

MUNICIPALITY OF NORRISTOWN
A Home Rule Municipality
Montgomery County, Pennsylvania

ORDINANCE NO. ___ of 2020

AN ORDINANCE REQUIRING THE NORRISTOWN MUNICIPAL WASTE AUTHORITY (THE “AUTHORITY”) TO CONVEY THE SEWER SYSTEM AND ALL PROPERTY AND ASSETS OF THE AUTHORITY TO THE MUNICIPALITY UNDER PROVISIONS OF SECTION 5619 AND SECTION 5622 OF THE MUNICIPAL AUTHORITIES ACT; ESTABLISHING A CONVEYANCE DATE BY WHICH THE AUTHORITY SHALL CONVEY BY APPROPRIATE INSTRUMENT THE SEWER SYSTEM AND ALL PROPERTY AND ASSETS; AUTHORIZING THE ASSUMPTION OF THE AUTHORITY’S FINANCIAL OBLIGATIONS AND NON-FINANCIAL OBLIGATIONS; NOTIFYING THE AUTHORITY AND ALL OTHER PARTIES TO IMMEDIATELY CEASE AND DESIST FROM ALL ACTIONS OR ACTIVITIES THAT COULD DECREASE THE VALUE OF THE SEWER SYSTEM OR OTHERWISE INTERFERE WITH OR DELAY THE CONVEYANCE OF THE SEWER SYSTEM TO THE MUNICIPALITY; AUTHORIZING INCIDENTAL ACTION TO BE TAKEN BY SPECIFIED OFFICERS OF THE MUNICIPALITY; AND REPEALING INCONSISTENT ORDINANCES AND RESOLUTIONS.

WHEREAS, the Municipality of Norristown (the “Municipality”) is a Home Rule Municipality organized and operating in accordance with the Charter of the Municipality of Norristown as permitted by the Home Rule Charter and Optional Plans Law, 53 Pa. C.S. 2901 *et seq* (the “Charter”); and

WHEREAS, the Municipality created the Authority in 1993 and the Authority currently owns and operates a sanitary wastewater collection and disposal system (the “System”) that provides wastewater service to various customers primarily within the Municipality; and

WHEREAS, the System is a project of a character which the Municipality has the power to establish, maintain or operate pursuant to the Municipality’s Charter; and

WHEREAS, the Municipality has decided to acquire the System and to assume or pay off the outstanding obligations of the Authority pursuant to provisions of the Municipal Authorities Act, 53 Pa. C.S. including §§5619; 5622 (the “Act”).

NOW THEREFORE, BE IT ORDAINED AND ENACTED by the Municipal Council of the Municipality of Norristown as follows:

1. Municipality's Acquisition of System

The Municipal Council hereby authorizes the acquisition of the System, including all monies, funds and property, real, personal and mixed, and all contracts related thereto of the Authority, and all right, title and interest of the Authority thereto, pursuant to the rights and powers vested in the Municipality under the Act. The Municipal Council further authorizes the operation of the System by the Municipality from the date of the acquisition forward and authorizes municipal staff to prepare for the transition of the System from Authority to Municipality control.

To effectuate the Municipality's right to own, operate and maintain the System for its residents, the Municipal Council hereby commands and orders the Authority, through its board members, to convey the System and all property of the Authority to the Municipality pursuant to the Act by written instrument(s) in form and substance acceptable to the Municipality five (5) days after the Municipality's assumption or discharge of all of the Authority Obligations as defined hereinafter and in accordance with the Act (the "Conveyance Date").

2. Assumption or Payment of Authority Financial Obligations

Pursuant to the Act, the Municipal Council hereby authorizes and approves the assumption or payment (or the provision of payment) by the Municipality on or before the Conveyance Date, of all outstanding financial obligations incurred or owing by the Authority with respect to the System (the "Authority Financial Obligations"). The Municipal Council hereby orders the Authority to, commencing on the Effective Date hereof, cooperate with the Municipality, its agents and representatives, to effectuate the assignment and assumption of all Authority Financial Obligations. The Authority shall use its best efforts to effectuate the assignment or repayment of the Authority Financial Obligations by the Municipality in accordance with the Act, including, without limitation, promptly providing copies of documents and records relating to all Authority Financial Obligations and requesting the consent of such assignment from any lender associated with any Authority Financial Obligations.

