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March 31, 2020

VIA EMAIL

C. Kim Bracey  
Executive Director  
PA Department of Community & Economic Development  
Governor's Center for Local Government Services  
Commonwealth Keystone Building  
400 North Street, 4<sup>th</sup> Floor  
Harrisburg, PA 17120-0225

Dear Director Bracey:

Please find enclosed the *Act 47 Coordinator's Recommendation to the Secretary of the Department of Community and Economic Development for the City of Scranton* prepared by the Pennsylvania Economy League, Central PA Division, LLC, the appointed Act 47 Coordinator for the City of Scranton. The *Recommendation* was prepared in accordance with the post-report exit plan procedures included in §11701.257(b) of Act 47 of 1987, as amended,

Please feel free to call me to discuss the *Recommendation* or any questions that you may have.

Sincerely,

Gerald E. Cross  
PA Economy League

GEC/mpd

**ACT 47 COORDINATOR'S RECOMMENDATION TO THE  
SECRETARY OF THE  
DEPARTMENT OF COMMUNITY AND ECONOMIC  
DEVELOPMENT  
FOR THE  
CITY OF SCRANTON**

Prepared By:

Pennsylvania Economy League, Central PA Division, LLC  
88 North Franklin Street, Suite 200  
Wilkes-Barre, PA 18701

March 2020

## **BACKGROUND**

Scranton was incorporated as a city on April 23, 1866 with a population of 35,000. The City of Scranton (City) is located in Lackawanna County and is the largest municipality in northeastern Pennsylvania. It became a major commercial city—a center of mining, railroads and industry—and attracted thousands of new immigrants. By the mid-1930s, Scranton's population had swelled beyond 140,000 due to growth in the mining and industry. After World War II coal lost favor to oil and gas as heating fuel and manufacturing moved to lower labor cost areas of the United States and overseas. The City's population began a downward trend to an estimated 2015 population of 77,118.

The City is currently governed by a home rule charter adopted by the City's voters in a referendum on May 21, 1974. The Home Rule Charter of Scranton (Home Rule Charter) became effective on January 5, 1976. Under the Home Rule Charter, the Mayor and Council, jointly, are the governing body of the City. The governing powers are divided between executive and legislative branches. The executive branch is headed by a Mayor elected at large for a four-year term. The Mayor has, among other powers, the power to veto ordinances and resolutions passed by Council, negotiate contracts, and draft and propose to Council an annual operating budget and an annual capital budget. The Mayor appoints a Business Administrator with the advice and consent of Council. The Business Administrator is responsible for supervising the administration of the City's adopted operating budget, and all operating department supervisors report to the Business Administrator.

The legislative branch is a Council that consists of five members elected at large for four-year terms. City Council appoints a City Clerk who is responsible for giving notice of Council meetings and keeping a journal of its proceedings. Council is required to meet once a week in regular session. All official and final action is taken by a majority vote. Ordinances or resolutions only become effective upon being signed by the Mayor or when passed by an extraordinary majority over the Mayor's veto. Council may adopt the Mayor's proposed budgets with or without amendments. If Council does not adopt a budget by December 15<sup>th</sup> the Mayor's proposed budget becomes the City's official budget for the ensuing year. The City's fiscal year commences on January 1 and ends on December 31.

The voters of the City also elect a City Controller for a four-year term. The City Controller is responsible for maintaining accounting systems for the City government and for examining and approving all contracts, purchase orders and other financial obligations against the City.

Pursuant to the Commonwealth of Pennsylvania's Municipalities Financial Recovery Act, Act 47 of 1987, as amended, (Act 47) the City was declared a financially distressed municipality by a Departmental Order of the Secretary of the then Department of Community Affairs (now Department of Community and Economic Development) (DCED) on January 10, 1992. See Appendix A. The Pennsylvania Economy League, Central PA Division, Wilkes-Barre, Pennsylvania was subsequently appointed the Act 47 Coordinator (Coordinator) for the City. The Coordinator prepared and the City adopted its original Act 47 Recovery Plan in 1992 and adopted subsequent Recovery Plan amendments prepared by the Coordinator in 1995, 2002, 2012 and 2015. The City has been in the Commonwealth's Act 47 program for over twenty-eight years.

Act 199 of 2014 (Act 199) amended Act 47 to provide a timeline and process for municipalities to exit from their distressed determination. For the City, the *Revised and Updated Act 47 Recovery Plan For the City of Scranton*, adopted by Scranton City Council on August 23, 2012, started the Act 199 timeline for the City to exit from the Act 47 program. As part of the Act 199 exit process, the Coordinator was required to prepare and file a report stating the financial condition of the City. On February 17, 2017, the Coordinator filed with the City a *Report Stating the Financial Condition of the City of Scranton* (Financial Condition Report). The Coordinator's finding in the Financial Condition Report noted that although the City had made "noteworthy progress" on a number of fronts, the Coordinator recommended that a three-year exit plan be prepared for the City.

The Coordinator, in conjunction with City officials, prepared a three-year exit plan for the City. On July 27, 2017 the City adopted the *Act 47 Exit Plan for the City of Scranton* (2017 Exit Plan). City officials have cooperated with the Coordinator in implementing many of the initiatives included in the City's 2017 Exit Plan.

Act 199 provides that after a municipality adopts a three-year exit plan the Secretary of DCED may, upon written recommendation from the coordinator, issue an administrative determination to rescind the order declaring the municipality distressed, thereby terminating the

distressed status of the municipality, or request the Governor to make a determination of a fiscal emergency in the municipality. If the coordinator does not provide a written recommendation to the Secretary of DCED and three-years elapse since the adoption of an exit plan, then the Secretary of DCED is required to terminate the distressed status of the municipality. See 53 P.S. §11701.257(b) and (c). The City adopted its Exit Plan on July 27, 2017.

DCED and the Coordinator have concluded that the Coordinator shall issue a written recommendation to the Secretary of DCED of whether to issue a determination to rescind the order declaring the City a distressed municipality or whether to request the Governor to make a determination of fiscal emergency in the City. The remainder of this Act 47 Coordinator's Recommendation will analyze the relevant facts in the City upon which the Coordinator's recommendation will be established.

