulation cannot substitute for the Court's independent jurisdictional inquiry. Plaintiffs must first establish Article III standing, a requirement that cannot be waived, including through agreement with the Defendant. Plaintiffs cannot make such a showing because the Supreme Court has conclusively held that taxpayer status alone is insufficient to confer standing, and they do not fit within the narrow carve-out for municipal taxpayers alleging illegal use of taxpayer funds. But even if they could demonstrate standing, the City's decision to abandon defense of the Ordinance does not moot the controversy. Instead, it confirms the need to resolve the pending Motion to Intervene and heightens Proposed Intervenors' interests under Rule 24. This new development also establishes that a finding of permissive intervention is warranted even assuming *arguendo* Proposed Intervenors have not met the Rule 24 requirements for intervention.

In short, the Court should dismiss this action because Plaintiffs lack Article III standing. In the alternative, if the Court concludes that Plaintiffs have standing, it should grant Proposed Intervenors' Motion to Intervene, reject the Stipulation as a basis for finding the case moot, and permit the case to proceed.

ARGUMENT

I. Plaintiffs Must Establish Article III Standing and Cannot Do So

The first and foremost inquiry in this case is whether Plaintiffs have standing under Article III of the U.S. Constitution. Article III limits the federal judicial power to "Cases" and "Controversies." U.S. Const. art. III, § 2, cl. 1. Courts have long held that standing is part of the case and controversy requirement to "ensure [] that the Federal Judiciary respects 'the proper—and properly limited—role of the courts in a democratic society[.]'" *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 341 (2006) (quoting *Allen v. Wright*, 468 U.S. 737, 750 (1984)). *See also Raines v. Byrd*, 521 U.S. 811, 818 (1997) ("no principle is more fundamental to the judiciary's proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies."); *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 474 (1982) (recognizing that the case or controversy requirement is necessary for maintaining the "tripartite allocation of power" provided for in the U.S. Constitution).

In order to establish Article III standing, a plaintiff must demonstrate an injury-in-fact, causation, and redressability. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992). An injury in fact must be both "concrete and particularized" and "actual or imminent, not conjectural or hypothetical." *Id.* at 560.

A. Plaintiffs and Defendants Cannot Dispose of Subject-Matter Jurisdictional Requirements through Stipulation

Federal courts "have an omnipresent duty to take notice of jurisdictional defects, on their own initiative if necessary," *Calvary Chapel of Bangor v. Mills*, 984 F.3d 21, 26 (1st Cir. 2020) (quoting *Whitfield v. Mun. of Fajardo*, 564 F.3d 40, 44 (1st Cir. 2009)), even in the absence of a party's jurisdictional challenge. *See Arbaugh v. Y & H Corp.*, 546 U.S. 500, 514 (2006). If the Court determines that it lacks subject-matter jurisdiction, it has no power to proceed and must dismiss the action. *See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998) ("Without jurisdiction the court cannot proceed at all in any cause." (quoting *Ex parte McCardle*, 74 U.S. (7 Wall.) 506, 514 (1868))); *P.R. Tel. Co. v. WorldNet Telecomms., LLC*, 156 F.4th 65, 67 (1st Cir. 2025) (quoting *Steel Co.*, 523 U.S. at 94); Fed. R. Civ. P. 12(h)(3). Nor can the parties cure that defect by agreement: subject-matter jurisdiction, "because it involves a court's power to hear a case, can never be forfeited or waived." *Arbaugh*, 546 U.S. at 514 (quoting *United States v. Cotton*, 535 U.S. 625, 630 (2002)).

