

**IN THE SUPREME COURT OF PENNSYLVANIA**

**Nos. 12 MAP 2023 and 15 MAP 2023**

---

RICK SIGER, IN HIS CAPACITY AS  
ACTING SECRETARY OF THE DEPARTMENT OF COMMUNITY  
AND ECONOMIC DEVELOPMENT

v.

CITY OF CHESTER

Appeal of: City of Chester, Mayor Thaddeus Kirkland and City Council of the City of Chester

**BRIEF OF APPELLANTS**  
**THE CITY OF CHESTER, MAYOR**  
**THADDEUS KIRKLAND AND CITY**  
**COUNCIL OF THE CITY OF CHESTER**

---

Appeal from the Memorandum and Order entered on January 31, 2023 and the  
Order entered on February 14, 2023 of the Honorable Ellen Ceisler of the  
Commonwealth Court at Docket No. 336 MD 2020

---

**H. Marc Tepper, Esq. (No. 49084)**  
**Mark Pfeiffer, Esquire (No. 76245)**  
**BUCHANAN INGERSOLL & ROONEY PC**  
**50 S. 16th Street, Suite 3200**  
**Philadelphia, PA 19102-2555**  
**Telephone: (215) 665-8700**  
**Facsimile: (215) 665-8760**

**Attorneys for Appellants**

**TABLE OF CONTENTS**

	<u><b>Page</b></u>
<b>I. STATEMENT OF JURISDICTION .....</b>	<b>1</b>
<b>II. ORDERS IN QUESTION.....</b>	<b>1</b>
<b>III. SCOPE AND STANDARD OF REVIEW .....</b>	<b>3</b>
<b>IV. STATEMENT OF THE QUESTIONS INVOLVED .....</b>	<b>4</b>
<b>V. STATEMENT OF THE CASE .....</b>	<b>6</b>
<b>VI. SUMMARY OF ARGUMENT .....</b>	<b>19</b>
<b>VII. ARGUMENT</b>	
<b>A. The City’s Home Rule Charter may not be amended without a voter referendum required by Article IX, Section 2 of the Pennsylvania Constitution.....</b>	<b>22</b>
<b>B. The modifications to the Act 47 recovery plan impermissibly change the form of the City’s government.....</b>	<b>24</b>
<b>C. The administrative duties of the elected officials may not be suspended by a modification to an Act 47 recovery plan.....</b>	<b>30</b>
<b>D. An Act 47 receiver may not be given the right to remove items from the legislative agenda of City Council.....</b>	<b>33</b>
<b>E. The City solicitor may not be required to disclose privileged information to the Act 47 Receiver.....</b>	<b>35</b>
<b>F. The modifications to the Act 47 recovery plan are not necessary to achieve financial stability of the City.....</b>	<b>36</b>

G.	<b>The separation of powers doctrine should not permit the Commonwealth Court to empower a receiver, which is a court appointed judicial officer, to exercise control over a local government.....</b>	39
H.	<b>The facts of this case do not warrant the suspension of the administrative duties of the officials.....</b>	42
I.	<b>The Commonwealth Court should have employed a narrower remedy than suspension of the duties of the Officials.....</b>	46
V.	<b>CONCLUSION .....</b>	49
VI.	<b>APPENDIX</b>	
A.	<b>Memorandum and Order dated January 31, 2023</b>	
B.	<b>Order dated February 14, 2023</b>	
C.	<b>Home Rule Charter</b>	

## TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
<i>Ball v. Chapman</i> , 289 A.3d 1 (Pa. 2022).....	3
<i>City of Chester v. Chester Water Auth.</i> , 263 A.3d 689, 712 (Pa. Commw. Ct. 2021).....	16
<i>City of Phila. v. Schweiker</i> , 579 Pa. 591, 858 A.2d 75 (Pa. 2004).....	25
<i>Cleveland Board of Education v. Loudermill</i> , 470 U.S. 532 (1985).....	43, 46, 48
<i>Commonwealth v. 1997 Chevrolet</i> , 639 Pa. 239, 60 A.3d 153 (2017).....	3
<i>Commonwealth v. 605 University Drive</i> , 628 Pa. 434, 104 A.3d 411 (Pa. 2014).....	3
<i>Commonwealth v. Champney</i> , 619 Pa. 627, 65 A.3d 386 (2013).....	3
<i>Fagan v. Smith</i> , 615 Pa. 87, 41 A.3d 816 (2012).....	32
<i>Harrisburg Sch. Dist. v. Zogby</i> , 574 Pa. 121, 828 A.2d 1079 (2003).....	24
<i>In re Petition to Recall Reese</i> , 542 Pa. 114, 665 A.2d 1162 (1995).....	31
<i>Jefferson County Court Appointed Employees Ass'n v. Pa. Labor Rels. Bd.</i> , 603 Pa. 482, 985 A.2d 697 (2009).....	40
<i>Nutter v. Dougherty</i> , 595 Pa. 340, 938 A.2d 401(2007).....	26



**Cases-continued**

**Page**

*Pa. Rest. & Lodging Ass’n v. City of Pittsburgh*,  
653 Pa. 596, 211 A.3d 810 (2019).....24, 25, 26, 32

*Renner v. Court of Common Pleas of Lehigh Cty.*,  
660 Pa. 255, 234 A.3d 411 (2020).....40

*Robinson Twp. v. Commonwealth*,  
623 Pa. 564, 83 A.3d 901 (2013).....39

*Warner v. Conn*, 347 Pa. 617, 32 A.2d 740 (1943).....40

**Pennsylvania Statutes**

42 Pa.C.S.A. § 102.....40

53 Pa.C.S. § 2941.....23

53 Pa. C.S. § 2961.....26, 32

53 P.S. § 11701.101.....6

53 P.S. § 11701.102.....13, 30, 32, 34

53 P.S. § 11701.605.....13, 29, 32, 34

53 P.S. § 11701.703.....14, 15

53 P.S. § 11701.704.....13, 15, 20, 24, 32, 47

53 P.S. § 11701.706.....13, 14, 15, 21, 36, 41

53 P.S. § 11701.708.....14, 15, 21, 30, 33

53 P.S. § 11701.709.....14, 15, 41, 42, 46, 48

**Pennsylvania Constitution**

**Page**

Pa. Const., Art. VI, Section 7.....7, 20, 30, 31, 32  
Pa. Const., Art. IX, Section 2.....20, 22, 23, 25, 26, 29, 34  
Pa. Const. Art. IX, Section 14.....22, 25

**Rules**

Pa.R.P.C. 1.6.....5, 20, 35, 36

**I. STATEMENT OF JURISDICTION**

This Court exercised King’s Bench jurisdiction over these appeals.

**II. ORDERS IN QUESTION**

The appeals concern the Memorandum and Order of the Commonwealth Court entered on January 31, 2023<sup>1</sup> and the Order entered on February 14, 2023.<sup>2</sup>

The applicable text of the Order entered on January 31, 2023 is as follows:

AND NOW, this 31st day of January, 2023, upon consideration of the Modification of Amended Recovery Plan (Plan Modification) filed by Michael T. Doweary, in his capacity as Receiver for the City of Chester (Receiver), the response thereto filed by the City of Chester, Mayor Thaddeus Kirkland, and City Council of the City of Chester (collectively, the City), and the arguments and evidence presented at the hearing held from January 9-11, 2023, including the credited testimony, the Court hereby CONFIRMS IN PART the Plan Modification, STRIKES certain of the proposed initiatives therein, and GRANTS Receiver leave to amend the Plan Modification.

It is further hereby ORDERED and DIRECTED that: (1) Receiver’s Amended Plan Modification shall conform to the Court’s specific rulings on the proposed initiatives in the foregoing Opinion; only the proposed initiatives that the Court has stricken shall be amended. (2) Receiver shall file the Amended Plan Modification with the Court for review no later than Monday, February 13, 2023.<sup>3</sup>

---

<sup>1</sup> Appendix A  
<sup>2</sup> Appendix B  
<sup>3</sup> Appendix A

The applicable text of the Order entered on February 14, 2023 is as follows:

AND NOW, this 14th day of February, 2023, upon receipt of the Modification of Amended Recovery Plan filed on February 10, 2023 by Michael T. Doweary, in his capacity as Receiver for the City of Chester (Amended Plan Modification), in accordance with the Court's January 31, 2023 Order, the Court hereby CONFIRMS the Amended Plan Modification, EXCEPT for the parking and Stormwater Authority initiatives included therein.<sup>1</sup>

Both orders confirm the Receiver's proposed modifications to the City's financial recovery plan. Appellants principally seek review of the following confirmed modifications:

- a. The administrative duties of City councilmembers with respect to day-to-day operations shall be suspended. City councilmembers may not direct a City employee relating to any matter in the line of the employee's employment.<sup>2</sup>
- b. City elected officials shall not interfere with the directives of the Chief of Staff or the Receiver.<sup>3</sup>
- c. The Receiver shall have the authority to direct the City or Authority to remove items from their Council or Board agenda.<sup>4</sup>
- d. Section 11.9-903(c) of the City's Charter provides that, "Where special skills are required, Council may at its discretion, employ qualified non-

---

<sup>1</sup> Appendix B  
<sup>2</sup> R. 1546a  
<sup>3</sup> R. 1547a  
<sup>4</sup> R. 1549a

residents of the City in such cases where there are no qualified City residents available for the particular position involved.” This [modification] substitutes “the Receiver” for “Council.”<sup>5</sup>

- e. Should the City Solicitor become aware of a situation where a City official or employee is not complying with an order of this Court or with a confirmed recovery plan or plan modification, he shall immediately instruct the City official or employ to comply and he shall immediately inform the Receiver.<sup>6</sup>

### **III. SCOPE AND STANDARD OF REVIEW**

The standard of review for purely legal questions, legal conclusions, statutory construction and mixed questions of law and fact is *de novo*, and the scope of review is plenary. *Ball v. Chapman*, 289 A.3d 1, \*12 (Pa. 2022); *Commonwealth v. 1997 Chevrolet*, 639 Pa. 239, 304, 160 A.3d 153 (2017); *Commonwealth v. Champney*, 619 Pa. 627, 65 A.3d 386, 400 (2013).

The standard of review for factual determinations made by the trial court is to determine if they are supported by substantial competent evidence, and whether the trial court abused its discretion or committed an error of law. *Commonwealth v. 605 University Drive*, 628 Pa. 434, 104 A.3d 411, 420 (Pa. 2014).

---

<sup>5</sup> R. 1558a

<sup>6</sup> R. 1564a

#### **IV. STATEMENT OF THE QUESTION INVOLVED**

1. Whether the City’s home rule charter may be amended without a voter referendum required by Article IX, Section 2 of the Pennsylvania Constitution? The Commonwealth Court did not address whether section 11.9-903(c) of the City’s Home Rule Charter could be amended without a voter referendum.

2. Whether the modifications to the Act 47 recovery plan may change the form of local government? The Commonwealth Court concluded proposed modifications to the recovery plan which give the Receiver “exclusive authority over internal administrative matters, while concomitantly stripping the Mayor and City Council of duties expressly granted to them by the City’s governing documents” effectuate an impermissible wholesale change of municipal government. However, the Commonwealth Court confirmed modifications to the recovery plan which change the form of government by a) suspending the administrative duties of the elected officials, b) prohibiting the elected officials from interfering with the directives of the chief of staff and Receiver and c) authorizing the Receiver to direct the City to remove items from the City council agenda.

3. Whether the administrative duties of the appointed officials may be suspended by a modification to an Act 47 recovery plan? The Commonwealth

Court determined the administrative duties of the elected officials, acting in their appointed capacities as department heads, may be suspended by a modification to an Act 47 recovery plan.

4. Whether an Act 47 receiver may be given the right to remove items from the legislative agenda of city council? Without providing analysis, the Commonwealth Court confirmed a modification to the recovery plan which authorizes the Receiver to remove items from the legislative agenda.

5. Whether a city solicitor may be required to disclose privileged information to an Act 47 receiver? Without providing analysis, the Commonwealth Court confirmed a modification of the recovery plan which potentially requires the City solicitor to potentially disclose privileged information to the Receiver in violation of Rule 1.6 of the Pennsylvania Rules of Professional Conduct.

6. Whether the confirmed modifications to the Act 47 recovery plan are necessary to achieve financial stability of the distressed municipality? The Commonwealth Court determined the Receiver's proposed modifications to the recovery plan relating to human resources, finance, auditing, procurement, and legal, will help provide the City with "stability" but the Commonwealth Court did not expressly determine these modifications were necessary to achieve "financial stability."

7. Whether the separation of powers doctrine permits the Commonwealth Court to empower a receiver to exercise control over a local government? The Commonwealth Court did not address whether the separation of powers doctrine is violated when a receiver to exercise control over a local government.

8. Whether the facts of the case warrant the suspension of the administrative duties of the officials? The Commonwealth Court determined the facts of the case warrant suspension of the administrative duties of the officials.

9. Whether the Commonwealth Court should have employed a narrower remedy than suspension of the duties of the officials? The Commonwealth Court did not address whether a narrower remedy was warranted or required.

## **V. STATEMENT OF THE CASE**

These appeals involve a municipal receivership proceeding pursuant to the Pennsylvania Municipalities Financial Recovery Act of 1987, as amended 53 P.S. § 11701.101, et seq. (“Act 47”). The appeals relate to the role of an Act 47 receiver, the ability of an Act 47 receiver to suspend the duties of municipal officials and the extent a municipality to retains the right of self-governance during an Act 47 receivership.



## The City's Form of Government

The City has operated under a Home Rule Charter<sup>7</sup> since 1980.<sup>8</sup> The preamble to the Home Rule Charter states it was adopted by the citizens of the city in a referendum in accordance with Article IX, Section 2, of the Pennsylvania Constitution to, in part, “establish a form of government... [to] provide a government responsive to the citizens, ... and to bring to the people of the City of Chester the greatest grant of local self-government powers that a municipality can have under the Constitution of the Commonwealth of Pennsylvania.”<sup>9</sup>

The Home Rule Charter authorizes<sup>10</sup> the City's Administrative Code,<sup>11</sup> which was adopted by ordinance and “provide[s] for the administrative organization of the City government, the assignment of duties and responsibilities to officers and employees, and procedural requirements set forth in the general laws or in the Charter.”<sup>12</sup>

Pursuant to the Home Rule Charter, the City is governed by an elected five-member City Council, one of whom is the Mayor who has full voting rights.<sup>13</sup> City

---

<sup>7</sup> Appendix C

<sup>8</sup> Appendix A, page 7.

<sup>9</sup> R. 2453a

<sup>10</sup> Appendix C § 602

<sup>11</sup> R. 2473a. *et seq.* (the “Administrative Code”)

<sup>12</sup> Appendix A, page 7; *see also* Appendix C § 602; *see also* Appendix C §§ 211, 213, and 215 (incorporating provisions of the Administrative Code).

<sup>13</sup> Appendix A, page 8; Appendix C §§ 201, 301

Council members serve four-year staggered terms.<sup>14</sup> City Council is exclusively vested with “[a]ll legislative powers and duties of the City.”<sup>15</sup> These legislative powers include adopting a budget, making appropriations for expenditures, levying taxes, conducting audits and investigations, modifying the Administrative Code to create or abolish municipal departments, and adopting ordinances and resolutions.<sup>16</sup>

City Council may, by ordinance, create, alter, or abolish and prescribe the functions of the City departments, agencies, and offices, not inconsistent with the general laws or the Home Rule Charter and designate department heads from City Council.<sup>17</sup> City Council also acts as a body in formulating programs and policies of all departments and agencies of the City government, which policies and programs shall be implemented through the Administrative Code, other ordinances of Council, or departmental regulations approved by Council.<sup>18</sup>

The Mayor is the City’s chief executive.<sup>19</sup> The Mayor supervises the conduct of all City officers, examines all reasonable complaints against any of them and causes any violations or neglect of duty to be promptly punished or reported to

---

<sup>14</sup> Appendix A, page 8; Appendix C § 205  
<sup>15</sup> Appendix A, page 8; Appendix C § 215  
<sup>16</sup> Appendix A, page 8; Appendix C § 215  
<sup>17</sup> Appendix C § 601  
<sup>18</sup> Appendix C § 603  
<sup>19</sup> Appendix A, page 7; Appendix C § 301

City Council.<sup>20</sup> At the annual organizational meeting of City Council, the Mayor may assign to each Council member a responsibility as department head of one or more departments or agencies of the City government.<sup>21</sup> All current department heads are members of City Council and have been appointed by the Mayor in this manner.

The Mayor also has emergency powers to preserve the public peace within the City including all the powers which are devolved by the laws of the Commonwealth upon sheriffs, to prevent and suppress mobs, riots, and unlawful and tumultuous assemblies.<sup>22</sup> Finally, the Mayor has “any and all additional powers and duties which may be conferred upon him by the Administrative Code.”<sup>23</sup>

The Home Rule Charter authorizes City Council to adopt an Administrative Code to provide for the administrative organization of the City government, the assignment of duties and responsibilities to officers and employees.<sup>24</sup> All changes in organization and procedures in the Administrative Code must be effectuated by amendment to the Administrative Code in the same manner as other ordinances are enacted and amended.<sup>25</sup>

---

<sup>20</sup> Appendix A, pages 7- 8; Appendix C § 302

<sup>21</sup> Appendix C § 603

<sup>22</sup> Appendix C § 304

<sup>23</sup> Appendix A, pages 7-8; Appendix C § 302

<sup>24</sup> Appendix C § 602

<sup>25</sup> Appendix C § 602

The Administrative Code provides the directors of the City's various departments have the powers and duties assigned by City Council and serve as agents of City Council and are subject to review, approval and revocation by City Council.<sup>26</sup> The Administrative Code provides the department directors report to City Council.<sup>27</sup>

### **The City's Financial Problems**

The City's financial problems are the product of demographic and economic forces which have been mounting for decades.<sup>28</sup> The financial problems pre-date the administration of the current Mayor who took office in 2016.<sup>29</sup>

During World Wars I and II, the City thrived as an industrial and manufacturing community.<sup>30</sup> Since the mid-1950s, the City has experienced economic difficulties and challenges, including, (i) a decreasing population, (ii) declining revenues, (iii) high municipal expenditures, and (iv) high levels of crime.<sup>31</sup>

Over time, these trends mutually reinforced each other and substantially eroded the City's tax base.<sup>32</sup> As more people leave the City, there is less economic

---

<sup>26</sup> Administrative Code § 111.03

<sup>27</sup> Administrative Code § 111.03

<sup>28</sup> R. 2683a

<sup>29</sup> Appendix A, page 17

<sup>30</sup> R. 2683a, paragraph 11

<sup>31</sup> R. 2683a, paragraph 11

<sup>32</sup> R. 2683a, paragraph 11

activity and fewer jobs.<sup>33</sup> Less economic activity and fewer jobs induce more people to leave, further weakening the tax base.<sup>34</sup> Tax increases to make up for the decrease in economic activity and population, and decreased tax revenue, induces even more population loss and contributes to a long-term spiral of decline.<sup>35</sup>

These trends have taken a substantial toll on the City's ability to generate revenue, provide services to the City's residents, maintain critical infrastructure and pursue the type of economic development projects which would revitalize the City.<sup>36</sup>

In 1995, faced with multi-million dollar deficits and past due obligations, and after nearly four-decades of decline, the City was designated as a distressed city under Act 47 and subjected to financial oversight by the Commonwealth of Pennsylvania.<sup>37</sup> The City remained in various forms of supervision as a distressed city under Act 47 since 1995, a period of over 27 years.<sup>38</sup>

The City's current financial problems include underfunded pension liabilities of \$40 million to \$127 million which the City has "no way of paying" through its general operating revenues.<sup>39</sup>

---

<sup>33</sup> R. 2683a, paragraph 11

<sup>34</sup> R. 2683a, paragraph 11

<sup>35</sup> R. 2683a, paragraph 11

<sup>36</sup> R. 2683a, paragraph 11

<sup>37</sup> R. 2684a, paragraph 12

<sup>38</sup> R. 2684a, paragraph 12

<sup>39</sup> Appendix A, pages 32-33; *c.f.* R. 2691a, paragraph 31 (Receiver stating funding the plans in full would require a contribution of at least \$127,200,000 as of January 1, 2022).

According to the Receiver, as a practical matter, the City cannot meaningfully increase revenues by raising taxes.<sup>40</sup> Citizens of the City already pay significantly higher taxes than other communities in Delaware County and the City's earned income tax is the second highest in the Commonwealth, lower only than Philadelphia.<sup>41</sup> Even if the City could raise taxes, the residents lack the financial wherewithal to bear them.<sup>42</sup>

According to the Receiver, the City cannot materially reduce expenditures by further reducing employee head count, wages, or services to residents beyond the level currently provided.<sup>43</sup> The City's long-standing financial troubles have already left it unable to pay competitive wages to attract non-fire employees.<sup>44</sup> Additional cuts would only further jeopardize health, safety, and welfare.<sup>45</sup>

### **The Pandemic and Receivership**

On April 13, 2020, after the onset of the COVID-19 pandemic, the Governor of the Commonwealth declared a fiscal emergency in the City. Following the declaration of the fiscal emergency, the Commonwealth filed a motion in the

---

<sup>40</sup> R. 2713a, paragraph 30  
<sup>41</sup> R. 2713a, paragraph 30  
<sup>42</sup> R. 2713a, paragraph 30  
<sup>43</sup> R. 2713a, paragraph 30  
<sup>44</sup> R. 2713a, paragraph 30  
<sup>45</sup> R. 2713a, paragraph 30

Commonwealth Court for the appointment of an Act 47 receiver for the City and the Receiver was appointed by the Commonwealth Court on June 22, 2020.<sup>46</sup>

### **The Powers of an Act 47 receiver**

The powers of an Act 47 are statutorily enumerated. 53 P.S. §§ 11701.706. Unlike a traditional receivership, an Act 47 receiver does not take control of the City or supplant local governance. 53 P.S. §§ 11701.102(b)(1)(ii), 11701.605 and 11701.704(a). There is no receivership estate and an Act 47 receiver has no right to control the assets of the City.

An Act 47 receiver's relevant authority is limited to the power to: (a) require the municipality to take actions to implement an Act 47 recovery plan; (b) modify the recovery plan as necessary to achieve financial stability of the distressed municipality; (c) require the municipality to sell assets; (d) approve, disapprove, modify, reject, terminate or renegotiate contracts and agreements except to the extent prohibited by the Constitutions of the United States and Pennsylvania; and (e) file a bankruptcy proceeding and to act on the municipality's behalf in the bankruptcy. 53 P.S. § 11701.706(a)(1), (2), (5), (6) and (9).

There is no broad catch-all provision giving an Act 47 receiver governance rights or the right to exercise control over the municipality. Except for the

---

<sup>46</sup> R.25a

enumerated powers with respect to filing a bankruptcy case, none of the statutory powers permit an Act 47 receiver to take direct action on behalf of a municipality.

From a general perspective, an Act 47 receiver's powers only extend to directing and requiring action from the municipality. If the municipality refuses to comply with the receiver's directive, the recourse is for the receiver to file a *mandamus* action in the Court to compel compliance. 53 P.S. §§ 11701.708 and 11701.709. The Receiver's proposed modifications to the recovery plan at issue in this appeal were expressly intended to bypass this statutory *mandamus* procedure.<sup>47</sup>

### **Role of an Act 47 Receiver**

An Act 47 receiver's primary role is to formulate and implement a recovery plan for the City. 53 P.S. §§ 11701.703 and 11701.706. The recovery plan must provide for: (i) continued provision of vital and necessary services; (ii) payment of the lawful financial obligations of the distressed municipality and authorities; (iii) timely deposit of required payments to the pension fund in which the distressed municipality participates. 53 P.S. § 11701.703(b)(1).

