

ORDINANCE NO. _____

ORDINANCE AMENDING THE TEXT OF CHAPTER 78, ARTICLE VI OF THE BUNCOMBE COUNTY CODE OF ORDINANCES, THE ZONING ORDINANCE OF BUNCOMBE COUNTY

WHEREAS, pursuant to N.C. Gen. Stat. § 153A-340, the County may adopt a zoning ordinance to regulate development within its territorial jurisdiction;

WHEREAS, on December 1, 2009, the Buncombe County Commissioners enacted Buncombe County Ordinance No. 09-12-01 which established a comprehensive zoning plan for the properties located in Buncombe County outside of the boundaries of incorporated municipalities and their zoning jurisdictions;

WHEREAS, pursuant to N.C. Gen. Stat. § 153A-323, the County may amend its zoning ordinance after giving proper public notice and holding a public hearing;

WHEREAS, in accordance with the procedures set forth in the Buncombe County Zoning Ordinance, the Buncombe County Planning Board met to consider the proposed amendments and recommended in a vote of 6 to 0 on December 2, 2013 that the amendments related to public and private utilities and energy generation facilities are consistent with the Buncombe County Comprehensive Land Use Plan and Updates thereto, and reasonable and in the public interest, and further recommended that the Board of Commissioners approve the proposed amendments;

WHEREAS, this Board has reviewed the written recommendations of the Buncombe County Planning Board which found that the proposed amendments are consistent with the Buncombe County Comprehensive Land Use Plan and Updates thereto, and reasonable and in the public interest, and further recommended that the Board of Commissioners approve the proposed amendments; and

WHEREAS, in accordance with North Carolina General Statutes and with the provisions set forth in Division 8 of Chapter 78, Article VI of the Buncombe County Code of Ordinances, the Board of Commissioners duly advertised and held a public hearing to consider the proposed amendments.

NOW, THEREFORE, BE IT ORDAINED BY THE BUNCOMBE COUNTY BOARD OF COMMISSIONERS THAT:

Section 1. This Board finds that the adoption of the proposed amendments to The Zoning Ordinance are consistent with the Buncombe County Land Use Plan and updates and are reasonable and in the public interest based upon the reasons set forth by the Planning Board in their resolution dated December 2, 2013;

Section 2. That this Board does hereby approve the following amendments to The Zoning Ordinance of Buncombe County:

Add to Section 78-581. Definitions.

Private utilities and related facilities means utility structures including, but not limited to, pumping stations, electricity generation facilities, transformers, utility poles, transmission lines, and pipelines that require a specific location to provide service. These facilities are considered to be private facilities if they are accessories to the facility or development upon which they are located and do not provide service to exterior properties or customers. This definition does not include telecommunications towers or public safety communications towers as defined by this Ordinance or their related infrastructure. Private utilities intended to serve up to two, single-family residential units are considered a permitted accessory use to the residential structure provided that the footprint does not exceed 10,000 square feet.

Public utilities and related facilities means utility structures including, but not limited to, pumping stations, electricity generation facilities, transformers, utility poles, transmission lines, and pipelines that require a specific location to provide service. This definition does not include telecommunications towers or public safety communications towers as defined by this Ordinance or their related infrastructure.

Public or private utilities and related facilities footprint means the cumulative area occupied by a utility operated by a single entity. For the purposes of this article, the footprint shall include any areas disturbed, altered from natural conditions, or made impervious during the installation of the utility, any area occupied by equipment pertaining to the facility, and any area fenced or secured against access to the facility, or any buffer or easement area required to surround the facility. The footprint calculation does not apply to utilities which are contained entirely underground and which do not include any structures as defined by this ordinance or any energy collection devices. For the purposes of footprint calculation, any facilities owned or operated by the applicant shall be included if said facilities lie within 1,320 feet of the proposed facility.

Modify Sec. 78-641. Permitted uses.

(a) *Permitted use table.* Uses are permitted in the various zoning districts pursuant to Table 1.

Table 1 – Permitted Use Table										
Uses	P = Permitted C = Allowed as Conditional Use Blank Space = Not Permitted									
	Districts									
	R-LD	R-1	R-2	R-3	NS	CS	EMP	PS	BDM	OU
<u>Private utility stations and substations, pumping stations, water and sewer plants, water storage tanks (less than</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>

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Uses	P = Permitted C = Allowed as Conditional Use Blank Space = Not Permitted									
	Districts									
	R-LD	R-1	R-2	R-3	NS	CS	EMP	PS	BDM	OU
<u>2 acres in total footprint)</u>										
<u>Private utility stations and substations, pumping stations, water and sewer plants, water storage tanks (2 acres or greater in total footprint)</u>	C	C	C	C	C	C	C	C	C	C
Public utility stations and substations, pumping stations, water and sewer plants, water storage tanks (<u>less than 2 acres in total footprint)</u>	C	C	C	C	P	P	P	P	C	P
<u>Public utility stations and substations, pumping stations, water and sewer plants, water storage tanks (2 acres or greater in total footprint)</u>	C	C	C	C	C	C	C	C	C	C

Modify Sec. 78-645. Steep Slope/High Elevation Overlay District

- (c) *Permitted uses.* Uses are permitted in the Protected Ridge Overlay District pursuant to the following table. All uses not listed are not allowed.
- (d) *Conditional uses.* All conditional uses shall be administered in accordance with Division VI of this chapter.

Table 1 – Permitted Use Table										
Uses	P = Permitted C = Allowed as Conditional Use Blank Space = Not Permitted									
	Districts									
	R-LD	R-1	R-2	R-3	NS	CS	EMP	PS	BDM	OU
<u>Private utility stations and substations, pumping stations, water and sewer plants, water storage tanks</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>
Public utility stations and substations, pumping stations, water and sewer plants, water storage tanks	C	C	C	C	C	C	C	C	<u>C</u>	C

Modify Sec. 78-646. Protected Ridge Overlay District

- (c) *Permitted uses.* Uses are permitted in the Protected Ridge Overlay District pursuant to the following table. All uses not listed are not allowed.
- (d) *Conditional uses.* All conditional uses shall be administered in accordance with Division VI of this chapter.

Table 1 – Permitted Use Table										
Uses	P = Permitted C = Allowed as Conditional Use Blank Space = Not Permitted									
	Districts									
	R-LD	R-1	R-2	R-3	NS	CS	EMP	PS	BDM	OU
Private utility stations and substations, pumping stations, water and sewer plants, water storage tanks	C	C	C	C	C	C	C	C	C	C
Public utility stations and substations, pumping stations, water and sewer plants, water storage tanks	C	C	C	C	C	C	C	C	C	C

Modify Sec. 78-678. Conditional use standards.

- (3) *Public or Private utility stations; radio and TV towers; water and sewer plants; water storage tanks.* Standards for public or private utility stations, radio and TV towers, water and sewer plants, and water storage tanks shall be as follows:
 - a. Structures shall be enclosed by a woven wire fence at least eight feet high. This does not apply to photovoltaic cells which are incorporated as structural elements of other facilities.
 - b. The lot shall be suitably landscaped, including a buffer strip at least four feet wide and planted with evergreen shrubs or trees which at maturity will be between eight and 12 feet high along the side and rear property lines. This planting requirement may be modified by the board of adjustment where adequate buffering exists in the form of vegetation and/or terrain.
 - c. Entrances and exits shall be designed so as to promote public safety.

- d. Emergency contact information for the owner/manager of the facility shall be prominently posted at the site.
- e. A plan for decommissioning of the facility should the facility become non-operational for a period of more than 365 consecutive days shall be presented to the board of adjustment. The plan shall describe how the site will be returned to its pre-development condition and shall present a mechanism for funding the decommissioning.
- f. Facilities using wind as a means of electricity generation must be appropriately separated from existing residential communities and structures. The applicant must present an area map which depicts the proposed facility and the closest residential structures. The map shall be to scale and shall also show publicly maintained roads within the area.
- g. At locations where the facility will exist alongside other uses, the applicant must include a description of the other uses which will occur on the site and how public safety will be guaranteed.
- h. For facilities located within 5 linear miles of any aviation facility, the applicant must provide a solar glare analysis (such as the Solar Glare Hazard Analysis Tool available through Sandia National Laboratories) that demonstrates that the installation does not pose an imminent threat to flight operations. Additionally, the applicant must demonstrate that the proposed structures do not interfere with flight operations. The applicant must also provide proof that a copy of their analysis has been submitted to the aviation facility operator.
- i. For facilities located within 1,320 feet of a NC or US highway (inclusive of Interstates) or within the Blue Ridge Parkway Overlay, the applicant must provide proof from a qualified professional, which may include the highway operator, that the facility does not pose an imminent threat to users of the highway.
- j. For facilities located within the Steep Slope/High Elevation or Protected Ridge Overlay Districts, the applicant must quantify and provide documentation of the tree coverage and species removed. When development is to occur within either Overlay District listed above, the limitations on disturbed and impervious area shall be applied to the parcel as a whole.
- k. All facilities must provide certification from an engineer or the manufacturer of the equipment that equipment to be utilized will not create electromagnetic interference (or other signal interference) with any radio communication or telecommunication system, aircraft navigation system, or radar system. Facilities utilizing wind as a means of electricity generation must submit a microwave path analysis performed by a Federal Communications Commission recognized frequency coordinator.
- l. All facilities must register with other state and federal agencies as required; proof of this registration (including applicable submissions for analysis by the Federal Communications Commission or Federal Aviation Administration) must be provided

to the board of adjustment.

Section 3. That if any section, subsection, 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; and

Section 4. That all ordinances and clauses of ordinances in conflict herewith be and are hereby repealed to the extent of such conflict.

Section 5. This ordinance is effective upon adoption.

Read, approved and adopted this 7th day of January, 2014.

ATTEST

BOARD OF COMMISSIONERS FOR THE
COUNTY OF BUNCOMBE

Kathy Hughes, Clerk

BY _____
David Gantt, Chairman

APPROVED AS TO FORM

County Attorney