

RECREATIONAL FACILITIES AND  
OPEN SPACE IMPACT FEE ORDINANCE  
OF THE TOWN OF CUMBERLAND, MAINE

ARTICLE I. GENERAL PROVISIONS

1.1. Authority

This Ordinance is adopted pursuant to Home Rule Powers as provided for in Article VIII, Part 2, Section 1 of the Maine Constitution and Title 30-A, MRSA, Section 3001 and Section 4354.

1.2. Short Title

This Ordinance shall be known and may be cited as the "Recreational Facilities and Open Space Impact Fee Ordinance of the Town of Cumberland, Maine", and will be referred to herein as "this Ordinance."

1.3. Purpose

The general purposes of this Ordinance are to maintain the Town's financial capacity to provide adequate public facilities to meet the additional needs for recreation and open space created by future residents. Further, this Ordinance establishes a fair and equitable process by which to ensure that new residential development in the Town of Cumberland will be accomplished in a safe and healthful manner, and that such development will bear a proportional or reasonably related share of the cost of new, expanded or modified recreational infrastructure necessary to service such development through the payment of impact fees that shall be dedicated to paying for the needed improvements.

1.4. Applicability

1. This Ordinance shall apply to the issuance of any building permit for a new residential structure within the Town of Cumberland but shall exclude senior housing projects as defined in this ordinance.
2. This Ordinance shall not apply to additions to residential structures existing at the time of the adoption of this ordinance.
3. This ordinance shall not apply to developers who have been issued or applied for a Town of Cumberland growth permit by the Code Enforcement Officer prior to date of the adoption of this ordinance, provided however, that the said Growth Permit is converted into a building permit as prescribed in the Growth Management Ordinance.
4. This ordinance shall apply to any addition to a residential structure built following the adoption of this ordinance where such addition is made within five (5) years of the issuance of the original building permit. The fee for any such addition shall be assessed as for new construction as set forth in Section 1.11 below, except that the initial five hundred (500) square foot discount shall not apply. This Ordinance shall not apply to additions to residential structures made after the expiration of five (5) years from the issuance of the original building permit.
5. No building permit shall be granted for any residential construction activity described herein that requires payment of an impact fee under this Ordinance until the impact fees hereby required have been paid.

### 1.5. Definitions

Impact fees are charges or assessments imposed by the Town of Cumberland against new residential construction to help with the acquisition and development of additional recreation lands and facilities and for the acquisition and preservation of open space for the future use and enjoyment of the town's residents.

Developer is a person who has received an approval for residential construction under either the subdivision or site plan ordinance, or a person who has otherwise applied for a residential building permit for any activity described herein.

Gross floor area shall include the entire floor area of each floor measured from the outside of exterior walls, and shall include all interior partitions and spaces whether finished or not, but shall exclude basements, garages intended for the storage of automobiles, unheated porches and any portion of a room or attic with sloping ceilings measuring less than five (5) feet from floor to ceiling.

Residential Structure shall refer to any living unit including those in single-family homes, multi-family homes, attached and/or detached residential structures, condominiums, apartments, manufactured housing and mobile homes.

Senior Housing Project shall refer to a residential development constructed solely for elderly residents who meet strictly enforced age guidelines, and within which the residential units are by deed or covenant restricted to occupation by residents who meet such age guidelines.

### 1.6. Payment of Fees

The Code Enforcement Officer shall collect the impact fee prior to the issuance of any building permit for residential construction that is subject to the fee. The amount of the fee shall be based upon the procedure set out in subsection 1.11 below.

### 1.7. Impact Fee Accounts

All impact fees collected under the provisions of this ordinance shall be segregated from the Town's general revenue and be accounted for in separate impact fee accounts designated for the particular improvements in question. The impact fee accounts are as follows:

1. Open space land acquisition account (36% of each fee collected).
2. Recreational facility improvement and capacity expansion account (64% of each fee collected).

### 1.8. Use of Impact Fees

Impact fees collected under the provisions of this ordinance shall only be used to pay for site acquisition and capital improvements for the creation or expansion of recreational facilities and for the acquisition and related improvement of open space. No portion of the fee shall be used for routine maintenance or operation activities.

The following costs are examples of, but are not intended to limit, capital improvements:

1. Acquisition of land or easements including conservation easements and development rights.
2. Engineering, surveying and environmental assessment services directly related to the acquisition, design, construction and continued upgrading of the improvement.
3. The actual construction of the improvement including, without limitation, demolition costs, clearing and grading of land, and necessary capital equipment dedicated to the site.
4. Mitigation costs.
5. Legal and administrative costs associated with construction of the improvement, including any borrowing necessary to finance the project.

6. Debt service costs including interest if the Town borrows for the construction of the improvement.
7. Relocation costs.
8. Similar costs that are directly related to the improvement project.

