



In his Petition, Receiver asks this Court to issue a writ of mandamus directing that City Officials comply with the initiatives outlined in the Amended Recovery Plan, which this Court approved on June 7, 2021, and with Receiver's Orders issued on December 23, 2021 and March 2, 2022 pursuant to Section 708 of Act 47.<sup>2</sup> Receiver contends that City Officials' recent actions have interfered with the fiscal goals of the Amended Recovery Plan and threaten to impair the City of Chester's (City) ability to provide vital and necessary services to its residents. Specifically, Receiver asks this Court to direct that City Officials:

(1) comply with Receiver's December 23, 2021 Order, Act 47, and the Amended Recovery Plan by rescinding the \$10,000 salary increases City Officials recently granted themselves;

(2) rescind 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

(3) comply with Receiver's March 2, 2022 Order regarding the City's Finance and Human Resources Departments' staffing and internal controls.

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<sup>2</sup> Section 708 of Act 47 provides:

**(a) Orders.**--The receiver may issue an order to an elected or appointed official of the distressed municipality or an authority to:

(1) implement any provision of the recovery plan; and

(2) refrain from taking any action that would interfere with the powers granted to the receiver or the goals of the recovery plan.

**(b) Enforcement.**--An order issued under subsection (a) shall be enforceable under [S]ection 709 [of Act 47].

53 P.S. § 11701.708. Section 708 of Act 47 was added by the Act of October 20, 2011, P.L. 318.

Pet. for Writ of Mandamus at 5.

Both Receiver and City Officials presented argument and testimony in support of their respective positions at a Web-Ex hearing before the Court on March 14, 2022.

The Court will briefly address each issue raised in the Petition.

### **1. Salary Increases**

On June 7, 2021, this Court approved Receiver's Amended Recovery Plan, which includes Initiative WF27 regarding city official salaries. Initiative WF27 was the result of negotiations between Receiver and the City.<sup>3</sup> Initiative WF27 states in pertinent part:

#### 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.*

Pet. for Writ of Mandamus, Tab D, at 83-84 (emphasis added).

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<sup>3</sup> In his Petition, Receiver asserts that the City did not object to Initiative WF27 during the two-day confirmation hearing held on the Amended Recovery Plan in June 2021. Pet. for Writ of Mandamus at 5.

Receiver alleges that, during budget discussions with Receiver's team in December 2021, Mayor Kirkland and Councilman Morgan informed Receiver that City Council intended to pass a budget in 2022 restoring the \$10,000 salary increases that were eliminated in 2021 by Initiative WF27. On December 23, 2021, Receiver ordered the Mayor and City Council to approve a budget that included salaries compliant with Initiative WF27. On December 27, 2021, Councilman Morgan responded that City Council intended to restore the salary increases in the 2022 budget.

At the hearing, City Officials' counsel argued that Article III, Section 27 of the Pennsylvania Constitution prohibits the City from reducing the salaries of elected officials mid-term, such as City Officials here. Article III, Section 27 states that “[n]o law shall extend the term of any public officer, or increase or diminish his salary or emoluments, after his election or appointment.” Pa. Const. art. III, § 27 (emphasis added); see also *Buckwalter v. Borough of Phoenixville*, 985 A.2d 728, 733 (Pa. 2009) (holding that municipalities, like the General Assembly, may not alter the compensation of elected officials by ordinance in the middle of their terms pursuant to Article III, Section 27).

City Solicitor Kenneth Shuster, Esquire, testified, as a witness, that during the COVID-19 pandemic, the City voluntarily reduced City Officials' salaries by \$10,000 each, without passing an ordinance, but that reduction was only intended to be temporary. In their brief, City Officials assert:

The salar[ies] of [City O]fficials was established by ordinance prior to the receivership. During the pandemic[,] [City O]fficials voluntarily reduced their salar[ies] for one year without an ordinance. The current salar[ies are] an increase over the prior year but [are] not the result of the officials giving themselves a raise. It is as a result of the voluntary

reduction and the salaries returning to the pre-pandemic level[s] established by the ordinance.

City Officials' Br. in Support of Answer to Pet. for Mandamus at 9.

