

**BURKE COUNTY
VOLUNTARY AGRICULTURAL DISTRICT ORDINANCE
- Final Draft -**

**ARTICLE I
TITLE**

An ordinance of the Board of County Commissioners of BURKE COUNTY, NORTH CAROLINA, entitled, "**VOLUNTARY AGRICULTURAL DISTRICT ORDINANCE.**"

**ARTICLE II
AUTHORITY**

The articles and sections of this program are adopted pursuant to authority conferred by the N.C.G.S. Sections 106-735 through 106-744 and Chapter 153A.

**ARTICLE III
PURPOSE**

The purpose of this ordinance is to promote agricultural values and the general welfare of the county and more specifically, increase identity and pride in the agricultural community and its way of life; encourage the economic and financial health of agriculture; and increase protection from non-farm development and negative impacts on properly managed farms.

**ARTICLE IV
DEFINITIONS**

The following are defined for purposes of this ordinance:

Advisory Board: Burke County Agricultural Advisory Board.

Chairperson: Chairperson of the Burke County Agricultural Advisory Board.

District: Voluntary Agricultural District as established by this ordinance.

Board of Commissioners: Burke County Board of Commissioners.

**ARTICLE V
AGRICULTURAL ADVISORY BOARD**

A. Creation

The Board of Commissioners shall establish an Agricultural Advisory Board to implement the provisions of this program.

B. Membership

The Advisory Board shall consist of seven (7) members appointed by the Board of Commissioners.

C. Membership Requirements

1. Each Advisory Board member shall be a Burke County resident and landowner.

2. At least five (5) of the members shall be actively engaged in farming.
3. At least one of the Advisory Board members actively engaged in farming shall be nominated by the Burke County Soil and Water Conservation District Board of Supervisors.
4. The members actively engaged in farming, as well as other members, shall be selected for appointment by the Board of Commissioners from the names of individuals submitted to the Board of Commissioners by the Soil and Water Conservation District Board of Supervisors, the County Office of the North Carolina Cooperative Extension Service, the U.S. Farm Service Agency County Committee, nonprofit agricultural organizations, conservation organizations, agribusiness, and the public at large.

D. Tenure

The initial board is to consist of four (4) appointees for a two (2) year term and three (3) appointees for a four (4) year term. Thereafter, all appointments are to be for terms of four (4) years, with reappointment permitted.

E. Vacancies

Any vacancy on the Advisory Board is to be filled by the Board of Commissioners for the remainder of the unexpired term.

F. Removal

Any member of the Advisory Board may be removed by the Board of Commissioners upon a majority vote of the Commissioners. No cause for removal shall be required.

G. Funding

The *per diem* compensation, if any, of the members of the Advisory Board may be fixed by the Board of Commissioners and funds may be appropriated to the Advisory Board to perform its duties.

H. Advisory Board Procedure

1. Chairperson

The Advisory Board shall elect a chairperson and vice-chairperson each year at its first meeting of the fiscal year. The chairperson shall preside over all regular or special meetings of the Advisory Board. In the absence or disability of the chairperson, the vice-chairperson shall preside and shall exercise all the powers of the chairperson. Additional officers may be elected as needed.

2. Jurisdiction

The Advisory Board may adopt rules of procedure not inconsistent with this ordinance or with other provisions of State law.

3. Advisory Board Year

The Advisory Board shall use the Burke County fiscal year as its meeting year.

4. Meetings

Meetings of the Advisory Board shall be held at the call of the chairperson and at such other times as the Advisory Board may specify in its rules of procedure or upon the request of at least a majority of the Advisory Board Membership. A meeting shall be held at least annually and notice of any meetings to the members shall be in writing, unless otherwise agreed to by all Advisory Board members. Meeting dates and times shall be posted as far in advance as possible in a designated location and by advertisement in local newspapers or by other means of public dissemination of the meeting dates as may be agreed upon by at least a majority of the Advisory Board Membership. All meetings shall be open to the public. All business shall be conducted consistent with Roberts Rules of Order.

5. Majority Vote

All issues shall be decided by a majority vote of the members of the Advisory Board, except as otherwise stated herein. ~~In the event of an anticipated absence by an Advisory Board member, a proxy may be designated. The proxy designation must be done in writing and be submitted to the Board Chairman prior to the meeting.~~

6. Records

The Advisory Board shall keep minutes of the proceedings showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be filed in the office of the Advisory Board and shall be a public record.

7. Administrative

The Advisory Board may contract with the Soil and Water Conservation District office to serve the Board for record keeping, correspondence, application procedures under this ordinance, and whatever services the Board needs to complete its duties.