#### 1.9. Refund of Fees

1. If a building permit or other relevant permit is surrendered or expires without commencement of construction, the developer shall be entitled to a refund, without interest, of the impact fee paid as a condition of its issuance. A request for a refund shall be made in writing to the Town Planner, and shall occur within ninety (90) days of the expiration of the permit.
2. If the funds collected annually are not expended or obligated by contract for their intended purpose by the end of the calendar quarter immediately following ten (10) years from the date the fee was paid, the prorated share of the funds shall be returned to the current owner of the property for which the fee was paid, provided that a request is made in writing to the Town Planner within one hundred eighty (180) days of the expiration of the ten (10) year period.

#### 1.10. Waiver of Impact Fee

The Town Council may, by formal vote following a public hearing, waive the payment of a required impact fee, in whole or in part, if it finds that:

1. The developer or property owner who would otherwise be responsible for the payment of the impact fee voluntarily agrees to construct an improvement for which the impact fee would be collected, or an equivalent improvement approved by the Town Council.
2. The developer of a subdivision offers to dedicate and/or improve public lands or recreational amenities and the Town Council finds these public lands or recreational amenities to be of town-wide benefit.

#### 1.11. Calculation of Fees

The recreational facilities and open space impact fee shall be a per square foot fee established by the Town Council, and shall be based upon the Town's impact fee calculation methodology. This methodology has been adopted by the Town Council and is on file and available for review in the Town Planner's office. The amount of the fee paid by a developer shall be determined by multiplying the gross floor area as defined in this ordinance less five hundred (500) square feet by the per square foot fee established herein. The total amount of the impact fee due for each project shall be determined by the developer, subject to the approval of the Code Enforcement Officer (CEO), using the impact fee calculation worksheet provided by the CEO and shall be based upon the following:

1. The developer shall determine, subject to the CEO's approval, the gross floor area of the residential structure subject to the impact fee based upon plans and other documents submitted by the developer.
2. The developer shall determine, subject to the CEO's approval, the amount of the recreational facilities portion of the fee by subtracting five hundred (500) square feet from the gross floor area determined in Section 1.11.1 of this ordinance and multiplying the difference by \$0.87 per square foot unless the Town Council has waived that portion of the fee in accordance with Section 1.10 of this ordinance.
3. The developer shall determine, subject to the CEO's approval, the amount of the open space portion of the fee by subtracting five hundred (500) square feet from the gross floor area determined in Section 1.11.1 of this ordinance and multiplying the difference by \$0.49 per square foot unless the Town Council has waived that portion of the fee in accordance with Section 1.10 of this ordinance.

4. The developer shall determine, subject to the CEO's approval, the total impact fee due by combining the recreational facilities portion and the open space portion as calculated above. Unless the Town Council waives the fee required in either section 1.11.2 or section 1.11.3 above, the sum of the per square foot impact fees described in those sections shall be \$1.36 per square foot of gross floor area less five hundred (500) square feet.
5. The five hundred (500) square foot reduction in gross floor area discussed in this section of the ordinance shall not apply to residential additions made within five (5) years of the issuance of the original building permit for the home.

## ARTICLE II. ADMINISTRATIVE PROVISIONS

### 2.1 Validity and Severability

If any section, phrase, sentence or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

### 2.2 Conflict with Other Ordinances

Should any section, phrase, sentence or portion of this Ordinance be found to be in conflict with other local, state or federal Ordinances or regulations, the more stringent section or provision shall prevail. Existing provisions for building permit fees are to be held separate from the impact fees described herein and are not affected by this Ordinance.

### 2.3 Review and Revision

The Town Council shall periodically review each impact fee established under this chapter. If the Council finds that the anticipated cost of the improvement has changed or that the identification of development subject to the fee is no longer appropriate, the Council may adopt changes to the impact fee. Any changes adopted as a result of such review shall apply to all future development but shall not apply retroactively to projects that have already paid an impact fee. A public hearing shall be held prior to the adoption of any amendment. Notice of such public hearing shall be in accordance with state and local requirements.

### 2.4 Right to Appeal

A developer may appeal the determination of the Code Enforcement Officer as to either the applicability of the impact fee to a particular project, the gross floor area subject to the fee, or the amount of the fee to be paid. Appeals shall be made in writing to the CEO within ten (10) days of the CEO's initial determination of the amount of the impact fee due for a particular residential structure. The Board of Adjustment and Appeals shall consider such appeal at their next regularly scheduled meeting and shall issue a determination either upholding the CEO's decision or modifying the CEO's decision within seven (7) days of the date of the hearing at which the appeal was heard.

### 2.5 Effective Date

This Ordinance shall take effect upon its adoption by a majority of the eligible voters present at the June 28, 2001 Town Council Meeting. The effective date of this Ordinance is June 28, 2001.

