

ALLEGHANY COUNTY, NORTH CAROLINA

**AN ORDINANCE FOR THE PERMITTING
OF EXPLOSIVE MATERIALS BUSINESSES
IN ALLEGHANY COUNTY, NORTH CAROLINA**

BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE COUNTY OF ALLEGHANY IN REGULAR SESSION ASSEMBLED:

Article I. Title.

This Ordinance shall be known and may be cited as the Alleghany County Explosive Materials Permitting Ordinance.

Article II. Authority.

The Alleghany County Board of Commissioners enacts this Ordinance pursuant to the authority granted under G.S. Chapter 153A, Article 6, Section 128, Regulation of Explosive Substances; G.S. Chapter 143, Article 9, Section 138(b) and (e), North Carolina State Building Code; and G.S. Chapter 20, Article 3, Part 10, Section 167, Vehicles Transporting Explosives.

Article III. Findings and Purpose.

The Alleghany County Board of Commissioners finds that the location, possession, storage, use, handling, manufacture, sale, and transportation of certain explosive materials, together with the danger of fire, injury, and theft in connection therewith, constitutes a potential hazard to the health, safety, and welfare of the citizens of the County unless carefully regulated, controlled, and monitored. Accordingly, the Board of Commissioners, for the purpose of protecting the public and safeguarding the health and welfare of the citizens of the County, does deem it necessary and advisable to regulate the location, possession, storage, use, handling, manufacture, sale, and transportation of explosive materials within its jurisdiction.

Article IV. Definitions.

1. “Applicant” shall mean the person(s) or business entity applying for a permit under this Ordinance and shall specifically include all individuals having any ownership interests whatsoever in such business entity.
2. “Authorized persons” shall mean the following: The owner and/or operator of a site which has been approved for operations under this Ordinance, together with all employees, invitees, licensees, and contractors of the owner and/or operator; the Fire Official, together with the employees of his office; and members of local, State, and Federal law enforcement agencies while in the official discharge of their duties.

3. “Binary explosive materials” shall mean explosive materials composed of separate components, each of which, when separated, is safe for storage and transportation and would not in itself be considered as an explosive.
4. “Board of Commissioners” shall mean the Alleghany County Board of Commissioners.
5. “Code” shall mean the State Fire Prevention Code as adopted by the North Carolina Building Code Council in connection with the State Building Code under G.S.§143-138.
6. “County” shall mean the County of Alleghany.
7. “DOT” shall mean the United States Department of Transportation.
8. “Explosives” shall mean any chemical compounds, mixtures, or devices, the primary or common purpose of which is to function by explosion.
9. “Explosive materials” shall mean explosives, blasting agents, and detonators.
10. “Fire Official” shall mean the officer or other designated authority, or their duly authorized representative, charged with the administration and enforcement of the Code. For purposes of this Ordinance, the Fire Official shall be the Alleghany County Fire Official or his duly authorized representative.
11. “Manufacture” shall mean the assembly, combination or preparation of explosives for use in any blasting operation or activity.
12. “Pre-mixing” and “pre-mixed” shall mean the mixing or combination of binary explosive materials into a form that constitutes an explosive.
13. “Site” shall mean a physical location within the County, having clearly delineated boundaries as approved by the Fire Official under the provisions of this Ordinance, whereon operations regulated hereunder are being conducted or are proposed to be conducted.
14. “Tract” shall mean the entire parcel of real property, as identified by metes and bounds or other discernible description contained in a deed, will, or instrument of conveyance, on which a site is located.

Article V. Scope.

This Ordinance shall govern the permitting procedure for the location, possession, storage, use, handling, manufacture, sale, and transportation of explosive materials in Alleghany

County, and is adopted in place of the provisions of Section 1901.2 of the Code. This Ordinance shall not apply, however, to:

1. The Armed Forces of the United States, Coast Guard, or National Guard.
2. Explosives in forms prescribed by the official United States Pharmacopoeia.
3. The sale, possession, or use of Class C common fireworks.
4. The possession, transportation, storage and use of small arms ammunition when packaged in accordance with DOT packaging requirements.
5. The possession, storage, transportation and use of not more than 5 lbs. (2.2 kg) of commercially manufactured sporting black powder, 20 lbs. (9.1 kg) of smokeless powder, and 10,000 small arms primers for hand loading of small arms ammunition for personal consumption.
6. The transportation and use of explosive materials by the United States Bureau of Mines, and Federal, State, and local law enforcement and fire agencies, acting in their official capacities.
7. Special industrial explosive devices which in the aggregate contain less than 50 lbs. (22.7 kg) of explosive materials.
8. The possession, transportation, storage, and use of blank industrial power load cartridges when packaged in accordance with DOT packaging regulations.
9. Items pre-empted by Federal regulations.
10. The possession, storage, transportation, handling, and use of explosive materials by companies permitted under the provisions of G.S. Chapter 74, Article 7.

