

**ORDINANCE NO. 1903-16**

AN ORDINANCE OF THE CITY OF MILTON, WASHINGTON ADDING A NEW CHAPTER 13.45 TO THE MILTON MUNICIPAL CODE AS IT RELATES TO THE COLLECTION OF PARKS IMPACT FEES; ENTERING LEGISLATIVE FINDINGS; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

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WHEREAS, The citizens of Milton take pride in their park system and this park system is integral to the quality of life in Milton; and,

WHEREAS, as identified in the City of Milton's Comprehensive Plan, the City must expand its park system in order to maintain current standards if new development is to be accommodated without decreasing current parks standards; and,

WHEREAS, the imposition of impact fees is one of the preferred methods of ensuring that development bears a proportionate share of the cost of capital facilities necessary to accommodate such development: NOW THEREFORE,

THE CITY COUNCIL OF THE CITY OF MILTON, WASHINGTON, DO ORDAIN AS FOLLOWS:

**Section 1. Findings.** The recitals set forth above are hereby adopted as the Milton City Council's findings in support of this ordinance.

**Section 2.** Chapter 13 of the Milton Municipal Code is hereby amended by adding a new Chapter 13.45 as follows:

**Chapter 13.45  
PARKS IMPACT FEES**

Sections:

- 13.45.010 Findings and authority.
- 13.45.020 Definitions.
- 13.45.030 Assessment of impact fees.
- 13.45.040 Independent fee calculations.
- 13.45.050 Credits and adjustments.
- 13.45.060 Exemptions.
- 13.45.070 Appeals.
- 13.45.080 Establishment of impact fee account for parks and recreation.
- 13.45.090 Refunds.
- 13.45.100 Use of funds.

13.45.110 Review and update of impact fees.

13.45.120 Deferral of payment.

13.45.130 Miscellaneous provisions.

### **13.45.010 Findings and authority.**

The council of the city of Milton (the "council") hereby finds and determines that new growth and residential development in the city of Milton will create additional demand and need for parks and recreation facilities in the city of Milton, and the council finds that new growth and development should pay a proportionate share of the cost of parks and recreation facilities needed to serve the new growth and development. Therefore, pursuant to Chapter 82.02 RCW, the council adopts this chapter to assess impact fees for parks and recreation. The provisions of this chapter shall be liberally construed in order to carry out the purposes of the council in establishing the impact fee program

### **13.45.020 Definitions.**

The following words and terms shall have the following meanings for the purposes of this chapter unless the context clearly requires otherwise. Terms otherwise not defined herein shall be defined pursuant to RCW 82.02.090 or given their usual and customary meaning.

A. "Act" means the Growth Management Act, Chapter 36.70A RCW, as now in existence or as hereafter amended.

B. "Building permit," for the purposes of this chapter only, means an official document or certification which is issued by the city and which authorizes the construction, alteration, enlargement, conversion, reconstruction, remodeling, rehabilitation, erection, demolition, moving or repair of a building or structure.

C. "Capital facilities plan" means the capital facilities plan element of the city's comprehensive plan adopted pursuant to Chapter 36.70A RCW and such plan as amended.

D. "Change of use" means any use which substantially differs from the previous use of a building or premises. A substantially different use is one which is not included in the group number classification of the previous use, as set forth in the most recent edition of the Standard Industrial Classification Manual.

E. "City" means the city of Milton.

F. "Council" means the city council of the city of Milton.

G. "Department" means the Public Works Department.

H. "Development activity" means any construction or expansion of a building, structure, or use, any change of use of a building or structure, or any change of the use of land that creates additional demand and need for parks and recreation facilities.

I. "Director" means the director of Public Works or the director's designee.

J. "Dwelling unit" means a building, or portion thereof, designed for residential occupancy consisting of one or more rooms which are arranged, designed or used as living quarters for one family only.

K. "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 parks and recreation facilities.

L. "Feepayer" is a person, corporation, partnership, an incorporated association, or any other similar entity, or department or bureau of any governmental entity commencing a land development activity which creates the demand for additional parks and recreation facilities, and which requires the issuance of a building permit. "Feepayer" includes an applicant for an impact fee credit.

