

**TRANSYLVANIA COUNTY  
HIGH-IMPACT INDUSTRIES ORDINANCE**

**Section 1. Title**

This chapter shall be known and may be cited as the Ordinance Regulating High-Impact Industries in Transylvania County.

**Section 2. Purpose**

The purpose of this ordinance is to protect the health, safety and general welfare of the citizens of Transylvania County; to protect the rural nature and character of Transylvania County; and to protect property owners and businesses from the impacts of High-Impact Industries, as defined herein.

**Section 3. Jurisdiction**

The provisions of this chapter shall apply to all areas of Transylvania County located outside the planning jurisdiction of any incorporated city or town or its extraterritorial jurisdictions.

**Section 4. Authority and Enactment**

This Chapter is established by the Transylvania County Board of Commissioners pursuant to the authority conferred in G.S. §§153A-121.

**Section 5. Applicability**

The provisions of this Chapter shall apply to High-Impact Industries, as defined in this Ordinance.

**Section 6. Definitions**

Airfield/Airstrip/Airport - Any runway, land area, or other facility designed or used either publicly or privately by any person for landing and takeoff of aircraft, including all necessary taxiways. "Airfield/Airstrip" is further defined as aircraft storage and tie-down areas, hangars, and other necessary buildings appurtenant to an airport.

Asphalt Plant – A facility with the equipment necessary to produce petroleum bitumen, which when mixed with proper amounts of sand or gravel (or both) results in or may be used in producing material suitable for paving and/or roofing.

Buffer – A continuous strip of land, measured from the property lines or from any street bordering or traversing the property (whichever is closer to the principal use or building), where no development or principal use may occur, but which may contain vegetative screening, fencing, a wall or a combination of these items.

Bulk Flammables (Fuel Oil, Propane, Gasoline), Chemicals, or Explosives Manufacturer and/or Storage Facility – A facility whose primary purpose is one of the following:

(1) Manufacturing and/or storage of a chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion. This term 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.

(2) The production, synthesis, formation, processing, refining, manufacturing, distribution, and/or storage of chemical products in bulk.

(3) The storage, distribution, mixing or transfer of flammable or combustible liquids or gases received by or transferred by tank vessel, pipelines, tank car, piping, or portable tank or container except such storage, distribution, mixing or transfer of flammable or combustible liquids or gasses shall not include filling stations or convenience centers used solely for retail distribution to individual customers.

Child Day Care Facility – A facility, licensed by the state of North Carolina, where supervision or care is provided to children on a regular basis.

Chip Mill – Any non-portable wood-chipping facility that stands alone and apart from a sawmill or a pulp mill, and whose purpose is to provide wood chips to an off-site fabricating facility including but not limited to a paper mill or oriented strand board mill.

Church – A building used on a regular basis for the primary purpose of serving as a place of public worship.

Commercial Incinerators - Any enclosed device that burns or converts more than 250 pounds of any material per hour other than the classical boiler fossil fuels, such as natural gas, propane, coal or fuel oil, which is a principal use on any lot or parcel.

Concrete Plant – An establishment, whether portable or non-portable, primarily engaged in manufacturing hydraulic cement, including Portland, natural, and masonry cements delivered to a purchaser in a plastic and unhardened state. Also included are the manufacture of concrete products from a combination of cement and aggregate.

Dwelling Unit– An occupied unit(s) providing complete, independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation.

Educational Facility – An elementary school, secondary school, charter school, private school, community college, college, university, or any other similar institution or facility for the education of persons, including any property owned by such facility used for education purposes.

Electricity Generating Facility – A stand-alone plant not ancillary to another land use which generates electricity to be distributed to consumers, including but not limited to fossil fuel burning facilities and wind power farms, but excluding passive solar power farms. This definition shall not include electricity produced at or on an agricultural farm, residence, business, or other facility where use of the electricity so produced is limited primarily to on-site consumption.

Helicopter Sightseeing Operation – Any individual, corporation or commercial enterprise that carries passengers by helicopter for compensation for the purpose of aerial observation of landmarks and other manmade or natural sites, touring, pleasure flying or amusement or for the purpose of transporting passengers for tourist-related activities.

