

**SWAIN COUNTY ORDINANCE REQUIRING PUBLIC NOTIFICATION
FILING FOR STRUCTURES PRIOR TO APPLYING FOR LAND-
DISTURBING PERMIT AND ISSUANCE OF AN AUTHORITY TO
PROCEED FOR THE CONSTRUCTION AND DEMOLITION OF
CERTAIN STRUCTURES NOT OTHERWISE SUBJECT TO THE
NORTH CAROLINA BUILDING CODE**

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of the County of Swain hereby adopts the following ordinance.

Section 1. AUTHORITY, JURISDICTION, AND PURPOSE.

(a) **Title.** This Ordinance shall be known and cited as the **SWAIN COUNTY ORDINANCE REQUIRING PUBLIC NOTIFICATION FILING FOR STRUCTURES PRIOR TO APPLYING FOR LAND-DISTURBING PERMIT AND ISSUANCE OF AN AUTHORITY TO PROCEED FOR THE CONSTRUCTION AND DEMOLITION OF CERTAIN STRUCTURES NOT OTHERWISE SUBJECT TO THE NORTH CAROLINA BUILDING CODE.**

(b) **Authority and Enactment Clause.** The Swain County Board of Commissioners ordains and enacts this Ordinance into law pursuant to authority granted in N.C.Gen.Stat. Chapter 153A, Section 6, more specifically § 153A-121 thereof.

(c) **Jurisdiction.** This Ordinance shall apply to all real property in Swain County which is located outside the jurisdiction of a municipality established pursuant to N.C.Gen.Stat. §153A-122. Municipalities within Swain County may elect to allow this ordinance to be effective within their corporate limits or their extraterritorial jurisdictions.

(d) **Purpose.** The purpose of this Ordinance is to ensure the safety of the citizens of Swain County and property within Swain County, and to allow Swain County the time to budget and plan for transportation, traffic, nuisance potential, law enforcement and fire prevention related to the construction, demolition, and renovations of the identified and defined structures within the territorial jurisdiction of Swain County.

Section 2. DEFINITIONS.

- (a) **"Authority to Proceed":** A written authorization issued by the Swain County Inspection Department evidencing that a person has complied with this Ordinance for the construction, reconstruction, alteration, movement to another site, removal, or demolition of a structure as defined herein.
- (b) **"Board of Commissioners":** Swain County Board of Commissioners.

- (c) “Building Inspector”: A person employed by Swain County to work as a Building Inspector within the Swain County Inspections Department.
- (d) “Distribution pole” and/or “distribution tower”: *a pole and/or tower that is designed for and used to carry distribution lines, cables, or wires for telephone, cable television, or electricity or to provide lighting.*
- (e) “Engineer”: A professional engineer, currently licensed in the State of North Carolina by the North Carolina Board of Examiners for Engineers and Surveyors in accordance with GS 89C-16.
- (f) “Erosion and Sediment Control Ordinance”: Shall mean the Swain County Erosion and Sediment Control Ordinance as adopted by the Swain County Board of Commissioners on April 9, 2001 and any amendments thereto.
- (g) “Inspection Department”: Swain County Building Inspections Department.
- (h) “Land-Disturbing Activity”: Any use of land by any person upon which land any structure as defined herein shall be located, constructed and/or maintained, which use of land results in a change in the natural cover or topography and that may cause or contribute to sedimentation and subject to the Swain County Erosion and Sediment Control Ordinance.
- (i) “Notification Filing”: A formal written filing submitted by the person making application for a permit required by the Swain County Erosion and Sediment Control Ordinance and any amendments thereto.
- (j) “Person”: shall mean any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, or other legal entity.
- (k) “Seal”: The engineer’s seal of a design authorized by the North Carolina Board of Examiners for Engineers and Surveyors.
- (l) “Structure(s)”: Any structure, not otherwise subject to the North Carolina Building Code or other federal, state or local law, regulation or ordinance with minimum standards enacted to protect life, safety and general welfare as they relate to the construction and/or occupancy of structures or buildings, which shall include but not specifically limited to the following: new or

existing dams, utility towers, utility substations, utility switching stations, utility tie stations, base stations, and any and all associated structures or buildings used in the electric, cell phone radio, wind power, water power facilities, industrial facilities, institutional facilities, and asphalt plants. *Distribution poles and distribution towers* are not a structure as defined herein.

