

Title 18A

**PARKS, RECREATION, OPEN SPACE AND TRAIL
IMPACT FEES AND MITIGATION**

Chapters:

18A.04 Parks, Recreation, Open Space and Trail Impact Fees and Mitigation

Chapter 18A.04

PARKS, RECREATION, OPEN SPACE AND TRAIL IMPACT FEES AND MITIGATION

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18A.04.010 Authority.

This title is adopted under RCW 82.02.050(2) which authorizes cities planning under the Growth Management Act, primarily codified at Chapters 36.70A and 82.02 RCW, to assess, collect, and use impact fees to pay for park, recreation, open space and trail facilities needed to accommodate growth. The city of Marysville is required to plan under the Growth Management Act and has adopted a comprehensive plan, which includes a capital facilities element which complies with RCW 36.70A.070 (3), 82.02.050(4), and all other applicable requirements. Consequently, the city of Marysville is authorized to impose, collect, and use impact fees. (Ord. 2300 § 3, 1999).

18A.04.020 Purposes.

The purpose of this title is to implement the capital facilities element of the Marysville comprehensive plan and the Growth Management Act by:

(1) Ensuring that adequate park, recreation, open space and trail facilities are available to serve new development.

(2) Maintaining the high quality of life in Marysville by ensuring that adequate facilities are available to serve growth thereby providing for the needs of new growth and maintaining existing service levels for present businesses and residents.

(3) Establishing standards and procedures whereby new development pays its proportionate share of the costs of park, recreation, open space and trail facilities; reducing transaction costs for both the city and developers; and ensuring the developments are not required to pay arbitrary or duplicative fees. (Ord. 2300 § 3, 1999).

18A.04.030 Payment of impact fees required.

Any person who applies for a building permit for any development activity or who undertakes any development activity shall pay the impact fees set in MMC 18A.04.060 or 18A.04.070 to the city of Marysville finance department or its designee. No new building permit shall be issued until the required impact fees have been paid to the city of Marysville finance department or its designee or successor. Where a building permit is not required for a development activity, the impact fees shall be paid to the city of Marysville finance department or its designee before undertaking the development activity. (Ord. 2300 § 3, 1999).

18A.04.040 Exemptions to the requirement to pay impact fees.

(1) The following are excluded from the requirement to pay some or all of the required impact fees:

(a) The reconstruction, remodeling, or replacement of existing buildings, structures, mobile homes, or manufactured homes, which does not result, for nonresidential structures, in additional floor space or, for all structures, additional dwellings. A complete application for a building permit to replace or reconstruct an existing structure that was removed or destroyed shall be submitted within three years after the structure was removed or destroyed in order for the exemption to apply.

(b) The construction of structures accessory to a residence are exempt from the requirement to pay all impact fees. Nonresidential accessory structures are not exempt from the requirement to pay impact fees. The construction of any accessory structures which will result in additional dwelling units, including accessory dwelling units, requires the payment of impact fees.

(c) Parking garages and building space which is constructed solely to park motor vehicles which are not owned, leased or rented by a busi-

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ness or part of a stock in trade are exempt from the requirement to pay all impact fees. The conversion of parking garages or vehicle parking areas to other uses identified in MMC 18A.04.060(2) requires the payment of impact fees.

(d) Temporary uses and structures authorized by Chapter 19.44 MMC are exempt from the requirement to pay all impact fees.

(e) The property on which the development activity will take place is exempt from the payment of park, recreation, open space or trail facilities impact fees under RCW 82.02.100 because the property is part of a development activity which mitigated its impacts on the same system improvements under the State Environmental Policy Act (SEPA).

(f) The development activity shall not be required to pay impact fees for a facility type because: (i) the impact of the development activity for park, recreation, open space or trail facilities has been mitigated by a voluntary agreement; mitigated State Environmental Policy Act (SEPA) determination; SEPA EIS; permit or approval condition which requires the payment of fees consistent with the fees imposed by this title for park impacts; the dedication of land in lieu of a fee for parks, recreation and trail improvements; or the construction or improvement of parks, recreation, open space or trails in lieu of a fee; and (ii) the SEPA, permit or approval condition predates the effective date of the ordinance codified in this chapter. If the condition or requirement does not provide that the improvements substitute for impact fees, then the development activity is not exempt. To be exempt from the payment of park facilities impact fees, the voluntary agreement, mitigated SEPA determination, permit or approval condition shall provide for a payment, dedication, or construction of park facility improvements. Where a development activity has not filed a complete building permit application before the effective date of this chapter, the development activity shall pay any payment under the same terms as an impact fee but in the amount specified by the voluntary agreement, mitigated SEPA determination, permit or approval condition as a condition of being exempt from the requirement to pay mitigation fees. Unless the voluntary agreement, permit condition or approval condition requires payment when the building permit is applied for or issued, the planning director may extend the payment date from before the issuance of a building permit to some later date for development activities required to pay under this exemption.

