

# CHAPTER XII. PUBLIC PROPERTY

## ARTICLE 4. PARK IMPACT FEE

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**12-401. SHORT TITLE.** This Ordinance shall be known and cited as the "Leawood, Kansas Park Impact Fee Ordinance".

(Ord. 985C; 05-18-87)

**12-402. PURPOSE.** A Park Impact Fee is hereby imposed on new development for the purpose of assuring that parkland and open space is available and adequate to meet the needs created by new development while maintaining current and proposed park and open space standards pursuant to the Leawood Master Plan. The park impact fee shall be imposed by the City on all new development and all fees collected shall be used solely and exclusively for the purpose of acquisition and development of parkland and open space made necessary by and serving such new development.

(Ord. 985C; 05-18-87)

12-403

**DEFINITIONS.**

- (a) **Applicant:** the property owner or duly designated agent of the property owner, of land on which a building permit has been requested for nonresidential development or on which final plat approval has been requested for residential development.
- (b) **Building:** any enclosed structure designed or intended for the support, enclosure, shelter or protection of persons or property.
- (c) **Building Permit:** the City permit required for new building construction and/or additions to buildings pursuant to Chapter 4 of the Code of the City of Leawood. The term "building permit" as used herein shall not be deemed to include permits required for remodeling, rehabilitation or other improvements to an existing structure, or to the rebuilding of a damaged structure, or to permits required for accessory uses.
- (d) **City:** the City of Leawood, Kansas.
- (e) **Development:** the construction, erection, reconstruction or use of any principal building or structure for nonresidential use which requires issuance of a building permit; and the final platting of land for residential uses.
- (f) **Dwelling:** any building, or portion thereof, designed exclusively for residential occupancy and containing one or more dwelling units.
- (g) **Floor Area, Finished:** the square foot area of all space within the outside line of exterior walls including the total area of all floor levels, but excluding porches, garages, or unfinished space in a basement or cellar.
- (h) **Master Plan or Master Development Plan:** the official, adopted comprehensive development plan for the City of Leawood, and amendments thereto.
- (i) **Non-residential Development:** all development other than residential development and public and quasi-public use, as herein defined.
- (j) **Open Space:** land used or to be used as park or open space associated with the City greenway system, but not including floodplains and steep slopes for which compensating density has been granted to the property owner by the City. Open space land includes the acquisition of such land, the construction of improvements thereon, and the expenditure of funds incidental thereto, including but not necessarily limited to planning, engineering and design work, utility relocation, provision of pedestrian and vehicular access thereto and purchase of equipment.
- (k) **Parkland:** land used or to be used as a City Park, including both the acquisition of such land, the construction of improvements thereon and the expenditure of funds incidental thereto, including but not necessarily limited to planning, engineering and design of the park and improvements, utility relocation, provision of pedestrian and vehicular access thereto and purchase of equipment.
- (l) **Property:** a legally described parcel of land capable of development pursuant to applicable City ordinances and regulations.
- (m) **Property Owner:** any person, group of persons, firm or firms, corporation or corporations, or any other entity having a proprietary interest in the land on which a building permit has been requested.

- (n) **Public and Quasi-Public Use:** a development owned, operated or used by the City of Leawood, Kansas; any political subdivision of the State of Kansas, including but not limited to school districts; the State of Kansas, any agencies or departments thereof; the Federal Government, and any agencies and departments thereof. For purposes of this Ordinance only, "places of worship" are hereby defined as quasi-public uses.
- (o) **Residential Development:** the development of any property for a dwelling or dwellings as indicated by an application for final plat approval.
- (p) **Subdivision Regulations:** the Subdivision Regulations of the City of Leawood contained in the Leawood Development Ordinance, including all duly adopted amendments thereto.
- (q) **Zoning Ordinance:** The Leawood Development Ordinance, including all duly adopted amendments thereto.

