

# ASHE COUNTY, N.C. ORDINANCE

## CHAPTER 161: VOLUNTARY FARMLAND PRESERVATION PROGRAM

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### **\*161.01 TITLE.**

This chapter, adopted by the Board of Commissioners, shall be known as the Ashe County Voluntary Farmland Preservation Program.  
(Ord. Passed 7-16-01)

### **\*161.02 AUTHORITY.**

This chapter is adopted pursuant to the authority conferred by G.S. \*\*106-735 through 106-743.  
(Ord. Passed 7-16-01)

### **\*161.03 PURPOSE.**

The purpose of this chapter is to promote the health, safety, rural agricultural values and 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 farming; increase protection from undesirable non-farm development; and increase the protection of farms from nuisance suits and other negative impacts on properly managed farms.  
(Ord. Passed 7-16-01)

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### **\*161.04 JURISDICTION.**

The jurisdiction of the Voluntary Farmland Preservation Program shall be the unincorporated areas of the county.  
(Ord. Passed 7-16-01)

### **\*161.05 DEFINITIONS.**

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**ADVISORY BOARD.** The Ashe County Agricultural Advisory Board.

**BOARD OF COMMISSIONERS.** The Board of Commissioners of Ashe County, North Carolina.

**CHAIRMAN.** Chairman of the Ashe County Agricultural Advisory Board.

**DISTRICT.** A voluntary agricultural district established under the terms and conditions of this chapter by the Board of Commissioners.  
(Ord. Passed 7-16-01)

### **\*161.06 QUALIFICATIONS AND CERTIFICATION OF FARMLAND.**

- (A) *Requirements.* In order for farmland to qualify for participation under the terms of this chapter, it shall meet the following requirements:
- (1) The farmland shall be real property;
  - (2) The farm property shall be participating in the farm present-uses-value taxation program established by G.S.\*\*105-277.2 through 105-277.7, or is otherwise determined by the county to meet all the qualifications of the program set forth in G.S.\*105.277.3;
  - (3) The property shall be certified by the Natural Resources Conservation Service of the United States Department of Agriculture, in consultation with the Cooperative Extension office and the Farm Service Agency, as being a farm on which at least two-thirds of the land is composed of soils that:
    - (a) Are best suited for providing food, seed, fiber, forage, timber, and horticultural crops, including Christmas trees and ornamental;
    - (b) Have good soil qualities;
    - (c) Are favorable for all major crops common to the county where the land is located;

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- (d) Have a favorable growing season; and
  - (e) Receive the available moisture needed to produce high yields for an average of eight out of ten year; or soils on which at least two-thirds of the land has been actively used in agricultural, horticultural or forestry operations as defined in G.S.\*105-277.2 (1,2,3) during each of the five previous years, measured from the date on which the determination must be made as to whether the land in question qualifies;
- (4) The property, if highly erodible land exists on the farm, is managed in accordance with the Natural Resources Conservation Service defined erosion control practices that are addressed to said highly erodible land, and
- (5) The property is the subject of a conservation agreement, as defined in 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. There will be an exemption for the creation of not more than three lots that meet applicable county watershed and subdivision regulations (Chapter 156 of this code) or the regulations of any municipality that apply to the farm property. The property owner may voluntarily revoke this conservation agreement by submitting a written request to the Board in accordance with \*161.08. Any accepted agricultural practice will be exempt from this conservation agreement.
- (B) *Certification.* The owner of the farm seeking to qualify his property for participation in the farmland preservation program shall submit written evidence that the property conforms to the requirements of subsection (A) above. This written information shall be submitted to the Chairman of the Advisory Board or the designated staff person on forms provided by the Board. The certification may be submitted at the same time the owner applies for inclusion in a district.  
(Ord. Passed 7-16-01)

### **\*161.07 APPLICATION, APPROVAL AND APPEAL PROCEDURES.**

- (A) *Creation of Voluntary Agricultural Districts.* In order to implement the purposes stated in \*161.03, this chapter provides for the creation of voluntary agricultural districts that shall meet the following standards:
- (1) The district, when initially established, shall contain a minimum of 25 contiguous acres of qualified farmland, OR, two or more qualified farms that contain a minimum of 25 acres and are located within a mile of each other;

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- (2) The landowner(s) requesting inclusion in the district shall execute an agreement with the county to sustain agriculture in the district in accordance with \*161.06(A)(5). Said agreement shall be in a form that is reviewed and approved by the Advisory Board; and
- (3) For each district created under the terms of this chapter, one of the existing Advisory Board members shall be assigned to represent the district.

