

CITY OF MOUNTLAKE TERRACE

ORDINANCE NO. 2504

AN ORDINANCE OF THE CITY OF MOUNTLAKE TERRACE AMENDING THE SERVICE AREA MAP AND SPECIFIC TEXT BY REPEALING AND REPLACING ORDINANCE NO. 2459 FOR PARK IMPACT FEES ON DEVELOPMENT AND REPEALING AND REPLACING CHAPTER 18.35, "PARK IMPACT FEES," OF THE MOUNTLAKE TERRACE MUNICIPAL CODE

WHEREAS, RCW 82.02.050 - 82.02.100 authorizes and provides for impact fees as a funding tool that may be used by local governments planning under the Growth Management Act (GMA) for the financing of certain kinds of public facilities;

WHEREAS, the City of Mountlake Terrace is required to plan and does plan under the GMA;

WHEREAS, the City has identified a public park capital improvement, consistent with the adopted Town Center Plan, that is eligible to be funded in part by impact fees and that is being included in the City's Capital Improvement Plan for 2009 - 2014;

WHEREAS, the park improvement being funded through impact fees will attract people downtown and be used by employees and customers of downtown businesses and, at the same time, will serve the entire community and provide additional park facilities to mitigate impacts that may be generated by future residential development and growth anywhere within the City;

WHEREAS, the City adopted a park impact fee ordinance, Ordinance No. 2459, in September 2007 and such ordinance provided for Service Area 2 to be co-extensive with the designated Town Center district;

WHEREAS, on December 1, 2008, expanded the designated Town Center district to include new area along 236th Street SW;

WHEREAS, to ensure that development in the new area of the Town Center district is subject to the same impact fees as the rest of the Town Center, the Service Area Map must be amended to include the new Town Center area in Service Area 2;

WHEREAS, several minor technical edits are appropriate to make at the same time; and

WHEREAS, pursuant to proper public notice under the municipal code, the City of Mountlake Terrace Planning Commission and the City Council has each held a public hearing, respectively on December 8 and December 15, on this matter;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MOUNTLAKE

TERRACE, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Title 18 of the Mountlake Terrace Municipal Code is hereby amended to add a new chapter 18.35, "Park Impact Fees," which shall read as follows:

Sections:

- 18.35.010 Authority and purpose.
- 18.35.020 Definitions.
- 18.35.030 Establishment of service areas.
- 18.35.040 Imposition and payment of transportation impact fees.
- 18.35.050 Calculation of impact fees.
- 18.35.060 Credits.
- 18.35.070 Appeals.
- 18.35.080 Accounting.
- 18.35.090 Expenditures.
- 18.35.100 Refunds.
- 18.35.110 Adjustments.
- 18.35.120 Administrative fees.
- 18.35.130 Review.

18.35.010 Authority and purpose.

A. This Ordinance is enacted pursuant to the City's police power, RCW 36.70A.020(9), RCW 36.70A.070(3) and (8), Chapter 82.02 RCW and WAC 365-195-850.

B. The purpose of this ordinance is to:

1. Ensure that adequate public park space is available as growth and development occurs;
2. Ensure that new development pays its fair share of park improvements through the assessment of impact fees;
3. Ensure proper collection and administration of impact fees so that fees are fairly imposed and correctly expended.

18.35.020 Definitions.

1. "Building permit" means an official document or certification which is issued by the building official and which authorizes the construction, alteration, enlargement, conversion, reconstruction, remodeling, rehabilitation, erection, demolition, moving or repairing of a building or structure.

2. "City" means the City of Mountlake Terrace.

3. "Development activity" means any construction or expansion of a building, structure, or use, any change in use of a building or structure, or any changes in the use of land, that creates additional demand and need for public facilities.

4. "Development approval" means any written authorization from the City which authorizes the commencement of development activity.

5. "Encumbered" means to reserve, set aside, or otherwise earmark the impact fees in order to pay for commitments, contractual obligations, or other liabilities incurred for planned facilities.

6. "Impact fee" means a payment of money imposed upon development as a condition of

development approval to pay for public facilities needed to serve new growth and development, citywide or in identified service areas, and that is reasonably related to the new development that creates additional demand and need for public facilities, that is a proportionate share of the cost of the public facilities, and that is used for facilities that reasonably benefit the new development and the city of service area as a whole. "Impact fee" does not include a reasonable permit or application fee.

7. "Owner" means the owner of record of real property, although when real property is being purchased under a real estate contract, the purchaser shall be considered the owner of the real property if the contract is recorded.

