

**TITLE I: GENERAL PROVISIONS**

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Chapter

**10. GENERAL PROVISIONS**

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**CHAPTER 10: GENERAL PROVISIONS**

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**§ 10.01 TITLE OF CODE.**

This codification of ordinances by and for the municipality of Black Mountain shall be designated as the Code of Black Mountain and may be so cited.

**§ 10.02 INTERPRETATION.**

Unless otherwise provided herein, or by law or implication required, the same rules of construction, definition, and application shall govern the interpretation of this code as those governing the interpretation of the General Statutes of North Carolina.

**§ 10.03 APPLICATION TO FUTURE ORDINANCES.**

All provisions of Title I compatible with future legislation, shall apply to ordinances hereafter adopted amending or supplementing this code unless otherwise specifically provided.

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### § 10.04 CAPTIONS.

Headings and captions used in this code other than the title, chapter, and section numbers are employed for reference purposes only and shall not be deemed a part of the text of any section.

### § 10.05 DEFINITIONS.

(A) General rule. Words and phrases shall be taken in their plain, or ordinary and usual sense. However, technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import.

(B) For the purpose of this code, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**MUNICIPAL CORPORATION, MUNICIPALITY, or TOWN.** The Town of Black Mountain, North Carolina.

**CODE, THIS CODE or THIS CODE OF ORDINANCES.** This municipal code as modified by amendment, revision, and adoption of new titles, chapters, or sections.

**COUNTY.** Buncombe County, North Carolina.

**MAY.** The act referred to is permissive.

**MONTH.** A calendar month.

**OATH.** An affirmation in all cases in which, by law, an affirmation may be substituted for an oath, and in such cases the words **SWEAR** and **SWORN** shall be equivalent to the words **AFFIRM** and **AFFIRMED**.

**OFFICER, OFFICE, EMPLOYEE, COMMISSION, or DEPARTMENT.** An officer, office, employee, commission, or department of this municipality unless the context clearly requires otherwise.

**PERSON.** Extends to and includes person, persons, firm, corporation, copartnership, trustee, lessee, or receiver. Whenever used in any clause prescribing and imposing a penalty, the terms **PERSON** or **WHOEVER** as applied to any unincorporated entity shall mean the partners or members thereof, and as applied to corporations, the officers or agents thereof.

**PRECEDING or FOLLOWING.** Next before or next after, respectively.

**SHALL.** The act referred to is mandatory.

**SIGNATURE or SUBSCRIPTION.** Includes a mark when the person cannot write.

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**STATE.** The State of North Carolina.

**SUBCHAPTER.** A division of a chapter, designated in this code by a heading in the chapter analysis and a capitalized heading in the body of the chapter, setting apart a group of sections related by the subject matter of the heading. Not all chapters have subchapters.

**WRITTEN.** Any representation of words, letters, or figures, whether by printing or otherwise.

**YEAR.** A calendar year, unless otherwise expressed; equivalent to the words **YEAR OF OUR LORD.**

**Statutory reference:**

Similar statutory definitions, see G.S. § 12-3

### § 10.06 RULES OF INTERPRETATION.

The construction of all ordinances of this town shall be by the following rules, unless such construction is plainly repugnant to the intent of the Board of Aldermen or of the context of the same ordinance:

(A) **AND** or **OR.** Either conjunction shall include the other as if written “and/or”, if the sense requires it.

(B) Acts by assistants. When a statute or ordinance requires an act to be done which, by law, an agent or deputy as well may do as the principal, such requisition shall be satisfied by the performance of such act by an authorized agent or deputy.

(C) Gender; singular and plural; tenses. Words denoting the masculine gender shall be deemed to include the feminine and neuter genders; words in the singular shall include the plural, and words in the plural shall include the singular; the use of a verb in the present tense shall include the future, if applicable.

(D) General term. A general term following specific enumeration of terms is not to be limited to the class enumerated unless expressly so limited.

