

**CHAPTER 158: TOWN OF TRYON ENHANCED FARMLAND
PRESERVATION PROGRAM ORDINANCE**

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§ 158.01 AUTHORITY

The articles and sections of this ordinance are adopted pursuant to authority conferred by the N. C. G. S. Sections 106-735 through 106-744 and Chapter 160A.

§ 158.02 PURPOSE

The purpose of this ordinance is to promote agricultural values and the general welfare of the Town of Tryon and more specifically, increase identity and pride in the agricultural community and its way of life; encourage the economic and financial health of agriculture; and increase protection from non-farm development and other negative impacts on properly managed farms.

The Enhanced Agricultural Development and Farmland Preservation Program Ordinance creates a district that will provide greater benefits to farmers than the Voluntary Farmland Preservation Ordinance. Participating farms will be allowed to receive up to 25% of their gross sales from certain types of non-farm products and still qualify for agricultural zoning exemptions and be eligible for a higher percentage of cost-share program funding and have priority for other state and local grant programs.

§ 158.03 DEFINITIONS

The following are defined for purposes of this ordinance:

Advisory Board: Polk County Agricultural Advisory Board.

Chairperson: Chairperson of Polk County Agricultural Advisory Board.

District: Voluntary Agricultural District as established by this ordinance.

§ 158.04 AGRICULTURAL ADVISORY BOARD

A. Creation

The Enhanced Agricultural Preservation Ordinance will be implemented by the existing Voluntary Farmland Preservation Board as appointed by the Polk County Board of Commissioners. This Advisory Board will oversee both county and municipal ordinances in Polk County.

B. Membership

The Advisory Board shall consist of no fewer than 7 (seven) members appointed by the Polk County Board of Commissioners.

C. Membership Requirements

1. Each Advisory Board member shall be a Polk County resident.
2. At least 5 of the 7 members shall be actively engaged in farming.
3. The members shall be selected for appointment by the Polk County Board of Commissioners from the names of individuals submitted to the Polk County Board of Commissioners by the Soil and Water Conservation District, the Cooperative Extension Service, the Farm Service Agency – Polk County Committee Members, and the Polk County Farm Bureau with an effort to have the broadest geographical representation possible.

D. Tenure

The initial board is to consist of 2 (two) appointees for terms of one year; 2 (two) appointees for terms of two years; and 3 (three) appointees for terms of three years. Thereafter, all appointments are to be for terms of three years, with reappointment permitted.

E. Vacancies

Any vacancy on the Advisory Board is to be filled by the Polk County Board of Commissioners for the remainder of the unexpired term as per Article IV, Section C.3.

F. Removal

Any member of the Advisory Board may be removed for cause by the Polk County Board of Commissioners subsequent to written charges being presented to the member and after a public hearing on the matter.

G. Funding

Funds may be appropriated by the Polk County Board of Commissioners to the agricultural advisory Board to perform its duties. Additionally, funds may be appropriated for specific use in the Enhanced Agricultural Development and Farmland Preservation Program of the Town of Tryon by the Town of Tryon Board of Commissioners for use in the Town of Tryon Program.

H. Advisory Board Procedure

1. Chairperson

The Advisory Board shall elect a chairperson and vice-chairperson each year at its 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. Jurisdiction

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

3. Advisory Board Year

The Advisory Board shall use the Polk County fiscal year as its meeting year.

4. Meetings

Meetings of the Advisory Board shall be held at the call of the chairperson and at such times as the Advisory Board may specify in its rules of procedure. Notice of any meetings to the members shall be in writing. All

meetings will be open to the public. A quorum consisting of 4 of the 7 Advisory Board members must be present to conduct official business.

5. Majority Vote

The concurring vote of a majority of the quorum of the Advisory Board shall be necessary to reverse any order, requirement, decision, or determination of the Agricultural Advisory Board; to decide in favor of an applicant; or to pass upon any other matter on which it is required to act under this ordinance.

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 filed in the Polk Soil and Water Conservation District office.

I. Duties

The Advisory Board shall:

1. Review and approve applications for qualified farmland and enhanced agricultural districts and make recommendations concerning the establishment and modification of these agricultural districts;
2. Conduct public hearings per Article IX.
- 3 . Advise the Polk County Board of Commissioners and the Tryon Board of Commissioners on projects, programs, or issues affecting the agricultural economy or activities within the county that will affect agricultural districts;
4. Review and make recommendations concerning proposed amendments to this ordinance;
5. Study additional methods of farmland preservation and make recommendations to the Polk County Board of Commissioners and the Tryon Board of Commissioners; and
6. Perform other agricultural related tasks or duties assigned by the Polk County Board of Commissioners.

