CHAPTER 160: HIGH IMPACT DEVELOPMENT
GENERAL PROVISIONS

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§ 160.01 TITLE.

This Chapter shall be known and may be cited as High Impact Development, codified as Chapter 160 of the Haywood County Code of Ordinances.

§ 160.02 AUTHORITY AND JURISDICTION.

(A) This Chapter is established by the Haywood County Board of Commissioners pursuant to the authority conferred in N.C.G.S. §153A-121 and §153A-320.

(B) The provisions of this Chapter shall apply to all unincorporated areas of Haywood County lying outside of the corporate limits and the extraterritorial jurisdictions of any municipality.

§ 160.03 PURPOSE – PROTECTION OF VULNERABLE POPULATIONS.

This Chapter hereby acknowledges that high impact development within Haywood County has important, positive economic benefits to the citizens of the County. The County also recognizes that, at times, certain conditions associated with high impact activity can have adverse effects upon the health and well-being of vulnerable populations of people in close proximity. There are populations within certain facilities in Haywood County who have limited mobility, or complicated or difficult evacuation options, or limited ability to help themselves during times of emergency or evacuation; be it children in schools or care facilities, the sick, the elderly, the mentally challenged, or the incarcerated.

It is the simple intent of this Chapter to implement limited, reasonable protection standards for minimum high impact hazards and activities named herein. The desired outcome is that higher factors of safety may be in place for vulnerable citizens in any of the following entities:

1- Public and private schools,
2- Child care institutions/facilities,
3- Day care centers,
4- Hospitals,
5- Nursing care homes,
6- Retirement and assisted living facilities,
7- Correctional institutions (Ex. Jail or Prison).

§ 160.04 APPLICABILITY.

(A) The provisions of this Chapter shall apply to the following uses of any land as further defined in § 160.05(B) of this Chapter:

(1) Asphalt Plants; and,
(2) Chemical Facility
Class I,
Class II; and,
(3) Explosives Facility
Class I,
Class II; and,
(4) Mining, Quarrying, or Resource Extraction; and,
(5) Hazardous Waste Facilities
Class I,
Class II; and,
(6) Landfills; and,
(7) Combustible and Flammable Bulk Fuel Facilities
Class I,
Class II.

(B) The provisions of this Chapter shall not apply to any use of land arising out of or associated with *bona fide* agricultural or forestry operations as defined in G. S. § 106-701.

§ 160.05 INTERPRETATIONS AND DEFINITIONS.

(A) For the purposes of this Ordinance, certain words shall be defined or interpreted as follows:

(1) The word "County" shall mean Haywood County, North Carolina.

(2) The words "County Commissioners" shall mean the Board of Commissioners of Haywood County, North Carolina.

(3) The word "Ordinance" or "Chapter" shall mean CHAPTER 160 of the Haywood County Code of Ordinances.

(4) Words used in the singular in this Ordinance include the plural and words used in the plural include the singular.

(5) Words used in the present tense include future tense.

(6) The word "person" includes a firm, association, organization, corporation, company, trust, and partnership as well as an individual.

(7) The words "used" or "occupied" shall mean "intended, designed, and arranged to be used by or is used/occupied by persons."

(8) The word "lot" shall include the words "plot," "parcel," "site," "acreage," "tract," and "premises."

(9) The word "structure" shall include the word "building."

(10) The word "includes" shall not limit the term to specified examples, but is intended to extend its meaning to all other instances or circumstances of like kind or character.

(B) The following words shall be specifically defined as follows:

Accessory Structure - means a structure located on the same parcel of property as the principal structure and the use supports the principal structure. Garages, carports and storage sheds are common accessory structures.

Asphalt Plant – The equipment and facility necessary to produce petroleum bitumen products.

Buffer – A strip of land or an area of separation between properties or land uses measured from different property boundaries, different property uses, or surface waters.

