

# **EXHIBIT F**

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Dennis Davin, in his capacity as  
Secretary of the Department of  
Community and Economic  
Development

Petitioner,

v.

City of Chester,  
Mayor Thaddeus Kirkland and Council  
Members William Morgan, Elizabeth  
Williams, Portia West, and Stefan  
Roots,

Respondents.

No. 336 MD 2020

**ORDER**

And now, this \_\_\_\_ day of March 2022, upon the consideration of the  
Petition for Writ of Mandamus by the Receiver for the City of Chester, in  
accordance with Section 709 of Act 47 as amended, and the City's response  
thereto, it is hereby ORDERED that the elected and appointed officials of the City  
of Chester, specifically Mayor Thaddeus Kirkland and Council Members William  
Morgan, Elizabeth Williams, Portia West, and Stefan Roots, shall:

1. IMMEDIATELY RESCIND the \$10,000 salary increases that certain City  
elected officials granted themselves for 2022 in violation of WF27 of the  
Receiver's Modified Fiscal Recovery Plan;

2. Reverse Resolution 28-2022 which supported an application for an economic development liquor license, including consent for the use of the license, to a property partially owned by a current City employee;
3. Comply with the Receiver's March 2, 2022 Order regarding the City's finance and human resources departments' staff and internal controls.

BY THE COURT:

\_\_\_\_\_ J

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Dennis M. Davin, in his capacity as  
Secretary of the Department of  
Community and Economic  
Development

Petitioner,

v.

City of Chester,  
Mayor Thaddeus Kirkland and Council  
Members William Morgan, Elizabeth  
Williams, Portia West, and Stefan  
Roots,

Respondents.

No. 336 MD 2020

**Receiver for the City of Chester Petition for Mandamus**

The Receiver for the City of Chester (the “Receiver”), Michael Doweary (“Doweary”), files this Petition for Mandamus pursuant to Section 709 of the Municipalities Financial Recovery Act, 53 P.S. Section 1107.709, as well as 53 P.S. Section 1107.704, 1101.706 and 1101.708 of the same law and the Receiver’s Amended Fiscal Recovery Plan (the “Plan”) for the City of Chester (the “City”), which was approved by this Court on June 7, 2021, and thus made binding on the City and its elected officials.

*The Urgency of This Matter  
and the Critical State of the City*

The City of Chester is running out of time. The City stands on the brink of bankruptcy. But for federal rescue plan funding and a \$5 million emergency loan

from the Commonwealth's Department of Economic and Community Development (DCED), the City would have run out of cash last year. The City's fiscal situation is just as precarious this year. The City owes its pension funds approximately \$37,000,000 in missed payments, its police pension fund has the equivalent of approximately 6-7 months of benefits left, and pension costs are expected to again increase significantly next year. Simply put, the City desperately needs help and the actions that some of its elected officials have taken which have necessitated this filing not only violate the Amended Recovery Plan and its goals, but also make it much more difficult to obtain that help and to put the City back on solid financial footing.

The Receiver files this Petition asking this Court to enforce the Plan and the powers of the Receiver. The relief the Receiver requests is clearly envisioned by and an integral part of Chapter 7 of Act 47. The Receiver has attempted to work with the City, but it is clear that without Court intervention, some of the City's elected officials will continue to block the Receiver's efforts and will refuse to comply with the Plan. The Receiver and the residents of Chester simply do not have the luxury of time to allow this interference by some elected officials to continue.

*The Requested Relief*

As detailed further below, and in the accompanying memorandum of law incorporated herein by reference, the Receiver requests this Court to issue a Writ of Mandamus upon Mayor Thaddeus Kirkland, in his official capacity, and all other members of the City of Chester City Council, William Morgan, Elizabeth Williams, Portia West, and Stefan Roots, (the “Elected Officials”), directing and mandating that they:

- a. Comply with the Receiver’s Order dated December 23, 2021, Act 47 and the Plan by rescinding the \$10,000 salary increases that certain elected officials granted themselves for 2022. [The Receiver’s December 23, 2021 Order is attached thereto as Tab “A”];
- b. Reverse Resolution 28-2022 which supported an application for an economic development liquor license, including consent for the use of the license, to a property partially owned by a current City employee [March 2, 2022 Order regarding Resolution 28-2022 attached thereto as Tab “B”]; and
- c. Comply with the Receiver’s March 2, 2022, Order regarding the City’s finance and human resources departments’ staff and internal controls. [March 2, 2022 regarding Compliance with Plan attached thereto as Tab “C”].

In support of this Petition, the Receiver avers as follows:

*The Parties*

1. The City is a city of the Third Class under Pennsylvania law, which prior to June 22, 2021, was operating under a Home Rule Charter.
2. The Respondents are the Mayor and the elected members of City Council for the City. Those individuals include Elected Officials identified previously.
3. This action is being brought against all of the foregoing individuals in their official capacities in their respective positions as elected officials for the City.

*The City's Receivership Status*

4. The City was designated as a distressed city under Act 47 in 1995.
5. On June 22, 2020, this Court determined that a fiscal emergency, as defined by Section 602(A) of Act 47, continued to exist in the City and declared the City to be in Receivership pursuant to Section 702(c)(2) of Act 47.
6. On June 22, 2020, this Court also appointed Michael Doweary as the Receiver for the City.
7. Pursuant to Act 47 and the Court's June 22, 2020, Order the Receiver submitted an initial Recovery Plan which this Court confirmed in an order dated October 19, 2020.
8. Pursuant to the Court's October 19, 2020, Order, the Receiver submitted a Modified Recovery Plan (the "Plan") on April 7, 2021.

9. Hearings on the Receiver's Plan were conducted before this Court on May 5 and May 7, 2021.
10. The City participated in those hearings and made no objections to any of the Plan provisions referenced in this mandamus petition.
11. In an order dated June 7, 2021, this Court approved the Receiver's Plan.
12. In an order dated December 28, 2021, this Court extended the Receivership for the City for up to two (2) years.

***Count I: Mandamus***

***The City Council's Decision to Award Certain City Council Members a Pay Raise in Direct Violation of Workforce Initiative WF27 of the Plan, the Receiver's Order to Comply with WF27 and Act 47***

*The City's Budgeting and Salary Ordinance Process*

13. Paragraphs 1 through 12 above are incorporated herein by reference as if the same were fully set forth herein.
14. The Third Class City Code requires the City to pass a budget no later than December 31 of a given year. [11 Pa. C.S.A. Section 11809\(a\)](#). The City's budget encompasses the funding for all the City's personnel positions, including the salaries for all elected officials, such as the Mayor and City Council.
15. As noted in the Plan, prior to 2020, each City Council member and the elected Controller earned \$35,000 and the Mayor earned \$41,000.
16. In 2018, prior to Receivership, the Mayor and City Council acted to raise the salaries of Council members and the elected Controller by \$25,000 (or 71.4%) to



\$60,000 and the salary of the Mayor received by \$34,000 (or 82.9%) to \$75,000.

The salary increases took effect in 2020 for the Mayor and two Council Members.

17. Later in 2020, the Governor declared a fiscal emergency in the City and the City was placed in Receivership under Act 47. [Court's June 22, 2020 Order.]

18. During the 2021 budget process, the City agreed to lower the salary of the Mayor from \$75,000 to \$65,000, the Controller's salary from \$60,000 to \$50,000 and City Council members set to earn \$60,000 to \$50,000. Council members who were due to earn \$35,000 in 2021 did not receive a salary reduction.

19. The reduced salaries were part of a budget agreement between the City and the Receiver negotiated in 2020 to have City Council pass the 2021 budget. As part of the agreement, the Receiver agreed to the City's request to keep certain individuals employed, including the Mayor's son-in-law Ronald Starr, even though the Receiver had wanted to eliminate those positions. The reduction in salary was not a one-time gratuity as clearly evidenced by the Plan provision, Initiative WF27.

20. Initiative WF27 specifically addressed the issues at hand and provided:

**WF27: Mayor, City Council and Controller salaries**

Prior to 2020, each City Council member and the elected Controller earned \$35,000 and the Mayor earned \$41,000. In 2020, two Council members and the elected Controller received \$25,000 increases to \$60,000 and the Mayor received a \$34,000 increase to \$75,000.

During the 2021 budget process, the City agreed to lower the salary of the Mayor from \$75,000 to \$65,000, the Controller's salary from \$60,000 to \$50,000 and City Council members set to earn \$60,000 to \$50,000. Council members who were due to earn \$35,000 in 2021 did not receive a salary reduction.

The City shall take action to change City ordinances to reflect that the new salary going forward for the Mayor is \$65,000, and the new salary for Council Members and the Controller is \$50,000. The new salary level for Council members currently earning \$35,000 will take effect at the beginning of the new term for those particular Council seats.

[The Plan, WF 27, at 83-84 (the Plan is attached hereto as Tab "D")].

21. The City and the Mayor participated in the hearings for the Receiver's Modified Recovery Plan which were conducted before this Court on May 5 and May 7, 2021 and objected to one portion of the Plan which it subsequently withdrew, but did not object to the WF 27 Initiative.

22. The \$10,000 reduction in salary still provided the Mayor with a \$24,000 increase (or 58.5%) over his pre-2020 salary and other elected officials with a \$15,000 increase (or 42.9%) over their pre-2020 salaries.

23. As part of the 2022 budget process with the Receiver and the Receiver's team (including the Receiver's lead municipal finance consultant and the Receiver's Chief of Staff) and the City, Mayor Thaddeus Kirkland and Councilman William Morgan told the Receiver that the budget that City Council would pass would restore the \$10,000 salary increases that were eliminated in 2021

and by WF27 of the Plan. The City's attempt to restore those \$10,000 increases violated the Plan that this Court had approved on June 7, 2021. The Receiver's team objected to restoring those increases.

24. On December 23, 2021, after receiving notice of the City's intent to violate the Plan, the Receiver directed the Mayor and City Council that a budget be introduced and approved with salaries for Elected Officials that complied with the Plan. [Attached as Tab "A"].

25. On December 27, 2021, Councilman William Morgan responded to the Receiver's December 23, 2021, Order stating that the City Council intended to restore the \$10,000 salary increases [Attached as Tab "E"].

26. On December 29, 2021, the City Council passed a budget that restored the \$10,000 salary increases in violation of the Plan and the budget.

27. Furthermore, on January 11, 2022, the Receiver brought the elected official salary increase issue to the Municipal Financial Recovery Advisory Committee ("MFRAC") for discussion. [A copy of the presentation by the Receiver's Chief of Staff is attached as Tab "F"].

28. At that public meeting, which was live-streamed and recorded, Mayor Kirkland and Councilman William Morgan again reiterated that they would not comply with WF27.

29. In a January 13, 2022, article in the Delaware County Times on this issue, Mayor Kirkland is quoted taking the position that the 2021 agreement to reduce elected official salaries by \$10,000 was temporary, a position that is completely contradicted by the plain language of WF27. [A copy of that article is attached at Tab G]. It can also be found online at:

<https://www.delcotimes.com/2022/01/13/receiver-intends-to-go-to-court-over-chester-elected-officials-salaries/>.

30. The Plan contains a variety of action items and initiatives, including Initiative WF27 which directly addresses this very situation. Initiative WF27 is quoted previously. [The Plan, WF27, at 83-84 (Tab “D”).]

31. Plan Initiative WF27 provides the authority for the Receiver to take the actions that he took in this case, including issuing his December 23, 2021 Order and filing this Petition.

32. The Receiver issued his December 23, 2021, Order pursuant to section 1101.708 of Act 47 to implement the plan, specifically WF27.

33. Pursuant to [53 P.S. Section 11701.709\(a\)](#), the Receiver files this Petition for Mandamus to “secure compliance with the order issued under section 708” of Act 47.

34. The Court’s approval of the Plan on October 19, 2021 had the effect of imposing the Plan on the City and its elected and appointed officials regardless of

any law, charter, ordinance, rule or regulation to the contrary. 53 P.S. Section 11701.704(a).

35. Section 704(a) of Act 47 mandates that this Court’s approval of the Plan “impos[es] on the elected and appointed officials of the distressed municipality [i.e., the City] **a mandatory duty** to undertake the acts set forth in the recovery plan.” 53 P.S. Section 11701.704(a)(1).

36. Section 704(a)(2) of Act 47 further commands that the approval of the plan “suspend[s] the authority of the elected and appointed officials of the distressed municipality...pursuant to law, charter, ordinance, rule or regulation to the extent that power would interfere with the powers granted to the receiver or the goals of the recovery plan.” 53 P.S. Section 11701.704(a)(2).

37. Act 47 further authorizes the Receiver broad authority to effectuate and enforce the Plan’s provisions, including the authority to require the City to act as necessary to implement the Receiver’s Plan. 53 P.S. Section 11701.706(a)(1).

38. Specifically, section 706(a)(1) instructs that “[n]otwithstanding any other provision of law, the receiver shall” have the power and duty to “require the distressed municipality [the City]...to take actions necessary to implement the recovery plan under section 703.” 53 P.S. Section 11701.706(a)(1).

39. The Plan has already been approved by this Court, and as a result, the powers of the City’s elected officials that may otherwise exist under applicable law

are suspended with respect to all issues relating to the Receiver's attempt to effectuate WF27 and the City's officials have the "mandatory duty" to undertake all acts set forth in the Plan. [53 P.S. Section 11701.704\(a\)\(1\)](#).

40. Those suspended powers include but are not limited to the powers to prepare a salary ordinance that is contrary to Initiative WF27 or otherwise interferes with the Receiver's implementation of the Plan or the goals of the Plan.

