

1 **BILL NO. S-13-05-31**

2 **SPECIAL ORDINANCE NO. S-_____**

3 **AN ORDINANCE CLARIFYING INTENT OF BILL NO. G-**
4 **09-05-08 (ORDINANCE NO. G-12-09), ADOPTED BY**
5 **COMMON COUNCIL OF FORT WAYNE MAY 26, 2009,**
6 **AND G-12-02-02 (ORDINANCE NO. G-6-12), ADOPTED**
7 **BY COMMON COUNCIL OF FORT WAYNE FEBRUARY**
8 **28, 2012**

9 **WHEREAS**, on May 26, 2009, Common Council of Fort Wayne
10 adopted Bill No. G-09-05-08 (Ordinance No. G-12-09), which among other
11 things, approved a five year rate plan that would adjust sewer rates annually
12 on the 1st day of July of each year from July 1, 2009 to July 1, 2013,
13 (hereinafter referred to as "2009 Rate Ordinance");

14 **WHEREAS**, on February 28, 2012, Common Council of Fort Wayne
15 adopted Bill No. G-12-02-02 (Ordinance No. G-6-12), which repealed and
16 replaced Chapter 51 of the Fort Wayne Code of Ordinances ("City Code"), as
17 mandated by Indiana Department of Environmental Management ("IDEM")
18 and the United States Environmental Protection Agency ("USEPA"),
19 (hereinafter referred to as "2012 Pretreatment Ordinance");

20 **WHEREAS**, as stated in the preamble of the 2012 Pretreatment
21 Ordinance, City of Fort Wayne, as Control Authority, was required to
22 "develop, enforce and maintain adequate legal authority in its Sewer Use
23 Ordinance (SUO) to fully implement the pretreatment program" and "within
24 six months after the effective date of its NPDES Permit, to submit to EPA
25 Region 5 and the IDEM pretreatment group, a program modification request
26 to incorporate the pretreatment streamlining revision in 327 IAC 5-16 through
27 327 IAC 5-21 of Indiana Administrative Code, which became effective on
28 May 3, 2009";

29 **WHEREAS**, the adoption of the 2012 Pretreatment Ordinance was for
30 the purpose of complying with the mandates of IDEM and USEPA and was

1 not adopted for the purpose of amending or repealing the sewer rate
2 structure previously adopted by Council in the 2009 Rate Ordinance;

3 **WHEREAS**, to eliminate any interpretation to the contrary, the
4 Common Council has determined to adopt an ordinance to clarify the intent
5 of the 2012 Pretreatment Ordinance.

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

8 **SECTION 1.** The above recitals are incorporated herein by this
9 reference as though fully set forth herein below.

10 **SECTION 2.** Council hereby declares the adoption of the 2012
11 Pretreatment Ordinance was for the purpose of complying with the mandates
12 of IDEM and USEPA to develop, enforce and maintain adequate legal
13 authority in City of Fort Wayne's Sewer Use Ordinance to fully implement a
14 pretreatment program and to incorporate those provisions into the City Code.

15 **SECTION 3.** Notwithstanding any language set forth in the 2012
16 Pretreatment Ordinance, Council hereby finds that the adoption of the 2012
17 Pretreatment Ordinance does not amend or repeal the sewer rate structure
18 adopted in the 2009 Rate Ordinance.

19 **SECTION 4.** That this Ordinance shall be in full force and effect from
20 and after its passage and any and all necessary approval by the Mayor.

21
22
23 _____
Council Member

24 APPROVED AS TO FORM AND LEGALITY

25
26 _____
Carol Helton, City Attorney



CITY OF FORT WAYNE

THOMAS C. HENRY, MAYOR

Interoffice Memo

Date: May 23, 2013
To: Common Council Members
From: Lindsey Jackson, Associate City Attorney

RE: AN ORDINANCE CLARIFYING INTENT OF BILL NO. G-09-05-08 (ORDINANCE NO. G-12-09), ADOPTED BY COMMON COUNCIL OF FORT WAYNE MAY 26, 2009, AND BILL NO. G-12-02-02 (ORDINANCE NO. G-6-12), ADOPTED BY COMMON COUNCIL OF FORT WAYNE FEBRUARY 28, 2012

In order to eliminate any interpretation to the contrary, this Ordinance is to clarify Common Council's intent when it adopted Bill No. G-12-02-02 (Ordinance No. G-6-12) ("2012 Pretreatment Ordinance") in reference to sewer rates adopted in G-09-05-8 (Ordinance No. G-12-09) ("2009 Rate Ordinance"). The proper steps required by Indiana Code were not taken to repeal the rates when the 2012 Pretreatment Ordinance was adopted and therefore any attempt to interpret the 2012 Pretreatment Ordinance as a repeal of sewer rates validly adopted in the 2009 Rate Ordinance must fail. Common Council adopted the 2012 Pretreatment Ordinance, which repealed and replaced Chapter 51, as mandated by Indiana Department of Environmental Management ("IDEM") and the United States Environmental Protection Agency ("USEPA"). City of Fort Wayne, as Control Authority, was required to develop, enforce and maintain adequate legal authority in its Sewer Use Ordinance (SUO) to *fully implement the pretreatment program*. The intent of adopting the 2012 Pretreatment Ordinance was to comply with IDEM and EPA mandates regarding pretreatment, not to change the five year sewer rate plan adopted by the 2009 Rate Ordinance.

cc: Diane Brown
File

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