M. "Hearing examiner" means the examiner who acts on behalf of the council in considering and applying land use regulatory codes as provided under Chapter 2.54 MMC. Where appropriate, "hearing examiner" also refers to the office of the hearing examiner.

O. "Impact fee" means a payment of money imposed by the city of Milton on development activity pursuant to this chapter as a condition of granting development approval in order to pay for the parks and recreation facilities needed to serve new growth and development.

P. "Impact fee account" or "account" means the account established for the parks and recreation facilities' impact fees collected. The account shall be established pursuant to MMC 13.45.080 and comply with the requirements of RCW 82.02.070.

Q. "Independent fee calculation" means the parks and recreation impact calculation prepared by a feepayer to support the assessment of an impact fee other than that shown in MMC 13.45.030.

R. "Interest" means the interest rate earned by local jurisdictions in the State of Washington Local Government Investment Pool, if not otherwise defined.

S. "Multifamily dwelling" means a building designed exclusively for occupancy by two or more families living independently of each other, and containing two or more residential dwelling units.

T. "Owner" means the owner of record of real property; provided, that if the real property is being purchased under a recorded real estate contract, the purchaser shall be considered the owner of the real property.

U. "Parks and recreation facilities" means neighborhood and community parks, open space, recreational trails, athletic fields, swimming pools, and community centers, and any furnishings and equipment that are used at such locations and which can be capitalized.

V. "Parks and recreation project improvements" means site improvements and facilities that are planned and designed to provide service for a particular development or users of the project and are not parks and recreation system improvements. No parks and recreation improvement or facility included in a capital facilities plan approved by the council shall be considered a parks and recreation project improvement.

W. "Parks and recreation system improvements" means parks and recreation facilities that are either included in the city of Milton's capital facilities plan and/or are designed to provide service to service areas within the community at large, in contrast to parks and recreation project improvements.

X. "Single-family dwelling" means a detached building designed exclusively for occupancy by one family and containing one residential dwelling unit. A manufactured home may be considered a one-family dwelling, if sited per Chapter 17.60 MMC.

Y. "State" means the state of Washington.

Z. "Surplus credits" means credits over and above those calculated as an impact fee. For example:

1. In grandfathering calculations, if the difference between a proposed use fee minus existing use credit results in a positive number, the result is the impact fee due.

2. In grandfathering calculations, if the difference between a proposed use fee minus existing use credit results in a negative number, the result is the surplus credit and no impact fee would be due.

### **13.45.030 Assessment of impact fees.**

A. Effective October 1, 2016, the city shall collect park impact fees calculated at \$1,550 per each Dwelling Unit from any applicant seeking development approval from the city for any development activity that includes dwelling units within the city.

B. Where a change of use increases housing capacity by more than or equal to one dwelling unit, the director shall calculate a parks and recreation impact fee based on the increase in the housing capacity.

C. The amount of impact fees shall be determined at the time an applicant submits a complete application for a building permit using the amount shown in MMC 13.45.030, or pursuant to an independent fee calculation accepted by the director pursuant to MMC 13.45.040, and adjusted for any credits pursuant to MMC 13.45.050.

D. Payment of impact fees shall be made by the feepayer at the time the building permit is issued for each unit in the development. The amount to be paid shall not be increased for any applicant that submitted a complete application for the building permit before the city established the impact fee rates.

E. Applicants that have been awarded credits prior to the submittal of the complete building permit application pursuant to MMC 13.45.050 shall submit, along with the complete building permit application, a copy of the letter or certificate prepared by the director pursuant to MMC 13.45.050 setting forth the dollar amount of the credit awarded. Impact fees, as determined after the application of appropriate credits, shall be collected from the feepayer at the time the building permit is issued.

F. The department shall not issue a building permit unless and until the impact fees have been paid or credit(s) awarded.

