

MONTREAT CODE OF GENERAL ORDINANCES

CHAPTER M - EXTENSIONS OF PUBLIC UTILITIES AND STREETS

(Adopted 03/12/2009)

Section 1. General Provisions

- 1) 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.
- 2) 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.
- 3) Private Wells and Septic Systems. Some property owners have built private wells and septic systems. The Town will no longer allow this practice. The owners of any 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.
- 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.

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 on _____, 2009, as it may be amended from time to time.

Street Standards Ordinance means the Streets Standards Ordinance for the Town of Montreat adopted on _____, 2009, 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

- 1) 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.

- 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 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.

- 3) 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.

- 4) 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 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 authority under any other section of this Chapter.

- 5) 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

- 1) 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.
- 2) 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 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.
 - a) 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.

- b) 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.
- 3) 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.
- 4) 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 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.
- 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 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 the application, and the action of the Board shall be final; provided, however, the Board may indicate to the owners of the property benefited by the proposed extension the requirements 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 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 sewerage services are available for the property to be served by the proposed water line and the property owner has connected to the MSD sewerage system, conveyed to MSD the sewer lines and systems and easements therefor, and has constructed the sewerage system to MSD standards and MSD has accepted the system.

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 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 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) Nonliability 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.