High-Impact Industry – A business that contains operating machinery that will exceed, by the nature of its structure, the provisions of the Transylvania County Noise Ordinance; operations that release excessive odors, vibrations, fumes, light, smoke, or dust onto or near adjacent properties; operations that produce vehicular traffic incompatible with existing infrastructure (capacity, volume, and/or weight); or businesses whose placement and/or location results in an unacceptable risk to County residents, the public, or employees.

High-Impact Industries include, but are not limited to, airports, asphalt plants, bulk flammable storage facilities, chipmills, commercial incinerators, concrete plants, electricity generating facilities, helicopter sightseeing operations, junkyards, medical waste facilities, mining and extraction operations, motor sports facilities, sawmills, slaughtering and processing plants, and waste management facilities.

Hours of Operation – The times of day during which an establishment may conduct its principal operations.

Industrial Business— A business, not defined as a High-Impact Industry, engaged in the manufacturing and basic processing of materials or products predominantly from extracted or raw materials, or previously prepared materials, including processing, fabrication, assembly, treatment, packaging, storage, sales, and distribution of such products.

Junkyard – an establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk or maintenance or operation of an automobile graveyard. This definition includes salvage yards and /or other similar establishments.

Light Mitigation – Controlling light in order to reduce light emission or diminish the effects that emitted light has on adjacent parcels or the neighborhood.

Medical Center – A facility staffed on a regular basis by one (1) or more physicians licensed to practice medicine in the State of North Carolina, which facility is located outside the boundaries of a municipality and is established and maintained for the purpose of providing medical care.

Medical Waste Facility – A facility that stores or treats medical waste as defined by G.S. §130A-309.26a.

Mining & Extraction Operation – Any establishment or business primarily engaged in dressing and beneficiating of ores; the breaking, washing, and grading of coal; the crushing and breaking of stone; and the crushing, grinding, or otherwise preparing of sand, gravel and nonmetallic chemical and fertilizer minerals. This definition specifically excludes gem mines and other recreational mining operations.

Motor Sports Facility – Any facility, track, or course where upon which racing or motor sporting events are conducted for commercial purposes including, but not limited to vehicles, using motorcycles, all-terrain vehicles, motor scooters, go-carts, etc.

Noise Mitigation – Controlling noise in order to reduce the emission of noise or diminish the effects that emitted noise has on adjacent parcels or the neighborhood.

Nursing Care Home – A North Carolina licensed facility, however named, that is advertised, announced, or maintained for the express or implied purpose of providing nursing or convalescent care for three or more persons unrelated to the operator. This term includes rehabilitation care, skilled nursing homes, and assisted living facilities.

Perennial Waters – Indicated by blue lines on the most recent versions of the USGS 1: 24,000 (7.5 minute) scale topographic maps.

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

Protected Facilities – an educational facility, child day care facility, nursing care home, and/or medical center.

Sawmill - Any commercial operation employing six (6) or more full-time employees established for a period of six months or more where timber is customarily processed into raw lumber, finished wood products or other wood products, regardless of whether the products are sold on premises or transferred to another facility for storage and sale. This definition includes the reprocessing of lumber and wood planing operations, and excludes carpentry operations including but not limited to furniture building and wood carving.

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.

Separation – Where separation restrictions are required, no portion of the property on which the regulated industry is located shall be situated within the stated straight-line distance from the closest point of a dwelling unit, commercial, or industrial structure or a protected facility's property boundary line.

Setback – The distance from the road right of way or property line to the closest edge (drip edge) of a structure or sign. For stream setbacks, it shall be the distance from the closest edge of land disturbance to the riparian edge.

Slaughtering and Processing Plant – An establishment primarily engaged in slaughtering, dressing, packing, freezing, canning, cooking and/or curing animals or poultry or their by-products or processing or manufacturing products from such animals or poultry or their by-products; and establishments primarily engaged in the collection and/or processing of the inedible portion(s) of animals or poultry or their carcasses. This definition specifically excludes: slaughtering and processing activities performed for personal use.

