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**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT**

IN RE:

CITY OF HARRISBURG

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**Request for Determination of
Distress Under Act 47**

**RESPONSE OF APPLICANT, THE CITY OF HARRISBURG, TO MOTION OF
INTERVENORS, DEBT WATCH HARRISBURG and NEIL GROVER, PRO SE, TO
JOIN AND SUPPORT MOTION FOR CONTINUANCE OF MEMBERS OF THE
HARRISBURG CITY COUNCIL SO TO OBTAIN AND HAVE REPRESENTATION BY
QUALIFIED LEGAL COUNSEL**

AND NOW COMES Applicant, City of Harrisburg (City or Applicant), by and through its Law Bureau, and files this Response to the Motion of Intervenors', Debt Watch Harrisburg and Neil Grover, Pro Se, to Join and Support Motion for Continuance of Members of the Harrisburg City Council so to Obtain and Have Representation by Qualified Legal Counsel.

1. Admit.
2. Deny. On the contrary, on October 19, 2010, a letter was sent by Mr. Brad Koplinski, Harrisburg City Councilperson, to Mr. Fred Reddig, Executive Secretary, Governor's Center for Local Government Services, requesting that Mr. Reddig continue the Act 47 hearing scheduled for October 20, 2010 until November 29, 2010. The purpose for the continuance was so that City Council could retain legal counsel pursuant to City Council Resolution 72-2010

(Resolution) passed on September 28, 2010. Nowhere in Mr. Koplinski's letter does it indicate that the request for continuance was joined in by a majority of City Council members. In any event, the letter was not authorized by City Council through Councilmanic action nor was Mr. Koplinski designated as City Council's representative in the matter related to the Act 47 hearing: as such, the request can only be considered to be that of Mr. Koplinski personally or by Mr. Koplinski in his singular capacity as a City elected official and not to be the request of City Council as the legislative body of the City. Therefore, no motion, joined in by a majority of City Council seeking a continuance of the Act 47 hearing, was filed on October 19, 2010. Additionally, Mr. Koplinski's request was formally denied on the record during the Act 47 hearing. In which case, there exists no motion to join or support by Intervenors either on behalf of City Council members or Mr. Koplinski

3. Deny. City Council had not begun the process to obtain legal counsel to advise it on matters related to the subject Act 47 proceeding. On the contrary, City Council's Resolution was passed prior to the Mayor's petition seeking a Determination of Distress under Act 47 and, therefore, could not have been for the purpose alleged in Intervenor's Motion. Instead, the Resolution was for the purpose of obtaining any number of professionals including, "financial advisors, attorneys and other consultants" to advise City Council on the merits of itself filing for Distressed Status or authorizing the filing of a petition under Chapter 9 of the Bankruptcy Code. As such, a continuance of the statutorily required hearing resulting from the Mayor's petition seeking Distressed Status would be improper as well as irrelevant to City Council's purposes for seeking professionals as put forth in the Resolution. A true and correct copy of the Resolution is attached hereto and incorporated herein as Exhibit "A".

4. This averment requires no substantive response. To the extent a response is required the allegations are denied.

5. Deny. City Council has not been denied legal counsel. On the contrary, as stated above, City Council took no action to represent itself as an interested party at the Act 47 hearing. All elected officials, including members of City Council, as well as all other interested parties, were afforded an opportunity to testify during the Act 47 hearing. Four members of City Council attended and two took the opportunity to present testimony. Anyone of them could have been represented by the legal counsel of his or her choosing. The Agency denied no interested person the right to legal counsel.

6. The allegations of this paragraph require no substantive response. To the extent a response is required the allegations are denied. Further, the allegations in the paragraph contain legal conclusions and accordingly are therefore deemed denied.

7. Admit in part, deny in part. Applicant only admits the part of this averment that states that on October 20, 2010 an Act 47 administrative hearing was commenced. It is denied that the matter proceeded with Council unrepresented for the reasons stated in the above paragraphs. By way of further response, the City Solicitor represents the City and does not represent the City Council or the individual elected officials of the City, appointed officials, City employees or City Departments, Offices or Bureaus. As the Mayor of the City filed the petition seeking Determination of Distress pursuant to section 202 of Act 47, 53 P.S. § 11701.202, the Solicitor appeared to represent the City in accordance with the Mayor's petition. The Solicitor was not requested to represent members of City Council and any such representation would have been improper.

8. This averment requires no substantive response. To the extent a response is required the allegations are denied. Further, the allegations in the paragraph contain legal conclusions and accordingly are therefore deemed denied.

9. The allegations of this paragraph require no substantive response. To the extent a response is required the allegations are denied. Further, the allegations in the paragraph contain legal conclusions and accordingly are therefore deemed denied.

10. This averment requires no substantive response. To the extent a response is required the allegations are denied.

11. This averment requires no substantive response. To the extent a response is required the allegations are denied. Further, the allegations in the paragraph contain legal conclusions and accordingly are therefore deemed denied.

12. Deny. The carrying out of the mandates of Act 47 related to Notice and Hearing does not permit the Secretary or his designee to strip any party of his or her fundamental due process rights. On the contrary, the mandates of Act 47 serve to ensure, protect and preserve the fundamental due process rights of all parties while allowing the purpose of the Act to be carried out in response to the petition seeking a Determination of Distress. Further, the allegations in the paragraph contain legal conclusions and accordingly are therefore deemed denied.

13. The allegations of this paragraph require no substantive response. To the extent a response is required the allegations are denied. Further, the allegations in the paragraph contain legal conclusions and accordingly are therefore deemed denied.

14. Deny. The grant of Distressed Status may very well afford the Applicant with needed financial assistance. Any financial assistance regardless of amount or type would be beneficial to the Applicant. The testimony provided by Mr. Kroboth, Interim Business

Administrator/Acting Chief of Staff, indicated that the City is well short of sufficient cash to meet the upcoming payroll which must be funded by the morning of Wednesday, October 27, 2010 or the City's employees will go unpaid. Additional testimony indicated that the City is far behind in payments for health and health related benefits which may be jeopardized without at least some partial or full payment in the near future. Therefore, in order to prevent immediate and irreparable harm to City employees and their families an expedited determination by the Agency is critical.

15. Deny. For the reasons stated in the above paragraphs related to the fact that City Council nor any other interested party has been denied any due process rights and related to the present critical financial situation of the City and the potential irreparable harm to City employees and their families, the Presiding Officer should close the proceedings to allow for an immediate determination.

16. Deny. As this motion seeks to join and support a nonexistent motion of City Council members and as Mr. Koplinski's request was formally denied, this motion is not lawful or proper.

17. Deny. The motion of the Intervenors should be denied.

WHEREFORE, for the reasons stated, the Intervenors' Motion to Join and Support Motion for Continuance of Members of the Harrisburg City Council so to Obtain and have Representation by Qualified Legal Counsel, should be denied and the Agency should enter the alternative order proposed herewith.

Respectfully submitted,

By: 

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Date: October 22, 2010

Moved by: Brian Koplich

A resolution authorizing the engagement of professionals to study the advisability of authorizing the filing of a petition under either the Municipalities Financial Recovery Act (Act 47) or Chapter 9 of the bankruptcy code.

WHEREAS, the City of Harrisburg is in a state of financial crisis due primarily to its inability to make debt service payments guaranteed by the City for The Harrisburg Authority's Resource Recovery Facility; and

WHEREAS, Act 47 grants standing to City Council to request a determination of municipal financial distress, and Act 47 also grants sole and exclusive statutory authority to City Council to authorize the filing of a petition requesting relief under Chapter 9 of the Bankruptcy Code; and

WHEREAS, it is prudent at this time to engage professional advisors to study and report to City Council regarding the advisability of seeking the assistance of the Commonwealth of Pennsylvania by filing a petition under Act 47 or of seeking relief under Chapter 9 of the Bankruptcy Code.

NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED BY THE COUNCIL OF THE CITY OF HARRISBURG that the Chair of the Budget and Finance Committee of City Council be and is hereby authorized to engage in a search for professional advisors, which may include accountants, financial advisors, attorneys and other consultants, to study and report to Council regarding the advisability of the City of Harrisburg either (i) petitioning the Secretary of Community and Economic Development of the Commonwealth of Pennsylvania for a determination that the City of Harrisburg is a financially distressed municipality pursuant to the Pennsylvania Municipalities Financial Recovery Act, Act of July 10, 1987, P.L. 246, No. 47, 53 P.S. §§11701.101 et seq. and seeking the Commonwealth's financial assistance, or (ii) authorizing the filing of a petition under Chapter 9 of the Bankruptcy Code for the Adjustment of Debts of a Municipality, 11 U.S.C. §901 et seq., in the U.S. Bankruptcy Court for the Middle District of Pennsylvania.

Exhibit "A"

BE IT FURTHER RESOLVED that the Chair of the Budget and Finance Committee of City Council be and hereby is instructed to take all steps necessary to effectuate the purposes of this Resolution.

Seconded by: Wanda L. Williams

YEAS		NAYS
✓	KIM	
✓	KOPLINSKI	
✓	SMITH	
✓	SUMNERFORD	✓
✓	WILLIAMS	
✓	WILSON	
✓	ROBERTS	✓
Yeas	5	
Nays	2	

Passed the City Council September 28, 2010
David M. Smith
President of City Council
City Clerk

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT

IN RE:

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CERTIFICATE OF SERVICE

I hereby certify that I have this 22nd day of October, 2010, served a true and correct copy of the foregoing motion via facsimile transmission and United States Postal Service, first class postage prepaid and properly addressed to the following:

Steven J. Fishman, Esquire
Charles Brown, Esquire
Department of Community and
Economic Development
Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg, PA 17120-0225
717-783-1402 (fax)

Neil A. Grover, Esquire
Pro Se and Attorney for Intervenors
2201 North 2nd Street
Harrisburg, PA 17110
717-233-2342 (fax)

By: 

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ORDER

NOW, this _____ day of October, 2010, upon consideration of the *Response of Applicant, City of Harrisburg, to Motion of Intervenors, Debt Watch Harrisburg and Neil Grover, Pro Se, to Join and Support Motion for Continuance of Members of the Harrisburg City Council so to Obtain and have Representation by Qualified Legal Counsel*, the Intervenors' Motion is HEREBY DENIED. The Act 47 Administrative Hearing will be closed so that the Secretary may proceed to issue an administrative determination of whether the Applicant, City of Harrisburg, is financially distressed.

By: _____
Fred Reddig, Presiding Officer