

ORDINANCE NO.

THE EMERGENCY MANAGEMENT ORDINANCE OF BUNCOMBE COUNTY

- WHEREAS, with the passage of S.L. 2012-12, the State of North Carolina repealed Article 1, Ch. 166A, the North Carolina Emergency Management Act of 1977, and replaced it with Article 1A, Ch. 166A, the North Carolina Emergency Management Act; and
- WHEREAS, current Buncombe County emergency management plans are compliant with all State standards and requirements; and
- WHEREAS, Staff attorney and Emergency Service Director recommend that this Board adopt an emergency management ordinance in order to assure that all resources and emergency powers are immediately available in the event of an emergency and, if required, to streamline the process for the declaration of a state of emergency.

NOW, THEREFORE, BE IT ORDAINED BY THE Board of Commissioners for the County of Buncombe that:

Section 1. The Buncombe County Code of Ordinances Chapter 21 is hereby established as follows:

Chapter 21 - EMERGENCY MANAGEMENT

ARTICLE I. IN GENERAL

Sec. 21-1. Short title.

This Ordinance shall be known and may be cited and referred to as "The Emergency Management Ordinance of Buncombe County."

Sec. 21-2. Purpose Statement

The purposes of this Ordinance are to set forth the authority and responsibility of Buncombe County in prevention of, preparation for, response to, and recovery from natural or man-made emergencies or hostile military or paramilitary action and to do the following:

- a) Reduce vulnerability of people and property of this County to damage, injury, and loss of life and property.
- b) Prepare for prompt and efficient rescue, care, and treatment of threatened or affected persons.
- c) Coordinate with state and federal agencies for the orderly rehabilitation of persons and restoration of property.
- d) Provide for cooperation and coordination of activities relating to emergency mitigation, preparedness, response, and recovery among agencies and officials of this County and with

similar agencies and officials of other counties, with state and federal governments, with interstate organizations, and with other private and quasi-official organizations.

21.3. Definitions.

The following definitions apply in this Ordinance:

Chair of the Board of County Commissioners: The chair of the board of county commissioners or, in case of the chair's absence or disability, the person authorized to act in the chair's stead. Unless the governing body of the county has specified who is to act in lieu of the chair with respect to a particular power or duty set out in this Ordinance, this term shall mean the person generally authorized to act in lieu of the chair.

County-authorized emergency management personnel: Persons duly registered, identified and appointed by the Director of the county emergency management agency and assigned to participate in an emergency management activity,

Emergency: An occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made accidental, military, paramilitary, weather-related, or riot-related cause.

Emergency area: The geographical area covered by a state of emergency.

Emergency management: Those measures taken by the populace and governments at federal, state, and local levels to minimize the adverse effect of any type emergency, which includes the never-ending preparedness cycle of planning, prevention, mitigation, warning, movement, shelter, emergency assistance, and recovery.

Emergency management agency: The local governmental agency charged with coordination of all emergency management activities for its jurisdiction.

Hazardous materials: Any material defined as a hazardous substance under 29 Code of Federal Regulations, 1910.120(a)(3).

Political subdivision: Counties, incorporated cities, and towns.

State of emergency: A finding and declaration that an emergency exists by the Board of Commissioners or the Chair of the Board of Commissioners, acting under the authority of G.S. 166A-19.22.

Secs. Reserved.

ARTICLE. II. EMERGENCY MANAGEMENT AGENCY

Sec. 21-31. Authority.

Pursuant to NCGS 166A, the North Carolina Emergency Management Act, a county emergency management agency is hereby established.

Sec. 21-32. Establishment; Director.

The Buncombe County Emergency Services Director serves as the Director of the emergency management agency.

Sec. 21-33. Intent

The intent of this Ordinance is to establish an agency that will ensure the complete and efficient utilization of all of the County's resources to combat emergencies as defined in this Ordinance.

The emergency management agency will be the coordinating agency for all activity in connection with emergency management. It will be the instrument through which the Board of Commissioners may exercise its authority and discharge the responsibilities vested in it during an emergency.