G. For complete building permit applications for new development, redevelopment or a change of use, and prior to or at the time of issuance of any single-family residential building permit for a dwelling unit that is being constructed, the applicant may elect to record a covenant against title to the property on forms prepared and provided by the city that requires payment of parks impact fees due and owing, less any credits awarded, by providing for automatic payment through escrow of these development charges due and owing to be paid no later than at time final inspection or 18 months from the date of issuance of the original building permit, whichever comes first. Failure to pay shall result in the following:

1. If 30 days after the city has sent the responsible party written notification of its obligation to pay the charges established in this chapter the full amount remains unpaid, the responsible party shall be subject to the enforcement provisions of MMC 1.08.100. Written notification shall

be by regular and certified mail and to the most current available contact information on file with the city. For the purposes of applying MMC 1.08.100, the responsible party shall constitute a property owner, the property(ies) for which a permit(s) has been issued shall constitute the property(ies) on which the violation is occurring, and the impact fee amount remaining unpaid shall constitute a violation occurring on the permitted property(ies) under these sections.

2. Any unpaid charges adopted by this chapter that are outstanding 30 days from the date the charges are due shall constitute a lien against the property(ies) for which a permit(s) has been issued in the amount of the unpaid charges. In addition to the actions authorized in subsection (G)(1) of this section, the city may record a lien against the permitted property(ies) in the amount of the unpaid charges and may immediately suspend any permits previously issued for the lot or unit associated with the current development activity and shall limit the granting of any future permits for the lot or unit until such time that all outstanding water, sanitary sewer and storm drainage development charges are paid in full.

3. The appeals process authorized in MMC 13.45.070 shall not apply to determinations made pursuant to this section.

### **13.45.040 Independent fee calculations.**

A. If, in the judgment of the director, none of the fee amount set forth in the MMC 13.45.030 accurately describes or captures the impacts of the new development, the applicant shall conduct an independent fee calculation and the director may impose alternative fees on a specific development based on those calculations, once accepted by the city.

B. Feepayers may opt not to have the impact fees determined according to the rate set forth in the MMC 13.45.030. Such feepayers shall prepare and submit to the director an independent fee calculation for the development activity for which a building permit is sought. The documentation submitted shall show the basis upon which the independent fee calculation was made.

C. A nonreimbursable administrative fee shall be charged for each independent fee calculation. The fee shall be deposited with the city to pay for city review of the independent fee calculation upon submittal of the documented independent fee study.

D. After the city completes its review, the actual fees and expenses will be determined and the cash deposit shall be adjusted to provide for a refund by the city or additional payment by the feepayer.

E. While there is a presumption that the amounts set forth in the MMC 13.45.030 are valid, the director shall consider the documentation submitted by the feepayer, but is not required to accept such documentation which the director reasonably deems to be inaccurate or not reliable, and may, in the alternative, require the feepayer to submit additional or different documentation for consideration. The director is authorized to adjust the impact fees on a case-by-case basis based on the independent fee calculation, the specific characteristics of the development, and/or where adjustment is deemed by the director to be appropriate based on principles of fairness under the circumstances of the case.

F. Determinations made by the director pursuant to this section may be appealed to the office of the hearing examiner subject to the procedures set forth in MMC 17.71.

### **13.45.050 Credits and adjustments.**

A. A feepayer can request that a credit or credits for parks and recreation impact fees be awarded to him/her for parks and recreation improvement projects provided by the feepayer in excess of the standard requirements for the feepayer's development if the land, improvements, and/or the facility constructed are identified as parks and recreation system improvements that provide capacity to serve new growth in the capital facilities plan, or the director, at his/her discretion, makes the finding that such land, improvements, and/or facilities would serve the parks and recreation goals and objectives of the capital facilities plan.

B. For each request for a credit or credits, the director shall determine the value of dedicated land by using available documentation or selecting an appraiser from a list of independent appraisers maintained by the department to determine the value of the land being dedicated. The value of improvements will be determined through documentation submitted by the feepayer.

C. The feepayer shall pay the cost of the appraisal and shall deposit on account the estimated cost of the appraisal as determined by the city at the time the feepayer requests consideration for a credit.

D. After receiving the appraisal, the director shall provide the applicant with a letter or certificate setting forth the dollar amount of the credit, the reason for the credit, where applicable, the legal description of the site donated, and the legal description or other adequate description of the project or development to which the credit may be applied. The applicant must sign and date a duplicate copy of such letter or certificate indicating his/her agreement to the terms of the letter or certificate and return such signed document to the director before the impact fee credit will be awarded. The failure of the applicant to sign, date, and return such document within 60 days shall nullify the credit.

