

Ordinance No. 3550

An ordinance related to Blasting Operations, amending Chapter 10, Fire Prevention and Protection, Article IV. – Explosives, Section 10-76, discharge of class 2 explosives; blasting operations and adding Section 10-78, Blasting Operations; repealing all ordinances to the contrary; and declaring an emergency

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF BROKEN ARROW, OKLAHOMA:

SECTION I.

Chapter 10. – Fire Prevention and Protection

Article IV. - Explosives

Sec. 10-76. - Discharge of Class 2 explosives.

- A. It shall be unlawful for any person to use or discharge any Class 2 explosives within the corporate limits of the city, except in connection with blasting operations or demolitions.
- B. No person shall blast or carry on any blasting operations without first having obtained a permit from the Development Services Department.

(Code 1977, § 10-76; Ord. No. 2945, § I, 1-7-2008; Ord. No. 3205, § VIII, 8-21-2012; Ord. No. 3205(Corr.), § VIII, 9-18-2012)

Section 10-78. – Blasting Operations

Purpose.

To protect the general health, safety and welfare of residents of the City of Broken Arrow from unnecessary and excessive air blasts, ground vibrations and dust which are physically harmful and otherwise detrimental to individuals and the community in the enjoyment of life, property and conduct of business, the City shall:

- A. Regulate the detonation of explosives used to demolish structures, fragment rock and excavate for development within the City; and
- B. Inform those who are reasonably calculated to be affected by any blasting.

This ordinance is intended to limit the adverse effects of blasting on persons or property outside any controlled blasting site area.

Section 10-78.1. - Definitions.

When used in this ordinance section, the terms below shall be defined and limited as follows:

Appeal shall mean a request for a review of the City Manager or his designee's interpretation of any provision of this chapter or a request for a variance.

Blast Area shall mean the area in which concussion (shock wave), flying material or gases from an explosion may cause injury to a person.

Blast Site shall mean the area where explosive material is handled during loading, including the perimeter formed by the loaded blast holes and 50 feet in all directions from loaded holes.

Blast Standards as described by the most applicable blasting project scenario listed below:

- 1) Three hundred (300) feet perpendicular and on each side of the line of the proposed blasting, i.e., blasting performed down the center of a street; or
- 2) Three hundred (300) feet from each exterior boundary or property line, whichever is greater, of the proposed blasting.

The City Manager or his designee may require a larger area than that described herein if he finds that strict adherence to the distance requirements does not result in a logical boundary. Consideration should be given to proximity of structures to each other, geology or topography of the area, density of development and sensitivity of structures.

Certified Blaster shall mean a person who has certified blaster status pursuant to the State of Oklahoma Explosives and Blasting Regulation Act and implementing regulations thereof.

Department shall mean the Development Services Department of the City of Broken Arrow.

Department of Mines shall mean the state of Oklahoma agency responsible for the administration, regulation and enforcement of the state of Oklahoma laws and regulations regarding blasting operations.

Development shall mean any manmade changes to improved or unimproved property, including but not limited to buildings or other structures, mining, excavation and construction.

Director shall mean the duly appointed Director of the Development Services Department of the City of Broken Arrow or his designated representative.

Explosives shall mean any substance, chemical compound or mechanical mixture that is commonly used for the purpose of producing an explosion to demolish a structure or to fragment rock for excavation or construction, including initiating devices.

Flyrock shall mean any dirt, mud, stone, fragmented rock or other material that is displaced from the blasting area by being thrown in the air or cast along the ground.

Blasting Agent, Blasting Cap, Block Holing, Detonating Cord, Detonator, Electric Blasting Cap, Electric Blasting Circuitry, and Electric Delay Blasting Caps shall mean as stated in the definitions defined in Title 460, Oklahoma Department of Mines, Chapter 25: Oklahoma Explosives and Blasting Rules and Regulations

Fuse Lighters, Magazine, Misfire, Mud-Capping, Nonelectric Delay Blasting Cap, Primary Blasting, Primer, Safety Fuse, Secondary Blasting, Semiconductive Hose, Springing, Stemming, Water gels, or slurry explosives shall mean as stated in the definitions defined in Title 460, Oklahoma Department of Mines, Chapter 25: Oklahoma Explosives and Blasting Rules and Regulations

Oklahoma Mining Commission shall mean the state of Oklahoma commission having jurisdiction over mining operations in Oklahoma.

Person shall mean any individual, partnership, firm, association, public or private corporation or institution, municipal corporation, any trust estate or any other legal entity, and any successor, representative, agent or agency of the foregoing.