### **FACTORS TO CONSIDER TO RESCIND A DISTRESS DETERMINATION**

Section 11701.255.1(c) of Act 47 enumerates four factors for the Secretary of DCED to consider in making a determination on whether to rescind the distressed status of a municipality. The full language of §255.1(c) is as follows:

- (c) **Factors to Consider.** — If the secretary concludes that *substantial evidence* supports an affirmative determination for each of the following factors, the determination shall be that the distressed status will be rescinded. The secretary shall consider whether:
- (1) 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.
  - (2) Obligations issued to finance the municipality's debt have been retired, reduced or reissued in a manner that has adequately refinanced outstanding principle [*sic*] and interest and has permitted timely debt service and reasonable probability of continued timely debt service absent participation in this act.
  - (3) The municipality has negotiated and resolved all claims or judgments that would have placed the municipality in imminent jeopardy of financial default.
  - (4) 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 a termination of distressed status.

53 P.S. §11701.255.1(c). (Emphasis added.)

“Substantial evidence” is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. See *Republic Steel Corporation v. Workmen’s Compensation Appeal Board*, 492 Pa. 1 (Pa. 1980), 421 A.2d. 1060, at 1062. Appellate review is focused on whether there is rational support in the record, when reviewed as a whole, for an agency’s action. *Id.* at 1063. Findings of fact will be overturned only if they are arbitrary and capricious. *Id.* Using the statutory language above as guidance, the Coordinator will examine the relevant facts as they exist in the City for each factor enumerated in §11701.255.1(c).

**Factor (1)**

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.

The City provided the Coordinator with completed annual audits for the years 2016-2018. For 2019, the Coordinator utilized restated financial statements provided by the City. For 2020, the Coordinator will analyze the City’s adopted 2020 operating budget and the Coordinator’s database of City financials to create 2020 estimates.

During the period 2016 – 2019 the City experienced a mix of surpluses and deficits. The City’s audited financial statements show that the City experienced an excess of revenues over expenditures of \$3,972,101 in 2016. In 2016, the City received over \$74,000,000 in proceeds from bonds. The principal 2016 bond financings consisted of \$29,810,000 in bond financing to pay the police and fire judgment resulting from a 2011 Pennsylvania Supreme Court ruling; \$7,720,000 refinancing a letter of credit that backed a 2008 taxable variable rate demand note; and \$32,850,000 in bonds to generate the funds needed to defease the remaining outstanding debt

of the Scranton Parking Authority (SPA) as part of the 2016 monetization of the SPA. The City also received \$66,519,986 in proceeds from the sale of the Scranton Sewer Authority to a third party in December 2016 (2016 Sewer Sale Proceeds). This sale transaction significantly increased the City's fund balance from \$5,050,411 to \$75,542,498.

The City's 2017 audited financial statements evidence that the City experienced an excess of expenditures over revenues resulting in a deficit of (\$42,262,695). However, this deficit occurred during 2017 due to the City's utilization of a portion of the 2016 Sewer Sale Proceeds in the fund balance to defease seven outstanding general obligation bonds and notes. The total long-term debt defeased by the City in 2017 was approximately \$42,411,312. (See **Factor 2** for defeased 2017 debt details). The defeasance of the general obligation bonds and notes reduced the City's long-term debt general obligation notes and notes from \$154,893,540 in 2016 to \$113,463,684 in 2017. After accounting for the unbudgeted defeasance expenditure, the City's deficit in 2017 was (\$148,617). The defeasance of these general obligation bonds and notes decreased the City's fund balance from \$75,542,498 to \$33,279,803.

The City's 2018 audited financial statements evidence that the City experienced an excess of expenditures over revenues resulting in a deficit of (\$1,241,138). In 2018, the City issued a five-year Series of 2018 general obligation note of \$22,990,000. The note was secured by \$22,990,000 of 2016 Sewer Sale Proceeds which were deposited in an account with Webster Bank of Waterbury, Connecticut. The \$22,990,000 general obligation note proceeds received by the City were distributed to partially fund the City's pensions—10% was distributed to the City's non-uniformed pension plans and 45% was distributed to the police pension plan and fire pension plan, respectively. The City's fund balance decreased in 2018 from \$33,279,803 to \$32,038,665.

For 2019, the City's 2019 unaudited financial statements were examined for this analysis. In 2019, the City experienced an excess of revenues over expenditures resulting in a \$1,412,341 surplus. Unlike the prior three years, the City did not undertake any long-term debt obligations nor defease any long-term debt. The City's fund balance increased from \$32,038,665 to \$33,451,006.

Based upon the City's adopted 2020 budget and the Coordinator's financial database, the City is estimated to incur a slight deficit of (\$124,290) in 2020. In 2020, the City will make its first principal payment of \$6,000,000 on the Series of 2018 general obligation note thereby

increasing the City's 2020 debt service payments. The City will transfer \$6.0 million from the Webster Bank account to make this payment in 2020. The estimated 2020 deficit of (\$124,290) will slightly reduce the City's fund balance to \$33,326,716. (See Table 1.)

Table 1  
CITY OF SCRANTON  
General Fund Revenues and Expenditures  
2016 to 2020

