

**ORDINANCE OF THE UNION COUNTY BOARD OF COMMISSIONERS
AMENDING THE UNION COUNTY CODE AND UNION COUNTY WATER AND SEWER
EXTENSION ORDINANCE TO ADDRESS COLLECTION AND TIMING OF SYSTEM
DEVELOPMENT FEES**

WHEREAS, on June 11, 2018, the Union County Board of Commissioners (the "Board") by resolution gave retroactive effect to the creation of the Union County Water and Sewer District ("UCWSD") to July 1, 2013 and approved an Amended Interlocal Operating Agreement (the "Amended Interlocal") for Union County Water and Sewer Services, also retroactive to July 1, 2013; and

WHEREAS, on June 11, 2018, UCWSD approved the Amended Interlocal and otherwise ratified, validated and confirmed all capacity fees adopted, imposed and collected by the County, retroactive to July 1, 2013, and simultaneously took steps to implement system development fees pursuant to N.C. Gen. Stat. Ch. 162A, Art. 8, effective July 1, 2018; and

WHEREAS, on December 3, 2018, and January 7, 2019, the Board made conforming changes to its Water and Sewer Extension Ordinance, codified in Chapter 34 of the Union County Code to further implement the collection of system development fees in accordance with N.C. Gen. Stat. Ch., Art. 8, as amended by S.L. 2018-34; and

WHEREAS, on June 30, 2020, S.L. 2020-61 was adopted which, among other things, changed the timing of collection of system development fees for new development involving the subdivision of land, effective January 1, 2021; and

WHEREAS, the Board finds it appropriate to make conforming changes to its Water and Sewer Extension Ordinance, codified in Chapter 34 of the Union County Code, to further implement the collection of system development fees in accordance with N.C. Gen. Stat. Ch., Art. 8, as recently amended by S.L. 2020-61.

NOW, THEREFORE, BE IT ORDAINED by the Union County Board of Commissioners as follows:

Section 1. Union County Code § 34-303(a) reads as rewritten:

"Sec. 34-303. - Applicability.

- (a) This article shall apply throughout the county, and it shall be followed by all persons in order to plan, reserve water or sewer capacity, construct and have accepted for service any water and/or sewer line extension to the UCPW system that is to serve any development. As to developments to which this article applies, this article, as amended, shall supersede prior versions and any previous water and sewer extension policies. This article also applies to property requesting access to the UCPW system which has direct water and sewer access such that a water and/or sewer line extension to the UCPW system is not necessary to serve the property to the extent set forth in division 8 of this article."

Section 2. The definition of "*Development phase*" set forth in Union County Code § 34-308 reads as rewritten:

"Development phase means that portion of a development for which allocated capacity will be granted by the district on behalf of UCPW, and for which associated system development fees will be paid, pursuant to a standard water and sewer services extension agreement."

Section 3. Union County Code § 34-363 reads as rewritten:

"Sec. 34-363. - Execution of standard water and sewer services extension agreement.

After final approval of the water and sewer plans by the district and issuance of applicable construction permits by NCDEQ, the district will prepare the final standard water and sewer services extension agreement on behalf of the district and UCPW for execution by the developer and owner. The agreement shall apply to such development phase as designated by the developer and approved by the district. The development phase may be comprised of the entire development or only a portion thereof. The developer shall define the development phase by indication on the water and sewer plans and by either a separate map clearly showing the parameters of the development phase, or a legal description, to be incorporated as exhibits into the agreement. The district will allocate capacity, as further described in section 34-364, and the system development fees shall be paid, only for the development phase described in the agreement. The district will cause to be recorded on behalf of itself and UCPW each standard water and sewer services extension agreement with the Office of the Union County Register of Deeds, the cost for which shall be charged to the developer. The district may include on the face of such standard water and sewer services extension agreement language providing that the capacity allocated under the agreement is not an appurtenance to the land until such time that system development fees for the associated property have been paid. Once all system development fees required under a standard water and sewer services extension agreement have been paid, the district may record an additional document stating that all required system development fees under such agreement have been paid. The executive director of the district is hereby authorized to approve and execute such agreements on behalf of the district and UCPW."