§ 158.05 CREATION OF ENHANCED AGRICULTURAL DISTRICTS

A. Implementation

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

1. The District shall contain a minimum of 25 contiguous acres of qualified farmland; or
2. The District shall contain two or more qualified farms, which contain a minimum of 25 acres and are located within a mile of each other.

B. Encourage Formation

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 purpose and objectives, including the implementation of a public information program to reasonably inform landowners of the farmland preservation program.

C. Display

The Districts shall be marked on county maps displayed for public view in the following county offices:

1. Register of Deeds
2. Planning Department
3. Tax Supervisor
4. Soil and Water Conservation District
5. Agricultural Extension
6. County Land Records
7. Any other office deemed necessary by the Advisory Board

D. Withdrawal

Enhanced Agricultural Districts require an irrevocable agricultural term easement between the Agriculture Advisory Board and the agriculture producer that cannot be revoked for ten (10) years.

§ 158.06 CERTIFICATION AND QUALIFICATION OF FARMLAND

A. Requirements

1. To secure county certification as qualifying farmland, a farm must:

- a. be eligible for the farm present -use-value program established by N.C.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;
 - b. be certified by the Soil and Water Conservation Service of the United States Department of Agriculture as being a farm on which at least two-thirds of the land is composed of soils that are best suited for providing food, seed, fiber, forage, timber, forestry products, horticultural crops and oil seed crops or have been actively used in agricultural, horticultural or forestry operations as defined by N. C. 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 questions qualifies;
 - c. be managed, if highly erodible land exists on the farm, in accordance with the Soil Conservation Service defined erosion-control practices that are addressed to said highly erodible land; and
 - d. be the subject of an agricultural term easement, 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 ten (10) years, except for the creation of not more than three lots that meet applicable county zoning and subdivision regulations.
2. Qualifying documentation for the term easement shall be attached to the deed by the landowner.

§ 158.07 APPLICATION, APPROVAL, AND APPEAL PROCEDURE

A. Application Procedure

1. A landowner may apply to participate in either farmland program by making application to the chairperson of the Advisory Board or a designated staff person. The application shall be on forms provided by the Advisory Board. The application to participate in the Enhanced Agricultural Program may be filed with the certification for qualifying farmland.
2. An agreement to sustain, encourage, and promote agriculture must be executed by the landowner and recorded with the Advisory Board.

B. Approval Process

1. Upon submission of the application to the Advisory Board, the Advisory

Board shall meet within 60 days to review the application. The chairperson shall notify the applicant by first class mail of approval or disapproval of participation in the district.

2. Upon receipt of an application, the chairman will forward copies immediately to:
 - a. The Polk County tax assessor's office; and
 - b. The Polk County Soil and Water Conservation Service office. The offices shall evaluate, complete and return their copies to the chairperson within 30 days of receipt.

C. Appeal

If an application is denied by the Advisory Board, the petitioner shall have thirty (30) days to appeal the decision to the Polk County Board of Commissioners. Such appeal shall be presented in writing. The decision of the Polk County Board of Commissioners is final.

§ 158.08 REVOCATION AND RENEWAL OF PRESERVATION AGREEMENT

A. Revocation

The Advisory Board may revoke the Preservation Agreement based on noncompliance by the landowner, subject to the same provisions as contained in Article VII for appeal of denials. Such revocation shall result in loss of qualifying farm status and loss of eligibility to participate in a district.

B. Renewal

An agricultural easement entered into between a county or municipalities and landowner pursuant to G. S. 106-743.1(a)(2) shall be irrevocable for a period of ten (10) years from the date the agreement is executed. At the end of its term, an agricultural easement shall automatically renew for a term of three (3) years, unless notice of termination is given in a timely manner by either party as prescribed in the ordinance establishing the enhanced agricultural program. The benefits set forth in this Part shall be available to the farmland that is the subject of the agricultural easement for the duration of the agricultural easement.

§ 158.09 PUBLIC HEARINGS

A. Purpose

Pursuant to N. C. G. S. 106-740, which 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 ordinance provides for such hearing.

B. Procedure

1. Upon receiving a request, the Advisory Board shall publish notice describing the proposed action in the appropriate newspapers of Polk 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 thirty (30) days of receipt of the request.
2. 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. 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, U. S. D. A. Soil Conservation Service District Conservationist, the Polk County Farm Bureau and may consult with 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 30 days after the public hearings, 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 acquisition.
5. Pursuant to N. C. G. S. 106-740, the Polk County 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.