An Act 47 recovery plan may also include: (i) the sale, lease, conveyance, assignment or other use or disposition of the assets of the distressed municipality; (ii) the approval, modification, rejection, renegotiation or termination of contracts

---

<sup>47</sup> R. 1520a ("By including many of these initiatives, the Receiver hopes to avoid multiple returns to the Court seeking *mandamus*."); see also R. 1546a (Receiver seeking to limit representation of the City in a *mandamus* proceeding to the solicitor)



or agreements of the distressed municipality or authorities, except to the extent prohibited by the Constitutions of the United States and Pennsylvania; (iii) the execution of new contracts or agreements; and (iv) other information the receiver deems appropriate. 53 P.S. § 11701.703(b)(2).

A receiver may only modify a recovery plan “as necessary to achieve financial stability of the distressed municipality.” 53 P.S. § 11701.706(a)(2). There is no provision in Act 47 permitting a receiver to amend a recovery plan to suspend administrative duties of municipality officials or to give a receiver any authority over the legislative role of elected officials.

A recovery plan may not be construed to change the form of government of the distressed municipality or an authority. 53 P.S. § 11701.704(b). Confirmation of a recovery plan, or a modified recovery plan, may not be construed to affect the powers and duties of elected and appointed officials except as follows: (1) confirmation of the plan imposes a mandatory duty to undertake the acts set forth in the plan; and (2) confirmation suspends the authority of the elected and appointed officials to exercise power to the extent it would interfere with the powers granted to the receiver or the goals of the recovery plan. 53 P.S. § 11701.704(a). The Receiver’s remedy to enforce this is to pursue *mandamus* in the Commonwealth Court. 53 P.S. §§ 11701.708 and 11701.709.

## The Recovery Strategy

The Receiver's recovery strategy, which was also the City's recovery strategy before the appointment of the Receiver, involves the privatization of the Chester Water Authority assets.<sup>48</sup> The City issued a request for proposals for the purchase of the assets of the Chester Water Authority and received three proposals from Aqua America, Pennsylvania American Water and the Chester Water Authority itself. *See City of Chester v. Chester Water Auth.*, 263 A.3d 689, 712 (Pa. Commw. Ct. 2021). According to the initial bids, the City could potentially receive between \$60 million and \$410 million if it monetizes the water system assets. *Id.*<sup>49</sup>

## The Recovery Plans

The Commonwealth Court confirmed the Receiver's original Act 47 recovery plan for the City in October, 2020 and an amended recovery plan on June 7, 2021.

At issue in these appeals are the Receiver's most recent proposed modifications to the recovery plan which were filed on November 8, 2022, two days before the Receiver filed a bankruptcy petition on behalf of the City.<sup>50</sup>

---

<sup>48</sup> R. 42a

<sup>49</sup> The \$410 million proposal is from Aqua. The \$60 million proposal is from the Chester Water Authority which is attempting to stop the privatization through litigation. *See City of Chester v. Chester Water Auth.*, 263 A.3d 689, 712 (Pa. Commw. Ct. 2021).

<sup>50</sup> The Receiver filed revised modifications on February 10, 2023 which were the final version confirmed by the Court. See R. 1517a.

The Appellants consented to many of the Receiver’s proposed modifications to the recovery plan. However, the Appellants objected<sup>51</sup> to the modifications which are subject to these appeals and several others which are not at issue in these appeals.

The Commonwealth Court noted the “most contested [modifications] seek to remove the City’s elected officials from their appointed positions as department heads; suspend the administrative duties of the City’s elected officials as they relate to day-to-day operations; and give Receiver the sole authority to take certain actions on the City’s behalf, including entering into contracts and controlling and directing the expenditure of federal and state funds.”<sup>52</sup> The Commonwealth Court noted the Receiver sought “to convert the City’s current Chief Operating Officer [] into the City’s Chief of Staff, who would report exclusively to Receiver and oversee each of the City’s departments.”<sup>53</sup>

The Commonwealth Court held evidentiary hearings on the proposed modifications from January 9, 2023 through January 11, 2023. The Commonwealth Court noted “[m]uch of the testimony at the hearing focused on the following incidents, which Receiver contends exemplify the City officials’ lack of transparency, lack of cooperation, and disrespect of Receiver and his team:

---

<sup>51</sup> R. 492a; R. 520a; R. 824a; R. 851a; R. 865a; R. 1079a; R. 1283a

<sup>52</sup> Appendix A, page 10

<sup>53</sup> Appendix A, page 10

- a. Councilman Morgan’s involvement in a June 2022 phishing scam, which resulted in the City’s loss of \$400,000, and his failure to inform Receiver of the incident for three months;
- b. the City’s unauthorized payroll payments to an employee for several months while he was incarcerated;
- c. Councilman Morgan’s purchase of \$1,500 in gift cards in December 2021 for which he was subsequently reimbursed by City Council without adequate documentation justifying the purchases; and
- d. the Mayor’s verbal threats and racial slurs directed to the Receiver on two occasions in February 2021 and December 2022.”<sup>54</sup>

After post-trial briefing, on January 31, 2023, the Commonwealth Court issued a Memorandum and Order confirming the Receiver’s proposed modifications to the recovery plan in part and denying them in part. The Order required the Receiver to submit a revised recovery plan consistent with the Commonwealth Court’s order. On February 10, 2023, the Receiver submitted revisions to the recovery plan as required by the Commonwealth Court’s Memorandum and Order. On February 14, 2023, the Commonwealth Court formally confirmed the Receiver’s proposed modifications to the recovery plan consistent with the January 31, 2023 Memorandum and Order.

---

<sup>54</sup> Appendix A, pages 11-12

## The Appeals

These appeals are based on the January 31, 2023 Memorandum and Order and the February 14, 2023 Order entered by Judge Ceisler of the Commonwealth Court. Appellants do not seek review of all of the confirmed modifications to the recovery plan. Appellants only seek review of the confirmation of the certain problematic modifications which generally change the form of government and suspend the administrative duties of the City officials.

Appellants raised the issues which are subject to these appeals at various points throughout the proceeding before the Commonwealth including in connection with Appellants' objections to the modifications, pre-trial briefing, and post-trial briefing.<sup>55</sup>

### **VI. SUMMARY OF ARGUMENT**

Although there are nine (9) questions presented for review, there is significant overlap and common themes with regard to most of them. The appealed modifications to the City's recovery plan are not authorized by Act 47 and are contrary to the self-governance protections afforded to the City's Home Rule Charter and Administrative Code by the Pennsylvania Constitution and other statutes.

---

<sup>55</sup> R. 492a; R. 520a; R. 824a; R. 851a; R. 865a; R. 1079a; R. 1283a

First, one of the modifications impermissibly and expressly amends Section 11.9-903(c) of the City's Home Rule Charter without a voter referendum required by Article IX, Section 2 of the Pennsylvania Constitution.

Second, the modifications change the form of the City's government in violation of section 704(b) of Act 47, 53 P.S. § 11701.704(b), and Article IX of the Pennsylvania Constitution which provides constitutional protections for the self-governance provided by a home rule charter.

Third, the suspension of the duties of the elected officials, in their positions as the appointed heads of the City's departments, violates Article VI, Section 7 of the Pennsylvania Constitution and is contrary to various sections of Act 47 which protect the roles of City officials during an Act 47 proceeding.

Fourth, the modification which gives the Receiver the right to require items be removed from the City's legislative agenda changes the City's form of government which exclusively vests legislative authority in City Council. This modification violates various provisions of Act 47 and the protections for home rule charters contained in Article IX, Section 2 of the Pennsylvania Constitution.

Fifth, one of the modifications requires the City solicitor to disclose information, including potentially privileged communications, to the Receiver in violation of Rule 1.6(a) of the Pennsylvania Rules of Professional responsibility. Nothing in Act 47 authorizes this requirement.

Sixth, the Receiver only has authority to modify the recovery plan as necessary to achieve the financial stability of the City. 53 P.S. § 11701.706(a)(2). The Receiver has no power to amend the recovery plan to change the form of government or to suspend officials. The appealed modifications do not relate to the City's financial recovery and are not authorized by Act 47.

Seventh, the modifications would permit the Receiver, who is an arm of the court and a judicial officer, to interfere with the governance of the City in violation of the separation of powers doctrine.

Eighth, the facts of this case do not warrant the suspension of the appointed administrative duties of the elected officials. There were four (4) principal incidents raised by the Receiver. One incident was with respect to the Mayor and three were related to Councilperson Morgan. The facts related to these incidents are insufficient to justify depriving the residents of the City of their choices to govern the City. There were no serious allegations of misconduct with respect to the other members of City Council who should not be suspended based on the conduct of the Mayor and Councilperson Morgan.

Finally, Act 47 provides a narrower remedy than the non-statutory suspension remedy requested by the Receiver. Act 47 permits a receiver to seek *mandamus* to compel compliance by the officials. 53 P.S. §§ 11701.708 and 11701.708. Instead of using the statutory procedure, the Receiver opted for the

non-statutory remedy of suspension which the Receiver’s chief of staff, who drafted the proposed modification, described as a “sledgehammer.”<sup>56</sup> Because the non-statutory “sledgehammer” remedy of suspension results in the disenfranchisement of the residents and is not authorized by Act 47, it should not have been employed or confirmed.

## VII. ARGUMENT

### A. **The City’s Home Rule Charter may not be amended without a voter referendum required by Article IX, Section 2 of the Pennsylvania Constitution.**

Article IX, Section 2 of the Pennsylvania Constitution requires a voter referendum to amend a home rule charter:

Home rule. Municipalities shall have the right and power to frame and adopt home rule charters. *Adoption, amendment or repeal of a home rule charter shall be by referendum.*<sup>57</sup> The General Assembly shall provide the procedure by which a home rule charter may be framed and its adoption, amendment or repeal presented to the electors. If the General Assembly does not so provide, a home rule charter or a procedure for framing and presenting a home rule charter may be presented to the electors by initiative or by the governing body of the municipality...

Pa. Constitution, Art. IX, Section 2 (emphasis added).

---

<sup>56</sup> R. 3288a (transcript page 143, line 14)

<sup>57</sup> “Referendum” means approval of a question placed on the ballot, by initiative or otherwise, by a majority vote of the electors voting thereon. Pa. Constitution, Article IX, Section 14.



The Commonwealth Court confirmed the following modification to the City's Act 47 recovery plan which expressly amends the City's Home Rule Charter without a voter referendum:

Section 11.9-903(c) of the City's [Home Rule] Charter provides that, "Where special skills are required, Council may at its discretion, employ qualified non-residents of the City in such cases where there are no qualified City residents available for the particular position involved." This [modification] substitutes "the Receiver" for "Council."<sup>58</sup>

Nothing in Act 47 authorizes, or purports to authorize, the Receiver or the Commonwealth Court to bypass the voter referendum required by the constitution, and by 53 Pa.C.S. § 2941 *et seq.* (establishing the procedure for amendment of a home rule charter by voter referendum) to amend Section 11.9-903(c) of the Home Rule Charter to substitute the Receiver for City Council.

As a result, the confirmed modification to the recovery plan, which expressly amends Section 11.9-903(c) of the Home Rule Charter without a voter referendum, facially violates Article IX, Section 2 of the Pennsylvania Constitution.

---

<sup>58</sup> R. 1558a

**B. The modifications to the Act 47 recovery plan impermissibly change the form of the City's government.**

The confirmed modifications to the recovery plan are impermissible because they violate Act 47, the Pennsylvania Constitution and the Pennsylvania Home Rule Charter Act by changing the form of the City's government.

Act 47 prohibits a recovery plan from changing the municipality's form of government. 53 P.S. § 11701.704(b). Although this Court has not determined the meaning of "form of government" in the context of 53 P.S. § 11701.704(b), the phrase was addressed in the context of the Education Empowerment Act which gave a mayor additional authority not provided for in the municipality's form of government. *Harrisburg Sch. Dist. v. Zogby*, 574 Pa. 121, 828 A.2d 1079 (2003). This Court in *Zogby* determined it would be an impermissible alteration of a municipality's form of government if it was inconsistent with the "basic existence, structure, and powers of the office of mayor or the other branches of city government." *Zogby* at 143.

The City's form of government also has constitutional protection. Prior to the enactment of the current constitution in 1968, Pennsylvania followed *Dillon's* rule which provides municipalities are creatures of the state with no inherent powers and may do only those things which the legislature has expressly or by necessary implication placed within their power. *Pa. Rest. & Lodging Ass'n v. City*

*of Pittsburgh*, 653 Pa. 596, 606-607, 211 A.3d 810 (2019). The current constitution “turned this principal on its head” with respect to municipalities, like the City, which adopt a home rule charter. *Id.*

Article IX, Section 2 of the Pennsylvania Constitution provides:

Home rule. Municipalities shall have the right and power to frame and adopt home rule charters. ***Adoption, amendment or repeal of a home rule charter shall be by referendum.***<sup>59</sup> The General Assembly shall provide the procedure by which a home rule charter may be framed and its adoption, amendment or repeal presented to the electors. If the General Assembly does not so provide, a home rule charter or a procedure for framing and presenting a home rule charter may be presented to the electors by initiative or by the governing body of the municipality. ***A municipality which has a home rule charter may exercise any power or perform any function not denied by this Constitution, by its home rule charter or by the General Assembly at any time.***

Pa. Constitution, Art. IX, Section 2 (emphasis added).

“By virtue of this revision, any power that the General Assembly did not forbid was now extended to any municipality that—like the City []—adopted home rule.” *Pa. Rest. & Lodging Ass’n*, 211 A.3d at 816, citing *City of Phila. v. Schweiker*, 579 Pa. 591, 858 A.2d 75, 84 (Pa. 2004).

---

<sup>59</sup> “Referendum” means approval of a question placed on the ballot, by initiative or otherwise, by a majority vote of the electors voting thereon. Pa. Constitution, Article IX, Section 14.

Part of Article IX, Section 2 is incorporated, nearly verbatim, into the Pennsylvania Home Rule Charter Act which emphasizes a home rule municipality's power is to be liberally construed in favor of the municipality:

“A municipality which has adopted a home rule charter may exercise any powers and perform any function not denied by the Constitution of Pennsylvania, by statute or by its home rule charter. All grants of municipal power to municipalities governed by a home rule charter under this subchapter, whether in the form of specific enumeration or general terms, shall be *liberally construed in favor of the municipality.*”

53 Pa. C.S. § 2961 (emphasis added).

If there is ambiguity in the scope of home rule municipal authority or the limitations imposed on the authority, the ambiguity must be resolved in the municipality's favor. *Pa. Rest. & Lodging Ass'n v. City of Pittsburgh*, 653 Pa. 596, 211 A.3d 810 (2019) citing *Nutter v. Dougherty*, 595 Pa. 340, 938 A.2d 401, 411 (2007).

The Receiver described the City's form of government in a status report to the Commonwealth Court as follows:

Under the City's current form of government, each Council member serves as a department head. There is no single individual, such as a city manager, in charge of City operations. This arrangement does not meet Chester's needs. The Receiver will be creating a Chief

Operating Officer position who will be responsible for overseeing and coordinating City operations.<sup>60</sup>

The basic structure of the City's government, as established by the Home Rule Charter<sup>61</sup> and Administrative Code, gives the Mayor and City Council dual roles as legislators and administrators. The City's legislative function is exclusively vested in City Council, which includes the Mayor.<sup>62</sup> The administrative functions of the City are vested in the Mayor as the chief executive with the power to supervise all administrative activities of the City.<sup>63</sup> The Home Rule Charter gives the Mayor the right, and the Mayor has exercised the right, to appoint Council members to serve as heads of the City's departments.<sup>64</sup>

The modifications to the recovery plan impermissibly change the form of the City's government by, *inter alia*: a) prohibiting the officials from directing the activities of the chief of staff;<sup>65</sup> b) suspending the administrative duties of City council members;<sup>66</sup> c) prohibiting the elected officials from interfering with directives of the chief of staff or the Receiver;<sup>67</sup> and d) giving the Receiver the

---

<sup>60</sup> R.40a. (Receiver expressing desire to change the form of government prior to any of the alleged misconduct in this case)

<sup>61</sup> The preamble to the Home Rule Charter states it was adopted to establish a form of government for the City. R. 2453a.

<sup>62</sup> Order, page 8; Appendix C § 215

<sup>63</sup> Appendix C §§ 301 and 303

<sup>64</sup> Appendix C § 603

<sup>65</sup> R. 1546a

<sup>66</sup> R. 1546a

<sup>67</sup> R. 1547a

right to remove items from the legislative agenda;<sup>68</sup> and e) amending the Home Rule Charter.<sup>69</sup>

In short, the modifications suspend the administrative powers of the Mayor and City Council members as department heads and assign them to a newly appointed chief of staff.<sup>70</sup> This violates the Home Rule Charter and Administrative Code which make all officials, including the chief of staff, subject to the supervision and control of the Mayor and City Council.<sup>71</sup> The modifications to the plan reverse the hierarchy by making the Mayor subservient to the chief of staff and the Receiver by prohibiting the Mayor from interfering with the directives of the Receiver and chief of staff.<sup>72</sup>

The residents of the City adopted the Home Rule Charter to “bring to the people of the City of Chester the greatest grant of local self-government powers that a municipality can have under the Constitution of the Commonwealth of Pennsylvania.”<sup>73</sup> Before confirmation of the modifications to the recovery plan, the residents entrusted the administration of their City to the Mayor, as the chief executive and head of the public affairs department, and City Council as the appointed department heads.

---

<sup>68</sup> R. 1549a

<sup>69</sup> R. 1558a

<sup>70</sup> R. 1546a – R. 1547a

<sup>71</sup> Appendix C § 303; Administrative Code §§ 111.03, 112.06

<sup>72</sup> Appendix 3, page 31

<sup>73</sup> R. 2453a

If the Commonwealth Court’s decision stands, the City will not be run by the Mayor in his role as chief executive. It will be run by a newly retained chief of staff and a receiver who are not elected and not accountable to the residents in any way. The Mayor and City Council members, as the chief executive officer and department heads, respectively, will have to follow the directives of a previously subordinate chief of staff. Not only does the modification suspend the administrative duties, it reverses the roles of the elected officials and the chief of staff by elevating the chief of staff to a position of authority over the Mayor and City Council.

The modifications to the recovery plan will prohibit the Mayor and City Council members from fully performing their exclusive legislative function and appointed administrative functions in violation of the state constitution which provides, in relevant part, a “municipality which has a home rule charter may exercise any power or perform any function not denied by this Constitution, by its home rule charter or by the General Assembly at any time.” Pa. Const., Art. IX, Section 2.

Act 47 does not require or contemplate this result. Instead, Act 47 preserves self-governance and allows appointed and elected officials to “continue to carry out the duties of their respective offices” during a fiscal emergency like the one which continues in the City. 53 P.S. § 11701.605; *see also* 53 P.S. §

11701.102(b)(1)(ii) (legislative intent to leave principal responsibility for conducting the governmental affairs to the charge of its elected officials).

The Receiver's remedy to ensure the City and officials do what is necessary to effectuate a financial recovery is not to unilaterally suspend their duties or make wholesale changes to the government through a recovery plan modification. The remedy is a *mandamus* action to compel compliance by the officials. 53 P.S. §§ 11701.708 and 11701.708. The Receiver's proposed modifications were expressly intended to bypass the statutory *mandamus* procedure.<sup>74</sup>

As a result, these modifications the recovery plan may not be confirmed.

**C. The administrative duties of the elected officials may not be suspended by a modification to an Act 47 recovery plan.**

Article VI, Section 7 of the Pennsylvania Constitution provides:

All civil officers shall hold their offices on the condition that they behave themselves well while in office, and shall be removed on conviction of misbehavior in office or of any infamous crime. *Appointed civil officers*, other than judges of the courts of record, *may be removed at the pleasure of the power by which they shall have been appointed*. All civil officers elected by the people, except the Governor, the Lieutenant Governor, members of the General Assembly and judges of the courts of record, shall be removed by the Governor for reasonable cause, after due notice and full hearing, on the address of two-thirds of the Senate.

Pa. Const., Art. VI, Section 7

---

<sup>74</sup> R. 1520a ("By including many of these initiatives, the Receiver hopes to avoid multiple returns to the Court seeking mandamus.")



Section 7 is the exclusive method, absent impeachment, conviction of crime or misbehavior in office, of removing such [appointed civil] officers." *In re Petition to Recall Reese*, 542 Pa. 114, 124, 665 A.2d 1162 (1995)(applying section 7, which facially applies to both elected and appointed officers, in a case involving an elected official).

In this case, the City officials have not been convicted of crime or misbehavior in office. Even if they were guilty of a crime or misconduct, they would not be subject to removal by the Receiver, the Commonwealth Court or a confirmed recovery plan because Article VI, Section 7 provides the sole method of removing public officials.

Act 47 generally does not conflict with the removal provisions of Section 7. The general rule under Act 47 is “[d]uring a fiscal emergency, the ... appointed and elected officials of the distressed municipality shall continue to carry out the duties of their respective offices, except that no decision or action shall conflict with an emergency action plan, order or exercise of power by the Governor” before the appointment of a receiver. 53 P.S. § 11701.605.<sup>75</sup>

Section 704(a)(2) of Act 47 includes a narrow and limited suspension of the authority of the elected and appointed officials to the extent the authority would interfere with the powers granted to the receiver or the goals of the recovery plan.

---

<sup>75</sup> The power of the Governor terminates upon the appointment of a receiver. 53 P.S. § 11701.608(b).

53 P.S. §§ 11701.704(a)(2). This does not provide the Receiver with a broad right to suspend duties in a recovery plan. The suspension only occurs, if at all, if the duties conflict with a previously confirmed plan or the receiver's power.

Section 704(a)(2) must be construed narrowly to avoid conflict with the exclusive removal provisions of Article VI, Section 7 of the Pennsylvania Constitution. *Fagan v. Smith*, 615 Pa. 87, 94, 41 A.3d 816 (2012)(courts have the duty to avoid constitutional difficulties, if possible, by construing statutes in a constitutional manner). It also must be construed narrowly in favor of the retained self-governance rights of the municipality. 53 Pa.C.S. § 2961; *Pa. Rest. & Lodging Ass'n v. City of Pittsburgh*, 653 Pa. 596, 211 A.3d 810 (2019) (if there is ambiguity in the scope of municipal authority or the limitations imposed on the authority, the ambiguity must be resolved in the municipality's favor).

Narrow construction of section 704(a)(2) is required by the legislative intent of Act 47 to leave the principal responsibility for conducting the government affairs to the charge of the elected officials. 53 P.S. § 11701.102(b)(1)(ii). It is also required by Act 47's directive that appointed officials, like the City Council members in their capacity as department heads, "shall continue to carry out the duties of their respective offices" during a fiscal emergency. 53 P.S. § 11701.605.

In short, section 704(a)(2) may not be construed to give the Receiver the right to modify a recovery plan to suspend duties of officials on a wholesale basis.

Nothing in Act 47 authorizes the Receiver, or the Court, to effectuate a broad suspension of the duties of the officials. The Receiver can only issue *ad hoc* orders as necessary and can only enforce compliance through a *mandamus* proceeding. 53 P.S. § 11701.708(b).

As a result, the modifications to the recovery plan may not effectuate a wholesale suspension of the administrative duties of the elected officials acting in their appointed roles.

