

**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. New Residential Structures:

- a. This Ordinance shall apply to the issuance of any building permit for a new residential structure within the Town of Cumberland.
- b. This Ordinance shall not apply to the issuance of a building permit for the repair, replacement or reconstruction of a residential structure that was unintentionally damaged or destroyed by fire, flood or other natural disaster, provided the number of dwelling units is not increased.
- c. This Ordinance shall apply to the issuance of a building permit for the replacement or reconstruction of a residential structure that was intentionally demolished, provided that the first 1,000 sq. ft. or the square footage of the demolished structure, whichever is greater, shall be exempt from calculation of the impact fee as set forth in Section 1.11.
- d. This Ordinance shall not apply to the issuance of a building permit to relocate an existing residential structure to a new lot within the Town of Cumberland.
- e. This Ordinance shall apply to the issuance of a building permit for a new residential structure on the lot from which another residential structure was previously relocated, provided that the first 1,000 sq. ft. or the square footage of the previously relocated structure, whichever is greater, shall be exempt from calculation of the impact fee as set forth in Section 1.11.

2. Additions to Residential Structures:

- a. This Ordinance shall not apply to additions to residential structures existing at the time of the adoption of this ordinance.
- b. 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 one thousand (1,000) 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.

3. This ordinance shall not apply to any project that converts an existing municipal structure into a senior housing project.
4. 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 structures to help with the acquisition and development of 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 Account

All impact fees collected under the provisions of this ordinance shall be segregated from the Town's general fund revenue and be accounted for in a separate impact fee account.

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 acquisition or 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 one thousand (1,000) 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 total impact fee due by multiplying \$1.40 per square foot of gross floor area, less one thousand (1,000) square feet.
3. The one thousand (1,000) 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, Amended April 9, 2012, Amended July 23, 2012]

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.

The Need for Expanded Facilities: In 2000, the Town's Comprehensive Plan and Open Space Plan identified the need to expand the supply of recreational facilities and open space to serve a growing population and proposed the use of impact fees to fund some of this cost. The impact fee was established in 2001 based upon the anticipated need for additional or improved recreational facilities and open space resulting from expected population growth.

In 2000, Cumberland had approximately 600 acres of permanent open space, the largest portion of which is the Twin Brook Recreation Facility acquired through two purchases. The first was a 148 acre parcel on Tuttle Road in 1994 for \$530,000 and the second a 100 acre parcel on Greely Road in 1996 for \$390,000. The total open space in 2000 also included Chebeague Island and resulted in 0.084 acres of open space per capita based upon a population of 7,159. Between 2000 and 2010, Chebeague Island seceded from the Town of Cumberland, causing the population of Cumberland to decrease by 341 residents. Cumberland's total population, however, experienced a net increase of 52 residents, for a total of 7,211 in 2010.

In 2003, the Town purchased a 216 acre parcel, the Rines Forest, to be utilized as open space for residents of the community. Then in 2006, the Town began a comprehensive upgrade to the existing 248 acre Twin Brook recreation facility that was completed in 2009. Today, Cumberland has a total of 1,135 acres of open space which translates to 0.157 acres per capita. The significant increase in open space and improved recreational facilities coupled with minimal population growth has allowed the Town of Cumberland to meet the needs identified in the Town's Comprehensive Plan and Open Space Plan, as well as to provide excess capacity for anticipated future growth.

The Share of Need Attributable to Growth: In 2000, Cumberland had 2,548 households including Chebeague Island. In 2010, Cumberland had 2,697 households and Chebeague Island had 171 households. Adjusting for the loss of households on Chebeague Island, Cumberland experienced a net increase of 320 households. The Town of Cumberland's Growth Management Ordinance limits growth permits for new dwellings to a maximum of fifty (50) per year, while the average of actual new development over the last ten years was 36 dwellings per year.

Who Should Pay the Fee: Housing development has been relatively stable over the past ten years, but population appears to be declining, as evidenced by the decrease in average household size from 2.8 in 2000 to 2.67 in 2010. The current average household size of 2.67 translates to .42 acres of recreational facilities and open space per household. Although housing development may remain consistent, the reducing population means that the existing recreational facilities and open space should be adequate for the current population and anticipated growth in the near future. The acquisition of the Rines Forest and the upgrades to Twin Brook satisfy the needs for open space and recreational facilities of projected future development. Therefore, new residential development should continue to be assessed an impact fee to contribute to the costs of acquiring and improving these facilities.

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.

Calculation of the Fee: The cost to acquire the Rines Forest in 2003 was \$1,241,000, \$5,745 per acre. Additionally, over the course of three years, the improvements to Twin Brook cost a total of \$1,594,546. The total cost of acquiring this additional open space and upgrading existing recreation facilities was \$2,835,546. The total

of all impact fees collected prior to June 30, 2011 is \$730,814. The difference between the total cost of acquiring additional open space and upgrading existing recreation facilities (\$2,835,546) and the impact fees collected (\$730,814) equals \$2,104,732, the net cost of acquisition of the Rines Forest and upgrades to the Twin Brook recreational facility. Assuming that this net cost of acquisition is a debt to be paid over 30 years at 4%, the annual cost of open space acquisition and recreational facility upgrades is \$121,717. Based on the maximum allowable new development of fifty (50) units and the average gross living area of 1,739 sq. ft. (2,739 minus 1,000 sq. ft. exemption), the impact fee to new development equals \$1.40 per square foot.

Rines Forest Acquisition	\$1,241,000
	+
Twin Brook Improvements	\$1,594,546
Total Costs	\$2,835,546
	-
Impact Fees Collected to Date	\$ 730, 814
Total Unpaid Debt	\$2,104,732
Annual Debt	\$ 121,717 (Total Debt over 30 years at 4% interest)
Cost per Home	\$ 2,434 (Annual Debt / 50 max permits per year)
Cost per Square Foot (Impact Fee)	\$ 1.40 (Cost per Home / 1,739 s.f. avg. home size)

[Adopted June 28, 2001, effective June 28, 2001, Amended April 9, 2012, Amended July 23, 2012]

Town of Cumberland

Sample Impact Fee Amounts

<i>Gross Floor Area (GFA)</i>	<i>Fee Amount (GFA – 1,000 sf X \$1.40 per sq. ft.)</i>
1,548 sf (average home in Small's Brook)	\$767
1,827 sf (average 3 bedroom home in Cumberland)	\$1,158
2,000 sf	\$1,400
2,739 sf (average home in Cumberland)	\$2,435
3,000 sf	\$2,800
4,000 sf	\$4,200
5,000 sf	\$5,600

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:

$$\begin{aligned} & [\text{Gross Floor Area} - 1,000 \text{ square feet}] \times \$1.40 \text{ per square foot} \\ = & \text{Total Impact Fee}^* \end{aligned}$$

*** 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 style="text-align: center;"><i>Town of Cumberland</i></p> <p style="text-align: center;">Residential Impact Fee Information and Calculation Sheet</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: