

# **BLASTING ORDINANCE TOWN OF EDGECOMB**

## **Section 1 AUTHORITY**

- A. This ordinance is enacted pursuant to the authority given the Town in MRSA 30- A, Section 3001 and shall be administered and enforced by the Town of Edgecomb Board of Selectmen and the Code Enforcement Officer.
- B. The requirements of this ordinance are in addition to any other ordinances, regulations and statutes, and where different standards are contained elsewhere, the more restrictive standards shall apply.
- C. This ordinance in no way replaces or negates or relieves any person from compliance with the provisions pertaining to explosives contained under A-M.R.S.A., Title 25, part 6, subchapter 1, PL 1999, c.652, as they may be amended, regarding rules for the manufacture, transportation, storage and use of explosive materials. This ordinance is supplemental to the State Statute, and the Town of Edgecomb relies on firms or persons conducting blasting activities to be in compliance with said statute.

## **Section 2 PURPOSE**

Considering that the transport, storage and use, including detonation, of explosive material (hereinafter referred to as blasting activities) are inherently dangerous; and that blasting activities may involve risks of psychological, physical, economic or nuisance damage to persons, property, geologic and hydro-geological resources, wildlife resources and the environment in the Town of Edgecomb, it is the purpose of this ordinance to secure and promote the public health, safety and welfare of the inhabitants of Edgecomb by controlling and regulating blasting activities in the Town and to declare that firms or individuals who engage in such activities must assume responsibility for them under the doctrine of "strict liability."

## **Section 3 EXCLUSIONS**

This ordinance does not apply to:

- A. The Armed forces of the United States or the State Militia
- B. Explosives in forms prescribed by the official United States Pharmacopoeia
- C. Possession, transportation and use of small arms, small arms ammunition including smokeless or black powder when possessed for noncommercial purposes in

quantities of five pounds or less

- D. The sale or use of fireworks
- E. The sale or use of explosives or blasting agents by the Town of Edgecomb and Edgecomb Fire Department acting in their official capacity.

#### Section 4 **DEFINITIONS**

Applicant: The person, company or corporation responsible and accountable for managing and conducting blasting operations.

Blaster: A State licensed individual who is in charge of and responsible for the loading and firing of a blast or who is in immediate personal charge and supervision of one or more other persons engaged in such activity.

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

Scaled distance formula: The formula used to establish radii for purposes of prelist/post-blast notification and inspection where the radius in feet away from the blast site(s) equals a distance of 200 feet times the square root of a charge, computed using the following formula:  $D = 200 \times \sqrt{W}$ . Where D equals the distance in feet and W equals the maximum weight of explosives in pounds that can be detonated per delay interval of 8 milliseconds or longer. Distance is intended to apply to a structure or well not owned, leased or contracted by the applicant or owner of a property on which blasting operations are to be conducted.

Strict Liability: Liability to others for personal injury and property damage without regard to fault or negligence arising from inherently dangerous activities, herein regarding blasting.

Structure: Anything built for the support, shelter or enclosure of persons, animals, goods or property of any kind, together with anything constructed or erected with a fixed location on or in the ground. The term includes structures temporarily or permanently located, such as decks and satellite dishes.

#### Section 5 **PERMIT REQUIRED**

- A. No person may manufacture, store, transport, use or detonate explosives within the Town of Edgecomb without first obtaining a permit in accordance with this ordinance. No permit shall be required for transit through Edgecomb from and to other towns.
- B. Application for a blasting permit shall be made in writing to the Board of

Selectmen, Town of Edgecomb and set forth the purpose for obtaining the blasting permit. The application must be signed and sworn to by the applicant. The burden rests upon the applicant to establish his/her qualifications for a permit. The applicant will be deemed competent and familiar with explosives if holding a permit to Use, Transport and Store explosives issued by the State of Maine. Blasting that requires filling and/or earth moving in excess of 100 cubic yards shall require Planning Board approval (see Section 5 of the Land Use Ordinance). The following information shall be submitted in the application:

1. Name, address, phone number of person or firm seeking the permit
  2. Names of individual(s) who shall actually be doing the blasting and a photocopy of each such identified person's current Maine blasting permit.
  3. Name of the insurer, policy number and agent providing insurance coverage as required by this ordinance.
- C. A true copy of the permit issued by the Town of Edgecomb shall be conspicuously posted at the job site.
- D. The application shall be accompanied by a fee of \$25.00.
- E. Permits shall be valid for six (6) months from the date of issuance.

#### Section 6

### **BOND AND PROOF OF INSURANCE**

The applicant shall submit with the application a certificate of insurance issued by an insurance carrier authorized to conduct business in the State of Maine showing that comprehensive liability insurance is in full force and effect for the blasting operations to be carried out by applicant in the Town of Edgecomb, for all personal injury and property damage arising out of blasting operations including completed operations, contractual liability, explosion, underground and collapse, in an amount not less than \$2,000,000 per occurrence, combined single limit. Said certificate shall indicate the effective dates of the liability coverage, the name and address of the agent or broker through whom the insurance coverage was issued and who is responsible for attesting to the existence of the insurance coverage. Said certificate shall provide for 10 days' advance written notice to the Code Enforcement Officer in the event the insurance policy is canceled, terminated or modified and receipt of such notice of termination shall be grounds to revoke a permit for blasting.