E. Any claim for credit must be made no later than the time of application for a building permit. Any claim not so made shall be deemed waived.

F. Determinations made by the director pursuant to this section shall be subject to the appeals procedures set forth in MMC 17.71.

G. Pursuant to and consistent with the requirements of RCW 82.02.060, the fee rate in MMC 13.45.030 has been reasonably adjusted for other revenue sources which are earmarked for, or proratable to, funding parks and recreation facilities.

H. In order to grandfather the capacity rights of existing developments, the director will utilize the adopted rates to calculate any impact fee credits and to determine any surplus credits for off-site system improvements made by the property owner.

Only in a situation when a property owner makes off-site system capacity improvements that qualify in accordance with subsection A of this section will any surplus credits (value computed during the permit year and not adjusted for inflation) remain with the property or any subdivision of that property to benefit future development where a parks and recreation impact fee is determined to be due.

### **13.45.060 Exemptions.**

A. The following shall be exempted from the payment of parks and recreation impact fees:

1. Replacement of a structure with a new structure of the same use at the same site or lot when such replacement occurs within 12 months of the demolition or destruction of the prior structure.
2. Alterations or expansion or enlargement or remodeling or rehabilitation or conversion of an existing dwelling unit where no additional units are created and the use is not changed.
3. Miscellaneous improvements, including but not limited to fences, walls, swimming pools, and signs.
4. A change of use where the increase in housing capacity is less than the threshold stated in MMC 13.45.030(B).
5. Demolition or moving of a structure.

6. Any building permit application that has been submitted to the department before 5:00 p.m. the business day before the first effective date of the park impact fee rate schedule and subsequently determined to be a complete application by the city.

B. The director shall be authorized to determine whether a particular development activity falls within an exemption identified in this section. Determinations of the director shall be subject to the appeals procedures set forth in MMC 13.45.070.

### **13.45.070 Appeals.**

A. Any feepayer may pay the impact fees imposed by this chapter under protest in order to obtain a building permit. Appeals regarding the impact fees imposed on any development activity may only be made by the feepayer of the property where such development activity will occur. No appeal submitted under protest shall be permitted unless and until the impact fees at issue have been paid. Alternatively, any feepayer may appeal the impact fees determined by the director without first paying the fees, providing the applicant is willing to provide a satisfactory security of the appealed fee amount in accordance with the requirements of MMC 17.71 prior to issuance of the building permit. Alternatively, any feepayer may appeal the impact fees determined by the director without first paying the fees, provided the applicant is willing to postpone issuance of the building permit until after the appeal process when the revised final fee is known.

B. Determinations of the director with respect to the applicability of the impact fees to a given development activity, the availability or value of a credit, or the director's decision with respect to the independent fee calculation, or any other determination which the director is authorized to make pursuant to this chapter, can be appealed to the hearing examiner.

C. Appeals shall be taken within 10 days of the director's issuance of a written determination by filing with the office of the hearing examiner a notice of appeal specifying the grounds thereof and depositing the necessary fee, which is set forth in the existing fee schedules for appeals of administrative decisions. The director shall transmit to the office of the hearing examiner all papers constituting the record for the determination, including, where appropriate, the independent fee calculation.

D. The hearing examiner shall fix a time for the hearing of the appeal, give notice to the parties in interest, and decide the same as provided in Chapter 2.54 MMC. At the hearing, any party may appear in person or by agent or attorney.

E. 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 in subsection G of this section.

F. 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 director with respect to the amount of the impact fees imposed or the credit awarded upon a determination that it is proper to do so based on principles of fairness, and may make such order, requirements, decision or determination as ought to be made, and to that end shall have the powers which have been granted to the director by this chapter.

G. Any feepayer aggrieved by any decision of the office of the hearing examiner may appeal the hearing examiner's final decision as provided in Chapter 2.54 MMC.

#### **13.45.080 Establishment of impact fee account for parks and recreation.**

A. Impact fee receipts shall be earmarked specifically and deposited in special interest-bearing accounts. The fees received shall be prudently invested in a manner consistent with the investment policies of the city.