Underground facility shall mean any underground line, facility, system and appurtenances thereto, for producing, storing, conveying, transmitting or distributing communication, electricity, power, light, heat, gas, oil, petroleum products, water (including storm water), steam, sewage and other commodities.

Variance shall mean a grant of relief to a person from the requirements herein when specific enforcement would result in unnecessary hardship, permitting the use of explosives in a manner otherwise prohibited by this chapter.

Violation shall mean the failure to be in full compliance with any of the provisions of this chapter.

Section 10-78.2. - Scope.

Unless specifically exempted, a blasting permit as required by this chapter shall be obtained prior to any person detonating explosives within the City. Entities exempt from state of Oklahoma regulation pursuant to Title 460, Oklahoma Department of Mines, Chapter 25: Oklahoma Explosives and Blasting Rules and Regulations Section 1-6, Applicability or Section 123.8 of the Oklahoma Explosives and Blasting Regulation Act are exempt from the requirements of this chapter; provided, however, that all contractors using explosives in the performance of work in the City must obtain a blasting permit and comply with the provisions of this chapter.

Section 10-78.3. - Blasting permits.

A. **General Requirements.** Application for a blasting permit required under this chapter shall be submitted to the Development Services Department with the following information:

1. Name and Business address, phone number and email of the applicant.
2. A written description of the purpose of the proposed blasting.
3. Blasting permit issued by the Oklahoma Department of Mines for the specific project for which application is being made.
4. A copy of the blasting plan for the specific project associated with the current blasting permit issued by the Oklahoma Department of Mines.
5. Current copy of the state of Oklahoma blaster's certification number with issuance date and expiration date related to the business and person who will supervise all blasting operations.
6. A development site plan consisting of the following:
 - a. A project map or aerial photo to scale which depicts the site to be blasted and all real property within seven hundred (700) feet of the blasting area as calculated pursuant to the requirements of this chapter; and
 - b. Proposed location of seismographic instruments. Two seismographic instruments are required. Their proposed location shall be shown on the project map. The seismographs shall have a frequency response from 2 to 250 hertz, within -3 dB at 2 hertz. The accuracy shall be +/-5 or +/-0.02 in./sec., whichever is larger, between 4 and 125 hertz; and
7. Proposed blasting schedule; and
8. A certificate of blasting liability insurance coverage as required by the Oklahoma Explosives and Blasting Regulation Act and implementing regulations thereof in the amount of One Million Dollars (\$1,000,000.00) per occurrence to become available for the payment of all damages to persons or property which may arise from, or be caused by, the conduct of any act of blasting. The insurance certificate must be executed by a company licensed to do business in the state of Oklahoma and name the City of Broken Arrow as an additional insured; and
9. Non-refundable application fee, for each occurrence as described in the current City of Broken Arrow Manual of Fees.
10. Applicant shall notify the Director 24 hours in advance of blasting operation so that proper notices to Public agencies of the upcoming blasting at the site.

- A. **Inactive Permit Application Denial.** Failure of an applicant to provide all the information required by this section within thirty (30) days of beginning the application process shall result in denial of the application unless an extension is granted in writing by the Director.
- B. **Permit Issuance.** Once the application has been approved, the Director shall issue the blasting permit. The permit shall be signed by the Director and shall expire thirty (30) days after the projected completion date.
- C. **Permit Fee.** The Applicant shall setup an Escrow account with the City and place monies in escrow to cover the permit fee for each day blasting occurs.
- D. **Denial.** Denial of a blasting permit shall be accompanied by a statement of the reasons for the denial.
- E. **Transfer.** A blasting permit shall not be transferable.

Section 10-78.4. - Administrative procedures.

- A. **Blasting Permit Duration.** A blasting permit shall automatically expire if the authorized work is not commenced within six (6) months after issuance of the permit or if the authorized work is suspended or abandoned for a period of six (6) months after the time of commencing the work, unless an extension has been granted in writing by the Director.

Section 10-78.5. - Standards for blasting permits.

