

# CODE OF GENERAL ORDINANCES

## TOWN OF MONTREAT NORTH CAROLINA

Recommended by the Planning Board on March 24, 1999

**Adopted May 13, 1999 by the Board of Commissioners**

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# MONTREAT GENERAL ORDINANCES

## CHAPTER A – GENERAL PROVISIONS AND ADMINISTRATION

### ARTICLE I: DEFINITIONS OF WORDS AND PHRASES

*(Revised 2/13/2003)*

Section 1. Word Interpretation: Except as specifically defined herein, all words used in this Code of General Ordinances shall have their customary dictionary definitions. For the purposes of this Code of General Ordinances, certain words or terms used herein are defined as follows:

The words “Code” and “Code of General Ordinances” shall mean the *Code of General Ordinances of the Town of Montreat, North Carolina*.

The word “Town” shall mean the Town of Montreat, North Carolina.

The word “Board” shall mean the Board of Commissioners of the Town of Montreat, North Carolina.

The words “Board of Adjustment” shall mean the Town of Montreat Zoning Board of Adjustment.

The words “Planning Board” shall mean the Town of Montreat Planning and Zoning Commission.

The words “Police Department” shall mean the Town of Montreat Police Department.

The word “may” is permissive.

The word “shall” is mandatory.

Section 2. Definitions

Abandoned Motor Vehicle: A Vehicle which is:

- a) left on public grounds or Town owned property in violation of a law or ordinance prohibiting parking;
- b) left for longer than twenty-four (24) hours on property owned or operated by the Town;
- c) left for longer than two (2) hours on private property without the consent of the owner, occupant, or lessee of the property; or
- d) left for longer than seven (7) days on public grounds.

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At Large: An animal shall be deemed to be at large when it is off the owner's property and not under the control of the owner or a responsible Person, either by leash, cord, or chain.

Authorized Emergency Vehicle: Vehicles of the Fire Department and Police Department and such ambulances designated or authorized by the Chief of Police.

Bar: An area which is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of such beverages. Although a Restaurant may contain a bar, the term "bar" shall not include the Restaurant dining area.

Business: Any sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional services are delivered.

Block: A unit of land bounded by Streets or by a combination of Streets and public land, waterways, or any other barrier to the continuity of development.

Child Care Facility: Any licensed nursery, day care center, preschool, or other facility that provides care for children.

Crosswalk: That portion of a Roadway ordinarily included within the prolongation or connection of the lateral lines of Sidewalks at Intersections. Any portion of a Roadway distinctly indicated for Pedestrian crossing by lines or other markings on the surface.

Derelict Vehicle: A Motor Vehicle:

- a) Whose certificate of registration has expired and the registered and legal owner no longer resides at the address listed on the last certificate of registration on record with the North Carolina Department of Transportation; or
- b) Whose major parts have been removed so as to render the Vehicle inoperable and incapable of passing inspection as required under existing standards; or
- c) Whose manufacturer's serial plates, Vehicle identification numbers, license plates and any other means of identification have been removed so as to nullify efforts to locate or identify the registered legal owner; or
- d) Whose registered and legal owner of record disclaims ownership or releases his/her rights thereto; or
- e) Which is more than 12 years old and does not bear current license as required by the Department of Motor Vehicles.

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**EXCEPTION:** A Vehicle that is on private property and is being stored, repaired or restored by the owner will not be considered a Derelict Vehicle. This exception holds true even if the Vehicle is not registered, is partially stripped and will not pass inspection, or is more than 12 years old. If the Vehicle is on private property and is claimed by the owner, it is not Abandoned or Derelict.

**Driver:** Every Person who drives or is in actual physical control of a Vehicle.

**Employee:** Any Person who is employed by any Employer in the consideration for direct or indirect monetary wages or profit, and any Person who volunteers his or her services for a non-profit entity.

**Employer:** Any Person or Entity, including a municipal corporation or non-profit entity, who employs the services of one or more individual Persons.

**Enclosed Area:** All space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of door or passage ways) which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid, "office landscaping" or similar structures.

**Entity:** Any firm, partnership, corporation, limited liability company or any other type of business association.

**Fiscal Year:** The period beginning with the 1st day of July and ending with the following 30th day of June.

**Health Care Facility:** Any public or private facility principally engaged in providing services for health maintenance and the treatment of mental and physical conditions, including but not limited to laboratories, hospitals and doctors' offices.

**Intersection:** The area where two or more Roadways cross or join at grade.

**Junked Motor Vehicle:** An Abandoned Motor Vehicle that also:

- a) is partially dismantled or wrecked; or
- b) cannot be self-propelled or moved in the manner in which it originally was intended to move; or
- c) is more than five (5) years old and appears to be worth less than one hundred dollars (\$100); or
- d) does not display a current license plate.

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Motor Vehicle: Every Vehicle which is self-propelled by some kind of motor (e.g. gasoline, diesel, electric).

Officer: A Police Officer of the Town or any other agent of the Town that is authorized by the Board to implement ordinances and procedures of the Town.

Official Traffic Control Devices: All signs, signals, markings, mirrors and devices not inconsistent with this Code of Ordinances placed or erected by authority of the governing body or official having jurisdiction, for the purpose of regulating, warning, or guiding Traffic.

Park: To bring a Vehicle, whether occupied or not, to a stop and keep Standing other than temporarily for the purpose of and while actually engaged in loading or unloading.

Pedestrian: Any Person afoot.

Person: Every natural Person.

Place of Employment: Any Enclosed Area under the control of a public or private employer which Employees normally frequent during the course of employment, including but not limited to work areas, Employee lounges and restrooms, conference and class rooms, Employee cafeterias and hallways. A private residence is not a "place of employment" unless it is used as a Child Care or Health Care Facility.

Police Officer: Every Officer of the municipal police department or any Officer authorized to direct or regulate Traffic or to make arrests for violation of traffic regulations.

Private Road or Driveway: Every road or driveway not open to the use of the public for purposes of vehicular travel.

Public Place: Any enclosed area to which the public is invited or in which the public is permitted, including, but not limited to, banks, educational facilities, health facilities, laundromats, public transportation facilities, reception areas, Restaurants, retail food production and marketing establishments, retail service establishments, retail stores, theaters and waiting rooms. A private residence is not a "public place."

Public Walkway: A cleared way or path for pedestrians located on public grounds that may or may not be paved or otherwise improved. A Sidewalk is a type of Public Walkway.

Recyclable Materials: Newspaper, magazine, cardboard, telephone books, loose paper, glass containers, designated plastic containers, steel or aluminum cans and scraps, reusable clothing.



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**Refuse:** All discarded household and yard items, such as appliances, furniture, equipment, leaves, clippings, branches, etc.

**Residential Yard Waste:** Bagged leaves and brush and trimmings which measure shorter than four feet (4') in length and less than six inches (6") in diameter. Lawn grass clippings are excluded from pick-up.

**Residential White Goods/Bulk Goods:** Appliances, stoves, refrigerators, water heaters, furniture, carpet, window air conditioners, items other than household garbage, recyclables, building materials, hazardous waste, tires.

**Restaurant:** Any coffee shop, cafeteria, sandwich stand, private and public school cafeteria and any other eating establishment which gives or offers food for sale to the public, guests, or Employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities. The term "Restaurant" shall not include a cocktail lounge or tavern if said cocktail lounge or tavern is a "Bar" as defined above.

**Right-of-way:** The privilege of the immediate use of the Roadway.

**Roadway:** That portion of a Street that is improved, designed, or ordinarily used for vehicular travel.

**Safety Zone:** The area or space officially set apart within a Roadway for the exclusive use of Pedestrians and which is protected or is so marked or indicated by adequate signs as to be plainly visible at all times while set apart as a Safety Zone.

**Service Line:** Any indoor line at which one (1) or more Persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

**Sidewalk:** A paved, surfaced or leveled area, paralleling and usually separated from the Street, intended for use as a Pedestrian walkway.

**Smoking:** Inhaling, exhaling, burning or carrying any lighted cigar, cigarette, weed, plant or other combustible substance in any manner or in any form.

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Smoking Materials: All items, paraphernalia, and equipment associated with the act of Smoking, including but not limited to: cigars, cigarettes, pipes, pipe tobacco, weeds, plants (whether lighted or unlighted); matches, lighters, lighter fluid, butane-type lighter fillers; and all containers, wrappers, and packaging associated therewith.

Solid Waste (garbage): Unwanted or discarded animal and vegetable matter, small cans, glassware, crockery, paper and plastic products, and other small containers in which animal and vegetable matter has been left or stored.

Sports Arena: Sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

Standing: Any stopping of a Vehicle, whether occupied or not.

Stop or Stopping: When prohibited, means any stopping of a Vehicle except when necessary to avoid conflict with other Traffic or in compliance with the direction of a Police Officer or traffic control sign or signal.

Street or Highway: The entire width between property lines of every way or place of whatever nature when any part thereof is open to the use of the public, as a matter of right, for purpose of vehicular traffic.

Traffic: Pedestrians, ridden animals, Vehicles and other conveyances either singly or together while using any Street for purposes of travel.

Vehicle: Every device in, upon, or by which any Person or property is or may be transported or drawn upon a Street, except devices moved by human power or used exclusively upon stationary rails or tracks; provided, that for the purpose of this Ordinance, a bicycle or a ridden animal shall be deemed a Vehicle.

Section 3. Official Time Standard. Whenever certain hours are named herein they shall mean standard time or daylight saving time as may be in current use in the Town.

## MONTREAT CODE OF GENERAL ORDINANCES

### CHAPTER A - GENERAL PROVISIONS AND ADMINISTRATION

#### ARTICLE II: LEGISLATIVE

Section 1. Regular Meetings. The regular meetings of the Mayor and Board of the Town shall be held on the second Thursday of each month, at 7:30 p.m. in the Allen Building, unless otherwise designated by the Board. The regular meeting begins at the public hearing starting time in those months when a public hearing is scheduled before the regular monthly meeting, as announced during the prior month's meeting.

Section 2. Special Meetings. Special meetings of the Board may be held upon the call of the Mayor or upon written request of any two members of the Board. Notice of the time and purposes of said special meetings shall be posted, and due notice shall be given to the Mayor and Board of the time and purposes of such meetings.

Section 3. Quorum. A majority of the members of the Board shall constitute a quorum and no official business of the Town shall be transacted by the Board unless a quorum is present.

Section 4. Minutes. It shall be the duty of the Town Clerk to be present at all meetings of said Town Board and to keep in a book provided for that purpose a record of all the proceedings of the Board.

Section 5. Mayor to Preside. The Mayor shall preside at all meetings of the Board and in his/her absence the Mayor Pro Tempore shall preside.

Section 6. Mayor Not to Vote. The Mayor shall not vote on any question before the Board except in the case of a tie vote deadlocking a decision of the Board.

Section 7. Committees. The Mayor and Commissioners may create such committees of the Board for special purposes as they deem best.

## **MONTREAT CODE OF GENERAL ORDINANCES**

### **CHAPTER A - GENERAL PROVISIONS AND ADMINISTRATION**

#### **ARTICLE III: ORDINANCES**

Section 1. Effective Date. All ordinances shall be effective after the ratification thereof except ordinances specifying some other effective date or ordinances required by state law to be effective only after having met specific date requirements.

Section 2. Ordinance Confined to One Subject. All ordinances shall be confined to one subject except appropriation ordinances which shall be confined to the subject of appropriation only.

Section 3. Official Copy. A true copy of an ordinance, which has been duly enacted by the Board, signed by the Mayor, and attested to by the Town Clerk shall be known as an official copy of any ordinance for the Town. The official copy of all ordinances shall be kept at the Town office. All ordinances or a true copy thereof shall be inserted in this Code in the proper chapter.

Section 4. Ordinances Appropriating Money. No appropriation ordinance or an ordinance to alter or repeal an appropriation ordinance shall be enacted at any meeting other than a regular meeting except by a unanimous vote of the entire Board.

Section 5. Public Education. The Board shall engage in a continuing program to explain and clarify the purposes and requirements of the ordinances contained in this Code to citizens affected by it, and to guide owners, operators and managers in their compliance with them. Such program may include publication of brochures explaining the provisions of the ordinances.

Section 6. Severability. Should any Section or provision of this Code be declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of the Code of General Ordinances as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

# MONTREAT CODE OF GENERAL ORDINANCES

## CHAPTER A - GENERAL PROVISIONS AND ADMINISTRATION

### ARTICLE IV: OFFICERS AND EMPLOYEES

Section 1. Office of Mayor. It shall be the duty of the Mayor to cause all ordinances of the Town to be enforced and to attend and preside over all meetings of the Board. It shall further be the duty of the Mayor to, within thirty days after the close of each year, require a report to the Board from the various departments of the Town government for the previous year and recommend such adjustments as he/she may see fit. The Mayor shall perform such other duties as the Board may from time to time require. The Mayor shall be the chief executive Officer of the Town.

Section 2. Offices of the Town Administrator and Finance Officer. The Town Administrator and Finance Officer shall be appointed by the Board at the first meeting in each year.

- a) It shall be the duty of the Finance Officer, under supervision of the Town Administrator, to keep true, accurate and just books of accounts of the dealings and transactions of the Town. These books shall show at all times the true condition of the Town, its resources and liabilities and the disposition and use of the moneys coming under the control of the Town.
- b) The Town Administrator shall keep or cause to be kept in a safe place all moneys, records, and accounts.
- c) The Finance Officer shall disburse funds for the various purposes of the Town only when an appropriation for such purpose has been made in the annual budget and the disbursement is authorized by the Town Administrator.
- d) The Town Administrator shall perform such other duties as the Board may from time to time require.

Section 3. Office of the Town Clerk. The Town Clerk shall attend all meetings of the Board and shall regularly and fairly record all their proceedings. He/she shall also keep a bound book of the Code of Ordinances, in which he/she shall fairly and correctly transcribe all ordinances which are enacted by the Board.

Section 4. Office of the Zoning Official. The Zoning Official has the responsibilities of administering and enforcing the Town's Zoning Ordinance, under the supervision of the Board. The Zoning Official shall be appointed by the Board at the first meeting in each year.

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Section 5. Director of Public Works. The Director of Public Works shall direct and coordinate the functions, activities and personnel of the Public Works Section and perform related work as required, under the supervision of the Town Administrator. The Town's public works operations include street maintenance and repair, street sign installation and maintenance, construction and repair of water distribution system, water wells, landscaping and installation and repair of storm drainage facilities. The Director of Public Works shall be appointed by the Board at the first meeting in each year.

Section 6. Other Officers and Employees. Such other Officers and Employees that are deemed necessary shall be appointed by the Board.

Section 7. Employees' Bonds. The Town Administrator and other Officers or Employees required by the Board shall, before entering upon their duties, post bond in amounts specified by the Board. All bond premiums shall be paid from Town funds. Provided that, when two offices are combined, such as Town Administrator and Tax Collector, only one bond shall be required.

## **MONTREAT CODE OF GENERAL ORDINANCES**

### **CHAPTER A - GENERAL PROVISIONS AND ADMINISTRATION**

#### **ARTICLE V: FINANCES AND PURCHASING**

Section 1. Disbursement of Funds. No money shall be disbursed from the Town treasury except for items that have been provided for in the annual budget, or in the case of an extreme emergency. All checks shall be signed by the Finance Officer and one Commissioner or Mayor.

Section 2. Purchasing.

- a) Before any order is given for items to be paid by the Town or any purchase made by any Town Employee, a purchasing order must first be obtained from the Town Administrator.
- b) Any Town Employee purchasing goods without a purchase order from the Town Administrator shall be held responsible for the cost of same.

## **MONTREAT CODE OF GENERAL ORDINANCES**

### **CHAPTER B – POLICE**

*(Revised 6/10/2004)*

Section 1. Organization. The Police Department of the Town shall consist of a Chief and as many Officers as the Board shall deem necessary. The Board may establish within the Police Department, as a division thereof, an auxiliary police division. The auxiliary police division shall be a volunteer organization whose members shall serve without compensation.

Section 2. Control. The Town Administrator shall have general supervision over the Police Department. The Board may suspend, for cause, any member of the Police Department until the next regular meeting at which time final disposition shall be made.

Section 3. Uniforms. All Police Officers shall wear uniforms as shall be provided by the Town and shall surrender all uniforms and equipment upon leaving the police service of the Town if such uniforms and equipment were furnished by the Town.

Section 4. Duties of Police. The members of the Police Department shall carry out all orders of the Board, enforce all laws and ordinances of the Town and the State of North Carolina, and at all times preserve the peace and protect the property and the safety of the citizens of Montreat.

Section 5. Chief of Police. The Chief shall have control over the Police Department under the supervision of the Town Administrator. The Chief shall keep the Board informed of the department's activities and make such reports that the Board may from time to time require, and he/she shall perform such other duties as may be required of him/her by the Board.



# MONTREAT CODE OF GENERAL ORDINANCES

## CHAPTER C – FIRE PROTECTION AND PREVENTION

*(Revised 06/24/2002)*

*(Revised 06/10/2010)*

### ARTICLE I: FIRE PREVENTION CODE

#### **AN ORDINANCE FOR ADOPTION OF THE CURRENT EFFECTIVE EDITION INTERNATIONAL FIRE CODE AS AMENDED BY THE STATE OF NORTH CAROLINA AND THE TOWN OF MONTREAT.**

An Ordinance of the Town of Montreat adopting the current effective North Carolina Edition of the International Fire Code, including the Appendix Chapters as amended, regulating and governing the safeguarding of life and property from fire and explosion hazards arising from the storage, handling and use of hazardous substances, materials and devices, and from conditions hazardous to life or property in the occupancy of buildings and premises in the Town of Montreat; providing for the issuance of permits for hazardous uses or operations; repealing Chapter C, Entitled “Fire Protection and Prevention” and all other ordinances and parts of the ordinances in conflict therewith.

#### **The Town of Montreat does ordain as follows:**

NC Building Code, Volume 5, Fire Prevention and Protection, is hereby repealed in its entirety and replaced as set out with these new provisions as a new Chapter C, Entitled “Fire Protection and Prevention”.

Section 1. Fire Prevention Code Adopted. That a certain document, not less than one (1) copy on file at the Fire Inspections Office, and not less than (1) copy on file at the Building Inspections Office, being marked and designated as the current effective North Carolina Edition of the International Fire Code, including the Appendix Chapters as amended, be and is hereby adopted as the code of the Town of Montreat for regulating and governing the safeguarding of life and property from fire and explosion hazards arising from the storage, handling and use of hazardous substances, materials and devices, and from conditions hazardous to life or property in the occupancy of buildings and premises and providing for the issuance of permits for hazardous uses or operations; and each and all of the regulations, provisions, conditions and terms of such Fire Code are hereby referred to, adopted and made a part hereof as if fully set out in this ordinance.

The North Carolina State Building Code Council may revise and amend the North Carolina State Fire Prevention Code, either on its own motion or upon application from any citizen, state agency or political subdivision of the State. In adopting any amendment, the Council shall comply with the same procedural requirements and standards set forth in N.C.G.S. §143-138 for adoption of

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**Article I: Fire Prevention Code**

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the Code, and such adoption shall be the current effective edition of the Code establishing fire prevention and safety guidelines for the Town, except as modified or amended in this Chapter.

In the event of conflicts with current effective North Carolina Edition of the International Fire Code and this chapter, the more restrictive provisions shall prevail.

Section 2. Fire Chief's Responsibilities. The Fire Prevention Division is established within the Town of Black Mountain under the direction of the Fire Chief. The function of the division with respect to this code shall be to provide support and coordinate fire response and protection services for the Town of Montreat. .

Section 3. Enforcement of Fire Code. The Code Administrator for the Town of Montreat or other designee appointed by the Town Board of Commissioners shall serve as Fire Code Official, and is hereby authorized to enforce the provisions of this code and shall have the authority to render interpretations of this code, and to adopt policies, procedures, rules and regulations in order to clarify the application of its provisions. Such interpretations, policies, procedures, rules and regulations shall be in compliance with the intent and purpose of this code and shall not have the effect of waiving requirements specifically provided for in this code.

Section 4. Liability. The code official, officer or employee charged with the enforcement of this code, while acting for the jurisdiction, shall not thereby be rendered liable personally, and is hereby relieved from all personal liability for any damage accruing to persons or property as a result of an act required or permitted in the discharge of official duties.

Section 5. Legal Defense. Any suit instituted against any officer or employee because of an act performed by that officer or employee in the lawful discharge of duties and under the provisions of this code shall be defended by the legal representative of the jurisdiction until the final termination of the proceedings. The code official or any subordinate shall not be liable for costs in an action, suit or proceeding that is instituted in pursuance of the provisions of this code; and any officer of the department of fire prevention, acting in good faith and without malice, shall be free from liability for acts performed under any of its provisions or by reason of any act or omission in the performance of official duties in connection therewith.

Section 6. Applications and Permits. The fire code official is authorized to receive applications, review construction documents and issue permits for construction regulated by the fire code, issue permits for operations regulated by the fire code, inspect the premises for which such permits have been issued and enforce compliance with the provisions of this code.

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**Article I: Fire Prevention Code**

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Section 7. Investigation of Fires. The fire chief or his designee shall coordinate with the fire code official investigations of the cause, origin, and circumstances of every fire occurring in the Town of Montreat, by which property has been destroyed or damaged. Such investigations shall begin immediately upon the occurrence of such a fire. This is in accordance with North Carolina General Statutes that address this responsibility.

Section 8. Authority at Fires and Other Emergencies. The fire chief or officer of the fire department in charge at the scene of a fire or other emergency involving the protection of life or property or any part thereof, shall have the authority to direct such operation as necessary to extinguish or control any fire, perform any rescue operation, investigate the existence of suspected or reported fires, gas leaks or other hazardous conditions or situations, or take any other action necessary in the reasonable performance of duty. In the exercise of such power, the fire chief or officer of the fire department is authorized to prohibit any person, vehicle, vessel or thing from approaching the scene and is authorized to remove, or cause to be removed or kept away from the scene, any vehicle, vessel or thing which could impede or interfere with the operations of the fire department and, in the judgment of the fire chief, any person not actually and usefully employed in the extinguishing of such fire or in the preservation of property in the vicinity thereof.

Section 9. Barricades. The fire chief or officer of the fire department in charge at the scene of an emergency is authorized to place ropes, guards, barricades or other obstructions across any street, alley, place or private property in the vicinity of such operation so as to prevent accidents or interference with the lawful efforts of the fire department to manage and control the situation and to handle fire apparatus.

Section 10. Obstructing Operations. No person shall obstruct the operations of the fire department in connection with extinguishment or control of any fire, or actions relative to other emergencies, or disobey any lawful command of the fire chief or officer of the fire department in charge of the emergency, or any part thereof, or any lawful order of a police officer assisting the fire department.

Section 11. Systems and Devices. No person shall render a system or device inoperative during an emergency unless by direction of the fire chief or fire department official in charge of the incident.

**In addition to the requirements found in the North Carolina Fire Code and Administration and Enforcement Code, the Town of Montreat adopts these sections by ordinance:**

Section 12. Permits. Permits shall be in accordance with Section 105 of the 2002 North Carolina Edition of the 2000 International Fire Code.

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- a) Permits Required. Permits required by the fire code shall be obtained from the fire code official. Permit fees shall be established as set forth in the Fee Schedule for the Town and paid prior to issuance of the permit. Issued permits shall be kept on the premises designated therein at all times and shall be readily available for inspection by the fire code official.
  
- b) Types of Permits. There shall be two types of permits as follows:
  - 1) Operational Permit. An operational permit allows the applicant to conduct an operation or a business for which a permit is required by 105.6 for either:
    - 1.1 A prescribed period.
    - 1.2 Until renewed or revoked.
  - 2) Construction Permits. A construction permit allows the applicant to install or modify systems and equipment for which a permit is required by 105.6.
  
- c) Permits for the Same Location. When more than one operational permit is required for the same location, the code official is authorized to consolidate such permits into a single permit provided that each provision is listed in the permit.
  
- d) Application. Application for a permit required by this code shall be made to the code official in such form and detail as prescribed by the code official. Applications for permits shall be accompanied by such plans as prescribed by the code official.
  
- e) Refusal to Issue Permit. If the application for a permit describes a use that does not conform to the requirements of this code and other pertinent laws and ordinances, the code official shall not issue a permit, but shall return the application to the applicant with the refusal to issue such permit. Such refusal shall, when requested, be in writing and shall contain the reasons for refusal.
  
- f) Inspection Authorized. Before a new operational permit is approved, the code official is authorized to inspect the receptacles, vehicles, buildings, devices, premises, storage spaces or areas to be used to determine compliance with this code or any operational constraints required.

Section 13. Violations.

- a) Unlawful Acts. It shall be unlawful for a person, firm or corporation to erect, construct, alter, repair, remove, demolish, or utilize a building, occupancy, premises, or system regulated by this code, or cause same to be done, in conflict with or in violation of any of the provisions of this code.

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- b) Notice of Violation. When the code official finds a building, premises, vehicle, storage facility, or outdoor area that is in violation of this code, the code official is authorized to prepare a written notice of violation describing the conditions deemed unsafe and, when compliance is not immediate, specifying a time for compliance.
- c) Service. A notice of violation issued pursuant to this code shall be served upon the owner, operator, occupant, or other person responsible for the condition or violation, either by personal service, mail, or by delivering the same to, and leaving it with, some person of responsibility upon the premises. For unattended or abandoned locations, a copy of such notice of violation shall be posted on the premises in a conspicuous place at or near the entrance to such premises and the notice of violation shall be mailed by certified mail with return receipt requested or a certificate of mailing, to the last known address of the owner, occupant or both.
- d) Compliance with Orders and Notices. The owner, operator, occupant or other person responsible for the condition or violation to which the notice of violation pertains, shall comply with a notice of violation issued or served as provided by this code.
- e) Prosecution of Violations. If the notice of violation is not complied with promptly, the code official is authorized to request the Attorney of the Town of Montreat to institute the appropriate legal proceedings at law or in equity to restrain, correct or abate such violation or to require removal or termination of the unlawful occupancy of the structure in violation of the provisions of this code or of the order or direction made pursuant thereto.
- f) Unauthorized Tampering. Signs, tags or seals posted or affixed by the code official shall not be mutilated, destroyed, tampered with, or removed without authorization from the code official.

Section 14. Violation Penalties. Any person, firm, corporation or their assigns, agent or executor who violates a provision of this code or shall fail to comply with any of the requirements thereof or who shall erect, install, alter, repair or do work in violation of the approved construction documents or directive of the code official, or of a permit or certificate used under provisions of this code, shall be deemed in violation of this code. Each calendar day, or lesser time period as specified in a written notice, that a violation continues after due notice has been served shall be deemed a separate offense. Violators of this code may be assessed a civil monetary penalty based upon the class of violation and the fee schedule of civil penalties as adopted by the Town of Montreat.

Section 15. Classes of Violations. Violations of this code shall be assigned a violation classification as defined in this section. Determination of the class of violation shall be at the sole

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discretion of code officials of the Black Mountain Fire Department who are charged with enforcement of this code.

- Class D. A violation of the provisions of this code shall be deemed a Class D violation.
- Class C. A violation of the provisions of this code, which causes an increase of the hazard or menace of fire, explosion, or other hazardous condition or may delay, hinder, or interfere with the operations of the fire department, shall be deemed a Class C violation.
- Class B. A violation of the provisions of this code which may delay, hinder, or prevent the egress of the occupants in the event of a fire and/or other emergency or acts which may prevent the operation of fire and/or life safety devices and/or systems shall be deemed a Class B violation.
- Class A. A violation of the provisions of this code that delayed, hindered, or prevented the egress of the occupants during an emergency or caused a fire or increased the severity of a fire or acts that prevented the operation of a fire and/or life safety system or device during an emergency shall be deemed a Class A violation.

Note: Civil fines are Class D: \$50.00, Class C: \$75.00, Class B: \$150.00, and Class A: \$300.00.

Section 16. Abatement of Violation. In addition to the imposition of the civil penalties herein described, the code official is authorized to institute appropriate action to prevent unlawful construction or to restrain, correct or abate a violation; or to prevent illegal occupancy of a structure or premises; or to stop an illegal act, conduct of business or occupancy of a structure on or about any premises in accordance with N.C General Statutes.

**In addition to the requirements found in the North Carolina Fire Code and Administration and Enforcement Code, the Town of Montreat adopts these sections by ordinance:**

Section 17. Hazard Categories. Adoption of Appendix E - Hazard Categories, in order to provide limits and definition for the enforcement of Chapter 27 of the *International Fire Code*.

Section 18. Constitutionality. That if any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional; such decision shall not affect the validity of the remaining portions of this ordinance. The Town of Montreat hereby declares that it would have passed this ordinance, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional.

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Section 19. Adoption. That this ordinance and the rules, regulations, provisions, requirements, orders and matters established and adopted hereby shall take effect and be in full force and effect January 1, 2002 from and after the date of its final passage and adoption.

**Permits and Schedules**

(Note: This document is included for informational purposes and is NOT part of the ordinance)

Two types of permits are identified:

- 1) Operational. Issued for a prescribed period or until renewed or revoked
- 2) Construction. Allows the applicant to install and/or modify systems and equipment

[CONTINUED ON FOLLOWING PAGE]

**Operational Permits**

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<u>Optional</u>	<u>Mandatory</u>
Aerosol Products	Amusement Buildings
Aviation Facilities	Carnivals & Fairs
Battery Systems	Covered Mall Buildings
Cellulose Nitrate Film	Exhibits & Trade Shows
Combustible Dust Producing Operations	Explosives
Compressed Gasses	Flammable & Combustible Liquids*
Cryogenic Fluids	Fumigation and Insect Fogging
Cutting & Welding	Liquid or Gas Fueled Vehicles inside Assembly
Dry Cleaning Plants	Spraying or Dipping
Fire Hydrants & Valves	Temporary Membrane Structures
Flammable & Combustible Liquids*	
Floor Finishing	
Fruit & Crop Ripening	
Hazardous Materials & Facilities	
High Piled Storage	
Hot Work	
Industrial Ovens	
Lumber & Woodworking Plants	
LP Gas	
Magnesium	
Miscellaneous Combustible Storage	
Open Burning	
Open Flames and Candles	
Organic Coatings	
Places of Assembly	
Private Fire Hydrants	
Pyrotechnic Effects	
Pyroxylin Plastics	
Refrigeration Equipment	
Repair Garages / Service Stations	
Rooftop Heliports	
Storage of Scrap Tires and Byproducts	
Tire Rebuilding	
Waste Handling	
Wood Products (Chips, Plywood, Lumber, Storage > 200 Cubic feet)	

\*Change, Replace, or Abandon Tanks, Operate Bulk Storage, Transport, or Dispensing Facility  
Dispense into fuel tanks.



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**Construction Permits**

<u>Optional</u>	<u>Mandatory</u>
LP Gas	Automatic Fire-Extinguishing Systems
	Compressed Gasses
	Fire Alarm / Detection Systems (& related)
	Fire Pumps & Related Equipment
	Flammable & Combustible Liquids
	Hazardous Materials
	Industrial Ovens
	Private Fire Hydrants
	Spraying or Dipping
	Standpipe Systems
	Temporary Membrane Structures

**Schedule of Inspections, NCGS Mandated:**

Once Every Year	Hazardous, Institutional, High Rise, Assembly, Residential*
Once Every Two Years	Industrial and Educational
Once Every Three Years	Business, Mercantile, Storage, Churches, and Synagogues

\*Excludes one and two family dwellings, and includes interior common areas of dwelling units of multi-family occupancies

## MONTREAT CODE OF GENERAL ORDINANCES

### CHAPTER D - STREETS AND PUBLIC WALKWAYS

#### ARTICLE I: DAMAGE TO STREETS AND PUBLIC WALKWAYS

*(Revised 3/08/2012)*

Section 1. Permit Required. No person or entity shall cut into any street, sidewalk, walkway, alley or other public right-of-way for any purpose, including but not limited to installation of and repair to utility systems, or disturb the right-of-way by removing any dirt, sod, sand or paving material therefrom or otherwise disturb the right-of-way, without first obtaining a cut permit from the Town Building Inspector/Code Enforcement Officer. If trees in the right-of-way are to be removed or if work is to be performed within the drip-line of trees in the right-of-way, no cut permit shall be issued until the permittee meets the requirements of Section 625 of the Montreat Zoning Ordinance.

Section 2. Public Walkway Construction. No Public Walkway of any description shall be built by any Person or Entity of brick, wood, asphalt, concrete or any other material without a written permit from the Town Building Inspector/Code Enforcement Officer.

Section 3. Permit Application and Fee.

- a) Each application for a cut permit shall be accompanied by the required permit fee as set forth in the Town's Fee Schedule. All fees for cuts within the public rights-of-way shall be set forth in the Town's Fee Schedule.
- b) If the cut work extends beyond ten working days, excluding weather days, a penalty as set forth in the Town's Fee Schedule shall be assessed in addition to the regular permit fee. A permit may be extended without penalty if extenuating circumstances are encountered. Extenuating circumstances may consist of but not be limited to circumstances that could not be planned for nor reasonably anticipated and beyond the control of the permittee. Provided, however, extenuating circumstance shall not consist of failure of a subcontractor to perform. The Building Inspector/Code Enforcement Officer may grant extensions provided the extension is requested in writing at least 48 hours prior to the permit deadline. All extensions must be approved in writing. A weather day shall include the following: (i) when the temperature drops below 32 degrees Fahrenheit between the hours of 9 a.m. and 6 p.m.; or (ii) any day that the 24 hour rain accumulation for that day exceeds 0.25 inches; or (iii) any other similarly situated circumstance as determined by the Town Building Inspector/Code Enforcement Officer.
- c) If a project is scheduled to last more than ten working days, the permittee shall submit detailed information that defines the scope of the project, a map or sketch showing

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the precise location of the project, the name of the contact person who will be on site at all times, etc., prior to obtaining a cut permit.

- d) Any person who cuts into a public right-of-way without first obtaining the cut permit required by this section, shall be charged a civil penalty as outlined in Chapter L – Penalties of the Montreat Code of General Ordinances. Emergency repair cuts to an existing utility may be made without a permit in hand provided the permit is obtained by the close of the next business day after the cut is made. In the event the emergency work cut permit is not obtained within the time period set forth herein, the penalty as well as the regular permit fee shall apply.
- e) Any person/permittee who fails to pay permit cost, including permit fees and penalties shall not be granted any further permits for new construction or installation until the outstanding fees/penalties are paid.
- f) It shall remain the sole responsibility of the permittee to provide traffic control per the manual of uniform traffic control devices, located in the Town’s Public Work Director’s office.

Section 4. Street Restoration and Repair.

- a) Any person or entity who shall cut into any street, sidewalk, walkway, alley or other public right-of-way within the town limits shall restore the cut in accordance with the standards and specifications set forth in the Town’s standards specifications and detail manual as that manual is interpreted by the Town’s Public Works Director and Building Inspector. In any event, the final cut must be rectangular or square in shape. L- or T-shaped cuts are prohibited. Cuts into town streets shall have a full width overlay for any cuts that extend beyond one travel lane or for those streets that have been resurfaced within three years prior to the date of the permit. The total length of the overlay must be a minimum of 35 feet in length. Projects shall be designed to the extent possible, so as not to locate utility poles, hydrants, valves and manholes on sidewalks or walkways.
- b) The Public Works Director and/or the Building Inspector shall be responsible for conducting periodic inspections of the project during the progress of the work. The permittee shall notify the Public Works Director and/or the Building Inspector when work has been completed and request a final inspection. The Building Inspector shall make the final inspection to determine that streets, sidewalks, walkways, alleys or other public rights-of-way are restored to town standards, and that all debris, materials, tools and equipment are removed therefrom. All cuts shall be warranted by the person, corporation or company making the cut for a period of two years from the date of final approval which warranty shall include an indemnification clause, agreeing to indemnify and hold harmless the Town from any such claims during the two-year warranty period.

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- c) The permittee or person causing the cut shall remain solely responsible for any and all costs incurred in restoring the street, sidewalk, walkway or public right-of-way to town standards.
- d) Upon the failure of any person to restore a town street, sidewalk, walkway, alley or other public right-of-way to town standards, the Town will:
  - 1) Provide written notice that the cut is not acceptable.
  - 2) Allow ten days for the person to repair the cut; and
  - 3) Perform a reinspection after ten days. If the work is not completed to town standards, the Building Inspector will order the completion of the work by the Town and recover 120 percent of the actual cost to restore the cut from the permittee in addition to permit fees and penalties already incurred and/or take such other legal action as is necessary to correct the violation.

Section 5. Permit Exclusions.

- a) Buried service lines perpendicular to the street resulting in a trench width of six inches or less which do not involve the cutting of the sidewalk, walkway, street, or other street appurtenance;
- b) Pole placement and removals which do not involve the cutting of the sidewalk, walkway, street or other street appurtenances; and
- c) Installation of replacement poles.

Section 6. Appeal Process. In the event that an applicant or permittee disagrees with a fee or penalty that is assessed, notice must first be given to the Building Inspector in writing within ten working days of the fee or penalty being assessed, setting forth the basis of the disagreement. If the response received from the Building Inspector is not satisfactory, an appeal may be taken to the Town Administrator within ten days of receipt of the Building Inspector's written response. The Town Administrator may establish an advisory committee made up of town staff to provide an advisory opinion. The Town Administrator's decision shall be final.

Section 7. Leaving Excavations Unprotected. It shall be unlawful for any Person or Entity making any excavation for any purpose whatsoever in any of the Streets, public alleys or Public Walkways in the Town to fail to securely cover such excavations with planks, place ropes around the same three feet from the ground, or place a sufficient number of amber lights around such excavation to prevent injury to any Person using the Street, public alley or Public Walkway.

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Section 8. Streets and Public Walkways Not to be Damaged. It shall be unlawful for any Person or Entity to drag or run or cause to be dragged or run any harrow or other implement, engine, machine or tool upon any Street, public alley or Public Walkway of the Town which shall injure or cut the surface thereof.

Section 9. House Moving. No Person or Entity shall move any house or building upon or across the Streets, public alleys or Public Walkways without the written consent of the Board and the deposit of a bond to the Town Administrator in the sum of five thousand dollars (\$5,000.00) to cover damage done to such Street, alley or Public Walkway or to any public or private property.

Section 10. Damage to Bridges and Culverts. No Person or Entity shall injure or misplace any part of any bridge, culvert, ditch and drain or other property belonging to or used by the Town. No Person or Entity shall place any obstruction in any culvert, ditch or drain, to prevent the free flow of water on or over the Streets of the Town. Footbridges that cross creeks must be approved in writing by the Town Building Inspector.

Section 11. Damage to Lights and Signs. No Person or Entity shall injure, tamper with, remove, paint upon or deface any sign, sign post, street light, traffic signal, bulletin board or other municipal property, except Employees of the Town in performance of their duties.

## **MONTREAT CODE OF GENERAL ORDINANCES**

### **CHAPTER D - STREETS AND PUBLIC WALKWAYS**

#### **ARTICLE II: OBSTRUCTING STREETS AND PUBLIC WALKWAYS**

Section 1. Assembly on Public Walkways. All Persons are forbidden from assembling or collecting so as to obstruct any Public Walkway or Street and all Persons so collecting and standing shall disperse and move upon the demand of any Police Officer.

Section 2. Display of Goods Prohibited. No Person shall place for display or sale any goods, wares or merchandise of any kind upon any of the Sidewalks or other Public Walkways of the Town.

Section 3. Placing Objects on Street and Public Walkways. No brick, stone, wood or other substances obstructing the free passage of Persons and Vehicles shall be placed in any of the alley, Streets, Public Walkways or other routes of the Town. No Person or Entity shall place on or in any of the alleys, Streets or Public Walkways of the Town any boxes, crates, casks, or barrels of any description, or any other obstruction of any kind. However, any Person erecting a building or other structure, may, with permission from the Town Administrator, place building material for immediate use on the Streets in such a way as to not interfere with the usual traffic.

Section 4. Construction Near Public Walkway. Before building or remodeling is begun in close proximity to a Public Walkway, a passageway shall be constructed so as to leave the Public Walkway unobstructed and to provide safe and easy passage.

**MONTREAT CODE OF GENERAL ORDINANCES**

**CHAPTER D - STREETS AND PUBLIC WALKWAYS**

**ARTICLE III: USE AND CLEANLINESS**

Section 1. Throwing Trash Prohibited. No trash of any kind shall be thrown or swept upon any Public Walkway, Street or other public property in the Town.

Section 2. Tree Trimmings. It shall be unlawful for any Person to place or allow to be placed any tree trimmings or shrubbery on any Street or Public Walkway, except as designated by Chapter G, Article II, "Solid Waste Disposal and Refuse Collection."

## MONTREAT CODE OF GENERAL ORDINANCES

### CHAPTER D - STREETS AND PUBLIC WALKWAYS

#### ARTICLE IV: STREET STANDARDS

*(Adopted 7/09/2009); (Revised 3/11/2010) (Revised 11/11/21)*

Section 1. Town Streets. The following regulations and design standards are intended to provide safe and necessary access to both public and residential areas of the Town of Montreat, and to ensure preservation of the unique character of this community. In the interest of accommodating projected future growth and enabling residents to maintain needed connectivity, town streets will be designed to encourage use by pedestrians, automotive, and alternative transportation.

Section 2. General Requirements. All streets to be built within the planning jurisdiction of the Town shall be constructed as described in this ordinance and shall meet the minimum street construction standards for the Town so that said streets, when completed, may be accepted by resolution of the Board of Commissioners in accordance with G.S. 160A-374. No private streets will be platted within the existing corporate limits of the Town.

Section 3. General Design Principles – Streets. The Comprehensive Plan for the Town encourages development of a balanced network of streets, pathways and trails that accommodate the mobility needs of its residents, visitors and students whether they travel by vehicle, bicycle or foot, while providing safe access to the properties in the community. Equally important, the Plan encourages a highly interconnected system of non-vehicular circulation routes to provide connectivity to community destinations with minimal disturbance to vegetation. Off-street parking is encouraged throughout the Town wherever practicable.

- a) Streets shall interconnect within a development and with adjoining development. Streets within a new development shall connect to existing streets and rights-of-way. Street stubs shall be provided to the property line to provide for future development. Streets shall be planned with due regard to the designated circulation system as guided by the Comprehensive Plan and any other applicable approved plans.
- b) Streets shall be designed as the main public space of the Town and shall be arranged so as to encourage pedestrian traffic as well as other alternate forms of transportation.
- c) Newly constructed thoroughfares or local streets shall be bordered by sidewalks or walking paths on one or both sides as determined by the Comprehensive Pedestrian Master Plan.
- d) Streets shall be designed with street trees planted in a manner appropriate to their function. When used, street trees shall compliment the face of the buildings and



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shade the sidewalk. Street trees should allow the free movement of emergency vehicles.

- e) Wherever possible, streets should be designed to fit the contours of the land and should minimize removal of significant trees.
- f) All streets, shall be constructed in accordance with the design and construction standards in this code and shall be maintained for public access whether by easement or by public dedication. Closed, guarded, or gated streets are strictly prohibited.
- g) The use of traffic calming devices such as raised intersections, lateral shifts, and roundabouts may be encouraged as alternatives to conventional traffic control measures with approval of the Town Administrator and Public Works Director.

Section 4. Street Classifications.

- a) Thoroughfares. Major streets which serve as collectors of traffic from local streets, carrying it within and out of the Town's jurisdiction.
- b) Local Streets. Streets which primarily provide access to abutting property, may provide direct connection to a thoroughfare and serve more than ten (10) dwelling units.
- c) Lane. Minor streets which are primarily pedestrian-oriented and residential in nature, but do not serve more than ten (10) dwelling units.
- d) “Green” Street. A local street or lane demonstrating a combination of interrelated Low Impact Development (LID) elements designed to retain and treat stormwater runoff, which may provide integral traffic-calming features, that promotes the use of sustainable materials and achieves an overall reduction in environmental impact.
- e) Cul-de-sacs. A local street or lane having one end open to traffic and the other end permanently terminated by a vehicular turnaround. Cul-de-sacs shall be designed to maintain adequate dimensional access for emergency service equipment as contained in current North Carolina State Fire Code.

Section 5. Street Engineering and Design Specifications. Street designs shall permit the comfortable use of the street by cars, bicyclists, and pedestrians. Pavement widths, design speeds, and the number of vehicle lanes should be minimized. The specific design of any given

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street must consider the building types which front on the street and the relationship of the street to the Town's street network. New development that adjoins existing publicly maintained streets or adjoins existing platted roads shall in either case be required to upgrade those streets to meet the standards of this Section and the Ordinance Regulating the Extension of Public Utilities and Streets. The services of a professional engineer or consultant engaged by the Town may be required to provide recommendations regarding the plans for any proposed street system to be dedicated to the public. Any and all fees associated with additional technical review services retained by the Town concerning the proposed project are the sole responsibility of the applicant. The following specifications shall apply to public infrastructure design:

5.1 Street Materials. Portland cement concrete for curb and gutter, driveways, and sidewalks shall have a minimum 28 day compressive strength of 4,000 psi, a non-vibrated slump between 2.5 and 4 inches, minimum cement content of 564 pounds per cubic yard, an air entrainment of 5-7 %, and a maximum water-cement ratio of 0.532.

Joint filler shall be a non-extruding joint material conforming to ASTM C1751.

Concrete Curing Agents shall be free from any impurities which may be detrimental to the concrete and meet Section 1026 of the North Carolina Department of Transportation (NCDOT) Standard Specifications for Roads and Structures.

Aggregate for Portland cement concrete shall meet the requirements for fine and course aggregate of Section 1014 of the NCDOT Standard Specifications for Roads and Structures.

Portland cement and admixtures shall meet the requirements of Section 1000 of the NCDOT Standard Specifications for Roads and Structures.

Water for mixing or curing the concrete shall be free from injurious amounts of oil, salt, acid, or other products injurious to the finished product.

Aggregate Base Course (ABC) shall consist of an approved coarse aggregate produced in accordance with the requirements indicated in Section 520 of the NCDOT Standard Specifications for Roads and Structures.

Bituminous Base Course, Type B25.0B mixture shall conform to Table 2 in Section 4.6 of the latest edition of the Superpave Hot Mix Asphalt/Quality Management System of the NCDOT Pavement Construction Section.

Bituminous Intermediate Course, Type I 19.0B mixture shall conform to Table 2 in Section 4.6 of the latest edition of the Superpave Hot Mix Asphalt/Quality Management System of the NCDOT Pavement Construction Section.

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Bituminous Surface Course SF 9.5A and S 9.5B mixture shall conform to Table 2 in Section 4.6 of the latest edition of the Superpave Hot Mix Asphalt/Quality Management System of the NCDOT Pavement Construction Section.

Tack Coat shall conform to Section 9.31 of the latest edition of the Superpave Hot Mix Asphalt/Quality Management System of the NCDOT Pavement Construction System. Concrete Pavement shall meet Section 700 of NCDOT Standard Specifications for Roads and Structures.

Geotextile Fabric may be used to stabilize a roadway, subgrades, slopes, and for other uses as necessary. At least one week prior to using this fabric, a sample and its associated engineering data shall be submitted to the Town for approval. Areas stabilized with fabric shall be indicated on "as-built" drawings with the manufacturer name and type fabric indicated.