Sec. 21-34. Organization and appointments.

The Emergency Services Director, as Director, subject to the direction and guidance of the Board of Commissioners, shall be responsible for the organization, administration and operation of the emergency management agency, and shall designate and appoint deputy Directors to assist with the duties of the Director in his absence or inability to act.

Sec. 21-35. Duties and responsibilities of Director.

For the purposes of this Ordinance, the Director shall include, but not be limited to, the following:

- Enter into contracts, obtain and distribute equipment, materials, and supplies for emergency management purposes and to provide for the health and safety of persons and property, including emergency assistance, consistent with this Ordinance;
- Direct and coordinate the development of emergency management plans and programs in accordance with the policies and standards set by the North Carolina Division of Emergency Management, consistent with federal and State laws and regulations;
- Be responsible for the planning, coordination and operation of the emergency management activities in the county;
- Be responsible for cooperation and maintenance of liaison with state and federal authorities and the authorities of other political subdivisions to ensure the most effective operation of the emergency management plans;
- Coordinating the recruitment of volunteer personnel and agencies to augment the personnel and facilities of the county for emergency management purposes;

- Such services from persons outside of government may be accepted by local government on a volunteer basis;
- Developing and coordinating plans for the immediate use of all facilities, equipment, manpower and other resources of the county for the purpose of minimizing or preventing damage to persons and property; and protecting and restoring to usefulness governmental services and public utilities necessary for the public health, safety, and welfare;
- Enter into agreements with owners or persons in control of buildings or other property for the use of such buildings or other property for the emergency management purposes and designating suitable buildings as public shelters;
- Through public informational programs, educating the populace as to actions necessary and required for the protection of their persons and property in an emergency, either impending or present;
- Conducting drills and exercises to ensure the efficient operation of the emergency management forces and to familiarize residents with emergency management regulations, procedures and operations;
- Coordinating the activity of all other public and private agencies engaged in any emergency management activities;
- When personnel, equipment, or supplies for an emergency function are not available within the local government, the Director is authorized to seek assistance from other governments or from persons outside of government;
- The assignment of duties, when of a supervisory nature, shall also include the granting of authority for the persons to carry out duties prior to, during, and after the occurrence of an emergency; and
- The invoicing of persons liable for hazardous materials release, and, in the event of non-payment, the discretion to proceed with legal action to recover costs.

Sec. 21-36. Emergency management plans.

(a) Comprehensive emergency management plans shall be adopted by resolution of the Board of Commissioners. In the preparation of these plans as they pertain to County organization, it is intended that the services, equipment, facilities, and personnel of all existing departments and agencies shall be utilized to the fullest extent. All departments and agencies have the responsibility to perform the functions assigned by these plans and be in a current state of readiness at all times. These plans shall have the effect of law whenever an emergency, as defined in this Ordinance, has been declared.

(b) The Director shall prescribe those positions within the emergency organizational structure for which lines of succession are necessary. In each instance, the responsible person will designate and keep on file with the Director a current list of three persons as successors to his

position. The list will be in order of succession and will designate persons best capable of carrying out all assigned duties and functions.

(c) Any individual assigned responsibility in the plans shall be responsible for carrying out all assigned duties and functions. Duties include the organization and training of assigned employees and, where needed, volunteers. Each individual shall formulate the standing operating procedure to implement the plans.

(d) The Director may submit recommended changes to the Board of Commissioners.

Secs. Reserved.

ARTICLE III. DECLARATION OF STATE OF EMERGENCY

Sec. 21-66. Declaration.

A state of emergency may be declared by the Board of Commissioners if it finds that an emergency exists. Recognizing that circumstances and practical considerations may dictate a more opportune course, a state of emergency may be declared by the chairperson of the Board of Commissioners when he or she finds that an emergency exists. The declaration shall be in writing; shall activate any or all of the prohibitions and restrictions as authorized below and any and all applicable local plans, mutual assistance compacts, and agreements; and shall also authorize the furnishing of assistance thereunder. Reasonable steps shall be taken to give notice to the public of the terms of the declaration. Reports of the substance of the declaration shall be sent to the mass communications media which serve the affected area.