(g) Accessory dwellings approved by the city under Chapter 19.34 MMC.

(2) Any claim of exemption shall be made no later than the time of application for a building permit. If a building permit is not required for the development activity, the claim shall be made when the fee is tendered. Any claim not made when required by this section shall be deemed waived. (Ord. 2300 § 3, 1999).

18A.04.050 Computing required impact fees using adopted impact fee schedules.

At the option of the person applying for a building permit or undertaking development activity, the amount of the impact fees shall be determined by the fee schedules in this section.

(1) When using the impact fee schedules, the impact fees shall be calculated by using the following formula:

$$\begin{matrix} \text{Number of} & & \text{Impact fee} & & \text{Amount of impact fee} \\ \text{units of} & \times & \text{amount for a} & = & \text{that shall be paid for that} \\ \text{each use} & & \text{facility type} & & \text{facility type for that use} \end{matrix}$$

(a) The number of units of each use shall be determined as follows: (i) for residential uses it is the number of housing units for which a building permit application has been made; and (ii) for office, retail, or manufacturing uses it is the gross floor area of building(s) to be used for each use expressed in square feet divided by 1,000 square feet. If uses other than parking vehicles which does not constitute a stock in trade and uses accessory to residences will take place outside of buildings, the calculations shall include the land area on which these uses will take place.

(b) Using the formula in subsection (1) of this section, impact fees shall be calculated separately for each use and each facility type. The impact fees that shall be paid are the sum of these calculations.

(c) If a development activity will include more than one use in a building or on a site, then the fee shall be determined using the above schedule by apportioning the space committed to the various uses specified on the schedule.

(d) If the type of use or development activity is not specified on the impact fee schedules in this section, the planning director shall use the impact fee applicable to the most comparable type of land use on the fee schedules. The planning director shall be guided in the selection of a comparable type by the most recent Standard Industrial Code Manual and the Marysville development code. If the planning director determines that there is no comparable type of land use on the above fee

schedule then the planning director shall determine the proper fee by considering demographic or other documentation which is available from state, local, and regional authorities.

(e) In the case of a change in use, development activity, redevelopment, or expansion or modification of an existing use, the impact fee shall be based upon the net positive increase in the impact fee based on either the number of dwelling units or square feet of commercial or industrial area for the new development activity as compared to the previous development activity. The planning director shall be guided in this determination by the sources and agencies listed above.

(2) Park, Recreation, Open Space or Trail Facility-Type Impact Fee Schedule.

Land Use	Units	Impact Fee That Shall Be Paid per Unit or S.F.
Single-family residences (including mobile/manufactured homes, duplexes and attached single-family homes)	1 housing unit	\$ 963.00
Multifamily residences	1 housing unit	\$ 681.00

Note: Land uses are defined in MMC Title 19. (Ord. 2344 § 1, 2000; Ord. 2300 § 3, 1999).

18A.04.060 Computing required impact fees based on an independent fee calculation study.

If a person required to pay impact fees decides not to have the impact fees determined according to MMC 18A.04.060, then the person shall prepare and submit to the director an independent fee calculation study for the proposed development activity. Any person can decide to have an independent fee calculation study for one or more impact fees and use the impact fee schedules in MMC 18A.04.060 for one or more impact fees.

(1) Any person submitting an independent impact fee calculation study shall include the fee set by the city council for reviewing independent impact fee calculation studies. This fee may be set by ordinance or resolution.

(2) The independent fee calculation study shall comply with the following standards:

(a) The study shall follow accepted impact fee assessment practices and methodologies and shall be consistent with this ordinance and Chapter 82.02 RCW.

(b) The study shall use data sources which are acceptable to the planning director, including the city’s capital facilities element and the data shall be comparable with the uses and intensities proposed for the proposed development activity.

(c) The study shall comply with the applicable state laws governing impact fees including RCW 82.02.060 or its successor.

(d) The study, including any data collection and analysis, shall be prepared and documented by professionals qualified in their respective fields.