Sidewalk material may vary according to the overall design and character of the development but must be approved by the Town Administrator and Public Works Director.

5.2 Street Signs and Traffic Control Signs. All street and traffic control signs shall be installed by the developer prior to the issuance of any certificates of occupancy. These signs will be maintained by the Town and shall be consistent with the Manual on Uniform Traffic Control Devices (MUTCD). All specialty traffic control and street name signs and posts must comply with appropriate standards for size, reflectivity, location, etc.

5.3 Sidewalks. Sidewalks or walking paths shall be constructed within the street right of way and along one side of all thoroughfares and local streets as determined by the Comprehensive Pedestrian Master Plan.

Sidewalks shall be a minimum of five (5) feet in width. The minimum thickness of a sidewalk constructed of concrete or asphalt shall be four (4) inches. At locations where a driveway crosses a sidewalk, a six (6) inch depth is required. A minimum depth of four (4) inches of ABC is required under all sidewalks. Sidewalks shall have a uniform slope toward the roadway of ¼ inch per foot. The utility strip between the sidewalk and the back of curb shall not be less than ¼ inch per foot nor greater than ½ inch per foot toward the roadway unless approved by the Public Works Director and the engineering firm hired by the Town to review the street and sidewalk design. Where no curb and gutter exists on a road that requires sidewalks, the Public Works Director may require curb and gutter installation in addition to the installation of the sidewalk. Sidewalks should be constructed with an adequate planting strip where practical.

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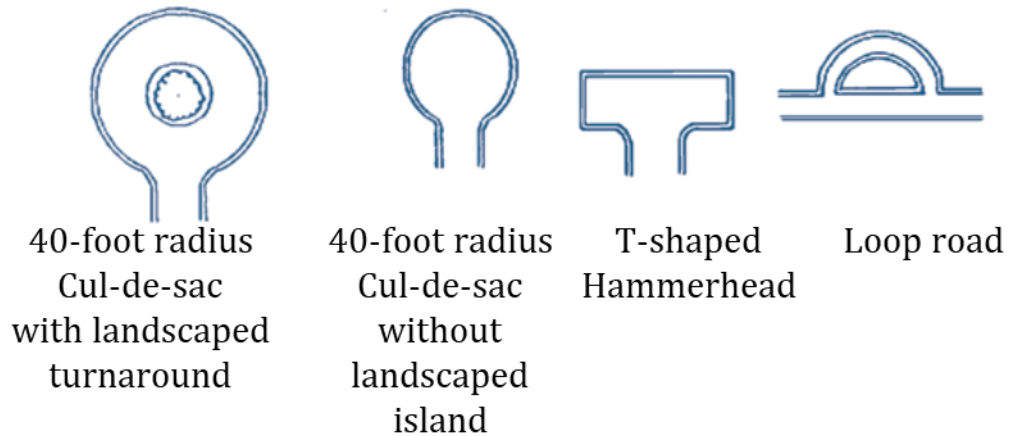
A sidewalk may be constructed so as to provide a gradual meander and to facilitate the installation of landscape material, vegetated stormwater management features, or to avoid existing obstacles such as power poles, fire hydrants, street lights, etc. The design of the sidewalk shall be such that pedestrian safety is provided and the usability of the sidewalk is not affected. The Town is receptive to reviewing alternate designs relative to the provision of pedestrian facilities not outlined herein. Such alternate designs may include greenways or a combination of sidewalks and greenways. The requirement for a sidewalk may be waived by the Public Works Director and Town Administrator.

All new sidewalks shall be constructed of either concrete, asphalt or other approved material. Alternative type materials may be presented to the Public Works Director for consideration. Pervious materials not meeting ADA requirements shall not be allowed due to concerns for pedestrian accessibility/usability and maintenance costs.

Pipes, drains, flumes or other concentrated stormwater devices shall not discharge across a sidewalk, but shall rather be piped or flumed under the sidewalk.

5.4 Bike Paths. All new developments within the existing town limits may be required to include bike lanes at the direction of Town Council upon recommendation by the Town Administrator and Public Works Director. Bike paths shall be a minimum of four (4) feet in width unless otherwise permitted. Bike lanes and bike paths shall be designed according to the North Carolina Bicycle Facilities Planning and Design Guidelines, published by NCDOT.

5.5 Cul-de-sacs. Cul-de-sacs may be permitted only where topographic conditions and/or exterior lot line configurations offer no practical alternatives for connection or through traffic. If permitted, a cul-de-sac radius shall be at least forty (40) feet or as approved by the Public Works Director and Town Administrator. Alternative termination designs may be submitted for consideration by the Public Works Director and Town Administrator. All alternative designs shall require evaluation for emergency vehicle accessibility by the Fire Chief providing fire protection service for the Town.



### **Four alternative turnarounds for residential streets**

5.6 Intersections. All new streets shall intersect as nearly as possible at right angles and no street shall intersect at less than sixty (60) degrees.

(150) feet apart measured from centerline to centerline, except lanes. Where a centerline offset occurs at an intersection, the distance between centerlines of the intersecting streets shall not be less than sixty (60) feet.

Curb radii at street intersections shall be rounded with a minimum radius of fifteen (15) feet. At an angle of intersection of less than 90 degrees, a greater radius may be required. Curb radii shall be designed to reduce pedestrian crossing times along all streets. In general, curb radii should not exceed twenty five (25) feet.

Proper sight lines shall be maintained at all intersections of streets to permit adequate sight distance.

Street trees shall be held twenty (20) feet from intersections to allow turning radius of emergency vehicles.

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5.7 Utility Location. All newly installed utilities shall be located underground in either the right-of-way or a public utility easement.

5.8 Curbs and Drainage. Standard curbing is required along all streets with marked on-street parking and around all required landscaping areas and parking lots. Valley curb and gutter shall not be allowed where road grades exceed five percent (5%). Twenty-four (24) inch curb and gutter is required along streets; Eighteen (18) inch curb and gutter is allowed in parking areas. Drainage shall be provided using closed curb and gutter systems or open swales depending on approval of the Public Works Director. All storm drainage systems shall be designed in compliance with the requirements of “Article III - Stormwater Management” for the Town of Montreat. All streets proposed for dedication to the Town shall be designed with minimum storm drainage capacity for runoff from the twenty five (25) year storm event. In areas where bridges or major culverts are constructed, or in areas subject to flooding, streets shall be designed with storm drainage capacity for runoff from the fifty (50) year storm event. All drainage grates must be safe for bicyclists. Bicycle-safe drainage grates are Types E, F, and G approved by the NCDOT (Standard Detail 840.03 – Frames, Grates and Hood – for use on Standard Catch Basin).

5.9 Minimum Width of Shoulder or Berm. The minimum width of a shoulder on a street proposed for dedication to the Town shall be as set forth in “Table 1. Town Street Standards” contained in this Section.

5.10 Centerline Radius. A minimum radius of ninety (90) feet and a minimum tangent of fifty (50) feet shall be provided between reverse curves on all streets. Centerlines may be varied upon approval of the Public Works Director.

5.11 Pedestrian Crosswalks. Where deemed necessary by the Public Works Director, a pedestrian crosswalk at least ten (10) feet in width may be required to provide convenient public access to a public area such as a park, greenway, or place of assembly, or to a water area such as a stream, river, or lake. The pedestrian crosswalks shall be designated as a crosswalk with pavement marking and signage in accordance with the MUTCD and must be approved by the Public Works Director prior to installation. The use of pervious paving materials shall be encouraged for construction of pedestrian crosswalks, wherever practicable, as a Low Impact Design (LID) measure.

5.12 Posted Speed Limits. The Town wide speed limit shall be a maximum of twenty (20) miles per hour unless otherwise posted.

5.13 Specific Requirements. Horizontal Curves - All streets proposed for dedication to the Town where a total center line deflection angle of more than ten degrees (10°) occurs, shall have a circular curve introduced.

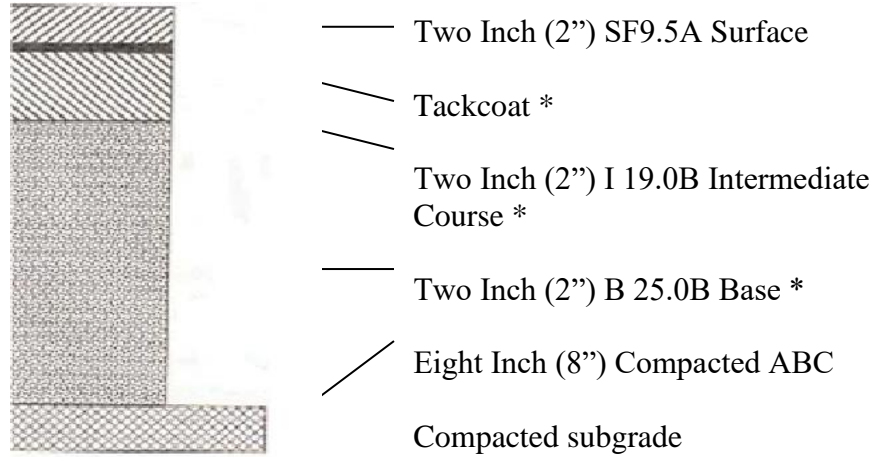
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Paving: All streets proposed for dedication to the Town shall either be improved gravel roads or shall be paved in accordance with the following minimum standards of the Town Public Works Department hereinafter referred to as the Public Works Department:

- 1) Earth Cuts and Fills: All earth fills within street right-of-way shall be placed with tested and controlled compaction methods. Compaction must be at least 100% in accordance with the standard (not modified) Proctor Test. Graded area of cut within the street right of way shall be tested to be sure that they are also within the 100% compaction requirements for fills. Where found deficient, the top twelve inches (12") shall be removed and replaced using proper compaction methods and equipment to achieve the required 100% compaction requirement. No stone base shall be placed until the Town Street Department has inspected and approved the subgrade. Independent testing laboratory samples will be required to show that tests have been made and the results meet the requirements.
- 2) Pavement or Stone Base: Crushed stone aggregate base material shall meet the North Carolina Department of Transportation specifications for stabilized stone base and shall have a minimum compacted thickness of eight (8) inches.

**Figure 1. Paving Specifications**



3) Paving Surface Course: Asphalt paving material shall meet North Carolina Department of Transportation specifications and shall have a minimum compacted thickness of two (2”) inches. More stringent requirements may be imposed by the Town Public Works Department for pavement base and surface course where load bearing characteristics of the soil are unstable or otherwise deficient.

4) Pervious Pavement, Pervious Concrete and Other Engineered Pervious Roadway Systems: Designs utilizing alternative paving materials may be submitted to the Town Public Works Director for consideration and approval. Corroborative engineering data must be provided illustrating comparable strength and durability of the proposed material, design specifications for underlying storage layer (base) course and associated underdrain design features.

Private Streets: There shall be no private streets platted within the Town of Montreat corporate limits.

Conformity to Surrounding Development: The proposed street layout within a subdivision shall be coordinated with the existing street system of the surrounding area.

Pedestrian Ways: Streets shall be designed or public walkways provided to assure safe and reasonable access to parks, playgrounds, schools, and other places of public assembly. Pedestrian Crosswalks may be required by the Public Works Director.

Street Cross-Section: See “Table 1. Town Street Standards” for cross-section



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information.

**Shoulders:** Where concrete curb and gutter are used, the shoulder may be reduced to two feet (2') on both sides.

**Water and Wastewater:** Water and wastewater infrastructure shall be installed according to provisions contained in Chapter E “Utilities” and the Ordinance Regulating the Construction and Financing of Public Improvements for the Town. The main sewerage collector lines must meet the Metropolitan Sewerage District regulations. Septic systems must meet Buncombe County Health Department Regulations.

**Fire Hydrants:** Fire Hydrants shall conform to the American Water Works Association Standard for Dry Barrel Fire Hydrants (AWWAC502). Hydrants shall have at least three (3) outlets; one outlet shall be a pumper outlet and other outlets shall be at least two and one-half (2 ½ “) inch nominal size. The street connection shall be not less than six (6) inches in diameter. Hose threads on outlets preferably should conform to National Standard dimensions. A valve shall be provided on connections between hydrants and street mains. Hydrants that operate in a direction opposite to that of the majority shall be considered unsatisfactory. Flush hydrants are considered undesirable because of delay of operation, which is more serious because of the possibility of heavy snow. At no place on the main or artery lines will there be a distance of more than one thousand (1,000) feet between hydrants.

**Table 1. Town Street Standards**

Type of Street	Min. R/W Width	Min. Pavement or Gravel Width		<sup>4</sup> Min. Shoulder Width		Max. Grade	Sight Distance	Design Speed (MPH)
		<sup>3</sup> Curb	<sup>4</sup> No Curb	Cut	Fill			
Thoroughfare	40'	20'	20'	8'	8'	12%	250'	30
Local Street	30'	18'	18'	4'	4'	16%	100'	20
<sup>1</sup> Cul-de-sacs	30'	16'	13'	2'	3'	16%	60'	5
Unpaved Road	30'	16'	16'	2'	3'	16%	60'	15
Lane	30'	16'	16'	2'	3'	16%	60'	15
“Green” Street	30'	14'	14'	*2'	*3'	*14%	*60'	*15

NOTE: For all road types, the minimum cross slope from crown of the road shall be one quarter (1/4) inch per foot.

<sup>1</sup> Cul-de-sacs shall be terminated by a circular right-of-way of not less than a thirty (30) foot radius

and a circular pavement width of not less than fifteen (15) foot radius. Incorporation of bioretention areas (rain gardens) in the form of vegetated island depressions within cul-de-sacs shall be encouraged to promote alternative means of treating stormwater flow from the pavement.

<sup>2</sup> “Green” Street designs allow for utilization of Low Impact Development (LID) concepts demonstrating such features as:

- Interspersed flow-through infiltration planting and bioretention areas;
- Pervious paving materials
- Vegetated/pervious swales
- Varying width, meandering curbless streets; or
- Other alternative designs implementing proven low impact features that are determines to provide comparable safety, functionality and that are in keeping with the character and image of the community

The “Green” Street option is provided to encourage development of a more environmentally sensitive and sustainable transportation infrastructure throughout the Town. All proposed designs must first be submitted to Town Administration for consideration and approval.

\*A “Green” Street design may modify required parameters such as minimum shoulder width, maximum grade, sight distance and design speed from listed tabular values if specifications submitted by the designer are tenable, and subsequent review by the Town confirms the variance is justifiable.

<sup>3</sup> Where concrete curb and gutter is used, the shoulder may be reduced to two (2) feet on both sides. Curb cuts shall be incorporated at regular intervals, wherever practicable, to direct stormwater flow to vegetated swales, sheet flow across grassy filter strips, or into other structural stormwater treatment features designed to provide infiltration and prevent a concentrated flow of rainwater.

<sup>4</sup> Where concrete curb and gutter is not used, pervious shoulder surfacing materials, such as permeable interlocking concrete pavement (PICP), grass/gravel pavers, or concrete grid paver (CGP) systems shall be encouraged when site conditions and topography permit sheet flow of rainwater off the roadway and low impact design is the intended goal, pervious shoulder surfacing materials may be required. A reduction of up to three (3) feet in pavement width is permitted with the application of these pervious systems installed within shoulders at pavement grade level.

# MONTREAT CODE OF GENERAL ORDINANCES

## CHAPTER E - UTILITIES

### ARTICLE I: WATER & WASTEWATER

*(Revised 3/12/2009); (Revised 11/11/21)*

Section 1. Board to Regulate Water. The water system of the Town shall be under the control of the Board or its authorized agent, which shall have the duty of prescribing and enforcing full compliance with all the rules and regulations governing all connections with the water system.

Section 2. Metropolitan Sewerage District (MSD) to Regulate Sewer. The Town's sewer system operates under the jurisdiction of the Metropolitan Sewerage District of Buncombe County, North Carolina (MSD), on behalf of the Town.

Section 3. Permit for Connection Required. No Person or Entity shall connect with the water system of the Town until he/she/it has made written application for permission to the Town Administrator for such connection, paid the appropriate application and tap fee and received approval for such connection. This application shall be made before any part of the wastewater system of a building or other connection shall be laid or constructed and the application shall be accompanied by a plan or drawing which states the name of the Street where the building is located and the name of the Person or Entity and shows the location of the building and entire proposed connection to a wastewater system through the building to its terminus and the location of all of the fixtures, traps, ventilating pipes, etc.

Section 4. Separate Connections Required. Each building shall have separate water and wastewater connections.

Section 5. Water and Wastewater Systems Required. All owners of property within the Town limits shall, at the time of development permitting, make provision for connecting with the public water system for water intake purposes, except where a private potable water well is permitted per NCGS 87-97.2 as amended from time to time. All owners of property within the Town limits or ETJ shall, at the time of development permitting, make provision for wastewater systems as required by MSD and/or the Buncombe County Health Department as the case may be.

Section 6. Privies and Septic Systems Regulated.

- a) No privy of any kind shall be permitted in the Town.
- b) All wastewater septic systems shall comply with and be operated pursuant to all regulations, requirements and orders of the Buncombe County Health Department.

Section 7. Use of Town Water.

- a) No Person or Entity shall supply or sell water to other Persons or entities, nor shall any Person or Entity take or carry away water from any hydrant, watering trough, or public fountain.
- b) The fire hydrants are for the use of the Fire Department for fighting fires and are not to be used by an unauthorized Person for any purpose, without written permission from the Board.

Section 8. Water and Sewer Rates.

- a) Water rates and water connection charges shall be determined from time to time by the Board and shall be kept on file in the office of the Town Administrator.
- b) Sewer rates and connection charges shall be determined by the MSD.

Section 9. Tampering with or Obstructing Water and Sewer Lines Prohibited. No Person shall touch, tamper, or in any manner manipulate or turn the cut-offs on the water mains forming a part of the water system of the Town, nor shall any Person tamper with or harm in any manner whatsoever any water or sewer line, main or any appurtenance thereto. No Person shall throw or deposit any material or substance in any water or sewer line that will in any manner obstruct such line.

Section 10. Private Water Supply Regulated.

- a) It shall be unlawful for any Person or Entity to furnish, supply, or provide for gain or profit, any water from a private well or pump in or to any dwelling house, boarding house, inn, hotel, cafe or other commercial establishment, or any room or rooms of the same, when said dwelling house or any room or rooms therein are rented, or offered for rent to the public, or when said boarding house, inn, hotel, cafe, or other commercial establishment is open to, or used by, the public, unless and until an analysis of the water from such private well or pump shall have first been submitted to and approved by the Building Inspector.
- b) The water analysis referred to in Sub-Section (1) hereof shall be made by or under the direction of the Buncombe County Health Department or the Department of Public Health of the State of North Carolina.
- c) If said water analysis bears the approval of either of the authorities referred to in Sub-Section (2) hereof, the Building Inspector shall approve the same. If, however, the analysis shows that the water is contaminated and unfit for human consumption, the Building Inspector shall not approve said analysis.

Section 11. Director of Public Works. The Director, or his/her assistant, shall at all reasonable hours have free access to all buildings or structures in the Town for the purpose of examining hydrants, fixtures or connections on which Town water pressure is maintained.

Section 12. Work on Water System. All work on the water system and all connections or disconnections thereto shall be performed by authorized Employees of the Town, or by plumbers approved by the Town. All work shall be performed in accordance with the Plumbing Code of the State of North Carolina and such amendments thereto that the Board may from time to time adopt.

# MONTREAT CODE OF GENERAL ORDINANCES

## CHAPTER E - UTILITIES

### ARTICLE II: WATER CONSERVATION ORDINANCE

#### **Water Shortage Response Plan (WSRP) Town of Montreat (PWSID: 01-11-484) (Revised 4/08/2010)**

Section I. Introduction. This plan provides guidelines for the Town of Montreat to manage water supply and demand in the event of a supply problem or water shortage. Such problems could include imminent supply disruptions resulting from a major pipeline failure as well as forecasted water supply shortages due to droughts. The plan enables Montreat to maintain essential public health and safety and minimize adverse impacts on economic activity, environmental resources and the area's lifestyle. "Water shortage" as is discussed in this document means that Montreat will not have the normal amount of water to provide to its customers. It is extremely improbable that Montreat would ever run out of water. The stages noted in the plan will be implemented depending on the magnitude of the water shortage. All water systems purchasing water from the Town of Montreat water system will, at a minimum, adopt and enforce water use reduction measures contained in this plan or a similar plan as a condition of water sales.

Section II. Authorization. The Mayor of Montreat is authorized to enact the water shortage response provisions when the thresholds established in Section VII or Section VIII of this plan are met. In the Mayor's absence, the Town Administrator will assume this responsibility.

Section III. Notification. The following notification methods will be used to inform water system employees and customers of a water shortage declaration: employee e-mail announcements, notices at municipal buildings, notices in water bills and on the Town of Montreat website at [www.townofmontreat.org](http://www.townofmontreat.org). Required water shortage response measures will be communicated through a press release that will be forwarded to the following media outlets: **Black Mountain News** (828) 669-8727, **Asheville Citizen-Times** (828) 232-5883, **WLOS News 13** (828) 684-1340, **570 WWNC** (828) 257-2700, **BCTV** (Buncombe County Government Access Channel) (828) 250-4109, **Montreat Conference Center** (828) 669-2911 and **Montreat College** (828) 669-8012. The Montreat Public Works Director will notify the Asheville Regional Office of the North Carolina Department of Environment and Natural Resources, **Division of Water Resources** (828) 296-4500.

Section IV. Relationship of Plan to Other Municipalities. The Town of Montreat will assist and support emergency restriction measures required to manage water demand during an emergency or water shortage. This plan has been developed in consultation with the Town of Black Mountain and the City of Asheville based on the premise that an effective demand management strategy must be regionally consistent. This is based on several considerations:

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1) Public support and cooperation is likely to be higher if actions are equitable, i.e., all water users are experiencing the same service level and degree of hardship; 2) A unified message and approach is easier to understand and distribute through the media, which is key in communicating information to the public; and 3) Consistency makes it easier to forecast demand reductions, which is essential to effectively manage the system during a water shortage. The Town of Montreat water system will, at a minimum, adopt, implement and enforce water use reduction measures contained in this plan and the plan and all subsequent revisions adopted by the Town of Black Mountain as a condition of water purchased from the Town of Black Mountain.

Section V. Year-Round Water Conservation Policy in Montreat. The Town of Montreat Board of Commissioners encourages all municipally supplied water users to use water efficiently at all times. Montreat’s Public Works Director will monitor water demand and the available supply of water. The findings will be reported to the Town Administrator. In the event of a declaration of water shortage by the Mayor, the Public Works Director will submit a weekly report on water supply conditions to the Town Administrator.

Public education and outreach will consist of any or all of the following activities:

- Independent Mailings to Major Users
- Website
- Press Releases or Public Service Announcements
- Flyers/Handouts/Newsletters
- Bill Announcements to all Customers
- Signs and Posters
- Presentations
- Water Audits

Section VI. Montreat Water Use Classification. To aid implementation of this plan the following classes of water use have been established:

Class I: Essential Potable Water Uses for Montreat

- **Domestic** – Water to sustain human and domestic pet life; minimum standards of hygiene and sanitation.
- **Patient Care** – Patient care and rehabilitation, including swimming pools used for patient care and rehabilitation.
- **Public Use** – Firefighting and approved flushing of sewers and hydrants to ensure public health and safety.

Class II: Socially/Economically Important Potable Water Uses for Montreat

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- **Domestic** – Minimal use for kitchen, bathroom and laundry. Minimal watering of vegetable gardens and trees to preserve them.
- **Public Use** – Filling and operation of public swimming pools.
- **Commercial** – Commercial Laundromats; restaurants and hotels, minimum amount required to maintain essential cooling operations.
- **Agricultural** – Minimum amount required to maintain crops, livestock and associated activities.
- **Institutional** – Efficient use by schools, churches and government facilities.

Class III: Non-Essential Potable Water Uses for Montreat

- **All** – Ornamental uses (i.e. fountains, reflecting pools, artificial waterfalls); Residential lawn irrigation; Non-commercial washing of motor vehicles; Washdown of impervious surfaces; Filling and operation of recreational swimming pools.
- **Public Use** – Gardens, lawns, parks, playing fields and recreational areas.
- **Commercial** – Serving water in restaurants except by request.

Section VII. Drought Response Triggers and Phased Water Use Reductions. When one of the following water supply thresholds (triggers) are reached, the Mayor shall initiate the following Phase reduction measures as outlined under the corresponding Response heading. For the purpose of this ordinance, Montreat's winter pumping times include the dates from October 1<sup>st</sup> through May 31<sup>st</sup> and summer pumping times include the dates from June 1<sup>st</sup> through September 30<sup>th</sup>.

Phase I: Voluntary Water Use Reduction for Montreat

**Triggers**

- Twenty percent (20%) increase in normal seasonal pumping times (measured annually) to maintain storage and meet demand.
- Pumping times required to maintain storage and meet daily demand exceed ten (10) hours per day in winter and sixteen (16) hours per day in summer.
- Average daily use greater than 250,000 gallons per day for seven (7) consecutive days.
- Static Water Level (*Additional data is needed before an appropriate trigger is established.*)
- Pumping Water Level (*Additional data is needed before an appropriate trigger is established.*)
- Rain Levels (*Additional data is needed before an appropriate trigger is established.*)



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- When voluntary water use reductions have been requested by the Town of Black Mountain.

**Response**

- The Mayor shall declare a **Water Shortage Advisory**.
- Begin public notification as previously outlined and distribute water conservation tips.
- Request Voluntary Conservation for all users of the Montreat water system as outlined in distributed information.
- Request Class III non-essential uses to be reevaluated.
- Request individual users reduce water consumption by ten percent (10%).
- Large water users (greater than annual average of 50,000 gallons) are required to prepare a fifteen percent (15%) Water Use Reduction Plan to be submitted within thirty (30) days of a water shortage advisory declaration.

Phase II: Mandatory Water Use Reduction Measures for Montreat

**Triggers**

- Forty percent (40%) increase in normal seasonal pumping times (measured annually) to maintain storage and meet demand.
- Pumping times required to maintain storage and meet daily demand exceed twelve (12) hours per day in the winter and eighteen (18) hours per day in the summer.
- Average daily use greater than 275,000 gallons per day for seven (7) consecutive days.
- Static Water Level *(Additional data is needed before an appropriate trigger is established.)*
- Pumping Water Level *(Additional data is needed before an appropriate trigger is established.)*
- Rain Levels *(Additional data is needed before an appropriate trigger is established.)*
- When mandatory water use reduction measures have been requested by the Town of Black Mountain.

**Response**

- The Mayor shall declare a **Water Shortage Alert**.
- All voluntary measures become mandatory measures.
- Enforce a system-wide twenty-five percent (25%) water use reduction goal.
- Notify water use customers by any or all methods as previously outlined.

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- Non-commercial car washing and residential outdoor watering is limited to two days per week between 6 p.m. and 8 a.m.
- Ban all non-commercial pressure washing and washdown of impervious surfaces.
- Ban the filling of newly constructed or recently drained pools.
- Public recreational areas are limited to watering on Monday between the hours of 6 p.m. and 8 a.m.
- Institutional automatic toilet flushing systems will operate only during business hours.
- All non-public hydrant use by permit only.
- Ban ornamental uses (i.e. fountains, reflecting pools, artificial waterfalls).
- May authorize additional water use restrictions or bans to be enforced ten days after public notification.

Phase III: Emergency Water Use Reduction Measures for Montreat

**Triggers**

- Sixty percent (60%) increase in normal seasonal pumping times (measured annually) to maintain storage and meet demand.
- Pumping times required to maintain storage and meet daily demand exceed fourteen (14) hours per day in winter and twenty (20) hours per day in summer.
- Average daily use greater than 300,000 gallons per day for seven (7) consecutive days.
- Static Water Level *(Additional data is needed before an appropriate trigger is established.)*
- Pumping Water Level *(Additional data is needed before an appropriate trigger is established.)*
- Rain Levels *(Additional data is needed before an appropriate trigger is established.)*
- When emergency water use reduction measures have been requested by the Town of Black Mountain.

**Response**

- The Mayor shall declare a **Water Shortage Emergency**.
- Enforce a system wide fifty percent (50%) water use reduction goal.
- In addition to the above measures the following measures will also be imposed:
- Notify water use customers by any or all methods as previously outlined.
- Ban Class III non-essential uses.

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- Request additional conservation from Class 1 (essential) users as may be possible.
- Enact advanced restriction pricing with fines for overuse.
- Limit garden irrigation to two days per week between 6 p.m. and 8 a.m.
- Ban all landscape irrigation (including greens, public areas, school grounds, residential lawns).
- Ban all recreational water use including but not limited to wading pools and outdoor water toys.
- May authorize additional water use restrictions or bans to be enforced ten days after public notification.

**Phase IV: Rationing Measures for Montreat**

Whenever the Mayor has declared a Water Shortage Emergency and finds a need to provide for the equitable distribution of critically-limited treated water or water supplies to ensure that sufficient treated water is available to preserve public health and safety of the citizens, the Mayor shall enforce a water rationing policy. Such rationing policy may be developed at the time of the declaration of the Water Shortage Emergency and should be reflective of the following criteria:

- a) It is imperative that water customers achieve an immediate further reduction in water use in order to extend existing water supplies and, at the same time, assure that sufficient water is available to preserve the public health and sanitation and to provide fire protection service.
- b) The policy must provide for equitable reductions in water usage and for equal sacrifice on the part of each water customer. The success of this policy depends on the cooperation of all water customers in the emergency area.
- c) The policy must ensure that fire protection is maintained. Where possible, tank trucks shall use non-potable water.
- d) The policy shall make it unlawful to fail to act in accordance with the restrictions on treated water use or to attempt to evade or avoid such water rationing restrictions.

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- e) The policy may include additional measures of mandatory conservation controls such as a percentage reduction in consumption, termination of service to specific areas in the water system on a rotating basis, prohibition of all institutional uses of potable water, etc., or whatever is necessary to protect the health and safety of the customers of the water system.

In addition to other measures authorized by this ordinance, the minimum water rationing policy will provide as follows:

1. Water Use Rationing for Residential Users – The number of permanent residents in each dwelling unit (household) will determine the amount of water that each household will be allowed. Each dwelling unit (household) shall be allotted sixty five (65) gallons per day for each resident of the household. If it is found that the residential water allotment provided under this section would create an extraordinary hardship for individual customers, as in the case of special health-related requirements, a revised allotment for the particular customer may be established by the Town Administrator and Public Works Director.
2. Water Use Rationing for Non-Residential Water Users – Non-residential customers include commercial, industrial, institutional, public and all other such users. Non-residential water customers shall further reduce their water usage to the lower of (i) sixty-five (65) gallons per person per day or (ii) to fifty percent (50%) of use levels during the last metered recording. It is the primary responsibility of each non-residential water customer to meet the mandate water use reduction goal in whatever manner possible, including limitation of operating hours or days if necessary. The Town of Montreat will work with each non-residential customer to establish a water allotment for each service. If the mandated further reduction in water usage cannot be obtained without imposing extraordinary hardship which threatens health and safety, the non-residential customer may apply to the Town of Montreat for a variance. For these purposes, “extraordinary hardship” means a permanent damage to property or an economic loss which is substantially more severe than the sacrifices borne by other water users subject to this water rationing policy. If the further reduction would cause an extraordinary hardship or threaten health or safety, a variance may be granted by the Board of Commissioners, and a revised water use reduction requirement for the particular customer may be established.

The Town of Montreat may implement more restrictive water rationing policies if the mandated water reduction has failed to sufficiently extend limited water supplies.

Water Use Rationing Enforcement – The Town of Montreat Public Works Department with the assistance of the Montreat Police Department will have primary responsibility for monitoring compliance with the water rationing policy. Any residential or non-residential water customer

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who exceeds the allotments established pursuant to this water rationing will be subject to an excess-use administrative penalty of \$100.00 for each violation. Each day a water customer exceeds its allotment shall be a separate violation. In addition to the excess-use administrative penalty, non-compliance with the water rationing provisions of this ordinance will result in the maximum penalties provided for by this ordinance or the North Carolina General Statutes. Meter reading schedules are authorized to be altered to assure adequate monitoring of compliance with this ordinance. Any customer or other person aggrieved by a decision or action imposing an excess-use civil penalty or other remedy for non-compliance with the requirements of this ordinance may file a letter of appeal to the Board of Commissioners within ten (10) days of action to rebut the finding of a violation, or provide evidence of circumstances beyond the customer's control that resulted in the violation. A record of evidence regarding disputed violation shall be kept and a written notice of the Board's final decision and action in such cases shall be provided to the customer or aggrieved party within thirty (30) days of the Town receiving the letter of appeal.

Implementation of Temporary Service Interruptions – In order to effectuate compliance with this ordinance, the Mayor, or an agent designated by the Mayor is hereby authorized to plan and implement temporary service interruption to all or part of its water supply system, as may be deemed appropriate, when any/or all of the following conditions are determined to exist: 1) the mandated reduction in system-wide water usage has not been achieved; and/or 2) the mandated reduction in system-wide water usage has been achieved, but has failed to have a significant impact in extending limited water supplies; and/or 3) temporary service interruptions are necessary in order to further extend limited and/or dwindling water supplies. In the event it is determined that temporary service interruptions are necessary, the Town of Montreat shall notify its customers through the public media listed in Section One of this ordinance at least one day prior to the temporary service interruptions that a planned, temporary service interruption is to be imposed. Such notice shall: 1) state the day or days when the planned, temporary service interruption will occur; 2) state the time(s) when such planned, temporary service interruptions will commence and the time(s) such interruption will cease; 3) state whether the planned, temporary service interruptions are to be imposed on the entire system or part thereof, and, if only part(s) of the system will experience planned, temporary service interruption, state the part(s) of the system where the planned, temporary service interruption will occur; and 4) advise all customers within the areas affected by planned, temporary service interruptions how to treat any water received from the system, for human consumption, during the period(s) of such interruptions and for such additional time as may be necessary until full pressure is restored to the system.

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**Summary Responses to Water Use Classes at Different Phases**

	Voluntary Phase	Mandatory Phase	Emergency Phase
<b>Class 1: Essential</b>	Voluntary Conservation	Voluntary Conservation	Additional Conservation
<b>Class 2: Socially or Economically Important</b>	Voluntary Conservation	Voluntary Conservation Mandatory Restrictions	Mandatory Restrictions
<b>Class 3: Non-Essential</b>	Voluntary Conservation	Mandatory Restrictions	Mandatory Restrictions

Section VIII. Civil Emergency Response Triggers and Emergency Rationing Plan. The Town of Montreat maintains a mutual assistance agreement with other municipalities through the North Carolina League of Municipalities to share equipment, personnel and supplies in times of an emergency.

As part of the General Emergency Response Plan, the Water Department’s primary objectives in an emergency is to 1) maintain water service for domestic and firefighting purposes; 2) protect the water supply from possible contamination; 3) control the loss of water, and; 4) keep the public informed. This Section of the Ordinance along with the General Emergency Response Plan describes general actions to be taken to 1) assess situation status and extent of damage to the water system, 2) prevent contamination and loss of water, and 3) restore water service in response to the following types of civil emergencies: earthquake, flood, fire, contamination of water supply, civil disorder, power outage, mechanical failure, damage to distribution water tanks or booster pumping station, and telecommunications failure.

The civil emergency water rationing plan is intended to preserve treated water supplies in the event a catastrophe results in impairment of the water system. The civil emergency rationing plan has two states, which are defined as follows:

- a. **Serious Shortage:** This condition exists when the system is unable to meet normal demand, but can supply enough water for basic public health and safety needs. In this situation, not taking swift action to ration water could jeopardize available water in storage, or could leave the Town vulnerable in the event of further outages.
- b. **Critical Shortage:** This condition exists when production facilities are rendered incapable of meeting fifty percent (50%) or less of normal daily production levels and the current rate of consumption poses an immediate threat of draining the storage tanks.

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The restrictions that would be instituted in a serious or critical shortage are summarized below:

<b>Serious Shortage</b>	
<b>Prohibited Uses:</b>	<b>Permitted Uses:</b>
1. Watering lawns, gardens or landscaping	1. Normal domestic uses: drinking, cooking (paper plates and plastic utensils requested)
2. Washing cars, boats, building exteriors	2. Toilet flushing, only when necessary
3. Washing sidewalks, driveways, or any exterior surfaces	3. Limit showers to three minutes
4. No outdoor use for any reason	4. Bathing only if absolutely necessary (no more than half full)
5. Car washes closed	5. Minimize clothes and dish washing
6. Filling of swimming pools, hot tubs, decorative pools, or fountains (must be turned off)	

<b>Critical Shortage</b>	
<b>Prohibited Uses:</b>	<b>Permitted Uses:</b>
1. Outdoor water use for any reason	1. Water limited to health and safety only: drinking and cooking (paper plates and plastic utensils required)
2. Clothes washing and commercial laundering, except for health reasons	2. Toilet flushing for solid waste only
3. Janitorial cleaning	3. Shower/bathing should be limited to every other day
4. Businesses and institutions that use water in their operations may be forced to close or restrict operations (i.e. restaurants, coffee shops, laundromats, public and private schools, gyms)	4. Use water only when absolutely necessary
5. No water for construction	
6. No water for crop irrigation	

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Section IX. Montreat Enforcement Penalties.

<b>Offense</b>	<b>Phase I: Voluntary</b>	<b>Phase II: Mandatory</b>	<b>Phase III: Emergency</b>
<b>First</b>	Notice of Violation	Notice of Violation and \$50.00 Fine	\$100.00 fine
<b>Second</b>	Notice of Violation	\$100.00 Fine	\$350.00 Fine
<b>Third</b>	Notice of Violation	\$250.00 Fine	Water Service Disconnection and Associated Reconnect Fees
<b>More than Three Offenses</b>	Notice of Violation	Water Service Disconnection and Associated Reconnect Fees	Water Service Disconnection and Associated Reconnect Fees

The Town of Montreat Police Department, with assistance from the Public Works Department, will have responsibility for monitoring compliance and enforcing the requirements of this plan. Water service disconnection and reconnect fees shall be set by the Board of Commissioners annually. In the event of continued gross non-compliance of this ordinance, the meter shall be removed, service shall be discontinued and all tap fees and deposits forfeited. Reconnection shall only be made by payment of current due amounts and payment of new tap fees and deposits.

Section X. Montreat Residential and Non-Residential Conservation Rates. Conservation pricing is an important tool for water conservation. Conservation pricing is a rate structure that encourages consumers to reduce water use by charging more for increased water use. Increased water rates have proven to be a strong incentive for water users to reduce excessive outdoor water use. Conservation pricing is a critical conservation measure that will help to ensure enough water is available for all our citizens.

<b>Water System Operating Status</b>	<b>Conservation Rates</b>
Normal Conditions or Phase I Advisory	Normal Rate
Declaration of Phase II Alert	2 x Normal Rate
Declaration of Phase III Emergency	4 x Normal Rate

Section XI. Public Comment. Customers will have multiple opportunities to comment on the provisions of the Water Shortage Response Plan. First, a draft plan will be published on the Town of Montreat website. A public hearing will be scheduled with notice printed on all customer water bills to collect comments on the draft. All subsequent revisions to the draft plan will be published at least 30 days prior to an adoption vote by the Montreat Board of Commissioners.



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Section XII. Variance Protocols. Applications for water use variance requests are available from the Town of Montreat website and Town Services Building. All applications must be submitted to the Public Works Department at the Town Services Building for review. A decision to approve or deny individual variance requests will be determined within three business days of submittal after careful consideration of the following criteria: impact on water demand, expected duration, alternative source options, social and economic importance, purpose (i.e. necessary use of drinking water) and the prevention of structural damage.

Section XIII. Effectiveness. The effectiveness of the Water Shortage Response Plan will be determined by comparing the stated water conservation goals with observed water use reduction data. Other factors to be considered include frequency of plan activation, any problem periods without activation, total number of violation citations, desired reductions attained and evaluation of demand reductions compared to the previous year's seasonal data. In the event of a declaration of water shortage, water use reduction data and a water supply condition report will be compiled by the Public Works Director and submitted weekly to the Mayor and Town Administrator.

Section XIV. Revisions. The Water Shortage Response Plan will be reviewed and revised as needed to adapt to new circumstances affecting water supply and demand, following implementation of emergency restrictions, and at a minimum of every five years, as required by the provisions of G.S. 143-355 (l). Further, a water shortage response planning work group will review procedures following each emergency or rationing stage to recommend any necessary plan improvements to the Board of Commissioners. The Town of Montreat's Public Works Director is responsible for initiating all subsequent revisions.

Section XV. Taking Water from Streams. Any person or entity who wishes to draw water from any river, stream, lake or similar body of water shall only be permitted to do this during the months of June through September, for a maximum duration of four hours per day, three days per week and only after receiving authorization from the Town Administrator.

Section XVI. Return to Normal Operations in Montreat. Phase conservation measures and restriction will expire incrementally when the Mayor, after consultation with the Town Administrator and Public Works Director, finds that the water supply has returned to normal.

# MONTREAT CODE OF GENERAL ORDINANCES

## CHAPTER F - TRAFFIC

### ARTICLE I: REQUIRED OBEDIENCE TO TRAFFIC REGULATIONS AND POLICE OFFICERS

Section 1. Required Obedience to Traffic Ordinance. It is a misdemeanor for any Person to do any act forbidden, or fail to perform any act required, in this Chapter. This Chapter shall be known as the Traffic Ordinance.

Section 2. Obedience to Police. No Person shall willfully fail or refuse to comply with any lawful order or direction by a Police Officer.

Section 3. Authority of Police in Special Cases. In the event of a fire or other emergency, or when necessary to expedite Traffic or safeguard Pedestrians, Police Officers may direct Traffic as conditions may require, notwithstanding the provisions of this Chapter.

Section 4. Public Employees to Obey Traffic Regulations. The provisions of this Ordinance shall apply to the Driver of any Vehicle owned by, or used in the service of, the United States Government, this State, County or Town and it shall be unlawful for any said Driver to violate any of the provisions of this Ordinance, except as otherwise permitted in this Ordinance, or by State Statute.

Section 5. Exemptions to Authorized Emergency Vehicles. The provisions of this Ordinance regulating the operation, Parking and Standing of Vehicles shall apply to authorized emergency vehicles, except as follows:

- 1) A Driver when operating such Vehicle in any emergency, except when otherwise directed by a Police Officer, may:
  - a) Park or stand, notwithstanding the provisions of this Ordinance;
  - b) Proceed past a red or stop signal, or stop sign, but only after slowing down as may be necessary for safe operation;
  - c) Exceed the posted speed limits so long as he/she does not endanger life or property;
  - d) Disregard regulations governing direction of movement or turning in specified directions, so long as he/she does not endanger life or property;
- 2) The foregoing exemptions shall not, however, protect the Driver of any such Vehicle from the consequences of his/her reckless disregard of the safety of others.

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**Regulations and Police Officers**

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Section 6. Persons Riding Bicycles, Motorcycles or Animals Obey Traffic Regulations. Every Person propelling any push cart or riding a bicycle or an animal upon a Roadway and every Person driving any animal-drawn Vehicle, shall be subject to the provisions of this Ordinance applicable to the Driver of any Vehicle, except those provisions of this Chapter which, by their very nature, can have no application.

## MONTREAT CODE OF GENERAL ORDINANCES

### CHAPTER F – TRAFFIC

#### ARTICLE II: OBEDIENCE TO OFFICIAL TRAFFIC CONTROL DEVICES

Section 1. Obedience to Official Traffic Control Devices. The Driver of any Vehicle shall obey the directions of any Official Traffic Control Device applicable thereto and placed in accordance with the Traffic Ordinance, unless otherwise directed by a Police Officer, subject to the exemptions granted the Driver of an authorized emergency vehicle, in Article I, Section 5, of this Chapter.

No provision of this Chapter for which signs are required, shall be enforced against an alleged violator if, at the time and place of the alleged violation, an official sign is not in proper position and sufficiently legible to an ordinarily observant Person. Whenever a particular Section does not state that signs are required, such Section shall be effective without signs being placed to give notice thereof.

Section 2. Obedience to No Turn Signs and Turning Markers. Whenever authorized signs are placed, erected, or installed to indicate that no right or left or "U" turn is permitted, no Driver of a Vehicle shall disobey the directions of any such sign, and when authorized markers, buttons, or other indications are placed within an Intersection indicating the course to be traveled by Vehicles traversing the Intersection, no Driver of a Vehicle shall disobey the directions of such indications.

Section 3. Obedience to No Parking Zone and Safety Zone Markers. Whenever authorized signs or markings are placed, erected or installed indicating no-parking zones or Safety Zones, no Driver of a Vehicle shall disobey the regulations in connection therewith.

# MONTREAT CODE OF GENERAL ORDINANCES

## CHAPTER F -- TRAFFIC

### ARTICLE III: STOPPING, STANDING, AND PARKING

*(Revised 2/12/2004)*

*(Revised 8/14/2008)*

Section 1. Vehicles Not To Stop In Streets, Exceptions. No Vehicle shall stop in any Street except for the purpose of parking as prescribed in this Chapter, unless such stop is made necessary by the approach of fire apparatus, by the approach of a funeral or other procession which is given the right-of-way by the stopping of public conveyance, by the giving of traffic signals, by the passing of some other Vehicle or Pedestrian, or by some emergency; and in any case covered by these exceptions said Vehicles shall stop so as not to obstruct a Public Walkway, Pedestrian aisle, Safety Zone, Crossing or Street Intersection if such can be avoided.

Section 2. Vehicles Not To Obstruct Passing Of Emergency Apparatus And Other Vehicles. No Vehicles shall so stand on any Street as to interrupt, or interfere with, the passage of public conveyances and emergency apparatus. For the purpose of this Section, interrupt or interfere is defined as parking or placing a Vehicle or other obstruction in such a manner that a twelve foot wide section of road surface is not maintained for emergency traffic. Vehicles violating this Section are subject to towing at the owner's expense.

Section 3. Parking Prohibited At All Times In Designated Areas. No Person shall Park a Vehicle upon any portion of a Street where signs are placed, erected, or installed, giving notice that the area is a tow-away zone or no parking zone, or where the curbing or edge of pavement has been painted yellow or white and/or marked NO PARKING by the Town in lieu of placing signs.

Section 4. Parking Parallel To Edge of Roadway, Unless Otherwise Directed By This Chapter Or By Parking Lines. Where not prohibited by signs or markings, Vehicle shall Park parallel to the edge of Roadway leaving no less than twelve feet of Roadway unobstructed for normal passage of other Vehicles.

Section 5. Parking Within Lines Where Provided. On any Street or shoulder of any Street, which is marked off with lines indicating the parking spaces for Vehicles, all Vehicles shall be parked between said lines. In instances where other means are used to denote parking spaces, all Vehicles shall be parked within those spaces as well.

**Montreat General Ordinances**  
**Chapter F - Traffic**  
**Article III: Stopping, Standing and Parking**

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Section 6. Unlawful Parking. No Person shall Stand or Park a Vehicle upon any Street for the principal purpose of:

- 1) Displaying a Vehicle for sale;
- 2) Washing, greasing, or repairing such Vehicle, except repairs necessitated by emergency;
- 3) Storage of a Vehicle by a garage, dealer or other Person when such Storage is not incident to the bona-fide use and operation of such Vehicle; or
- 4) Storage of any detached trailer, or van, when the towing unit has been disconnected, or for the purpose of transferring merchandise or freight from one Vehicle to another. In this case, storage shall mean parking for three consecutive days. The Police Chief has the authority to grant an exception to the number of days allowed.