41. Any power that the City or the Elected Officials may have had or thought they had with respect to any issue provided under the Plan, including WF27, is suspended to the extent it interferes with the implementation of the Plan and the goals of the Plan. [53 P.S. Section 11701.704\(a\)\(2\)](#).

42. The issuance of a mandamus pursuant to [53 P.S. Section 11701.709](#) upon an elected official is appropriate where, as here, it is "necessary to secure compliance with the Plan."<sup>1</sup>

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<sup>1</sup> Generally, mandamus is an extraordinary writ which "lies to compel the performance of a ministerial act or mandatory duty where there is a clear legal right in the plaintiff, a corresponding duty in the defendant, and a lack of any other adequate and appropriate remedy at law." *Township of Bensalem v. Moore*, [620 A.2d 76, 79](#) (Pa. Commw. 1993); *Bobick v. Fitzgerald*, [207 A.2d 878, 880](#) (Pa. 1965). This standard is different from the standard contained in [53 P.S. Section 1101.709\(a\)](#). The Receiver maintains the correct standard in this action is that found in Section 709 of Act 47, but the facts of this matter would clearly satisfy the general mandamus standard based upon the duties and rights of the Receiver and the impact of the Plan as mandated by the Legislature in Act 47. Furthermore, the Legislature clearly contemplated the time sensitive nature of a receiver's mandamus petition, as Section 709(a) requires the court to grant or deny the petition within fourteen days of the filing.

43. As a result of the Plan and the provisions of Act 47 cited above, the Mayor and all elected officials in the City have a legal and affirmative duty to undertake the acts set forth in and to implement the Plan, particularly to pass a budget with salaries of elected officials and the Mayor as mandated by the Plan. 53 P.S. Section 1101.704(a).

44. Initiative WF27 provides the Receiver with the authority to take the action that was taken in this matter.

45. The City's actions are patently and directly contrary to Initiative WF27 and interfere with the Receiver's implementation of the Plan which was approved by this Court.

46. The issuance of a mandamus upon an elected official is appropriate in this matter. Based on the legislative mandate found in section 704(a)(1) and (2) and 706(a)(1), the Elected Officials have a duty and obligation to comply with the Plan, including WF27.

47. Through their actions highlighted above, the Elected Officials have done just the opposite. They have failed to comply with WF27 and have attempted to interfere with the implementation of the Plan by unilaterally increasing their own salaries while the compensation of many City employees has been reduced and other employees have been laid off.

48. Section 709(a) provides that this Court “shall grant the relief requested” in the Receiver’s Petition if the Court determines that the Receiver’s order “was issued in compliance with this chapter.

49. Essentially, the Receiver is merely requesting the Court to order the City’s officials to comply with an Order and Plan that was previously issued and approved by this Court when it approved the Plan on June 7, 2021.

50. The City officials’ refusal to cooperate with the Receiver has caused delay and has impeded the implementation of the Plan as required by Act 47.

51. The delay caused by City officials is prejudicing the Receiver by preventing the implementation of WF27 Initiative and further by unnecessarily complicating the Receiver’s ability to fully engage in other critical issues, such as negotiations with the City’s unions and retirees to deal with pension issues.

52. As explained by the Receiver’s Chief of Staff at the January 11, 2022, MFRAC meeting, reinstating these salary increases makes it even more difficult to achieve necessary changes in collective bargaining agreements, or with retiree pensions and health care, or with tax/fee increases as affected individuals will and have asked why they are being asked for give-backs when elected officials have had their salaries increased by over 71% in the last two years.



**Count II: Mandamus**

***City Council's Refusal to Comply with the Receiver's Directive to Refrain from Supporting an Application for an Economic Development Liquor License, Including Consent for the Use of the License, to a Property Partially Owned by a City Employee***

53. Paragraphs 1 through 52 above are incorporated herein by reference as if the same were fully set forth herein.

54. On February 22, 2022 the Receiver became aware of an agenda item for the February 23, 2022 City Council Meeting involving Resolution 28-2022, which supported an application for an economic development liquor license, including consent for the use of the license, to a property partially owned by Ronald Starr, who is currently employed as the City's Business Development Director and is the son-in-law of the Mayor.

55. On February 22, 2022, the Receiver emailed the Mayor, City Council and the Solicitor and requested that Resolution 28-2022 be pulled from the agenda in order to "discuss ethical issues surrounding this resolution." [Tab "H"].

56. After the City Solicitor informed the Receiver's Chief of Staff that the City intended to move forward with the resolution, the Receiver sent a subsequent email to directly order that the Resolution be removed from the agenda. [Tab "H"].

57. The Mayor and City Council disregarded the order and passed the resolution anyway without disclosing that Mr. Starr was a current City employee and relative of the Mayor.

58. The Amended Recovery Plan directly addresses economic development and states that “The City’s resurgence will be built upon a strong local economy and expanded tax base, which requires a strategic effort to attract and retain businesses and create job opportunities for the local workforce that provides a living wage.”

See Tab D, P. 89.

59. The Amended Recovery Plan highlights the importance of economic development and the need to attract businesses to invest in the City.

60. However, businesses must be assured that there is a level playing field in the City and that no person or business receives preferential treatment from City Administration or elected officials because of who they work for or who they are related to.

61. Actions like Resolution 28-2022, which was done without any level of transparency and benefited a City employee who was related to the Mayor, create the opposite perception and hurt the City’s ability to attract business investment.

62. On March 2, 2022, the Receiver issued an Order to the Mayor and City Council to reverse Resolution 28-2022. See Tab B.

63. On March 2, 2022, the Mayor verbally informed the Receiver that he and the Council would not comply with the Order.

64. It is appropriate to issue a Mandamus due to the Mayor’s refusal to comply with the Receiver’s March 2, 2022 Order regarding Resolution 28-2022.

65. The Order was issued in order to protect the City's Economic Development, which is an integral part of the Amended Recovery Plan (See Tab D, p. 89-100) and a part of the Receiver's statutory duty under Act 47.

66. The City's action is directly contrary to the Amended Recovery Plan which was approved by this Court.

67. The issuance of a Mandamus is proper in this matter, as the Elected Officials have a duty and obligation to comply with the Plan, including the Economic Development section.

68. Section 709(a) provides that this court "shall grant the relief requested" in the Receiver's Petition if the Court determines that the Receiver's order was "issued in compliance with this Chapter."

69. The Receiver is requesting that this Court order the City's officials to comply with the March 2, 2022 order regarding reversing Resolution 28-2022, as that action has impeded the implementation and goals of the Plan as required by Act 47.

