

CITY/TOWN OF _____
VOLUNTARY AGRICULTURAL DISTRICT &
ENHANCED VOLUNTARY AGRICULTURAL DISTRICT ORDINANCE (03-21-08 Draft)

ARTICLE I
TITLE

An ordinance of the City Council of the city/town of _____, located in _____ County, NC entitled, "**VOLUNTARY AGRICULTURAL DISTRICT & ENHANCED VOLUNTARY DISTRICT ORDINANCE.**"

ARTICLE II
AUTHORITY

The articles and sections of this ordinance are adopted pursuant to authority conferred by the N.C.G.S. Sections 106-735 through 106-744 and Chapter 160A.

ARTICLE III
PURPOSE

The purpose of this ordinance is to promote agricultural values and the general welfare of the municipality 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 other negative impacts on properly managed farms.

ARTICLE IV
DEFINITIONS

The following are defined for purposes of this ordinance:

Advisory Board: City/town of _____ Agricultural Advisory Board.

Chairperson: Chairperson of the city/town of _____ Agricultural Advisory Board.

District: Voluntary Agricultural District as established by this ordinance.

Enhanced District: Enhanced Voluntary Agricultural District as established by this ordinance.

Council: The City Council or governing board of the city/town of _____, interchangeable with the term "board of alderman" or "board of commissioners."

ARTICLE V
AGRICULTURAL ADVISORY BOARD

A. Creation

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

B. Membership

The Advisory Board shall consist of no less than _____ members appointed by the Council.

C. Membership Requirements

1. Each Advisory Board member, except those serving in and *ex officio* capacity, shall be a Town/City of _____ resident or landowner.
2. At least ____ of the members shall be actively engaged in farming. Of the members actively engaged in farming, there shall be at least one member from each voluntary agricultural district or enhanced district within municipal jurisdiction.
3. The members actively engaged in farming, as well as other members, shall be selected for appointment by the Council 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.
4. Additional members may be appointed to the Board in an *ex officio* capacity from the Soil and Water Conservation District Board, North Carolina Cooperative Extension, the U.S. Farm Service Agency, or other agencies, as deemed necessary by the Board of Commissioners. Members serving in an *ex officio* capacity do not count towards majority or quorum requirements.

D. Tenure

The initial board is to consist of ____ appointees for terms of one year; ____ appointees for terms of two years; and ____ appointees for terms of three years. Thereafter, all appointments are to be for terms of three years, with reappointment permitted.

E. Vacancies

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

F. Removal

Any member of the Advisory Board may be removed by the Council upon a two-thirds vote of the Council members. 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 Council 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 city/town of _____ 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 on the door of the meeting site 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.

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. A quorum is defined as at least two-thirds of the members in attendance. No business may be conducted by the Advisory Board without a quorum present.

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, or its designee, and shall be a public record.

7. Administrative

The Advisory Board may contract with the _____ 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 or disapprove applications of landowners for enrollment of qualified farmland in either and voluntary agricultural districts or enhanced voluntary agricultural districts;
2. Make recommendations concerning the establishment and modification of agricultural districts;
3. Conduct public hearings;
4. Advise the Council on projects, programs, or issues affecting the agricultural economy or activities within the county that will affect agricultural districts;

5. Review and make recommendations concerning proposed amendments to this ordinance;
6. Develop a draft county wide farmland protection plan as defined in N.C.G.S. §106-744 (e) for presentation to the Council;
7. Study additional methods of farmland preservation and make recommendations to the Council; and
8. Perform other agricultural related tasks or duties assigned by the Council.

**ARTICLE VI
 CREATION OF VOLUNTARY AGRICULTURAL DISTRICTS
 AND ENHANCED VOLUNTARY AGRICULTURAL DISTRICTS**

A. Regions

The City/Town of _____ is hereby divided into _____ regions as defined below:

1. _____.
2. _____.
3. _____.
4. _____.

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 or Enhanced District shall contain a minimum of _____ contiguous acres of qualified farmland; or
2. The District or Enhanced District shall contain _____ or more qualified farms within areas designated by the Advisory Board.