	2016 Audit	2017 Audit	2018 Audit	2019 Restated	2020 Estimated
Taxes	70,548,681	72,648,050	72,925,885	73,350,942	75,584,728
Intergovernmental	3,768,628	4,963,928	4,761,305	4,419,309	4,459,266
Departmental Earnings	1,410,012	281,014	554,483	307,639	447,000
Refuse Disposal Fee	7,440,667	6,637,754	6,970,633	7,268,069	7,111,678
Licenses & Permits	1,332,642	2,295,187	2,396,375	2,452,580	2,105,664
Cable Television Franchise Revenue	1,016,420	1,071,698	1,022,958	771,904	975,000
Payments In Lieu of Taxes	60,791	271,559	71,456	245,338	350,000
Investment Income	0	0	0	0	0
Other Revenues	904,101	3,073,037	881,339	1,161,203	967,300
Rents & Concessions	6,500	5,500	5,500	5,000	5,000
Program Income	<u>0</u>	<u>0</u>	<u>432,088</u>	<u>0</u>	<u>0</u>
<b>Total Revenues</b>	<b>86,488,442</b>	<b>91,247,727</b>	<b>90,022,022</b>	<b>89,981,984</b>	<b>92,005,636</b>
General Government	13,045,312	14,539,547	17,687,403	15,127,080	18,405,585
Public Safety	48,284,517	53,625,673	67,310,714	47,480,091	49,130,303
Public Works	10,889,714	12,384,073	13,074,685	13,044,460	13,601,452
Community Development	0	0	0	0	0
Culture & Recreation	649,603	685,201	725,924	949,953	872,015
Debt Service	12,420,110	8,943,290	10,688,041	12,212,524	18,201,846
Capital Outlay	<u>0</u>	<u>1,975,936</u>	<u>3,912,713</u>	<u>1,876,768</u>	<u>1,893,300</u>
<b>Total Expenditures</b>	<b>85,289,256</b>	<b>92,153,720</b>	<b>113,399,480</b>	<b>90,690,876</b>	<b>102,104,501</b>
<b>Operating Surplus/(Deficit)</b>	<b>1,199,186</b>	<b>(905,993)</b>	<b>(23,377,458)</b>	<b>(708,892)</b>	<b>(10,098,865)</b>
Transfers	1,016,976	2,930,526	169,391	2,741,550	9,398,901
Sale of Assets	0	2,570,139	0	0	1,520,824
Proceeds from Leases	0	0	1,944,539	106	100
Proceeds from Bonds	74,018,961	24,620,000	22,990,000	0	1,000
Premium of Issuance of Bonds	0	1,539,054			
TRAN	12,750,000	12,750,000	12,750,000	12,700,000	12,750,000
Transfers Out	-8,823,003	-175,000	-2,132,397	0	0
TRAN	-13,014,162	-12,964,896	-13,101,263	-12,946,598	-13,196,250
Payment to escrow Agent for Refunding/Retirements	0	-72,437,410	0	0	0
Parking Authority Debt Payments	-31,864,978				
Court Award Payment	<u>-31,310,879</u>	<u>-189,115</u>	<u>-483,951</u>	<u>-373,824</u>	<u>-500,000</u>
<b>Total Other Financing Sources</b>	<b>2,772,915</b>	<b>(41,356,702)</b>	<b>22,136,320</b>	<b>2,121,234</b>	<b>9,974,575</b>
<b>Excess of Revenues &amp; Other Financing Sources over Expenditures and Other Financing Uses</b>	<b>3,972,101</b>	<b>(42,262,695)</b>	<b>(1,241,138)</b>	<b>1,412,341</b>	<b>(124,290)</b>
Sale of Sewer Authority	66,519,986				
Fund Balance Beginning of Year	5,050,411	75,542,498	33,279,803	32,038,665	33,451,006
<b>Fund Balance End of Year</b>	<b>75,542,498</b>	<b>33,279,803</b>	<b>32,038,665</b>	<b>33,451,006</b>	<b>33,326,716</b>

Note that the Coordinator will analyze the probability of future City revenues and expenditures producing future balanced budgets absent participation in this act in the **Factor 4** projections of City revenues and expenditures.

**Factor (2)**

Obligations issued to finance the municipality's debt have been retired, reduced or reissued in a manner that has adequately refinanced outstanding principle [*sic*] and interest and has permitted timely debt service and reasonable probability of continued timely debt service absent participation in this act.

As mentioned in **Factor (1)** above, the City used a large portion of the 2016 Sewer Sale Proceeds to defease a significant amount of long-term, high-interest debt in 2017. As a result, from 2016 to 2017 the City's outstanding long-term debt decreased from \$158,893,540 to \$113,463,684.

In 2018, the City issued a \$22.9 million general obligation note to fund the City's three defined benefit pension plans. As previously mentioned, this note was secured by \$22,990,000 of 2016 Sewer Sale Proceeds which are currently deposited in an account with Webster Bank. The City did not undertake any major issuances of general obligation bonds or notes in 2019.

During the period 2016 – 2019 the City timely made all of its debt service payments. The City's total outstanding debt decreased from \$158,893,540 in 2016 to 117,634, 814 in 2019. (See Table 2.)

Table 2  
**CITY OF SCRANTON**  
**Outstanding Debt Principal**  
**2016 to 2019**  
(Outstanding as of December 31<sup>st</sup> each year)

	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>Maturity</b>
	<b>Audit</b>	<b>Audit</b>	<b>Audit</b>	<b>Estimated</b>	<b>Date</b>
<b>General Obligation Bonds</b>					
Emmaus General Authority Series 2002	4,405,000	4,105,000	3,795,000	3,470,000	2028
Series B of 2003	25,195,000	0	0	0	
Series C of 2003	13,270,000	0	0	0	
Series D of 2003	6,135,000	0	0	0	
Series A of 2012	6,075,000	0	0	0	
Series C of 2012	6,655,000	0	0	0	
Series A and AA of 2016	39,278,595	37,175,000	34,570,000	31,815,000	2028/2025
Series of 2017	0	24,620,000	22,620,000	20,520,000	2029
<b>Total GO Bonds</b>	<b>101,013,595</b>	<b>65,900,000</b>	<b>60,985,000</b>	<b>55,805,000</b>	
<b>General Obligation Notes</b>					
Series B of 2012	800,000	0	0		
Series A of 2013	3,774,025	0	0		
Series of 2016	35,563,692	32,840,000	32,605,000	32,360,000	2032
Series of 2018	0	0	22,620,000	22,990,000	2023
<b>Total GO Notes</b>	<b>40,137,717</b>	<b>32,840,000</b>	<b>55,225,000</b>	<b>55,350,000</b>	
<b>Lease Obligations Payable</b>					
2006 Capitalized Lease Equip Energy System	700,428	0	0		
2006 Capitalized Buildings	8,820,000	7,705,000	0		2024
2016 Capitalized Lease Equipment	1,587,346	1,017,687	0		
2016 Street Light Lease	4,000,000	3,678,203	3,395,681	3,094,979	2027
Capitalized Lease Equipment	0	0	2,310,712	2,310,712	2023
<b>Total Lease Obligations</b>	<b>15,107,774</b>	<b>12,400,890</b>	<b>5,706,393</b>	<b>4,791,109</b>	
<b>Notes Payable</b>					
DCED Act 47 Loan	600,000	500,000	400,000	300,000	2022
PIB Loan	2,034,454	1,822,794	1,607,352	1,388,705	2025
<b>Total Notes Payable</b>	<b>2,634,454</b>	<b>2,322,794</b>	<b>2,007,352</b>	<b>1,688,705</b>	
<b>Total Outstanding Debt</b>	<b>158,893,540</b>	<b>113,463,684</b>	<b>123,923,745</b>	<b>117,634,814</b>	