Here, for this reason, the City's proposed Stipulation does not permit issuance of the requested injunction. *See Calvary Chapel*, 984 F.3d at 26 (explaining that, although the parties "stand united" in asserting jurisdiction, "subject matter jurisdiction cannot be conferred on a federal court by the parties' agreement alone"); *Espinal-Dominguez v. Puerto Rico*, 352 F.3d 490, 495 (1st Cir. 2003) ("[L]itigants cannot confer subject matter jurisdiction on a federal court by 'indolence, oversight, acquiescence, or consent.'" (quoting *United States v. Horn*, 29 F.3d 754, 768 (1st Cir. 1994))); *Daley v. Town of New Durham*, 733 F.2d 4, 7 (1st Cir. 1984) ("Nor can the parties cure a defect in subject matter jurisdiction by waiver or consent; without subject matter jurisdiction, the court has no power to hear and decide the case."). Accordingly, the parties' agreement to entry of a permanent injunction cannot relieve the Court of its independent obligation to determine whether Plaintiffs have Article III standing before entering that relief.

B. Plaintiffs Lack Article III Standing

The Supreme Court has long held that as a general principle, taxpayer lawsuits are barred for lack of Article III standing. *See DaimlerChrysler*, 547 U.S. at 349. *See also Massachusetts v. Mellon*, 262 U.S. 447, 486–89 (1923) (explaining that taxpayers usually lack Article III standing to challenge government expenditures based solely on their status as taxpayers). Federal and state taxpayers' interest in public funds, in particular, is too "remote, fluctuating and uncertain" to support jurisdiction. *Id.* at 487–88. *See also ASARCO Inc. v. Kadish*, 490 U.S. 605, 613–14 (1989) (opinion of Kennedy, J.) ("[W]e have likened state taxpayers to federal taxpayers" for purposes of assessing taxpayer standing) (citing *Doremus v. Board of Education of Hawthorne*, 342 U.S. 429, 434 (1952)).

Municipal taxpayers can occupy a narrow exception to the broad prohibition against Article III standing for taxpayers in very specific circumstances. In *Donnelly v. Lynch*, the First

Circuit reaffirmed municipal-taxpayer standing where plaintiffs challenged the allegedly unconstitutional use of their municipal tax dollars. 691 F.2d 1029, 1031–32 (1st Cir. 1982), *rev'd on other grounds*, 465 U.S. 668 (1984). But *Donnelly* emphasized that the plaintiffs there challenged "direct expenditures," *id.* at 1031 n.3, and described the relevant taxpayer interest as a "direct and immediate" interest in the "application of [municipal] moneys," *id.* at 1032. *See also Massachusetts v. Mellon*, 262 U.S. at 486–89 (explaining that municipal taxpayers may sue to enjoin "an illegal use of the moneys of a municipal corporation" because their interest in the municipality's funds is "direct and immediate," and describing the doctrine as based on "the peculiar relation of the corporate taxpayer to the corporation").

Thus, *Donnelly* does not establish that municipal-taxpayer status, standing alone, opens the federal courthouse doors to *any* challenge concerning municipal finances. Rather, the First Circuit's determination that standing was present rested on a direct nexus between the taxpayers' municipal contributions and the alleged illicit use of municipal funds.

Neither the Supreme Court nor the First Circuit has recognized municipal taxpayers' standing to challenge city ordinances with which they take issue from a policy perspective. There is a significant distinction between challenging an *unlawful* use of taxpayer funds and challenging a divestment ordinance enacted for policy reasons. And while not binding on this court, other circuits likewise restrict municipal taxpayer standing to challenges based on unlawful expenditures. *See, e.g.*, *Doe v. Madison Sch. Dist. No. 321*, 177 F.3d 789, 793 (9th Cir. 1999) (en banc) ("'taxpayer standing,' by its nature, requires an injury resulting from a government's expenditure of tax revenues"); *Cammack v. Waihee*, 932 F.2d 765, 770 (9th Cir. 1991) (stating that municipal-taxpayer standing is available where an expenditure of municipal funds is challenged); *see also Protect Our Parks, Inc. v. Chi. Park Dist.*, 971 F.3d 722, 735 (7th

Cir. 2020) (requiring a showing that municipal tax dollars are spent on allegedly unlawful activity). The cases thus differ at the margins, but they share a common premise: municipal-taxpayer standing requires more than a generalized, ideological objection to municipal fiscal policy.