All land enrolled in a region, defined in section A, above, shall be part of a single district, whether enrolled in the District or the Enhanced District. If a single farm has acreage in two or more regions, the farm shall participate in the district where the largest acreage is found. All land as defined in section A, above, shall be treated as a single district whether enrolled in the District or the Enhanced District.

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 Enhanced 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 region 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 or Enhanced District withdraw and the acreage in the District or Enhanced 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**

Requirements

To secure county certification as qualifying farmland, 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 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
3. Be the subject of a conservation agreement, as defined in N.C.G.S. §121-35, between the county or municipality 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 municipal zoning and subdivision regulations.

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

A. Application Procedure

1. A landowner may apply to participate in either the Agricultural District or Enhanced Agricultural District program by making application to the chairperson of the Advisory Board or a designated staff person, and must designate the application as for either Voluntary Agricultural District status or Enhanced District status. 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.
2. A conservation agreement suited to district type (Voluntary Agricultural District or Enhanced Voluntary Agricultural District) designated by the land owner to sustain, encourage, and promote agriculture must be executed by the landowner and recorded with the Advisory Board, which shall record a certified copy of such with the _____ County Registrar of Deeds. Permitted uses include agriculture, horticulture, forestry, and outdoor recreation. Conservation agreements for the Enhanced Agricultural District program may, at the election of the parties, include provisions requiring that any disputes between the county and the landowner be resolved through arbitration or mediation, and, in the event of litigation, that the prevailing party be awarded costs, including reasonable attorney fees. The Conservation Agreement for the Enhanced Voluntary Agricultural District shall be binding upon all successors in interest to the landowner, except for successors in interest resulting from the exercise of rights under a security interest or lien that preceded the Conservation Agreement.

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 _____ County tax assessor;
 - b. The _____ Soil and Water Conservation District office;
 - c. The _____ Office of NC Cooperative Extension; and
 - d. The Natural Resources Conservation Service.

C. Appeal

If an application is denied by the Advisory Board, the landowner may, within ten (10) days of notification of disapproval of the application, request in writing that the Advisory Board reconsider its decision. Upon either an initial denial or denial after reconsideration, whichever is later, the landowner 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.

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

A. Revocation

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. The Advisory Board may, upon thirty (30) days written notice, revoke the same Conservation 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 Conservation Agreements prior to expiration. Enforcement of the terms of a Conservation Agreement for land enrolled in a Voluntary Agricultural District shall be limited to revocation of the agreement.
2. Conservation Agreements for land within Enhanced Districts are IRREVOCABLE for a period of 10 years. Enforcement of the terms of a Conservation Agreement for land enrolled in an Enhanced Voluntary Agricultural District may be through injunctive relief in any court of competent jurisdiction.

B. Renewal

1. Conservation Agreements for Voluntary Agricultural Districts shall be deemed automatically renewed for an additional term of 10 years, unless either the Advisory Board or the landowner gives written notice to the contrary no later than 30 days prior to the termination date.

2. Conservation Agreements for Enhanced Voluntary Agricultural Districts shall be deemed automatically renewed for an additional term of 3 years, unless either the Advisory Board or the landowner gives written notice to the contrary no later than 30 days prior to the termination date.

**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 _____ County water and/or sewer systems.
2. A landowner belonging to an Enhanced District shall not be required to connect to _____ County utility systems.

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.
2. Utility assessments shall be held in abeyance, without interest, for farms in an Enhanced District, until improvements on such property are connected to the utility 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. The landowner may be required to sign an acknowledgement (that may be incorporated into the Conservation Agreement) of the abeyance of the statute of limitation upon collecting water and sewer assessments.

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.

**ARTICLE XI
ADDITIONAL ENHANCED AGRICULTURAL DISTRICT BENEFITS**

Land enrolled in the Enhanced Agricultural District program is entitled to all of the benefits available under the Voluntary Agricultural District program, and to the following additional benefits:

A. Sale of Non-farm products

Landowners participating in Enhanced Districts may receive up to twenty-five percent of gross sales from the sale of nonfarm products and still qualify as a bona fide farm that is exempt from county zoning regulations under N.C.G.S. §153A-340(b). A farmer seeking to benefit from this subsection shall have the burden of establishing that the property's sale of nonfarm products did not exceed twenty-five percent of its gross sales. A county may adopt an ordinance pursuant to this section that sets forth the standards necessary for proof of compliance.

