

**PLANNING AND INSPECTIONS DEPARTMENT  
ZONING TEXT AMENDMENT REPORT  
January 6, 2015**

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**CASE NUMBER:** Z-14-10

**REQUESTED ACTION:** To amend Section 11.22(j) General Provisions  
To amend Section 11.24 District Regulations  
To amend Section 11.26 Board of Adjustment  
To amend Section 11.29 Definitions

**APPLICANT:** City Council

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**EXISTING TEXT**

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**Section 11.22 GENERAL PROVISIONS**

(j) **Interpretation of Regulations** - Regulations of this Ordinance shall be enforced and interpreted according to the following rules:

- (1) **Permitted Uses** - Uses not designated as permitted uses shall be prohibited. Additional uses when in character with the district may be added to the Ordinance by amendment.
  - (2) **Minimum Requirements** - The provisions of this Ordinance shall be held to be the minimum requirements for the promotion of the public safety, health, convenience, prosperity or the general welfare.
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**PROPOSED TEXT**

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**Section 11.22 GENERAL PROVISIONS**

(j) **Interpretation of Regulations** - Regulations of this Ordinance shall be enforced and interpreted according to the following rules:

- (1) **Permitted Uses** - Uses not designated as permitted uses shall be prohibited. Additional uses, when in character with the district, may be added to the Ordinance by amendment. When a use is permitted in a certain district or districts, it is the general intent of this Ordinance that, upon creation or designation of that district, such permitted use is in harmony with the area and in general conformity with the plan of development of Eden and its environs.

- (2) **Minimum Requirements** - The provisions of this Ordinance shall be considered minimum requirements for the promotion of the public safety, health, and the general welfare. When there is inconsistency between provisions in this Ordinance and state and federal regulations, the stricter requirement shall apply.

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**EXISTING TEXT**

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**Section 11.24 I-3 Industrial District**

(Currently, I-3 Industrial District does not exist)

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**PROPOSED TEXT**

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**Section 11.24(p)     I-3 INDUSTRIAL DISTRICT – HIGH IMPACT USES**

High Impact industrial uses are those which, by their nature, produce objectionable levels of noise, odors, vibrations, fumes, light, smoke, traffic and/or other impacts upon the lands adjacent to them. High impact uses are required to be connected to City of Eden water and sewer services. Any discharge, leachate or other industrial waste shall be treated by the City of Eden.

(1)     **Permitted Uses**

Uses listed in the I-3 Industrial District shall be allowed only upon approval of a Special Use Permit. Special Use Permits in the I-3 Industrial District shall be heard and decided by the City Council according to the procedures established in Section 11.26 of this Ordinance. The following shall be I-3 industrial uses:

Asphalt Paving Production and Sales: (only on parcels containing 75 or more acres; 50 foot forested buffer required along streams and waterways and along any adjoining property containing a residential or non-industrial use).

Automobile Salvage Facilities, Junkyards or the Storage of Non-operative Vehicles (not including towing and temporary storage facilities)

Bulk Storage of Flammables - Propane, Gasoline, Crude Oil, Fuel Oil and Natural Gas

Caretaker residences as an accessory use, only for parcels 50 acres or greater, and only for an active industrial use (caretaker residence must be vacated if industrial use ceases). Such accessory use shall be a part of the special use permit application or an application to amend the special use permit.

Chemical Manufacturing

Coal Ash Landfills

Coal Ash Recycling

Coal Ash as Structural Fill

Coal, storage

Concrete Plants

Enameling, lacquering, or the plating of galvanizing metals.

Hazardous Waste, Infectious Waste and Toxic Substance Storage Facilities, Treatment Facilities, Transportation Facilities and/or Disposal Facilities

Hydraulic Fracturing (Fracking), or Other Oil and Gas Exploration

Mining, Extractions and Quarries (only on parcels containing 75 or more acres; 50 foot forested buffer required along streams and waterways and along any adjoining property containing a residential or non-industrial use.

Railroad freight yard and terminals.

Sanitary Landfills (MSW)

Sanitary Landfills (construction and demolition debris)

Sawmills

Scrap Metals Storage or Recycling

- (2) **Exempt Uses** The following uses are exempt from High Impact regulations:

Agricultural Chemical Storage Facilities and/or Buildings regulated by the North Carolina Department of Agriculture pursuant to the NC Best Management Practices (BMP) and Integrated Pest Management (IPM) programs.

Portable Sawmills

The storage of less than 25,000 gallons of flammable or combustible liquids or gases at filling stations or convenience stores solely for the retail distribution to individual customers

- (3) **Dimensional Requirements**

- (a) **Lot Width**

Minimum required lot width shall be 400 feet.

- (b) **Yard Requirements**

Minimum front yard depth shall be 100 feet which shall be devoted for sidewalks, grass, and plants, and the necessary entrances and exits to driveways. Off-street parking shall not be permitted in this front yard area.

Minimum width of side yard shall be 100 feet.

Minimum width of rear yard shall be 100 feet.

(c) **Building Height**

No building, structure, facility or any type of storage shall exceed 35 feet in height unless the depth of front and total width of side yards required herein shall be increased, five (5) feet for each ten (10) feet or fraction thereof of building height in excess of 35 feet. Flag poles, antennas, chimneys, and similar accessories to buildings are exempt from this height limitation.