Section 4. Union County Code § 34-364 reads as rewritten:

"Sec. 34-364. - Reservation of capacity.

- (a) The specific water and sewer capacity allocated to a development phase will be that capacity specified in the standard water and sewer services extension agreement executed by the developer, owner and the district. Under no circumstances shall this article be construed to allocate any capacity through any approval or mechanism other than the mutual execution of the standard water and sewer services extension agreement by the developer, owner and the district, execution being the sole method by which capacity can be allocated. The district will execute the standard water and sewer services extension agreement, which will provide that, at the time of application for a building permit, system development fees specified in the agreement for the lot(s) within the development phase associated with the application for a building permit shall be paid. The responsible party for payment of the applicable system development fees is set forth in section 34-365 below. Once the system development fees are paid for a lot within the development phase associated with the standard water and sewer services extension agreement, the allocated capacity set forth in the standard water and sewer services extension agreement associated with such lot shall be deemed an appurtenance to the land and, as such, will pass with title to the land. The allocated capacity cannot be otherwise assigned, sold, transferred, leased, encumbered, or disposed of in any manner by the developer or owner.. If the developer or owner intends to transfer title of property associated with the development, or any portion thereof (such as a lot) prior to payment of the system development fees associated with such property (or portion thereof), the developer shall do all of the following prior to the date of such property transfer:

- (i) provide the transferee of such property notice of the unpaid system development fees associated with the property and certain terms under this article, which notice shall be acknowledged by the transferee, and shall include at a minimum, the following:

(a) a statement of transferee's obligation to pay district the unpaid system development fees associated with the property to be transferred at the time of building permit application;

(b) a statement providing the date of execution of the standard water and sewer services extension agreement associated with the property to be transferred;

(c) a statement providing that allocated capacity is reserved for the property to be transferred, as part of the development phase, for a period of five (5) years measured from the date of execution of the standard water and sewer services extension agreement associated with the property;

(d) a statement providing where the transferee may obtain a copy of the standard water and sewer services extension agreement associated with the property to be transferred; and

(e) a statement providing that if either

(i) the developer fails to complete the development phase project such that all infrastructure described in the agreement has not been completed and accepted by the district on behalf of UCPW within the five-year period, or any extended time period allowed by the district as set forth in this division, or

(ii) system development fees associated with the property have not been paid within the five-year period,

then the allocated capacity for such property shall be subject to return to the district and any system development fees paid for allocated capacity associated with unaccepted infrastructure shall be retained by the district as liquidated damages compensating the district for the reservation of capacity for five years without receiving revenue. It shall also be provided that UCPW and the district shall have no further obligation to accept any additional infrastructure associated with the development phase and shall have no obligation to provide water and/or sewer services to the prospective customers that might connect to such additional infrastructure.

(ii) provide notice to district of the transfer, including providing district the transferee's acknowledgment of the required notice set forth in subsection (a)(i) of this section, within fifteen (15) days of the transfer date.

(b) If, during the course of development, the developer determines that a change in allocated capacity may be required, the developer shall immediately notify the district in writing of such proposed changes to the water and sewer plans. The developer shall not proceed to modify the development phase project until such allocation change is approved by the district, in its sole discretion, and memorialized in an amendment to the standard water and sewer services extension agreement, signed by the developer, owner and the district; provided, however, that increases or decreases in allocated capacity of five percent or less may be administered by the district through written approval by the district director, or his designee, without need for formal written amendment to the agreement. Upon adjustment in the amount of allocated capacity, the amount of system development fees due for the development phase will be recalculated based upon the adjusted allocated capacity.

(c) The allocated capacity shall be reserved for the development phase for a period of five years, unless extended as set forth in subsection (d) below, measured from the date of execution of the standard water and sewer services extension agreement. If (i) the developer fails to complete the development phase project such that all infrastructure described in the agreement has not been completed and accepted by the district on behalf of UCPW within the five-year period, or (ii) all system development fees associated with the development phase project have not been paid within the five-year period, then the allocated capacity for any portion of the development phase project that has not been

accepted by the district on behalf of UCPW under section 34-415 or for which associated system development fees have not been paid, the associated allocated capacity for such development phase project, or portion thereof, shall return to the district and UCPW and any system development fees paid for allocated capacity associated with unaccepted infrastructure shall be retained by the district as liquidated damages compensating the district for the reservation of capacity for five years without receiving revenue. The district shall have no further obligation to accept any additional infrastructure associated with the development phase and shall have no obligation to provide water and/or sewer services to the prospective customers that might connect to such additional infrastructure. The district may include on the face of the standard water and sewer services extension agreement language describing the limitations on allocated capacity, the obligation to accept infrastructure, and the provision of services which are set forth herein.

- (d) If all system development fees associated with the entire development phase project have not been paid within the five year period set forth in subsection (c) above, the extension agreement will be eligible for an additional three year extension if (i) all infrastructure associated with the development phase project described in the agreement has been completed and accepted by the district on behalf of UCPW within the five-year period, and (ii) system development fees associated with at least fifty percent (50%) of the lots in the development phase project have been paid. The developer must submit a request for such extension at least sixty (60) days prior to the expiration of the five year period measured from the date of execution of the standard water and sewer services extension agreement. Such request must include any documentation necessary to establish the developer meets the requirements for such extension set forth herein. If the requirements for such time period extension are met, district shall grant such extension through an amendment to the standard water and sewer services extension agreement.

If such an extension is granted, if system development fees are paid for at least fifty percent (50%) of the lots which had not been paid at the time of the expiration of the initial five year period by the end of the additional three year period, then capacity shall be considered allocated for the remainder of the development phase project, with system development fees still remaining due at the time of building permit application for all lots for which system development fees had not been paid. However, if at the end of the extension period such milestone is not reached, then developer may request another three (3) year extension, which may be granted by the district at its reasonable discretion. If such an extension is not granted, or such a granted extension subsequently expires, the allocated capacity for any portion of the development phase project for which associated system development fees have not been paid shall be subject to return to the district. The district shall have no obligation to provide water and/or sewer services to the prospective customers that might connect to such additional infrastructure for any such portion of the development phase project for which associated system development fees have not been paid."

Section 5. Union County Code § 34-365 reads as rewritten:

"Sec. 34-365. - Payment of system development fees.

The owner of the property associated with the development phase, or portion thereof, at time of application for building permits responsible for payment of all system development fees associated with allocating capacity to that development phase property, or portion thereof. However, if ownership of a development phase, or portion thereof, is transferred after the date of execution of the standard water and sewer services agreement, but prior to payment of associated system development fees for the transferred property, and the notice required prior to transfer by section 34-364(a) was not properly given, the developer shall be responsible for payment of the system development fees associated with the transferred property. System development fees shall be those in effect at the time such fees are paid to the district. If the required system development fees are not paid at time of building permit application for any portion of the development phase and such system development fees payment is still not made within ten days of such building permit application, such failure shall constitute a material breach of the standard water and sewer services extension agreement, which shall become voidable and subject to termination at the discretion of the district. Upon termination by the district in such event, the development phase will be considered

terminated by the district and allocated capacity for the development phase, or any portion thereof, which has not met the requirement of section 34-364(c) shall return to the district."

Section 6. Union County Code § 34-367(a)-(b) reads as rewritten:

- "(a) The requirements of division 3 of this article (sections 34-363 through 34-366), other than this section, do not apply to development which does not involve the subdivision of land. Rather, the requirements of this section 34-367 apply to development not involving the subdivision of land as it relates to standard water and sewer services extension agreements and approval to construct for those developments for which water and sewer is not directly accessible. This section 34-367 is only applicable to such non-subdivision development.
- (b) When water and sewer is not directly accessible to the development, then after final approval of the water and sewer plans by the district and issuance of applicable construction permits by NCDEQ, the district will prepare the final standard water and sewer services extension agreement on behalf of the district and UCPW for execution by the developer and owner. The agreement shall apply to such development phase as designated by the developer and approved by the district. The development phase may be comprised of the entire development or only a portion thereof. The developer shall define the development phase by indication on the water and sewer plans and by either a separate map clearly showing the parameters of the development phase, or a legal description, to be incorporated as exhibits into the agreement. The district will allocate capacity and the developer shall pay system development fees, only for the development phase described in the agreement. Once all system development fees have been fully paid, in accordance with this section, the district will cause to be recorded on behalf of itself and UCPW each standard water and sewer services extension agreement with the Office of the Union County Register of Deeds, the cost for which shall be charged to the developer. The executive director of the district is hereby authorized to approve and execute such agreements on behalf of the district and UCPW."

Section 7. Union County Code § 34-413 reads as rewritten:

"Sec. 34-413. - Conditions for acceptance.

Prior to acceptance of the water and sewer infrastructure by the district, on behalf of UCPW, and as a prerequisite to activation of water and/or sewer service within the development phase project, the developer shall ensure that all of the following conditions have been satisfied:

- (1) All punch list items identified in the final inspection performed pursuant to division 4 of this article have been resolved.
- (2) The plat was received and approved by the district prior to recordation.
- (3) The district has received a warranty/repair guarantee to the joint benefit of the district and UCPW as described in section 34-418.
- (4) All applicable NCDEQ/NCDDWR approvals have been obtained.
- (5) The developer's engineer of record has submitted to the district an opinion of cost of the value of the water and sewer improvements.
- (6) All releases have been obtained by other agencies, such as state, county or others applicable to encroachment permits or other liabilities.
- (7) All easements necessary for the conveyance of the water and/or sewer facilities to be maintained and owned by UCPW have been executed and recorded with the Office of the Union County Register of Deeds.

- (8) UCPW has received transfer of title for all real property and infrastructure that is to be dedicated to UCPW either by fee simple conveyance or granting of easements, as further described in section 34-416.
- (9) The engineer of record has provided to the district in writing all applicable NCDEQ/NCDWR certifications and test results.
- (10) The district has received record drawings, pump station specific operation and maintenance manuals, if applicable, and any other supporting documentation in paper and electronic format as provided for in the UCPW standard sewer and water specifications.
- (11) The engineer of record has submitted to the district a certificate of completion certifying that the water and sewer infrastructure has been constructed in conformance with the terms and conditions of the standard water and sewer line extension agreement for this project.

Once the above items have been completed to the satisfaction of the district, the district will issue a letter of final acceptance and then water and sewer service may be activated as provided in section 34-414.

However, the requirement labeled number (2) above does not apply to development which does not involve the subdivision of land."

Section 8. Add a new Division 8 to Article IV, Chapter 34, of the Union County Code, which shall read as follows:

"DIVISION 8. – SYSTEM DEVELOPMENT FEES AND CAPACITY ALLOCATION FOR PROPERTY NOT REQUIRING A STANDARD WATER AND SEWER SERVICES EXTENSION AGREEMENT

Sec. 34-490. – System Development Fees and Property Allocation for Properties Not Requiring System Extension.

- (a) This division applies to development on property not involving the new subdivision of land which has direct water and sewer access such that a water and/or sewer line extension to the UCPW system is not necessary to serve the property. The provisions of division 1 and division of 7 of this article also apply to property subject to this division.
- (b) For any lot to which this division applies, the owner of the lot must submit a sketch plan for approval by the district, as such sketch plan submittal process is described in section 34-336. Upon the district's approval of the sketch plan and payment of all applicable fees, the owner of the lot must pay applicable system development fees at the time of building permit application. It is at the point of building permit application and associated payment of system development fees that capacity is considered allocated and water and/or sewer service is committed to any such lot."

Section 9. This ordinance shall become effective as of January 1, 2021.

Adopted this 16th day of November, 2020.

First Reading: November 16, 2020.

Second Reading: December 7, 2020