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## § 31.01 Intent and Purpose, Authority, Limitation

**(1)** The purpose of this Chapter is to set forth the authority and responsibility of the Board of County Commissioners, County Manager, Emergency Management Director, and Emergency Management Agency in the prevention of, preparation for, response to and recovery from natural or man-made disasters or hostile military or paramilitary action and to:

(a) Reduce vulnerability of people and property of the 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) Provide for the rapid and orderly rehabilitation of persons and restoration of property; and

(d) Provide for cooperation and coordination of activities relating to emergency and disaster mitigation, preparedness, response and recovery among agencies and officials of this County and with similar agencies and officials of other Counties, Municipalities, State and Federal Government, with interstate organizations and with other private and quasi-official organizations.

**(2)** This article will not relieve any county department of the legal responsibilities or authority given to it by law. Nor will it adversely affect the work of any volunteer agency organized for relief in disaster emergencies.

**(3)** To the extent not specifically enumerated herein, all authorities and powers conferred on the County pursuant to the North Carolina Emergency Management Act, G.S. Chapter 166A, Article 36A of Chapter 14 of the North Carolina General Statutes, and all similar provisions of North Carolina and Federal Laws, Rules, Policies and Executive Orders, and all similar provisions of state and federal law, are incorporated herein by reference. The County and its officers shall have the power to act to the fullest extent of the law.

**(4)** Nothing in this article shall be construed to expand the levels of authority or abilities to act of any persons subject to this ordinance beyond the authorities granted by North Carolina and Federal law.

### § 31.02 Haywood County Emergency Management Agency

In accordance with N.C.G.S. 166A- 19.15, the County governing body is responsible for all emergency management activities within the geographical limits of Haywood County. The Haywood County Emergency Management Agency [hereinafter "the Agency"] is hereby established and is designated as the County agency responsible for all emergency management activities within and on behalf of the County. The Agency shall be the agency through which the Haywood County Board of County Commissioners exercises the authority and discharges the responsibilities vested in it during disasters and states of emergency. The Agency shall also be the coordinating agency for all activities connected with emergency management, including activities of the municipalities within the County.

### § 31.03 Definitions

The following words, terms and phrases, when used in this Chapter, shall have the meanings ascribed to them in this section:

**(1)** ***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. (NCGS 166A-19.3(2))

**(2)** ***County Manager*** – The County Manager, appointed by the Board of County Commissioners, or, in the case of the County Manager's absence or disability, the Assistant County Manager, or in the case of the Assistant County Manager's absence or disability, the person authorized to act in the County manager's stead. Unless the governing body of the County has specified who is to act in lieu of the County Manager 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 County Manager.

**(3)** ***Director*** - The coordinator of the Haywood County Emergency Management Agency, appointed as prescribed in this chapter.

**(4)** ***Disaster Declaration*** – A gubernatorial declaration that the impact or anticipated impact of an emergency constitutes a disaster of one of the types enumerated in G.S. 166A-19.21(b) or a Federal Declaration of Disaster. (NCGS 166A- 19.3(3))

**(5)** ***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. (NCGS 166A-19.3(6))

**(6)** ***Emergency Area*** – The geographical area covered by a State of Emergency as defined under (NCGS 166A-3(7)).

**(7)** ***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. (NCGS 166A-19.3(8))

**(8)** ***Emergency Management Agency*** – A State or local governmental agency charged with coordination of all emergency management activities for its jurisdiction. (NCGS 166A-19.3(9))

**(9)** ***Emergency Management Personnel*** – In cooperation with the Emergency Management Agency, all employees of Haywood County and municipal governments within Haywood County, their departments, boards, institutions, and councils, agents, representatives, contractors and subcontractors who are participating in emergency management activities.

**(10)** ***Hazardous Materials*** – Any material defined as a hazardous substance under 29 Code of Federal Regulation, 1910.120(a)(3).