Waste Management Facility – Land and equipment, other than incinerators, used in the management of solid waste, including transfer stations, landfills, and recycling facilities which are not owned or operated by a unit of government.

### **Section 7. Permits Required**

A Transylvania County High-Impact Industry (HII) Permit shall be obtained as provided in this Ordinance, prior to the construction of a High-Impact Industry. No permit shall be issued to a High-Impact Industry that is not in compliance with this Ordinance. No building permit shall be issued for any High-Impact Industry subject to this ordinance that has not received a High-Impact Industry Permit.

### **Section 8. Enforcement Officer**

The Board of Commissioners shall appoint an Enforcement Officer. The Enforcement Officer or his appointee shall administer and enforce all provisions of this Ordinance.

### **Section 9. Exemptions**

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

### **Section 10. Preferred Locations for High-Impact Commercial Development**

The Board of Commissioners prefers applicants to locate, site, and erect High-Impact Industries in the order of the following priorities:

1. Adjacent to existing High-Impact Industries
2. Adjacent to existing commercial or industrial businesses
3. Brownfield or redevelopment sites
4. Greenfield sites

### **Section 11. Administration and Permitting**

#### **11.1 High-Impact Industry Permit Application**

- A. Applicant shall submit a completed High-Impact Industry Permit Application and five (5) copies of all supporting documentation, as identified in Section 12 and 13, to the Enforcement Officer at least thirty (30) calendar days prior to the next regular scheduled Planning Board meeting.

- B. Applicant shall submit to the Enforcement Officer a permit fee established by the County Commissioners.
  - C. The Enforcement Officer shall review the completed application for compliance with Sections 12 and 13. Any application not containing all information required in Sections 12 and 13 shall be rejected and returned to the applicant together with the reasons for rejection. The Enforcement Officer may allow the applicant thirty (30) calendar days, or a reasonable time period agreed upon by both parties in writing, to cure any deficiencies.
  - D. The Enforcement Officer shall be responsible for submitting a notice to the local paper(s) and mailing a certified letter to all known property owners abutting the property where the proposed High-Impact Industry is to be located. The notice shall state that the Planning Board will review and consider the High-Impact Industry Permit Application at their next regular meeting and that the application is available for public review in the Planning Department. The notice shall not appear less than ten (10) calendar days or more than twenty-five (25) calendar days prior to the date set for public hearing. The public notice shall also contain a map highlighting 1,320 foot radius around the proposed site.
  - E. The Enforcement Officer shall recommend to the Planning Board either approval, approval with conditions or disapproval. In making the recommendation, the Enforcement Officer may include any addition conditions deemed necessary.
  - F. After receiving the Enforcement Officer's recommendation, the Planning Board shall consider public comment and the permit application regarding technical compliance with Section 13 of this Ordinance.
  - G. The Planning Board shall take formal action to approve, approve with conditions or disapprove the permit application within forty-five (45) calendar days. If the action is to disapprove the permit application, the reasons for such action shall be stated in the minutes and specific reference shall be made to the requirements not met. If the Planning Board fails to act within the specified time period, the application shall be considered approved. If the Planning Board retains a consultant to review the application per Section 11.2, then the forty-five (45) day time period can be extended as deemed necessary by the Planning Board.
- 11.2 The County may retain a consultant and/or expert necessary to assist the County review and evaluate the application. The County may also request expert assistance for other issues, such as traffic impacts, residential value impacts, noise mitigation, etc., in order to ensure the general health, safety, and welfare of the public. The cost of the expert assistance shall be paid by the applicant.
- 11.3 The Enforcement Officer shall maintain a record of all High-Impact Industry Permits and copies shall be furnished upon request to any interested person.
- 11.4 Any order, requirement, decision or determination of the Planning Board adverse to the interest of an applicant for a High-Impact Industry Permit shall be provided to the applicant in writing by certified mail, return receipt requested. Applicant shall also be notified of appeals process as stated in Section 15.
- 11.5 The failure to obtain any required High-Impact Industry Permit shall be a violation of this Ordinance. Furthermore, High-Impact Industry Permits shall be issued on the basis of applications approved by the Planning Board and shall authorize only the use, arrangement, or construction applied for and approved. Any use, arrangement or construction not in compliance shall be in violation of this Ordinance.

