

ARTICLE 1. PURPOSE AND AUTHORITY

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1.1. SHORT TITLE.

- 1.1.1. This Ordinance shall be known and may be cited as the Zoning Ordinance of the Town of Fairmont.

1.2. AUTHORITY.

- 1.2.1. The zoning provisions enacted in this document are under the authority of North Carolina General Statutes NCGS Chapter 160D which extends to towns and counties the authority to enact regulations which promote the health, safety, morals, or the general welfare of the community. The provisions contained in NCGS Chapter 160D apply to all development regulations adopted pursuant to Chapter 160D, applicable and related local acts, and any other local ordinance that substantially affects land use and development. This section further authorizes the establishment of overlay districts in which additional regulations may be imposed upon properties that lie within the boundary of the district. The statutes also require that all such regulations shall be uniform for each class or type of building throughout each district, but that the regulations in one district may differ from those in other districts.

Statutory Authority – NCGS § 160D-101

1.3. PURPOSE.

- 1.3.1. It is the purpose of this Ordinance to promote purpose of promoting the public health, safety, morals and general welfare; of the residents of Fairmont and its extraterritorial planning jurisdiction. Regulations within this Ordinance are made in accordance with the Town's Comprehensive Plan as outlines in Section 1.7 and may be updated from time to time. These regulations are found by the Board of Commissioners to be necessary and appropriate to:
- A. Lessen congestion in the streets;
 - B. Secure safety from fire, panic and other dangers;
 - C. Provide adequate light and air;
 - D. Prevent the overcrowding of land and protect the natural features within the Town;
 - E. Avoid undue concentration of population;
 - F. Facilitate the efficient, adequate and economic provision of transportation, water, sewage, schools, parks, and other public services;
 - G. Preserve and enhance visual attractiveness and economic vitality;
 - H. Require appropriate setbacks for buildings and other structures to facilitate the safe movement of vehicular and pedestrian traffic, provide adequate fire lanes and ensure adequate distance from dust, noise and fumes created by vehicular traffic; and
 - I. Establish a zoning vested right upon the approval of a site specific development plan pursuant to NCGS Chapter 160D-108.

***Statutory Authority – NCGS § 160D-108
(Ord. 05/31/1977 154.001 Section A)***

1.4. REPEAL OF PRIOR ORDINANCE, INCONSISTENCIES.

- 1.4.1. This Ordinance is hereby enacted and shall be the Zoning Ordinance for the Town of Fairmont. All ordinances, or portions thereof, of the Town of Fairmont which relate to zoning and land use which are inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such inconsistency.

1.5. JURISDICTION AND EXEMPTIONS, EXTRATERRITORIAL JURISDICTION, SPLIT JURISDICTION

- 1.5.1. *Jurisdiction*. The regulations and provisions found in this zoning ordinance shall apply to all the properties within the corporate limits and the extraterritorial jurisdiction of the Town of Fairmont, North Carolina, established pursuant to NCGS 160D-202, which shall comprise the Town of Fairmont's planning jurisdiction.

Statutory Authority – S.L. 2020-25; NCGS § 160D-201(a)

- A. In addition to other locations required by law, a copy of a map showing the boundaries of the Town's planning jurisdiction shall be available for public inspection in the Municipal Building.
- B. Except as hereinafter provided, no building or structure shall be erected, moved, altered, or extended, and no land, building, or structure or part thereof shall be occupied or used unless in conformity with the regulations specified for the district in which it is located.

- C. Pursuant to NCGS 160A-392, the provisions of this Ordinance shall not be applicable to any lands owned by any governmental body (Federal, State, or local), but shall be applicable to the erection, construction, and use of buildings owned by a governmental body (Federal, State, or local).
- D. Pursuant to NCGS 160A-458.5, forestry activity on forestland that is taxed on the basis of its present-use value as forestland under Article 12 of Chapter 105 of the North Carolina General Statutes, or forestry activity that is conducted in accordance with a forest management plan that is prepared or approved by a forester registered in accordance with Chapter 89B of the North Carolina General Statutes, shall not be subject to the regulations of this Ordinance.
- E. Pursuant to NCGS 160A-360(k), property located within the town’s extraterritorial planning and zoning jurisdictional area that is used for bona fide farm purposes, as defined in NCGS 153A-340, is not subject to the regulations of this Ordinance. However, when such property ceases to be used for bona fide farm purposes, it shall become subject to the provisions of this Ordinance.