**Count III: Mandamus**

***The City's Repeated Violation of the Receiver's Orders to Implement Changes Required by the Plan and Necessary to Achieve the Goals of the Plan to Fix Competency and Performance Issues in the City's Finance and Human Resources Department that are Interfering with the Receiver's Ability to Implement the Amended Recovery Plan and Threaten the City's Ability to Provide Vital and Necessary Services as Defined Under Act 47***

70. Paragraphs 1 through 69 above are incorporated herein by reference as if the same were fully set forth herein.
71. Act 47 mandates that the Receiver's Plan ensures that the City will be able to provide vital and necessary services, which is defined to include the payment of payroll and pension obligations. Section 701 and 703(b)(1).
72. The City's Finance and Human Resources departments are integral to the Receiver's ability to continue to provide for vital and necessary services for the City.
73. Councilman William Morgan ("Councilman Morgan") has served as the Director of Accounts and Finance which supervises the City's Finance and Human Resources departments since September 2016.
74. The Receiver's team has encountered a number of actions taken by Councilman Morgan which impede the Receiver's ability to fulfill his statutory duty under Act 47 and to implement the Amended Recovery Plan.

75. Because of those actions, on March 2, 2022, the Receiver issued an order to the City which addressed staffing and internal controls of the City's Finance and Human Resources departments . [Tab "C"].
76. Councilman Morgan's actions that led to the Receiver's directives are detailed at length in the Order. [Tab "C"].
77. By way of example, these actions include the following:
1. Incorrect payment of salaries and longevity to police officers and firefighters. These incorrect payments directly violate Initiative WF 08 of the Amended Recovery Plan, p. 74.
  2. Mr. Morgan verbally instructed payroll staff to pay certain employees a total of \$137,540 in violation of a directive and the law. Additionally, this amount was not budgeted or formally authorized by Council, and the City will need to make cuts to account for the unauthorized payment. This action violated FIN 03 on p. 60 of the Amended Recovery Plan.
  3. The City has incurred IRS Tax penalties of approximately \$750,000 due to late or inaccurate payments. FIN 02 on p. 60 of the Amended Recovery Plan specifically addresses the needed improvements of and importance of accurate financial reporting.
  4. Councilman Morgan has refused to allow the Interim CFO to fulfill her duties [which was the subject of a previous order by the Receiver dated November 8, 2021 and is attached thereto as Tab "I"] by refusing to give her access to the buildings, financial system, an email address, excluding her from meetings and has directed staff to seek his approval from before providing her with information.<sup>2</sup>

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<sup>2</sup> After the City's former CFO left the City, Councilman Morgan, with the support of the Mayor, expressed his desire to become the City's CFO. The Receiver instead selected another individual to serve in that role and Councilman Morgan became very upset. Upon meeting with the Interim CFO that the Receiver selected, Councilman Morgan told her that she was a "outsider."

5. In December 2021, Councilman Morgan approved reimbursements to himself, and verbally directed a City employee to reimburse him for the purchase of \$1,500 in gift cards without sufficient documentation, and to date, has not provided the requested documentation to the Interim CFO.
  6. In November 2020, while conducting a review of employees on the City's health care plans, the Receiver's team discovered seven City employees who remained on a very expensive health care plan that had been discontinued for active employees. Those seven employees were Mayor Thaddeus Kirkland, Solicitor Ken Schuster, Councilman William Morgan, the former Chief Financial Officer, and the three other employees of the City's human resources department. After the Receiver brought this to the attention of the former City Chief Financial Officer, those employees were removed from those health care plans. FIN 01 on p. 59 of the Amended Recovery Plan directly involves employees on the wrong health care plan.
78. These actions, as well as the other actions detailed in the March 2, 2022 Order, impede the Receiver from implementing the Amended Recovery Plan and fulfilling his statutory duties.
79. On March 2, 2022, Solicitor Ken Schuster, at a meeting with the Mayor and all other council members except Councilmember Roots, verbally informed the Receiver that the City would not comply with all of the provisions of the March 2, 2022 order regarding the Departments of Finance and Human Resources.
80. As such, the Receiver is requesting that this Court issue the Writ of Mandamus and require the City to comply with the March 2, 2022 order.
81. Section 704(a) of Act 47 mandates that this Court's approval of the Plan "impos[es] on the elected and appointed officials of the distressed municipality

[i.e., the City] a mandatory duty to undertake the acts set forth in the recovery plan.” [53 P.S. Section 11701.704\(a\)\(1\)](#).

82. Section 704(b) of Act 47 further commands that the approval of the plan “suspend[s] the authority of the elected and appointed officials of the distressed municipality...pursuant to law, charter, ordinance, rule or regulation to the extent that power would interfere with the powers granted to the receiver or the goals of the recovery plan”. [53 P.S. Section 11701.704\(a\)\(2\)](#).

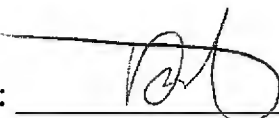
83. Here, the Receiver requests this Mandamus to protect his ability to implement the Plan under Section 704(a) and (b), as this Mandamus seeks to have Councilman Morgan’s authority suspended only in his role as the Director of the Finance and Human Resources departments, as his role in that capacity has impeded the Receiver’s ability to implement the Plan.

WHEREFORE, based on the foregoing, the Receiver requests this Court to issue the attached Writ of Mandamus to require all elected and appointed officials in the City of Chester to take all necessary action to comply with WF27 and immediately rescind such salary increases; to reverse Resolution 28-2022 which supported an application for an economic development liquor license, including

consent for the use of the license to a property partially owned by a current City employee; and to comply with the Receiver's March 2, 2022 Order regarding the City's finance and human resources departments' staff and internal controls."

Respectfully submitted

Dated: March 4, 2022

By:   
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Tiffany Allen  
Attorney I.D. 323629  
Benjamin Patchen, Esquire  
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tallen@cdblaw.com  
bpatchen@cdblaw.com

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



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**CERTIFICATE OF SERVICE**


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I, John P. McLaughlin, hereby certify that on this day I served the foregoing document upon Mayor Thaddeus Kirkland, and Council Members William Morgan, Elizabeth Williams, Portia West, and Stefan Roots, in their official capacities, in the manner indicated below, which service satisfies the requirements of Pa. R.A.P. 121:

Kenneth R. Schuster  
334 Front Street  
Media, PA 19063  
*Solicitor for the City of Chester*  
*Via First Class Mail*

Kenneth R. Schuster  
334 Front Street  
Media, PA 19063  
*Solicitor for the City of Chester*  
*Via email at ken@schusterlaw.com*

Dated: March 4, 2022

By:   
John P. McLaughlin  
Campbell Durrant, P.C.  
One Belmont Avenue,  
Suite 300  
Bala Cynwyd, PA 19004  
Email:  
jmclaughlin@cdblaw.com

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

**VERIFICATION**

I, Vijay Kapoor, Chief of Staff for the Receiver for the City of Chester, verify that the statements made in the foregoing *Petition For Mandamus* are true and correct to the best of my knowledge and belief. I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

By: \_\_\_\_\_

  
Vijay Kapoor

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Dennis M. Davin, in his capacity as  
Secretary of the Department of  
Community and Economic  
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Petitioner,

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City of Chester,  
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Roots,

Respondent.