### § 10.07 SEVERABILITY.

If any provision of this code as now or later amended or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions that can be given effect without the invalid provision or application.

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### **§ 10.08 REFERENCE TO OTHER SECTIONS.**

Whenever in one section reference is made to another section hereof, such reference shall extend and apply to the section referred to as subsequently amended, revised, recodified, or renumbered unless the subject matter is changed or materially altered by the amendment or revision.

### **§ 10.09 REFERENCE TO OFFICES.**

Reference to a public office or officer shall be deemed to apply to any office, officer, or employee of this town exercising the powers, duties, or functions contemplated in the provision, irrespective of any transfer of functions or change in the official title of the functionary.

### **§ 10.10 ERRORS AND OMISSIONS.**

If a manifest error is discovered, consisting of the misspelling of any words; the omission of any word or words necessary to express the intention of the provisions affected; the use of a word or words to which no meaning can be attached; or the use of a word or words when another word or words was clearly intended to express such intent, such spelling shall be corrected and such word or words supplied, omitted, or substituted as will conform with the manifest intention, and the provisions shall have the same effect as though the correct words were contained in the text as originally published. No alteration shall be made or permitted if any question exists regarding the nature or extent of such error.

### **§ 10.11 OFFICIAL TIME.**

The official time, as established by applicable state and federal laws, shall be the official time within this municipality for the transaction of all town business.

### **§ 10.12 REASONABLE TIME.**

(A) In all cases where an ordinance requires an act to be done in a reasonable time or requires reasonable notice to be given, reasonable time or notice shall be deemed to mean the time which is necessary for a prompt performance of such act or the giving of the notice.

(B) The time within which an act is to be done, as herein provided, shall be computed by excluding the first day and including the last. If the last day be Sunday, it shall be excluded.

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### § 10.13 ORDINANCES REPEALED.

This code, from and after its effective date, shall contain all of the provisions of a general nature pertaining to the subjects herein enumerated and embraced. All prior ordinances pertaining to the subjects treated by this code shall be deemed repealed from and after the effective date of this code.

### § 10.14 ORDINANCES UNAFFECTED.

All ordinances of a temporary or special nature and all other ordinances pertaining to subjects not embraced in this code shall remain in full force and effect unless herein repealed expressly or by necessary implication.

### § 10.15 EFFECTIVE DATE OF ORDINANCES.

All ordinances passed by the Board of Aldermen requiring publication shall take effect from and after the due publication thereof, unless otherwise expressly provided. Ordinances not requiring publication shall take effect from their passage, unless otherwise expressly provided.

### § 10.16 REPEAL OR MODIFICATION OF ORDINANCE.

(A) Whenever any ordinance or part of an ordinance shall be repealed or modified by a subsequent ordinance, the ordinance or part of an ordinance thus repealed or modified shall continue in force until the due publication of the ordinance repealing or modifying it when publication is required to give effect thereto, unless otherwise expressly provided.

(B) No suit, proceedings, right, fine, forfeiture, or penalty instituted, created, given, secured, or accrued under any ordinance previous to its repeal shall in any way be affected, released, or discharged, but may be prosecuted, enjoyed, and recovered as fully as if the ordinance had continued in force unless it is otherwise expressly provided.

(C) When any ordinance repealing a former ordinance, clause, or provision shall be itself repealed, the repeal shall not be construed to revive the former ordinance, clause, or provision, unless it is expressly provided.

### § 10.17 ORDINANCES WHICH AMEND OR SUPPLEMENT CODE.

(A) If the Board of Aldermen shall desire to amend any existing chapter or section of this code, the chapter or section shall be specifically repealed and a new chapter or section, containing the desired amendment, substituted in its place.

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(B) Any ordinance which is proposed to add to the existing code a new chapter or section shall indicate, with reference to the arrangement of this code, the proper number of such chapter or section. In addition to such indication thereof as may appear in the text of the proposed ordinance, a caption or title shall be shown in concise form above the ordinance.

