

MONTREAT CODE OF GENERAL ORDINANCES

CHAPTER J – BUILDING CODES

ARTICLE III: NONRESIDENTIAL BUILDINGS

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.

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(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.

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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.

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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) 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.

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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 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

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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.

(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

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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, 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.

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(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).

(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

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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.

(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.