

BOROUGH OF AVALON  
CAPE MAY COUNTY  
NEW JERSEY

ORDINANCE NO 787-2019

**SUBJECT:** BOND ORDINANCE PROVIDING FOR VARIOUS 2019 WATER AND SEWER UTILITY IMPROVEMENTS, BY AND IN THE BOROUGH OF AVALON, IN THE COUNTY OF CAPE MAY, STATE OF NEW JERSEY (THE "BOROUGH"); APPROPRIATING \$2,482,500 THEREFOR FROM THE WATER AND SEWER UTILITY OF THE BOROUGH AND AUTHORIZING THE ISSUANCE OF \$2,358,375 BONDS OR NOTES OF THE BOROUGH TO FINANCE PART OF THE COSTS THEREOF

**BE IT ORDAINED AND ENACTED BY THE BOROUGH COUNCIL OF THE BOROUGH OF AVALON, IN THE COUNTY OF CAPE MAY, STATE OF NEW JERSEY** (not less than two-thirds of all the members thereof affirmatively concurring), **AS FOLLOWS:**

**SECTION 1.** The improvements or purposes described in Section 3 of this bond ordinance are hereby authorized to be undertaken by the Water And Sewer Utility of the Borough of Avalon, in the County of Cape May, State of New Jersey (the "Borough") as general improvements. For the said improvements or purposes stated in Section 3, there is hereby appropriated the principal amount of \$2,482,500 from the Water And Sewer Utility of the Borough, said sum being inclusive of a down payment in the aggregate amount of \$124,125 for said improvements or purposes as required by the Local Bond Law, N.J.S.A. 40A:2-1 et seq. (the "Local Bond Law"). The down payment is now available by virtue of a provision or provisions in a previously adopted budget or budgets of the Borough for down payment or for capital improvement purposes.

**SECTION 2.** For the financing of said improvements or purposes described in Section 3 hereof and to meet the part of said \$2,482,500 appropriation not provided for by application hereunder of said down payment, negotiable bonds of the Water And Sewer Utility of the Borough are hereby authorized to be issued in the aggregate principal amount not exceeding \$2,358,375 pursuant to the Local Bond Law. In anticipation of the issuance of said bonds and to temporarily finance said improvements or purposes, negotiable notes of the Borough in an aggregate principal amount not exceeding \$2,358,375 are hereby authorized to be issued pursuant to and within the limitations prescribed by said Local Bond Law.

**SECTION 3. (a)** The improvements hereby authorized and purposes for the financing of which said obligations are to be issued include, but are not limited to, the following various general capital improvements to the Borough's Water And Sewer Utility including, but not limited to, as follows:

<u>Description</u>	<u>Appropriation</u>	<u>Authorization</u>	<u>Down Payment</u>	<u>Useful Life</u>
(i) Borough-Wide Water And Sewer Improvements To The Utility's Geographic Information System;	\$50,000	\$47,500	\$2,500	20 years
(ii) Improvements To And/Or Replacement Of Fire Hydrants;	\$112,500	\$106,875	\$5,625	30 years

<u>Description</u>	<u>Appropriation</u>	<u>Authorization</u>	<u>Down Payment</u>	<u>Useful Life</u>
(iii) Wastewater Pump Station Improvements Including, But Not Limited To, The 58 <sup>th</sup> Street Wastewater Pump Station;	\$112,500	\$106,875	\$5,625	20 years
(iv) Improvements To Various Storm Water Inlets;	\$84,375	\$80,156	\$4,219	30 years
(v) Improvements To The 38 <sup>th</sup> Street Wellhouse Including, But Not Limited To, Pipe, Check Valve And Hydrant Improvements;	\$28,125	\$26,719	\$1,406	20 years
(vi) Acquisition And Installation, As Applicable, Of Blow Offs At Dead Ends Mains;	\$45,000	\$42,750	\$2,250	20 years
(vii) Various Improvements To The 68 <sup>th</sup> Street Sewer Main;	\$112,000	\$106,400	\$5,600	20 years
(viii) Improvements Related To Storm Sewer System Including North End Drainage Improvements;	\$530,000	\$503,500	\$26,500	5 years
(ix) Storm-Water Pump Station Improvements Including, But Not Limited To, The 78 <sup>th</sup> Street Pump Station;	\$460,000	\$437,000	\$23,000	20 years
(x) Storm Sewer System Improvements Including Sump Pump Improvements;	\$73,000	\$69,350	\$3,650	5 years
(xi) Various Water System Improvements Including, But Not Limited To, The 35 <sup>th</sup> Street Water Main Improvements;	\$22,000	\$20,900	\$1,100	20 years
(xii) Various Water System Improvements Including, But Not	\$670,000	\$636,500	\$33,500	20 years