Section 7. Standing Or Parking Vehicles For Primary Purpose Of Advertising Prohibited. No Person shall Stand or Park on any Street any Vehicle for the primary purpose of advertising.

Section 8. Stopping, Standing, Or Parking Prohibited In Specified Places. No Person shall stop, Stand, or Park a Vehicle except when necessary to avoid conflict with other Traffic, or in compliance with the directions of a Police Officer or traffic control device in any of the following places:

- 1) On the Sidewalk or Public Walkway;
- 2) On a Crosswalk;
- 3) Within thirty feet of any flashing beacon, stop sign, or traffic control signal located at the side of a Street or Roadway;
- 4) Alongside or opposite any Street excavation or obstruction, when such Stopping, Standing, or Parking would obstruct Traffic;
- 5) Upon any bridge or other elevated structure or within any underpass structure;
- 6) On the Roadway side of any Vehicle stopped, Standing, or parked at the edge or curb of a Street.

Section 9. Moving Of Vehicles Of Other Operators Into Restricted Areas Prohibited. No Person shall move a Vehicle not owned by such Person into any prohibited area or a sufficient distance from curb to make such parking unlawful under this Chapter.

Section 10. Tow Away Zones. No Person shall Park a Vehicle at any time upon any portion of a Street where signs are placed, erected, or installed, giving notice that an area is a tow away

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zone. The Police Department is hereby authorized to ticket, immobilize, or tow any Vehicle parked in violation of this Section and to remove any other form of obstruction from the public Streets. The procedure for determining whether a Vehicle is to be ticketed, immobilized or towed can be found in the Policy and Procedure Manual of the Police Department. The Police Department shall use reasonable diligence to notify the owner of the removal and storage of a Vehicle.

Section 11. Impoundment Of Vehicles. Whenever a Police Officer finds a Motor Vehicle or other Vehicle that falls into one or more of the following categories, the Officer may have the Vehicle removed by a properly licensed wrecker to the storage lot or garage operated by such wrecker:

- 1) Vehicle Abandoned, Junked or wrecked on the Streets of the Town or on Town property;
- 2) Vehicle involved in a hit-and-run accident;
- 3) Vehicle subject of a theft;
- 4) Vehicle used in the commission of a felony;
- 5) Vehicle operated by a Driver who does not have a driver's license or who was under the influence of any impairing substance;
- 6) Vehicle parked in violation of a state statute or a Town Ordinance, except an ordinance against overtime parking.

When any Vehicle is so removed and impounded, the Police Officer towing and impounding the Vehicle shall notify the owner of the Vehicle as stated in the Policy and Procedure Manual for towing of Vehicles. If the owner of the Vehicle or a responsible representative cannot be notified or determined, the Police Department will advertise the impounding of the Vehicle. The owner may redeem and recover the Vehicle by exhibiting proof of ownership to the Police Department and by paying all expenses incident to the impounding of the Vehicle. Nothing in this Section shall be construed to abridge the power and authority of the Police Department to remove any obstruction from the Streets or other Public Places of the Town or to excuse or exempt any Person from any fine or penalty provided for the violation of any Traffic law or ordinance.

Section 12. Immobilization Of Vehicles.

- 1) Installation Of Boot. Whenever a Police Officer finds a Vehicle that falls into one or more of the following categories, the Officer may have the Vehicle immobilized using an immobilization device called an auto-boot:
  - a) When a Vehicle is parked on any Street that is designated a No Parking-Tow Away Zone pursuant to this Chapter and the Vehicle is not blocking

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the safe flow of Traffic. If the Vehicle is blocking the safe flow of Traffic, the Vehicle is to be towed, not immobilized;

- b) When a Vehicle is parked in violation of any parking ordinance and has one or more delinquent previous parking citations;
- c) When a Vehicle is parked in violation of a parking ordinance and the owner is considered a habitual violator of the parking ordinances. For the purpose of this Section a habitual violator is one who has been charged two previous times for a similar offense within a three year period.

For the purpose of determining whether an illegally parked Vehicle has had issued against it an outstanding unpaid and overdue parking ticket, it shall be sufficient if the license plate number of the illegally parked Vehicle and the license plate number of the Vehicle having received the tickets are the same.

- 2) Application And Notification Of Immobilization. When an immobilization device is attached to a Vehicle:
  - a) The manufacturer's directions for installation of the device shall be followed;
  - b) A notice shall be affixed to the windshield or other part of the Vehicle so as to be readily visible;
  - c) The notice shall warn that the Vehicle has been immobilized and that any attempt to move the Vehicle may result in damage thereto. The Town shall not be responsible for any damage to an immobilized illegally parked Vehicle resulting from unauthorized attempts to free or move that Vehicle;
  - d) An immobilization fee as set forth in the Town of Montreat Fee Schedule shall be charged for the removal of the immobilization device. The notice shall state that all outstanding parking notices of infraction and the charge for immobilization must be paid in full prior to the removal of the immobilization device; and
  - e) The address and telephone number to be contacted to pay the charges to have the immobilization device removed shall also be listed on the notice.
- 3) Towing Of Immobilized Vehicle. If the penalties due and the immobilization are not paid, or satisfactory arrangements in lieu thereof are not made, within 48 hours of the attachment of the immobilization device, such Vehicle may be towed and impounded by, or at the direction of, the Town Administrator or Police Department, to any private impoundment lot. If a private contractor tows and stores such Vehicle, there shall be imposed against the Vehicle the private



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**Article III: Stopping, Standing and Parking**

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contractor's actual charges for towing and storing such Vehicle. Once a Vehicle has been impounded the Police Department shall mail, or cause to have mailed, by certified mail, return receipt requested, a notice of impoundment to the registered owner at the address or addresses on record at the North Carolina Department of Motor Vehicles. Copies of this certified mail will be provided also to the Mayor and Town Administrator.

- 4) Release From Impoundment. Upon payment of all penalties and fines for unpaid and overdue parking tickets issued for a Vehicle and all other applicable charges authorized by this Ordinance, including immobilization, towing, and storage fees, the Vehicle shall be released from impoundment to the owner or any other Person entitled to claim possession of the Vehicle.
  
- 5) Failure To Claim Impounded Vehicle. If a Vehicle has been impounded and stored by the Town and remains in the impound facility for a period of time that exceeds 30 days and the registered owner cannot be contacted, then the wrecker service may sell the Vehicle to recover towing and storage expenses in a manner that meets the requirements of N.C. G.S. § 20-114. In the event that this situation occurs the Town will not attempt to collect penalties and fines from the wrecker service or new owner.
  
- 6) Hearing. The registered owner, or Person entitled to possession, of any Vehicle which has been immobilized or impounded pursuant to this Section may submit a request for a hearing to the Mayor of the Town by certified mail within seven calendar days from the date the notice of immobilization is affixed, as set forth in Section 12.2 above, or the date of receipt of the notice of towing, as provided for in Section 12.3 above, whichever is applicable. If a request for a hearing is not made within the allocated time, the right to a hearing shall have been waived.

If a hearing is requested, the Mayor or his/her designee, shall send a statement to such Person to inform them of the time and place for the hearing, of the basis for the Vehicle's immobilization and/or impoundment, of the opportunity to present evidence as to why such Vehicle should not have been immobilized, towed, and/or impounded, and of the right to have counsel present at the hearing. The hearing shall be held within five business days of the Town's receipt of a request for a hearing, unless a longer time period is requested by the Person asking for the hearing.

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**Article III: Stopping, Standing and Parking**

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The Mayor, or his/her designee, shall serve as the hearing officer, shall conduct a hearing and shall prepare a written report within three business days of the hearing stating his/her conclusion as to whether the Vehicle was properly immobilized, towed, and/or impounded, pursuant to this Section, and the reasons and evidence underlying his/her conclusion. If it is concluded that the Vehicle should not have been immobilized, towed, and/or impounded, any improper charge(s) shall be canceled, or if paid, rebated.

- 7) Penalty For Removal, Damage, Or Destruction To Immobilization Device. It shall be unlawful for any Person or Entity to remove from a wheel an immobilization device placed thereon pursuant to this Section or to remove from impoundment any Vehicle placed therein pursuant to this Section without all penalties and fines applicable having first been paid. It shall be unlawful for any Person or Entity to damage or destroy an immobilization device placed on a Vehicle pursuant to this Section.

Section 13. Enforcement Of Parking Violations. Any Police Officer employed by the Town shall have the authority to enforce the various provisions of this Chapter F of Article III. The enforcement of parking ordinances by citation shall be made by attaching to any Vehicle violating the provisions of the parking ordinance a notice to the owner or operator thereof that such a Vehicle has been parked in violation of the provisions of the ordinances of the Town and that such violation subjects the offender to a criminal penalty in the amount stated in the notice and in Section 14 of this Article. More serious or repeat violations of parking ordinances will be enforced by immobilization, impounding, and/or towing in addition to the written parking citation.

Section 14. Parking Penalties. The owner or operator of any Vehicle that has been found to be in violation of a Section of this Article will be subject to the following criminal penalties and/or actions:

- 1) Parking Citation. The issuance of a parking citation to a Person will subject the violator to a fine as provided for in the Town of Montreat Fee Schedule. If the fine is not paid within 15 days from the issuance date it will be overdue and an additional penalty will be imposed as provided for in the Town of Montreat Fee Schedule. If the citation is not paid within 30 days, it will be considered delinquent and the Police Department will notify the violator with a final notice that he/she has failed to comply with the citation and if the citation is not paid within 20 days of the issuance of the final notification the Town will obtain the necessary papers to take the matter to District Court.

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- 2) Immobilization. The immobilization of a Vehicle will subject the owner or operator to payment of all outstanding parking citations and for the applicable immobilization fee of \$20.00. If the Vehicle that is immobilized is not claimed within 48 hours, then the Vehicle may be removed from the Street and impounded. If this occurs the owner or operator shall also be responsible for towing and impound charges in addition to the fees listed for citations and immobilization fees.

Section 15. Parking for Special Events. Any ticketed event must apply for a special event parking permit. The Chief of Police or his/her designee is hereby assigned to issue permits for any ticketed event that requires traffic and parking control.

## MONTREAT CODE OF GENERAL ORDINANCES

### CHAPTER F – TRAFFIC

#### ARTICLE IV: OPERATION OF VEHICLES

Section 1. Stop Before Entering Certain Street Intersections. Where stop signs are placed, erected, or installed at Intersections every Driver of a Vehicle shall stop in obedience to such signs before entering the Intersection, and shall not proceed into, or across the Street until he/she has first determined that no conflict will be involved.

Section 2. Stop When Traffic Obstructed. No Driver shall enter an Intersection or a marked Crosswalk, unless there is sufficient space on the other side of the Intersection or Crosswalk, to accommodate the Vehicle he/she is operating without obstructing the passage of other Vehicles, or pedestrians, notwithstanding any traffic control signal indication to proceed.

Section 3. One-Way Streets. Where signs are placed, erected, or installed designating one-way travel, vehicular traffic shall move only in the direction indicated on the sign.

Section 4. Emerging From Alley Or Private Driveway. The Driver of a Vehicle emerging from an alley, driveway, or building shall stop such Vehicle immediately prior to driving onto a Public Walkway, or into the Public Walkway areas extending across any alleyway, and upon entering the Roadway he/she shall yield the right-of-way to all Vehicles approaching on said Roadway.

Section 5. Vehicles Shall Not Be Driven On A Public Walkway. The Driver of a Vehicle shall not drive on any Public Walkway.

Section 6. Clinging To Moving Vehicles. Any Person riding upon any bicycle, motorcycle, coaster, sled, roller-skates, or any toy vehicle, shall not attach the same, or him/herself, to any public conveyance or moving Vehicle upon any Roadway.

Section 7. Riding On Handle-Bars Prohibited. The operator of motorcycle or bicycle, when upon a Street, shall not carry any Person upon the handle bar, frame, or tank of any such Vehicle, nor shall any Person so ride upon any such Vehicle.

Section 8. Riding On Public Walkways Without Hands On Handlebars Prohibited. No Person shall ride a bicycle or motorcycle on any Street or Public Walkway without having his/her hands upon the handlebars.

Section 9. Use Of Coaster, Roller-Skates, Skateboards And Similar Devices Restricted. No Person upon roller-skates, skateboard, or riding in, or by means of, any coaster, toy vehicle, or similar device shall be on any Roadway, unless it be while crossing a Street at a Crosswalk or Intersection; except upon Streets designated by the Board as “play streets.”

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**Article IV: Operation of Vehicles**

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Section 10. Speed-Limit. A Vehicle may be operated on any Street of the Town, at a rate of speed not exceeding twenty miles per hour, except where clearly posted according to North Carolina state law. However, at no time shall the speed be greater than is reasonable and prudent under the existing conditions.

## MONTREAT CODE OF GENERAL ORDINANCES

### CHAPTER G - HEALTH PROTECTION AND DISEASE PREVENTION

#### ARTICLE I: GENERAL REGULATIONS

Section 1. Enforcement of this Chapter Under Supervision of County Health Officer. The enforcement of this Chapter shall be under the supervision of the Buncombe County Health Officer.

Section 2. Unlawful to Hinder Health Officer or Assistants. It shall be unlawful for any Person to hinder, obstruct, or delay the Health Officer or any of his/her assistants in the lawful discharge of their duties.

Section 3. Right to Enter. The Health Officer or any of his/her assistants shall have the right to enter at any reasonable time any premises for the purpose of making the inspections or investigations as required by this Chapter.

Section 4. Property Kept Clean. Owners or Occupants of Premises Required to Keep the Same Clean. Every Person owning or occupying any premises in the corporate limits shall keep the premises free from noxious weeds, trash, and all forms of animal or vegetable Refuse which may be dangerous or prejudicial to the public health or which may constitute a public nuisance. No owner or occupant of any premises shall bury therein any animal or vegetable matter which, upon decaying, may become dangerous or prejudicial to the public health or may constitute a nuisance.

Section 5. Persons Violating Section to be Notified. If any Person shall violate the provisions of the preceding Section it shall be the duty of the Chief of Police or the Town Administrator or his/her associates to give notice to the owner or Person in possession of such premises, that within 15 days from the date of such notice, all weeds, trash and offensive animal or vegetable matter be removed from the premises. Should any owner or occupant fail to comply with notice, the Chief of Police shall proceed to have such matter removed, and the owner or occupant shall be responsible to the Town for the cost of removal.

Section 6. Human Waste. No Person shall urinate or deposit any human waste of any kind in the Town, except in approved sanitary facilities.

Section 7. Stagnant Water. No Person or occupant of any property shall allow stagnant water to accumulate or remain anywhere on his/her property.

Section 8. Sale of Food -- Eating Establishments. All Persons or Entities selling food of any kind or serving prepared meals shall comply with all applicable requirements of the North

**Montreat General Ordinances**  
**Chapter G – Health Protection & Disease Prevention**  
**Article I: General Regulations**

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Carolina State Board of Health.

Section 9. Debris from New Construction. All lumber and construction materials remaining from the erection and completion of any new building or new construction to an existing building, shall be removed by the property owner within ten (10) days from the completion date of such building. For the purposes of this Ordinance, the completion date shall be the date that the final approval or “green tag” is issued by the Building Inspector.

## MONTREAT CODE OF GENERAL ORDINANCES

### CHAPTER G - HEALTH PROTECTION AND DISEASE PREVENTION

#### ARTICLE II: SOLID WASTE DISPOSAL AND REFUSE COLLECTION

*(Revised 2/13/2003); (Revised 10/14/2010); (Revised 5/10/2012)*

Section 1. Requirements. Solid Waste, except recyclable items, must be kept in paper or plastic bags and placed in metal or rigid plastic containers of not over forty (40) gallon capacity with proper lids. All cans are to be marked with house number legible for easy viewing.

An adequate number of garbage cans shall be required for any building to fully hold all solid waste generated. (If additional solid waste is placed outside of cans and cans are full then owner does not have adequate cans.)

Secure garbage cans (as defined in Section 1 of this Article) may be placed at roadside only on the morning of scheduled pick-up and shall be removed from the street by the following morning. Property owners or occupants who leave Solid Waste for collection on any day other than the scheduled pick-up day must place such Solid Waste in a bear-proof container. All bear-proof containers located in Town right of way shall be approved by the Town Administrator and Code Administrator in accordance with the guidelines listed below:

- 1) Containers manufactured by vendors using metal construction are approved as bear-proof when firmly anchored to the ground or other permanent object.
- 2) Containers that are not constructed as described above may be granted conditional approval subject to the following conditions:
  - i. The construction of the container must be of a solid, sturdy material on all sides and hinged openings must have secure latches.
  - ii. Containers must be securely anchored to the ground or other permanent object in a manner that will prevent tipping.
  - iii. If conditional approval is given and the container is broken into by bears, the owner will be notified immediately by the Town. The owner shall have thirty (30) days to either remove or replace the container with an approved metal container.
- 3) The location of the container shall be of sufficient distance from traveled roadway to minimize traffic hazards.
- 4) The container shall be located within the property owner's projected lines. If this is not possible due to terrain or other obstacles, the owner shall obtain and



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provide to the Town a copy of written permission from another property owner to locate the container within that owner’s projected property lines.

- 5) Property owners with containers meeting the above requirements must apply for and receive written permission from the Town Administrator and Code Administrator to locate the container on public rights-of-way. A site plan, survey or some other type of accurate graphic representation indicating the specific location of the proposed container shall be provided along with the completed form: *Application to Locate a Bear-Proof Garbage Container in the Public Right-of-Way*. Since the containers are not considered structures, a Certificate of Zoning Compliance is not required.

Any containers located in Town rights-of-way that are not bear-proof or have not received proper approval shall be removed by the property owner.

No person shall throw, place or deposit any solid waste of any kind in any place or on any public or private property, except in his or her own container(s).

Section 2. Burning or Burying of Solid Waste and Refuse. It shall be unlawful to burn or bury solid waste for the purpose of disposal.

Section 3. Accumulation of Solid Waste and Refuse Prohibited. All solid waste shall be kept in proper containers as required by Section 1, and it shall be unlawful for any person to permit solid waste to accumulate or remain unsecured on any premises beyond the time of scheduled removal. A schedule for collection of both Solid Waste and recyclables is available in the Town Services Office.

Section 4. Solid Waste Collection. The Town provides weekly pick-ups year-round, and twice-weekly pick-ups as scheduled each summer. The Town will pick up garbage scattered around cans that have been upset or where the tops have been torn. However, if the Public Works Director or the investigating Police Officer determines that this resulted from failing to comply with the requirements of this Ordinance, the owner of the property shall be cited, required to purchase a bear proof container, inform the Town Administrator as to the approximate time of the container placement, and be subject to the penalties as found in Chapter L.

Section 5. Yard Waste Collection. The Town provides residential yard waste collection weekly placed next to the streets in accordance with the collection schedule. Brush and tree limbs must be cut into six (6) foot lengths and must not exceed six (6) inches in diameter. Yard waste may be placed in loose piles of up to three (3) cubic yards at one time. Three cubic yards is about the size of one small pickup truck load. Yard waste in excess of three cubic yards will be collected at the curb upon request. A fee for excess yard waste will be charged in accordance

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with the Town of Montreat Fee Schedule. Commercially cut brush or yard waste, lot clearing, and yard waste deposited by private contractors, landscapers or tree companies will not be collected by the Town.

Leaves will be collected weekly from October through December, and twice monthly throughout the remainder of the year. Leaves may be collected at other times during the year by contacting the Town Services Office and paying the required fees as set forth in the Town of Montreat Fee Schedule. Leaves must be bagged in “ecofriendly” biodegradable paper bags. The Town will not collect leaves placed in plastic bags or leaves collected and bagged by private contractors, landscaping contractors or tree companies.

Section 6. White Goods and Bulk Items Waste Collection. The Town provides white goods and bulk item waste collection twice per year free of charge. White Goods and Bulk Items Waste may be collected at other times during the year by contacting the Town Services Office and paying the required fees as set forth in the Town of Montreat Fee Schedule.

Section 7. Recyclable Materials. The Town provides recycling collection weekly in accordance with the collection schedule. Recyclables should be placed in a blue or clear transparent bag. All recyclable materials shall be separated from Solid Waste and placed at the curb alongside the Solid Waste containers.

Section 8. New Construction and Remodeling. The holder of any building permit issued by the Town shall be responsible for maintaining the corresponding construction site free of rubbish, hazards, and unsightly conditions from the beginning of construction until occupancy.

Section 9. Owner Responsible for Actions of Occupants. The owner of each structure in the Town is responsible for compliance with this Sanitation Ordinance whether the structure is occupied or operated by the owner or by a visitor, renter, lessee, or any other Person. The owner shall take all actions necessary to inform occupants of the structure of the requirements of this sanitation ordinance. In any case, the owner is responsible for compliance with this Sanitation Ordinance and shall be subject to the penalties for violations set forth in Chapter L.

Section 10. Effective Date. This Ordinance shall become effective on October 1, 2012.

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**CHAPTER G - HEALTH PROTECTION AND DISEASE PREVENTION**

**ARTICLE III: SMOKING POLLUTION CONTROL**

Section 1. Findings and Purpose. The Board does hereby find that:

- 1) The Environmental Protection Agency has labeled environmental tobacco smoke as a Class A Carcinogen in its January 7, 1993 report. Numerous other studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke is a cause of disease, including lung cancer, in nonsmokers. At special risk are children, pregnant women, elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease; and
- 2) Health hazards induced by breathing secondhand smoke include lung cancer, heart disease, respiratory infection, decreased respiratory function, bronchoconstriction and bronchospasm.

Accordingly, the Board finds and declares that the purposes of this Article are: (1) to protect the public health and welfare by prohibiting Smoking in Public Places where the public must go and places of employment; (2) to guarantee the right of merchants and landlords of private businesses where the public can choose to go or not, to designate their businesses as smoke-free or Smoking; and (3) to guarantee the right of nonsmokers to breathe smoke-free air and to recognize that the need to breathe smoke-free air shall have priority over the desire to smoke.

Section 2. Application of Article to Town-Owned Facilities. All enclosed facilities owned by the Town shall be subject to the provisions of this Article.

Section 3. Prohibition of Smoking in Public Places. Smoking shall be prohibited in all enclosed Public Places within the Town, including but not limited to the following places:

- 1) Elevators;
- 2) Buses, taxicabs, and other means of public transit under the authority of the Town, and ticket, boarding, and waiting areas of public transit depots;
- 3) Restrooms;
- 4) Service Lines;
- 5) Retail stores available to and customarily used by the general public for sustenance and maintenance of daily living, including but not limited to grocery stores and other food stores, clothing stores, discount department stores and furniture stores;
- 6) All areas available to and customarily used by the general public in all businesses

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and non-profit entities patronized by the public including but not limited to attorneys' offices and other offices, banks, laundromats, hotels and motels;

- 7) Restaurants which are limited to one room;
- 8) Public areas of aquariums, galleries, libraries and museums when open to the public;
- 9) Any facility which is primarily used for exhibiting any motion picture, stage drama, lecture, musical recital or other similar performance;
- 10) Sports Arenas and convention halls;
- 11) Every room, chamber, place of meeting or public assembly, including school buildings under the control of any board, council, commission, committee, including joint committees, or agencies of the Town or any political subdivision of the State during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the Town;
- 12) Waiting rooms, hallways, wards and semiprivate rooms of health facilities, including but not limited to, hospitals, clinics, physical therapy facilities, doctors' offices, and dentists' offices;
- 13) Lobbies, hallways, and other common areas in apartment buildings, condominiums, retirement facilities, nursing homes, and other multiple-unit residential facilities;
- 14) Lobbies, hallways, and other common areas in multiple-unit commercial facilities;
- 15) Polling places.

Notwithstanding any other provision of this Section, any owner, operator, manager or other Person who controls any establishment or facility may declare that entire establishment or facility as a nonsmoking establishment.

Section 4. Regulation of Smoking in Places of Employment. It shall be the responsibility of Employers to provide a smoke-free workplace for all Employees, but Employers are not required to incur any expense to make structural or other physical modifications.

Within 60 days of the effective date of this Article, each Employer having an enclosed Place of Employment located within the Town shall adopt, implement, make known and maintain a written smoking policy which shall contain the following requirement:

Smoking shall be prohibited in all enclosed facilities within a Place of Employment without exception. This includes common work areas, auditoriums, classrooms, conference and meeting

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rooms, private offices, elevators, hallways, medical facilities, cafeterias, Employee lounges, stairs, restrooms, Vehicles and all other enclosed facilities.

The smoking policy shall be communicated to all Employees within three (3) weeks of its adoption.

All Employers shall supply a written copy of the smoking policy upon request to any existing or prospective Employee.

Section 5. Regulation of Smoking in Eating Establishments. All eating establishments with a seating capacity of 30 or more patrons shall designate non-smoking areas. The seating capacity of any Bar located within the dining area of an eating establishment shall be included in the calculation of the total capacity of the eating establishment.

Eating establishments with a seating capacity of 30 or more patrons shall have posted a conspicuous sign or signs clearly stating that a nonsmoking area is available.

The nonsmoking area shall be separate and contiguous, containing at all times one-half (1/2) or more of the seating capacity of the dining area.

Eating establishments with a seating capacity of fewer than 30 patrons seated in the same room shall designate the entire facility as nonsmoking and post signage to that effect at the patron entrance.

Notwithstanding any other provision of this Ordinance, any owner, operator, manager or other Person who controls any eating establishment described in this Ordinance may declare the entire eating establishment as a nonsmoking eating establishment.

Section 6. Where Smoking Not Regulated. Notwithstanding any other provision of this Article to the contrary, the following areas shall not be subject to the Smoking restrictions of this Article:

- 1) Bars;
- 2) Private residences, except when used as a child-care or health-care facility;
- 3) Restaurants, hotel and motel conference or meeting rooms and public and private assembly rooms while these places are being used for private functions.

Notwithstanding any other provision of this Section, any owner, operator, manager or other Person who controls any establishment described in this Section may declare that entire establishment as a nonsmoking establishment.

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Section 7. Posting of Signs. "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly, sufficiently and conspicuously posted in every building or other place where Smoking is regulated by this Article, by the owner, operator, manager or other Person having control of such building or other place.

Every one-room Restaurant shall have posted at every entrance a conspicuous sign clearly stating that Smoking is prohibited.

Section 8. Enforcement. Any citizen who desires to register a complaint under this Chapter may initiate enforcement with the property owner, then if necessary the Police Department.

The Fire Department or the Buncombe County Health Department shall require, while an establishment is undergoing otherwise mandated inspections, a "self-certification" from the owner, manager, operator or other Person having control of such establishment that all requirements of this Article have been complied with.

Any owner, manager, operator or Employee of any establishment regulated by this Article may inform Persons violating this article of the appropriate provisions thereof.

Notwithstanding any other provision of this Article, a private citizen may bring legal action to enforce this Article.

Section 9. Violations and Penalties. It shall be unlawful for any Person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this Article to fail to comply with any of its provisions.

It shall be unlawful for any Person to smoke in any area where Smoking is prohibited by the provisions of this Article.

Any Person who violates any provision of this Article shall be guilty of an infraction, punishable by:

- 1) A fine not exceeding one hundred dollars (\$100) for a first violation;
- 2) A fine not exceeding two hundred dollars (\$200) for a second violation of this Article within one (1) year;
- 3) A fine not exceeding five hundred dollars (\$500) for each additional violation of this Article within one (1) year.

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Section 10. Non-retaliation. No Person or Employer shall discharge, refuse to hire or in any manner retaliate against any Employee or applicant for employment because such Employee or applicant exercises any right to a smoke-free environment afforded by this Article.

Section 11. Other Applicable Laws. This Article shall not be interpreted or construed to permit Smoking where it is otherwise restricted by other applicable laws.

Section 12. Severability. If any provision, clause, sentence or paragraph of this Article or the application thereof to any Person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are declared to be severable.

Section 13. Disposal of Smoking Materials. Because of the fire hazards associated therewith, the disposal and discarding of Smoking Materials in public/open areas is prohibited. These areas include, but are not limited to, lawns, grounds, landscaped areas, undeveloped areas, paths, trails, Sidewalks, roads, Streets, and any trash/garbage receptacles which are located in these areas. Owners, operators, and managers of facilities in which Smoking has been authorized are responsible for providing ash trays, "butt cans," and other fire-proof disposal receptacles for the use of smokers.

Section 14. Conflict of Laws. If any portion of this Ordinance or the enforcement thereof is found to be preempted by state or federal law, such preemption shall not operate to invalidate the rest of the Ordinance and the same shall remain in full force and effect. All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed.

Section 15. Exemptions. Independent entities shall be eligible, upon application to the Town Administrator, for an exemption for a maximum of twenty percent (20%) of the total square footage of any dorm, hotel, or Restaurant. The application for the exemption shall specify the buildings to be covered and the percent of the total square footage of each building to be exempt.

Section 16. Effective Date. This Article shall be effective October 14, 1993, and shall be reviewed within one year of its effective date.

## MONTREAT CODE OF GENERAL ORDINANCES

### CHAPTER G - HEALTH PROTECTION AND DISEASE PREVENTION

#### ARTICLE IV: DERELICT VEHICLE ORDINANCE

Section 1. Purpose. Abandoned and Junked Motor Vehicles constitute a hazard to the health and welfare of the people of the Town in that such Vehicles can harbor noxious diseases, furnish shelter and breeding places for vermin, and present physical dangers to the safety and well-being of children and other citizens. It is therefore in the public interest that the present accumulation of Abandoned and Derelict Motor Vehicles be eliminated and that future abandonment of such Vehicles be prevented.

Section 2. Removal of Abandoned Motor Vehicles. The Town may remove to a storage garage or area an Abandoned Motor Vehicle from Town or public property.

The Town may remove an Abandoned Motor Vehicle from private property only with the written approval of the owner, lessee, or occupant of the property.

When an Abandoned Motor Vehicle is removed as provided for in Subsection 2.1, the Town shall promptly give written notice of the removal to the registered owner at his/her address according to the latest registration certificate of title on file with the appropriate state Division of Motor Vehicles. The notice shall inform the owner of the possible sale or other disposition that may be made of the Vehicle under this Ordinance. The owner may regain possession of the Vehicle by paying to the Town all reasonable costs incidental to the removal and storage of the Vehicle. If the Vehicle does not display a current license plate and Vehicle identification numbers have been removed or defaced so as to be illegible, the Town need not give notice to the Vehicle's registered owner.

Section 3. Disposal of Abandoned Motor Vehicles. After holding an Abandoned Motor Vehicle for thirty (30) days after the day the Vehicle is removed, the Town may sell or dispose of it as provided in this Section.

If the Vehicle appears to be worth less than one hundred dollars (\$100), the Town may dispose of it as a Junked Motor Vehicle as provided by Section 4 of this Ordinance. If the Vehicle appears to be worth one hundred (\$100) dollars or more, it shall be sold at public auction. The Town shall give twenty (20) days written notice of the sale to the registered owner at his/her last known address, to each holder of a lien of record of the Vehicle and to the Division of Motor Vehicles. Any Person having an interest in the Vehicle may redeem it at any time before the sale by paying all costs accrued to date. The proceeds of the sale shall be paid to the Town Clerk, who shall pay the appropriate Officers or Persons the cost of removal, storage, investigation, sale and liens, in that order. The remainder of the proceeds of sale, if any, shall be paid over to the registered owner, or held by the Town for sixty (60) days if the registered owner cannot be located with reasonable diligence. If the owner does not claim the remainder of the proceeds within sixty (60)



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days after the day of sale, the funds shall be deposited in the Town’s general fund and owner’s rights to the Vehicle are extinguished.

Section 4. Removal of Junked Motor Vehicles. The Town may remove from Town or public property to a storage garage or area a Junked Motor Vehicle.

The Town may remove to a storage garage or area a Junked Motor Vehicle that is left for longer than two (2) hours on private property without the written consent of the owner, lessee, or occupant of the premises. The Town may remove a Junked Motor Vehicle to a storage garage or area without the consent of the owner, lessee, or occupant of the property when the Vehicle is a health or safety hazard. A Junked or other Motor Vehicle may be declared a health or safety hazard when it is found to be:

- 1) A breeding ground or harbor for mosquitoes or other insects, snakes, rats, or other pest; or
- 2) A point of collection for pools or ponds or water; or
- 3) A point of concentration of gasoline, oil, or other flammable or explosive materials; or
- 4) So located that there is a danger of a Vehicle falling or turning over; or
- 5) A source of danger for children through entrapment in areas of confinement that cannot be opened from the inside or from exposed surfaces of metal, glass or other rigid materials.

Appropriate Town Officers and Employers have a right, upon presentation of proper credentials, to enter on any premises within the Town’s jurisdiction if any Vehicles are health or safety hazard.

When a Junked or other Motor Vehicle is found to be a health or safety hazard, the Town Authority responsible for the removal of such Vehicle shall notify the owner of the property upon which the Vehicle is located at the address as shown by the records of the Buncombe County Tax Office that the Vehicle is a health or safety hazard and will be removed after fifteen (15) days from the posting of the notice and disposed of as provided for in Section 5. Notice shall be made by registered mail and by affixing a notice to the motor Vehicle in such a way that it will be conspicuous, within the fifteen (15) day period the owner, occupant or lessee of the property may appeal the finding that the Vehicle is a health or safety hazard to the Board. The filing of an appeal shall stay removal proceedings until the Board acts on the appeal.

Section 5. Disposal of Junked Motor Vehicles. After holding a Junked Motor Vehicle for fifteen (15) days (or fifteen (15) days after the Town has served notice of its intention to remove and dispose of the Vehicle as provided for in Subsection 4.5, the Town may destroy (or remove and destroy) a Junked Motor Vehicle or sell it at a private sale as junk. Within fifteen (15) days

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after final disposition of a Junked Motor Vehicle, the Town shall notify the Division of Motor Vehicles that the Vehicle has been determined to be a Junked Motor Vehicle and has been disposed of as such. The notice shall contain as full and accurate a description of the Vehicle as can be reasonable determined. The proceeds of the sale of a Junked Motor Vehicle shall be paid to the Town Clerk who shall pay to the appropriate Officers or Persons the cost of removal, storage, investigation, sale, and liens, in that order. The remainder of the proceeds of sale, if any, shall be held by the Town for thirty (30) days after the Vehicle is disposed of, the funds shall be deposited in the Town's general fund and the owner's rights in the Vehicle are extinguished. If a Junked Motor Vehicle does not display a current license plate and the Vehicle identification numbers have been removed or defaced so as to be illegible, the Town may dispose of it under this Section. The Town may destroy the Vehicle or sell it at private sale (without regard to value), after having held the Vehicle for forty-eight (48) hours. The proceeds shall be placed in the Town's general fund.

Section 6. No Liability. No Person nor any town or county may be held to answer in a civil or criminal action to any owner or other Person legally entitled to the possession of an Abandoned, Junked, lost, or stolen motor Vehicle for disposing of the Vehicle as provided in this Ordinance.

Section 7. Exceptions. This Ordinance does not apply to any Vehicle in an enclosed building, to any Vehicle on the premises of a Business enterprise being operated in a lawful place and manner if the Vehicle is necessary to the operation of the enterprise, or to any Vehicle in an appropriate storage place or depository maintained in a lawful place and manner by the Town.

Section 8. Severability. If any provision of this Ordinance or its application to any Person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application. The provisions of this Ordinance are declared to be severable.

# **MONTREAT CODE OF GENERAL ORDINANCES**

## **CHAPTER H - BUSINESS AND TRADES**

### **ARTICLE I: PRIVILEGE LICENSES**

*(Revised 3/08/2007)*

Section 1. Repeal of Privilege License Tax. In accordance with N.C.G.S. § 160A-211, privilege license taxes for the Town of Montreat are hereby repealed in their entirety effective July 1, 2007. This repeal does not affect the rights or liabilities of the Town, a taxpayer, or another person arising under ordinance regulations in effect prior to this date; nor does it affect the right to any refund or credit of a tax accrued under the previous regulations before the effective date of this repeal.

**MONTREAT CODE OF GENERAL ORDINANCES**

**CHAPTER H - BUSINESS AND TRADES**

**ARTICLE II: RENTALS**

*(Revised 10/12/2006); (Revised 2/11/2010); (Repealed 1/10/2013)*

Section 1. Repeal. Effective January 10, 2013, this Article is hereby repealed in its entirety.

## MONTREAT CODE OF GENERAL ORDINANCES

### CHAPTER I - DISORDERLY CONDUCT AND PUBLIC NUISANCES

#### ARTICLE I: DISORDERLY CONDUCT

Section 1. General. No occupant of any building shall permit the building to be kept in an indecent or offensive or disorderly manner or permit loafers or idle Persons to congregate therein or in front of same to the annoyance of Persons passing by or living in the vicinity.

Section 2. Vagrants. Any and all tramps, vagrants, Persons under suspicion, who shall be found with no visible means of support, either male or female, shall not be allowed on the Streets or other Public Places.

Section 3. Profanity and Boisterous Conduct. It shall be unlawful for any Person to use loud and boisterous language so as to become a nuisance or use any form of profanity or indecent language on the Street or in a gathering or audience or assembly, or in any Public Place whatsoever, or to indecently expose themselves within the corporate limits.

Section 4. Public Drunkenness. It shall be unlawful for any intoxicated Person to be on or upon any public Street or other Public Place.

Section 5. Drinking in Public. No Person shall consume, serve, or drink wine, beer, whiskey, or alcoholic beverages of any kind on the public Streets, alleys or walkways or in public hearings.

## MONTREAT CODE OF GENERAL ORDINANCES

### CHAPTER I - DISORDERLY CONDUCT AND PUBLIC NUISANCES

#### ARTICLE II: NOISE CONTROL

*(Revised 6/10/2004); (Revised 8/12/2010); (Revised 7/9/2015)*

Section 1. It shall be unlawful for any Person or Entity to create or assist in creating, permit, continue, or permit the continuance of any unreasonably loud, disturbing and unnecessary noise in the Town. Noise of such character, intensity and duration as to be detrimental to the life and health of any individual is prohibited. The production or emission of noises or amplified speech, music or other sounds that tend to annoy, disturb or frighten citizens of the Town is also prohibited (Ref. N.C.G.S. § 160A-184.)

Section 2. Noise - Specific Prohibitions. The following acts, among others, are declared to be loud, disturbing, and unnecessary noises in violation of Chapter I, Article II, Section 1, but this list is not exclusive and does not limit the Town's authority to prohibit other noises.

- a) The playing of any radio, phonograph, musical instrument, or sound amplification system in such a manner or with such volume from 11:00 p.m. - 7:00 a.m. so as to annoy or disturb the quiet, comfort or repose of any Person in any dwelling, hotel or other residence or vehicle. For the purpose of this Section any sound coming from these sources that can be heard at the property lines of the complainant during these hours shall be deemed excessive, unreasonably loud, disturbing and unnecessary noise and shall constitute a violation of this Section.
- b) The use of a speaker or amplifier at any time from 7:00 a.m. - 11:00 p.m., so that said sound measured with a decibel meter at the property line and determined to be in excess of those sound levels referenced in Table I shall be deemed excessive, unreasonably loud, disturbing and unnecessary noise and shall constitute a violation of this Section. This however does not apply to a personal radio, TV, or other sound producing device that is used on private property and at a level that the sound does not travel beyond the property lines of the private property where the device is being used.
- c) The operation of a Motor Vehicle with defective or modified engine sound muffling system so as to produce engine noise that exceeds the normal noise produced by automobiles operated in the Town; for the purpose of this Section the normal noise produced shall be as stated in the Sound Level Table II, titled "Motor Vehicle & Motorcycle Sound Limits," attached hereto and incorporated herein by reference.
- d) The keeping of any animal or bird which by causing frequent, incessant or repetitive noise shall disturb the comfort and repose of any Person in the vicinity.
- e) The erection (including excavating), demolition, alteration or repair of any building or the operation of a chainsaw or other power lawn maintenance tool in a residential,

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business or institutional district other than between the hours of 7:00 a.m. and 7:00 p.m. Monday through Saturday and on Sundays between the hours of 1:00 p.m. and 6:00 p.m. except in the case of urgent necessity in the interest of public safety and then only with permission from the Building Inspector or a member of the Police Department .

- f) The discharge of a gun in the Town except by written permission from the Chief of Police.
- g) It shall be unlawful for any person or entity to use or cause to be discharged any fireworks and/or pyrotechnics as defined in N.C.G.S. 14-414.
- h) Constant/Pure Tone. When a constant or pure tone is produced, whether by mechanical equipment or other methods, the maximum decibel level shall be 60 decibels as measured at the property line of the complainant. When a constant or pure tone is produced, whether by mechanical equipment or other methods, the above maximum decibel levels are reduced by 5 dBA. In the case of a pure or constant tone it does not matter if the sound is amplified or not.

Section 3. Exemptions. The following activities and events shall be exempt from the provisions of Section 2 above and the maximum noise level shall be 80 decibels or as approved by the Chief of Police or his designated representative, using a common sense rule that applies to the specific circumstances of the event. All private activities will comply with the provisions of Section 2 above.

- a) Town and permitted activities associated with the Town’s celebration of the July 4<sup>th</sup> national holiday.
- b) Noises of safety signals, warning devices, emergency pressure relief valves, all church bells.
- c) All noises coming from the normal operations or properly equipped aircraft (not including scale model aircraft.)
- d) Emergency work necessary to maintain public safety, or to restore property to a safe condition following an accident or natural disaster, or to protect persons or property from an imminent danger.
- e) Noises resulting from the provision of government services necessary to maintain the public infrastructure.
- f) Noises resulting from the provision of sanitation and recycling services between the hours of 5:30 a.m. and 11:00 p.m.

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**SOUND LEVEL TABLE I**

**AMPLIFIED SOUND LIMITS**

(Measured at Property Line)

MAXIMUM SOUND LAND USE CATEGORY	TIME	LEVEL LIMITS IN DECIBELS (dBA)
Residential R-1, R-2 & R-3	7:00 a.m. – 11:00 p.m.	60 dBA
Residential R-1, R-2, & R-3	11:00 p.m. – 7:00 a.m.	NOT ALLOWED <sup>(1)</sup>
Institutional/Residential	7:00 a.m. – 11:00 p.m.	80 dBA
Institutional/Residential	11:00 p.m. – 7:00 a.m.	NOT ALLOWED <sup>(1)</sup>
Conservation District	7:00 a.m. – 11:00 p.m.	80 dBA
Conservation District	11:00 p.m. – 7:00 a.m.	NOT ALLOWED <sup>(1)</sup>
Woodland District	7:00 a.m. – 11:00 p.m.	60 dBA
Woodland District	11:00 a.m. – 7:00 a.m.	NOT ALLOWED <sup>(1)</sup>
Institutional Zone	7:00 a.m. – 11:00 p.m.	80 dBA
Institutional Zone	11:00 p.m. – 7:00 a.m.	NOT ALLOWED <sup>(1)</sup>



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**SOUND LEVEL TABLE II**

**MOTOR VEHICLE AND MOTORCYCLE SOUND LIMITS**

(Decibels (dBA) measured 50 feet from Vehicle)

VEHICLE CLASS	SPEED LIMIT 35 MPH OR LESS	STATIONARY RUN-UP
Motor carrier Vehicle engaged in interstate commerce with GVWR of GCWR 10,000 lbs. or more	86 dBA	88 dBA
All other Motor Vehicles with GVWR or GCWR of 6,000 lbs. or more	84 dBA	86 dBA
Any Motorcycle	82 dBA	84 dBA
Any other Motor Vehicle or any combination of Vehicles towed by any Motor Vehicle	78 dBA	88 dBA

**REFERENCE:** These decibel levels were taken from the SBCCI standard produced by the Southern Building Code Congress International (SSTD-8-87.)

## MONTREAT CODE OF GENERAL ORDINANCES

### CHAPTER I - DISORDERLY CONDUCT AND PUBLIC NUISANCES

#### ARTICLE III: DOGS

##### Section 1. Dog Control.

- a) Collar and Tags. No Person or Entity shall own or keep any dog over the age of six (6) months in the Town unless that Person has provided a collar and tags for each dog as herein provided. The collar shall contain a current rabies vaccination tag and an identification tag with the owner's name and telephone number imprinted upon it.
- b) Vaccination. It shall be unlawful for the owner of any dog to keep the dog unless it is vaccinated by a licensed veterinary surgeon with anti-rabies vaccine as required by the General Statutes of North Carolina. Proof of rabies inoculation must be attached to the collar of the dog.
- c) Restraint. The owner or custodian of a dog shall keep the dog under restraint at all times and shall not permit the dog to be At Large.
- d) Impoundment. Any dog not displaying the proper tags as required in this Ordinance or any dog found running At Large shall be taken up by the Animal Control Officer, or authorized representative thereof, or a Montreat police officer, and impounded in the Black Mountain Animal Shelter or other animal shelter designated by the Town Administrator. All dogs not claimed within twenty-four (24) hours shall be turned over the Buncombe County Animal Shelter. Upon arrival at the Buncombe County Animal Shelter, dogs not claimed within seven (7) days may be put up for adoption or humanely euthanized.
- e) Notice to Owner. As soon as a dog has been impounded, the Town will attempt to notify the owner by telephone and inform the owner of the dog's impoundment and how custody of the dog may be regained.
- f) Impoundment Fees. An owner may reclaim an impounded dog by paying the necessary impoundment fees at the temporary animal shelter in the Town of Black Mountain. If the dog has been turned over to Buncombe County officials, the owner must first pay the Town's impoundment fee at the temporary animal shelter in the Town of Black Mountain, obtain a release for the dog from the Town of Black Mountain, and then pay the required Buncombe County fees at the County shelter. Dogs will not be released from the Buncombe County shelter unless a release slip has been issued by the Town of Black Mountain showing that the appropriate Black Mountain fees have been paid.

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- g) Records. Animal control personnel shall keep, or cause to be kept, accurate and detailed records of the licensing, impoundment, and disposition of all dogs that come into their custody. Records shall also be kept of all moneys collected under this Section.

Section 2. Records. All previous ordinances relating to the keeping, licensing, and restraining of dogs are hereby repealed. All other ordinances in conflict herewith are repealed to the extent of such conflict.

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**ARTICLE IV: OTHER ANIMALS**

Section 1. Animals At Large. All animals caught running At Large shall be impounded by the Police and unless claimed within four days shall be disposed of as the Town shall deem best.

Section 2. Hog, Pigs, Goats and Livestock Prohibited. No Person shall be permitted to keep or maintain any hog, pig or goat pen, or keep any hogs, pigs, goats or livestock within the Town's corporate limits.

Section 3. Chickens Prohibited. No Person shall maintain a chicken house or other enclosure for chickens, or keep any chickens, within the Town's corporate limits.

## MONTREAT CODE OF GENERAL ORDINANCES

### CHAPTER I - DISORDERLY CONDUCT AND PUBLIC NUISANCES

#### ARTICLE V: FIREARMS

*(Adopted 8/12/2010)*

Section 1. General. In accordance with North Carolina General Statute 160A-189, a town may by ordinance regulate, restrict, or prohibit the discharge of firearms at any time or place within the town except when used in the defense of person or property or pursuant to lawful directions of law enforcement officers, and may regulate the display of firearms on the streets, sidewalks, alleys, or other public property.