(e) The study shall show the basis upon which the independent fee calculation was made,

(3) The planning director shall consider the study and documentation submitted by the person required to pay the impact fees, but is not required to accept the study if the planning director determines that the study is not accurate or reliable. The planning director may, in the alternative, require the person submitting the study to submit additional or different documentation for consideration. If the director decides that outside experts are needed to review the study, the applicant shall be responsible for paying for the reasonable cost of a review by outside experts. If an acceptable independent fee calculation study is not presented, the person shall pay the impact fees based upon the process and schedules in MMC 18A.04.060. If an acceptable independent fee calculation study is presented, the fee may be adjusted to that appropriate to the particular development activity. (Ord. 2300 § 3, 1999).

18A.04.070 Credits and adjustments to required impact fee payments.

(1) Credits. Required impact fees shall be reduced by the following credits when applicable:

(a) The required park, recreation, open space or trail facilities impact fees shall be reduced by the amount of any payment for park, recreation, open space or trail facilities system improvements previously made for the lot on which the development activity will take place either as a condition of approval or under a voluntary agreement with the city entered into after the effective date of the ordinance codified in this chapter.

(b) After the effective date of the ordinance codified in this chapter, whenever a development is granted approval subject to a condition that the developer actually provide sites, facilities, or improvements for parks, recreation, open space, or trails acceptable to the city, or whenever the developer has agreed, pursuant to the terms of a voluntary agreement with the city, to provide land, parks capital facilities, or to improve existing facilities, the

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developer shall be entitled to a credit for up to the value of the land or up to the actual cost of construction against the impact fee that would be chargeable under MMC 18A.04.060 or 18A.04.070,

(i) The land value or cost of construction shall be estimated at the time of approval and shall be based on acceptable evidence and documentation. The evidence and documentation shall be reviewed and, if acceptable, approved by the planning director. When land is proposed for dedication, the person required to pay impact fees shall present either an MAI appraisal or evidence of the assessed value as determined by the county assessor's office. If construction costs are estimated, the documentation shall be confirmed after the construction is completed to assure that an accurate credit amount is provided. If the land value or construction cost is less than the calculated fee amount, the difference remaining shall be chargeable as an impact fee for the facility for which the land, system facilities, or improved system facilities where provided.

(ii) In certain cases a park, recreation, open space or trail system improvement may function as a project improvement. Where a system improvement functions as a project improvement, the person who is required to pay impact fees shall only receive a credit for the amount of the improvement that functions as a parks, recreation, open space or trail system improvement.

(c) The amount of the credit for a development activity shall not exceed the amount of the impact fee the development activity is required to pay.

(d) If a development activity includes construction of park, recreation, open space or trail facilities which meet the requirements of this subsection, then the applicant shall be entitled to a credit for that portion of the park, recreation, open space or trail facilities impact fee to be used for that park, recreation, open space or trail facility-type to the extent that the park, recreation, open space or trail system satisfies the needs of the occupants of the development activity and the public.

(i) The credit shall equal:

(A) The reduction in demand by occupants of the development on the city's park, recreation, open space or trail system, that is met by the facility.

(B) The reduction in demand by the general public on the city's park, recreation, open space or trail system, that is met by the facility, if the facility is open to the general public and signs at the facility notify the public that they can use the facility. To be eligible for the credit in this subsection,

the facility shall be located in an area which, based upon adopted level-of-service standards, is lacking in needed park, recreation, open space or trail facilities. Credit under this subsection shall not be given for the portion of any facility which provides a higher level-of-service than that set by the level-of-service standard for that facility.

(ii) The park, recreation, open space or trail facilities shall meet the following criteria to be eligible for a credit:

(A) The area or facility shall function as a park, recreation, open space or trail system improvement and not a project improvement as defined by this chapter, either because it is a system improvement or because it is a project improvement which relieves demand on the city's park, recreation, open space or trail system.

(B) The facilities shall be equivalent to Marysville's adopted standards for park, recreation, open space or trail facilities.

(C) The park, recreation, open space or trail shall be large enough to function as that type of park, recreation, open space or trail system to obtain a credit.

(D) The city may require that legally binding covenants be recorded in the real property records providing that the facility shall be used by the facility's occupants or the general public. If these facilities are closed or converted to another use, the amount of the credit in current dollars shall be paid to the Marysville finance department or its designee or successor before the facilities are closed or converted.

