

**CHEROKEE COUNTY  
VOLUNTARY AGRICULTURAL DISTRICT ORDINANCE**

**ARTICLE I  
TITLE**

An Ordinance of the Board of County Commissioners of CHEROKEE COUNTY, NORTH CAROLINA, entitled, "CHEROKEE 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 decrease the likelihood of legal disputes, such as nuisance actions between farm owners and their neighbors.

**ARTICLE IV  
DEFINITIONS**

The following are defined for purposes of this Ordinance:

- Advisory Board:** Cherokee County Agricultural Advisory Board.
- Board of Commissioners:** Cherokee County Board of Commissioners.
- Chairperson:** Chairperson of the Cherokee County Agricultural Advisory Board.
- District:** Voluntary Agricultural District as established by this Ordinance.
- Conservation Agreement** A ten (10) year revocable agreement signed by the landowner committing to keep land in agricultural or forest use, as described in N.C.G.S. 121-35

**ARTICLE V**  
**AGRICULTURAL ADVISORY BOARD**

**A. Creation**

The Board of Commissioners establishes the Cherokee County Agricultural Advisory Board to implement the provisions of this program.

**B. Membership**

1. The Advisory Board shall consist of no less than five (5) members representing the Voluntary Agricultural Districts approved under this Ordinance. County policy for county-appointed boards, commissioners, committees, and authorities adopted May 20, 2013, shall be followed to determine membership of this board.

2. Pursuant to ~153A-76, boards of county commissioners are granted the authority to establish advisory boards and to appoint members to and remove members from those advisory boards. In acting on this authority the Cherokee County Board of Commissioners established certain general conditions to which applicants and members of advisory boards should conform. Pursuant to Cherokee County Policy, the Cherokee County Board of Commissioners established that the Cherokee County Soil and Water Board of Supervisors will serve as the Cherokee County Agricultural Advisory Board Members.

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

4. At least three (3) (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.

5. 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.

6. Additional members may be appointed to the Board in an ex officio capacity with recommendations from the Cherokee County Soil and Water Conservation District Board of Supervisors, as deemed necessary by the Board of Commissioners. Members serving in an ex officio capacity shall neither vote nor count toward quorum requirements.

**D. Tenure**

Pursuant to Cherokee County Policy, the Cherokee County Board of Commissioners established that the Cherokee County Soil and Water Board of Supervisors will serve as the Cherokee County Agricultural Advisory Board Members with their terms running concurrently.

**E. Vacancies**

Any vacancy of a member appointed by the Board of Commissioners on the Advisory Board is to be filled by the Board of Commissioners with recommendations from the Cherokee County Soil and Water Conservation District, for the remainder of the unexpired term.

**F. Removal**

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.

**G. Advisory Board Procedure** *(may be in the ordinance or Advisory Board may adopt by-laws to govern procedures)*

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 Cherokee 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 by all means of public dissemination 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 shall be held at the Cherokee County 409 Building. If this facility is unavailable or if the business of the Advisory Board makes it necessary or more convenient to meet at a different location, the chairperson shall determine this location and provide timely notification to all board members and to the public.
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. Administration: The Cherokee County Soil and Water Conservation District office will serve the Advisory Board for record keeping, correspondence, and whatever services the Board needs in order to complete its duties.

**H. Duties**

The Advisory Board shall:

- Review and approve or disapprove applications of landowners for enrollment of qualified farmland, horticultural land, or forestland into the Voluntary Agricultural Districts. By approval of this Ordinance the County Board of Commissioners has delegated authority pursuant to N.C.G.S. §106-739(1) to enroll qualifying farms into agricultural districts.
- Make recommendations concerning the establishment and modification of Agricultural Districts.
- Conduct public hearings related to public condemnation of qualifying farmland and other agricultural issues.
- Advise the Board of Commissioners on projects, programs, or issues affecting the agricultural economy and agricultural, horticultural or forestry activities within the county that may affect Agricultural Districts.
- Review and make recommendations concerning proposed amendments to this ordinance.
- Study additional methods of protection for farming, horticulture, forestry, and the attendant land base, and make recommendations to the Board of Commissioners.
- Perform other agricultural, horticultural, and forestry-related tasks or duties assigned by the Board of Commissioners.
  - Develop and maintain a draft countywide Farmland Protection Plan as defined in N.C.G.S. ~106-144(e) for presentation to 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 shall meet the following standards:

- When initially established, the District shall contain a minimum of 3 contiguous acres of qualified farmland, OR, two or more qualified farms that, together, contain a minimum of 3 acres and are located within a mile of each other.
- The District shall contain a minimum of 10 contiguous acres of qualified forest land or 3 contiguous acres of qualified horticultural land.
- All land enrolled in a region, defined in Section A, above, shall be part of a single district, whether enrolled in a 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.
- Qualifying farmland in a region with an existing District shall be added to the District as herein provided.
- Landowner(s) requesting inclusion in the VAD shall execute a conservation agreement with the county to sustain agriculture in the VAD in accordance with Article VII of this ordinance. Said agreement shall be in a form which is reviewed and approved by the Advisory Board.

