

FILED FOR RECORD

2010 OCT 26 AM 10:59

CLERK OF COURSE
KERSHAW COUNTY, S.C.

**ORDINANCE NO. 163.2010
ORDINANCE AMENDING ORDINANCE NO. 126.2008
TAP FEES AND SEWER IMPACT FEES**

AN ORDINANCE AMENDING AN ORDINANCE AUTHORIZING A REDUCTION IN SEWER TAP FEES AND ESTABLISHING SEWER IMPACT FEES TO BE PAID BY USERS OF THE KERSHAW COUNTY UTILITIES SEWER SYSTEM IN CONNECTION WITH THE WASTEWATER MASTER PLAN FOR KERSHAW COUNTY SO AS TO ESTABLISH A METHOD OF INSTALLMENT PAYMENTS OF IMPACT FEES FOR CERTAIN LARGE INDUSTRIAL CUSTOMERS

BE IT ORDAINED BY THE COUNTY COUNCIL BY KERSHAW COUNTY, SOUTH CAROLINA, IN MEETING DULY ASSEMBLED:

ARTICLE I

FINDINGS OF FACT

Section 1.01

Section 1.01 is amended to include:

22. Kershaw County owns and operates a Waste Water Treatment Plant that was recently upgraded to accommodate a daily waste water flow of an additional 3.28 million gallons per day, or 8200 Residential Development Units ("RDUs"), of capacity, and in order to properly maintain the viability of the treatment capacity of the upgraded plant, the encouragement of higher daily flows is necessary to ensure proper functioning of the treatment processing facilities, and to preserve the ability of the plant to ultimately function at its full rated capacity and continue to perform its critical public health role.
23. Kershaw County Council finds that the plant was constructed in anticipation of a certain annual growth in the demand for treatment capacity, but that the recent recession has adversely affected the actual growth in demand for waste water treatment services.
24. Kershaw County Council finds that ensuring the proper functioning of the waste water treatment plant is critical to the preservation of public health throughout the County and is a proper public purpose of the County.
25. Kershaw County Council further finds that the promotion and encouragement of economic development is also a valid public purpose of the County.

26. After due investigation and study, Kershaw County Council finds that the twin needs of protecting and preserving the public health in the County and encouraging the beneficial effects of economic development, including the retention of existing industries, particularly those industries generating large quantities of treatable waste water, and which will hire, or which will retain in employment, relatively large numbers of employees, can be met by encouraging the continued use of sewer capacity and facilitating the utilization of more sewage treatment capacity in the County's enlarged waste water treatment facilities.
27. In order to accomplish these public purposes and to encourage the location of high sewer demand industrial customers in Kershaw County and the continuation in operation of, and/or expansion of the facilities of large industrial sewer users in Kershaw County, Kershaw County desires to provide a method of installment payment of Impact Fees where more than 125 RDUs¹ are reserved or used, this being the equivalent of a demand for capacity for more than 50,000 gallons per day of treatable waste water.
28. In order to preserve existing industries that are large sewer users in Kershaw County, Kershaw County desires to provide a method of installment payment of Impact Fees where more than 125 RDUs are reserved or used.
29. The availability of incremental payment of the Impact Fees for large sewer users of more than 125 RDUs will enhance the tax base for Kershaw County, provide continued employment for citizens of Kershaw County, as well as the opportunity for new employment, and will lead to the industrial development of Kershaw County, and provide for higher utilization of Kershaw County's sewer treatment system and sewer treatment plant.
30. That providing a method for the installment payment of Impact Fees exceeding 125 RDUs² is in the public interest of the citizens of Kershaw County, in that the increased utilization of the system will ensure that the system continues to function properly, and will encourage new industries to locate in the County and will encourage existing industries to remain in the County or to increase their industrial output, and thereby provides jobs and job security for many employees, which has a beneficial effect on both the entire local economy of Kershaw County and on the public health of its citizens.
31. Kershaw County Council further finds that this Ordinance does not change the amount of the Impact Fee due or payable by any customer, but merely

¹ As defined in Ordinance No. 126.2008, an RDU is a "Residential Development Unit," which is the equivalent of the generation of 400 gallons per day of wastewater, the average discharged by a home in South Carolina which is connected to a public sewer system.

² Based on the current Impact Fee of \$2,250 per RDU, an Impact Fee based on 126 RDUs would be \$283,500, while an Impact Fee based on 250 RDUs would be \$562,500.

shifts the time for payment of these fees in certain specific situations, while charging interest for the privilege and imposing other safeguards to ensure full payment.

32. Any Impact Fee which is not paid in its entirety is considered to have not been paid at all, and no refund of any partial fee paid is due to the customer. No subsequent occupier or owner of any property, which had had County sewer service terminated for failure to make complete payment of the sewer Impact Fee, shall be entitled to any credit for any portion of such sewer Impact Fees as may have been paid, unless partial credit is approved by vote of County Council as an economic development inducement for a new industry to begin operations on that property.

ARTICLE II

PROCEDURE SEWER IMPACT FEES IMPOSED, COLLECTION PROCEDURES

Article II, "Procedure Sewer Impact Fees Imposed, Collection Procedures" is amended by amending and adding the following provisions to Subsection 5 of Section 2.02.


