

# ***ORDINANCE NO. 64***

## **PERQUIMANS COUNTY VOLUNTARY AGRICULTURAL DISTRICT ORDINANCE**

### **ARTICLE I TITLE**

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

### **ARTICLE II AUTHORITY**

The articles and sections of this Ordinance are adopted pursuant to authority conferred by the North Carolina General Statutes 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 Perquimans 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, horticulture and forestry; and increase protection of farmland from non-farm development and other negative impacts on properly managed farms. It is important that all citizens recognize the importance of agriculture to the economic and cultural life of the county.

This ordinance establishes a Voluntary Agricultural District Program that has the following benefits for participating farms and other county residents:

The program preserves and maintains agricultural areas within the county.

The program informs non-farming neighbors and potential land purchasers that the participating farm may emit noise, dust, smells, be the site of aerial pesticide applications in accordance with state regulations, etc. This may help avoid conflicts between neighbors.

Landowner participation in the program is voluntary and the landowner may terminate his/her participation at any time.

The program conserves green space and natural resources as the county's population and development expands.

The program helps maintain opportunities to produce locally grown food and fiber.

### **ARTICLE IV DEFINITIONS**

The following are defined for purposes of this Ordinance:

Advisory Board: Perquimans County Agricultural Advisory Board.

Chairperson: Chairperson of the Perquimans County Agricultural Advisory Board.

District: Voluntary Agricultural District as established by this ordinance.

Board of Commissioners: Perquimans County Board of County 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 no less than nine members appointed by the Board of Commissioners.

C. Membership Requirements

1. Each Advisory Board member, except those serving in an *ex officio* capacity, shall be a Perquimans County resident or landowner.
2. At least six of the members shall be actively engaged in farming, or has been actively engaged in farming in the past. Of the members actively engaged in farming, there shall be at least one such member from each agricultural district in Perquimans County. This determination shall be made without reference to *ex officio* members.
3. The members actively engaged in farming, as well as other members, shall be selected for appointment by the Board of County Commissioners from the names of individuals submitted by the Perquimans County Soil and Water Conservation District Board of Supervisors, the Perquimans County Center of the North Carolina Cooperative Extension Service, the USDA Farm Service Agency County Committee, and any other agriculture-related group or individual.
4. The remaining three at-large members shall be selected as follows: one member from the Board of County Commissioners, one member selected by the USDA agencies, and one member selected by the Perquimans County Farm Bureau Board of Directors. The names of these individuals will be submitted to the Board of County Commissioners for at-large appointments. The member of the Board of County Commissioners shall not be eligible to serve as the Advisory Board's representative on the Perquimans County Planning Board pursuant to Article V, Section G. 3. of this ordinance.
5. Additional members may be appointed to the Board in an *ex officio* capacity from the Soil and Water Conservation District Board, the North Carolina Cooperative Extension Service, the USDA Farm Service Agency, or other agencies, as deemed necessary by the Board of Commissioners. Members serving in an *ex officio* capacity shall neither vote nor count toward quorum requirements.

D. Tenure

The initial board is to consist of 3 appointees for terms of one year; 3 appointees for terms of two years; and 3 appointees for terms of three years. Thereafter, all appointments are to be for terms of three years, with reappointment permitted. Members will be eligible to serve two consecutive three-year terms, then rotate off for a least one year.

E. Vacancies

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

F. Removal

Any member of the Advisory Board may be removed by the Board of Commissioners upon a unanimous 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. Determination of Procedure

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 Perquimans 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. Meetings shall be conducted in accord with the current Roberts Rules of Order. All meetings shall be open to the public.

5. Majority Vote and Quorum Requirements

All issues shall be decided by a majority vote of the members of the Advisory Board present, except as otherwise stated herein.

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 public record.

