

Disclaimer for Draft Municipal Model Voluntary Agricultural District Ordinance Notes

The intent of the editors of this model ordinance was to produce a "clean" ordinance that gives municipalities a great deal of operational and fiscal flexibility. However, this model ordinance is provided here only for reference and example purposes. It does not constitute a legal document or the provision of legal advice. For this document to be valid and legally enforceable it must be modified, reviewed, and approved by a town council after consultation with a city attorney or other legal counsel. Many of the provisions in this document are required while others are optional. All guidance and authority for what municipalities must and may include in their ordinance is derived from The Agricultural Development and Farmland Preservation Enabling Act, N.C.G.S. 106-735, *et. seq.* and Chapter 160A. Please refer to the Notes section of this document, which offers guidance on this model ordinance. Copies of voluntary agricultural district ordinances currently in effect may be found at: <http://www.cals.ncsu.edu/wq/lpn/nccountyordinances.htm>.

These ordinances are provided for reference and example purposes only and do not constitute the provision of legal advice.

Notes

General Notes

Some counties have included within their agricultural district ordinance, and often under the "incentives" section of the ordinance, a public expenditures provision. This provision is sometimes entitled "Expenditure of County Funds for Non-Farm Uses". This provision requires that when the county or any other unit of local government proposes to spend public funds on projects or activities that would convert land in voluntary agricultural districts to non-farm uses, it shall submit to the Advisory Board that the county or other governmental unit has considered other alternatives before spending such funds. In 2005, statutory changes authorized the creation of Enhanced Voluntary Agricultural Districts, which require a 10 year, irrevocable commitment from land owners, but enjoy new and extended benefits. This model ordinance creates a program with both district options available, as has been adopted by Cabarrus County. Polk County has enacted both programs separately. Either option is available to counties although it would be difficult to enact the enhanced program without first or simultaneously adopting the regular program. Few municipal programs have been currently enacted.

Article II

The municipality may also rely on the general ordinance making authority delegated to municipalities through Chapter 160A to supplement provisions contained in N.C.G.S. §106-735, *et. seq.*

Article V, Sections A & B

The municipality may want to consider basing the minimum number of Advisory Board members (i.e., the number prior to the creation of any agricultural districts) on the expected regions that may be established within the planning jurisdiction. This would allow the entire jurisdiction to be represented on a geographical basis regardless of whether or not a region of the city/town actually contained an agricultural district. It would also ensure that regions of the city/town that do not contain agricultural districts, but that are adjacent to or that would somehow otherwise be affected by agricultural districts in the city/town, would have a voice in the creation and maintenance of those districts. There are three possible advantages to establishing regions within which voluntary agricultural districts may be formed:

1. The formation of a single district within each such region will stabilize the representation on the Advisory Board because the maximum total number of districts is fixed in advance by the number of regions established. Farms with noncontiguous acreage may be contained in a single district within a region. A region is not a district; only land actually enrolled within a region constitutes a district. The failure to control the total number of districts that can be formed may result in a multiplicity of districts. This leaves the municipality with the unpalatable choice of either leaving some districts unrepresented on the advisory board or, in the alternative, adding

additional members as new districts are created. Experience in some counties has shown that as the number of members on the advisory board increases it becomes difficult to set a meeting time that meets the schedules of a quorum of the membership of the advisory board.

2. The designation of such areas contributes to the formation of large blocks of contiguous or noncontiguous (though spatially close) protected areas of farmland.
3. District formation can be more easily coordinated with the municipality's comprehensive land use plan and the farmland protection plan, as well as analogous county programs.

Article V, Section C

This provision is intended to encourage participation of nonresident landowners. Many landowners in N.C. are absentee owners living out of county or out of state. Involving these owners is likely to contribute to successful agricultural district programs and farmland preservation programs. The landownership and residency requirements are inapplicable to *ex officio* members to allow the appointment of those who may provide valuable technical knowledge and advice to the advisory board.

Article V, Sections C (2)

This may be expressed as a fraction, percentage or number. If expressed as a fraction, the ordinance should be drafted such that *ex officio* members are excluded from the calculation of the fraction. Municipalities may want to add language here to ensure adequate representation by both landowners in enhanced and regular district programs. Some landowners may be participants in both programs as there is no requirement that a landowner enroll all land owned in one program or the other.

Article V, Sections C (2), (3), & (4)

Drafters may wish to add “or forestry” after farming to make clear that landowners primarily engaged in forestry are eligible to serve.

Article V, Section F

The purpose of this provision is to give the town council discretion to remove members from the advisory board. The only exception to this discretion is removal of a member for an illegal reason; e.g., race or religion. An attempt to remove a member for an illegal reason could create liability for the municipality. Any advisory board member who is removed is eligible for reappointment at any

time, as this model ordinance contains no prohibition on reappointment. To give advisory board members more protection from removal, some ordinances require a unanimous vote for removal.