(d) **Visibility at Intersections**

On a corner lot nothing shall be erected, placed, planted, or allowed to grow in such a manner as materially to impede vision between a height of two and one-half (2 1/2) feet and ten (10) feet in a triangular area formed by a diagonal line between two (2) points on the right-of-way lines, 20 feet from where they intersect.

(4) **Required Buffers**

Where this district abuts a lot in a residential district or land occupied by a residential use, the owner of the industrial property shall provide and maintain along said property line a continuous visual buffer. The buffer shall be a compact evergreen hedge or other type of evergreen foliage screening, or shall be a combined fence and shrubbery screen, the latter facing the residential use.

(5) **Off-Street Parking And Loading**

Off-street parking and loading shall be provided according to the provisions set forth in Section 11.25 of this Ordinance.

(6) **Landscaping Requirements For Parking Lots**

New parking lots with twelve (12) or more parking spaces or any expanded parking lot which creates twelve (12) or more total parking spaces shall be landscaped as set forth in Section 11.25 of this Ordinance.

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**EXISTING TEXT**

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**Section 11.24 I-3 Special Use Permits – City Council**

(Currently, I-3 Special Use Permits – City Council does not exist)

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**PROPOSED TEXT**

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**Section 11.24(q)      I-3 SPECIAL USE PERMITS – CITY COUNCIL**

(1)      **Purposes**

Special Use Permits add flexibility to the Zoning Ordinance and are authorized by N.C.G.S. 160A-381. A Special Use Permit may be issued in the classes of cases or situations hereinafter specified in accordance with the standards, principles, conditions, safeguards and procedures hereinafter specified subject to any additional reasonable and appropriate conditions and safeguards imposed on said Special Use Permits. By use of Special Use Permits, such special use may be allowed in a zoning district where such use would not otherwise be acceptable or permitted and in a way which allows the use while minimizing negative effects on surrounding properties.

The procedures for the issuance of Special Use Permits and the uses for which Special Use Permits may be issued are established in this Section. All land and structures under authority of a Special Use Permit shall strictly comply with the conditions and safeguards imposed upon such Special Use Permits and with the City of Eden Zoning Ordinance.

(2)      **Procedure for Issuance of Special Use Permits**

- (a)      Special Use Permits may be issued by the City Council for the uses enumerated in Section 11.24(p).
- (b)      Applications for Special Use Permits shall be signed by the owners of the property included in the Petition for a Special Use Permit. Upon receiving such application, the Zoning Officer shall determine if it meets the development standards and other requirements of this Section.
- (c)      If the application is found to meet the standards and requirements of this Section, the Zoning Officer shall forward it, together with his/her report, to the Planning Board and then the City Council
- (d)      Upon receiving the recommendation of the Zoning Officer and the Planning Board, the City Council shall hold a public hearing following the procedures set forth in this Ordinance. The Special Use Permit, if granted, shall include such conditions and safeguards as may be required by the City Council.

Before granting a Special Use Permit, the City Council shall make the following findings based upon competent, material and substantial evidence presented to the City Council:

- (i) That the use will not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted and approved.
  - (ii) That the use meets all required conditions and specifications.
  - (iii) That the use will not substantially injure the value of adjoining or abutting property, or that the use is a public necessity, and
  - (iv) That the location and character of the use if developed according to the plan as submitted and approved will be in harmony with the area in which it is to be located and in general conformity with the plan of development of Eden and its environs.
- (e) The applicant shall submit a boundary survey and vicinity map showing:
- (i) The property's total acreage, its zoning classification, the general location in relations to all major streets, railroads, and/or waterways, the date and the north arrow.
  - (ii) All existing easements, reservations and rights-of-way.
  - (iii) The approximate dimension, including height, of proposed buildings, structures or appurtenances.
  - (iv) All required setbacks, buffers, screening, and landscaping required by this ordinance or proposed by the petitioner; the landscape plan may be a part of the site plan or shown as a separate drawing.
  - (v) All existing and proposed points of access on public streets.
  - (vi) Delineation of areas within the floodplain as shown on the official flood boundary maps.
  - (vii) Proposed phasing, if any
  - (viii) The location of existing and proposed storm drainage patterns and facilities intended to serve the proposed development
  - (ix) Approximate location of all existing and proposed infrastructure on the site including water, sewer, roads, pedestrian ways.
  - (x) Generalized traffic, parking and circulation plans.
- (f) Lighting. All lighting shall be pointed downward with the primary cone of illumination being entirely contained on the subject property. Exterior lighting fixtures shall be overhead full cut-off fixtures. Lighting shall be designed so that light straying to residential properties does not exceed one foot candle at the property boundary.

- (g) Noise. A Noise Mitigation Plan (NMP) shall be submitted with the application. . The NMP shall also address traffic noise within the site in regard to: vehicular speed; vehicular compliance with NC Muffler Laws and Vehicle Manufacturer’s Specifications; Jake brake usage; and regular vehicle use within the site. The plan does not need to address emergency warning devices and lawn care equipment used during daylight hours.
- (h) The City Council may impose such reasonable conditions and safeguards upon a Special Use Permit that will assure that the special use in its proposed location will be harmonious with the area, external impacts are mitigated, and threats to public health and safety are addressed. Such conditions and safeguards may be offered by the applicant to meet its burden of showing that it has complied with the standards in section (2)(d) or they may be imposed by the City Council in order for the City Council to find that the applicant has met the standards in section (2)(d). All conditions imposed upon a Special Use Permit shall be entered into the minutes of the meeting at which the Special Use Permit is granted and placed upon on the Certificate of the Special Use Permit.
- (i) If the City Council denies the permit, it shall adopt and record findings upon which the denial is based.