7. Administrative

The Advisory Board shall work through the Perquimans County Center of the North Carolina Cooperative Extension Service or the Perquimans County Soil and Water Conservation District for record keeping, correspondence, and 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 or disapprove applications of landowners for enrollment of qualified farmland, horticultural land, or forestland in voluntary agricultural districts;
2. Make recommendations concerning the establishment and modification of agricultural districts;
3. Conduct public hearings;
4. Advise the Board of Commissioners on projects, programs, or issues affecting the agricultural economy and agricultural, horticultural or forestry activities within the county that will affect agricultural districts;
5. Review and make recommendations concerning proposed amendments to this ordinance;
6. Develop a draft countywide farmland protection plan as defined in N.C.G.S. §106-744 (e) for presentation to the Board of Commissioners;
7. Study additional methods of protection for farming, horticulture, forestry, and the attendant land base, and make recommendations to the Board of Commissioners; and
8. Perform other agricultural, horticultural, and forestry-related tasks or duties assigned by the Board of Commissioners.

**ARTICLE VI  
CREATION OF VOLUNTARY AGRICULTURAL DISTRICTS**

A. Regions

Perquimans County is hereby divided into five (5) districts based on the current established townships as defined below:

1. Belvidere.
2. Bethel.
3. Hertford.
4. New Hope.
5. Parkville .

B. 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 two (2) or more qualified farms within a township established under this ordinance.

All land enrolled in a township, defined in section A, above, shall be part of a single district. If a single farm has acreage in two or more townships, the farm shall participate in the district where the largest acreage is found.

C. 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.

D. Addition and Withdrawal

1. Qualifying farmland in a township with an existing district shall be added to the district as herein provided.
2. 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.

E. Display

The Districts shall be marked on county maps that shall be displayed for public view in county offices including, but not limited to, the offices of the Planning Department, Register of Deeds, Tax Department, Farm Service Agency, and Agricultural Building.

F. Renewal

Each conservation agreement shall renew automatically for an additional ten (10) year period at its termination date unless either the county or landowner gives written notice at least thirty (30) days prior to the agreement termination date.

**ARTICLE VII  
CERTIFICATION AND QUALIFICATION OF FARMLAND**

Requirements

To secure county certification as qualifying farmland in a Voluntary Agricultural District, a farm must:

1. Be participating in the farm present-use-value taxation program established by N.C.G.S. §105-277.2 through §105-277.7, or is otherwise determined by the county to meet all the qualifications of this program set forth in G.S. 105-277.3 ;
2. Be the subject of a conservation agreement, as defined in N.C.G.S. §121-35, between the county 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 four lots that meet applicable county zoning and subdivision regulations. The property owner may voluntarily revoke this conservation agreement by submitting a written request to the Board in accordance with Article VIII;
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;
4. Be located in the unincorporated area of Perquimans County, except that the County may operate a program in an incorporated area of a municipality under agreement with that municipality.

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

A. Application Procedure

1. A landowner may apply to participate in the Agricultural District program by making application to the Advisory Board, or the Perquimans County Center of the North Carolina Cooperative Extension Service. The application shall be on forms provided by the Advisory Board. The application to participate in a district may be filed with the application for certification of qualifying farmland and must be approved by the Advisory Board.

2. An agreement to sustain, encourage, and promote agriculture must be executed by the landowner and recorded with the Advisory Board.

B. Approval Process

1. Upon submission of the application to the Advisory Board, the Advisory Board shall meet within thirty (30) 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 Perquimans County tax assessor;
  - b. The Perquimans County Soil and Water Conservation District office;
  - c. The Perquimans County Center of the N.C. Cooperative Extension Service: and
  - d. The Natural Resources Conservation Service.

C. Appeal

If an application is denied by the Advisory Board, the petitioner shall have thirty (30) days from the date of notification 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.

- D. The Agricultural Advisory Board can make exceptions on an individual farm basis for farms that have not met the requirements of present use valuation based on the farm's importance in maintaining agricultural production in Perquimans County.