8. "Proportionate share" means that portion of the cost of public facility improvements that are reasonably related to the service demands and needs of new development.

9. "Public facilities" means the capital facilities for which impact fees may be established pursuant to RCW 82.02.090.

10. "Service area" means a geographic area defined by the City in which a defined set of public facilities provides service to development within the area. Service areas shall be designated on the basis of sound planning or engineering principles.

11. "System improvements" mean public facilities that are included in the capital facilities plan and are designed to provide service to service areas within the community at large, in contrast to project improvements.

12. "Unit" means any building or portion thereof which contains living facilities including provisions for sleeping, cooking, eating, and sanitation, as required by the City, for not more than one family and including site-built buildings, mobile/manufactured homes and modular homes.

18.35.030 Establishment of service areas.

A. One or more service areas may be established pursuant to RCW 82.02.060, within which the City shall calculate and impose impact fees for various land use categories per unit of development.

B. The City has created two service areas within which park impact fees shall be charged and collected:

1. Service Area 1 – Citywide: Boundaries are co-extensive with the City of Mountlake Terrace city boundaries and shall include all unincorporated areas annexed to the City on and after the effective date of this ordinance.

2. Service Area 2 – Town Center: A fee will be applied to commercial development within Service Area 2, as explained in Appendix A of this Ordinance. Boundaries of this service area are co-extensive with the area designated Town Center and shown in Appendix C of this Ordinance.

18.35.040 Imposition and payment of park impact fees.

A. An impact fee is imposed upon all new residential development activity within Service Area 1 and new residential and non-residential development within Service Area 2 (as defined in MTMC 18.35.030).

B. For non-residential development within Service Area 2, City staff shall determine the impact fee owed by dividing the square footage in the development by 1,000 and multiplying by the fee adopted in this ordinance (see Appendix A).

C. In the event that both residential and non-residential land uses are proposed for the development activity for which approval is being sought, impact fees shall be calculated

separately for each land use category.

D. Impact fees imposed under this ordinance shall be payable as a condition of issuance of a building permit.

E. The following type of development activity is exempted from the imposition of impact fees under this chapter: public transportation facilities.

18.35.050 Calculation of impact fees.

The methodology and formula used to develop park impact fees is attached as Appendix B at the end of this chapter. The formula may be revised upon future review.

18.35.060 Credits.

A. This section allows for the provision of reasonable credit to a feepayer, against the amount of impact fees owed, for the value of any dedication of land for, improvements to, or new construction of planned facilities by a feepayer, pursuant to RCW 82.02.060(3).

1. The Community Development Director shall determine (1) whether the contribution meets capital improvement needs for which the particular impact fee has been imposed; and (2) whether the contribution will substitute for or otherwise reduce the need for capital improvements anticipated to be provided with impact fee funds; and (3) the value of the developer contribution. In no event, however, shall the credit exceed the amount of the otherwise applicable impact fee. In the event an appraisal is necessary to determine the value of land dedicated, an appraiser shall be designated by the City and the full cost of such appraisal shall be paid by the applicant.

2. Any application for credit must be submitted at or before the time of development project approval on forms provided by the City. The application shall contain a declaration of those facts, under oath, along with the relevant documentary evidence which qualifies the property owner for the credit. Any claim not so made shall be deemed waived.

3. Credits shall not be transferable from one project or development to another without the approval of the Community Development Director.

18.35.070 Appeals.

A. Any feepayer may pay the impact fees imposed by this chapter under protest in order to obtain the development approval and/or a building permit. Appeals regarding the impact fees imposed on any development activity may only be taken by the feepayer of the property where such development activity will occur. No appeal shall be permitted unless and until the impact fees at issue have been paid.

B. A feepayer may protest or challenge the imposition of a fee imposed pursuant to this ordinance by filing with the City Clerk within ten days following the payment of the impact fee, a written notice of appeal with a full statement of the grounds, and an appeals fee charged pursuant to the City's adopted fee schedule.

C. The Hearing Examiner shall fix a time for the hearing of the appeal, and give notice to the parties in interest. At the hearing, any party may appear in person or by agent or attorney.

D. The Hearing Examiner is authorized to make findings of fact regarding the applicability of the impact fees to a given development activity, the availability or amount of the credit, or the accuracy or applicability of an independent fee calculation. The decision of the Hearing Examiner shall be final, except as provided by this section.

E. The Hearing Examiner may, so long as such action is in conformance with the provisions

of this chapter, reverse or affirm, in whole or in part, or may modify the determinations of the Community Development Director with respect to the amount of impact fees imposed or the credit awarded upon a determination that it is proper to do so based on principles or determinations as ought to be made, and to that end shall have the powers which have been granted to the Community Development Director by this chapter.

F. Any feepayer who believes that the decision of the Hearing Examiner is based on erroneous procedures, errors of law or fact, or error in judgment, or has discovered new evidence which could not be reasonably available at the prior hearing, may make a written request for reconsideration by the Hearing Examiner within ten working days of the date the decision is rendered. This request shall set forth the specific errors or new information relied upon by the appellant, and the Hearing Examiner may, after review of the record, take further action as he or she deems proper.

G. The filing of a request for reconsideration shall effectively stay the appeal period until the Hearing Examiner takes further action.

18.35.080 Accounting.

A. The City shall establish an account for fees collected pursuant to this ordinance and funds from this account shall be expended for purposes for which the impact fees were collected.

B. The accounts shall be interest-bearing and all interest earned shall be retained in the accounts and expended for purposes for which the impact fees were collected.

18.35.090 Expenditures.

A. The impact fees deposited into the impact fee account, and the interest and profit received from the investment thereof, shall be expended only for those park projects, including a public plaza centrally located in the Town Square area, which is bounded by 56th and 58th Avenues West and 232nd and 234th Streets Southwest, for which the impact fees were collected, in conformance with the Capital Facilities Plan.

B. The funds shall be expended or encumbered within six years of receipt by the City, unless written findings by the city council identify an extraordinary and compelling reason for fees to be held longer than six years. Impact fees shall be considered encumbered on a first in, first out basis.

C. The City shall prepare an annual report on the impact fee account showing the source and amount of all moneys collected, earned, or received and park improvements that were financed in whole or in part by impact fees.

18.35.100 Refunds.

A. The City shall refund to the current property owners of property on which an impact fee has been paid, any impact fees that have not been expended or encumbered for the park improvement projects for which they were collected within six years from the date of receipt (or such longer period of time established in the event that the City finds that an extraordinary or compelling reason exists to hold the fees longer than six years as provided in MTMC 18.35.090.B). Impact fees shall be considered encumbered on a first in, first out basis. The City shall notify potential refund claimants by first-class mail deposited with the United States postal service at the last known address of claimants.

B. The City shall also refund to the current property owner on which an impact fee has been paid all impact fees paid with respect to such property if the development activity for which the

impact fee was imposed did not occur and no impact has resulted; provided, that if some, but not all, of the development activity for which an impact fee was imposed occurred, the impact will be deemed to have occurred, and no refund shall be available under this Section.

C. Owners seeking a refund of impact fees must submit a written request for a refund of impact fees to the Community Development Director within one year of the date the right to claim the refund arises (which, for purposes of refund claims authorized by this Section of this ordinance only, shall be the date of voluntary or involuntary abandonment of the building permit) or the date that notice is given as provided in MTMC 18.35.100.A, whichever is later. Refunds of impact fees shall include interest and any profits earned on the impact fees from the date of their receipt to the date of refund. Any impact fees not expended within the time limitations described in MTMC 18.35.090, and for which no application for a refund has been made within the one-year refund claim period, shall be retained by the City and expended on the transportation projects for which the impact fees were collected, without further limitation as to time of expenditure.

18.35.110 Adjustments.

A. Pursuant to and consistent with the requirements of 82.02.060 RCW, the impact fee schedules in Appendix A have been reasonably adjusted for taxes and other revenue sources which are anticipated to be available to fund particular planned facilities.

18.35.120 Administrative fees.

A. The City's cost of administering the impact fee program is deemed to be generally equivalent to four hours of staff time for each project. An administrative fee that is equivalent to four hours of staff time at the rate prescribed under the development fee schedule authorized by MTMC 3.150.090, shall be imposed for each development project for which impact fees are required.

B. The administrative fee, which is non-refundable, shall be paid by the applicant to the City at the time the impact fees are paid.

18.35.130 Review.

A. The impact fees set forth in Appendix A shall be reviewed by the council as it may deem necessary and appropriate in conjunction with the annual update of the capital facilities plan element of the City's comprehensive plan.

B. The fee schedules may be adjusted by means of an adopted resolution as deemed necessary to reflect changes in construction costs, additional projects, or other relevant information.

Section 2. Conflict. In the event of a conflict between this Ordinance or any mitigation measure imposed thereto, and any ordinance or regulation of the City, the provisions of this Ordinance shall control.

Section 3. Severability. Should any term or provision of this ordinance be found to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other term or provision of this Ordinance.

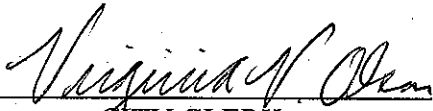
Section 4. Effective Date. This Ordinance shall take effect five days after its adoption and publication as required by law.


Section 5. Expiration. This Ordinance shall expire ten (10) years from the date of adoption unless it is extended by the City Council following a report from the SEPA Responsible Official and a public hearing.

Section 6. Publication. This Ordinance or a summary thereof consisting of the title shall be published in the official newspaper of the City.

PASSED by the City Council of the City of Mountlake Terraces this 15th day of December, 2008 and signed into authentication of its passage this 15th day of December, 2008.

ATTEST:


CITY CLERK


MAYOR JERRY SMITH

APPROVED AS TO FORM: Gregory G. Schrag, City Attorney

APPENDIX A
(Ordinance No. 2459)
City of Mountlake Terrace
Park Impact Fees

Per Trip Fees by Service Area

A. The fees below have been calculated per the methodology discussed in Appendix B of this chapter.

1. Service Area 1 – Citywide: Boundaries are co-extensive with the City of Mountlake Terrace city boundaries and shall include all unincorporated areas annexed to the City on and after the effective date of this ordinance.

a. Residential fee (per unit)

i. Multi-family: \$2,026.23

ii. Single-family: \$2,026.23

2. Service Area 2 – Town Center: A fee for commercial development will be applied within Service Area 2 (Town Center) as explained in Appendix B of this ordinance. Boundaries of this Service Area are co-extensive with the area designated Town Center and shown in Appendix C.

a. Commercial fee (per 1,000 square feet)

i. Office: \$772.67

ii. Retail: \$602.76

APPENDIX B
(Ordinance No. 2459)
City of Mountlake Terrace
Park Impact Fee Calculation Methodology

Park impact fees are most commonly charged on new residential development, not commercial, since City parks are often thought of to be for the benefit and use of City residents. However, because the Town Center park proposed in the City's Capital Facilities Plan is a plaza located in the commercial center of the city, it is reasonable to assume that employees of businesses in the Town Center are likely to take advantage of the public open space, whether or not they are residents of Mountlake Terrace.

Other cities within the State of Washington have set a precedent for charging park impact fees to commercial and residential development, including the Cities of Redmond and Burlington. Redmond conducted a survey that revealed that non-resident employees use the parks at one quarter the rate of residents. That is, for every four hours of residential park use, non-resident employees use the parks for an average of one hour.

Based on this rationale and similar usage patterns, the City of Mountlake Terrace has decided to implement an impact fee for residential development citywide and for commercial development located within the Town Center.

It is assumed that all residents citywide will use the plaza park space as they would any other public area. It is also assumed that employees of the Town Center, regardless of whether or not they are residents of the City, will use the plaza park as a result of the location of their employment.

Fee Calculation

Expected residential development **citywide** was multiplied by the assumed average number of occupants per unit. The resulting total number of new residents was multiplied by four hours of average park use per week. The number of estimated new employees resulting from future commercial development within the **Town Center** was multiplied by one hour per week of average park use.

The total hours of use for each residential and commercial land use category therefore established the relative percent of total use, which was applied to the estimated cost of the plaza park. This resulted in a total cost allocation of the creation of the park for each land use category. The total cost allocation for each land use was then divided by the appropriate unit – housing units for residential development, and 1,000 square feet for commercial development.

The calculation of park impact fees for residential and commercial development is shown in the table below.

Calculation of Park Impact Fees

Land Use	Expected Development			Persons per Unit	Hours Use per Week	Total Hours	% Hours	Cost Allocation	Per Unit Fee (Full Cost)	
	Housing Units	Employ	Building Area (SF)						Per Housing Unit	Per 1,000 SF
Multi-family	990			2.20	4.00	8,712	69.4%	\$2,674,627	\$2,701.64	
Single-family	276			2.20	4.00	2,429	19.3%	\$745,654	\$2,701.64	
Office (In TC)		900	268,200		1.00	900	7.2%	\$276,304		\$1,030.22
Retail (In TC)		516	197,112		1.00	516	4.1%	\$158,415		\$803.68
TOTALS	1,266	1,416	465,312			12,557	100.0%	\$3,855,000		

Source: Berk & Associates

Discount

To recognize the shared nature of park use, a 25% discount is provided on the fee for all development within both service areas. The resulting fees are shown in the table below.

