

STATE OF SOUTH CAROLINA  
COUNTY COUNCIL FOR RICHLAND COUNTY  
ORDINANCE NO. 029-14HR

AN ORDINANCE AMENDING THE RICHLAND COUNTY CODE OF ORDINANCES, CHAPTER 2, ADMINISTRATION; ARTICLE X, PURCHASING BY ADDING DIVISION 9, PROMPT PAYMENT REQUIREMENTS.

WHEREAS, Richland County Council desires to amend the Richland County Code of Ordinances, Chapter 2, Administration; Article X, Purchasing by adding Prompt Payment Requirements which it will do concurrently with third reading of this ordinance.

NOW THEREFORE, pursuant to the authority granted by the Constitution and the General Assembly of the State of South Carolina, BE IT ENACTED BY THE COUNTY COUNCIL FOR RICHLAND COUNTY:

SECTION I. The Richland County Code of Ordinances, Chapter 2, Administration; Article X, Purchasing is hereby amended to add Division 9, Prompt Payment Requirements to read as follows:

DIVISION 9: PROMPT PAYMENT REQUIREMENTS

**Section 2-648. Prompt Payment Required.**

(1). *Right of County prime contractor and subcontractor to prompt payment.*

(a) Performance by a prime contractor in accordance with the provisions of its Richland County contract entitles prime contractor to payment from the County in a prompt manner. Provided there are no bona fide disputes relating to the adequacy of performance by the contractor, the County shall pay contractor no later than 30 days after receipt of a proper invoice from the contractor that summarizes the services provided or goods delivered to County by contractor and the cost of same. For each thirty-day interval that payment from the County is late, contractor shall be entitled to interest penalty payments from the County equal to 5% of the late balance. This late penalty fee payment shall be in addition to the payment of the undisputed original balance due by the County.

(b) Performance by a subcontractor in accordance with the provisions of its subcontract agreement with County's prime contractor while providing goods or services on behalf of Richland County entitles subcontractor to payment from the prime contractor in a prompt manner. Provided there are no bona fide disputes relating to the adequacy of performance by the subcontractor, the prime contractor shall pay subcontractor no later than seven days after prime contractor has received payment from the County for the goods or services that subcontractor has properly invoiced prime contractor for by summarizing the goods or services delivered on behalf of the County through the prime contractor. Alternatively, in instances where, through no fault of subcontractor, prime contractor has not been paid by the County for goods or services rendered by subcontractor, and more than thirty-seven days have lapsed since prime contractor received a proper invoice from subcontractor, the prime contractor shall authorize the County to pay subcontractor's undisputed invoice directly and to then deduct subcontractor's payment portion from prime contractor's account receivables due under its contract with the County. For each thirty-day interval beyond thirty-seven days that payment to subcontractor is late, subcontractor shall be entitled to an interest penalty fee equal to 5% of the late balance. This late penalty fee shall be in addition to the payment of the undisputed original balance due by the prime contractor, and shall be payable by either the prime contractor or the County depending upon which party is responsible for the late payment under these terms.

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(c) The County shall place language establishing these prompt payment terms as described above in (a) and (b) in any County bid solicitation and resulting contract awarded under County Ordinance, Chapter 2, Administration, Article X, Purchasing, § 2-591 and in each instance wherein the County determines to apply the provisions of County Ordinance, Chapter 2, Administration, Article X, Purchasing, Division 7 to a solicitation. In addition, each prime contractor shall be required to include similar prompt payment flow-down provisions for each tier of subcontractors that perform services or provide goods on behalf of the County through the prime contractor or a subcontractor.

(d) Any prevailing party that makes a final written demand for payment and late penalty fees to the responsible party pursuant to this Ordinance and fails to receive payment in full within 30 days, and subsequently takes legal recourse to enforce these prompt payment provisions, shall also be entitled to the award of reasonable attorneys' fees by a court of competent jurisdiction.

(2). *Grounds on which County, prime contractor, or subcontractor may withhold application and certification for payment; contract terms unaffected.*

Nothing in this Ordinance prevents the County, the contractor, or a subcontractor from withholding application and certification for payment because of the following: unsatisfactory job progress, defective construction not remedied, disputed work, third party claims filed or reasonable evidence that claim will be filed, failure of contractor or subcontractor to make timely payments for labor, equipment, and materials, damage to County, contractor, or another subcontractor, reasonable evidence that contract or subcontract cannot be completed for the unpaid balance of the contract or subcontract sum, or a reasonable amount for retainage.

Nothing in this Ordinance requires that payments due a contractor from the County be paid any more frequently than as set forth in the construction documents, nor shall anything in this Ordinance affect the terms of any agreement between the County and any lender.

(3). *Failure of contractor or subcontractor to make timely payments.*


In addition to the interest on late payments provided in Section 1, if any contractor or subcontractor makes late payments more than three times during the course of a contract, unless sufficient justification is made to the County and the County determines not to count the payment as late, the County can withhold the amount of the late payment due from the contractor to the subcontractor or to the lower tier subcontractor and make such late payment directly to the subcontractor or the lower tier subcontractor.

SECTION II. Severability. If any section, subsection, or clause of this ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections, and clauses shall not be affected thereby.

SECTION III. Conflicting Ordinances Repealed. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION IV. Effective Date. This ordinance shall be effective from and after June 3, 2014.


RICHLAND COUNTY COUNCIL

BY:   
Norman Jackson, Chair

Attest this 8th day of  
August, 2014.

  
Michelle Onley, Interim Clerk of Council

RICHLAND COUNTY ATTORNEY'S OFFICE



Approved As To LEGAL Form Only.  
No Opinion Rendered As To Content.

- First Reading: May 6, 2014
- Second Reading: May 20, 2014
- Third Reading: June 3, 2014
- Public Hearing: June 3, 2014