

# **EXHIBIT E**

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Dennis M. Davin, in his capacity as	:	
Secretary of the Department of	:	
Community and Economic	:	
Development,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 336 M.D. 2020
	:	Argued: December 21, 2020
City of Chester,	:	
	:	
Respondent.	:	

**MEMORANDUM & ORDER**

Following argument and upon consideration of the submissions received as to the parameters of the authority of the Receiver appointed for the City of Chester (City) pursuant to the Municipalities Financial Recovery Act (Act 47),<sup>1</sup> this Court issues the following memorandum and order to facilitate implementation of the Receiver’s Recovery Plan confirmed by the Court on October 19, 2020 (Plan).

WHEREAS, the City and the Receiver (Parties) have collaborated since confirmation of the Plan to develop a budget for 2021, involving reorganization of personnel, to ensure the continued provision of vital and necessary services.

WHEREAS, Act 47 confers broad, but not unlimited, powers on the Receiver; Section 706(b) of Act 47 states express prohibitions on that power.

WHEREAS, the Receiver’s authority is confined to those acts necessary for implementation of the Plan, which Act 47 limits to those acts set forth in the Plan.

WHEREAS, the Parties recognize that successful implementation of the Plan depends on the City’s collaboration with the Receiver in the shared goals of the Plan.

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<sup>1</sup> Act of July 10, 1987, P.L. 246, *as amended*, 53 P.S. §§11701.101-11701.712.

WHEREAS, neither the Plan nor Receiver’s proposed implementation as set forth in the status updates and the most recent filings to this Court, alters the “form of government” of the City under Section 704(b)(1) of Act 47.<sup>2</sup>

WHEREAS, Section 704(b)(2) provides that Plan confirmation by this Court “shall not be construed to . . . affect powers and duties of elected and appointed officials of [the City]” except as set forth in Section 704(a). Section 704(a) provides in relevant part that this Court’s confirmation of the Plan imposes “on the elected and appointed officials of [the City] a mandatory duty to undertake the acts set forth in the [Plan].” [53 P.S. §11701.704\(a\)\(1\)](#) (emphasis added). As to powers of Council or appointed officials, such authority is suspended only “to the extent that [the exercise of] the power would interfere with the powers granted to the [R]eceiver or the goals of the [Plan].” [53 P.S. §11701.704\(a\)\(2\)](#). The Plan thus expands the duties of elected and appointed officials to undertake **acts set forth in the Plan**, and restricts their powers when there is a conflict between the Plan and the Home Rule Charter or other law.

WHEREAS, the City’s Home Rule Charter is superseded when there is a direct conflict between the Receiver’s powers and duties as set forth in the Plan and the provisions of the Home Rule Charter.

WHEREAS, the City is governed by a five-member elected Council, including the Mayor, who has equal voting rights to other Council members, and is its presiding officer. *See* Home Rule Charter, §201. The Mayor also serves as Chief Executive, and supervises City officers. *Id.*, §303; *see generally* Article III.

WHEREAS, constant oversight and involvement of this Court is not feasible or contemplated by Act 47, and such would delay actions that, to be fully realized, must occur on a day-to-day basis.

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<sup>2</sup> Our Supreme Court defines “form of government” as “the organization, placement, or relationship of basic elements,” and “the structure, organization, or essential character of something, as opposed to its matter.” *Harrisburg Sch. Dist. v. Zogby*, [828 A.2d 1079, 1092](#) (Pa. 2003) (quoting Webster’s Colleg. Dictionary 515 (Random House ed. 2000)).

WHEREAS, this Court's review of a receiver's recovery plan is limited, as the Court shall confirm a plan following a hearing, unless there is clear and convincing evidence that the plan "is arbitrary, capricious, or wholly inadequate to alleviate the fiscal emergency" of the City, under Section 703(d) of Act 47, 53 P.S. §11701.703(d); Act 47 makes no provision for the City, its Council or for this Court to *approve* specific content of the Plan, or to recommend alternatives for its implementation.

WHEREAS, by Memorandum and Order dated October 19, 2020, this Court confirmed the Plan and advised the Receiver that a modified plan shall be filed no later than February 8, 2021, that is more defined in terms of actions necessary to achieve financial stability.

