

_____ COUNTY
VOLUNTARY AGRICULTURAL DISTRICT ORDINANCE
(With explanatory footnotes)¹

ARTICLE I
TITLE

An ordinance of the Board of County Commissioners of _____ COUNTY, NORTH CAROLINA, entitled, " _____ 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 106-743 and Chapter 153A.²

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.

¹ This model Voluntary Agricultural District Ordinance is one of two model ordinances prepared by the North Carolina VAD Working Group. This model is considered a “bare bones” ordinance that supplies no requirements beyond those in the enabling legislation N.C.G.S. §§106-735 – 743.

² As noted, this bare bones model ordinance ends at N.C.G.S. §106-743 and does not extend to creation authority for Enhanced Voluntary Agricultural Districts under N.C.G.S. §106-743.1-5.

**ARTICLE IV
DEFINITIONS³**

The following are defined for purposes of this Ordinance:

1. "County" _____ County, North Carolina.
2. "Advisory Board" _____ County Agricultural Advisory Board responsible for administering this Ordinance pursuant to N.C.G.S. § 106-739.
3. "Chairperson" Chairperson of the _____ County Agricultural Advisory Board.
4. "District" Voluntary Agricultural District as established by this Ordinance.
5. "Board of Commissioners" _____ County Board of Commissioners.

**ARTICLE V
AGRICULTURAL ADVISORY BOARD**

A. Creation.

The Board of Commissioners shall establish an Agricultural Advisory Board to implement the provisions of this Ordinance.

B. Membership Requirements

1. The Advisory Board shall consist of _____ members representing the Voluntary Agricultural Districts approved under this Ordinance.⁴

³ Definitions are inserted as a matter of reference and convenience, as these terms are not specifically defined in or required to be defined by the statute.

⁴ N.C.G.S. §106-740 provides no specific qualifications for the Agricultural Advisory Board in number. The only clear requirement in the enabling legislation that may serve as a qualification is found in N.C.G.C. §106-738 which requires "[t]hat each such district have a representative on the agricultural advisory board established under G.S. 106-739." The Advisory Board must determine how to manage this representative capacity requirement, and presumably may do so by adopting Bylaws. A common challenge for Advisory Boards is whether to match an individual Board Member to each designated Voluntary Agricultural District (VAD), which can become unwieldy both in number and transitory as VADs are created and eliminated.

Model County Voluntary Agricultural District Ordinance

2. Each Advisory Board member, except those serving in an ex officio capacity, shall be a _____ County resident or landowner.⁵

3. The Advisory Board shall address other matters of Advisory Board membership qualifications in Bylaws approved by the initial Advisory Board and further approved if necessary by local ordinance or state law.⁶

C. Duties of Advisory Board⁷

1. Review applications of landowners for enrollment of qualified farmland, horticultural land, or forestland into a District for compliance with this Ordinance;

2. Make recommendations to the County Board of Commissioners concerning the establishment, additions to, and modification of Districts;

3. Conduct public hearings concerning likely to have an impact on agricultural operations, particularly if such projects involve condemnation of all or part of any qualifying farm;

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 Districts;

5. Review and make recommendations concerning proposed amendments to this Ordinance; and

6. Perform other related tasks or duties assigned by the Board of Commissioners.

⁵ Though the enabling legislation makes no requirement that a Member of an Agricultural Advisory Board be a resident of a particular county, common sense would dictate this limitation.

⁶ In this basic model ordinance, all matters of Advisory Board governance are determined by the Bylaws of the Advisory Board. Matters of Meetings, Notice, Procedure, Tenure, Vacancy, Removal and Funding. Approval of such Bylaws may be required by a separate county ordinance or under state law, and the initial Advisory Board should consult with the County Attorney on such matters. A separate model VAD Advisory Board Bylaws has been developed by the NC VAD Working Group, and is available at _____ (insert web location[s])

⁷ N.C.G.S. §106-739 provides a list of duties the County *may* confer upon the Advisory Board, but such duties are permissive and not required. The suggested duties in the statute have been included and noted here as options.

ARTICLE VI
DEFINITION OF VOLUNTARY AGRICULTURAL DISTRICTS

A. Voluntary Agricultural Districts

In order to implement the purposes stated in Article III, this program provides for the creation of Voluntary Agricultural Districts within the unincorporated area of the County, which shall consist of at least the number of contiguous acres of agricultural land, and forestland or horticultural land that is part of a qualifying farm or the number of qualifying farms deemed appropriate by the governing board of the county or city adopting this ordinance, the initial number of Voluntary Agricultural Districts in _____ shall be _____ (insert number of distinct VADs _____).

