

LAW OFFICE OF WILLIAM J. CLUCK

587 Showers Street
Harrisburg PA 17104
717-238-3027
fax 717-238-8033
billcluck@billcluck.com

August 11, 2011

Comments on Proposed Act 47 Plan Prepared by Mayor Thompson's Administration

These comments are submitted in my individual capacity as a local resident, businessperson, homeowner and taxpayer and are separate from my position as one of three members of the Board of Directors of the Harrisburg Authority.

If I was a school teacher, I would mark this proposed plan as "incomplete." The Mayor's August 2, 2011 transmittal letter, which contains an unacceptable number of misspellings, poor grammar, and erroneous citations to pages in the plan, acknowledges "all changes reflected in the Mayor's transmittal letter and Executive Summary were not completely transferred into the full body of the Mayor's Act 47 Plan Initiatives due to time constraints. However, this plan is a living document and will include additional adjustments as the Mayor's Proposed Plan is publically [sic] discussed with City Council and the public in upcoming hearings. It is our intent to complete all the necessary changes after the public hearing process." Classifying the plan as a "living document" does not mean the Mayor may bypass the statutory requirement to present a plan that alleviates the city's financially distressed status.

It is unclear from review of the transmittal letter, Executive Summary and the proposed plan itself, exactly what initiatives are still being proposed, which ones are not under consideration and what tax increases will be imposed on city residents, property owners and businesses and whether those increases are fall back provisions if there is stranded debt remaining after sale and lease of assets or whether those increases are already included in the five-year projections for revenue and expenses or whether they are required only to the extent necessary to balance the city budget or some combination of the foregoing.

As a result, it is difficult to comment on a moving target or an ambiguous proposal.

THE EXTENDED UNION CONTRACTS

The City has been slow to make necessary changes in its structure and initiatives. The Management Partners report issued in 2010 was never publicly vetted and only a minimal number of its suggestions were implemented. The most disturbing issue is the 11th hour

extension of the three union contracts by the previous administration. Upon taking office in January 2010, the Mayor retained outside counsel to determine whether those contracts could be challenged. At her press conference on August 2, 2011, the Mayor acknowledged that she had received legal advice that those contract extensions could be challenged. However, those extensions have been in effect now for over 18 months. The Act 47 plan rejected by City Council recommended voiding those contracts. In fact the overwhelming majority of the cost savings in the Workforce section WF01, of the plans relies upon those contracts being voided.

The Mayor proposes negotiating with the unions for concessions rather than voiding the contracts, and then negotiating revisions to the collective bargaining agreements. See new language at the top of page 81 of the Mayor's plan above the Financial Impact chart. If those contracts are not voided, what is the backup plan to balance the 2011 through 2015 budgets?

HOST MUNICIPALITY BENEFIT FEE

The Mayor should consider amending the waste agreement with Covanta and the Harrisburg Authority to require the statutory \$1 per ton Host Municipality Benefit Fee to be directed to the City rather than being used to pay utilities for the warehouse storing the wild west artifacts.

The Municipal Waste Planning, Recycling and Waste Reduction Act, commonly referred to as Act 101, was enacted in 1988. While recognized for its recycling and waste planning successes, Act 101 provides incentives to local governments to locate waste management facilities. The Host Municipality Benefit Fee is one such incentive that enables environmental benefits to offset the burdens of these facilities. Section 1301 of Act 101 establishes the Host Fee and provides as follows:

Section 1301. Host municipality benefit fee.

(a) Imposition.—There is imposed a host municipality benefit fee upon the operator of each municipal waste landfill or resource recovery facility that has a valid permit on the effective date of this act or receives a new permit or permit that results in additional capacity from the department under the Solid Waste Management Act after the effective date of this act.

The fee shall be paid to the host municipality. If the host municipality owns or operates the landfill or facility, the fee shall not be imposed for waste generated within such municipality. If the landfill or facility is located within more than one host municipality, the fee shall be apportioned among them according to the percentage of the permitted area located in each municipality.