B. Agricultural Cost Share Program

Landowners participating in Enhanced Districts are eligible under N.C.G.S. §143-215.74(b) to receive the higher percentage of cost-share funds for the benefit of that farmland under the Agriculture Cost Share Program established pursuant to Part 9 of Article 21 of Chapter 143 of the General Statutes for funds to benefit that farmland.

C. Priority Consideration

State departments, institutions, or agencies that award grants to farmers are encouraged to give priority consideration to landowners participating in Enhanced Districts.

D. Utility Assessment Waiver

As provided by Article X above, waiver of all municipal utility assessments in addition to waiver of water and sewer assessments is available to all participants in Enhanced Districts.

**ARTICLE XVII
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 the city/town of _____ within five (5) 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 ten (10) 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, and any other individuals, agencies, or organizations deemed by the Advisory Board to be necessary for its review of the proposed action.
4. Within five (5) 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 thirty (30) 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 Council shall not permit any formal initiation of condemnation by local agencies while the proposed condemnation is properly before the Advisory Board.

**ARTICLE XVIII
NOTIFICATION**

A. Record Notice of Proximity to Voluntary Agricultural District

1. Procedure

When _____ County computerizes its County Land Records System the following requirements outlined in this section shall be implemented and enforced. Upon certification of qualifying farmland and designation of real property as a District, the _____ County Register of Deeds shall [leave this provision out of your ordinance if your county land records system will not support this] shall provide some form of notice reasonably calculated to alert a person researching the title of a particular tract that such tract is located within one-half aerial mile of a voluntary agricultural district.

2. Limit of Liability

In no event shall the municipality 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.

3. 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. There shall at least one sign posted along every ___

miles of such roads or as many as may be deemed appropriate by the Advisory Board, or its administrative agent for the county's agricultural district program. Placement of signage shall be coordinated with the N.C. Department of Transportation.

C. Maps

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

1. Planning Department;
2. Register of Deeds;
3. Natural Resources Conservation Service;
4. North Carolina Cooperative Extension ;
5. Soil and Water Conservation District; and
6. Any other such agency or office the Advisory Board deems appropriate, including maps denoting the location of agricultural districts within City/Town of _____ planning jurisdiction.

**ARTICLE XIX
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 ____ aerial mile(s) of the proposed development.

**ARTICLE XX
COUNTY LAND-USE PLANNING**

A. Duty of the Advisory Board

It shall be the duty of the Advisory Board to advise the Council or the agency or office to which the Council delegates 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 ordinance is enacted or when one is formed.

B. 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:

They city/town of _____ 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 County Planning office, or the Natural Resources Conservation Service office.

C. Growth Corridors

At such time as the county might establish designated growth corridors, agricultural districts will not be permitted in the designated growth corridors, as delineated on the official county planning map without the approval of the Council. 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 Council.

**ARTICLE XXI
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 XXII
NORTH CAROLINA AGENCY NOTIFICATION**

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 North Carolina Cooperative Extension, 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 ordinance; and
7. Any other information the Advisory Board deems useful, including maps denoting the location of agricultural districts in the _____ city/town planning jurisdiction.

**ARTICLE XXIII
LEGAL PROVISIONS**

A. Severability

If any article, section, subsection, clause, phrase, or portion of this ordinance 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 ordinance.

B. Conflict with other Ordinances and Statutes

Whenever the provisions of this ordinance conflict with other ordinances of the city/town of _____, 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 Council.

**ARTICLE XXIV
ENACTMENT**

The city/town of _____ City Council hereby adopts and enacts the preceding articles and sections of this ordinance.

Adopted this the ____ day of _____, 2004.

Motion for adoption by _____ and seconded by _____.

CITY COUNCIL

Chairperson

ATTEST:

Clerk to City Council

Approved as to form:

City Attorney