(Ord. 05/31/1977, 154.001 Section C)

- 1.5.2. *Extraterritorial Jurisdiction.* The Extraterritorial Jurisdiction of the Town of Fairmont is that area described in the ordinance adopted by the Town Board of Commissioners on April 8, 1975. Such planning jurisdiction may be modified from time to time in accordance with NCGS Chapter 160D.

Statutory Authority – NCGS § 160D-202(a)

(Ord. 05/31/1977, 154.001 Section B)

- A. *Authority in the Extraterritorial Area.* The Town may not exercise extraterritorially any power conferred by this Ordinance in its extraterritorial jurisdiction that it is not exercising within its corporate limits. The Town may exercise in its extraterritorial area all powers conferred by NCGS Chapter 160D that it is exercising within its corporate limits. If the Town fails to extend a particular type of development regulation to the extraterritorial area, the county may elect to exercise that particular type of regulation in the extraterritorial area.

Statutory Authority – NCGS § 160D-202(b)

- B. *County approval of Town Jurisdiction.* The Town may not extend its extraterritorial powers into any area for which Robeson County has adopted and is enforcing county zoning and subdivision regulations. However, the Town may do so where the county is not exercising both of these powers, or when the Town and the county have agreed upon the area within which each will exercise the powers conferred by NCGS Chapter 160D. The Town may not extend its extraterritorial powers beyond one mile from its

corporate limits without the approval of the Robeson County Board of Commissioners.

Statutory Authority – NCGS § 160D-202(c)

- C. Notice of Proposed Jurisdiction Change. When the Town of Fairmont proposes to exercise extraterritorial jurisdiction under Chapter 160D, the Town shall notify the owners of all parcels of land proposed for addition to the area of extraterritorial jurisdiction, as shown on the county tax records. The notice shall be sent by first-class mail to the last addresses listed for affected property owners in the county tax records. The notice shall inform the landowner of the effect of the extension of extraterritorial jurisdiction, of the landowner’s right to participate in a legislative hearing prior to adoption of any ordinance extending the area of extraterritorial jurisdiction, as provided in G.S. 160D-6-1, and the right of all residents of the area to apply to the Robeson County Board of Commissioners to serve as a representative on the planning board and the board of adjustment, as provided in G.S. 160D-3-3. The notice shall be mailed at least 30 days prior to the date of the hearing. The person or persons mailing the notices shall certify to the Town Board of Commissioners that the notices were sent by first-class mail, and the certificate shall be deemed conclusive in the absence of fraud.

Statutory Authority – NCGS § 160D-202(d)

- D. Boundaries. The Town’s Board of Commissioners, exercising extraterritorial jurisdiction under Chapter 160D, has adopted an ordinance specifying the areas to be included based upon existing or projected urban development and areas of critical concern to the Town, as evidenced by officially adopted plans for its development. A single jurisdictional boundary is, therefore, applicable for all powers conferred in Chapter 160D. Boundaries are defined, to the extent feasible, in terms of geographical features identifiable on the ground and also follow parcel ownership boundaries. The boundaries specified in the ordinance shall at all times be drawn on a map, set forth in a written description, or shown by a combination of these techniques. This delineation shall be maintained in the manner provided in G.S. 160A-22 for the delineation of the corporate limits, and shall be recorded in the Office of the Register of Deeds of each county in which any portion of the area lies. Where the extraterritorial jurisdiction of two or more Towns overlaps, the jurisdictional boundary between them shall be a line connecting the midway points of the overlapping area unless the Boards agree to another boundary line within the overlapping area based upon existing or projected patterns of development.

Statutory Authority – NCGS § 160D-202(e)

- E. County Authority Within Town Jurisdiction. The county may on request of the Town Board of Commissioners exercise any or all of these powers in any or all areas lying

within the Town's corporate limits or within the Town's specified area of extraterritorial jurisdiction.