Accordingly, Plaintiffs lack standing even under the municipal taxpayer exception. Plaintiffs allege that they are "resident[s], property owner[s], and municipal taxpayer[s] of the City of Medford," Compl. ¶¶ 4–5, ECF No. 1, and expressly bring this action "in their capacity as municipal taxpayers." *Id.* ¶ 9. They do not allege any individualized pecuniary loss; indeed, the Complaint expressly disclaims the need to do so. *Id.* ¶ 11. Instead, their asserted financial harms concern speculative effects that implementation of the Ordinance would have on municipal funds, including reduced diversification, increased risk or volatility, and foregone returns. *Id.* ¶¶ 40, 47. Yet the Ordinance has never been implemented. Plaintiffs therefore do not identify a concrete loss of funds (which still would not confer Article III standing), much less an unlawful expenditure of municipal funds pursuant to the Ordinance—and thus no direct fiscal nexus of the kind on which the Supreme Court and First Circuit have predicated municipal-taxpayer standing.

Nor can Massachusetts taxpayer-standing law supply what Article III requires. Even assuming G.L. c. 40, § 53 authorizes qualifying municipal taxpayers to pursue claims in Massachusetts courts, the Massachusetts Legislature cannot dispense with Article III's constitutional requirement of injury-in-fact for a plaintiff seeking to invoke *federal* jurisdiction. *See Spokeo, Inc. v. Robins*, 578 U.S. 330, 341 (2016) (explaining that even Congress cannot automatically satisfy Article III's injury-in-fact requirement merely by creating a statutory right and authorizing a person to sue). A state-law authorization to sue therefore does not, standing alone, establish federal jurisdiction where Article III's requirements are otherwise absent.

Indeed, Plaintiffs' allegations appear insufficient even under Massachusetts taxpayer-standing law to bring a case in state court. In *Hale v. City of Northampton*, No. 2680CV00038, slip op. at 3–4 (Mass. Super. Ct. Sept. 8, 2026), the Superior Court rejected municipal-taxpayer standing under G.L. c. 40, § 53 despite materially similar allegations of "increased risk, reduced diversification, and foregone returns," dismissing the action without reaching the pending preliminary-injunction or intervention motions.

The court reasoned that § 53 applies where a municipality is "about to raise or expend money or incur obligations," and held that neither indirect implementation costs nor alleged investment consequences such as increased risk, reduced diversification, and foregone returns satisfied that requirement. *Id.* at 3–4. The comparison is particularly instructive here: *Hale* involved the ten municipal taxpayers required to invoke § 53, yet the court still found standing lacking because the challenged divestment measure did not implicate the requisite municipal expenditure or obligation. *Id.* at 1–4.[1] Here, by contrast, there are only two Plaintiffs, and the Complaint identifies only those two individuals as Medford municipal taxpayers. *See* Compl. ¶¶ 4–5, 9. Thus, § 53 neither eliminates Article III's independent requirements nor supports the proposition that allegations of speculative investment consequences, without an identified expenditure or concrete fiscal injury, suffice even as a matter of Massachusetts taxpayer standing. Plaintiffs therefore cannot invoke federal jurisdiction based on their municipal-taxpayer status alone.

[1] Massachusetts's "ten taxpayer" law expressly requires ten municipal taxpayers to bring an action under the statute. *See* Mass. Gen. Laws ch. 40, § 53 (providing that "ten taxable inhabitants" of a municipality may bring suit).

II. The City's Stipulation Does Not Moot the Case

Assuming *arguendo* Plaintiffs have Article III standing to challenge the Ordinance, the August 27 Stipulation does not render this case moot. The City seeks entry of a permanent injunction based principally on the financial costs of continued litigation, without conceding that the Ordinance is unlawful. Plaintiffs, meanwhile, have expressly declined to accept that disposition as sufficient because they continue to seek a declaration that the Ordinance is unlawful, invalid, and unenforceable. Thus, even the existing parties have not agreed upon the relief necessary to resolve this action. More fundamentally, their Stipulation cannot extinguish Proposed Intervenors' asserted interests or circumvent a Motion to Intervene that had been pending for four months and was scheduled for hearing only days after the Stipulation was filed.