(Ord. 985C; 05-18-87)

(Ord. 2074C; 08-16-04)

**12-404. APPLICABILITY OF PARK IMPACT FEE.**

- (a) This Ordinance shall be uniformly applicable to residential and nonresidential development, but not public and quasi-public uses on property in the City of Leawood which is or will be served by and is accessible to Parkland and Open Space as herein defined.
- (b) For purposes of this Ordinance, property is "served by" parkland and open space land when such park or open space land is provided, pursuant to the City Master Plan and Capital Improvements Program, within five (5) years from the date of collection of Park Impact Fees and such park or open space land is accessible to the development from which impact fees are collected.
- (c) For purposes of this Ordinance, additional park and open space land provided south of I-435, but excluding additions to or expansions of the existing Leawood City Park, is "accessible" to and serves development in the City south of I-435. Additional park and open space land provided north of I-435, but including additions to or expansions of the existing Leawood City Park, is accessible to and serves development in the City north of I-435.

(Ord. 985C; 05-18-87)

**12-405.**

**IMPOSITION OF PARK IMPACT FEE.**

- (a) A Park Impact Fee shall be imposed on all residential and nonresidential development in the City, except as provided in subsection (b) and Section 12-412, herein.
- (b) The Park Impact Fee shall not be imposed on any development for which an application for development approval had been received by the City on or before the date of publication of notice of public hearing by the City Council on this Ordinance (April 29, 1987). For purposes of this subsection only, an application for development approval shall mean and include any of the following: application for preliminary or final plat approval or replat pursuant to Section 17 of the City Code (the Leawood Subdivision Regulations); application for rezoning, special use permit, variance or development plan approval pursuant to Section 15 of the City Code (the Leawood Zoning Ordinance); application for a building permit; and application for a certificate of occupancy.
- (c) Imposition of the Impact Fee does not alter, negate, supersede or otherwise affect any other requirements of City, County, State or federal legislation or regulations that may be applicable to a development, including City zoning and/or subdivision regulations that may impose open space and park requirements and standards.
- (d) Upon receipt of an application for a preliminary plat, the Director of Planning and Development shall preliminarily calculate the amount of the Park Impact Fee by multiplying the applicable residential or non-residential impact fee rate by the number of dwelling units or floor area (in square feet) estimated for the proposed development for which subdivision approval is being sought. Such calculation shall be an estimate only for the benefit of the applicant for subdivision approval and shall be subject to final determination at such time as applicant requests a building permit or final plat approval.

(Ord. 985C; 05-18-87)

**12-406. AMOUNT OF PARK IMPACT FEE.**

- (a) Effective for all development plans for which an application for development approval was not received by the City prior to September 1, 2018, the Park Impact Fee shall be at the following rate:

*Residential Development:* \$400.00 per dwelling unit

*Nonresidential Development:* \$.15 per square foot of floor area, finished.

- (b) For all plans for which an application for development approval was received by the City prior to September 1, 2018, the Park Impact Fee shall be at the following rate:

*Residential Development:* \$300.00 per dwelling unit

*Nonresidential Development:* \$.10 per square foot of floor area, finished.

(Ord. 2889C; 05-21-18)

(Ord. 985C; 05-18-87)

**12-407. COLLECTION OF PARK IMPACT FEE.**

- (a) The Director of Planning and Development shall be responsible for the processing and collection of the applicable Impact Fee.
- (b) Applicants for building permits for nonresidential development and applicants for final plat approval for residential development subject to this Ordinance must submit the following information:
- (1) the number of dwelling units for residential development;
  - (2) the finished floor area for non-residential development;
  - (3) both the number of dwelling units and the finished floor area for a mixed-use development; and
  - (4) relevant supporting documentation as may be required by the Director of Planning and Development.
- (c) The Director of Planning and Development shall be responsible for determining that:
- (1) the applicant has paid the Park Impact Fee; or
  - (2) the applicant has been determined to be exempt pursuant to Section 12-412; or
  - (3) an appeal has been taken and a bond or other surety posted pursuant to Section 12-413.
- (d) The Director of Planning and Development shall collect the applicable Park Impact Fee prior to issuance of a building permit for non-residential development and prior to final plat approval for residential development.

