

## Article I: General Provisions

### § 202-1 Applicability.

- A. This chapter shall apply to the transportation, storage, possession and use of explosive materials in the Town of Newington.
- B. This chapter shall not apply to:
  - (1) Explosive materials while in the course of transportation via railroad, water, highway or air when explosive materials are moving under the jurisdiction of and in conformity with regulations adopted by any federal or state department or agency.
  - (2) The laboratories of schools and similar institutions when confined to the purpose of instruction or research or to explosive materials in the forms prescribed by the official United States Pharmacopoeia or the National Formulary and used in medicines and medicinal agents.
  - (3) The normal and emergency conditions of any government, including all departments, agencies and divisions thereof, provided that they are acting in their official capacity and in the proper performance of their duties or functions.
  - (4) Explosive materials for delivery to any government or any department, agency or division thereof.
  - (5) Pyrotechnics commonly known as "fireworks," including signaling devices such as flares and fuses.
  - (6) Small arms ammunition and components thereof, which are subject to the Gun Control Act of 1968 (Title 18, Chapter 44, of the United States Code) and regulations promulgated thereunder.
  - (7) Gasoline, fertilizers and propellants used in propellant-activated power devices or tools.
- C. Blasting should be the last option as a technique to assist excavation. The applicant shall present information why non-blasting methods (e.g. mechanical hammering, et cetera) are not feasible.

### § 202-2 Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

#### **AUTHORIZED, APPROVED or APPROVAL**

Authorized, approved or approval by the Fire Chief or his designee.

#### **BLAST AREA**

The area of a blast within the influence of flyrock gasses and concussion.

#### **BLASTER**

That qualified person in charge of and responsible for the loading and firing of a blast.

#### **BLASTING AGENT**

An explosive material which meets prescribed criteria for insensitivity to initiation in conformity with Title 27 of the Code of Federal Regulations, Section 55.11 (for storage), and Title 49 of the Code of Federal Regulations (for transportation).

#### **BLAST SITE**

The area where explosive material is handled during loading, including the perimeter of blast holes and for a distance of 50 feet in all directions from loaded holes or holes to be loaded.

#### **DETONATING CORD**

A flexible cord containing a center core of high-velocity explosive and used to initiate other explosives.

**DETONATOR**

Any device containing any initiating or primary explosive that is used for initiating detonation. The term includes, but is not limited to, electric blasting caps of instantaneous and delay types, blasting caps for use with safety fuses, detonating cord delay connectors and nonelectric instantaneous and delay blasting caps which use detonating cord or other replacement for electric lag wires.

**EXPLOSIVE**

Any chemical compound mixture or device, the primary or common purpose of which is to function by explosion.

**EXPLOSIVE MATERIALS**

These include explosives, blasting agents and detonators. The term includes, but is not limited to, dynamite and other high explosives, safety fuses, detonating cord and igniters. Title 49 of the Code of Federal Regulations, Parts 1 through 999, subdivide these materials into:

- A. Class A explosives: detonating or otherwise maximum hazard.
- B. Class B explosives: flammable hazard.
- C. Class C explosives: minimum hazard.
- D. Blasting agents: See definition.

**Fire Chief shall mean the Newington Fire Chief or the Chief's designee.**

**HIGH EXPLOSIVES**

Explosives which are characterized by a very high rate of reaction, high pressure development and the presence of a detonation wave in the explosive.

**PERSON**

Any individual, corporation, company, association, firm, partnership, society or joint-stock company.

**PYROTECHNICS**

Any combustible or explosive compositions or manufactured articles designed and prepared for the purpose of producing audible or visible effects. "Pyrotechnics" are commonly referred to as "fireworks."

**SAFETY FUSE**

A flexible cord containing an internal burning medium by which fire or flame is conveyed at a continuous and uniform rate from the point of ignition to the point of use, usually a fuse detonator.

**§ 202-3 Word usage.**

Words used in the singular shall include the plural and in the plural shall include the singular. Words used in the masculine gender shall include the feminine gender and vice versa.

**§ 202-4 Forms and procedures.**

The Fire Chief shall issue forms necessary or useful for carrying out the purposes of this chapter. [1] He may also establish procedures necessary or useful for carrying out the purposes of this chapter which are consistent with the provisions of this chapter.