### § 10.18 SECTION HISTORIES; STATUTORY REFERENCES.

(A) As histories for the code sections, the specific number and passage date of the original ordinance, and the most recent three amending ordinances, if any, are listed following the text of the code section. Example: (Ord. 10, passed 5-13-60; Am. Ord. 15, passed 1-1-70; Am. Ord. 20, passed 1-1-80; Am. Ord. 25, passed 1-1-85)

(B) (1) If a statutory cite is included in the history, this indicates that the text of the section reads substantially the same as the statute.

Example: (G.S. § 160-67) (Ord. 10, passed 1-17-80; Am. Ord. 20, passed 1-1-85).

(2) If a statutory cite is set forth as a “statutory reference” following the text of the section, this indicates that the reader should refer to that statute for further information.

Example:

### § 31.10 MAYOR.

The Mayor shall preside at all meetings of the Board of Aldermen.  
(Ord. 10, passed 1-1-80)

**Statutory reference:**

For the powers and duties of the Mayor, see G.S. § 160A-67.

### § 10.19 AMENDMENTS TO CODE; AMENDATORY LANGUAGE.

(A) All ordinances passed subsequent to this code which amend, repeal or in any way affect this code may be numbered in accordance with the numbering system of this code and printed for inclusion herein. In the case of repealed chapters, sections and subsections or any part thereof, by subsequent ordinances, such repealed portions may be excluded from the code by omission from reprinted pages affected thereby. The subsequent ordinances as numbered and printed, or omitted, in the case of repeal, shall be prima facie evidence of such subsequent ordinances until such time that this code and subsequent ordinances numbered or omitted are readopted as a new code by the Board of Aldermen.

(B) Amendments to any of the provisions of this code may be made by amending such provisions by specific reference to the section number of this code in the following language: “That section \_\_\_\_\_ of the Code of Ordinances, Town of Black Mountain, North Carolina, is hereby amended to read as follows: ...”. The new provisions shall then be set out in full as desired.

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(C) In the event a new section not heretofore existing in the code is to be added, the following language may be used: That the Code of Ordinances, Town of Black Mountain, North Carolina, is hereby amended by adding a section, to be numbered \_\_\_\_\_, which said section reads as follows:..." The new section shall then be set out in full as desired.  
(’75 Code, § 1-4)

### **§ 10.20 ALTERING CODE.**

It shall be unlawful for any person to change or amend, by additions or deletions, any part or portion of this code or to insert or delete pages, or any portions thereof, or to alter or tamper with the code in any manner whatsoever except pursuant to ordinance or resolution or other official act of the Board of Aldermen which shall cause the law of the town to be misrepresented thereby.  
(’75 Code, § 1-5) Penalty, see § 10.99

### **§ 10.21 LIABILITY OF CORPORATE OFFICERS, AGENTS AND EMPLOYEES FOR VIOLATION OF CODE.**

In the event of a violation of any provision of this code or other ordinance of the town by a corporation, the officer, agent or employee thereof who performs the act constituting the violation or procures, aids or abets the performance of the act shall be subject to the same penalties as if he himself had committed the violation.  
(’75 Code, § 1-6)

### **§ 10.99 GENERAL PENALTY.**

(A) Whenever in this code or in any ordinance of the town any act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor or whenever in the code or ordinance the doing of any act is required or the failure to do an act is declared to be unlawful, where no specific penalty is provided therefor, the violation of any provision of this code or other ordinance shall be punished by a fine not exceeding \$50 or by imprisonment for a term not exceeding 30 days. Each day that any violation of this code or of any ordinance shall continue shall constitute a separate offense. (’75 Code, § 1-7)

(B) Any person who shall violate an ordinance of the town regulating the operation or parking of vehicles, shall be responsible for an infraction and shall be required to pay a penalty of not more than \$50. (G.S. § 14-4 (b))