**(11)** ***Hazardous Materials Incident or Hazardous Materials Emergency*** – Any uncontrolled release or threatened release of a hazardous substance requiring outside assistance by a local fire department or hazmat team to contain and control.

**(12)** ***Local Emergency Planning Committee*** - A committee formed by the Haywood County Board of County Commissioners to facilitate emergency management coordination and cooperation of all political jurisdictions and agencies, both public and private, within Haywood County.

**(13)** ***Political subdivision*** – Counties and incorporated cities, towns, and villages. (NCGS 166A-19.3(12))

**(14)** ***Regulations*** - Plans, programs and other emergency procedures deemed essential to emergency management, and adopted by the Local Emergency Planning Committee.

**(15)** ***State of Emergency*** - A finding and declaration by the Governor, the North Carolina General Assembly, or the governing body of Haywood County, or the Chair of the Board of County Commissioners or other incorporated municipality, pursuant to NCGS 166A-19.22(a), acting under the authority of Article 1A of Chapter 166A of the General Statutes of North Carolina, as amended, that an emergency exists. (NCGS 166A-19.3(19))

**(16)** ***Volunteer*** means contributing a service, equipment or facilities to the emergency management agency without remuneration.

## § 31.04 Organization and Appointments

The Haywood County Emergency Management Agency shall consist of the following:

**(1)** An Emergency Management Agency under the direction of the Board of County Commissioners, through the County Manager. The head of the Haywood County Emergency Management Agency shall be known as the Director and shall be appointed by the Board of County Commissioners and supervised by the County Manager. Such assistants and other employees as are deemed necessary for the proper functioning of the agency will be hired or assigned by the County Manager or designee.

**(2)** The employees and resources of all county departments, boards, institutions, and councils shall participate in emergency management activities. Duties assigned to county departments shall be the same as or similar to the normal duties of the department, where possible.

**(3)** Volunteer personnel and agencies offering service to and accepted by the County.

**(4)** A director of the Haywood County Emergency Management Agency appointed by the Haywood County Board of County Commissioners shall be a person well versed and trained in operations involving the activities of many different agencies which will operate to protect the public health, safety and welfare in the event of an emergency as defined in this chapter. The director shall designate and appoint deputy coordinators to assume the emergency duties of the director in his/her absence or inability to act.

## § 31.05 General Powers, Duties and Responsibilities

**(1)** The Haywood County Board of County Commissioners (BOCC) shall exercise general direction and control of the County emergency management program and shall be responsible for carrying out the provisions within this Chapter, Chapter 166A of the North Carolina General Statues, and all other applicable local, State, and Federal laws. Day-to day operations of the Emergency Management Agency shall be conducted by the Director, under the supervision of the County Manager.

**(2)** If an emergency occurs and rises to the level that a State of Emergency is needed, the Chair of the Board of County Commissioners is hereby empowered to determine and declare the existence of a State of Emergency and to impose such restrictions and prohibitions as are deemed necessary to protect public health, safety, and welfare. Prior to declaring a State of Emergency, the Chair, or the County Manager acting under the Chair's directions, shall make reasonable attempts to notify the Board of County Commissioners of the emergency situation and the need for the Declaration. The Declaration shall be as described in §31.07 of this chapter.

**(3)** During the State of Emergency, the Chair of the Board of County Commissioners shall have the power and the duty to perform such actions as are lawful and necessary to protect public health and safety and is expressly authorized to determine and impose any prohibitions or restrictions deemed necessary and which are allowed by Federal and State law. Additionally, during a State of Emergency, the Chair of the Board of County Commissioners may take, authorize or delegate any lawful actions to protect life and property, including but not limited to:

(a) Make, amend or rescind the necessary local orders, rules, declarations, and regulations within the limits of the authority conferred herein, with due consideration of the laws and policies of the State and Federal government.
(b) Sell, lend, lease, give, transfer or deliver materials or perform services for disaster purposes on such terms and conditions as may be prescribed by any existing State or Federal law, regulation, policy, order, or declaration.
(c) After concurrence of the other members of the Board of County Commissioners, use contingency and emergency funds as necessary and appropriate to provide relief and assistance from the effects of an emergency, reallocate such other funds as may reasonably be available within the appropriations of the various departments when the severity and magnitude of such emergency so requires and when the contingency and emergency funds are insufficient or inappropriate.
(d) Delegate any authority vested in the Chair under this chapter and provide for the sub-delegation of any such authority.
(e) In the absence or disability of the Director or agency deputy coordinators, the Chair of the Board of County Commissioners may temporarily designate a qualified individual to serve in that role until the next regular meeting of the Board of County Commissioners.

**(4)** The County Manager shall have the following duties and responsibilities:
(a) Be responsible to the Board of County Commissioners for emergency management activities.
(b) Activate County plans applicable to the areas in question and authorize and direct the deployment of other County resources, supplies, employees and equipment as necessary pursuant to this Chapter or any other provision of law.
(c) Implement this chapter to the fullest extent allowed by Federal and State law.
(d) Exercise additional authority, duties, and responsibilities as may be prescribed by the Board of County Commissioners, or the Chair of the Board of County Commissioners.
(e) Serve as an active member of the Local Emergency Planning Committee.

These duties may be sub-delegated to the Assistant County Manager or the Director as appropriate.

**(5)** The Director shall have the following duties and responsibilities:
(a) Be responsible to the County Manager in regard to all phases of emergency management activity.
(b) Maintain liaison with the state and federal authorities and the authorities of other political subdivisions to ensure the most effective operation of the emergency management plans.
(c) Coordinate the recruitment of volunteer personnel and agencies to augment the personnel and facilities of the county for emergency management purposes.

(d) Develop and coordinate 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.

(e) Negotiate and conclude 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.

(f) Through public informational programs, educate the populace as to actions necessary and required for the protection of their persons and property in an emergency either imminent or present.

(g) Maintain a County Emergency Operations Plan approved by the Local Emergency Planning Committee and Board of County Commissioners, as well as comply with State and Federal emergency management requirements.

(h) Conduct training and exercises to ensure the efficient operation of the emergency management forces and to familiarize residents with emergency management regulations, procedures and operations.

(i) Coordinate the activity of all other public and private agencies engaged in any emergency management activities by serving as the active Chairperson of the Local Emergency Planning Committee.

(j) In the event that a State of Emergency is declared, the authority to coordinate emergency management activities is hereby expressly vested in the Emergency Management Agency and the Director, who shall consult with the County Manager, or his or her designee, and follow all applicable State and Federal laws in the discharge of his duties. During a local or State declared emergency, or Federal or State declared disaster, the Director, in consultation with the County Manager or his or her designee, is authorized to utilize available county resources as reasonably necessary including the transfer and direction of personnel or functions of county agencies or units thereof for the purpose of performing or facilitating emergency management activities.

(k) In coordination with the County Manager, the Director is authorized to enter into Mutual Aid Agreements with other counties, municipalities and other public or private agencies for the purpose of providing supplies, equipment, personnel, and/or services.

## § 31.06 County Emergency Management Plans

**(1)** Comprehensive emergency management plans shall be adopted and maintained by resolution of the Board of County Commissioners. In the preparation of these plans as they pertain to county organization, it is intended that the services, equipment and facilities and personnel of all existing departments and agencies shall be utilized to the fullest extent necessary. When approved, it shall be the duty of all departments and agencies to perform the functions assigned by these plans and to maintain their portions

of the plans in a current state of readiness at all times. These plans shall have the effect of law when an emergency as defined in this chapter, has been declared.

**(2)** The Director shall prescribe in the emergency plans those positions within the Emergency Management Agency 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/her position. The list will be in order of succession and will as nearly as possible designate persons best capable of carrying out all assigned duties and functions.