Even if the Court determines that it may address mootness before resolving the pending Motion to Intervene, the Stipulation does not moot this case. Mootness is a limitation imposed by Article III's case or controversy requirement and arises when, during the course of litigation, the issues are no longer "live" or the parties lack a legally cognizable interest in the outcome. *See Harris v. Univ. of Mass. Lowell*, 43 F.4th 187, 191–92 (1st Cir. 2022). A case becomes moot only when "it is impossible for a court to grant any effectual relief whatever to the prevailing party." *Chafin v. Chafin*, 568 U.S. 165, 172 (2013) (citation omitted). "As long as the parties have a concrete interest, however small, in the outcome of the litigation, the case is not moot." *Id.* (citation omitted).

A. Interpreting the Stipulation as Rendering the Case Moot Poses Significant Separation of Powers Concerns

The Stipulation cannot moot this action merely because the City has agreed to the entry of permanent injunctive relief. The requested injunction would constitute an exercise of this Court's judicial power, not a self-executing agreement between the parties. Accordingly, the

Court must consider whether the proposed disposition is one it may properly enter, particularly where the requested relief would alter the allocation of authority among governmental actors.

Initially, permitting the parties to obtain a permanent injunction against enforcement of the Ordinance by agreement raises serious separation-of-powers concerns. The parties' agreement as to the validity of duly enacted legislation does not displace the judiciary's independent role in determining what the law is. *See McLaughlin v. Hagel*, 767 F.3d 113, 118–19 (1st Cir. 2014) (explaining, in reliance on *United States v. Windsor*, that permitting the Executive's refusal to defend legislation to preclude judicial review would undermine the separation-of-powers principle that it is the judiciary's province and duty to interpret the law, and identifying the concern raised when the Executive effectively "nullif[ies] Congress' enactment solely on its own initiative and without any determination from the Court"); *United States v. Windsor*, 570 U.S. 744, 759–61 (2013).

The Supreme Court has also specifically cautioned against consent decrees through which "public officials sometimes consent to, or refrain from vigorously opposing, decrees that go well beyond what is required by federal law." *Horne v. Flores*, 557 U.S. 433, 448–49 (2009). Such decrees "'improperly deprive future officials of their designated legislative and executive powers.'" *Id.* at 449 (quoting *Frew v. Hawkins*, 540 U.S. 431, 441 (2004)). The concern is especially pronounced where a proposed decree reflects "rifts within the bureaucracy or between the executive and legislative branches." *Id.* at 449. Those concerns are not theoretical here. The proposed Stipulation would enlist this Court in permanently enjoining enforcement of an ordinance duly enacted by Medford's legislative branch, notwithstanding the City Council's continued defense of that enactment and the pending effort of two Councilors to intervene to defend it.

In the same vein, judicial enforcement of the Stipulation would contravene the City's own explicit division of executive and legislative authority. Medford's Charter provides that "[t]he legislative branch shall never exercise any executive power, and the executive branch shall never exercise any legislative power." 2025 Mass. Acts ch. 30, § 2, art. I, § 1-3. And although constitutional separation-of-powers principles governing federal and state governments generally do not apply wholesale to municipalities, Massachusetts law requires courts to respect a statutory scheme that "delineate[s] clear spheres of activities to be exercised by the separate branches of municipal authority." *City Council of Springfield v. Mayor of Springfield*, 489 Mass. 184, 193 (2022). Federal courts have likewise recognized that separation-of-powers principles may apply, as modified, to municipal governments whose charters establish distinct legislative and executive branches. *See Morris v. Bd. of Estimate*, 647 F. Supp. 1463, 1474–75 (E.D.N.Y. 1986) (recognizing that the separation-of-powers principle applies, "as modified," to municipal government and relying on the city charter's establishment of "distinct legislative and executive branches").