- (B) *Application to Participate.* A landowner may apply to participate in the program by making application to the Chairman of the Advisory Board or to a designated staff person. The application shall be on forms provided by the Advisory Board. The application to participate in a district may be filed with the certification of qualifying farmland.
- (C) *Approval Process.* Upon review of the written certification and application submitted by the property owner, the Board shall meet within 30 days if possible to approve or disapprove the application. The Chairman shall notify the applicants by first class mail of said approval or disapproval of participation in the district.
- (D) *Appeal.* If the Agricultural Advisory Board denies an application, the petitioner has 30 days to appeal the decision to the Board of Commissioners. Such appeal shall be presented in writing. The decision of the Board of Commissioners is final.  
(Ord. Passed 7-16-01)

### **\*161.08 REVOCATIONS OF AGRICULTURAL DISTRICT AGREEMENTS.**

By written notice to the Advisory Board, a landowner of qualifying farmland may revoke the agreement formulated pursuant to §161.06(A)(5), or the Board may revoke same agreement based on noncompliance by the landowner. Such revocation shall result in loss of qualifying farm status, and consequently, loss of eligibility to participate in a voluntary agricultural district and the benefits thereof. Revocation by a landowner of an agreement and the resulting loss of qualifying farmland status for the purpose of participation in a voluntary agricultural district shall in no way affect the eligibility of the land to be taxed at its present use value as provided in G.S.\*107-277.2 through 105-277.6. If a portion of a district is removed for any reason after being established by this chapter, the remaining qualified farms may remain in the program, provided they meet all other requirements except the minimum area requirements of \*161.07(A)(1).  
(Ord. Passed 7-16-01)

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### \*161.09 AGRICULTURAL ADVISORY BOARD.

- (A) *Creation.* In accordance with G.S.\*106-739, the Board of Commissioners hereby establishes an Agricultural Advisory Board to implement the provisions of this chapter.
- (B) *Appointments and Membership.* The Agricultural Advisory Board shall consist of seven members appointed by the Board of Commissioners.
- (1) *Requirements.*
- (a) Each Advisory Board member shall be a county resident and registered to vote in the county.
  - (b) Five of the seven members shall be actively engaged in farming.
  - (c) The five members actively engaged in farming shall meet the eligibility criteria for the preservation program and be selected for appointment by the Board of Commissioners from the names of individuals submitted to the Board of Commissioners by the Ashe Soil and Water Conservation District, the Cooperative Extension Service, the Farm Service Agency Committee and the Ashe County Farm Bureau, with an effort to have the broadest geographical representation possible. The two members shall have special interest, experience, or education in agriculture and/or rural land preservation.
- (2) *Tenure.* The members are to serve for terms of three years, except that the initial Board is to consist of two appointees for a term of one year, two appointees for terms of two years, and three appointees for terms of three years. Thereafter, all appointments are to be for terms of three years, with re-appointments permitted but shall not exceed two consecutive three-year terms. The term for the initial Board members will be determined by lottery.
- (3) *Vacancies.* Any vacancy on the Agricultural Advisory Board is to be filled by the Board of Commissioners for the remainder of the unexpired term following the same procedure as for the initial appointment.
- (4) *Removal for Cause.* The Board of Commissioners upon written charges and after a public hearing may remove any member of the Agricultural Advisory Board for cause. An Advisory Board member shall forfeit membership if three consecutive unexcused Board meetings are missed.

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### (5) *Funding.*

- (a) *Compensation.* The per meeting compensation of the members of the Advisory Board may be fixed by the Board
- (b) *Appropriations for Performance of Duties.* Funds shall be appropriated by the Board to perform its duties. The Advisory Board may request a budget to be presented to the County Commissioners annually.

### (C) *Procedures.* The Advisory Board shall adopt rules of procedure that are consistent with the enabling legislation and other applicable statutes.