**ARTICLE IX  
REVOCATION AND ENFORCEMENT OF CONSERVATION AGREEMENTS**

A. Revocation and Enforcement

1. By providing 30 days advance written notice to the Advisory Board, a landowner of qualifying farmland within a Voluntary Agricultural District may revoke the Conservation Agreement or the Advisory Board may revoke the same Conservation Agreement based on noncompliance by the landowner, subject to the same provisions as contained in Article VIII(C) for appeal of denials. Such revocation shall result in loss of qualifying farm status and loss of eligibility to participate in a district. Aside from noncompliance by the landowner, neither the Advisory Board nor the Board of Commissioners shall revoke any Conservation Agreement prior to its expiration. If the Advisory Board shall revoke this Conservation Agreement for cause, the landowner shall have the appeal rights set forth in Article VIII(C). Transfers of land in a Voluntary Agricultural District due to death of the landowner, sale, or gift shall not revoke the Conservation Agreement unless the land no longer qualifies for the present-use-value taxation program or, in the event that there are water or sewer assessments held in abeyance, the new owner(s) fails to agree in writing to accept liability for those assessments in the event that the land is withdrawn either voluntarily or involuntarily from the district. Enforcement of the terms of a Conservation Agreement for land enrolled in a Voluntary Agricultural District shall be limited to revocation of the Conservation Agreement and the benefits derived therefrom.

**ARTICLE X  
WAIVER OF WATER AND SEWER OR ALL UTILITY ASSESSMENTS**

A. No Connection Required

1. A landowner belonging to the District shall not be required to connect to, or be assessed fees related to Perquimans County water and/or sewer systems as outlined in N.C.G.S. 106-743.5.

B. Abeyance

1. Water and sewer assessments shall be held in abeyance, without interest, for farms in a District, until improvements on such property are connected to the water or sewer system for which the assessment was made.

C. Termination of Abeyance

When the period of abeyance ends, the assessment is payable in accordance with the terms set out in the assessment resolution.

D. Suspension of Statute of Limitations

Statutes of limitations are suspended during the time that any assessment is held in abeyance without interest.

E. Other Statutory Abeyance Procedures

Nothing in this section is intended to diminish the authority of the County to hold assessments in abeyance under N.C.G.S. §153A-201, or other applicable law.

F. 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 other grants under which county utility systems are constructed this section shall not apply. This section shall not apply to utilities that are not owned by the County unless the County has entered into an agreement with the entity(ies) owning the utilities and that agreement provides that this Ordinance shall apply.

**ARTICLE XII  
PUBLIC HEARINGS**

A. Purpose

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

B. Procedure

1. Upon receiving a request, the Advisory Board shall publish notice describing the proposed action in the appropriate newspapers of Perquimans County within fourteen (14) business days of the request, and will in the same notice notify the public of a public hearing on the proposed condemnation, to be held within thirty (30) days of receipt of the request.
2. The Advisory Board shall meet to review:
  - a. Whether the need for the project has been satisfactorily established by the agency or unit of government involved, including a review of any fiscal impact analysis conducted by the agency involved; and
  - b. Whether there are alternatives to the proposed action that have less impact and are less disruptive to the agricultural activities of the District within which the proposed action is to take place.
3. The Advisory Board shall consult with the County Agricultural Extension Agent, the Natural Resources Conservation Service District Conservationist, Soil and Water Conservation personnel, the County Manager, and any other individuals, agencies, or organizations deemed by the Advisory Board to be necessary for its review of the proposed action.
4. Within seven (7) days after the hearing, the Advisory Board shall make a report containing its findings and recommendations regarding the proposed action. The report shall be made available to the public prior to its being conveyed to the decision-making body of the agency proposing the acquisition.
5. There will be a period of ten (10) days allowed for public comment on the report of the Advisory Board.
6. After the ten (10) day period for public comment has expired, the Advisory Board shall submit a final report containing all of its findings and recommendations regarding the proposed action to the decision making body of the agency proposing the acquisition.
7. The total time period, from the day that a request for a hearing has been received to the day that a final report is issued to the decision making body of the agency proposing the acquisition shall not exceed sixty (60) days. If the agency agrees to an extension, the agency and the Advisory Board shall mutually agree upon a schedule to be set forth in writing and made available to the public.
8. 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 XIII  
PUBLIC NOTIFICATION**

A. Record Notice of Proximity to Voluntary Agricultural District

1. Computerized Land Records

Upon certification of qualifying farmland and designation of real property as a District, the Perquimans County Land Records System shall be changed to include a notice reasonably calculated

to alert a person researching the title of a particular tract that such a tract is located within one aerial mile of a voluntary agricultural district.