Article VI. Permits.

A. Permits Required:

It shall be unlawful for a business to utilize explosives within Alleghany County without a permit; provided, however, that no permit shall be required under this Article VI for the possession, storage, sale or transportation of or other dealing in ammunition of any type by a person or business duly licensed or authorized as a dealer of ammunition or firearms under Federal or State law; provided further, that no permit shall be required under this Article VI for the temporary possession, storage, sale, use, or transportation of or other dealing in Class B fireworks by a person, business, or organization which is preparing to utilize the same for a fireworks display as approved by the Fire Official.

Notwithstanding the foregoing, permits shall not be issued to businesses that utilize the following materials, and said materials shall be disposed of in an approved, safe manner:

1. Dynamite having an unsatisfactory absorbent or an absorbent that permits leakage of a liquid explosive ingredient under any conditions liable to exist during storage.
2. Nitrocellulose in a dry and uncompressed condition in a quantity greater than 10 lbs. (4.54 kg) net weight in one package.

3. Fulminate of mercury in a dry condition and fulminate of all other metals in any condition except as a component of manufactured articles not hereinafter forbidden.
4. Explosive compositions that ignite spontaneously or undergo marked decomposition, rendering the products of their use more hazardous, when subjected for 48 consecutive hours or less to a temperature of 167 degrees F (75 degrees C.)
5. Explosive materials condemned by DOT.
6. Explosive materials containing an ammonium salt and chlorate.

B. Enforcement Authority:

The Fire Official shall have exclusive authority to receive and review applications for, issue or deny issuance of, and revoke permits as are required under this Ordinance and N.C. State Building Code, Volume V Fire Prevention, Chapter 19.

C. Application:

An applicant for a permit under this Ordinance shall prepare and file an application for a permit with the Fire Official on a form that the Fire Official shall develop and approve. The application shall set forth or be accompanied by the following information:

1. The name and description of the applicant, including: (a) the type of business entity, whether individual, sole proprietorship, partnership, corporation, or otherwise; (b) the address and telephone number of the applicant, including the name, address, and telephone number of a contact person who shall agree to serve as such for purposes of communication with the Fire Official; (c) a detailed history of the applicants past and present activities and operations; (d) a detailed accounting of experience and training;(e) a detailed account of all administrative/legal actions or investigations that include but not limited to permit or license revocations, sanctions, penalties, and any other type of administrative proceeding by a Federal, State, or local authority.
2. Evidence of liability insurance for all activities and operations to be conducted, in the sum of no less than one million dollars (1,000,000).
3. A description of all explosives generally used in day to day activities.
4. Certification that applicant has read, understands and agrees to follow all guidelines set forth in the N.C. State Building Code – Volume V, Chapter 19, when using explosives within Alleghany County.
5. Such other information as may be required by the Fire Official in order to determine that the proposed activities and operations on each site will be conducted in a safe and responsible manner and with a minimal likelihood of injury to person or property by virtue of such activities and operations, including not only injuries which may occur to personnel on site but also injuries to persons or property on public roadways and in the community surrounding the proposed activity and operations.

D. Application Fee:

A \$100 application fee plus \$10 per month operation fee will be assessed for each application. Upon renewal within a one-year period, the \$100 application fee may be waived. The renewal applicants shall be responsible for the \$10 monthly fees

E. Approval of Denial of Permits:

Applications shall be reviewed pursuant to the following procedure, and permits shall be approved or denied in accordance therewith:

1. Upon receipt of an application as set forth under Paragraph C above, the Fire Official shall review the same in order to determine whether it complies with all the requirements of said Paragraph C. The Fire Official shall have up to thirty (30) working days in which to make said determination. The Fire Official shall also, by and with the assistance of the County Attorney, contact the offices of the various Clerks of Court, administrative agencies, counties, municipalities, or other offices necessary to investigate and verify the information required under subdivision (e) of Paragraph C.1. above
2. The Fire Official, upon making the above determinations, shall immediately issue a permit to the applicant if all of said determinations are in the affirmative. The Fire Official may attach such reasonable conditions to the permit as shall in his opinion reasonable insure that the applicant will operate in compliance with the requirements of this Ordinance and N.C. State Building Code. Volume V Fire Prevention, Chapter 19.
3. Upon determination by the Fire Official that less than all of the required information has been submitted by the applicant or that the business cannot satisfy the above determinations, the Fire Official shall return the application to the applicant with a written statement as to which item or items of information are missing or inadequate. The applicant may then re-submit the application within 30 days, in which event the procedure and time limits set forth in subparagraph 1 above shall start again. Any re-submittals after the 30-day period will be required to pay an additional application fee.
4. The Fire Official shall further deny an application and refuse to issue a permit hereunder upon a determination by the Fire Official that the applicant:
 - (a) has submitted an application which contains a material misrepresentation, either of commission or omission.
 - (b) Is the subject of a past or pending license or permit revocation, sanction, penalty, or any other type of administrative or regulatory proceeding that bears on the applicant's fitness to conduct an operation in compliance with the requirements of this Ordinance.