Statutory Authority – NCGS § 160D-202(f)

- F. *Transfer of Jurisdiction.* When a Town annexes, or the Town extends its jurisdiction to include, an area that is currently being regulated by the county, the county development regulations and powers of enforcement shall remain in effect until (i) the Town has adopted such development regulations, or (ii) a period of 60 days has elapsed following the annexation, extension or incorporation, whichever is sooner. Prior to the transfer of jurisdiction, the Town may hold hearings and take any other measures consistent with N.C.G.S. 160D-2-4 that may be required in order to adopt and apply its development regulations for the area at the same time it assumes jurisdiction.

Statutory Authority – NCGS § 160D-202(g)

- G. *Relinquishment of Jurisdiction.* When the Town relinquishes jurisdiction over an area that it is regulating under N.C.G.S. Chapter 160D to a county, the Town development regulations and powers of enforcement shall remain in effect until (i) the county has adopted such development regulation or (ii) a period of 60 days has elapsed following the action by which the city relinquished jurisdiction, whichever is sooner. Prior to the transfer of jurisdiction, the Town may hold hearings and take other measures consistent with N.C.G.S. 160D-204 that may be required in order to adopt and apply its development regulations for the area at the same time it assumes jurisdiction.

Statutory Authority – NCGS § 160D-202(h)

- H. *Process for Local Government Approval.* When the Town is granted powers by this section subject to the request, approval, or agreement of another local government, the request, approval, or agreement shall be evidenced by a formally adopted resolution of the Board of Commissioners of the Town of Fairmont. Any such request, approval, or agreement can be rescinded upon two years' written notice to the other governing boards concerned by repealing the resolution. The resolution may be modified at any time by mutual agreement of the governing boards concerned.

Statutory Authority – NCGS § 160D-202(i)

- I. *Local Acts.* Nothing in this section shall repeal, modify, or amend any local act that defines the boundaries of a city's extraterritorial jurisdiction by metes and bounds or courses and distances.

Statutory Authority – NCGS § 160D-202(j)

- J. Effect on Vested Rights. Whenever the Town, pursuant to this section, acquires jurisdiction over a territory that theretofore has been subject to the jurisdiction of another local government, any person who has acquired vested rights in the surrendering jurisdiction may exercise those rights as if no change of jurisdiction had occurred. The city or county acquiring jurisdiction may take any action regarding such a development approval, certificate, or other evidence of compliance that could have been taken by the local government surrendering jurisdiction pursuant to its development regulations. Except as provided in this subsection, any building, structure, or other land use in a territory over which a city or county has acquired jurisdiction is subject to the development regulations of the city or county.

Statutory Authority – NCGS § 160D-202(k)

- 1.5.3. Split Jurisdiction. If a parcel of land lies within the planning and development regulation jurisdiction of more than one local government, the local governments may by mutual agreement pursuant to Article 20 of Chapter 160A and with the written consent of the landowner assign exclusive planning and development regulation jurisdiction for the entire parcel to any one of those local governments. Such a mutual agreement shall only be applicable to development regulations and shall not affect taxation or other non-regulatory matters. The mutual agreement shall be evidenced by a resolution formally adopted by each governing board and recorded with the register of deeds in the county where the property is located within 14 days of the adoption of the last required resolution.

Statutory Authority – NCGS § 160D-203

- 1.5.4. Pending Jurisdiction. After consideration of a change in local government jurisdiction has been formally proposed, the local government that is potentially receiving jurisdiction may receive and process proposals to adopt development regulations and any application for development approvals that would be required in that local government if the jurisdiction is changed. No final decisions shall be made on any development approval prior to the actual transfer of jurisdiction. Acceptance of jurisdiction, adoption of development regulations, and decisions on development approvals may be made concurrently and may have a common effective date.

Statutory Authority – NCGS § 160D-204

- 1.5.5. Exemptions.

- A. In accordance with NCGS 160A-392, the Town of Fairmont Zoning Ordinance applies to state-owned lands only when a building is involved.

1.6. COMPLIANCE.

1.6.1. No building, premises, or structure shall be constructed, erected, modified, converted, occupied, placed, maintained or moved, and no land use shall be commenced, maintained, or modified, except as authorized by this Ordinance.

***Statutory Authority – NCGS Chapter 160D-403(a)
(Ord. 05/31/1977; 154.003)***

1.7. RELATIONSHIP TO COMPREHENSIVE PLAN.

1.7.1. It is the intention of the Board of Commissioners that this Ordinance implement the planning policies adopted for the Town of Fairmont, for the purpose of promoting the public health, safety, morals and general welfare; promoting the orderly development of the community; lessening congestion in the roads and streets; securing safety from fire, panic and other dangers; providing adequate light and air; preventing the overcrowding of the land; avoiding undue concentration of population; and facilitating the adequate provision of transportation, water, sewerage, schools, parks and other public requirements, all in accordance with a well-considered comprehensive plan, as reflected in the Comprehensive Plan and other planning documents. While the Board of Commissioners reaffirms its commitment that this Ordinance and any amendment to it be in conformity with adopted planning policies, the Board of Commissioners hereby expresses its intent that neither this Ordinance nor any amendment to it may be challenged on the basis of any alleged nonconformity with any planning document.

(Ord. 05/31/1977; 154.001 Section A)

A. *Comprehensive Plan Required.* As a condition of adopting and applying zoning regulations under NCGS Chapter 160D and this ordinance, the Town of Fairmont shall adopt and reasonably maintain a comprehensive plan that sets forth goals, policies, and programs intended to guide the present and future physical, social, and economic development of the jurisdiction.

- 1) The comprehensive plan sets forth the goals, policies and programs intended to guide coordinated, efficient, and orderly development within the planning and development regulation jurisdiction based on an analysis of present and future needs.
- 2) Planning analysis supporting the plan may address inventories of existing conditions and assess future trends regarding demographics, economic, environmental, and cultural factors.
- 3) The planning process shall include opportunities for citizen engagement in plan preparation and adoption.

Statutory Authority – S.L. 2020-25 Section 11(a); NCGS § 160D-501

- B. Other Plans. In addition to a comprehensive plan, the Town may prepare and adopt such other plans as deemed appropriate. This may include, but is not limited to, land use plans, small area plans, neighborhood plans, hazard mitigation plans, transportation plans, housing plans, and recreation and open space plans.
- 1) If adopted pursuant to the process set forth in this section, such plans shall be considered in review of proposed zoning amendments.

Statutory Authority – S.L. 2020-25 Section 11(a1); NCGS § 160D-501

- C. Contents. A comprehensive plan may, among other topics, address any of the following as determined by the Town:
- 1) Issues and opportunities facing the local government, including consideration of trends, the values expressed by citizens, community vision, and guiding principles for growth, and development.
 - 2) The pattern of desired growth and development and civic design, including the location, distribution, and characteristics of future land uses, urban form, utilities, and transportation networks.
 - 3) Employment opportunities, economic development, and community development.
 - 4) Acceptable levels of public services and infrastructure to support development, including water, waste disposal, utilities, emergency services, transportation, education, recreation, community facilities, and other public services, including plans and policies for provision of and financing for public infrastructure.
 - 5) Housing with a range of types and affordability to accommodate persons and households of all types and income levels.
 - 6) Recreation and open spaces.
 - 7) Mitigation of natural hazards such as flooding, winds, wildfires, and unstable lands.
 - 8) Protection of the environment and natural resources, including agricultural resources, mineral resources, and water and air quality.
 - 9) Protection of significant architectural, scenic, cultural, historical, or archaeological resources.

10) Analysis and evaluation of implementation measures, including regulations, public investments, and educational programs.

Statutory Authority – S.L. 2020-25 Section 11(b); NCGS § 160D-501(b)

1.7.2. Adoption and Effect of Plans.

- A. Plans shall be adopted by the governing board with the advice and consultation of the planning board.
- B. Adoption and amendment of a comprehensive plan is a legislative decision and shall follow the process mandated for zoning text amendments set by G.S. 160D-6-1.
- C. Plans adopted under this Chapter may be undertaken and adopted as part of or in conjunction with plans required under other statutes, including but not limited to the plans required by G.S. 113A-110.
- D. Plans adopted under this Chapter shall be advisory in nature without independent regulatory effect. Plans adopted under this Chapter do not expand, diminish, or alter the scope of authority for development regulations adopted under this Chapter.
- E. Plans adopted under this section shall be considered by the planning board and governing board when considering proposed amendments to zoning regulations as required by G.S. 160D-604 and 160D-605.
- F. If a plan is deemed amended by G.S. 160D-605 by virtue of adoption of a zoning amendment that is inconsistent with the plan, that amendment shall be noted in the plan. However, if the plan is one that requires review and approval subject to G.S. 113A-110, the plan amendment shall not be effective until that review and approval is completed.

Statutory Authority – S.L. 2020-25 Section 11(b); NCGS § 160D-501(c)

1.8. DEVELOPMENT APPROVALS RUN WITH THE LAND.

- 1.8.1. Unless provided otherwise by law, all rights, privileges, benefits, burdens and obligations created by approvals made pursuant to this Ordinance and to NCGS Chapter 160D attach to and run with the land.

Statutory Authority – NCGS § 160D-104

1.9. FEES.

- 1.9.1. Reasonable fees sufficient to cover the costs of administration, inspection, publication of notice and similar matters may be charged to applicants for zoning permits, sign permits, special use permits, zoning amendments, variances and other administrative relief and plan review. The amount of the fees charged shall be set forth in the Town's budget or as established by resolution of the Board of Commissioners and filed in the offices of the Town Clerk.
- 1.9.2. Fees established in accordance with Subsection 1.9.1. shall be paid upon submission of a signed application or notice of appeal.
- 1.9.3. Refund of Fees Determined to be Illegal. If the Town of Fairmont is found to have illegally imposed a tax, fee, or monetary contribution for development or a development approval not specifically authorized by law, the shall return the tax, fee, or monetary contribution plus interest of six percent (6%) per annum to the person who made the payment or as directed by a court if the person making the payment is no longer in existence.

***Statutory Authority – NCGS § 160D-106
(Ord. 05/31/1977, 154.067 Section C)***

1.10. SEVERABILITY.

- 1.10.1 If any section or specific provision or standard of this Ordinance or any regulating district boundary arising from it is found by a court to be invalid for any reason, the decision of the court shall not affect the validity of any other section, provision, standard, or district boundary of these regulations except the provision in question. The other portions of these regulations not affected by the decision of the court shall remain in full force and effect.

1.11. CONFLICTS WITH OTHER REGULATIONS.

- 1.11.1. In interpreting and applying the provisions of this Ordinance, they shall be held to be the minimum Requirements for the promotion of the public safety, health, convenience, prosperity, and general welfare. It is not intended by this Ordinance to interfere with, abrogate, or annul any easements, covenants, or other agreements between parties; provided, however, that where this Ordinance imposes a greater restriction upon the use of buildings or premises or upon the height of buildings, or requires larger open spaces than are imposed or required by other ordinances, rules, regulations, restrictive covenants, or agreements, the provisions of this greater restriction shall govern.

(Ord. 05/31/1977 Amd.05/13/2003; 154.202)

1.12. EFFECT ON PRIOR LAWS.

- 1.12.1. The enactment of this Ordinance shall not require the re-adoption of any local government ordinance enacted pursuant to laws that were in effect before July 18, 2023 and are restated

or revised herein. The provisions of this Ordinance shall not affect any act heretofore done, any liability incurred, any right accrued or vested, or any suit or prosecution begun or cause of action accrued as of July 18, 2023. The enactment of this Ordinance shall not be deemed to amend the geographic area within which Town development regulations adopted prior to July 1, 2021 are effective.

1.12.2. G.S. 153A-3 and 160A-3 are applicable to this Ordinance. Nothing in this Ordinance repeals or amends a charter or local act in effect as of July 18, 2023 unless this Ordinance or a subsequent enactment of the General Assembly clearly shows a legislative intent to repeal or supersede that charter or local act.

1.12.3. Whenever a reference is made in another section of the General Statutes or any local act, or any Town ordinance, resolution, or order, to a portion of Article 19 of Chapter 160A or Article 18 of Chapter 153A of the General Statutes that is repealed or superseded by NCGS Chapter 160D, the reference shall be deemed amended to refer to that portion of NCGS 160D that most nearly corresponds to the repealed or superseded portion of Article 19 of Chapter 160A or Article 18 of Chapter 153A.133

1.12.4. Building permits prior to effective date. No section of this ordinance shall in any way prohibit, restrict, or affect in any manner or form any person, firm or corporation who has secured a building permit by the Town of Fairmont prior to the effective date of this ordinance.

Statutory Authority – NCGS § 160D-111

1.13. EFFECTIVE DATE.

1.13.1. The provisions in this Ordinance were adopted and became effective on July 18, 2023.

Mayor

ATTEST: _____ (SEAL)