(3) **Uses Requiring Special Use Permits**

Special Use Permits may be issued for the following special uses subject to the development standards and other requirements in this Section.

Violation of any City of Eden, State or Federal law or permit may result in the suspension or revocation of a permit issued by the City of Eden.

(a) **Asphalt Paving Production and Sales.**

Allowed only on parcels containing 75 or more acres; 50 foot forested buffer required along streams and waterways and along any adjoining property containing a residential or non-industrial use.

The City Council shall, prior to the issuance of a Special Use Permit for Asphalt Paving Production and Sales in the I-3 Industrial District, find that such special use meets the standards listed in Section 11.24(p)(3) and above in sections (d) through (i).

(b) **Automobile Salvage Facilities, Junkyards or the Storage of Non-Operative Vehicles (not including towing and temporary storage operations):**

- (1) The tract shall be a minimum of five (5) acres.



- (2) No open storage shall be permitted within 500 feet of a church, school, residential zoning district, or property used for residential purposes.
- (3) No open storage shall be permitted within 200 feet of a city thoroughfare as defined and designated on the city's adopted thoroughfare plan.
- (4) The open storage area shall be enclosed on all sides by a visual screen a minimum of eight (8) feet in height. The screen shall be opaque, consist of masonry or stone wall, a solid wood fence constructed of pressure treated wood or a chain-link type fence with panel inserts. The screen shall setback a minimum of ten (10) feet from all lot lines or on established setback lines as set forth above for such storage. No car bodies or other material not normally used for fencing shall be permitted. No advertising shall be permitted on the fence or screen.
- (5) The owner and any tenant on the property shall be jointly and severally responsible for the maintenance of the approved visual screen. Plants that may die shall be replaced, and fences and walls shall be repaired. The visual screen shall be protected from damage by motor vehicles which could reduce the effectiveness of the screen.
- (6) No open storage shall be permitted outside the screened area of the property. No vehicles shall be stacked, stored or maintained at a height greater than the visual screen, nor shall they be visible from outside the open storage area.
- (7) Any storage of tires shall be under a roofed structure.
- (8) The motor vehicle salvage yard shall be subject to all applicable provisions of the N. C. Fire Prevention Code.
- (9) To assure access to firefighting equipment, no junk shall be stored closer than 10 feet from the fence or screen.
- (10) The surface of the area used for storage of materials shall either be paved or seal coated gravel to control dust and soil absorption from runoff drainage from the junk.
- (11) No oil, grease, tires or gasoline or other similar material shall be burned at any time.
- (12) Storage areas shall be maintained in such a manner as to cause no public nuisance.
- (13) No materials or wastes shall be deposited upon a lot in such a form or manner that they may be transferred off the lot.

- (14) Materials or wastes which cause fumes or dust or which constitute a fire hazard or which may attract rodents or insects shall be stored outside only if adequately enclosed in appropriate containers.

The City Council shall, prior to the issuance of a Special Use Permit for Automobile Salvage Facilities, Junkyards or the Storage of Non-operative Vehicles (not including towing and temporary storage facilities) in the I-3 Industrial District, find that such special use meets the standards listed in Section 11.24(p)(3) and above in sections (d) through (i).

(c) **Bulk Storage of Flammables – Propane, Gasoline, Crude Oil, Fuel Oil and Natural Gas.**

- (1) Site plan shall show proposed layout of pipelines. Description shall include storage capacity of all storage units.
- (2) Storage tanks protected by either an attached extinguishing system approved by the City of Eden Fire Marshal or an approved floating roof shall not be located within 120 feet of a property boundary. Storage tanks, not equipped with extinguishing system or floating roof, shall not be located within 175 feet of a property boundary.
- (3) In the discretion of the Zoning Officer, tanks or groups of tanks containing flammable liquids shall be diked or the yard shall be provided with a curb or other suitable means to prevent the spread of liquid onto other property or water bodies. A diked area shall not be less than the capacity of the largest tank within the diked area. Dikes or retaining walls shall be of earth, steel, concrete or solid masonry designed to be liquid tight and to withstand a full hydraulic head and so constructed as to provide the required protection. Earthen dikes three (3) feet or more in height shall have a flat section at the top not less than two (2) feet in width. The slope shall be consistent with the angle or repose of the material of which the dikes are constructed. Dikes shall be restricted to an average height of not more than six (6) feet above the exterior grade unless means are available for extinguishing a fire in any tank containing crude petroleum; dikes and walls enclosing such tanks shall be provided at the top with a flareback section designed to turn back a boil-over wave, provided, however, that a flareback section shall not be required for dikes and walls enclosing approved floating roof tanks. No loose combustible material, empty or full drum or barrel, shall be permitted within the diked area.