[1] *Editor's Note: Said Forms are on file at the Fire Department and in the town offices and may be examined there during regular business hours.*

**§ 202-5 Violations and penalties.**

Any person who violates any provision of this chapter commits a separate violation of this chapter for each provision violated and shall be subject to a civil fine of not more than \$500 for each separate violation.

## Article II: Licenses and Permits

### § 202-6 Applicability of Article.

Safety and security are primary considerations in the manufacture, transportation, storage, sale, possession and use of explosive materials. An appropriate and thorough system of licensing or permitting is designed to promote these considerations by assuring that these products come only into the hands of qualified persons who require them in their own occupation.

- A. The license and permit requirements of this Article shall apply to all explosive materials.
- B. This Article is intended to supplement existing federal and state laws and regulations.

### § 202-7 Exceptions.

This Article shall not apply to hand-loading of small arms ammunition for personal use and not for resale.

### § 202-8 Manufacture of explosives.

- A. The manufacture of explosive materials within the Town of Newington shall be limited to those having an appropriate state and/or federal license,
- B. The manufacture of explosive materials within the Town of Newington shall be prohibited when such manufacture presents an undue hazard to life and property.

### § 202-9 Dealers of explosives.

- A. Persons intending to act as dealers in explosive materials must possess an appropriate federal license from the Bureau of Alcohol, Tobacco and Firearms.
- B. Explosive materials shall not be sold, given, delivered or transferred to any person not in possession of a valid license or permit.

### § 202-10 Blaster's license required.

- A. No person may load or fire explosive materials unless such person or his supervisor is a licensed blaster in conformance with the rules and regulations promulgated under RSA 158:9 of the State of New Hampshire.
- B. Proof of said license shall be provided upon request to the Fire Chief.

### § 202-11 Permit required.

- A. No person shall use explosive materials within the Town of Newington without first obtaining the proper permit from the Newington Fire Chief which authorizes him to use such materials. The permit application shall be accompanied by a letter of explanation setting forth why non-blasting methods are not feasible.
- B. The authorized agent or person conducting an operation or activity requiring the use of explosive materials shall obtain a permit to use explosive materials and shall be responsible for the results and any other consequences of any loading and firing of explosive material and shall permit the loading and firing to be performed or supervised only by a licensed blaster.

### § 202-12 Permit applications; fees; pre-blasting conference; renewal.

- A. Application for a permit or its renewal shall be made to the Fire Chief on forms provided by him, with a copy to be simultaneously filed with the New Hampshire Board of Selectmen, and shall contain such information as may be required.

**B. Applications submitted shall have attached proof of the following:**

- (1) State of New Hampshire license to use, purchase and transport explosive materials.
- (2) State of New Hampshire certificate of competency to conduct blasting operations.
- (3) Certificate of Insurance showing minimum coverage of \$2,000,000 bodily injury and \$500,000 property damage by a carrier authorized by the State of New Hampshire Insurance Commissioner to do business in New Hampshire. The Insurance certificate shall state that the Insurance company is authorized to do business in the State of New Hampshire.
- (4) The blaster's license of the person in charge of or supervising the use of explosives.
- (5) Written permission from the owner of the land on which the use of explosives will occur for the Fire Chief to inspect the land during the period of the permit and until 20 days after the expiration of the permit.

**C. Applications with application permit fees must be received by the Fire Chief at least 10 and not more than 30 business days prior to the estimated start date of blasting operations.**

**D. A fee shall be assessed for each permit. Checks shall be made payable to the Town of Newington with "Fire Department" noted on the check. The check must be received by the Fire Department prior to permit approval and issuance. Permit fee rates have been established by either the Board of Fire Engineers or by the Board of Selectmen.**

**E. Pre-blasting conferences may be scheduled by the Fire Chief prior to approval of permit application. Conference attendees may include but not be limited to representatives of the blaster, other town officials and/or citizens likely to be affected by blasting operations.**

**F. If an application for renewal is filed with the issuing authority before expiration of the old permit, the renewal will become effective when the old permit expires. No renewal permit shall be issued more than 30 days before the expiration date of the current permit.**

**G. If an application for renewal is filed after the expiration of the old permit, it shall be considered as an application for a new permit.**

**§ 202-13 Permit restrictions.**

- A. No permit shall be assigned or transferred.
- B. Approved permits shall be dated and be valid for no more than one year from date of issue.
- C. The permit expiration date shall be no later than the expiration date of the blaster's insurance certificate.
- D. The permit shall bear the name and address of the person who applied for the permit, the name and address of the person(s) with a blaster's license who will supervise the use of explosives and the signature of the approving authority.

