

**CITY OF WIXOM
ORDINANCE NO. 2016-04**

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES FOR THE CITY OF WIXOM, TO AMEND TITLE 13, PUBLIC SERVICES, CHAPTER 13.08, SEWER SERVICE SYSTEM TO ADD A NEW DEFINITION UNDER SECTION 13.08.020 AND TO AMEND SECTION 13.08.295, TAP-IN FEES-INSTALLMENT AGREEMENTS, IN ITS ENTIRETY

THE CITY OF WIXOM ORDAINS:

Section 1. Section 13.08.020 – Definitions, shall be amended to include the following definitions:

“Commercial users” means those users located on commercial real property as defined in the General Property Tax Act, MCL 211.34c(2)(b).

Section 2. Section 13.08.295 – Tap-in fees—Installment agreements, shall be amended to read as follows:

- A. Sewer Permit Fee. Unless modified by the process described in subsection (C) or (D) of this section, prior to the start of constructing a public and/or private sanitary sewer in the city, the contractor must possess a sewer permit for the project issued by the city. A fee as set by resolution of the city council per unit as determined by the unit factors in effect on the date of application for a sewer connection permit shall be charged by the city for each connection to an existing public sewer or private sewer connecting to a public sewer. No such connections shall be allowed until the fee is paid. The contractor shall notify the city at least forty-eight hours prior to the start of sewer construction and request inspections of all connections to any public sewers.
- B. Tap-in Fees. Unless modified by the process described in subsection (C) or (D) of this section, in the case of an expansion of an existing private or public sewer system or an addition in excess of one thousand square feet to a commercial structure whether or not such structural addition contains plumbing facilities, before a sewer permit can be issued, additional tap-in fees must be paid in accord with the unit fee schedule adopted herein.
- C. Review by Building Official. In those instances where a commercial user or the city believes that the unit factor assigned does not adequately reflect actual use, said parties may request a review by the building official. In such review process the building official shall consider data presented by the petitioner and may present to the city council a recommendation suggesting an alternate unit factor based upon the formula of one unit per one hundred fifteen thousand gallons per year. Should the city council choose to accept the recommendation of the building official, the parties shall enter into the agreement entitled Exhibit A, on file in the office of the city clerk, which understanding calls for immediate payment of the adjusted unit factor fee and an annual review by the city of actual water or effluent flow for a period of five years. The Exhibit A contract, the form of which may from time to time be modified by resolution of city council, shall empower the city to increase the adjusted unit factor fee should the monitoring process

indicate water or effluent flows in excess of levels anticipated on the date of the execution of the agreement.

- D. Installment Agreements. Under limited circumstances, a commercial user wishing to pay a tap-in fee in installments may petition the city council for an installment agreement, subject to the following:
- (i) Applications for installment agreements are only available for tap-in fees with a total amount in excess of \$25,000.
 - (ii) Any outstanding tap-in fees previously incurred by the commercial user must be paid in full prior to requesting an installment agreement for another piece of property.
 - (iii) The petition must include a copy of the existing lease between the commercial user and the property owner, if the property is not owned by the commercial user.
 - (iv) The installment agreement will be prepared and/or reviewed by the city attorney prior to presentation of the petition to city council, with all attorney fees to be paid by petitioner.
 - (v) Any installment agreement would be subject to the initial payment of 25% of the total tap-in fee ("initial payment") prior to the execution of an installment agreement.
 - (vi) The installment agreement shall be signed by both the commercial user and property owner, if different.
 - (vii) The term of any installment agreement shall be no more than five (5) years. However, the final payment due under the installment agreement will be no later than 12 months prior to the end of an existing lease if the commercial user does not own the property.
 - (viii) Installment payments shall be made twice per year. All installment payments shall be due on April 1 and October 1 of each year. However, in the event the initial payment required in subsection (v) above falls within thirty (30) days prior to April 1, then the first installment payment shall be due on October 1; if the initial payment falls within thirty (30) days prior to October 1, the first installment payment shall be due the following April 1.
 - (ix) An installment fee of 1% of the total tap-in fee will also be assessed and payable along with the initial payment.
 - (x) Installment payments will include accrued interest at the rate of interest determined and approved by the city.

- (xii) The city council may grant the petition, in its sole discretion, if the city council determines that there are unique circumstances to justify the extension of time to pay the tap-in fees.
- (xi) In the event that the petition is granted based on misrepresentation, the city may recalculate the amounts owing under the installment agreement. In addition if the city should discover during the term of the installment agreement that the use of the premises has been expanded, or other circumstances which would require that the number of tap-in fees should be increased, the city shall notify the commercial user of the increase, and the payments due and owing under the installment agreement shall be automatically recalculated and all fees shall be paid within the term periods contained in the installment agreement.
- (xii) All installment agreements shall be executed in recordable form, signed by the owner and the user (if not the same) of the property in question, and shall be recorded. All installment agreements will subject both the property owner and the petitioning user (if not the same) to personal liability for any and all amounts owed under the terms of the agreement. Should a delinquency in any installment due under the agreement continue for a period of time in excess of ninety (90) days, or should the final payment be delinquent to any extent, the city at its sole option may add any and all amounts due under the agreement to the tax rolls concerning the subject property or in the alternative, seek legal action against the petitioner user. In the event of legal action, the property owner and/or petitioning user shall be responsible for not only all amounts due under the installment agreement but for all litigation, attorney fees, and other expenses incurred by the city in any necessary collection process.
- (xiii) There will be no refunds of any amounts paid under a tap-in fee installment agreement. If, prior to actual tap-in, a project which is the subject of a fee installment agreement is canceled, upon written notice to the city by the user, the cessation of construction will be verified by the city. Upon receipt of a confirming report by the city from the department of public services of construction termination, the installment agreement shall be deemed nullified. All interest and fees set forth in the agreement will continue to accrue until submission to the city of the confirming report. Upon termination of the agreement, prior to actual tap-in, all administration fees, attorney fees, penalties and interest due shall be subtracted from previously paid principal amounts and the remaining net amount shall be available to the user or the user's assigns for the same property as a future credit toward tap-in fees at whatever tap-in rate might be in effect when a future tap-in permit is requested for the subject property. No interest shall be credited to any future user on any principal amounts left on deposit with the city. Any interest earned on such deposits shall become the sole property of the city. Once a tap-in is actually made to the property, all the terms of the installment agreement concerning a particular piece of property shall remain in full force and effect and shall be paid in accordance with the conditions set forth therein.

Section 3. Savings Clause.

Nothing in this Ordinance hereby adopted shall be construed to affect any just or legal right or remedy of any character nor shall any just or legal right or remedy of any character be lost, impaired or affected by this Ordinance.

Section 4. Severability.

The various parts, sections and clauses of this Ordinance are declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected.

Section 5. Adoption.

This Ordinance shall take effect on the 8th day after publication.

Kevin W. Hinkley, City Mayor

Catherine Buck, City Clerk

Notice of adoption published in the Spinal Column on February 17, 2016.

CERTIFICATION OF CLERK

I hereby certify that the foregoing is a true and complete copy of an Ordinance adopted by the City Council of the City of Wixom, County of Oakland, State of Michigan, at a regular meeting of the City Council duly called and held on 9th day of February, 2016.

Catherine Buck, City Clerk