**D. An Act 47 receiver may not be given the right to remove items from the legislative agenda of City Council.**

The Commonwealth Court confirmed a modification to the recovery plan which gives the Receiver the “the authority to direct the City... to remove items from their Council...agenda.”<sup>76</sup> This would give the Receiver an unfettered right to block legislative action ranging from mundane items unrelated to the City’s financial condition to items required for the health and safety of the residents. This violates the City’s Home Rule Charter which gives City Council the exclusive legislative power for the City.<sup>77</sup>

Nothing in Act 47 permits a receiver to create a *de facto* legislative veto in a recovery plan. The legislative intent of Act 47 is to:

---

<sup>76</sup> R. 1549a

<sup>77</sup> Appendix C § 104

[e]nact procedures and provide powers and guidelines to ensure fiscal integrity of municipalities while leaving principal responsibility for conducting the governmental affairs of a municipality, including choosing the priorities for and manner of expenditures based on available revenues, to the charge of its elected officials, consistent with the public policy set forth in this section.

53 P.S. § 11701.102(b)(1)(ii) (emphasis added).

Act 47 preserves self-governance by specifically authorizing elected officials to “continue to carry out the duties of their respective offices” during a fiscal emergency like the one which continues in the City. 53 P.S. § 11701.605. In this case, the offices of the Mayor and City Council include an exclusive legislative function.<sup>78</sup>

The confirmation of the modification giving the Receiver the power to order the removal of items from the legislative agenda impermissibly impinges upon the exclusive legislative rights of the elected officials. It changes the form of government by giving the Receiver a broad and unrestrained power to block legislation in violation of Article IX, Section 2 of the Constitution.

As a result, the modification to the plan giving the Receiver the right to compel removal of items from the legislative agenda may not be confirmed.

---

<sup>78</sup> Appendix A, page 8; Appendix C § 215

**E. The City solicitor may not be required to disclose privileged information to the Act 47 Receiver.**

The Commonwealth Court confirmed the following modification to the recovery plan:

Should the City Solicitor become aware of a situation where a City official or employee is not complying with an order of this Court or with a confirmed recovery plan or plan modification, he shall immediately instruct the City official or employ to comply and he shall immediately inform the Receiver.<sup>79</sup>

There is no provision in the modification which exempts the disclosure of attorney/client communications. The Receiver and the City are unfortunately adversarial parties in the Commonwealth Court receivership case.<sup>80</sup> It is unusual, and likely unprecedented, for a court to authorize a blanket rule requiring disclosure of all communications between an attorney and client to an opposing party without the Court making a determination concerning whether the communication is privileged, whether there is waiver and whether there are justifiable grounds for disclosure.

In addition, the City solicitor is an attorney who is subject to Rule 1.6(a) of the Pennsylvania Rules of Professional Conduct which prohibits a lawyer from revealing information relating to representation of a client unless the client gives

---

<sup>79</sup> R. 1564a

<sup>80</sup> They should be working together to solve the City's financial problems instead of litigating against each other. The City and elected officials did not commence this litigation.

informed consent. Pa.R.P.C. 1.6(a). This rule is not limited solely to privileged communications. It even applies to non-privileged information relating to the representation. As a result, even if the information is not privileged, the solicitor may not reveal it without risk of violating Rule 1.6.

The confirmed modification leaves the solicitor in an ethical quagmire having to choose between compliance with the recovery plan or the Rules of Professional Conduct. If the solicitor is confronted with this choice, it may require the solicitor's resignation to avoid violating Rule 1.6 and any future solicitor will inherit the same conundrum potentially leaving the City without counsel at a time when the City needs it the most.

As a result, the modification should not be included in the recovery plan unless it is revised to include mechanisms to protect communications covered by the attorney/client privilege and to address the ethical constraints of Rule 1.6 faced by the solicitor.

**F. The modifications to the Act 47 recovery plan are not necessary to achieve financial stability of the City.**

Act 47 only authorizes the Receiver to modify the recovery plan "as necessary to achieve financial stability of the distressed municipality." 53 P.S. § 11701.706(a)(2).

The financial stability of the City is not dependent upon changing the form of the City's government, suspending administrative duties, making the chief of

staff the *de facto* chief executive or giving the Receiver a *carte blanche* right to remove items from the legislative agenda. The City has much larger financial problems which will not be solved by creating a form of government to the Receiver's liking, giving the Receiver a *de facto* veto or suspending administrative duties of the officials.

For example, one of the Receiver's proposed modifications requires the City be represented in future Commonwealth Court proceedings solely by the solicitor.<sup>81</sup> This is not needed for financial stability. It is an apparent attempt to stack the deck in the Receiver's favor in future litigation by limiting the City's right to choose representation. The City's right to retain special counsel is expressly provided in the Home Rule Charter.<sup>82</sup> A litigant should not have the right to choose or limit representation of a party opponent. This is particularly problematic because the solicitor may be a witness in future proceedings and may not have the competence to handle the litigation.<sup>83</sup>

The Receiver's proposed unilateral right to remove items from the legislative agenda is not necessary for financial stability. It has no impact on the hundreds of millions of dollars in debt accumulated by the City over the decades. The right, which amounts to a legislative veto before City Council even votes,

---

<sup>81</sup> R. 1558a

<sup>82</sup> Appendix C § 607 (authorizing City Council to retain special counsel)

<sup>83</sup> See R.P.C. 1.1 (requiring attorney competence)

would apply to all types of legislation including those which are wholly unrelated to the City's finances or financial recovery. The Receiver would be able to block legislative action ranging from a mundane resolution recognizing the accomplishments of a City resident to the approval of the payment of expenses to items related to policing and public safety.

The Receiver was appointed to effectuate a financial recovery and not to interfere with political governance and public safety issues. The City officials, who are responsible to the citizenry, are tasked with governance duties and they can be voted out of office if they fall short. Suspending their administrative duties is likely unprecedented in the Commonwealth and denies the residents of the City the right to choose their own representatives to run government.

The Receiver has the ability to achieve financial stability without taking the extraordinary step of removing the City officials and assuming administrative and legislative control over the City. Financial stability will be achieved if the Chester Water Authority assets are monetized at the proposed \$410 million price, or hopefully more.

None of the modifications impact the City's revenue. The Receiver has already told the bankruptcy court that raising taxes is not feasible because the City residents lack the financial wherewithal to bear them.<sup>84</sup>

---

<sup>84</sup> R. 2691a, paragraph 30



Controlling the City's expenditures is not the problem. The Receiver told the bankruptcy court that the "City cannot materially reduce expenditures at this time by further reducing employee head count, wages, or services to residents beyond the level currently provided. The City's long-standing financial troubles have already left it unable to pay competitive wages to attract non-fire employees. Additional cuts would only further jeopardize health, safety, and welfare."<sup>85</sup>

The City officials, and the City's form of government, are not standing in the way of a financial recovery. These are not the problems. It is the debt which has accumulated over decades, the poverty of the City and the reduced population. Disenfranchising the residents by removing their democratically elected officials will not solve the problem. It is not necessary to the financial recovery and is antithetical to democracy.

**G. The separation of powers doctrine should not permit the Commonwealth Court to empower a receiver, which is a court appointed judicial officer, to exercise control over a local government.**

Although the common paradigm implicating the separation of powers principle involves tension between some combination of the legislature, the executive branch, and the judiciary, this Court recognized a similar tension may also arise in disputes involving these branches and local government which implicate additional levels of complexity. *Robinson Twp. v. Commonwealth*, 623

---

<sup>85</sup> R. 2691a, paragraph 30

Pa. 564, 721, 83 A.3d 901 (2013); see also, *Jefferson County Court Appointed Employees Ass'n v. Pa. Labor Rels. Bd.*, 603 Pa. 482, 985 A.2d 697, 701 n. 3, 706 (2009) (county commissioners' board, acting in its legislative capacity, encroached on judiciary's authority to hire, fire, and supervise its employees in directing judiciary to eliminate five trial court employee positions).

The rationale for the separation of powers doctrine is to prevent one branch of government, in this case the judiciary, from exercising, infringing upon, or usurping the powers of another branch, in this case the local government. *Renner v. Court of Common Pleas of Lehigh Cty.*, 660 Pa. 255, 269, 234 A.3d 411 (2020). To avert this danger, no branch may exercise the functions delegated to another branch. *Id.* The doctrine is related to the system of checks and balances, which prevents one branch from acting unchecked. *Id.*

Separation of powers is implicated in this case by the degree of control the Receiver seeks over the City. The Receiver is an arm of the court and a judicial officer.<sup>86</sup> Confirmation of the modifications effectively give the Commonwealth Court, acting through the Receiver, the right to prohibit legislation from being voted upon. Confirmation makes the Receiver, who is an arm of the Commonwealth Court, the ultimate authority in the City with the power to direct

---

<sup>86</sup> A receiver “is the arm of the Court, doing the Court's work.” *Warner v. Conn*, 347 Pa. 617, 32 A.2d 740, n. 3 (1943); see also, 42 Pa.C.S.A. § 102 (definitions of “appointive judicial officers” and “judicial officers”).

the activities of the City officials through the chief of staff. Confirmation of the appealed modifications indirectly places the police and fire department under the control of the judiciary which is not a role the judiciary is equipped to undertake.

There are inadequate checks and balances placed on the judiciary when it becomes entrenched in local government. Governance is not an easy task. It involves political decisions and a political process which are not in the province of the judiciary. Our democracy provides for the residents of the City to elect the persons entrusted to govern the City and make legislative decisions for it. If the local elected officials do not perform satisfactorily, they may be voted out of office by the residents. There is no right to vote the Receiver out of office and the Receiver is not answerable to anyone outside of the judiciary for anything the Receiver does in a local government capacity.

Act 47 is drafted in a restrained manner which avoids the separation of powers issue by providing a receiver with limited powers which generally do not involve the receiver acting on behalf of the municipality or exercising control over the municipality. 53 P.S. § 11701.706(a). By intentionally bypassing the more constrained *mandamus* remedy required by 53 P.S. § 11701.709<sup>87</sup> and invoking what the Receiver's chief of staff, the person who drafted the modifications, called

---

<sup>87</sup> R. 1520a (“By including many of these initiatives, the Receiver hopes to avoid multiple returns to the Court seeking mandamus.”)

a “sledgehammer” approach,<sup>88</sup> the Receiver crossed the delicate line separating branches of government in a manner not authorized by Act 47.

There is much less risk of a separation of powers problem if the *mandamus* remedy of 53 P.S. § 11701.709 is utilized by the Receiver instead of the non-statutory “sledgehammer” approach of the proposed plan modifications. As a result, the plan modifications should not be confirmed. The Receiver has adequate remedies under Act 47 and should not be permitted to expand the scope of the statutory remedies because doing so drags the judiciary across the line making the judiciary responsible for local governance.

**H. The facts of this case do not warrant the suspension of the administrative duties of the officials.**

The Receiver’s chief of staff, who drafted the modifications to the plan, described the suspension of the administrative duties of the elected officials as a “sledgehammer.”<sup>89</sup> There is little doubt the suspension is an extraordinary remedy which has likely never been employed in this Commonwealth. But extraordinary remedies are usually justified only in extraordinary circumstances and are usually employed as measures of last resort.

In this case, the extraordinary remedy of suspension is not justified and is not a measure of last resort. As the Commonwealth Court noted, “[m]uch of the

---

<sup>88</sup> R. 3288a (transcript page 143, line 14)

<sup>89</sup> R. 3288a (transcript page 143, line 14)

testimony at the hearing focused on the following incidents, which Receiver contends exemplify the City officials' lack of transparency, lack of cooperation, and disrespect of Receiver and his team:

- a. Councilman Morgan's involvement in a June 2022 phishing scam, which resulted in the City's loss of \$400,000, and his failure to inform Receiver of the incident for three months;
- b. the City's unauthorized payroll payments to an employee for several months while he was incarcerated;
- c. Councilman Morgan's purchase of \$1,500 in gift cards in December 2021 for which he was subsequently reimbursed by City Council without adequate documentation justifying the purchases; and
- d. the Mayor's verbal threats and racial slurs directed to the Receiver on two occasions in February 2021 and December 2022.<sup>90</sup>

The City acknowledged it paid accrued vacation and time off compensation to the incarcerated employee while he was incarcerated. However, these payments were made pending completion of a *Loudermill* hearing required by law.<sup>91</sup> See, *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985).

Councilperson Morgan was not implicated in any wrongdoing in the phishing incident other than that he should have promptly informed the other City

---

<sup>90</sup> Appendix A, pages 11-12

<sup>91</sup> R. 1553a

officials and the Receiver. Instead, he reported the matter to the police promptly upon discovery.<sup>92</sup>

The City acknowledged it reimbursed Councilperson Morgan \$1,500 related to an advance made by the Councilperson on an emergency basis, out of his own funds, to purchase gift cards used by City employees to purchase toys after a Toys-for-Tots organization informed the City it would not be able to supply toys for the City's children. The reimbursement was approved by the Mayor and City Council.<sup>93</sup>

The residents of the City should not be deprived of the officials they chose to run the City simply because one of the officials reached into his own pocket to fund a Toys-for-Tots campaign for the City's children and was reimbursed by the City after the reimbursement was approved by City Council. To some residents, which act alone may be provide a reason to re-elect the councilperson in the future. To other residents, it may provide reason to vote for someone else. The point is whether the elected officials remain in office is a matter for the voters and not for the Receiver or the Commonwealth Court.

The Mayor acknowledges he directed an inappropriate racial slur towards the Receiver during a heated meeting between the two.<sup>94</sup> The Receiver testified he

---

<sup>92</sup> R. 772a

<sup>93</sup> R. 4094a

<sup>94</sup> R. 3747a (transcript page 230)

did not feel physically threatened by the Mayor who is a senior citizen.<sup>95</sup> The racial slur incident between the Mayor and Receiver likely impacted their relationship in a very negative way. The Receiver could not be blamed for having little patience or sympathy for the Mayor and a desire to see them removed from the picture.

But the incident between the Mayor and the Receiver is not cause to remove the Mayor from his role as chief executive of the City. He was elected by the residents to act as the chief executive of the City. If the residents have problems with the Mayor's use of the racial slur, they can vote him out. The Receiver and the Commonwealth Court do not have the right to remove the Mayor as the chief executive. That right only belongs to the voters.

None of these incidents are cause to remove any of the other City Council members, who were not accused of any serious wrongdoing, from their positions as department heads. One of the problems with the sledgehammer approach is that it is aimed at the Mayor and Councilperson Morgan but it also hits the other members of City Council and deprives the residents of their chosen government leaders.

With the decades of financial distress inherited by the City officials and the attention grabbing allegations of the Receiver, it is easy to see only the negative in the City. That would be a mistake. Since the Mayor has taken office, violent crime

---

<sup>95</sup> R. 3713a (transcript pages 93-94); see also, R. 3989a (after acknowledging use of racial slur, Mayor denied physically threatening Receiver)

is down approximately 60% in the City.<sup>96</sup> This was not done because the Mayor was focusing on \$1,500 Toys-for-Tots reimbursements or *Loudermill* hearings. It was accomplished because the Mayor was elected with a commitment to reduce crime and he followed through by taking a different approach and it worked.<sup>97</sup> It was not the product of the Mayor's legislative role. It was done by the Mayor in his administrative role as the head of the Department of Public Affairs.<sup>98</sup>

The Receiver has not made an election promise to the citizens to reduce crime and may not be equipped to fight crime because he is an accountant.<sup>99</sup> His qualifications in this regard have never been vetted by the citizens because he was never elected. He chosen by the Commonwealth to effectuate a financial recovery which does not include political issues like solving a crime problem.

The sledgehammer approach employed by the Receiver is not justified, wise or legally permissible.

**I. The Commonwealth Court should have employed a narrower remedy than suspension of the duties of the officials.**

Act 47 provides a *mandamus* remedy in 53 P.S. § 11701.709 which is narrower than the wholesale suspension of the administrative duties of the elected

---

<sup>96</sup> R. 3705a (transcript pages 61-62); R. 3739a (transcript pages 198-199); *see also* <https://www.fox29.com/news/chester-sees-dramatic-reduction-in-gun-violence-and-deadly-shootings>.

<sup>97</sup> R.3739a – R. 3740a

<sup>98</sup> Administrative Code § 111.04

<sup>99</sup> R. 24a



officials requested by the Receiver. The Receiver sought to avoid multiple statutory *mandamus* actions<sup>100</sup> in favor of the non-statutory suspension remedy which the Receiver’s chief of staff, the person who drafted the proposed recovery plan modifications described as a “sledgehammer” approach.<sup>101</sup>

There is no justification for permitting the Receiver to bypass the statutory *mandamus* procedure in favor of the non-statutory wholesale suspension of the administrative duties of all of the City officials, even those who are not accused of serious wrongdoing. Act 47 does not provide a receiver with a right to suspend elected and appointed officials on a wholesale basis like in the sledgehammer approach.

The general rule under Act 47 is that confirmation of a plan does not affect the powers or duties of elected and appointed officials. 53 P.S. § 11701.704(b)(2). It only suspends their powers to “to the extent that the power would interfere with the powers granted to the receiver or the goals of the recovery plan.” 53 P.S. § 11701.704(a).

The Receiver has not identified any power exercised by the City officials which currently stand in the way of the financial recovery goals of the plan or the Receiver’s powers. The Receiver’s complaints are based on incidents which

---

<sup>100</sup> R. 1520a (“By including many of these initiatives, the Receiver hopes to avoid multiple returns to the Court seeking mandamus.”)

<sup>101</sup> R. 3288a (transcript page 143, line 14)

occurred in the past. The City's financial recovery is not dependent upon accounting for the \$1,500 in Toys-for-Tots receipts or the pre-*Loudermill* hearing payments made to the incarcerated employee. Councilperson Morgan failed to promptly report the phishing to the Receiver but what occurred in the past is irrelevant to the future financial recovery. The Mayor used inappropriate language that cannot be taken back but it does not stand in the way of the financial recovery and the parties must move forward.

If, in the future, the officials do something which interferes with the Receiver's power or the financial recovery of the City, the Receiver has the right to go to court to seek *mandamus* relief. 53 P.S. § 11701.709. But providing wholesale suspension of the duties now, instead of limited remedies in the future, provides relief to the Receiver which may not actually be required or justified. It also deprives the residents of the City of their right to self-governance.

At bottom, the Receiver's remedy for dealing with uncooperative officials is *mandamus*. It is not a wholesale suspension of the administrative duties of the officials through a modification of the recovery plan.

V. **CONCLUSION**

For the foregoing reasons, the Appellants respectfully request that the Court vacate the orders of the Commonwealth Court to the extent the orders confirm the appealed modifications.

Dated: April 13, 2023

Respectfully submitted,

*/s/ Mark Pfeiffer*

H. Marc Tepper, Esq. (No. 49084)

Mark Pfeiffer, Esq. (No. 76245)

Buchanan Ingersoll & Rooney PC

Two Liberty Place

50 S. 16th Street, Suite 3200

Philadelphia, PA 19102

(215) 665-8700

mark.pfeiffer@bipc.com

*Counsel for Appellants*

**CERTIFICATE OF COMPLIANCE**

I, Mark Pfeiffer, hereby certify that the foregoing Brief contains 10,990 words according to the word count feature of the word processing software used to prepare it. The Brief complies with the 14,000 word limit set forth in Pa. R.A.P. 2135(a)(1) and 2135(d).

DATE: April 13, 2023

*/s/ Mark Pfeiffer*  
\_\_\_\_\_  
Mark Pfeiffer, Esq. (PA Bar ID 76245)  
Buchanan Ingersoll & Rooney PC  
Two Liberty Place  
50 S. 16th Street, Suite 3200  
Philadelphia, PA 19102  
(215) 665-8700  
mark.pfeiffer@bipc.com  
*Counsel for Appellants*

**CERTIFICATE OF COMPLIANCE**

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by:

Dated: April 13, 2023

**BUCHANAN INGERSOLL & ROONEY PC**

/s/ Mark Pfeiffer  
Mark Pfeiffer (PA ID 76245)  
Two Liberty Place  
50 S. 16<sup>th</sup> Street, Suite 3200  
Philadelphia, PA 19102  
Tel: (215) 665-8700  
Fax: (215) 665-8760  
mark.pfeiffer@bipc.com

*Attorneys for Counsel for Appellants*

**CERTIFICATE OF SERVICE**

I hereby certify that I am this day serving the foregoing Brief upon all counsel of record via PACFile and Overnight Mail as noted on the attached service list.

DATE: April 13, 2023

By: /s/ Mark Pfeiffer  
Mark Pfeiffer, Esquire

PACFile Notified:

John P. McLaughlin, Esquire  
Tiffany Allen, Esquire  
Benjamin Patchen, Esquire  
Campbell Durrant, P.C.  
One Belmont Avenue, Suite 300  
Bala Cynwyd, PA 19004  
Email:

[jmclaughlin@cdblaw.com](mailto:jmclaughlin@cdblaw.com)

[tallen@cdblaw.com](mailto:tallen@cdblaw.com)

[bpatchen@cdblaw.com](mailto:bpatchen@cdblaw.com)

*Attorneys for Receiver for the  
City of Chester, Michael  
Dowearry*

Sean Christopher Campbell, Esquire  
Pennsylvania Department of Community and Economic Development  
400 North St., Fourth Floor  
Harrisburg, PA 17120

Chester Water Authority  
Andrew Kabnick Garden, Esquire  
Conrad O'Brien, P.C.  
Centre Square, West Tower  
1500 Market St., Ste. 3900  
Philadelphia, PA 19102-2100

Megan Anne Guernsey, Esquire  
Conrad O'Brien, P.C.  
Centre Square, West Tower  
1500 Market St., Ste. 3900  
Philadelphia, PA 19102-2100

William Grady Roark, Esquire  
Steven Alan Hann, Esquire  
Hamburg, Rubin, Mullin, Maxwell & Lupin, PC  
375 Morris Rd.  
P.O. Box 1479  
Lansdale, PA 19446-0773  
PFS VII, LLC

c/o Thomas Helbig, Jr., Esquire  
Elliott Greenleaf PC  
925 Harvest Dr., Ste. 300  
Blue Bell, PA 19422

Kevin Dooley Kent, Esquire  
Conrad O'Brien PC  
Centre Square, West Tower  
1500 Market St., Ste. 3900  
Philadelphia, PA 19102-2100

Robert Forman Teplitz, Esquire  
Justin Andrew Zimmerman, Esquire  
Pennsylvania Governor's Office  
Pa Dept Of Community & Economic Development  
400 North St., Fourth floor  
Harrisburg, PA 17120

J. Michael Adams, Jr., Esquire  
P.O. Box 18204  
Pittsburgh, PA 15236

Bradley John Betack, Esquire  
Campbell Durrant Beatty Palombo & Miller, P.C.  
1 Belmont Ave., Ste. 300  
Bala Cynwyd, PA 19004

Overnight Mail:

Chester Economic Development Authority  
Chester City Hall  
1 East Fourth Street  
Chester, PA 19013

Chester Parking Authority  
Chester City Hall  
1 East Fourth Street  
Chester, PA 19013



Chester Redevelopment Authority  
Chester City Hall  
1 East Fourth Street  
Chester, PA 19013

Patrick James Harvey, Esquire  
Campbell Durrant Beatty Palombo & Miller, P.C.  
1 Belmont Ave., Ste. 300  
Bala Cynwyd, PA 19004

William Jacobs  
Chester City Hall  
1 East Fourth Street  
Chester, PA 19013

Dennis Davin  
c/o J. Michael Adams, Jr., Esquire  
P.O. Box 18204  
Pittsburgh, PA 15236

# **APPENDIX A**



The Court held a three-day evidentiary hearing on the Plan Modification. The testimony presented at the hearing revealed to the Court a culture of denial, blame-shifting, arrogance, and nepotism within the City's government. The testimony also demonstrated the existence of significant operational issues within the City's departments, as well as City officials' lack of transparency, lack of cooperation, and blatant disrespect of Receiver and his team. Receiver contends that these issues, collectively, have impeded his ability to carry out the goals of the Amended Recovery Plan that was approved by the Court in June 2021.