The Stipulation threatens that division in two respects. First, the Charter vests the City's executive powers "solely in the mayor" and requires the Mayor to "cause the charter, the laws, the ordinances and other orders for the government of the city to be enforced." 2025 Mass. Acts ch. 30, § 2, art. III, § 3-2(a)–(b). The Ordinance was enacted over the Mayor's veto and remains in effect. Yet rather than enforce it—or obtain an adjudication that it is unlawful—the City now asks this Court to permanently prohibit its implementation. Entry of the requested injunction would therefore use federal judicial relief to place the Mayor under an obligation not to perform the very Charter duty requiring enforcement of duly enacted ordinances.

Second, the Stipulation implicates the City Council's appropriations authority. The Charter provides that the Council "may delete or decrease any amounts except expenditures required by law." 2025 Mass. Acts ch. 30, § 2, art. VI, § 6-4(b). That authority provides a meaningful curtailment on mayoral power; Massachusetts courts recognize that a city council's authority may operate as "a check on the mayor's executive function through the power of appropriations." *City Council of Boston v. Mayor of Boston*, 383 Mass. 716, 720 (1981). Here, the Mayor requested funding to defend this litigation, and the Council authorized $75,000 for that purpose. Yet the Stipulation represents that only a fraction of those authorized funds has been expended and invokes the cost of continued litigation as the basis for abandoning the defense, without the Council having rescinded or reduced its appropriation. Indeed, the proposed Council Declaration states that, before the Stipulation was filed, neither the Mayor nor appointed counsel presented the Council with an accounting of litigation expenses or asked whether additional funds should be appropriated. *See* Proposed City Council Declaration ¶ 11, attached hereto as Exhibit B. The Council further states that it would not have regarded the approximately $35,000 identified in the Stipulation as sufficient reason to abandon the defense and remains willing to consider appropriating additional funds reasonably necessary to continue it. *Id.* ¶¶ 12–13. The City therefore asks this Court to enter permanent relief based in part on an asserted fiscal constraint that the governmental body possessing the relevant appropriations authority has not imposed.

The parties' differing positions regarding the Ordinance's legality provide yet another reason the case is not moot. Plaintiffs have expressly declined to accept the City's proposed permanent injunction as full relief and continue to seek a declaratory judgment that the Ordinance is unlawful, invalid, and unenforceable. The City, meanwhile, does not concede that the Ordinance is unlawful, seeking only the injunction. Thus, the existing parties do not agree about the appropriate disposition of the case. And even as to the permanent injunction they both seek, the parties' agreement cannot itself supply the basis for judicial relief. A permanent injunction is an exercise of the Court's equitable authority determining the parties' legal rights and obligations; it cannot be obtained merely because litigants agree that a court should incorporate their negotiated position into a judgment.

The Stipulation therefore does not present a completed, self-executing settlement that leaves the Court with nothing further to adjudicate. Instead, the City asks the Court to convert its decision to cease defending the Ordinance into permanent federal injunctive relief notwithstanding substantial questions concerning the allocation of municipal authority, while Plaintiffs simultaneously maintain that additional judicial relief remains necessary. Under these circumstances, the Stipulation cannot itself establish that the controversy has ceased to exist.

B. The Stipulation Heightens, Rather Than Eliminates, the Need for Intervention under Rule 24

The Stipulation does not eliminate Proposed Intervenors' interests in this litigation. To the contrary, it confirms the need for their participation before the Court reviews Plaintiffs' claims.

1. Proposed Intervenors' Rule 24 Motion Should be Decided Before Mootness or Any Other Matter

As a threshold issue, the Court should resolve the pending Motion to Intervene before making any other determination—including addressing mootness or Plaintiffs' standing. Proposed Intervenors filed their motion months before the City's proposed Stipulation, and that motion remained pending when the City sought permanent injunctive relief. The City's abandonment of the Ordinance's defense should not foreclose consideration of the pending

Motion to Intervene. Otherwise, the very conduct confirming the need for intervention would prevent Proposed Intervenors from obtaining a ruling on their motion.