3. Assignment and Assumption of Authority Non-Financial Obligations

The Municipal Council hereby authorizes and approves the assumption by the Municipality on or before the Conveyance Date, of all other Authority obligations with respect to the System, including without limitation the assumption of the Authority's NPDES Permit No. PA0027421 (the "Authority Non-Financial Obligations" and together with the Authority Financial Obligations, the "Authority Obligations"). The Municipal Council hereby orders the Authority to, commencing on the Effective Date hereof, cooperate with the Municipality, its agents and representatives, to effectuate the assignment and assumption of the Authority Non-Financial Obligations. The Authority shall use its best efforts to effectuate the assignment of the Authority Non-Financial Obligations from the Authority to the Municipality in accordance with the Act, the Pennsylvania Public Utility Code and the Department of Environmental Protection's regulations.

4. Prohibition of Authority Action

Other than the ordinary operation of the System, the Authority and any other party associated therewith shall not take any action upon or expend any funds: (i) related to any projects or projects, including, but not limited to the incurrence by the Authority of any obligations or indebtedness for any purpose, or the expansion, encumbrance transfer or other disposition of any of the System or any property of the Authority; (ii) on or in connection with ordering or obtaining any valuation, study or report of or in connection with the System; or (iii) which could have a negative effect on the value or operation of the System. Notwithstanding the foregoing, the Authority is expressly permitted to undertake and complete certain improvements and upgrades to its treatment plant facilities located at 368 East Washington Street in compliance with the subdivision and land development and zoning hearing board approvals granted by the Municipality in accordance with the Municipality's direction and the requirements of the Pennsylvania Department of Environmental Protection until such time as the System is conveyed to the Municipality.

5. Authority's Use of Funds

The Authority or any other party is hereby expressly prohibited from taking any action or expending any funds, for the purpose of challenging the right of the Municipality to take the actions set forth in this Ordinance or which would have the effect of directly or indirectly, hindering, impeding or otherwise adversely affecting the Municipality's ability to obtain control and ownership of the System. Council interprets a violation of this provision as cause for the removal of members of the board of the Authority under Section 5610(d) of the Act and grounds for surcharge and hereby directs its agents and employees, to take any and all necessary actions required to vindicate the violation.

6. Municipality's Use of Authority Funds

Pursuant to Section 5622(d) of the Act, following the Authority's conveyance of the System to the Municipality, the Municipality shall only use the Authority's reserves derived from the Authority's operations, for the purposes of operating, maintaining, repairing, improving and extending the System. In furtherance of the foregoing, the Municipality is hereby directed to hold Authority reserves in a separate fund, which shall only be used for operating, maintaining, repairing, improving and extending the System. Further, money received from the Authority which represents the proceeds of financing shall be retained by the Municipality in a separate fund which shall only be used for improving or extending the System or other capital purposes related to it.

7. Existing Agreements

Any and all existing agreements between the Municipality and the Authority shall be terminated and shall be null and void and no longer of any force or effect upon the Conveyance Date.

8. General Authorization

The Municipal Council hereby further authorizes the Municipality, its agents and employees, to take any and all necessary actions required by the with the Charter of the Municipality and other applicable law to complete the conveyance of the System as permitted by applicable law.

9. Severability

The provisions of this Ordinance are intended to be severable, and if any section, sentence, clause, part or provision hereof shall be held illegal, invalid or unconstitutional by any court of competent jurisdiction, such decision of the court shall not affect or impair the remaining sections, sentences, clauses, parts or provisions of this Ordinance. It is hereby declared to be the intent of the Municipal Council that this Ordinance would have been adopted even if such illegal, invalid or unconstitutional section, sentence, clause, part or provisions had not been included herein.

10. Effective Date

This Ordinance shall take effect and be in force five (5) days from and after its approval as required by the Charter of the Municipality (the “Effective Date”).

11. Repealer

All other ordinances and resolutions or parts thereof as they are inconsistent with this Ordinance are hereby repealed.

ENACTED AND ORDAINED this _____ day of _____, 2020.

Seal:

**Municipality of Norristown
Municipal Council**

By: _____
Derrick Perry
Council President

Attest: _____
Crandall O. Jones
Municipal Administrator