For the reasons that follow, the Court confirms in part Receiver's Plan Modification, strikes certain proposed initiatives from the Plan Modification, and grants Receiver leave to amend the Plan Modification, as discussed more fully below.

## **I. Introduction**

### **A. Act 47**

The General Assembly's purpose in enacting Act 47 was to "foster the fiscal integrity of municipalities" to enable them to "provide for the health, safety and welfare of their citizens; pay principal and interest on their debt obligations when due; meet financial obligations to their employees, vendors and suppliers; and provide for proper financial accounting procedures, budgeting and taxing practices." Section 102(a) of Act 47, 53 P.S. § 11701.102(a). Act 47 provides a comprehensive program of fiscal management oversight and technical and financial assistance to municipalities experiencing severe financial distress in order to ensure the health, safety, and welfare of their citizens. *See id.* § 11701.102(b).

To achieve these goals, once a fiscal emergency is declared and a receiver is appointed, Act 47 grants the receiver broad authority to oversee the distressed

municipality's financial recovery. Specifically, Section 706(a) of Act 47 gives an appointed receiver the following enumerated powers and duties:

(1) To require the distressed municipality or authority to take actions necessary to implement the recovery plan under [S]ection 703 [of Act 47].

(2) To modify the recovery plan as necessary to achieve financial stability of the distressed municipality and authorities in accordance with [S]ection 703 [of Act 47].

(3) To require the distressed municipality or authority to negotiate intergovernmental cooperation agreements between the distressed municipality and other political subdivisions in order to eliminate and avoid deficits, maintain sound budgetary practices and avoid interruption of municipal services.

(4) To submit quarterly reports to the [municipality's] governing body and, if applicable, the chief executive officer of the distressed municipality and to the [D]epartment [of Community and Economic Development (DCED)]. . . .

(5) To require the distressed municipality or authority to cause the sale, lease, conveyance, assignment or other use or disposition of the distressed municipality's or authority's assets in accordance with [S]ection 707 [of Act 47].

(6) To approve, disapprove, modify, reject, terminate or renegotiate contracts and agreements with the distressed municipality or authority, except to the extent prohibited by the Constitutions of the United States and Pennsylvania.

(7) To direct the distressed municipality or authority to take any other action to implement the recovery plan.

(8) To attend executive sessions of the governing body of the distressed municipality or authority and make reports to the public on implementation of the recovery plan.

(9) To file a municipal debt adjustment action under the [United States] Bankruptcy Code (11 U.S.C. § 101 et seq.) and to act on the municipality’s behalf in the proceeding. . . .

(10) To meet and consult with the advisory committee under [S]ection 711 [of Act 47].

(11) To employ financial or legal experts deemed necessary to develop and implement the recovery plan. . . .

(12) To make a recommendation to the [S]ecretary [of DCED] that the municipality be disincorporated in accordance with Chapter 4 [of Act 47].

*Id.* § 11701.706(a).<sup>3</sup>

In creating and implementing a fiscal recovery plan, the receiver must ensure the “continued provision of vital and necessary services” to the residents of the

---

<sup>3</sup> Section 706(b) of Act 47, in turn, specifies which actions by an appointed receiver are prohibited. A receiver *may not*:

(1) Unilaterally levy taxes.

(2) Unilaterally abrogate, alter or otherwise interfere with a lien, charge, covenant or relative priority that is:

(i) held by a holder of a debt obligation of a distressed municipality; and

(ii) granted by the contract, law, rule or regulation governing the debt obligation.

(3) Unilaterally impair or modify existing bonds, notes, municipal securities or other lawful contractual or legal obligations of the distressed municipality or authority.

(4) Authorize the use of the proceeds of the sale, lease, conveyance, assignment or other use or disposition of the assets of the distressed municipality or authority in a manner contrary to [S]ection 707[of Act 47].

53 P.S. § 11701.706(b). Section 706 of Act 47 was added by the Act of October 20, 2011, P.L. 318.

distressed municipality. *Id.* § 11701.703(b)(1)(i). Act 47 defines “vital and necessary services” as “[b]asic and fundamental municipal services,” which includes not only police and fire services, trash collection, and snow removal, but also “[p]ayroll and pension obligations” and “[f]ulfillment of payment of debt obligations or any other financial obligations.” Section 701 of Act 47, 53 P.S. § 11701.701.<sup>4</sup>

Importantly, throughout his or her appointment, the receiver has the express authority “[t]o *require* the distressed municipality . . . *to take actions necessary to implement the recovery plan*” and “[t]o modify [a] recovery plan *as necessary to achieve financial stability of the distressed municipality.*” 53 P.S. § 11701.706(a)(1) and (2) (emphasis added). Any modification of a recovery plan must first be approved and confirmed by the Court before it may be implemented. *See id.* § 11701.703(e).

Once the Court confirms a plan modification, the municipality’s elected and appointed officials are obligated to comply with the modified plan. Section 704(a) of Act 47 provides that the Court’s confirmation of a plan modification “shall have the effect of: (1) imposing on the elected and appointed officials of the distressed municipality . . . *a mandatory duty to undertake the acts set forth in the recovery plan*”; and “(2) *suspending the authority of the elected and appointed officials of the distressed municipality . . . to exercise power on behalf of the distressed municipality . . . pursuant to law, charter, ordinance, rule or regulation to the extent that the power would interfere with the powers granted to the receiver or the goals of the recovery plan.*” *Id.* § 11701.704(a)(1) and (2) (emphasis added). Section 704(b) also provides that the Court’s confirmation of a plan modification “*shall not be construed to: (1) change the form of government of the distressed municipality . . . ; or (2) except as set forth in [Section 704](a), affect [the] powers and duties of [the]*

---

<sup>4</sup> Section 701 of Act 47 was added by the Act of October 20, 2011, P.L. 318.

*elected and appointed officials* of the distressed municipality . . . .” *Id.* § 11701.704(b) (emphasis added).

## **B. Factual & Procedural Background**

Since 1995, the City has been designated a financially distressed municipality under Act 47. Between 1995 and 2020, the City operated under numerous Act 47 fiscal recovery plans.

On April 13, 2020, as a result of the City’s continuing and deepening financial crisis, Governor Tom Wolf issued a Declaration of Fiscal Emergency for the City under Act 47. On June 22, 2020, the Court placed the City under receivership and approved the appointment of Mr. Doweary as Receiver under Act 47.<sup>5</sup>

The Court confirmed Receiver’s initial Act 47 recovery plan in October 2020. On April 7, 2021, Receiver submitted an Amended Recovery Plan, which the Court confirmed on June 7, 2021. At that time, the Court determined that the Amended Recovery Plan “contain[ed] a number of initiatives that set forth short- and long-term strategies to address structural issues” in the City and “propose[d] certain initiatives, in cooperation with City officials and other stakeholders, to address the fiscal emergency and continue to provide necessary and vital services in the City.” *Davin v. City of Chester* (Pa. Cmwlth., No. 336 M.D. 2020, filed June 7, 2021) (*Davin I*), slip op. at 6-7.

On March 4, 2022, Receiver filed a Petition for Writ of Mandamus (Mandamus Petition) with the Court pursuant to Section 709(a) of Act 47, 53 P.S. § 11701.709(a).<sup>6</sup> In his Mandamus Petition, Receiver asked the Court to direct that

---

<sup>5</sup> On December 28, 2021, the Court extended the City’s receivership for up to two years.

<sup>6</sup> Section 709(a) of Act 47 permits an appointed receiver to petition this Court “to issue a writ of mandamus upon any elected or appointed official of the distressed municipality . . . to secure compliance with an order” issued by the receiver. 53 P.S. § 11701.709(a). Section 709 of Act 47 was added by the Act of October 20, 2011, P.L. 318.



the City’s elected officials comply with the initiatives outlined in the Amended Recovery Plan and with two prior orders issued by Receiver.

On March 22, 2022, after an evidentiary hearing, the Court granted in part and denied in part the Mandamus Petition. Most notably, the Court found that Councilman William Morgan, who heads the City’s Department of Finance and Human Resources (Finance Department), failed to cooperate with Receiver and his team and “engaged in conduct that has impeded Receiver’s ability carry out the goals of the Amended Recovery Plan.” *Davin v. City of Chester* (Pa. Cmwlth., No. 336 M.D. 2020, filed Mar. 22, 2022) (*Davin II*), slip op. at 9-10. As such, the Court ordered that “Councilman Morgan and his team shall immediately share any future correspondence or information they receive relating to the City’s finances with Receiver” and that “Mr. Morgan shall not direct any employee to act or take any action that in any way interferes with the operations of the City’s Finance . . . Department[].” *Id.* at 11 n.11 & 13.

### **C. City’s Governance Structure**

The City is a City of the Third Class and has operated under a Home Rule Charter since 1980. The Home Rule Charter incorporates the City’s Administrative Code, which was adopted by ordinance and “provide[s] for the administrative organization of the City government, the assignment of duties and responsibilities to officers and employees, and procedural requirements set forth in the general laws or in the Charter.” Home Rule Charter § 602; *see also id.* §§ 211, 213, and 215 (incorporating provisions of the Administrative Code).

The City is governed by an elected Mayor, who is the City’s “chief executive.” *Id.* § 301. The Mayor “shall have any and all additional powers and duties which may be conferred upon him by the Administrative Code.” *Id.* § 302. The Mayor supervises the conduct of all City officers, examines all reasonable complaints

against them, and causes any violations or neglect of duty to be promptly punished or reported to City Council. *Id.* § 303.

The City is also governed by an elected five-member Council, one of whom is the Mayor who has full voting rights. *Id.* §§ 201, 301. City Council members serve four-year staggered terms. *Id.* § 205. City Council is exclusively vested with “[a]ll legislative powers and duties of the City.” *Id.* § 215. Such legislative powers include adopting a budget, making appropriations for expenditures, levying taxes, conducting audits and investigations, modifying the Administrative Code to create or abolish municipal departments, and adopting ordinances and resolutions. *Id.*

#### **D. Present Proceedings**

##### **1. Plan Modification**

On November 8, 2022,<sup>7</sup> Receiver filed the instant Plan Modification, seeking to amend the City’s fiscal recovery plan a second time since it was initially confirmed by the Court. In support of his Plan Modification, Receiver avers:

The City . . . is at a critical point in its history. Financially, it stands at the brink of bankruptcy with a severe structural deficit that cannot be addressed by one-time “fixes.” Operationally, the City cannot reliably provide basic vital and necessary services to its residents, and it does not have the basic internal financial and personnel capabilities and policies to reliably provide basic governmental functions to its employees. Efforts to right [the City’s] ship up to this point have not worked. For [the City] to survive and thrive again, it must take bold and significant steps.

. . . .

---

<sup>7</sup> Two days later, on November 10, 2022, Receiver filed a Chapter 9 bankruptcy petition in the United States Bankruptcy Court for the Eastern District of Pennsylvania. On November 22, 2022, the federal bankruptcy court partially lifted the automatic bankruptcy stay to allow this Court to address Receiver’s pending Plan Modification.

After over two and [one-]half years in [the City], the Receiver and his team of municipal professionals have tried to address the City's deep financial and operational problems. These problems are by far the worst that the Receiver's team has ever encountered in their many years of financially distressed local government experience. The status quo has not worked, is not working, and will not work. The residents of [the City] deserve better.

....

As Act 47 requires the Receiver to ensure the provision of vital and necessary services to [City] residents, and as the City is on the verge of a Chapter 9 bankruptcy filing, the Receiver files this Plan Modification to secure Court approval to fulfill his responsibilities as they relate to the provision of vital and necessary services. Through this Plan Modification, the Receiver seeks approval, or in some cases clarification or reaffirmation, of initiatives that allow him to complete the very difficult task that this Court has confirmed him to accomplish.

Plan Modification at 1-4.<sup>8</sup> Receiver contends that recent actions by the City's elected officials have impeded his ability to carry out the goals of the Amended Recovery Plan and the City's ability to provide vital and necessary services to its residents.

Receiver's Plan Modification contains 33 proposed initiatives, which Receiver has categorized as follows: (1) administrative duties and professional management; (2) core internal administrative functions and ethics; (3) parking services; (4) monetization of the Stormwater Authority of the City of Chester (Stormwater Authority);<sup>9</sup> and (5) economic development. *See* Plan Modification at 30-59.

---

<sup>8</sup> Receiver filed a revised Plan Modification with the Court on December 9, 2022, which incorporates compromised language proposed by Councilman Stefan Roots. The Court cites the December 9, 2022 version of the Plan Modification throughout this Opinion.

<sup>9</sup> On January 4, 2023, following a pre-hearing conference with the parties' counsel, the Court bifurcated the matter and directed that it would not receive evidence on Receiver's proposed initiatives relating to the Stormwater Authority at the Plan Modification hearing. Furthermore, during the hearing, the Court ruled from the bench that it would not consider evidence regarding Receiver's proposed parking initiatives at that time. N.T., 1/9/23, at 165-66, 169. The Court

The most contested initiatives seek to remove the City’s elected officials from their appointed positions as department heads; suspend the administrative duties of the City’s elected officials as they relate to day-to-day operations; and give Receiver the sole authority to take certain actions on the City’s behalf, including entering into contracts and controlling and directing the expenditure of federal and state funds. Receiver also seeks to convert the City’s current Chief Operating Officer (COO) into the City’s Chief of Staff, who would report exclusively to Receiver and oversee each of the City’s departments.

On December 2, 2022, the City filed objections to the Plan Modification and a supporting brief, asserting:

The Receiver’s proposed [m]odifications, inter alia: a) strip the mayor and city council (the “Elected Officials”) of all administrative duties with respect to the City; b) give all administrative duties to a chief operating officer who reports solely to the Receiver; c) give the Receiver a *de facto* veto over all of the City’s legislative activity by authorizing the Receiver to remove items from City Council’s legislative agenda; and d) give the Receiver the sole authority to sell the City’s assets and dissolve the City’s municipal authorities.

In short, the Receiver seeks to remove the Elected Officials from power and install himself as the unelected supreme authority of the City who is not answerable to the citizens.

City Br. in Opp. to Plan Modification at 1 (emphasis in original).

The crux of the City’s opposition is that Receiver’s proposed modifications effectuate a change in the form of government, which is prohibited by Act 47 and the Pennsylvania Constitution. The City asserts that Receiver has specific enumerated powers under Act 47, which do not include the power to take

---

bifurcated the Stormwater Authority and parking matters from these proceedings due to the complex factual and legal issues involved, which the Court determined necessitated separate hearings. Thus, the Court does not address the Stormwater Authority initiatives or the parking initiatives in this Opinion.

administrative control of the City or to oust elected officials from their positions. *See* 53 P.S. § 11701.706(a) (outlining a receiver’s powers and duties). The City also asserts that the proposed modifications unconstitutionally disenfranchise the City’s residents by amending the Home Rule Charter without a voter referendum. Finally, the City contends that, contrary to Receiver’s assertions, “[t]he problem is not the [City’s] [e]lected [o]fficials”; rather, the problem “is the debt which has accumulated over decades, the poverty of the City[,] and the reduced population. Disenfranchising the residents by removing their democratically elected officials will not solve the problem.” City Br. in Opp. to Plan Modification at 27.

## **2. Evidentiary Hearing**

The Court held a three-day hearing on the Plan Modification from January 9-11, 2023. Receiver testified on his own behalf and also presented the testimony of his Chief of Staff, Vijay Kapoor, and the City’s newly hired COO, Leonard Lightner.<sup>10</sup> The City presented the testimony of its Solicitor, Kenneth Schuster, Esquire, Mayor Kirkland, and Councilman Morgan.

Much of the testimony at the hearing focused on the following incidents, which Receiver contends exemplify the City officials’ lack of transparency, lack of cooperation, and disrespect of Receiver and his team:

---

<sup>10</sup> In the Plan Modification, Receiver avers:

Both the Receiver and a unanimous City Council approved the hiring [of] Mr. . . . Lightner on July 27, 2022, after a nationwide search conducted by a professional search firm. Mr. Lightner previously served as the [COO] for the City of Allentown and is also a 27-year U.S. Army veteran retiring at the rank of Command Sergeant Major.

Plan Modification at 29; *see* N.T., 1/10/23, at 106-07. Mr. Lightner testified at the hearing that he began serving as the City’s COO on August 15, 2022. N.T., 1/10/23, at 107.

- Councilman Morgan’s involvement in a June 2022 phishing scam, which resulted in the City’s loss of \$400,000, and his failure to inform Receiver of the incident for three months;
- the City’s unauthorized payroll payments to an employee for several months while he was incarcerated;
- Councilman Morgan’s purchase of \$1,500 in gift cards in December 2021 for which he was subsequently reimbursed by City Council without adequate documentation justifying the purchases; and
- Mayor Kirkland’s verbal threats and racial slurs directed to Receiver on two occasions in February 2021 and December 2022.

The Court will address the specific testimony and evidence relevant to Receiver’s proposed initiatives and the issues before the Court in the Analysis section of this Opinion. *See* Section II.C., *infra*.

### **3. Post-Hearing Submissions**

At the conclusion of the hearing, the Court directed the parties to confer and submit to the Court compromised plan language, particularly with regard to the proposed Chief of Staff position. Notes of Testimony (N.T.), 1/11/23, at 100-02. After the hearing, the parties separately filed post-hearing briefs and exhibits containing proposed revised plan language. However, it appears from the parties’ filings that Receiver and the City neither conferred nor agreed upon the proposed language in either party’s exhibits. Therefore, the Court will not consider these post-hearing exhibits in rendering its decision on the Plan Modification and will instead focus on the version of the Plan Modification submitted to the Court on December 9, 2022. *See* note 8, *supra*.

## II. Analysis

### A. Standard of Review

In considering Receiver's Plan Modification and the City's objections thereto, the Court applies the standard of review set forth in Section 703(e) of Act 47, which provides:

The [C]ourt *shall confirm* the modification within 60 days of receipt of notification of the modification *unless it finds clear and convincing evidence that the recovery plan as modified is arbitrary, capricious or wholly inadequate to alleviate the fiscal emergency* in the distressed municipality.

53 P.S. § 11701.703(e) (emphasis added). As the Court previously recognized in its prior Memorandum Opinion, the Court's review of Receiver's proposed Plan Modification "is highly deferential." *Davin I*, slip op. at 3. Therefore, unless the Court finds "clear and convincing evidence" that the Plan Modification "is arbitrary, capricious or wholly inadequate to alleviate the fiscal emergency," the Court must confirm the Plan Modification. 53 P.S. § 11701.703(e).

### B. Legal Issues

Before addressing Receiver's proposed initiatives and the evidence presented at the hearing, the Court will address the issues of law raised by the City in opposition to the Plan Modification.

#### 1. Change in Form of Government

The City first asserts that many of Receiver's proposed initiatives effectuate a change in the form of government, which is prohibited by Act 47. Section 704(b) of Act 47 states that the Court's confirmation a plan modification "*shall not be construed to[] . . . change the form of government* of the distressed municipality." 53 P.S. § 11701.704(b) (emphasis added). The City also argues that many of the proposed initiatives violate Article IX, Section 2 of the Pennsylvania Constitution,

which prohibits the amendment of a municipality’s home rule charter without a voter referendum. *See* Pa. Const. art IX, § 2 (“Adoption, amendment[,], or repeal of a home rule charter shall be by referendum.”). Article IX, Section 2 also provides that a home rule municipality, such as the City, “*may exercise any power or perform any function* not denied by this Constitution, by its home rule charter[,], or by the General Assembly at any time.” *Id.* (emphasis added).

The law in Pennsylvania regarding what constitutes a change in the form government is extremely sparse. However, the Court finds *Harrisburg School District v. Zogby*, 828 A.2d 1079 (Pa. 2003), instructive on this issue. In *Zogby*, our Supreme Court interpreted Article 9, Section 3 of the Pennsylvania Constitution, which applies to the selection by municipalities of an optional form of government and requires that any change in the form of government be by voter referendum. *See* Pa. Const. art. IX, § 3 (“Adoption or repeal of an optional form of government shall be by referendum.”). At issue in *Zogby* was a statute enacted by the General Assembly, known as Act 91, which gave the Mayor of the City of Harrisburg the authority to appoint a board of control for the Harrisburg public school district.

The Supreme Court noted that “form” is defined as “the organization, placement, or relationship of basic elements” and “the structure, organization, or essential character of something, as opposed to its matter.” *Zogby*, 828 A.2d at 1092. The *Zogby* Court determined that Article 9, Section 3 of the Pennsylvania Constitution “does not *per se* preclude a legislative *grant* of particularized powers and duties to the mayor of a city that has opted for a mayor-council form of government, but refers instead to *a wholesale change of municipal government.*” *Id.* (emphasis added). Therefore, the Supreme Court concluded that “[*s*]o long as the addition of such duties is not inconsistent with the basic existence, structure, and



*powers of the office of mayor or the other branches of city government, it does not alter its form.” Id. (emphasis added).*<sup>11</sup>

Here, Receiver seeks to have the Chief of Staff report *solely* to Receiver and not take any directives from the Mayor or City Council. However, the City’s Administrative Code provides that the Chief of Staff “shall serve at the pleasure of . . . City Council” and that his powers and duties are “set by City Council from time to time.” Admin. Code §§ 112.02, 112.06. Receiver also seeks the *sole* authority to act on the City’s behalf with regard to entering into contracts and directing the expenditures of federal and state funds, contrary to the provisions of the Home Rule Charter and Administrative Code, which give such authority to the Mayor and/or other City officials. *See id.* § 115.005(a) and (b)(1) (the City Treasurer, who shall be appointed by and “serve[s] at the will of [the] Mayor and [City] Council,” shall be responsible for “the safe keeping and payment over of all public moneys entrusted to his care); *id.* § 111.002(b) (all City contracts shall be signed by the director of the department having jurisdiction thereof); Home Rule Charter § 713 (City Council may enter contracts for all lawful purposes). Receiver also seeks to require that City Council pass any budget or budget amendment as he directs. However, the Home Rule Charter grants budget-making authority to the City’s Chief Financial Officer (CFO)<sup>12</sup> and City Council. *See* Home Rule Charter § 703 (the CFO “shall prepare

---

<sup>11</sup> In so holding, the Supreme Court relied in part on Judge Leadbetter’s Dissenting Opinion in *Harrisburg School District v. Hickok*, 781 A.2d 221, 239 (Pa. Cmwlth. 2001) (*en banc*) (Leadbetter, J., dissenting) (citation omitted; emphasis added), wherein she stated:

“Pa. Const. art. IX, § 3, by its own terms, only requires voter referendum when an optional form of government is adopted or repealed . . . . The provision thus speaks only to *a wholesale change of municipal government, not to amendments of municipal powers* which may be made from time to time by the General Assembly.”

<sup>12</sup> The evidence presented at the Plan Modification hearing established that Receiver and the City officials are currently in the process of hiring a new CFO.

and submit to [City] Council a proposed operating budget for the ensuing fiscal year”); *id.* § 707 (City Council shall “adopt a final budget with such amendments as [City] Council considers advisable”).