Permittee shall follow blasting area as depicted in the site plan submitted as part of the application and as approved by the Oklahoma Department of Mines. A holder of a blasting permit shall adhere to the following:

- A. Permittee shall perform pre-blast surveys upon the request of the affected property owner or his representative. The pre-blast survey shall consist of conducting or providing for inspections on structures within the blasting area. The pre-blast survey shall document any damage to and other physical factors of the structure that could reasonably be affected by the blasting.
- B. The post-blast survey shall consist of conducting or providing for inspections of structures within the pre-blast survey area. The post-blast survey shall document any changes to or differences in the surveyed structure from the pre-blast survey. Permittee shall perform post-blast surveys when requested by persons previously having had a pre-blast survey performed under the same blasting permit. The post-blast survey shall be requested within thirty (30) days after blasting has been completed.
- C. The cost of the pre-blast and post-blast surveys shall be paid by the permittee directly to the individual or organization which is hired to perform the surveys. Pre-blast and post-blast surveys shall be performed by an individual or organization who has expertise in the assessment of the impact of blasting on structures.
- D. At the beginning of each blasting project the permittee shall perform test blasting to determine the amount of blasting charge required to limit the peak particle velocity to two (2.0) inches per second at the closest structure.
- E. The permittee shall abide by the State of Oklahoma Department of Mines and implementing regulations thereof.
- F. The permittee shall notify all property owners within 300 feet of property boundary of the blasting area that a pre-blast survey is available to them. The notice shall be sent by certified mail, return receipt requested, at least ten (10) working days prior to the anticipated start of the blasting. The notice shall explain that a pre-blast survey is available and provide information for scheduling the survey. The notice shall state the anticipated dates of the blasting and specify the blasting location. The certified mail receipts stamped by the U.S. Postal Service or an affidavit wherein the permittee swears that the notification required by

this section has been made and the list of property owners in the blasting area from County tax records shall be furnished to the Director as proof of compliance with this requirement.

1. If the dates of blasting change following the notice required by this section, then a new notice which specifies the revised dates of blasting shall be mailed to property owners in the blasting area in sufficient time to provide them not less than forty-eight (48) hours notice of the blasting.
2. The permittee shall also give notice of his intent to blast by posting a notice at the blasting site at least seven (7) calendar days before the date of the proposed blasting. The notice shall state:
 - a. The dates and anticipated duration of blasting, and place of the proposed blasting; and
 - b. Who will conduct the proposed blasting, identified by the name of a contact person, a physical address and a telephone number; and
 - c. Instructions on how the reader can contact the blaster and the Director, including a physical address and a telephone number.
- G. Except as otherwise authorized by the Director for good cause shown, all blasting activities shall be limited to daylight hours, 7:00 a.m. to 5:00 p.m., Monday through Saturday.
- H. The permittee shall monitor any blasting that occurs within the blasting area. Such monitoring must be overseen by a certified blaster and shall measure blast-induced vibration by means of an instrument as outlined in Title 460, Oklahoma Department of Mines, Oklahoma Explosives and Blasting Rules and Regulations. Monitoring results shall be submitted to the Director weekly showing compliance with State regulations.
- I. The permittee shall maintain a record of each blast. All records shall be maintained in conformance with the Oklahoma Explosives and Blasting Regulation Act and implementing regulations thereof. In addition, the permittee shall maintain evidence of the notifications required by this section. These records shall be available for inspection by the Director for a period of three (3) years following expiration of the blasting permit.
- J. The permittee shall keep the blasting permit under file at the site or on display at all times where the blasting operation is located and shall make such permit readily available for inspection by the Director.

Section 10-78.6. - Permit suspension and revocation.

A blasting permit may be revoked or suspended immediately upon occurrence of any of the following events:

- A. A violation of any condition of the permit; or
- B. A violation of any provision of this chapter or any other applicable law, ordinance, rule or regulation pertaining to the blasting project for which the permit is issued; or
- C. The existence of any condition or doing of any act constituting fraud, or creating a nuisance or hazard, or endangering human life or the property of others.
- D. **Notice and Order of Revocation or Suspension.** Upon the occurrence of any of the events above listed, the Director may cause to be served upon the permit holder a notice and order immediately suspending or revoking the permit, specifying the grounds for the suspension or revocation, and advising the holder that he is entitled to a hearing before the Director at a time, place and date specified in the notice and order, and further advising the holder that if the holder fails to appear at the time, place and date therein specified, the Director's order for suspension or revocation of the holder's permit shall be final. The date of the hearing shall be no later than five (5) working days from the date of suspension or revocation.