**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 agricultural district program.

**ARTICLE VII  
CERTIFICATION AND QUALIFICATION OF FARMLAND**

**A. Requirements**

In order for farmland to qualify for inclusion in a Voluntary Agricultural District property, it must be real property that meets the following requirements:

1. Is used for bona fide farm purposes, as that term is defined in G.S. 106-743.4(a) and G.S. 160D-903.
2. Be participating in the present-use-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 this program set forth in G.S. 105-277.3.
3. Be managed, if highly erodible land exists on the farm, in accordance with the USDA Natural Resources Conservation Service defined erosion-control practices that are addressed to said highly erodible land.
4. 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 nonfarm use or development of such land for a period of at least ten (10) years, except for the

creation of not more than three (3) lots that meet applicable municipal and county zoning and subdivision regulations. The form of the conservation agreement shall be approved by the agricultural advisory board created under G.S. 106-739.

5. Be located in the unincorporated area of Cherokee County, unless there is an agreement with the 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 submitting an application to the Chairperson of the Advisory Board or to the Cherokee County Soil and Water Conservation District office. The application shall be on forms provided by Cherokee County Soil and Water Conservation District office and approved by the Advisory Board.

2. A conservation agreement (required by N.C.G.S. ~106-737 and defined in N.C.G.S. ~121-35) suited to district type (Voluntary Agricultural District) designated by the landowner to sustain, encourage, and promote agriculture must be executed by the landowner with the Advisory Board, which shall record a certified copy of such with the Cherokee County register of Deeds. Permitted uses include agriculture, horticulture and forestry.

### **B. Approval Process**

Upon receipt of an application, the Cherokee County Soil and Water Conservation District staff will forward copies to the members of the Advisory Board and all ex officio members for their evaluation.

The Advisory Board shall meet within ninety (90) days of receipt of a completed application to determine if the application meets the minimum requirements established by this ordinance. The chairperson shall notify the applicant by first class mail of approval or disapproval within fifteen (15) days.

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:

1. The Cherokee County tax assessor;
2. The Cherokee County Soil and Water Conservation District

### **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 NOTIFICATION**

### **A. Public Awareness**

Upon approval of a Voluntary Agricultural District the Cherokee County Soil and Water Conservation District staff shall provide notification of said District to the following:

- Notification shall be mailed to the property owner / applicant by first class mail.
- The Cherokee County Tax Department/GIS Mapping shall maintain maps of approved Districts within the Cherokee County Geographic Information Mapping System Database as well as an overlay for all tracts located within one-half (1/2) mile of the property line of any tract of land enrolled in a voluntary agricultural district.
- The mapping information 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 an agricultural district. This mapping information may be viewed by accessing the Cherokee County GIS website.
- Notice of these methods of District notification and identification shall be included in all Cherokee County Voluntary Agricultural District Program information brochures made available to the public by Cherokee County Cooperative Extension and others.

### **B. Signage**

Cherokee County may place signs identifying approved Agricultural Districts along major roads that pass through or next to those districts. Members of the Agricultural Districts 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-ways or easements and shall conform to Chapter 11, Sign Regulations, of the Cherokee County Zoning Ordinance.

### **C. Maps**

Maps identifying approved agricultural districts shall be updated at least twice each year and shall be prominently displayed at the following agencies or offices:

- Cherokee County Cooperative Extension

- Cherokee County Soil and Water Conservation District office
- Cherokee County Register of Deeds
- Any other such agency or office the Advisory Board deems appropriate

**D. 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 X  
REVOCATION AND ENFORCEMENT, TRANSFER OF LAND, AND  
RENEWAL OF CONSERVATION AGREEMENTS**

**A. Revocation and Enforcement**

By providing 30 days' written notice to the Advisory Board, a landowner of qualifying farmland may revoke his/her participation in the Voluntary Agricultural District Program formulated pursuant to Article VIII of this ordinance, or the Advisory Board may revoke the same participation based on noncompliance by the landowner. Such revocation shall result in loss of qualifying farm status and loss of eligibility to participate in a district. If the Advisory Board shall revoke this Conservation Agreement for cause, the landowner shall have the appeal rights set forth in Article VIII(C). Absent noncompliance by the landowner, neither the Advisory Board nor the Board of Commissioners shall revoke any Conservation Agreement prior to its expiration. The county will remove the tract from the public record of the program within a reasonable time frame (60 days).