While *Zogby* suggests that a mere change in duties does not alter the form of government, the Court concludes that any initiatives that give Receiver *exclusive* authority over internal administrative matters, while concomitantly stripping the Mayor and City Council of duties *expressly granted* to them by the City’s governing documents, effectuate “a wholesale change of municipal government.” *Zogby*, 828 A.2d at 1092. Indeed, Act 47 recognizes that, the “*principal responsibility for conducting the governmental affairs of a [distressed] municipality, including choosing the priorities for and manner of expenditures based on available revenues, shall be left to “the charge of its elected officials.”* 53 P.S. § 11701.102(b)(1)(ii) (emphasis added); *see also id.* § 11701.605 (“During a fiscal emergency, the . . . appointed and elected officials of the distressed municipality shall continue to carry out the duties of their respective offices.”).

The Court will address the specific initiatives that it concludes effectuate a change in the form of government in Section II.C. of this Opinion, *infra*.

## **2. Authority to Remove Department Heads**

Next, the City asserts that Receiver lacks authority to remove the City’s elected officials from their positions as department heads. The Court disagrees.

The City’s Home Rule Charter provides that City “Council *may*, by ordinance, . . . designate department heads from City Council.” Home Rule Charter § 601 (emphasis added). The Home Rule Charter also provides that during City Council’s annual organizational meeting, “the Mayor *may* assign to each Council member *a responsibility as department head* of one or more departments or agencies of the City government.” *Id.* § 603 (emphasis added). While the Home Rule Charter

provides that either City Council *or* the Mayor may assign department heads, Mayor Kirkland testified at the Plan Modification hearing that, since he took office in 2016, he has appointed department heads each January. N.T., 1/10/23, at 243-44.

It is evident from the plain language of the City’s Charter – which uses the term “may” instead of “shall” – that the Mayor’s authority to assign department head responsibilities to City Council members is permissive, not mandatory. The Court finds nothing in the City’s Charter or Administrative Code that would preclude Receiver from removing Council members from their positions as department heads or from appointing non-Council members as department heads, *if* the Court finds that such changes are not arbitrary, capricious, or wholly inadequate to alleviate the City’s fiscal emergency. *See* 53 P.S. § 11701.703(e).

In its post-hearing brief, the City argues that Council members can only be removed from their positions via the legislative impeachment procedures outlined in the Pennsylvania Constitution. However, Receiver does not seek to remove Council members from their elected positions. Receiver only seeks to remove certain Council members from their non-mandatory *administrative roles* as department heads; they would still remain in their elected positions as legislators on City Council for the remainder of their terms. The removal of elected officials’ administrative duties does not trigger an impeachment process under the Pennsylvania Constitution, which applies to the removal of government officials from their *public offices*. *See* Pa. Const., art. VI, §§ 6-7. Therefore, the Court rejects this claim.

### **3. Authority to Contract**

Finally, the City argues that Receiver lacks the authority to unilaterally enter into contracts on the City’s behalf. The City points out that Section 706(a) of Act 47 identifies each of Receiver’s enumerated powers, and those powers do not include the authority to enter into contracts. The Court agrees.

Section 706(a)(6) of Act 47, addressing a receiver’s powers with regard to contracts, gives Receiver the authority “[t]o *approve, disapprove, modify, reject, terminate or renegotiate* contracts and agreements with the distressed municipality . . . , except to the extent prohibited by the Constitutions of the United States and Pennsylvania.” 53 P.S. § 1101.706(a)(6) (emphasis added). This provision does *not* expressly grant Receiver the power to “enter into” contracts, only to approve, disapprove, modify, reject, terminate, or renegotiate contracts with the City. The Court must give effect to the plain language of a statutory provision where, as here, the language is clear and free from ambiguity. *See* Section 1921(b) of the Statutory Construction Act of 1972, 1 Pa. C.S. 1921(b); *see also Thompson v. Thompson*, 223 A.3d 1272, 1277 (Pa. 2020) (“Under the doctrine of *expressio unius est exclusio alterius*, ‘the inclusion of a specific matter in a statute implies the exclusion of other matters.’”) (citation omitted). The Court concludes that Act 47 does not grant Receiver the power to *unilaterally enter into contracts* on the City’s behalf. However, Receiver *is* authorized under Section 706(a)(6) to review any contracts proposed by the City and may disapprove, modify, reject, or renegotiate any proposed contracts.<sup>13</sup>

Moreover, the Administrative Code contains a provision relating to the execution of contracts. Section 117.01(a) and (b) provides:

(a) *All contracts and agreements wherein the City is a party shall be prepared by the City Solicitor when requested by [City] Council and each contract and agreement, before its execution, shall be submitted by him to [City] Council or the director of the proper department. After proper execution by the other contracting party, the City Solicitor shall mark his approval as to the form and the execution thereof.*

---

<sup>13</sup> Act 47 also explicitly empowers Receiver to “[t]o employ financial or legal experts deemed necessary to develop and implement the recovery plan.” 53 P.S. § 11701.706(a)(11).

(b) *Each contract or agreement wherein the City is a party shall be signed on behalf of the City by the director of the department having jurisdiction of the subject matter thereof and by the City Clerk, and the City scale shall be attached thereto.*

Admin. Code § 117.01(a) and (b) (emphasis added). Thus, to the extent Receiver seeks to completely usurp the power to execute contracts from City Council and the directors of City departments, the Court concludes that such an initiative also effectuates an impermissible change in the form of government. *See* Section II.B.1, *supra*.

### **C. Receiver's Proposed Initiatives**

The Court will now review Receiver's proposed initiatives, which the Court outlines below by the categories identified in the Plan Modification: (1) administrative duties and professional management; (2) core internal administrative functions and ethics; and (3) economic development. The Court also identifies the proposed initiatives using the same initiative titles that Receiver uses in the Plan Modification.

#### **1. Administrative Duties and Professional Management Initiatives**

Receiver seeks approval of the following eight initiatives in this category:

- Chief Operating Officer (COO)<sup>14</sup>
- Chief of Staff Reporting
- Administrative Duties of Elected Officials
- Compliance with Chief of Staff Directives
- Interference with Chief of Staff and Receiver Directives
- Duty to Provide Information
- Ability to Audit

---

<sup>14</sup> This proposed initiative would replace Initiative WF03 in the existing Amended Recovery Plan.

- Council and Board Agendas

According to Receiver, these initiatives “clarify the administrative duties of City officials to eliminate interference and to create a baseline level of professional management required for the basic functioning of the City and for the provision of vital and necessary services.” Plan Modification at 11. Receiver maintains that the City needs skilled, qualified professionals to oversee its departments, particularly the Finance Department, because the present practice of appointing Council members as department heads is proving to be detrimental to the City’s operations.

At the hearing, Receiver and his Chief of Staff, Mr. Kapoor, offered numerous examples of operational issues within the City’s departments, as well as City officials’ lack of transparency and lack of cooperation with Receiver and his team. Much of their testimony focused on problems within the City’s Finance Department, which is overseen by Councilman Morgan.

Mr. Kapoor first testified regarding Councilman Morgan’s involvement in a phishing scam in which the City lost approximately \$400,000 in June 2022. Councilman Morgan discovered the scam in July 2022 but did not inform Receiver about it until three months later, in October 2022. N.T., 1/9/23, at 78, 80-81. Councilman Morgan called Receiver and told him that the City was about to send out a press release that day stating “that the City had lost . . . money in a phishing scam.” *Id.* at 79. That phone call was the first time Receiver had heard about the incident. Plan Modification at 16.

Mayor Kirkland testified that Councilman Morgan first told him about the phishing incident in October 2022. N.T., 1/10/23, at 255. Mayor Kirkland recalled that he had surgery in September 2022, and that he was home recovering from that

surgery in October 2022 when Councilman Morgan visited him and told him about the incident. *Id.* at 235, 255.<sup>15</sup>

During his testimony, Councilman Morgan admitted that when first learned of the phishing scam in July 2022, he did not immediately notify Receiver, the Mayor, the City Solicitor, or a fellow member of City Council. N.T., 1/11/23, at 19-20. Councilman Morgan also apologized for his failure to notify Receiver in a timely manner, recognizing that his failure to do so was a violation of the Court’s prior Order. *Id.* at 19. Councilman Morgan testified, however, that as a result of this incident, he “learned [his] lesson” and “took a cyber security . . . course.” *Id.* at 30. He also testified that he has put additional safety measures in place to prevent a cyber crime from occurring again, including “making sure that all wires[] and transfers that go . . . in and out of the bank account go through our internal control process,” working on “a million-dollar [information technology] infrastructure improvement plan,” and applying for cyber insurance. *Id.* at 25-26.

Mr. Kapoor testified, on the other hand, that the City officials’ handling of the phishing incident exemplifies their lack of accountability. Contrary to Councilman Morgan’s testimony, Mr. Kapoor testified that, after the incident became public, “[n]o action was taken with respect to Councilman Morgan,” “no new policies were created,” and no “citywide e-mail [was] sent out.” N.T., 1/9/23, at 118.

Receiver also contends that the City failed to properly investigate City Council’s reimbursement of Councilman Morgan for his purchase of \$1,500 in gift cards in December 2021, which were allegedly used to purchase toys for a Toys for Tots Christmas collection. Councilman Morgan testified that he used his own

---

<sup>15</sup> Mayor Kirkland initially testified that this conversation occurred in December 2022, but he later corrected his testimony and stated the conversation occurred after he was released from the hospital in October 2022. N.T., 1/10/23, at 235, 255.

money to purchase \$1,500 in Visa gift cards at CVS, and those gift cards were used to buy toys at Five Below. N.T., 1/11/23, at 23, 37-38.<sup>16</sup> He explained:

When it comes to any refunds or reimbursements that may have to go to someone, of course, there's checks and balances; and when it comes to my stuff, *the CEO of the City of Chester, that being the Mayor, will always have to sign off on any refunds that are done prior to them going back to me. And then, of course, all expenditures . . . have to get ratified through . . . a vote of the Mayor and [City] Council.*

*Id.* at 23 (emphasis added). Councilman Morgan did not recall the specific date, but he believed the Mayor approved the \$1,500 reimbursement prior to him “receiving the refund check.” *Id.* at 24.

During his testimony, Mayor Kirkland testified that, although he approved the reimbursement to Councilman Morgan, he never saw the receipts and does not know if the purchases actually totaled \$1,500. N.T., 1/10/23, at 227. However, Mayor Kirkland testified: “I trust that Councilman Morgan’s focus was on those young people and doing the very right thing. I don’t believe that Councilman Morgan or anybody else . . . in City Council would jeopardize their career over a couple hundred dollars. I just don’t believe that.” *Id.* at 228.

On rebuttal, Mr. Kapoor explained the discrepancies with regard to the gift card purchases as follows:

[I]f you total the amounts expended on these receipts in [Receiver’s] Exhibit 18, it does not total \$1,500. It totals a little . . . over \$1,300.

The second significant issue with these receipts . . . the receipt that is marked No. 2, in blue, if you go down to the total where it shows the method of purchase, it shows that the toys were purchased through Apple Pay, whereas in the first receipt that has an amount for [\$]500 – and an amount for [\$]417.50, it says they’re paid by Visa [gift] cards.

---

<sup>16</sup> Duane Lee, who works in the Department of Parks and Recreation, purchased the toys at Five Below at Councilman Morgan’s direction. N.T., 1/11/23, at 36, 38.



*So we had one problem with them not totaling \$1,500, which was the amount that was supposed to be reimbursed, and the second problem was that one of the receipts was not paid via a Visa gift card. It was paid via Apple Pay. And there was no explanation ever provided about the discrepancy[] . . . .*

N.T., 1/11/23, at 51 (emphasis added); *see id.*, Receiver Ex. 17 (explaining that \$582 of the \$1,500 is unaccounted for and requesting additional documentation). Moreover, Mr. Kapoor testified that following this Court’s Order on the Mandamus Petition, which directed the City to investigate the gift card matter and report its findings to Receiver, Receiver’s team repeatedly asked Mr. Schuster, the City Solicitor, the status of the investigation, but they received “no substantive update,” “no report,” and “no conclusions.” N.T., 1/11/23, at 53-54, 56. According to Mr. Kapoor, “[t]hat’s why [Receiver has] provisions in the . . . [P]lan [M]odification that are very clear that the Receiver has the ability to conduct investigations and that employees, including [the] elected officials, must comply with any of those investigations.” *Id.* at 57.

As noted in Section I.B. of this Opinion, *supra*, Councilman Morgan oversees both finance *and* human resources, as they presently comprise a single department. At the hearing, Mr. Schuster testified that he believes finance and human resources should be separate departments. He testified:

*I . . . believe that the department should be divided. Even though the Home Rule Charter says accounts and finances, finance department/[human resources], I think they’re two distinct roles. I think you need a CFO[] . . . and . . . a financial team, and I think you need a real [human resources] director like you would have in corporate America.*

N.T., 1/10/23, at 171-72 (emphasis added).

Receiver also testified to acts of hostility that City officials have directed toward him. Receiver testified that Mayor Kirkland verbally threatened him on two separate occasions. The “worst situation” occurred in February 2021 during a meeting with the Mayor and City Council members to discuss the City’s Executive On Loan program. N.T., 1/10/23, at 17. According to Receiver, “Mayor Kirkland was using this program basically to circumvent the budget and pay for positions that were no longer supported by the budget or . . . the [City’s] salary ordinance.” *Id.* When Receiver verbally expressed his disagreement with Mayor Kirkland about his handling of the program, “[t]he Mayor . . . became irate.” *Id.* Receiver described what transpired next as follows:

*[The Mayor] got up, walked around the room and decided to stand over the top of me and challenge me to a fight, and finger in my face and all of the other stuff. I finally had to . . . stand up and step back to . . . make sure that I wasn’t actually attacked.*

The [City’s] former CFO[, Nafis] Nichols[,] stood in between us and broke it up and the Mayor eventually left the room. But *[I’m] definitely not anyone’s nigger, and had the Mayor been any younger,<sup>[17]</sup> I really would have thought that . . . it was a chance for some physical harm.*

*Id.* at 17-18 (emphasis added). Receiver further testified that Mayor Kirkland is not the only City official who has directed a racial slur toward him. He testified that Councilwoman Elizabeth Williams has called him a slave master “on more than one occasion.” *Id.* at 19.

Mr. Kapoor also attended the February 2021 meeting via telephone and testified to what he heard during the altercation between Receiver and Mayor Kirkland. Mr. Kapoor testified:

---

<sup>17</sup> Mayor Kirkland testified at the hearing that he was about to turn 68 years old on January 12, 2023. N.T., 1/10/23, at 202.

*Mayor [Kirkland] got extremely angry. He started shouting. He started threatening the Receiver. He then alleged that the Receiver was having . . . affairs with women in Chester hotels. He stated . . . something to the effect of, I heard where you were. I know you were talking to that girl. I know it's going on in those hotels.*

[Receiver] is married, and that was absolute defamation to [him]. I was shocked when I heard that, and then it continued.

The Receiver's reaction was, he . . . laughed in sort of a way of like, I can't believe you're accusing me of this. . . .

And then, again, I was on the phone, but it sounded like the Receiver and the Mayor were getting really close. *And you could hear the Receiver saying "Back off" to the Mayor. Then the Mayor called the Receiver the N-word. And I heard a door slam, and then it was quiet.*

N.T., 1/11/13, at 73-74 (emphasis added). Mr. Kapoor testified that Councilwoman Williams then entered the room and stated that the Mayor was very upset and that she "felt disrespected by the Receiver's team because all of these problems had been occurring previously and . . . we were asking questions 'of the wrong people.'" *Id.* at 74-75. Mr. Kapoor also testified that he has previously heard Councilwoman Williams call Receiver a slave master. *Id.* at 74.

Receiver testified that the second threat incident occurred very recently, in December 2022, during discussions with the Mayor about the hiring of a new CFO. N.T., 1/10/23, at 18. Receiver testified that "[t]hose conversations quickly broke down," and Mayor Kirkland pointed his finger at Receiver and stated, "Watch your back" and "[Your d]ays are numbered." *Id.* at 18-19.

Mayor Kirkland downplayed both of these incidents during his testimony. With regard to the February 2021 incident, Mayor Kirkland testified that he and Receiver had a "heated" exchange regarding the Executive On Loan program. *Id.* at

231. He testified that Receiver referred to the program as “fraudulent” and said to Mayor Kirkland, “You’re incapable of having an intelligent conversation,” and “[t]hat’s when that unfortunate word came out of [Mayor Kirkland’s] mouth.” *Id.* (emphasis added). Mayor Kirkland admitted that he stood up during the exchange, but he denied physically threatening or pointing his finger at Receiver. *Id.* at 234. Mayor Kirkland further testified: “I never said ‘Watch your back.’ I stood up because I was upset. *I never put my finger in his face. I spoke to the Receiver. I never threatened him.*” *Id.* (emphasis added). Mayor Kirkland acknowledged that four other people were present in the room, but he denied that Mr. Nichols had to stand between him and Receiver. *Id.* Mayor Kirkland admitted that he called Receiver a racial slur, referring to it as an “inappropriate comment.” *Id.* at 230. He testified, however, that he apologized to Receiver at their next meeting. *Id.* at 231.

Furthermore, in the Plan Modification, Receiver seeks to convert the present COO position, which is held by Mr. Lightner, into a Chief of Staff position consistent with the City’s Administrative Code. Mr. Kapoor explained why Receiver wants to appoint a Chief of Staff to oversee the City’s departments as follows:

The City has in its [A]dministrative [C]ode, as it exists right now, a chief of staff position. . . . If you look at the chief of staff position, the chief of staff looks a lot like a city manager, in terms of what [the chief of staff is] responsible for doing. [The chief of staff is] essentially responsible for implementing and executing policy . . . within the City.

At the time [Receiver] got involved, *it became very clear that the City needed centralized management, because each department had essentially been operating on its own. And particularly for a city that’s in financial trouble, you need that strong central management.*

N.T., 1/9/23 at 111-12 (emphasis added); *see* Admin. Code §§ 112.01-112.06 (setting forth the qualifications, duties, and responsibilities of the Chief of Staff). On cross-examination, Mr. Kapoor clarified: “We’re not looking to remove

Councilman Morgan, the Mayor, or any other elected official[] from being a council member. *What we are looking to do is establish some sense of professional management and accountability as it relates to City operations.*” *Id.* at 262 (emphasis added).

\* \* \* \*

The Court concludes that all of this evidence, viewed together, demonstrates the City officials’ continued lack of transparency and lack of cooperation with Receiver and his team. Even worse, Mayor Kirkland has verbally – and publicly – threatened and disrespected Receiver on more than one occasion. The Court discredits Mayor Kirkland’s testimony to the contrary. This type of adverse behavior obstructs Receiver’s ability to work amicably and productively with City officials to achieve the City’s fiscal recovery goals. While the gift card issue, in particular, may seem minor in the grand scheme of the City’s financial troubles, the Court believes it reflects the City officials’ overall pattern of failing to work in partnership with Receiver. The Court agrees with Receiver that if the City officials responsible for carrying out the goals of the recovery plan “are incapable of doing so or refuse to do so and face no repercussions, then nothing will ever change and . . . Receiver will not be able to ensure the provision of vital and necessary services” to the City’s residents. Plan Modification at 11.

The Court is also extremely troubled by the fact that Councilman Morgan failed to notify Receiver about the phishing incident for three months, in direct contravention of this Court’s prior order to “immediately” share any information relating to the City’s finances with Receiver. *Davin II*, slip op. at 13. Councilman Morgan’s failure to promptly disclose this critical financial information is even more egregious considering that he meets with Receiver every week. *See* N.T., 1/10/23,

at 29-30. Councilman Morgan also inexplicably failed to inform the Mayor of the phishing incident for two months prior to the Mayor's medical absence.

Compounding Councilman Morgan's recent actions is the fact that, in ruling on the Mandamus Petition, the Court previously found that "Councilman Morgan . . . ha[s] engaged in conduct that has impeded Receiver's ability carry out the goals of the Amended Recovery Plan," including, *inter alia*, failing to complete monthly bank reconciliations, making late and/or inaccurate federal tax payments, making improper "hazard" payments to certain employees, and allowing himself and other City officials to remain on an expensive health care plan that had been discontinued. *See Davin II*, slip op. at 9-10.<sup>18</sup> In the Court's view, Councilman Morgan can no longer effectively serve as the head of the Department of Finance and Human Resources.

As explained in Section II.B.2. above, the Court concludes that Receiver has the authority to remove City Council members from their assigned positions as department heads and to appoint experienced professionals in their place. Based on the credible evidence presented at the hearing, the Court believes that such administrative changes are not only permissible, but necessary.

The Court also believes that having a Chief of Staff oversee the day-to-day operations of all City departments would help alleviate many of the obstacles Receiver and his team have experienced. Mr. Lightner, the present COO who would become the Chief of Staff, credibly testified: "[F]rom my standpoint, from an operational standpoint to meet the needs of the citizens, we need to have clear direction. *The employees need to have clear direction of who they can take orders*

---

<sup>18</sup> In light of this evidence, it is inconceivable to the Court that Mayor Kirkland initially supported Councilman Morgan's candidacy for the position of the City's CFO. *See N.T.*, 1/10/23, at 223-24.

*from, who's in charge, how do we move things forward.”* N.T., 1/10/23, at 135 (emphasis added).

\* \* \* \*

The Court STRIKES the following initiative from the Plan Modification: Chief of Staff Reporting. As explained in Section II.B.1 above, because this initiative, as written, gives Receiver *sole* authority and control over the Chief of Staff, in violation of the City's Home Rule Charter and Administrative Code, it effectuates a change in the form of government. This initiative may be revised to allow the Chief of Staff to report to Receiver, but without changing the form of government pursuant to the Home Rule Charter and Administrative Code.

The Court CONFIRMS WITHOUT CHANGE the remaining seven initiatives in the administrative duties and professional management category. The Court concludes, based on the credible evidence of record, that the proposed initiatives are not arbitrary, capricious, or wholly inadequate to alleviate the City's fiscal emergency.

## **2. Core Internal Administrative Functions and Ethics Initiatives**

Receiver seeks approval of the following 19 initiatives in this category:

- Receivership Controls to Manage Staffing Levels and Personnel<sup>19</sup>
- Receiver Ability to Hire Contractors on Behalf of City or Authority
- Residency Requirement
- Human Resources Policy Development, Implementation and Enforcement
- Compliance with Human Resources Policies and Procedures
- Employee Investigations

---

<sup>19</sup> This proposed initiative would replace Initiative WF02 in the existing Amended Recovery Plan.

- Internal Controls
- Timely Expenditure Reports Prior to City Council Passage
- Auditor Selection
- Budget and Budget Amendment Passage
- Expenditure of American Rescue Plan Act (ARPA) Funds and Any Other Current or Future Federal and State Funds
- Development, Implementation, and Enforcement of Procurement Policies
- Prompt Execution of Contracts
- Selection Committee for Request for Proposals
- Receiver Power to Enter into Contracts and Agreements on Behalf of the City and to Direct that Expenditures Be Made or Eliminated
- Timely Written Legal Advice to City Departments
- Disclosure of Non-Compliance with Court Orders or Amended Recovery Plan
- Development, Implementation and Enforcement of Ethics Policy
- Receiver Ability to Conduct Investigations

Receiver asserts that the impetuses for these initiatives are the City’s poor auditing and recordkeeping practices, as well as the City’s lack of clearly defined personnel and ethics policies to guide employees in their day-to-day responsibilities. According to Receiver, the City’s past practices demonstrate that the City’s “elected officials have failed to conduct internal investigations into personnel matters, including those that involve the expenditure of City funds.” Plan Modification at 43.