Class 1 Chemical Facility – An establishment, business, or facility whose primary purpose is retail sales of chemical products in forms or states of matter that are hazardous, per "Emergency Planning and Community Right to Know Act (EPCRA) (42 U.S.C. § 11022 et. seq)"

Class 2 Chemical Facility - An establishment, business, or facility whose primary purpose may include wholesale transactions, transferring, production, synthesis, formation, processing, refining, manufacturing, distribution, and/or storage of chemical products in forms or states of matter that are hazardous, per "Emergency Planning and Community Right to Know Act (EPCRA) (42 U.S.C. § 11022 et. seq)"

Commercial – Use for an occupation, employment, or enterprise that is carried on for profit by the owner, lessee, or licensee.

Class I Combustible and Flammable Bulk Fuel Storage Facility – An establishment, business, or facility such as a service station or convenience store whose purpose in storing combustible and flammable fuel in quantity less than 50,000 gallons is for small-quantity retail sales of fuel to the public. Examples of small-quantity sales would include purchases such as a tank of gasoline for an automobile; or a propane tank exchange, or propane tank filling options for a family camper or a BBQ grill.

Class II Combustible and Flammable Bulk Fuel Storage Facility – A facility whose purpose is the storage, distribution, mixing, or transfer of combustible liquids, gases, or solids, received or transferred by truck, train, tank vessel, pipelines, tank car, piping, portable tank or containers, or other methods that include, but are not limited to propane, methane, and/or other combustible or flammable fuels. A facility in this class primarily sells, transfers, or stores large quantities of fuel for wholesale distribution; or may sell truckload quantities of home heating fuel. This definition shall not include fuel stored at or on a residence, business, or other facility where use of the same is limited to on-site consumption.

Class 1 Explosives Facility - An establishment, business, or facility primarily engaged in retail sales of pre-manufactured or pre-packaged explosives.

Class 2 Explosives Facility – An establishment, business, or facility used in the manufacturing, transferring, or storage of any chemical compounds, mixtures, or devices in which the primary or common purpose is to explode. This definition includes but is not limited to dynamite, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniting cord, igniters, and display fireworks, but does not include hand-loaded small arms ammunition.

Development Permit – A permit issued by the Ordinance Administrator authorizing the construction of a new entity or facility listed in section 160.03 or section 160.04 or any modification to a pre-existing entity or facility.

Hazardous Waste (NC General Statutes, Chapter 130A Article 9, § 130A-290(a)(8)) - "Hazardous waste" means a solid waste, or combination of solid wastes, which because of its quantity, concentration or physical, chemical or infectious characteristics may:

a. Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

b. Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed.

Class 1 Hazardous Waste Facility – A facility designed for collection of and or *temporary* storage of hazardous waste.

Class 2 Hazardous Waste Facility – A facility designed for processing, recovery, treatment, refining, production of and/or disposal of hazardous waste.

High Impact – A use listed in § 160.04 (A) of this Ordinance.

Landfill - (NC General Statutes, Chapter 130A Article 9, § 130A-290(a)(16) – "Landfill" means a disposal facility or part of a disposal facility where waste is placed in or on land and which is not a land treatment facility, a surface impoundment, an injection well, a hazardous waste long-term storage facility or a surface storage facility. This definition does not include recycling facilities.

Mining, Quarrying, or Resource Extraction – Any activity that may include dredging, digging, extraction, mining, or quarrying of earth materials including stones, minerals, ores, sand, or soils for commercial purposes. This definition shall not include excavation or grading when conducted solely in aid of on-site construction for purposes other than mining. This definition shall not include "gem" or other mining generally operated as a business use for the general public. This definition shall not include the removal of fieldstone for commercial, construction, masonry or private use.

Ordinance Administrator – An individual or group of individuals designated by the Haywood County Board of Commissioners and charged with upholding the provisions of this chapter, and having the power to enter all lands at reasonable times to insure that these provisions are being carried out.

Perennial Stream - A constantly flowing, drought-resistant stream that is typically depicted by a thin continuous blue line on the most recent version of the USGS 1:24,000 (7.5 minute) scale topographic maps (or as determined by local government studies; or studies including determinations or classifications made by the State of North Carolina, the United States Army Corps of Engineers or other controlling authorities acceptable to the County).

