

**WAKE COUNTY
VOLUNTARY AGRICULTURAL DISTRICT PROGRAM
ORDINANCE**

**ARTICLE I
TITLE**

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

**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 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, horticulture and forestry; 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: Wake County Agricultural Advisory Board.

Chairperson: Chairperson of the Wake County Agricultural Advisory Board.

District: Voluntary Agricultural District as established by this Ordinance.

Board of Commissioners: Wake County Board of Commissioners.

Designated Staff Person: Wake County Soil & Water Conservation Department staff member

**ARTICLE V
AGRICULTURAL ADVISORY BOARD**

A. Creation

The Board of Commissioners appoints the Wake Soil and Water Conservation District (Wake SWCD) Board of Supervisors to establish an Agricultural Advisory Board to implement the provisions of this program.

B. Membership

The Advisory Board shall consist of volunteers from landowners in the Wake County Voluntary Agricultural District (VAD) Program.

C. Membership Requirements

1. Each Advisory Board member, except those serving in an *ex officio* capacity, shall be a Wake County resident or landowner enrolled in the VAD program.
2. Additional members may be appointed to the Board in an *ex officio* capacity from the Soil and Water Conservation District Board, Wake County Cooperative Extension, the U.S. Farm Service Agency, nonprofit agricultural organizations, conservation organizations, agribusiness, horticultural businesses, forestry businesses, and the public at large or other agencies, as deemed necessary by the Board of Commissioners or the Wake SWCD Board of Supervisors. Members serving in an *ex officio* capacity shall neither vote nor count toward quorum requirements.

D. Advisory Board Procedure

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

The Chairperson shall be appointed by the Wake Soil and Water Conservation District Board of Supervisors.

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 biannually. All meetings shall be open to the public. Minutes will be kept of all meetings.

E. Duties

The Advisory Board shall:

1. Review and approve or disapprove applications of landowners for enrollment of qualified farmland, horticultural land, or forestland into a District;
2. Make recommendations concerning the establishment and modification of Districts;
3. 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 Districts;
4. Review and make recommendations concerning proposed amendments to this ordinance;
5. Study additional methods of protection for farming, horticulture, forestry, and the attendant land base, and make recommendations to the Board of Commissioners; and

6. Perform other agricultural, horticultural, and forestry-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:

The District shall contain a minimum of 20 contiguous acres of qualified forest land, 10 acres of farm land, or 5 acres of horticultural land.

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 Voluntary Agricultural District program.

C. Addition

Qualifying farmland within a mile of an existing District shall be added to the District as herein provided.

**ARTICLE VII
CERTIFICATION AND QUALIFICATION OF FARMLAND**

A. Requirements

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

1. Be real property that is engaged in agriculture as defined in N.C.G.S. §106-581.1;
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;
3. 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 three lots that meet applicable zoning and subdivision regulations; and

4. Be located in the unincorporated area of Wake County, unless there is an Memorandum of Understanding with a municipality through which the county is authorized to exercise the authority of the municipality on its behalf.

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

A. Application Procedure

1. A landowner may apply to participate in the Voluntary Agricultural District program by making application to the chairperson of the Advisory Board or a designated staff person (DSP). The application shall be on forms provided by the Advisory Board which will be available in the Wake SWCD office.
2. A conservation agreement (required by N.C.G.S. §106-737 and defined in N.C.G.S. §121-35) to sustain, encourage, and promote agriculture must be executed by the landowner with the Advisory Board.

B. Approval Process

1. Upon submission of the application to the Advisory Board, the Advisory Board shall meet at least biannually (or more often as needed) to review the application. The chairperson or DSP shall notify the applicant by first class mail of approval or disapproval of participation in a District.
2. Upon approval of an application, the chairperson or DSP will forward copies immediately to notify the following offices:
 - a. The Wake County Register of Deeds;
 - b. The Wake County Planning Department;
 - c. The Wake County Soil and Water Conservation Department;
 - d. The Wake County Revenue Department, and
 - e. The Natural Resources Conservation Service.
 - f. Wake County Geographic Information Services

C. Appeal

If an application is denied by the Advisory Board, the landowner may, within fifteen (15) days of notification of disapproval of the application, request in writing that the Advisory Board reconsider its decision. The request for reconsideration shall state the reason(s) therefore. Upon either an initial denial, if no request for reconsideration was made, or denial after reconsideration, 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

REVOCACTION, ENFORCEMENT AND RENEWAL OF CONSERVATION AGREEMENTS

A. Revocation and Enforcement

By providing written notice to the Advisory Board, a landowner of qualifying farmland within a 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 eligibility to participate in a District. Absent 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 District due to death of the landowner, sale or gift shall not revoke the Conservation Agreement unless the land no longer qualifies. Enforcement of the terms of a Conservation Agreement for land enrolled in a District shall be limited to revocation of the Conservation Agreement and the benefits derived therefrom.