## Section 12. Application Requirements

The following information shall be submitted with the application and shall be part of the permit application.

- 12.1 A site development plan prepared by a N.C. Registered Land Surveyor or a N.C. Registered Landscape Architect containing the following:
- A. The applicant's name and property owner's name and their addresses, scale, north arrow, vicinity map, and the tax parcel identification number(s).
  - B. The name, addresses and tax parcel identification numbers of all owners of property abutting the subject property and their respective uses.
  - C. The name, address, signature, and seal of the surveyor or landscape architect preparing the site development plan.
  - D. The boundary lines of the parcel(s) that will contain the proposed High-Impact Industry and the location of the following:
    1. All existing and proposed structures located on the parcel, all private and public roads, highways, and underground and overhead utilities.
    2. Streams, lakes, ponds, or other natural features
    3. 100 year flood plain, or note stating that the site is located outside of the floodplain and floodway
    4. Separation distances to Protected Facilities, or note stating that there are no Protected Facilities within the required separation distance.
    5. Buffers
    6. Vegetative buffers
    7. Screening, both existing and proposed
    8. Stream setbacks, if applicable
    9. Safety fencing, if applicable
    10. Impervious surface areas and total impervious surface coverage
    11. On-site traffic estimates (peak and off-peak) and type of traffic
    12. Hours of Operation, if applicable
- 12.2 The following documents shall be submitted, if applicable:
- A. All applicable Federal and State permits received
  - B. Property ownership or lessee agreement
  - C. Noise Mitigation Plan, if applicable
  - D. Light Mitigation Plan, if applicable
  - E. Dust Mitigation, if applicable
  - F. Traffic Mitigation Plan, if applicable
  - G. Stormwater and Erosion Control plan, if applicable

## Section 13. Permitting Standards

High-Impact Industries shall be permitted, constructed, operated, or maintained in accordance with the following standards:

- 13.1 Separation Distances. The location of a High-Impact Industry both portable and permanent shall not be within 1,000 feet in any direction, of a dwelling unit, commercial building, or an industrial business; airports and/or motor sports facilities shall not be within 1,500 feet in any direction, of a dwelling unit, commercial building, or industrial business. The location of a High-Impact Industry shall not be within 1,320 feet of a protected facility, and airports and/or motor sports facilities shall not be within 2,640 feet

of a protected facility.

- 13.2 **Buffer.** All High-Impact Industries shall maintain a buffer along all adjoining property lines at a minimum of 100 feet on property lines not adjoining a public or private road right of way, and a 50 foot buffer on all property lines abutting a public or private road right of way. No buffers are required on common property lines shared by other High-Impact Industries.
- 13.3 **Screening and Vegetative Buffer.** A continuous vegetative buffer shall be maintained along any property line of a High-Impact Industry. The vegetative buffer strip shall not be less than fifteen (15) feet in width at maturity, and shall be composed of variable plant types, heights, and widths, that create a wall of vegetation (i.e. groundcover, vines, shrubs, trees). Plants shall vary between a minimum of five (5) feet in height to greater than ten (10) feet in height. Existing vegetation may be used in lieu of or in addition to the required screening and for new plantings Transylvania County encourages the use of native plants. Upon approval of the Planning Board, a combination of the vegetative buffer and opaque wooden fences, masonry walls, or landscaped earthen berms is permissible. No minimum vegetative buffers shall apply to the common property lines shared by other High-Impact Industries.
- 13.4 **Stream Setback.** The closest point of land disturbance shall be set back from all perennial waters and trout waters according to local, state and federal regulations.
- 13.5 **Noise.** The High-Impact Industry shall not violate the Transylvania County Noise Control Ordinance.
- 13.6 **Lighting.** All lighting, unless otherwise required by specific industry practice, shall be pointed downwards with the primary cone of illumination being contained on the subject property.
- 13.7 **Traffic Impact Analysis.** When a High-Impact Industry is proposed to be located on a road that is not designated as a State or Federal numbered road, and would create a volume of traffic in terms of vehicular trips per day that exceeds the road's practical carrying capacity as defined by the North Carolina Department of Transportation (NCDOT), a Traffic Impact Analysis (TIA) shall be performed by a licensed engineer or transportation planner and shall be provided by the applicant. Specific recommendations for the mitigation of the impacts from the proposed traffic must be provided based on the average number of daily trips generated by the proposed facility. These recommendations should address, but are not limited to: acceleration and deceleration lanes, road design standards, shoulder width, stop lights and outlying intersection improvements.
- 13.8 **Stormwater and Erosion Control.** All applicable local, state, and federal stormwater, sediment and erosion control permits shall be submitted with the High-Impact Industry Application.
- 13.9 The Planning Board may require other reasonable conditions that would protect the property values and living standards of other properties within a 2,640 foot radius form the proposed facility. This can include, but is not limited to, sound barriers, containment, hours of operation, etc.

