

# **CITY OF BATAVIA**

---

**DATE:** 2/22/19  
**TO:** Mayor and City Council  
**FROM:** Peggy Colby, Finance Director  
**RE:** Ordinance 19-10 Authorizing an IEPA Loan for Sewer Separation

Last November, the City Council passed Ordinance 18-65 authorizing an IEPA low interest loan for Area 3 storm sewer separation. The City and the City's Bond Counsel consulted with the legal Counsel of the IEPA in preparation of Bond Ordinance 18-65 that provided the General Fund as the revenue source for repayment of the loan. The application and all documents were then submitted to the IEPA. We just heard back from the IEPA and they have determined that they would prefer that the City pledge sewer revenues rather than the general fund revenues for the dedicated source of revenue.

The change in dedicated revenue source requires a new Ordinance and application. The new Ordinance will not change how the City intended to repay the loan as the City can still use general fund revenues towards repayment along with the proportionate share of sewer revenues. The only difference is that the City guarantees that there will be enough sewer revenues to repay the loan. The City will use the funds from the drainage fund to pay 50% of the cost. The dollar amount remains the same at capping the loan at \$2,350,000. I am providing the first Ordinance for your reference as well. The exact wording for Ordinance 19-10 is not available yet as Bond Counsel is reviewing it and consulting with the IEPA office. I will provide the final version when it is ready. We plan to take the final version directly to City Council.

This will be on the Agenda for Committee of the Whole-GS on February 26, 2019.

***Requested Action by Council:*** Recommendation for approval of Ordinance 19-10 Authorizing and IEPA loan for Area 3 Sewer Separation not to exceed \$2,350,000. Thank you.

cc. Mayor and City Council  
Laura Newman  
Gary Holm  
Andrea Podraza  
File

# DRAFT

**CITY OF BATAVIA, ILLINOIS  
ORDINANCE 19-10**

**WATER POLLUTION CONTROL LOAN PROGRAM  
AUTHORIZING LOAN AGREEMENT  
CITY OF BATAVIA  
A HOME RULE ENTITY**

**ADOPTED BY THE  
MAYOR AND CITY COUNCIL  
THIS TH DAY OF 2019**

Published in pamphlet form  
by authority of the Mayor  
and City Council of the City of Batavia,  
Kane & DuPage Counties, Illinois,  
This th day of , 2019

Prepared by:  
City of Batavia  
100 N. Island Ave.  
Batavia, IL 60510

---

**AUTHORIZING LOAN AGREEMENT  
(WATER POLLUTION CONTROL LOAN PROGRAM –CITY OF BATAVIA)**

**ORDINANCE NUMBER 19-10**

AN ORDINANCE authorizing the City of Batavia, of  
Kane and DuPage County, Illinois, to borrow funds  
from the Water Pollution Control Loan Program

**WHEREAS**, the City of Batavia of Kane and DuPage County, Illinois, operates its sewerage system (“the System”) and in accordance with the provisions of the Illinois Constitution Home Rule Act, 65 ILCS 5/1 et seq (collectively “the Act”) and the Local Government Debt Reform Act, 30 ILCS 350/1 et seq. (collectively “the Act”); and

**WHEREAS**, the MAYOR and CITY COUNCIL of the City of Batavia (“the Corporate Authorities”) have determined that it is advisable, necessary, and in the best interest of the public health, safety, and welfare to improve the System, including the following:

**Project Description**

The project consists of separating storm sewer connections from the combined storm/sanitary sewer system and subsequently constructing a separate storm sewer system to accommodate stormwater flows, thereby relieving the sanitary sewer system from storm water flows, all in the City’s Area 3, as part of the City’s overall plan to separate its combined sewer areas, which are significant contributors to the total infiltration and inflow received at the wastewater treatment facility as well as a source of local street flooding, sewer backups into residences and increased flows to lift stations. The existing combined sewer will remain in place, but will convey sanitary waste only.

all in accordance with the preliminary plans and estimate of costs heretofore approved by the Council and now on file in the office of the City Clerk, and to pay the engineering, legal, financial and administrative expense related thereto (collectively, the “*Project*”); and