B. There is hereby established a separate impact fee account for the fees collected pursuant to this chapter: the parks and recreation facilities impact fee account. Funds withdrawn from these accounts must be used in accordance with the provisions of MMC 13.45.100. Interest earned on the fees shall be retained in the account and expended for the purposes for which the impact fees were collected.

C. On an annual basis, the financial director shall provide a report to the council on the parks and recreation impact fee account showing the source and amount of all moneys collected, earned, or received, and the parks and recreation system improvements that were financed in whole or in part by impact fees.

D. Impact fees shall be expended or encumbered within ten years of receipt, unless the council identifies in written findings an extraordinary and compelling reason or reasons for the delay.

#### **13.45.090 Refunds.**

A. If the city fails to expend or encumber the impact fees within ten years of when the fees were paid or, where extraordinary or compelling reasons exist, such other time periods as established pursuant to MMC 13.45.080, the current owner of the property on which impact fees have been paid may receive a refund of such fees. In determining whether impact fees have been expended or encumbered, impact fees shall be considered

expended or encumbered on a first-in, first-out basis; provided, that any party that voluntarily elects to use the alternative fee payment method specified in MMC 13.45.030 shall sign as a condition of use of the alternative fee payment method a waiver of right on a form prepared and provided by the city to recovery of park impact fees not spent with the statutory ten-year timeframe.

B. The city shall notify potential claimants by first class mail deposited with the United States Postal Service at the last known address of such claimants. A potential claimant or claimant must be the owner of the property.

C. Owners seeking a refund of impact fees must submit a written request for a refund of the fees to the director within one year of the date the right to claim the refund arises or the date that notice is given, whichever is later.

D. Any impact fees for which no application for a refund has been made within this one-year period shall be retained by the city and expended on the appropriate parks and recreation facilities.

E. Refunds of impact fees under this section shall include any interest earned on the impact fees by the city.

F. If and when the city seeks to terminate any or all components of the parks and recreation impact fee program, all unexpended or unencumbered funds from any terminated component or components, including interest earned, shall be refunded pursuant to this section. Upon the finding that any or all fee requirements are to be terminated, the city shall place notice of such termination and the availability of refunds in a newspaper of general circulation at least two times and shall notify all potential claimants by first class mail to the last known address of the claimants. All funds available for refund shall be retained for a period of one year. At the end of one year, any remaining funds shall be retained by the city, but must be expended for the appropriate parks and recreation facilities. This notice requirement shall not apply if there are no unexpended or unencumbered balances within an account or accounts being terminated.

G. The city shall also refund to the developer of property for which impact fees have been paid all impact fees paid, including interest earned on the impact fees, if the development activity for which the impact fees were imposed did not occur.

### **13.45.100 Use of funds.**

A. Pursuant to this chapter, impact fees:

1. Shall be used for parks and recreation system improvements that will reasonably benefit the new development; and

2. Shall not be imposed to make up for deficiencies in parks and recreation facilities serving existing developments; and

3. Shall not be used for maintenance or operations.

B. As a general guideline, parks and recreation impact fees may be used for any parks and recreation system improvements which could otherwise be funded by a bond issue of the city.

C. Parks and recreation facilities impact fees may be spent for parks and recreation system improvements, including but not limited to neighborhood and community parks, recreational trails, athletic fields, swimming pools, and community centers, including planning, land acquisition, site improvements, necessary off-site improvements including mitigation, construction, engineering, architectural, permitting, financing, and administrative expenses, applicable impact fees or mitigation costs, and any other expenses which can be capitalized.

D. In the event that bonds or similar debt instruments are or have been issued for the advanced provision of parks and recreation system improvements for which impact fees may be expended, impact fees may be used to pay debt service on such bonds or similar debt instruments to the extent that the facilities or improvements provided are consistent with the requirements of this section and are used to serve the new development.

#### **13.45.110 Review and update of impact fees.**

A. The fee rate schedules set forth in MMC 13.45.030 shall be reviewed by the council no later than two years after the effective date of the fee rate schedule attached to the ordinance codified in this chapter, and no more than every two years thereafter.