The Supreme Court has recognized that a settlement between existing parties cannot simply extinguish the interests of nonconsenting intervenors. In *Local No. 93, International Association of Firefighters v. City of Cleveland*, the Court explained that "[a] court's approval of a consent decree between some of the parties . . . cannot dispose of the valid claims of nonconsenting intervenors" and that, "if properly raised, these claims remain and may be litigated by the intervenor." 478 U.S. 501, 529 (1986). The First Circuit similarly has explained that "third party intervenors who object that they are adversely affected by a settlement between a government entity and a private party should be provided with adequate notice and an opportunity to have these objections heard." *P.R. Dairy Farmers Ass'n v. Pagán*, 748 F.3d 13, 20 (1st Cir. 2014). And intervenors must receive "a fair opportunity to present relevant facts and arguments to the court, and to counter the opponent's submissions." *United States v. Cannons Eng'g Corp.*, 899 F.2d 79, 94 (1st Cir. 1990) (quoting *Aoude v. Mobil Oil Corp.*, 862 F.2d 890, 894 (1st Cir. 1988)). Plaintiffs and Defendant seek to deprive them of this right, and Proposed Intervenors respectfully urge the Court not to permit the parties' agreement to circumvent the procedural protections afforded to those seeking intervention.

The principles reflected in *Local No. 93*, *P.R. Dairy Farmers*, and *Cannons Engineering* apply with particular force here. Proposed Intervenors did not attempt to enter this litigation in response to a completed settlement; their Motion to Intervene had been pending for approximately four months when the City filed the Stipulation, and the Court was days away from hearing argument both on the intervention issue and Plaintiffs' request for preliminary injunctive relief. The Stipulation then sought to replace that anticipated adversarial adjudication with the City's agreement to permanent injunctive relief. Whatever the City's motivation, allowing that procedural sequence to foreclose consideration of the pending intervention motion would allow an existing party to avoid intervention simply by abandoning the defense immediately before the Court determines whether intervention is warranted. The protections afforded by Rule 24 do not permit such strategic litigation tactics to defeat an otherwise proper motion to intervene.

Accordingly, the Court should resolve Proposed Intervenors' timely Motion to Intervene before determining whether the existing parties' subsequent Stipulation eliminates the controversy. Otherwise, the City's abandonment of the Ordinance would simultaneously establish the inadequacy of representation supporting intervention and prevent Proposed Intervenors from ever obtaining a ruling on their right to defend it.

2. The City's Proposed Stipulation Further Confirms the Necessity of Rule 24 Intervention

Proposed Intervenors moved under Rules 24(a) and (b) to intervene to defend the validity and operation of the Ordinance. *See* ECF Nos. 9, 10, 36, 38, 44. At that time, they provided reasons the Court should grant intervention as of right under Rule 24(a), or at least permissive intervention under Rule 24(b), based on several circumstances: the Mayor had vetoed and publicly opposed the Ordinance, retained a law firm that had gone on the record stating the Ordinance was unlawful, and declined to oppose a preliminary injunction. Two sitting City Councilors subsequently joined the motion to intervene, in their personal capacities, based on concerns that the Ordinance would not otherwise receive a full and meaningful defense. *See* ECF No. 38 at 1–3; ECF Nos. 38-1, 38-2. The Mayor's subsequent decision to seek a permanent injunction against the Ordinance further confirms that she does not intend to defend it. Put otherwise, the Stipulation further confirms the inadequacy of the City's representation: the City and Proposed Intervenors no longer merely advance different arguments toward a common objective but seek opposite dispositions of Plaintiffs' claims.

Recent developments further corroborate that divergence. On September 15, 2026, the City Council is scheduled to consider Resolution 26-161, which would adopt and authorize submission to this Court of a declaration concerning the City's litigation posture and supporting intervention by Proposed Intervenors or the Massachusetts Attorney General. *See* Proposed Resolution 26-161, attached hereto as Exhibit A. The proposed declaration states, among other things, that the Council's input generally has not been reflected in the City's litigation positions; that the Council was neither notified of nor consulted regarding the August 27 Stipulation; and that the City's earlier assent to preliminary injunctive relief was filed against the Council's wishes. *See* Ex. B ¶¶ 1–4. It further states that the Council views these actions as reflecting a divergence between its position and the litigation posture presently being taken on behalf of the City, and expressly supports Proposed Intervenors' intervention so that a defense of the Ordinance may continue. *Id.* ¶¶ 6, 14.