- (1) *Chairperson.* The Advisory Board shall elect a Chairperson and Vice-Chairperson each year at its meeting of the fiscal year. The Chairperson shall preside over all regular or special meetings of the Board. In the absence or disability of the Chairperson, the Vice-Chairperson shall preside and shall have and exercise all the powers of the Chairperson so absent or disabled. Additional officers may be elected as needed.
- (2) *Jurisdiction and Procedures: Supplementary Rules.* The jurisdiction and procedures of the Advisory Board are set out in this section, except that the Advisory Board may adopt supplementary rules of procedure not inconsistent with this section or with other provisions of law.
- (3) *Advisory Board Year.* The Advisory Board shall use the county fiscal year as its meeting year.
- (4) *Meetings.* Meetings of the Advisory Board, following such notice as required by this section, shall be held at the call of the Chairperson and at such other times as the Board in its rules of procedure may specify. A called meeting shall be held at least monthly. A quorum shall consist of a majority of the members of the Advisory Board.
- (5) *Voting.* The concurring vote of a majority of the members of the Advisory Board shall be necessary to reverse any order, requirement, decision or determination of any administrative official or agency, to decide in favor of an applicant, or to pass upon any other matter on which it is required to act under this section.
- (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 immediately filed in the office of the Advisory Board and shall be a public record.

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- (7) *Administrative Services.* The Cooperative Extension Service office shall serve the Agricultural Advisory Board for record keeping, correspondence, application procedures under this section together with such other services the Advisory Board needs to complete its duties.
- (D) *Duties.* The Agricultural Advisory Board shall:
- (1) Review and approve applications for qualified farmland and voluntary agricultural districts.
  - (2) Hold public hearings pursuant to \*161.10.
  - (3) Advise the Board of Commissioners on projects, programs, or issues affecting the agricultural economy or activities within the county that will affect agricultural districts.
  - (4) Perform other related tasks or duties assigned by the Board of Commissioners.
- (Ord. Passed 7-16-01)

### \*161.10 PUBLIC HEARINGS ON CONDEMNATION OF FARMLAND.

- (A) *Purpose.* Pursuant to G.S.\*106-740, no state or local public agency or government unit may formally initiate any action to condemn any interest in qualifying farmland within a voluntary agricultural district until such agency or unit has requested the Agricultural Advisory Board to hold a public hearing on the proposed condemnation. The procedures for such hearings shall be as set forth below.
- (B) *Procedures.*
- (1) *Establish Public Hearing.* Upon receipt of a request for a public hearing, the Agricultural Advisory Board shall have 30 days to set a date for a public hearing on the proposed condemnation pursuant to G.S.\*106-740. No formal initiation of condemnation shall be initiated while the proposed condemnation is properly before the Advisory Board within the time limitations set forth in this section.
  - (2) *Notice of Public Hearing.* The Advisory Board shall run a notice of the public hearing in a newspaper having general circulation in the county at least 10 days prior to the date established for the hearing. The notice shall contain the date, time and place of the hearing and shall provide the name of the agency requesting the hearing and the purpose of the condemnation.
  - (3) *Public Hearing.* The Advisory Board shall conduct the public hearing and receive information and comments from the agency requesting the condemnation action and the citizens of the county. Additionally, the Board shall review the following:

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- (a) Has the need for the project requiring the condemnation been satisfactorily shown by the agency requesting the action?
- (b) Has a financial impact analysis been conducted by the agency seeking the action?
- (c) Have alternatives been considered to the proposed action that are less disruptive to the agricultural activities and farmland base of the voluntary agricultural district within which the proposed action is to take place?

The Advisory Board shall invite and allow input by the County Cooperative Extension Agent, U.S.D.A. Natural Resources Conservationist, the Farm Service Agency, and may consult with any other individuals, agencies or organizations, public or private, necessary to the Board's review of the proposed action.

- (4) *Findings and Notification.* Within 30 days after the public hearing, the Advisory Board shall make a report containing its findings and recommendations regarding the proposed action to the Board of County Commissioners. The report shall be conveyed to the decision-making body of the agency proposing acquisition and made available to the public for comments.
- (5) Pursuant to 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 within these time limitations.  
(Ord. Passed 7-16-01)

### **\*161.11 LAND USE INCENTIVES TO VOLUNTARY AGRICULTURAL DISTRICT FORMATION.**

- (A) *Purpose.* The purpose of this section is to help meet the needs of agriculture as an industry and prevent conflicts between voluntary agricultural district participants and non-farm landowners in proximity to districts.
- (B) *Public Notification.*
  - (1) The Advisory Board, in cooperation with the county, shall take measures as set forth below to provide notification to property owners, residents, and other interested persons in and adjacent to any designated agricultural district with a goal of informing all current and potential residents and property owners in and

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adjacent to an agricultural district, that farming and agricultural activities may take place in this district any time during the day or night.