(b) Amount.—The fee is \$1 per ton of weighed solid waste or \$1 per three cubic yards of volume-measured solid waste for all solid waste received at a landfill or facility. Any

amounts paid by an operator to a host municipality pursuant to a preexisting agreement shall serve as a credit against the fee amount imposed by this section.

(c) Municipal options.—Nothing in this section or section 1302 shall prevent a host municipality from receiving a higher fee or receiving the-fee in a different form or at different times than provided in this section and section 1302, if the host municipality and the operator of the municipal waste landfill or resource recovery facility agree in writing.

The Host Fee did not apply when the City of Harrisburg operated the incinerator. It does apply when there is a private operator. When Covanta Energy commenced operation of the Harrisburg incinerator in January 2007, then-Harrisburg Mayor Steve Reed included a provision in the contract between Covanta and the Harrisburg Authority that required the Authority, in lieu of the dollar per ton, to pay the heat for the warehouse at the incinerator complex that houses historical artifacts and the city's vehicle maintenance center.

In 2010, the Authority paid approximately \$ 90,000 for the fuel to heat the aforementioned buildings. However, the Authority collected about \$ 300,000 from the Host Fee. The \$1 per ton is tacked onto the disposal rate. However, the former Mayor's provision in the contract between Covanta and the Authority did not address the disposition of the excess amount of money. The Authority has treated those funds as revenue and has used the surplus to pay operating expenses and debt service.

In 2003, City Council enacted Ordinance 4-2003. Under that ordinance, City Council appoints two members of the five member EAC and the Mayor appoints the other three, with advice and consent of Council. The EAC was intended to provide an independent oversight of the incinerator and provide educational information to city residents, businesses and institutions to meet Act 101's mandatory recycling requirements.

Unfortunately, the EAC never got off the ground. This is an opportunity to improve recycling by residents, businesses and institutions in the City.

RETAIN A PROFESSIONAL GOVERNMENT RELATIONS FIRM

The City does not have an active presence in the halls of the State Capital or in Congress. In fact, throughout the Act 47 process, the City has been at odds with its own representatives and suburban legislators. It is important for the City to maintain regular communications with the Governor's office, relevant state agencies, and the legislature. There are literally hundreds of programs impacting the City and its residents, some of which could provide additional funds in the form of grants and low interest loans to supplement the City general fund. A minimal investment in a quality government relations firm will pay for itself. A credible government relations firm can assist in identifying opportunities for economic development, minority/women business enterprises, workforce training, educational grants and private foundations.

APPOINT ADVISORY PANEL TO OVERSEE WHBG/CHANNEL 20

Pursuant to the Comcast franchise agreement with the City, which expired in July 2010, WHBG/Channel 20 on Comcast Cable System is supposed to provide community

programming related to educational and/or governmental activities. While Channel 20 has provided worthwhile programming, including televising City Council meetings, it has been subject to political influence in the prior and current administrations. Presently, there is an uncomfortable inclusion of religious activities that are not appropriate for a governmental station. Moreover, the viewing audience is limited to Comcast Cable subscribers and its programming does not reach digital antennae and satellite users. Nor do local hotels carry the station.

WHBG/Channel 20 could produce additional revenue by diversifying its programming. Also, the pending renewal of the Comcast franchise agreement should include funding of WHBG's web site to enable programming to be viewed on the web site. Advertising could be sold for the programming and the web site.

The Mayor should appoint an independent advisory panel to prepare a strategic plan and oversee operation of the station and web site.