Where provision is made for draining stormwater from diked areas, such drains shall be kept closed and designed not to permit flammable liquids

to enter streams, public sewers, or public drains. Where pumps control drainage from the diked area, they shall not be self- starting.

- (4) A facility shall be located outside of the City of Eden Water Supply Watershed areas as designated by the City of Eden Water Supply Watershed Ordinance and the official Watershed Maps.
- (5) The minimum lot size for bulk storage of flammables – propane, gasoline, crude oil, fuel oil and natural gas facility shall be ten (10) acres.
- (6) Applications for a Special Use Permit must be accompanied with a request for voluntary annexation if the area is not within the municipal boundary.

The City Council shall, prior to the issuance of a Special Use Permit for bulk storage of flammables – propane, gasoline, crude oil, fuel oil and natural gas, in the I-3 Industrial District, find that such special use meets the standards listed in Section 11.24(p)(3) and above in sections (d) through (i).

(d) **Chemical Manufacturing.**

The City Council shall, prior to the issuance of a Special Use Permit for chemical manufacturing in the I-3 Industrial District, find that such special use meets the standards listed in Section 11.24(p)(3) and above in sections (d) through (i).

(e) **Coal Ash Landfills.**

- (1) Neighborhood Revitalization Plan - If a proposed coal ash landfill adjoins or has an outer boundary within 2,000 feet of a residential neighborhood where 15% or more of the homes are vacant, boarded or in disrepair; or 15% or more of the homes are not owner occupied; or 15% or more of the residents have incomes below the federal poverty level, then the applicant shall present the City with a revitalization plan that specifies steps and timelines for how the applicant will revitalize the neighborhood to mitigate the impacts of being adjacent to a landfill. Steps may include, but are not limited to, upgrades to streets, landscaping, repairs to homes, and community amenities.
- (2) Economic Impact Mitigation - If an applicant for a coal ash landfill proposes using land identified in the City of Eden Land Development Plan as an "employment center," it must propose a plan for mitigating the economic impact triggered by loss of land in the City's inventory of land identified for job creation and economic development. At a minimum, the mitigation plan shall include an application for voluntary annexation.

- (3) To find consistency with the Land Development Plan, the City Council may impose a condition that issuance of the Special Use Permit is contingent upon delivery routes that avoid residential neighborhoods, schools and health care facilities, and buffers that exceed the buffers imposed by State and federal law.
- (4) Facility boundaries adjoining residentially zoned areas shall, in addition to landscaping required by the facility's Permit to Construct or Permit to Operate, have a triple row of varying species of evergreens, staggered to achieve an opaque vegetative buffer no less than 20 in height at maturity.
- (5) The applicant shall submit plans for establishing a Community Advisory Group which enables the owner or operator to meet no less than semi-annually with representatives from the neighborhood to inform them of developments and changes in landfill operations, report on ways complaints have been addressed, and to hear of problems created by landfill operation.
- (6) The applicant shall propose hours of operation to be included as a condition in the Special Use Permit. The hours of operations shall be established to minimize impacts of noise and lights on neighboring properties.

The City Council shall, prior to the issuance of a Special Use Permit for a coal ash landfill in the I-3 Industrial District, find that such special use meets the standards listed in Section 11.24(p)(3) and above in sections (d) through (i).

(f) **Coal Ash Recycling (as a primary use).**

The recycling of coal ash as a component of other manufactured products shall meet the development standards otherwise imposed upon manufacture of those products from other materials and sources.

The City Council shall, prior to the issuance of a Special Use Permit for coal ash recycling in the I-3 Industrial District, find that such special use meets the standards listed in Section 11.24(p)(3) and above in sections (d) through (i).

(g) **Coal Ash as Structural Fill (as a primary use)**

- (1) When the primary purpose of the deposit or placement of coal ash is disposal of coal ash, then the beneficial use of coal ash as structural fill shall be considered a primary use for the purposes of these regulations, regardless of the ultimate beneficial purpose proposed.
- (2) Coal ash as a beneficial use or as structural fill for landscaping, construction or other purposes that is accessory or ancillary to another

primary use shall strictly follow all regulations and permits related to its use.

- (3) Coal ash as a beneficial use or as structural fill as a primary use shall be subject to conditions specified in the Special Use Permit for transportation of coal ash from impoundment or other storage areas to the location of fill or deposit to insure truck routes avoid residential areas to the extent possible.
- (4) The use of coal ash as beneficial fill or as structural fill for a public project controlled or owned or to be controlled or owned by the City of Eden, shall first be approved as a project acceptable to and desirable by the City.
- (5) Applications for a Special Use Permit must be accompanied with a request for voluntary annexation if the area is not within the municipal boundary.

The City Council shall, prior to the issuance of a Special Use Permit for coal ash as structural fill (as a primary use) in the I-3 Industrial District, find that such special use meets the standards listed in Section 11.24(p)(3) and above in sections (d) through (i).

(h) **Coal, Storage**

The City Council shall, prior to the issuance of a Special Use Permit for a coal, storage in the I-3 Industrial District, find that such special use meets the standards listed in Section 11.24(p)(3) and above in sections (d) through (i).

(i) **Concrete Plants**

The City Council shall, prior to the issuance of a Special Use Permit for a concrete plant in the I-3 Industrial District, find that such special use meets the standards listed in Section 11.24(p)(3) and above in sections (d) through (i).

