

1 Bill No. G-12-05-25

2 GENERAL ORDINANCE NO. _____

3 **AN ORDINANCE AMENDING SECTION 51.074**
4 **WHOLESALE CONTRACT CUSTOMERS – UNIT AND**
5 **OTHER CHARGES CITY OF FORT WAYNE, CODE OF**
6 **ORDINANCES.**

7 **WHEREAS**, the City of Fort Wayne, Indiana ("City") has executed
8 written contracts with various entities to provide wholesale sewage treatment
9 service ("Contracts"); and

10 **WHEREAS**, due to health and safety concerns, the City will continue
11 to treat sewage that is conveyed to the City's Water Pollution Control
12 Plant/Wastewater Treatment Facility from a wholesale customer even when
13 such a Contract has expired, been terminated or the customer is in
14 substantial default of its Contract; and

15 **WHEREAS**, an ordinance is needed to identify the rates, rules and
16 regulations applicable to any customer receiving wholesale treatment service
17 under an expired or terminated Contract or that is in substantial default of its
18 Contract; and

19 **WHEREAS**, any customer receiving wholesale treatment service from
20 the City upon expiration or termination of its Contract or that is in substantial
21 default of its Contract shall be subject to the same rates, rules and
22 regulations as retail industrial, commercial, institutional or governmental
23 customers of the City, whichever class of user applies to the customer.

24 **NOW, THEREFORE, BE IT ORDAINED BY THE COMMON**
25 **COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:**
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1 **SECTION 1.** That the Common Council of the City of Fort Wayne,
2 Indiana has determined that due to health and safety concerns, the City will
3 continue to treat sewage from a wholesale customer even when a Contract
4 has expired, been terminated or the customer is in substantial default; that
5 applying existing published rates, rules and regulations of retail industrial,
6 commercial, institutional or governmental customers to any customer
7 receiving wholesale treatment service upon expiration or termination of its
8 Contract or that is in substantial default of its Contract is the most reasonable
9 way to determine and provide for the proper rates, rules and regulations for
10 service to that customer; and the City's tariff rates have been determined to
11 be just and equitable; and

12 **SECTION 2.** The following section of Section 51.074 of the Fort
13 Wayne Code of Ordinances is hereby amended to adjust the rates and
14 charges to a wholesale customer that has a Contract that has expired or
15 been terminated or is in substantial default of its Contract.

16 **Section 51.074 (H) *Expiration/termination or substantial default of***
17 ***contract.***

18 Any customer receiving wholesale treatment service from the City that
19 has a Contract that has expired or been terminated or is in substantial default
20 of its Contract shall pay all fees, charges and penalties applicable to retail
21 Industrial, Commercial, Institutional or Governmental customers, with the
22 customer paying the Out of City rate, unless the customer's service area is
23 wholly contained within the corporate boundaries of the City of Fort Wayne.

24 **SECTION 3.** Except for the foregoing amendments, the remaining
25 sections of Section 51.074 of the City of Fort Wayne, Indiana, Code of
26 Ordinances shall remain in full force and effect.

SECTION 4. This Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

Council Member

APPROVED AS TO FORM AND LEGALITY

Carol Helton, City Attorney

Interoffice Memo

Date: May 18, 2012
To: Common Council Members
From: Kumar Menon, Director of City Utilities
RE: An Ordinance Amending Chapter 51 Sewers, Section 51.074 Wholesale Contract Customers – Unit and Other Charges

The City of Fort Wayne has entered into sanitary sewer wholesale treatment contracts with a number of surrounding communities and sewer districts. These contracts are long term contracts that establish rules, regulations, responsibilities and basis for rate setting provisions. Many of these contracts date back decades and have been periodically amended over the years. Upon review of these contracts, the City Law Office determined that it is necessary to more explicitly clarify rate setting methods and associated service provision in the event a wholesale treatment contract becomes expired, is terminated or is in substantial default.

This ordinance provides for the continuation of wastewater treatment services by the City to the wholesale customer/former wholesale customer even following contract expiration, termination or substantial default absent another wastewater treatment alternative. This ordinance also establishes that customers receiving wholesale sewage treatment service from City Utilities, upon expiration or termination of its Contract or if the wholesale customer is in substantial default of its Contract, shall be subject to the same rates, rules and regulations as retail industrial, commercial, institutional or governmental customers of the City, whichever class of user applies to the customer.

City Utilities is seeking approval of this ordinance. Please contact Nancy Townsend at 427-2691 or at nancy.townsend@cityoffortwayne.org if you have any questions.

CC: Diane Brown
Molly McCray

Bill No. G-12-__ -__

GENERAL ORDINANCE NO. _____

**AN ORDINANCE AMENDING SECTION 51.074
WHOLESALE CONTRACT CUSTOMERS – UNIT AND OTHER CHARGES
CITY OF FORT WAYNE, CODE OF ORDINANCES**

WHEREAS, the City of Fort Wayne, Indiana (“City”) has executed written contracts with various entities to provide wholesale sewage treatment service (“Contracts”); and

WHEREAS, due to health and safety concerns, the City will continue to treat sewage that is conveyed to the City’s Water Pollution Control Plant/Wastewater Treatment Facility from a wholesale customer even when such a Contract has expired, been terminated or the customer is in substantial default of its Contract; and

WHEREAS, an ordinance is needed to identify the rates, rules and regulations applicable to any customer receiving wholesale treatment service under an expired or terminated Contract or that is in substantial default of its Contract; and

and

WHEREAS, any customer receiving wholesale treatment service from the City upon expiration or termination of its Contract or that is in substantial default of its Contract shall be subject to the same rates, rules and regulations as retail industrial, commercial, institutional or governmental customers of the City, whichever class of user applies to the customer.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That the Common Council of the City of Fort Wayne, Indiana has determined that due to health and safety concerns, the City will continue to treat sewage from a wholesale customer even when a Contract has expired, been terminated or the customer is in substantial default; that applying existing published rates, rules and regulations of retail industrial, commercial, institutional or governmental customers to any customer receiving wholesale treatment service upon expiration or termination of its Contract or that is in substantial default of its Contract is the most reasonable way to determine and provide for the proper rates, rules and regulations for service to that customer; and the City’s tariff rates have been determined to be just and equitable; and

SECTION 2. The following section of Section 51.074 of the Fort Wayne Code of Ordinances is hereby amended to adjust the rates and charges to a wholesale customer that has a Contract that has expired or been terminated or is in substantial default of its Contract.

Section 51.074 (H) *Expiration or substantial default of contract.*

Any customer receiving wholesale treatment service from the City that has a Contract that has expired or been terminated or is in substantial default of its Contract shall pay all fees, charges and penalties applicable to retail Industrial, Commercial, Institutional or Governmental customers, with the customer paying the Out of City rate, unless the customer's service area is wholly contained within the corporate boundaries of the City of Fort Wayne.

SECTION 3. Except for the foregoing amendments, the remaining sections of Section 51.074 of the City of Fort Wayne, Indiana, Code of Ordinances shall remain in full force and effect.

SECTION 4. This Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

Council Member

Approved as to form and legality

Carol Helton, City Attorney