

O-23-37
8/16/23

ORDINANCE OF THE CITY OF BAYONNE, IN THE COUNTY OF HUDSON, STATE OF NEW JERSEY AMENDING THE MUNICIPAL CODE TO ADD A NEW CHAPTER [39] PROVIDING FOR THE ESTABLISHMENT OF A MUNICIPAL WATER AND WASTEWATER UTILITY

WHEREAS, pursuant to N.J.S.A. 40:62-1 et seq., a municipality is permitted to operate municipal public utilities; and

WHEREAS, pursuant to N.J.S.A. 40A:1-1, a municipal public utility is defined as any enterprise from which a municipality anticipates it will receive fees, rents, or other charges; and

WHEREAS, a municipal public utility is required for accounting and budgetary purposes, to be treated as a separate and distinct entity pursuant to N.J.S.A. 40A:4-62; and

WHEREAS, the City of Bayonne, in the County of Hudson, State of New Jersey, a public body corporate and politic of the State of New Jersey (the “**City**”) owns the water and wastewater transmission and distribution system (the “**System**”) within the geographic limits of the City; and

WHEREAS, the use, operation, management, construction, maintenance, and improvement of the System is subject to the terms and conditions of the Bayonne Water and Wastewater Concession Agreement dated December 20, 2012, as modified and /or amended from time to time (the “**Concession Agreement**”); and

WHEREAS, in accordance with the Concession Agreement, the City may utilize low cost financing in lieu of the funding mechanisms set forth in the Concession Agreement to finance certain improvements in order to minimize the impact on the ratepayers with the debt service on such City financing (the “**City Utility Debt**”) being repaid by the Concessionaire (as defined in the Concession Agreement) with the Revenues (as defined in the Concession Agreement); and

WHEREAS, the City wishes to create a municipal utility to oversee the Concessionaire and Concession Agreement and to accurately and properly budget and account for certain expenses including the City Utility Debt and revenues received from the Concessionaire relating thereto in a manner which is permitted by statute, and which is separate and distinct from the usual operations of municipal government; and

WHEREAS, the City desires to amend the Code of the City of Bayonne (the “**City Code**”) to provide for the creation of the City of Bayonne Water and Wastewater Utility.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Bayonne, in the County of Hudson, State of New Jersey, as follows:

CHAPTER [39]-1. ESTABLISHMENT; OFFICIAL NAME.

There is hereby created and established in the City, and in accordance with New Jersey statutes, a public utility for budgetary purposes. The name by which this utility shall be known is the “City of Bayonne Water and Wastewater Utility” (hereinafter, the “**Utility**”). For budgetary and accounting purposes, the Utility shall be a separate entity.

CHAPTER [39]-2. POWERS

The Utility, which constitutes an agency of the City, exercising public and essential governmental functions, shall have all the powers necessary and convenient to carry out and effectuate the purpose and the provisions of the New Jersey Statutes.

CHAPTER [39]-3. FUNCTIONS.

It shall be the function of the Utility to budget and account for certain of the costs and revenues of the System related to the City Utility Debt and the oversight of the Concessionaire and the Concession Agreement and to pay to those persons entitled thereto the interest and principal on the City Utility Debt. The Utility shall monitor the Concessionaire's responsibilities to preserve, care for, lay out, construct, maintain, improve, and operate lands, buildings, equipment, and facilities used for the provision of the System.

CHAPTER [39]-4. GOVERNING REGULATIONS.

The Utility shall be governed by and in accordance with the laws of the State of New Jersey, the ordinances, the City Code, and the resolutions adopted by the City, and administrative directives. The City shall amend its ordinances to effectuate the establishment of a Water and Wastewater utility.

CHAPTER [39]-5. FINANCIAL AFFAIRS; DISPOSITION OF FUNDS.

The financial affairs of the Utility shall be governed in accordance with the statutes applying to the financial affairs of a municipality and utilities in general.

CHAPTER [39]-6. ACQUISITION OF PROPERTY AND/OR EQUIPMENT.

The Utility may, from time to time, acquire such real property and/or equipment in the name of City as may be authorized by the City Council in accordance with the laws of the State of New Jersey.

CHAPTER [39]-7. APPOINTMENT OF EMPLOYEES, SALARIES AND COMPENSATION.

The City shall have the full authority to appoint and employ all necessary employees for the Utility. Salaries of the employees will be in accordance with classification and salary ordinances duly adopted by the City Council. Portions of salaries of existing employees may be pro-rated based on the amount of time spent on System operations compared to the employees' full time City responsibilities.

CHAPTER [39]-8. UTILITY REVENUES.

The Utility shall have authority to charge and collect monies consistent with the terms of the Concession Agreement and to use these monies to pay the interest and principal on the City Utility Debt.

CHAPTER [39]-9. OPERATION OF THE UTILITY

The Utility shall be under the administration, operation and control of the [Director of Public Works and Parks] subject to the Concession Agreement.

CHAPTER [39]-10. REPEAL OF INCONSISTENT PROVISIONS

All provisions of the City Code inconsistent with the provisions of this ordinance are hereby repealed.

CHAPTER [39]-11. EFFECTIVE DATE.

This ordinance shall take effect upon final adoption and publication according to law.