(j) **Enameling, Lacquering, or the Plating of Galvanized Metals**

The City Council shall, prior to the issuance of a Special Use Permit for enameling, lacquering, or the plating of galvanizing metals in the I-3 Industrial District, find that such special use meets the standards listed in Section 11.24(p)(3) and above in sections (d) through (i).

(k) **Hazardous Waste, Infectious Waste and Toxic Substance Storage Facilities, Treatment Facilities, Transportation Facilities and/or Disposal Facilities**

- (1) Storage of hazardous or infectious waste or toxic substances shall be above ground and in a manner consistent with applicable state and/or federal regulations covering each stored material.
- (2) The storage or processing area containment system shall be consistent with the system required in the permit issued by NCDENR. If NCDENR does not require a containment system, then a containment system shall be installed equal to one and one-half (1.5) times larger than the largest storage tank. If the storage vessels are drums, then the storage area containment system shall be 50% of their total storage volume.
- (3) All hazardous or infectious waste or toxic substance storage, treatment, transportation and/or disposal facilities shall provide a Contingency Plan consistent with 40 CFR 265.52 to the City of Eden Zoning Officer, and the City of Eden Fire Marshal.
- (4) In determining whether to require greater buffers, the City of Eden shall consider the following factors:
  - (a) The type of hazardous or infectious waste or toxic substance to be stored, treated, transported, and/or disposal of at the facility, and the degree of hazard or toxicity associated with such waste or substance.
  - (b) The volume of hazardous or infectious waste or toxic substance to be stored, treated, transported, and/or disposed of at the facility.
  - (c) The number of residents in proximity to the facility;
  - (d) The number of institutional, school, and commercial structures in proximity to the facility, their distance from the facility, and the nature of the activities that take place in these structures.
  - (e) The lateral distance and slope from the facility to surface waters or to watersheds draining directly into surface water supplies.
  - (f) The vertical distance, and the type of soils and geologic conditions separating the facility from the water table.
  - (g) The direction of the flow of groundwater from the sites;
  - (h) Any other relevant factors.
- (5) A hazardous or infectious waste or toxic substance storage, treatment, transportation, and/or disposal facility shall comply with the security requirements of 40 CFR 265.14, as a minimum.
- (6) All water, sanitary sewer and storm water management systems on the site shall be protected so as to minimize to the greatest extent reasonable the probability of contamination by hazardous waste or toxic substance.

- (7) The facility shall be operated in accordance with all state and federal legislation and shall hold the proper valid permit(s) issued by the appropriate state and federal agencies governing the facility's operation.
- (8) All hazardous or infectious waste or toxic substance facilities shall be located at least 1,000 feet from a stream.
- (9) If not disposed of at a facility permitted to receive hazardous and toxic wastes, all materials that are landfilled shall be rendered non-hazardous and non-toxic before being placed in a landfill.
- (10) Liability and Bonding: All hazardous or infectious waste or toxic substance storage, treatment, transportation, and/or disposal facilities are subject to the following liability requirements:
  - (a) All persons storing, treating, transporting or disposing of hazardous or infectious wastes or toxic substances in Rockingham County shall be held to a standard of strict liability for spills, accidents, contamination or other discharges and hazards arising from the facility. As used in this section, the term "strict liability" shall mean that persons storing, treating, transporting, or disposing of hazardous waste or toxic substance shall be liable for all emergency clean-up costs, clean-up costs in general, damages to persons and property, and other costs resulting from discharges or contamination, regardless of fault, or regardless of whether the discharge of contamination was the result of intentional or negligent conduct, accident or other cause.
  - (b) All hazardous or infectious waste or toxic substance storage, treatment, transportation, and/or disposal facilities shall be subject to the following bond requirements:
    - (i) If no Federal or State regulations require closure plans and bonding, The City of Eden may require the facility to submit a closure plan and to obtain bonding, with the City of Eden named as additional insured, sufficient to execute the closure plan. The closure plan should meet Federal and State regulations regarding such closures.
    - (ii) Should the above stated bond or insurance expire or be revoked then the hazardous waste or toxic substance storage, treatment, transportation and/or disposal facility must cease operation and remove all hazardous waste and/or toxic substance from the site.
- (11) Applications for a Special Use Permit must be accompanied with a request for voluntary annexation if the area is not within the municipal boundary.

The City Council shall, prior to the issuance of a Special Use Permit for Hazardous Waste, Infectious Waste and Toxic Substance Storage Facilities, Treatment Facilities, Transportation Facilities and/or Disposal Facilities in the I-3 Industrial District, find that such special use meets the standards listed above in sections (p)(3) and (q)(d) through (i).