Section 2. Discharge of Firearms. No person shall shoot or discharge, within the corporate limits of the town, any firearm, gun, rifle, pistol, air rifle, spring gun or compressed air rifle or pistol or other similar device or weapon which impels or discharges with force any bullet, shot or pellet of any kind, including arrows with metallic tips or sharp tips of any nature, designed to penetrate and propelled by a bow or spring device. This section shall not apply to any law enforcement officer of any governmental agency or body charged with the duties of protecting life or property or enforcing laws and regulations while engaged in the performance of their official duty. This section shall not apply in defending one's self or property or the safety and property of others.

Section 3. Seizure of Firearms or Weapons. The Chief of Police or any member of the Police Department is hereby authorized to seize, hold and confiscate, subject to order of the court, any firearm, weapon, air rifle or similar device described in Section 2 which is shot or discharged within the town in violation of this article.

Section 4. Penalty for Violation of Article. Any violation of the provisions of this article shall constitute a Class 3 misdemeanor punishable, upon conviction, as provided in G.S. 160A-175 and G.S. 14-4 or as specified in Chapter L of the Town of Montreat Code of General Ordinances.

Section 5. Repeal of Conflicting Ordinances. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict.

Section 6. Separability. If any section, subsection, paragraph, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.

# MONTREAT CODE OF GENERAL ORDINANCES

## CHAPTER J - BUILDING CODES

### ARTICLE I: GENERAL BUILDING REGULATIONS

*(Revised 10/08/2009); (Revised 12/09/2010)*

Section 1. Building Inspector. The Building Inspector shall be appointed by the Board of Commissioners and shall possess all the powers conferred and perform all the duties prescribed by N.C. G.S. § 160A-412 and other applicable statutes. The Inspector shall possess such further powers and perform such further duties as may be prescribed by this Chapter. The Inspector shall receive the fees allowed by statute and prescribed under the Town Fee Schedule. The Inspector or his/her deputy shall have the right to enter, at all reasonable times, any building or structure within the Town, for the purpose of inspecting or in the performance of his/her duties. The Inspector shall make, or cause to be made, such inspection of all chimneys, flues, and steam and fire openings within the Town. The Inspector may, when occasion requires, appoint a deputy or deputies, to perform any part of his/her duties.

Section 2. Building Permit Required. It shall be unlawful for any Person or Entity to hereafter erect, construct, build, structurally repair, replace or alter or cause or authorize the same any building or structure on any lot or parcel of land within the Town or within the unincorporated portion of Buncombe County inside the extraterritorial jurisdiction of Montreat, until such Person or Entity has obtained a building permit in accordance with this article. The applicant shall submit to the Building Inspector a duly signed and completed application for a building permit. The application shall be accompanied by plans and specifications for the proposed building or structure, the material to be used, the proposed location thereof, the purposes for which the building or structure is to be used, the estimated cost of the project, and any other information that will enable the Building Inspector to properly evaluate the application. No permit shall be required for repairs to a single-family residence with construction costs less than \$5,000 unless the work involves: the addition, repair or replacement of load-bearing structures; the addition, repair, replacement or change in the design of plumbing systems; the addition, repair or replacement of heating, air conditioning or electrical wiring, devices, appliances or equipment; the use of materials not permitted by currently adopted North Carolina Residential Code; or the addition (excluding replacement, up to the \$5,000 limit as provided herein, of like-grade fire resistance) of roofing.

Section 3. State Building Code Adopted. All rules and regulations adopted by the State of North Carolina as the current effective edition of North Carolina State Building Code as referenced by the North Carolina Department of Insurance – Office of State Fire Marshall for the proper construction and erection of all buildings and as provided in N.C.G.S. § 143-136 through 143-143.2, are hereby adopted by reference and shall control general construction the same as if set out at length herein, except as amended or modified in this Chapter. The North Carolina

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State Building Code includes: NC Administrative Code and Policies, NC Building Code, NC Residential Code, 2009 NC Rehabilitation Code, 1995 Existing Buildings Code; accessibility provisions contained in current NC Building Code, Chapter 11 and Appendix E and 2003 ANSI A117.1,, NC Electrical Code (current edition NFPA 70 – National Electrical Code), NC Energy Conservation Code, State of North Carolina Regulations for Manufactured Homes, and NC Fire Code. The North Carolina State Building Code Council may revise and amend the North Carolina State Building Code, either on its own motion or upon application from any citizen, state agency or political subdivision of the State. In adopting any amendment, the Council shall comply with the same procedural requirements and standards set forth in N.C.G.S. §143-138 for adoption of the Code, and such adoption shall be the current effective edition of the Code regulating general construction for the Town, except as modified or amended in this Chapter.

Section 4. Green Building Incentive. Applicants for a building permit may provide documentation that the proposed design(s) and construction practices will pursue Leadership in Energy and Environmental Design (LEED) certification as approved by the U. S. Green Building Council, a one Globe or higher rating under the Green Globes program standards adopted by the Green Building Initiative, EarthCraft House certification, National Association of Home Builders (NAHB) Green Home certification, or equivalent nationally or state recognized certification or rating system with third-party verification of sustainable building practices. Such applications are eligible for a partial rebate of permit fees dependent upon the level of certification achieved and/or extent of sustainable practices utilized.

Proof of LEED certification shall result in a partial rebate of associated permit fees. The rebates increase proportionate to the level of certification achieved:

- 10% Rebate for LEED Certified
- 15% Rebate for LEED Silver
- 20% Rebate for LEED Gold
- 25% Rebate for LEED Platinum

Incentives exist for other measures utilized as follows:

The total per-trade inspection fee(s) associated with the following shall be waived in the form of a refund offered to applicants providing as-built verification of:

- Installation and approval of Geothermal Heat Pump Systems
- Installation and approval of Solar Energy Systems (Either Photovoltaic (PV) or Hot Water)
- Installation and approval of Vertical-Axis Wind Turbines
- Installation and approval of Stormwater or Graywater Collection/Recycling Systems

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A 10% reduction in associated permit fees for construction projects shall be approved by the Building Inspector if utilizing:

- Approved Clear Water Contractors
- HealthyBuilt Home Certification
- Mountain Council for Accountable Development (MCAD) Certified Developers
- Low Impact Development (LID) Design Concepts

Projects providing proof of equivalent nationally or state recognized certification or rating systems with third-party verification of sustainable building practices may also be eligible for comparable rebates proportionate to level of certification. Regular fees shall be paid in full upon approval and rebated following certification. The use of developers or builders with multiple, or overlapping, areas of training and credentials does not entitle an applicant to accrue cumulative rebates. The applicant must specify the desired rebate or fee reduction in writing during application for permit(s).

Section 5. Fuel Storage Tank. Any storage tank for gasoline, oil or other combustible or inflammable materials shall meet the requirements of the North Carolina Building Code and NFPA standards. The time frame to bring existing tanks into compliance with this Ordinance is five years from the date of adoption of this Ordinance.



# MONTREAT CODE OF GENERAL ORDINANCES

## CHAPTER J - BUILDING CODES

### ARTICLE II: MINIMUM HOUSING REGULATIONS

(Revised 12/09/2010)

#### Section 1. Authority, Purpose, and Scope.

(A) Pursuant to G.S. 160A-441, it is hereby found and declared that there exist in the Town of Montreat dwellings which are unfit for human habitation due to dilapidation or defects increasing the hazards of fire, accidents and other calamities, due to lack of ventilation, light and sanitary facilities, and due to other conditions rendering the dwellings unsafe or unsanitary, dangerous and detrimental to the health, safety and morals, and otherwise inimical to the welfare of the residents of the Town, and that a public necessity exists to exercise the police powers of the Town to repair, close or demolish such dwellings in accordance with the procedure set out in this Chapter.

(B) In order to protect the health, safety and welfare of the residents of the Town as authorized by Part 6 of Article 19, Chapter 160A of the General Statutes, it is the purpose of this article to establish minimum standards of fitness for the initial and continued occupancy of all buildings used for human habitation, as expressly authorized by G.S. 160A-444.

(C) The provisions of this article apply to all existing dwellings and all dwellings hereafter constructed within the Town of Montreat, which are used or intended to be used for human habitation.

(D) The provisions of this article also provide for the repair, closing or demolition of any abandoned structure which the Board of Commissioners finds to be a health or safety hazard as a result of the attraction of insects or rodents, conditions creating a fire hazard, dangerous conditions constituting a threat to children or frequent use by vagrants as living quarters in the absence of sanitary facilities.

#### Section 2. Definitions.

The following definitions shall apply in the interpretation and enforcement of this article:

(A) *Basement* shall mean a portion of a building which is located partly underground, having direct access to light and air from windows located above the level of the adjoining ground.

(B) *Boarding house* shall mean a dwelling unit or part thereof where, for compensation, lodging and meals are provided.

(C) *Cellar* shall mean a portion of a building located partly or wholly underground having an inadequate access to light and air from windows located partly or wholly below the level of the adjoining ground.

(D) *Deteriorated* shall mean that a dwelling is unfit for human habitation but can be repaired, altered or improved to comply with all of the minimum standards established by this article, at a cost not in excess of 50 percent of the current value of the dwelling, as determined by finding of the Inspector.

(E) *Dilapidated* shall mean that a dwelling is unfit for human habitation and cannot be repaired, altered or improved to comply with all of the minimum standards established by this

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article at a cost not in excess of 50 percent of the current value of the dwelling, as determined by finding of the Inspector.

(F) *Dwelling* shall mean any Building, or portion thereof, which is designed for living and/or sleeping purposes for one or more families, including but not limited to all dwelling units and rooming units.

(G) *Dwelling, Single-Family* shall mean a detached dwelling unit, designed for or occupied exclusively by one family including Vacation/Conference Rentals as allowed in Chapter H, Article II of the General Ordinances of the Town of Montreat.

1) *Dwelling, Two-Family* shall mean a detached Building including two individual dwelling units.

2) *Dwelling, Multi-Family* shall mean a dwelling intended or used for occupancy by three or more families living independently of each other, with the number of families in residence not exceeding the number of dwelling units provided.

(H) *Dwelling Unit* shall mean a single unit providing complete, independent living facilities for one or more persons including permanent facilities for living, sleeping, eating, cooking, and sanitation.

(I) *Extermination* shall mean the control and elimination of insects, rodents or other pests by eliminating their harborage places: by removing or making inaccessible materials that may serve as their food; by poisoning, spraying, fumigating, or trapping or by any other recognized and legal pest elimination methods approved by the Inspector.

(J) *Garbage* shall mean the animal and vegetable waste resulting from the handling, preparation, cooking and consumption of food.

(K) *Habitable room* shall mean a room or enclosed floor space used or intended to be used for living, sleeping, cooking or eating purposes, excluding bathrooms, water closet compartments, laundries, heater rooms, foyers, communicating corridors, closets and storage spaces.

(L) *Infestation* shall mean the presence, within or around a dwelling, of any insects, rodents or other pests in such number as to constitute a menace to the health, safety or welfare of the occupants or the public.

(M) *Inspector* shall mean a Building Inspector of the Town or any agent of the Inspector who is authorized by the Inspector.

(N) *Let* shall mean to rent to another for money or other valuable consideration.

(O) *Net Free Ventilation Area* shall mean the combined product of unobstructed clear opening dimensions that permit the free flow of required ventilation air.

(P) *Occupant* shall mean any person living, sleeping, cooking or eating in, or having actual possession of, a dwelling unit or rooming unit.

(Q) *Operator* shall mean any person who has charge, care or control of a building, or part thereof, in which dwelling units or rooming units are let.

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(R) *Owner* shall mean any person who alone, jointly, or severally with others:

(i) Shall have title to any dwelling or dwelling unit, with or without accompanying actual possession thereof; or

(ii) Shall have charge, care or control of any dwelling or dwelling unit, as owner or agent of the owner, or as executor, administrator, trustee or guardian of the estate of the owner. Any such person representing the actual owner in any capacity shall be bound to comply with the provisions of this article, and of rules and regulations adopted pursuant thereto, to the same extent as the owner.

(S) *Plumbing* shall mean and include all of the following supplied facilities and equipment: Gas pipes, gas burning equipment, water pipes, mechanical garbage disposal units (mechanical sink grinder), waste pipes, water closets, sinks, installed dishwashers, lavatories, bath tubs, shower baths, installed clothes washing machines, catch basin, drains, vents and any other similar supplied fixtures, together with all connections to water, sewer or gas lines.

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(T) *Public Authority* shall mean the Town Board of Commissioners or any officer who is in charge of any department or branch of the government of the Town or of Buncombe County or the State of North Carolina relating to health, fire, building regulations or other activities concerning dwellings in the Town.

(U) *Rooming unit* shall mean any room or group of rooms forming a single habitable unit used or intended to be used for living and sleeping, but not for cooking or eating purposes.

(V) *Rubbish* shall mean combustible and noncombustible waste materials, except garbage and ashes, and the term shall include paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings, tin cans, metals, mineral matter, glass crockery and dust.

(W) *Supplied* shall mean paid for, furnished, or provided by, or under the control of, the owner or operator.

(X) *Temporary housing* shall mean any tent, trailer or other structure used for human shelter which is designed to be transportable and which is not attached to the ground, to another structure, or to any utilities system on the same premises for more than 30 consecutive days.

(Y) *Unfit for human habitation* shall mean that conditions exist in a dwelling which violate safety standards for sanitary condition or structural integrity or which pose a fire hazardous condition or do not comply with the minimum standards of fitness of this article.

(Z) *Meaning of certain words.* Whenever the words "dwelling, dwelling unit, rooming house, rooming unit, premises" are used in this article, they shall be construed as though they were followed by the words "or any part thereof."

**Section 3. Minimum Standards of Fitness.** The Building Inspector may determine that a dwelling is unfit for human habitation if he/she finds that conditions exist in the dwelling that render it dangerous or injurious to the health, safety or morals of the occupants of the dwelling, the occupants of neighboring dwellings, or other residents of the Town. Examples of defective conditions could include, but are not limited to, defects that increase the likelihood of fire, accident, or other calamities; lack of adequate ventilation, light or sanitary facilities; dilapidation; structural defects; and uncleanness. Without excluding other methods of determining whether a dwelling is unfit for human habitation, the Building Inspector shall apply the minimum standards set forth in Sections 4, 5, 6, 7, 8, 9, and 10 in determining whether a dwelling is unfit. No person shall occupy a dwelling which does not meet the minimum standards of fitness set forth in this article.

**Section 4. Minimum Standards for Structural Condition.**

(A) Walls, partitions or supporting members, sills, joists, rafters or other structural members shall not list, lean or buckle and shall not be rotted, substantially deteriorated, or damaged.

(B) Floors or roofs shall have adequate supporting members and strength to be reasonably safe for the purpose used.

(C) Foundations, foundation walls, piers or other foundation supports shall not be substantially deteriorated or damaged.

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(D) Steps, stairs, landings, porches, or other parts or appurtenances shall be maintained in such condition that they will not fall or collapse.

(E) Adequate facilities for egress in case of fire or panic shall be provided.

(F) Interior walls and ceilings of all rooms, closets and hallways shall be finished of suitable materials, which will, by use of reasonable household methods, promote sanitation and cleanliness and shall be maintained in such a manner so as to enable the occupants to maintain reasonable privacy between various spaces.

(G) The roof, flashings, exterior walls, basement walls, floors, and all doors and windows exposed to the weather shall be constructed and maintained so as to be substantially weather and watertight.

(H) There shall be no chimneys or parts thereof which are defective, deteriorated or in danger of falling, or in such condition or location as to constitute a fire hazard. Chimneys that do not meet these standards shall either be repaired or sealed so as to prevent unsafe operation as a fuel-burning appliance.

(I) There shall be no use of the ground for floors, or wood floors on the ground.

**Section 5. Minimum Standards for Basic Equipment and Facilities.**

(A) *Plumbing system.*

(i) Each dwelling unit shall be connected to a potable water supply and to the public sewer or other approved sewage disposal system.

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(ii) Each dwelling unit shall contain not less than a kitchen sink, lavatory, tub or shower, water closet, and adequate supply of both cold water and hot water. All water shall be supplied through an approved pipe distribution system connected to a potable water supply.

(iii) All plumbing fixtures shall meet the standards of the N.C. Plumbing Code in effect at the time of installation and shall be maintained in a state of good repair and in good working order.

(iv) All required plumbing fixtures shall be located within the dwelling unit and be accessible to the occupants of same. The water closet and tub or shower shall be located in a room or rooms affording privacy to the user.

(B) *Heating system.* Every dwelling and dwelling unit utilized year-round and properties let for rent utilized during the months of November through March shall have facilities for providing heat in accordance with either (i) or (ii) below:

(i) Central and electric heating systems. Every central or electric heating system shall be of sufficient capacity so as to maintain all habitable rooms, bathrooms and water closet compartments in every dwelling unit to which it is connected at a minimum temperature of 68 degrees Fahrenheit measured at a point three (3) feet above the floor and two (2) feet from exterior walls during ordinary winter conditions.

(ii) Other heating facilities. Where a central or electric heating system is not provided, each dwelling and dwelling unit shall be provided with sufficient fireplaces, chimneys, flues or gas vents whereby heating appliances may be connected so as to maintain at least one habitable room at a minimum temperature of 68 degrees Fahrenheit measured three (3) feet above the floor and two (2) feet from exterior walls during ordinary winter conditions.

(C) *Electrical system.*

(i) Every dwelling and dwelling unit shall be wired for electric lights and convenience receptacles. Every habitable room shall contain at least two (2) floor or wall-type electric convenience receptacles, connected in such manner as prescribed by the National Electrical Code ((NEC) - Volume IV of the N.C. State Building Code). There shall be installed in every bathroom, water closet room, laundry room and furnace room at least one (1) supplied ceiling or wall-type electric light fixture. In the event wall or ceiling light fixtures are not provided in any habitable room, then each such habitable room shall contain at least three (3) floor or wall-type electric convenience receptacles.

(ii) Every public hall and stairway in every multi-family dwelling shall be adequately lighted by electric lights at all times when natural daylight is not sufficient.

(iii) All fixtures, receptacles, equipment and wiring shall be maintained in a state of good repair, safe, capable of being used and installed in accordance with the National Electrical Code.

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Dwelling units let as Vacation/Conference Rentals are required to comply with additional Fire and Safety Code regulations detailed in Chapter H of Montreat General Code of Ordinances, including Ground Fault Circuit Interrupter (GFCI) receptacle outlets in all locations as prescribed by the NEC.

**Section 6. Minimum Standards for Ventilation.**

(A) *General.* Every habitable room with one or more exterior walls shall have at least one (1) window or skylight facing directly to the outdoors which can easily be opened, or such other device or means as will adequately ventilate the room. The total (aggregate) glazing area of habitable rooms where provided as the means of ventilation shall be at least eight (8) percent of the floor area of such rooms. Whenever walls or other portions of structures face a window or any room and the light-obstructing structures are located less than five (5) feet from the window and extend to a level above that of the ceiling of the room, such a window shall not be deemed to face directly to the outdoors and shall not be included as contributing to the required minimum total window area. Whenever a skylight or multiple skylights are the only window(s) in a room, the total window area of the skylight(s) shall equal at least 15 percent of the total floor area of the room.

(B) *Habitable rooms.* Every habitable room shall have at least one (1) window, skylight or other comparable exterior opening which can easily be opened, or such other device or means as will adequately ventilate the room. Habitable rooms with no exterior walls shall be considered to meet the ventilation requirement if two doorways, windows or other adequately-sized openings provide cross ventilation from connecting spaces with windows or skylights opening to the outside. If natural light is not provided by means of a window or skylight, an adequate source of artificial light shall be provided to meet this requirement. The minimum aggregate net free ventilation area, measured between stops and sill to sash or from threshold to header and jamb-to-jamb, for every habitable room shall be four (4) percent of the floor area of the room. The total openable window area in every habitable room shall be equal to at least 45 percent of the minimum window area size or minimum skylight-type window size as required, or shall have other approved, equivalent ventilation. In habitable sleeping rooms let for rent, in no case shall the number of required openings, net clear openable area(s) and dimensional requirement(s) be less than that specified in N.C. Residential Code (Volume VII of the N.C. State Building Code) for emergency escape and rescue.

(C) *Bathroom and water closet rooms.* Every bathroom and water closet compartment shall comply with the light and ventilation requirements for habitable rooms except that no window or skylight shall be required in adequately ventilated bathrooms and water closet rooms equipped with an approved ventilation system.

**Section 7. Minimum Standards for Space, Use and Location.**

(A) *Room sizes.* Every dwelling unit shall contain at least one habitable room with the minimum room size as required by the N.C. Residential Code.

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(i) Every dwelling unit shall contain at least 120 square feet of habitable floor area for the first occupant, at least 100 square feet of additional habitable area for each of the next three (3) occupants, and at least 75 square feet of additional habitable floor area for each additional occupant.

(ii) In every dwelling unit and in every rooming unit, every room occupied for sleeping purposes by one (1) occupant shall contain at least 70 square feet of floor area, and every room occupied for sleeping purposes by more than one (1) occupant shall contain at least 50 square feet of floor area for each occupant 12 years of age and over and at least 35 square feet of floor area for each occupant under 12 years of age.

(B) *Ceiling height.* Habitable rooms shall have a ceiling height of at least seven (7) feet. At least one-half (1/2) of the floor area of every habitable room with sloped ceilings shall have a ceiling height of at least seven (7) feet. Ceilings in basements may project to within six (6) feet eight (8) inches of the finished floor; and beams, girders, ducts or other obstructions may project to within six (6) feet four (4) inches of the finished floor. Attic spaces occupied for sleeping purposes shall provide the required emergency escape and rescue opening in addition to meeting the other dimensional requirements in order to be considered a habitable room.

(C) *Floor area calculation.* Floor area shall be calculated on the basis of habitable room area. The floor area of any part of any room where the ceiling height is less than five (5) feet shall not be considered as part of the required floor area contributing toward total area of the room to determine maximum permissible occupancy.

(D) *Cellar.* No cellar shall be used for living purposes.

(E) *Basements.* No basement shall be used for living purposes unless:

(i) The floor and walls are substantially watertight;

(ii) The total window area and total openable window area within sleeping rooms are at least the minimum required for emergency escape and rescue, and ceiling height is equal to that required for habitable rooms;

(iii) The required minimum window area of every habitable room is entirely above the grade adjoining the window area, except where the window or windows face a stairwell, window well, or accessway.

### **Section 8. Minimum Standards for Safe and Sanitary Maintenance.**

(A) *Exterior foundation, walls and roofs.* Foundation walls, exterior walls, and exterior roofs shall be substantially weathertight and rodent proof; shall be kept in sound condition and good repair; shall be capable of affording privacy; and shall be safe to use and capable of supporting the load which normal use may cause to be placed thereon. Exterior walls shall be protected with paint or other protective covering to prevent the entrance or penetration of moisture or the weather.



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(B) *Interior floors, walls and ceilings.* The floors, interior walls and ceilings shall be substantially rodent proof; shall be kept in sound condition and good repair; and shall be safe to use and capable of supporting the load which normal use may cause to be placed thereon.

(C) *Windows and doors.* The windows, exterior doors, basement or cellar doors, and hatchways shall be substantially weathertight, watertight, and rodent proof and shall be kept in sound working condition and good repair.

(D) *Stairs, porches, and appurtenances.* The outside and inside stairs, porches, and any appurtenance thereto shall be safe to use and capable of supporting the load that normal use may cause to be placed thereon and shall be kept in sound condition and good repair.

(E) *Bathroom floors.* The bathroom floor surfaces and water closet compartment floor surfaces shall be constructed and maintained so as to be reasonably impervious to water and so as to permit the floor to be easily kept in a clean and sanitary condition.

(F) *Supplied facilities.* The supplied facilities, pieces of equipment, or utilities which are required under this article shall be so constructed or installed that they will function safely and effectively and shall be maintained in satisfactory working condition.

(G) *Drainage.* Yards shall be properly graded so as to drain thoroughly and so as to prevent the accumulation of stagnant water.

(H) *Egress.* Every dwelling unit shall be provided with adequate means of egress as required by N.C. Residential Code.

**Section 9. Minimum Standards for Control of Insects, Rodents and Infestations.**

(A) *Rodent control.* Basement or cellar windows used or intended to be used for ventilation, and other openings to a basement which might provide an entry for rodents, shall be supplied with screens installed or such other approved device as will effectively prevent their entrance.

(B) *Infestation.* Every occupant of a dwelling containing a single dwelling unit shall be responsible for the extermination of any insects, rodents, or other pests therein or on the premises; and every occupant of a dwelling unit in a dwelling containing more than one (1) dwelling unit shall be responsible for such extermination whenever the occupant's dwelling unit is the only one infested. Whenever infestation is caused by failure of the owner to maintain a dwelling in a rodent-proof or reasonably insect-proof condition, extermination shall be the responsibility of the owner. Whenever infestation exists in two (2) or more of the dwelling units in any dwelling or in the shared or public parts of any dwelling containing two (2) or more dwelling units, extermination shall be the responsibility of the owner.

**Section 10. Minimum Standards Applicable to Boarding Houses; Exceptions.**

All of the minimum standards and requirements and other provisions of this article shall be applicable to boarding houses, and to every person who operates a boarding house or who occupies or lets to another for occupancy any rooming unit in any boarding house, except as provided in the following subsections:

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(A) *Water closet, hand lavatory and bath facilities.* At least one (1) water closet, lavatory basin, and bathtub or shower, properly connected to an approved water and sewer system and in good working condition, shall be supplied for each four (4) rooms within a boarding house wherever the facilities are shared. All the facilities shall be located within the residence building served and shall be directly accessible from a common hall or passageway and shall be not more than one (1) story removed from any of the persons sharing the facilities. Every lavatory basin and bathtub or shower shall be supplied with hot and cold water at all times. The required facilities shall not be located in a cellar.

(B) *Minimum floor area for sleeping purposes.* Every room occupied for sleeping purposes by one (1) occupant shall contain at least 70 square feet of floor area, and every room occupied for sleeping purposes by more than one (1) occupant shall contain at least 50 square feet of floor area for each occupant 12 years of age and over and at least 35 square feet of floor area for each occupant under 12 years of age.

(C) *Sanitary conditions.* The operator of every boarding house shall be responsible for (i) the sanitary maintenance of all walls, floors and ceilings, (ii) the sanitary maintenance of every other part of the boarding house; and (iii) the sanitary maintenance of the entire premises where the boarding house is located.

(D) *Sanitary facilities.* Every water closet, flush urinal, lavatory basin, and bathtub or shower required by subsection (1) of this section shall be located within the boarding house and within a room or rooms which afford privacy and are separate from the habitable rooms, and which are accessible from a common hall without going outside the boarding house or through any other room therein.

### **Section 11. Responsibilities of Owners and Occupants.**

(A) *Public areas.* Every owner of a dwelling containing two (2) or more dwelling units shall be responsible for maintaining in a clean and sanitary condition the shared or public areas of the dwelling and premises thereof.

(B) *Cleanliness.* Every occupant of a dwelling or dwelling unit shall keep in a clean and sanitary condition that part of the dwelling, dwelling unit, and premises thereof which he occupies and controls.

(C) *Rubbish and garbage.* Every occupant of a dwelling or dwelling unit shall dispose of all his rubbish and garbage in a clean and sanitary manner by placing it in the supplied storage facilities. In all cases the owner shall be responsible for the availability of rubbish and garbage storage facilities.

(D) *Supplied plumbing fixtures.* Every occupant of a dwelling unit shall keep all supplied plumbing fixtures therein in a clean and sanitary condition and shall be responsible for the exercise of reasonable care in the proper use and operation of same.

(E) *Care of facilities, equipment and structure.* No occupant shall willfully destroy, deface, or impair any of the facilities or equipment, or any part of the structure of a dwelling or dwelling unit.

### **Section 12. Duties of Building Inspector.**

The Board of Commissioners designates the Building Inspector to exercise the powers and duties prescribed by this Chapter and to enforce the provisions of this article. It shall be the duty of the Building Inspector:

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(A) To investigate the dwelling conditions and to inspect dwellings and dwelling units located in the Town, in order to determine which dwellings and dwelling units are unfit for human habitation, and for the purpose of carrying out the objectives of this article with respect to the dwellings and dwelling units;

(B) To take such action, together with other appropriate departments and agencies, public and private, as may be necessary to effect rehabilitation of housing which is deteriorated;

(C) To keep a record of the results of inspections made under this article and an inventory of those dwellings that do not meet the minimum standards of fitness herein prescribed; and

(D) To perform such other duties as may be herein prescribed.

**Section 13. Powers of Building Inspector.**

The Building Inspector is authorized to exercise such powers as may be necessary or convenient to carry out and effectuate the purpose and provisions of this article, including the following powers in addition to others herein granted:

(A) To administer oaths and affirmations, examine witnesses and receive evidence;

(B) To enter upon premises for the purpose of making examinations and inspections; provided, such entries shall be made in accordance with law and in such manner as to cause the least possible inconvenience to the persons in possession; and

(C) To appoint and fix the duties of the officers, agents, and employees as the Building Inspector deems necessary to carry out the purposes of this article.

**Section 14. Inspections.**

(A) *Inspections Authorized.* The Building Inspector shall make periodic inspections according to the policy established by the Board of Commissioners for unsafe, unsanitary, or otherwise hazardous and unlawful conditions in structures within the Town. In addition, the Building Inspector shall make inspections when he/she has reason to believe that such conditions exist in a particular structure. In exercising this power, the Building Inspector shall have the right to enter any premises within the Town at all reasonable hours for the purposes of inspection or other enforcement action, upon presentation of proper credentials. Upon refusal after proper notice, the Building Inspector shall have the right to inspect pursuant to the provisions of Article 4A, Chapter 15 of the North Carolina General Statutes.

(B) *Duty of Owners and Occupants.* The owner or occupant of every dwelling, dwelling unit, or rooming unit, or the person in charge thereof, shall give the Building Inspector free access to the dwelling, dwelling unit, or rooming unit, and its premises at all reasonable times for the purposes of the inspection, examination and survey. Every occupant of a dwelling or dwelling unit shall give the owner thereof, or their agent or employee, access to any part of the dwelling or dwelling unit and its premises, at all reasonable times for the purpose of making the repairs or alterations as are necessary to effect compliance with the provisions of this article or with any lawful order issued pursuant to the provisions of this article

**Section 15. Procedure for Enforcement.**

(A) *Preliminary investigation; notice; hearing.* Whenever a petition is filed with the Building Inspector by a Public Authority or by at least five (5) residents of the Town charging that any dwelling or dwelling unit is unfit for human habitation, or whenever it appears to the Building Inspector, upon inspection, that any dwelling or dwelling unit is unfit for human habitation the Building Inspector shall, if a preliminary investigation discloses a basis for the charges, issue and cause to be served upon the owner of and parties in interest in such dwelling or dwelling unit a complaint stating the charges and containing a notice that a hearing will be held before the Building Inspector at a place in the Town therein fixed, not less than 10 nor more than 30 days after the serving of the complaint. The owner or any party in interest shall have the right to file an answer to the complaint and to appear in person or otherwise, and give testimony at the place and time fixed in the complaint. Notice of the hearing shall also be given to at least one (1) of the persons signing a petition relating to the dwelling. Any person desiring to do so may attend the hearing and give evidence relevant to the matter being heard. The rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the Building Inspector.

(B) *Procedure after hearing.* After the notice and hearing, the Building Inspector shall state in writing a determination as to whether such dwelling or dwelling unit is unfit for human habitation, and, if so, whether it is deteriorated or dilapidated.

(i) If the Building Inspector determines that the dwelling or dwelling unit is deteriorated, s/he shall state in writing findings of fact in support of the determination. The Building Inspector shall issue and cause to be served upon the owner thereof an order directing and requiring the owner to repair, alter, or improve such dwelling or dwelling unit to comply with the minimum standards of fitness established by this article within a specified period of time, not to exceed 90 days. The order may also direct and require the owner to vacate and close the dwelling or dwelling unit until the repairs, alterations and improvements have been made only if continued occupancy during the time allowed for repair will present a significant threat of bodily harm, taking into account the nature of the necessary repairs, alternations or improvements; the current state of the property; and any additional risks due to the presence and capacity of minors under the age of 18 or occupants with physical or mental disabilities. The order shall state that the failure to make timely repairs as directed in the order shall make the dwelling subject to the issuance of an unfit order under Section 15(c).

(ii) If the Building Inspector determines that the dwelling or dwelling unit is dilapidated, s/he shall state in writing findings of fact to support the determination. The Building Inspector shall issue and cause to be served upon the owner thereof an order directing and requiring the owner to either repair, alter and improve such dwelling or dwelling unit to comply with the minimum standards of fitness established by this article, or else vacate and remove or demolish the dwelling within a specified period of time not to exceed 90 days.

(C) *Failure to comply with order.*

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(i) If the owner of any deteriorated or dilapidated dwelling or dwelling unit shall fail to comply with an order of the Building Inspector to repair, alter or improve or to vacate and close the dwelling within the time specified therein, the Building Inspector may cause the dwelling to be repaired, altered or improved or to be vacated and closed in accordance with the requirements of this article. The Building Inspector may cause to be posted on the main entrance of any dwelling so closed, a placard with the following words: “This building is unfit for human habitation; the use or occupation of this building for human habitation is prohibited and unlawful.” Occupation of a building so posted shall constitute a Class 1 misdemeanor.

(ii) If the owner of a dilapidated dwelling shall fail to comply with an order of the Building Inspector to remove or demolish the dwelling within the time specified therein, the Building Inspector may cause the dwelling to be removed or demolished in accordance with the requirements of this article.

(iii) The Building Inspector shall not exercise the duties set forth in the section until the Board of Commissioners shall have by ordinance ordered the Building Inspector to proceed to effectuate the purpose of this article. After failure of an owner of a deteriorated or dilapidated dwelling or dwelling unit to comply with an order of the Building Inspector within the time specified therein, the Building Inspector shall submit to the Board an ordinance ordering the Building Inspector to cause the dwelling or dwelling unit which the Building Inspector has found to be unfit for human habitation to be repaired, altered, and improved or vacated and closed or removed or demolished, as provided in the original order of the Building Inspector. Upon adoption by the Board of Commissioners, this ordinance shall be recorded in the Office of the Register of Deeds of the county in which the dwelling is located and shall be indexed in the name of the property owner in the grantor index. No ordinance shall be adopted to require demolition of a dwelling until the owner has first been given a reasonable opportunity to bring it into conformity with this article.

(iv) If the Board of Commissioners shall have adopted an ordinance ordering the Building Inspector to cause a dwelling to be repaired, altered or improved or to be vacated or closed or if the Building Inspector shall have issued an order ordering a dwelling to be repaired or vacated and closed and if the dwelling has been vacated or closed for a period of one year pursuant to the ordinance or order, then the Board of Commissioners may, after the expiration of such one-year period, enact an ordinance if the Board of Commissioners has found that the owner has abandoned the intent and purpose to repair, alter or improve the dwelling in order to render it fit for human habitation and that the continuation of the dwelling in its vacated and closed status would be inimical to the health, safety, morals and welfare of the Town in that the dwelling would continue to deteriorate, would create a fire and safety hazard, would be a threat to children and vagrants, would attract persons intent on criminal activities, would cause or contribute to blight and the deterioration of property values in the area, and would render unavailable

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property and a dwelling which might otherwise have been made available to ease the persistent shortage of decent and affordable housing in North Carolina. The Board of Commissioners shall serve such ordinance on the owner of the dwelling. If the repair of the dwelling to render it fit for human habitation can be made at a cost not exceeding fifty percent of the then current value of the dwelling, the ordinance shall require that the owner either repair or demolish and remove the dwelling within 90 days. If the repair of the dwelling to render it fit for human habitation cannot be made at a cost not exceeding fifty percent of the then current value of the dwelling, the ordinance shall require the owner to demolish and remove the dwelling within 90 days. The ordinance shall be recorded in the Office of the Register of Deeds in the county where the property is located and shall be indexed in the name of the property owner in the grantor index. If the owner fails to comply with this ordinance, the Building Inspector shall effectuate the purpose of the ordinance.

(v) If any occupant fails to comply with an order to vacate a dwelling, the Building Inspector may file a civil action in the name of the Town to remove such occupant in accordance with the requirements of G.S. Section 160A-443(7).

(vi) Whenever a determination has been made that a dwelling must be vacated and closed or removed or demolished under provisions of this article, notice of the order shall be given by first-class mail to any organization involved in providing or restoring dwellings for affordable housing that has filed a written request for such notices. The notice shall be given in accordance with the requirements of G.S. Section 160A-443(8).

(D) If any dwelling is erected, constructed, altered, repaired, converted, maintained, or used in violation of this section or of any valid order or decision of the Building Inspector of the Board made pursuant to this section, the Building Inspector or Board may institute any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration or use, to restrain, correct or abate the violation, to prevent the occupancy of the dwelling, or to prevent any illegal act, conduct or use in or about the premises of the dwelling.

**Section 16. Methods of Service of Complaints or Orders.**

Complaints or orders issued by the Building Inspector under this article shall be served upon persons either personally or by registered or certified mail, but if the whereabouts of such persons or the identities of the owners are unknown and cannot be ascertained by the Inspector in the exercise of reasonable diligence, the Building Inspector shall make an affidavit to that effect, and the serving of the complaint or order upon such person may be made by publication in a newspaper having general circulation in the Town at least once no later than the time at which personal service would be required under the provisions of this article. Where service is made by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises affected by the complaint or order.

**Section 17. Costs, a Lien on Premises.**

As provided by G.S. 160A-443(6), the amount of the cost of any repairs, alterations, or improvements, or vacating and closing, or removal or demolition, caused to be made or done by the Building Inspector pursuant to section 15(C) of this article shall be a lien against the real property upon which the cost was incurred. The lien shall be filed, have the same priority, and be collected as the lien for special assessment as provided by Article 10, Chapter 160A of the General Statutes.

If the real property upon which the cost was incurred is located in the Town, then the amount of the cost is also a lien on any other real property of the owner located within the Town limits or one mile thereof, except for the owner's primary residence. This lien is inferior to all prior liens and shall be collected as a money judgment.

If the dwelling is removed or demolished by the Building Inspector, he/she shall sell the materials of the dwelling and any personal property, fixtures or appurtenances found in or attached to the dwelling. The Building Inspector shall credit the proceeds of the sale against the cost of the removal or demolition. The Building Inspector shall deposit any remaining balance in the superior court, secured in a manner directed the court, and distributed by the court to the persons found to be entitled thereto by final order or decree of the court. Nothing in this section shall be construed to impair or limit in any way the power of the Town to define and declare nuisances and cause their removal or abatement by summary proceedings or otherwise.

Section 18. Appeals from Orders of Inspector.

(A) An appeal from any decision or order of the Building Inspector may be taken by any person aggrieved thereby or by any officer or board of the Town. Any appeal from the Building Inspector shall be taken within 10 days from the rendering of the decision or service of the order and shall be taken by filing with the Building Inspector and with the Zoning Board of Adjustment (the "Board") a notice of appeal which shall specify the grounds upon which the appeal is based. Upon the filing of any notice of appeal, the Building Inspector shall forthwith transmit to the Board all the papers constituting the record upon which the decision appealed from was made. When appeal is from a decision of the Building Inspector refusing to allow the person aggrieved thereby to do any act, his decision shall remain in force until modified or reversed. When any appeal is from a decision of the Building Inspector requiring the person aggrieved to do any act, the appeal shall have the effect of suspending the requirement until the hearing by the Board, unless the Building Inspector certifies to the Board, after the notice of appeal is filed with him, that by reason of the facts stated in the certificate (a copy of which shall be furnished the appellant), a suspension of this requirement would cause imminent peril to life or property, in which case the requirement shall not be suspended except by a restraining order, which may be granted for due cause shown upon not less than one (1) day's written notice to the Building Inspector, by the Board, or by a court of record upon petition made pursuant to G.S. 160A-446(f) and subsection (5) of this section.

(B) *Hearing of Appeals.* The Board shall fix a reasonable time for the hearing of all appeals, shall give due notice to all the parties, and shall render its decision within a reasonable time. Any party may appear in person or by agent or



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attorney. The Board may reverse or affirm, wholly or partly, or may modify the decision or order appealed from, and may make such decision and order as in its opinion ought to be made in the matter, and to that end it shall have all the powers of the Building Inspector; but the concurring vote of four (4) members of the Board shall be necessary to reverse or modify any decision or order of the Building Inspector. The Board shall have power also in passing upon appeals, when practical difficulties or unnecessary hardships would result from carrying out the strict letter of the ordinance, to adapt the application of the ordinance to the necessities of the case to the end that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done.

(C) Every decision of the Board shall be subject to review by proceedings in the nature of certiorari instituted within 15 days of the decision of the Board, but not otherwise.

(D) *Petition to superior court by owner.* Any person aggrieved by an order issued by the Building Inspector or a decision rendered by the Board shall have the right, within 30 days after issuance of the order or rendering of the decision, to petition the superior court for a temporary injunction restraining the Building Inspector pending a final disposition of the cause, as provided by G.S. 160A-446(f).

**Section 19. Alternative Remedies.**

Neither this article nor any of its provisions shall be construed to impair or limit in any way the power of the Town to define and declare nuisances and to cause their abatement by summary action or otherwise, or to enforce this ordinance by criminal process as authorized by G.S. 14-4 and section 22 of this article, and the enforcement of any remedy provided herein shall not prevent the enforcement of any other remedy or remedies provided herein or in other ordinances or laws.

# MONTREAT CODE OF GENERAL ORDINANCES

## CHAPTER J – BUILDING CODES

### ARTICLE III: NON-RESIDENTIAL BUILDINGS

(Revised 12/09/2010)

#### Section 1. Authority, Purpose, and Scope.

(A) Pursuant to G.S. 160A-439, if the Board of Commissioners of the Town of Montreat finds that any nonresidential building or structure fails to meet minimum standards of maintenance, sanitation and safety due to conditions that are dangerous or injurious to public health, safety, and welfare as defined herein, then it may determine that a public necessity exists to exercise the police powers of the Town to repair, close or demolish such buildings or structures in accordance with the procedure set out in this Chapter.

(B) In order to protect the health, safety and welfare of the residents of the Town as authorized by Part 5 of Article 19, Chapter 160A of the General Statutes, it is the purpose of this article to establish minimum standards of maintenance, sanitation and safety for the initial and continued occupancy and use of all nonresidential buildings within the corporate limits of the Town, as expressly authorized by G.S. 160A-439.

(C) The provisions of this article shall apply to all existing nonresidential buildings or structures used or intended for supporting or sheltering any use or occupancy, and any nonresidential building or structure hereafter constructed within the Town of Montreat.

#### Section 2. Definitions.

*Note: The following definitions are understood to be a supplement to those contained in the foregoing Article II: Minimum Housing Regulations and all terms shall apply in the interpretation and enforcement of this article in their entirety:*

(A) *Accessory Building* shall mean a building that: (i) is clearly incidental to and customarily found in connection with a principal building; (ii) is subordinate to and serves a principal building; (iii) is subordinate in area, extent, or purpose to the principal building served; (iv) contributes to the comfort, convenience, or necessity of occupants in the principal building served; and (v) is located on the same lot as the principal building served.

(B) *Building* shall mean any Structure, fully or partially enclosed, and isolated by exterior walls constructed, used or intended for supporting or sheltering any use or occupancy, including tents, trailers, mobile homes, and similar Structures whether stationary or movable.

(C) *Historic Building* shall mean buildings that are listed in or eligible for listing in the National Register of Historic Places, or designated as historic under an appropriate state or local law.

(D) *Parties in Interest* shall mean all individuals, associations, and corporations who have interests of record in a nonresidential building or structure and any who are in possession thereof.

(E) *Principal Building* shall mean a Building in which is conducted the principle use of the parcel on which it is situated.

(F) *Structure* shall mean anything constructed or erected, the use of which requires permanent location on the ground, or attachment to something having a permanent location on the ground, including fences, business signs, and billboards.

(G) *Trailer* shall mean any vehicle or structure capable of moving or being moved, over street and highways on its own wheels or on flat beds or other carriers, which is designed to be utilized to:

(i) Provide temporary quarters for the conduct of business, profession, trade or occupation; or

(ii) Serve as a carrier of people, new or used goods, products, or equipment.

(H) *Use* shall mean the purpose or activity for which land or Buildings are designed, arranged, or intended or for which land or Buildings are occupied or maintained.

### **Section 3. Duties of Building Inspector.**

The Board of Commissioners designates the Building Inspector to exercise the powers and duties prescribed by this Chapter and to enforce the provisions of this article. It shall be the duty of the Building Inspector:

(A) To investigate and to inspect nonresidential buildings and structures located in the Town, in order to determine which fail to meet the minimum standards described in this Chapter, and for the purpose of carrying out the objectives of this article with respect to nonresidential buildings and structures;

(B) To take such action, together with other appropriate departments and agencies, public and private, as may be necessary to effect rehabilitation of nonresidential buildings and structures which are defective;

(C) To keep a record of the results of inspections made under this article and an inventory of those structures that do not meet the minimum standards of maintenance, sanitation and safety herein prescribed; and

(D) To perform such other duties as may be herein prescribed.

### **Section 4. Powers of Building Inspector.**

The Building Inspector is authorized to exercise such powers as may be necessary or convenient to carry out and effectuate the purpose and provisions of this article, including the following powers in addition to others herein granted:

(A) To administer oaths and affirmations, examine witnesses and receive evidence;

(B) To enter upon premises for the purpose of making examinations and inspections; provided, such entries shall be made in accordance with law and in such manner as to cause the least possible inconvenience to the persons in possession; and

(C) To appoint and fix the duties of the officers, agents, and employees as the Building Inspector deems necessary to carry out the purposes of this article.

Section 5. Minimum Standards of Fitness.

The Building Inspector may determine that a nonresidential building or structure is unfit for occupancy or use if he/she finds that conditions exist that render it dangerous or injurious to the health or safety of the occupants of the building, the occupants of neighboring buildings, or other residents of the Town. Examples of defective conditions could include, but are not limited to, defects that increase the likelihood of fire, accident, or other calamities; dilapidation; structural defects; and uncleanliness. Without excluding other methods of determining whether a nonresidential building or structure is unfit for occupancy or use, the Building Inspector shall apply the minimum standards set forth in Sections 6, 7, 8, and 9 in determining whether a structure is unfit. No person shall occupy or use a nonresidential building or structure which does not meet the minimum standards of fitness set forth in this article.

### **Section 6. Minimum Standards for Structural Condition.**

(A) Walls, partitions or supporting members, sills, joists, rafters or other structural members shall not list, lean or buckle and shall not be rotted, substantially deteriorated, or damaged.

(B) Floors or roofs shall have adequate supporting members and strength to be reasonably safe for the purpose used.

(C) Foundations, foundation walls, piers or other foundation supports shall not be substantially deteriorated or damaged.

(D) Steps, stairs, landings, porches, or other parts or appurtenances shall be maintained in such condition that they will not fall or collapse.

(E) Adequate facilities for egress in case of fire or panic shall be provided.