However, the plain language of Initiative WF27 states 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.” Pet. for Writ of Mandamus, Tab D, at 83 (emphasis added). Initiative WF27 also mandates that the City make the salary reductions permanent by passing an ordinance, stating that “[t]he City *shall take action to change City ordinances* to reflect” the reduced salaries. *Id.* (emphasis added). Contrary to City Officials' contention, it is evident that the reduction in salaries was *not* intended to be temporary. Rather, the record shows that the City agreed to reduce the salaries of the Mayor, the Controller, and certain City Council members by \$10,000 each *and* agreed to pass an ordinance, at the appropriate time, setting the new salaries “going forward.” *Id.*

The Court further concludes that the salary reductions in Initiative WF27 do not violate Article III, Section 27 of the Pennsylvania Constitution, as long as they are set to take effect at the *beginning* of each elected official's new term. Our courts have held that Article III, Section 27 prohibits a municipality from reducing elected officials' salaries by ordinance in the middle of their terms. *See Buckwalter*, 985 A.2d at 733; *see also Meade v. City of Phila.*, 65 A.3d 1031, 1040 (Pa. Cmwlth. 2013) (*en banc*) (concluding that Article III, Section 27 prohibited salary reductions in the middle of the terms of members of the City of Philadelphia's Board of Revision of Taxes). Initiative WF27 states that “[t]he new salary level for [City] Council members currently earning \$35,000 will take effect *at the beginning of the new term for those particular Council seats.*” Pet. for Writ of Mandamus, Tab D, at 83-84 (emphasis added). It does not include similar language with regard to the

Mayor's and the Controller's salaries or the salaries of City Council members who were previously earning \$60,000. The present record also does not indicate when City Officials' various terms of office began or are set to end.

At the hearing, the parties informed the Court that, to date, no ordinance regarding salary reductions has been passed. The Court concludes that the City violated the Amended Recovery Plan and this Court's June 7, 2021 Order by not passing an ordinance to reflect the new salaries going forward for the Mayor, the Controller, and City Council members as outlined in Initiative WF27. However, in order to comply with the Pennsylvania Constitution, the salary reduction ordinance, when passed, must state that the new salaries for the Mayor, the Controller, and City Council members will take effect at the *beginning of the new term* for each of those elected positions.

Accordingly, the Court grants in part and denies in part Receiver's request for a writ of mandamus on this issue.

## **2. Liquor License**

Receiver alleges that, on February 22, 2022, he learned of an agenda item for the next 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, the City's Business Development Director and the Mayor's ex-son-in-law. Receiver alleges that he emailed the Mayor, City Council, and the City Solicitor requesting that Resolution 28-2022 be removed from the agenda so that they could discuss potential ethical concerns stemming from the proposed resolution. On February 23, 2022, at a public meeting, City Council passed Resolution 28-2022, without disclosing that Mr. Starr was a City employee or the Mayor's ex-son-in-law.

On March 2, 2022, Receiver issued an “Order re: Council Action on Economic Development Liquor License” to the Mayor and City Council, directing that City Council rescind Resolution 28-2022. *See* Pet. for Writ of Mandamus, Tab B. In the Order, Receiver expressed his concerns about the Resolution as follows:

Pages 89-100 of the Amended Recovery Plan deal directly with economic development. The Plan states[:] “The [C]ity’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 provide a living wage.”

The ethical issues of this action should be obvious. If the City is to attract businesses to invest in it, which it desperately needs, businesses need to be assured that there is a level playing field in the City and that certain individuals, especially those related to elected officials, will not get preferential treatment.

Actions like these, which are not transparent and which directly benefit existing City employees who are also related to elected officials, create exactly the opposite perception and hurt Chester’s ability to attract business investment.

*Id.*; *see* Pet. for Writ of Mandamus, Tab D, at 89-100 (outlining economic development goals and initiatives for the City). Receiver alleges that the Mayor responded to the Order by verbally informing Receiver that City Council would not rescind the resolution.

At the hearing, Receiver’s counsel argued that, by passing a resolution that financially benefits a current City employee and ex-relative of the Mayor, City Council violated a key goal of the Amended Recovery Plan, which is to improve the overall perception of the City. *See* Pet. for Writ of Mandamus, Tab D, at 94 (Goal Number 4 of the economic development plan). Vijay Kapoor, Receiver’s Chief of Staff, testified that before the February 23, 2022 City Council meeting, Receiver

asked to meet with the Mayor and City Council to learn more about the proposed liquor license and discuss any potential ethical concerns. Mr. Kapoor also testified that Receiver was not necessarily opposed to the Resolution; he merely wanted to be fully informed of the details of the proposed liquor license before City Council voted on it.