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

**C. Renewal of Conservation Agreements**

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. 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.

**D. Term**

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

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

**A. No Connection Required**

1. A landowner belonging to a District shall not be required to connect to Cherokee County water and/or sewer 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.

**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 Limitation**

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 limitations upon collecting water and sewer assessments, or other utility 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 Improvement 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. This section shall not apply to utilities that are not owned by the County

unless the County has entered into an agreement with the entity(ies) owning the utilities and that agreement provides that this Ordinance shall apply.

## **ARTICLE XII PUBLIC HEARINGS ON CONDEMNATION OF FARMLAND**

### **A. Purpose**

Pursuant to N.C.G.S. §106-740, 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**

Upon receiving a request to hold a hearing on the proposed condemnation, the Advisory Board shall publish notice describing the proposed action in the appropriate newspaper of Cherokee County within twenty-one (21) 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 thirty (30) days of receipt of the request.

The Advisory Board shall meet to review:

1. 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.
2. 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 Cherokee County Soil and Water Conservation District, and any other individuals, agencies, or organizations deemed by the Advisory Board to be necessary for its review of the proposed action. Land value will not be a factor in the selection between properties under consideration for 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 for comment prior to its being conveyed to the decision-making body of the agency proposing the acquisition by condemnation.
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 by condemnation.
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. The State, local government agency or governmental unit proposing to acquire property by condemnation may not formally initiate condemnation action while the proposed condemnation is properly before the Advisory Board. The Board of Commissioners shall condemn farmland within an Agriculture District only as a "last resort" if it is considering condemnation for County purposes.

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

Developers of major subdivisions, apartment complexes or planned unit developments shall designate on preliminary development plans, the existence of any and all Agricultural Districts within ½ aerial mile of the proposed development.

**ARTICLE XIV  
COUNTY LAND-USE PLANNING**

**A. Duty of the Advisory Board**

It shall be the duty of the Advisory Board to advise the Board of Commissioners or the agency or office to which the Board of Commissioners has delegated the 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 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 Cherokee County Soil and Water Conservation District office and the Cherokee County Register of Deeds any other office or agency the Advisory Board deems necessary:

Cherokee County 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, prescribed burning, and other common farming activities may occur in these districts any time during the day or night. Maps,

either physical copies or provided through a GIS viewer, and information on the location and establishment of these districts can be viewed and/or obtained from Cherokee County Soil and Water Conservation District, Cherokee County Cooperative Extension, Cherokee County Tax Department/GIS Mapping, Register of Deeds or the Natural Resources Conservation Service.

**C. Growth Corridors**

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

**ARTICLE XV  
CONSULTATION AUTHORITY**

The Advisory Board may consult with Cherokee County Soil and Water Conservation District, Cherokee County 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 XVI  
NORTH CAROLINA AGENCY NOTIFICATION**

At least annually, Cherokee County Soil and Water Conservation District shall submit a written report to the Office of the Commissioner of Agriculture and Consumer Services on the county's agricultural district program, including the following information:

- Number of landowners enrolled
- Number of acres enrolled
- Number of acres certified during the reporting period
- Number of acres denied during the reporting period
- Number of acres for which applications are pending
- Municipalities with which Memorandums of Understanding have been signed;
- Municipalities that have adopted this Ordinance for the purpose of the county enforcing this Ordinance within their corporate boundaries;
- Copies of any amendments to this Ordinance;
- Any other information the Advisory Board deems useful;

- A copy of this report shall also be provided to the Board of Commissioners, Cherokee County Cooperative Extension Service, Cherokee County Tax Department/GIS Mapping, and Cherokee County Forest Service.

**ARTICLE XVII  
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 with other ordinances and statutes**

Whenever the provisions of this Ordinance conflict with other ordinances of Cherokee County, 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 Board of Commissioners. The Board of Commissioners shall consult with the Advisory Board prior to any amendment for Public Hearing.

**D. Notice**

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

**ARTICLE XVII  
ENACTMENT**

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

Adopted this the 28<sup>th</sup> day of October, 2024.

Randy Phillips  
Chairperson

ATTEST:

Mama Harris  
Clerk to Board of Commissioners

