

ORDINANCE

IT IS HEREBY ORDAINED BY THE TOWN OF SMITHFIELD AS FOLLOWS:

CHAPTER 294

**ORDINANCE APPROVING AND AUTHORIZING THE ISSUE OF NOT TO EXCEED
\$7,700,000 SEWER REVENUE BONDS FOR THE PURPOSES OF FINANCING
IMPROVEMENTS TO THE TOWN'S SEWER SYSTEM**

§294-36. Sewer Improvement Bonds

WHEREAS, the Town has previously developed a program under which to structure its borrowings with the Rhode Island Clean Water Finance Agency, and

WHEREAS, the Town is proposing the upgrade of the Wastewater Treatment Facility to Tertiary Treatment; and

WHEREAS, the Town will finance these projects with a borrowing from the Rhode Island Clean Water Financing Agency.

NOW, therefore, the Town of Smithfield hereby ordains as follows:

1. The sum of Seven Million, Seven Hundred Thousand Dollars (\$7,700,000) is appropriated for the planning, construction, financing, maintenance, renewal and replacement costs for the collection, transportation, pumping, treatment and final disposition of sewage in the Town of Smithfield (the "Project"). The period of usefulness of the Project is expected to be not less than twenty five (25) years.
2. In accordance with Chapter 46-12.2 of the Rhode Island General Laws, the Town Manager and the Town Council President are authorized to borrow an amount not exceeding Seven Million, Seven Hundred Thousand Dollars (\$7,700,000) from the Rhode Island Clean Water Finance Agency, and to evidence such loan, such officers are hereby authorized to issue sewer revenue bonds in an amount not exceeding Seven Million, Seven Hundred Thousand Dollars (\$7,700,000) (the "Bonds"), at one time or from time to time in order to meet the foregoing appropriation.
3. The said officers from time to time may issue and refund not exceeding Seven Million, Seven Hundred Thousand Dollars (\$7,700,000) interest bearing or discounted notes (the "Notes") under Chapter 46-12.2 of the Rhode Island General Laws in anticipation of the issue of said Bonds or in anticipation of the receipt of federal or state aid for the purposes specified in subsection (1) hereof.
4. The Bonds and Notes shall be payable solely from revenues of the Town's sewer system, including, but not limited to annual charges, sewer assessments and connect capable charges (the "Sewer Revenues"). The Bonds and Notes shall not

be general obligations of the Town. The Town may issue bonds, notes or other obligations on a parity with the Bonds or Notes.

5. The manner of sale and the forms, denominations, maturities, interest rates and other details of the bonds and notes shall be fixed by the said officers.
6. Pending the issue of Bonds under subsection (2) hereof or pending or in lieu of the issue of Notes under subsection (3) hereof, the Finance Director may expend funds from the general treasury of the Town for the purposes specified in subsection (1) hereof. Any advances made under this subsection shall be repaid without interest from the proceeds of Bonds or Notes issued hereunder or from the proceeds of applicable federal or state assistance or from other available funds.
7. The said officers are also authorized, empowered and directed, on behalf of the Town, to: (a) execute, acknowledge and deliver, one or more Supplemental Indentures supplementing the Trust Indenture dated December 12, 2007, by and between the Town and Wells Fargo Bank, N.A., as Trustee relating to the Bonds by and between the Town and a corporate trustee (as supplemented, the "Trust Indenture") and any and all other loan agreements, documents, certificates or instruments necessary to effectuate such borrowing; (b) amend, modify or supplement the Trust Indenture, Supplemental Indentures, Bonds or Notes and any and all other loan agreements, documents, certificates or instruments at any time and from time to time, in such manner and for such purposes as such officers shall deem necessary, desirable or advisable; (c) pledge the Sewer Revenues to secure payment of the Bonds or Notes; (d) direct the Trustee with regard to investments of trust funds pursuant to the Trust Indenture; and (e) do and perform all such other acts and things deemed by said officers to be necessary, desirable or advisable with respect to any matters contemplated by this Ordinance in order to effectuate said borrowing and the intent thereof.
8. The Town Manager and the Town Council President are hereby authorized, if required, to take all lawful action necessary under the Internal Revenue Code of 1986, as amended (the "Code"), to ensure that the interest on the Bonds and the Notes will remain exempt from federal income taxation to the extent provided in Section 103 of the Code, and to refrain from taking any action which will cause interest on the Bonds or Notes to lose the benefit of exclusion from gross income provided by Section 103(a) of the Code.
9. This Ordinance is an affirmative action of the Town Council of the Town toward to issuance of the Bonds and Notes in accordance with the purposes of the laws of the State. This Ordinance constitutes the Town's declaration of official intent, pursuant to Treasury Regulation §1.150-2, to reimburse the Town funds and accounts for certain capital expenditures for the Project paid on or after the date which is sixty (60) days prior to the date of this Ordinance but prior to the issuance of the Bonds or Notes. Such amounts to be reimbursed shall be reimbursed not later than eighteen (18) months after (a) the date on which the

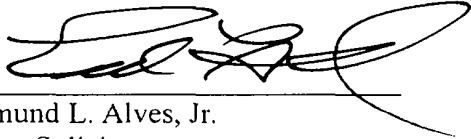
expenditure is paid or (b) the date the particular project is placed in service or abandoned, but in no event more than three (3) years after the date the expenditure is paid.

- 10. The Town Manager and the Town Council President are hereby authorized to take all lawful action necessary to comply with federal tax and securities laws including Rule 15c2-12 of the Securities and Exchange Commission (the "SEC Rule") and to execute and deliver a Continuing Disclosure Certificate in connection with the Bonds or Notes in the form as shall be deemed advisable by the Town Manager and the Town Council President in order to comply with the SEC Rule. The Town hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Certificate, as it may be amended from time to time. Notwithstanding any other provision of this Ordinance or the Bonds or Notes, failure of the Town to comply with the Continuing Disclosure Certificate shall not be considered an event of default; however, any Bondholder or Noteholder may take such action as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the Town to comply with its obligations under this subsection and under the Continuing Disclosure Certificate.

THIS ORDINANCE WILL BECOME EFFECTIVE AT THE EXPIRATION OF THIRTY (30) DAYS AFTER ADOPTION.

ODINANCE INTRODUCED BY
TOWN COUNCIL PRESIDENT,
MICHAEL J. FLYNN

ORDINANCE AMENDMENT
APPROVED AS TO FORM:



Edmund L. Alves, Jr.
Town Solicitor