I. Duties

The Advisory Board shall:

1. Review and approve applications for qualified farmland and voluntary agricultural districts and make recommendations concerning the establishment and modification of agricultural districts;
2. Conduct public meetings;
3. Advise the Board of Commissioners on projects, programs, or issues affecting the agricultural economy or activities within the county that will affect agricultural districts;
4. Review and make recommendations concerning proposed amendments to this ordinance;
5. Develop a county wide farmland protection plan as defined in N.C.G.S. §106-744 (e) (1) for presentation to the Board of Commissioners;
6. Study additional methods of farmland preservation and make recommendations to the Board of Commissioners; and

7. Perform other agricultural related tasks or duties assigned by the Board of Commissioners.

**ARTICLE VI
CREATION OF VOLUNTARY AGRICULTURAL DISTRICTS**

A. Implementation

In order to implement the purposes stated in Article III, this program provides for the creation of voluntary agricultural districts which meet the following standards:

1. The District shall contain a minimum of ten (10) contiguous acres of qualified farmland; or
2. The District shall contain one (1) or more qualified farms within areas designated by the Advisory Board.

B. Education

The county may take such action as it deems appropriate through the Advisory Board or other entities or individuals to encourage the formation of the Districts and to further their purposes and objectives, including the implementation of a public information program to reasonably inform landowners of the agricultural district program.

C. Withdrawal

In the event that one or more participants in the District withdraw and the acreage in the District becomes less than the minimum acreage required or results in the remaining land being noncontiguous, a voluntary agricultural district will continue to exist so long as there is one qualifying farm.

**ARTICLE VII
CERTIFICATION AND QUALIFICATION OF FARMLAND**

A. Requirements

To secure county certification as qualifying farmland, a farm must:

1. Be participating in or qualify to be participating in the farm present-use-value taxation program established by N.C.G.S. §105-277.2 through §105-277.7;
2. Be certified by the Natural Resources Conservation Service of the United States Department of Agriculture as being a farm on which at least two-thirds of the land is composed of soils that:
 - a. Are best suited for providing food, seed, fiber, forage, timber, forestry products, horticultural crops and oil seed crops;
 - b. Have good soil qualities;
 - c. Are favorable for all major crops common to the county where the land is located;
 - d. Have a favorable growing season; and
 - e. Receive the available moisture needed to produce high yields for an average of eight out of ten years.

OR

Have been actively used in agricultural, horticultural or forestry operations as defined by N.C.G.S. §105-277.2 (1,2,3) during each of the five previous years, measured from the date on which the determination must be made as to whether the land in question qualifies;

3. Be managed, if highly erodible land exists on the farm, in accordance with the Natural Resources Conservation Service defined erosion-control practices that are addressed to said highly-erodible land; and
4. Be the subject of a conservation agreement, as defined in N.C.G.S. §121-35, between the county or a land trust recognized by the Advisory Board, and the owner of such land that prohibits non-farm use or development of such land for a period of at least ten years, except for the creation of not more than three lots that meet applicable county zoning and subdivision regulations.

**ARTICLE VIII
APPLICATION, APPROVAL, AND APPEAL PROCEDURE**

A. Application Procedure

1. A landowner may apply to participate in the program by making application to the chairperson of the Advisory Board or a designated staff person. The application shall be on forms provided by the Advisory Board. The application to participate in a district may be filed with the certification for qualifying farmland.
2. An agreement to sustain, encourage, and promote agriculture must be executed by the landowner and recorded with the Advisory Board.
3. The Advisory Board may collect a one time application fee from the landowner.

B. Approval Process

1. Upon submission of the application to the Advisory Board, the Advisory Board shall meet within ninety (90) days to approve or disapprove the application. The chairperson shall notify the applicant by first class mail of approval or disapproval of participation in the district.
2. Upon receipt of an application, the chairperson will forward copies immediately to the following offices which shall be asked to provide comments, if any, to the Advisory Board prior to the date set for the Advisory Board vote on the application.
 - a. The Burke County tax assessor;
 - b. The Burke Soil and Water Conservation District office; and
 - c. The Natural Resources Conservation Service.
 - d. The North Carolina Forest Service.
 - e. The Burke County Community Development Department.

C. Appeal

If an application is denied by the Advisory Board, the petitioner shall have thirty (30) days to appeal the decision to the Board of Commissioners. Such appeal shall be presented in writing. The decision of the Board of Commissioners is final.

**ARTICLE IX
REVOCATION OF PRESERVATION AGREEMENT**

By written notice to the Advisory Board, a landowner of qualifying farmland may revoke the Preservation Agreement or the Advisory Board may revoke the same Preservation Agreement based on noncompliance by the landowner, subject to the same provisions as contained in Article VIII for appeal of denials. Such revocation shall result in loss of qualifying farm status and loss of eligibility to participate in a district. Absent noncompliance by the landowner, neither the Advisory Board nor the Board of Commissioners shall revoke any preservation agreements prior to its expiration.

**ARTICLE X
PUBLIC MEETINGS**

A. Purpose

Pursuant to N.C.G.S. §106-740, which provides that no State or local public agency, governmental unit, or utility may formally initiate any action to condemn any interest in qualifying farmland within a District until such agency has requested the Advisory Board to hold a public meeting on the proposed condemnation.

B. Procedure

1. After holding the public meeting the Advisory Board shall prepare and submit written findings and a recommendation to the decision-making body of the agency proposing acquisition.
2. The Advisory Board shall have 30 days after receiving a request for a public meeting to hold the meeting and submit its findings and recommendations to the agency.
3. The Advisory Board shall consult with the County Agricultural Extension Agent, the Natural Resources Conservation Service District Conservationist, and any other individuals, agencies, or organizations deemed by the Advisory Board to be necessary for its review of the proposed action.
4. Pursuant to N.C.G.S. §106-740, the Board of Commissioners shall not permit any formal initiation of condemnation by local agencies while the proposed condemnation is properly before the Advisory Board.