The Stipulation likewise materially strengthens the basis for permissive intervention. The City's agreement to permanent injunctive relief leaves no existing party prepared to defend the Ordinance against Plaintiffs' challenge. Proposed Intervenors would fill that newly created adversarial gap without asserting counterclaims, seeking affirmative relief, or expanding the issues already before the Court. *See Daggett v. Comm'n on Gov't Ethics & Election Pracs.*, 172 F.3d 104, 113 (1st Cir. 1999) (recognizing that, in considering permissive intervention, a court may consider "almost any factor rationally relevant," including whether the proposed intervenor "may be helpful in fully developing the case"). Rather than rendering intervention unnecessary, then, the Stipulation leaves Proposed Intervenors as the only participants seeking to provide an adversarial defense of the Ordinance and thereby heightens the need for permissive intervention. Accordingly, even if the Court were to find that Proposed Intervenors have not met the requirements for intervention as of right under Rule 24(a), they have established that permissive intervention is warranted under Rule 24(b).

Nor does the City's proposed Stipulation impose an independent Article III standing requirement on Proposed Intervenors. A defendant-intervenor need not independently establish Article III standing where, as here, it seeks no affirmative relief and only to defend against the relief the plaintiffs invoked federal jurisdiction to obtain. *See Melone v. Coit*, 100 F.4th 21, 29 (1st Cir. 2024) (holding that a proposed defendant-intervenor need not independently establish standing where it "simply seeks to defend the agency's position"); *Town of Chester v. Laroe Estates, Inc.*, 581 U.S. 433, 439–40 (2017) (requiring an intervenor to establish standing when it seeks relief different from that sought by a party with standing). No judgment has been entered, Plaintiffs continue to seek declaratory and injunctive relief concerning the Ordinance, and Proposed Intervenors seek only denial of that relief. In short, the Stipulation strengthens Proposed Intervenors' showing that the City does not adequately represent their interests; it does not transform their defensive participation into an independent invocation of federal jurisdiction.[2]

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[2] Even if independent Article III standing were required, Proposed Intervenors have already identified concrete interests sufficient to satisfy that requirement, including their status as Medford municipal taxpayers, their direct participation in advocating for and securing enactment of the Ordinance, and their interest in its continued enforcement and in the lawful administration of municipal funds. *See* ECF No. 41 at 4–6; ECF No. 44 at 5–7; ECF No. 56-1 at 6. Indeed, Plaintiffs themselves rely principally on their status as Medford municipal taxpayers and alleged effects on the City's investment portfolio. *See* ECF No. 56-1 at 5–6. If those interests are sufficient to establish Plaintiffs' Article III standing, Proposed Intervenors' corresponding taxpayer interests—together with their additional direct interests in the Ordinance's enactment and enforcement—would likewise satisfy Article III.

Accordingly, the City's latest litigation tactic cannot be treated as eliminating the need for intervention. On the contrary, the City's explicit abandonment of any defense of the Ordinance confirms that Proposed Intervenors' interests are no longer represented and leaves no existing party to present the defense they timely sought to advance. Those circumstances reinforce, rather than extinguish, Proposed Intervenors' entitlement to intervention under Rule 24(a), or, at minimum, the necessity of permissive intervention under Rule 24(b).

C. In Any Event, the Stipulation Does Not Moot the Case

The demanding standard for mootness is not satisfied here because Plaintiffs themselves maintain that the Stipulation does not resolve their claims or provide all of the relief they seek. At the August 31, 2026 hearing, Plaintiffs represented to the Court that they do not accept permanent injunctive relief alone and continue to seek a judicial determination that the Ordinance is unlawful. The City, meanwhile, proposes only permanent nonenforcement without a determination as to lawfulness. Thus, Plaintiffs and Proposed Intervenors agree on at least one point relevant to the question presently before the Court: the City's proposed Stipulation has not eliminated the live controversy. They disagree fundamentally as to how that controversy should be resolved—Plaintiffs seek a judgment declaring the Ordinance unlawful, while Proposed Intervenors seek to defend its validity.