(1) **Hydraulic Fracturing (Fracking) or Other Oil and Gas Exploration and Extraction**

- (1) No hydraulic fracturing or other oil and gas exploration or extraction activity shall be located within a Water Supply Watershed.
- (2) No hydraulic fracturing or other oil and gas exploration activity shall be located within a flood hazard area as defined by the City of Eden Flood Hazard Mitigation section of this ordinance.
- (3) The applicant shall demonstrate how City of Eden maintained rights-of-way will be protected from damage that may occur from transport of equipment or other parts of the hydraulic fracturing operation.
- (4) The applicant shall be liable for all repairs to rights-of-way necessitated by hauling or other aspects of s the hydraulic fracturing operation.
- (5) A copy of any lease of oil or gas rights or any other document separating rights to oil or gas from the freehold of the surface property shall be submitted as part of the application
- (6) The City of Eden shall be notified at least 60 days before any hydraulic fracturing or other oil and gas exploration activity shall commence on the surface property identified in the special use permit application.
- (7) All legally required State and Federal permits or approvals shall have been issued by the appropriate State or Federal Agencies before the commencement of any hydraulic fracturing activities. Copies of the documents shall be provided to the City of Eden at least 14 days prior to such commencement.
- (8) No hydraulic fracturing or other oil or gas exploration activity shall be located less than 100 feet from the front property line bordering a public right-of-way nor less than 100 feet from a side property line of the surface property in question.
- (9) The City of Eden shall be provided copies of any notices of violation from State or Federal agencies within 7 days of receipt.



- (10) The Special Use Permit may be revoked if the applicant does not comply with its terms. Unresolved notices of violation from State or Federal agencies may also result in revocation of the Special Use Permit.

The City Council shall, prior to the issuance of a Special Use Permit for Hydraulic Fracturing (fracking) or Other Oil and Gas Exploration in the I-3 Industrial District, find that such special use meets the standards listed in Section 11.24(p)(3) and above in sections (d) through (i).

(m) **Mining, Extraction Operations and Quarries** (including sand, gravel and clay pits)

- (1) The facility boundary shall be enclosed by a chain link, wooden or masonry fence at least five (5) feet in height. Where the property lines have been enclosed prior to the time of adoption of this Ordinance with a fence constructed as heretofore described, this section shall be deemed to have been complied with.
- (2) Operations involving blasting discernible beyond the outer boundary of a quarry shall only be conducted between the hours of 7:00 a.m. and 6:00 p.m. (dust). Suppression shall meet all NCDENR operating permit requirements at a minimum. Operating plans shall, in addition to permit requirements, insure that dust is suppressed so that it does not stray to adjoining properties used for residential, commercial, institutional, recreational or religious activities.
- (3) Interior roads shall be located no closer than thirty-five (35) feet from an external property line other than a highway or railroad right-of-way line.
- (4) The facility's NCDENR reclamation plan shall be submitted to the City's Zoning Officer within 30 days of terminating quarrying operations. The owner or operator shall also demonstrate that all reasonable steps have or will be taken to prevent trespass onto the property, including security measures for monitoring the site.
- (5) The minimum lot size shall be 75 acres. A 50 foot forested buffer shall be required along streams and waterways and along any adjoining property containing a residential or non-industrial use.
- (6) Applications for a Special Use Permit must be accompanied with a request for voluntary annexation if the area is not within the municipal boundary.

The City Council shall, prior to the issuance of a Special Use Permit for Mining, Extraction Operations and Quarries in the I-3 Industrial District, find that such

special use meets the standards listed in Section 11.24(p)(3) and above in sections (d) through (i).

(n) **Sanitary Landfills (MSW)**

- (1) The following additional factors shall be considered in approving rezoning to I-3 for a sanitary landfill:
  - (a) Whether noise, odor and traffic impacts of a MSWLF on the surrounding area will be sufficiently mitigated; and
  - (b) Types of waste to be disposed and methods of transport to the site.
  - (c) To find consistency with the Land Development Plan, the City Council may impose a condition that issuance of the Special Use Permit is contingent upon delivery routes that avoid residential neighborhoods, schools and health care facilities, and buffers that exceed the buffers imposed by State and federal law.
- (2) An application for development approval shall include feasibility studies and a preliminary site plan to be used in the application for a Permit to Construct.
- (3) A landfill shall not be located:
  - (a) within a protected or critical area of a watershed.
  - (b) within a 100-year floodplain.
- (4) The truck entrance shall be located within two thousand (2,000) feet of a major arterial highway.
- (5) There shall be a natural or planted opaque landscaping buffer at least fifty (50) feet wide between the landfill and any public roads and between the landfill and any residential structure.
- (6) Applications for a Special Use Permit must be accompanied with a request for voluntary annexation if the area is not within the municipal boundary.
- (7) Approach and departure traffic routes for a landfill facility shall not be permitted through streets primarily intended to provide access for a residential neighborhood.
- (8) A security fence at least seven (7) feet in height shall be installed around the facility boundary.
- (9) The landfill shall comply with all federal, state and local regulations.

The City Council shall, prior to the issuance of a Special Use Permit for Municipal Solid Waste Landfills in the I-3 Industrial District, find that such special use meets the standards listed in Section 11.24(p)(3) and above in sections (d) through (i).

(o) **Sanitary Landfills (Construction and Demolition Debris)**

- (1) Applications for a Special Use Permit must be accompanied with a request for voluntary annexation if the area is not within the municipal boundary.
- (2) Approach and departure traffic routes for a landfill facility shall not be permitted through streets primarily intended to provide access for a residential neighborhood.
- (3) The facility boundary shall have a minimum thirty (30) foot vegetated buffer between the facility and any property zoned for residential use.