F. Renewal of Permits

A permit issued pursuant to Paragraph E above shall be valid for the period of coverage as stated on the proof of liability insurance up to one (1) year. All permits will be renewed by following the guidelines set forth in Sections C, D, and E of Article VI of this Ordinance.

G. Ownership and Scope of Permits; Transfer

Permits cannot be sold or transferred between businesses. All new businesses shall apply for a permit through the Fire Official's Office.

H. Revocation of Permits;

The Fire Official, after due notice (verbal or written) to the holder of a permit under this Ordinance and an opportunity to be heard, may revoke the permit upon any of the following grounds:

1. A violation by the permit holder of any of the requirements of this Ordinance or of any of the requirements or conditions of the permit.
2. A violation by the permit holder of any Federal or State laws, rules, or regulations pertaining to the operations or activities being conducted by the permit holder under this Ordinance.
3. Negligent supervision, operation, or monitoring of the activities which the permit holder is conducting under this Ordinance.
4. A determination that the permit holder submitted an application which contained a material misrepresentation, either of commission or omission.

A written notice detailing the reason or reasons for revocation will follow all verbal revocations.

I. Appeals

An Applicant for an initial or renewal permit which is denied under this Article VI, or a permit holder whose permit is revoked hereunder, may appeal such denial or revocation to the General Court of Justice as provided by law.

Article VII. Violations, Enforcement, and Penalties.

A. Interference.

It shall be unlawful for any person to interfere with, hinder, or harass the employees, agents, contractors, or authorized representatives of Alleghany County in the performance of their duties as prescribed by this Ordinance or in the performance of their duties as prescribed by any contract entered into under the provisions hereof.

B. Violations; Penalties.

1. The violation of any provision of this Ordinance shall be a Class 3 misdemeanor, and any person convicted of such violation shall be fined not more than \$500.00, in addition to any other penalty which may be lawfully imposed for such misdemeanor.

2. Each day's continuing violation of this Ordinance, where applicable, shall constitute a separate and distinct offense.
3. Payment of a fine imposed in criminal proceedings pursuant to this Section B. does not relieve a person of his or her liability for fees assessed under this Ordinance.

C. Equitable Enforcement; Order of Abatement.

This Ordinance may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction, or by an order of abatement, as provided under G.S. §153A-123(d) and (e).

D. Cumulative Remedies.

The remedies and penalties for violation of this Ordinance shall be cumulative, and the election of a remedy or enforcement of a penalty by the County hereunder shall not preclude the election of any other remedy or enforcement of any other penalty by the County which may be provided under this Ordinance or by law.

E. Enforcement Officer.

The Fire Official is designated by the Board of Commissioners as the enforcement office under this Ordinance and is hereby charged with the responsibility of enforcing all of the terms and provisions of the same.

Article VIII. Conflicting Ordinances.

If any section or part of any other ordinance of Alleghany County or amendment thereto is in derogation of or conflict with any of the provisions of this Ordinance, then this Ordinance shall control and said section or part in derogation thereof or conflict therewith is hereby repealed.

Article IX. Severability.

If any section or part of this Ordinance should be held invalid for any reason, such determination shall not affect the remaining sections or parts, and to that end the provisions of this Ordinance are hereby declared severable.

Article X. Headings.

The headings used in this Ordinance are for convenience only and shall not be used to interpret or construe its provisions.

Article XI Effective Date.

This Ordinance shall be effective as of the date of adoption below and shall apply to all businesses, which, as of or subsequent to said date, are conducting or propose to conduct blasting operations in Alleghany County, N.C.

Adopted this the 2nd day of April, 2001.

ATTEST:

(sig: Karen Evans)
Karen Evans
Clerk to the Board
(County Seal)

ALLEGHANY BOARD OF COMMISSIONERS:

(sig: Ken Richardson)
Ken Richardson, Chair

(sig: Eldon Edwards)
Eldon Edwards, Vice-Chair

(sig: Charity Gambill)
Charity Gambill, Member

(sig: Warren Taylor)
Warren Taylor, Member

(sig: Patrick Woodie)
Patrick Woodie, Member

FILED in ALLEGHANY County, NC
on Apr. 09, 2001 at 11:04:05 AM
by. Lizabeth R. Roupe
Register of Deeds
(sig: Lizabeth Reeves Roupe)