

**CITY OF NANTICOKE**

**EVALUATION OF CITY'S REQUEST TO RESCIND DETERMINATION OF  
DISTRESS PER ACT 47, THE MUNICIPALITY FINANCIAL RECOVERY ACT**

**Hearing Held: June 22, 2015**



COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF COMMUNITY & ECONOMIC DEVELOPMENT

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IN RE: : REQUEST FOR TERMINATION OF  
: STATUS UNDER SECTION 255.1 OF  
CITY OF NANTICOKE : THE MUNICIPALITIES FINANCIAL  
: RECOVERY ACT  
:

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REQUESTING PARTY:

The Nanticoke City, City Council, in cooperation with the Recovery Coordinator, Commonwealth of Pennsylvania, Department of Community and Economic Development, Governor's Center for Local Government Services.

**DEPARTMENTAL DETERMINATION**

1. On May 26, 2006, the City of Nanticoke (the "City") was designated a financially distressed municipality pursuant to the Municipalities Financial Recovery ("Act 47"), codified at 53 P.S. § 11701.101 et seq.
2. On June 3, 2015, the City of Nanticoke, City Council requested by resolution to terminate distressed status under Act 47, based on recommendations from the Recovery Coordinator and the Department of Community and Economic Development.
3. A public hearing was held on June 22, 2015 in accordance with section 255.1(a).
4. In considering whether distressed status shall be terminated, section 255.1 requires a consideration of whether:
  - (a) Operational deficits of the municipality have been eliminated and the financial condition of the municipality as evidenced by audited financial statements prepared in accordance with generally accepted accounting principles and projections of future revenues and expenditures, demonstrates a reasonable probability of future balanced budgets absent participation in this act.

- (b) Obligations issued to finance the municipality's debt have been retired, reduced or reissued in a manner that has adequately refinanced outstanding principle and interest and has permitted timely debt service and reasonable probability of continued timely debt service absent participation in this act.
- (c) The municipality has negotiated and resolved all claims or judgments that would have placed the municipality in imminent jeopardy of financial default.
- (d) The reasonably projected revenues of the municipality are sufficient to fund ongoing necessary expenditures, including pension and debt obligations and the continuation or negotiation of collective bargaining agreements and the provision of municipal services. Projections of revenues shall include any anticipated tax or fee increases to fund ongoing expenditures for the first five years after termination of distressed status.

53 P.S. § 11701.255.1(c).

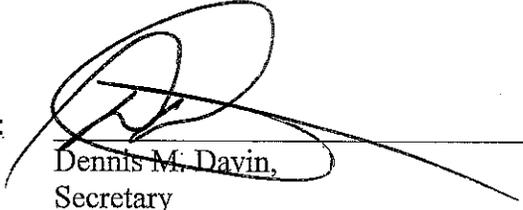
5. With regard to the first factor, there is uncontroverted evidence that deficits have been eliminated and the City now exhibits sound financial management practices. Further, though the City is projected to incur general fund operating deficits in the coming years, it has the ability to balance its budget with a reduction in expenditures, an increase in real estate or earned income tax. Accordingly, there is a reasonable probability of future balanced budgets following termination of the City's Act 47 status.
6. The City incurred multiple obligations to finance its debt. In 2004 and 2005, the City issued debt to fund previously unfunded debt and retire outstanding Tax Anticipation Note obligations. The City also refinanced an outstanding Sewer Fund obligation in 2005. The Commonwealth extended two, no-interest Act 47 loans to the City in 2006 and 2007. The City paid off the Series 2004 debt obligation in 2014 and will retire the series 2005 note in 2015. The initial Act 47 loan (\$700,000) will be paid in full in 2016, and the second Act 47 loan (\$200,000) will be retired in 2018. The Series 2005 Sewer Fund Note will be paid off in 2019. Accordingly, the City's obligations have been reduced to a level that permits a reasonable probability of continued timely debt service outside of Act 47.
7. There are no judgments which would place the City in imminent jeopardy of financial default.

8. As previously stated, the City will face increasingly larger general fund operating deficits in the next five years. However, its status as a Home Rule municipality, allows the City to raise real estate, earned income and real estate transfer taxes without limits to provide for revenue to fund City operations. A carefully planned increase in certain taxes coupled with a reduction in nonessential operating expenditures will allow the City to fund its pension and debt obligations for the next five years.