B. The rates set forth in MMC 13.45.030 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.

#### **13.45.120 Deferral of Impact Fees**

In accordance with ESB 5923 (2015), an applicant may request, at any time prior to building permit issuance, and consistent with the requirements of this section, to defer the payment of an impact fee for a residential development unit. The following shall apply to any request to defer payment of an impact fee:

A. For each single family residence for which any impact fee deferral is applied for, an administrative fee must be paid to the City due to the increased burden placed on city staff for processing and monitoring such deferral.

B. A separate application must be submitted for each single-family residence being constructed. Only the first twenty (20) applications per calendar year by each applicant for impact fee deferral are eligible for impact fee deferral under this chapter.

The period of deferral expires at the earliest of:

1. The time of final inspection by the city; or
2. Eighteen months after the building permit is issued by the city.

C. The applicant must grant and record in favor of the City of Milton an impact fee lien in the amount of the deferred impact fee. The lien must be in a form signed, dated and approved by the city attorney, and signed by all owners of the property and persons or entities holding any interest in the property, with all signatures acknowledged as required for a deed, and recorded among the appropriate land records of the County. Proof of such recording shall be submitted to the City before a building permit may be issued. The lien must specify that it is binding on all successors in title after the recordation. The lien may specify that it is subordinate to one mortgage for the purpose of construction upon the same real property granted by the applicant. A mortgage, Deed of Trust or other financing mechanism shall be limited to the property upon which construction on one single family residence will occur. A lien not paid when due shall bear interest at the statutory rate. A lien shall become due at the expiration of the deferral date.

D. If impact fees are not paid in accordance with ESB 5923(2015), the city may institute foreclosure proceedings in accordance with RCW Chapter 61.12.

E. After full payment of impact fees, and upon written request of the person paying said fees containing the name and address of the requester together with a copy of a proposed lien release form, the City, upon approval by the City Attorney, shall sign a lien release and deliver it to the person paying said fee either in person or by first class mail.

### **13.45.130 Miscellaneous provisions.**

A. Existing Authority Unimpaired. Nothing in this chapter shall preclude the city from requiring the feepayer or the proponent of a development activity to mitigate adverse environmental impacts of a specific development pursuant to the State Environmental Policy Act, Chapter 43.21C RCW, based on the environmental documents accompanying the underlying development approval process, and/or Chapter 58.17 RCW, governing plats and subdivisions; provided, that the exercise of this authority is consistent with the provisions of RCW 82.02.050(1)(c).

B. Captions. The chapter and section captions used in this chapter are for convenience only and shall not control or affect the meaning or construction of any of the provisions of this chapter.

C. Severability. If any portion of this chapter is found to be invalid or unenforceable for any reason, such finding shall not affect the validity or enforceability of any other section of this chapter.

D. Short Title. This chapter shall be known and may be cited as "the city of Milton parks and recreation impact fee ordinance."

**END OF CODE REVISION**

**Section 3. Severability.** If any section, sentence, clause or phrase of this ordinance should be held 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 section, sentence, clause or phrase of this ordinance.

**Section 4. Publication.** This ordinance shall be published by an approved summary consisting of the title.

**Section 5. Effective Date.** This ordinance shall become effective and be in full force five (5) days after passage, approval, and publication as provided by law.

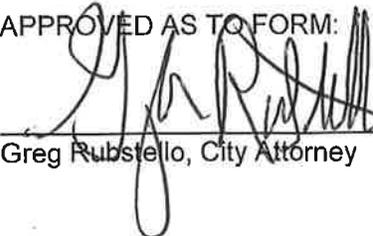
PASSED by the Council and approved by the Mayor of the City of Milton, this 19<sup>th</sup> day of September, 2016.

CITY OF MILTON

  
\_\_\_\_\_  
Mayor Debra Perry

ATTEST/AUTHENTICATED:

  
\_\_\_\_\_  
Katie Bolam, City Clerk

APPROVED AS TO FORM:  
  
\_\_\_\_\_  
Greg Rubstello, City Attorney

Published: 9/22/2016  
Effective Date: 9/27/2016