

# MONTREAT CODE OF GENERAL ORDINANCES

## CHAPTER K – PENALTIES

*(Revised 06/09/05)*

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.