Sec. 21-67. Area.

The declaration of state of emergency shall include a definition of the area constituting the emergency area. The emergency area of a state of emergency declared shall not include any area within the corporate limits of any municipality, or within any area of the county over which a municipality has jurisdiction to enact general police-power ordinances, unless the municipality's governing body or mayor consents to or requests the state of emergency's application.

Sec. 21-68. When States of Emergency Take Effect.

Upon the declaration of a state of emergency by the Board of Commissioners or Chair of the Board of County Commissioners enacted under the authority of this Ordinance shall take effect immediately unless the ordinance or declaration sets a later time.

Sec. 21-69. Expiration of States of Emergency.

Unless otherwise stated in the Declaration or the ordinance imposing Prohibitions and Restrictions adopted pursuant to this Ordinance, a state of emergency declared pursuant to this Ordinance shall expire when it is terminated by the official or governing body that declared it.

Sec. 21-70. Prohibitions and Restrictions authorized.

The declaration of state of emergency may or may not include any or all of the following authorized prohibitions and restrictions. Further, the authority to impose by declaration such prohibitions and restrictions under this section, and to impose those prohibitions and restrictions at a particular time as appropriate, may be exercised by official or governing body that declared it. The permitted prohibitions and restrictions:

1. movements of people in public places, including imposing a curfew; directing and compelling the voluntary or mandatory evacuation of all or part of the population from any stricken or threatened area within the governing body's jurisdiction; prescribing routes, modes of transportation, and destinations in connection with evacuation; and controlling ingress and egress of an emergency area, and the movement of persons within the area;
2. the operation of offices, business establishments, and other places to or from which people may travel or at which they may congregate;
3. the possession, transportation, sale, purchase, and consumption of alcoholic beverages.
4. the possession, transportation, sale, purchase, storage, and use of gasoline, and dangerous weapons and substances, except that this subdivision does not authorize prohibitions or restrictions on lawfully possessed firearms or ammunition. As used in this subdivision, the term "dangerous weapons and substances" has the same meaning as it does under NCGS 14-288.1. As used in this subdivision, the term "firearm" has the same meaning as it does under NCGS 14-409.39(2); and
5. other activities or conditions the control of which may be reasonably necessary to maintain order and protect lives or property during the state of emergency.

Sec. 21-71. When Prohibitions and Restrictions Take Effect.

All prohibitions and restrictions imposed by authority of this section shall take effect in the emergency area immediately upon publication of the declaration unless the declaration sets a later time. For the purpose of requiring compliance, publication may consist of reports of the substance of the prohibitions and restrictions in the mass communications media serving the emergency area or other effective methods of disseminating the necessary information quickly. As soon as practicable, however, appropriate distribution of the full text of any declaration shall be made.

Sec. 21-72. Authorized personnel.

The declaration of a state of emergency may or may not exempt from all or any part of prohibitions and restrictions the following persons or groups of persons while acting in the line of and within the scope of their respective duties:

- Law enforcement officers, firefighters and other public employees, rescue squad members, doctors, nurses, employees of hospitals and other medical facilities;
- On-duty military personnel, whether state or federal;

- On-duty employees of public utilities, public transportation companies, and newspaper, magazine, radio broadcasting, and television broadcasting corporations operated for profit; and
- Such other classes of persons as may be essential to the preservation of public order and immediately necessary to serve the safety, health, and welfare needs of people within the county.

Sec. 21-73. Expiration of Prohibitions and Restrictions.

The Prohibitions and restrictions imposed pursuant to this section shall expire upon the earliest occurrence of any of the following:

- a. The prohibition or restriction is terminated by the official or government body that imposed the prohibition or restriction;
- b. The state of emergency is terminated.

Sec. 21-74. Supplemental Authority.