(Ord. 985C; 05-18-87)

**12-408.**

**CALCULATION OF PARK IMPACT FEE.** Upon receipt of an application for a building permit or final plat approval for development subject to this Ordinance, the Director of Planning and Development shall calculate the amount of the applicable Park Impact Fee due in accordance with the following procedure:

- (a) determination of the applicability of this ordinance to the subject property shall be made within three (3) working days of receipt of such application by the Director of Planning and Development;
- (b) if this Ordinance is not applicable because (i) the subject property is not served by the proposed parkland and open space or (ii) the subject property is not accessible to such parkland and open space or (iii) the subject property is exempt pursuant to Section 12-412 herein, the Director of Planning and Development shall return the application with the inapplicability or exemption noted thereon;
- (c) if this Ordinance is determined to be applicable, the Director of Planning and Development shall:
  - (1) for residential development, multiply the applicable Park Impact Fee rate by the number of dwelling units for which final plat approval is being sought.
  - (2) for nonresidential development, multiply the applicable Park Impact Fee rate by the finished floor area (in square feet) of nonresidential development for which the building permit is being sought.
  - (3) for mixed-use developments, the Park Impact Fee shall be separately calculated as set forth above for residential and nonresidential development.
  - (4) Director of Planning and Development shall calculate the amount of the Park Impact Fee due pursuant to the building permit application or application for final plat approval as submitted and the requirements of this Ordinance in effect at the time of submission.

- (5) A building permit application or application for final plat approval must be resubmitted to the Director of Planning and Development and the amount of the Park Impact Fee recalculated if the applicant alters the proposed development by increasing the number of dwelling units or increasing the finished floor area of non-residential development.
- (d) An applicant may file a petition for review with the City Administrator or his duly designated agent on forms provided by the City for the purpose of seeking administrative review of a decision by the Director of Planning and Development as to the applicability of the Park Impact Fee ordinance or the exemption of the property, or the amount of the Park Impact Fee due. Within one (1) month of the date of receipt of a petition for review, the City Administrator or his duly designated agent must provide the petitioner, in writing, with a decision on the request. The decision shall include the reasons for the decision.

(Ord. 985C; 05-18-87)

**12-409. ANNUAL REVIEW.**

- (a) Prior to April 1, 2013, and each year thereafter, the City Administrator, or his duly designated agent, shall prepare a report to the Governing Body on Park Impact Fees. In the preparation of such report, the City Administrator or his duly designated agent shall review the following information:
  - (1) A statement from the City Treasurer summarizing Park Impact Fees collected and disbursed during the year;
  - (2) A statement from the City Recreation Director summarizing parkland and open space acquisition and development and the status thereof for the preceding year;
  - (3) A statement from the Director of Planning and Development summarizing the type, location, timing and amount of development for which building permits were issued or final plat approval granted in the year and summarizing the administration and enforcement of the Park Impact Fee.
  - (4) A statement and recommendation from the Parks and Recreation Advisory Board on any and all aspects of the Park Impact Fee and City park and open space needs.
- (b) The City Administrator's Report shall make recommendations, if appropriate, on amendments to the Ordinance; changes in the administration or enforcement of the Ordinance; changes in the Park Impact Fee rate; and changes in the Comprehensive Plan.

- (c) The Park Impact Fee rate shall be reviewed annually. Based upon the City Administrator's Report and such other factors as the Governing Body deems relevant and applicable, the Governing Body may amend the Park Impact Fee Ordinance including, but not limited to an amendment of the Impact Fee rate. If the Governing Body fails to take such action, the Park Impact Fee rate then in effect shall remain in effect. Nothing herein precludes the Governing Body or limits its discretion to amend the Park Impact Fee Ordinance at such other times as may be deemed necessary.
- (d) In the annual review process, the Governing Body shall take into consideration the following factors: inflation as measured by changes in an appropriate land and construction cost index used by the City; improvement cost increases as measured by actual experience during the year; changes in the design, engineering, location, or other elements of proposed parkland and open space; revisions to the Comprehensive Plan; and changes in the anticipated land use mix and/or intensity in new development areas of the City.

(Ord. 2562C; 08-20-12)

(Code 2000)

(Ord. 985C; 5-18-87)

**12-410. RESTRICTIONS ON USE OF AND ACCOUNTING FOR PARK IMPACT FEE FUNDS.**

- (a) The funds collected by reason of the establishment of the Park Impact Fee must be used solely for the purpose of funding parkland and open space acquisition and development pursuant to the Master Plan or for reimbursement to the City for parkland and open space acquisition and development pursuant to the Master Plan.