**§ 202-14 Denial, revocation or suspension of permit.**

**A. A permit for use of explosive materials may be denied, revoked or suspended for any of the following reasons:**

- (1) Noncompliance with any order of the issuing authority.
- (2) If it is determined that any applicant or permit holder was or is under the influence of any drug (prescription or nonprescription) or alcohol that may have impaired their judgment or ability to transport, store, possess or use any explosive material under the jurisdiction of the Town of Newington in a safe and prudent manner, while operating under such permit, their permit to operate in the town shall be suspended immediately. The Fire Chief shall contact the Newington Police Department and the State of New Hampshire Department of Safety if they feel that any applicant or permit holder has or is suspected of violating this or any part of this chapter because

they may have been or were impaired by any drugs (prescription or nonprescription) or alcohol. No permit to operate shall be reissued until the matter is fully investigated and the Fire Chief's office provided with the findings of any investigations into the matter.

- (3) Proof that the permit holder or applicant suffers from a mental or physical defect that would interfere with the safe handling of explosive materials.
- (4) Violation by the applicant or permit holder of any provision of any law or regulation relating to explosive materials or proof that false information was willfully given or a misrepresentation was willfully made to obtain the permit.
- (5) Determination by the issuing authority that blasting operations pose a hazard to the health or property of any person or have or will cause an unnecessary nuisance to any person.
- (6) For other good cause.

**B. Notification; hearing.**

- (1) In any case where the Fire Chief determines that it may be appropriate to deny a permit, he shall promptly notify the applicant. Said notice will set forth specific basis for the denial and state that, upon written request, a hearing before the Chief will be held within 10 days after the date of receiving the request. Following said hearing, the Chief will make a final determination as to whether to grant or deny the applicant a permit.
- (2) In any case where the Fire Chief determines that it may be appropriate to revoke a permit from a current permit holder, he shall promptly notify the applicant that the applicant's current permit is temporarily suspended pending a hearing. Said notice will set forth specific basis for the suspension and anticipated revocation and state that, upon written request, a hearing before the Chief will be held within 10 days after the date of receiving the request. Following said hearing, the Chief will make a final determination as to whether to revoke the permit.

- C. Within 15 days after such hearing, the Fire Chief shall state his findings and conclusions, in writing, and transmit a copy to the applicant or former permit holder.
- D. Upon notice of the revocation or suspension of any permit, the former permit holder shall immediately surrender to the issuing authority the permit and all copies thereof.

**§ 202-15 Licenses and permits available for public inspection; protection of permits.**

- A. Licenses (or copies thereof) to deal in explosive materials shall be kept available for inspection at each place of operation.
- B. A permit to blast (or copies thereof) shall be kept available for inspection at each place of operation.
- C. Permit holders shall take every reasonable precaution to protect their permits from loss, theft, defacement, destruction or unauthorized duplication, and any such occurrence shall be reported immediately to the Fire Chief.

**§ 202-16 Recordkeeping and reporting.**

- A. A holder of a permit to use explosive materials shall make a record of all operations within the Town of Newington. Such record shall be made available to the Fire Chief upon request and shall be retained for five years.
- B. All persons holding a blasters permit shall make daily records for each blast that at a minimum contains the information required by the current version of the Newington Fire Department's Records Requirements for Blasting. These records shall be retained for five years.
- C. The Fire Chief shall be notified promptly by any permit holder of a change in business address or phone number and home address, if applicable.
- D. The theft or loss of explosive materials shall be reported immediately to the Fire Chief and to the Newington Police Department.

