

## MONTREAT CODE OF GENERAL ORDINANCES

### 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;

**Montreat General Ordinances**  
**Chapter G – Health Protection & Disease Prevention**  
**Article III: Smoking Pollution Control**  
**Rev. 9/08/2011**

---

- 6) All areas available to and customarily used by the general public in all businesses 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:

**Montreat General Ordinances**  
**Chapter G – Health Protection & Disease Prevention**  
**Article III: Smoking Pollution Control**  
**Rev. 9/08/2011**

---

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 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.

**Montreat General Ordinances**  
**Chapter G – Health Protection & Disease Prevention**  
**Article III: Smoking Pollution Control**  
**Rev. 9/08/2011**

---

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.

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 10. 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;

**Montreat General Ordinances**  
**Chapter G – Health Protection & Disease Prevention**  
**Article III: Smoking Pollution Control**  
**Rev. 9/08/2011**

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- 3) A fine not exceeding five hundred dollars (\$500) for each additional violation of this Article within one (1) year.

Section 11. 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 12. Other Applicable Laws. This Article shall not be interpreted or construed to permit Smoking where it is otherwise restricted by other applicable laws.

Section 13. 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 14. 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 15. 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 16. 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 17. Effective Date. This Article shall be effective October 14, 1993, and shall be reviewed within one year of its effective date.