- (b) Upon receipt of Park Impact Fees, the Director of Planning and Development shall transfer such funds to the City Treasurer who shall be responsible for the placement of such funds in a segregated, interest bearing account designated as the "Park Impact Fee Account." All funds placed in said account and all interest earned therefrom shall be utilized solely and exclusively for parkland and open space acquisition and development pursuant to the Master Plan. At the discretion of the Governing Body, other revenues as may be legally utilized for such purposes may be deposited to such account. The City Treasurer shall establish adequate financial and accounting controls to ensure that Park Impact Fee funds disbursed from such accounts are utilized solely and exclusively for parkland and open space acquisition and development or for reimbursement to the City of advances made from other revenue sources to fund parkland and open space acquisition and development. Disbursement of funds from said accounts shall be authorized by the City at such times as are reasonably necessary to carry out the purposes and intent of this Ordinance; provided, however, that funds shall be expended within a reasonable period of time, but not to exceed five (5) years from the date such funds are collected.
- (c) The City Treasurer shall maintain and keep adequate financial records for said account which shall show the source and disbursement of all funds placed in or expended by such account.
- (d) Interest earned by such account shall be credited to the account and shall be utilized solely for the purposes specified for funds of the account.
- (e) Impact Fee funds collected shall not be used to maintain, repair or operate the existing park system, nor to finance park and recreational activities other than parkland and open space acquisition and development as herein defined.
- (f) The City may issue and utilize general obligation bonds, revenue bonds, revenue certificates or other certificates of indebtedness as are within the authority of the City in such manner and subject to such limitations as may be provided by law in furtherance of the financing and provision of parkland and open space as set forth in the Master Plan. Funds pledged toward the retirement of such bonds or other certificates of indebtedness may include the Park Impact Fees and other City (and non-City) funds and revenues as may be allocated by the Governing Body. Park Impact Fees paid pursuant to this Ordinance, however, shall be used solely and exclusively for parkland and open space acquisition and development as defined herein.

(Ord. 985C; 05-18-87)

12-411.

**REFUNDS.**

- (a) The current owner of property on which a Park Impact Fee has been paid may apply for a refund of such fee if:
  - (1) the City has failed to provide parkland or open space serving such property within five (5) years of the date of payment of the Park Impact Fee; or
  - (2) the building permit for nonresidential development pursuant to which the Park Impact Fee has been paid has lapsed for non-commencement of construction; or
  - (3) the nonresidential development for which a building permit has been issued has been altered resulting in a decrease in the amount of the Park Impact Fee due; or
  - (4) the final plat for a residential development pursuant to which an Impact Fee has been paid is vacated; or
  - (5) a replat for fewer residential lots or dwelling units is submitted on property pursuant to which an Impact Fee had been paid prior to final plat approval.
- (b) Only the current owner of property may petition for a refund. A petition for refund must be filed within one year of the event giving rise to the right to claim a refund.
- (c) The petition for refund must be submitted to the City Administrator or his duly designated agent on a form provided by the City for such purpose. The petition must contain: a statement that petitioner is the current owner of the property; a copy of the dated receipt for payment of the Park Impact Fee issued by the Director of Planning and Development; a certified copy of the latest recorded deed for the subject property; and a statement of the reasons for which a refund is sought.
- (d) Within one month of the date of receipt of a petition for refund, the City Administrator or his duly designated agent must provide the petitioner, in writing, with a decision on the refund request. The decision must include the reasons for the decision. If a refund is due petitioner, the City Administrator or his duly designated agent shall notify the City Treasurer and request that a refund payment be made to petitioner.
- (e) Petitioner may appeal the determination of the City Manager to the Governing Body.

