

## REGULATIONS ON WATER AND SEWER CAPACITY

### HILTON HEAD NO. 1 PUBLIC SERVICE DISTRICT

**Whereas**, Hilton Head No. 1 Public Service District (the “*District*”) was created as a body politic and corporate pursuant to the provisions of Act No. 596 of the Acts and Joint Resolutions of the General Assembly of the State of South Carolina for the year 1969, as amended by Act No. 686 of the Acts and Joint Resolutions of the General Assembly of the State of South Carolina for the year 1971, by Act No. 1738 of the Acts and Joint Resolutions of the General Assembly of the State of South Carolina for the year 1972, and by Act No. 124 of the General Assembly of the State of South Carolina for the year 2003, all of which are collectively referred to herein as the “*Enabling Legislation*”;

**Whereas**, the District provides water and sewer service within that portion of Hilton Head Island within the boundaries of the District;

**Whereas**, the District is authorized to construct facilities and infrastructure for the provision of such services, and has so constructed, acquired, and improved a combined waterworks and sewer system (the “*System*”);

**Whereas**, the District is further authorized to sell or otherwise commit shares of usage volume (hereinafter called “*Capacity*,” as further defined in Section I below) in such facilities and infrastructure to users or potential users of the System;

**Whereas**, the District must meet debt service commitments that may have been or may be made subsequent to any sale of Capacity;

**Whereas**, certain costs are associated with the operation and maintenance of that portion of the District’s System that is dedicated to currently used capacity;

**Whereas**, pursuant to the relevant sections of the Enabling Legislation, the District has the authority to establish and collect water and sewer service charges from the properties within the District’s service area;

**Whereas**, the Hilton Head No. 1 Public Service District Commission (the “*Commission*”) has determined to allocate the costs of constructing or otherwise acquiring Capacity for water and wastewater services by requiring that all users of the System pay for their share of Capacity in the water treatment plant(s) and distribution system and/or wastewater treatment plant (s) and collection system;

**Now, therefore**, the following Regulations are hereby adopted by the Commission.

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**I. CAPACITY & CHARGES – GENERAL DEFINITIONS**

The American Water Works Association (“*AWWA*”) defines “*Capacity*” as the utility’s ability to have resources available to meet the service needs of its customers: the combination of plant and service-related activities required in order to provide the amount of service required by the customer. [*AWWA Manual M26 – Water Rates & Related Charges*]. The District hereby adopts said definition of *Capacity*. For the District’s purposes, the term *plant* as used in said definition shall refer to the entire physical plant, thereby being inclusive of all infrastructure necessary for providing water and/or sewer service to the user, regardless of whether said infrastructure is owned by the District outright or through an equity interest or reservation of rights.

In determining the amount of charges to be assessed for a particular area or development based on Capacity (hereinafter, “*Capacity Charges*”), the District shall endeavor to use practices consistent with those outlined in *AWWA Manual M26*, or any other subsequent publication deemed by the District to constitute a reasonably prudent source of guidance.

**II. WATER CAPACITY CHARGE**

The District shall assess a water Capacity Charge to all new customers (or existing customers using or planning to use more Capacity than that to which they currently hold rights). Such charge shall be reflective of the one-time cost of the infrastructure to produce, store, and deliver the maximum daily amount of water to be used by a particular customer. Components of the water Capacity Charge shall include the pro-rata share of the water treatment plant or wells and treatment equipment, storage tanks (the size and amount of which is determined by DHEC based upon the total amount of water that the District has committed to provide to all customers), pumps, water transmission lines, and distribution mains.

**III. SEWER CAPACITY CHARGE**

The District shall assess a sewer Capacity Charge to all new customers (or existing customers using or planning to use more capacity than that to which they currently hold rights). Such sewer Capacity Charge shall be reflective of the one-time cost of the infrastructure to collect, transport, treat, and dispose of the maximum daily amount of wastewater to be generated by a particular customer (as determined by DHEC tablets or actual history, whichever is greater). The components making up the sewer Capacity Charge shall include the pro-rata share of the wastewater treatment plant, disposal facilities, lift station, force mains, interceptor lines and trunk lines.

**IV. CAPACITY REGULATIONS ADMINISTRATION**

- A. All users of the System shall pay for their share of capacity in the water treatment plants and distribution system and/or wastewater treatment plant and collection system.
- B. The District shall establish and update Capacity Charges for each class of service to reflect the cost of providing said capacity at any given time. Such costs shall take into account such factors as volume, flow, waste loading, waste strength, and pressure requirements, among others.

- C. The District may buy back any unused Capacity from a developer or property owner at any price equal to or less than the original purchase amount, but is not required to do so.
- D. The District shall not reserve Capacity specific to a development, project, or parcel until such time as payment has been received by the District.
- E. The District, at its sole discretion, may sell Capacity for a planned development in excess of the District's current surplus Capacity of record, provided that the District anticipates the actual Capacity to be available at the developer's initially projected time of need. Where the District is specifically required to construct or upgrade infrastructure within a specific time frame to meet such a Capacity requirement, a separate, written agreement placing specific limits upon the District's liability shall be executed between the District and the developer prior to the District's accepting payment.
- F. Except by the District's prior written consent, Capacity shall be specifically attached to a parcel or tract of property as opposed to the purchaser or current owner.
- G. Transfer of Capacity from one property to another, regardless of whether said properties are within a PUD, requires the District's prior approval. The District shall not be obligated to approve any transfer of Capacity between properties in lieu of an additional Capacity purchase from the District.
- H. The District shall have the authority to adjust and collect Capacity Charges when Capacity use exceeds average daily purchased capacity.
- I. In the event that a user of the System begins and continues (either constantly or on some regular basis) using Capacity in excess of the user's purchased or otherwise allotted Capacity, and fails to pay additional Capacity Charges after reasonable notice, the District shall take action to restrict the user's Capacity usage to that amount to which the user is otherwise entitled. In the absence of any other feasible and effective method of Capacity control, the District after giving reasonable and customary notice may cause the user's service to be interrupted until such time as payment is made.
- J. The owner of a particular parcel or tract bears the burden of proof regarding any claim of original Capacity purchase or assignment. In such cases where the District is unable to produce documentation of subsequent assignment, release, transfer, revocation, or use of specific Capacity, the original or most recent valid and available documents properly authorized by the District shall be honored.
- K. In the event that any section or portion of these regulations are deemed to be invalidated by the terms of a pre-existing contract or for any reason of legality or technicality, all remaining sections and terms of these regulations shall remain in full force and effect.