

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 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.

ARTICLE II: SOLID WASTE DISPOSAL AND REFUSE COLLECTION

(Revised 02/13/2003)

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 paragraph 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 in accordance with guidelines approved by the Board of Commissioners.

If a bear-proof container does not meet the requirements of the guidelines, the Town Administrator may refer the approval to the Board of Commissioners. Compliance with this ordinance is mandated by the date of December 31, 2003. After that date any containers located in Town right-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. Collection of both Solid Waste and recyclables will be in accordance with the schedule with the Contractor. The schedule is available in the Town office. The Town has an agreement with a Solid Waste Collection Service Contractor which provides weekly pick-ups year-round, and twice-weekly pick-ups as scheduled each summer. This contractor will pick up residential yard waste placed next to the streets in accordance with the schedule provided that leaves are bagged and all brush measures shorter than four feet (4') in length and less than six (6) inches in diameter. There will be scheduled pick-ups twice yearly for residential white goods/bulk goods.

The Solid Waste Collection Service Contractor will pick up garbage scattered around cans that have been upset or where the tops have been torn. However, if the Town Administrator 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 K, Section I.

Section 4. 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 5. Recyclable Materials. All recyclable materials shall be separated from Solid Waste and placed at the curb alongside the Solid Waste containers.

Section 6. 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 K.

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 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 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.

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;
- 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.

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) 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 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.