

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

THE CITY OF HARRISBURG, PA,)	
)	Bankruptcy No. 11-6938 (MDF)
Debtor.)	
)	Chapter 9
)	
)	

**CITY OF HARRISBURG’S EMERGENCY MOTION FOR AN ORDER
CONFIRMING AUTHORITY OF CITY TO PAY PRE-PETITION CLAIMS OF
CERTAIN VENDORS, SERVICE PROVIDERS,
EMPLOYEES, AND INSURANCE PAYMENT OBLIGATIONS**

The City of Harrisburg, through its Mayor, the Honorable Linda D. Thompson (the “City”), by and through its counsel, Tucker Arensberg, P.C., hereby move the Court for an Order confirming the authority of, but not requiring, the City of Harrisburg to pay Pre-Petition Claims of Certain Vendors, Service Providers, Employees, and Insurance Payment Obligations (the “Motion”). A proposed Order is attached hereto as Exhibit “A”.

1. The City of Harrisburg (the “City”) is a Pennsylvania Municipal Corporation organized pursuant to the Third Class City Code, Act of June 23, 1931, P.L. 932, as amended, 53 P.S. § 35101 *et seq.*, and operating pursuant to Mayor-Council Plan A (“Plan A”) of the Optional Third Class City Charter Law, Act of July 15, 1957, P.L. 901, as amended, 53 P.S. § 41101 *et seq.*

2. On October 11, 2011, four members of the City Council of Harrisburg (the “Unauthorized Council Members”), by resolution, purported to authorize the filing of, and did file, a bankruptcy petition in the name of the City of Harrisburg (the “Petition”) under Chapter 9 of the United States Bankruptcy Code, 11 U.S.C., (the “Bankruptcy Code”).

3. The City of Harrisburg through Linda Thompson as Mayor has disputed the propriety of the Petition and a hearing on the Petition and Objections thereto is set for November 23, 2011.

4. In the interim, the automatic stay under 11 U.S.C. §922 is in effect. The City has the funds to pay its vendors in accordance with pre-petition terms, but due to the illegal action of City Council in filing a bankruptcy petition, certain pre-petition creditors including, *inter alia*, insurance providers, service providers, employees and vendors of goods and services (the “Vendors”) have expressed concern about receiving payments without confirmation by the Court of the City’s authority to make such payments.

5. In other instances, certain Vendors are unwilling to continue to provide goods and services on the terms on which they had provided such goods and services pre-petition-- instead demanding C.O.D. payment terms if their prepetition invoices are not paid.

6. Pursuant to Bankruptcy Code Section 904 the City does not need Court authority to pay the Vendors for their pre-petition claims, but the City has been put in the position of needing to file this Motion because of the unauthorized action of City Council, which in violation of its duties to the citizens of Harrisburg has acted improvidently and further jeopardized the City’s financial condition.

7. In the course of doing business, the City procures goods and services from its Vendors who are approved as the parties from whom the City may obtain such goods and services -- usually after a competitive bidding process. For example, the City has certain vendors that supply tires, batteries, parts and fuel for City vehicles, including for police, fire and other emergency vehicles.

8. Because of this acquisition process, the City cannot simply stop doing business with a vendor without going through a lengthy requisition process which can take several weeks

for approval. If the City runs out of fuel for its vehicles and the current approved vendors refuse additional fuel, there would be an immediate and adverse affect on and harm to the City, its operations and its ability to provide services to its Citizens.

9. As of the Petition Date, many Vendors were owed payments on account of pre-petition obligations. By this Motion, the City of Harrisburg seeks confirmation of its authority to pay the Vendors on their invoices in the ordinary course of the City's business.

10. If the Motion is granted, then prior to providing payment to the Vendors, the City will seek to require a Vendor to agree to (a) continue to supply to the City post-petition on trade terms substantially similar or better than those provided to the City prior to the Petition Date, (b) execute a written acknowledgement that provides that any future purchase orders will be subject to the agreed trade terms, and (c) certain additional similar provisions as agreed between the City and each Vendor.

11. Chapter 9 of the Bankruptcy Code does not make Sections 363, 364(a),(b) or 507 (except for Section 507(a)(2)) applicable in a Chapter 9 proceeding. However Sections 544, 545 and certain subsections of §1129 of the Bankruptcy Code are applicable in Chapter 9. Accordingly, the uncertainty among Vendors makes such parties' cautious in extending further credit.

12. In order that the City be able to exercise its governmental powers without impairment, real or artificial, the City requests that the Court enter an Order confirming the authority of, but not requiring, the City of Harrisburg to pay Pre-Petition Claims of Certain Vendors, Service Providers, Employees, and Insurance Payment Obligations.

WHEREFORE, the City of Harrisburg, through its Mayor, the Honorable Linda D. Thompson respectfully requests that this Honorable Court enter the Order attached hereto as Exhibit "A" confirming the authority of, but not requiring, the City of Harrisburg to pay Pre-

Petition Claims of Certain Vendors, Service Providers, Employees, and Insurance Payment Obligations the City further prays that this Court grant the City such other relief as is just and proper.

Dated: October 25, 2011

Respectfully submitted,

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