As an example, Receiver points to an incident in which the City made unauthorized payments for several months to an employee who was incarcerated,



unbeknownst to Receiver. Receiver's finance team first discovered the payments while conducting a routine backpay calculation process for a collective bargaining agreement. *Id.* at 36-37. Mr. Kapoor testified that upon discovering these payments, Receiver inquired about the employee during his weekly call with the City's former interim COO, Cyrise Dixon, "and she said, *Oh, he's in jail.*" N.T., 1/9/23, at 102 (emphasis added). When Receiver's team looked into the issue further, they learned that the employee worked in the Department of Parks and Recreation and had been incarcerated on child rape charges. *Id.* at 103.

Mr. Kapoor further testified:

[W]e went back and started digging in to try and understand what happened, who authorized [the payments]. Because . . . putting aside the issue of the alleged incident that this person was incarcerated for allegedly committing, *our other problem was that when we looked at the payroll amounts, he was getting paid in excess of the number of hours in a week for a normal payroll amount.* And then when we learned that he had been actually paid for – he had had sick leave and vacation leave paid out, this individual was a unionized employee, and the collective bargaining agreement does not provide for that. *That is not how vacation or sick time is done. It's not paid out that way. It's use it or lose it.*

. . . .

. . . [I]t was just given [to the former employee] as a lump sum. And this would not be the type of situation where you would be able to use sick leave. *You don't get to use sick leave for being incarcerated.*

*Id.* at 103-04 (emphasis added).

Mr. Kapoor testified that Receiver then attempted to investigate the matter and move forward with the employee's termination. Receiver's attorney reached out three times to Councilwoman Portia West, who headed the Department of Parks and Recreation at that time, asking to meet with her, but he "received no response."

*Id.* at 105. Mr. Kapoor testified that when he later asked Councilwoman West why Receiver’s attorney had not heard back from her, “she acted surprised and said, Well, I don’t remember getting that e-mail. And then she looked through her phone and found the e-mail.” *Id.* at 106.

According to Mr. Kapoor, “part of the problem with how the City operates is that each one of these departments is almost like a fiefdom.” *Id.*; *see also* N.T., 1/10/23, at 71-72 (Receiver testified that “the [City’s] elected officials are running five different . . . ‘fiefdoms[.]’”). Mr. Kapoor testified that in most municipalities, the human resources department and the city solicitor “would have taken this over immediately and it would have been out of the hands of the department head. But what happened here was that . . . Councilwoman West did not want to move to terminate the individual, . . . so he stayed on [the payroll].” N.T., 1/9/23, at 106-07. As Receiver points out in the Plan Modification, “[t]he fact that City funds were paid to an employee when he was not entitled to them demonstrates the lack of internal controls in and across the[.] functional areas” of human resources, finance, and legal. Plan Modification at 39.

With regard to budgeting and finance, Mr. Kapoor testified that one significant problem is that Receiver and his team “don’t have very strong financial reporting data from the City to be able to look on a day-to-day basis to understand how much money [the City has] in the account, and more importantly, how many checks have been sent out but haven’t been cashed.” N.T., 1/9/23, at 49. He testified that “*the City is perpetually on the verge of running out of money.*” *Id.* at 47 (emphasis added).

Mr. Kapoor also testified to several factors that have contributed to the City’s present financial crisis. The first factor is that the City’s pension fund is significantly underfunded. Mr. Kapoor testified that a minimum municipal obligation (MMO) is

“the annual payment a city needs to make into its pension funds.” *Id.* at 27. Mr. Kapoor testified:

*The City did not make its full MMO payments from 2013 until 2020. Essentially how the City . . . got by was that it did not fully fund its pension plans. And instead of making the full payment there, they used it for operations. And the[ City] ran significant deficits over that time period and continued to do so.*

*Id.* at 45-46 (emphasis added). According to Mr. Kapoor, the City now “has approximately \$40 million in back-due MMO payments” and “[t]he City . . . has absolutely no way of paying for that through its general operating revenues.” *Id.* at 46 (emphasis added).

Mr. Kapoor also recounted that at the end of 2022, Receiver and his team were concerned that “literally the City would run out of money and that [the City] would not . . . have enough money in [its] checking account to make payroll” in January 2023. *Id.* at 48-49. The City was able to do so only because it received an emergency order from the federal bankruptcy judge authorizing the Commonwealth to provide a \$5 million tax revenue anticipation note (TRAN) to the City. *Id.* at 47-48. Mr. Kapoor explained that a TRAN is “kind of like a repayment plan” whereby the City “would get the money, and then . . . would pay it back [to the Commonwealth] when [the City’s] property taxes would start coming in, which . . . happen[s] around May, June.” *Id.* at 47.

Another significant problem, according to Mr. Kapoor, is that “the City is unable to balance its budget.” *Id.* at 46. Mr. Kapoor testified:

[The City] has a structural deficit. And if you look at the 2023 budget, . . . the budget that was passed in December of last year for 2023, it has . . . a little over a \$2 million deficit in it already. It is not a balanced budget. We cannot pay for both operations as well as debt service as well as the MMO payments that are due. There is a deficit in there.

*Id.* at 46-47. Mr. Kapoor characterized the City’s financial situation as “dire.” *Id.* at 49; *see also* N.T., 1/10/23, at 149 (Mr. Schuster characterized the City’s financial condition at the start of the receivership as “abysmal”).

Mayor Kirkland acknowledged that the City had not made any MMO payments since he took office in 2016 until after Receiver was appointed. N.T., 1/10/23, at 216. Mayor Kirkland testified, however, that he was unaware that the MMO payments were not made during that period. *Id.* at 216-17. Mayor Kirkland testified that “there is a lot that falls on [his] shoulders” and acknowledged that “[s]ome . . . things fall through the cracks.” *Id.* at 217-18. When asked if the Auditor General had cited the City for missing its MMO payments, Mayor Kirkland replied, “[t]he [A]uditor [General] never sent me any information citing the City.” *Id.* at 218-19. He testified that the notice probably went to the City’s former CFO, Mr. Nichols. *Id.* at 219. However, he agreed that, as Mayor, he would expect that his Council members or employees would inform him of citations regarding debts or missed payments. *Id.*

On rebuttal, Mr. Kapoor testified that “[a]n MMO payment is one of the biggest payments that a [c]ity has.” N.T., 1/11/23, at 82. He testified that, contrary to Mayor Kirkland’s testimony, the Auditor General’s compliance audits *were* sent to the Mayor and City Council. *Id.* at 81; *see* Receiver Exs. 21-22. Mr. Kapoor also pointed out that under the City’s Administrative Code, the Mayor is the chairperson of the City’s pension funds, and “as the chairperson of the pension funds, the Mayor has a fiduciary duty to know what the level of funding is in the plans” and “to ensure that the funding levels are appropriate in those plans.” N.T., 1/11/23, at 81-82; *see* Admin. Code § 142.05(a) (stating that “the Mayor shall be the Chairperson of the City of Chester Aggregated Pension Fund Board”).

When asked about the City’s improper calculation of pension benefits, Mr. Schuster, the City Solicitor, testified:

We all knew that there was an improper calculation going back to – I think we collectively were working on that . . . going back to before, I think, 2008.

. . . .

I believe that . . . once the pension spiked and everyone started to wrap their arms around the deficit, that we began to uncover discrepancies in the calculation; whether it should be calculated on the past year of employment or the past five years, . . . which it probably should be[] . . . .

. . . .

*. . . There was a particular administration and police chief who would let all of his friends work a ton of overtime for 12 months before they retired, and their pension would be calculated on that instead of their actual salary averaged over three or five years. That’s what was happening. But there was, believe it or not, agreements in front of a prior pension board that th[ey were] legitimate calculations. So[] . . . it’s a real conundrum.*

N.T., 1/10/23, at 187-88 (emphasis added).

With regard to personnel issues, Receiver testified that there is very little consistency and a lot of turnover within the City’s departments. N.T., 1/10/23, at 45, 89-90. Moreover, Receiver asserts that “[o]ther than being designated by the Mayor, there are no further qualifications necessary for a [City C]ouncil member to serve as a department head,” nor is there “any requirement to demonstrate basic competence in the areas the [C]ouncil member is overseeing.” Plan Modification at 28.

Indeed, Mayor Kirkland testified that each January he appoints department heads, and he acknowledged that some department head positions have changed hands from year to year. *Id.* at 243-44. When asked what criteria he uses in

assigning department heads, Mayor Kirkland replied: “I use the criteria of their experience, their background, their ability to perform the task[ and] to motivate the staff persons, and much, much more.” *Id.* at 244. With regard to Councilwoman Williams, who oversees the Department of Public Safety, “[h]er qualifications were her long standing on [City] Council, her ability to work within systems, her ability to seek . . . funding that would help our fire department move . . . in a continuously positive direction, and her attendance here in City Council.” *Id.* at 244-45. Mayor Kirkland admitted that Councilwoman Williams previously oversaw parks and recreation and that, while she now oversees public safety, she has no prior experience in the areas of code enforcement or fire services. *Id.* at 245. Mayor Kirkland testified, however, that he does not “shuffle” City Council members between departments, but rather “appoint[s] those persons who[m] [he] believe[s] will better serve th[e] community and that department.” *Id.* at 247.

Receiver further contends that he has encountered resistance from City employees because there is no clear chain of command within the City’s departments. Receiver asserts that often he or the COO, Mr. Lightner, will direct an employee to do something, but the employee does not comply because the Mayor or a City Council member told the employee not to comply or gave the employee conflicting information. Plan Modification at 26-27. Receiver testified that when the COO issues a directive to an employee, “it gets undermined by elected officials who say that they’re responsible for that department” and “what they want supersedes what [the COO] is trying to advance.” N.T., 1/10/23, at 71. Receiver explained: “The elected officials are running five different . . . ‘fiefdoms,’ . . . [s]o it’s next to impossible to get past or through the elected official to get to the department and implement whatever needs to happen in that area.” *Id.* at 71-72. Mr. Lightner corroborated this testimony. Mr. Lightner explained that often “the

employees are trying to understand the structure, trying to understand the chain of command.” *Id.* at 117. He testified that when a task needs to be completed, “sometimes [employees are] a little hesitant or not sure, so they have to confirm if this is something that they should complete . . . or not” with a member of City Council. *Id.* at 117-18.

Receiver further testified that nepotism is a problem within the City’s government. According to Receiver, “there are significant relationships that aren’t disclosed” and “aren’t managed appropriately.” *Id.* at 35. For example, Receiver testified:

We’ve dealt with the son-in-law of the Mayor being the chief of staff. The . . . former [human resources] director . . . is the niece of Councilwoman West. [A] current [human resources] employee is the daughter of a public works deputy director; that wasn’t disclosed. We found that out [seven] months after the employee started.

*Id.* at 36; *see also* N.T., 1/9/23, at 116 (Mr. Kapoor testified that “[t]here[ are] a lot of employees in the City of Chester who are related”).

On cross-examination, when asked if he knew that a human resources employee was related to a deputy director of another department, Mayor Kirkland replied, “yes.” N.T., 1/10/23, at 252. However, Mayor Kirkland testified that he was unaware that Councilwoman West recently hired her sister to work in her department, stating, “I don’t think that information is correct.” *Id.* at 250-51. When asked directly about nepotism, Mayor Kirkland stated, “I don’t believe that . . . is a conflict of interest because someone’s child or someone’s family member has a skill set that fits the needs of the City and they’re employed” by the City. *Id.* at 252-53. He testified that “[s]ome folks might call that nepotism,” but he “simply call[s] it an opportunity for us to fill a void in City government that is so desperately needed.” *Id.* at 253. Mayor Kirkland explained:

[The City] . . . has approximately . . . 36,000 [residents]. Eventually you're going to come across some family members in our County government, in our City government, in our downtown area who are working alongside one another.

Because of the small population and because of the close-knit family that we have here and because of the talented persons, whether they are family members or whether they're persons that we've never met before, we try our best to make sure that those persons that are put in place that are hired by the City have the skill set to do the job.

*Id.* at 251-52.

Receiver also testified that he has attempted to work with the Mayor and City Council to revise the City's personnel policies, beginning with the employee handbook, but those efforts have "fall[en] on deaf ears." *Id.* at 36-37. Receiver explained that "[t]here will be working sessions where it sounds like we're all in favor of advancing [the policies], but transitioning from the staff level to [City C]ouncil approval, somewhere in there, the process dies." *Id.* at 37.

Mr. Lightner has also encountered difficulties in this area. Mr. Lightner explained: "[A]s we come across certain situations, I will ask for policies and procedures. And we don't have a centralized repository of policies or procedures." *Id.* at 111. He testified that they "have the employee handbook, but that's far from actual policies and procedures." *Id.* at 112. Mr. Lightner opined that the lack of centralized human resources policies is "problematic for all departments." *Id.*

On cross-examination, Mr. Lightner explained why the City needs a clear chain of command regarding internal operations as follows:

[F]rom my standpoint, from an operational standpoint to meet the needs of the citizens, *we need to have clear direction. The employees need to have clear direction of who they can take orders from, who's in charge, how do we move things forward.* And again, we need to put these policies and procedures and all this stuff in place.



*Id.* at 135 (emphasis added). He further testified: “It’s having all the departments work together, [and] understanding that . . . one department can’t work in the silo. *All departments have to work together.*” *Id.* (emphasis added).

\* \* \* \*

The credible evidence presented at the hearing demonstrates that the City’s elected officials are not empowering Receiver in the eyes of the City’s employees. Rather, the evidence shows that City officials frequently ignore Receiver’s advice and directives, and even direct other employees in their departments to ignore his directives. City officials also have historically overlooked issues such as the unauthorized payroll payments to an incarcerated employee, the former police chief allowing his friends to boost their pensions by working extra overtime before retirement, and the City’s seven-year default on its MMO payments. These incidents, together with the evidence of widespread nepotism within the City’s government, demonstrate a pattern of City officials taking care of their own and intentionally turning their backs on wrongdoing within their departments. Further exacerbating these problems is the Mayor’s assignment of Council members as department heads based on their loyalty to City Council and the Mayor’s own inclination in a particular year, rather than on the person’s actual qualifications to oversee a particular area. These practices cannot continue.

Mr. Lightner testified that, as COO, he needs three things to help the City emerge from its fiscal emergency: “[W]e need *consistency*, we need *stability*, and we need *direction*.” N.T., 1/10/23, at 134 (emphasis added). The Court believes that Receiver’s initiatives in this category, relating to human resources, finance, auditing, procurement, and legal, will help provide the City with that consistency, stability, and direction.

\* \* \* \*

The Court STRIKES the following initiatives from the Plan Modification: Receiver Ability to Hire Contractors on Behalf of City or Authority; Budget and Budget Amendment Passage; Expenditure of ARPA Funds and Any Other Current or Future Federal and State Funds; and Receiver Power to Enter into Contracts and Agreements on Behalf of the City and to Direct that Expenditures Be Made or Eliminated. As explained in Section II.B.1. above, because these four initiatives, as written, give Receiver *sole* authority to act on the City's behalf in violation of the City's Home Rule Charter and Administrative Code, they effectuate a change in the form of government. Furthermore, as discussed in Section II.B.3. above, Act 47 does not authorize Receiver to unilaterally enter into contracts on the City's behalf, only to approve, disapprove, modify, reject, terminate, or renegotiate proposed or existing contracts. These initiatives should be revised to give Receiver the authority to act in these areas, without completely removing such authority from the City's elected officials pursuant to the Home Rule Charter and Administrative Code.

The Court also STRIKES the following initiatives from the Plan Modification: Human Resources Policy Development, Implementation and Enforcement; Development, Implementation and Enforcement of Procurement Policies; and Development, Implementation and Enforcement of Ethics Policy. These three initiatives should be revised *only* to remove the language regarding the filing of a plan modification with the Court and asking the Court to render a decision within 21 days. The remaining language in these three initiatives is acceptable pursuant to Act 47.

The Court CONFIRMS WITHOUT CHANGE the remaining 12 initiatives in the core internal administrative functions and ethics category. The Court concludes,

based on the credible evidence of record, that the proposed initiatives are not arbitrary, capricious, or wholly inadequate to alleviate the City's fiscal emergency.

### 3. Economic Development Initiatives

Receiver seeks approval of the following two initiatives in this category:

- City and Authority Compliance with Update to Municipal Comprehensive Plan Without Delay
- Approval of Economic Development Incentives

At the hearing, Receiver recounted that, at one point, the Mayor's former son-in-law, Ronald Starr, was placed in charge of economic development. N.T., 1/10/23, at 46-47. However, Receiver testified:

In that year, I'm not sure what he accomplished. *I know he personally acquired several downtown properties during that time period, but what was done to advance economic developments on behalf of the City, I don't know.*

And as he previously served as the City's chief of staff, he definitely was not meeting a mark there.

*Id.* at 46 (emphasis added); *see also Davin II*, slip op. at 6-7 (discussing City Council's passage of a resolution supporting an application for an economic development liquor license to a property partially owned by Mr. Starr).

Mr. Kapoor also testified that Mr. Starr was previously the chief of staff, but Receiver laid him off because he "couldn't tell what [Mr. Starr] was actually doing," and "*then the Mayor requested that that [Mr. Starr] be placed as the business development officer.*" N.T., 1/9/23, at 206-07 (emphasis added). Mr. Kapoor testified that Mr. Starr took the business development position at the end of 2020, reducing his annual salary from \$110,000 to \$85,000. *Id.* at 211; *see id.* at 91. According to Mr. Kapoor, Mr. Starr "was working on important economic development things," but he "[n]ever attended any operational meetings" and

“[n]ever attended any of the Receiver[’s] weekly meetings with . . . City Council.” *Id.* at 207. Mr. Kapoor testified that “it was sort of an ongoing joke that you never [saw] him around City Hall.” *Id.* Mr. Starr has since resigned from that position. *Id.* at 212.

Receiver asserts that, with regard to economic development, the prior Amended Recovery Plan included an initiative that required the City to “work collaboratively with the Delaware County Planning Department, the Delaware Valley Regional Planning Commission, and DCED to update its Municipal Comprehensive Plan,” which “serves as the primary resource document for long-term land use planning decisions.” Plan Modification at 57. Although the City received a grant from DCED to pay for this study, it was never completed “due to delays from the City Planner in providing information to the selected vendor.” *Id.* Thus, Receiver seeks to reinstate this study and to ensure that the City Planner and other City officials fully cooperate in the process.

At the hearing, Receiver testified about the importance of economic development in helping the City emerge from insolvency. Receiver explained that “growing the tax base . . . is critical to the long-term sustainability of the City.” N.T., 1/10/23, at 12. According to Receiver, having a comprehensive strategic plan for economic growth is “critical to setting a stage for a long-term vision for the City,” including “tak[ing] on issues like blight, community engagement, how to invest in a waterfront, and [how to] bring additional tourism[.] . . . and dollars [in]to the City.” *Id.* at 11-12. Receiver testified that the City’s prior comprehensive plan expired in 2020 and his attempts to implement a new plan have been delayed because “access to the vendor has been blocked” and “[r]equests for meetings have been denied.” *Id.* at 13-14. Receiver testified that, in particular, he has faced resistance from the City Planner, who has “obstruct[ed]” Receiver’s efforts by “asking [Receiver and

his team] to explain . . . months later . . . why [they] need to talk to the vendor or why [they're] trying to take on this effort.” *Id.* at 14.

Receiver agreed that the proposed economic development initiatives require the cooperation of the City Planner and other City officials in order to proceed. *Id.* at 14-15. Receiver testified that the City needs to “work[] with . . . consultants on [Receiver’s] team,” “the selected vendor,” and Delaware County “collectively[ and] collaboratively to figure out a path forward.” *Id.* at 14.

Mr. Schuster also recognized the importance of economic development in moving the City toward its fiscal recovery goals. *Id.* at 155-56. Mr. Schuster testified that crime rates are down in the City and “if you lower crime, there will be . . . economic development, residential development.” *Id.* at 148, 155. Mr. Schuster testified that the City is uniquely situated near Philadelphia and Wilmington, the Blue Route, and public transportation. *Id.* at 156. He noted that the City’s waterfront, in particular, “is a real keystone element of any economic development.” *Id.* Mr. Schuster also seemed optimistic about future economic development in the City, as he has seen “art galleries, restaurants and small, locally-owned business” beginning to populate the downtown area and he “can see some vibrancy and . . . life coming back to the [C]ity.” *Id.* at 156-57.

\* \* \* \*

It is evident that both Receiver and the City recognize that fostering economic development is critical to the City’s financial recovery. Yet, in working toward that goal, the Mayor simply parachuted his former relative into the business development position, without providing any clear directives or oversight to ensure that the City’s economic development objectives were being met. By all accounts, the only progress Mr. Starr made on that front during his tenure was to obtain a liquor license for one of his businesses.

The Court concludes, based on the credible evidence of record, that Receiver's economic development initiatives are not arbitrary, capricious, or wholly inadequate to alleviate the City's fiscal emergency.

The Court CONFIRMS WITHOUT CHANGE both initiatives in the economic development category.

### **III. Conclusion**

The appointment of a receiver under Act 47 is the Commonwealth's final attempt to save a distressed municipality from total financial collapse. That is why the General Assembly grants so much power to an appointed receiver under Act 47 and mandates that the elected officials comply with a fiscal recovery plan that has been confirmed by the Court. *See* 53 P.S. §11701.706(a)(1); *id.* § 11701.704(a)(1) and (2). Act 47, however, also cautions that the Court's confirmation of a recovery plan shall not be construed to change the form of government. *See id.* § 11701.704(b)(1). Thus, in ruling on a plan modification, the Court must balance the receiver's broad powers with the powers legislatively granted to the elected officials so as not to remove *all* such authority from the elected officials, while giving the receiver meaningful participation and authority to carry out his duties under Act 47.

In this case, the credible evidence of record demonstrates that aside from the severe financial distress plaguing the City, the City also suffers from a municipal government that is internally dysfunctional. While the recent hiring of Mr. Lightner as COO is a step in the right direction, the Court does not see a viable path forward for the City unless major changes are made to its internal administrative operations. According to Receiver, "the City's current administrative organization and allocation of duties is the single greatest operational obstacle to the City's ability to provide vital and necessary services" to its residents. Plan Modification at 25. The Court agrees.

The Court concludes that not only is there no clear and convincing evidence that the Plan Modification is arbitrary, capricious, or wholly inadequate to alleviate the City's fiscal emergency, but the credible evidence establishes that Receiver's proposed initiatives are necessary to help Receiver and his team work constructively with the COO (soon to become the Chief of Staff) and the elected officials to save the City from the brink of financial doom. As explained in Section II.C. above, however, several of Receiver's proposed initiatives cannot be confirmed as written, but should be modified to conform with Act 47 and the City's Home Rule Charter and Administrative Code. For this reason, the Court grants Receiver leave to amend the Plan Modification in accordance with the attached Order.

\* \* \*

Accordingly, based on the foregoing analysis and conclusions, the Court enters the following Order:

## **ORDER**

AND NOW, this 31<sup>st</sup> day of January, 2023, upon consideration of the Modification of Amended Recovery Plan (Plan Modification) filed by Michael T. Doweary, in his capacity as Receiver for the City of Chester (Receiver), the response thereto filed by the City of Chester, Mayor Thaddeus Kirkland, and City Council of the City of Chester (collectively, the City), and the arguments and evidence presented at the hearing held from January 9-11, 2023, including the credited testimony, the Court hereby CONFIRMS IN PART the Plan Modification, STRIKES certain of the proposed initiatives therein, and GRANTS Receiver leave to amend the Plan Modification.

