

**MECKLENBURG COUNTY
ORDINANCE
ESTABLISHING A VOLUNTARY AND ENHANCED VOLUNTARY
AGRICULTURAL DISTRICT**

**ARTICLE I
TITLE**

An ordinance of the Board of County Commissioners of MECKLENBURG COUNTY, NORTH CAROLINA, entitled, "MECKLENBURG COUNTY VOLUNTARY AND ENHANCED VOLUNTARY AGRICULTURAL DISTRICT ORDINANCE."

**ARTICLE II
AUTHORITY**

This ordinance and related articles and sections are adopted pursuant to North Carolina General Statutes sections 106-735 through 106-743 and Chapter 153A.

**ARTICLE III
PURPOSE**

The purpose of this Ordinance is to promote agricultural values within the county and more specifically, encourage the economic and financial health of agriculture, horticulture and forestry; increase protection from non-farm development and other negative impacts on properly managed farms; and decrease the likelihood of legal disputes such as nuisance actions between farm owners and neighbors.

**ARTICLE IV
DEFINITIONS**

The following are defined terms for purposes of this Ordinance:

1. "Advisory Board:" Mecklenburg County Agricultural Advisory Board responsible for administering this Ordinance pursuant to N.C.G.S. § 106-739.
2. "Agriculture:" The production and harvesting of crops, the planting and production of trees and timber, the raising, care and training of livestock, aquaculture, the operation and maintenance of a farm and buildings on the farm, and agritourism as fully described in NCGS §106-581.1.
3. "Board of Commissioners:" Mecklenburg County Board of Commissioners.
4. "Chairperson:" Chairperson of the Mecklenburg County Agricultural Advisory Board.

5. "Conservation Agreement:" shall mean an Agreement as defined in N.C.G.S. §121-35 between the County and the owner of the Qualifying Farmland that prohibits nonfarm use or development of such land for an initial period of 10 years. Said agreement shall be in a form reviewed and approved by the Advisory Board.
6. "County:" Mecklenburg County, North Carolina.
7. "District ("VAD"):" Voluntary Agricultural District as defined in Article VI of this Ordinance.
8. "Enhanced District ("EVAD"):" Enhanced Voluntary Agricultural District as defined in Article VI of this Ordinance.
9. "Qualifying Farmland:" shall mean land meeting the requirements as set forth in Article VII of this Ordinance.

ARTICLE V

AGRICULTURAL ADVISORY BOARD

A. Creation.

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

B. Membership Requirements

1. The Advisory Board shall consist of no less than five and no more than eleven voting members.
2. The Advisory Board shall make every reasonable effort to provide the broadest possible representation of the geographical regions of the County and, to the extent possible, all segments of agricultural production existing within the County.
3. Each Advisory Board member, except those serving in an ex officio capacity, shall be a Mecklenburg County resident or landowner.
4. The Advisory Board shall address other matters of Advisory Board membership qualifications in Bylaws approved by the Board of County Commissioners.
5. A majority of the members shall be actively engaged in agriculture as defined in N.C.G.S. § 106-581.1. This determination shall be made without reference to ex officio members.
6. The members actively engaged in agriculture as defined in N.C.G.S. § 106-581.1, as well as other members, shall be selected for appointment by the Board of Commissioners 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 North Carolina Cooperative

Extension, the U.S. Farm Service Agency County Committee, nonprofit agricultural organizations, conservation organizations, agribusiness, horticultural businesses, forestry businesses, or from the public at large.

7. Additional ex-officio members may be appointed to the Board from the Soil and Water Conservation District Board of Supervisors, the County Office of North Carolina Cooperative Extension, or other agencies, as deemed necessary by the Board of Commissioners. Members serving in an ex officio capacity shall neither vote nor be counted toward quorum requirements. No more than four ex officio members may serve on the Board at any given time.

8. Members are to serve for three years terms, with a maximum service of two consecutive three-year terms or until the BOCC terminates the Advisory Board, whichever is first. The newly created Advisory Board shall have staggered terms. For the Advisory Board, the County shall appoint, as closely as possible, one-third of its membership for a one-year term, one-third of its membership for a two-year term, and one-third of its membership for a three-year term. As the terms of initial board members expire, their successors shall each be appointed for three-year terms.

9. Any vacancy of a member appointed by the Board of Commissioners on the Advisory Board is to be filled by the Board of Commissioners for the remainder of the unexpired term.

10. Any member of the Advisory Board may be removed by the Board of Commissioners upon a majority vote of the Commissioners. No cause for removal shall be required.