The City Council shall, prior to the issuance of a Special Use Permit for a sanitary landfill for construction and demolition debris in the I-3 Industrial District, find that such special use meets the standards listed in Section 11.24(p)(3) and above in sections (d) through (i).

(p) **Saw Mills**

The City Council shall, prior to the issuance of a Special Use Permit for a saw mill in the I-3 Industrial District, find that such special use meets the standards listed in Section 11.24(p)(3) and above in sections (d) through (i).

(q) **Scrap Metal Storage or Recycling**

- (1) Approach and departure traffic routes for a scrap metal storage or recycling facility shall not be permitted through streets primarily intended to provide access for a residential neighborhood.
- (2) Applications for a Special Use Permit must be accompanied with a request for voluntary annexation if the area is not within the municipal boundary.
- (3) The applicant shall present a sound attenuation plan that demonstrates how noise from the facility will be sufficiently mitigated for any adjoining residentially zoned or residentially used properties.

The City Council shall, prior to the issuance of a Special Use Permit for scrap metal storage or recycling in the I-3 Industrial District, find that such special use meets the standards listed in Section 11.24(p)(3) and above in sections (d) through (i).

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**EXISTING TEXT**

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**Section 11.24(m)     I-2 INDUSTRIAL DISTRICT**

(1)     **Permitted Uses: (includes, but is not limited to, the following)**

Asphalt paving production and sales (only on parcels containing 75 or more acres; 50 foot forested buffer required along streams and waterways and along any adjoining property containing a residential or non-industrial use).

Caretaker residences as an accessory use, only for parcels 50 acres or greater, and only for an active industrial use (caretaker residence must be vacated if industrial use ceases)

Chemical manufacture and sales.

Coal, storage and retail of

Enameling, lacquering, or the plating of galvanizing metals.

Mining and quarrying (only on parcels containing 75 or more acres; 50 foot forested buffer required along streams and waterways and along any adjoining property containing a residential or non-industrial use), not including fracking.

Mixing plants for concrete, not including asphalt mixing operations.

Railroad freight yard and terminals

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**PROPOSED TEXT**

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**Section 11.24(m)     I-2 INDUSTRIAL DISTRICT**

(1)     **Permitted Uses:**

Delete the following:

Asphalt paving production and sales (only on parcels containing 75 or more acres; 50 foot forested buffer required along streams and waterways and along any adjoining property containing a residential or non-industrial use).

Caretaker residences as an accessory use, only for parcels 50 acres or greater, and only for an active industrial use (caretaker residence must be vacated if industrial use ceases)

Chemical manufacture and sales.

Coal, storage and retail of.

Enameling, lacquering, or the plating of galvanizing metals.

Gasoline or fuel oil storage or bulk terminal plants for any flammable gases or liquids, provided 1/ that no storage tanks are placed closer than fifty (50) feet to any boundary line of the lot on which said storage is located and 2/ that the uses are in conformity with the state and local regulations governing the storage of combustible fuels.

Mining and quarrying (only on parcels containing 75 or more acres; 50 foot forested buffer required along streams and waterways and along any adjoining property containing a residential or non-industrial use), not including fracking.

Mixing plants for concrete, not including asphalt mixing operations.

Railroad freight yard and terminals

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**EXISTING TEXT**

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**Section 11.26(c)(3)(b)(1)**

- (1) Special Use Permits may be issued by the Board of Adjustment for the uses enumerated in the following subsection 11.26(c) after a hearing upon a Petition for the issuance thereof.

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**PROPOSED TEXT**

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**Section 11.26(c)(3)(b)(1)**

- (1) Special Use Permits in all zoning districts other than I-3 Industrial District and the PUDR district shall be issued by the Board of Adjustment for the uses enumerated in the following subsection 11.26(c) after a hearing and upon a Petition for the issuance thereof. Special Use Permits in the I-3 Industrial District shall be heard and decided by the City Council according to the procedures established in this section.

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## EXISTING TEXT

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### Section 11.29 DEFINITIONS

(Currently definitions do not exist for Coal Ash Landfill, Coal Ash Recycling, Hydraulic Fracturing, Mining, Extractions and Quarrying, Oil and Gas Exploration, Sanitary Landfill, and Structural Fill)

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## PROPOSED TEXT

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### Section 11.29 DEFINITIONS

**Coal Ash Landfill:** A facility designed primarily for the disposal of combustion products and residuals, including fly ash, bottom ash, boiler slag, mill rejects, and flue gas desulfurization residue produced by a coal-fired generating unit when that facility is located on land or lands not previously used by a coal-fired generating unit.

**Coal Ash Recycling:** The procedure by which coal combustion products are directly used or reused (a) as an ingredient in an industrial process to make a product, unless distinct components of the coal combustion products are recovered as separate end products or (b) in a function or application as an effective substitute for a commercial product or natural resource.

**Hydraulic fracturing:** The process by which sub-surface rock is fractured by a hydraulically pressurized liquid for the purpose of extracting any form of gas, including natural gas.

**Junkyard:** Any area or lot, or portion thereof, used for the storage, keeping, accumulation or abandonment of scrap or waste materials, including but not limited to, scrap metals, wastepaper, rags, buildings, used appliances, machinery or other scrap materials. A recycling processing center or recycling plant is not considered a junkyard.