Section 3. NOTIFICATION FILING and AUTHORITY TO PROCEED REQUIRED.

(a) No person may apply for a permit for any land-disturbing activity as required by the Erosion and Sediment Control Ordinance regarding property upon which any structure, as defined herein, shall be located *without* first having filed a Notification Filing form at least six (6) months prior to making application for the land-disturbing activity with the Inspections Department, which form will be provided by and available at the Inspection Department.

Further, said person filing a Notification Filing shall come before the Board of Commissioners at a *public hearing* to provide information about the physical nature of the structure, its location and its purposes. Said date and time of the public meeting shall be provided to the person filing the Notification Filing at the address stated thereon by the Clerk to the Board of Commissioners.

(b) No person may commence or proceed with the following without first obtaining an Authority to Proceed for any structure as defined herein:

(1) The construction, reconstruction, alteration, movement to another site, removal, or demolition of a “structure” defined herein.

(c) Any person desiring to proceed with and make application for an Authority to Proceed for work or project described in subsection (b)(1) above shall file such application with the Building Inspector at the Inspections Department.

The application shall be accompanied by plans and specifications for the desired structure, which plans and specifications must be designed and certified by a professional engineer with such engineer's seal affixed thereto. The purpose is to ensure the work identified in subsection (b)(1) above has been drawn and certified by an engineer.

- (1) No Authority to Proceed shall be issued unless any such plans and specifications of an engineer are certified and sealed within the twelve (12) months prior to the application date.
- (2) The Authority to Proceed shall be in writing issued by the Inspections Department and shall contain a provision that the structure as defined herein shall comply with the engineer's plans and specifications referenced in subsection (c) of Section 3 for the work described in subsection (b)(1) above.
- (3) An Authority to Proceed issued pursuant to this Ordinance expires twelve (12) months after the date of issuance, if the work has not commenced.
- (4) After an Authority to Proceed has been issued, no change or deviation from the engineer's plans and specifications accompanying the initial application may be made until the applicant presents the changed or modified plans designed and certified by a professional engineer with such final drawings and plans having been stamped with the engineer's North Carolina seal to the Inspections Department and an amended Authority to Proceed is issued by the Inspections Department.
- (5) No work may be commenced or continued on any structure defined herein until such time as the *person who applies for a permit as set out herein* has located upon said construction site temporary sanitary toilet facilities for the workers use during construction. Said toilets shall be maintained in a sanitary condition at all times. An adequate number of facilities must be provided for the number of employees at the construction site as follows: less than 20 employees shall have a

minimum of one toilet, 20 to 200 employees shall have a minimum of one toilet and one urinal per 40 workers, and where there are more than 200 employees, there shall be one toilet and one urinal per 50 workers.

The toilet facilities may be portable, enclosed, chemically treated, tank-tight units. Portable toilets shall be enclosed, screened and weatherproofed with internal latches. Temporary toilet facilities need not be provided on site for crews on a job site for no more than one working day provided that transportation is readily available for the workers to toilet facilities no further away from the construction site than 3 miles.

(e) Exception. Any and all structures that are to be build within a North Carolina Certified Industrial Site within Swain County is exempt from the requirements of this Ordinance.

(f) This ordinance in no way regulates or controls public utility rights-of-way.

Section 4. RECORDS AND REPORTS. The Inspection Department shall keep complete, and accurate records in convenient form of each application for land disturbing permit and notification filings received, each application and authority to proceed issued, each inspection and reinspection made pursuant to the Erosion and Sediment Control Ordinance and work and activities of the department of inspections related to this Ordinance.

The department shall submit periodic reports to the Board of Commissioners and any other governmental authority as may be required.

Section 5. FEES.

(a) The Board of Commissioners may establish a fee schedule for the administration of Notification Filings as required in Section 3 herein and the Inspector's review of plans and specifications to ensure they have been drawn by an engineer and upon which the engineer's "seal" appears. This

fee schedule may change from time to time without notice pursuant to directives from the Board of Commissioners.

- (b) Any fee schedule associated with the application for permit and inspections under the Erosion and Sediment Control Ordinance shall be as set out in said Erosion and Sediment Control Ordinance.

Section 6. PENALTIES.

(a) Civil Penalties

- (1) Civil Penalty for a Violation. Any person who violates any of the provisions of this Ordinance, or who initiates or continues to complete work or construction in violation of this Ordinance is subject to a civil penalty. The maximum civil penalty amount that the County may assess per violation is five thousand dollars (\$5,000.00). A civil penalty may be assessed from the date of the violation. Each day of a continuing violation shall constitute a separate violation.
- (2) Civil Penalty Assessment Factors. The Board of Commissioners shall determine the amount of the civil penalty based upon the following factors:
 - (i) the degree and extent of harm caused by the violation,
 - (ii) the cost of rectifying the damage,
 - (iii) the amount of money the violator saved by noncompliance,
 - (iv) whether the violation was committed willfully, and
 - (v) the prior record of the violator in complying or failing to comply with this ordinance.

- (3) Notice of Civil Penalty Assessment. The Board of Commissioners shall provide notice of the civil penalty amount and basis for assessment to the person assessed. The notice of assessment shall be served by any means authorized under N.C. Gen.Stat. §1A-1, Rule 4, and shall direct the violator to either pay the assessment or contest the assessment, within 30 days after receipt of the notice of assessment, by written demand for a hearing.
- (4) Collection. If payment is not received within 30 days after it is due, the Board of Commissioners on behalf of Swain County may institute a civil action to recover the amount of the assessment. The civil action may be brought in the Superior Court of the county where the violation occurred. Such civil actions must be filed within three (3) years of the date the assessment was due. An assessment that is not contested is due when the violator is served with a notice of assessment. An assessment that is contested is due at the conclusion of the administrative and judicial review of the assessment.
- (b) Criminal Penalties. Any person who knowingly or willfully violates any provision of this Ordinance, or rule or order adopted or issued pursuant to this Ordinance, or who knowingly or willfully initiates or continues the work and construction activity in violation of this Ordinance, shall be guilty of a Class 3 misdemeanor which may include a fine not to exceed \$500.00.
- (c) Penalties for any violation of the Erosion and Sediment Control Ordinance as it relates to land disturbing activities for land upon which any structure defined herein shall be located shall be as set out within the Erosion and Sediment Control Ordinance

Section 7. AMENDMENTS. The Board of Commissioners may from time to time amend the terms of this Ordinance, but no amendment shall become effective unless the Board of Commissioners has held a public hearing on the amendment. Notice of hearing shall be given as required by N.C.Gen.Stat. §153A-323 or other law as applicable.

Section 8. TIME COMPUTATION. Any time a deadline date referenced within this Ordinance is on a weekend or a legal holiday that is observed by Swain County, the deadline date shall be extended to 5:00 PM on the next business day following the weekend or legal holiday.

Section 9. VALIDITY/SEVERABILITY. Should any section or provision of this Ordinance be decided by a court of competent jurisdiction to be unconstitutional or invalid, that such decision shall not affect the validity of this Ordinance as a whole or any part thereof other than the part declared to be unconstitutional or invalid.

Section 10. PREEMPTION. It is not intended that this Ordinance repeal, abrogate, annul, impair, or interfere with any existing Federal or North Carolina law, rules or regulations. However, where this Ordinance imposes greater restrictions, the provisions of this Ordinance shall govern.

In the event any provision(s) within this Ordinance conflict with the North Carolina Building Code, the North Carolina Building Code shall prevail. Further, in the event any provision(s) within this Ordinance conflict with Erosion and Sediment Control Ordinance, the Erosion and Sediment Control Ordinance shall prevail.

Section 11. EFFECTIVE DATE. This Ordinance becomes effective on the date it is adopted by the Swain County Board of County Commissioners.

Passed and adopted by the Swain County Board of Commissioners on the _____ day of _____, 2010.

SWAIN COUNTY BOARD OF COMMISSIONERS

Glenn Jones, Chairman

CLERK TO THE BOARD:

Cindi Woodard, Clerk

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