It is further hereby ORDERED and DIRECTED that:

(1) Receiver's Amended Plan Modification shall conform to the Court's specific rulings on the proposed initiatives in the foregoing Opinion; **only the proposed initiatives that the Court has stricken shall be amended.**

(2) Receiver shall file the Amended Plan Modification with the Court for review **no later than Monday, February 13, 2023.**



---

ELLEN CEISLER, Judge



## **APPENDIX B**



J. Michael Adams Jr., Esq.  
P.o. Box 18204  
Pittsburgh, PA 15236

---

AOPC 1231A Rev.02/14/2023

Tiffany R. Allen, Esq.  
City Of Philadelphia Law Dept  
1515 Arch St Fl 16  
Philadelphia, PA 19102

---

AOPC 1231A Rev.02/14/2023

Bradley John Betack, Esq.  
Campbell Durrant Beatty Palombo & Miller, P.C.  
Campbell Durrant P.c.  
1 Belmont Ave Ste 300  
Bala Cynwyd, PA 19004

Sean Christopher Campbell, Esq.  
Pennsylvania Department of Community & Economic Development  
Pa Dept Of Community And Economic Dev  
400 North St Fourth Fl  
Harrisburg, PA 17120

---

AOPC 1231A Rev.02/14/2023

Chester Economic Development Authority  
Chester City Hall  
1 East Fourth Street  
Chester, PA 19013

---

AOPC 1231A Rev.02/14/2023

Chester Parking Authority  
Chester City Hall  
1 East Fourth Street  
Chester, PA 19013

---

AOPC 1231A Rev.02/14/2023



Chester Redevelopment Authority  
Chester City Hall  
1 East Fourth Street  
Chester, PA 19013

---

AOPC 1231A Rev.02/14/2023

Andrew Kabnick Garden, Esq.  
Conrad O'Brien, P.C.  
Centre Square West Tower  
1500 Market St Ste 3900  
Philadelphia, PA 19102

---

AOPC 1231A Rev.02/14/2023

Charles Matthew Gibbs, Esq.  
McMonagle, Perri, McHugh, Mischak & Davis, P.C.  
1845 Walnut St  
19th Floor  
Philadelphia, PA 19103

---

AOPC 1231A Rev.02/14/2023

Megan Anne Guernsey, Esq.  
Conrad O'Brien, P.C.  
Conrad O'Brien Pc  
Centre Square, West Tower  
1500 Market St 3900  
Philadelphia, PA 19102-2100

---

AOPC 1231A Rev.02/14/2023

Steven Alan Hann, Esq.  
Hamburg, Rubin, Mullin, Maxwell & Lupin, PC  
Hamburg Rubin Mullin Maxwell & Lupin  
375 Morris Rd  
Lansdale, PA 19446

Patrick James Harvey, Esq.  
Cambell Durrant Beatty Palombo & Miller, P.C.  
Campbell Durrant P.c.  
1 Belmont Ave Ste 300  
Bala Cynwyd, PA 19004

Thomas Helbig Jr., Esq.  
Elliott Greenleaf Pc  
925 Harvest Dr Ste 300  
Blue Bell, PA 19422

---

AOPC 1231A Rev.02/14/2023

William Jacobs  
Chester City Hall  
1 East Fourth Street  
Chester, PA 19013

---

AOPC 1231A Rev.02/14/2023



Kevin Dooley Kent, Esq.  
Clark Hill PLC  
Two Commerce Square  
2001 Market Street, Suite 2620  
Philadelphia, PA 19103

---

AOPC 1231A Rev.02/14/2023

John Patrick McLaughlin, Esq.  
Campbell Durrant Beatty Palombo & Miller, P.C.  
Campbell Durrant P.c.  
1 Belmont Ave Ste 300  
Bala Cynwyd, PA 19004

Benjamin Richard Patchen, Esq.  
Philadelphia City Solicitor's Office  
City Of Phila  
1515 Arch St 16th Fl  
Philadelphia, PA 19102

---

AOPC 1231A Rev.02/14/2023

Mark D. Pfeiffer, Esq.  
Buchanan, Ingersoll & Rooney, P.C.  
Buchanan Ingersoll & Rooney  
50 S 16TH St Ste 3200  
Philadelphia, PA 19102-2555

William Grady Roark, Esq.  
Hamburg, Rubin, Mullin, Maxwell & Lupin, PC  
Hamburg Rubin Et Al  
375 Morris Road PO Box 1479  
Lansdale, PA 19446-0773

---

AOPC 1231A Rev.02/14/2023

Robert Forman Teplitz, Esq.  
Pennsylvania Governor's Office  
Pa Dept Of Community & Economic Development  
400 North St Fl 4  
Harrisburg, PA 17120

---

AOPC 1231A Rev.02/14/2023

H. Marc Tepper, Esq.  
Buchanan, Ingersoll & Rooney, P.C.  
Buchanan Ingersoll & Rooney Pc  
50 S 16TH St Ste 3200  
Philadelphia, PA 19102-2555

Justin Andrew Zimmerman, Esq.  
Pennsylvania Department of Community & Economic Development  
Pa Dept Of C & E Development  
400 North St Fl 4  
Harrisburg, PA 17120

---

AOPC 1231A Rev.02/14/2023



## Service List

Addressed To:	J. Michael Adams Jr., Esq. P.o. Box 18204 Pittsburgh, PA 15236	PACFile Notified
	Tiffany R. Allen, Esq. City Of Philadelphia Law Dept 1515 Arch St Fl 16 Philadelphia, PA 19102	PACFile Notified
	Bradley John Betack, Esq. Campbell Durrant Beatty Palombo & Miller, P.C. Campbell Durrant P.c. 1 Belmont Ave Ste 300 Bala Cynwyd, PA 19004	PACFile Notified
	Sean Christopher Campbell, Esq. Pennsylvania Department of Community & Economic Development Pa Dept Of Community And Economic Dev 400 North St Fourth Fl Harrisburg, PA 17120	PACFile Notified
	Chester Economic Development Authority Chester City Hall 1 East Fourth Street Chester, PA 19013	
	Chester Parking Authority Chester City Hall 1 East Fourth Street Chester, PA 19013	
	Chester Redevelopment Authority Chester City Hall 1 East Fourth Street Chester, PA 19013	
	Andrew Kabnick Garden, Esq. Conrad O'Brien, P.C. Centre Square West Tower 1500 Market St Ste 3900 Philadelphia, PA 19102	PACFile Notified

**Service List**

Addressed To:	Charles Matthew Gibbs, Esq. McMonagle, Perri, McHugh, Mischak & Davis, P.C. 1845 Walnut St 19th Floor Philadelphia, PA 19103	PACFile Notified
	Megan Anne Guernsey, Esq. Conrad O'Brien, P.C. Conrad O'Brien Pc Centre Square, West Tower 1500 Market St 3900 Philadelphia, PA 19102-2100	PACFile Notified
	Steven Alan Hann, Esq. Hamburg, Rubin, Mullin, Maxwell & Lupin, PC Hamburg Rubin Mullin Maxwell & Lupin 375 Morris Rd Lansdale, PA 19446	PACFile Notified
	Patrick James Harvey, Esq. Cambell Durrant Beatty Palombo & Miller, P.C. Campbell Durrant P.c. 1 Belmont Ave Ste 300 Bala Cynwyd, PA 19004	
	Thomas Helbig Jr., Esq. Elliott Greenleaf Pc 925 Harvest Dr Ste 300 Blue Bell, PA 19422	PACFile Notified
	William Jacobs Chester City Hall 1 East Fourth Street Chester, PA 19013	
	Kevin Dooley Kent, Esq. Clark Hill PLC Two Commerce Square 2001 Market Street, Suite 2620 Philadelphia, PA 19103	PACFile Notified
	John Patrick McLaughlin, Esq. Campbell Durrant Beatty Palombo & Miller, P.C. Campbell Durrant P.c. 1 Belmont Ave Ste 300 Bala Cynwyd, PA 19004	PACFile Notified

## Service List

Addressed To:	Benjamin Richard Patchen, Esq. Philadelphia City Solicitor's Office City Of Phila 1515 Arch St 16th Fl Philadelphia, PA 19102	PACFile Notified
	Mark D. Pfeiffer, Esq. Buchanan, Ingersoll & Rooney, P.C. Buchanan Ingersoll & Rooney 50 S 16TH St Ste 3200 Philadelphia, PA 19102-2555	PACFile Notified
	William Grady Roark, Esq. Hamburg, Rubin, Mullin, Maxwell & Lupin, PC Hamburg Rubin Et Al 375 Morris Road PO Box 1479 Lansdale, PA 19446-0773	PACFile Notified
	Robert Forman Teplitz, Esq. Pennsylvania Governor's Office Pa Dept Of Community & Economic Development 400 North St Fl 4 Harrisburg, PA 17120	PACFile Notified
	H. Marc Tepper, Esq. Buchanan, Ingersoll & Rooney, P.C. Buchanan Ingersoll & Rooney Pc 50 S 16TH St Ste 3200 Philadelphia, PA 19102-2555	PACFile Notified
	Justin Andrew Zimmerman, Esq. Pennsylvania Department of Community & Economic Development Pa Dept Of C & E Development 400 North St Fl 4 Harrisburg, PA 17120	PACFile Notified

## **APPENDIX C**

HOME RULE CHARTER  
OF THE  
CITY OF CHESTER  
DELAWARE COUNTY, PENNSYLVANIA

---

PREAMBLE

In accordance with Article IX, Section 2, of the Pennsylvania Constitution and Act 62 (1972) of the General Assembly, the citizens of the City of Chester, by referendum in the Spring Primary 1980, adopt the following Home Rule Charter to establish a form of government to provide for the health, safety, and well-being of its citizens, to provide a government responsive to the citizens, to provide municipal services and facilities with a high degree of efficiency and economy, and to bring to the people of the City of Chester the greatest grant of local self-government powers that a municipality can have under the Constitution of the Commonwealth of Pennsylvania.

ARTICLE I - NAME, BOUNDARIES AND POWERS OF THE CITY

SECTION 101. NAME AND BOUNDARIES.

The City of Chester shall continue as a municipal corporation under the name of the City of Chester with the actual boundaries at the time this Charter takes effect and as may be lawfully changed thereafter. As used in this Charter the words Chester and City shall mean the Home Rule Municipality City of Chester, Delaware County, Pennsylvania.

SECTION 102. GENERAL POWERS.

Chester shall have and may exercise any powers and perform any function not denied by the Constitution of Pennsylvania, the General Assembly of the Commonwealth of Pennsylvania, or this Charter.

SECTION 103. INTERPRETATION.

The powers of Chester shall be liberally construed in favor of the City in order to provide Chester with the greatest possible power of self-government under the Pennsylvania Constitution. Any specific mention of the powers in the Charter shall not be construed as limiting in any way the general powers of the City as stated in this article.

**SECTION 104. POWERS VESTED IN THE CITY COUNCIL.**

The legislative powers of Chester shall be exclusively vested in the City Council as set forth and limited in this Charter.

**SECTION 105. CONTINUATION.**

All powers and functions contained in any and all ordinances and resolutions of the City of Chester prior to the effective date of this Charter, which are in force on the effective date of this Charter, and not inconsistent herewith, shall continue in force until amended, repealed, superseded, or expired by their own terms.

**ARTICLE II - CITY COUNCIL****SECTION 201. NAME AND COMPOSITION.**

The legislative body of Chester shall be the City Council, hereinafter referred to as the Council. The Council shall be composed of five members, one of whom will be elected under the title of Mayor. The Mayor will participate as a member of Council, with full voting rights thereon, and shall be the presiding officer of Council. All references to Council members in this Charter shall include the Mayor. Council members shall be elected from the City at large.

**SECTION 202. QUALIFICATIONS FOR OFFICE.**

A member of the City Council, including the Mayor, hereinafter referred to as a Council member, shall be a citizen of the United States; a qualified voter of the City; must retain such status during the term of office for which elected; should not have been convicted of any crime classified as a misdemeanor of the second class or higher; must have been a resident of the City of Chester for at least one (1) year prior to filing a petition for election; and must not otherwise be disqualified from office by the terms of this Charter or by the laws of the Commonwealth of Pennsylvania.

**SECTION 203. PROHIBITIONS.**

No Council member shall, during the terms of office of the Council member, hold any other compensated position in the City of Chester government. This prohibition shall not preclude a nonpaying position with any local, state, or federal board or authority. Reimbursement of expenses shall not be considered compensation.

**SECTION 204. FORFEITURE OF OFFICE.**

The office of Council member shall be forfeited if the Council member is declared by any court in this Commonwealth to:

- A. Lack any qualifications for the office prescribed by this Charter or laws of the General Assembly;
- B. Have willfully violated any express prohibition of this Charter;
- C. Be convicted of any crime classified as a misdemeanor of the second class or higher, under the laws of the Commonwealth or of the United States, or be convicted of any comparable crime under the laws of any other state in the United States.

**SECTION 205. TERM OF OFFICE.**

Council members shall serve for four-year staggered terms beginning at 10:00 a.m. of the first Monday of January following the year in which they are elected except for Council members appointed or elected to fill a vacancy, who shall serve for the remainder of the unexpired term of the member succeeded or as otherwise provided in Section 208 of this Charter.

**SECTION 206. ELECTIONS.**

The procedure for the nomination and election of Council members shall be as provided in the election laws of the Commonwealth of Pennsylvania.

**SECTION 207. VACANCIES.**

The office of Council member shall become vacant upon death, resignation, removal of place of residence from the City, legal certification of mental and/or physical disability, or forfeiture of office as directed by this Charter, or as otherwise provided by law.

**SECTION 208. FILLING OF VACANCIES.**

Whenever a vacancy exists in the office of Council member, the vacancy shall be filled as set forth in the Administrative Code.

**SECTION 209. COMPENSATION.**

The compensation of the Council members under this Charter shall be as set by City Council. Council may establish by ordinance the annual compensation of succeeding Council members. It is the intent of this Charter that all Council members, except the Mayor, elected to office at the same time shall be paid at the same rate and that the Council shall not change the compensation of Council members then in office for the remainder of their present term. They shall be authorized to receive reimbursement of reasonable expenses actually incurred in the performance of their duties in accordance with regulations which shall be set forth in the Administrative Code or other ordinance.

**SECTION 210. ORGANIZATION OF THE COUNCIL.**

The Council shall organize at a meeting at 10:00 a.m. on the first Monday of January of each year. If the first Monday is a legal holiday, the organizational meeting will be held on the first day following which is not a legal holiday. At the organizational meeting the Council shall elect from its membership a Deputy Mayor to serve at the pleasure of the Council. The Deputy Mayor shall serve as presiding officer of Council during any temporary absence of the Mayor and shall serve as the City's representative at ceremonial occasions during any temporary absence of the Mayor or at such other times as the Mayor may request. The Council shall also appoint a City Clerk to maintain records of Council and perform such other duties as prescribed for City Clerks by general law, this Charter, the Administrative Code, or other direction of Council.

**SECTION 211. COUNCIL MEETINGS AND PROCEDURES.**

The Council shall meet regularly at least once in every month at such time and place within the City, as the Council may prescribe by ordinance or resolution.

At its first meeting each year, the Council shall designate and advertise the calendar of regular monthly meetings for the remainder of the year. Special meetings may be held on the call of the presiding officer by providing notice to each Council member at least twenty-four hours in advance of such special meeting, which meeting notice shall be prominently posted at the City Hall. In the event of an emergency which makes it necessary to convene a meeting with less than twenty-four hours' advance notice, such notice requirement may be waived, provided all reasonable effort is made to provide Council with direct notice. The Council may, in the Administrative Code or other ordinance, adopt rules and regulations for its meetings which shall be designed to assure full and equal participation in the deliberations of the Council by all of its members and shall not be inconsistent with specific provisions of this Charter. All regular meetings of the Council, and any special meetings at which official actions are taken, shall be open to the public and public notice of such meetings shall be given.

#### SECTION 212. QUORUM AND MAJORITY ACTION.

A majority of the members of the Council shall constitute a quorum. The Council shall conduct no business except in the presence of a quorum. The action of a majority of Council members present and entitled to vote shall be binding upon and constitute the action of the Council, provided a quorum is present, except as otherwise stated in this Charter. The phrase "majority of the total membership of the Council" or similar language is used elsewhere in this Charter to indicate actions which must be taken by a majority of the total membership rather than by a majority of a quorum.

#### SECTION 213. OFFICIAL ACTION.

All actions of the Council shall be taken by the adoption of an ordinance, resolution, or motion. All legislation shall be enacted by the adoption of an ordinance. All ordinances and resolutions shall be in written form and enacted only after reasonable notice, except as otherwise provided in this Charter or the Administrative Code. All final action in adopting ordinances and resolutions shall be by voice vote unless a roll call is required by a member of Council, and the vote of each Council member shall be entered in the record of the meeting.

#### SECTION 214. RECORDS AND REPORTS.

The City Clerk shall maintain a written record of the minutes and proceedings of all meetings of the Council. All ordinances and resolutions shall be entered, as approved, in the record books of the City. All records and reports shall be open and available for public inspection at City Hall throughout normal office hours. No citizen of Chester shall be denied reasonable access to all public records of the City. Copies of the minutes, ordinances, resolutions, and other official reports and actions of the Council shall be available to the public at a reasonable fee established by Council.



**SECTION 215. LEGISLATIVE POWERS AND DUTIES.**

All legislative powers and duties of the City shall be exclusively vested in and exercised by the Council. The Council shall provide for the exercise of and performance of all legislative powers and duties imposed on the City by law or this Charter, and specifically, but not limited to, the following:

A. To adopt the budget, make appropriations for expenditures for all lawful purposes and levy taxes authorized by law and limitations thereon imposed by this Charter or general law;

B. To adopt, amend, and repeal an Administrative Code to create, alter, combine, and/or abolish municipal departments, bureaus, boards, and commissions, and prescribe procedures not inconsistent with this Charter or general law;

C. To make or cause to be made such studies or post-audits and investigations as it deems to be in the best interest of the City;

D. To adopt ordinances and resolutions not inconsistent with or restrained by the Constituion and laws of the Commonwealth or by this Charter, and prescribe fines and penalties consistent with general law for the violation of City ordinances;

E. To make provision for any matter of the City government not otherwise provided for in this Charter or general law, and not inconsistent therewith.

**ARTICLE III - MAYOR****SECTION 301. CHIEF EXECUTIVE.**

The Mayor shall be the chief executive of the City. He shall be inaugurated and take the oath of office at 10:00 a.m. of the first Monday of January next succeeding his election, or as soon thereafter as possible.

**SECTION 302. DUTIES OF MAYOR.**

The Mayor shall be a member of City Council and shall have any and all additional powers and duties which may be conferred upon him by the Administrative Code and this Charter.

**SECTION 303. SUPERVISION OF CITY OFFICERS.**

The Mayor shall supervise the conduct of all City officers, examine the grounds of all reasonable complaints against any of them, and cause all of their violations or neglect of duty to be promptly punished or reported to the Council for correction. For the purposes aforesaid, he is hereby empowered to issue subpoenas and compulsory processes, under his official seal, for the attendance of such persons and the production of such books and papers as he may deem necessary, and shall have like enforcement of such subpoenas.

**SECTION 304. EMERGENCY POWER OF THE MAYOR.**

In order to enable the Mayor effectually to preserve the public peace within the City, all the powers which are devolved by the laws of this Commonwealth upon sheriffs, to prevent and suppress mobs, riots, and unlawful and tumultuous assemblies, are hereby conferred upon him. When the Mayor, or chief executive, considers that a state of emergency exists, he may issue his proclamation, which shall be in writing and copies of which shall be made available to all news media, and to each member of City Council declaring a state of emergency for a period not to exceed five (5) days, unless extended by action of Council. In his proclamation he may prohibit, for all or any part of the City in which there is a clear and present danger to life or property through civil disorder:

(1) Any person being on the public streets, or in the public parks or at any other public place during the hours declared by him to be a period of curfew;

(2) The assembling or gathering of a group of people, in such numbers to be designated by him, upon the public streets, parks, or other public places;

(3) The entry or departure of persons into or from any restricted area;

(4) The sale, purchase, or dispensing of any commodities or goods, as designated by him;

(5) The transportation, possession, or use of gasoline, kerosene, or other combustible, flammable, or explosive liquids or materials, except in connection with the normal operation of motor vehicles, normal home use, or legitimate commercial use;

(6) Any other such activities as he reasonably believes should be prohibited to help preserve life, health, property, or the public peace.

The proclamation shall describe any restricted area with particularity and shall specify the hours during which such restrictions are to be in effect.

Any person violating such proclamation of emergency shall be guilty of a summary offense and shall, upon conviction, be sentenced to pay a fine not to exceed three hundred dollars (\$300.00) or to undergo imprisonment not to exceed thirty (30) days or both.

**SECTION 305. ADMINISTRATIVE ASSISTANT.**

The Mayor may appoint an assistant to assist in the administration of the functions of the Mayor. The Administrative Assistant will serve at the pleasure of the Mayor, shall be qualified by education and/or experience to carry out the duties of the office, and shall be compensated by a salary which shall be set by Council in the Administrative Code or other ordinance.

**ARTICLE IV - ORDINANCES****SECTION 401. ACTION REQUIRING ORDINANCES.**

The following action of City Council shall require an ordinance:

A. Provide for a fine or other penalty, or establish a rule or regulation for violation of which a fine or other penalty is imposed;

B. Establish, levy, and collect taxes, and decrease or increase the rates of existing taxes;

C. Establish, alter, or abolish rates or charges for any utility or other service supplied by the City;

- D. Authorize the borrowing of money, except for revenue anticipation loans or emergency loans as provided elsewhere in this Charter;
- E. Grant, renew, or extend a franchise;
- F. Exercise the power of eminent domain;
- G. Establish, alter, or amend any zoning ordinance, subdivision procedure, land development, land use, or building regulation;
- H. Amend or repeal any ordinance previously adopted.

#### SECTION 402. STANDARD CODES OF TECHNICAL REGULATIONS.

The Council may adopt any standard code of technical regulation by adopting an ordinance incorporating said code by reference. The details of such standard codes need not be advertised, but copies of such codes shall be available at City Hall for public inspection and for purchase at a reasonable fee fixed by the Council.

#### SECTION 403. PROCEDURE FOR ENACTMENT.

An ordinance may be introduced by any Council member at any regular or special public meeting. Except where specifically provided otherwise in this Charter, an ordinance shall proceed as provided in the Administrative Code.

#### SECTION 404. EFFECTIVE DATE.

Except as specifically provided otherwise in this Charter, an ordinance shall take effect immediately after final adoption or such later date as the Council may prescribe.

#### SECTION 405. RECORDING.

The City Clerk shall cause the full text of any ordinance, with proof of publication, to be recorded as a permanent record within one month after its final adoption. The permanent record shall be open and available for public inspection throughout normal office hours.

#### SECTION 406. CODIFICATION.

The Council shall provide for the maintenance of a general codification of all City ordinances having the force and effect of law. The general codification shall be published in loose-leaf form and include this Charter and the Administrative Code required by this Charter. The compilation shall be known and cited as "The General Laws of the City of Chester" and copies shall be made available for purchase by the public at a reasonable price set by the Council. All amendments to the General Laws and all new ordinances shall be integrated in said compilation and distributed as aforesaid.

