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Subject: Commissioners seek public input on Emergency Management ordinance.

“The Haywood County Board of Commissioners is reviewing its Emergency Management Ordinance to consider public input, and to ensure that it conforms to contemporary local, state and federal laws.”

As you must be aware, many sections of NCGS § 166A were repealed by Session Laws effective October 1, 2012. This was, of course, before your time as County Manager, but after the original Emergency Management Ordinance was signed in November of 2009. § 166A severely curtails what municipal and county governments authority when dealing with emergencies. But you know that, I imagine. I will outline (summarize) two aspects. There are many, many more.

1. The ordinances authorized by this section may permit prohibitions and restrictions (i.e., these are the only actions you can enforce during an emergency):

- Movement of people in public places.
- Operation of offices, business’s, places people go.
- Controlling aspects of alcoholic beverages.
- Controlling aspects of gasoline and “dangerous weapons and substances”, except does not authorize prohibitions or restrictions on lawfully possessed firearms or ammunition.
- Other activities or conditions reasonably necessary to protect lives or property.

Note: “dangerous weapons and substances” applies only to threat of bodily injury or destruction of property, when circumstances indicate a probability that such instrument or substance will be so used.

These are the only things Mark Swanger can do during a County State of Emergency.

2. State of Emergency, § 166A-19.22.

(2) 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 the state of emergency's application. Such an extension may be with respect to one or more of the prohibitions and restrictions imposed in that county pursuant to the authority granted in G.S. 166A-19.31 and need not be with respect to all prohibitions and restrictions authorized by that section.

A County Declaration of a State of Emergency does not automatically include any municipality.

These are just two (2) of the restrictions the NC General Legislature has placed on Counties and Municipalities during a Declaration of Emergency.

With § 166A-19.22 and other applicable NCGS's at hand, I modified the existing EMO.

This document was originally provided to my by Candace Way as a Word Document, thus is complete.

Bad Stuff was indicated using the strike-out format. [~~Bad Stuff~~]

Good Stuff that was added in place of the Bad Stuff is shown in bold-underline. [**Good Stuff**].

You know, if Swanger had attempted to rely on the existing EMO for our next emergency, he and a bunch of other county employees, including you, could have gotten into a lot of trouble.

You should thanking us (all of the people that brought this EMO issue up) for our concern.

This is but a single recommendation for you to consider, as everyone in Haywood County also needs to voice their concern on this existing document.

Thank you,

Monroe Miller

cc: Terry Ramey
Candace Way

CHAPTER 31- EMERGENCY MANAGEMENT

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§ 31.01 Intent and Purpose

~~(a) 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:~~

- ~~(1) Reduce vulnerability of people and property of the County to damage, injury, and loss of life and property;~~
- ~~(2) Prepare for prompt and efficient rescue, care and treatment of threatened or affected persons;~~
- ~~(3) Provide for the rapid and orderly rehabilitation of persons and restoration of property; and~~
- ~~(4) 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 governments, with interstate organizations and with other private and quasi-official organizations.~~

~~(b) This article will not relieve any county department of the legal responsibilities or authority given to it in the county Charter or by local chapters, nor will it adversely affect the work of any volunteer agency organized for relief in disaster emergencies.~~

~~© To the extent not specifically enumerated herein, all authorities and powers conferred on the County pursuant to Chapter 166A, Chapter 36A and Chapter 14 of the North Carolina General Statutes, and all similar provisions of state and federal law, are incorporated herein by reference.~~

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- (a) The purpose of this Chapter is to enact ordinances designed to permit the imposition or prohibitions and restrictions within the emergency area during a state of emergency declared pursuant to § 166A-19.22 and as set forth in § 166A-19.15 and § 166A-19.31. Type of Prohibitions and Restrictions Authorized. - The ordinances authorized by this section may permit prohibitions and restrictions:
- (1) Of 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) Of the operation of offices, business establishments, and other places to or from which people may travel or at which they may congregate.
 - (3) Upon the possession, transportation, sale, purchase, and consumption of alcoholic beverages.
 - (4) Upon 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 G.S. 14-288.1. As used in this subdivision, the term "firearm" has the same meaning as it does under G.S. 14-409.39(2).
 - (5) Upon 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.

Article 36A., Riots, Civil Disorders, and Emergencies, § 14-288.1. Definitions.

- (2) Dangerous weapon or substance. - Any deadly weapon, ammunition, explosive, incendiary device, radioactive material or device, as defined in G.S. 14-288.8(c)(5), or any instrument or substance designed for a use that carries a threat of serious bodily injury or destruction of property; or any instrument or substance that is capable of being used to inflict serious bodily injury, when the circumstances indicate a probability that such instrument or substance will be so used; or any part or ingredient in any instrument or substance included above, when the circumstances indicate a probability that such part or ingredient will be so used.

The ordinances authorized by this section need not require or provide for the imposition of all of the types of prohibitions or restrictions, or any particular prohibition or restriction, authorized by this section during an emergency but may instead authorize the official or officials who impose those prohibitions or restrictions to determine and impose the prohibitions or restrictions deemed necessary or suitable to a particular state of emergency.

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The following principles are to be used as the primary guide and authority for developing specific procedures for dealing with emergencies in the various neighborhoods of Haywood County:

- (1) Individuals have exclusive right to their earned or otherwise acquired Property and other resources and these rights cannot be taken away for any reason by anyone.
- (2) In no instance will an individual be forced to take part in any recommended action or process. For example, during a forest fire, individuals may be urged to leave their homes for their own safety but in no case will they be forced to leave. Citizens will be free to choose whether or not they follow any procedures developed in the following ordinance.
- (3) During an emergency citizens , including elected officials and government employees are responsible for their own actions while implementing this Ordinance. Actions in violation of another citizens’s rights as described in the Constitution of the United States of America, including their rights to their life, liberty and property, may be prosecuted to the fullest extent of the law.
- (4) Haywood County is to be divided into geographic areas. These areas may include areas such as Bethel, Cruso, Waynesville, Hazelwood, Balsam Gap, Maggie Valley, Soco Gap, White Oak, Clyde, Canton and Jonathan Creek, etc.
- (5) During an emergency, the Sheriff of Haywood County and the Chief of Police of each municipality will limit their responsibilities to their constitutional duties Which are to protect the life, liberty and property of citizens within their jurisdiction from criminal activity while the citizens are dealing with non-criminal or natural emergencies.

§ 31.02 Haywood County Emergency Management Agency

In accordance with N.C.G.S. ~~166A-7(a)~~ **§ 166A-19.15** the County governing body is responsible for all emergency management activities within its borders, ~~including the municipalities therein.~~ 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, ~~including but not limited to those activities provided for in Section 2.~~ The Agency shall be the agency through which the Haywood County Board of 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 activity connected with emergency management, including activities within municipalities.

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§ 31.03 Definitions

The following words, terms and phrases, when used in this Chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~(1) **Attack** means direct or indirect assault against the county, its government, its environs, or of the nation, by forces of a hostile nation or the agents thereof, including assault by bombing, conventional or nuclear, chemical or biological warfare, terrorism or sabotage.~~

(2) **County Chairperson** means the Chairperson of the Haywood County Board of Commissioners.

(3) **Director** means the coordinator of the county emergency management agency, appointed as prescribed in this chapter.

(4) **Disaster Emergency** means 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 or paramilitary cause, ~~including but not limited to actual or threatened enemy attack, sabotage~~ extraordinary fire, flood, storm, epidemic, accident, chemical spill or other impending or actual calamity endangering or threatening to endanger health, life or property of constituted government.

(5) **Emergency management** means the basic government functions of maintaining the public peace, health and safety during an emergency. ~~This term includes prevention against and plans and preparations for protection and relief and recovery from effects of an attack by the forces of an enemy nation or the agents thereof or a disaster as defined in this section. It shall not, however, include any activity that is the primary responsibility of the military forces of the United States.~~

(6) **Emergency Management Personnel** means 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.

~~(7) **Local Emergency Planning Committee** is a committee formed by the County Commissioners to facilitate emergency management coordination and cooperation of all political jurisdictions and agencies, both public and private, within Haywood County.~~

(8) **Regulations** mean plans, programs and other emergency procedures deemed essential to emergency management.

(9) **State of Emergency (or State of Disaster)** means the condition that exists whenever, during times of public crisis, ~~disaster~~, rioting, catastrophe, or similar public emergency, public safety authorities are unable to maintain public order or afford adequate protection for lives or property, and which constitutes a significant threat to public health, safety and welfare whether actual or imminent.

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

§ 31.04 Organization and Appointments

The emergency management organization shall consist of the following:

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- (1) An agency of emergency management under the direction of the board of commissioners. The head of the county emergency management agency shall be known as the director, and such assistants and other employees as are deemed necessary for the proper functioning of the agency will be appointed.
- (2) The employees and resources of all county departments, boards, institutions, and councils shall participate in the 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) The board of commissioners shall appoint a director of the county emergency management agency who 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 if danger occurs from enemy action or disaster as defined in this article.~~
- (5) 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 Duties and Responsibilities

The Chairperson of the Board of County Commissioners shall have the authority to independently exercise the following duties and responsibilities after reasonable attempts to convene a meeting of the full Board of County Commissioners have proven unsuccessful.

- (1) Exercise general direction and control of the County emergency management program and shall be responsible for carrying out the provisions within this local chapter, Chapter 166A of the North Carolina General Statutes, and all other applicable local, state, and federal laws.
- (2) Serve as an active member of the Local Emergency Planning Committee and agrees to assure collaborative membership amongst other applicable agencies.
- (3) Make, amend or rescind the necessary orders, rules, proclamations, and regulations within the limits of the authority conferred upon him/her herein, with due consideration of the laws and policies of the state and federal government.
- (4) Delegate any authority vested in him/her under this chapter and to provide for the sub-delegation of any such authority.
- (5) Cooperate and coordinate with the Governor and the heads of the departments and agencies of the state and federal government, and with other appropriate state officers and agencies, and with the officers and agencies of other local units of government in matters pertaining to the emergency management of the County.
- (6) Utilize the services, equipment, supplies and facilities of existing departments, offices and agencies of the County and of the political subdivisions thereof. The officers and personnel of all such departments, offices and agencies are required to cooperate with and extend such services and facilities to the Chairperson upon request. This authority shall extend to a state of ~~disaster, imminent threat of disaster or~~ emergency management planning and training purposes.

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- ~~(7) 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 law.~~
- (8) Use contingency and emergency funds as necessary and appropriate to provide relief and assistance from the effects of a ~~disaster~~ **an emergency**, and to reallocate such other funds as may reasonably be available within the appropriations of the various departments when the severity and magnitude of such ~~disaster~~ **emergency** so requires and the contingency and emergency funds are insufficient or inappropriate.

The County Manager shall have the following duties and responsibilities:

- (1) Be responsible to the Board of County Commissioners for emergency management activities.
- (2) Activate County plans applicable to the areas in question and to 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.
- (3) Implement this chapter
- (4) Exercise additional authority, duties, and responsibilities as may be prescribed by the Board of County Commissioner.

These duties may be sub-delegated to the Director of the Emergency Management Agency as appropriate.

The Director of Emergency Management shall have the following duties and responsibilities:

- (1) Be responsible to the County Manager in regard to all phases of emergency management activity.
- (2) 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.
- (3) Coordinate the recruitment of volunteer personnel and agencies to augment the personnel and facilities of the county for emergency management purposes.
- (4) 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.
- ~~(5) 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.~~
- (6) Through public informational programs, educate the populace as to actions necessary and required for the protection of their persons and property in a ~~disaster~~ **an emergency**, either impending or present.
- (7) 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.
- (8) 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.

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- (9) 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.

§ 31.06 County Emergency Management plans

- (1) Comprehensive emergency management plans shall be adopted and maintained 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 and facilities and personnel of all existing departments and agencies shall be utilized to the fullest extent. 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 whenever a disaster, as defined in this chapter, has been proclaimed.~~
- (2) The director shall prescribe in the emergency plans those positions within the ~~disaster~~ **emergency** organization, in addition to his/her own, 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 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 and, where needed, volunteers. 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 will then submit the amendments to the board of commissioners with his/her recommendation for its approval.
- (5) When a required competency or skill for a ~~disaster~~ **an emergency** 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 a ~~disaster~~ **an emergency**. 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.
- ~~(6) 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. Such agreements will be coordinated with the County Manager to assure other directives, compensation and laws are complied with therein.~~

§ 31.07 Declaration of County ~~Disaster~~ **Emergency**

- ~~(1) Pursuant to N.C.G.S. 116A-8 and Article 36A of Chapter 14 of the North Carolina General Statutes, the existence of a state of disaster may be proclaimed by the County~~

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~~Chairperson without public notice or by a resolution of the Board of County Commissioners in an emergency meeting if a disaster threatens or exists.~~

- ~~(2) If a County state of disaster is proclaimed, the County Manager or Emergency Management Director shall provide the Board of County Commissioners with a preliminary damage assessment as soon as the assessment is available. Municipalities therein may proclaim individual disasters upon request of their respective Mayor per G.S. 14-288.14.~~
- ~~—(3) A proclamation or resolution declaring or terminating a County state of disaster shall be disseminated promptly to the attention of the general public and all other entities therein.~~
- ~~—(4) In addition to any other powers conferred upon the County Manager by local law, during a state of disaster, the County Manager shall have the following powers, with authority to sub-delegate all of part of these powers to the Emergency Management Director:~~
 - ~~(a) — To utilize all available County resources as reasonably necessary to cope with an emergency, including the transfer and direction of personnel or functions of County agencies or units thereof for the purpose of performing or facilitating emergency services;~~
 - ~~(b) — To take such action and give such directions to law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of this chapter and with the orders, rules and regulations made pursuant thereto;~~
 - ~~© — To take steps to assure that measures, including the installation of public utilities, are taken when necessary to qualify for temporary housing assistance from the federal government when that assistance is required to protect the public health, welfare, and safety;~~
 - ~~(d) — To relieve any public official having administrative responsibilities under this chapter of such responsibilities for willful failure to obey an order, rule or regulation adopted pursuant to this chapter.~~
 - ~~(e) — To direct and compel the evacuation of all or part of the population from any stricken or threatened area within the County, to prescribe routes, modes of transportation, and destinations in connection with evacuation; and to control ingress and egress of a disaster area, the movement of persons within the area, and the occupancy of premises therein.~~
 - ~~(f) — To establish a system of economic controls over all resources, materials and services to include food, clothing, shelter, fuel, rents and wages, including the administration and enforcement of any rationing, price freezing or similar state/federal order or regulation;~~
 - ~~(g) — To regulate and control the flow of vehicular and pedestrian traffic, the congregation of persons in public places or buildings, lights and noises of all kinds and the maintenance, extension and operation of public utility and transportation services and facilities;~~
 - ~~(h) — To waive a provision of any regulation or chapter of a County agency or a political subdivision this restricts the immediate relief of human suffering;~~
 - ~~(i) — To perform and exercise such other functions, powers and duties as are necessary to promote and secure the safety and protection of the civilian population;~~

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- (j) ~~To procure, by purchase, condemnation, seizure or by other means to construct, lease, transport, store, maintain, renovate or distribute materials and facilities for emergency management without regard to the limitation of any existing law.~~
- (5) ~~A state of emergency declared pursuant to this Chapter, and all prohibitions and restrictions imposed as a result of the declaration, shall be established by written proclamation duly executed by the Chairman or the Chairman's designee, and shall remain in effect until such time as the proclamation is amended or rescinded in the same manner. The proclamation 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) ~~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.~~
- (7) ~~Any proclamation declaring 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 proclamation.~~

Pursuant to § 166A-19.22. Municipal or county declaration of state of emergency.

(a) Declaration. - A state of emergency may be declared by the governing body of a municipality or county, if either of these finds that an emergency exists. Authority to declare a state of emergency under this section may also be delegated by ordinance to the mayor of a municipality or to the chair of the board of county commissioners of a county.

(b) Emergency Area. - The emergency area shall be determined in accordance with the following:

NC General Statutes - Chapter 166A 12

(1) Unless another subdivision of this subsection is applicable, the emergency area shall not exceed the area over which the municipality or county has jurisdiction to enact general police-power ordinances. The governing body declaring the state of emergency may declare that the emergency area includes part or all of the governing body's jurisdiction. Unless the governing body declaring the state of emergency provides otherwise, the emergency area includes this entire jurisdiction, subject to the limitations contained in the other subdivisions in this subsection.

(2) 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

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municipality's governing body or mayor consents to or requests the state of emergency's application. Such an extension may be with respect to one or more of the prohibitions and restrictions imposed in that county pursuant to the authority granted in G.S. 166A-19.31 and need not be with respect to all prohibitions and restrictions authorized by that section.

~~§ 31.08 Hazardous Materials and Substances~~

~~(A) Definitions~~

~~The following words, phrases, and terms when used in this Section, shall have the meanings ascribed to them in this Section and applicable regulations of the U.S. Environmental Protection Agency and the North Carolina Department of Environment, Health and Natural Resources, except where the context clearly indicates a different meaning:~~

~~Hazardous material:~~

~~Any substance which, when discharged in any quantity, may present an imminent and substantial danger to the public health or welfare or to the environment.~~

~~Having control over:~~

~~Shall mean, but not limited to any person using, transferring, storing or transporting a hazardous material immediately prior to release of such hazardous material onto the land or into the air or the waters of the county.~~

~~Hazardous material response:~~

~~The sending of fire department/emergency management or its agent(s), personnel, or equipment to abate, control, or remedy the spread of hazardous materials which endanger the health or safety of persons or the environment.~~

~~Person: includes individuals, firms, partnerships, associations, institutions, corporations, local governments and the governmental agencies.~~

~~(B) Purpose and Activity~~

~~(1) The Haywood County Emergency Management Director or their designee shall have the authority to summarily abate, remedy, or control the spread of hazardous materials which are emitted into the environment in such a manner as to endanger the health or safety of the general public or the environment.~~

~~(2) The Haywood County Emergency Management Director or their designee shall have authority to enter public or private property, with or without the owner's consent, to respond to such hazardous materials emergencies.~~

~~(3) The Haywood County Emergency Management Director or their designee shall determine the type, amount and quantity of equipment and personnel required to adequately abate, remedy or control the spread of all hazardous materials which are emitted into the environment.~~

~~© Responsibility~~

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The property owner and/or the person exercising control over the hazardous materials that create the hazardous materials emergency shall be held financially liable for the response, abatement, control, and remedial costs incurred by the Haywood County or its agent(s) during the emergency. The property owner and/or the person exercising control over such hazardous material shall assist Haywood County or its agent(s) in abatement, removal, control and remedial measures associated with the hazardous material emergency.

Assistance shall consist of any or all of the following:

- (1) Comply with the direction of the Haywood County Emergency Management Director;
- (2) Supply emergency response plan information for the site;
- (3) Supply emergency response equipment, personnel, and materials available on the site.

(D) Fees and Charges

The fees and charges for hazardous materials emergency response on behalf of Haywood County or its agent(s) shall be established by the Board of County Commissioners of Haywood County from time to time and set forth in the Haywood County Manual of Fees and Charges, a copy of which shall be maintained in the office of the Haywood County Emergency Management Director and the Haywood County Finance Office, and shall contain a schedule of types and amounts of charges authorized.

(E) Payment of Costs

(1) Upon completion of response to a hazardous materials emergency by Haywood County or its agent(s) under the provisions of this Section, the County shall there upon mail or deliver to the owner of and/or the person having control over the hazardous materials that created the emergency a bill covering the costs of response, including but not limited to abatement, remediation, control and removal.

(2) As provided for in Section 160A-193 of the General Statutes, the amount of the bill shall become a lien upon such property, land, or premises where the hazardous materials emergency arose, and if not paid within thirty (30) days, shall be collected in the same manner as provided for the collection of delinquent or unpaid taxes.

§ 31.09 — Fees and Charges for Hazardous Materials Response

The charges for hazardous materials emergency response on behalf of Haywood County or its agent(s) shall be based upon a unified fee schedule that has been agreed upon by a committee of all applicable agencies and approved by the Board of County Commissioners. It is the responsibility of each agency/department/office to bill for fees and charges rendered during the emergency.

§ 31.10 Liability and Immunity

(1) This Chapter is an exercise by the county of its governmental functions for the protection of the public peace, health, and safety, and neither the county 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 any order, rule, proclamation, or regulation

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~~promulgated pursuant to this Chapter shall be liable for any damage sustained to persons or property as the result of such activity.~~

- ~~(2) Any person owning or controlling real estate or other premises who voluntarily and without compensation grants the county the right to inspect, designate and use the whole or any part of such real estate or premises for the purpose of sheltering persons during an actual, impending or practice disaster situation shall not be civilly liable for the death of or injury to any persons on or about such real estate or premises under such license, privilege or other permission or for loss of or damage to the property of such person.~~
- ~~(3) All functions hereunder and all other activities relating to emergency management are hereby declared to be governmental functions. Neither the State or County nor any political subdivision thereof, nor, except in cases of willful misconduct, gross negligence or bad faith, any emergency management worker complying with or reasonably attempting to comply with this Chapter or any order, rule, proclamation, or regulation promulgated pursuant to the provisions of this Chapter or pursuant to any chapter 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.~~

Pursuant to § 166A-19.60. Immunity and exemption.

- (a) Generally. - All functions hereunder and all other activities relating to emergency management as provided for in this Chapter or elsewhere in the General Statutes are hereby declared to be governmental functions. Neither the State nor any political subdivision thereof, nor, except in cases of willful misconduct, gross negligence, or bad faith, any emergency management worker, firm, partnership, association, or corporation complying with or reasonably attempting to comply with this Article or any order, rule, or regulation promulgated pursuant to the provisions of this Article or pursuant to any ordinance 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.
- (b) Immunity. - The immunity provided to firms, partnerships, associations, or corporations, under subsection (a) of this section, is subject to all of the following conditions:
- (1) The immunity applies only when the firm, partnership, association, or corporation is acting without compensation or with compensation limited to no more than actual expenses and one of the following applies:
- a. Emergency management services are provided at any place in this State during a state of emergency declared by the Governor or General Assembly pursuant to this Article, and the services are provided under the direction and control of the Secretary pursuant to G.S. 166A-19.10, 166A-19.11, 166A-19.12, 166A-19.20, 166A-19.30, and 143B-602, or the Governor.
- b. Emergency management services are provided during a state of emergency declared pursuant to G.S. 166A-19.22, and the services are provided under the direction and control of the governing body of a municipality or county under G.S.

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166A-19.31, or the chair of a board of county commissioners under G.S. 166A-19.22(b)(3).

c. The firm, partnership, association, or corporation is engaged in planning, preparation, training, or exercises with the Division, the Division of Public Health, or the governing body of each county or municipality under G.S. 166A-19.15 related to the performance of emergency management services or measures.

(2) The immunity shall not apply to any firm, partnership, association, or corporation, or to any employee or agent thereof, whose act or omission caused in whole or in part the actual or imminent emergency or whose act or omission necessitated emergency management measures.

(3) To the extent that any firm, partnership, association, or corporation has liability insurance, that firm, partnership, association, or corporation shall be deemed to have waived the immunity to the extent of the indemnification by insurance for its negligence. An insurer shall not under a contract of insurance exclude from liability coverage the acts or omissions of a firm, partnership, association, or corporation for which the firm, partnership, association, or corporation would only be liable to the extent indemnified by insurance as provided by this subdivision.

§ 31.11 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.

§ 31.12 Violations

~~Unless otherwise provided for by law, it shall be a Class 3 misdemeanor for any person to violate any of the provisions of this Chapter, proclamations, 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 proclamations or plans issued pursuant to this Chapter.~~

Pursuant to § 166A-19.31, Violation. - Any person who violates any provision of an ordinance or a declaration enacted or declared pursuant to this section shall be guilty of a Class 2 misdemeanor in accordance with G.S. 14-288.20A.

~~§ 31.13 Conflicting Chapters, Orders, Rules and Regulations Suspended.~~

CHAPTER 31- EMERGENCY MANAGEMENT

~~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.~~

§ 31.14 County Commissioners Adoption

Upon motion made by Commissioner _____ and seconded by Commissioner _____, the above Ordinance was unanimously adopted this _____ day of ~~November, 2009~~ **March, 2015**

~~J. W. Kirkpatrick~~ **Mark Swanger** Chairman, Haywood County Board of Commissioners