This section is intended to supplement and confirm the powers conferred by NCGS 153A-121(a), G.S. 160A-174(a), and all other general and local laws authorizing counties to enact ordinances for the protection of the public health and safety in times of riot or other grave civil disturbance or emergency.

Secs. Reserved.

ARTICLE IV. MISCELLANEOUS PROVISIONS.

Sec. 21-126. Superseding and amendatory proclamations.

The Board of Commissioners or chair may invoke the restrictions authorized by this Ordinance in separate declarations and may amend any declaration by means of a superseding declaration in accordance with the procedures set forth in Ordinance pertaining to the prohibitions and restrictions authorized.

Sec. 21-127. Termination of Declaration.

A state of emergency declared under this Ordinance shall expire when terminated by the Board of Commissioners or chair following the same procedures set forth in this Ordinance.

Sec. 21-128. Absence or disability of Chairperson.

In the absence or disability of the Chair, the vice-chair of the Board of Commissioners or such other Commissioner as may be designated by the Board of Commissioners shall have and exercise all of the powers given the Chair in this Ordinance.

Sec. 21-129. Governmental Functions.

All functions and other activities relating to emergency management as provided for in this Ordinance or elsewhere in the Buncombe County Code of Ordinances are hereby declared to be governmental functions. Except in cases of willful misconduct, gross negligence, or bad faith, any emergency management worker, firm, partnership, association, corporation, or agent complying with or reasonably attempting to comply with this Ordinance or any order, rule, or regulation promulgated pursuant to the provisions of this Ordinance or pursuant to any ordinance relating to any emergency management measures enacted by the County, shall not be liable for the death of or injury to persons, or for damage to real or personal property as a result of any such activity.

Sec. 21-130. No Private Liability.

Any person, firm, or corporation, together with any successors in interest, if any, owning or controlling real or personal property who, voluntarily or involuntarily, knowingly or unknowingly, with or without compensation, grants a license or privilege or otherwise permits or allows the designation or use of the whole or any part or parts of such real or personal property for the purpose of activities or functions relating to emergency management as provided for in this Ordinance or elsewhere in the Buncombe County Code of Ordinances shall not be civilly liable for the death of or injury to any person or the loss of or damage to the property of any persons where such death, injury, loss, or damage resulted from, through, or because of the use of the real or personal property for any of the above purposes, provided that the use of the property is subject to the order or control of or pursuant to a request of the State government or Buncombe County.

Sec. 21-131. Violations.

Any person who violates any provision of an ordinance or a declaration enacted or declared pursuant to this Ordinance shall be guilty of a Class 2 misdemeanor in accordance with NCGS 14-288.20A.

Sec. 21-132. Civil liability of persons who willfully ignore a warning in an emergency.

In an emergency, a person who willfully ignores a warning regarding personal safety issued by a federal, State, or local law enforcement agency, emergency management agency, or other governmental agency responsible for emergency management under Ordinance is civilly liable for the cost of a rescue effort to any governmental agency or nonprofit agency cooperating with a governmental agency conducting a rescue on the endangered person's behalf if all of the following are true:

- 1) The person ignores the warning and (i) engages in an activity or course of action that a reasonable person would not pursue or (ii) fails to take a course of action that a reasonable person would pursue.
- 2) As a result of ignoring the warning, the person places himself or herself or another in danger.
- 3) A governmental rescue effort is undertaken on the endangered person's behalf.

Secs. Reserved

Section 2. If any section, subsection, sentence, clause, or phrase of this ordinance is, for any reason, held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Commissioners hereby declare that it would have passed this ordinance, and

each section, subsection, sentence, clause, or phrase thereof irrespective of the fact that anyone or more sections, subsections, sentences, clauses, or phrases be declared invalid.

Section 3. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 4. This ordinance is effective upon adoption.

Read, approved and adopted this 3rd day of June, 2014.

ATTEST

BOARD OF COMMISSIONERS FOR THE
COUNTY OF BUNCOMBE

Kathy Hughes, Clerk

By: _____
David Gantt, Chairman

APPROVED AS TO FORM

County Attorney