Mr. Shuster testified that Resolution 28-2022 declared City Council's support for Mr. Starr's proposed economic development liquor license, which is the *first* step toward obtaining a license. Mr. Starr still must go before the Pennsylvania Liquor Control Board for final review and approval of the license. Mr. Shuster further testified that Mr. Starr intends to open a fine dining restaurant with a liquor license on the property, which is located in the City's downtown area. Mr. Shuster testified that the proposed dining establishment would rehabilitate an abandoned and blighted building, create jobs for City residents, and generate revenue for the City.

The Court concludes that while the Mayor and City Council certainly should have been more transparent in the proposal and adoption of Resolution 28-2022, the Resolution itself, which declares City Council's support for Mr. Starr's proposed economic development liquor license, does not conflict with the stated goals or initiatives in the Amended Recovery Plan. It appears, based on Mr. Shuster's testimony, that the proposed license may in fact promote several goals of the Amended Recovery Plan, including increasing jobs and economic opportunities in the City, attracting commercial development to the City, and improving the quality of life for City residents and workers. *See* Pet. for Writ of Mandamus, Tab D, at 94.

Accordingly, the Court denies Receiver's request for a writ of mandamus on this issue.

### **3. Finance & Human Resource Departments**

Receiver alleges that on March 2, 2022, he issued an Order to City Officials addressing problems with staffing and internal operations in the City’s Finance and Human Resources Departments, both of which are overseen by Councilman Morgan. Councilman Morgan has served as Director of the Finance and Human Resources Departments since September 2016 and was appointed by the Mayor to that position.

Receiver alleges that he issued the March 2, 2022 Order to rectify issues that have impeded his ability to implement the Amended Recovery Plan. Those issues include: failing to complete monthly bank reconciliations; making late and/or inaccurate federal tax payments, which caused the City to incur tax penalties of approximately \$750,000; approving reimbursements for the purchase of \$1,500 in gift cards without sufficient documentation; making improper “hazard” payments to certain employees totaling \$137,540; allowing the Mayor, the City Solicitor Shuster, Councilman Morgan, former Chief Financial Officer (CFO) Nafis Nichols, and three employees in the Human Resources Department to remain on an expensive health care plan that had been discontinued; and preventing the Interim CFO, who was appointed by Receiver, from fulfilling her duties and obligations under the Amended Recovery Plan. *See* Pet. for Writ of Mandamus, Tab C. Receiver alleges that on March 2, 2022, the City Solicitor informed him that the City would not comply with all of the provisions of the March 2, 2022 Order.

Section 704(a)(1) of Act 47 provides that this Court’s approval of a recovery plan “impos[es] on the elected and appointed officials of the distressed municipality a **mandatory duty** to undertake the acts set forth in the recovery plan.” 53 P.S. § 11701.704(a)(1) (emphasis added).<sup>4</sup> The Court concludes, based on the credited testimony, that Councilman Morgan and members of his team have engaged in

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<sup>4</sup> Section 704 of Act 47 was added by the Act of October 20, 2011, P.L. 318.

conduct that has impeded Receiver's ability carry out the goals of the Amended Recovery Plan, particularly with regard to their dealings with Interim CFO Sheila Winfrey Brown.

Under Section 708(a) of Act 47, a receiver may only issue orders to elected and appointed officials directing them to: (1) implement the provisions of the recovery plan; and (2) refrain from taking actions that would interfere with the receiver's powers or the goals of the plan. 53 P.S. § 11701.708(a). Here, however, Receiver asks this Court to remove Councilman Morgan from his appointed position and prohibit him from exercising any further authority with regard to fiscal matters. *See* Pet. for Writ of Mandamus, Tab C. While Section 704(a)(2) of Act 47 states that the Court's confirmation of a recovery plan effectively "suspend[s]" an appointed official's power "to the extent that the power would interfere with the powers granted to the receiver," 53 P.S. § 11701.704(a)(2), it does not expressly authorize Receiver to remove an appointed official from his position.<sup>5</sup> In fact, Section 704(b)(1) states that the Court's confirmation of the plan "*shall not be construed to . . . change the form of government of the distressed municipality.*" *Id.* § 704(b)(1) (emphasis added).

Furthermore, the City's Home Rule Charter authorizes City Council to investigate alleged wrongdoing by City officials. *See* Answer to Pet. for Mandamus, Ex. 1, at 9. The Home Rule Charter also provides that the Mayor shall supervise the conduct of all City officials and "examine the grounds of all reasonable complaints against them, and cause all of their violations or neglect of duty to be promptly punished or reported to [City] Council for correction." *Id.* The City's right to self-

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<sup>5</sup> Section 706(a) of Act 47, which delineates the powers and duties of an appointed receiver, also does not contain such an express authorization. *See* 53 P.S. § 11701.706(a), added by the Act of October 20, 2011, P.L. 318.

govern is further protected by Article IX, Section 2 of the Pennsylvania Constitution, which states: “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, § 2. At the hearing, City Official’s counsel informed the Court that the City Solicitor is presently investigating Receiver’s allegations of wrongdoing within the Finance Department and will take any necessary corrective actions resulting from his investigation. The Court will not interfere with the City’s authority under its Home Rule Charter to investigate these matters internally, as long as the investigation is carried out in an ethical and impartial manner, and the City keeps Receiver apprised of its findings as the investigation continues.

During the hearing, both sides agreed that the Finance Department is understaffed and would benefit from the hiring of more accountants. Ms. Brown also credibly testified that her job duties have been hampered by Councilman Morgan and his team and that she needs their cooperation going forward to clear the backlog of work and rectify the deficiencies within the Finance Department. The Court agrees that mutual cooperation between Receiver’s team and Councilman Morgan’s team is necessary to carry out their mandatory duties under the Amended Recovery Plan. *See* 53 P.S. §11701.704(a)(1). To effectuate this objective, the Court will direct that City Officials comply with Paragraphs 4 through 8 and Paragraph 11 of Receiver’s March 2, 2022, Order.<sup>6</sup>

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<sup>6</sup> These paragraphs state:

4. 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 and Human Resources Departments or that interferes in any way with the decisions of the Interim CFO or her successor unless such directive is approved by the Receiver.

Accordingly, the Court grants in part and denies in part Receiver's request for a writ of mandamus on this issue.

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Based on the foregoing analysis and conclusions, the Court enters the following order:

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5. Mr. Morgan shall not take any action to interfere with the duties of the Interim CFO or her successor without the direct review and approval of the Receiver.

6. Mr. Morgan shall take all steps necessary to ensure that the Interim CFO and her successor has access to all offices, files, and all equipment that she or the Receiver requests.

7. Mr. Morgan shall comply with all programs, policies, procedures, audit recommendations, and monetary and financial controls implemented by the Interim CFO and her successor.

8. Mr. Morgan shall not take any action to interfere with the supervision of the Human Resources and Finance Departments and any other employee under the supervision of the Interim CFO or her successor.

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11. City employees and elected officials shall provide the Interim CFO with any information she requests and shall follow the directives she makes in her role as Interim CFO.

## **ORDER**

AND NOW, this 22<sup>nd</sup> day of March 2022, upon consideration of Receiver's Petition for Writ of Mandamus, City Officials' Answer thereto, and the arguments and evidence presented at the hearing on March 14, 2022, including the credited testimony, the Court hereby GRANTS IN PART AND DENIES IN PART the Petition for Writ of Mandamus, as follows.

It is hereby ORDERED and DIRECTED that:

1. City Council shall pass an ordinance, consistent with Initiative WF27 of the Amended Recovery Plan, to reflect that the new salary going forward for the Mayor is \$65,000, and the new salary for the Controller and City Council members is \$50,000, and that the new salaries will take effect at the beginning of the new terms for those elected officials;

2. City Council shall pass the salary reduction ordinance at the next regularly scheduled City Council meeting, or prior to the next election, whichever is sooner;

3. City Officials shall comply with Paragraphs 4 through 8 and Paragraph 11 of Receiver's "Order re: Necessary Steps to Comply With Recovery Plan," dated March 2, 2022, relating to the City's Finance and Human Resources Departments (Petition for Writ of Mandamus, Tab C);

4. Councilman Morgan and his team shall immediately share any future correspondence or information they receive relating to the City's finances with Receiver and the Interim CFO;

5. The Parties shall continue to file regular status reports with the Court, as required by Act 47, to update the Court on the City's progress toward implementation of the Amended Recovery Plan and compliance with the directives in this Order; and

6. Receiver shall file the next status report with the Court no later than May 31, 2022. The Court reserves the right to request status reports when it deems such reports necessary, and the parties may request status conferences as needed to maintain progress with the Amended Recovery Plan.

Jurisdiction retained.



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ELLEN CEISLER, Judge