- (a) Signs identifying approved agricultural districts shall be placed along the rights-of-way of major roads.
- (b) Information identifying approved districts shall be provided to the Register of Deeds Office, the Ashe Soil and Water Conservation District, the Cooperative Extension Service, the Farm Service Agency, the Ashe County Planning and Inspections Department, and the Ashe County Tax Department.
- (c) The following notice shall be displayed in a prominent position in the office of the Register of Deeds and the public access area in the Ashe County Tax Department:

### **NOTICE TO REAL ESTATE PURCHASERS IN ASHE COUNTY**

#### **ASHE COUNTY AGRICULTURAL DISTRICTS**

Ashe County has established agricultural districts to protect and preserve agricultural lands and activities. These districts have been developed and mapped to inform all purchasers of real property that certain agricultural activities, including but not limited to pesticide spraying, manure spreading, machinery and truck operations, livestock operations, sawing, and similar activities may take place in these districts any time during the day or night. Maps and/or information on the location and establishment of these districts can be obtained from the Cooperative Extension Service, County Planning and Inspections Department, Natural Resources Conservation Service, the Farm Service Agency, and the County Tax Department.

- (2) *Limit of Liability.* In no event shall the county or any of its officers, employees, or agents be held liable in damages for any misfeasance, malfeasance, or nonfeasance occurring in good faith in connection with the duties or obligations imposed by this chapter.

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(3) *Expenditure of County Funds for Non-Farm Uses.* Prior to expending any monies that would convert land in a voluntary agricultural district to non-farm uses, the county or any other local unit of government shall submit to the Advisory Board detailed information showing that said governmental unit has considered alternatives. Such consideration shall include the criteria listed in \*161.10(B)(3)(a through c).

### (C) Waiver of Water and Sewer Assessments.

(1) Purpose. The purpose of this subsection is to help mitigate the financial impacts on farmers by some local and state capital investments unused by such farmers.

(2) Procedure. The waiver procedure shall be as follows:

- (a) Landowners belonging to voluntary agricultural districts shall not be assessed for, or required to connect to, water and/or sewer systems.
- (b) Water and sewer assessments shall be held in abeyance, without interest, for farms inside a voluntary agricultural district, until improvements on such property are connected to the water or sewer system for which the assessment was made.
- (c) When the period of abeyance ends, the assessment is payable in accordance with the terms set out in the assessment resolution.
- (d) Statutes of limitations are suspended during the time that any assessment is held in abeyance without interest.
- (e) Assessment procedures followed under G.S.\*153A-185 et. seq. shall conform to the terms of this section with respect to qualifying farms that entered into preservation agreements while such section was in effect.
- (f) Nothing in this subsection is intended to diminish the authority of the county to hold assessments in abeyance under G.S.\*153A-201.  
(Ord. Passed 7-16-01)

### **\*161.12 NORTH CAROLINA AGENCY NOTIFICATION.**

(A) *Consultation with N.C. Department of Agriculture and Other Agencies.* The Board may consult with the Cooperative Extension Office, the Natural Resources Conservation Service Office, the Farm Service Agency Office, the N.C. Department of Agriculture, and any other such agency the Board deems necessary to properly conduct its business.

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(B) *Recording the Program Document.* An official copy of the program document shall be recorded with the North Carolina Commissioner of Agriculture's office after adoption. At least once a year, the county shall submit a written report to the Commissioner of Agriculture, including the status, progress, and activities of the county's farmland preservation program, and voluntary agricultural districting information regarding:

- (1) Number of landowners enrolled;
- (2) Number of acres applied;
- (3) Number of acres certified;
- (4) Number of acres denied, and
- (5) Date certified.

(Ord. Passed 7-16-01)

### \*161.13 LEGAL PROVISIONS.

(A) *Severability.* If any section, subsection, clause, phrase or portion of this chapter is for any reason invalid or unconstitutional as determined by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this chapter.

(B) *Amendments.* This chapter may be amended from time to time after a public hearing, notice of which shall be sent to program participants by first class mail 30 days prior to the hearing, and in consultation with the Agricultural Advisory Board to the Board of Commissioners. The Board of Commissioners will make the final decision.

(Ord. Passed 7-16-01)