

**O-16-48**  
**8/24/16**

AN ORDINANCE OF THE CITY OF BAYONNE DISSOLVING  
THE BAYONNE MUNICIPAL UTILITIES AUTHORITY  
PURSUANT TO N.J.S.A. 40A:5A-20 AND MAKING  
ADEQUATE PROVISION FOR THE PAYMENT OF  
CREDITORS OR OBLIGEEES OF THE AUTHORITY AND THE  
ASSUMPTION OF THE  
SERVICES PROVIDED BY THE AUTHORITY

WHEREAS, the governing body of the City of Bayonne, in the County of Hudson, New Jersey (the "City"), created The Bayonne Municipal Utilities Authority (the "Authority") in accordance with the provisions of Chapter 183 of the Laws of 1957 of the State of New Jersey, Chapter 14B of Title 40 of the Revised Statutes of the State of New Jersey and acts amendatory thereof or supplemental thereto; and

WHEREAS, after a careful examination and analysis, the City has determined that it is in the best interests of the residents of the City and the users of the system of the Authority to dissolve the Authority, and for the City to assume the utility services provided by the Authority and to provide for the financial obligations of the Authority as set forth herein; and

WHEREAS, the City desires to dissolve the Authority in accordance with and in fulfillment of the provisions of N.J.S.A. 40A:5A-20.

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

Section 1.                    Dissolution.

The Bayonne Municipal Utilities Authority, created by the City by ordinance adopted in 1997 (Ordinance #O-97-42), as amended, be and the same is hereby dissolved, subject to the terms and conditions hereof.

Section 2.                    Transfer of Title to All Facilities and Property.

Upon the effective date of the dissolution as set forth in Section 5 of this ordinance, all real and personal property, facilities and contracts of the Authority, and all monies and funds held by or for the Authority shall be deemed transferred to and become the property of the City. The existing officers of the Authority are hereby authorized and directed to execute any and all documents or instruments necessary to transfer legal title to any and all real property, personal property, facilities, contracts and monies and funds of the Authority to the City upon the effective date of the dissolution herein, notwithstanding the dissolution of the Authority. All documents and records of the Authority shall be delivered to the City Clerk prior to the effective date of the dissolution.

Section 3.                    Assumption of Contracts, Obligations and Services.

As noted above, upon the effective date of the dissolution as set forth in Section 6 of this Ordinance the City shall own all property, facilities and contracts previously owned by, leased to or otherwise controlled by the Authority. The City expressly assumes all contracts and obligations of the Authority in existence as of the date of dissolution set forth herein, including, but not limited to, the rights and obligations of the Authority under the Bayonne Water and Wastewater Concession Agreement (“Concession Agreement”), dated December 20, 2012 between the Bayonne Municipal Utilities Authority and Bayonne Water Joint Venture, LLC, which agreement has a term of 40 years and provides for the day to day operation, maintenance of and capital improvements to the water and sewer systems and assets.

The City shall assume the oversight, coordination and management of said Concession Agreement and other obligations of the Authority so as to honor the commitments of the Authority and assure through the City’s department and organizational structure that the services previously provided, coordinated and overseen by the Authority, which services are necessary for the health, safety and welfare of the users of the system are protected and carried out.

Section 4.                    Payment of All Creditors and Obligees.

The City shall, in accordance with N.J.S.A. 40A:2-1 et seq. and N.J.S.A. 40A:5A-20, upon the effective date of the dissolution as set forth in Section 5 of this ordinance assume all legal obligations to pay all existing and outstanding creditors and obligees of the Authority. The City shall assume the Outstanding Bonds of the Authority that remain unpaid as of the date dissolution and shall as long as the Outstanding Bonds remain outstanding, perform all obligations of the Authority under those outstanding Bonds or debts including the option to issue City debt in an amount necessary to defease (refund) any or all outstanding Authority Debt.

Simultaneous with the adoption of this ordinance the City shall adopt a bond ordinance providing for the City to so adopt (assume payment of) all of the outstanding bond obligations of the Authority.

Section 5.                    Effective Date of Dissolution.

The dissolution of the Authority shall take effect as of December 31, 2016 or the date of issuance of debt obligations of the City to refund the Authority Debt to be Defeased, the defeasance of the Authority Debt to be Defeased, and the transfer of all funds from the Authority to the City, whichever is later.

Section 6.                    Limitation on Actions by Authority.

So as to provide for an orderly transition of the services provided by the Authority, the ordinance creating the Authority is hereby amended to provide that the Authority shall not be authorized to issue or authorize any obligations, to approve or enter into any contracts or to take any other actions which may impair or affect the City’s operation of the water and sewer facilities without the prior consent of the City as evidenced by a resolution of the Municipal Council; provided

however, that the Authority may perform under existing contracts, extend any contracts which are set to expire subject to a clause in each such contract allowing the City to terminate said contract on 10 days written notice from the City Business Administrator at any time following the date of dissolution, pay its (the Authority's) legally due debt and bills incurred in the ordinary course without the prior consent of the City, and, provided further, that this provision will not affect the Authority's obligations under its existing contracts or its obligations to the holders of its bonds.

Section 7. Authorization of City and Authority to Take all Necessary Action.

The City shall prepare a closing audit of the Authority after the dissolution of the Authority is effectuated.

Additionally, the Mayor, Business Administrator, Chief Financial Officer, City Clerk and other employees, as directed by the Business Administrator and/or the Mayor, are hereby authorized and directed to take any and all steps necessary to effectuate the purposes of this ordinance. The members of the Authority, its officers, employees, engineer and counsel are hereby authorized and directed to take all steps necessary to effectuate the purposes of this ordinance.

Section 8. Approval of Local Finance Board; Filing.

This ordinance shall be submitted to and approved by the Local Finance Board of the State of New Jersey prior to final adoption in accordance with the requirements of N.J.S.A. 40A:5A-20 and the final adoption of this ordinance by the City shall represent conclusive proof of the fact that this ordinance has received the approval of the Local Finance Board. Immediately upon adoption of this ordinance, this ordinance shall be filed with the Local Finance Board and with the Secretary of State of New Jersey, in accordance with N.J.S.A. 40A:5A-20.

Section 9. Severability.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional or invalid by any court of competent jurisdiction, such decision shall not affect the remaining portions of this ordinance.

Section 10. Repeal of All Inconsistent Ordinances;

All ordinances of the City which are inconsistent with the provisions of this ordinance are hereby repealed to the extent of such inconsistency.

Section 11. Effective Date.

This ordinance shall take effect immediately upon the adoption hereof and shall not be subject to referendum.