(F) There shall be no chimneys or parts thereof which are defective, deteriorated or in danger of falling, or in such condition or location as to constitute a fire hazard. Chimneys that do not meet these standards shall either be repaired or sealed so as to prevent unsafe operation as a fuel-burning appliance.

### **Section 7. Minimum Standards for Basic Equipment and Facilities.**

(A) *Plumbing system.*

(i) Occupied buildings with installed plumbing shall be connected to a potable water supply consisting of the public water system and the public sewer unless otherwise approved.

(ii) All water shall be supplied through an approved pipe distribution system connected to a potable water supply.

(iii) All plumbing fixtures shall meet the standards of the N.C. Plumbing Code in effect at the time of installation and shall be maintained in a state of good repair and in good working order.

(iv) All required plumbing fixtures shall be located within the building and be accessible to the occupants of same.

(B) *Electrical system.* Occupied building required to provide electric lights, convenience receptacles, or other related systems shall do so as prescribed by the National

Electrical Code ((NEC) - Volume IV of the N. C. State Building Code), and all fixtures, receptacles, equipment and wiring shall be maintained in a state of good repair, safe, capable of being used and installed in accordance with the NEC.

**Section 8. Minimum Standards for Safe and Sanitary Maintenance.**

(A) *Exterior foundation, walls and roofs.* Foundation walls, exterior walls, and exterior roofs shall be substantially weathertight and rodent proof; shall be kept in sound condition and good repair; and shall be safe to use and capable of supporting the load which normal use may cause to be placed thereon.

(B) *Interior floors, walls and ceilings.* The floors, interior walls and ceilings shall be substantially rodent proof; shall be kept in sound condition and good repair; and shall be safe to use and capable of supporting the load which normal use may cause to be placed thereon.

(C) *Windows and doors.* The windows, exterior doors, basement or cellar doors, and hatchways shall be substantially weathertight, watertight, and rodent proof and shall be kept in sound working condition and good repair.

(D) *Stairs, porches, and appurtenances.* The outside and inside stairs, porches, and any appurtenance thereto shall be safe to use and capable of supporting the load that normal use may cause to be placed thereon and shall be kept in sound condition and good repair.

(E) *Bathroom floors.* The bathroom floor surfaces and water closet compartment floor surfaces shall be constructed and maintained so as to be reasonably impervious to water and so as to permit the floor to be easily kept in a clean and sanitary condition.

(F) *Supplied facilities.* The supplied facilities, pieces of equipment, or utilities which are required under this article and/or any adopted requirements in effect at the time of construction, shall be so constructed or installed that they will function safely and effectively and shall be maintained in satisfactory working condition.

(G) *Egress.* Every building shall be provided with adequate means of egress as required by N.C. Building Code.

**Section 9. Minimum Standards for Control of Insects, Rodents and Infestations.**

(A) *Rodent control.* Basement or cellar windows used or intended to be used for ventilation, and other openings to a basement which might provide an entry for rodents, shall be supplied with screens installed or such other approved device as will effectively prevent their entrance.

(B) *Infestation.* Every occupant of a nonresidential building or structure shall be responsible for the extermination of any insects, rodents, or other pests therein or on the premises; and every occupant of a nonresidential building containing more than one (1) occupied unit shall be responsible for such extermination whenever the occupant's unit is the only one infested. Whenever infestation is caused by failure of the owner to maintain a nonresidential building or structure in a rodent-proof or reasonably insect-proof condition, extermination shall be the responsibility of the owner. Whenever infestation exists in two (2) or more of the units in

any nonresidential building or structure or in the shared or public parts of said occupancy containing two (2) or more units, extermination shall be the responsibility of the owner.

### **Section 10. Procedure for Enforcement.**

(A) *Preliminary investigation; notice; hearing.* Whenever it appears to the Building Inspector that any nonresidential building or structure has not been properly maintained so that the safety or health of its occupants or members of the general public are jeopardized for failure of the property to meet the minimum standards established herein, the Building Inspector shall conduct a preliminary investigation. If the preliminary investigation discloses evidence of a violation of the minimum standards, the Building Inspector shall issue and cause to be served upon the owner of and parties in interest in such nonresidential building or structure a complaint stating the charges and containing a notice that a hearing will be held before the Building Inspector at a place in the Town therein fixed, not less than 10 nor more than 30 days after the serving of the complaint. The owner or any party in interest shall have the right to file an answer to the complaint and to appear in person or otherwise, and give testimony at the place and time fixed in the complaint. Any person desiring to do so may attend the hearing and give evidence relevant to the matter being heard. The rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the Building Inspector.

(B) *Procedure after hearing.* After the notice and hearing, the Building Inspector shall state in writing a determination as to whether such nonresidential building or structure is unfit for occupancy or use, and, if so, shall issue and cause to be served an order to the property owner of and parties in interest in the nonresidential building or structure to take remedial action, within the time specified herein, subject to the procedures and limitations as follows:

(i) The Building Inspector may issue an order that the nonresidential building or structure be repaired, altered, or improved in order to bring it into compliance with the minimum standards established herein, or to vacate or close the nonresidential building or structure for any use, if evidence is provided that the cost of repairs does not exceed fifty percent (50%) of the current value.

(ii) If evidence is provided to the Building Inspector that the cost of repair, alteration, or improvement of the nonresidential building or structure is in excess of fifty percent (50%) of its current value, he/she may require the owner or parties in interest to remove or demolish said building or structure. Notwithstanding any other provision of law, if the nonresidential building or structure is designated as a local historic landmark, listed in the National Register of Historic Places, or located in a locally designated G.S. 160A-439 Page 2 historic district or in a historic district listed in the National Register of Historic Places and the Board of Commissioners determines, after a public hearing as provided by ordinance, that the nonresidential building or structure is of individual significance or contributes to maintaining the character of the district, and the nonresidential building or structure has not been condemned as unsafe, the order may require that the nonresidential building or structure be vacated and closed until it is brought into compliance with the minimum standards established by the governing body.

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(C) *Failure to comply with order.*

(i) If the owner of any defective nonresidential building or structure shall fail to comply with an order of the Building Inspector to repair, alter or improve or to vacate and close the nonresidential building or structure within the time specified therein, the Board of Commissioners may adopt an ordinance ordering the Building Inspector to effectuate the purpose of this section with respect to the particular property or properties found to be jeopardizing the health or safety of its occupants or members of the general public. The property or properties shall be described in the ordinance. The ordinance shall be recorded in the office of the register of deeds and shall be indexed in the name of property owner or owners in the grantor index. Following adoption of the ordinance, the Building Inspector may cause the building or structure to be repaired, altered or improved or to be vacated and closed. The Building Inspector may cause to be posted on the main entrance of any nonresidential building or structure so closed, a placard with the following words: "This building is unfit for any use; the use or occupation of this building for any purpose is prohibited and unlawful." Any person who occupies or knowingly allows the occupancy of a building so posted shall be guilty of a Class 3 misdemeanor.

(ii) If the owner fails to comply with an order of the Building Inspector to remove or demolish the nonresidential building or structure within the time specified therein, the Board of Commissioners may adopt an ordinance ordering the Building Inspector to effectuate the purpose of this section with respect to the particular property or properties found to be jeopardizing the health or safety of its occupants or members of the general public. No ordinance shall be adopted to require demolition of a nonresidential building or structure until the owner has first been given a reasonable opportunity to bring it into conformity with the minimum standards established herein. The property or properties shall be described in the ordinance. The ordinance shall be recorded in the office of the register of deeds and shall be indexed in the name of property owner or owners in the grantor index. Following adoption of the ordinance, the Building Inspector may cause the building or structure to be removed or demolished.

(iii) If the Board of Commissioners shall have adopted an ordinance ordering the Building Inspector to cause a nonresidential building or structure to be repaired, altered or improved or to be vacated or closed or if the Building Inspector shall have issued an order ordering a nonresidential building or structure to be repaired or vacated and closed and if the nonresidential building or structure has been vacated or closed for a period of two years pursuant to the ordinance or order, then the Board of Commissioners may, after the expiration of such two-year period, enact an ordinance if the Board of Commissioners has found that the owner has abandoned the intent and purpose to repair, alter or improve the nonresidential building or structure in order to render it fit for occupancy or use and that the continuation of the nonresidential building or structure in its vacated and closed status would be inimical to the health, safety and welfare of the Town in that the nonresidential building or structure would continue to deteriorate,



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would create a fire and safety hazard, would be a threat to children and vagrants, would attract persons intent on criminal activities, would cause or contribute to blight and the deterioration of property values in the area. The Board of Commissioners shall serve such ordinance on the owner of the nonresidential building or structure. If the repair of the nonresidential building or structure to render it fit for occupancy or use can be made at a cost not exceeding fifty percent of the then current value, the ordinance shall require that the owner either repair or demolish and remove the nonresidential building or structure within 90 days. If the repair of the nonresidential building or structure to render it fit for occupancy or use cannot be made at a cost not exceeding fifty percent of the then current value, the ordinance shall require the owner to demolish and remove the nonresidential building or structure within 90 days. The ordinance shall be recorded in the Office of the Register of Deeds in the county where the property is located and shall be indexed in the name of the property owner in the grantor index. If the owner fails to comply with this ordinance, the Building Inspector shall effectuate the purpose of the ordinance.

(iv) Complaints or orders issued by the Building Inspector pursuant to an ordinance adopted under this section shall be served upon persons either personally or by registered or certified mail so long as the means used are reasonably designed to achieve actual notice. When service is made by registered or certified mail, a copy of the complaint or order may also be sent by regular mail. Service shall be deemed sufficient if the registered or certified mail is refused, but the regular mail is not returned within 10 days after mailing. If regular mail is used, a notice of the pending proceedings shall be posted in a conspicuous place on the premises affected. If the identities of any owners is or the whereabouts of persons are unknown and cannot be ascertained by the Building Inspector in the exercise of reasonable diligence, and the Building Inspector makes an affidavit to that effect, the serving of the complaint or order upon the owners or other persons may be made by publication in a newspaper having general circulation in the city at least once no later than the time that personal service would be required under this section. When service is made by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises affected.

(v) If any occupant fails to comply with an order to vacate a nonresidential building or structure, the Building Inspector may file a civil action in the name of the Town to remove such occupant in accordance with the requirements of G.S. Section 160A-439(j).

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(vi) The Board of Commissioners may impose civil penalties against any person or entity that fails to comply with an order entered pursuant to this section. However, the imposition of civil penalties shall not limit the use of any other lawful remedies available to the Board for the enforcement of any ordinances adopted pursuant to this section.

(D) *Costs, a Lien on Premises.* As provided by G.S. 160A-439(i), the amount of the cost of any repairs, alterations, or improvements, or vacating and closing, or removal or demolition, caused to be made or done by the Building Inspector pursuant to section 8(C) of this article shall be a lien against the real property upon which the cost was incurred. The lien shall be filed, have the same priority, and be collected as the lien for special assessment as provided by Article 10, Chapter 160A of the General Statutes.

If the real property upon which the cost was incurred is located in the Town, then the amount of the cost is also a lien on any other real property of the owner located within the Town limits except for the owner's primary residence. This lien is inferior to all prior liens and shall be collected as a money judgment.

If the nonresidential building or structure is removed or demolished by the Building Inspector, he/she shall sell the resulting materials and any personal property, fixtures or appurtenances found therein or attached thereto. The Building Inspector shall credit the proceeds of the sale against the cost of the removal or demolition. The Building Inspector shall deposit any remaining balance in the superior court, secured in a manner directed the court, and distributed by the court to the persons found to be entitled thereto by final order or decree of the court. Nothing in this section shall be construed to impair or limit in any way the power of the Town to define and declare nuisances and cause their removal or abatement by summary proceedings or otherwise.

(E) *Appeals.* Any appeals may be taken from any decision or order of the Building Inspector to the Zoning Board of Adjustment. Any person aggrieved by a decision or order of the Building Inspector shall have the remedies provided in G.S. 160A-446.

**(F) Violations; Penalty.**

(i) It shall be unlawful for the owner of any non-residential building or structure to fail, neglect, refuse to repair, alter, or improve the same, or to vacate and close, or to remove or demolish the same, upon order of the Building Inspector duly made and served as herein provided, within the time specified in the order; and each day that any such failure, neglect, or refusal to comply with the order continues shall constitute a separate and distinct offense. It shall be unlawful for the owner of any non-residential building or structure with respect to which an order has been issued pursuant to section 15 of this article, to occupy or permit the occupancy or use of the same after the time prescribed in the order for its repair, alteration, improvement or its vacation and closing; and each day that the occupancy or use continues after the prescribed time shall constitute a separate and distinct offense.

(ii) The violation of any provision of this article shall constitute a misdemeanor, as provided by G.S. 14-4.

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(G) *Funding.* The Board of Commissioners is authorized to make appropriations from its revenues necessary to carry out the purposes of this section and may accept and apply grants or donations to assist in carrying out the provisions of the ordinances adopted by the Board

(H) *No Effect on Just Compensation for Taking by Eminent Domain.* Nothing in this section shall be construed as preventing the owner or owners of any property from receiving just compensation for the taking of property by the power of eminent domain under the laws of this State, nor as permitting any property to be condemned or destroyed except in accordance with the police power of the State.

**MONTREAT CODE OF GENERAL ORDINANCES**

**CHAPTER J – BUILDING CODES**

**ARTICLE IV: GENERAL PROVISIONS**

*(Revised 12/09/2010)*

**Section 1. Conflict with Other Provisions.**

In the event any provision, standard, or requirement of this article is found to be in conflict with any provision of any other ordinance or code of the Town, the provision which establishes the higher standard or more stringent requirement for the promotion and protection of the health and safety of the residents of the Town shall prevail.

**Section 2. Severability.**

If any provision of this article is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, the provision shall be deemed a separate, independent provision and the holding shall not affect the validity of any other provision hereof, and to that end, the provisions of this article are hereby declared to be severable.

**MONTREAT CODE OF GENERAL ORDINANCES**

**CHAPTER K - ENVIRONMENT**

**ARTICLE I: FLOOD DAMAGE PREVENTION ORDINANCE**

*(Revised 11/30/2009)*

**ARTICLE 1. STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND OBJECTIVES.**

**SECTION A. STATUTORY AUTHORIZATION.**

That pursuant to authority granted by the Legislature of the State of North Carolina as contained in Part 6, Article 21 of Chapter 143; Parts 3, 5, and 8 of Article 19 of Chapter 160A; and Article 8 of Chapter 160A of the North Carolina General Statutes, delegated to local governmental units the responsibility to adopt regulations designed to promote the public health, safety, and general welfare.

Therefore, the Board of Commissioners of the Town of Montreat, North Carolina, does ordain as follows:

**SECTION B. FINDINGS OF FACT.**

- (1) The flood prone areas within the jurisdiction of the Town of Montreat are subject to periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
- (2) These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities and by the occupancy in flood prone areas of uses vulnerable to floods or hazardous to other lands which are inadequately elevated, floodproofed, or otherwise unprotected from flood damages.

**SECTION C. STATEMENT OF PURPOSE.**

It is the purpose of this ordinance to promote public health, safety, and general welfare and to minimize public and private losses due to flood conditions within flood prone areas by provisions designed to:

- (1) restrict or prohibit uses that are dangerous to health, safety, and property due to water or erosion hazards or that result in damaging increases in erosion, flood heights or velocities;

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- (2) require that uses vulnerable to floods, including facilities that serve such uses, be protected against flood damage at the time of initial construction;
- (3) control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters;
- (4) control filling, grading, dredging, and all other development that may increase erosion or flood damage; and
- (5) prevent or regulate the construction of flood barriers that will unnaturally divert flood waters or which may increase flood hazards to other lands.

**SECTION D.           OBJECTIVES.**

The objectives of this ordinance are to:

- (1) protect human life, safety, and health;
- (2) minimize expenditure of public money for costly flood control projects;
- (3) minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) minimize prolonged business losses and interruptions;
- (5) minimize damage to public facilities and utilities (i.e. water and gas mains, electric, telephone, cable and sewer lines, streets, and bridges) that are located in flood prone areas;
- (6) help maintain a stable tax base by providing for the sound use and development of flood prone areas; and
- (7) ensure that potential buyers are aware that property is in a Special Flood Hazard Area.

**ARTICLE 2.           DEFINITIONS.**

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

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“Accessory Structure (Appurtenant Structure)” means a structure located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Garages, carports and storage sheds are common urban accessory structures. Pole barns, hay sheds and the like qualify as accessory structures on farms, and may or may not be located on the same parcel as the farm dwelling or shop building.

“Addition (to an existing building)” means an extension or increase in the floor area or height of a building or structure.

“Appeal” means a request for a review of the Floodplain Administrator's interpretation of any provision of this ordinance.

“Area of Special Flood Hazard” see “Special Flood Hazard Area (SFHA)”.

“Basement” means any area of the building having its floor subgrade (below ground level) on all sides.

“Base Flood” means the flood having a one (1) percent chance of being equaled or exceeded in any given year.

“Base Flood Elevation (BFE)” means a determination of the water surface elevations of the base flood as published in the Flood Insurance Study. When the BFE has not been provided in a “Special Flood Hazard Area”, it may be obtained from engineering studies available from a Federal, State, or other source using FEMA approved engineering methodologies. This elevation, when combined with the “Freeboard”, establishes the “Regulatory Flood Protection Elevation”.

“Building” see “Structure”.

“Chemical Storage Facility” means a building, portion of a building, or exterior area adjacent to a building used for the storage of any chemical or chemically reactive products.

“Development” means any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

“Disposal” means, as defined in NCGS 130A-290(a)(6), the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water so that the solid waste or any constituent part of the solid waste may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

“Elevated Building” means a non-basement building which has its lowest elevated floor raised

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above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

“Encroachment” means the advance or infringement of uses, fill, excavation, buildings, structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

“Existing Manufactured Home Park or Manufactured Home Subdivision” means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) was completed before the initial effective date of the floodplain management regulations adopted by the community.

“Flood” or “Flooding” means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) the overflow of inland or tidal waters; and/or
- (2) the unusual and rapid accumulation of runoff of surface waters from any source.

“Flood Insurance” means the insurance coverage provided under the National Flood Insurance Program.

“Flood Insurance Rate Map (FIRM)” means an official map of a community, issued by the Federal Emergency Management Agency, on which both the Special Flood Hazard Areas and the risk premium zones applicable to the community are delineated.

“Flood Insurance Study (FIS)” means an examination, evaluation, and determination of flood hazards, corresponding water surface elevations (if appropriate), flood hazard risk zones, and other flood data in a community issued by the Federal Emergency Management Agency. The Flood Insurance Study report includes Flood Insurance Rate Maps (FIRMs) and Flood Boundary and Floodway Maps (FBFMs), if published.

“Floodplain” means any land area susceptible to being inundated by water from any source.

“Floodplain Administrator” is the individual appointed to administer and enforce the floodplain management regulations.

“Floodplain Development Permit” means any type of permit that is required in conformance with the provisions of this ordinance, prior to the commencement of any development activity.

“Floodplain Management” means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including, but not limited to, emergency preparedness plans,



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flood control works, floodplain management regulations, and open space plans.

“Floodplain Management Regulations” means this ordinance and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances, and other applications of police power. This term describes Federal, State or local regulations, in any combination thereof, which provide standards for preventing and reducing flood loss and damage.

“Floodproofing” means any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures, and their contents.

“Floodway” means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.

“Flood Zone” means a geographical area shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map that reflects the severity or type of flooding in the area.

“Freeboard” means the height added to the Base Flood Elevation (BFE) to account for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, blockage of bridge openings, and the hydrological effect of urbanization of the watershed. The Base Flood Elevation plus the freeboard establishes the “Regulatory Flood Protection Elevation”.

“Functionally Dependent Facility” means a facility which cannot be used for its intended purpose unless it is located in close proximity to water, limited to a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, or ship repair. The term does not include long-term storage, manufacture, sales, or service facilities.

“Hazardous Waste Management Facility” means a facility, as defined in NCGS 130A, Article 9, for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste.

“Highest Adjacent Grade (HAG)” means the highest natural elevation of the ground surface, prior to construction, immediately next to the proposed walls of the structure.

“Historic Structure” means any structure that is:

- (a) listed individually in the National Register of Historic Places (a listing maintained by the US Department of Interior) or preliminarily determined by the Secretary of Interior as meeting the requirements for individual listing on the National

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Register;

- (b) certified or preliminarily determined by the Secretary of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (c) individually listed on a local inventory of historic landmarks in communities with a “Certified Local Government (CLG) Program”; or
- (d) certified as contributing to the historical significance of a historic district designated by a community with a “Certified Local Government (CLG) Program”.

Certified Local Government (CLG) Programs are approved by the US Department of the Interior in cooperation with the North Carolina Department of Cultural Resources through the State Historic Preservation Officer as having met the requirements of the National Historic Preservation Act of 1966 as amended in 1980.

“Lowest Adjacent Grade (LAG)” means the elevation of the ground, sidewalk or patio slab immediately next to the building, or deck support, after completion of the building.

“Lowest Floor” means lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or limited storage in an area other than a basement area is not considered a building's lowest floor, provided that such an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

“Manufactured Home” means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term “manufactured home” does not include a “recreational vehicle”.

“Manufactured Home Park or Subdivision” means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

“Market Value” means the building value, not including the land value and that of any accessory structures or other improvements on the lot. Market value may be established by independent certified appraisal; replacement cost depreciated for age of building and quality of construction (Actual Cash Value); or adjusted tax assessed values.

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“Mean Sea Level” means, for purposes of this ordinance, the National Geodetic Vertical Datum (NGVD) as corrected in 1929, the North American Vertical Datum (NAVD) as corrected in 1988, or other vertical control datum used as a reference for establishing varying elevations within the floodplain, to which Base Flood Elevations (BFEs) shown on a FIRM are referenced. Refer to each FIRM panel to determine datum used.

“New Construction” means structures for which the “start of construction” commenced on or after the effective date of the initial floodplain management regulations and includes any subsequent improvements to such structures.

“Non-Encroachment Area” means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot as designated in the Flood Insurance Study report.

“Person” means an individual, corporation, business trust, estate, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency or instrumentality, public corporation or any other legal or commercial entity.

“Post-FIRM” means construction or other development for which the “start of construction” occurred on or after the effective date of the initial Flood Insurance Rate Map.

“Pre-FIRM” means construction or other development for which the “start of construction” occurred before the effective date of the initial Flood Insurance Rate Map.

“Principally Above Ground” means that at least 51% of the actual cash value of the structure is above ground.

“Public Safety” and/or “Nuisance” means anything which is injurious to the safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

“Recreational Vehicle (RV)” means a vehicle, which is:

- (a) built on a single chassis;
- (b) 400 square feet or less when measured at the largest horizontal projection;
- (c) designed to be self-propelled or permanently towable by a light duty truck; and
- (d) designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use.

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“Reference Level” is the bottom of the lowest horizontal structural member of the lowest floor for structures within all Special Flood Hazard Areas. Designated as Zone A1-A30, AE, A, A99 or AO.

“Regulatory Flood Protection Elevation” means the “Base Flood Elevation” plus the “Freeboard”. In “Special Flood Hazard Areas” where Base Flood Elevations (BFEs) have been determined, this elevation shall be the BFE plus two (2) feet of freeboard. In “Special Flood Hazard Areas” where no BFE has been established, this elevation shall be at least two (2) feet above the highest adjacent grade.

“Remedy a Violation” means to bring the structure or other development into compliance with State and community floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the ordinance or otherwise deterring future similar violations, or reducing Federal financial exposure with regard to the structure or other development.

“Riverine” means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

“Salvage Yard” means any non-residential property used for the storage, collection, and/or recycling of any type of equipment, and including but not limited to vehicles, appliances and related machinery.

“Solid Waste Disposal Facility” means any facility involved in the disposal of solid waste, as defined in NCGS 130A-290(a)(35).

“Solid Waste Disposal Site” means, as defined in NCGS 130A-290(a)(36), any place at which solid wastes are disposed of by incineration, sanitary landfill, or any other method.

“Special Flood Hazard Area (SFHA)” means the land in the floodplain subject to a one percent (1%) or greater chance of being flooded in any given year as determined in Article 3, Section B of this ordinance.

“Start of Construction” includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing,

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grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of the building, whether or not that alteration affects the external dimensions of the building.

“Structure” means a walled and roofed building, a manufactured home, or a gas, liquid, or liquefied gas storage tank that is principally above ground.

“Substantial Damage” means damage of any origin sustained by a structure during any one-year period whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. See definition of “substantial improvement”. Substantial damage also means flood-related damage sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred

“Substantial Improvement” means any combination of repairs, reconstruction, rehabilitation, addition, or other improvement of a structure, taking place during any one-year period for which the cost equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures which have incurred “substantial damage”, regardless of the actual repair work performed. The term does not, however, include either:

- (a) any correction of existing violations of State or community health, sanitary, or safety code specifications which have been identified by the community code enforcement official and which are the minimum necessary to assure safe living conditions; or
- (b) any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

“Variance” is a grant of relief from the requirements of this ordinance.

“Violation” means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Articles 4 and 5 is presumed to be in violation until such time as that documentation is provided.

“Watercourse” means a lake, river, creek, stream, wash, channel or other topographic feature on

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or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

“Water Surface Elevation (WSE)” means the height, in relation to mean sea level, of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

“Zone A” designates the flood hazard area without base flood elevations established.

“Zone AE” is the 1% annual chance (100-year) floodplain with base flood elevations established.

“Zone X- Shaded” is the 0.2% annual chance (500-year) floodplain.

“Zone X- Unshaded” designates areas outside the 500-year floodplain.

**ARTICLE 3.           GENERAL PROVISIONS.**

**SECTION A.           LANDS TO WHICH THIS ORDINANCE APPLIES.**

This ordinance shall apply to all Special Flood Hazard Areas within the jurisdiction of the Town of Montreat and the unincorporated areas of Buncombe County located within the extraterritorial jurisdiction of Montreat.

**SECTION B.       BASIS FOR ESTABLISHING THE SPECIAL FLOOD HAZARD AREAS.**

The Special Flood Hazard Areas are those identified under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its Flood insurance Study (FIS) and its accompanying Flood Insurance Rate Maps (FIRM), for Buncombe County dated January 6, 2010, which are adopted by reference and declared to be a part of this ordinance.

**SECTION C.           ESTABLISHMENT OF FLOODPLAIN DEVELOPMENT PERMIT.**

A Floodplain Development Permit shall be required in conformance with the provisions of this ordinance prior to the commencement of any development activities within Special Flood Hazard Areas determined in accordance with the provisions of Article 3, Section B of this ordinance.

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**SECTION D.           COMPLIANCE.**

No structure or land shall hereafter be located, extended, converted, altered, or developed in any way without full compliance with the terms of this ordinance and other applicable regulations.

**SECTION E.           ABROGATION AND GREATER RESTRICTIONS.**

This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

**SECTION F.           INTERPRETATION.**

In the interpretation and application of this ordinance, all provisions shall be:

- (a) considered as minimum requirements;
- (b) liberally construed in favor of the governing body; and
- (c) deemed neither to limit nor repeal any other powers granted under State statutes.

**SECTION G.           WARNING AND DISCLAIMER OF LIABILITY.**

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur. Actual flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the Special Flood Hazard Areas or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the Town of Montreat or by any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

**SECTION H.           PENALTIES FOR VIOLATION.**

- (1) Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$50.00 or imprisoned for not more than thirty (30) days, or both. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the Town of Montreat from taking such other lawful action as is necessary to prevent or remedy any violation.

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- (2) In addition to revoking or refusing to issue a Floodplain Development Permit, the Floodplain Administrator or other authorized agent may refuse or cause to be refused a certificate of occupancy for any building or other improvements constructed or being constructed on the site in question, or cause the Town permitting office to refuse to issue any permit that has been applied for, or cause the Town permitting office to freeze (or suspend) active permits and inspections until the applicant has taken the corrective procedures set forth in the notice and cured the violations described therein.
- (3) Failure to remove any artificial obstruction or enlargement or replacement thereof, that violates this Ordinance or the provision of any permit issued under the authority of this Ordinance may subject the person in violation of this Ordinance to a fine of not more than \$5,000 per day, and such fine shall constitute a separate violation of this Ordinance for each day that the failure continues after written notice from the Town Board of Commissioners. Any fine imposed hereunder shall be a civil penalty which may be recovered by the Town in a civil action in the nature of a debt.
- (4) In addition to or in lieu of other remedies, the Town Board of Commissioners may, by and through its Floodplain Administrator or other authorized agent, institute any appropriate action or proceeding to restrain or prevent any violation of this Ordinance or of the provisions of any permit issued under the authority of this Ordinance, or to require any person, firm or corporation that has committed a violation to remove a violating obstruction or restore the conditions existing before the placement of the obstruction by any manner or means available at law or in equity.

**SECTION A.                    DESIGNATION OF FLOODPLAIN ADMINISTRATOR.**

The Code Administrator, hereinafter referred to as the “Floodplain Administrator”, is hereby appointed to administer and implement the provisions of this ordinance.

**SECTION B.            FLOODPLAIN DEVELOPMENT APPLICATION, PERMIT AND CERTIFICATION REQUIREMENTS.**

- (1) **Application Requirements.** Application for a Floodplain Development Permit shall be made to the Floodplain Administrator prior to any development activities located within Special Flood Hazard Areas. The following items shall be presented to the Floodplain Administrator to apply for a floodplain development permit:
  - (a) A plot plan drawn to scale which shall include, but shall not be limited to, the



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following specific details of the proposed floodplain development:

- (i) the nature, location, dimensions, and elevations of the area of development/disturbance; existing and proposed structures, utility systems, grading/pavement areas, fill materials, storage areas, drainage facilities, and other development;
  - (ii) the boundary of the Special Flood Hazard Area as delineated on the FIRM or other flood map as determined in Article 3, Section B, or a statement that the entire lot is within the Special Flood Hazard Area;
  - (iii) flood zone(s) designation of the proposed development area as determined on the FIRM or other flood map as determined in Article 3, Section B;
  - (iv) the boundary of the floodway(s) or non-encroachment area(s) as determined in Article 3, Section B;
  - (v) the Base Flood Elevation (BFE) where provided as set forth in Article 3, Section B; Article 4, Section C; or Article 5, Section D;
  - (vi) the old and new location of any watercourse that will be altered or relocated as a result of proposed development;
- (b) Proposed elevation, and method thereof, of all development within a Special Flood Hazard Area including but not limited to:
- (i) Elevation in relation to mean sea level of the proposed reference level (including basement) of all structures;
  - (ii) Elevation in relation to mean sea level to which any non-residential structure in Zone AE, A or AO will be flood-proofed; and
  - (iii) Elevation in relation to mean sea level to which any proposed utility systems will be elevated or floodproofed;
- (c) If floodproofing, a Floodproofing Certificate (FEMA Form 81-65) with supporting data and an operational plan that includes, but is not limited to, installation, exercise, and maintenance of floodproofing measures.
- (d) A Foundation Plan, drawn to scale, which shall include details of the proposed foundation system to ensure all provisions of this ordinance are met. These details

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include but are not limited to:

- (i) The proposed method of elevation, if applicable (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/posts/piers/piles/shear walls); and
  - (ii) Openings to facilitate automatic equalization of hydrostatic flood forces on walls in accordance with Article 5, Section B(4)(c) when solid foundation perimeter walls are used in Zones A, AO, AE, and A1-30;
- (e) Usage details of any enclosed areas below the lowest floor.
  - (f) Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage;
  - (g) Certification that all other Local, State and Federal permits required prior to floodplain development permit issuance have been received.
  - (h) Documentation for placement of Recreational Vehicles and/or Temporary Structures, when applicable, to ensure that the provisions of Article 5, Section B, subsections (6) and (7) of this ordinance are met.
  - (i) A description of proposed watercourse alteration or relocation, when applicable, including an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map (if not shown on plot plan) showing the location of the proposed watercourse alteration or relocation.

(2) **Permit Requirements.** The Floodplain Development Permit shall include, but not be limited to:

- (a) A description of the development to be permitted under the floodplain development permit.
- (b) The Special Flood Hazard Area determination for the proposed development per available data specified in Article 3, Section B.
- (c) The regulatory flood protection elevation required for the reference level and all attendant utilities.
- (d) The regulatory flood protection elevation required for the protection of all public utilities.
- (e) All certification submittal requirements with timelines.

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- (f) A statement that no fill material or other development shall encroach into the floodway or non-encroachment area of any watercourse, if applicable.
- (g) The flood openings requirements, if in Zones A, AO, AE or A1-30.
- (h) Limitations of below BFE enclosure uses, if applicable. (i.e., parking, building access and limited storage only).

(3) **Certification Requirements.**

- (a) Elevation Certificates
  - (i) An Elevation Certificate (FEMA Form 81-31) is recommended prior to the actual start of any new construction. It shall be the duty of the permit holder to have established an elevation reference level, prior to construction. The Floodplain Administrator can review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder prior to the beginning of construction. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit.
  - (ii) A final as-built Elevation Certificate (FEMA Form 81-31) is required after construction is completed and prior to Certificate of Compliance/Occupancy issuance. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of final as-built construction of the elevation of the reference level and all attendant utilities. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to Certificate of Compliance/Occupancy issuance. In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make required corrections shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.
- (b) Floodproofing Certificate. If non-residential floodproofing is used to meet the regulatory flood protection elevation requirements, a Floodproofing Certificate (FEMA Form 81-65), with supporting data, an operational plan, and an inspection and maintenance plan are required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities, in relation to mean sea level. Floodproofing certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The Floodplain Administrator shall

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review the certificate data, the operational plan, and the inspection and maintenance plan. Deficiencies detected by such review shall be corrected by the applicant prior to permit approval. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit. Failure to construct in accordance with the certified design shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.

- (c) If a manufactured home is placed within Zone A, AO, AE, or A1-30 and the elevation of the chassis is more than 36 inches in height above grade, an engineered foundation certification is required in accordance with the provisions of Article 5, Section B(3)(b).
- (d) If a watercourse is to be altered or relocated, a description of the extent of watercourse alteration or relocation; a professional engineer’s certified report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map showing the location of the proposed watercourse alteration or relocation shall all be submitted by the permit applicant prior to issuance of a floodplain development permit.
- (e) Certification Exemptions. The following structures, if located within Zone A, AO, AE or A1-30, are exempt from the elevation/floodproofing certification requirements specified in items (a) and (b) of this subsection:
  - (i) Recreational Vehicles meeting requirements of Article 5, Section B(6)(a);
  - (ii) Temporary Structures meeting requirements of Article 5, Section B(7); and
  - (iii) Accessory Structures less than 150 square feet meeting requirements of Article 5, Section B(8).

**SECTION C. DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR.**

The Floodplain Administrator shall perform , but not be limited to, the following duties:

- (1) Review all floodplain development applications and issue permits for all proposed development within Special Flood Hazard Areas to assure that the requirements of this ordinance have been satisfied.
- (2) Review all proposed development within Special Flood Hazard Areas to assure that all necessary Local, State and Federal permits have been received.

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- (3) Notify adjacent communities and the North Carolina Department of Crime Control and Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency (FEMA).
- (4) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is maintained.
- (5) Prevent encroachments into floodways and non-encroachment areas unless the certification and flood hazard reduction provisions of Article 5, Section F are met.
- (6) Obtain actual elevation (in relation to mean sea level) of the reference level (including basement) of all attendant utilities of all new and substantially improved structures, in accordance with Article 4, Section B(3).
- (7) Obtain actual elevation (in relation to mean sea level) to which all new and substantially improved structures and utilities have been floodproofed, in accordance with the provisions of Article 4, Section B(3).
- (8) Obtain actual elevation (in relation to mean sea level) of all public utilities in accordance with the provisions of Article 4, Section B(3).
- (9) When floodproofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with the provisions of Article 4, Section B(3) and Article 5, Section B(2).
- (10) Where interpretation is needed as to the exact location of boundaries of the Special Flood Hazard Areas, floodways, or non-encroachment areas, (for example where there appears to be a conflict between a mapped boundary and actual field conditions), make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this article.

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- (11) When Base Flood Elevation (BFE) data has not been provided in accordance with Article 3, Section B, obtain, review, and reasonably utilize any Base Flood Elevation (BFE) data, along with floodway data or non-encroachment area data available from a Federal, State, or other source, including data developed pursuant to Article 5, Section D(2)(b), in order to administer the provisions of this ordinance.
- (12) When Base Flood Elevation (BFE) data is provided but no floodway or non-encroachment area data has been provided in accordance with Article 3, Section B, obtain, review, and reasonably utilize any floodway data or non-encroachment area data available from a Federal, State, or other source in order to administer the provisions of this ordinance.
- (13) Permanently maintain all records that pertain to the administration of this ordinance and make these records available for public inspection, recognizing that such information may be subject to the Privacy Act of 1974, as amended.
- (14) Make on-site inspections of work in progress. As the work pursuant to a floodplain development permit progresses, the floodplain administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local ordinance and the terms of the permit. In exercising this power, the floodplain administrator has a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of the community at any reasonable hour for the purposes of inspection or other enforcement action.
- (15) Issue stop-work orders as required. Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this ordinance, the Floodplain Administrator may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing or in charge of the work. The stop-work order shall state the specific work to be stopped, the specific reason(s) for the stoppage, and the condition(s) under which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor.
- (16) Revoke floodplain development permits as required. The Floodplain Administrator may revoke and require the return of the floodplain development permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, and specifications; for refusal or failure to comply with the requirements of State or local laws; or for false statements or misrepresentations made in securing the permit. Any floodplain development permit mistakenly issued in violation of an applicable State or local law may also be revoked.
- (17) May refuse or cause to be refused a certificate of occupancy for any building or other

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improvements constructed or being constructed on the site in question, or cause the Town permitting office to refuse to issue any permit that has been applied for, or cause the Town permitting office to freeze (or suspend) active permits and inspections.

- (18) Make periodic inspections throughout the Special Flood Hazard Areas within the jurisdiction of the community. The Floodplain Administrator and each member of his or her inspections department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action.
- (19) Follow through with corrective procedures of Article 4, Section D.
- (20) Review, provide input, and make recommendations for variance requests.
- (21) Maintain a current map repository to include, but not limited to, the FIS Report, FIRM and other official flood maps and studies adopted in accordance with Article 3, Section B of this ordinance, including any revisions thereto including Letters of Map Change, issued by FEMA. Notify State and FEMA of mapping needs.
- (22) Coordinate revisions to FIS reports and FIRMs, including Letters of Map Revision Based on Fill (LOMR-F) and Letters of Map Revision (LOMR).
- (23) Apply and enforce any and all provisions of this Ordinance. In determining the amount of any penalty ordered under authority of this Ordinance the Floodplain Administrator shall give due consideration to the appropriateness of the penalty with respect to the size of the business of the person being charged, the gravity of the violation, the good faith of the person, the record of previous violations, and, in general, the facts and circumstances surrounding the violation.

**SECTION D. CORRECTIVE PROCEDURES.**

- (1) Violations to be Corrected: When the Floodplain Administrator finds violations of applicable State and local laws, it shall be his or her duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law cited in such notification.
- (2) Actions in Event of Failure to Take Corrective Action: If the owner of a building or property shall fail to take prompt corrective action, the Floodplain Administrator shall give the owner written notice, by certified or registered mail to the owner's last known address or by personal service, stating:
  - (a) that the building or property is in violation of the floodplain management

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regulations;

- (b) that a hearing will be held before the floodplain administrator at a designated place and time, not later than ten (10) days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and
- (c) that following the hearing, the Floodplain Administrator may issue an order affirming, modifying or rescinding the original finding or may enter such other finding or order as the Floodplain Administrator may deem just and proper consistent with the provisions of this Ordinance including, but not limited to order to alter, vacate, or demolish the building; or to remove fill as applicable.

- (3) Order to Take Corrective Action: If, upon a hearing held pursuant to the notice prescribed above, the Floodplain Administrator shall find that the building or development is in violation of the Flood Damage Prevention Ordinance, He/she shall issue an order in writing to the owner, requiring the owner to remedy the violation within a specified time period, not less than sixty (60) calendar days, nor more than one-hundred eighty (180) calendar days. Where the Floodplain Administrator finds that there is imminent danger to life or other property, they may order that corrective action be taken in such lesser period as may be feasible.
- (4) Appeal: Any owner who has received an order to take corrective action may appeal the order to the Board of Adjustment by giving notice of appeal in writing to the Floodplain Administrator within ten (10) days following issuance of the final order. In the absence of an appeal, the order of the Floodplain Administrator shall be final. The Board of Adjustment shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.

Any order, requirement, decision, or determination made by the Floodplain Administrator may be appealed to the Board of Adjustment pursuant to the procedure found in Section F. Appeals below.

- (5) Failure to Comply with Order: If the owner of a building or property fails to comply with an order to take corrective action for which no appeal has been made or fails to comply with an order of the governing body following an appeal, the owner shall be guilty of a misdemeanor and shall be punished at the discretion of the court.



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**SECTION E. VARIANCE PROCEDURES.**

- (1) The Board of Adjustment as established by the Town of Montreat, hereinafter referred to as the “appeal board”, shall hear and decide requests for variances from the requirements of this ordinance.
- (2) Any person aggrieved by the decision of the appeal board may appeal such decision to the Court, as provided in Chapter 7A of the North Carolina General Statutes.
- (3) Variances may be issued for:
  - (a) the repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and that the variance is the minimum necessary to preserve the historic character and design of the structure;
  - (b) functionally dependent facilities if determined to meet the definition as stated in Article 2 of this ordinance, provided provisions of Article 4, Section E(9)(b), (c), and (e) have been satisfied, and such facilities are protected by methods that minimize flood damages during the base flood and create no additional threats to public safety; or
  - (c) any other type of development, provided it meets the requirements of this Section.
- (4) In passing upon variances, the appeal board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance, and:
  - (a) the danger that materials may be swept onto other lands to the injury of others;
  - (b) the danger to life and property due to flooding or erosion damage;
  - (c) the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
  - (d) the importance of the services provided by the proposed facility to the community;
  - (e) the necessity to the facility of a waterfront location as defined under Article 2 of this ordinance as a functionally dependent facility, where applicable;
  - (f) the availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;

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- (g) the compatibility of the proposed use with existing and anticipated development;
  - (h) the relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
  - (i) the safety of access to the property in times of flood for ordinary and emergency vehicles;
  - (j) the expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
  - (k) the costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.
- (5) A written report addressing each of the above factors shall be submitted with the application for a variance.
- (6) Upon consideration of the factors listed above and the purposes of this ordinance, the appeal board may attach such conditions to the granting of variances as it deems necessary to further the purposes and objectives of this ordinance.
- (7) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the Base Flood Elevation (BFE) and the elevation to which the structure is to be built and that such construction below the Base Flood Elevation increases risks to life and property, and that the issuance of a variance to construct a structure below the Base Flood Elevation will result in increased premium rates for flood insurance up to \$25 per \$100 of insurance coverage. Such notification shall be maintained with a record of all variance actions, including justification for their issuance.
- (8) The Floodplain Administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the State of North Carolina upon request.
- (9) Conditions for Variances:
- (a) Variances shall not be issued when the variance will make the structure in violation of other Federal, State, or local laws, regulations, or ordinances.
  - (b) Variances shall not be issued within any designated floodway or non-encroachment area if the variance would result in any increase in flood levels during the base flood discharge.
  - (c) Variances shall only be issued upon a determination that the variance is the

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- minimum necessary, considering the flood hazard, to afford relief.
- (d) Variances shall only be issued prior to development permit approval.
  - (e) Variances shall only be issued upon:
    - (i) a showing of good and sufficient cause;
    - (ii) a determination that failure to grant the variance would result in exceptional hardship; and
    - (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- (10) A variance may be issued for solid waste disposal facilities or sites, hazardous waste management facilities, salvage yards, and chemical storage facilities that are located in Special Flood Hazard Areas provided that all of the following conditions are met:
- (a) The use serves a critical need in the community.
  - (b) No feasible location exists for the use outside the Special Flood Hazard Area.
  - (c) The reference level of any structure is elevated or floodproofed to at least the regulatory flood protection elevation.
  - (d) The use complies with all other applicable Federal, State and local laws.
  - (e) The Town of Montreat has notified the Secretary of the North Carolina Department of Crime Control and Public Safety of its intention to grant a variance at least thirty (30) calendar days prior to granting the variance.

**SECTION F. APPEALS**

- (a) *Types of appeals.* The Board of Adjustment shall hear and decide all appeals from any order, requirement, decision, or determination made by the Floodplain Administrator. In deciding appeals, it may hear both those based upon an allegedly improper or erroneous interpretation of this Ordinance and those based upon alleged hardship resulting from strict interpretation of this Ordinance.
- (b) *Procedure for filing appeals.* No appeal shall be heard by the Board of Adjustment unless notice thereof is filed within 30 days after the interested party receives notice of the order, requirement, decision or determination by the Floodplain Administrator. The applicant must file his application for a hearing with the Floodplain Administrator, who shall act as clerk for the Board of Adjustment in receiving this notice. All applications shall

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be made upon the form specified for that purpose, and all information required thereon shall be complete before an appeal shall be considered as having been filed.

(c) *Hearings.* Hearings shall be conducted as follows:

- (1) *Time.* After receipt of notice of appeal, the board chairperson shall schedule the time for a hearing, which shall be at a regular or special meeting within 31 days from the filing of such notice of appeal.
- (2) *Notice of hearing.* The Board of Adjustment shall mail notices of the hearing to the affected parties to the action appealed from, and to such other persons as the Floodplain Administrator shall direct, at least five days prior to the hearing. Such notice shall state the location of the building or lot, the general nature of the question involved in the appeal, and the time and place of the hearing.
- (3) *Conduct of hearing.* Any party may appear in person or by agent or by attorney at the hearing. The order of business for the hearing shall be as follows:
  - a. The chairperson, or such person as he shall direct, shall give a preliminary statement of the case.
  - b. The applicant shall present the argument in support of his application.
  - c. Persons opposed to granting the application shall present the argument against the application.
  - d. Both sides will be permitted to present rebuttals to opposing testimony.
  - e. The chairperson shall summarize the evidence, which has been presented, giving the parties opportunity to make objections or corrections.

Witnesses may be called and factual evidence may be submitted, but the Board of Adjustment shall not be limited to consideration of only such evidence as would be admissible in a court of law. The Board of Adjustment may view the premises before arriving at a decision. All witnesses before the Board of Adjustment shall be placed under oath and the opposing party may cross examine them.

- (4) *Rehearings.* An application for a rehearing may be made in the same manner as provided for an original hearing. Evidence in support of the application shall initially be limited to that which is necessary to enable the Board of Adjustment to determine whether there has been a substantial change in the facts, evidence, or conditions in the case. The application for rehearing shall be denied by the Board of Adjustment if, from the record, it finds that there has been no substantial

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change in facts, evidence or conditions. If the Board of Adjustment finds that there has been a change, it shall thereupon treat the request in the same manner as any other application.

(d) *Decisions.* Decisions shall be made in the following manner:

- (1) *Time.* A decision by the Board of Adjustment shall be made within 30 days from the time of hearing.
- (2) *Form.* Written notice by certified or registered mail of the decision in a case shall be given to the applicant by the Floodplain Administrator as soon as practical after the case is decided. Also, written notice shall be given to owners of the subject property, if not the applicant, and to other persons who have made written request for such notice. The final decision of the Board of Adjustment shall be shown in the record of the case as entered in the minutes of the Board of Adjustment and signed by the Floodplain Administrator and the chairperson upon approval of the minutes of the Board of Adjustment. Such record shall show the reasons for the determination, with summary of the evidence introduced and the findings of fact made by the Board of Adjustment. Where a variance is granted, the record shall state in detail any exceptional difficulty or unnecessary hardship upon which the appeal was based and which the Board of Adjustment finds to exist. The decision may reverse or affirm, wholly or partly, or modify the order, requirement, decision or determination appealed from. The record shall state in detail what, if any, conditions and safeguards are imposed by the Board of Adjustment in connection with the granting of a variance.
- (3) *Expiration of permits.* Unless otherwise specified, any order or decision of the Board of Adjustment granting a variance shall expire if a Floodplain Development Permit, building permit or certificate of occupancy for such use is not obtained by the applicant within one year from the date of the decision.
- (4) *Voting.* The concurring vote of four-fifths of the members of the Board of Adjustment shall be necessary to reverse any order, requirement, decision or determination of the Floodplain Administrator; to decide in favor of the applicant any matter upon which the Board of Adjustment is required by this article to pass; or to grant a variance from the provisions of this article.

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- (5) *Public record of decisions.* The decisions of the Board of Adjustment, as filed in its minutes, shall be a public record, available for inspection at all reasonable times.

(e) *Appeals from decision of Board of Adjustment.*

- (1) Appeals from the Board of Adjustment may be taken to the courts pursuant to G.S. §160A-388 as same is effective on and after January 1, 2010 in accordance Session Law 2009-421.
- (2) Every final decision granting or denying a permit under this Part shall be subject to review by the superior court of the county, with the right of jury trial at the election of the party seeking review. The time and manner of election of a jury trial shall be governed by G.S. 1A-1, Rule 38(b) of the Rules of Civil Procedure. Pending the final disposition of an appeal, no action shall be taken that would be unlawful in the absence of a permit issued under this Part.

**ARTICLE 5.                    PROVISIONS FOR FLOOD HAZARD REDUCTION.**

**SECTION A.                    GENERAL STANDARDS.**

In all Special Flood Hazard Areas the following provisions are required:

- (1) All new construction and substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, and lateral movement of the structure.
- (2) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- (3) All new construction and substantial improvements shall be constructed by methods and practices that minimize flood damages.
- (4) Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding to the Regulatory Flood Protection Elevation. These include, but are not limited to, HVAC equipment, water softener units, bath/kitchen fixtures, ductwork, electric / gas meter panels /boxes, utility/cable boxes, hot water heaters, and electric outlets/switches.
- (5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.

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- (6) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into flood waters.
- (7) On-site waste disposal systems shall be located and constructed to avoid impairment from them or contamination from them during flooding.
- (8) Any alteration, repair, reconstruction, or improvements to a structure, which is in compliance with the provisions of this ordinance, shall meet the requirements of “new construction” as contained in this ordinance.
- (9) Nothing in this ordinance shall prevent the repair, reconstruction, or replacement of a building or structure existing on the effective date of this ordinance and located totally or partially within the floodway, non-encroachment area, or stream setback, provided there is no additional encroachment below the Regulatory Flood Protection Elevation in the floodway, non-encroachment area, or stream setback, and provided that such repair, reconstruction, or replacement meets all of the other requirements of this ordinance.
- (10) New solid waste disposal facilities and sites, hazardous waste management facilities, salvage yards, and chemical storage facilities shall not be permitted, except by variance as specified in Article 4, Section E (9). A structure or tank for chemical or fuel storage incidental to an allowed use or to the operation of a water treatment plant or wastewater treatment facility may be located in a Special Flood Hazard Area only if the structure or tank is either elevated or floodproofed to at least the regulatory flood protection elevation and in accordance with the provisions of Article 4, Section B(3).
- (11) All subdivision proposals and other development proposals shall be consistent with the need to minimize flood damage.
- (12) All subdivision proposals and other development proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
- (13) All subdivision proposals and other development proposals shall have adequate drainage provided to reduce exposure to flood hazards.

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- (14) All subdivision proposals and other development proposals shall have received all necessary permits from those governmental agencies for which approval is required by Federal or State law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.
- (15) When a structure is partially located in a Special Flood Hazard Area, the entire structure shall meet the requirements for new construction and substantial improvements.
- (16) When a structure is located in multiple flood hazard zones or in a flood hazard risk zone with multiple base flood elevations, the provisions for the more restrictive flood hazard risk zone and the highest base flood elevation shall apply.
- (17) No vegetative debris such as wood piles, downed trees or branches, mulch or other materials which could cause blockage of culverts or bridges or which could otherwise create a hazard during a flood event shall be permitted to accumulate within the Special Flood Hazard Area.
- (18) No discarded items such as abandoned vehicles, white goods, tires, or other trash or debris shall be allowed to accumulate within the Special Flood Hazard Area.

**SECTION B. SPECIFIC STANDARDS.**

In all Special Flood Hazard Areas where Base Flood Elevation (BFE) data has been provided, as set forth in Article 3, Section B, or Article 5, Section D, the following provisions, in addition to the provisions of Article 5, Section A, are required:

- (1) Residential Construction. New construction and substantial improvement of any residential structure (including manufactured homes) shall have the reference level, including basement, elevated no lower than the Regulatory Flood Protection Elevation, as defined in Article 2 of this ordinance.
- (2) Non-Residential Construction. New construction and substantial improvement of any commercial, industrial, or other non-residential structure shall have the reference level, including basement, elevated no lower than the regulatory flood protection elevation, as defined in Article 2 of this ordinance. Structures located in A, AE, AO, and A1-30 Zones may be floodproofed to the Regulatory Flood Protection Elevation in lieu of elevation provided that all areas of the structure, together with attendant utility and sanitary facilities, below the regulatory flood protection elevation are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy.



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For AO Zones, the floodproofing elevation shall be in accordance with Article 5, Section G(2). A registered professional engineer or architect shall certify that the standards of this subsection are met. Such certification shall be provided to the Floodplain Administrator as set forth in Article 4, Section B(3), along with the operational plan and the inspection and maintenance plan plans.

(3) Manufactured Homes.

- (a) New and replacement manufactured homes shall be elevated so that the reference level of the manufactured home is no lower than the regulatory flood protection elevation, as defined in Article 2 of this ordinance.
- (b) Manufactured homes shall be securely anchored to an adequately anchored foundation to resist flotation, collapse, and lateral movement, either by certified engineered foundation system, or in accordance with the most current edition of the State of North Carolina Regulations for Manufactured Homes adopted by the Commissioner of Insurance pursuant to NCGS 143-143.15. Additionally, when the elevation would be met by an elevation of the chassis thirty-six (36) inches or less above the grade at the site, the chassis shall be supported by reinforced piers or engineered foundation. When the elevation of the chassis is above thirty-six (36) inches in height, an engineering certification is required.
- (c) All enclosures or skirting shall meet the requirements of Article 5, Section B(4).
- (d) An evacuation plan must be developed for evacuation of all residents of all new, substantially improved or substantially damaged manufactured home parks or subdivisions located within flood prone areas. This plan shall be filed with and approved by the Floodplain Administrator and the local Emergency Management Coordinator.

(4) Elevated Buildings. Fully enclosed area, of new construction and substantially improved structures, which is below the lowest floor:

- (a) shall not be designed or used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator). The interior portion of such enclosed area shall not be finished or partitioned into separate rooms, except to enclose storage areas;
- (b) shall be constructed entirely of flood resistant materials at least to the regulatory flood protection elevation; and

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- (c) shall include, in Zones A, AO, AE, and A1-30, flood openings to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet or exceed the following minimum design criteria:
  - (i) A minimum of two flood openings on different sides of each enclosed area subject to flooding;
  - (ii) The total net area of all flood openings must be at least one (1) square inch for each square foot of enclosed area subject to flooding;
  - (iii) If a building has more than one enclosed area, each enclosed area must have flood openings to allow floodwaters to automatically enter and exit;
  - (iv) The bottom of all required flood openings shall be no higher than one (1) foot above the adjacent grade;
  - (v) Flood openings may be equipped with screens, louvers, or other coverings or devices, provided they permit the automatic flow of floodwaters in both directions; and
  - (vi) Enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require flood openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires flood openings as outlined above.
  
- (5) Additions/Improvements.
  - (a) Additions and/or improvements to pre-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:
    - (i) not a substantial improvement, the addition and/or improvements must be designed to minimize flood damages and must not be any more non-conforming than the existing structure.
    - (ii) a substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.
  - (b) Additions to post-FIRM structures with no modifications to the existing structure other than a standard door in the common wall shall require only the addition to comply with the standards for new construction.

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- (c) Additions and/or improvements to post-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:
  - (i) not a substantial improvement, the addition and/or improvements only must comply with the standards for new construction.
  - (ii) a substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.
  
- (6) Recreational Vehicles. Recreational vehicles shall either:
  - (a) be on site for fewer than 180 consecutive days and be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities, and has no permanently attached additions); or
  - (b) meet all the requirements for new construction.
  
- (7) Temporary Non-Residential Structures. Prior to the issuance of a floodplain development permit for a temporary structure, the applicant must submit to the Floodplain Administrator a plan for the removal of such structure(s) in the event of a hurricane, flash flood or other type of flood warning notification. The following information shall be submitted in writing to the Floodplain Administrator for review and written approval:
  - (a) a specified time period for which the temporary use will be permitted. Time specified may not exceed three (3) months, renewable up to one (1) year;
  - (b) the name, address, and phone number of the individual responsible for the removal of the temporary structure;
  - (c) the time frame prior to the event at which a structure will be removed (i.e., minimum of 72 hours before landfall of a hurricane or immediately upon flood warning notification);
  - (d) a copy of the contract or other suitable instrument with the entity responsible for physical removal of the structure; and
  - (e) designation, accompanied by documentation, of a location outside the Special Flood Hazard Area, to which the temporary structure will be moved.
  
- (8) Accessory Structures. When accessory structures (sheds, detached garages, etc.) are to be placed within a Special Flood Hazard Area, the following criteria shall be met:

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- (a) Accessory structures shall not be used for human habitation (including working, sleeping, living, cooking or restroom areas);
- (b) Accessory structures shall not be temperature-controlled;
- (c) Accessory structures shall be designed to have low flood damage potential;
- (d) Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;
- (e) Accessory structures shall be firmly anchored in accordance with the provisions of Article 5, Section A(1);
- (f) All service facilities such as electrical shall be installed in accordance with the provisions of Article 5, Section A(4); and
- (g) Flood openings to facilitate automatic equalization of hydrostatic flood forces shall be provided below regulatory flood protection elevation in conformance with the provisions of Article 5, Section B(4)(c).

An accessory structure with a footprint less than 150 square feet that satisfies the criteria outlined above does not require an elevation or floodproofing certificate. Elevation or floodproofing certifications are required for all other accessory structures in accordance with Article 4, Section B(3).

**SECTION C. RESERVED.**

**SECTION D. STANDARDS FOR FLOODPLAINS WITHOUT ESTABLISHED  
BASE FLOOD ELEVATIONS.**

Within the Special Flood Hazard Areas designated as Approximate Zone A and established in Article 3, Section B, where no Base Flood Elevation (BFE) data has been provided by FEMA, the following provisions, in addition to the provisions of Article 5, Section A, shall apply:

- (1) No encroachments, including fill, new construction, substantial improvements or new development shall be permitted within a distance of thirty (30) feet each side from top of bank or five times the width of the stream, whichever is greater, unless certification with supporting technical data by a registered professional engineer is provided demonstrating that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
- (2) The BFE used in determining the Regulatory Flood Protection Elevation shall be determined based on the following criteria:

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- (a) When Base Flood Elevation (BFE) data is available from other sources, all new construction and substantial improvements within such areas shall also comply with all applicable provisions of this ordinance and shall be elevated or floodproofed in accordance with standards in Article 5, Sections A and B.
- (b) When floodway data is available from a Federal, State, or other source, all new construction and substantial improvements within floodway areas shall also comply with the requirements of Article 5, Sections B and F.
- (c) All subdivision, manufactured home park and other development proposals shall provide Base Flood Elevation (BFE) data if development is greater than five (5) acres or has more than fifty (50) lots/manufactured home sites. Such Base Flood Elevation (BFE) data shall be adopted by reference in accordance with Article 3, Section B and utilized in implementing this ordinance.
- (d) When Base Flood Elevation (BFE) data is not available from a Federal, State, or other source as outlined above, the reference level shall be elevated or floodproofed (nonresidential) to or above the Regulatory Flood Protection Elevation, as defined in Article 2. All other applicable provisions of Article 5, Section B shall also apply.

**SECTION E. STANDARDS FOR RIVERINE FLOODPLAINS WITH BFE BUT WITHOUT ESTABLISHED FLOODWAYS OR NON-ENCROACHMENT AREAS.**

Along rivers and streams where Base Flood Elevation (BFE) data is provided by FEMA or is available from another source but neither floodway nor non-encroachment areas are identified for a Special Flood Hazard Area on the FIRM or in the FIS report, the following requirements shall apply to all development within such areas:

- (1) Standards of Article 5, Sections A and B; and
- (2) Until a regulatory floodway or non-encroachment area is designated, no encroachments, including fill, new construction, substantial improvements, or other development, shall be permitted unless certification with supporting technical data by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one (1) foot at any point within the community.

**SECTION F. FLOODWAYS AND NON-ENCROACHMENT AREAS.**

Areas designated as floodways or non-encroachment areas are located within the Special Flood Hazard Areas established in Article 3, Section B. The floodways and non-encroachment areas

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are extremely hazardous areas due to the velocity of floodwaters that have erosion potential and carry debris and potential projectiles. The following provisions, in addition to standards outlined in Article 5, Sections A and B, shall apply to all development within such areas:

- (1) No encroachments, including fill, new construction, substantial improvements and other developments shall be permitted unless:
  - (a) it is demonstrated that the proposed encroachment would not result in any increase in the flood levels during the occurrence of the base flood, based on hydrologic and hydraulic analyses performed in accordance with standard engineering practice and presented to the Floodplain Administrator prior to issuance of floodplain development permit, or
  - (b) a Conditional Letter of Map Revision (CLOMR) has been approved by FEMA. A Letter of Map Revision (LOMR) must also be obtained upon completion of the proposed encroachment.
- (2) If Article 5, Section F(1) is satisfied, all development shall comply with all applicable flood hazard reduction provisions of this ordinance.
- (3) No new manufactured homes shall be permitted. Replacement manufactured homes in an existing manufactured home park or subdivision may be permitted, provided the following provisions are met:
  - (a) the anchoring and the elevation standards of Article 5, Section B(3); and
  - (b) the no encroachment standard of Article 5, Section F(1).
- (4) No new habitable structures, including structures used for working, sleeping, living, cooking, or restroom facilities, shall be permitted in floodways and non-encroachment areas.

**ARTICLE 6.                    LEGAL STATUS PROVISIONS.**

**SECTION A.    EFFECT ON RIGHTS AND LIABILITIES UNDER THE EXISTING FLOOD DAMAGE PREVENTION ORDINANCE.**

This ordinance in part comes forward by re-enactment of some of the provisions of the flood damage prevention ordinance enacted February 10, 2005, as amended, and it is not the intention to repeal but rather to re-enact and continue to enforce without interruption of such existing provisions, so that all rights and liabilities that have accrued thereunder are reserved and may be enforced. The enactment of this ordinance shall not affect any action, suit or proceeding instituted or pending. All provisions of the Flood Damage Prevention Ordinance of the Town of

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Montreat enacted on February 10, 2005, as amended, which are not reenacted herein are repealed.

The date of the initial Flood Damage Prevention Ordinance for Buncombe County is August 1, 1980.

**SECTION B. EFFECT UPON OUTSTANDING FLOODPLAIN DEVELOPMENT PERMITS.**

Nothing herein contained shall require any change in the plans, construction, size, or designated use of any development or any part thereof for which a floodplain development permit has been granted by the floodplain administrator or his or her authorized agents before the time of passage of this ordinance; provided, however, that when construction is not begun under such outstanding permit within a period of six (6) months subsequent to the date of issuance of the outstanding permit, construction or use shall be in conformity with the provisions of this ordinance.

**SECTION C. SEVERABILITY.**

If any section, clause, sentence, or phrase of the Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of this Ordinance.

**SECTION D. EFFECTIVE DATE.**

This ordinance shall become effective on January 6, 2010.

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**ARTICLE II: SOIL EROSION AND SEDIMENTATION CONTROL ORDINANCE**

*(Refers to the most updated version of the "Buncombe County  
Soil Erosion and Sedimentation Control Ordinance.")*



# MONTREAT CODE OF GENERAL ORDINANCES

## CHAPTER K - ENVIRONMENT

### ARTICLE III: STORMWATER MANAGEMENT

*(Revised 6/11/2009); (Revised 2/11/2010)*

#### 300. General Provisions

1. Purpose. The stormwater management regulations of this article shall protect, maintain and enhance the public health, safety, environment and general welfare by establishing minimum requirements and procedures to control the adverse effects of stormwater runoff associated with new development. Proper management of stormwater runoff will protect property, control stream channel erosion, prevent increased flooding associated with new development, protect floodplains, wetlands, water resources, riparian and aquatic ecosystems, and otherwise provide for environmentally sound use of the town's natural resources.
2. Scope. Except as otherwise expressly stated, the stormwater management regulations of this article apply to all development within Montreat and the unincorporated Buncombe County inside the extraterritorial jurisdiction of Montreat. Additional requirements regulating development on steeply-sloping sites ( $\geq 40\%$ ) are detailed in Montreat Code of General Ordinances, Chapter K—Environment, Article IV: Hillside Development.
3. Applicability and Exemptions. The stormwater management regulations of this article do not apply to any of the following development activities:
  - a) Activities including the breeding and grazing of livestock, undertaken on agricultural land for the production of plants and animals useful to humans, including but not limited to:
    - Forages and sod crops, grains and feed crops, tobacco, cotton and peanuts.
    - Dairy animals and apiary products.
    - Poultry and poultry products.
    - Livestock, including beef cattle, sheep, swine, horses, ponies, mules and goats.
    - Bees and dairy products.
    - Fur producing animals.

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- b) Activities undertaken on forestland for the production or harvesting of timber and timber products and conducted in accordance with best management practices as set out in Forest Practice Guidelines Related to Water Quality referenced as follows:  
  
[http://www.ncforestry.org/docs/Landowners/regulations/mgmt\\_practices.htm](http://www.ncforestry.org/docs/Landowners/regulations/mgmt_practices.htm)
- c) Activities for which a permit is required under the mining act, G.S. 74-46 et. seq.  
  
<http://www.dlr.enr.state.nc.us/pages/miningprogram.html>
- d) Any development in which the owner has accrued a vested right. For the purposes of this Chapter K only, a vested right is recognized if either (1) a preliminary plan has been approved by the Planning and Zoning Commission that meets the required specifications and standards of the Town of Montreat ordinances, Buncombe County ordinances, or (ii) a Land Disturbing Permit has been issued pursuant to the Buncombe County Soil Erosion and Sedimentation Control ordinance in effect on or before the effective date of this ordinance, and that such plan or permit remains unexpired.

A party in interest to a particular plan found to have no vested right to construct or develop on or before the effective date of this ordinance may appeal to the Town of Montreat Board of Adjustment for a hearing de novo. Such hearing shall be expedited and shall be limited to the issue of whether the landowner has a vested right to construct or develop their site under plans submitted prior to the effective date of this ordinance.

Redevelopment or expansion to uses included in the above categories are not subject to the stormwater requirements unless it *qualifies* by having disturbed area of 5,000 square feet or greater; at least 24% total lot area developed to include impervious cover; or addition of 2,500 square feet or more impervious surface, unless exempt pursuant to this ordinance.

### **301. Interpretations and Definitions**

1. Meaning and Intent. If a different or more specific meaning is given for a term defined elsewhere in the Town of Montreat Code, the meaning and application of the term in this ordinance shall control for purposes of application of this ordinance.
2. Text Controls in Event of Conflict. In the event of a conflict or inconsistency between the text of this ordinance and any heading, caption, figure, illustration, table, or map, the text shall control.

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3. Authority for Interpretation. The Stormwater Administrator has authority to determine the interpretation of this ordinance. Any person may request an interpretation by submitting a written request to the Administrator who shall respond in writing within 30 days. The Stormwater Administrator shall keep on file a record of all written interpretations of this ordinance.
4. References to Statutes, Regulations, and Documents. Whenever reference is made to a resolution, ordinance, statute, regulation, manual or document, it shall be construed as a reference to the most recent edition of such that has been finalized and published with due provision for notice and comment, unless otherwise specifically stated.
5. Word Usage.
  - a) The term “Town” shall herein refer to the Town of Montreat.
  - b) The term “Administrator” shall herein refer to the Stormwater Administrator of the Town of Montreat.
  - c) The term “Department” shall herein refer to the NC Department of Environment and Natural Resources (NCDENR).
  - d) The term “Division” shall herein refer to the NC Division of Water Quality (NCDWQ).
  - e) “Design Manual” shall herein refer to the most current edition of the *Stormwater Best Management Practice Manual* approved by NCDWQ. Development projects, or *qualified* redevelopment projects, less than 10,000 square feet may use the *Community Conservation Assistance Program (CCAP) Stormwater Best Management Practice Design Manual* prepared by the Biological and Agricultural Engineering Department of NCSU approved by NCDENR.
  - f) Lot area refers to the amount of horizontal land area contained inside the lot lines of a lot or site.
6. When used in this Ordinance, the following words and terms shall have the meaning set forth in this section, unless other provisions of this Ordinance specifically indicate otherwise.

Applicant: An owner or developer of a site who executes the Stormwater Permit Application pursuant to Town of Montreat Stormwater Ordinance.

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Best Management Practices (BMP's): Best Management Practices (BMP's) are effective, practical, structural or nonstructural methods which prevent or reduce the movement of sediment, nutrients, pesticides and other pollutants from the land to surface or ground water, or which otherwise protect water quality from potential adverse effects of silvicultural activities.

Built-upon Area(BUA): The portion of a *development* project that is covered by impervious or partially impervious surface including, but not limited to, buildings; pavement and gravel areas such as roads, parking lots and paths; and recreation facilities such as tennis courts. "Built-upon area" does not include a wooden slatted deck, the water area of a swimming pool, or pervious or partially pervious paving material to the extent that the paving material absorbs water or allows water to infiltrate through the paving material.

Connection: Any ditch, pipe, or other device for the diversion or transmission of storm drainage, which will in any way affect the operation or maintenance of the drainage ways.

Conveyance: Any feature of the landscape or earth, manmade or natural that carries water in a concentrated flow.

Detain: To store and slowly release stormwater runoff following precipitation by means of a surface depression or tank and an outlet structure.

Develop: Conversion of land to new service or purpose so as to make use of its resources, or to use the land for residential or commercial purposes.

Development: Any land disturbing activity which adds to or changes the amount of impervious or partially pervious cover on a land area or which otherwise decreases the infiltration of precipitation into the soil, other than a rebuilding activity that does not qualify as redevelopment.

Disturbed area: The portions of a development project that include graded areas disturbed so as to remove the natural cover in conjunction with development activities; both pervious and impervious surfaces installed and/or constructed including, but not limited to, buildings; concrete/asphalt pavement and gravel areas such as parking lots, patios, roads, and paths; lawns and artificially surfaced (e.g. recycled rubber mulch, crushed brick, etc.) areas; retention structures including, but not limited to, timber, stone and masonry walls; installation of septic/sewage systems, buried tanks or cisterns, etc.

Drainage structures: Shall include swales, channels, storm sewers, curb inlets, yard inlets, culverts, and other structures designed or used to convey stormwater.

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Impervious surface: Any surface that, in whole or in part, restricts or prevents the natural absorption of water into the ground. Such surfaces may include, but are not limited to, gravel, concrete, asphalt or other paving material, and all areas covered by the footprint of buildings or structures.

Land disturbing activity: Any use of, or operations on, the land by any person in residential, industrial, educational, institutional, or commercial development, including road construction and maintenance, that results in a change in the natural cover or topography.

Low Impact Development (LID): A term used in the United States to describe a land planning and engineering design approach to managing stormwater runoff. LID emphasizes conservation and use of on-site natural features to protect water quality.

Municipal Separate Storm Sewer Systems (MS4s): An MS4 is a conveyance or system of conveyances that is:

- Owned by a state, city, town, village, or other public entity that discharges to waters of the U.S.;
- Designed or used to collect or convey stormwater (including storm drains, pipes, ditches, etc.);
- Not a combined sewer; and
- Not part of a Publicly Owned Treatment Works (sewage treatment plant).

National Pollutant Discharge Elimination System (NPDES): The U.S. Environmental Protection Agency (EPA) administers this stormwater permitting program that regulates stormwater discharges from three potential sources: municipal separate storm sewer systems (MS4s), construction activities, and industrial activities.

Non-structural methods: Non-structural BMPs are designed to limit the amount of pollutants available in the environment that would potentially end up in stormwater runoff. Non-structural BMPs can be achieved through such things as education, management and development practices. Examples include ordinances and practices associated with land use and comprehensive site planning.

One-year, 24-hour storm: The surface runoff resulting from a 24-hour rainfall of intensity expected to be equaled or exceeded, on average, once in 12 months and with duration of 24-hours.

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**Redevelopment:** Any new construction on a site with pre-existing uses involving either partial or full demolition of existing structures, establishing new use(s) with a corresponding increase in impervious or partially pervious surface, or which otherwise decreases the infiltration of precipitation into the soil.

**Retain:** To capture and hold stormwater runoff following precipitation by means of surface depression allowing the water to infiltrate into the soil, thus reducing the hydrologic and pollution impacts downstream.

**Structural methods:** Physical systems installed to control pollutants and subsequent transport in stormwater. Many structural BMPs are designs based on natural systems and rely upon vegetation and soil mechanisms in order to perform as intended, such as wet ponds, green roofs, and stormwater wetlands; other, more conventional engineered solutions include bioretention areas, dry detention, permeable pavement, sand filters, and underground detention.

**Stormwater:** Any surface flow, runoff, and drainage consisting entirely of water from rainfall events.

**Stream:** A watercourse that collects surface runoff.

**Total Suspended Solids (TSS):** A water quality indicator illustrating the particulates present in a water sample, typically expressed as weight per volume (milligrams per litre or mg/l). The value is calculated from dry-weight of particles trapped by a filter, typically of a specified pore size, in the volume of water filtered. It is listed as a conventional pollutant in the U.S. Clean Water Act.

**Velocity:** The average rate of flow through the cross section of the main channel at the peak flow of the storm of interest.

### **302. Effective Date and Transitional Provisions**

This Ordinance shall take effect on February 11, 2010. All development and redevelopment projects for which complete and full applications were submitted and approved by the Town of Montreat, or for which conditional use permits have been issued, prior to the effective date of this ordinance shall be exempt from complying with provisions of this ordinance dealing with the control and/or management of post-construction runoff, but shall be required to comply with all other applicable provisions.

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Any violation of provisions existing on the effective date of this ordinance shall continue to be a violation under this ordinance and be subject to penalties and enforcement under this ordinance unless the use, development, construction, or other activity complies with the provisions of this ordinance.

**303. Administration and Procedures.**

1. Administration of this Ordinance. All questions arising in connection with this Ordinance shall be presented first to the Stormwater Administrator who shall be responsible for the day-to-day administration of this Ordinance. The Board of Adjustment shall have the authority to rule on matters of interpretation of this Ordinance and consider appeals from the decisions of the Stormwater Administrator. Any appeal from a decision of the Board of Adjustment shall be to the courts as provided by law. Where the regulations of this ordinance are more restrictive or impose higher standards or requirements than other environmental or land use codes for the Town of Montreat, then the requirements of this ordinance shall govern.
  
2. Stormwater Administrator. The Codes Administrator shall serve as the Stormwater Administrator by designation of the Board of Commissioners. The Stormwater Administrator shall have the following powers and duties under this ordinance:
  - a) To review and approve, approve with conditions, or disapprove applications for approval of plans pursuant to this ordinance;
  - b) To make determinations and render interpretations of this ordinance;
  - c) To establish application requirements and schedules for submittal and review of applications and appeals, to review and make recommendations to the Planning and Zoning Commission and/or Zoning Board of Adjustment on applications for development or redevelopment approvals;
  - d) To enforce the provisions of this ordinance in accordance with its enforcement provisions;
  - e) To maintain records, maps, and official materials as relate to the adoption, amendment, enforcement, or administration of this ordinance;
  - f) To provide expertise and technical assistance upon request;
  - g) To take any other action necessary to administer the provisions of this ordinance.

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3. Review and Appeals Procedure.

- a) A Stormwater Control Permit is required for all development and *qualified* redevelopment on lots with:
- Disturbed area of 5,000 square feet or greater; or
  - At least 24% total lot area developed to include impervious cover;
  - Or addition of 2,500 square feet or more impervious surface, unless exempt pursuant to this ordinance.

A building permit shall not be issued for *any* development project until the required Stormwater Control Permit has been issued.

- b) Two (2) copies of the completed stormwater plan submittal shall be submitted to the Stormwater Administrator for review.
- c) A site plan which includes orientation referencing north meridian; scale of drawing; boundaries and acreage of the parcel; adjacent streets and any easements; existing and/or proposed structures including setbacks; structure dimensions and separation distance(s); contour interval; existing and proposed contours; and clear graphic indication of any proposed alterations, additions, or details showing location of any systems of stormwater control, retention and treatment.
4. Application and permit review fees shall be established by the Montreat Board of Commissioners, and may amend and update fees and policies when needed. Current application fees are posted in the fee schedule for town services. Development projects less than 10,000 SF disturbed area, which are not part of a larger plan and meet the criteria detailed in 3(a) above, are eligible for reduced stormwater fees contingent upon extent of BMP's utilized. The Administrator shall grant a fifty-percent (50%) reduction in permit fees if it is determined project stormwater measures achieve greatest practicable treatment of post-construction runoff. LEED, Green Globe, NC Healthy Built Home, Clear Water Contractor, and other programs/certifications recognized at the national or state level to be consistent with LID project goals shall receive consideration as positively impacting overall stormwater treatment. Reduced building permit fees may also be granted by the Building Inspector for "Green" building practices/materials used, and will supplement any fee reductions granted under this ordinance.
5. Plan review fees shall be double posted amount when land disturbing activity begins before a required Stormwater Control Permit is issued by the Town.



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6. The Administrator shall review the submittal for completeness and for compliance with the requirements of this ordinance. An incomplete or nonconforming permit application will be returned to the applicant within two business days with an explanation of issues requiring resolution before plan review can be initiated.
7. Within thirty (30) days of receipt of complete application for development approval, the Administrator shall take action on the plan.
8. Approval, approval with modifications, or denial of the proposed stormwater control measures shall be in writing. In the case of denial, the reasons for denial shall be clearly stated. The applicant may appeal the decision of the Administrator to the Board of Adjustment. In the event a Stop Work Order has been issued for any violation of this ordinance, the party seeking to challenge the Order may request a special meeting of the Board of Adjustment to ensure a timely resolution of the matter.
9. Upon appeal, the Montreat Board of Adjustment will conduct a hearing in the nature of a quasi-judicial proceeding with all findings of fact supported by material evidence.
10. Decisions appealing the final decision by the Board of Adjustment may be filed in Buncombe County Superior Court, to be reviewed by proceedings in the nature of certiorari, within thirty (30) days of the final decision of the Board of Adjustment.
11. The Administrator shall take action on revisions to a stormwater control application which has been previously denied, within fifteen (15) days of receipt of the revised plan application for approval.
12. If a revised application is not re-submitted within sixty (60) calendar days from the date the applicant was notified, the application shall be considered withdrawn, and a new submittal for the same or substantially the same project shall be required along with the appropriate fee and pursuant to the then current standards.
13. Application for an amendment to an approved Stormwater Control Plan in written and graphic form may be made at any time. Until such time as an amendment is approved by the Administrator, it shall be unlawful to deviate from the approved plan.

14. A Stormwater Control Permit shall become null and void if the applicant has failed to make substantial progress within the prescribed timeframe as defined in this ordinance. The Administrator may grant a single, one-month extension of this time limit, for good cause shown, upon receiving a written request from the applicant before the expiration of the approved plan.

#### **304. Permit Application and Plans.**

The stormwater permit application shall describe in detail how post-development stormwater run-off will be controlled and managed, the design of all stormwater facilities and practices, and how the proposed project will meet the requirements of this ordinance. The following information should also be included in the submittal:

1. Existing Conditions / Proposed Site Plans. Existing conditions and proposed site layout sketch plans, which illustrate at a minimum: existing and proposed topography; perennial and intermittent streams; mapping of predominant soils from soil surveys (when available); boundaries of existing predominant vegetation and proposed limits of clearing and grading; and location of existing and proposed roads, buildings, parking areas and other impervious surfaces.
2. Natural Resources Inventory: A written or graphic inventory of the natural resources at the site and surrounding area as it exists prior to the commencement of the project. This description should include a discussion of soil conditions, forest cover, geologic features, topography, wetlands, and native vegetative areas on the site, as well as the location and boundaries of other natural feature protection and conservation areas such as lakes, ponds, floodplains, stream buffers and other setbacks (e.g., drinking water well setbacks, septic setbacks, etc.). Particular attention should be paid to environmentally sensitive features that provide particular opportunities or constraints for development.
3. Stormwater Management System Plan. A written or graphic concept plan of the proposed post-development stormwater management system including: preliminary selection and location of proposed structural stormwater controls; low impact design elements; location of existing and proposed conveyance systems such as grass channels, swales, and storm drains; flow paths; location of floodplain/floodway limits; relationship of site to upstream and downstream properties and drainages; and preliminary location of proposed stream channel modifications, such as bridge or culvert crossings.
4. Area-Based Requirements.

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- a) *Larger Development Projects:* All stormwater management plans relating to subdivisions or development or redevelopment plans on lots equal to or greater than one acre, or on lots less than an acre with at least 10,000 square feet disturbed area, or which are part of a larger common plan of development or sale, including a subdivision, Planned Unit Development, or other Special Use shall be prepared by a qualified registered North Carolina professional engineer, environmental scientist or landscape architect, and the consulting professional shall perform services only in their area of competence. The Administrator shall determine if the consulting professional may verify that the design of all stormwater management facilities and practices meets submittal requirements for complete applications, and that the designs and plans are sufficient to comply with this ordinance.
- b) *Smaller Projects:* Stormwater management plans relating to development or qualifying redevelopment on lots less than 10,000 square feet disturbed area in size shall meet the minimum permit application requirements of Section 304. 1-3, and applicants shall provide designs demonstrating adequate stormwater management measures selected from a list of approved BMP's as follows:
- Diffuse or Directed Flow Designs
  - Rain Gardens
  - Backyard Wetland
  - Stormwater Collection (Cistern) and Reuse Systems
  - Vegetated Swales
  - Impervious Removal
  - Permeable Pavement\*

\*Due to the higher clay content and low permeability of many soils in our region, permeable pavement's usefulness is limited to detention as a stormwater management tool in Western North Carolina.

Detailed information regarding the design, installation and maintenance of the stormwater management BMP's listed above are contained in the *CCAP Stormwater Best Management Practice Design Manual* prepared by Biological and Agricultural Engineering Department of NCSU, and published in cooperation with NCDENR. A copy of the manual is retained at the Town Zoning and Inspections Department, or available at the following website:

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<http://www.bae.ncsu.edu/stormwater/PublicationFiles/DSWC.Manual.2007.pdf>

5. As-Built Plans and Final Approval. Upon completion of a project, and before a certificate of occupancy shall be granted, the applicant shall certify that the completed project is in accordance with the approved stormwater management plans and designs, and shall submit actual “as built” plans for all stormwater management facilities or practices after final construction is completed. The plans shall show the final design specifications for all stormwater management facilities and practices and the field location, size, depth, and planted vegetation of all measures, controls, and devices, as installed.

For larger development projects referenced in Section 304. 4 (Area-Based Requirements), the designer of the stormwater management measures and plans shall certify, *under seal*, that the as-built stormwater measures, controls, and devices are in compliance with the approved stormwater management plans and designs and with the requirements of this ordinance. A final inspection and approval by the Stormwater Administrator shall occur before the release of any performance securities or a Certificate of Occupancy is issued.

Approval authorizes the applicant to go forward with only the specific plans and activity authorized in the permit. The approval shall not be construed to exempt the applicant from obtaining other applicable approvals from local, state, and federal authorities.

**305. General Standards.**

Until such time as a comprehensive watershed management plan for the Swannanoa Basin is developed, the following guidelines apply.

1. All built-upon area shall be at a minimum of 30 feet landward on all sides of any surface water as measured horizontally on a line perpendicular to a vertical line marking the edge of the top of the bank. A perennial or intermittent surface water shall be present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). An exception to this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 2B .0233 (3) (a) or similar site-specific determination made using Division of Water Quality-approved methodology.

EXCEPTION

- a) At the request of the Applicant (as set out in the Stormwater Control Permit application and shown on the site plan submitted in accordance with Sections 303

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and 304 or an application for an amendment to an existing Stormwater Control Permit), the Stormwater Administrator with the written approval of the Town Manager may grant a reduction in the surface water buffer or an exception from the built-upon area requirement in Section 305(1) for an impervious driveway or bridge to provide access to Applicant’s site and/or for utilities to serve Applicant’s site, provided and only in the event the site is permitted to be used for residential purposes only, when: (i) the Applicant provides evidence that constructing such a driveway or bridge, and/or installing such utilities, without the requested relief (i.e., either a reduction in the surface water buffer or an exception from the built-upon area requirement) is impossible or not practicable; and (ii) the proposed driveway, bridge and/or utility improvements will be located and designed to minimize impervious surface, protect against erosion and sedimentation runoff, have the least adverse effects on aquatic life and habitat, protect water quality to the maximum extent practicable, and utilize all appropriate Best Management Practices (BMPs). Nothing in this subsection 305(1)(a) shall be construed to authorize a reduction in the surface water buffer or an exception from the built-upon area requirement for any improvement other than driveway, bridge and/or utility improvements as provided herein.

- b) Before requesting relief as provided for in this subsection 305(1)(a), the Applicant shall meet with the Stormwater Administrator to discuss the nature of the proposed relief, alternatives to the proposed relief that may have a reduced impact on stormwater management, the required submittals that must accompany any request for relief and other potential concerns related to the relief being proposed.
- c) In addition to submittals required in Section 304 and elsewhere in this ordinance, the request for a reduction in the surface water buffer or an exception from the built-upon area requirement submitted by the Applicant shall also include the following:
  - i. A copy of construction plans for the proposed driveway, bridge and/or utility improvements prepared by an engineer licensed in North Carolina, which plan shall include a detailed depiction of all proposed impervious surfaces and structures;
  - ii. A certification by the engineer preparing the plans that the proposed driveway, bridge or utility structure will be located and designed to minimize impervious surface, protect against erosion and sedimentation runoff, will have the least adverse effects on aquatic life and habitat, will protect water quality to the maximum extent practicable, and will utilize all appropriate BMPs;

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- iii. A copy of all permits required by the North Carolina Department of Environmental Quality or any other state agency or authority;
    - iv. A copy of all permits required by the United States Army Corps of Engineers, and any other federal agency or authority; and
    - v. An operation and maintenance agreement in conformance with Section 309.
  - d) The Stormwater Administrator and Town Manager may request additional information as they deem necessary. This information may include:
    - i. A tree survey locating all trees in the proposed construction area and immediate vicinity exceeding 12” in Diameter Breast Height;
    - ii. A plan for restoration of topography and vegetation of all areas disturbed by construction; and
    - iii. Plans to protect natural features (such as a rock formation).
  - e) This authority to grant a reduction in the surface water buffer and an exception from the built-upon area requirement shall be construed to be permissive and not mandatory. Without limiting the generality of the preceding sentence, the Stormwater Administrator and Town Manager may attach reasonable and appropriate conditions to approval of the requested relief. Any such conditions should relate to the relationship of the proposed improvements and stormwater, the surface water and surrounding lands being impacted (including natural features thereof), open space and vegetation being impacted, surrounding properties, or other matters that the Stormwater Administrator and Town Manager may find appropriate or the Applicant may propose. In approving a request for relief as provided herein, the Stormwater Administrator and Town Manager may impose more restrictive requirements than would otherwise be required by this ordinance and those in the application, as deemed necessary to ensure that the purposes and intent of this stormwater management ordinance are met.
- 2. All other projects which are not exempt from this ordinance must submit a stormwater management plan in order to receive a permit.
  - 3. The approval of the stormwater permit shall require an enforceable restriction on property usage that runs with the land, such as a recorded deed restriction or

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protective covenants, or designated space on approved preliminary plat or master plan to ensure that future development and redevelopment maintains the site consistent with the approved project plans.

4. When a Stormwater BMP or management system is established under the control of a neighborhood association or other private entity, the developer shall develop and provide an operations and maintenance manual on the BMP to the entity as well as to the Town of Montreat Zoning and Inspections Department for future reference.
5. All development and qualifying redevelopment projects which cumulatively disturb at least 10,000 square feet or which are a part of a larger plan shall implement stormwater control measures that comply with the following standards:
  - a) Project sites must employ Low Impact Development (LID) practices to analyze the infiltration capacity and natural drainages of the site and develop a system of controls which mimic the existing natural hydrology and which cumulatively capture and treat the runoff from the first inch of rainfall.

LID practices may include any combination of site design techniques, strategies, and BMPs to store, infiltrate, evaporate, retain, and detain runoff on the site to more closely replicate pre-development runoff thereby limiting the increase in pollutant loads caused by development.

- b) Wherever LID practices are not achievable, or have not been demonstrated the management measures controlling the final run-off from the site shall control and treat the difference in stormwater runoff volume leaving the project site between the pre-and post-development conditions for, at a minimum, the 1-year, 24-hour storm as determined by NOAA data for Black Mountain.

(See [http://dipper.nws.noaa.gov/hdsc/pfds/orb/nc\\_pfds.html](http://dipper.nws.noaa.gov/hdsc/pfds/orb/nc_pfds.html))

Runoff volume drawdown time shall be a minimum of 48 hours, but not more than 120 hours.

- c) All structural stormwater treatment systems used to meet the requirements of the program shall be designed to have a minimum of 85% average annual removal for Total Suspended Solids.

- d) Peak storm water runoff rates shall be controlled for all development at or exceeding 24% built upon area for both LID and conventional approaches. The peak storm water runoff release rates leaving the site during post-construction conditions shall be equal to or less than the pre-development peak storm water runoff release rates for the 1-year frequency, 24-hour duration storm event as determined by NOAA data for Black Mountain. The emergency overflow and outlet works for any pond or wetland constructed as a stormwater BMP shall be capable of safely passing a discharge with a minimum recurrence frequency of 50 years. For detention basins, the temporary storage capacity shall be restored within 72 hours. Requirements of the Dam Safety Act shall be met when applicable.
  
- e) No one BMP shall receive runoff from an area greater than three (3) acres. However, the total drainage area from BMPs used in series (i.e., integrated) can exceed this three (3) acre maximum.

**306. Standards for Stormwater Control Measures.**

1. Evaluation According to Contents of Design Manual. All stormwater control measures and stormwater treatment practices (also referred to as Best Management Practices, or BMPs) required under this ordinance shall be evaluated by the Stormwater Administrator according to the policies, criteria, and information, including technical specifications and standards and the specific design criteria for each stormwater practice, in the Design Manual. The Stormwater Administrator shall determine whether they will be adequate to meet the requirements of this ordinance.
  
2. Determination of Adequacy; Presumptions and Alternatives. Stormwater treatment practices that are designed, and constructed, and maintained in accordance with the criteria and specifications in the Design Manual will be presumed to meet the minimum water quality and quantity performance standards of this ordinance. Whenever an applicant proposes to utilize a practice or practices not designed and constructed in accordance with the criteria and specifications in the Design Manual, the applicant shall have the burden of demonstrating that the practice(s) will satisfy the minimum water quality and quantity performance standards of this ordinance. The Stormwater Administrator may require the applicant to provide such documentation, calculations, and examples as necessary to determine whether such an affirmative showing is made.

**307. Additional Standards.**



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1. Trout Waters. In addition to standards for stormwater handling set out in the design manual, larger development and redevelopment projects that drain in whole or part to class TR waters shall design and implement the best stormwater practices that do not result in a sustained increase in the receiving water temperature, while still meeting the other requirements of this ordinance. Smaller qualified projects that are determined to create a potential negative impact to class TR waters due to design, type of improvement, or other relevant factors, shall also be required to comply with this standard.
  
2. Onsite Wastewater.
  - a) *Operation and Maintenance Requirements:* New and replaced onsite systems for domestic wastewater installed after the effective date of this ordinance must be approved and permitted by the Buncombe County Health Department. Both the Buncombe County septic permit and documentation showing the operation and maintenance for the system are required before a Town Building Permit may be issued.
  
  - b) *Standards for Operation and Maintenance:* Onsite systems for domestic wastewater covered by this ordinance shall be operated and maintained so as to avoid adverse effects on surface water and groundwater, including eutrophication of surface water and microbial or nitrate contamination of groundwater. Septic tank residuals shall be pumped whenever necessary to assure the proper operation of the system to meet these standards, and the septage shall be reused or disposed of in a manner that does not present significant risks to human health, surface water or groundwater.

**308. General Standards for Maintenance**

1. Function of BMPs as Intended. The owner of each structural BMP installed pursuant to this ordinance shall maintain and operate it so as to preserve and continue its function in controlling stormwater quality and quantity at the degree or amount of function for which the structural BMP was designed.
  
2. Annual Maintenance Inspection and Report. The person responsible for maintenance of any structural BMP installed pursuant to this ordinance shall submit to the Stormwater Administrator an annual inspection report using standard forms supplied by the Administrator or, if deemed acceptable, provided by the designer of each engineered system. The inspection report shall contain all of the following:
  - The name and address of the land owner;

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- The recorded book and page number of the lot of each structural BMP;
- A statement that an inspection was made of all structural BMPs;
- The date the inspection was made;
- A statement that all inspected structural BMPs are performing properly and are in compliance with the terms and conditions of the approved maintenance agreement required by this ordinance or, if not functioning as designed, a detailed description of each deficiency and how the condition was corrected, and
- For engineered structural systems requiring detailed monitoring of specific water quality parameters and indicators, the original signature and seal of the engineer, surveyor, or landscape architect performing services only in their area of competence. Systems requiring more frequent monitoring or inspections shall be maintained according to design requirements.

All inspection reports shall be on forms supplied by the Stormwater Administrator unless otherwise approved. An original inspection report shall be provided to the Stormwater Administrator beginning one year from the date of as-built certification and each year thereafter on or before the date of the as-built certification.

**309. Operation and Maintenance Agreement**

1. In General. Prior to the conveyance or transfer of any lot or building site to be served by a structural BMP pursuant to this ordinance, and prior to issuance of any permit for development or redevelopment requiring a structural BMP pursuant to this ordinance, the applicant or owner of the site must execute an operation and maintenance agreement that shall be binding on all subsequent owners of the site, portions of the site, and lots or parcels served by the structural BMP. Until the transference of all property, sites, or lots served by the structural BMP, the original owner or applicant shall have primary responsibility for carrying out the provisions of the maintenance agreement.

The operation and maintenance agreement shall require the owner or owners to maintain, repair and, if necessary, reconstruct the structural BMP, and shall state the terms, conditions, and schedule of maintenance for the structural BMP. In addition, it shall grant to the Town a right of entry in the event that the Stormwater Administrator has reason to believe it has become necessary to inspect, monitor, maintain, repair, or reconstruct the structural BMP; however, in no case shall the right of entry, of itself, confer an obligation on the Town to assume responsibility for the structural BMP.

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The operation and maintenance agreement must be approved by the Stormwater Administrator prior to plan approval and shall be referenced on the final plat recorded with the County Register of Deeds upon final plat approval. A copy of the recorded maintenance agreement shall be given to the Stormwater Administrator within fourteen (14) days following its recordation.

2. Special Requirement for Homeowners’ and Other Associations. For all structural BMPs required pursuant to this ordinance and that are to be or are owned and maintained by a homeowners’ association, property owners’ association, or similar entity, the required operation and maintenance agreement shall include all of the following provisions:
  - a) Acknowledgment that the association shall continuously operate and maintain the stormwater control and management facilities;
  - b) Establishment of an escrow account, which can be spent solely for sediment removal, structural, biological or vegetative replacement, major repair, or reconstruction of the structural BMPs;

If structural BMPs are not performing adequately or as intended or are not properly maintained, the Town, in its sole discretion, may remedy the situation, and in such instances the Town shall be fully reimbursed from the escrow account. Escrowed funds may be spent by the association for sediment removal, structural, biological or vegetative replacement, major repair, and reconstruction of the structural BMPs, provided that the Town Administrator or his/her designated Stormwater Administrator shall first consent to the expenditure.

- c) Both developer contribution and annual deposits for future use of “sinking funds” shall fund the escrow account. Prior to plat recordation or issuance of construction permits, whichever shall first occur, the developer shall pay into the escrow account an amount equal to fifteen per cent (15%) of the initial construction cost of the structural BMPs;

Two-thirds (2/3) of the total amount of sinking fund budget shall be deposited into the escrow account within the first five (5) years and the full amount shall be deposited within ten (10) years following initial construction of the structural BMPs.

Funds shall be deposited each year into the escrow account to cover the cost of maintenance. A portion of the annual assessments of the association shall include an allocation into the escrow account. Any funds drawn down from the escrow account shall be replaced in accordance with the schedule of anticipated work used to create the sinking fund budget.

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- d) The percent of developer contribution and lengths of time to fund the escrow account may be varied by the Town depending on the design and materials of the stormwater control and management facility;
- e) Granting to the Town a right of entry to inspect, monitor, maintain, repair, and reconstruct structural BMPs;
- f) Allowing the Town to recover from the association and its members any and all costs the Town expends to maintain or repair the structural BMPs or to correct any operational deficiencies. Failure to pay the Town of its expended costs, after forty-five (45) days written notice, shall constitute a breach of the agreement;

The Town shall thereafter be entitled to bring an action against the association and its members to pay, or foreclose upon the lien hereby authorized by the agreement against the property, or both, in case of a deficiency. Interest, collection costs, and attorney fees shall be added to the recovery.

- g) A statement that this agreement shall not obligate the Town to maintain or repair any structural BMPs, and that the Town shall not be liable to any person for the condition or operation of structural BMPs;
- h) A statement that this agreement shall not in any way diminish, limit, or restrict the right of the Town to enforce any of its ordinances as authorized by law; and
- i) A provision indemnifying and holding harmless the Town for any costs and injuries arising from or related to the structural BMP, unless the Town has agreed in writing to assume the maintenance responsibility for the BMP and has accepted dedication of any and all rights necessary to carry out that maintenance.

**310. Inspection Program**

Inspections and inspection programs by the Town may be conducted or established on any reasonable basis, including but not limited to routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to, reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in BMPs; and evaluating the condition of BMPs.

If the owner or occupant of any property refuses to permit such inspection, the Stormwater Administrator shall proceed to obtain an administrative search warrant pursuant to G.S. §15-27.2

or its successor. No person shall obstruct, hamper or interfere with the Stormwater Administrator while carrying out his or her official duties.

**311. Performance Security for Installation and Maintenance**

1. The Town may, at its discretion, require the submittal of a performance security or bond with surety, cash escrow, letter of credit or other acceptable legal arrangement prior to issuance of a permit in order to ensure that the structural BMPs are (1) installed by the permit holder as required by the approved stormwater management plan, and/or (2) maintained by the owner as required by the operation and maintenance agreement. This requirement may be instituted in addition to and in conjunction with other performance security or bond requirements the Town may require in conjunction with a subdivision or development plan.
2. The amount of an installation performance security shall be the total estimated construction cost of the BMPs approved under the permit, plus twenty-five percent (25%).
3. The amount of a maintenance performance security shall be determined based on the type of BMP and a projected annual maintenance cost as recorded in the maintenance agreement.
4. Uses of Performance Security.
  - a) *Forfeiture Provisions:* The performance security shall contain forfeiture provisions for failure, after proper notice, to complete work within the time specified, or to initiate or maintain any actions which may be required of the applicant or owner in accordance with this ordinance, approvals issued pursuant to this ordinance, or an operation and maintenance agreement established pursuant to this ordinance.
  - b) *Default:* Upon default of the owner to construct, maintain, repair and, if necessary, reconstruct any structural BMP in accordance with the applicable permit or operation and maintenance agreement, the Stormwater Administrator shall obtain and use all or any portion of the security to make necessary improvements based on an engineering estimate.

Such expenditure of funds shall be made after requesting the owner to comply with the permit or maintenance agreement. In the event of a

default triggering the use of installation performance security, the Town shall not return any of the unused deposited cash funds or other security which shall be retained for maintenance.

- c) *Costs in Excess of Performance Security:* If the Town takes action upon such failure by the applicant or owner, it may collect from the applicant or owner for the difference, should the amount of the reasonable cost of such action exceed the amount of the security held.
  
- d) *Refund:* Within sixty (60) days of the final approval, the installation performance security shall be refunded to the applicant or terminated, with the exception of any amount attributable to the cost (plus 25%) of landscaping installation and ongoing maintenance associated with the BMPs covered by the security. Any such landscaping shall be inspected one (1) year after installation with replacement for compliance with the approved plans and specifications and, if in compliance, the portion of the financial security attributable to landscaping shall be released.

**312. Notice to Owners**

- 1. Deed Recordation and Indications On Plat. The applicable operations and maintenance agreement, including but not limited to conservation easement, or dedication and acceptance into public maintenance, pertaining to every structural BMP shall be referenced on the final plat and shall be recorded with the County Register of Deeds upon final plat approval.

If no subdivision plat is recorded for the site, then the operations and maintenance agreement, or conservation easement, or dedication and acceptance into public maintenance, [whichever is applicable] shall be recorded with the County Register of Deeds so as to appear in the chain of title of all subsequent purchasers under generally accepted searching principles.

- 2. Signage. For homeowners and other associations, and where else deemed appropriate for the compliance of this ordinance, the Stormwater Administrator may require a structural BMPs to be posted with a conspicuous sign stating who is responsible for required maintenance and annual inspection. The sign shall be maintained so as to remain visible and legible.
  
- 3. Records of Installation and Maintenance Activities. The owner of each structural BMP shall keep records of inspections, maintenance, and repairs for at least five (5) years from the date of creation of the record and shall submit the same upon reasonable request to the Stormwater Administrator.

Every structural BMP installed pursuant to this ordinance shall be made accessible for adequate maintenance and repair in accordance with the maintenance agreement, including, but not limited to a maintenance easement. If a maintenance easement is provided then it shall be recorded and its terms shall specify who may make use of the easement and for what purposes.

**313. Illicit Municipal Discharges and Connections**

The Federal Phase II rule specifies that local communities shall prohibit any discharge to a municipal separate storm **unless it:**

1. Consists of a discharge pursuant to an NPDES permit; or
2. Consists of a discharge from fire fighting activities; or
3. Consists of a discharge in any of the following categories, *and* the operator of the small MS4 has not identified that category as a significant contributor of pollutants to its small MS4:
  - Water line flushing;
  - Landscape irrigation;
  - Diverted stream flows;
  - Rising ground waters;
  - Uncontaminated ground water infiltration;
  - Uncontaminated pumped ground water;
  - Discharges from potable water sources;
  - Foundation drains;
  - Air conditioning condensation (commercial/residential);
  - Irrigation waters;
  - Springs;
  - Water from crawl space pumps;
  - Footing drains;
  - Lawn watering;
  - Individual residential car washing and charity car washing;

- Flows from riparian habitats and wetlands;
- De-chlorinated swimming pool discharges; and
- Street wash water.

**314. Other Illicit Discharges**

No person shall cause or allow the discharge, emission, disposal, pouring, or pumping directly or indirectly to any stormwater conveyance, the waters of the State, or upon the land in manner and amount that the substance is likely to reach a stormwater conveyance or the waters of the State.

Prohibited substances include but are not limited to: oil, anti-freeze, chemicals, pet feces or animal waste, paints, garbage, and litter, or any liquid, solid, gas, or other substance, other than stormwater, provided that non-stormwater discharges associated with the following activities are allowed, **provided** that they do not significantly impact water quality:

- Water line flushing;
- Landscape irrigation;
- Diverted stream flows;
- Rising ground waters;
- Uncontaminated ground water infiltration;
- Uncontaminated pumped ground water;
- Discharges from potable water sources;
- Foundation drains;
- Air conditioning condensation (commercial/residential);
- Irrigation waters;
- Springs;
- Water from crawl space pumps;
- Footing drains;
- Lawn watering;
- Individual residential car washing and charity car washing;
- Flows from riparian habitats and wetlands;
- De-chlorinated swimming pool discharges;



- Street wash water;
- Flow from fire fighting activities; and
- Other non-stormwater discharges for which a valid NPDES discharge permit has been approved and issued by the State of North Carolina, and provided that any such discharges to the municipal separate storm sewer system shall be authorized by the Town.

**315. Illicit Connections**

1. Connections to a stormwater conveyance or stormwater conveyance system that allow the discharge of non-stormwater, other than the exclusions described in section above, are unlawful. Prohibited connections include, but are not limited to: floor drains, waste water from washing machines or sanitary sewers, wash water from commercial vehicle washing or steam cleaning, and waste water from septic systems.
2. Where such connections exist in violation of this section and said connections were made prior to the adoption of this provision or any other ordinance prohibiting such connections, the property owner or the person using said connection shall remove the connection within one (1) year following the effective date of this ordinance. However, the one-year grace period shall not apply to connections which may result in the discharge of hazardous materials or other discharges which pose an immediate threat to health and safety, or are likely to result in immediate injury and harm to real or personal property, natural resources, wildlife, or habitat.
3. Where it is determined that said connection: i) May result in the discharge of hazardous materials or may pose an immediate threat to health and safety, or is likely to result in immediate injury and harm to real or personal property, natural resources, wildlife, or habitat; or ii) Was made in violation of any applicable regulation or ordinance, other than this section; the Stormwater Administrator shall designate the time within which the connection shall be removed. In setting the time limit for compliance, the Stormwater Administrator shall take the following into consideration:
  - The consequences of delay,
  - The potential harm to the environment, to the public health, and to public and private property, and
  - The cost of remedying the damage.

**316. Spills**

1. Spills or leaks of polluting substances released, discharged to, or having the potential to be released or discharged to the stormwater conveyance system, shall be contained, controlled, collected, and properly disposed. All affected areas shall be restored to their preexisting condition.
2. Persons in control of the polluting substances immediately prior to their release or discharge, and persons owning the property on which the substances were released or discharged, shall immediately notify the Town of the release or discharge, as well as making any required notifications under State and Federal law.
3. Notification shall not relieve any person of any expenses related to the restoration, loss, damage, or any other liability which may be incurred as a result of said spill or leak, nor shall such notification relieve any person from other liability which may be imposed by State or other law.

**317. Nuisances**

1. The owner of each stormwater BMP, whether structural or non-structural BMP, shall maintain it so as not to create or result in a condition that creates a potential hazard or nuisance to the health, safety and welfare of the general public.
2. Illicit discharges and illicit connections which exist within the Town of Montreat jurisdictions, are hereby found, deemed, and declared to be dangerous or prejudiced to the public health or public safety and are found, deemed, and declared to be public nuisances and shall be abated.

**318. Enforcement and Violations.**

1. Authority to Enforce. The provisions of this ordinance shall be enforced by the Stormwater Administrator, his or her designee, or any authorized agent of Town. Whenever this section refers to the Stormwater Administrator, it includes his or her designee and any authorized agent of the Town.
2. Violation Unlawful. Any failure to comply with applicable requirements, prohibitions, standards, or limitations imposed by this ordinance, or the terms or conditions of any permit, maintenance agreement, or other development or redevelopment approval or authorization granted pursuant to this ordinance, is unlawful and shall constitute a violation of this ordinance and is subject to the

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same civil or criminal penalties as other zoning violations, with each day that a violation continues constituting a separate offense.

3. Responsible Persons/Entities. Any person who erects, constructs, reconstructs, alters (whether actively or passively), or fails to erect, construct, reconstruct, alter, repair or maintain any structure, BMP, practice, or condition in violation of this ordinance shall be subject to the remedies, penalties, and/or enforcement actions in accordance with this section.

Persons subject to the remedies and penalties set forth herein may include any architect, engineer, builder, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that results in or constitutes a violation of this ordinance, or fails to take appropriate action, so that a violation of this ordinance results or persists; or an owner, any tenant or occupant, or any other person, who has control over, or responsibility for, the use or development of the property on which the violation occurs.

4. Person Maintaining Condition Resulting In or Constituting Violation. An architect, engineer, builder, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that constitutes a violation of this ordinance, or fails to take appropriate action, so that a violation of this ordinance results or persists.
5. Responsibility For Land or Use of Land. The owner of the land on which the violation occurs, any tenant or occupant of the property, any person who is responsible for stormwater controls or practices pursuant to a private agreement or public document, or any person, who has control over, or responsibility for, the use, development or redevelopment of the property.
6. Remedies and Penalties. The remedies and penalties provided for violations of this ordinance, whether civil or criminal, shall be cumulative and in addition to any other remedy provided by law, and may be exercised in any order and can include:
  - a) *Withholding of Certificate of Occupancy:* The Stormwater Administrator or other authorized agent may refuse to issue a certificate of occupancy for the building or other improvements constructed or being constructed on the site and served by the stormwater practices in question until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein.

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- b) *Disapproval of Subsequent Permits and Development Approvals:* As long as a violation of this ordinance continues and remains uncorrected, the Stormwater Administrator or other authorized agent may withhold, and the Town Planning and Zoning Commission or Board of Adjustment may disapprove, any request for permit or development approval or authorization provided for by this ordinance for the land on which the violation occurs.
- c) *Injunction, Abatements, etc.:* The Stormwater Administrator, with the written authorization of the Town Administrator, may institute an action in a court of competent jurisdiction for a mandatory or prohibitory injunction and order of abatement to correct a violation of this ordinance. Any person violating this ordinance shall be subject to the full range of equitable remedies provided in the General Statutes or at common law.
- d) *Correction as Public Health Nuisance, Costs as Lien, etc.:* If the violation is deemed dangerous or prejudicial to the public health or public safety and is within the geographic limits prescribed by North Carolina G.S. § 160A-193, the Stormwater Administrator, with the written authorization of the Town Administrator, may cause the violation to be corrected and the costs to be assessed as a lien against the property.
- e) *Stop Work Order:* The Stormwater Administrator may issue a stop work order to the person violating this ordinance. The stop work order shall remain in effect until the person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violation or violations described therein. The stop work order may be withdrawn or modified to enable the person to take the necessary remedial measures to cure such violation or violations.
- f) *Civil Penalties:* Violation of this ordinance may subject the violator to a civil penalty to be recovered in a civil action in the nature of a debt if the violator does not pay the penalty within thirty (30) days after notice of the violation is issued by the Stormwater Administrator or his/her designee. Civil penalties may be assessed up to the full amount of penalty to which the Town is subject for violations of its Phase II Stormwater permit up to \$500.
- g) *Criminal Penalties:* Violation of this ordinance may be enforced as a misdemeanor subject to the maximum fine permissible under North Carolina law.

7. Procedures.

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- a) *Violations:* Whenever a violation of this ordinance occurs, or is alleged to have occurred, any person may file a written complaint in accordance with the procedures established in the Town of Montreat Code.
- b) *Extension of Time:* A person who receives a notice of violation and correction order, or the owner of the land on which the violation occurs, may submit to the Stormwater Administrator a written request for an extension of time for correction of the violation. On determining that the request includes enough information to show that the violation cannot be corrected within the specified time limit for reasons beyond the control of the person requesting the extension, the Stormwater Administrator may extend the time limit as is reasonably necessary to allow timely correction of the violation.

The Stormwater Administrator may grant extensions in addition to the foregoing extension if the violation cannot be corrected within the permitted time due to circumstances beyond the control of the person violating this ordinance.

The Stormwater Administrator may grant an extension only by written notice of extension. The notice of extension shall state the date prior to which correction must be made, after which the violator will be subject to the penalties described in the notice of violation and correction order.

- c) *Enforcement After Time to Correct:* After the time has expired to correct a violation, including any extension(s) if authorized by the Stormwater Administrator, the Stormwater Administrator shall determine if the violation is corrected. If the violation is not corrected, the Stormwater Administrator may act to impose one or more of the remedies and penalties authorized by this ordinance.
- d) *Emergency Enforcement:* If delay in correcting a violation would seriously threaten the effective enforcement of this ordinance or pose an immediate danger to the public health, safety, or welfare, then the Stormwater Administrator may order the immediate cessation of a violation. Any person so ordered shall cease any violation immediately. The Stormwater Administrator may seek immediate enforcement, without prior written notice, through any remedy or penalty authorized by this article.

## MONTREAT GENERAL ORDINANCES

### CHAPTER K – ENVIRONMENT

#### ARTICLE IV: HILLSIDE DEVELOPMENT

*(Adopted 6/11/2009); (Revised 9/08/2011)*

##### Section I. General Provisions.

1. Purpose. The hillside development regulations of this article shall establish guidelines for responsible land use addressing both aesthetics (the “viewscape”) and slope stability, utilizing approved methods of erosion prevention and stormwater control. Montreat contains intensely varied topography within a relatively small area, involving significant regions that transition abruptly from gentle slope to steep gradient. These factors pose unique challenges for the location and installation of structures while preserving the natural aesthetic characteristic of the Town. It has been determined that measures must be taken to ensure the stability of our hillsides while permitting continued low-impact development.
2. Scope. Except as otherwise expressly stated, the hillside development regulations of this article apply to all development within Montreat and the unincorporated areas of Buncombe County inside the extraterritorial jurisdiction of Montreat.
3. Applicability and Exemptions. The hillside development regulations of this article do not apply to any of the following development activities:
  - a) Land disturbing activities involving property with an existing slope less than forty percent (40%);
  - b) Land disturbing activities associated with the installation of water quality Best Management Practices (BMP’s) as set forth in the Stormwater Best Management Practices Manual published by the North Carolina Division of Water Quality. The BMP’s shall not affect the calculation of Approved Graded Area (AGA) if revegetation of the disturbed area is determined to adequately offset negative impacts of disturbance;
  - c) Minor improvements to properties involving the addition of one hundred (100) square feet impervious surface or less, and for which no grading or building permit are required;
  - d) Activities undertaken on forestland for the production or harvesting of timber and timber products and conducted in accordance with best management practices as set out in Forest Practice Guidelines Related to Water Quality referenced as follows:  
[http://www.ncforestry.org/docs/Landowners/regulations/mgmt\\_practices.htm](http://www.ncforestry.org/docs/Landowners/regulations/mgmt_practices.htm)

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- f) Activities for which a permit is required under the mining act, G.S. 74-46 et seq.:  
  
<http://www.dlr.enr.state.nc.us/pages/miningprogram.html>
- g) Any development in which the owner has accrued a vested right. For the purposes of this Article only, a vested right is recognized if either (i) a preliminary plan has been approved by the Planning Board that meets the required specifications and standards of the Town of Montreat ordinances, Buncombe County ordinances, or (ii) a Land Disturbing Permit has been issued pursuant to a Buncombe County Soil Erosion and Sedimentation Control ordinance in effect on or before the effective date of this ordinance, and that such plan or permit remains unexpired.

A party in interest to a particular plan found to have no vested right to construct or develop on or before the effective date of this ordinance may appeal to the Town of Montreat Board of Adjustment for a hearing de novo. Such hearing shall be expedited and shall be limited to the issue of whether the landowner has a vested right to construct or develop their site under plans submitted to the effective date of this ordinance.

4. Interpretation of Certain Words or Terms. Except as specifically defined herein, all words used in this Ordinance have their customary dictionary definitions. For the purposes of this Ordinance, certain words or terms used herein are defined as follows:
- a) Words used in the present tense include the future tense. Words used in the singular include the plural, and words used in the plural include the singular;
  - b) The word "shall" is always mandatory;
  - c) The word "may" is permissive;
  - d) The word "lot" includes the word "plot" or "parcel";
  - e) The term "remediation" refers to *aesthetic remediation* as defined herein;
  - f) The word "person" includes a firm, association, organization, partnership, trust company, limited liability company, or corporation as well as an individual;
  - g) The terms "Department," "Office(s)," or "Zoning and Inspections" refer to the Town of Montreat Zoning and Inspections Department;

- h) The term "Planning Commission" refers to the Montreat Planning and Zoning Commission. The terms "Town Commissioners" "Town Board of Commissioners" or "Mayor and Town Commissioners" refer to the legally constituted and elected governing body of the Town of Montreat. The term "Board of Adjustment" refers to the Zoning Board of Adjustment for the Town of Montreat.

5. Definitions.

Aesthetic remediation: A variety of measures including, but not limited to, reclamation of non-developed portions of a disturbed area through reforestation, revegetation, naturescaping or other approved methods to restore the character of an area representative of its natural state; (re)introduction of approved plant species or modification of color and/or texture of surface materials to mitigate the undesirable visual impact of specific structural elements associated with a development project.

Aggregate Visible Area (AVA): The sum, expressed in square feet, of all exposed (plane) surfaces associated with a structure. Material exhibiting a high Light Reflectance Value of greater than thirty-two percent (>32%) represents a significant impact upon the viewscape when the aggregate quantity exceeds one hundred and fifty (150) square feet. A structure located within the Hillside Development Area having existing slope of forty percent (40%) or greater, with more than one hundred and fifty (150) square feet AVA and high Light Reflectance Value finishes/materials, shall require aesthetic remediation.

Applicant: An owner or developer of a site who executes the Hillside Development Permit Application pursuant to Town of Montreat Hillside Development Ordinance.

Approved Graded Area (AGA): The maximum surface area (measured in square feet) of a proposed development site that may be graded pursuant to execution of a Hillside Development Permit. Portions of the AGA unimproved by addition of structure(s) or impervious surfaces shall be remediated before issuance of the Certificate of Occupancy.

Artificial slope: Any land disturbing activity that modifies an existing slope.

Best Management Practices (BMP): Best Management Practices (BMP's) consist of both structural and non-structural methods of preventing exposure to stormwater runoff, and provide measures designed to remove a substantial percentage of any pollutants that may be present in the stormwater stream. BMP's also treat the volume of stormwater leaving a developed site with the goal of approximating pre-construction, or natural conditions.

Cut slope: Exposed ground surface resulting from excavation of material.



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Develop: Conversion of land to new service or purpose so as to make use of its resources, or to use the land for residential or commercial purposes.

Development density: The total number of primary structures permitted per unit area as modified by existing grade.

Development intensity: The permitted ratio, expressed as percentages, of unimproved (preserved) area versus developed (buildings, parking, other improvements) area.

Disturbed area: The portions of a development project that include graded areas disturbed so as to remove the natural cover in conjunction with development activities; both pervious and impervious surfaces installed and/or constructed including, but not limited to, buildings; concrete/asphalt pavement and gravel areas such as parking lots, patios, roads, and paths; lawn and artificially surfaced (e.g. recycled rubber mulch, crushed brick, etc) areas; retention structures including, but not limited to, timber, stone and masonry walls; buried tanks or cisterns, etc. Grading activities undertaken exclusively for the installation of legally permitted septic leach/drainage field systems are not regulated under the requirements of this definition.

Existing grade: The vertical elevation of the land as it exists on the adoption date of this ordinance.

Existing grade is determined as follows:

Calculation of Existing Grade. The applicant may submit calculations of the existing grade for the entire parcel or for the proposed graded area; these calculations shall be sealed by a licensed surveyor, engineer, or landscape architect. If no calculations are provided, the Town of Montreat may calculate the existing grade of any entire parcel – or portion thereof - using Buncombe County’s “Slope Tool” <http://72.250.240.51/slopetool/> or calculate the average slope of any portion of a parcel using the following formula:

$$S = \frac{.0023(I)(L)}{A}$$

- Where:
- S = Existing grade of parcel or fraction thereof, in percent
  - I = Contour interval of map in feet, with said contour intervals to be five feet or less
  - L = Total length of the contour lines within the parcel or fraction thereof, in feet
  - A = Area of the parcel or fraction thereof, in acres
  - 0.0023 = Product of two constants, one of which converts feet into acres and one of which converts a decimal fraction into a percentage
  - Once “S” is calculated, it shall be rounded to the nearest whole number.

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The advantage of submitting calculations for existing grade within the proposed graded area may be realized by providing evidence that improvements will be limited to less steeply-sloped portions of a lot, thereby reducing restrictions placed upon development based upon existing grade.

Fill slope: Exposed ground surface resulting from deposition of material.

Finished grade: Proposed final elevation of a given lot area (surrounding a structure) subsequent to completion of development activities.

Geotechnical Assessment (GA): A comprehensive analysis of soil type(s), composition and characteristics (colluvial, cohesive or expansive, pH, water retention, etc.) conducted pursuant to proposed development of a building site.

Global Stability (GS): Geotechnical analysis of characteristics within a reinforced soil mass evaluating potential slip surfaces or failure planes that can go behind or through the reinforced soil mass. Global Stability shall be included in assessment of all development if recommended by the consulting geotechnical engineer. The analysis takes into consideration the following factors:

- The overall geometry of the structural system installed including, but not limited to, foundation & retaining walls, footings, etc., and the slopes above and below the system.
- Loading or surcharge conditions (e.g. 250 pounds per square foot (3.65 kPa) for highway loading). Any superimposed load, with the exception of retained earth, shall be considered surcharge.
- Soil parameters (shear strength and unit weight of the soil) determined by the laboratory tests of the soil conducted as part of a geotechnical survey or assessment.
- Subsurface and surface water conditions (groundwater can have a negative effect on slope stability).

Hillside Development Area: That region inside the Town of Montreat boundaries and unincorporated areas of Buncombe County within Montreat extraterritorial jurisdiction (ETJ) with an existing slope equal to forty percent (40%) or greater.

Impervious surface: Any surface that does not allow water to percolate through, or significantly penetrate, for natural absorption by the ground within a twenty-four (24) hour period, including but not limited to: rooftops; parking/driving areas finished with asphalt, concrete, or densely-compacted gravel; patios, or pools.

Improved site: A lot or parcel that contains disturbed area(s) attributable to development

activities.

Land disturbing activity: Any use of, or operations on, the land by any person or firm in residential, industrial, educational, institutional, or commercial development, including road construction and maintenance, that results in a change in the natural cover or topography.

Light Reflectance Value (LRV): A measurement used to express the percentage (0-100%) of light reflected from the surface of a material. Large exposed regions of structures with LRV greater than thirty-two percent (>32%) shall require aesthetic remediation.

Low Impact Development (LID): A term used in the United States to describe a land planning and engineering design approach to managing stormwater runoff. LID emphasizes conservation and use of on-site natural features to protect water quality.

Natural grade: The elevation of a given lot area before any land disturbing activities commence.

Naturescaping: Landscaping installed using only native plant species and materials endemic to the region.

Non-conforming Improved Lot: Any improved lot in existence prior to adoption of this ordinance that, whether by aggregate graded area and/or existing impervious area, exceed the permitted limits established herein.

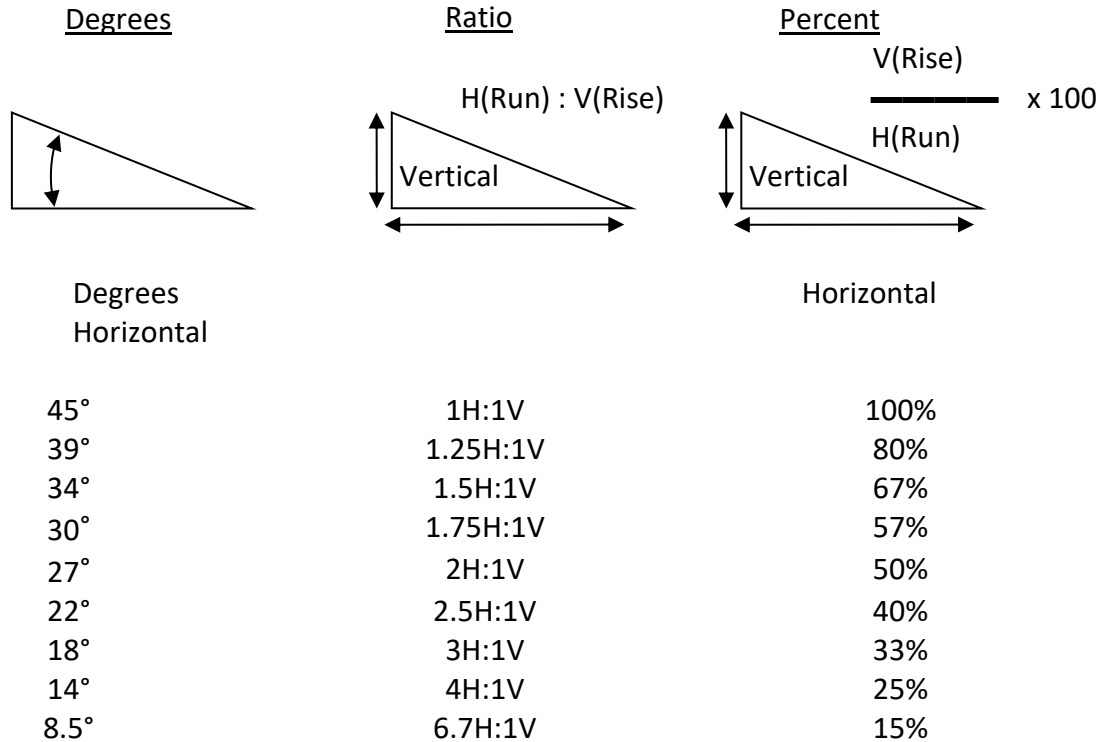
Reforestation: The action of renewing forest cover as by natural seeding or by the artificial planting of seeds or young trees.

Revegetation: Reintroducing entirely native, or a combination of at least fifty-percent (50%) native and approved non-native, plant species (see Appendix A) back into a disturbed area to effect aesthetic remediation and prevent potential erosion.

Slope: The extent to which a land form deviates from the perfectly horizontal as expressed in percent, degree or ratio. To ensure consistent conversion between these separate methods of expressing the extent of slope, the following explanatory table is provided as part of this definition.

**[CONTINUED ON FOLLOWING PAGE]**

**Slope Measurements**



**Structure:** Anything constructed or erected, the use of which requires permanent location on the ground, or attachment to something having a permanent location on the ground, including fences, business signs, and driveways.

**Viewscape:** The overall aesthetic impression a view presents at any given time within commonly traveled or occupied locations inside Montreat and/or its extraterritorial jurisdiction.

Section II. Administration and Procedures.

1. Administration of this Ordinance. All questions arising in connection with this Ordinance shall be presented first to the Code Administrator who shall be responsible for the day-to-day administration of this Ordinance. The Board of Adjustment shall have the authority to rule on matters of interpretation of this Ordinance and consider appeals from the decisions of the Code Administrator. Any appeal from a decision of the Board of Adjustment shall be to the courts as provided by law.

2. Review and Appeals Procedure.

- a) A Hillside Development Permit is required for all development and redevelopment on lots with an existing slope of forty percent (40%) or greater, unless exempt pursuant to this ordinance.
- b) Two (2) copies of a site plan including the following information shall be submitted:
  - 1. Orientation referencing north meridian;
  - 2. Scale of drawing; boundaries and acreage of the parcel;
  - 3. Location of adjacent streets and any easements;
  - 4. Location of existing and/or proposed structures including setbacks; structure dimensions and separation distance(s);
  - 5. Contour interval(s) of existing and proposed contours; and
  - 6. Clear graphic indication of any proposed alterations or additions
- c) The site plan and permit application shall be accompanied by results from the required Geotechnical Assessment and recommendations from a North Carolina-registered geotechnical engineer.
- d) Application and permit review fees shall be established by the Montreat Board of Commissioners and posted in the fee schedule for Town services.
- e) Plan review fees shall be double the posted amount when land disturbing activity begins before a Hillside Development Permit is issued by the Town.
- f) The Department shall review the submittal for completeness and for compliance with the requirements of this ordinance. An incomplete or nonconforming permit application will be returned to the applicant prior to review with an explanation of issues requiring resolution before plan review can be initiated.
- g) Within thirty (30) days of receipt of complete application for hillside development approval, the Department shall take action on the plan.
- h) Approval, approval with modifications, or denial of the proposed hillside development project shall be in writing. In the case of denial, the reasons for denial shall be clearly stated. The applicant may appeal the decision of the Code Administrator to the Board of Adjustment.
- i) Upon appeal, the Montreat Board of Adjustment will conduct a hearing in the nature of a quasi-judicial proceeding with all findings of fact supported by material evidence.

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- j) Decisions appealing the final decision by the Board of Adjustment may be filed in Buncombe County Superior Court, to be reviewed by proceedings in the nature of certiorari, within thirty (30) days of the final decision of the Board of Adjustment.
- k) The Code Administrator shall take action on revisions to a hillside development application which has been previously denied, within fifteen (15) days of receipt of the revised plan application for approval.
- l) If a revised application is not re-submitted within sixty (60) calendar days from the date the applicant was notified, the application shall be considered withdrawn, and a new submittal for the same or substantially the same project shall be required along with the appropriate fee and pursuant to the then current standards.
- m) Application for an amendment to an approved hillside development plan in written and graphic form may be made at any time. Until such time as an amendment is approved by the Code Administrator, it shall be unlawful to deviate from the approved plan.
- n) A hillside development permit shall become null and void if the applicant has failed to make progress on the site within six (6) months after the date of approval. The Code Administrator may grant a single, six-month extension of this time limit, for good cause shown, upon receiving a written request from the applicant before the expiration of the approved plan.

3. Penalties for Violation.

Civil penalties may be imposed as follows:

- a) Any person who violates any of the provisions of this article, or rules or orders adopted or issued pursuant to this article, or who initiates or continues improvement to property for which a hillside development permit is required, except in accordance with the terms, conditions and provisions of an approved plan shall, upon conviction, be guilty of a misdemeanor and shall be subject to a fine not to exceed five hundred dollars (\$500.00) or imprisonment not to exceed thirty (30) days as provided by N.C.G.S. § 14-4 and § 15A- 1340.23. Each day such violation continues shall constitute a separate offense pursuant to N.C.G.S. §160A-175 (g). Additional fees may be charged for remedies and enforcement of this ordinance.

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- b) No penalty shall be assessed until the applicant is notified of the violation by registered or certified mail, return receipt requested, or, if reasonable attempts to contact the applicant have failed, by conspicuously posting the property in such manner as to be readily visible from an adjacent street or public thoroughfare for a period not less than ten (10) days giving notice to the violation.

A posting affidavit shall be required, including graphic record of the noticing, and filed with Zoning and Inspections Department. The notice shall list the parcel identification number and location of the property, the date, the applicant's name and a description of the violation in reasonable detail. It shall also specify the timeframe in which the violation shall be corrected, and warn that failure to correct the violation within the prescribed time period will result in the assessment of civil penalty or other enforcement action.

- c) If the violation has not been corrected within the designated time period, a civil penalty may be assessed from the date the violation is detected.
- d) Refusal to accept the notice or failure to notify the Code Administrator of a change of address shall not relieve the violator's obligation to pay such penalty.
- e) The Code Administrator may refuse to issue a certificate of occupancy for any building or other improvements constructed or being constructed on a site for which an approved hillside development permit has been issued until the applicant has taken the remedial measures set forth in the notice of violation and cured the violations described therein.

4. Development Standards.

- a) Grading. The following requirements shall regulate the extent (see Table I) and technique of grading within a hillside development area based on the existing grade.

**[CONTINUED ON FOLLOWING PAGE]**

Table I. Approved Graded Area.

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APPROVED GRADED AREA (AGA) BY SLOPE		
SLOPE	AGA	NOTE (*)
40% - 45%	40%	GA (*)
45% - 50%	35%	GA (*)
50% - 55%	30%	GA (*)
55% - 60%+	25%	GA (*)

**\*\*NOTE\*\*** Slope values shown in the above table shall be interpreted in the following manner: “40% - 45%” will include all slopes 40% up to any slope less than 45%, etc.

(\*) A Geotechnical Assessment shall be required for lots with existing grade forty percent (40%) or greater. Investigation of Global Stability shall be required as indicated by a Geotechnical Assessment. The recommendations of a NC registered geotechnical engineer regarding a particular site may reduce the percentage AGA below the value indicated.

Applicants may request up to fifty percent (50%) increase of tabular Approved Graded Area by the Code Administrator if accompanied by a Landscape Plan detailing adequate revegetation of the disturbed area to offset negative impacts of disturbance. The increase shall only be granted in cases determined by the Code Administrator to be justified, due to inherent difficulties associated with the subject lot making adequate grading impractical or upon written recommendation of a NC registered geotechnical engineer. The additional approved graded area shall not be built upon to include impervious cover or structures.

- b) Front Yard Setback Reduction. Owners of previously-platted parcels with an existing grade of forty percent (40%) or greater may request up to a fifty percent (50%) reduction in the required front yard building setback for the associated Zoning District. Requests will be evaluated on a case-by-case basis, and permission must be evidenced by written approval bearing signatures of both the Zoning and Town Administrators.
- c) Vehicular Access Construction. Roads, streets and driveways constructed on any lot, parcel, tract of land or designated right-of-way within a hillside development area with natural grade forty percent (40%) or greater shall require consultation with a North Carolina-registered geotechnical engineer prior to land disturbing activities.



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The site assessment shall include investigation for colluvial deposits and other factors indicating potential instability. Recommendations of the geotechnical engineer shall be submitted with the application for review and approval. All streets constructed shall meet the minimum street construction standards for the Town as detailed in (Insert reference to Montreat’s Street Standards Ordinance).

- d) Artificial Slopes. Artificial slopes shall be reforested, revegetated, naturescaped or otherwise remediated to visually integrate disturbed areas into surrounding terrain with the purpose of maintaining a natural appearance. Artificial slopes shall not exceed a 1:1 cut and 1.5:1 fill. However, if stable exposed rock is the intended result, the cut and/or fill slope(s) may be increased with approval of the Code Administrator and supporting recommendation from a North Carolina-registered professional engineer.

Remediation shall consist of a combination of trees, shrubs and groundcover plants native to the area or taken from the list of approved species contained in Appendix A of the Town of Montreat Zoning Ordinance. A maintenance plan shall be required for remediation areas and such plan shall include provisions for replacement of dead vegetation when greater than fifty percent (50%) mortality rate occurs. Invasive plant species, as referenced in list maintained by NC State University (see link below), shall not be introduced as landscape specimens or for remediation purposes:

<http://www.ncsu.edu/goingnative/howto/mapping/invxse/index.html>

- e) Preservation of Vegetation. All trees and other natural vegetation shall be preserved in hillside development areas except within the designated Approved Graded Area. Non-native invasive species may be removed. For new development or additions, these preservation areas shall be designated on plans submitted for development approval. For existing development, aerial photographs or other methods for determining the extent of tree cover shall be utilized to enforce this requirement. Preservation areas shall be clearly designated during all land disturbing activities using protective fencing. If a property owner desires to remove trees or other protected vegetation required to be preserved in this section, he or she may submit an alternative landscape plan for consideration by the Code Administrator. The alternative landscape plan must contain:
- i. a tree survey of the property showing which trees and protected vegetation are to be removed and which will remain;
  - ii. the location of any structures, driveways and other impervious surfaces; and
  - iii. an explanation of the reason(s) for removal of the required trees

and other protected vegetation, including a statement of how the removal supports the purposes of this section or how such removal can be mitigated consistent with the purposes of this section.

Within two (2) business days of receiving an alternative landscape plan, the Code Administrator shall approve, approve with conditions, or deny the alternative landscape plan. If the Code Administrator denies the alternative landscape plan, the reasons shall be detailed in writing. Appeals of the Code Administrator's decisions shall be made, in writing, to the Board of Adjustment within thirty (30) days of denial of the alternative landscape plan.

- f) Structure height. The maximum height of principal structures in all residential zoning districts within hillside development areas shall be limited to thirty five (35) feet. No structure shall exceed the height requirement of the underlying zoning district. For the purpose of this section, height shall be defined as the vertical distance measured from average natural grade encompassing the living areas of a structure to the highest point of its roofline, or from the top of the parapet or roof surface for flat-roofed structures. Carports, garages, decks and other non-inhabited additions to structures that may increase the building footprint are not included in calculation of average natural grade.
- g) Light Reflectance Value (LRV). Large exposed regions of structures greater than one hundred and fifty square feet (>150SF) with LRV greater than thirty-two percent (>32%) shall require aesthetic remediation. Building finish and trim materials possessing muted colors, natural tones and textures representative of the structure's surroundings will minimize the visual impact within wooded areas.
- h) Existing Non-Conformities. Non-conforming improved lots in existence prior to adoption of this ordinance that violate the minimum provisions for AGA and/or maximum impervious area, shall be combined with contiguous lots in the same ownership prior to further development and evaluated for compliance with the minimum provisions of this ordinance. A twenty percent (20%) allowance shall be made for existing impervious area on improved lots within the Institutional (I) or Institutional/Residential (I/R) Districts of Montreat. If the applicant demonstrates that no possibility of combining adjacent lots exist to achieve compliance, and the maximum allowable increases available for AGA and impervious area still exceeds allowable tabular values, a variance must first be obtained from the Board of Adjustment before additional improvements are permitted for grading or increased impervious area on the property.
- i) Development Intensity. Intensity of development shall be limited as follows in hillside development areas of Montreat to preserve, to the greatest reasonable extent, the viewscape and other natural features that distinguish the Town from

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neighboring developed mountain regions. For the purpose of this section, “impervious ratio” shall mean the quotient obtained from the combined gross structure footprint and other impervious surface areas on a lot, divided by the gross area of the lot or site.

Table II. Allowable Development Intensity.

MAXIMUM IMPERVIOUS RATIO/AVA			
Existing Grade	Maximum Allowable Impervious Ratio	Maximum Allowable Ratio With Bonus	Aggregate Visible Area (AVA) Permitted With High LRV (>32%)
40% - 45%	0.30	0.40	* 400 SF
45% - 50%	0.25	0.375	* 350 SF
50% - 55%	0.225	0.338	* 300 SF
> 55%	0.20	0.30	< * 250 SF

**\*\*NOTE\*\*** Existing grade values shown in the above table shall be interpreted in the following manner: “40% - 45%” will include all slopes 40% up to any slope less than 45%, etc.

The maximum impervious ratio may be offset by an intensity bonus accrued through conscientious measures undertaken to mitigate the impact of improvements within hillside development areas. The symbol (\*) in column 4 of Table II indicates combined area(s) that shall require remediation to lessen the negative visual effect. “Earth berm” homes, “green” roofs, LEED, Green Globe, NC Healthy Built Home, Clear Water Contractor, and other sustainable and innovative alternatives to conventional construction practices, recognized at the national or state level to be consistent with LID project goals, will receive consideration for development intensity bonus credit as well.

- i) Intensity Bonus. An intensity bonus may be granted for each of the items listed below. A total intensity bonus of up to fifty percent (50%) of the allowable intensity may be achieved under this provision through accumulation. No intensity bonus shall permit a structure to violate requirements of the underlying zoning district or to allow development in the case of a non-conforming improved lot. Measures such as locating structures and other improvements on less steep and (environmentally or aesthetically) sensitive areas of a lot and designating a preservation easement for more sensitive regions, shall receive an intensity bonus. Less sensitive areas may include previously cleared areas, such as

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pastures/fields, old camp or home sites, and logging roads, provided such clearing predates June 11, 2009.

Grading is limited to ninety percent (90%) or less of the maximum approved graded area allowed in Table I; bonus of fifteen percent (15%);

1. Grading of streets, access drives and driveways is located outside of slopes forty percent (40%) or greater and/or is predominately located on existing cleared areas; bonus of fifteen percent (15%);
  2. Structures and parking areas are screened by vegetation to minimize the visual impact from commonly frequented or accessible areas; bonus of fifteen percent (15%);
  3. The Code Administrator determines that substantial stormwater best management practices are met in the proposed development, or rainwater recycling/retention features such as cisterns or rain gardens are implemented; bonus of fifteen percent (15%);
- j) Development Density. Re-combinations, re-development or newly-platted tracts undergoing development activities, or major/minor subdivisions as defined in the Subdivision Ordinance for the Town of Montreat with an existing grade of forty percent (40%) or greater shall conform to the following density table:

**[CONTINUED ON FOLLOWING PAGE]**

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Table III.      Development Density.

SLOPE %	UNITS PER ACRE	MINIMUM LOT IN ACRES
40	1.650	0.606
41	1.585	0.631
42	1.524	0.656
43	1.468	0.681
44	1.416	0.706
45	1.368	0.731
46	1.323	0.756
47	1.280	0.781
48	1.241	0.806
49	1.203	0.831
50	1.168	0.856
51	1.135	0.881
52	1.104	0.906
53	1.074	0.931
54	1.046	0.956
55	1.019	0.981
56	0.994	1.006
57	0.970	1.031
58	0.947	1.056
59	0.925	1.081
60	0.904	1.107
61	0.884	1.131
62	0.865	1.156
63	0.847	1.181
64	0.829	1.206
65	0.812	1.231

## **Montreat General Ordinance**

### **Chapter K- Environment**

#### **Article V: TREES (Revised 12/10/2015)**

##### Section 1: General Provisions

###### Purpose and Intent

The Town of Montreat, realizing that trees have a profound effect on the quality of life in the community, deems it necessary and desirable in the interest of public health, safety and welfare to enact an ordinance for the preservation, planting, replacement and removal of trees on municipally owned property, areas designated as Greenspace and public rights-of-way within the Town. The purposes of this Article are to regulate the planting of new trees and shrubbery; to vigorously encourage the protection of existing trees and shrubbery, including their root systems; to regulate the preservation, replacement and removal of trees and to establish procedures for fulfilling these purposes.

###### Applicability

The terms and provisions of this Article shall apply to all Town Property, all public rights of way within the Town, those areas designated as Greenspace in the Offer of Dedication dated May 12, 1983 from the Mountain Retreat Association to the Town of Montreat as well as to private property in the manner specifically described herein.