The City has not notified the Coordinator nor is the Coordinator aware as of the writing of this Act 47 Coordinator’s Recommendation of any new City debt obligations to be incurred in 2020. The City’s 2020 debt service is projected to be \$17,858,079, of which \$6,000,000 will be transferred from the Webster Bank account for a principal payment on the 2018 general obligation note. Notwithstanding any borrowing which may be incurred in 2020, the Coordinator projects the City’s debt service obligations for the years 2020-2025 as stated in Table 3.

Table 3  
CITY OF SCRANTON  
Debt Service  
2020 to 2025

	<b>2020 Debt Service</b>	<b>2021 Debt Service</b>	<b>2022 Debt Service</b>	<b>2023 Debt Service</b>	<b>2024 Debt Service</b>	<b>2025 Debt Service</b>
General Obligation Bonds						
Emmaus General Authority Series 2002	456,450	454,725	457,650	455,050	457,100	457,100
Series A and AA of 2016	4,508,513	4,531,713	4,686,325	4,795,350	5,170,288	5,267,125
Series of 2017	3,231,000	3,230,750	3,225,000	3,233,750	2,296,000	868,750
<b>Total GO Bonds</b>	<b>8,195,963</b>	<b>8,217,188</b>	<b>8,368,975</b>	<b>8,484,150</b>	<b>7,923,388</b>	<b>6,592,975</b>
General Obligation Notes						
Series of 2016	1,878,000	1,875,000	1,876,500	1,872,250	2,442,500	3,783,500
Series of 2018	6,559,450	6,558,225	6,561,050	6,556,825	0	0
<b>Total GO Notes</b>	<b>8,437,450</b>	<b>8,433,225</b>	<b>8,437,550</b>	<b>8,429,075</b>	<b>2,442,500</b>	<b>3,783,500</b>
Lease Obligations Payable						
2016 Street Light Lease	429,767	438,218	446,379	455,150	464,090	473,206
Capitalized Lease Equipment	449,930	464,168	464,168	464,168	102,157	102,157
<b>Total Lease Obligations</b>	<b>879,697</b>	<b>902,386</b>	<b>910,547</b>	<b>919,318</b>	<b>566,247</b>	<b>575,363</b>
Notes Payable						
DCED Act 47 Loan	100,000	100,000	100,000	0	0	0
PIB Loan	244,969	244,969	244,968	244,811	244,991	244,991
<b>Total Notes Payable</b>	<b>344,969</b>	<b>344,969</b>	<b>344,968</b>	<b>244,811</b>	<b>244,991</b>	<b>244,991</b>
<b>Total Debt Service</b>	<b>17,858,079</b>	<b>17,897,768</b>	<b>18,062,040</b>	<b>18,077,354</b>	<b>11,177,125</b>	<b>11,196,828</b>

The Coordinator deems it worthy to note that in 2015 the City appointed a local bank as the City's paying agent for the City's debt service. The paying agent serves as a single point for paying the City's debt service obligations and is required by two City bond issues. The City designates 33% of annually collected real estate taxes to go directly to the paying agent. The paying agent structure created by the City has served the City well in meeting its annual debt service obligations over the past five-years. The Coordinator anticipates that the City will continue this process into the future.

### **Factor (3)**

The municipality has negotiated and resolved all claims or judgments that would have placed the municipality in imminent jeopardy of financial default.

Over the past 28 years the City, with a population of over 77,000 people, has had a fair share of litigation. During the 2017 Exit Plan period, the City has settled or fully adjudicated several outstanding lawsuits. However, as of the writing of this Act 47 Coordinator's Recommendation there remains several outstanding lawsuits that the City is defending, with one lawsuit in particular that involves a significant sum of money. The following is a review of the settled and active lawsuits involving the City.

#### **Settled lawsuits:**

- 1) In July 2019, the City settled a lawsuit filed by UGI Utilities, Inc., in 2015 that challenged a June 2015 City ordinance imposing new rules and fees on pavement cuts and inspections in the City. The City agreed to reduce the pavement cut and inspection fees to PennDOT standards and to provide UGI with a \$100,000 credit against future pavement cut and inspections fees to be allocated over five years.
- 2) In April 2019, the City agreed to pay \$245,000 to settle a federal lawsuit filed by a building contractor who alleged that the City Director of Licensing, Inspections and Permits improperly revoked his contracting licenses. The settlement will be paid from City general funds because insurance coverage of the claim was denied.
- 3) In March 2019, the City agreed to settle a class-action lawsuit filed in 2015 challenging the City's rental registration program. The City will pay a total of \$71,100 to 544 property owners, lower the rental registration fee from \$150 to \$45 in 2020 and pay plaintiff's legal fees.

#### **Outstanding lawsuits:**

- 1) A class action lawsuit filed in December 2016 challenges the City's annual \$300 trash fee as excessive. About 6,000 City property owners signed on as co-plaintiffs in June 2019.

In October 2019, the City appointed the law firm of Fox Rothschild LLP to provide legal services. Litigation is ongoing.

- 2) A potential class-action lawsuit filed in September 2018 alleges that Northeast Revenue Services, the City appointed collector of delinquent trash fees, has charged and collected interest on both delinquent garbage fees and on penalties that were not authorized by City ordinance. The City was ordered to be included as a defendant in the lawsuit. Litigation is ongoing.
- 3) The City is defending a 2017 Action in Mandamus alleging that the City is annually collecting Act 511 tax revenue in excess of the aggregate amount permitted in 53 P.S. §6924.320. The plaintiffs sought a judicial order to have the City modify their Act 511 tax rates to conform with §6924.320 and to escrow any Act 511 tax collection dollars that exceed the statutory limit. The City argued that the §6924.320 aggregate revenue limit does not apply to the City because as a home rule municipality the Home Rule Charter and Optional Plans Law, Act 62 of 1972, as amended, (Home Rule Law) permits the City to exceed the Act 511 tax rate limits and, consequently, the §6924.320 aggregate collection limits.

On December 16, 2019, Judge James Gibbons of the Lackawanna County Court of Common Pleas agreed with the plaintiffs and ordered the City to set aside and sequester excess Act 511 taxes for the years 2015, 2016, 2017 (2019 Lackawanna Common Pleas Order). The 2019 Lackawanna Common Pleas Order also requires the City to determine, set aside and sequester excess Act 511 taxes received for fiscal year 2018 forthwith. Finally, the 2019 Lackawanna Common Pleas Order directs the City to reduce the rates of their Act 511 tax rates so that the total revenues collected for its Act 511 taxes going forward more closely approximate the Act 511 aggregate revenue limit.

The City has informed the Coordinator that the estimated amount of money the City will need to set aside to comply with the 2019 Lackawanna Common Pleas Order is approximately \$50 million. In addition, the City will be required to reduce its Act 511 tax rates to comply with the 2019 Lackawanna Common Pleas Order. To offset the reduced Act 511 tax revenue the City will have to increase its real property tax rates

and/or impose significant expenditure reductions to comply with the 2019 Lackawanna Common Pleas Order.

On January 13, 2020, the City filed a Notice of Appeal of the 2019 Lackawanna Common Pleas Order with the Commonwealth Court of Pennsylvania. The City also filed, on February 25, 2020, a Petition for Extraordinary Jurisdiction or in the Alternative King's Bench Jurisdiction with the Supreme Court of Pennsylvania. The City's appeal filings has, by law, superseded enforcement of the 2019 Lackawanna Common Pleas Order.

The Coordinator understands that the City is currently in the legal process of appealing the 2019 Lackawanna Common Pleas Order and that at this time, the City's exercise of their appellate rights have not been finalized. With the supersedeas in place, it is the Coordinator's opinion that, at the time of the writing of this Act 47 Coordinator's Recommendation, the City's financial condition and public service provisions have not been immediately impacted by the 2019 Lackawanna Common Pleas Order. However, should the City not prevail in its appeal efforts, it is the Coordinator's opinion that, at that time, an evaluation of the City's fiscal condition and the options available would be warranted to determine the City's fiscal capacity to satisfy the 2019 Lackawanna Common Pleas Order or any modification that may be made to the 2019 Lackawanna Common Pleas Order by an appellate court.

**Factor (4)**

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 a termination of distressed status.

The Coordinator projects that the City will incur operating deficits throughout the 2021-2025 projection period. The lack of inherent growth in the City's real property tax revenue and only slight growth in the City's earned income tax revenue coupled with annual projected

expenditure growth of 2.0% will cause the City to realize operating budget deficits throughout the projection period. (See Table 4.)

Table 4  
CITY OF SCRANTON  
General Fund Revenue and Expenditure  
Baseline Projections  
2021 to 2025

	<b>2021</b>	<b>2022</b>	<b>2023</b>	<b>2024</b>	<b>2025</b>
	<b>Projected</b>	<b>Projected</b>	<b>Projected</b>	<b>Projected</b>	<b>Projected</b>
<u>Revenue</u>					
Real Estate Taxes	\$35,797,007	\$35,761,210	\$35,725,449	\$35,689,724	\$35,654,034
EIT	29,408,633	29,967,397	30,536,778	31,116,977	31,708,199
LST	4,954,950	4,959,905	4,964,865	4,969,830	4,974,800
Merc/BPT/Payroll Prep	2,587,875	2,600,814	2,613,818	2,626,888	2,640,022
RE Transfer Tax	2,751,000	2,751,000	2,751,000	2,751,000	2,751,000
Other Taxes	295,000	295,000	295,000	295,000	295,000
Refuse Revenue	7,111,678	7,111,678	7,111,678	7,111,678	7,111,678
Licenses & Permits	2,038,164	2,038,164	2,038,164	2,038,164	2,038,164
Intergovernmental Revenues	4,429,618	4,516,758	4,605,619	4,696,234	4,788,640
Transfers	8,339,451	8,339,451	7,539,451	2,339,451	2,339,451
Other Non tax revenue	<u>3,131,726</u>	<u>3,130,954</u>	<u>3,130,184</u>	<u>3,129,416</u>	<u>3,128,649</u>
<b>Operating Revenue</b>	<b>\$100,845,103</b>	<b>\$101,472,332</b>	<b>\$101,312,006</b>	<b>\$96,764,360</b>	<b>\$97,429,636</b>
<u>Expenditures</u>					
Direct Compensation	\$35,213,505	\$35,900,182	\$36,568,182	\$37,249,628	\$37,944,790
Benefits	20,606,215	21,688,037	22,829,359	24,033,454	25,303,774
Pension	11,789,532	11,789,532	11,789,532	11,789,532	11,789,532
Workers Comp	3,109,811	3,109,811	3,109,811	3,109,811	3,109,811
Capital Expenditures	1,412,750	1,412,750	1,412,750	1,412,750	1,412,750
Departmental Expenditures	8,671,898	8,854,008	9,031,088	9,211,710	9,395,944
Nondepartmental Expenditures	1,342,537	1,349,772	1,356,807	1,363,983	1,371,303
Debt Service exc TRAN	18,256,130	18,183,458	18,246,504	11,079,357	11,130,412
TRAN Interest	446,250	446,250	446,250	446,250	446,250
Court Awards	<u>500,000</u>	<u>500,000</u>	<u>500,000</u>	<u>500,000</u>	<u>500,000</u>
<b>Total Expenditures</b>	<b>\$101,348,628</b>	<b>\$103,233,801</b>	<b>\$105,290,284</b>	<b>\$100,196,476</b>	<b>\$102,404,567</b>
<b>Operating Surplus/(Deficit)</b>	<b>(\$503,525)</b>	<b>(\$1,761,469)</b>	<b>(\$3,978,278)</b>	<b>(\$3,432,116)</b>	<b>(\$4,974,931)</b>

As mentioned, the lack of inherent growth in the City's real property tax revenue is the main driver for the projected operating deficits. This lack of inherent grow is the result of annual flat or decreasing City real property assessed values. In nineteen years, the City's real property

assessed values increased from \$375,820,656 in 2000 to \$388,299,190 in 2018 or by 3.3%. By contrast, the City’s real property market values increased from \$1,370,292,100 in 2000 to \$2,378,758,636 in 2018 or by 73.6%. The result of flat or decreasing real property assessed values is that the City receives the same or less real property tax revenue year after year even though the City’s real property tax rates remain constant. As the largest revenue source for City operations, this lack of inherent growth in the City’s real property assessed values will force the City’s elected officials to seek additional revenues to maintain pace with the City’s expenditure growth. (See Table 5.)

Table 5  
CITY OF SCRANTON  
Real Property Market Value and Assessed Value  
2000 to 2018

Year	Market Value	MV Change	MV % Change	Assessed Value	AV Change	AV % Change	Ratio of Assessed to Market Value
2000	1,370,292,100	79,514,000	6.2	375,820,656	3,968,214	1.1	27.4%
2001	1,369,567,700	-724,400	-0.1	375,864,398	43,742	0.0	27.4%
2002	1,465,214,700	95,647,000	7.0	383,853,757	7,989,359	2.1	26.2%
2003	1,452,676,700	-12,538,000	-0.9	380,284,275	-3,569,482	-0.9	26.2%
2004	1,553,485,600	100,808,900	6.9	384,921,429	4,637,154	1.2	24.8%
2005	1,559,719,200	6,233,600	0.4	385,911,174	989,745	0.3	24.7%
2006	1,779,411,700	219,692,500	14.1	389,095,126	3,183,952	0.8	21.9%
2007	1,777,575,800	-1,835,900	-0.1	388,605,450	-489,676	-0.1	21.9%
2008	1,991,479,725	213,903,925	12.0	384,341,025	-4,264,425	-1.1	19.3%
2009	2,047,335,159	55,855,433	2.8	390,510,794	6,169,769	1.6	19.1%
2010	2,211,703,424	164,368,265	8.0	382,752,940	-7,757,854	-2.0	17.3%
2011	2,197,521,550	-14,181,874	-0.6	380,485,130	-2,267,810	-0.6	17.3%
2012	2,263,828,875	66,307,325	3.0	390,752,934	10,267,804	2.7	17.3%
2013	2,265,824,782	1,995,907	0.1	390,860,289	107,355	0.0	17.3%
2014	2,282,430,414	16,605,632	0.7	397,321,682	6,461,393	1.7	17.4%
2015	2,273,875,550	-8,554,864	-0.4	395,717,763	-1,603,919	-0.4	17.4%
2016	2,304,080,217	30,204,667	1.3	392,363,291	-3,354,472	-0.8	17.0%
2017	2,286,978,457	-17,101,760	-0.7	388,299,190	-4,064,101	-1.0	17.0%
2018	2,378,758,636	-17,101,760	-0.7	388,299,190	-4,064,101	-1.0	17.0%

For the City to mitigate the effects of its annual flat or decreasing real property assessed values, the City will have to make incremental property tax rate increases and/or reduce expenditures over the next five years to avoid the projected operating budget deficits. The Coordinator recommends that the City increase its property tax millage rate by 1.4%, 3.5% and

6.2% in the years 2021 – 2023, respectively, to eliminate the projected operating deficits in those years. In 2024, the City’s debt service obligations will be reduced by approximately \$6,000,000 as the City’s Series of 2018 general obligation note is satisfied in 2023. Although the Coordinator projects the City will incur a 2024 operating budget deficit of (\$3,432,116), no tax increase is recommended in 2024. The accruing of City property tax revenue generated by the prior 2021 – 2023 property tax increases will generate \$3,978,278 of additional revenue by 2024 leaving the City with a projected operating budget surplus of \$546,162 in 2024. In 2025, the Coordinator recommends a 2.8% property tax millage increase to eliminate the projected (\$4,974,931) operating budget deficit. The total property tax rate percentage increase over the five-year period of 2021 – 2025 is 13.9%. Any expenditure reductions implemented by the City during this period may reduce the percentage property tax millage rates recommended by the Coordinator in this Act 47 Coordinator’s Recommendation. (See Table 6.)

Table 6  
CITY OF SCRANTON  
General Fund Revenue and Expenditure  
Recommended Property Tax Increases  
2021 to 2025

	<b>2021</b>	<b>2022</b>	<b>2023</b>	<b>2024</b>	<b>2025</b>
	<b>Projected</b>	<b>Projected</b>	<b>Projected</b>	<b>Projected</b>	<b>Projected</b>
Revenues	\$100,845,103	\$101,472,332	\$101,312,006	\$96,764,360	\$97,429,636
Expenditures	<u>\$101,348,628</u>	<u>\$103,233,801</u>	<u>\$105,290,284</u>	<u>\$100,196,476</u>	<u>\$102,404,567</u>
<b>Operating Surplus/(Deficit)</b>	<b>(\$503,525)</b>	<b>(\$1,761,469)</b>	<b>(\$3,978,278)</b>	<b>(\$3,432,116)</b>	<b>(\$4,974,931)</b>
RE Tax Revenue Projection	\$35,797,007	\$35,761,210	\$35,725,449	\$35,689,724	\$35,654,034
Annual RE Tax % Increase	1.4%	3.5%	6.2%	0.0%	2.8%
Additional RE Tax Revenue	\$503,525	\$1,257,943	\$2,216,810	\$0	\$996,652
Accrue ment of RE Tax Revenue	<u>\$503,525</u>	<u>\$1,761,469</u>	<u>\$3,978,278</u>	<u>\$3,978,278</u>	<u>\$4,974,931</u>
<b>Operating Surplus/(Deficit)</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$546,162</b>	<b>\$0</b>
Accrue ment of RE Tax % Increase	1.4%	4.9%	11.1%	11.1%	13.9%

While real property tax rate increases and expenditure reductions are unpalatable political options, the incremental real property tax increases recommended by the Coordinator will prevent the City from having to make punitive double-digit real estate tax increases in the future. More importantly, the Coordinator’s recommended annual tax increases will ensure that the City

has sufficient cash available throughout a fiscal year to meet its debt obligations and its financial obligations to its employees, vendors and suppliers as they come due.

As previously mentioned in this Act 47 Coordinator's Recommendation, the City is a home rule municipality. Thus, according to §2962(b) of the Home Rule Law, the City is not subject to tax rate limits on real property or Act 511 taxes. If the 2019 Lackawanna Common Pleas Order noted above in **Factor (3)** is upheld as a limit on the aggregate amount of Act 511 revenue the City may collect in a fiscal year, which in turn would force the City to reduce its Act 511 tax rates, primarily its earned income tax rate, as a home rule municipality there is no statutory limit on the real property tax rate the City may impose to offset any reduction in City Act 511 tax rates.

**At the time of the writing this Act 47 Coordinator's Recommendation, the City, along with the nation, is in the midst of the Coronavirus (COVID-19) pandemic. The future impact of the COVID-19 pandemic on the City's financial projections as presented by the Coordinator in this Act 47 Coordinator's Recommendation is unknown at this time. The Coordinator will continue to monitor the City's fiscal condition as the City progresses through the COVID-19 pandemic.**

### **FISCAL EMERGENCY**

As previously mentioned, DCED has charged the Coordinator with examining the conditions of the City to determine whether a fiscal emergency exists in the City. According to the relevant section of Act 47, the Governor determines a fiscal emergency exists if the distressed municipality:

- (a) **FISCAL EMERGENCY.**—The Governor determines a fiscal emergency exists if the distressed municipality:
  - (1) (i) is insolvent or is projected to be insolvent within 180 days or less; or
  - (ii) is unable to ensure the continued provision of vital and necessary services.

53 P.S. §11701.602(a)(1).

A distressed municipality is “insolvent” if it is unable to meet all financial obligations as they become due, including payment of debt obligations. 53 P.S. §11701.601. “Vital and necessary services” is defined as “basic and fundamental municipal services, including any of the following: (1) Police and fire services (2) Ambulance and rescue services (3) Water supply and distribution (4) Wastewater services (5) Refuse collection and disposal (6) Snow removal (7) Payroll and pension obligations (8) Fulfillment of payment of debt obligations or any other financial obligations.” *Id.*

The Coordinator’s analysis in the Factors to Consider to Rescind a Distress Determination of this Act 47 Coordinator’s Recommendation has determined that the City has been able to meet all of its financial obligations, including debt service, since the City’s adoption of the 2017 Exit Plan. In addition, the Coordinator’s cash flow projections project that the City will remain solvent throughout 2020, enabling the City to meet its financial obligations as they come due, including its 2020 debt service. (See Table 7.)

Table 7  
CITY OF SCRANTON  
Cash Flow Projections—Quarterly  
2020

	1st Qtr Budget	2nd Qtr Budget	3rd Qtr Budget	4th Qtr Budget	2020 Total
<b>Cash Beginning of Quarter</b>	<b>1,267,530</b>	<b>13,672,037</b>	<b>13,331,966</b>	<b>8,105,933</b>	
Surplus Deficit	7,987,863	3,776,261	36,406	-11,354,279	
Other Financing Sources/(Uses)	11,416,644	-4,116,332	-5,262,439	-2,484,123	
Increase/(Decrease) in Payables	0	0	0	0	
(Increase)/Decrease in Other Cash Accounts	-7,000,000	0	0	7,000,000	
Other Balance Sheet Items Affecting Cash	0	0	0	0	
<b>Cash End of Quarter</b>	<b>13,672,037</b>	<b>13,331,966</b>	<b>8,105,933</b>	<b>1,267,531</b>	
<hr/>					
Revenues	29,324,773	31,520,223	20,795,406	21,410,350	103,050,751
<b>Total Revenues</b>	<b>29,324,773</b>	<b>31,520,223</b>	<b>20,795,406</b>	<b>21,410,350</b>	<b>103,050,751</b>
Expenditures	19,742,254	19,172,227	18,018,121	27,470,053	84,402,655
Debt Service	1,594,657	8,571,735	2,740,879	5,294,576	18,201,846
<b>Total Expenditures</b>	<b>21,336,910</b>	<b>27,743,962</b>	<b>20,759,000</b>	<b>32,764,629</b>	<b>102,604,501</b>
<b>Surplus/(Deficit)</b>	<b>7,987,863</b>	<b>3,776,261</b>	<b>36,406</b>	<b>(11,354,279)</b>	<b>446,250</b>
<hr/>					
<u>Other Financing Sources/(Uses)</u>					
TRAN	11,416,644	-4,116,332	-5,262,439	-2,484,123	-446,250
Debt Proceeds	0	0	0	0	0
Debt Defeasance	0	0	0	0	0
<b>Net Other Financing Sources/(Uses)</b>	<b>11,416,644</b>	<b>(4,116,332)</b>	<b>(5,262,439)</b>	<b>(2,484,123)</b>	<b>(446,250)</b>

AP Current Year at Prior Month	-375,387	-375,387	-375,387	-375,387
AP Current Year at Current Month	-375,387	-375,387	-375,387	-375,387
Change in AP Balance	0	0	0	0

In its adopted 2020 operating budget, the City has appropriated funds to provide many of the vital and necessary services enumerated in §11701.601 such as police and fire services, refuse collection and disposal, snow removal, payroll and pension obligations and the fulfillment of debt and other financial obligations. There is no evidence from the City or otherwise available to the Coordinator that as of the writing of this Act 47 Coordinator’s Recommendation that the City is unable to ensure the continued provision of vital and necessary services.

Although the specter of a failed appeal on the City’s behalf of the 2019 Lackawanna Common Pleas Order looms sometime in the future, it is not certain at this time whether this Order will be overturned by an appellate court ruling, that the City’s exhaustion of its appellate rights will occur within 180 days or if the 2019 Lackawanna Common Pleas Order is upheld on appeal at some future date that it would render the City “insolvent” or “unable to ensure the continued provision of vital and necessary services.” As mentioned previously in this Act 47 Coordinator’s Recommendation, the Coordinator deems it necessary that a full evaluation of the City’s financial condition and the options available to it would be warranted at the time such negative judgement is made final through the City’s exhaustion of its appellate rights.

### **RECOMMENDATION**

The Coordinator has reviewed the statutory factors necessary to make a determination of whether to request a rescission of the order declaring the City a distressed municipality and also the statutory criteria of whether to issue a determination of fiscal emergency in the City. It is the recommendation of the Coordinator that based upon a review of the totality of the factors included in §11701.255.1(c), substantial evidence supports an affirmative determination by the Secretary to issue a determination to rescind the order declaring the City of Scranton a distressed municipality. **However, the Coordinator is mindful that the City, along with the nation, is experiencing the effects of confronting the COVID-19 pandemic as of the time of this recommendation. The mutability of the circumstances created by the COVID-19 pandemic makes it impracticable at this time to project the extent of the negative impact on the City’s**

**future financial condition. Any such projection would be mere conjecture. The Coordinator will continue to monitor the fiscal impact of the COVID-19 pandemic on the City's fiscal condition over the next several weeks and months and provide its findings to DCED. Although not statutorily required, the Coordinator supports the Secretary of DCED's consideration of the extenuating circumstances facing the City as he evaluates the Coordinator's recommendation and the approaching July 27, 2020, statutory deadline for terminating the City's financially distressed status.**

Although the City has experienced a mix of operating budget surpluses and deficits over the past four years, the City has achieved many successes that will assist in sustaining the City's financial condition into the future. The City efficiently utilized the \$66.9 million of the 2016 Sewer Sale Proceeds to alleviate two outstanding issues. First, the City defeased over \$42.0 million in high yield, long-term general obligation bonds and notes. By defeasing these long-term debt obligations, the City has reduced the cost of its future debt service. In addition, the City has established a practice of utilizing a paying agent to aid the City in meeting its annual debt service obligations. Under this arrangement, the City escrows approximately 32% of its annual collected real property taxes for debt service obligations. It is the Coordinator's opinion that this arrangement has ensured that the City has sufficient cash available to make its debt obligation payments when due and recommends that the City maintain this arrangement in the future.

Second, the City deposited \$22.9 million of the 2016 Sewer Sale Proceeds into the City's aggregate pension fund. This infusion of cash into the City's pension funds, along with past market performance, has increased the funding ratio of all three City defined benefit pension funds. The aggregate pension fund reached a market value of over \$100 million in November 2019 from a market value of \$43.7 million in 2013.

The Coordinator projects that the City will experience operating deficits in the future as rate of the City's expenditure growth outpaces the rate of the City's revenue growth. As previously mentioned, the main driver for the projected operating deficits is the lack of growth in the City's real property assessed valuations. The real property assessed value decline in the City appears to be part of the systemic application of the state law governing assessment of real property for purposes of taxation. The City's continued participation in the Act 47 program cannot directly reverse this trend. In order to counter this lack of growth in real property

assessed values, the City will have to generate new revenue through tax increases, institute expenditure reductions and/or increase employee productivity. The Coordinator has continuously apprised the City of managing this issue through small annual tax increases for the past fifteen years. This advice has not always been heeded by the City's elected representatives, which in turn left the City with insufficient cash available in a fiscal year to satisfy their financial obligations when they were due and ultimately resulted in unavoidable, punitive, double-digit tax rate increases on City residents. It remains the Coordinator's opinion that the City can manage the projected operating budget deficits and sustain a sufficient cash flow throughout future fiscal years by incrementally increasing City property tax rates as recommended by the Coordinator in this Act 47 Coordinator's Recommendation.

The Coordinator is cognizant of the negative order issued by the Lackawanna County Court of Common Pleas in December 2019. Presently, the City is vigorously exercising its appellate rights seeking a reversal of this order. Hopefully, the City's appointed legal team will be successful. Until the City exhausts its appellate rights concluding the legal process of this litigation, the Coordinator can only conjecture several outcomes that may or may not occur in the future. The impact of this litigation will become much clearer upon the City's exhaustion of its appellate rights.

Act 47 provides specific guidance for the Coordinator to evaluate when making its recommendation to the Secretary of DCED. It does not permit the Coordinator to entertain the evaluation of all potential scenarios the City may encounter in the near or distant future. At this time, it is the Coordinator's opinion that the City of Scranton is able to meet all of its financial obligations as they come due. It is also the Coordinator's opinion that the City is presently able to provide vital and necessary services to its residents. Therefore, for the reasons stated above, it is the recommendation of the Coordinator that the Secretary of DCED may issue a determination to rescind the order declaring the City of Scranton a distressed municipality as defined by Act 47 of 1987, as amended.

# APPENDIX

## A

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF COMMUNITY AFFAIRS

IN RE: . PETITION UNDER SECTION 201  
CITY OF SCRANTON . AND 203 OF THE FINANCIALLY  
DISTRESSED MUNICIPALITIES ACT

\*\*\*\*\*

CITY OF SCRANTON .  
DOCKET NO. FDMA - 12  
. .  
. .  
. .

DEPARTMENTAL ORDER

AND NOW, this 10th day of January 1992, the above-captioned petition is granted.

IT IS ORDERED that the City of Scranton shall be deemed to be a distressed municipality under the Financially Distressed Municipalities Act, Act 47 of 1987.

  
Karen A. Miller  
Secretary  
Department of Community Affairs