(2) Adjustments. The director may adjust the required impact fees where the director determines one of the following circumstances exists and the discount included in the impact fee formula fails to adjust for the error in the calculation or to ameliorate the unfairness of the fee:

(a) The person required to pay the impact fee demonstrates that an impact fee was incorrectly computed.

(b) The person required to pay the impact fee demonstrates that unusual circumstances make the standard impact fee applied to the development unfair or unjust. These circumstances shall not be circumstances generally applicable to similar types of land uses or generally applicable to development activities in that vicinity. Unusual circumstances may include that the development activity will have substantially less impact on the system improvement than the other development activities in the category.

(3) Any claim of a credit or adjustment shall be made no later than the time of application for a

building permit. If a building permit is not required for the development activity, the claim may be made when the fee is tendered. Any claim not made when required by this section shall be deemed waived. (Ord. 2300 § 3, 1999).

18A.04.080 Appeals and payments under protest.

(1) Any decision made by the planning director, his or her designee, in the course of administering this chapter may be appealed in accordance with the procedures for appealing the underlying permit and shall not be subject to a separate appeal process. This shall include the requirement to pay impact fees. Where no other appeal process is provided, an appeal may be made as an appeal of an administrative decision, pursuant to Chapter 15.11 MMC. Any errors in the formula for calculating the impact fee shall be referred to the mayor and city council for possible modification.

(2) Impact fees may be paid under written protest to obtain a building permit or other approval or permit. (Ord. 2300 § 3, 1999).

18A.04.090 Impact fee accounts and disbursements.

(1) The city of Marysville finance department shall identify the funds collected as to the person paying them, the date paid, and the type of impact fee paid. The finance department shall deposit the fees in special interest-bearing accounts. A separate account shall be established for each type of impact fee. All interest shall be retained in the account and expended for the purposes for which the impact fee was imposed. While maintaining fees in separate accounts, pooled investments may be used.

(2) Park, recreation, open space or trail impact fees shall only be expended on system improvements which are included in the capital facilities chapter of the comprehensive plan.

(3) For system improvements included in the capital facilities chapter, impact fees may be expended on facility planning; land acquisition; site improvements; application fees; necessary off-site improvements; required mitigation; construction, engineering, architectural, permitting, financing, and administrative expenses; relocatable facilities; capital equipment; repayment of system improvement costs previously incurred by the city to the extent that new growth and development will be served by the system improvements; and any other expenses which could be capitalized and are consistent with the capital facilities element.

(4) In the event that bonds or similar debt instruments are issued for the advanced provision of system improvements for which impact fees may be expended and where consistent with provisions of the bond covenants, 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.

(5) Impact fees shall be expended or encumbered for a permissible use within six years of the date they are received by the city of Marysville finance department unless the city council makes written findings that there exists an extraordinary and compelling reason for fees to be held longer than six years. (Ord. 2300 § 3, 1999).

18A.04.100 Impact fee refunds.

(1) All requests for impact fee refunds shall be made by the owner of the property on which the impact fee was paid and shall be made in writing. The written request shall be submitted to the city of Marysville finance department or its successor, if the city holds the funds. The written request shall be received within one year of the date the right to the claim for the refund arises. Notwithstanding any other provision of this section, where notice of eligibility of a refund is required by subsection (2)(b) of this section, the written request shall be received within one year of the date on which the city mails the notice that the person may be eligible for a refund.

(2) Refunds of Unencumbered Impact Fees.

(a) The current owner of property on which impact fees have been paid may apply for and receive a refund of these fees if the impact fees have not been expended or encumbered within the time limits in MMC 18A.04.090(5) unless the city council has extended the six-year period by finding that there is an extraordinary and compelling reason to hold such fees for a longer period. Refunds of impact fees under this subsection (2) shall include any interest earned on the impact fees by the city. In determining whether impact fees have been encumbered, impact fees shall be considered encumbered on a first-in, first-out basis.

(b) If the city holds impact fees beyond the time limits set in MMC 18A.04.090(5), the city shall notify potential claimants by first class mail deposited with the United States Postal Service addressed to the owner of the property as shown in the county tax records or a commercial compendium of the tax records.

(c) Any impact fees that are not expended within the time limits in MMC 18A.04.090(5) and

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for which no application for a refund has been made within the one-year period set by subsection (1) of this section shall be retained and expended on the system improvements for which the impact fees were imposed.