C. Duties of Advisory Board

1. Review and approve or deny applications of landowners for enrollment of Qualifying Farmland, horticultural land, or forestland into a VAD or EVAD for compliance with this Ordinance;

2. Execute Conservation Agreements with landowners as necessary to enroll Qualifying Farmland into the VAD or EVAD. on behalf of the Board of Commissioners;

3. Make recommendations to the Board of County Commissioners concerning the establishment, additions to, or modifications of a VAD or EVAD;

4. Conduct public hearings on proposed condemnation of VAD and EVAD-enrolled parcels by State or local public agency or governmental units as described in Article XII of this Ordinance;

5. Advise the Board of Commissioners on projects, programs, or issues affecting the agricultural economy and agricultural, horticultural or forestry activities within the County;

6. Review and make recommendations concerning any ordinance or amendment adopted or proposed for adoption under Chapter 106 Article 6 of the North Carolina General Statutes

including amendments to this Ordinance;

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

D. Bylaws of Advisory Board and Procedure

1. **Chair and Vice Chair:** The Advisory Board shall elect a chairperson and vice-chairperson from those members appointed by the commissioners each year at the Advisory Board's 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. **Determination of Procedure:** The Advisory Board may adopt rules of procedure consistent with this Ordinance or other provisions of State law.

3. **Advisory Board Year:** The Advisory Board shall use the Mecklenburg County fiscal year, July 1 - June 30, 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 as required by N.C.G.S. § 143-318.12 All meetings shall be open to the public and follow the Open Meetings Laws.

5. **Meeting Location:** Meetings of the Advisory Board will be held in a conference room at Land Use and Environmental Services Agency (2145 Suttle Ave; Charlotte, NC), or any other suitable facility and will be communicated at least 48 hours prior to the meeting.

6. **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 a majority of the members. No business may be conducted by the Advisory Board without a quorum present.

7. **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.

8. **Advisory Board Administration:** The Mecklenburg Soil and Water Conservation

District office, with support from Mecklenburg County Sustainability staff, will serve the Advisory Board in record keeping, correspondence, and other duties as assigned by the Board.

ARTICLE VI DEFINITION OF 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 (VAD) 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 adopting this Ordinance. Landowner(s) requesting inclusion in the VAD shall execute a revocable Conservation Agreement with the County in accordance with this Ordinance.

B. Enhanced Voluntary Agricultural Districts

In order to implement the purposes stated in Article III, this program also provides for the creation of Enhanced Voluntary Agricultural Districts (EVAD) 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 adopting this ordinance. Participants enrolled in the Enhanced Voluntary Agricultural Districts are entitled to additional benefits as noted in Article XIII of this Ordinance. Parcels enrolled within the EVAD are subject to an irrevocable Conservation Agreement in accordance with this Ordinance.

ARTICLE VII CERTIFICATION OF QUALIFYING FARMLAND

- A. To secure county certification as Qualifying Farmland in the VAD program, a farm must:
1. Be real property that is engaged in agriculture as that term is defined in N.C.G.S. § 106-581.1;
 2. Be a bona fide farm, as defined in N.C.G.S. §160D-903.
 3. Be a minimum of 1 acre in size.
 4. 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;

5. 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; and
6. Be located in the unincorporated area of Mecklenburg 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.

B. To secure county certification as Qualifying Farmland in the EVAD programs, a farm must:

1. Be real property that is engaged in agriculture as that term is defined in N.C.G.S. § 106-581.1;
2. Be a bona fide farm, as defined in N.C.G.S. § 160D-903.
3. Be a minimum of 1 acre in size.
4. 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;
5. 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, and shall be binding on any successors in interest. At the end of its term, such Conservation Agreement shall automatically renew for consecutive three years terms, unless written notice of termination is provided as set forth in this Ordinance; and
6. Be located in the unincorporated area of Mecklenburg 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.

ARTICLE VIII

CREATION OF AGRICULTURAL DISTRICTS

A. Implementation

In order to implement the purposes stated in Article III, this program provides for the creation of Voluntary Agricultural Districts and Enhanced Agricultural Districts which shall meet the following standards:

- Each VAD or EVAD shall contain a minimum of one contiguous acre of Qualifying Farmland.
- Landowner(s) requesting inclusion in the VAD or EVAD shall execute a Conservation Agreement regarding the Qualifying Farmland with the County in accordance with f this Ordinance. Said agreement shall be in a form which is reviewed and approved by the Advisory Board.