**WHEREAS**, the estimated cost of construction and installation of the Project, including engineering, legal, financial and other related expenses is \$2,350,000 and there are insufficient funds on hand and lawfully available to pay these costs; and

**WHEREAS**, the loan shall bear an interest rate as defined by 35 Ill. Adm. Code 365, which does not exceed the maximum rate authorized by the Bond Authorization Act, as amended, 30 ILCS 305/0.01 et seq., at the time of the issuance of the loan; and

**WHEREAS**, the principal and interest payment shall be payable semi-annually, and the loan shall mature in 20 years, which is within the period of useful life of the Project; and

**WHEREAS**, the costs are expected to be paid for with a loan to the City of Batavia from the Water Pollution Control Loan Program through the Illinois Environmental Protection Agency, the loan to be repaid from Sewer revenues and the loan is authorized to be accepted at this time pursuant to the Act; and

**WHEREAS**, in accordance with the provisions of the Act, the City of Batavia is authorized to borrow funds from the Water Pollution Control Loan Program in the aggregate principal amount of \$2,350,000 to provide funds to pay the costs of the Project; and

**WHEREAS**, the loan to the City of Batavia shall be made pursuant to a Loan Agreement, including certain terms and conditions between the City of Batavia and the Illinois Environmental Protection Agency;

NOW THEREFORE, be it ordained by the Corporate Authorities of the City of Batavia of Kane and Dupage County, Illinois, as follows:

**SECTION 1. INCORPORATION OF PREAMBLES**

The Corporate Authorities hereby find that the recitals contained in the preambles are true and correct, and incorporate them into this Ordinance by this reference.

**SECTION 2. DETERMINATION TO BORROW FUNDS**

It is necessary and in the best interests of the City of Batavia to construct the Project for the public health, safety, and welfare, in accordance with the plans and specifications, as described; that the System continues to be operated in accordance with the provisions of the Illinois Environmental Protection Act, 415 ILCS 5/1 et seq.; and that for the purpose of constructing the Project, it is hereby authorized that funds be borrowed by the City of Batavia in the aggregate principal amount (which can include construction period interest financed over the term of the loan) not to exceed \$2,350,000.

**SECTION 3. ADDITIONAL ORDINANCES**

The Corporate Authorities may adopt additional ordinances or proceedings supplementing or amending this Ordinance, providing for entering into the Loan Agreement with the Illinois Environmental Protection Agency, prescribing all the details of the Loan Agreement, and providing for the collection, segregation and distribution of the sewer revenues of the System, so long as the maximum amount of the Loan Agreement as set forth in this Ordinance is not exceeded and there is no material change in the project or purposes described herein. Any additional ordinances or proceedings shall in all instances become effective in accordance with the Act or other applicable laws. This Ordinance, together with such additional ordinances or proceedings, shall constitute complete authority for entering into the Loan Agreement under applicable law.

However, notwithstanding the above, the City of Batavia may not adopt additional ordinances or amendments which provide for any substantive or material change in the scope and intent of this Ordinance, including but not limited to interest rate, preference or priority of any other ordinance with this Ordinance, parity of any other ordinance with this Ordinance, or otherwise alter or impair the obligation of the City of

Batavia to pay the principal and interest due to the Water Pollution Control Loan Program without the written consent of the Illinois Environmental Protection Agency.

**SECTION 4. LOAN NOT INDEBTEDNESS OF City of Batavia**

Repayment of the loan to the Illinois Environmental Protection Agency by the City of Batavia pursuant to this Ordinance is to be solely from the revenue derived from Sewer Fund revenues, and the loan does not constitute an indebtedness of the City of Batavia within the meaning of any constitutional or statutory limitation.

**SECTION 5. APPLICATION FOR LOAN**

The Mayor is hereby authorized to make application to the Illinois Environmental Protection Agency for a loan through the Water Pollution Control Loan Program, in accordance with the loan requirements set out in 35 Ill. Adm. Code 365.