The following section provides comments on the substance of the structural deficit plan:

1. Page 21 references Appendix B as a summary of public input. The Mayor's plan only includes Appendix A (which was formerly Appendix C).
2. Page 24 discusses 2012-2015 General Fund Baseline Projections and states that those projections include an increase of 1% in the Earned Income Tax per year; 1.75% increase per year in Business Privilege and Mercantile Tax; and a 3% increase per year in the real estate transfer tax. Is the Mayor proposing these annual tax increases as part of her plan? What is the impact on the average resident of these tax increases?
Separate from those tax increases, at page 375, Initiative REV05 calls for an increase in the earned income tax rate.
How many increases of the earned income tax are required by this plan?
3. On page 31 of the rejected Act 47 plan, there was a paragraph describing the difficulty the coordinator had in obtaining data and information from the City, noting the data received seemed to be inconsistent or incomplete. Why was this paragraph deleted from page 30 (above Conclusion) of the Mayor's plan?
4. What is the intent of the Mayor's plan for the Department of Parks, Recreation and Enrichment? On page 35 of the Mayor's plan, she writes that the department shall be disbanded. However, on page 3 of the Executive Summary, the Mayor calls for downsizing the department. Yet, on page 285 PRE01 calls for evaluation of transferring recreation programming to a non-profit and the five year financial impact was changed from \$773,816 to TBD. How will the City make up the \$773,816 from the previous Act 47 plan? The Mayor does seem to support combining parks maintenance with the Department of Public Works (page 3) and eliminating the park ranger program (page 3).
5. Page 39 refers to Appendix C as containing the list of Act 47 funding requests. It is actually now Appendix A.

6. Page 39 rennumbers PI05 to PI04 and refers to Appendix D as containing a list of suggested performance measures. There is no Appendix D in the Mayor's plan or a list of suggested performance measures.
7. Page 57 initiative DS03 requires an increase in property taxes by 8%. Is the intent to raise the property tax whether or not there is stranded debt if the assets are sold/leased? Is this an increase on land only or land and improvements? Does the Mayor intend to retain the two tiered property tax structure?
8. Page 96 Initiative WF16 – where did the cost savings figures totaling \$12,600/year come from?
9. Page 108 Initiative RET04, the responsible party should be City Solicitor and not City Council to seek an IRS determination letter for the police plan.
10. Page 108- why was the Act 47 Initiative RET05 update police plan deleted from the Mayor's plan?
11. Page 109- why was the Act 47 Initiative RET07 resolve discrepancies between non-uniformed plan and non-uniformed PMRS agreement deleted from the Mayor's plan?
12. Page 120 Initiative IRM01-what is the status of funding a risk manager service?
13. Page 120 Initiative IRM02 includes savings of \$5146 in 2011 based upon revisions to brokerage service agreements. Have those revisions occurred? Is this savings realistic for 2011?
14. Page 122 Initiative IRM04 How will the City fund retaining an actuarial firm?
15. Page 122 Initiative IRM05 Has the City started the process for seeking competitive bids for workers' compensation claims management services?
16. Page 159 in the first paragraph references "lapses in required grant reporting have been identified." Have those lapses been corrected?
17. Page 178 Initiative IT07 calls for spending \$80,000 to perform a needs assessment in 2012 for an Enterprise Resource Planning system. However, in Appendix A, the Act 47 list of Funding Requests reduced this amount to \$65,000.
18. Page 187 Initiative LAW01 suggests retaining outside labor lawyer with already budgeted funds of \$110,000. If experienced labor counsel is available, why not make this a permanent in-house hire?
19. Page 187 Initiative LAW02 calls for hiring two more staff attorneys with already budgeted funds for one position and reduce outside counsel costs to fund the second hire. Why hasn't this already occurred? What is the status of hiring a new city solicitor?
20. Pages 214-216 Initiatives POL10, POL11, and POL12 spend approximately \$20,000 this year to appoint a civilian manager for parking enforcement office and replace electronic parking ticketing devices. Those initiatives are proposed to be funded in 2011 by increasing operational efficiency in parking enforcement office. Will these initiatives occur this year?
21. Page 217 Initiative POL14 why haven't current parking ticket fees been increased already?
22. Page 243-244 Initiative FIRE05 and FIRE06 why haven't these increase in billing/collection of emergency response and vehicle extraction fees and adjusting of false alarm fees been implemented already?