B. Landowner Execution Required. Owners of the initial requisite acreage to form a Voluntary Agricultural District as well as subsequent owners shall execute an agreement to sustain agriculture in the district, the form of said agreement must be reviewed and approved by the Advisory Board.⁸

C. Advisory Board Representation of Voluntary Agricultural Districts. Each Voluntary Agricultural District shall be represented by representative designated as such by the Advisory Board established under G.S. 106-739.

D. Addition to District

Qualifying farmland in a region with an existing District shall be added to the District as herein provided.

E. Certification of Districts. The Advisory Board shall present to the Board of Commissioners each new qualifying farm for approval. The Board of Commissioners may by resolution waive this requirement.

⁸ The language here is meant to condense and mirror the requirements of that language appearing in §106-738(a)(2) and §106-738(a)(3), which reads: “(2) For the formation of such districts upon the execution by the owners of the requisite acreage of an agreement to sustain agriculture in the district; [and] (3) That the form of this agreement must be reviewed and approved by an agricultural advisory board established under G.S. 106-739 or some other county board or official.”

**ARTICLE VII
CERTIFICATION OF QUALIFYING FARMLAND**

A. Requirements⁹

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 that word is 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 (10) years, except for the creation of not more than three lots that meet applicable county zoning and subdivision regulations; and
4. Be located in the unincorporated area of _____ County, unless there is an agreement with a municipality through which the county is authorized to exercise the authority of the municipality on its behalf.¹⁰

⁹ These requirements are drawn verbatim from the enabling legislation, N.C.G.S. §106-737. The NC VAD Working Group is not certain whether additional requirements may be added by the County.

¹⁰ Item 4 is meant to comply with § 106-738 (c) to ensure enrolled farmland does not lie within municipal boundary (without noted agreement between county and municipality) and thus be invalid.

**ARTICLE VIII
APPLICATION, REVIEW, AND APPEAL**

[Subject to future codification]¹¹

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

By written notice to the county, the landowner may revoke this conservation agreement. Such revocation shall result in loss of qualifying farm status.¹²

**ARTICLE X
WAIVER OF WATER AND SEWER ASSESSMENTS**

[Subject to future codification]¹³

**ARTICLE XI
PUBLIC HEARINGS**

[Subject to future codification]¹⁴

¹¹ The enabling legislation is silent as to matters of application for enrollment and the manner in which the Advisory Board processes applications, including requisite form and appeal in the case of rejection of an applicant.

¹² This language is drawn directly from N.C.G.S. §106-737.1 concerning revocation of agreements. The statute is silent as to whether such agreements automatically renew.

¹³ N.C.G.S. § 106-742 [Waiver of water and sewer assessments] remains an optional authority and requirement of a county adopting a voluntary agricultural district ordinance to waive water and sewer assessments then such are extended into land enrolled in a VAD.

¹⁴ N.C.G.S. § 106-740 [Public hearings on condemnation of farmland] remains an optional authority and requirement of a county adopting a voluntary agricultural district ordinance to hold hearings when land within a VAD is threatened by eminent domain.

**ARTICLE XII
MANDATORY NOTIFICATION¹⁵**

A Record Notice of Proximity to a Voluntary Agricultural District

1. Procedure

Pursuant to N.C.G.S. § 106-741, upon certification of qualifying farmland and its designation as a Voluntary Agricultural District, the County shall provide in its computerized land records system 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 mile of a Voluntary Agricultural District as defined in Article VI (A) of this Ordinance.

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 Article.

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.

**ARTICLE XIII
SUBDIVISION ORDINANCE AND ZONING ORDINANCE REVIEW**

[Subject to future codification]¹⁶

¹⁵ In 2018, the VAD enabling legislation §106-741(a) was amended to require that counties with digitized land record systems include a proximity warning “reasonably calculated to alert a person researching the title of a particular tract that such tract is located within one-half mile of a poultry, swine, or dairy qualifying farm or within 600 feet of any other qualifying farm or within one-half mile of a voluntary agricultural district.” Because it is mandatory, such language is incorporated into this model ordinance.

¹⁶ The enabling legislation is silent on any requirements regarding coordination with subdivision and zoning ordinances.

**ARTICLE XIV
COUNTY LAND USE PLANNING**

[Subject to future codification]¹⁷

**ARTICLE XV
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 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 the status, progress and activities of its farmland preservation program.¹⁸

¹⁷ The enabling legislation is silent regarding the integration of a Voluntary Agricultural District Ordinance with County land use planning.

¹⁸ This Article is a requirement of the enabling statute N.C.G.S. §106-743, though the statute is silent on the precise composition of the required report.

Model County Voluntary Agricultural District Ordinance

**ARTICLE XVI
ENACTMENT**

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

Adopted this the ____ day of _____, 20__.

Motion for adoption by _____ and seconded by _____.

COUNTY BOARD OF
COMMISSIONERS

Chairperson

ATTEST:

Clerk to Board of Commissioners

Approved as to form:

County Attorney

WORKING DRAFT 10-10-2019