(3) Refunds of Impact Fees for When Development Does Not Proceed. Any person who was required to pay impact fees may request and shall receive a refund, including interest earned on the impact fees, when both of the following conditions are met:

(a) A final inspection is not requested for the building or, if no building is being constructed as part of the development activity, if the use is not started.

(b) No impact has resulted on the park, recreation, open space or trail facilities. "Impact" shall be deemed to include cases where the city has expended or encumbered the impact fees in good faith before the application for the refund. In the event that the city has expended or encumbered the fees in good faith no refund shall be given. However, if within a period of five years the same or subsequent owner of the property proceeds with the same or substantially similar development activity, the owner shall be eligible for a credit. The owner shall request the credit in writing by the deadline set for claiming credits and shall provide receipts for the impact fees paid by the owner for a development activity of the same or substantially similar nature on the same property or some part of the property. The planning director shall determine whether to grant a credit, and a decision to deny a credit request may be appealed as an appeal of an administrative decision pursuant to Chapter 15.11 MMC.

(4) See RCW 82.02.080 or its successor for rules on the termination of impact fee requirements.

(5) The interest due on the refund of impact fees required by this chapter or RCW 82.02.080 or its successor shall be calculated according to the average rate received by the city on invested funds throughout the period during which the impact fees were retained by that local government. (Ord. 2300 § 3, 1999).

18A.04.110 Annual impact fee report.

Each year, the city of Marysville finance department shall prepare a report on each impact fee account showing the source and amount of all moneys collected, earned, or received and the system improvements that were financed in whole or in part by the impact fees. This report may be part

of an existing annual report or a separate report. (Ord. 2300 § 3, 1999).

18A.04.120 Periodic review of fee schedules.

The city council shall review the fee schedules in MMC 18A.04.060 at least once every four years. (Ord. 2300 § 3, 1999).

18A.04.130 Formula for determining park, recreation, open space or trail impact fees.

(1) The park, recreation, open space or trail impact fees for MMC 18A.04.060(2) shall be the developer fee obligation (F) calculated using the formula and table in this section.

(2) The impact fee service area for park, recreation, open space or trail impact fees shall be the entire city of Marysville.

(3) Separate fees shall be calculated for single-family residences, multifamily residences, offices, retail trade, manufacturing, and other uses. For the purposes of this chapter, mobile homes or manufactured homes, duplexes and single-family attached dwellings shall be treated as single-family residences.

(4) The schedule of fees set forth in MMC 18A.04.050(2) shall be adjusted annually beginning January 1, 2001, based upon the change in the Consumer Price Index (CPI-U) for the Seattle-Everett area for the preceding 12 months for which such CPI data is available.

Formulas for Determining Park, Recreation, Open Space or Trail Impact Fees:

For assessing impacts of residential properties, the capital facility plan is used as the basis for the fee calculation.

IF:

- A = Parks, recreation, open space or trails capital facility program.
- B = City of Marysville contribution.
- C = Percent of total park use demanded by land use category.
- D = Projected growth by number of units per land use category.
- F = Developer fee obligation.

THEN:

$$F = [(A - B) \times C] / D$$

(Ord. 2300 § 3, 1999).

18A.04.140 Severability.

If any section, subsection, sentence, clause, phrase or word of this chapter should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, subsection, sentence, clause, phrase or word of this chapter. (Ord. 2300 § 3, 1999).

18A.04.150 No special duty created.

It is the purpose of this chapter to provide for the health, welfare and safety of the general public, and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this chapter. No provision or term used in this chapter is intended to impose any duty whatsoever upon the city or any of its officers, agents, or employees for whom the implementation or enforcement of this chapter shall be discretionary and not mandatory.

Nothing contained in this chapter is intended to be, nor shall be construed to create or form the basis for, any liability on the part of the city or its officers, agents and employees for any injury or damage resulting from the failure of any premises to abate a nuisance or to comply with the provisions of this chapter or be a reason or a consequence of any inspection, notice or order, in connection with the implementation or enforcement of this chapter, or by reason of any action of the city related in any manner to enforcement of this chapter by its officer, agents or employees. (Ord. 2300 § 3, 1999).

18A.04.160 Emergency.

In light of the rapid rate of development in the city of Marysville and Snohomish County and the need to provide adequate parks, recreation, open space and trail facilities to serve development, an emergency is hereby declared to exist due to the fiscal impacts of delay on the city and in order to preserve the public health, safety and welfare. (Ord. 2300 § 3, 1999).

