

**ORDINANCE OF THE UNION COUNTY BOARD OF COMMISSIONERS
AMENDING THE UNION COUNTY WATER AND SEWER EXTENSION ORDINANCE
TO COMPLETE IMPLEMENTATION OF SYSTEM DEVELOPMENT FEES PURSUANT TO
N.C. GEN. STAT. Ch. 162A, Art. 8, AS AMENDED BY S.L. 2018-34**

WHEREAS, on June 11, 2018, 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, 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 amended by S.L. 2018-34.

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

Section 1. 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 developer shall agree to pay system development fees, 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 2. 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 the developer will pay, at the time of plat recordation, all system development fees specified in the agreement for the property being platted. Once the system development fees are paid in full for 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 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. The developer and owner shall provide written notice to the district within five days of transfer of any portion of the property comprising the development phase, except for the transfer of title of a portion of the property (such as a lot) to the end user pursuant to the plan of development. If the developer intends to transfer title of property associated with the development and if the property or any portion thereof is associated with unpaid system development fees, the developer shall give the district notice of such transfer prior to the date of transfer.
- (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. If the developer has not paid the full amount of system development fees due under the standard water and sewer services extension agreement for the development phase, the developer shall pay all additional system development fees due based upon the recalculation at the time of recordation of the plat associated with these revisions. If the system development fees associated with the development phase, as modified, were already paid in an amount in excess of the recalculated amount, the district will refund or credit, as applicable, without interest, such system development fees as are commensurate with a decrease in capacity. All such adjustments shall be binding on UCPW, the district, the developer and owner, and shall be subject to the terms and conditions of the standard water and sewer services extension agreement and this article.
- (c) The allocated capacity shall be reserved for the development phase for a period of five years, measured from the date of execution of the standard water and sewer services extension agreement. If 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, 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 shall return to the district and UCPW and any system development fees paid by the developer 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."

Section 3. Union County Code § 34-365 reads as rewritten:

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

The developer shall pay all system development fees associated with allocating capacity to the development phase. System development fees shall be those in effect at the time such fees are paid to the district. If the developer fails to pay the required system development fees at time of plat recordation of the development phase and continues to fail to make such system development fee payment within ten (10) days of plat recordation, 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 shall return to the district."

Section 4. Union County Code § 34-366 reads as rewritten:

"Sec. 34-366. - Approval to construct.

The developer shall not begin construction of any water and/or sewer line extensions until the district issues the developer an approval to construct letter. The district will issue an approval to construct letter to the developer upon occurrence of the following:

- (1) All plans and specifications review requirements of the district have been satisfied;
- (2) All required certificates/permits are in possession of the district;
- (3) UCPW has received the construction permit from NCDEQ for the proposed water and sewer infrastructure;
- (4) The district has received the executed standard water and sewer services extension agreement; and

Under no circumstances shall this article be construed to authorize the developer to begin construction of water and/or sewer line extensions through any approval or mechanism other than issuance by the district of the approval to construct letter, which issuance is the sole method by which construction can be authorized. District or UCPW staff cannot waive this requirement."

Section 5. 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 plat has been recorded and the developer has paid the required system development fees.
- (4) The district has received a warranty/repair guarantee to the joint benefit of the district and UCPW as described in section 34-418.
- (5) All applicable NCDEQ/NCDDWR approvals have been obtained.
- (6) The developer's engineer of record has submitted to the district an opinion of cost of the value of the water and sewer improvements.
- (7) All releases have been obtained by other agencies, such as state, county or others applicable to encroachment permits or other liabilities.

- (8) 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.
- (9) 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.
- (10) The engineer of record has provided to the district in writing all applicable NCDEQ/NCDWR certifications and test results.
- (11) 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.
- (12) 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."

Section 6. Union County Code § 34-454(c) reads as rewritten:

- "(c) The district, on behalf of UCPW, will consider a joint application with joint applicants for extensions greater than 2,500 linear feet provided that one of the joint applicants meets the requirements of this section, each applicant meets the requirements set forth in this division, and each applicant is within 2,500 linear feet of the joint applicant's requested water line extension. Each applicant's qualifying lot must be located within their requested 2,500-linear-foot extension. Each applicant must pay applicable tap and system development fees at the time of application. The total length of any water extension pursuant to this section shall not exceed 5,000 linear feet."

Adopted this 3rd day of December, 2018.