Declaratory and injunctive relief are distinct forms of relief. A permanent injunction directing the City not to enforce the Ordinance would regulate the City's future conduct. It would not itself adjudicate Plaintiffs' separate request for a declaration concerning the Ordinance's legality. Plaintiffs continue to ask the Court to make that determination, while the City has not agreed to it. The Court therefore remains capable of granting or denying relief that the parties continue to dispute. The Stipulation cannot simultaneously be insufficient to satisfy Plaintiffs' requested relief and sufficient to establish that there is no longer any live controversy for the Court to resolve.

Nor does the City's willingness to refrain permanently from enforcing the Ordinance eliminate the underlying controversy. The City has not repealed the Ordinance, and the Stipulation does not purport to invalidate it through the municipal legislative process. Rather, the Ordinance remains on the books while the City asks this Court to prohibit its enforcement. *Cf. Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 457 n.1 (2017) (noting that the Governor's announcement that the challenged policy had changed did not moot the case because the relevant department had not carried its "heavy burden" of making "absolutely clear" that it could not revert to its prior policy (quoting *Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, 528 U.S. 167, 189 (2000))); *Boston Bit Labs, Inc. v. Baker*, 11 F.4th 3, 8–9 (1st Cir. 2021) (finding claims for injunctive and declaratory relief moot where the challenged executive order had been rescinded and the underlying state of emergency terminated, leaving "no ongoing conduct to enjoin" and no immediate or real controversy); *Town of Portsmouth v. Lewis*, 813 F.3d 54, 58–59 (1st Cir. 2016) (finding claims for injunctive and declaratory relief moot after the state legislature repealed the challenged tolls, leaving "no ongoing conduct to enjoin" and no sufficiently immediate and real controversy to support declaratory relief). The continuing existence of the Ordinance, coupled with Plaintiffs' insistence that they remain entitled to a judicial declaration of its invalidity, therefore distinguishes this case from one in which intervening events have eliminated the challenged measure and left the court unable to provide effectual relief.

Indeed, the unusual posture of the Stipulation underscores why mootness is the wrong characterization. The existing parties have not reached a self-executing settlement that leaves the

Court unable to provide meaningful relief. Instead, they ask the Court to act: the City requests entry of a permanent injunction, while Plaintiffs maintain that the Court must additionally declare the Ordinance unlawful. Both positions require an exercise of judicial power. So long as the Court is being asked to determine what relief should issue—and the parties continue to disagree over that question—the controversy has not disappeared merely because the City has changed its litigation position.

Accordingly, even apart from Proposed Intervenors' pending Motion to Intervene, the Stipulation does not satisfy the demanding standard for mootness. Plaintiffs continue to seek relief the City has not agreed to provide; the City has not conceded the Ordinance's illegality; and the Ordinance remains in existence. Because the Court can still grant or deny effectual relief concerning Plaintiffs' claims, this case remains a live controversy.

CONCLUSION

For the foregoing reasons, Proposed Intervenors respectfully submit that Plaintiffs have failed to establish Article III standing and that the City's August 27, 2026, Stipulation does not moot this action. Accordingly, the Court should dismiss the action for lack of subject-matter jurisdiction. In the alternative, if the Court concludes that Plaintiffs have Article III standing, it should first grant Proposed Intervenors' Motion to Intervene, reject the Stipulation as a basis for finding the case moot, and permit the case to proceed to a determination on the merits.

Dated: September 14, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on September 14, 2026, I electronically filed the foregoing Proposed Intervenors' Supplemental Memorandum Regarding Article III Standing and Mootness with the Clerk of Court using the CM/ECF system, which will send notice of such filing to all counsel of record.

/s/Malak Afaneh

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