##### Section 2: Tree Board

###### Tree Board Composition

The Montreat Tree Board shall consist of three members appointed by Town Council. In addition, the Environmental Commissioner of the Montreat Board of Commissioners and the Chair of the Montreat Landcare Committee shall serve as ex-officio voting members of the Tree Board. Additionally, the Public Works Director shall serve as an ex-officio non-voting member. All appointed members shall serve a term of three years. The Board shall select annually from among its members a chair, vice-chair and secretary. Vacancies resulting from resignation, death or removal of a member shall be filled by Town Council for the unexpired term upon request by the Chairperson.

The Public Works Director will serve as the Town staff member specifically charged with the responsibility of carrying out the planning, implementation and coordination with other agencies and advisory boards of all projects undertaken by the Tree Board.

The Tree Board shall formulate and adopt rules of procedure under which it will operate.

#### Duties and Responsibilities

Subject to such limitation as may be imposed by laws or regulations, the Montreat Tree Board shall serve as an advisory board to the Town Council for the following purposes in order to further the public welfare:

Study, investigate, counsel and develop and review a written plan for the care, preservation, pruning, planting, replanting, removal or disposition of trees and shrubs in Greenspace, within public rights-of-way and on Town Property. Such plan will be presented to the Board of Commissioners and upon its acceptance and approval shall constitute the official comprehensive Town Tree Plan for the Town.

When requested by the Town Council, consider, investigate, make findings, report upon, and recommend any special matter or question coming within the scope of its work.

Facilitate the planting, growth and protection of trees and shrubs within the Town.

Foster the communication among citizens of the Town that would provide the needed protection of trees and shrubs and to coordinate active measures to support their health and growth with the Town.

Conduct a tree survey of existing trees along rights-of-way and on Town Property.

Investigate available grants, loans or contributions from other governmental agencies, public or private entities, or individuals, and to recommend the expenditure of any proceeds toward the accomplishment of its purpose.

Conduct continuing education, research, planning and feasibility studies required to support the purposes stated in this Article.

Work with Town staff to promote and enforce this Article regarding the regulation of planting, protection, preservation and removal of trees and shrubs.

#### Review by Board of Commissioners

The Board of Commissioners shall have the right to review the conduct, acts and decisions of the Montreat Tree Board. Any person may appeal from any ruling or order of the Montreat Tree Board to the Board of Commissioners, who may hear the matter and make a final decision. The Tree Board shall submit to the Town Council an annual report of its activities and recommendations and shall file with the Town Clerk copies of its minutes and proceedings of its regular and special meetings.

#### Interference with Tree Board

It shall be unlawful for any person to prevent, delay or interfere with the Montreat Tree Board, or any of its agents, while engaging in the performance of its duties and responsibilities. It shall be unlawful for any Person to prevent, delay or interfere with the Public Works Director or Town employees or agents while engaging in and about the assessment, planting, cultivation,

mulching, pruning, spraying or removing of any Street Trees, Greenspace Trees or trees on Town Property, as authorized in this Article.

### Section 3: Administration

For the purposes of carrying out the provisions of this Article, the Public Works Director shall have responsibility and control over all trees and shrubbery planted or growing in or upon Town Property, including public rights-of-way.

The Public Works Director, or agent thereof, shall be responsible for formulating, in conjunction with the Montreat Tree Board, a written plan for the care, preservation, pruning, planting, replanting, removal or disposition of trees and shrubs in Greenspace, within rights-of-way and on Town Property. The Town Tree Plan shall govern the species of trees to be planted and consideration shall be given to the existing and future utility and environmental factors in recommending a specific species for each area. Such plan will be presented to the Board of Commissioners and upon its acceptance and approval shall constitute the official comprehensive Town Tree Plan for the Town.

The Public Works Director and Zoning Administrator, or agent thereof, in conjunction with the Montreat Tree Board, shall have prepared a document entitled, Montreat Tree and Shrub Standards Specification and Detail Manual, which shall contain the guidelines and specifications for tree and shrub planting, care, maintenance, removal and landscape design which shall be adopted by Board of Commissioners and used by developers, landscape architects, designers and the general public in furtherance of the requirements and intent of this Article. The Guidelines shall be reviewed by the Montreat Tree Board at a minimum, every two years, and any revisions to the Guidelines shall be adopted by the Board of Commissioners.

### Section 4: Permitting

Permits shall be obtained from the Public Works Director for all activity involving the planting, removal and replacement of trees and shrubs on Town Property, public rights-of-way and Greenspace areas except as noted herein.

The Public Works Director shall review all requests for permits for the planting, removal and replacement of trees and shrubbery on Town Property, including rights-of-way and Greenspace. If the planting, removal or replacement complies with the Guidelines, the Public Works Director shall issue a permit and may attach reasonable conditions or remedies to the permit. If the plans do not comply with the Guidelines, the permit shall be denied.

Before any permit shall be issued, each applicant shall first file evidence of possession of liability insurance in the minimum amounts of \$300,000 for bodily injury and \$100,000 property damage indemnifying the Town or any person injured or damaged resulting from the pursuit of such endeavors as described in this Article.



The Town may withhold or withdraw Town issued permits, certificates and other authorizations until such requirements of the permit are met.

During the period of an emergency such as a windstorm, ice storms, tornado, or other Acts of God, the requirements of this Section may be waived by the Town Administrator, Public Works Director or the Board of Commissioners.

#### Section 5: Public Tree Care

The Town shall have the right to plant, prune, maintain and remove trees, plants and shrubs within the lines of all streets, roads, ways, and Town property, as may be necessary to ensure public safety or to preserve or enhance the symmetry and beauty of such public grounds.

No person shall remove, destroy, cut, prune or otherwise treat any Street Tree, Greenspace Tree or other tree or shrubbery having its trunk upon any Town Property or right-of-way or contract with another Person to perform such acts without first obtaining a written permit from the Public Works Director except as herein set forth.

No person shall plant or contract with another to plant any tree or shrubbery on any Town Property, except as herein noted, without a permit from the Public Works Director.

Public and private utilities shall submit written specifications for pruning, trenching or grading around trees and shrubbery on Town Property to the Public Works Director for approval. A utility company shall not be required to obtain a permit for routine maintenance operations affecting trees and shrubbery having their trunks upon Town Property so long as such work is done in strict accordance with the Guidelines and specifications as approved by the Public Works Director. A utility company is required to obtain a permit to remove any tree or shrubbery on Town Property. Approved written specifications shall be valid for two years, after which new specifications or a request for an additional two-year extension of the previously approved specifications must be made by the utility company.

The Montreat Tree Board may remove or cause or order to be removed, any Street Tree, Greenspace Tree or other tree or shrub growing on Town Property or part of said tree or shrub, which is in an unsafe condition or which by reason of its nature is injurious to utility lines, water and sewer lines, gas lines, or other public improvements, or is affected with any injurious fungus, insect or other pest. This Section does not prohibit the planting of Street Trees by adjacent property owners providing that the selection and location of such trees is in accordance with the Guidelines for planting developed by the Montreat Tree Board and the property owner has obtained a permit. The Montreat Tree Board, in conjunction with the Public Works Director, has the right to approve any plantings that take place on Town Property, including public rights-of-way.

#### Section 6: Injuring Trees and Shrubbery

No person shall place or maintain upon the ground upon any Town Property any compacted stone, cement or other impervious matter or substance in such a manner as may obstruct the free access of air and water to the root of any tree or shrubbery. This provision shall not apply to paving, repairing or altering of Town streets, sidewalks, greenways or other Town Property performed by the Town.

No Person shall perform or contract with another to perform construction work (including the operation or storage of equipment or materials) within the drip line of any tree or shrubbery having its trunk on any Town Property without first obtaining a permit from the Public Works Director.

No Person shall attach any object, including, but not limited to, rope, wire, chain or sign, to any tree or shrubbery in or upon any Town Property or to the guard or stake intended for the protection of such tree or shrubbery except for the purpose of protecting it or the public.

#### Section 7: Planting Plan

For planned developments subject to the provisions of the Montreat Subdivision Ordinance, the property owner or developer desiring to plant trees and shrubbery in or upon Town Property, including rights-of-way, shall, in addition to applying for a permit, submit a planting plan or written statement to the Public Works Director. Planting plans upon Town Property shall accurately show the following:

The proposed street width, together with its pavement, curb, and/or gutter, parking strip and sidewalk areas, to a definite indicated scale.

The location of underground and overhead utilities, all poles and posts, to a definite indicated scale.

The proposed location of each and every proposed tree and shrub, together with the location of each existing tree, shrub, plant or vine within the proposed street right-of-way in scaled relation to the other features to the plan.

The variety, height and caliper, where applicable, of each and every tree and shrub proposed to be planted and of those already existing within the proposed street lines, either indicated on the plan or referenced with a number to a key list.

The distance in feet between the trees and shrubs in any one row.

The nature of the soil in the planting space to a depth of three feet and all existing and proposed surface and subsurface drainage system.

In the case of persons not involved in planned development and who desire to perform small scale landscape plantings on Town Property, written statements in lieu of a planting plan shall contain the same information required on the planting plan. In such a case, a simple letter of intent outlining the location, method and materials, may be submitted.

#### Section 8: Mitigation of Unsafe Trees on Private Property

The Public Works Director, in conjunction with the Environmental Commissioner of the Montreal Board of Commissioners, may cause or order to be removed any shrub, tree or part thereof on private property which is unsafe, injurious to the public welfare or which, by reason of its nature, is injurious to public improvements or is infested with an injurious fungus, insect or other pest. Hemlock trees infected with Hemlock Woolly Adelgid are exempt from this Section.

The Public Works Director may enter upon private property in the Town to treat or cause or order to be otherwise treated, any shrub or tree infected or infested by any parasite, insect or pest when it shall be necessary to do so to prevent the breeding or scattering of any parasite or animal or plant pest and to prevent danger therefrom to persons or property or to trees growing on Town Property or Greenspace.

Whenever, in the opinion of the Public Works Director and the Environmental Commissioner, the removal of a tree or shrub on private property shall be necessary, under the provisions of this Article, the Public Works Director and Environmental Commissioner shall have the power to remove such tree or shrub or cause or order the same to be done upon notice and an opportunity to be heard by the property owner.

Prior to exercising the authority conferred by this Article, the Public Works Director and Environmental Commissioner shall give the property owner notice and an opportunity to correct the condition by requesting that corrective action be taken. The request shall be in writing to the owner of the property in question and shall be acted upon within 30 days, or a lesser period of time if an imminent threat to life or property exists, from the date of the request. If, after 30 days or such lesser period of time, the owner has not corrected the condition or undertaken action that would lead to a timely correction of the condition, the Public Works Director may enter upon the property, perform the work necessary to correct the condition and bill the owner for the actual costs incurred. In situations involving an imminent threat to the public health, safety or welfare, or to Town Property, the Town may act without prior notification to the property owner but notice shall be given within a reasonable period thereafter.

#### Section 9: Trees and Shrubbery Abutting Town Property

Trees, shrubbery, flowers, bushes or vines standing in or upon any property abutting Town Property and having branches, limbs, trunks, or other parts projecting onto Town Property shall be maintained by the owner of the property on which such trees, shrubbery, flowers, bushes or vines are growing so as not to interfere with the free and safe passage along the Town right-of-way by pedestrians and vehicular traffic.

If the owner of such property does not keep this growth from trees and other plants from projecting onto Town Property, the Public Works Director may order its removal. The order

shall be in writing to the owner and shall be acted upon within 30 days from the time of the order. If, after 30 days, the owner has not responded or acted to remove the projecting growth from such trees or plants, then the Public Works Director may enter upon the private property to perform the work necessary to correct the condition and bill the owner for the actual costs incurred. In situations deemed by the Public Works Director to constitute an imminent threat to the public health, safety or welfare, or to Town Property, the Public Works Director may act without prior notification to the property owner.

#### Section 10: Tree Topping

It shall be unlawful as a normal practice, except as described below, for any Person to top any Street Tree, Greenspace Tree, or other tree on Town Property. Topping is defined as the severe cutting back of limbs and trunks to stubs larger than three inches in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree. Trees severely damaged by storms or other causes, or certain trees that interfere with or are an imminent threat to utility wires or other obstructions where other pruning practices are impractical may be exempted from this Section at the determination of the Montreat Tree Board.

#### Section 11: Removal of Stumps

All stumps of Street and Greenspace Trees shall be removed below the surface of the ground so that the top of the stump shall not project above the surface of the ground.

#### Section 12: Inspection, Enforcement, Appeal and Penalty

##### Inspection

The Public Works Director and the Zoning Administrator may periodically inspect areas subject to the provisions of this Article.

If through inspection it is determined that a Person has failed to comply or is no longer in compliance with the provisions of this Article, a notice to comply shall be served upon that Person by registered mail, return receipt requested or by hand delivery from the Public Works Director. The notice shall state the violation and describe those measures necessary to comply with this Article.

The Public Works Director may conduct such investigations as deemed reasonably necessary to carry out the duties as prescribed in this Article and may enter at reasonable times upon private property as defined herein, for the purpose of inspecting trees and shrubbery subject to the provisions of this Article. No person shall refuse entry or access to any authorized representative or agent of the Town who requests entry for the purposes of inspection and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with such representative while in the process of carrying out official duties.

## Notice and Appeal

Any person who violates any provision of this Article shall be notified by the Public Works Director of the specific violation by certified or registered mail, return receipt requested, or by hand delivery. The notice shall set forth the nature of the violation, the measures required to comply with this Article, if compliance is at all practicable, and a reasonable time period within which compliance must be completed.

If any aggrieved person disagrees with a decision of the Public Works Director, such person may request a hearing within ten working days of receipt of the notice of violation. The request must be in writing and directed to the Montreat Tree Board secretary. The secretary shall immediately assemble an appeals board, made up of at least three members, from among the full membership of the Montreat Tree Board. The chairperson of the Montreat Tree Board shall always serve on the appeals board as the chairperson and shall not vote except to cast the deciding vote in case of a tie. The members to sit on the appeals board shall be selected on a rotating basis. The owners shall have the right to be represented by counsel, and to examine and cross examine witnesses at said hearing. The Town Attorney shall serve as the appeals board's legal advisor during said hearing. The appeals board shall render its written decision within 30 days after the hearing.

The appeals board may modify, amend or revise the appealed decision. The decision of the appeals board shall be served upon the appealing party by registered or certified mail, return receipt requested, or by hand delivery.

If any aggrieved party is dissatisfied with the decision of the appeals board, an appeal may be taken to the Buncombe County Superior Court. Notice of the appeal must be filed within ten working days of receipt of the appeals board's decision. The parties may stipulate that the appeal to the Buncombe County Superior Court shall be a review of the record only. In the absence of a mutual stipulation, the review shall be de novo.

Any aggrieved party may request an injunction to preserve the status quo during the pendency of any appeal in accordance with applicable North Carolina law.

## Civil Penalty

Any person violating any provision of this Article shall be subject to the civil penalties found in Chapter L of the Town of Montreat Code of General Ordinances.

## Injunctive Relief

Whenever there exists reasonable cause to believe that any Person is violating this Article or the Guidelines or any other standards adopted pursuant to this Article or any term, condition or provision of an approved permit, the Town may, either before or after the institution of any other action or proceeding authorized by this Article, institute a civil action in the name of the Town for a mandatory or prohibitory injunction and an order of abatement demanding the violator to correct the unlawful condition upon or cease the unlawful use of the property.

Definitions to be Added or Amended in Chapter A – General Administration;  
Article 1 – Definitions of Words and Phrases

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this Article, except where the context clearly indicates a different meaning:

Caliper – Diameter measurement of the trunk taken six inches above ground level for trees up to and including four-inch-caliper size. Measurements shall be taken twelve inches above the ground for larger trees.

Diseased Tree – A tree affected by a process in which fungi, bacteria, mycoplasmas, and viruses are able to invade and infect trees causing poor growth and weak appearance, disruption of plant processes, distortion of certain tree parts and strain or death of the tree.

Diameter Breast Height (DBH) – The diameter of a tree four and one-half feet above the average ground level.

Drip Line – a vertical line running through the outermost portions of the tree crown extending to the ground.

Greenspace Trees – Trees and shrubs found in those areas designated as Greenspace in the Offer of Dedication dated May 12, 1983 from the Mountain Retreat Association to the Town of Montreat.

Guidelines – Montreat Tree and Shrub Standards Specifications and Detail Manual, published by the Public Works Department.

Impervious Cover – Building and structure footprints, areas of pavement, compacted gravel or other compacted areas which by their dense nature do not allow the passage of sufficient oxygen and moisture to support and sustain healthy root growth.

Maintenance – Property cultural practices including pruning, fertilization, pest management, and root system protection. The standards of maintenance are those published by the National Arborists Association.

Paved Area – Any ground surface covered with concrete, asphalt, stone, compacted gravel, brick or other paving material.

Person – A public or private individual, corporation, company, firm, association, trust, estate, commission, board, public or private institution, utility cooperative or other legal entity.

Private Property – Property that is not owned by a federal, state or local government.

Public Works Director – The head of the Town of Montreat Public Works Department or his or her designee.

Replacement – Replacement of dead, dying, diseased, or removed trees with trees of equal or comparable size, species, vigor and health.

Removal – The cutting down of any tree or shrub and all other acts which cause the actual removal or the effective removal through damaging, poisoning or other direct or indirect actions resulting in the death of a tree or shrub.

o) Root Protection Zone- Generally, 18 to 24 inches deep and a radius distance from the trunk of the tree equal to one foot for each one inch of trunk diameter or the outermost drip line of the tree, whichever is greater.

p) Street Trees – Trees and shrubs on land lying within right-of-way on either side of all streets, roads, or ways within the Town.

q) Topping – Any pruning practice that results in the severe cutting back of limbs and trunks to stubs larger than three inches in diameter within the trees crown to such a degree so as to remove the normal canopy and disfigure the tree.

r) Town – The Town of Montreat, North Carolina

s) Town Property – All real property which is owned or leased by the Town or which is maintained by it or any part of any Town right-of-way or for which the Town has a license, easement, or right to use, possess or occupy property.

t) Unsafe Tree – For a tree to be unsafe, one of the following criteria must apply;

(1) A combination of a structural defect and a target.

(a) A structural defect which predisposes the tree to failure; i.e., dead tree, trunk decay, dead branches, V-crotches; and

(b) A target such as a structure, road, walkway, campsite or other area where improvements to property exists or people reside.

(2) A tree that is otherwise structurally sound, but which interferes with the routine activities of people. Interferences include obstructions, sight distance problems for motorists, buckling of sidewalks or greenways, attracting lightning, or interference with utilities.





# MONTREAT CODE OF GENERAL ORDINANCES

## CHAPTER L – PENALTIES

*(Revised 6/09/2005); (Re-titled 6/14/2007)*

Section 1. Unless otherwise specifically provided, any Person or Entity violating any of the provisions of any Section or Subsection of this Code of General Ordinances (the Code) or failing, neglecting or refusing to comply with the same shall be subject to the remedies provided for in this Chapter, except that if a provision of this Code has been adopted pursuant to a North Carolina General Statute that provides specific civil remedies for violation, such remedies shall be available to the Town for enforcement of this Code in addition to the remedies set out in this Chapter.

Section 2. Criminal Penalty. Violations of the provisions of this Code regulating the operation or parking of vehicles shall be an infraction and shall subject the offender to a penalty of not more than fifty dollars (\$50.00) pursuant to N.C.G.S. § 14-4(b). Except as otherwise provided, a violation of other provisions of this Code shall be a misdemeanor and shall subject the offender to a fine not to exceed five hundred dollars (\$500.00) or imprisonment not to exceed twenty (20) days or the maximum provided by N.C.G.S. § 14-4(a) and § 15A-1340.23..

Section 3. Civil Penalty. Violations of this Code shall subject the offender to a civil penalty upon the issuance of a citation for a violation. The Town may recover the civil penalty, if not paid to the Town Administrator within thirty (30) days of the date the citation was issued, in a civil action in the nature of a debt pursuant to N.C.G.S. § 160A-175. Each day that any violation of the provisions of this Code continues shall constitute a separate and distinct offense. The civil penalty shall be fifty dollars (\$50.00) for each violation unless otherwise provided in this Code or set forth below: **For purposes of determining the amount of the civil penalty pursuant to this Section, the failure to pay the fifty-dollar (\$50) civil penalty shall not constitute a separate and distinct offense that subjects the offender to an additional fifty-dollar (\$50) civil penalty.**

Section 4. Civil Penalty for Violations of Chapter I—Disorderly Conduct and Public Nuisances in Montreat:

First violation:	Oral Warning
Second violation:	Written Warning
Third violation:	\$250.00
Fourth and subsequent violations:	\$500.00

Second or subsequent violations of the provisions of Chapter I by the same person for the same activity occurring within one year of the first such violation shall be subject to the higher penalties

set forth above. The citation shall be issued to the offender and a copy of the citation shall be sent to the owner of the property where the violation occurred at the contact information shown on the Privilege License application or other Town records.

Section 5. Equitable Remedy. In addition to the criminal and civil penalties set out in this Chapter, the Town may enforce any provision of this Code by an appropriate equitable remedy issuing from a court of competent jurisdiction. In such case, the General Court of Justice shall have jurisdiction to issue such orders as may be appropriate, and it shall not be a defense to the application of the Town for equitable relief that there is an adequate remedy at law.

Section 6. Injunction. In addition to the criminal and civil penalties set out in this Chapter, the Town may enforce any provision of this Code that makes unlawful a condition existing upon or use made of real property by injunction and order of abatement, and the General Court of Justice shall have jurisdiction to issue such orders. When a violation of such an ordinance occurs, the Town may apply to the appropriate division of the General Court of Justice for a mandatory or prohibitory injunction and order of abatement commanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property. The action shall be governed in all respects by the laws and rules governing civil proceedings, including the Rules of Civil Procedure in general and Rule 65 in particular.

Section 7. Order of Abatement. In addition to an injunction, the court may enter an order of abatement as a part of the judgment in the cause. An order of abatement may direct that:

- a) Buildings or other structures on the property be closed, demolished or removed;
- b) Fixtures, furniture or other moveable property be removed from building on the property;
- c) Grass and weeds be cut;
- d) Improvements or repairs be made; or
- e) Any other action be taken that is necessary to bring the property into compliance with the Code.

If the defendant fails or refuses to comply with an injunction or order of abatement within the time allowed by the court, he or she may be cited for contempt and the Town may execute the order of abatement. The Town shall have a lien on the property for the cost of executing an order of abatement in the nature of a mechanic's and materialman's lien. The defendant may secure cancellation of an order of abatement by paying all costs of the proceedings and posting a bond for compliance with the order. The bond shall be given with sureties approved by the clerk of superior court in an amount approved by the judge before whom the matter is heard and shall

be conditioned on the defendant's full compliance with the terms of the order of abatement within a time fixed by the judge. Cancellation of an order of abatement shall not suspend or cancel an injunction issued in conjunction therewith.

Section 8. The provisions of this Code may be enforced by one, all or a combination of the remedies authorized by this Chapter.

## MONTREAT CODE OF GENERAL ORDINANCES

### CHAPTER M - EXTENSIONS OF PUBLIC UTILITIES AND STREETS

(Adopted 3/12/2009); (Revised 11/11/21)

#### Section 1. General Provisions

- a) Purpose. The purpose of this Chapter is to provide regulations and procedures for the extension of the public water lines, sewer lines, and streets by individual property owners or by the Town upon petition by affected property owners or on its own initiative. Many of the plats of lots in the Town were recorded before the Town adopted the Subdivision Ordinance on December 11, 1980. Some of the lots shown on those plats are not served by public utilities and streets. Although expansion of public utilities and streets is part of the Town's five-year Capital Improvement Plan, property owners may wish to develop lots before the extension of public utilities and streets to their property under the Capital Improvement Plan. The purpose of this Chapter is to provide for a more orderly expansion of public utilities and streets in advance of the Town's Capital Improvement Plan.
- b) Scope. This Chapter applies to all extensions of public water lines, sewer lines, and streets within the Town and within the extraterritorial jurisdiction of the Town, except for extensions of public utilities and streets in new developments that are subject to the Subdivision Ordinance. Extensions of public utilities and streets in new developments shall be made in accordance with the requirements of the Subdivision Ordinance and the Street Standards Ordinance.
- c) Conversion of Private Wells and Septic Systems. The owners of any developed or improved property located in the Town shall connect to the public water line and MSD sewer line in accordance with this Ordinance and MSD requirements. When public water or sewer lines are extended in accordance with the Ordinance or MSD requirements, property owners who have built private wells and septic systems will be required to connect to the public water system and sanitary sewer system, except as otherwise provided by NCGS 87-97.2 as amended from time to time.
- 4) Definitions. The following terms, whether or not capitalized, as used in this Ordinance are defined as follows:

*MSD* means Metropolitan Sewerage District of Buncombe County, North Carolina, a public body and body politic and corporate, created and established by the North Carolina State Stream Sanitation Committee by Resolution adopted on January 19, 1962, under the provisions of the North Carolina Metropolitan Sewerage Districts Act, now codified as Chapter 162A, Article 5, of the General Statutes of North Carolina.

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*Private Utility Line* means a water line or sewer line installed and maintained by a property owner and serving one dwelling.

*Public Utility System* means the water distribution system owned and operated by the Town and the sanitary sewer system owned and operated by MSD.

*Schedule of Fees* means the Town of Montreat Schedule of Fees adopted annually at the start of each new fiscal year, as it may be amended from time to time.

*Street Standards Ordinance* means Montreat General Ordinance Chapter D, Article IV “Street Standards”, as it may be amended from time to time.

*Subdivision Ordinance* means the Subdivision Ordinance for the Town of Montreat adopted on December 11, 1980, as it may be amended from time to time.

Section 2.     Private Extensions of the Public Utility System

- a) Application.       Any person who desires to connect a private utility line to the public utility system or to construct a utility line in the right-of-way of a public street shall make a written application for such connection or construction on forms provided by the Town. The application must be accompanied by (i) a preliminary utility plan, designed to meet Town standards and prepared by a professional engineer registered to practice in the State of North Carolina, and (ii) a map prepared by a professional engineer or land surveyor registered to practice in the State of North Carolina, showing accurately the property to be served with water and/or sewer service, the location of the public lines where the proposed connection will be made, the location of streets serving the property, and the lots or other parcels to be served by the proposed utility line. The applicant shall submit copies of any permits required by the State of North Carolina or other governmental entity. The applicant shall pay the appropriate application fee shown on the Schedule of Fees at the time of the application submittal.

In addition, any person who desires to connect a private sewer line or system to the public sewer system shall comply with the requirements of the MSD’s Policy and Procedures for the Extension of Sewer Service and shall pay all fees required by MSD.

- b) Approval of Proposed Extension. The Director of Public Works shall review the size, location, character and quality of all pipes, stubs, valves, valve boxes, hydrants and other fixtures, equipment and apparatus to be laid and constructed and to be connected with the Town’s utility systems. The Director of Public Works may, in his or her sole discretion, retain a professional engineer to review the preliminary utility plan and related documents, to inspect the project site, and to make

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recommendations to the Town concerning the proposed project. The applicant shall pay the fees and expenses of the engineer retained by the Director of Public Works.

The Director of Public Works shall determine whether the project, if built in accordance with the preliminary utility plan, will meet Town standards. The Director of Public Works shall obtain confirmation of MSD's approval or disapproval of any sewer project. The Director of Public Works shall have the authority to recommend the approval or disapproval of the application, to indicate reasonable conditions and requirements for approval, and to recommend any measures that may be requisite or necessary to protect the interests of the Town or to prevent improper connections to the Town's utility system or improper use of the Town's right-of-way. The Director of Public Works shall submit the application (with the required utility plan and map), together with the recommendation for approval or disapproval, to the Board of Commissioners for consideration at the next regular meeting for which the submittal meets the deadline for the submission of agenda items.

- c) Dedication of Utility Line and Easement. The applicant, by proper written instrument, shall dedicate, give, grant and convey such water lines or systems to the Town or sewer lines or systems to MSD. No person or entity shall connect to the public utility system without dedicating, giving, granting and conveying the utility lines to the Town or MSD, and if any person or entity connects to the public utility system without first delivering the properly executed written instrument of dedication and conveyance, the act of connecting shall be deemed to be a dedication, gift, grant and conveyance of such water lines to the Town or sewer lines to MSD. If any portion of the utility lines will be constructed on property not owned by the applicant and not in the public right-of-way, the applicant shall, at no cost to the Town, obtain written easements in a form approved by the Town for the construction, installation, improvement, replacement, maintenance, inspection, repair and use of the utility lines, together with all appurtenant facilities and equipment necessary and convenient thereto, with appropriate rights of ingress and egress by the Town and/or MSD and the right to keep the easement clear of obstructions, trees and shrubs.
- d) Cost of Extension. If the Board approves the extension, the applicant shall pay the cost of installing the extension of the utility line to Town standards and the cost of meeting any conditions required by the Board of Commissioners in its approval of the extension. The Town may, in the sole discretion of the Board of Commissioners, enter into agreements that provide for the potential future reimbursement of a portion of the construction costs of certain water and sewer facilities ("owner-constructed facilities") when the facilities have been designed at the Town's direction to take into account Town-determined needs regarding existing or future development and, in addition, when the scale, scope, or size of the owner-constructed facilities are

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substantially larger than what is needed for that owner's property or when other unique circumstances apply.

Reimbursement shall be limited to payments from future users that benefit from the owner-constructed facilities. Such future users may include owners of near-by property, developers of future projects and/or water or sewer customers within those projects. In addition to any other fees provided by law or ordinance, the Town may require such future users to pay a fair portion of the cost of the owner-constructed facilities as a precondition of connection to the water and/or sewer system. If fees are imposed on future water and/or sewer customers, additional agreements, ordinances and/or fee resolutions may be passed implementing such charges. The Town shall reimburse the party to an agreement made under this section after future users make payments to the Town.

The Town shall develop written policies consistent with this section that apportion the original documented costs of the owner-constructed facilities that are subject to a reimbursement agreement among future users in a fair and equitable manner, as determined in the sole discretion of the Town. Agreements under this section shall, among other things, specify the time period for which reimbursements shall apply. In addition, agreements shall provide for a reasonable administrative charge to be retained by the Town for the Town's expense in administering the reimbursement program. No agreement shall obligate the Town to reimburse costs of owner-constructed facilities if payments are not received by the Town for any reason, nor shall any agreement limit the Town's authority to modify this section. This section shall not limit the Town's authority under any other section of this Chapter.

- e) Inspection Fee for Utility Improvements Installed by Private Contractors or by Property Owners. Any utility extension improvements installed by private contractors or property owners shall be inspected by the Town prior to being placed into service. Before the inspection, the applicant shall pay the engineering and other costs incurred by the Town and the inspection fee and other applicable fees set out on the Schedule of Fees.

Section 3. Public Extensions of the Utility System

- a) Statutory Procedure. Whenever the Town decides to install water lines or sewer lines in advance of the schedule set forth in Town's Capital Improvement Plan, the Town may consider financing the project with special assessments. The Town shall follow the procedure for financing improvements with special assessments prescribed in Article 10 of Chapter 160A of the North Carolina General Statutes.
- b) Assessment for Extensions. The Town may, in the sole discretion of the Board of Commissioners, make assessments of the cost for extensions or replacements of

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public utility lines or systems against the owners of property served or subject to being served thereby in conformity with Article 10 of Chapter 160A of the North Carolina General Statutes.

- i. When water or sewer lines exist but are inadequate (less than eight-inch sewer or less than six-inch water) for the system and are being replaced, the owners of the property served or subject to being served by the replacement may be assessed for the difference between the new cost of inadequate lines and the cost of the size installed.
  - ii. If a lot is already served by adequate (eight-inch sewer or six-inch water) or larger size public water or sewer lines and a water or sewer line providing a duplicating service is installed, the cost of the new installation shall not be assessed against that lot if the lot cannot be subdivided in any manner which would benefit from the installation.
- c) Preliminary Resolution and Public Hearing. The Board of Commissioners will consider many factors in determining whether to adopt a preliminary resolution, including but not limited to (i) availability of funds; (ii) estimated cost of the proposed improvement; (iii) priority of the need for the proposed water lines and/or sewer lines relative to the need for improvement of other utility lines; and (iv) the impact of the proposed improvement on land use, soil erosion, water quality and stormwater management. If the Board of Commissioners adopts a preliminary resolution, the Town shall hold a public hearing and may adopt an assessment resolution.
- d) Preliminary Assessment Roll and Public Hearing. When a project is complete, the Town shall ascertain the total cost, including construction costs, legal fees, interest paid during construction, costs of rights-of-way, and costs of publication of notices and resolutions. When the total cost has been determined, the Town shall prepare and publish a preliminary assessment roll in accordance with the provisions of Article 10 of Chapter 160A. The Board of Commissioners shall hold a public hearing and annul, modify or confirm the assessment. The notice of confirmation of assessment roll shall be published and the special assessment shall be paid in accordance with the provisions of Article 10 of Chapter 160A of the North Carolina General Statutes.

Section 4. Private Extensions of Public Street. Some property owners have built driveways in unopened public right-of-way. The Town will no longer allow this practice. Any new roads being built in unopened public right-of-way shall comply with the requirements of the Street Standards Ordinance.

- 1) Application. Any person who desires to construct a street in unopened public right-of-way or to improve or resurface an existing private driveway constructed in public right-of-way shall make a written application for such street



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improvement on forms provided by the Town. The application must be accompanied by (i) a preliminary street plan, designed to comply with the Street Standards Ordinance and prepared by a professional engineer registered to practice in the State of North Carolina, and (ii) a map prepared by a professional engineer or land surveyor registered to practice in the State of North Carolina, showing accurately the property to be served by the street, the location of adjacent public streets, and the lots or parcels to be served by the proposed street. The applicant shall submit copies of any permits required by the State of North Carolina or other governmental entity. The applicant shall pay the appropriate application fee shown on the Schedule of Fees at the time of the application submittal.

- 2) Approval of Proposed Extension. The Director of Public Works shall review the preliminary street plan and map for the proposed street to be laid and constructed, improved, or resurfaced in the Town’s street right-of-way. The Director of Public Works may, in his or her sole discretion, retain a professional engineer to review the preliminary street plan and related documents, to inspect the project site, and to make recommendations to the Town concerning the proposed project. The applicant shall pay the fees and expenses of the engineer retained by the Director of Public Works.

The Director of Public Works shall determine whether the project, if built in accordance with the preliminary street plan, will meet Town standards. The Director of Public Works shall have the authority to recommend the approval or disapproval of the application and to indicate reasonable conditions and requirements for approval, and to recommend any measures that may be requisite or necessary to protect the interests of the Town or to prevent improper construction in the Town’s public right-of-way. The Director of Public Works shall submit the application (with attached street plan and map), together with the recommendation for approval or disapproval, to the Board of Commissioners for consideration at the next regular meeting for which the submittal meets the deadline for the submission of agenda items.

- 3) Dedication of Street Improvements. The applicant shall, upon request by the Town, offer any portion of the street improvements not located in the public right-of-way for dedication to the public.
- 4) Cost of Extension. If the Board approves the extension, the applicant shall pay the cost of installing the extension in compliance with the Street Standards Ordinance and the cost of meeting any conditions imposed by the Board of Commissioners in its approval of the extension.

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- 5) Inspection Fee for Street Improvements Installed by Private Contractors or Property Owners. Any street extension improvements installed by private contractors or property owners shall be inspected by the Town prior to being placed into service. Before the inspection, the applicant shall pay the engineering and other costs incurred by the Town and the inspection fee and other applicable fees set out on the Schedule of Fees.

Section 5. Public Extension of Streets

- 1) Statutory Procedure. Whenever the Town decides to construct streets in advance of the schedule set forth in the Town’s Capital Improvement Plan, the Town may consider financing the project with special assessments. The Town shall follow the procedure for financing street improvements with special assessments prescribed in Article 10 of Chapter 160A of the North Carolina General Statutes.
- 2) Dedicated Streets not Opened. Dedicated streets that have not been opened shall not be opened or maintained by property owners unless first improved in accordance with the provisions of Section 4, Private Extensions of Public Street Submission of a sufficient petition as provided in this Section by abutting property owners requesting the improvement of the street on an assessment basis shall be considered as compliance with the provisions of this Paragraph.
- 3) Petition by Property Owners. Property owners who wish to request a public extension of a street or other street improvements shall make such requests by petition to the Board of Commissioners.
- a) The petition shall state the location of the proposed improvement, the names of property owners affected by the petition, the lineal feet of frontage of the property abutting on the street to be improved, and an engineer’s verification that the proposed street improvements will conform to the Town street improvement standards. In addition, the petition shall specify the percentage of the cost of the street improvements that the property owners request that the Town assess against the property owners affected by the petition. The petition shall be signed by all the property owners who wish to join in the petition for street improvements and a special assessment for the cost of the street improvements.
- b) The Town Administrator shall review the petition for conformity with North Carolina General Statute § 160A-217, which requires that, with some exceptions, a majority of the owners of property to be assessed, who represent at least a majority of the lineal feet of frontage of the property

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abutting on the street or portion of the street to be improved, must sign the petition.

- c) If the petition is sufficient, the Town shall prepare a map showing the names of property owners and the location and frontage of each parcel of land abutting both sides of the proposed street to be improved. The Town Administrator shall submit the petition and the map to the Board of Commissioners for consideration at its next regular meeting.
- 4) Preliminary Resolution and Public Hearing. The Board of Commissioners will consider many factors in determining whether to adopt a preliminary resolution, including but not limited to (i) availability of funds; (ii) estimated cost of the proposed improvement; (iii) percentage of property owners and street frontage represented by the petition; (iv) priority of the need for the improvement of the street described in the petition relative to the need for improvement of other streets; (v) the impact of the proposed improvement on land use, soil erosion, water quality and stormwater management; and (vi) the time of the filing of the petition. If the Board of Commissioners adopts a preliminary resolution, the Town shall hold a public hearing and may adopt an assessment resolution.
- 5) Preliminary Assessment Roll and Public Hearing. When a project is complete, the Town shall ascertain the total cost, including construction costs, legal fees, interest paid during construction, costs of rights-of-way, and costs of publication of notices and resolutions. When the total cost has been determined, the Town shall prepare and publish a preliminary assessment roll in accordance with the provisions of Article 10 of Chapter 160A. The Board of Commissioners shall hold a public hearing and annul, modify or confirm the assessment. The notice of confirmation of assessment roll shall be published and the special assessment shall be paid in accordance with the provisions of Article 10 of Chapter 160A.

Section 6. Extensions Outside Town Limits. All extensions of public utilities outside the Town corporate limit shall be subject to the approval of the Board of Commissioners and shall be located in the Town's Extraterritorial Jurisdiction. After action has been taken by the Director of Public Works (and by the Planning and Zoning Commission, if required) and recommendations have been made to the Board of Commissioners, the Board shall consider and act upon the approval or disapproval of any application for extension, and the action of the Board shall be final; provided, however, the Board may specify to the owners of the property benefited by the proposed extension any requirements or conditions which must be met as a prerequisite for approving the application.

- 1) Application. Any person who desires to connect a private utility line to the public utility system shall make a written application for such connection or construction on forms provided by the Town. The application must be

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accompanied by (i) a preliminary utility plan, designed to meet Town standards and prepared by a professional engineer registered to practice in the State of North Carolina, and (ii) a map prepared by a professional engineer or land surveyor registered to practice in the State of North Carolina, showing accurately the property to be served with water and/or sewer service, the location of the public lines where the proposed connection will be made, the location of streets serving the property, and the lots or other parcels to be served by the proposed utility line. The applicant shall submit copies of any permits required by the State of North Carolina or other governmental entity. The applicant shall pay the appropriate application fee shown on the Schedule of Fees at the time of the application submittal.

No private water line or system shall be approved for connection to the Town's water system unless, at the same time, adequate wastewater services are available for the property to be served by the proposed water line. Wastewater service must be provided by connection to the MSD sewerage system, if available to the subject property. If MSD service is not available, wastewater service must be provided by a private septic system approved and regulated by the Buncombe County Health Department.

In addition, any person who desires to connect a private sewer line or system to the public sewer system shall comply with the requirements of the MSD's Policy and Procedures for the Extension of Sewer Service and shall pay all fees required by MSD.

- 2) Approval of Proposed Extension. The Director of Public Works shall review the size, location, character and quality of all pipes, stubs, valves, valve boxes, hydrants and other fixtures, equipment and apparatus to be laid and constructed and to be connected with the Town's utility systems. The Director of Public Works may, in his or her sole discretion, retain a professional engineer to review the preliminary utility plan and related documents, to inspect the project site, and to make recommendations to the Town concerning the proposed project. The applicant shall pay the fees and expenses of the engineer retained by the Director of Public Works.

The Director of Public Works shall determine whether the project, if built in accordance with the preliminary utility plan, will meet Town standards. The Director of Public Works shall obtain confirmation of MSD's approval or disapproval of any sewer project. The Director of Public Works shall have the authority to recommend the approval or disapproval of the application, to indicate reasonable conditions and requirements for approval, and to recommend any measures that may be requisite or necessary to protect the interests of the Town

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or to prevent improper connections to the Town's utility system or improper use of the Town's right-of-way. The Director of Public Works shall submit the application (with the required utility plan and map), together with the recommendation for approval or disapproval, to the Board of Commissioners for consideration at its next regular meeting.

In prescribing the requirements and prerequisites for approval of the application for utility connections, the Board shall determine the width of streets, the adequacy of drainage, the adequacy of flood control measures and facilities, the type of paving, the size and type of pipes and other equipment, the location of streets, and such other matters with respect to the extension as the Board, in its discretion, may deem proper.

- 3) Dedication of System. The applicant, by proper written instrument, in consideration of the connection to public utility lines and the benefits derived therefrom, shall dedicate, give, grant and convey such water lines or systems to the Town or sewer lines or systems to MSD. No person or entity shall connect to the public utility lines without dedicating, giving, granting and conveying the utility lines to the Town or MSD, and if any person or entity connects to the public utility lines without first delivering the properly executed written instrument of dedication and conveyance, the act of connecting shall be deemed to be a dedication, gift, grant and conveyance of such water lines to the Town or sewer lines to MSD.
- 4) Easements. If the utility lines will be constructed on property not owned by the applicant, the applicant shall, at no cost to the Town, obtain written easements in a form approved by the Town for the construction, installation, improvement, replacement, maintenance, inspection, repair and use of the utility lines, together with all appurtenant facilities and equipment necessary and convenient thereto, with appropriate rights of ingress and egress by the Town and/or MSD and the right to keep the easement clear of obstructions, trees and shrubs.
- 5) Cost of Extension. After receiving the necessary approvals and permits, the applicant shall, at its own cost and without unnecessary delay, furnish, construct and lay the utility lines as approved to Town standards, without cost or expense to the Town. The applicant shall lay and construct the utility lines in approved easements and rights-of-way according to the standards and specifications, and of the character, size, quality and durability, as prescribed by the Town and subject to approval by the Town.
- 6) Inspection and Approval. Upon the completion of the construction and the dedication of the utility lines as authorized by this Chapter and upon inspection

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and approval thereof by the Town and/or MSD, the applicant shall be permitted to connect the extensions to the Town's and/or MSD's utility lines and systems upon the terms and conditions prescribed by this Chapter. No such connection shall be made without the express approval of the Town and/or MSD nor shall any connection be made without the supervision of the Town and/or MSD. Before the inspection, the applicant shall pay the engineering costs incurred by the Town and the inspection fee set out on the Schedule of Fees.

- 7) Map of System. The applicant shall furnish the Town with an accurate map showing in detail the location and dimensions of all recorded easements, mains, pipe lines, laterals, stubs, valves, valve boxes, hydrants, and other fixtures, apparatus, and equipment forming a part of the utility lines constructed and dedicated pursuant to this Chapter, and showing the depth of all pipes and apparatus below the ground level. The map shall be subject to approval by the Director of Public Works, and after the map is approved, there shall be no changes to the map without the written consent of the Director of Public Works.
- 8) Non-liability of Town. The applicant shall have and assume all risk in the laying, installation, and construction of the utility lines and system and shall give warranties against any material defect, equipment defect, malfunction, or failure for a period of one year from the date of acceptance of such extension. The cost of repair, replacement or both of the subject facilities during the warranty period shall be the sole expense of the applicant without any cost to the Town. Any repair or replacement made during the warranty period by the applicant or its agent shall also be warranted for a one-year period beginning from the date of acceptance of the repair or replacement.
- 9) Control by Town. All connections by consumers with the utility lines constructed and dedicated pursuant to this Chapter and all services through those lines and apparatus shall be in accordance with the laws, ordinances, rules and regulations of the Town, as now in force or as may be enacted, adopted and amended from time to time. The Town shall have complete supervision and control over the lines, taps, connections and all other parts of the utility lines and system so constructed for the purpose of making any and all necessary inspections and other purposes. The Town shall collect all fees and charges from consumers connected with such utility lines, for its sole use and benefit without compensation to the applicant.

## **MONTREAT CODE OF GENERAL ORDINANCES**

### **RATIFICATION AND ADOPTION**

All of the foregoing chapters, subchapters, articles, sections, subsections, subdivisions and paragraphs, shall be and are hereby duly made, ratified, and adopted as the Code of General Ordinances of the Town of Montreat, North Carolina; and

All ordinances, other than franchises, specific contracts or ordinances issuing, approving, or ratifying or concerning the floating, issuing or sale of bonds for various municipal purposes, ordinances relating to the extension of corporate limits, revenue ordinances or ordinances establishing permanent Street improvements districts, or concerning the extension, grade, widening, laying out, naming and/or establishing of new Streets or ordinances concerning bridges, subways and underpasses, or condemnation proceedings, that are in conflict or not in conformity herewith, are amended so as to conform thereto; and

What is known as the Annual Revenue Ordinances is not included in this Code and no part of said Revenue Ordinance is repealed by anything contained in this Code and ordinances of a structural nature now in effect, unless in conflict with, or contrary to, provisions of this Code are not hereby repealed or altered; and

Ordinances allowing, permitting, approving or confirming sales of lands or the conveyance of land by or to the Town are not hereby altered, amended, or repealed;

Nor shall any contract with the United States Government or any agencies thereto be construed to be altered, amended, or repealed, nor shall any contract or agreement with the Buncombe County Government, or any of the various departments thereof, including agreements about the use of tax assessment books, or the levying, or assessing of said tax be construed to be altered, amended or repealed, but all other ordinances of a penal nature if not included in said Code are hereby repealed; and

Provided, however, that nothing herein contained shall be construed to extend the time in or for which any franchises, contracts, or privilege was granted by the Town, nor to enlarge any right or rights given or granted in any franchises, contracts or privileges granted, or made by the Town nor to annul or abridge any right or privilege heretofore given, or granted by the Town.

It is also ordained that this Code may be referred to as the Code of General Ordinances of the Town of Montreat, North Carolina. And in all judicial proceedings it shall be sufficient to plead any Ordinance or Section of said Code by the caption or by the number of the Section thereof; and it shall not be necessary to plead the entire Ordinance or Section. A copy of said Code, when introduced in any of the courts of the State, shall be taken as prima facie evidence of the existence of any ordinance contained therein.