**Mining, Extractions and Quarrying:** The breaking of the surface soil in order to facilitate or accomplish the extraction or removal of minerals, ores, or other solid matter; any activity or process constituting all or part of a process for the extraction or removal of minerals, ores, soils, and other solid matter from their original location; or the preparation, washing, cleaning, or other treatment of minerals, ores, or other solid matter so as to make them suitable for commercial, industrial, or construction use.

**Oil and Gas Exploration:** (hydrocarbon exploration) is the search for hydrocarbon deposits beneath the Earth's surface, such as oil and natural gas.

**Sanitary Landfill:** A facility for disposal of any form of solid waste on land in a sanitary manner in accordance with the rules concerning sanitary landfills adopted under N.C. Gen. Stat. Chapter 130A, Article 9.

**Structural Fill:** Engineered fill with a projected beneficial end use, constructed using coal combustion products that are properly placed and compacted. Structural fill includes fill used to reclaim open pit mines and for embankments, greenscapes, foundations, construction foundations, and for bases or sub-bases under a structure or a footprint of a paved road, parking lot, sidewalk, walkway or similar structure. When the storage or disposal of coal combustion products is the primary purpose of placement of engineered fill and the ultimate use or purpose is incidental or accessory, then placement of structural fill shall be considered a primary use. When the use of structural fill is incidental to the ultimate use or purpose, then the ultimate use or purpose shall be considered the primary use.



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**EXISTING TEXT**

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**Section 11.24** District Regulations

- (a) **R-S** Residential-Suburban
- (a-1) **R-20** Residential
- (b) **R-12** Residential
- (b-1) **R-12S** Residential
- (c) **R-6** Residential
- (c-1) **R-6S** Residential
- (c-2) **R-4** Residential and Manufactured Homes
- (d) **M-H** Manufactured Homes
- (e) **O & I** Office & Institutional
- (f) **B-C** Business, Central
- (g) **B-G** Business, General
- (h) **B-N** Business, Neighborhood
- (i) **BH-1** Business, Highway
- (j) **BH-2** Business, Highway
- (k) **B-SC** Business, Shopping Center
- (l) **I-1** Industrial
- (l-a) **IP-1** Industrial Park
- (m) **I-2** Industrial
- (n) **PUD-R** Planned Unit Development Residential
- (o) **I-RO** Industrial Reuse Overlay

- (p) **M-H**           Manufactured Home Overlay
- (q) **O-A**            Outdoor Advertising Overlay

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**PROPOSED TEXT**

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**Section 11.24 DISTRICT REGULATIONS**

- (a) **R-S**                Residential-Suburban
- (b) **R-20**             Residential
- (c) **R-12**             Residential
- (c-1) **R-12S**         Residential
- (d) **R-6**               Residential
- (d-1) **R-6S**          Residential
- (e) **R-4**               Residential and Manufactured Homes
- (e-1) **M-H**            Manufactured Homes
- (f) **PUD-R**            Planned Unit Development Residential
- (g) **O & I**             Office & Institutional
- (h) **B-C**               Business, Central
- (i) **B-G**               Business, General
- (j) **B-N**               Business, Neighborhood
- (k) **BH-1**             Business, Highway
- (l) **BH-2**             Business, Highway
- (m) **B-SC**            Business, Shopping Center
- (n) **I-1**                Industrial

<b>(n-1)</b>	<b>IP-1</b>	Industrial Park
<b>(o)</b>	<b>I-2</b>	Industrial
<b>(p)</b>	<b>I-3</b>	Industrial – High Impact Uses
<b>(q)</b>	<b>I-3 SU</b>	Special Use Permits – City Council
<b>(r)</b>	<b>I-RO</b>	Industrial Reuse Overlay
<b>(s)</b>	<b>M-H</b>	Manufactured Home Overlay
<b>(t)</b>	<b>O-A</b>	Outdoor Advertising Overlay

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### **GENERAL INFORMATION**

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This request was submitted by the City Council.

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### **STAFF ANALYSIS**

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The North Carolina General Assembly has made a number of changes to the land use regulation statutes over the course of the most recent legislative session. The manner in which certain uses of land can be regulated by units of local government has also changed.

The City of Eden, like other local governments in North Carolina, can no longer refuse to allow certain land uses in our zoning jurisdiction. For example, the City of Eden has never needed to provide for solid waste landfills in our jurisdiction. We no longer have the ability to zone them out but we can adopt reasonable development standards.

The requirement that we must include high impact industrial uses led the City Council to declare a moratorium on such uses in order to give the staff and Planning Board a chance to make recommendations regarding these sensitive matters.

The recommended changes include creating a new Industrial-3 (I-3) district. Some uses in this district are new to the Zoning Ordinance and others are moved from Industrial-2. For any use in the I-3 district, a special use permit must be granted by the City Council before permits are issued to allow the requested use.

You will note changes to the General Provisions section of the Zoning Ordinance relating to the manner in which particular land uses are determined to be permitted uses or not. There are

several terms that have been proposed to be added to the Definitions section of the ordinance. The Board of Adjustment section has been changed to reflect the City Council's quasi-judicial role in the consideration of some uses.

Based upon the foregoing information, staff is of the opinion that the amendments be approved.

**STAFF RECOMMENDATION:**

**Approval of the text amendments**