B. Renewal

A Conservation Agreement for land within a Voluntary Agricultural District, that continues to qualify under the provisions of Article VII, shall be automatically renewed for a period of ten years unless the landowner provides written notice to the Advisory Board of intent not to renew. Absent noncompliance by the landowner, neither the Advisory Board nor the Board of Commissioners shall fail to renew any Conservation Agreement unless this Ordinance or its authorizing legislation has been repealed.

ARTICLE X PUBLIC HEARINGS

A. Purpose

N.C.G.S. §106-740 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. This provision ensures that the condemning agency or unit considers the impact of its actions upon agriculture, forestry, and/or horticultural prior to taking action that is not reversible. This provision is not intended to, and does not prohibit, the condemning agency or unit from taking action authorized by law.

B. Procedure

1. Upon receiving a request, the Advisory Board shall publish notice describing the proposed action in the appropriate newspapers of Wake County 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, SWC District Director, Environmental Services Director 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 condemning agency may not formally initiate a condemnation action while the proposed condemnation is properly before the Advisory Board within these time limitations

ARTICLE XI NOTIFICATION

A Record Notice of Proximity to a Voluntary Agricultural District

1. Procedure

Upon certification of qualifying farmland and designation of real property as a farm in a District, the County land records system will include a GIS layer to 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 mile of the farm in a District. The purpose of such notification is to inform all current and potential residents and property owners in and adjacent to an agricultural district that farming and agricultural activities may take place in the district any time during the day or night.

2. 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.

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 District as defined in this Ordinance.

B. Signage

Signs identifying parcels enrolled in an agricultural district may be placed on enrolled parcels at the discretion of the owners. Signs shall not be placed along the right-of-way of any state or county maintained road.

C. Maps

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

1. Wake County Planning Department;
2. Wake County Register of Deeds;
3. USDA Natural Resources Conservation Service;
4. North Carolina Cooperative Extension;
5. Wake Soil and Water Conservation District; and
6. Wake County Geographic Information Services
7. Any other such agency or office the Advisory Board deems appropriate.

**ARTICLE XII
COUNTY LAND-USE PLANNING**

A. Duty of the Advisory Board

It shall be the duty of the Advisory Board to advise the Wake Soil and Water Conservation District Board on the status, progress, and activities of the county's Voluntary Agricultural District program and to also coordinate the formation and maintenance of 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. 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:

Wake County has established 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, burning 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 Wake County Soil and Water Conservation Department office, the office of the Register of Deeds, the County Planning office, or the Natural Resources Conservation Service office.

**ARTICLE XIII
CONSULTATION AUTHORITY**

The Advisory Board may consult with North Carolina Forest Service, 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 XIV
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 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 Voluntary 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. Municipalities with which Memorandums of Understanding have been signed;
7. Municipalities that have adopted this Ordinance for the purpose of the county enforcing this Ordinance within their corporate boundaries;
8. Copies of any amendments to this Ordinance or Memorandums of Understanding signed with municipalities; and
9. Any other information the Advisory Board deems useful.

ARTICLE XV 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 Wake County, the provisions of those other ordinances shall govern. Whenever the provisions of any federal or state statute conflict with this Ordinance, the provisions of such federal or state statute shall govern. The sole remedy for a land use not complying with this Ordinance shall be revocation of the Conservation Agreement and removal of the non-qualifying land from the Wake County Voluntary Agricultural District Program. Recreational use of land that does not interfere with agricultural uses as defined in N.C.G.S. § 106-581.1 shall not be considered non-compliant with this Ordinance.

C. Amendments

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

ARTICLE XVI ENACTMENT

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

Adopted this the 5th day of December, 2016.

Motion for adoption by _____ and seconded by _____.

WAKE COUNTY BOARD OF COMMISSIONERS

Chairperson

ATTEST:

Clerk to Board of Commissioners

Approved as to form:

County Attorney