No. 336 MD 2020

**Receiver for the City of Chester's  
Memorandum of Law in Support of his Petition for Mandamus**

The City of Chester is running out of time. The City stands on the brink of bankruptcy. But for federal rescue plan funding and a \$5 million emergency loan from the Commonwealth's Department of Economic and Community Development (DCED), the City would have run out of cash last year. The City's fiscal situation is just as precarious this year. The City owes its pension funds approximately \$37,000,000 in missed payments, its police pension fund has the equivalent of approximately 6-7 months of benefits left, and pension costs are expected to again increase significantly next year. Simply put, the City desperately needs help and the actions that some of its elected officials have taken which have

necessitated this filing not only violate the Amended Recovery Plan and its goals, but also make it much more difficult to obtain that help and to put the City back on solid financial footing.

The Receiver for the City of Chester, Michael Doweary (the “Receiver “or “Doweary”) files this memorandum of law in support of his Petition for Mandamus (the “Petition”) which is incorporated herein by reference. The Receiver files the Petition pursuant to the Section 709 of the Municipalities Financial Recovery Act, [53 P.S. Section 1107.709](#), as well as [53. P.S. Sections 1107.704](#), [1101.706](#) and [1101.708](#) of the same law and the Receiver’s Amended Fiscal Recovery Plan (the “Plan”) for the City of Chester (the City), which was approved by this Court on June 7, 2021, and thus made binding on the City and its elected officials.

Through this Petition, the Receiver requests this Court to issue a writ of mandamus upon the Mayor of the City of Chester, Thaddeus Kirkland, in his official capacity, and all other members of the City of Chester City Council, William Morgan, Elizabeth Williams, Portia West, and Stefan Roots (the “Elected Officials”), in their official capacities, directing and mandating that they comply with Act 47, the Plan, and the Receiver’s December 23, 2021 and March 2, 2022 directives and orders, by:

a. Complying with the Receiver's Order dated December 23, 2021, Act 47 and the Plan by rescinding the \$10,000 salary increases that certain elected officials granted themselves for 2022. See Tab A.<sup>1</sup>

b. Reverse Resolution 28-2022 which supported an application for an economic development liquor license, including consent for the use of the license, to a property partially owned by a current City employee. Tab B; and

c. Comply with the Receiver's March 2, 2022 Order regarding the City's finance and human resources departments' staff and internal controls. Tab C.

#### Factual Background

The City was designated as a distressed city under Act 47 in 1995. On June 22, 2020, this Court determined that a fiscal emergency, as defined by Section 602(A) of Act 47, continued to exist in the City and declared the City to be in receivership pursuant to Section 702(c)(2) of Act 47. In that same order, this Court also appointed Michael Doweary as the Receiver for the City. In an order dated December 28, 2021, this Court extended the receivership for the City for up to two (2) years.

The Receiver's initial Recovery Plan was confirmed by this Court in an order dated October 19, 2020. The Receiver submitted a Modified Recovery Plan (the "Plan") on April 7, 2021, which was approved by the Court on June 7, 2021.

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<sup>1</sup> All references to "Tabs" are to the Tabs filed with the Mandamus.

The instant Petition respectfully requests that this Court issue a Mandamus, directing and mandating that the City and the Elected Officials comply with the three orders issued by the Receiver on December 23, 2021 and March 2, 2022 which are intended to enforce the provisions and the goals of the Plan. The compliance with these orders is essential to the Receiver's ability to implement the Plan and fulfill his duties under Act 47.

- I. The City Council's Decision to Award Certain City Council Members a Pay Raise is in Direct Violation of Workforce Initiative WF27 of the Plan, the Receiver's Order to Comply with WF27, and Act 47.

The First Count in the Instant Petition requests that this Court issue a Mandamus to require the City to comply with the Receiver's Order dated December 23, 2021, to amend the budget and rescind the improper raises. The Plan includes a number of initiatives, including Initiative WF27, which specifically addressed this issue. Initiative WF27 provides:

WF27: Mayor, City Council and Controller salaries

Prior to 2020, each City Council member and the elected Controller earned \$35,000 and the Mayor earned \$41,000. In 2020, two Council members and the elected Controller received \$25,000 increases to \$60,000 and the Mayor received a \$34,000 increase to \$75,000.

During the 2021 budget process, the City agreed to lower the salary of the Mayor from \$75,000 to \$65,000, the Controller's salary from \$60,000 to \$50,000 and City Council members set to earn \$60,000 to \$50,000. Council

members who were due to earn \$35,000 in 2021 did not receive a salary reduction.

The City shall take action to change City ordinances to reflect that the new salary going forward for the Mayor is \$65,000, and the new salary for Council Members and the Controller is \$50,000. The new salary level for Council members currently earning \$35,000 will take effect at the beginning of the new term for those particular Council seats.

[The Plan, WF 27, at 83-84, Tab D].

The Plan, including WF27, was approved by the Court after two days of hearing in which the City participated and the Mayor of the City testified. The City and the Elected Officials chose not to object to WF27 during the two days of hearing at which the Court reviewed and accepted testimony regarding the Plan.

Since Initiative WF27 is part of the Plan approved by this Court, it is binding on the City and all of its elected officials. Indeed, Initiative WF 27 is specifically binding on the City's Elected Officials because it identifies, addresses, and applies directly to the Elected Officials.

*The City's Budgeting and Salary Ordinance Process*

The City's annual budget encompasses the funding for all the City's personnel positions which are contained in the personnel ordinance, including the salaries for the Elected Officials in this case. As noted in Initiative WF27, prior to 2020, each City Council member and the elected Controller earned \$35,000 and the Mayor earned \$41,000. In 2020, two Council members and the elected

Controller received \$25,000 increases to \$60,000 and the Mayor received a \$34,000 increase to \$75,000.

During the 2021 budget process, the City agreed to lower the salary of the Mayor from \$75,000 to \$65,000, the Controller's salary from \$60,000 to \$50,000 and City Council members set to earn \$60,000 to \$50,000. Council members who were due to earn \$35,000 in 2021 did not receive a salary reduction. The reduced salaries were part of a budget agreement between the City and the Receiver negotiated in 2020 to have City Council pass the 2021 budget. As part of the agreement, the Receiver agreed to the City's request to keep certain individuals employed, including the Mayor's son-in-law Ronald Starr, even though the Receiver had wanted to eliminate those positions. The reduction in salary was not a one-time gratuity as evidenced by the Amended Recovery Plan provision, Initiative WF27, which legally mandated that the City make the salary reductions permanent.

As part of the 2022 budget discussions with the Receiver and the Receiver's team, Mayor Thaddeus Kirkland and Councilman William Morgan told the Receiver that City Council was going to pass a budget restoring the \$10,000 salary increases that were eliminated in the 2021 budget and by WF27 of the Plan. The City's attempt to restore those increases violated the Plan that this Court had



approved on June 7, 2021, less than six (6) months earlier. The Receiver and his team objected to restoring those increases.