ARTICLE IX
APPLICATION, APPROVAL, AND APPEAL PROCEDURE

A. Application Procedure

A landowner may apply to participate in the Voluntary Agricultural District Program or Enhanced Voluntary Agricultural District Program by submitting an application to the Mecklenburg Soil and Water Conservation District office. Such application must designate whether the application is for VAD or EVAD status. Paper applications shall be on forms provided by Mecklenburg Soil and Water Conservation District or North Carolina Cooperative Extension – Mecklenburg County Center office. The application may also be submitted through an online application accessible through the Soil and Water Conservation District, North Carolina Cooperative Extension or Mecklenburg County webpages. The application will be approved by the Advisory Board.

B. Approval Process

Upon receipt of an application, the Mecklenburg Soil and Water Conservation District will verify farm qualifications and forward copies to the members of the Advisory Board and all ex officio members for their evaluation.

Advisory Board shall meet within 120 days of receipt of a completed application to determine if the application meets the minimum requirements established by this Ordinance. The chairperson or designee shall notify the applicant by first class mail or electronic mail of approval or disapproval within fifteen (15) days after the meeting.

C. Appeal

If the Advisory Board determines an application does not meet the requirements of this Ordinance, the applicant shall have sixty (60) days to appeal the decision to the Board of Commissioners. Such appeal shall be submitted in writing to the Clerk to the Board of Commissioners. The Board shall consider the matter at a regular board meeting. The decision of the Board of Commissioners is final.

ARTICLE X
NOTIFICATION

A. Public Awareness

Upon approval of a Voluntary Agricultural District or Enhanced Voluntary Agricultural District the Mecklenburg Soil and Water Conservation District shall provide notification to the following:

- Notification shall be mailed and/or emailed to the property owner / applicant.
- The Mecklenburg County Geographic Information (GIS) Mapping Department shall

maintain maps of approved VAD and EVAD within the Mecklenburg County GIS Database.

- The mapping information within the Mecklenburg County GIS Database shall provide 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 VAD or EVAD-enrolled parcel. This mapping information may be viewed by accessing the Mecklenburg County GIS website.
- These methods of notification and identification shall be included in all Mecklenburg County Voluntary and Enhanced Voluntary Agricultural District Program information made available to the public by Mecklenburg County Cooperative Extension, Mecklenburg Soil & Water Conservation District, Mecklenburg County Planning and Zoning Department, and others.

B. Signage

Members of a VAD or EVAD have the privilege of posting signs on their individual farms denoting their Agricultural District membership. Signs must be placed on the landowner's property outside of any right-of-way or easements and shall conform to any existing ordinances and zoning regulations.

Signs will be created and ordered by Mecklenburg Soil & Water Conservation District (MSWCD) staff. Signage will be distributed by MSWCD, with assistance from NC Cooperative Extension and Mecklenburg County Sustainability staff as needed. Initial funding for signage will be provided by MSWCD.

C. Exclusion of Liability

1. 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 ordinance.
2. 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.

ARTICLE XI

REVOCATION AND ENFORCEMENT, TRANSFER OF LAND, AND RENEWAL OF CONSERVATION AGREEMENTS

A. Revocation and Enforcement

1. VAD. By providing 30 day written notice to the Mecklenburg County Office of Sustainability, the landowner may revoke the Conservation Agreement. Such revocation shall result in loss of membership in the VAD and any associated benefits. The County will remove the tract from the public record of the program. Signage denoting District

membership must be returned within thirty days.

2. EVAD. Conservation Agreements for land enrolled within the enhanced voluntary agricultural district are irrevocable for a period of ten years. After the initial ten-year period, the agreement will renew in three-year increments in perpetuity and may be terminated by either party prior to the termination date of the Conservation Agreement term or as otherwise allowed by law. If the Landowner chooses to terminate within the allowed timeframe, then the Landowner shall file a notice of revocation of the Conservation Agreement with the Mecklenburg County Office of Sustainability. The Mecklenburg County Office of Sustainability will then provide written notice of revocation with the Clerk to the Board of Commissioners sufficient to provide notice that the land has been withdrawn from the EVAD program. Such revocation shall result in loss of membership in the EVAD and any associated benefits and the County will remove the tract from the GIS database as set forth in Article X. Within thirty days of filing the notice of revocation with the Mecklenburg County Office of Sustainability, Landowner shall provide to the Office of Sustainability 1) any signage denoting District membership and 2) payment for any fees associated with the termination including any recording fees imposed by the Mecklenburg County Register of Deeds and 3) if applicable, shall execute any further documents required to terminate of the Conservation Agreement as may be required by the Mecklenburg County Office of Sustainability, the terms of the Conservation Agreement or by the Mecklenburg County Register of Deeds. LT
3. Advisory Board. Mecklenburg County may revoke a VAD or EVAD Conservation Agreement based on noncompliance by the landowner. The landowner shall have the right to appeal within sixty (60) days of notification of such revocation following the procedure set forth in Article IX(C).