2. Posting of Notice

The following notice, of a size and form suitable for posting, shall be located in the office of Register of Deeds, Planning Department, Tax Office, Inspections Department, and any other office or agency deemed necessary by the Advisory Board:

*Notice To Real Estate Purchasers in Perquimans County*  
*Perquimans County has established Voluntary 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 (including aerial application), manure spreading, machinery and truck operation, livestock operations, logging, and other common forms of farming and logging activities may occur in this district any time during the day or night. Maps and information on location and establishment of these districts may be accessed at the following locations: Planning, Tax, Register of Deeds, and Inspections offices.*

3. Building Permit Registration

Persons applying for a building permit shall be required to sign the following statement that shall be maintained at the office of the Advisory Board:

*I have reviewed the current Perquimans County Agricultural Districting map found in the Building Inspector's office. I understand that activities such as pesticide spraying (including aerial application), manure spreading, machinery operation, livestock operations, logging, and other common farming and forestry activities may occur at any time in these areas."*

4. Limit of Liability

In no event shall the County or any of its officers, employees, members of the Advisory Board, 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.

5. 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.

B. Signage

Signs identifying approved agricultural districts shall be placed along the rights-of-way of major roads that pass through or next to those districts at a distance deemed appropriate by the Advisory Board, or its administrative agent for the county's agricultural district program. There shall also be signage posted on major accesses into the county. Individuals with approved land in a district shall post that property. Placement of signage shall be coordinated with the North Carolina Department of Transportation where necessary.

C. Maps

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

1. Planning Department;
2. Register of Deeds;
3. Building Inspector;
4. North Carolina Cooperative Extension Service;
5. Soil and Water Conservation District/NRCS;
6. Tax Department; and
7. Any other such agency or office the Advisory Board deems appropriate.

**ARTICLE XIV  
SUBDIVISION ORDINANCE AND ZONING ORDINANCE REVIEW**

Developers of major subdivisions or planned unit developments shall designate on preliminary and final plats their understanding of the existence of a Voluntary Agricultural District(s) within one aerial mile of the proposed development.

**ARTICLE XV  
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 and the county's land use plan if one currently exists at the time this is enacted or when one is formed.

B. Growth Corridors

At such time as the county might establish designated growth corridors, agricultural districts shall not be permitted in the designated growth corridors, as delineated on the official county planning map without the approval of the Board of Commissioners. Districts located in growth corridors designated after the effective date of this program may remain, but shall not be expanded within the growth corridor area without the approval of the Board of Commissioners.

**ARTICLE XVI  
CONSULTATION AUTHORITY**

The Advisory Board may consult with North Carolina Cooperative Extension, the Natural Resources Conservation Service, 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 XVII  
NORTH CAROLINA AGENCY NOTIFICATION**

Annual 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. Number of acres for which applications are pending;
6. Copies of any amendments to the this Ordinance; and
7. Any other information the Advisory Board deems useful.

**ARTICLE XVIII  
LEGAL PROVISIONS**

A. Severability

If any article, section, subsection, clause, phrase, or portion of this is for any reason found invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this.

B. Conflict with other ordinances and statutes

Whenever the provisions of this ordinance conflict with other ordinances of Perquimans County, this ordinance shall govern. Whenever the provisions of any federal or state statute require more restrictive provisions than are required by this ordinance, the provisions of such statute shall govern.

C. Amendments

This ordinance may be amended from time to time by the Board of Commissioners.

**ARTICLE XIX  
ENACTMENT**

The Perquimans County Board of Commissioners hereby adopts and enacts the preceding articles and sections of this Ordinance.

Adopted this the 2<sup>nd</sup> day of November, 20 09.

Motion for adoption by Charles H. Ward and seconded by Sue Weimar.

PERQUIMANS COUNTY BOARD OF COMMISSIONERS

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Mack E. Nixon, Chairman

ATTEST:

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Mary P. Hunnicutt, Clerk  
Perquimans County Board of Commissioners

Approved as to form:

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County Attorney