#### **Section 14. Non-conforming High-Impact Industry**

Any High-Impact Industry legally in existence on the effective date of this Ordinance is declared non-conforming.

- 14.1 A non-conforming High-Impact Industry may expand its facilities without securing a High-Impact Industry

Permit as long as the methods of operation do not change and/or do not increase the existing level of non-conformity, or if the expansion is contained on the parcel(s) owned or leased at the adoption date of this Ordinance. All other expansions shall require a High-Impact Industry permit.

- 14.2 In cases of damage to non-conforming buildings to the extent of one-hundred percent or less of the replacement value, repairs may be made, provided the square footage of the damaged building(s) is maintained and the standards of this ordinance are met to the extent physically practicable as determined by the Enforcement Officer.

**Section 15. Variances and Appeals**

- 15.1 Where strict adherence to the provisions of this chapter would cause an unnecessary hardship, the Planning Board may authorize a variance. The Planning Board may request mitigation plans for the review and may seek expert assistance, as described in Section 11.2. Any authorizing of a variance shall not destroy the intent of this chapter. Any authorized variance shall be recorded in the minutes of the Planning Board meeting.
- 15.2 A hardship, as used in the context of this section, shall be considered to be some unique or unusual character to the proposed site, including but not limited to unique, size, shape, contour, or distance requirement.
- 15.3 All requests for a variance shall be submitted to the Enforcement Officer at least fifteen (15) calendar days prior to the next regular scheduled Planning Board meeting.
- 15.4 Any order, requirement, decision or determination made by the Planning Board may be appealed to the County Commissioners of Transylvania County within thirty (30) calendar days of the written notice of the Planning Board’s decision. The notice of this appeal shall be in writing and shall be served to the Clerk of the County Commissioners. Any further appeals may be appealed to the Superior Court of Transylvania County by proceedings in the nature of certiorari.

**Section 16. Penalties, Remedies, and Enforcement**

- 16.1 *Misdemeanor.* Any person who violates a provision of this chapter shall be guilty of a misdemeanor and shall be subject to punishment as provided for by G.S. § 14-4. Each day of a violation of this chapter shall be a separate offense.
- 16.2 *Financial penalties.* In addition to criminal penalties for a violation of this chapter, the Board of County Commissioners may impose civil penalties for each day’s continuation of the offense. The amount shall be limited to \$500 per day. A penalty unpaid 30 days after the offender has been cited for violation of this chapter may be recovered in a civil action in the General Court of Justice.
- 16.3 *Other remedies.* All appropriate remedies for relief authorized by G.S. § 153A-123, including orders for mandatory and prohibitory injunctions and for abatements, may be used to enforce this chapter.

**Section 17. Severability**

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

**Section 18. Effective Date**

This Ordinance shall take effect and be in force on \_\_\_\_\_. Mike Hawkins, Chairman Trisha Hogan, Clerk to Board