

AN ORDINANCE NO. 2008____: SEWER IMPACT FEES

AUTHORIZING SEWER IMPACT FEES TO BE PAID BY USERS OF THE
KERSHAW COUNTY UTILITIES SEWER SYSTEM IN CONNECTION
WITH A SEWER MASTER PLAN FOR KERSHAW COUNTY

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

ARTICLE I

FINDINGS OF FACT

As incident to the adoption of this Ordinance, the County Council of Kershaw County (the "Council"), the governing body of Kershaw County, South Carolina (the "County"), finds each fact stated herein is true and correct.

Section 1.01

1. The County is a body politic and a political subdivision of the State of South Carolina. The Council is the governing body of the County.

2. Pursuant to Sections 44-55-1410 (2006) and 4-9-30(5) of the Code of Laws of South Carolina, 1976, and a favorable referendum vote of the people of Kershaw County, at an election held on November 5, 1996, the County is authorized to acquire, construct, improve, enlarge, operate and maintain within the County a system for the collection, treatment and disposition of sewage and to place into effect schedules of rates and charges for the use of these sewer facilities.

3. By Ordinance dated June 12, 2007, Kershaw County Council created the Kershaw County Sewer District, comprised of the entire unincorporated area of Kershaw County (the "District") to provide sewer service in the unincorporated areas of Kershaw County.

4. By Ordinance dated August 14, 2007 the Kershaw County Council adopted the Comprehensive Plan for Kershaw County 2006-2016, which was the ten year update to the County's Comprehensive Plan. One of the key recommendations of the Comprehensive Plan was the development of a five year Capital Improvement Program (the "CIP"), which was duly developed by the Planning Commission and received from the Planning Commission by Kershaw County Council by Ordinance dated May 13, 2008.

5. Certain areas to be serviced by the District are experiencing dramatic residential, commercial and industrial growth due to their proximity to the Columbia metropolitan area.

6. This growth places significant financial stress on the District, particularly in the western part of the County, and in areas near Interstate Highway 20.

7. The CIP identified approximately \$20.5 million in capital improvements that will need to be constructed in the five year period 2008-2013 to the sewer treatment system operated by the County. The CIP indicates that an additional 3,137 Residential Development Units, or “RDUs,” capacity will be provided by the County sewer system (the “System”) during that time.

8. In order to serve these new customers at the same level of service being provided to current System customers, the Council finds that it is in the best interests of the County and its residents to implement an impact fee of Two Thousand Five-Hundred Dollars and 00/100 (\$2,500) per RDU, for all developers, individuals or other legal entities who plan to, or who do, tap into to the Kershaw County Utilities sewer system on or after the effective date of this Ordinance (the “Impact Fee”).

9. The District currently charges a tap fee of \$2,000 to defray the cost of connections made to its System.

10. To reduce the burden on new customers of its System from the imposition of the Impact Fee, it is appropriate for this tap fee to be reduced to \$1,000.

11. Pursuant to S.C. Code Ann. § 6-1-1080 (2006), the County may impose an impact fee if it has:

- (a) adopted a capital improvements plan before imposition of the impact fee, after due public notice before final adoption of the plan; and
- (b) prepared a report to be made public before the imposition of the impact fee, which shall include an explanation of the basis, use, calculation and method of collection of the impact fee; and
- (c) enacted the impact fee in accordance with Article 3, Chapter 1 of Title 6 of the S.C. Code of Laws, 1976, as amended.

12. The Council has reviewed the Kershaw County, South Carolina, Five-year Sewer System Capital Improvement Plan Issued by the Utilities Department of Kershaw County, as incorporated verbatim into the CIP as Appendix E thereto (the “Sewer CIP”) and Council finds the Plan to be sufficient to comply with Section 6-1-1080, S.C. Code of Laws, 1976, as amended.

13. The Council further finds that in light of the attached Sewer CIP, the Impact Fee is a fair and equitable way to address the increasing costs associated with new customer growth and is in the best interest of the County.

14. The Kershaw County Utilities Department has issued a Sewer Impact Fee(s) Report in satisfaction of the requirements of Section 6-1-1080(2) of the Code of Laws of South Carolina, 1976, a copy of which is attached hereto and incorporated herein by reference as Exhibit B.

15. The Council further finds that the revenues derived from the Impact Fee must be used to pay the costs related to the capital improvements to the sewer collection, treatment and disposal services, as outlined in the Sewer CIP (the “Improvements”).

16. The Impact Fees are set initially at \$2,500 per RDU which is estimated to be sufficient to generate significantly less than the entire amount of the capital that will be required to complete the Improvements. The remaining cost of the Improvements will be defrayed through grants, loans and other System revenues.

ARTICLE II

PROCEDURE SEWER IMPACT FEES IMPOSED, COLLECTION PROCEDURES

Section 2.01 Sewer Impact Fee Imposed.

1. Each customer seeking to connect to the Kershaw County Sewer System (the "System") shall pay an Impact Fee equal to \$2,500 per capital for each Residential Development Unit ("RDU") represented by the customer seeking to connect to the System. The Kershaw County Utilities Department shall compute the RDU for each customer using standard equivalency criteria promulgated from time to time by the South Carolina Department of Health and Environmental Control and successor agencies. The County reserves the right to review and revise the level at which Impact Fees are set or RDUs are calculated at any time in the future.