**SECTION 6. ACCEPTANCE OF LOAN AGREEMENT**

The Corporate Authorities hereby authorize acceptance of the offer of a loan through the Water Pollution Control Loan Program, including all terms and conditions of the Loan Agreement as well as all special conditions contained therein and made a part thereof by reference. The Corporate Authorities further agree that the loan funds awarded shall be used solely for the purposes of the project as approved by the Illinois Environmental Protection Agency in accordance with the terms and conditions of the Loan Agreement.

**SECTION 7. RESERVE ACCOUNTS**

The City of Batavia does not require the establishment of reserve accounts. The City of Batavia does not have any Revenue Bonds Outstanding.

**SECTION 8. AUTHORIZATION OF MAYOR  
TO EXECUTE LOAN AGREEMENT**

The MAYOR is hereby authorized and directed to execute the Loan Agreement with the Illinois Environmental Protection Agency. The Corporate Authorities may authorize by resolution a person other than the MAYOR for the sole purpose of authorizing or executing any documents associated with payment requests or reimbursements from the Illinois Environmental Protection Agency in connection with this loan.

**SECTION 9. SEVERABILITY**

If any section, paragraph, clause or provision of this Ordinance is held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Ordinance.

**SECTION 10. REPEALER**

All ordinances, resolutions, orders, or parts thereof, which conflict with the provisions of this Ordinance, to the extent of such conflict, are hereby repealed.

**PRESENTED** to the City Council of the City of Batavia, Illinois, this 3<sup>rd</sup> day of March 2019.

**PASSED** by the City Council of the City of Batavia, Illinois, this 3<sup>rd</sup> day of March 2019.

**APPROVED** by me as Mayor of said City of Batavia, Illinois, this 3<sup>rd</sup> day of March 2019.

\_\_\_\_\_  
Jeffery D. Schielke, Mayor

COUNCIL VOTE:

Ward	Aldermen	Ayes	Nays	Absent	Abstain	Aldermen	Ayes	Nays	Absent	Abstain
1	O'Brien					Salvati				
2	Callahan					Wolff				
3	Meitzler					Chanzit				
4	Malay					Stark				
5	Uher					Thelin Atac				
6	Cerone					Russotto				
7	McFadden					Brown				
Mayor Schielke										
VOTE:		Ayes	Nays	Absent	Abstentions					
Total holding office:		Mayor and 14 aldermen								

ATTEST:

\_\_\_\_\_  
Ellen Posledni, City Clerk



EXTRACT OF MINUTES of a regular public meeting of the City Council of the City of Batavia, Kane and DuPage Counties, Illinois, held in the City Council Chambers of City Hall, 100 North Island Avenue, Batavia, Illinois, in said City, at 7:30 o'clock P.M., on the 19th day of November, 2018.

\* \* \*

The Mayor called the meeting to order and directed the City Clerk to call the roll. Upon the roll being called, the Mayor and the following Aldermen were physically present at said location: **Brown, Russotto, Atac, Stark, Chanzit, Wolff, Salvati, Callahan, Meitzler, Malay, Uher, Cerone, McFadden (O'Brien joined the meeting at 7:49 p.m. and was present for the vote on Ordinance 18-65.)**

The following Aldermen were allowed by a majority of the Aldermen in accordance with and to the extent allowed by rules adopted by the City Council to attend the meeting by video or audio conference: **None**

No Alderman was not permitted to attend the meeting by video or audio conference.

The following Aldermen were absent and did not participate in the meeting in any manner or to any extent whatsoever: **None**

The Mayor announced that in order to finance the necessary improvements to the City's sewerage system, it would be necessary for the City to issue promissory notes in an amount not to exceed \$2,350,000, and that the City Council would consider the adoption of an ordinance authorizing the issuance of such bonds.

Thereupon, the City Clerk presented, the Mayor explained, and there was read by title an ordinance as follows, a copy of which was provided to each Alderman prior to said meeting and to everyone in attendance at said meeting who requested a copy:

**ORDINANCE NO. 18-65**

AN ORDINANCE authorizing the City of Batavia, Kane and DuPage Counties, Illinois, to issue a promissory note in an aggregate principal amount not to exceed \$2,350,000 in evidence of loans issued pursuant to the Water Pollution Control Loan Program.