Article V, Section H (2)

This section of the ordinance may also include either a reference to the current version of *Robert's Rules of Order* or a requirement that it be used as a guide for procedure.

Article V, Section I

Drafters may wish to add “forestry” and “forestland” as appropriate to this section.

Article V, Section I (6)

Through House Bill 2170 of the 2005 session of the NCGA, the requirements for county matching funds have changed. A county that is a development tier two or three county, as these tiers are defined in G.S. 143B-437.08, and that has prepared a countywide farmland protection plan shall match fifteen percent (15%) of the Trust Fund monies it receives with county funds. A county that has not prepared a countywide farmland protection plan shall match thirty percent (30%) of the Trust Fund monies it receives with county funds. A county that is a development tier one county, as defined in G.S. 143B-437.08, and that has prepared a countywide farmland protection plan shall not be required to match any of the Trust Fund monies it receives with county funds. It is to the fiscal advantage of all counties to adopt a farmland protection plan in conjunction with a voluntary agricultural district ordinance.

Article VI, Section A

Regions are usually defined along the logical division lines for a municipality. These lines may include roads, bodies of water, and school district lines. By using regions and limiting each region to one district the number of districts, and, therefore, the number of representatives on the Advisory Board, can be fixed at the time of the adoption of the ordinance. The model suggests four regions; however, each municipality should determine a number of regions that makes sense for that municipality.

Article VI, Section B

This section may also include a provision to allow for small tracts or lots to be included in existing or proposed voluntary agricultural districts when they are surrounded by or adjacent to farms which will be or that are currently part of agricultural districts.

Article VII, General Notes

This article is based on the statutory requirements for the qualification of farmland contained within N.C.G.S §106-736. Farms that do not participate in the use value program but that meet the requirements of N.C.G.S. §105-277.3 may participate in the voluntary agricultural district program. Some counties have elected to relax the acreage requirements of N.C.G.S. §105-277.3 to allow participation by small organic farms, greenhouse operations, and horticultural operations.

As of the 2005 amendments, certification through the National Resource Conservation Service of the USDA is no longer required. Ordinances that predate these amendments will contain language referring to certification by NRCS.

N.C.G.S. §106-737(3) references the 'Soil Conservation Service'. That agency of the U.S. Department of Agriculture has had a name change to the 'Natural Resources Conservation Service'.

Article VIII, Section A (2)

The conservation agreement should be short and meet the format requirements prescribed by the county's register of deeds so as to reduce filing fees. Farm uses include agriculture, horticulture, forestry, and outdoor recreation. Model agreements are also available at <http://www.cals.ncsu.edu/wq/lpn>

HB 607 did not address the question of whether the Conservation Agreement for the Enhanced District program is binding upon those who receive the land as the result of purchase, gift, or death of the landowner. Since the statute states that the agreement is 'irrevocable', it implies that successors in interest are bound by the Conservation Agreement. This issue should be explicitly addressed in the Conservation Agreement.

The General Assembly evinced no intent to supersede existing security interests, liens, and future interests in the property, that predate the Conservation Agreement, so successors in interest that succeed to the property as the result of such an interest would not be bound by the Conservation Agreement, which would be extinguished as the result of the exercise or operation of such a right. [Attempting to impair such a preexisting interest would likely constitute an uncompensated taking prohibited by the 5th Amendment such that the municipality would have liability for the value of the property interest impaired.]

Article VIII, Section B (1)

The amount of time outlined in this section that the Advisory Board has before it must vote on an application could be expanded to 60 days. This allows any agencies or offices 30 days to evaluate the application and give their recommendations to the Board and also an additional 30 days for the Board to evaluate those recommendations before it must vote on the application. Unfortunately the statute provides only for a 30-day period, so the forbearance of the condemning agency after 30

days would be voluntary. For condemnations initiated by the municipality, the municipality of course may bind itself to follow the longer 60-day period under the terms of its ordinance.

Article VIII, Section B (2)

The local Natural Resources Conservation Service office may only be asked to evaluate the application but it may not be required to do so by the advisory board or town council. The municipality has no jurisdiction over this federal agency. The same applies to the Soil and Water Conservation District office unless they are under contract with the municipality. If so the office may be required to evaluate applications. This requirement should be included in the written contract between the municipality and the Soil and Water Conservation District office.

Article IX

The statute does not require this provision. However, this provision is consistent with the policy set forth by the Agricultural Development and Farmland Preservation Enabling Act.