- E. Records made and kept pursuant to regulations promulgated by any federal or state agency need not be duplicated to satisfy the requirements of this section.

## Article III: Use of Explosive Materials

### § 202-17 General regulations.

- A. The conduct of all blasting operations shall be governed by the New Hampshire Code of Administrative Rules, Chapter Saf-C 1600, Explosives.
- B. In the case of conflicting rules or regulations, the most stringent rule or regulation shall apply.
- C. While explosive materials are being handled or used, smoking shall not be permitted, and no one near the explosive material shall possess matches, open flame or fire- or flame-producing devices, except that the blaster may possess a device for the specific purpose of igniting the safety fuse.
- D. No one shall handle explosive materials while under the influence of alcohol, narcotics or other substances that may impair one's judgment.
- E. For all blasts, the blaster shall exercise precautions to prevent injury to persons and damage to property and to prevent earth vibrations and atmospheric sounds from exceeding regulatory limits.
- F. When conducting blasting operations, the holder of the permit shall use reasonable precautions, including but not limited to warning signals, flags, barricades or mats as may be required or appropriate to maximize safety.
- G. Blasting operations shall be conducted during daylight hours only, except by permission of the Fire Chief.
- H. No explosive materials shall be intentionally abandoned in any location for any reason, nor left in such a manner that they may easily be obtained by children or other unauthorized persons. All unused explosive materials shall be returned to proper storage facilities.
- I. Explosive materials shall be loaded and used in a manner that is consistent with any recommendations or instructions of the manufacturer for that explosive material.
- J. Transportation, storage and possession of explosive materials in the Town of Newington shall be governed by the New Hampshire Code of Administrative Rules, Chapter Saf-C 1600, Explosives.

### § 202-18 Notification.

- A. Notification of intent to conduct blasting operations shall be published in a local daily newspaper on at least three consecutive days prior to the start of blasting. Said notification shall also be published in the local weekly newspaper at least once prior to the start date of blasting. Notification shall include the area of operations and the name of the company responsible for operations.
- B. Persons intending to conduct blasting operations within the Town of Newington shall submit written notification of such intent to the Chief of the Police and Fire Departments and the Selectmen's office. Said notification shall be made no less than 24 hours prior to the estimated start date of blasting and shall be submitted on the permit forms.
- C. The blaster shall also notify the Newington Fire Department dispatcher no less than 30 minutes prior to each blast. The blaster shall provide:
  - (1) The name of the company conducting the blasting;

- (2) The address of the blasting;
- (3) The time of the blasting; and
- (4) The amount of explosive material to be used.

**§ 202-19 Pre-blast surveys.**

Prior to conducting any blasting operations, the applicant or their agent shall conduct a pre-blast structural inspection condition survey of all existing structures and conditions on the site, adjacent to the site or in the vicinity of the site at no cost to the property owner or the Town of Newington. This survey shall extend to such structures or conditions as may be affected by the applicant's blasting operations. As a minimum, pre-blast structural inspection condition surveys shall be performed on all structures, including homes, foundations, driveways, roadbeds, swimming pools, wells and mobile homes within 500 feet of the anticipated blasting area. The applicant as well as the owner of the property being surveyed shall sign all such surveys once completed. If an owner refuses to allow for or sign a pre-blast survey form for whatever reason the applicant shall note this on the form. The applicant shall make at least three attempts to notify the owner of the need for such surveys; the last such attempt shall include written notification and the name and contact number of a person that they may contact.

- A. The pre-blast structural inspection condition survey shall consist of a written description of the interior and exterior condition of each of the structures examined. Descriptions shall locate any existing cracks, damage or other defects and shall include such information so as to make it possible to determine the effect, if any, of the blasting operations on the defect. Where significant cracks or damage exist, or for defects too complicated to describe in words, photographs shall be taken. A good quality videotape survey with appropriate audio description of locations, conditions and defects can be used in lieu of a written form. Prior to the start of work, a copy of the pre-blast condition survey shall be submitted to the Fire Chief and the homeowner or occupant.
- B. The individual person conducting the survey shall give written notice to the owner of the property concerned and tenants of the property. The notice shall state the dates on which the surveys are to be conducted. Copies of all notices shall also be provided to the Fire Chief.

**§ 202.20 Blasting operations.**

- A. During the time that holes are loaded or are being loaded with explosives, blasting agents or detonators, the blast site shall be barred to all but those authorized personnel engaged in the drilling and loading operations or otherwise authorized to enter that site. The blast site shall be guarded or barricaded and posted.
- B. After loading for a blast is completed, and before firing, all excess explosive materials shall be removed from the area and returned to proper facilities.
- C. As soon as practical after all blast holes are connected, prior to connecting to a source of initiation, such as a blasting machine, and until the shot has been fired and subjected to post-blast examination, the blast area shall be guarded or barricaded and posted or flagged against unauthorized entry.

**§ 202-21 Warning required.**

- A. No blast shall be fired until the blaster in charge has made certain that all surplus explosive materials are in a safe place, all persons and equipment are at a safe distance or under sufficient cover and that an adequate warning signal has been given.
- B. The blaster shall inform the Fire Chief of the method by which a signal is sounded and the type of signal prior to starting blasting operations.

**§ 202-22 Supervision of operations.**

- A. Loading and firing shall be performed or supervised only by a person possessing an appropriate blaster's permit. (See Article II.)

- B. The Fire Chief may, at his discretion, monitor at or near the blast site any blasting operations conducted within the Town of Newington.
- C. If, making the required thirty-minute prior notification (§ 202-18D), the blaster is informed that the blast will be monitored, the blaster shall delay initiation of the shot until such time as the Fire Department representative is in position to monitor the blast.

**§ 202-23 Seismographic monitoring.**

- A. The Fire Chief may, at his discretion, require that seismographic monitoring be conducted by the blaster for any or all blasts initiated.
- B. The location of seismographic equipment for tests may be determined by the Fire Chief in coordination with the blaster.
- C. The seismographic instrumentation shall, at a minimum, meet the specifications as outlined by the Newington Fire Department. The Chief has the option of requiring that the original seismographic strip chart, digital seismographic data and calibration data be provided.
- D. All seismographic test results shall be made available, in writing, to the Fire Chief upon request. The Chief has the option of requiring that the original seismographic strip be provided.

**Article IV: Complaints**

**§ 202-24 Categories of complaints.**

- A. The Fire Chief shall have the responsibility of coordinating all activities relative to complaints received concerning blasting operations within the Town of Newington.
- B. Complaints received may be grouped into two categories:
  - (1) Complaints of an informational nature or of a nuisance nature relative to blasts.
  - (2) Complaints wherein possible damage is claimed as a result of blasting operations.

**§ 202-25 Nuisances.**

- A. Complaints of an informational nature or reporting a nuisance factor relating to blasting operations shall be handled by the Fire Chief. The Chief shall contact, in a timely manner, the complainant and attempt to resolve the complaint. In the event that the complainant is not satisfied after contact by the Chief, the Chief shall require the blaster or the blasting company to contact the complainant directly.
- B. If, in the determination of the Fire Chief, sufficient complaints have been received in reference to a specific blasting operation, the Chief may direct such actions as may reduce the possible nuisance factor. Such actions may include but not be limited to reductions in the amounts of explosive materials used, change in the time of the blast initiation and monitoring of blasts by noise level or earth vibration equipment to determine the extent of or existence of the nuisance factor.

**§ 202-26 Damage complaints.**

- A. Complaints received by the Fire Department which allege damage to property as a result of blasting operations shall be coordinated promptly by the Fire Chief.
- B. The complainant shall be contacted directly by the Fire Chief to ascertain pertinent information relative to the alleged damage.



- C. The complainant shall also receive written instructions outlining the procedures to follow in order to seek compensation for possible damage.
- D. The Fire Chief may elect to inspect the alleged damage and shall be authorized to document and/or photograph such evidence as he deems necessary,
- E. If, in the determination of the Fire Chief, the blaster, the blasting company or their Insurance representatives are not dealing with the complainant in a satisfactory manner, the Chief may exercise any option provided by the Code, including ordering suspension of blasting operations until such time as a satisfactory resolution is attained.

Adopted by Newington Board of Selectmen

July 20, 2017