On December 23, 2021, after receiving notice of the City's intent to violate the Plan, the Receiver directed the Mayor and City Council to introduce and approve a budget that included salaries for Elected Officials that complied with the Plan. Tab A. On December 27, 2021, Councilman William Morgan responded to the Receiver's December 23, 2021 Order stating that the City Council intended to restore the salary increases. Tab E.

On December 29, 2021, the City Council willfully violated WF27 of the Plan, this Court's June 7, 2021 order approving the Plan under Act 47<sup>2</sup>, the Receiver's December 23, 2021 Order, and the Receiver's budget. This Mandamus action followed pursuant to the provisions cited above.

*II. City Council's Refusal to Comply with the Receiver's Directive to Refrain from Supporting an Application for an Economic Development Liquor License, Including Consent for the Use of the License, to a Property Partially Owned by a City Employee*

On February 22, 2022 the Receiver became aware of an agenda item for the February 23, 2022 City Council Meeting involving Resolution 28-2022, which

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<sup>2</sup> The Receiver notes that the actions of the elected officials in this case are a flagrant violation of not only Initiative WF27 of the Plan, and the other initiatives of the Plan cited below, but also of this Court's June 7, 2021 order approving the Plan. Under Act 47, the Court's approval of the Plan effectively is a legal mandate for the City to comply with the Plan. By intentionally disregarding the applicable provisions of the Plan, the City is disregarding this Court's June 7, 2021 order approving the Plan as well as the provisions of Act 47 which, as noted below, clearly state that the Court approved Plan supersedes the powers of City officials.

supported an application for an economic development liquor license, including consent for the use of the license, to a property partially owned by Ronald Starr, who is currently employed as the City's Business Development Director and is the son-in-law of the Mayor. On February 22, 2022, the Receiver emailed the Mayor, City Council and the Solicitor and requested that Resolution 28-2022 be pulled from the agenda in order to "discuss ethical issues surrounding this resolution." Tab H. After the City Solicitor informed the Receiver's Chief of Staff that the City intended to move forward with the resolution, the Receiver sent a subsequent email to directly order that the Resolution be removed from the agenda. Tab H. The Mayor and City Council disregarded the order and passed the resolution without disclosing that Mr. Starr was a current City employee and relative of the Mayor.

The Plan directly addresses economic development and states that "[t]he City's resurgence will be built upon a strong local economy and expanded tax base, which requires a strategic effort to attract and retain businesses and create job opportunities for the local workforce that provides a living wage." See Tab D, P. 89. The Amended Recovery Plan highlights the importance of economic development and the need to attract businesses to invest in the City. However, businesses must be assured that there is a level playing field in the City and that no person or business receives preferential treatment from City Administration or elected officials because of who they work for or who they are related to. Actions

like Resolution 28-2022, which was done without any level of transparency and benefited a City employee who is related to the Mayor create the opposite perception and hurts the City's ability to attract business investment.

On March 2, 2022, the Receiver issued an Order to the Mayor and City Council to reverse Resolution 28-2022. See Tab B. On March 2, 2022, the Mayor verbally informed the Receiver that he and the Council would not comply with the Order. It is appropriate to issue a Mandamus due to the Mayor's refusal to comply with the Receiver's March 2, 2022 Order regarding Resolution 28-2022. The Order was issued in order to protect the City's Economic Development, which is an integral part of the Amended Recovery Plan (See Tab D, p. 89-100) and a part of the Receiver's statutory duty under Act 47.

- III. The City's Repeated Violation of the Receiver's Orders to Implement Changes Required by the Plan and Necessary to Achieve the Goals of the Plan to Fix Competency and Performance Issues in the City's Finance and Human Resources Department are Interfering with the Receiver's Ability to Implement the Amended Recovery Plan and Threaten the City's Ability to Provide Vital and Necessary Services as Defined Under Act 47.

Act 47 mandates that the Receiver's Plan ensures that the City will be able to provide vital and necessary services, which is defined to include the payment of payroll and pension obligations. Section 701 and 703(b)(1). The City's Finance and Human Resources departments are integral to the Receiver's ability to continue to provide for vital and necessary services for the City.

Councilman William Morgan (“Councilman Morgan”) has served as the Director of the City’s Accounts and Finance which supervises the City’s Finance and Human Resources departments since September 2016. The Receiver’s team has encountered a number of actions taken by Councilman Morgan which impede the Receiver’s ability to fulfill his statutory duty under Act 47 and to implement the Amended Recovery Plan. Because of those actions, on March 2, 2022, the Receiver issued an order to the City which addressed staffing and internal controls of the City’s Finance and Human Resources departments. Tab C. Councilman Morgan’s actions that led to the Receiver’s directives are detailed at length in the Order. Tab C. By way of example, these actions include the following:

1. Incorrect payment of salaries and longevity to police officers and firefighters. These incorrect payments directly violate Initiative WF 08 of the Amended Recovery Plan, p. 74.
2. Mr. Morgan verbally instructed payroll staff to pay certain employees a total of \$137,540 in violation of a directive and the law. Additionally, this amount was not budgeted or formally authorized by Council, and the City will need to make cuts to account for the unauthorized payment. This action violated FIN 03 on p. 60 of the Amended Recovery Plan.
3. The City has incurred IRS Tax penalties of approximately \$750,000 due to late or inaccurate payments. FIN 02 on p. 60 of the Amended Recovery Plan specifically addresses the needed improvements of and importance of accurate financial reporting.
4. Councilman Morgan has refused to allow the Interim CFO to fulfill her duties [which was the subject of a previous order by the Receiver dated November 8, 2021 and is attached thereto as Tab I] by refusing to give her access to the buildings, financial system, an email address,

excluding her from meetings and has directed staff to seek his approval from before providing her with information.<sup>3</sup>

5. In December 2021, Councilman Morgan approved reimbursements to himself for the purchase of \$1,500 in gift cards without sufficient documentation, and to date, has not provided the requested documentation to the Interim CFO.
6. In November 2020, while conducting a review of employees on the City's health care plans, the Receiver's team discovered seven City employees who on a very expensive health care plan that had been discontinued for active employees. Those seven employees were Mayor Thaddeus Kirkland, Solicitor Ken Schuster, Councilman William Morgan, the former Chief Financial Officer, and the three other employees of the City's human resources department. After the Receiver brought this to the attention of the former City Chief Financial Officer, those employees were removed from those health care plans. FIN 01 on p. 59 of the Amended Recovery Plan directly involves employees on the wrong health care plan.

These actions, as well as the other actions detailed in the March 2, 2022 Order, impede the Receiver from implementing the Amended Recovery Plan and fulfilling his statutory duties. On March 2, 2022, Solicitor Ken Schuster, at a meeting with the Mayor and all other council members except Councilmember Roots, informed the Receiver that the City would not comply with all of the provisions of the March 2, 2022 order regarding the Departments of Finance and

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<sup>3</sup> After the City's former CFO left the City, Councilman Morgan, with the support of the Mayor, expressed his desire to become the City's CFO. The Receiver instead selected another individual to serve in that role and Councilman Morgan became very upset. Upon meeting with the Interim CFO that the Receiver selected, Councilman Morgan told her that she was a "outsider."