Article IX, Section B (1)

If neither the municipality nor the landowner gives a notice of termination, the Conservation Agreement could be renewed for successive 10-year periods indefinitely.

Article IX, Section B (2)

For the Enhanced Voluntary Agricultural District program, the Conservation Agreement may, if no notice of termination is given, be renewed for an indefinite number of successive 3-year periods.

Article X, Section A (2)

The statute gives city/town councils authority to extend the waiver of sewer and water assessments to farms inside or outside of agricultural districts. The municipality may not want to grant this waiver to farms outside of agricultural districts, however. The waiver could be a valuable incentive to offer to farms to encourage them to create or join an agricultural district; farms that otherwise might not become involved in a county agricultural district program might do so to receive the waiver. Restricting waivers to land within agricultural districts also reduces the cost of the program to the county.

Some federal, state, or other sewer and/or water construction or improvement grants may have provisions in conflict with this waiver provision. The municipality may want to include a provision, such as the one in (F) that avoids such conflicts.

N.C.G.S. §106-743.5 provided that in addition to the waiver of water and sewer assessments provided to enrollees in the Voluntary Agricultural District program, enrollees in the Enhanced Voluntary Agricultural District program shall have a waiver for assessments to all municipality-provided utilities for so long as they choose not to connect to those utilities.

Article XI

The statute lists several additional benefits to the Enhanced Voluntary Agricultural District, and also allows for further benefits at the discretion of the municipality. The “standards of proof” required for the twenty five percent non-farm sales limit may require that the municipality enact additional ordinance that defines the proof required.

The second sentence of N.C.G.S. §106-743.4 establishes a safe harbor based on participation in the Goodness Grows in North Carolina program, together with production of the non-farm product on another farm covered under a Conservation Agreement under the Enhanced Agricultural District program. Although unclear, this section appears to give counties considerable discretion to determine what qualifying farms can sell and maintain their exemption from county zoning.

Article XII

N.C.G.S. §106-740 allows the condemning agency to proceed 30 days after notice is given to the Advisory Board, without regard to whether the Advisory Board has acted. Thus everything the Advisory Board must do is compressed into 30 days. Publishing legal notices in the time provided will be difficult or impossible. This section applies only to condemnations under state law. Condemnations under federal law are unaffected by these provisions.

Article XIII, General Notes

This section should be adapted to the municipality’s particular circumstances. Not all automated land record systems have the capacity to provide record notice.

Article XIII, Section A (1)

This provision allows for the only legally effective way to ensure that someone searching the chain of title of a tract of land will find that the land is within the proximity of an agricultural district. Whether the buyer reads the abstract of title, or even if an abstract was not prepared, the buyer is conclusively presumed to be on notice that the land purchased is in close proximity to a voluntary agricultural district or an enhanced voluntary agricultural district. The way this provision is written for this model assumes that the county containing the municipality adopting this ordinance has not computerized their land records system yet. However, if the county land records system for the county containing the municipality is already computerized, this part of section A should be changed to reflect that. Some computerized records systems, however, cannot support this feature.

Drafters of a municipality's ordinance must ascertain the capabilities of their county's land record system before drafting the ordinance.

Article XIII, Section C

This provision is not required by the Agricultural Development and Farmland Preservation Enabling Act; however, it is a part of a well-designed public education program. The agencies listed are by way of example. Drafters should pick these with relevance to their municipality.

Article XV, Section B

This provision for the posting of a notice in the office of the Register of Deeds is useful for educational purposes, however, it does not provide record notice of the agricultural district to purchasers of property. Only the "Record Notice of Proximity to Voluntary Agricultural District" provision of Article XI, Notification, can provide record notice to a potential purchaser that the tract of land in question is located within one-half aerial mile of a voluntary agricultural district. This provision is included in the model ordinance primarily as a means to educate the public that agricultural districts exist in a municipality.

Article XVII, General Notes

The Farmland Preservation Enabling Act does not require that the written report, submitted to the North Carolina Department of Agriculture and Consumer Services (NCDA & CS) on a yearly basis, be made available to the public by the municipality. However, it is a public record, and, as such, is available to the public. To promote public education a provision can be inserted in this section of the ordinance that requires that the report be made available to the public. Also, if a provision is already included in the ordinance to make municipal maps marked with agricultural districts available to the public then a municipality could also choose to make those maps available in both the annual report to the NCDA & CS and in the public report as well.

Although, not required by this model ordinance, the municipality may choose to report the number of existing agricultural districts in the annual report.

RESOURCES:

Municipalities seeking information on developing and drafting a voluntary agricultural district ordinance may contact the

Institute of Government
919-966-5381
<http://ncinfo.iog.unc.edu>

North Carolina League of Municipalities
919- 715-4000
<http://www.nclm.org/>

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