- E. **Hearing Before the Director.** At the hearing before the Director, the permit holder shall be afforded the opportunity to respond to the charges of the Director and to present information to show why his permit should not be revoked or suspended. After such hearing, the Director may either affirm, modify or reverse his order for suspension or revocation of the holder's permit, and shall notify the holder in writing of his decision within five (5) working days of the date of the hearing. The Director's decision shall be final unless the permit holder appeals the decision to the City Council as provided herein.
- F. **Appeals.** An appeal shall be made by written notice filed with the City Clerk within ten (10) days of the decision of the Director. If no appeal is taken to the City Council as herein provided, the decision of the Director shall be final.
- G. **Service.** Notices and orders required by this subsection shall be served upon each party concerned, either personally or by certified mail, addressed to the individual contracting party or permit holder at the address given on the permit application filed with the Director.
- H. **Stop Work Order.** Upon the suspension or revocation of a blasting permit by the Director, the Director may issue a stop work order on all construction activity on the subject property which is related to the blasting and which is being performed pursuant to the suspended or revoked blasting permit.
- I. **Future Eligibility.** Any permittee who has had his blasting permit revoked pursuant to this chapter shall not be eligible for another blasting permit for a period of one (1) year following such revocation.

Section 10-78.7. - Appeals and variances.

- A. **Appeals.** Any person who is aggrieved by a decision, requirement, ruling or interpretation of this chapter may request review thereof by the Director. The determination of the Director may be appealed to the City Council by written notice of appeal filed with the Office of the City Clerk within ten (10) days of decision by the Director.
- B. **Variances.** The Director may grant one (1) or more variances from the terms of this chapter upon application and good cause shown by an applicant or permittee. A variance will only be granted if it will not cause detriment to the public good, safety or welfare, nor be contrary to the spirit, purposes and intent of this chapter where by reason of unique and exceptional physical circumstance or condition of a particular property, the literal enforcement of the requirements of this chapter will result in an unreasonable hardship.
 - 1. Application for a variance shall be made by the filing of a written request with the Director. Variances shall be granted only upon:
 - a. Showing of good and sufficient cause; and
 - b. A finding that failure to grant the variance would result in unreasonable hardship to the applicant or permittee; and
 - c. A finding that the granting of a variance would not result in additional threats to public safety, extraordinary public expense, creation of a nuisance, fraud or victimization of the public or conflict with existing local laws or ordinances.

Upon consideration of these factors, the Director may attach such conditions to the granting of a variance as he deems necessary to ensure compliance with the purpose and objectives of this chapter.
- C. **Appeal and Variance Process.** Upon accepting a notice of appeal or an application for a variance, the Director shall:
 - 1. Require the appellant or applicant to furnish the names and mailing addresses of all owners of the blasting site property and of all owners of the property within the blasting area as shown by County tax records; and

2. Schedule a hearing date before the Director within thirty (30) days of the application; and
3. Mail written notices to all owners of the blasting site property and to all owners of the property within the blasting area indicating that an appeal or variance has been requested and when a hearing will be held.

Section 10-78.8. - Penalties.

- A. **Penalty.** Unless otherwise provided herein, every person, firm, corporation or other legal entity violating any of the provisions of this chapter or conditions made pursuant thereto shall be guilty of an offense and, upon conviction, thereof shall be punished by imprisonment in the City jail for a period of not more than ninety (90) days and/or by a fine of not more than Five Hundred Dollars (\$500.00), excluding costs.
- B. **Fine or Imprisonment not Exclusive Remedies.** In addition to fine or imprisonment, the City may institute appropriate actions or proceedings at law or equity to enforce the provisions of this chapter to correct violations thereof. The conviction and punishment of any person hereunder shall not relieve the person of the responsibility to correct prohibited conditions or to remove prohibited buildings, structures, obstructions or improvements nor prevent the enforcement, correction or removal thereof.

Section 10-78.9. - Warning and disclaimer of liability.

The City recognizes that, although the degree of control on explosive detonation required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations, on rare occasions excessive airblast, overpressures, ground vibrations and dust can and will occur. These provisions do not imply that land outside the blasting areas or that uses permitted within such areas will be free from damages. These provisions shall not create liability on the part of the City or any officer or employee thereof for any blasting damages that result from reliance on this chapter or any administrative decision lawfully made thereunder.

SECTION II. Any ordinance or parts of ordinances found to be in conflict herewith are hereby repealed.

SECTION III. An emergency exists for the preservation of the public health, peace and safety, and therefore this ordinance shall become effective from and after the time of its passage and approval.

PASSED AND APPROVED and the emergency clause ruled upon separately this ____ day of _____, 2019.

ATTEST:

(SEAL) City Clerk

APPROVED:

City Attorney

MAYOR