\* \* \*

WHEREAS, the City of Batavia, Kane and DuPage Counties, Illinois (the “*City*”), has a population of more than 25,000, and in accordance with the provisions of Section 6(a) of Article VII of the 1970 Constitution of the State of Illinois (the “*Constitution*”), the City is a home rule unit of government and, as such, may exercise any power or perform any function pertaining to its government and affairs including, but not limited to, the power to tax and to incur debt; and

WHEREAS, pursuant to the provisions of Section 6(a) of the Constitution, the City has the power to incur debt payable from any lawful source and maturing within forty (40) years from the time it is incurred without prior referendum approval; and

WHEREAS, the City operates a sewerage system (the “*System*”) in accordance with the provisions of Division 141 of Article 11 of the Illinois Municipal Code, as supplemented and amended, and in particular as supplemented by the Local Government Debt Reform Act, as amended (collectively, the “*Act*”); and

WHEREAS, the City Council of the City (the “*Council*”) has determined that it is advisable, necessary and in the best interests of the public health, safety and welfare to undertake the following project with respect to the System:

**PROJECT DESCRIPTION - STORM AND SANITARY SEWER SEPARATION AREA 3**

The project consists of separating storm sewer connections from the combined storm/sanitary sewer system and subsequently constructing a separate storm sewer system to accommodate stormwater flows, thereby relieving the sanitary sewer system from storm water flows, all in the City’s Area 3, as part of the City’s overall plan to separate its combined sewer areas, which are significant

contributors to the total infiltration and inflow received at the wastewater treatment facility as well as a source of local street flooding, sewer backups into residences and increased flows to lift stations. The existing combined sewer will remain in place, but will convey sanitary waste only.

all in accordance with the preliminary plans and estimate of costs heretofore approved by the Council and now on file in the office of the City Clerk, and to pay the engineering, legal, financial and administrative expense related thereto (collectively, the "*Project*"); and

WHEREAS, the estimated cost of constructing and installing the Project, including engineering, legal, financial, bond discount, printing and publication costs, and other expenses, is not less than \$2,350,000, and there are insufficient funds on hand and lawfully available to pay such costs; and

WHEREAS, it is necessary and for the best interests of the City that the Project be undertaken and in order to finance the costs thereof it will be necessary for the City to issue up to \$2,350,000 of a general obligation promissory note or combination of notes of the City pursuant to the City's home rule powers (the "*Notes*"); and

WHEREAS, the State of Illinois (the "*State*"), acting through the IEPA, has offered to make loans to the City, to be evidenced by the Notes, through the "Water Pollution Control Loan Program" (the "*RLF*"), for the purpose of paying certain eligible costs of the Project; and it is necessary and advisable to authorize the acceptance of said loans(s) and execution of appropriate loan documents at the appropriate time(s); and

WHEREAS, pursuant to and in accordance with the provisions of the Act, the City is authorized to borrow funds from the RLF and may issue the Notes in evidence thereof for the purpose of providing funds to pay the costs of the Project; and

WHEREAS, such loan or loans to the City may be made pursuant to a loan agreement or agreements and bond ordinance or ordinances, with such terms and conditions as may be provided by the IEPA: and

WHEREAS, if funds from the RLF are unavailable in a timely manner, the City may pursue the issuance of the Notes in the conventional public municipal markets:

NOW, THEREFORE, Be It Ordained by the City Council of the City of Batavia, Kane and DuPage Counties, Illinois, as follows:

*Section 1. Incorporation of Preambles.* The Council hereby finds that all of the recitals contained in the preambles to this Ordinance are full, true and correct and does incorporate them into this Ordinance by this reference.

*Section 2. Determination to Issue Notes.* It is necessary and in the best interests of the City to undertake the Project for the public health, safety and welfare, in accordance with the preliminary plans and estimate of costs as hereinabove described, that the System continue to be operated in accordance with the provisions of the Act, and that for such purpose, there are hereby authorized to be issued and sold the Notes in an aggregate principal amount not to exceed \$2,350,000.