**(3)** Each department/agency head assigned responsibility in the plans shall be responsible for carrying out all duties and functions assigned therein. Duties will include the organization and training of assigned employees. Each head shall formulate the standing operating procedure to implement the plans for his/her service.

**(4)** Amendments to these plans shall be submitted to the Director. If approved, the Director shall then submit the amendments to the Board of County Commissioners with his/her recommendation for its approval.

**(5)** When a required competency or skill for an emergency or disaster function is not available within government, the Director is authorized to seek assistance from persons outside of government. The assignment of duties, when of a supervisory nature, shall also include the delegation of authority for the persons so assigned to carry out such duties prior to, during, and after the occurrence of an emergency or disaster. Such services from persons outside of government may be accepted by local government on a volunteer basis. Such citizens shall be enrolled as Emergency Management volunteers.

## § 31.07 Declaration of State of Emergency

**(1)** Pursuant to N.C.G.S. 116A-19.22 of the North Carolina General Statutes, the existence of a State of Emergency may be declared by the Chair of the Board of County Commissioners without public notice after reasonable attempts at consultations with the Board of County Commissioners.
The declaration shall be in writing.

**(2)** Absence or disability of Chair of Board of County Commissioners – In the absence or disability of the Chair of the Board of County Commissioners, the Vice-Chair or such other commissioner as may be designated by the Board of County Commissioners, shall have and exercise all of the powers given the Chair in this ordinance.

**(3)** The declaration of a State of Emergency shall include a definition of the area constituting the emergency area. The emergency area of a State of Emergency declared by a county 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 extension of the state of emergency within that municipality's jurisdiction by declaration.

**(4)** If a State of Emergency is declared, the County Manager or Director shall provide the Board of County Commissioners with a preliminary damage assessment as soon as the assessment is available.

**(5)** A State of Emergency declared pursuant to this Chapter, and all prohibitions and restrictions imposed under the declaration, shall be established by written declaration duly executed by the Chair or the Chair's designee, and shall remain in effect until such time as the declaration is amended or rescinded in the same manner. The declaration shall include a listing of all restrictions and prohibitions imposed and, where applicable, the date and time on which such restrictions and prohibitions become effective.

**(6)** A State of Emergency declaration and all subsequent amendments and terminations shall be disseminated promptly to the attention of the general public and all other entities therein.

**(7)** At such time as a State of Emergency is declared, the Director, shall, and is hereby authorized to, in consultation and cooperation with the County Manager or designee exercise all powers and take such actions as authorized by State and Federal law, and coordinate and control all persons and resources in the County to the extent allowed by State and Federal law, to protect life and property in response to the declared emergency.

**(8)** At such time as a State of Emergency is declared, the Emergency Management Plan, all standard operating procedures adopted pursuant to the Plan, and all applicable mutual aid agreements and other similar agreements and compacts shall be activated as deemed necessary.

**(9)** Any declaration of the existence of State of Emergency, and all restrictions and prohibitions imposed as a result of the declaration, shall apply in all areas of Haywood County unless otherwise specified in the declaration, subject to subsection §31.07(3) herein above.

### § 31.08 Prohibitions and Restrictions Authorized

The Declaration of State of Emergency may set forth any power or restrictions authorized by Federal and State law without limitations. Pursuant to NCGS 166A-19.31, the proclamation declaring State of Emergency may, but need not, include any or all of the following prohibitions and restrictions:

**(1)** Movement 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 subsection does not authorize prohibitions or restrictions on lawfully possessed firearms or ammunition. As used in this subsection, the term "Dangerous Weapons and Substance" has the same meaning as it does under NCGS 14-288.1. As used in this subsection, the term "Firearm" has the same meaning as it does under NCGS 14-409.39(2).

**(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.

### § 31.09 Amendment of Declaration

Superseding and Amendatory Declarations – The Chair of the Board of County Commissioners may invoke the prohibitions and restrictions authorized by this chapter in separate declarations and may amend any declaration by means of a superseding declaration in accordance with the procedures set forth in §31.07 of this Chapter.

### § 31.10 Expiration of Prohibitions and Restrictions, and Termination of State of Emergency

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

**(1)** The prohibition or restriction is terminated by the official that imposed the prohibition or restriction.

**(2)** The State of Emergency is terminated.

A State of Emergency declared under this article shall expire when terminated by the authority who issued it following the same procedures set forth in §31.09 of this chapter.

### § 31.11 Fees and Charges for Hazardous Materials Response

A person or entity who causes directly or indirectly the release of a hazardous material creating a hazardous materials incident shall be liable for all reasonable costs incurred in responding to and mitigating the incident. In the event the responsible party cannot be determined or is unable to pay, the property owner containing the hazardous materials at the time of the incident is responsible. It is the responsibility of each agency/department/ office to bill for fees and charges rendered by their agency/department/office during the emergency.

### § 31.12 Liability and Immunity

**(1)** Pursuant to NCGS 166A-19.60, which is incorporated by reference herein, and all other Federal and State laws, all immunities for activities conducted under this chapter shall apply to Haywood County, its employees and assigns to the fullest extent allowed by law.

**(2)** All functions hereunder and all other activities relating to emergency management are hereby declared to be governmental functions necessary to protect public health, safety and welfare. To the fullest extent allowed by State or Federal law, neither the State or County nor any political subdivision thereof, nor agents and representatives of the County or any individual, receiver, firm, partnership, corporation, association, or trustee or any of the agents thereof in good faith carrying out, complying with or attempting to comply with this Chapter or any order, rule, declaration, or regulation promulgated pursuant to the provisions of this Chapter or pursuant to any State or Federal law, order, rule declaration, or regulation relating to any emergency management measures enacted

by any political subdivision of the State, shall be liable for the death of or injury to persons, or for damage to property as a result of any such activity, except in cases of willful misconduct or bad faith.

**(3)** Pursuant to G.S. 166A-19.61, 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 Chapter or under State or Federal law 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 said real or personal property for any of the above purposes, provided that the use of said property is subject to the order or control of or pursuant to a request of the State government or any political subdivision thereof.

## § 31.13 Civil Liability and Violations

**(1)** Pursuant to NCGS 166A-19.62, during 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 this Article, 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:

(a) 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.

(b) As a result of ignoring the warning, the person places himself or herself or another in danger.

(c) A governmental rescue effort is undertaken on the endangered person's behalf. (1997-232, s.1; 2012-12, s. 1(b).)

**(2)** Unless otherwise provided for by law, pursuant to NCGS 14-288.20A, and this ordinance, it shall be a Class 2 misdemeanor for any person to violate any of the provisions of this Chapter, declarations, or plans issued pursuant to the authority contained in this Chapter, or to willfully obstruct, hinder or delay any member of the emergency management organization in the enforcement of this Chapter or any declarations or plans issued pursuant to this Chapter. Nothing in this chapter shall prohibit the lawful possession of firearms pursuant to 166A-19.31(b)(4).

### § 31.14 Conflicting Chapters, Orders, Rules and Regulations Suspended.

At all times when the orders, rules, and regulations made and promulgated pursuant to this Chapter shall be in effect, they shall supersede all existing chapters, orders, rules and regulations insofar as the latter may be inconsistent therewith.

### § 31.15 Severability.

Should any provision of this Chapter, or the application thereof to any person or circumstances be declared invalid for any reason, such declaration shall not affect the validity of any other provisions of this Chapter, it being the legislative intent that the provisions of this Chapter shall be severable and remain valid notwithstanding such declaration.

### § 31.16 Board of County Commissioners Adoption

Upon motion made by Commissioner _____ and seconded by

Commissioner _____, the above Ordinance was unanimously adopted this

_____ day of _____.

_____

**Mark S. Swanger Chairman, Haywood County Board of County Commissioners**