Section 2.02 Sewer Impact Fee Imposed

5. Impact Fees will become due and will be collected in cash or its equivalent by the Planning and Zoning Department as follows:
- (a) Impact Fees for new development, when the RDUs requested do not exceed 125 RDUs, will become due and will be collected in full at the time a sewer availability letter is requested for the development, or in the discretion of the County Administrator thirty (30) days thereafter. The District may cancel the sewer availability letter or letters for any development, developer or entity under their joint ownership or control if timely payment for letters issued in advance of payment is not received, and such cancellation will be without liability on the part of the County;
 - (b) Impact Fees for premises when the RDUs requested to not exceed 125 RDUs and where no sewer availability letter was required shall become due and will be collected in full when such premises apply for authorization to connect to the System; and
 - (c) For existing industrial customers or other customers seeking to increase their permitted discharge volumes into the System when the total RDUs requested is not to exceed 125 RDUs, the Impact Fees will become due and will be collected in full at the time the changes in discharge volumes are contracted for.
 - (d) Impact Fees when the RDUs requested exceed 125 RDUs for new development or for increased permitted discharge in excess of 125 RDUs

1) where a sewer availability letter is required or requested, 2) where no sewer availability letter is requested, then when the premises applies for authorization to connect to the system, or 3) for existing industrial customers or other customers seeking to increase their permitted discharge volumes into the system may be paid in the following manner and under the following conditions:

- (1) 25% of the Impact Fee immediately;
- (2) the remainder of the Impact Fee is paid in 36 monthly installments to be billed and paid in conjunction with the sewage usage fee, if any, and if no sewer usage fee is incurred, then paid independently in 36 monthly installments; and, in addition,
- (3) when the remainder of the Impact Fee is paid in monthly installments, there shall also be collected with that installment payment a fee for interest on the outstanding balance of the Impact Fee to be computed and paid monthly as follows: 5% per annum divided by 12 months times the balance due on the billing date, with unpaid interest payments added to the amount due and owing;
- (4) provided, that this method of payment is only available to entities that are current with all of the following charges: usage fees, payments of interest due on unpaid Impact Fees, and payments of any and all taxes, fees, Fees in Lieu of Taxes, and penalties, assessments or statutory costs due to or otherwise to owed to Kershaw County or to any of its elected or appointed officials; and
- (5) provided further that failure to pay the balance due of the Impact Fee in monthly installments shall result in termination of sewer service to the entity in like manner for failure to pay sewer usage fees, with sewer service being subject to being terminated by physically blocking access to the collector lines without notice of any kind as of the thirtieth day after the due date set forth on the sewer usage notice for payment without penalty, or as set forth in any correspondence on the subject addressed to customer or its counsel; and if no sewer usage fee is due, then the reservation of capacity will be cancelled if failure to pay after thirty (30) days notice is not remedied.
- (6) Kershaw County will have no liability whatsoever for any denial of service, including the blockage of any sewer line, resulting from or related to the failure to pay when due any bill, fee, charge or other amount due by the customer. In the event of any dispute, the date of actual receipt of payment in the offices of Kershaw County shall be determinative of the question.
- (7) Further provided, however, that in the event of a bona fide dispute, the customer shall have the right to request in writing that the County

ATTEST:



Merri M. Seigler, Clerk to Council

1ST Reading: July 13, 2010
2nd Reading: August 10, 2010
Public Hearing: September 28, 2010
3rd Reading: September 28, 2010

I certify that the notice of the public hearing held in this matter was duly advertised in proper statutory form in a newspaper of general circulation in Kershaw County, South Carolina at last 15 days prior to the holding of said hearing.



Merri M. Seigler, Clerk to Council


forbear terminating sewer service and, with the prior approval of the County, shall have the option of providing a commercial surety bond or a letter of credit from a Bank qualified to do business in South Carolina in the full amount of the disputed charges, including the amounts of any subsequent installments or usage charges that are reasonable expected to accrue while the dispute is litigated, mediated, arbitrated or otherwise resolved.

- (8) The statute of limitations on any claim by the County against any customer who defaults on any installment payments due shall not begin to run until the last day scheduled for the payment of the last installment payment without penalty.
- (9) As further consideration for the County's granting a customer the option to pay an Impact Fee in installment payments as set forth hereinabove, venue and jurisdiction over any dispute arising from the payment or non-payment of any Impact Fee or any installment thereof, or from any resulting termination or limitation of services, or from any matter relating thereto, shall be in a court of competent jurisdiction in Kershaw County, South Carolina. Any mediation or arbitration, which the parties may subsequently agree to, shall also be held in Kershaw County.

DONE BY VOTE OF A POSITIVE MAJORITY OF THE MEMBERS

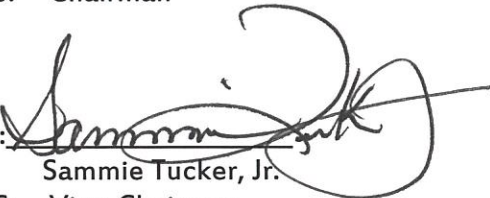
OF KERSHAW COUNTY COUNCIL IN MEETING DULY ASSEMBLED, this 28th day of
September, 2010.

KERSHAW COUNTY COUNCIL

By: 

Robert Maxwell Ford

ITS: Chairman

By: 

Sammie Tucker, Jr.

ITS: Vice-Chairman

[SEAL]