(Ord. 985C; 05-18-87)

**12-412.****EXEMPTIONS.**

- (a) A property owner shall be exempt from the Park Impact Fee otherwise due for proposed residential or nonresidential development on the subject property if such property owner has:
  - (1) dedicated parkland or open space to the City without obtaining compensating density therefor and the City has accepted such dedication; or
  - (2) agreed, as a condition of preliminary or final plat approval or rezoning, to dedicate identified parkland or open space consistent with the City Master Plan without obtaining compensating density therefor and the property is actually developed pursuant to said zoning and plan approval.
- (b) An exemption may only be given for building permit applications for nonresidential development or final plat approval for residential development on the subject property for which dedication or agreement to dedicate has occurred.
- (c) An applicant may apply for an exemption at the time of application for a building permit or in conjunction with a final plat approval. The applicant shall file a petition for exemption with the City Administrator or his duly designated agent on a form provided by the City for such purpose. The petition shall contain: a statement by the property owner or a duly designated agent of the property owner certifying that petitioner is the current owner of the property; documentary evidence of the ownership of the property at the time of occurrence of the event giving rise to the claim for exemption; documentary evidence of dedication or agreement to dedicate including a legal description or plat of the affected property; a certified copy of the latest recorded deed for the subject property; and a statement of the reasons for which the exemption is being sought. Within one month of the date of receipt of a petition for exemption, the City Administrator or his duly designated agent must provide the petitioner, in writing, with a decision on the exemption request; provided, however, that a decision on a petition for exemption filed in conjunction with a final plat shall be made by the City Administrator concurrently with Planning Commission action on the final plat. The decision must include the reasons for the decision. Upon making the decision, the City Administrator or his duly designated agent shall notify the petitioner in writing. Petitioner may appeal the determination of the City Administrator to the Governing Body.
- (d) An applicant may apply for an advance determination of exemption at any time by filing a petition for same with the City Administrator or his duly designated agent on a form provided by the City for such purpose. The petition shall contain the information required and shall be processed in accordance with the procedure set forth in Section 12-412(c) above.

(Ord. 985C; 05-18-87)

**12-413. APPEALS.** After a determination by the Director of Planning and Development of the applicability of the Park Impact Fee or the amount of the Impact Fee due or after a determination, by the City Administrator of the amount of refund due, if any, or the determination of an exemption, an applicant or a property owner may appeal to the Governing Body. The appellant must file a Notice of Appeal with the Governing Body within thirty (30) days following the determination by the Director of Planning and Development or City Administrator. If the Notice of Appeal is accompanied by a bond or other sufficient surety satisfactory to the City Attorney in an amount equal to the Park Impact Fee due as calculated by the Director of Planning and Development, the application shall be processed. The filing of an appeal shall not stay the collection of the Impact Fee due unless a bond or other sufficient surety has been filed.

(Ord. 985C; 05-18-87)

**12-414. EFFECT OF PARK IMPACT FEE ON ZONING AND SUBDIVISION REGULATIONS.** This ordinance shall not affect, in any manner, the permissible use of property, density of development, design and improvement standards and requirements or any other aspect of the development of land or provision of public improvements subject to the zoning and subdivision regulations or other regulations of the City, which shall be operative and remain in full force and effect without limitation with respect to all such development.

(Ord. 985C; 05-18-87)

**12-415. PARK IMPACT FEE AS ADDITIONAL AND SUPPLEMENTAL REQUIREMENT.** The Park Impact Fee is additional and supplemental to, and not in substitution of, any other requirements imposed by the City on the development of land or the issuance of building permits. It is intended to be consistent with and to further the objectives and policies of the Master Plan and to be coordinated with other City policies, ordinances and resolutions by which the City seeks to ensure the provision of adequate parkland and open space in conjunction with the development of land. In no event shall a property owner be obligated to pay for parkland and open space in an amount in excess of the amount calculated pursuant to this Ordinance; but, provided that a property owner may be required, pursuant to City zoning and subdivision regulations to provide open lands, setbacks, buffers and other non-buildable areas on-site in addition to meeting the Impact Fee requirement.

(Ord. 985C; 05-18-87)

**12-416. VARIANCES AND EXCEPTIONS.** Petitions for variances and exceptions to the application of this Ordinance shall be made to the City Administrator in accordance with procedures to be established by Resolution of the Governing Body.

(Ord. 985C; 05-18-87)