23. Page 250 Initiative FIRE14 is it legal to authorize layoffs of firemen subject to collective bargaining agreement for any reason?
24. Page 265 Initiative PW03 the city also accepts newspapers for recycling. The amount of recyclables seems low. Is this the figure reported to the Dauphin County in the City's annual report?
25. Page 295 in the second paragraph, there is an erroneous reference to a "computer SIMS system". The correct name is CEMS, continuous emission monitoring system.
26. Page 301 has a new paragraph titled Addressing the Short Term Cash Need. Is the assistance of HPA conditioned on City Council approving the Mayor's plan or will this occur in any event?
27. Pages 312 and 323 discuss illegal dumping. There is also a reference in the Mayor's Transmittal Letter to a Blight Initiative. What is this Blight Initiative? How much will it cost? How will it be funded? How does the City intend to increase enforcement against illegal dumping?
28. Page 313 notes the City has only one Health Officer to inspect approximately 400 food service providers in the City. Is it possible to request the Commonwealth take over food service provider inspections in the City?
29. Page 315 Initiative BH01 references Appendix E for a list of City fees. There is no Appendix E in the Mayor's plan. What is the status of the RFP for the Full Cost Recovery Fee study?
30. Page 316 Initiative BH02 calls for hiring four additional codes enforcement officers. However, the Mayor's Transmittal Letter calls for hiring only two additional codes officers as part of her Blight Initiative. Is it two or four new hires?
31. Page 317 Initiative BH07 calls for filling vacant CDBG funded positions. Why hasn't this occurred?
32. The City does not have a proactive economic development strategy. Page 333 Initiative ED01 requires the City to designate an economic development coordinator. In Appendix A, the Mayor has revised the list of Act 47 Finding Requests to include increase the salary for the business administrator and an economic development coordinator. The Act 47 Funding Request was for \$150,000. The Mayor's request is for \$162,000. Is this amount sufficient to cover cost for an Act 47 coordinator, business manager and economic development coordinator for two years?

Pages 336-337 discusses the Southern Gateway Project and recommends the transportation piece of the project be undertaken. That piece would extend Third Street to Paxton Street and result in making South Third Street accessible and provide access to an underutilized area prime for redevelopment. The Federal government recently announced the availability of millions of dollars for transportation projects under an initiative called TIGER III. There is an August 22, 2011 deadline for pre-application submissions. Here is a link to the relevant web site: <http://www.dot.gov/tiger/application-resources.html> and this is the link to the July 1, 2011 Federal Register notice: http://www.dot.gov/tiger/docs/FY11_TIGER_IntNOFA.pdf

33. Page 337 discusses the Neighborhood Corridor Projects and references a \$50,000 planning grant received by CREDC. Since one of the vacant buildings is the former Patriot News building, the publisher should be asked to fund the City's efforts to market and develop that property.
34. Pages 339-343 discuss the tax abatement strategy. However the discussion is the same as the Act 47 plan, yet the Mayor calls for only a five-year abatement program in her transmittal letter.
35. Page 343 Initiative ED04 discusses improving management of the revolving loan portfolio. The City should suspend any new loans until a thorough investigation into the program is completed to determine how the program got out of control.
36. Page 359 discusses the Real Estate Tax Senior Citizen Rebate. In her transmittal letter, the Mayor calls for the continuation of this program. However, in the plan, it is noted that the rebate program is not authorized by law.
37. Page 366 discusses the Business Privilege & Mercantile Tax and references a recent Pennsylvania Supreme Court decision holding that a base of operations is not necessary for the tax to apply. The plan speculates whether this holding would apply to out-of-town attorneys attending trial in Dauphin County of Federal Court, lobbyists who stay overnight during legislative sessions, and professional athletes. The City should evaluate the potential to apply the BPMT to those persons/businesses.

If this plan is revised, and approved by City Council and DCED Secretary, the City faces a monumental task in changing the way it is structured and operates. There must be outreach to the community to assist in implementing many of these initiatives. A spirit of conciliation and cooperation must replace the standoff approaches that have dominated City affairs for too many years. We are all stakeholders in this crisis.

Respectfully submitted for the good of the City,



William J. Cluck