

**ORDINANCE OF THE UNION COUNTY BOARD OF COMMISSIONERS AMENDING  
THE UNION COUNTY WATER AND SEWER EXTENSION ORDINANCE  
TO ADDRESS COLLECTION OF SYSTEM DEVELOPMENT FEES FOR NON-SUBDIVISION  
DEVELOPMENT**

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, on December 3, 2018, 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, 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 for non-subdivision development 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.** Add a new Union County Code § 34-367 which reads as follows:

"Sec. 34-367. – Non-Land Subdivision Development.

- (a) The requirements of Division 3 of this Article (Secs. 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. This section 34-367 is only applicable to such non-subdivision development.
- (b) 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."

- (c) 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 not execute the standard water and sewer services extension agreement until the developer has paid all system development fees specified in the agreement. Once the system development fees are paid, the capacity allocated pursuant to 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.
- (d) 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 developer shall pay, or the district will refund, without interest, such system development fees as are commensurate with the increase or 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.
- (e) 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 the system development fees paid by the developer shall be retained by the district as liquidated damages compensating the district for the reservation of capacity for five years without receiving revenue.
- (f) 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 of execution of the standard water and sewer services extension agreement; provided, however, that in the event of an adjustment resulting in an increase to the allocated capacity, as provided in subsection (d) of this section, the developer shall pay those system development fees in effect at the time of adjustment.
- (g) 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
- (5) The district has received payment of all required costs and fees, including system development fees, from the developer.

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 2.** Add the following to the end of Union County Code § 34-413:

"However, the requirement labeled number (2) above does not apply, nor does the reference to plat recordation in requirement labeled number (3) apply, to development which does not involve the subdivision of land."

Adopted this 7th day of January, 2019.

First Reading: December 17, 2018

Second Reading: Adopted January 7, 2019