AND NOW, this the 24th day of August, 2015, upon review of the record of the hearing held on June 22, 2015, and the recommendations of the departmental staff and the aforementioned findings of fact,

IT IS ORDERED that the status of City of Nanticoke, Luzerne County as a distressed municipality under the Municipalities Financial Recovery Act, Act 47 of 1987, as amended, is hereby TERMINATED.

By:



Dennis M. Davin,  
Secretary

## FINDINGS OF FACT

Testimony was presented at a public hearing held Monday, June 22, 2015 to rescind the distress determination for the City of Nanticoke, Luzerne County, from a Determination of Distress under the provisions of Act 47 of 1987, the Municipality Financial Recovery Act. The purpose of the hearing was to gather information on the City's financial condition to help the Secretary of the Department of Community and Economic Development (DCED) determine the City's financial condition and to inform the citizens, employees and officials of the City of Nanticoke of the Act 47 exit process.

The information that follows was presented by the Recovery Plan Coordinator, the Mayor, the City Council, the City Manager, the City Finance Manager, the Department of Community and Economic Development and citizens.

Evidence was presented that demonstrated the eligibility of the City to exit the Act 47 Municipality Financial Recovery Program. No testimony was received that contradicted the evidence presented at this hearing.

The City of Nanticoke has resolved all provisions of Act 47. The Act 47 process requires a public hearing prior to consideration of exit from the program.

The City of Nanticoke revenue and expenditure history, fund balance history, government wide fund balance history and revenue and expenditure projections indicate a clear financial recovery.

Nanticoke entered Act 47 in 2006 with a need to restore fiscal integrity after years of uncontrolled spending coupled with inadequate financial and day-to-day management. The City suffered from both insufficient revenues and an inability to control expenditures. Nanticoke was using debt to maintain necessary services, essentially borrowing the equivalent of the City's operating budget every three years. Over the prior 20 years, a significant decline in population negatively impacted the City's tax base. In addition to an overall population decline, the 18 to 65 age group dropped while the over 65 age group increased. The loss of prime wage earners reduced the resource base for the earned income and per capita taxes and forced greater reliance on property taxes. The lack of reassessment by Luzerne County prior to 2009 contributed to the increased debt levy in real property taxes as the City was unable to capture naturally occurring growth in property values. The City was at its statutory limit of 30 mills for general purpose property tax rates. Fueled by increased borrowing, debt millage, which has no statutory limit under the Third Class City Code, was an additional 30 mills of real estate taxes.

The Coordinator worked with the City to develop and implement a Recovery Plan process that has resulted in a change to a Home Rule Charter form of government, an increase in revenues, controls on expenditures, better overall management, and a reduced level of outstanding indebtedness. These recovery plan measures were undertaken without the need to either curtail or eliminate City services or to reduce or eliminate City personnel.

Nanticoke has taken numerous steps that have substantially improved the financial position of the City and will continue to provide a reasonable probability of future balanced budgets absent Act 47 provisions.

## **FORMAL TESTIMONY FROM PUBLIC HEARING**

The following discussion will focus on the actual hearing testimony that was conveyed at the public hearing. As Hearing Officer, I (Richard Vilello) conducted the public hearing.

Gerald Cross, Executive Director and Joseph Boyle, Senior Research Associate, Pennsylvania Economy League (PEL), the City's Recovery Plan Coordinator presented the results of the City's efforts under the recovery plan.

### Earned Income Taxes

The City increased its resident Earned Income Tax (EIT) rate as permitted by Act 47, raising the rate from 0.5 percent to 1.5 percent. As a result, revenue grew from approximately \$680,000 to over \$2 million annually. Without this substantial increase in revenue, the level of municipal services would have required a significant and unacceptable reduction. City officials then spearheaded an effort to develop a Home Rule Charter for Nanticoke that allows the City to retain the higher resident EIT level as necessary after exiting Act 47. A non-resident EIT of 0.33 percent that is allowed under Act 47 was initially levied to support capital improvements but was successfully phased out.

### Home Rule Charter

As a Home Rule community, the City is no longer bound by statutory limits on rates for EIT, property taxes and realty transfer taxes, providing for greater flexibility in the future to generate tax revenue based on community needs. The charter also provided for a new, more efficient government structure that is outlined in more detail below.

### Real Estate Taxes

Luzerne County implemented a property reassessment in 2009 that increased the City's real estate tax base. As previously stated, Nanticoke was at its limit for general purpose real estate millage when it entered Act 47, leaving no room to gain additional general purpose revenue if needed through a property tax increase. The County reassessment enabled Nanticoke to reduce the general purpose property tax rate to 1.4573 mills in 2010. The current rate is 4.2514 mills. One mill is worth approximately \$369,000. The City now has the ability under its Home Rule Charter to raise its general purpose property tax to meet its revenue requirements with no statutory limit.

### Financial Management

The lack of a consistent administrative organization hindered the City's ability to correct the fiscal mismanagement that contributed to the distress designation. The recovery process led to substantial improvements in the City's financial and management capacity through the hiring of an experienced City Manager, the retention of a qualified finance officer and the implementation of an accurate accounting and financial management system. The City's financial reporting systems and processes were rebuilt and timely financial information is now available to City officials and citizens. The ordinance to adopt an Administrative Code was introduced at the June 3, 2015 City Council meeting and was adopted at the June 17, 2015 City Council meeting. In addition, the Home Rule Charter established a Mayor-Council form of government with the City Manager clearly charged with running Nanticoke's day-to-day operations.

### Labor Negotiations

New contracts were negotiated with all City bargaining units that provided for Recovery Plan cost containment provisions. As noted previously, there were no employee layoffs and service levels remained constant.

### Elimination of Deficits

Annual financial reports and recent audits indicate that deficits have been eliminated and the City exhibits sound financial management practices. Monies have been transferred to capital funds and the City has established a budgetary reserve target. According to the City's audited and reported figures, Nanticoke experienced surpluses from 2010 through 2014.

### Debt Overview

The City issued debt in 2004 and 2005 to fund unfunded debt and retire outstanding TAN obligations. The City also refinanced an outstanding Sewer Fund obligation in 2005. The Commonwealth extended two, no-interest Act 47 loans to the City in 2006 and 2007. The City paid off the Series 2004 debt obligation in 2014 and will retire the series 2005 note in 2015. The initial Act 47 loan (\$700,000) will be paid in full in 2016, and the second Act 47 loan (\$200,000) will be retired in 2018. The Series 2005 Sewer Fund Note will be paid off in 2019.

### Debt Millage

The City levies a debt service millage of 0.6077 mills on taxable real property to generate funds to help pay annual debt service. The debt service millage generates over \$200,000 per year. The principal and interest on the Series 2005 sewer fund obligation is paid through the City's Sewer Fund.

### Financial Baseline

The Coordinator has reviewed Nanticoke's financial history and developed financial projections for 2015-2020, using the City's 2015 budget as the projection baseline. The 2015 budget includes anticipated increases in expenditures as a result of the elimination of pension fund "smoothing" in 2015 (approximately \$200,000 increase over 2014) and an increase in post-retirement benefits for firefighters that will increase by approximately \$88,000 over 2014. These increases as well as the normal expenditure growth assumptions increase the 2015 budget expenditures over the prior review. Projections indicate that the City will incur increasingly larger general fund operating deficits from \$124,523 in 2016 to \$580,373 in 2019 absent increases in revenue or decreases in expenditures.

### Overcoming Deficits

In order to overcome these projected deficits, Nanticoke can reduce operating expenditures provided those reductions do not jeopardize the health, safety, and welfare of the City's citizens, businesses, and visitors. As a Home Rule municipality, Nanticoke has the ability to raise real estate taxes, EIT, and the real estate transfer tax without statutory limits to provide revenue to fund City operations. Nanticoke will need to raise real estate tax rates from 4.2514 mills to 6.00 mills through 2020 to erase projected deficits. Alternatively, the City could increase EIT from the current 1.5 percent to 2.0 percent or could use a combination of raising EIT and real estate property taxes. The City's Home Rule Charter limits annual revenue increases to 108 percent of the previous year's recurring revenue base as defined in the Charter and the City's Administrative Code.

## Conclusion

The City now has a consistent series of revenue streams to provide realistic and affordable service levels. Changes to the financial management of the City allow the elected officials and the City Manager to deal with those factors that led to the distress determination. Reassessment has provided an enhanced and stable real estate tax base that permits the City to fund current service levels and to increase those levels of service if warranted. It is now the City's responsibility to remain vigilant and to actively manage the provision of City services within the context of the fiscal and management resources available to the City.

The Coordinator has worked with City officials to develop an ongoing strategy that will prevent the reoccurrence of past fiscal transgressions and point the way to balanced annual operating budgets. After termination of Act 47 status, the City's financial parameters will be constrained by the City's Home Rule Charter, Act 511, Acts 111 and 195, and related laws of the Commonwealth as applied to local governments. The ongoing challenge for the City is to maintain its fiscal discipline and continue to provide the level of public services expected and requested by its citizens, businesses, and visitors within the productivity of the financial resources that are available. The following recommendations are intended to provide the City with guidance moving forward to maintain a sustainable balanced budget for the foreseeable future while continuing to meet the service needs of its residents and businesses and provide for their health, safety and welfare.

**As such, it is the recommendation and opinion of the Coordinator that the conditions that led to the earlier determination of municipal distress for the City are no longer present and warrant a termination of Act 47 status in accordance with the factors listed in Section 255.1 of the Act.**

Mayor Richard Wiaterowski offered testimony as follows. The Mayor thanked citizens, employees, elected officials both past and present for their efforts. He stated that the City has made difficult decisions which have resulted in a positive impact on the City. The City is committed to moving forward and will continue to do so.

Councilwoman Lesley Butczynski offered the following testimony. Ms. Butczynski thanked the Mayor, City Administrator, employees, past elected officials and the citizens for working together to achieve exit from distressed status. She further noted that the City will continue to work toward moving the City forward.

City Manager Andrew Gegaris testified next. Mr. Gegaris acknowledged the improved condition of the City and noted that there are many plans for its future. He pledged to continue efforts to prevent circumstances which led to the City's distressed status.

City Finance Director Jennifer Polito was next to testify. Ms. Polito noted that the City has reconstructed its finance software making it more efficient, has produced financial reports for monthly Council meetings, will continue to control spending, will conduct timely audits and continue to produce a balanced budget.

Jim Rose, Local Government Policy Specialist for DCED's Northeast Region testified that the City is in a strong position to move forward because of the unusually high level of cooperation of its elected and appointed officials. Mr. Rose recommended that the City exit its Act 47 designation. He noted that a hearing officer report would be prepared and submitted to Secretary Dennis Davin for approval.

A resident named Mr. Marks requested the opportunity to speak. He asked a question regarding City debt, but had no comments to offer. As such, Mr. Vilello pointed out that the hearing was for testimony only, not for questions, but noted that his question could be answered outside the hearing. Mr. Marks elected to file a letter with the Department, and a copy of the letter is attached to the stenographer's report.

Mr. Vilello thanked all for their testimony and congratulated all who worked closely to make hard decisions and improve the City.

### **CONCLUSIONS**

The financial condition of the City of Nanticoke has significantly improved during the recovery period. The commitment of the Mayor, City Council, City Manager and staff over the past several years to adhere closely to the recommendations of the Recovery Plan is admirable. The analysis of the City's financial position reflects the financial improvements that have occurred and form the basis for the recommendation by the Recovery Coordinator that the City of Nanticoke should exit from distressed status.

The analysis supports the fact that the conditions that initially led to the City's distress status no longer exist. The City's elected officials have requested that the City exit distressed status at this time.

It is Commonwealth policy, as stated in Act 47, "to foster the fiscal integrity of municipalities so that they provide for the health, safety and welfare of their citizens; pay principal and interest on their obligations when due; meet the financial obligations to their employees, vendors and suppliers; and provide for proper accounting procedures, budgeting and taxing practices." The City has done just that.

Based on the testimony presented at the public hearing and evidence gathered through the consultative investigation, the City of Nanticoke meets the criteria for distress status to be rescinded.

I recommend that for the above reasons, the status of distressed municipality under the provisions of the Municipalities Financial Recovery Act, Act 47 of 1987, be rescinded for the City of Nanticoke.

Respectfully submitted,

Richard Vilello, Hearing Officer

Executive Director, Governor's Center for Local Government Services