#### Section 7

### **INDEMNIFICATION**

The applicant shall indemnify and hold harmless the Town of Edgecomb and its agents and employees from and against all claims, damages, losses and expenses, including attorneys' fees, arising out of or resulting from the performance of blasting operations, provided each claim, damage, loss or expense is attributed to bodily injury, sickness,

disease or death, or to injury to or destruction of property (other than the blast itself), including the loss of use as a result, caused in whole or in part by any act or omission of the applicant, anyone directly or indirectly employed by them, or anyone for whose acts applicant may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

Section 8  
**PROCEDURE**

The Code Enforcement Officer shall act upon the application within 10 business days from receipt of a complete application. The applicant must be notified in writing by first class mail within five days of the date the Code Enforcement Officer makes its decision.

Section 9  
**STRICT LIABILITY**

Acceptance of a blasting permit from the Town of Edgecomb signifies that the applicant agrees to be bound by the doctrine of strict liability with regard to personal injury and property damage arising from blasting operations conducted by applicant in the Town of Edgecomb.

Section 10  
**PRE-BLAST NOTIFICATION AND INSPECTIONS**

- A. Applicant must provide written notification at least ten business days prior to the commencement of the initial blast to all the owners of abutting properties and owners of properties containing structures within a radius calculated using the Scaled Distance Formula. Notification will be conducted as follows:
1. Notification via certified mail, return receipt, must be provided at applicant's expense to the property owner referenced in Paragraph 10A above at the most recent address listed in the records maintained by the Town of Edgecomb; or
  2. Alternatively, if the notice is hand-delivered to an owner, proof of delivery of the required notice must be obtained as evidenced by the signature of an occupant of the structure who is not a minor. The signed receipt must indicate whether or not the signing occupant is the owner of the property. If the signing occupant is not the owner of the property, then written notification to the property owner is not excused and must be provided as set forth in the above paragraph. At the discretion of the Code Enforcement Officer, the notice period required under this section may be waived if all owners of property within the required notification area who requested a pre-blast survey have received a pre-blast survey report (see following paragraph).

- B. The written notification must describe the blasting that will take place, including dates and times, or a range of dates and times, when blasting may occur, its possible effect on the owners or residents, the ability to obtain, at applicant's expense a pre-blast and post-blast inspection of structures and wells, instructions about how and where to contact the applicant, or his/her representative concerning blast-related complaints or claims.
- C. The written notification must include a mailing address and telephone number that property owners can use to obtain information or, to request at no cost, preblast/post-blast inspections. Property owners must be given a five-business day window to request pre-blast/post-blast inspection. Property owners are not obliged to accept a preblast/postblast inspection offer.
- D. Prior to detonation of explosives, the applicant must provide to the Code
- E. Enforcement Officer a list of all parties and property owners notified under Paragraphs 10A and B above including whether or not a pre-blast inspection request was received by the applicant in each case. Applicant shall also make certification that all requests for pre-blast inspection have been carried out.
- F. The pre-blast inspection must contain complete documentation of all visible interior and exterior defects observed at the structure(s). Interior and exterior photographs, or video documentation of structures containing observed defects must be identifiable as to the property, structure, location, and date recorded.
- G. Water quality protection: Water is a precious resource and measures shall be taken to protect and preserve groundwater quality. Wells within the scaled distance formula shall be tested for quality and turbidity pre-blast and post-blast with post-blast testing to be done no sooner than 24 hours or not later than 72 hours following the final detonation. Testing shall be conducted by the Maine Health & Environmental Test Lab using "Test A" at no expense to the property owner.
- H. The date and location of each inspection and/or test and the name of the person or firm performing the inspection or making the test must be recorded in written form along with a description of observed defects and/or well water test results.
- I. Before the first blast, a copy of the pre-blast inspection and test results must be provided, without charge, to each property owner or occupant. Additionally, when requested, a copy must be provided, without charge, to the Code Enforcement Officer.
- J. Not later than ten working days after completion of blasting operations, applicant shall, at applicant's expense, provide post-blast inspection and well-test reports to property owners and residents who previously requested same under the provisions above. However, water for post-blast well tests will be drawn not less than 24 hours or more than 72 hours from time of the final blast.
- K. Content and documentation of post-blast inspections and well tests shall be as directed in 10D, E, and F above.
- L. Certification by applicant that all post-blast inspections have been completed, including all the names and addresses, must be provided to the Code Enforcement Officer within 15 working days following the completion of blasting operations.

Section 11  
**RESTRICTIONS**

Hours of detonation shall be limited to daylight hours, nor earlier than 8:00 a.m. or later than 6:00 p.m. Monday through Friday inclusive. Blasting operations are prohibited during federally observed holidays.

Section 12  
**CONFLICT**

Whenever the requirements of provisions of the Ordinance are in conflict with the provisions of any other lawfully adopted ordinance or statute, the most restrictive requirements will apply.

Section 13  
**SEVERABILITY**

The provisions of this ordinance are severable and it is the intention to confer the whole or any part of the powers herein provided for. If any provision of this ordinance is held invalid or unconstitutional by any court of competent jurisdiction, that portion will be deemed a separate provision and will not affect any remaining provision of the ordinance. It is hereby declared to be the legislative intent that this ordinance would have been adopted if such unconstitutional provision was not included.

Section 14  
**VIOLATIONS**

A violation of this Ordinance, or a violation of any condition attached to a permit granted under this Ordinance shall be grounds for revocation of a permit, and shall constitute a land use violation for which shall be imposed a minimum penalty of \$100; a maximum penalty of \$2,500, in accordance with Title 30-A, M.R.S.A. Section 4452. Each day that the violation is not corrected will be considered a separate violation.