[Adopted June 28, 2001, effective June 28, 2001]

**TOWN OF CUMBERLAND  
RECREATIONAL FACILITIES AND OPEN SPACE  
IMPACT FEE METHODOLOGY**

This methodology sets out the procedure for determining the impact fee that should be paid by development for recreational facilities and open space. In developing the fee, we looked at the potential need for new or expanded infrastructure to meet the need for recreation and open space to identify possible areas for the creation of impact fees. For each area, we looked at whether there is a need for expanded capacity to accommodate growth resulting from development, if so, the type of new or expanded facilities that would be needed, the possible cost of the expanded capacity, the share of the capacity available to accommodate growth, who should pay an impact fee, and how the fee should be calculated. Here is a summary of that analysis:

1. **The Need for Expanded Facilities:** The need for community recreation facilities and open space is a function of the size of the community's population. As the community grows, it needs more recreation land, fields, facilities, playgrounds, natural areas, and open spaces. The Town's adopted Comprehensive Plan identifies the need to expand the supply of recreational facilities and open space to serve a growing population and proposes the use of impact fees to fund some of this cost. This is repeated in the Town's Open Space Plan and in the Long Range Plan for Chebeague Island.

The state's most recent State Comprehensive Outdoor Recreation Plan (SCORP) reports that the typical Maine community with a population of more than 2,500 residents had 14-15 acres of municipal recreational areas per 1,000 residents or approximately 0.015 acres per capita. This ratio serves as a reasonable basis for estimating future needs for recreational facilities created by population growth in Cumberland. A population growth of 1,000 residents will create a need for 15 acres of additional municipal recreation facilities.

There is no state or national standard for the amount of open space that is appropriate for a community. In Cumberland, there are a number of sources of permanent open space including Town owned conservation land and easements, the Town forest, state conservation land/easements, and conservation land and easements owned by the land trust. Cumberland currently has approximately 600 acres of permanent open space or 0.084 acres per capita based upon a 2000 population of 7,159. This ratio serves as a reasonable standard for additional open space as the Town's population grows.

2. **The Estimated Cost for Expanded Facilities:** The development costs for recreational facilities can range from \$20,000 per acre to \$100,000 per acre depending on the type of facility and the site with an average cost of \$50,000 per acre. The estimated cost for acquiring open space land based upon recent acquisitions in Cumberland is \$4,000 - \$6,000 per acre assuming that some portion of the land acquired is developable.

3. **The Share of Need Attributable to Growth:** The existing housing stock accommodates a relatively stable population although decreasing household size appears to be reducing this population somewhat. Turnover in the existing housing stock is unlikely to increase the Town's population. New residential development is, however, adding to the population that must be served with recreational facilities and open space.

This growth is partially offset by the declining population in the existing housing stock thereby reducing the effective need for additional recreational facilities and open space. Therefore, residential development is responsible for only a portion of the need for increased recreational facilities based upon the acreage per person standard. Between 1990 and 2000, the population of Cumberland grew by 1,323 while the number of households increased by 527. The survey of new households conducted in 1999 suggests that these new households have an average of 3.6 people. This means that the new households added approximately 1,900 residents. This was offset by a decline in the population living in the pre 1990 housing stock of 574 residents. Therefore only 70% of the new residents generate a need for additional recreational and open space with the balance offset by decreases in the occupancy of the pre-existing housing stock. To account for this, the impact fee should be established at 70% of the fee that would apply using the per capita basis and estimated costs.

**4. Who Should Pay The Fee:** Any residential development activity should pay this impact fee based upon the expected population of the project considering typical occupancy rates unless the Town determines that the unit is located in a project that includes an equivalent amount of open space as part of the development. Based upon national studies of occupancy levels of various types of housing in the northeast and the Town's housing survey, the following occupancy factors should be used in calculating the appropriate fee:

Single family dwelling with:	
a. three bedrooms	3.4 people/unit
b. four bedrooms	3.8 people/unit

There does not appear to be any justification for charging non-residential development an impact fee for recreation and open space facilities. Typically, non-residential uses do not generate a direct demand for these types of facilities and thus, should not be charged a fee.

**5. Calculation of the Fee:** The recreational facilities and open space impact fee should be the sum of the per capita cost of providing additional recreational facilities and the per capita cost of providing additional open space adjusted by 70% to account for the share of the need created by new residential development multiplied by the anticipated number of residents in the project allocated on a square foot of gross floor area basis.

The recreational facilities portion of the fee should be calculated by multiplying the average estimated development cost per acre of recreational facilities or \$50,000/acre by 0.015 acres per capita for a base per capita cost of \$750. This base cost should be adjusted by the 70% need factor resulting in an adjusted per capita recreational facilities cost of \$525. Any residential unit should be subject to an impact fee to cover this cost.