Principal Use - The primary purpose for which land, buildings or other improvements is/are arranged, designed, intended or used, including the storage or use of supplies, inventory, materials, equipment or products associated therewith.

Private School - A school operated by a private, non-governmental entity. A private school provides a facility (campus) and curriculum similar to public schools.

Public School – A non-commercial, elementary, secondary, or post secondary school that is supported by public funds, that is guided by local, state, and federal government policies and procedures, and that provides free education for children of a community or district.

Screening – The use of any device or natural growth including but not limited to fencing, walls, berms, vegetation, or any combination thereof that serves as a barrier of vision between adjoining properties. Screening may be partial or full as may be required by this Chapter.

Separation – Where separation restrictions are required, no portion of the active area on which the regulated use is located shall be situated within the stated distance from the protected use(s) whether such protected uses(s) are located within or outside Haywood County.

Setback - A continuous strip of land, or an area of land, or a specific minimum distance measured from defined, identifiable places such as property lines, streets, watercourses, or lakes that border or traverse the property (whichever is closer to the active area, principal use or building) in which no principal use is permitted. Limited development, including buffers and related development, parking lots and accessory structures and buildings, access road corridors, and interior service roads, may occur within the setback

§ 160.06 LOCATIONAL, SCREENING AND MITIGATION REQUIREMENTS.

No high impact development, as defined herein, of a parcel or parcels of land shall be permitted, constructed, operated, or maintained except in accordance with the following standards:

(A) Separation. The location of the closest point of a principle use, active area, building, structure or outdoor storage of a high impact development use shall be the minimum distance specified in § 160.07 of this Chapter from the nearest property line for any existing;

1- Public and private school,
2- Child care institution/facilities,
3- Day care center,
4- Hospital,
5- Nursing care home,
6- Retirement facility or assisted living institution,
7- Correctional Institution (Ex. Jail or Prison),

In order to establish permitted locations, the separation measurement shall be made in a straight line from the closest or nearest portion of the building, structure, outdoor storage, principle use, or active area of the high impact development to the nearest property line of the premises of the above listed protected facilities. Presence of a city, county or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the spacing requirements of this Section.

(1) Reciprocal separation requirement. In the event that a protected entity chooses to establish a new location of operation which is within the controlled proximity of a pre-existing, regulated entity, then, the

proposed, protected entity shall comply with the full separation distance requirements stated within §160.07 of this Chapter; and the full separation distance shall be upon the tract of the proposed, protected entity and not upon the pre-existing, regulated entity.

(B) Vegetative Buffer. A continuous vegetative buffer shall be maintained along any property line of a high impact development use which is adjacent to a public right-of-way or adjacent to property on which is located a public or private school, child care institution/facilities, day care center, hospital, nursing care home, retirement facility or assisted living institution or correctional facility. The vegetative buffer strip shall not be less than twenty five feet in width at a reasonable maturity and shall be composed of evergreen trees or shrubs approved by the Ordinance Administrator and which are of a type that at planting shall be a minimum of five feet in height and which at maturity shall not be less than ten feet in height.

(C) The buffer strip should consist of three rows of evergreen trees or shrubs planted in a staggered pattern. In each row the trees or shrubs should be spaced no more than ten feet apart (from base of tree to base of tree) and the rows should be no more than five feet apart or of a width appropriate for maturity of an approved species. Alternative spacing of trees or shrubs is acceptable to improve the growth of vegetation so long as the buffer strip is a minimum of twenty five feet in width and the density of the buffer is sufficient to provide adequate screening.

(D) Plans for buffering shall be provided with the permit application. Plants required in the buffer shall be carefully planted and shall be maintained in effective condition. Failure to maintain the buffer in reasonable, effective condition shall constitute a violation of this Ordinance. This planting requirement may be modified by the Ordinance Administrator where adequate buffering exists in the form of natural vegetation and or terrain.

(E) Stream Buffer. The closest point of building, structure, or outdoor storage of a high impact development use shall be set back from all surface waters, the minimum distance specified in § 160.07of this Chapter, or at a minimum, stream buffers as mandated by the State of North Carolina for the classified body.

(F) Principal Use Setback. All buildings, structures, or other improvements constituting the principal use for any high impact development shall be set back from the property lines the minimum distances specified in § 160.07 of this Chapter.

(G) Screening. All high impact development uses shall be effectively screened. The screening may be located within any required buffer or setback. The screening may consist of the required continuous vegetative buffer described in subsection (C) of this section or, upon approval of the Ordinance Administrator, a combination of the vegetative buffer, opaque wooden fences, masonry walls, or landscaped earthen berms that are approved for use.

(H) Setback Uses. Any legal, permitted (excluding the regulated entities herein) use may be located within the building setbacks of any high impact development use located on the same parcel of land.

(I) Safety Fencing. Safety fencing shall be installed around the principal use or building containing the principal use of all regulated uses as listed in 160.04 (A). The safety fencing shall be chain link or equivalent, at least six feet in height, and gated in order that it can be secured at any time.

§ 160.07 SPECIFICATIONS FOR SEPARATIONS, SETBACKS AND BUFFERS.

Specifications for the separation distances prescribed in § 160.06(A), the stream setbacks prescribed in § 160.06(D), the principal use setbacks prescribed in § 160.06(E), and the buffer widths prescribed in § 160.06(F) for each high impact development use are set forth in the following table (Stream buffers required by the State of North Carolina are given in the NCGS regulations and the NCAC rules.):

Regulated Entity	**Separation**	**Setback**	**Buffer (Live H_2O)**	**Fencing/ Screening**
1) Chemical Facility				
Class I	250	25	50	NO
Class II	1000	250	100	YES
2) Asphalt Plants	**750**	**100**	**100**	**YES**
3) Explosives				
Class I	250	25	50	**NO**
Class II	1000	200	100	**YES**
4) Mining/Extraction Operations/Quarries	1000	**100**	100	**YES**
5) Hazardous Waste				
Class I	**250**	**25**	**50**	**YES**
Class II	**1000**	**250**	**200**	**YES**
6) Landfills	**1000**	200	100	**YES**
7) Combustible and Flammable Bulk Fuel storage				
Class I-	**50**	**25**	**50**	**NO**
Class II	**1000**	**200**	**100**	**YES**

§ 160.08 APPLICATION TO EXISTING NONCONFORMING HIGH IMPACT DEVELOPMENT USES.

(A) Any high impact development use identified in this Chapter that is legally in existence on the effective date of this Chapter, which does not conform to the requirements of this Chapter, is declared non-conforming.

(B) Any non-conforming high impact development use as described above may continue so long as the use is not discontinued. In cases where repair or renovation is necessary to re-occupy a building that is part of a regulated entity, such construction must commence immediately and proceed continuously to completion and re-use.

(C) Expansion of nonconforming, high impact development uses shall comply with the standards set forth in this Ordinance.

In the event that there is no protected entity within the control distances required by this Ordinance, with the written permission of the Ordinance Administrator, the following allowances may apply: A Class I Chemical Facility, or a Class 1 Explosives Facility, or a Class I Hazardous Waste facility, or a Class I Combustible and Flammable Bulk Fuel Storage facility (underground storage only) may encroach upon the required setback distances by up to 20% (twenty percent).

In the event that a protected entity exists at the time of a proposed expansion of a regulated entity, with the written permission of the Ordinance Administrator, the following allowances may apply: A Class I Chemical Facility, or a Class 1 Explosives Facility, or a Class I Hazardous Waste facility, or a Class I Combustible and Flammable Bulk Fuel Storage facility (underground storage only) may encroach upon the required separation distances by up to 50% (fifty percent).

Vertical expansions are not allowed without written approval of the Ordinance Administrator.

(D) In cases of damage to nonconforming buildings to the extent of seventy five percent (75%) or less of the replacement value, repairs may be made, provided the original foundation footprint is maintained. If such damage exceeds seventy five percent (75%) of the replacement value, repairs may be made only if the original foundation footprint is maintained and the standards of this Ordinance are met to the extent approved by the Ordinance Administrator.

(E) Compliance with a requirement of this Ordinance is not physically practicable if compliance cannot be achieved without adding additional land to the lot where the nonconforming high impact development use is maintained or requires the movement of a substantial structure that is on a permanent foundation. Financial hardship caused by the cost of meeting requirements does not constitute grounds for finding that compliance is not practicable. However, in such instances, consideration will be given by the County to the regulated entity in order that hardships may be mitigated; this in the effort of balance and fairness; and, if there are no objectionable secondary consequences.

§ 160.09 INSPECTIONS.

(A) The Ordinance Administrator may periodically inspect the development activities subject to the requirements of this Chapter and shall request, from the applicant, permission to inspect the high impact development during construction and thereafter.

(B) If voluntary entry is denied, the Ordinance Administrator may seek any legal means to inspect the high impact development.

(C) The Ordinance Administrator shall be responsible for all inspections, plan review and approval, enforcement, and other responsibilities as outlined in this Chapter.

§ 160.10 PERMIT REQUIRED.

(A) All new high impact development uses and any nonconforming high impact development uses which are moved, altered or enlarged shall conform to the provisions contained in this Chapter.

(B) No building, establishment, business, facility, or other structure subject to this Ordinance shall be erected, moved, or altered without a Development Permit. No building permit shall be issued except in conformity with the provisions of this Chapter.

(C) Development Permit applications shall include site plans. A site development plan shall be prepared and shall contain the following information:

(1) The name, address and telephone number of the applicant and the property owner, tax parcel identification number, scale, north arrow, a copy of the section of the 1:24,000 USGS quadrangle showing the proposed site.

(2) The name, address, telephone number, signature and seal of the professional preparing the site development plan.

(3) All structures and surface waters located on the parcel, all private and public roads.

(4) Surveyed boundary lines of the parcel.

(5) Description of adjacent land use and all property owner names, tax parcel numbers and mailing addresses.

(6) To scale sizes and locations on the lot of any buildings already existing and location of all proposed buildings or alterations.

(7) Existing and proposed uses of the buildings and land.

(8) Any additional information requested by the Ordinance Administrator.

(D) The failure to obtain any Development Permit required by this ordinance shall be a violation of this Chapter.

§ 160.11 APPEAL FROM A DECISION OF THE ORDINANCE ADMINISTRATOR.

(A) Any order, requirement, decision or determination made by the Ordinance Administrator may be appealed to and decided by the Haywood County Planning Board.

(B) Notice of an appeal to the Planning Board shall be in writing, shall state the grounds for the appeal with specificity, and shall be submitted to the Ordinance Administrator within thirty days of the receipt of the written order, requirement, decision, or determination.

(C) The Ordinance Administrator shall schedule the appeal at the next regularly scheduled meeting of the Haywood County Planning Board and give notice thereof to the parties. At the meeting, any party may appear in person, by agent, or by attorney. The Planning Board shall give written notice of its decision to the Ordinance Administrator and to the applicant for a Development Permit.

§ 160.12 REQUEST FOR VARIANCE.
Refer to variance procedure

§ 160.13 PENALTIES, REMEDIES AND ENFORCEMENT.

(A) A violation of any of the provisions of this Chapter shall be a misdemeanor subject to the penalties and enforcement provisions of G.S. § 153A-123.

(B) Each day's continuing violation of any of the provisions of this Chapter shall constitute a separate and distinct violation.

(C) The provisions of this Chapter may be enforced by any one or more of the remedies authorized by G.S. § 153A-123.

§ 160.14 SEVERABILITY.

If any section or sections of this Chapter is/are held to be invalid or unenforceable, all other sections shall nevertheless continue in full force and effect.

160.15 ADOPTION AND EFFECTIVE DATE

Upon motion by Commissioner Kirkpatrick and seconded by

Commissioner Upton, the above Ordinance shall become effective upon

its adoption, this 19 day of September, 2016.

Mark Swanger

Mark Swanger, Chairman
Haywood County Board of County Commissioners