WHEREAS, since the confirmation of the Plan, the Receiver submitted status reports advising the Court that the circumstances were more dire than anticipated, and that creation of a new position overseeing all staff, for all departments, was necessary for Plan implementation. *See* Status Rep., 12/2/20, at 8.

WHEREAS, there is no dispute that the sources of the Receiver's powers and authority to act are Act 47 and the Plan.

WHEREAS, the Receiver relies on the following provision in the Plan, Initiative Workforce (WF) 03, as the source for restructuring of personnel, including the creation of the new position, Chief Operating Officer (COO):

For the remainder of 2020 and 2021, the Receiver shall manage the City's headcount by initiating or approving any hiring; enacting layoffs and/or terminations if needed; converting full-time positions to part-time; restructuring department operations including through consolidations or outsourcing; or reassigning personnel, subject to the provisions of collective bargaining agreements if applicable. In making such decisions, the Receiver shall consult with the relevant City department heads, but he shall have the power to enact any such decisions.

*See* Plan, WF03, at 48, (emphasis added).

WHEREAS, the Plan requires the Receiver to “consult” with Council, including the Mayor; in this context, the meaning of “consult” is to seek advice or guidance from another with greater expertise or knowledge base.

WHEREAS, the COO is not specifically identified, nor is a newly-created position described as supervising all staff, in the current Plan.

WHEREAS, by order dated December 16, 2020, this Court directed the Parties to address two questions involving the parameters of the Receiver’s authority with regard to Plan implementation, particularly when the Receiver and the City disagree as to the necessary actions for Plan implementation to meet their shared goals.

WHEREAS, the Parties renewed their interest in the Court’s clarification of the Receiver’s role vis-à-vis Council when there is a conflict in proposals to implement the Plan and the Plan does not specify the acts that are necessary for implementation.

Mindful of the hurdles outlined by the Parties, and to facilitate Plan implementation by solidifying the roles of the Receiver and the City through its duly-elected Council members, in accordance with the foregoing, the Court enters the following order:

### **ORDER**

AND NOW this 23<sup>rd</sup> day of December 2020, following argument and based on the filings submitted by the City of Chester (City) and its appointed Receiver (Parties) as to the issues stated in the December 16 Order, it is hereby ORDERED:

The Receiver has the power to implement the Recovery Plan confirmed by the Court (Plan) and the authority to require compliance by City officials, (elected and appointed) with the “acts set forth in the [Plan].” 53 P.S. §11701.704(a)(1). Such acts include those specified in WF03 in the Plan, and set forth in the first issue, except with regard to the Chief Operating Officer (COO). Moreover, the Plan

requires the Receiver to consult with Council before making such decisions. While not bound by Council's advice on WF03, consultation here implies measured consideration of Council recommendations in good faith, accounting for the Council's expertise and knowledge of City staff and historical personnel needs. The Receiver's authority here described as to (1)(a), (b) and (c) is CONFIRMED.

As to the creation of a new position (COO) that alters the managerial structure and undertakes a supervisory role over all staff, such that the described duties of the COO overlap with the duties of the Mayor as outlined in Article III of the Home Rule Charter, that act is not specifically set forth in the Plan. Thus, to the extent the duties of the position of COO overlap with and seem to supplant the duties conferred on the Mayor, the Court does not construe the current Plan to allow the creation of the COO position holding the duties currently described.

Until a modification is submitted and approved, the Parties are encouraged to continue their collaborative efforts to resolve the managerial role of the COO to enable continuation of vital and necessary services.

As the modification shall be filed within a matter of weeks (by or before February 8, 2021), this Court HOLDS IN ABEYANCE a decision as to the second issue (*i.e.*, that the proposed implementation of the Plan undermines the City's provision of vital and necessary services), until a hearing is held on the modification.

The Parties are encouraged to continue collaborating on the proposed budget, incorporating Receiver's proposed reorganization as authorized by the Plan, in accordance with their good faith negotiations to date.

This Order is without prejudice to the Parties' ability to avail themselves of any legal remedies under Act 47 or otherwise.



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J. ANDREW CROMPTON, Judge