Human Resources. As such, the Receiver is requesting that this Court issue the Writ of Mandamus and require the City to comply with the March 2, 2022 order. Here, the Receiver requests this Mandamus to protect his ability to implement the Plan under Section 704(a) and (b), as this Mandamus seeks to have Councilman Morgan's authority suspended only in his role as the Director of the Finance and Human Resources departments, as his role in that capacity has impeded the Receiver's ability to implement the Plan.

### **Discussion**

#### **I. The Receiver's Petition Should be Granted Based on the Receiver's Broad Authority under Section 704 (a)(1) and (2) and Section 706(a)(1) of Act 47, this Court's Order Approving the Plan, and the Initiatives Contained in the Plan, to Implement the Plan.**

The municipal receivership provisions contained in chapter 7 of Act 47 provide the Receiver with broad authority to implement the provisions of the Plan of Fiscal Recovery that was approved by this Court on June 7, 2021. Based on the structure and language of Act 47, the elected officials of the City have a mandatory duty to comply with and not interfere with the Receiver's efforts and discretion in implementing the provisions of the Plan.

Pursuant to [53 P.S. Section 11701.709\(a\)](#), the Receiver filed this Petition for Mandamus to "secure compliance with the order issued under section 708" of Act 47. The Court's approval of the Plan on October 19, 2021 had the effect of

imposing the Plan on the City and its elected and appointed officials regardless of any law to the contrary. [53 P.S. Section 11701.704\(a\)](#).

Section 704 of Act 47 provides the Receiver broad authority to effectuate and enforce the Plan's provisions, including the authority to require the City to act as necessary to implement the Receiver's Plan. [53 P.S. Section 11701.706\(a\)\(1\)](#).

Specifically, section 704(a) provides the following:

The confirmation of the recovery plan and any modification to the receiver's plan under section 703 shall have the effect of:

- (1) imposing on the elected and appointed officials of the distressed municipality or an authority a mandatory duty to undertake the acts set forth in the recovery plan;
- (2) suspending the authority of the elected and appointed officials of the distressed municipality or an authority to exercise power on behalf of the distressed municipality or authority 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; and
- (3) superseding the emergency action plan developed by the secretary under section 602.

[53 P.S. § 11701.704](#). Based on section 704 of Act 47, the Mayor and City Council have no power to act in any manner that is contrary to the Plan and its goals.

In cases such as this, where elected officials of a city placed in Act 47 Receivership fail to cooperate with the implementation of the Receiver's court approved Plan or to otherwise interfere with the "goals of the recovery plan", Act

47 provides for a clear and prompt procedure to enforce the Plan. The Receiver has followed that process in this case.

First, the Receiver can issue an order to the elected officials to implement any provision of the Plan or to refrain from interfering “with the powers granted to the Receiver or the goals of the recovery plan.” [53 P.S. Section 11701.708\(a\)](#) (1) and (2).<sup>4</sup> The Receiver issued such orders for each of the Counts in this Petition, on December 23, 2021, February 23, 2022 and March 2, 2022. The Mayor and City Council intentionally violated those orders.

Second, if, as in this case, the elected officials breach their duty under Act 47 to at the very least not interfere with the Plan’s implementation and refuse to comply the Receiver’s directive, Act 47 provides the Receiver with the remedy of Mandamus. [53 P.S. Section 11701.709\(a\)](#). The Receiver may file a Petition of Mandamus to secure compliance with an order issued under Section 708(a) of the Act. [53 P.S. 11701.709\(a\)](#). Act 47 further provides its own standard for the Court to utilize when reviewing the Mandamus Petition file under 709(a) which, consistent with the other provisions of Act 47, provides great deference to the Receiver and the Receiver’s order.

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<sup>4</sup> This order is the second mandate to the elected officials to comply with the Plan. The first mandate is in section 704(a)(1) of Act 47 and took effect when this Court approved the Plan on June 7, 2021.



Specifically, Section 709(a) of Act 47 provides that “[t]he court shall grant or deny the relief within 14 days of the filing of the petition. The court shall grant the relief requested if it determines that the order was issued in compliance with this chapter.” Section 709(a) only provides the Court with the option to “grant or deny the relief” based on whether the order complied with Chapter 7 of Act 47. Since the Plan has already been approved by this Court, there is no argument for the City that the goals or the initiative of the Plan that the Receiver seeks to implement are somehow open to debate. As long as the Receiver’s orders at issue seek to implement the initiative or goals of the Plan, the powers of the City’s officials are suspended, and the orders must be enforced.<sup>5</sup> 53 P.S. Sections 11701.704(a)(1) and (2), and (b)(2).

**II. Count I of the Mandamus Seeks to Prevent the City from Violating Initiative WF 27 of the Plan, and Mandamus is Appropriate Because the City has Blatantly Disregarded the Receiver’s Plan and Order.**

The Plan contains a variety of initiatives, including Initiative WF27. [The Plan, WF27, at 83-84, Tab D. Initiative WF27, quoted above, addresses this very

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<sup>5</sup> Generally, mandamus is an extraordinary writ which “lies to compel the performance of a ministerial act or mandatory duty where there is a clear legal right in the plaintiff, a corresponding duty in the defendant, and a lack of any other adequate and appropriate remedy at law.” *Township of Bensalem v. Moore*, 620 A.2d 76, 79 (Pa. Commw. 1993); *Bobick v. Fitzgerald*, 207 A.2d 878, 880 (Pa. 1965). This standard is different from the standard that the Legislature has prescribed for the Court to follow in this matter, which is contained in 53 P.S. Section 1101.709(a). The Receiver maintains the correct standard in this action is that found in Section 709 of Act 47, but the facts of this matter would clearly satisfy the general mandamus standard based upon the duties and rights of the Receiver and the impact of the Plan as mandated by the legislature in Act 47.

situation. Initiative WF27 and Act 47 both provide the authority for the Receiver to take the actions that he took in this case, including issuing his December 23, 2021 Order and filing this Petition.

The Receiver issued his December 23, 2021 Order pursuant to section 1101.708 of Act 47 to implement the plan, specifically WF27. The Plan has already been approved by this Court, and as a result, the powers and duties of the elected officials are suspended with respect to all issues relating to the Receiver's attempt to effectuate WF27. Those suspended powers include but are not limited to the powers to pass a salary ordinance that is contrary to the Receiver's December 23, 2021 order or Initiative WF27 or otherwise interfere with the Receiver's implementation of the Plan.

In this case, there is no question that the Receiver's Petition for Mandamus should be granted based on the following factual history that is undisputed:

- The Plan was approved on June 7, 2021.
- The Court-approved Plan contains WF27, which encompasses all of the mandated salaries for the Elected Officials.
- The Receiver sought the cooperation of the elected officials to implement the salary ordinance, but when it appeared that the elected officials planned to violate the court approved Plan and WF27, the Receiver issued his December 23, 2021 order to the Elected Officials.