**ARTICLE XI
NOTIFICATION**

A. Purpose

The purpose of this section is to help meet the needs of agriculture as an industry and prevent conflicts between voluntary agricultural district participants and non-farm landowners in proximity to districts.

B. Public Notification

The Advisory Board, in cooperation with the county, shall take measures as set forth below to provide notification to property owners, residents, and others interested persons in and adjacent to any designated agricultural district with a goal of informing all current and potential residents and property owners in and adjacent to an agricultural district that farming and agricultural activities may take place in this district any time during the day or night.

1. Signage

Signage shall be posted in a consistent manner as deemed appropriate by the Advisory Board.

2. Maps

Maps identifying approved agricultural districts shall be provided to the following agencies or offices:

- a. Register of Deeds;
- b. Natural Resources Conservation Service;
- c. North Carolina Cooperative Extension Service;
- d. Soil and Water Conservation District;
- e. The Burke County Community Development Department; and
- f. Any other such agency or office the Advisory Board deems appropriate.

3. Posting of Notice

The following notice, of a size and form suitable for posting, shall be posted in the office of the Register of Deeds, and any other office or agency the Advisory Board deems necessary.

NOTICE TO REAL ESTATE PURCHASERS IN BURKE COUNTY

Burke County has established agricultural districts to protect and preserve agricultural lands and activities. These districts have been developed and mapped by the county to inform all purchasers of real property that certain agricultural and forestry activities, including but not limited to pesticide spraying, manure spreading, machinery and truck operation, livestock operations, sawing, and other common farming activities may occur in these districts any time during the day or night. Maps and information on the location and establishment of these districts can be obtained from the North Carolina Cooperative Extension Service office, the office of the Register of Deeds, the Community Development Department, or the Natural Resources Conservation Service office.

C. Limit of Liability

In no event shall the County or any of its officers, employees, or agents be held liable in damages for any misfeasance, malfeasance, or nonfeasance occurring in good faith in connection with the duties or obligations imposed by this ordinance.

D. No Cause of Action

In no event shall any cause of action arise out of the failure of a person researching the title of a particular tract to report to any person the proximity of the tract to a qualifying farm or voluntary agricultural district as defined in this ordinance.

**ARTICLE XII
SUBDIVISION ORDINANCE AND ZONING ORDINANCE REVIEW**

Developers of major subdivisions or planned unit developments shall designate on preliminary development plans, the existence of the Districts within two (2) aerial miles of the proposed development.

**ARTICLE XIII
WAIVER OF WATER AND SEWER ASSESSMENTS**

A. No Assessment

A landowner belonging to the District shall not be assessed for or be required to connect Burke County water and/or sewer systems.

B. Conflict with Water and/or Sewer System Construction and Improvements Grants

To the extent that this section conflicts with the terms of federal, state, or local regulations and/or grants under which county water and/or sewer systems are constructed this section shall not apply.

**ARTICLE XIV
COUNTY LAND-USE PLANNING**

A. Duty of the Advisory Board

It shall be the duty of the Advisory Board to advise the Board of Commissioners or the agency or office to which the Board of Commissioners delegate authority to oversee county land use planning, on the status, progress, and activities of the county's agricultural district program and to also coordinate the formation and maintenance of agricultural districts with the county's land use planning activities.

**ARTICLE XV
CONSULTATION AUTHORITY**

The Advisory Board may consult with the North Carolina Cooperative Extension Service, the Natural Resources Conservation Service office, the North Carolina Department of Agriculture and Consumer Services, and with any other individual, agency, or organization the Advisory Board deems necessary to properly conduct its business.

ARTICLE XVI
NORTH CAROLINA AGENCY NOTIFICATION

A. Annually Report to the North Carolina Department of Agriculture and Consumer Services

A copy of this ordinance shall be sent to the Office of the North Carolina Commissioner of Agriculture and Consumer Services, the Board of Commissioners, the County Office of the North Carolina Cooperative Extension Service, and the Soil and Water Conservation District office after adoption. At least annually the county shall submit a written report to the Commissioner of Agriculture and Consumer Services on the county's agricultural district program, including the following information:

1. Number of landowners enrolled;
2. Number of acres enrolled;
3. Number of acres certified during the reporting period;
4. Number of acres denied during the reporting period;
5. Copies of any amendments to the ordinance; and
6. Any other information the Advisory Board deems useful.

ARTICLE XVIII
ENACTMENT

The Burke County Board of Commissioners hereby adopts and enacts the preceding articles and sections of this ordinance.

Adopted this the 6th day of August, 2002.

Motion for adoption by Jesse H. Searcy and seconded by N/A

BURKE COUNTY BOARD OF COMMISSIONERS

Trossie W. Wall
Chairperson

ATTEST:

Frances McKinney
Clerk to Board of Commissioners

Approved as to form:

County Attorney