*Section 3. Additional Ordinances.* The Council may adopt additional ordinances or proceedings supplementing or amending this Ordinance providing for the issuance and sale of the Notes, prescribing all the details of the Notes so long as the maximum amount of the Notes as set forth in this Ordinance is not exceeded and there is no material change in the Project purposes described herein. Such additional ordinances or proceedings shall in all instances become effective in accordance with applicable law. This Ordinance, together with such additional ordinances or proceedings, shall constitute complete authority for the issuance of the Notes under applicable law. However, notwithstanding the above, the City may not adopt additional ordinances or amendments which provide for any substantive or material change in the scope and intent of this Ordinance, including but not limited to interest rate, preference or priority of any other ordinance with this Ordinance, parity of any other ordinance with this Ordinance, or otherwise alter or impair the

obligation of the City to pay the principal and interest due to the RLF without the written consent of the IEPA.

*Section 4. Acceptance of Loan Agreement; Authorization for Execution.* The Council hereby authorizes acceptance of the offer of the loan(s) through the RLF, including all terms and conditions of the IEPA loan agreement(s) as well as all special conditions contained therein and made a part thereof by reference, such loan agreement to be as further approved by the ordinance and related proceedings for the Notes. The Council further agrees that the loan funds awarded shall be used solely for the purposes of the Project as approved by the IEPA in accordance with the terms and conditions of the loan agreement. The Mayor is hereby authorized and directed to execute the loan agreement with the IEPA.

*Section 5. Severability.* If any section, paragraph, clause or provision of this Ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Ordinance.

*Section 6. Repealer; Effective Date.* All ordinances, resolutions or orders, or parts thereof, in conflict with the provisions of this Ordinance are to the extent of such conflict hereby repealed; and this Ordinance shall be effective immediately.

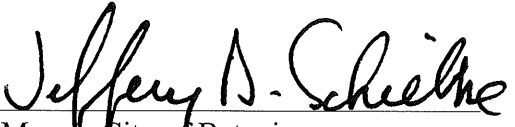
ADOPTED by the City Council on the 19th day of November, 2018.

AYES: **Brown, Russotto, Atac, Stark, Chanzit, Wolff, Salvati, O'Brien, Callahan, Meitzler, Malay, Uher, Cerone, McFadden**

NAYS: **None**


ABSENT: **None**

APPROVED on November 19, 2018

  
\_\_\_\_\_  
Mayor, City of Batavia,  
Kane and DuPage Counties, Illinois

RECORDED in the City Records on November 20, 2018.

Attest:

  
\_\_\_\_\_  
City Clerk, City of Batavia,  
Kane and DuPage Counties, Illinois

Alderman Chanzit moved and Alderman O'Brien seconded the motion that said ordinance as presented and read by the City Clerk be adopted.

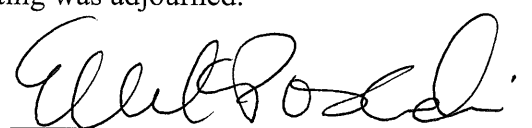
After a full and complete discussion thereof, including a public recital of the nature of the matter being considered and other information that informed the public, of the business being conducted, the Mayor directed that the roll be called for a vote upon the motion to adopt the ordinance as read.

Upon the roll being called, the following Aldermen voted AYE: **Brown, Russotto, Atac, Stark, Chanzit, Wolff, Salvati, O'Brien, Callahan, Meitzler, Malay, Uher, Cerone, McFadden**  
NAY: **None**

Whereupon the Mayor declared the motion carried and the ordinance adopted, and henceforth did approve and sign the same in open meeting and did direct the City Clerk to record the same in full in the records of the City Council of the City of Batavia, Kane and DuPage Counties, Illinois, which was done.

Other business not pertinent to the adoption of said ordinance was duly transacted at said meeting.

Upon motion duly made and seconded, the meeting was adjourned.

  
\_\_\_\_\_  
City Clerk