- Notwithstanding the foregoing, the Elected Officials still refused to enact the Receiver's salary ordinance.
- The Elected officials enacted an ordinance directly contrary to the Receiver's December 23, 2021 order. In doing so, the Elected officials ignored not only the Receiver but also this Court.

The role of the Court in this matter under Section 709(a) of Act 47 is limited to determining whether the Receiver's December 23, 2021 order was issued in compliance with Chapter 7 of Act 47. [53 P.S. Section 11701.709\(a\)](#). It was and the Plan has already been approved by this Court. As a result, the authority, powers and duties of the elected officials are suspended with respect to all issues relating to the Receiver's attempt to effectuate WF27. [53 P.S. Sections 11701.704\(a\)\(1\)](#) and [\(2\)](#), and [\(b\)\(2\)](#). The actions of the City's Elected Officials in this matter are contrary to their obligation to cooperate in the enforcement of the plan or, at the very least, to not interfere with its enforcement. Their actions are also contrary to Act 47 and the Plan.

Essentially, the Receiver is merely asking this Court to mandate the Elected Officials to comply with the Order and Plan that was previously issued and approved by this Court. The issuance of a mandamus order upon the Elected Officials is necessary in this case pursuant to [53 P.S. Section 11701.709](#) of Act 47. Such an order is "necessary to secure compliance with the Plan." The City

officials' refusal to cooperate with the Receiver and to comply with the Plan has caused delay and has impeded the implementation of the Plan.

**III. Count II of the Mandamus Addresses City Council's Refusal to Comply with the Receiver's Directive to Refrain from Supporting an Application for an Economic Development Liquor License, Including Consent for the Use of the License, to a Property Partially Owned by a City Employee.**

Like Count I, Count II respectfully requests Mandamus to address the City's blatant disregard of the Plan and an order from the Receiver. Here, the Receiver requested that the City withdraw Resolution 28-2022 from an agenda because of potential ethical concerns. After the Mayor informed the Receiver that he would not comply with that request, the Receiver sent a subsequent email to directly order that the Resolution be removed from the agenda. The Mayor and City Council ignored that order and passed the resolution without disclosing that the applicant at issue was a City employee and the son-in-law of the Mayor. On March 2, 2022 the Receiver issued a subsequent order about this Resolution and was informed by the City that it would not comply. This action is in direct contradiction to the Plan and impedes the Receiver's ability to attract and retain businesses.

Notably, the Plan devotes an entire section to Economic Development. Tab D at p. 89-100. Economic Development is an express goal of and essential to the Plan and the Receiver's ability to do his job. Here, the Receiver issued the March 2, 2022 order pursuant to [53 P.S. Section 11701.708\(a\)\(1\) and \(2\)](#). Shortly after the

issuance of that order, the City explicitly informed the Receiver that it would not comply. The Receiver is requesting that this Court issue Mandamus to secure compliance with the March 2, 2022 order under Section 709 of Act 47. Because the order was issued in compliance with Act 47, the Receiver respectfully requests that the Court grant Mandamus and require the City to Comply with the Receiver's order.

It is important to note that one of the hurdles facing the City and the Receiver is convincing stakeholders and potential partners that the past is not prologue and that helping the City will not be a case of throwing good money after bad and be a waste of time, resources, and effort because nothing will change. The actions of the City in this matter damages the image of the City as a place to invest or to provide assistance and lowers the confidence that stakeholders and potential partners in the City's economic development have in the future of the City and impedes the ability of the Receiver to achieve economic development.

**IV. Count III of the Mandamus Involves the City's Repeated Violation of the Receiver's Orders to Implement Changes Required by the Plan and Necessary to Achieve the Goals of the Plan to Fix Competency and Performance Issues in the City's Finance and Human Resources Department that are Interfering with the Receiver's Ability to Implement the Amended Recovery Plan and Threaten the City's Ability to Provide Vital and Necessary Services as Defined Under Act 47.**

Count III of the Mandamus requests that the City comply with the

Receiver's March 2, 2022 order to protect the Receiver's ability to address competency and performance issues in the City's Finance and Human Resources departments. As outlined in the Petition and Factual Background section of this Memorandum of Law, the Receiver and his team have encountered a number of actions by the Finance and Human Resources departments that are contrary to the Plan and issued the March 2, 2022 order to address those deficiencies. Specifically, the actions by Councilman Morgan in his capacity as Director of the Finance and Human Resources departments have impeded the Receiver's ability to implement numerous sections and initiatives of the Plan, including but not limited to Initiative WF 08 (p. 74), FIN 01- FIN 05 (pp. 59 - 62). Further, Councilman Morgan has taken affirmative actions to prevent the Interim CFO from fulfilling her duties and cooperating with the implementation of the plan. These actions have left the Receiver with no other choice but this instant Mandamus.

Here, the Receiver is seeking to enforce Section 704(b) of Act 47, which "suspend[s] the authority of the elected and appointed officials of the distressed municipality ... pursuant to law, charter ordinance, rule or regulation to the extent the power would interfere with the powers granted to the receiver or the goals of the recovery plan." The Receiver is seeking to suspend Councilman Morgan's authority consistent with Section 704(b) and only related to his role as Director of the Finance and Human Resources departments. This action and the March 2, 2022

order was necessary for the Receiver to fully implement the Plan and fulfill his duties.

Because the March 2, 2022 Order directly relates to the Receiver's ability to implement the Court approved Plan and because the Order was issued consistent with Act 47, the Receiver respectfully requests that the Court issue Mandamus.

### **Conclusion**

Accordingly, based on the foregoing, the Receiver requests this Court to immediately issue Mandamus against the Elected Officials and the City require them to comply with the Receiver's orders dated December 23, 2021 and March 2, 2022.

Dated: March 4, 2022

By: 

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

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**CERTIFICATE OF SERVICE**

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I, John P. McLaughlin, hereby certify that on this day I served the foregoing document upon Mayor Thaddeus Kirkland and Council Members William Morgan, Elizabeth Williams, Portia West, and Stefan Roots in their official capacities, in the manner indicated below, which service satisfies the requirements of Pa. R.A.P. 121:

Kenneth R. Schuster  
334 Front Street  
Media, PA 19063  
*Solicitor for the City of Chester*  
*Via First Class Mail and email at ken@schusterlaw.com*

Dated: March 4, 2022

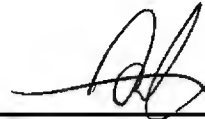
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*Attorneys for Receiver for the  
City of Chester, Michael  
Dowery*



**CERTIFICATE OF COMPLIANCE**

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



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Benjamin Patchen (Atty. I.D. 316514)  
Attorney for Michael Doweary, in his  
official capacity as Receiver for the City of  
Chester