§ 158.10 PUBLIC NOTICE

A. Procedure

Upon certification of qualified farmland, the Polk County Land Records System

shall be changed to include a notice reasonably calculated to alert a person researching the title of a particular tract that such tract is located within one-half aerial mile of enrolled farmland in the Enhanced Agricultural Program.

B. Limit of Liability

In no event shall the county, the municipality or any of their 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 ordinance.

C. 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 voluntary agricultural district as defined in this ordinance.

§ 158.11 SUBDIVISION ORDINANCE AND ZONING ORDINANCE REVIEW

Developers of major subdivisions or planned unit developments shall designate on preliminary development plans, the existence of an Enhanced Agricultural property within one-half aerial mile of the proposed development.

§ 158.12 WAIVER OF WATER AND SEWER ASSESSMENTS

A. No Connection Required

A landowner belonging to the Enhanced Agricultural Program shall not be required to connect to the Water and Sewer Authority of Polk County or Town of Tryon water/sewer systems.

B. Abeyance

Water and sewer assessments shall be held in abeyance, without interest, for farms in an agricultural 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 Limitations

Statutes of limitations are suspended during the time that any assessment is held

in abeyance without interest.

E. Other Statutory Abeyance Procedure

Nothing in this section is intended to diminish the authority of the county or municipalities to hold assessments in abeyance under N. C. G. S. 153A-201, or other applicable law.

§ 158.13 COUNTY LAND-USE PLANNING

A. Purpose

The purpose of this article 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. Procedure for Notification

1. Generally the Advisory Board, in cooperation with the County and Municipalities, shall provide notification of property owners, residents, and other interested persons, in and adjacent to, any designated agricultural 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 this district any time during the day or night. These activities may include but are not limited to the following: irrigation, pesticide spraying, machinery and truck operations, livestock operations, sawing, and similar activities.
2. Types of Notification:
 - a. Signs identifying approved agricultural districts may be placed along the rights-of-way of major roads.
 - b. Maps identifying approved districts shall be provided to the Register of Deeds, the Soil and Water Conservation Office, the Building Inspections Office, the Tax Office, and the County Planning Department.
 - c. The following notice shall be posted in the Office of the Register of Deeds, the Tax Office, the Building Inspections Office and the County Planning Department of the County Courthouse:

*“Notice to Real Estate Purchasers in Polk County
Polk County Agricultural Districts
Polk 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 activities, including but not limited to irrigation, pesticide spraying, manure spreading, machinery and truck operations, sawing, and similar activities, may take place in these districts any time of day or night. Maps and information on the location and establishment of these districts can be obtained from the Cooperative Extension Office, Register of Deeds Office, County Planning Office, and the Soil and Water Conservation Service.”

- d. Upon the recordation of maps in the Tax Office and the Register of Deeds Office pursuant to Article XIII, 2.b., the County Tax Assessor’s Office shall set forth in the general remarks’ section of the parcel detailed appraisal inquiry, real estate inquiry functions, with preservation district, and such notation will also be placed upon the maps of property maintained in the Tax Office.

C. Condemnation Proceeding

Prior to initiating condemnation proceedings which would convert land in an Enhanced Agricultural Program to non-farm uses, the county or any other local unit of government shall submit to the Advisory Board a statement that the governmental unit has considered alternatives to condemning farmland in the District.

§ 158.14 CONSULTATION AUTHORITY

The Advisory Board may consult with Cooperative Extension Office, the Polk County Soil and Water Conservation Service Office, the North Carolina Department of Agriculture, the Polk County Farm Bureau, and any other such agency the Advisory Board deems necessary to properly conduct its business.

§ 158.15 NORTH CAROLINA AGENCY NOTIFICATION

A. Record Annually with the Department of Agriculture

A record of this ordinance shall be recorded with the North Carolina Commissioner of Agriculture’s office after adoption. At least once a year the Advisory Board shall submit a written report to the Commissioner of Agriculture concerning the status, progress and activities of the Town of Tryon’s Enhanced Development and Farmland Preservation Program, including District information regarding:

- 1. Number of landowners enrolled;

2. Number of acres applied;
3. Number of acres certified;
4. Number of acres denied;
5. Date certified.

158.16 LEGAL PROVISIONS

A. Severability

If any article, section, subsection, clause, phrase, or portion of this ordinance is for any reason invalid or unconstitutional as determined by the 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 Statues

Whenever the provisions of any federal or state statute require more restrictive provisions than are required by this ordinance, the provisions of such statue shall govern.

C. Amendments

This ordinance may be amended from time to time by the Tryon Board of Commissioners after notification of and consultation with the Agricultural Advisory Board.

(Ord. 2007-28, passed 10-16-07)