2. Impact fees shall be used for capital improvements to the System. The Kershaw County Five-Year Sewer System Capital Improvement Plan, dated 2008, sets forth the current plan and sequencing of the those capital improvements (the "Improvements"). However, the County reserves the right to amend or modify the plan, or to change the Improvements on which the impact fee are expended, so long as the proceeds of the Impact Fees are spent on capital improvements to the System.

3. Impact Fees will be collected in cash by the Planning and Zoning Department at the time construction permits are issued for premises to be connected to the System. For existing industrial customers or other customers seeking to increase their permitted discharge volumes, the Impact Fees will be collected at the time the changes in discharge volumes are contracted for.

Section 2.02 Miscellaneous Provisions.

1. *Payment of fees under protest.* A customer may pay impact fees under protest. Payment under protest shall not preclude customer from filing an appeal pursuant to this section or preclude receipt of a refund, if appropriate. In lieu of paying Impact Fees under protest, the developer or fee payor, at the developer's or fee payor's option, may post a commercial bond acceptable to the County or submit an irrevocable letter of credit for the amount of the development impact fees due, pending the outcome of an appeal.

2. *Appeal.* Any determination made by any official of the County charged with the administration of any part of this article may be appealed to the County Council by filing with the County Administrator or a designee within ten days of the date of the determination being appealed: (1) a written notice of appeal on a form provided by the County, or by letter (2) a written explanation of why the appellant feels that a determination was in error, and (3) payment

of an appeal fee of \$50.00 The County Council shall promptly fix a time and place for hearing the appeal, and the Clerk to Council shall mail notice of the hearing to the appellant at the address given in the notice of appeal. The hearing shall be conducted at the time and place stated in such notice given by the County Council, and the determination of the County Council shall be final.

3. If any section, paragraph, clause or provision of this Ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the remaining provisions of the Ordinance. This Ordinance will take effect one day after adoption by the Kershaw County Council.

DONE BY VOTE OF A POSITIVE MAJORITY OF THE MEMBERS OF KERSHAW COUNTY COUNCIL IN MEETING DULY ASSEMBLED, this _____ day of _____, 2008.

KERSHAW COUNTY COUNCIL

[SEAL]

By: _____
Chairman, Kershaw County Council

ATTEST:

Clerk, Kershaw County Council

1st Reading: _____, 2008
2nd Reading: _____, 2008
Public Hearing: _____, 2008
3rd Reading: _____, 2008

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 least 30 days prior to the holding of said hearing.

Clerk, Kershaw County Council

EXHIBIT B

Kershaw County, South Carolina Sewer Impact Fees Report Prepared by the Kershaw County Utilities Department

May13, 2008

The Kershaw County Five-Year Wastewater System Capital Improvement Plan, dated May 13, 2008 (the “Capital Improvement Plan”) has identified approximately \$20.5 million in capital improvements that will need to be constructed in the five year period 2008-2013 to allow the wastewater treatment system operated by Kershaw County (the “County”) to serve the needs of the people of the County effectively, to promote continued development, and to protect the public health and environmental quality of the County. As indicated in that report, a volume of addition sewer service representing an additional 3,137 equivalent residential users (“ERU”s), or approximately 1.25 million gallons per day of capacity, have been requested from the County wastewater system (the “System”) and are outstanding at this time.

The County intends to defray part of the cost of improvements identified by the Capital Improvement Plan through a development impact fee (the “Impact Fee”) payable by all new customers connecting to the System after the effective date of ordinances establishing the Impact Fee. This report is issued in satisfaction of the requirements imposed by Section 6-1-1080(2) of the Code of Laws of South Carolina, 1976, as a condition for the adoption of a development impact fee by water and wastewater utilities. Each of the requirements of that statute is addressed below:

Basis of the Impact Fee:

As indicated above, the need for the Impact Fee is established in the Capital Improvement Plan, dated May 13, 2008. The Impact Fees themselves will be based on the specific RDUs of wastewater capacity represented by each customer seeking to connect to the System. At present, one RDU is equivalent to a projected wastewater loading of 400 gallons per day. The RDUs for specific customers shall be computed using standard equivalency criteria promulgated from time to time by the South Carolina Department of Health and Environmental Control or the County may, in the future, determine to adopt a System-specific set of criteria.

Use of the Impact Fee

Impact fees shall be used for capital improvements to the System. The Capital Improvement Plan sets forth the current plan and sequencing of those capital improvements (the “Improvements”). However, the County reserves to right to amend or modify the plan, or to

change the Improvements on which the impact fee are to be expended, so long as the proceeds of the Impact Fees are spent on capital improvements to the System.

Calculation of the Impact Fees

The Impact Fees are set initially at \$2500 per RDU which, considering the number of RDUs of capacity that are being requested at this time, is estimated to be sufficient to generate approximately 38 % of the capital that will be required to complete the Improvements. The remaining cost of the Improvements will be defrayed through grants, loans and other System revenues. The County reserves the right to review and revise the level at which Impact Fees are set at any time in the future.

Collection of Impact Fees

Impact Fees will be collected in cash by the Planning and Zoning Department at the time construction permits are issued for premises to be connected to the System. Proof of payment of the Impact Fees will be required as a condition of issuance of building permits in areas where the System provides public sewer service. For existing industrial customers or other customers seeking to increase their permitted discharge volumes into the System, the Impact Fees will be collected at the time the County agrees to increase the allowable discharge volumes into the System.