<u>Description</u>	<u>Appropriation</u>	<u>Authorization</u>	<u>Down Payment</u>	<u>Useful Life</u>
Limited To, The Sunrise Drive And 7 <sup>th</sup> Avenue Water Mains Improvements; And				
(xiii) Improvements To The 30 <sup>th</sup> Street Ocean Outfall.	\$183,000	\$173,850	\$9,150	30 years
<b>TOTALS</b>	<b><u>\$2,482,500</u></b>	<b><u>\$2,358,375</u></b>	<b><u>\$124,125</u></b>	

(b) All such improvements or purposes set forth in Section 3(a) shall include, but are not limited to, as applicable, all engineering, architectural and design work, title searches, surveying, construction planning, preparation of plans and specifications, permits, bid documents, construction inspection and contract administration, and also shall include all work, materials, equipment, accessories, labor and appurtenances necessary therefor or incidental thereto.

(c) The aggregate estimated maximum amount of bonds or notes to be issued for said improvements or purposes is \$2,358,375.

(d) The aggregate estimated cost of said improvements or purposes is \$2,482,500, the excess amount thereof over the said estimated maximum amount of bonds or notes to be issued therefor is the down payment available for said purposes in the amount of \$124,125.

**SECTION 4.** In the event the United States of America, the State of New Jersey, and/or the County of Cape May make a contribution or grant in aid to the Borough for the improvements and purposes authorized hereby and the same shall be received by the Borough prior to the issuance of the bonds or notes authorized in Section 2 hereof, then the amount of such bonds or notes to be issued shall be reduced by the amount so received from the United States of America, the State of New Jersey, and/or the County of Cape May. In the event, however, that any amount so contributed or granted by the United States of America, the State of New Jersey, and/or the County of Cape May shall be received by the Borough after the issuance of the bonds or notes authorized in Section 2 hereof, then such funds shall be applied to the payment of the bonds or notes so issued and shall be used for no other purpose. This Section 4 shall not apply, however, with respect to any contribution or grant in aid received by the Borough as a result of using funds from this bond ordinance as "matching local funds" to receive such contribution or grant in aid.

**SECTION 5.** All bond anticipation notes issued hereunder shall mature at such time as may be determined by the Chief Financial Officer of the Borough, provided that no note shall mature later than one (1) year from its date unless such bond anticipation notes are permitted to mature at such later date in accordance with applicable law. The notes shall bear interest at such rate or rates and be in such form as may be determined by the Chief Financial Officer. The Chief Financial Officer of the Borough shall determine all matters in connection with the notes issued pursuant to this bond ordinance, and the signature of the Chief Financial Officer upon the notes shall be conclusive evidence as to all such determinations. All notes issued hereunder may be renewed from time to time in accordance with the provisions of the Local Bond Law. The Chief Financial Officer is hereby authorized to sell part or all of the

notes from time to time at public or private sale and to deliver them to the purchaser thereof upon receipt of payment of the purchase price and accrued interest thereon from their dates to the date of delivery thereof. The Chief Financial Officer is directed to report in writing to the governing body at the meeting next succeeding the date when any sale or delivery of the notes pursuant to this bond ordinance is made. Such report must include the principal amount, the description, the interest rate, the maturity schedule of the notes so sold, the price obtained and the name of the purchaser.