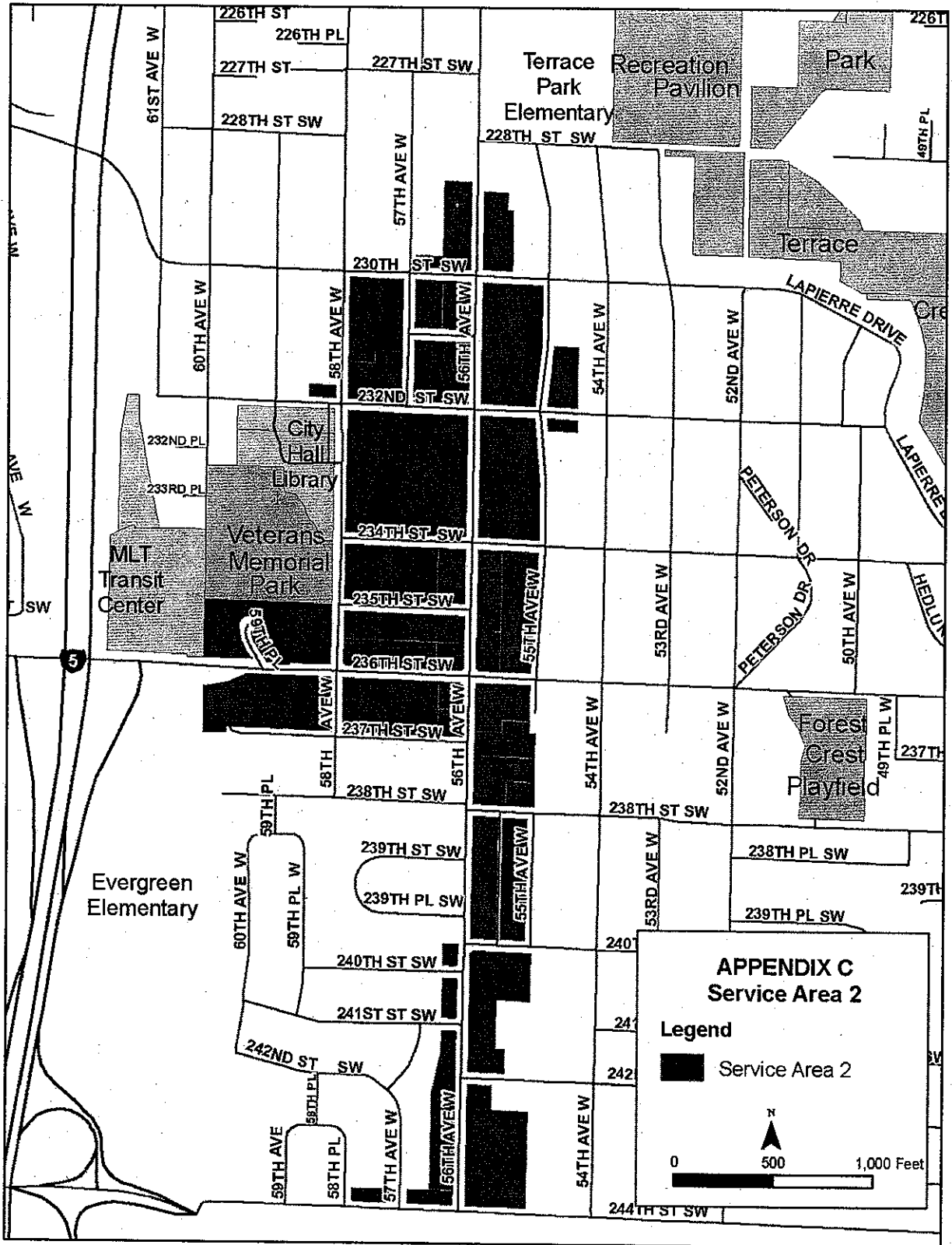
Park Impact Fees with Discount

	Unit	Full Cost Allocation	Discounted Fee
Discount		0%	25%
Residential			
	Multi Family Unit Dwelling	\$2,701.64	\$2,026.23
	Single Family Unit Dwelling	\$2,701.64	\$2,026.23
Commercial			
	Office (In TC) 1,000 SF	\$1,030.22	\$772.67
	Retail (In TC) 1,000 SF	\$803.68	\$602.76

Source: Berk & Associates

(Ordinance No. _____)

APPENDIX C



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