B. Transfer of Land

Transfers of land in a Voluntary Agricultural District due to death of the landowner, sale, or gift shall not revoke the Conservation Agreement unless the land no longer meets the requirements contained in Article VII.

Transfers of land in an Enhanced Voluntary Agricultural District due to death of the landowner, sale, or gift shall not revoke the Conservation Agreement. New owners are held to the expiration date of the Conservation Agreement as noted on the parcel deed.

C. Enforcement

Enforcement of the terms of a Conservation Agreement for land enrolled in a Voluntary Agricultural District and Enhanced Voluntary Agricultural District shall be limited to revocation of the Conservation Agreement and the benefits derived therefrom.

D. Term

The initial duration of a conservation agreement shall be for ten (10) years.

E. Renewal of Conservation Agreements

VAD conservation agreements shall automatically renew for subsequent ten (10) year terms unless either the landowner or the County provides written notice prior to the expiration of the conservation agreement.

EVAD conservation agreements renew for three (3) year terms after the initial 10-year agreement unless either the landowner or the County provides written notice prior to the expiration of the conservation agreement.

ARTICLE XII PUBLIC HEARINGS

A. Purpose.

Pursuant to N.C.G.S. §160-740, no state or local public agency or governmental unit may formally initiate any action to condemn or rezone any interest in qualifying farmland within a VAD or EVAD until such agency or unit has requested the Advisory Board to hold a public hearing on the proposed condemnation and/or rezoning.

B. Procedure. The hearing procedure shall be as follows:

1. Time period. The total time from the day that the request for a hearing ~~has been~~ was received to the day that a final report is issued to the decision-making body or the agency proposing the condemnation and/or rezoning shall not exceed 45 days. Notice of the public hearing must be published five days prior to the scheduled meeting.
2. Review. The Advisory Board shall meet to review:
 - a. If 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;
 - b. Whether there are alternatives to the proposed action that have less impact and are less destructive to the agricultural activities of the VAD or EVAD-enrolled parcels within which the proposed condemnation action is to take place.
 - c. Land value will not be a factor in the selection between properties under consideration for the proposed action.
3. Consultation. The Advisory Board may consult with individuals, agencies, or organizations as necessary for review of the proposed action.
4. Reporting. After a public 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 agency proposing condemnation and/or rezoning and the general public.
5. Agency shall not formally initiate a condemnation or rezoning action until 120 days after the date of the Agricultural Advisory Board submits its findings and

recommendations to the agency.

ARTICLE XIII ADDITIONAL BENEFITS FOR ENHANCED VOLUNTARY AGRICULTURAL DISTRICTS

- A. **Benefits.** Land enrolled in EVAD is entitled to all the benefits available under the VAD program.
- B. **Additional benefits.** Pursuant to N.C.G.S. §106-743.4, land enrolled in the EVAD program is entitled to the following additional benefits.
1. Sale of nonfarm products. Landowners participating in EVAD may receive up to 25 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. §160D-903. 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 25 percent of its gross sales.
 2. Agricultural cost share program. Landowners participating in EVAD are eligible to receive the higher percentage of cost share funds for the benefit of that farmland under the agricultural cost share program established pursuant to N.C.G.S. §106-850(b).
 3. Priority grant consideration. State departments, institutions, or agencies that award grants to farmers are encouraged to give priority consideration to landowners participating in EVAD.

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 after adoption. At least annually, the Mecklenburg County Sustainability office shall submit a written report to the Commissioner of Agriculture and Consumer Services and such other entities that have a need to know on the county's Voluntary Agricultural District program, including the following: the status, progress and activities of the farmland preservation program. A copy of the report shall be provided to the Board of County Commissioners.

ARTICLE XV LEGAL PROVISIONS

A. **Severability.** If any article, section, subsection, clause, phrase, or portion of this 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. Whenever the provisions of and federal or state statute require more restrictive provisions than are required by this Ordinance the provisions of such statute shall govern. Whenever the provisions of this Ordinance conflict with other ordinances of Mecklenburg County, this Ordinance shall control.

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

D. Notice. A copy of this Ordinance, once adopted, shall be recorded with the N.C. Department of Agriculture and Consumer Services.

ARTICLE XVI ENACTMENT

The Mecklenburg County Board of Commissioners hereby enacts this Ordinance and related Articles and Sections.

Adopted this the ____ day of _____, 20__.

Motion for adoption by _____ and seconded by _____.

MECKLENBURG COUNTY BOARD OF COMMISSIONERS

Chairperson

ATTEST:

Clerk to Board of Commissioners

Approved as to Form

County Attorney