**SECTION 6.** The capital budget of the Water And Sewer Utility of the Borough is hereby amended to conform with the provisions of this bond ordinance, and to the extent of any inconsistency herewith, a resolution in the form promulgated by the Local Finance Board showing full detail of the amended capital budget and capital programs as approved by the Director of the Division of Local Government Services in the New Jersey Department of Community Affairs will be on file in the Office of the Clerk and will be available for public inspection.

**SECTION 7.** The following additional matters are hereby determined, declared, recited and stated:

(a) The purposes described in Section 3 of this bond ordinance are not current expenses and are improvements or purposes which the Borough may lawfully undertake as general improvements or purposes, and no part of the cost thereof has been or shall be specially assessed on property specially benefited thereby.

(b) The average period of usefulness of said improvements or purposes within the limitations of said Local Bond Law, according to the reasonable life thereof computed from the date of the said bonds authorized by this bond ordinance, is 17.89 years.

(c) The supplemental debt statement required by the Local Bond Law has been duly made and filed in the Office of the Clerk of the Borough and a complete executed duplicate thereof has been filed in the Office of the Director of the Division of Local Government Services in the New Jersey Department of Community Affairs, and such statement shows that the gross debt of the Borough as defined in the Local Bond Law is increased by the authorization of the bonds or notes provided for in this bond ordinance by \$2,358,375 and the said obligations authorized by this bond ordinance will be within all debt limitations prescribed by said Local Bond Law.

(d) An aggregate amount not exceeding \$920,500 for items of expense listed in and permitted under N.J.S.A. 40A:2-20 is included in the estimated cost indicated herein for the purposes or improvements hereinbefore described.

**SECTION 8.** Unless paid from other sources, the full faith and credit of the Borough are hereby pledged to the punctual payment of the principal of and the interest on the obligations authorized by this bond ordinance. Unless paid from other sources, the obligations shall be direct, unlimited obligations of the Borough, and the Borough shall be obligated to levy *ad valorem* taxes upon all the taxable property within the Borough for the payment of the obligations and the interest thereon without limitation as to rate or amount.

**SECTION 9.** The Borough hereby declares the intent of the Borough to issue the bonds or bond anticipation notes in the amount authorized in Section 2 of this bond ordinance and to use proceeds to pay or reimburse expenditures for the costs of the purposes described in Section 3 of this bond ordinance. This Section 9 is a declaration of intent within the meaning and for purposes of Treasury Regulations §1.150-2 or any successor provisions of federal income tax law.

**SECTION 10.** The Borough Chief Financial Officer is hereby authorized to prepare and to update from time to time as necessary a financial disclosure document to be distributed in connection with the sale of obligations of the Borough and to execute such disclosure document on behalf of the Borough. The Borough Chief Financial Officer is further authorized to enter into the appropriate undertaking to provide secondary market disclosure on behalf of the Borough pursuant to Rule 15c2-12 of the Securities and Exchange Commission<sup>4</sup> (the "Rule") for the benefit of holders and beneficial owners of obligations of the Borough and to amend such undertaking from time to time in connection with any change in law, or interpretation thereof, provided such undertaking is and continues to be, in the opinion of a nationally recognized bond counsel, consistent with the requirements of the Rule. In the event that the Borough fails to comply with its undertaking, the Borough shall not be liable for any monetary damages, and the remedy shall be limited to specific performance of the undertaking.

**SECTION 11.** The Borough covenants to maintain the exclusion from gross income under Section 103(a) of the Code of the interest on all bonds and notes issued under this ordinance.

**SECTION 12.** This bond ordinance shall take effect twenty (20) days after the first publication thereof after final adoption, as provided by the Local Bond Law.

#### **NOTICE OF PENDING ORDINANCE**

The Ordinance published herewith was introduced and passed on first reading of the Municipal Council of the Borough of Avalon on April 10, 2019. It will be further considered for second reading, public hearing and final adoption at a meeting of said Council to be held on the 24<sup>th</sup> day of April, 2019 in the Meeting Room of the Municipal Building, Avalon, New Jersey at 4:15 p.m. and during the week prior to and up to and including the date of such meeting, copies of said Ordinance will be made available at the Clerk's Office in said Municipal Building to the members of the general public who shall request the same.

C. DANIELLE NOLLETT, Borough Clerk