**SECTION 407. EMERGENCY ORDINANCES.**

Notwithstanding any other provisions of this article, the Council may, in the event of substantial public emergency affecting the life, health, property, and peace of the citizens of Chester, adopt one or more emergency ordinances. Emergency ordinances shall be introduced in the form required for ordinances and shall be so designated and shall clearly state the nature of the emergency in specific terms. No prior publication of an emergency ordinance shall be required, and an emergency ordinance may be introduced, adopted, and take effect immediately at any meeting in which it is introduced. An emergency ordinance shall require the approval of a majority of the total members of the Council, except for emergencies at which it is impossible for the total membership to be present, in which case an emergency ordinance may be adopted by a two-thirds vote of the members present provided there is a quorum. Emergency ordinances shall not levy taxes or authorize the borrowing of money except as provided elsewhere in this Charter. An emergency ordinance shall become effective immediately upon adoption and shall automatically stand repealed as of the thirty-first day following the date of its adoption, but may be reenacted as provided herein if the emergency still exists. An emergency ordinance may also be repealed by adoption of a repealing ordinance in the same manner specified in this section for adoption of emergency ordinances.

**ARTICLE V - CONTROLLER****SECTION 501. ELECTION, QUALIFICATIONS AND COMPENSATION.**

There shall be an office of Controller, elected under the election laws of the Commonwealth of Pennsylvania for a term of four (4) years. Candidates for the office shall be registered voters of the City of Chester and shall be qualified by education and experience to perform the duties of the office.

The provisions of this Charter applying to Council members on qualifications for office (Section 202), prohibitions (Section 203), forfeiture of office (Section 204), and vacancies (Section 207) shall apply to the office of Controller.

Section 208 of this Charter applying to the filling of vacancies in the office of Council member shall apply to filling vacancies in the office of Controller. A person appointed to fill a vacancy shall serve for the remainder of the unexpired term.

The compensation for the Controller shall be as set by Council. Council may by ordinance establish the compensation for future offices of Controller, provided that no ordinance increasing the salary of the Controller shall take effect until the expiration of the term of the officer holding the office at the time the ordinance was adopted. Ordinances affecting the compensation of future Controllers shall be enacted prior to the first day of February in municipal election years in order to apply to the officers elected in such years.

**SECTION 502. PERSONNEL.**

Council shall authorize the employment of such personnel as it deems necessary for the performance of the functions assigned to the Controller. Employees of the offices of Controller shall be employees of the City and subject to all rules and regulations of Council on personnel administration.

Council shall designate a qualified employee of the office of the Controller to serve as deputy during any temporary absence or disability of the Treasurer or the Controller. Persons appointed as deputy shall have all the powers and responsibilities of their principal.

**SECTION 503. DUTIES OF THE CONTROLLER.**

The duties of the Controller shall be:

A. Approve all orders of disbursement submitted when such disbursements are for a lawful purpose and there is sufficient unexpended balance in the appropriate account. If the order of disbursement is not for a lawful purpose or, if there is not a sufficient unencumbered balance in the account to which the disbursement is to be charged, the Controller shall return the order and state the reasons for withholding approval.

B. Approve all contracts and purchase orders after determining that there is a sufficient unencumbered balance in the proper account to which the eventual expenditure will be charged and the expenditure will be for a lawful purpose.

C. Review monthly financial report and report promptly in writing to Council any exceptions thereto.

D. To administer, subject to the direction of the various pension boards, all City employee pension funds and to make such reports and keep such records as are necessary for the proper administration of said funds.

E. To perform an internal audit of all City accounts on a quarterly basis and to report to Council the results of said audit every fiscal year.

**ARTICLE VI - CITY ADMINISTRATION****SECTION 601. GENERAL PROVISIONS.**

The Council may, by ordinance, create, alter, or abolish and prescribe the functions of the City departments, agencies, and offices, not inconsistent with the general laws or this Charter, and designate department heads from City Council.

**SECTION 602. ADMINISTRATIVE CODE.**

The Council may, by ordinance, adopt an Administrative Code which shall provide for the administrative organization of the City government, the assignment of duties and responsibilities to officers and employees, and procedural requirements set forth in the general laws or in the Charter. All changes in organization and procedures set forth in the Administrative Code shall be effected by amendment to the Administrative Code in the same manner as other ordinances are enacted and amended.

**SECTION 603. LEGISLATIVE REVIEW.**

At the annual organizational meeting of Council, the Mayor may assign to each Council member a responsibility as department head of one or more departments or agencies of the City government. Council shall act as a body in formulating programs and policies of all departments and agencies of the City government, which policies and programs shall be implemented through the Administrative Code, other ordinances of Council, or departmental regulations approved by Council.

**SECTION 604. BOARDS AND COMMISSIONS.**

The Council may create, modify, or abolish boards, commissions, authorities, or other agencies and special committees of the City government if not inconsistent with general laws or this Charter. The Council may appoint by a majority vote of its total membership, subject to Section 203, the members of such agencies if not otherwise provided by this Charter or general law.

**SECTION 605. DIRECTOR OF PERSONNEL.**

The Mayor, with the approval of Council, may appoint a qualified person to serve as Director of Personnel. The Director of Personnel will be responsible for the functions of personnel administration as may be set forth in the Administrative Code or other ordinance.

**SECTION 606. COMPENSATION.**

The compensation of all officers, if not otherwise provided in this Charter, shall be set by Council in the Administrative Code or other ordinance, and may be changed from time to time by amendment of the same at the discretion of the Council. Compensation of employees other than officers shall be in accordance with the pay plan established under the Administrative Code.

**SECTION 607. CITY SOLICITOR, ASSISTANT SOLICITORS AND SPECIAL COUNSEL.**

The Council shall, on the first Monday of January, one thousand nine hundred and eighty-one, and on the first Monday of January every fourth year thereafter, or as soon thereafter as practicable in each of said years, appoint a City Solicitor, who shall be learned in the law and admitted to practice in the Supreme Court of the Commonwealth, and shall maintain an office in the City. He shall serve for a term of four years from the said first Monday of January and until his successor is qualified. He shall receive a fixed annual salary to be provided by ordinance. He shall give lawful bond to the City, with a surety or other company authorized by law to act as surety, to be approved by Council, in such sum as they shall by ordinance direct, conditioned for the faithful performance of his official duties. Vacancies in said office shall be filled by Council for the unexpired term.

Council may appoint one or more Assistant City Solicitors whose term of office shall be concurrent with that of the City Solicitor, and whose compensation shall be fixed by resolution, and who shall assist the Solicitor in the performance of all duties prescribed for him.



Council may, at its discretion, retain special counsel for particular proceedings or matters of the City and fix his compensation by resolution.

All duties, obligations, and other matters pertaining to the Solicitors and to special counsel shall be as set forth in the Administrative Code.

#### SECTION 608. CITY ENGINEER.

The Mayor, with the approval of the majority of the total membership of the Council, shall appoint and fix the compensation of a City Engineer who shall be a professional civil engineer registered in Pennsylvania, or an engineering firm similarly registered. The City Engineer or engineering firm shall perform the duties required by the Council through the Administrative Code or other action, or as may be required of a City Engineer by general law.

#### SECTION 609. DIRECTOR OF PLANNING.

The Mayor, with the approval of the majority of the total membership of the Council, shall appoint a Director of Planning, who shall be qualified by education and/or experience in city planning and zoning, to direct the planning and zoning of the City and to perform such duties as prescribed for such officer in this Charter and as the Council may require in the Administrative Code or other ordinance.

#### SECTION 610. CITY TREASURER.

Council may appoint a Treasurer to perform such functions and receive such salary as shall be set forth in the Administrative Code or by ordinance.

#### SECTION 611. CIVIL SERVICE COMMISSION.

Council shall appoint a Civil Service Commission pursuant to the authority vested in Section 604 of this Charter. In no event shall the members of said Commission be members of City Council nor be a member of any of the departments over which the Commission has control.

### ARTICLE VII - FINANCIAL ADMINISTRATION

#### SECTION 701. FISCAL YEAR.

The fiscal year of the City shall be the calendar year. However, after 1981, if not prohibited by law, the Council may, by ordinance, adopt a different fiscal year, specifying an orderly procedure for financial and budgetary controls in making such transition.

#### SECTION 702. CLASSIFICATION OF ACCOUNTS.

The Council shall adopt in the Administrative Code a uniform classification of accounts and codes to be used and followed in all financial plans, budgets, and financial reports.

**SECTION 703. BUDGET SUBMISSION.**

At least ninety (90) days before the end of the fiscal year, the director of each department may prepare in detail and submit to the chief financial officer their proposed operating budget for the ensuing fiscal year.

At least forty-five (45) days before the end of the fiscal year the chief financial officer shall prepare and submit to the Council a proposed operating budget for the ensuing fiscal year.

The procedure for budget submission, form of the budget, and all other matters affecting the budget submission shall be set forth in the Administrative Code unless specifically provided for in this Charter.

**SECTION 704. BALANCED BUDGET.**

The proposed budget, and the budget subsequently adopted by the Council, shall be balanced so that appropriations shall not exceed the estimated revenues and available surplus.

**SECTION 705. COUNCIL REVIEW.**

On or before thirty (30) days prior to the end of the fiscal year, the Council shall complete its review of the proposed budget, make such adjustments as it deems necessary, and adopt a preliminary budget.

**SECTION 706. ADVERTISING AND PUBLIC HEARING.**

No later than ten (10) days following the adoption of the preliminary budget by the Council, the City Clerk shall cause to be published in one or more newspapers of general circulation in the City, a notice of the date, time, and place at which the Council shall hold a public meeting on the proposed budget which shall take place at any regular or special meeting of the Council prior to the final adoption of the budget. The preliminary budget shall be available for public inspection at City Hall and copies shall be available for the public at a reasonable fee to be set by the Council.

**SECTION 707. BUDGET ADOPTION.**

Following advertising and public hearing, at which interested citizens shall have the right to express their views on the budget, the Council, by a majority vote of its total membership, shall adopt a final budget with such amendments as the Council considers advisable. The budget shall be adopted by ordinance which shall be effective as of the start of the fiscal year. The provisions of Article IV of this Charter shall not apply to ordinances adopting and amending proposed budgets. Should the Council for any reason fail to adopt a budget before the start of the fiscal year, the appropriations of the preceding year, prorated on a month-to-month basis, shall be considered to be adopted temporarily pending adoption of a final budget.



**SECTION 708. LEVY OF TAXES.**

At the time of adopting the annual budget, the Council shall simultaneously by ordinance levy sufficient taxes from authorized sources which, with other revenues and available receipts and balance, will provide for a balanced budget.

**SECTION 709. REVISED BUDGET.**

Notwithstanding any other provisions of this article, when the fiscal year of the City is the calendar year, in any year following a municipal election year the Council may, within forty-five (45) days after the start of the fiscal year, revise the budget and tax levies adopted by the previous Council. The procedures for adopting a revised budget shall be in accordance with Sections 706, 707, and 708 above, with the time periods adjusted to forty-five (45) days after the start of the fiscal year. Ordinances adopting a revised budget shall be effective as of the start of the fiscal year and shall rescind and replace the budget ordinance of the previous Council. It is the intent of this Charter that a new Council, in the year following a municipal election, shall have the power to revise the budget and tax levies adopted by the previous Council.

**SECTION 710. BUDGET EXECUTION.**

The chief financial officer shall cause the appropriations voted by the Council to be entered in the accounting records of the City and shall approve no contract or expenditure which would exceed the unencumbered balance of appropriations in any account. The Council may at any time amend the operating budget, but changes in appropriations, either increases or decreases, shall be made only pursuant to an ordinance authorizing such changes. Supplemental appropriations may be made by the Council in the event that revenues are found and certified by the Mayor to exceed estimates in the budget. If revenues are found and certified by the Mayor to fall short of estimates in the budget, the Mayor shall recommend reductions in appropriations to offset the deficiency in revenues, and the Council shall make necessary adjustments in appropriations to maintain a balanced budget. All appropriations shall lapse at the end of the fiscal year.

**SECTION 711. CAPITAL BUDGET.**

The capital program and the capital budget shall be adopted by the Council only after advertisement and public hearing as provided for the adoption of the operating budget. The capital budget may be financed from appropriations of current revenues or monies borrowed as authorized by law or by this Charter. The chief financial officer shall control expenditures in the capital budget in the same manner as provided for the operating budget. The Council may amend the capital budget at any time, but before doing so must amend the capital program.

All appropriations for the capital budget shall lapse at the end of the fiscal year, but sufficient amounts to complete projects in progress may be appropriated in the budget for the year following.

**SECTION 712. RECEIPTS.**

The Council shall, in the Administrative Code, provide for the receipt, deposit, and accounting for all monies due and received by the City. Such procedures shall be assigned to employees of the Treasurer or the chief financial officer as Council deems most appropriate consistent with other provisions of this Charter. The Mayor, with the approval of Council, shall designate the depositories for City receipts.

**SECTION 713. CONTRACTS.**

The Council may make contracts for all lawful purposes, subject to general law or this Charter. No contract shall be made or obligation incurred unless the chief financial officer or his designee shall certify that there is a sufficient unencumbered balance in an appropriation and that sufficient monies therefrom are or will be available to cover the claim or meet the obligation when it becomes due and payable. The Council shall provide in the Administrative Code the procedures for letting contracts which shall not be inconsistent with general law or this Charter.

**SECTION 714. DISBURSEMENTS.**

The chief financial officer shall authorize disbursement of City monies only after determining that all goods and services which have been contracted for have actually been received or performed. The Council shall provide in the Administrative Code for the signing and countersigning of all checks, drafts, or other orders of payment by three of five persons, designated by Council, two of whom shall be the Director of the Department of Accounts and Finance and the Controller.

**SECTION 715. RECORDS AND REPORTS.**

The chief financial officer shall:

A. Provide for the recording of all financial transactions and related activities of the City in terms of dollars and other appropriate units of measurement, in accordance with the form and procedures prescribed by the Council in the Administrative Code, and as shall be directed by the Council, in order that the required reports and analysis may be produced for the proper management and control of such activities.

B. Prepare periodic financial reports, at least monthly, and at such other times as the Mayor may direct, and at the end of each fiscal year prepare an annual financial report. The monthly reports shall be submitted to the Council at its regular meetings and made available to the public.

C. Provide for the preservation of official financial records, which shall be kept at City Hall and shall be available for public inspection during regular office hours, in conjunction with state historical records preservation standards.

**SECTION 716. INDEPENDENT AUDIT.**

The Council shall provide for an annual independent audit of City receipts, expenditures, accounts, and reports by a certified public accountant or a certified public accounting firm, experienced in municipal finance, having no personal interest, direct or indirect, in the fiscal affairs of the City or any of its elected or appointed personnel. The Council may provide for more frequent audits at its discretion.

**SECTION 717. BONDING OF OFFICERS AND EMPLOYEES.**

The Council shall provide in the Administrative Code for the bonding of all officers and employees who are responsible for the handling and/or authorization of receipts, disbursements, materials, and supplies. All such bonding shall be approved by the City Solicitor for form and sufficiency. The premium for such bonding shall be paid for by the City.

**SECTION 718. TAX LEVY.**

Council shall establish tax rates and levy on the various subjects of taxation subject to the limitations of Section 17 of an act entitled the Local Tax Enabling Act (Act No. 511 of 1966; P.L. 1257, Section 17, 53 P.S. §6917).

**ARTICLE VIII - PROHIBITIONS AND CONFLICT OF INTEREST****SECTION 801. PROHIBITED ACTIVITIES.**

The following activities shall be prohibited in the operation of the City government.

A. **Discrimination.** No person shall be favored or discriminated against in employment by the City in any capacity, appointment to any board, commission, or agency, or removal therefrom, because of race, sex, age, political or religious opinions or affiliations.

B. **Improper Gifts.** No person who seeks appointment to any City office, board, commission, or agency shall directly or indirectly give or pay any money, service, or other consideration to any person in connection with such appointment.

C. **Gifts to the City.** No gift of real estate, or any interest in real estate, to the City may be accepted without approval of Council.

**SECTION 802. CONFLICT OF INTEREST.**

The following shall constitute a conflict of interest and shall be prohibited and punishable as provided herein:

A. **Improper Advantage.** No elected or appointed official of the City government shall:

1. Engage in any activity or take any action by virtue of the elected or appointed position from which activity or action the official, or any other person or entity in whose welfare the official is interested, shall benefit or realize a gain or advantage. Such benefit, gain, or advantage shall not be construed to be prohibited if the action in question is in behalf of a group of citizens of the City and such benefit and relationship is generally known and acknowledged.

2. Solicit or accept, directly or indirectly, any gift, favor, service, commission or other compensation or consideration that might reasonably tend to influence that official in the discharge of the duties of the office.

3. Seek to influence, directly or indirectly, the awarding of any contract where such official, or other person or entity in whose welfare the official is interested, would benefit directly, financially or otherwise, from said contract. Such action is not intended to apply to actions of a Council member on behalf of a group or class of citizens of the City who would benefit from the contract, and such benefit is generally known and acknowledged.

B. Disqualification from Action. Any elected or appointed official of the City, or employee thereof, having any direct or indirect financial interest with any person or other entity proposing to contract with the City for the purchase or sale of land, materials, supplies, or services of any kind, whether that interest be as an employee, a party, a partner, or a stockholder, shall fully disclose such interest and, except where stockholdings in a public corporation shall be minimal, shall not participate in the discussion of said contract or vote on same. Violation of this section shall render the contract voidable.

## ARTICLE IX - CITIZEN PARTICIPATION

### SECTION 901. GENERAL PROVISIONS.

The Council shall protect and promote the right of the citizens of the City of Chester to participate in a positive and constructive manner in the government of the City. Any qualified citizen of the City may participate in the government of the City by:

- A. Seeking elective office of the City as prescribed by this Charter and voting for candidates for elective office;
- B. Serving on boards, commissions, authorities, or other agencies of the City government when requested by the appropriate officials;
- C. Attending and being heard at public meetings of the Council and other boards, commissions, authorities, and other agencies of the City government;
- D. Addressing suggestions to the Council and others to provide guidance for their actions.

### SECTION 902. PARTICIPATION ENCOURAGED.

The Council shall make every effort to appoint qualified citizens of the City to boards, commissions, authorities, or other agencies of the City government in order that the greatest possible use be made of the talents and interests of City citizens in promoting public interest and welfare of the City of Chester.

### SECTION 903. RESIDENCY OF CITY EMPLOYEES.

A. No person shall be employed by the City of Chester who is not a legal resident (domicile) thereof at the time of employment.

B. All persons presently employed by the City who presently live within the City or are employed after the effective date of this amendment shall as a condition of their employment maintain their legal residence (domicile) within the City of Chester or they shall be subject to dismissal.

C. Where special skills are required, Council may at its discretion, employ qualified nonresidents of the City in such cases where there are no qualified City residents available for the particular position involved.

D. All persons presently employed by the City of Chester who do not reside in the City and have changed their address and moved for any reason must move into the City of Chester and maintain their legal residence (domicile) therein or they shall be subject to dismissal.

E. Any employee who is discharged or leaves employment of the City of Chester for any reason and is subsequently reinstated who at the time of discharge or at the time of his leaving the employment of the City was required to be a resident of the City of Chester as a condition of his employment must upon reinstatement maintain his legal residence (domicile) within the City of Chester. (Enacted 11-7-89.)

#### ARTICLE X - GENERAL PROVISIONS

##### SECTION 1001. EFFECTIVE DATE.

This Charter shall become effective on January 7, 1981, except for the transitional provisions of Article XI of this Charter which shall become effective upon certification of the adoption of the Charter.

##### SECTION 1002. AMENDMENT.

Amendments to this Charter may be made in accordance with the provisions of Act 62 of 1972 of the General Assembly of Pennsylvania, as amended or as otherwise provided by law.



**SECTION 1003. SEVERABILITY.**

If any provision of this Charter is held invalid, the remaining provisions of the Charter will not be affected thereby. If the application of the Charter or any of its provisions to any person or circumstances is held invalid, the application of the Charter and its provisions to other persons or circumstances shall not be affected thereby.

**ARTICLE XI - TRANSITIONAL PROVISIONS****SECTION 1101. ELECTED OFFICERS.**

Elected officers in office on the day before this Charter becomes effective shall continue in office for the remainder of the term to which they were elected. On the effective date of this Charter, they will assume the functions and duties of their respective offices as set forth in this Charter and shall be compensated as provided therein.

**SECTION 1102. RIGHTS AND PRIVILEGES PRESERVED.**

Nothing in this Charter, except as otherwise specifically provided, shall affect or impair the rights and privileges of persons who are officers and employees of the City at the time of adoption of this Charter. An employee holding a position in the City government at the time this Charter takes effect, and who was serving in the same or similar position at the time of the adoption of this Charter, shall not be subject to competitive tests as a condition of continuation in the same or similar position, but in all other respects shall be subject to the personnel system set forth in the Administrative Code.

**SECTION 1103. DEPARTMENTS, OFFICES, BOARDS, COMMISSIONS AND AGENCIES.**

The organization of the City government under this Charter after the seventh day of January 1981 shall be set forth in the Administrative Code required by this Charter. However, nothing in this section shall be construed to abolish the office or terminate the terms of any officer or employee protected by a tenure of office law or collective bargaining agreement, and it is the intent of this Charter that qualified officers and employees be reappointed to the same or similar positions in the organization to be set forth in the Administrative Code. All appointed members of boards, commissions, authorities, or other agencies shall continue in office with the same or similar bodies for the remainder of the term of their original appointment. However, nothing in this section shall limit the right of the Council to create, modify, or abolish boards, commissions, authorities, or other agencies as provided in this Charter.

**SECTION 1104. PENDING MATTERS.**

All actions and proceedings of a legislative, executive, or judicial character which are pending upon effective date of this Charter shall be maintained, carried on or dealt with by the City officer, department, or agency appropriate under this Charter.



## SECTION 1105. TRANSITION COMMITTEE.

In order to establish an orderly procedure for transition to the new form of government provided by the Charter, and to ensure that all necessary action is taken to make this Charter fully effective on its effective date, the Council may within fifty (50) days after adoption of this Charter appoint a Transition Committee comprised of such members of the Council, the Government Study Commission, administrative staff of the City, and such representatives of civic agencies as the Council shall select to draft the necessary rules and regulations, ordinances, and resolutions as set forth below.

Not less than forty-five (45) days prior to the effective date of this Charter, the Council members shall meet with the Transition Committee to review and prepare the final draft of the necessary ordinances and any other appropriate ordinances to implement this Charter.

## CERTIFICATION OF CITY CLERK

## CITY OF CHESTER, PA.

The undersigned hereby certifies that:

1. He is the duly qualified and acting City Clerk of the Council of the City of Chester and is the keeper of its records;
2. The attached Home Rule Charter of the City of Chester is a true and correct copy of the Home Rule Charter adopted by the Government Study Commission in its Final Report dated November 15, 1979;
3. The attached Home Rule Charter of the City of Chester is a true and correct copy of the Home Rule Charter adopted by the electorate of the City of Chester on April 22, 1980, as certified by the County Board of Elections of Delaware County, Pennsylvania, on May 13, 1980;
4. The undersigned is duly authorized to execute this certificate.

IN WITNESS WHEREOF, the undersigned has hereunto set his hand and the seal of the City this 5th day of June, A. D. 1980.

/s/ Samuel C. Poliafico  
CITY CLERK