The open space portion of the fee should be calculated by multiplying the estimated average per acre cost of acquiring open space or \$5,000/acre by 0.084 acres per capita for a base per capita cost of \$420. This base fee should be adjusted by the 70% need factor resulting in an adjusted per capital open space facilities cost of \$294. Any residential unit should be subject to an impact fee to cover this cost unless the Town determines that the development in which the unit is located has provided an equivalent amount of open space.

The per capita recreational facilities cost of \$525 and the per capita open acquisition cost of \$294 per capita should then be charged to new residential development on a square footage basis. The Town's housing survey found that the average new three bedroom home had approximately 3.4 occupants while new four bedroom homes had approximately 3.8 occupants. The Town Assessor reports that the average three bedroom home has approximately 1,827 square feet of gross living area while the average four bedroom home has approximately 2,535 square feet. This translates into approximately 537 square feet per occupant in three bedroom homes and approximately 667 square feet in four bedroom homes or an average of approximately 600 square feet per occupant. This factor should be used in developing the impact fee on a square footage basis.

Allocating the \$525 per capita recreational facilities cost to the 600 square foot per occupant factor results in a recreational facilities impact fee of \$0.87 per square foot. Allocating the \$294 per capital open space acquisition cost to the 600 square foot per occupant factor results in an acquisition impact fee of \$0.49 per square foot. The combined impact fee should therefore be \$1.36 per square foot of gross area of new residential construction to cover the cost of providing recreational facilities and acquiring open space to meet the needs generated by new residents of Cumberland.

**6. Handling and Use of the Fee:** The two portions of the fee should be accounted for separately and should be credited to the appropriate impact fee account and used for the purposes set forth in the ordinance.

[Adopted June 28, 2001, effective June 28, 2001]

## Town of Cumberland

### *Sample Impact Fee Amounts*

<i>Gross Floor Area (GFA)</i>	<i>Fee Amount (GFA – 500 sf X \$1.36 per sq. ft.)</i>
1,000 sf	\$680
1,548 sf (average home in Small's Brook)	\$1,425
1,827 sf (average 3 bedroom home in Cumberland)	\$1,804
2,000 sf	\$2,040
2,535 sf (average 4 bedroom home in Cumberland)	\$2,768
3,000 sf	\$3,400
4,000 sf	\$4,760
5,000 sf	\$6,120

## ***IMPACT FEE INSTRUCTION SHEET***

for the

### RECREATIONAL FACILITIES AND OPEN SPACE IMPACT FEE ORDINANCE OF THE TOWN OF CUMBERLAND, MAINE

1. Using dimensioned building plans provided by the applicant, calculate the Gross Floor Area in accordance with the following definition as found in the “Recreational Facilities and Open Space Impact Fee Ordinance of the Town of Cumberland, Maine”

Gross floor area shall include the entire floor area of each floor measured from the outside of exterior walls, and shall include all interior partitions and spaces whether finished or not, but shall exclude basements, garages, unheated porches and any portion of a room or attic with sloping ceilings measuring less than five (5) feet from floor to ceiling.

2. To aid the gross floor area calculation, you may choose to sketch out and dimension the floor plan for each floor of the proposed structure, excluding the basement level, on the reverse side of this sheet.
3. To the gross floor area as calculated in accordance with the definition above and expressed in square feet, apply the following formula:

$$\begin{aligned} & \text{[Gross Floor Area – 500 square feet] X [\$0.87 per square foot]} \quad (\text{recreation fee amount}) \\ + & \text{ [Gross Floor Area – 500 square feet] X [\$0.49 per square foot]} \quad (\text{open space fee amount}) \\ = & \text{ Total Impact Fee*} \end{aligned}$$

**\* Please show this calculation on the “Impact Fee Information and Calculation Sheet”**

4. This fee amount is due to the Code Enforcement Officer prior to the granting of any building permit for a residential use in the Town of Cumberland.

<p><b><i>Town of Cumberland</i></b></p> <p><b>Residential Impact Fee Information and Calculation Sheet</b></p>		IMPACT FEE #:
		DATE RECEIVED:
		TIME RECEIVED:
		RECEIVED BY:
APPLICANT:	APPLICANT ADDRESS:	APPLICANT PHONE #:
PROPERTY OWNER:	PROPERTY OWNER ADDRESS:	PROPERTY OWNER PHONE#:
LOCATION / PROPERTY ADDRESS:	TAX MAP & LOT #:	EXEMPTIONS IF ANY:
PROJECT DESCRIPTION:		
IMPACT FEE CALCULATION		
TOTAL AMOUNT OF IMPACT FEE ASSESSED:		
I HEREBY CERTIFY THAT THE INFORMATION PROVIDED IS COMPLETE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF:		
SIGNATURE OF APPLICANT:		DATE: