

## **Chapter 38, FIRE PREVENTION**

### **ARTICLE I, General Provisions**

#### **§ 38-1. Purpose.**

This chapter, along with Chapter 27 and Chapter 29 of the Code of the Town of Kent, provides for the administration and enforcement of the New York State Uniform Fire Prevention and Building Code (the Uniform Code) and the State Energy Conservation Construction Code (the Energy Code) in this Town. This chapter is adopted pursuant to Section 10 of the Municipal Home Rule Law. Except as otherwise provided in the Uniform Code, other state law, or other section of this chapter, all buildings, structures, and premises, regardless of use or occupancy, are subject to the provisions of this chapter.

#### **§ 38-2. Application of standards.**

- A. The provisions of this chapter shall apply equally to new and existing conditions, except that existing conditions not in strict compliance with the terms of this chapter shall be permitted to continue where the exceptions do not constitute a distinct hazard to life or property in the opinion of the Building Inspector, the Chief Fire Inspector or an Inspector.
- B. Nothing contained in this chapter shall be construed as applying to the transportation of any article or thing shipped under the jurisdiction of and in compliance with the regulations prescribed by the United States Department of Transportation nor as applying to the military forces of the United States.
- C. This chapter is subject to all other chapters of the Code of the Town of Kent and all ordinances and local laws of the Town of Kent and any amendments thereto.

#### **§ 38-3. Supplementary requirements.**

All matters within the intent of this chapter not covered in detail by this chapter shall comply with nationally recognized good practice.

#### **§ 38-4. Definitions.**

Unless otherwise expressly stated, the following terms shall, for the purpose of this chapter, have the meanings indicated in this section:

**APPROVED** — Accepted by the Buildign Inspector, Chief Fire Inspector or an Inspector, as a result of his investigation and experience or by reason of test, listing

approval by the National Bureau of Standards, the American Gas Association Laboratories or other nationally recognized testing agencies.

**BUILDING** — Any structure having a roof supported by columns, poles or walls, used or intended to be used for the shelter or enclosure of persons, animals or property and used for residential, business or industrial purposes.

**BUILDING INSPECTOR** — The Building Inspector appointed pursuant to Chapter 27 of the Code of the Town of Kent.

**CHIEF FIRE INSPECTOR** — Fire Inspector appointed pursuant to Chapter 27 of the Code of the Town of Kent.

**CODE ENFORCEMENT PERSONEL** — The Building Inspector and all Inspectors appointed pursuant to Chapter 27 of the Code of the Town of Kent.

**ENERGY CODE** — State Energy Conservation Construction Code, as currently in effect and as hereafter amended from time to time.

**FIRE-RESISTANCE RATING** — The time in hours that the material or construction will withstand the standard fire exposure as determined by a fire test made in conformity with the "Standard Methods of Fire Tests of Building Construction and Materials," ASTM E119, of the American Society for Testing Materials.

**INSPECTOR** — Inspector appointed pursuant to Chapter 27 of the Code of the Town of Kent.

**MUNICIPALITY** — The Town of Kent.

**OPERATING PERMIT** – A permit issued pursuant to §38-\_\_\_\_. The term “Operating Permit” shall also include an Operating Permit which is renewed, amended or extended pursuant to any provision of this chapter.

**OWNER** — Includes his duly authorized agent or attorney, a purchaser, devisee, fiduciary, and a person having a vested or contingent interest in the property in question.

**PERSON** —An individual, corporation, limited liability company, partnership, limited partnership, business trust, estate trust, association, or any other legal or commercial entity of any kind or description.

**TOWN** — The Town of Kent.

**UNIFORM CODE** — The New York State Uniform Fire Prevention and Building Code, as currently in effect and as hereafter amended from time to time.

**§ 38-5. Enforcement.**

The chapter hereby adopted shall be enforced by the Building Inspector, the Chief Fire Inspector or any Inspector pursuant to Chapter 27 of the Code of the Town of Kent.

**§ 38-6. Authority to enter premises.**

The Building Inspector, Chief Fire Inspector or the Inspectors shall have such authority, at all reasonable hours, to enter any building or premises as is consistent with law, for the purpose of making any inspection or investigation which, under the provisions of this chapter, he or they may deem necessary to be made for the purpose of ascertaining and causing to be corrected any conditions liable to cause fire or endanger life from fire or any violations of the provisions or intent of this chapter and of any other ordinance affecting the fire hazard.

**§ 38-7. Orders to eliminate dangerous or hazardous conditions.**

Whenever any of the Inspectors mentioned in § 38-6 shall find in any building or upon any premises dangerous or hazardous conditions or materials as follows, he or they shall order such dangerous conditions or materials to be removed or remedied in such manner as may be specified by the Inspectors.

- A. Dangerous or unlawful amounts of combustible, explosive or otherwise hazardous materials.
- B. Hazardous conditions arising from defective or improperly installed equipment for handling or using combustible, explosive or otherwise hazardous materials.
- C. Dangerous accumulations of rubbish, wastepaper, boxes, shavings or other highly flammable materials.
- D. Accumulations of dust or waste material in air-conditioning or ventilating systems or of grease in kitchen or other exhaust ducts.
- E. Obstructions to or on fire escapes, stairs, passageways, doors or windows, liable to interfere with the operations of the Fire Department or the egress of occupants in case of fire.
- F. Any building or other structure which, for want of repairs, lack of sufficient fire escapes or other exit facilities, automatic or other fire alarm apparatus or fire extinguishing equipment, or by reason of age or dilapidated condition, or from any other cause, creates a hazardous condition.

**§ 38-8. Service of orders.**

The service of orders for the correction of violations of this chapter shall be made upon the owner, occupant or other person responsible for the conditions, either by delivering a copy of same to such person or by delivering the same to and leaving it with any person in charge of the premises, or, in case no such person is found upon the premises, by affixing a copy thereof in a conspicuous place on the door to the entrance of the premises. Whenever it may be necessary to serve such an order upon the owner of premises, such order may be served either by delivering to and leaving with the said person a copy of the said order or, if such owner is absent from the jurisdiction of the officer making the order, by sending such copy by registered mail to the owner's last known post office address.

**§ 38-9. Liability for damages.**

This chapter shall not be construed so as to hold the municipality responsible for any damage to persons or property by reason of the inspection or reinspection authorized herein or the failure to inspect or reinspect for the permit issued as herein provided, or by any reason of the approval or disapproval of any equipment authorized herein.

ARTICLE II, Explosives, Ammunition and Blasting Agents

**§ 38-10. Scope.**

This article shall apply to the manufacture, possession, storage, sale, transportation and use of explosives and blasting agents, except that nothing in this article shall be construed as applying to:

- A) The armed forces of the United States of America or the state militia.
- B) Explosives in forms prescribed by the official United States Pharmacopoeia.
- C) The sale or use of fireworks.
- D) The possession, transportation and use of small-arms ammunition or special industrial explosive devices.
- E) The possession, storage, transportation and use of smokeless powder and small-arms primers for hand loading of small-arms ammunition for personal use and black powder for use in the firing of antique firearms or artifacts or replicas thereof, in compliance with New York State Labor Law Industrial Code Rule 39 (12 NYCRR 39) and the New York State Fire Code.
- F) The manufacture, possession, storage and use of not more than 15 pounds of explosives or blasting agents in educational, governmental or industrial laboratories for instructional or research purposes when under direct supervision of experienced, competent persons.
- G) The transportation and use of explosives or blasting agents by the United States Bureau of Mines, the Federal Bureau of Investigation, the United States Secret Service or Police and Fire Departments acting in their official capacity.

### **§38-11. Definitions.**

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

**AIR BLAST** — The airborne shock wave or acoustic transient generated by an explosion.

**BLACK POWDER** — A deflagrating or low explosive compound composed of an intimate mixture of sulfur, charcoal and an earth nitrate, usually potassium nitrate or sodium nitrate.

**BLASTER** — A person who holds a valid New York State license to perform blasting operations.

**BLASTING** — The fracture of any heavy mass by detonation of explosive materials.

**BLASTING AGENT** -- Any material or mixture consisting of a fuel and oxidizer intended for blasting, not otherwise classified as an explosive, in which none of the ingredients are classified as explosives, provided that the finished product, as mixed and packaged for use or shipment, cannot be detonated by means of a No. 8 test blasting cap when unconfined. Materials or mixtures classified as nitro-carbo nitrates by Interstate Commerce Commission regulations shall be included in this definition.

**BLASTING CAP** — A detonator.

**BLASTING MACHINE** — An electrical or electromechanical device capable of providing electrical energy for the purpose of energizing electric blasting caps.

**BLAST MAT; BLASTING MAT** — A mat of woven steel wire, tires or other suitable material or construction to cover blast holes for the purpose of preventing fly rock missiles.

**BLAST SITE** – The specific place(s) or location(s) in or on which an explosive is placed for the purpose of blasting. In the case of multiple explosives the location of each explosive shall be deemed to be a separate blast site.

**BLAST ZONE** — The area surrounding a blast site subject to the influence of flying debris generated by the detonation of an explosive charge.

**BURDEN** — That dimension of a medium to be blasted measured from the borehole to the face at right angles to the spacing. It means also the total amount of material to be blasted by a given hole, usually measured in cubic yards or in tons.

**BUILDING INSPECTOR** — The duly appointed Building Inspector of the Town of Kent.

**DETONATOR** — Any device containing a detonating charge that is used for initiating detonation in an explosive. 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 or

delay blasting caps.

**EXPLOSIVE** — Any gunpowder, powders used for blasting, high explosives, blasting materials, detonating fuses, detonators and other detonating agents, smokeless powder and any chemical compound or any mechanical mixture containing any oxidizing and combustible units, or other ingredients in such proportions, quantities, or packing that ignition by fire, friction, concussion, percussion or detonation of any part thereof may and is intended to cause an explosion, but shall not include gasoline, kerosene, naphtha, turpentine, benzene, acetone, ethyl ether, benzol, and all quantities of black powder not exceeding five pounds for use in firing of antique firearms or artifacts or replicas thereof. Fixed ammunition and primers for small arms, fire-crackers, safety fuses and matches shall not be deemed to be explosives when the individual units contain any of the above-mentioned articles or substances in such limited quantity, are of such nature, and are so packed that it is impossible to produce an explosion of such units to the injury of life, limb or property.

**EXPLOSIVE, COMMERCIAL** — Any explosive except a propellant and nitrocarbonitrate.

**FIRE INSPECTOR** – The duly appointed Fire Inspector of the Town of Kent.

**FIREWORKS** — Any combustible or explosive composition or any substance or combination of substances or articles prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration or detonation.

**FLY ROCK** — Rock propelled from the blast area by the forces of an explosion.

**HERTZ** — Cycles per second.

**LOT or PROPERTY LINE** – A line of record bounding a lot that divides one lot from another lot or from a public or private street or any other public space.

**MAGAZINE** — Any building, structure or other enclosure or container, other than an explosive manufacturing building, used for the storage of explosives.

**MISFIRE** — An explosive material charge that fails to detonate after an attempt at initiation.

**PEAK PARTICLE VELOCITY** — The peak particle velocity recorded on any one of the three mutually perpendicular components of blasting vibrations in the vertical and horizontal directions.

**PROPELLANT** — Any solid chemical or solid chemical mixture which functions by rapid combustion of successive layers and includes, but is not limited to, smokeless powder and black powder for small arms, cannons, antique firearms, artifact firearms, antique firearms, and smokeless powder or solid propellant for rockets, jet thrust units or other devices.

**SEISMOGRAPH** — An instrument which records ground vibration by measuring and recording particle velocity, displacement or acceleration in three mutually perpendicular directions.

**SMALL-ARMS AMMUNITION** — Any shotgun, rifle, pistol or revolver

cartridge.

**SPECIAL INDUSTRIAL EXPLOSIVE DEVICE** — Any explosive powerpack containing an explosive charge in the form of a cartridge or construction device. The term includes, but is not limited to, explosive rivets, explosive bolts, explosive charges for driving pins or studs, cartridges for explosive-actuated power tools and charges of explosives used in jet tapping of open-hearth furnaces and jet perforations of oil well casings.

**SPECIAL INDUSTRIAL HIGH-EXPLOSIVE MATERIAL** — Sheets, extrusions, pellets and packages of high explosives, containing dynamite, trinitrotoluol, pentaerythritol tetranitrate, cyclotrimethylenetrinitramine or other similar compounds used for high-energy-rate forming, expanding and shaping in metal fabrication and for dismemberment and quick reduction of scrap metal.

**STEMMING** — An inert material placed in a bore hole after the explosive for the purpose of confining explosive materials or to separate charges of explosive material in the same bore hole.

**TEST BLASTING CAP NO. 8** — One containing two grams of a mixture of 80% mercury fulminate and 20% potassium chlorate, or a cap of equivalent strength.

**VIBRATION** — The energy from a blast that manifests itself in earthborne vibrations which are transmitted through the earth away from the immediate blast area.

### **§38-12. Permits required.**

Permits shall be obtained from the Fire Inspector for the following activities:

- A) To manufacture, possess, store, sell or otherwise dispose of commercial explosives or blasting agents.
- B) To transport commercial explosives or blasting agents.
- C) To use or detonate commercial explosives or blasting agents.
- D) To operate a terminal for handling commercial explosives or blasting agents.
- E) To deliver or receive commercial explosives or blasting agents to or from a carrier at a terminal between the hours of sunset and sunrise.
- F) To transport blasting caps or electric blasting caps on the same vehicle with commercial explosives.

### **§38-13. Application requirements**

- A) Permit to manufacture, possess, store, sell, dispose of, transport, operate a terminal, deliver or receive. An application for a permit to manufacture, possess, store, sell, dispose of, transport, operate a terminal, deliver or receive commercial explosives or blasting agents shall require the following information, as well as any other information the Fire Inspector deems necessary to protect the public health and safety:

- 1) The applicant's full name, address and telephone number. If the applicant is a corporation, partnership or other business entity, the name and address of each officer, partner, or managing member shall be separately stated. If the applicant is an out-of-state corporation, partnership or other business entity, the applicant must also submit proof of filing with the New York State Secretary of State to do business in New York. No permit shall be issued unless the applicant is authorized to do business in New York. The applicant shall also include proof of general liability insurance coverage in the amounts specified in this Article, and workmen's compensation insurance coverage.
  - 2) The location where the applicant proposes to manufacture, sell, possess, or store commercial explosives or blasting agents.
  - 3) A statement as to the purpose and need to manufacture, sell, possess, or store commercial explosives or blasting agents.
  - 4) Where the manufacture, sale, possession or storage of commercial explosives or blasting agents is subject to state or federal regulation and licensing, a current copy of any state or federal license or permit shall be provided, together with the application for a local permit, unless the use is specifically exempted herein.
  - 5) The quantity of commercial explosives or blasting agents to be manufactured, sold, possessed or stored.
  - 6) The application for a permit shall be signed by the applicant. In addition, the applicant shall sign an acknowledgment, under the penalties of perjury, stating that all information provided in the application or in support of the application is true and accurate.
  - 7) The application shall be accompanied by a permit fee in an amount set by the Town Board, together with any review fees pursuant to Chapter 55 that the Fire Inspector may also determine are necessary to cover the cost of retaining one or more consultants to assist in the review of the application.
- B) Permit to use or detonate. An application for a permit to use or detonate commercial explosives or blasting agents shall require the following information, as well as any other information the Fire Inspector deems necessary to protect the public health and safety:
- 1) The applicant's full name and address. If the applicant is a corporation, partnership or other business entity, the name and address of each officer, partner, or managing member shall be separately stated. If the applicant is an out-of-state corporation, partnership or other business entity, the applicant must also submit proof of filing with the New York State Secretary of State to do business in New York. No permit may be issued unless the applicant is authorized to do business in New York. The applicant shall also include proof of general liability insurance coverage in the amounts specified in this Article, and workmen's compensation insurance coverage.
  - 2) The name, address and telephone number of the person who will be conducting the blasting, and a copy of the blaster's license to purchase, own,

possess, transport and use explosives and a certificate of competence.

- 3) The time, date and location blasting is scheduled to begin.
- 4) The name(s) and address of the owners of property within four hundred (400') feet of the boundary of the property on which blasting is proposed to take place as taken from the most recent tax roll of the Town of Kent..
- 5) Unless otherwise modified by the Fire Inspector pursuant to paragraph B.6 below a pre-blast condition survey of the site, based on a current boundary survey of the property on which blasting is proposed, where one inch equals thirty (30') feet in scale or such other scale as may be deemed acceptable by the Fire Inspector, showing all structures located within one thousand (1000') feet of the blast site, together with a description of each structure within said distance. Any property owner owning lands located within 1000 feet of the blast site and who is subject to a pre-blast condition survey as set forth herein, shall be furnished a copy of the survey and the description of his or her property upon request and at no cost. In addition:
  - a) The structures to be shown on the pre-blast condition survey and described in writing shall include, but not be limited to residences; buildings; accessory structures; swimming pools; tennis courts; roads; driveways; utility poles and lines; water and sewer facilities including wells, septic fields and associated piping; and underground cables and utilities of record.
  - b) The written description of each structure shall include reports, photographs, videotape, and other documentation as may be required to sufficiently delineate and describe the existing condition of all surveyed structures and utilities, except where access to a property is denied by the owner. In the event an owner denies access to a property for purposes of conducting a pre-blast condition survey evidence of such denial shall be in writing signed by the owner or by the failure of the owner to respond within twenty-one days of the date of mailing of the applicant's written request for access as evidenced by certified first class U.S. Mail, return receipt requested.
  - c) The written description of each structure surveyed shall be based on a personal inspection by a firm(s) or person(s) qualified to perform such inspections, to note the interior and exterior condition of all residences, buildings, structures, and utilities, including foundations, wall, sidewalks, and pools except where access to the property has been denied. The survey shall also include an assessment of existing radon levels in residential structures located within 1000 feet of the blast site. The radon evaluation shall also include, to the extent practicable, an assessment of radon releases from ground water use within residential structures.
  - d) Where a pre-blast condition survey indicates there are electric transmission lines within 1000 feet of a proposed blast site, the Fire Inspector or his representative may require testing to determine the

presence and level of errant electrical current in the area. If testing indicates the presence of errant electrical current in the vicinity where explosives are to be detonated at a level sufficient to pose a potential threat to public safety, the Fire Inspector may require that any blasting be conducted solely by use of nonelectrical detonation.

- e) The Fire Inspector may, in his sole discretion, require that the pre-blast condition survey be accompanied with a videotape or photographs showing each building and structure and any particular features as he may direct.
- 6) The Fire Inspector may waive or modify the pre-blast condition survey requirements in paragraph B.5 above, where the Fire Inspector determines that the constant peak particle velocity (PPV) at the nearest residential structure would not exceed 0.5 inches per second. A decision by the Fire Inspector to waive or modify the pre-blast condition survey requirements shall be based on: 1) the results of a controlled test blast conducted with small test blasting charges and measured with seismographs to determine the amount of vibration loss over distance through rock and soil cover; or 2) such other data regarding geologic surface and subsurface conditions on the site and the amount of explosives to be employed during a blast event(s) that conclusively establish, in the sole opinion of the Fire Inspector, that the requirements of this section would be met.
  - a) All controlled test blasts shall be conducted only upon prior notice to the Fire Inspector, who may issue a temporary permit to conduct such limited test blasts as may be required to collect blast data.
- 7) Based on the application and the pre-blast condition survey, if any, the Fire Inspector shall estimate the cost of monitoring compliance with this chapter and furnish such estimate, together with a basis for his calculation, to the applicant. Before any permit is issued, the estimated cost of inspection services shall be deposited with the Town, held in escrow, and applied to reimburse the Town for costs and expenses actually incurred in connection with administering compliance with this chapter. Where the estimated amount deposited is insufficient to cover the Town's costs, the property owner and the applicant shall be responsible for any balance due. Where the estimated amount deposited with the Town exceeds the costs incurred, the balance shall be refunded.
- 8) The application for a permit to use explosives shall be signed by both the applicant and the blaster. In addition, the applicant shall sign an acknowledgment stating, under the penalties of perjury, that all information provided in the application or in support of the application is true and accurate. The blaster shall also sign an acknowledgment stating that he has read the entire application, that in his opinion blasting at the particular location can be conducted safely, without unreasonable risk, and that, under the penalties of perjury, the blaster's state license is valid, that he is fully authorized to conduct the type of activity set forth in the application and that

he agrees to abide by all state and federal safety standards.

- 9) A permit to conduct blasting shall be effective for a specific project and specific period of time, not to exceed one year. The Fire Inspector shall have sole discretion to set the term of any permit issued under this section.
  - 10) Expiration, revocation or cancellation of the blaster's state license shall automatically void any permit issued under this chapter.
  - 11) No blast shall be initiated at any location within the Town unless a written permit to conduct blasting has first been obtained and signed by the Fire Inspector authorizing blasting at the specific location.
  - 12) The Fire Inspector may add to any permit issued under this chapter whatever terms and conditions deemed necessary to protect public health, safety and welfare.
  - 13) No permit holder shall transfer or assign a permit issued under this chapter.
  - 14) The failure of an applicant to provide any information requested by the Fire Inspector in support of an application for a permit shall be grounds to deny an application or revoke a permit.
  - 15) Each applicant must furnish proof of general liability insurance, workmen's compensation insurance, and surety as set forth herein.
  - 16) The application shall be accompanied by a permit fee in an amount set by the Town Board, together with any review fees pursuant to Chapter 55 that the Fire Inspector may also determine are necessary to cover the cost of retaining one or more consultants to assist in the review of the application.
  - 17) The Fire Inspector or his representative may also request the applicant to supply any other, additional information that may be deemed necessary to protect the health and safety of the public or to prevent damage to property.
- C) Any person applying to use explosives or blasting agents to demolish any structure in excess of 25 feet in height shall agree to assume the cost of any engineering analysis, public safety survey, environmental review or other technical study deemed necessary by the Fire Inspector to determine if and how blasting can be conducted safely.

### **§38-13.1. Inspection, revocation and appeal.**

- A) Inspection. Because of the compelling and overriding public safety issues involved in the handling and use of explosives, the Town Building Inspector, the Fire Marshal, the Fire Inspector, the Code Enforcement Officer, and any member of the Police Department may inspect any vehicle, structure, dwelling, construction site, workplace or other area where explosives are manufactured, sold, possessed, stored or used within the Town for the limited purpose of ascertaining and verifying compliance with this chapter.
- B) Inspection fee. The fee for inspection(s) as set forth above shall be established by the Town Board. Said inspection fee may also, from time to time and at the

discretion of the Fire Inspector, include a fee pursuant to Chapter 55 of the Town code to cover the cost of retaining one or more persons or firms to assist in conducting such inspections.

- C) Recovery of costs. At the sole discretion of the Town, the reasonable and necessary costs incurred by the Town for inspection(s) shall be charged against the real property that is the subject of the inspection by adding that charge to and making it a part of the next annual real property tax assessment roll of the Town. Such charges shall be levied and collected at the same time and in the same manner as Town-assessed taxes and shall be paid to the Town Comptroller, to be applied in reimbursing the fund from which the costs of inspection under this Chapter were paid. Prior to charging such assessments, the owners of the real property shall be provided written notice to their last known address of record, by certified mail, return receipt requested, of an opportunity to be heard and object before the Town Board to the proposed real property assessment, at a date to be designated in the notice, which shall be no less than 30 days after its mailing.
- D) Permit revocation. The Fire Inspector may, on his own initiative or at the request of any other official, revoke or modify a permit issued pursuant to this chapter where it appears the permit holder has violated any local, state or federal rule or regulation, including but not limited to a false statement or representation on the application for a blasting permit or violation of any applicable safety standard or where the Fire Inspector determines that public safety has been compromised. The Fire Inspector may modify or revoke a permit by notifying the permit holder or his representative, orally or in writing, that the permit has been modified or revoked. Where a permit has been revoked, the Fire Inspector shall send a written notice of revocation to the permit holder by first class mail without unnecessary delay, but not later than five working days after revocation, setting forth the reasons the permit was revoked. The notice of revocation shall include a statement informing the permit holder of his right to appeal such revocation by filing a notice of appeal with the Town Clerk within 20 working days. Where a permit is modified, the Fire Inspector shall give the permit holder written notice of the modifications.
- E) Appeals. A permit holder who has had his permit revoked or modified by the Fire Inspector may appeal and seek relief from the modifications or reinstatement of the permit. An appeal pursuant to this section shall be heard by the Chief of Police, the Town Engineer and the Building Inspector, or any of their deputies, sitting as a board of appeals. The Fire Inspector shall appear and state his findings and the reasons for revoking or modifying the permit. The permit holder and/or the blaster shall be offered the opportunity to appear and present evidence why the permit should not be modified or revoked. The appeal board may sustain the Fire Inspector's decision to revoke a permit, reinstate any permit or amend any modifications imposed by the Fire Inspector. Where the board reinstates a permit, the board may amend the permit by adding whatever terms and conditions it deems necessary to protect public health, safety and welfare. The decision of the appeal panel shall be final.

**§38-13.2. General requirements.**

- A) The manufacture of explosives or blasting agents shall be prohibited unless such manufacture is authorized by the Fire Inspector .
- B) The storage of explosives and blasting agents is prohibited within the limits established by law as the limits of the district in which such storage is to be prohibited, except for temporary storage for use in connection with approved blasting operations; provided, however, that this prohibition shall not apply to wholesale and retail stocks of small-arms ammunition, explosive bolts, explosive rivets or cartridges for explosive-actuated power tools in quantities involving less than 500 pounds of explosive material.
- C) The Fire Inspector may limit the quantity of explosives or blasting agents to be permitted at any location.
- D) No person shall sell or display explosives or blasting agents on highways, sidewalks, public property or in places of public assembly.
- E) The Fire Inspector may designate the location and specify the maximum quantity of explosives or blasting agents which may be loaded, unloaded, reloaded or temporarily retained at each terminal where such operations are permitted.
- F) Shipments of explosives or blasting agents delivered to carriers shall comply with United States Department of Transportation regulations.
- G) Carriers shall immediately notify the Fire Inspector when explosives or blasting agents are received at terminals.
- H) No person shall be issued a permit under this Chapter to use explosives or blasting agents within the Town of Kent unless said person possesses a valid and current certificate of competence and a blasters license issued by the State of New York. No person shall load holes unless said person possesses a valid and current certificate of competence.

**§38-13.3. Blasting operations.**

- A) No blasting shall be initiated at any location within the Town limits unless a written permit has first been obtained from Fire Inspector authorizing blasting at the specific location.
- B) At all times during blasting the blaster designated in the application for a blasting permit shall be present and on-site during all blasting operations and shall be deemed to be authorized to act on behalf of the applicant for all administrative purposes.
- C) Blasting may be conducted when authorized by permit Monday through Friday between the hours of 8:30 a.m. and 4:00 p.m. Blasting is prohibited Saturdays, Sundays and legal holidays.
- D) Blasting conducted within the Town must comply with the terms of the permit and, in addition, all applicable state and federal health and safety standards.
- E) At least five business days prior to the scheduled start of blasting, the permit

- holder shall request a pre-blast meeting with the Fire Inspector to review and finalize the proposed blasting plan. No blasting shall be conducted unless a pre-blast meeting has been held with the Fire Inspector and the Fire Inspector is satisfied that the proposed blasting plan is reasonable.
- F) Each blasting permit holder shall establish and delineate a blast zone prior to detonating a blast. The blast zone must be clearly marked and adequate precautions implemented to prevent unauthorized entry into the area.
  - G) Prior to each blast, the blaster or his designee shall be responsible for notifying all persons in the general area that blasting operations are scheduled to begin within a specified period of time. In addition, the blaster shall sound a recognized whistle, siren or horn loud enough to be heard throughout the designated blast zone approximately three minutes prior to blasting and again 30 seconds prior to blasting, warning all persons that blasting is imminent.
  - H) The Fire Inspector or his representative shall be permitted access to observe all aspects of the blasting operation, including but not limited to observation of all pre-blast preparatory site work, the explosion/detonation and access to the post-blast site. The property owner shall reimburse the Town for the cost of all inspection services, including the cost of retaining an on-site inspector to monitor all aspects of blasting, where the Fire Inspector deems such services necessary, by depositing the estimated cost of inspection services in a designated account to be held in escrow by the Town and applied to reimburse the Town for costs incurred in administering compliance with this chapter. The permit holder and the blaster shall, upon request, make available to the Fire Inspector a copy of all seismic reading and any and all other documentation and data collected regarding any blast.
  - I) The blasting permit holder shall notify the Fire Inspector or his designated representative and the Police Department of an impending blast at least two hours, but not more than 12 hours, prior to the time each blast is scheduled.
  - J) The applicant shall be responsible for any costs incurred by the Town in providing police, emergency services or any other personnel deemed necessary to ensure public safety.
  - K) No blasting shall be performed in such a manner or under such circumstances as to eject debris into the air so as to constitute a hazard or danger or do harm or damage to persons or property. In addition:
    - 1) No person shall use a quantity of explosives greater than necessary to break or move the target material or use an amount of explosives that poses a risk of injury to persons or property.
    - 2) Covering blasts. Before firing any blasts, except where the same is in a tunnel, the material to be blasted shall be covered on the top and sides with blasting mat(s) or construction using timber, held securely together by strong chains or ropes of iron or steel, and covered with sheets of tin or heavy woven matting of rope or wire. The Fire Inspector, in his sole discretion, may waive the use of blasting mats or other cover where his evaluation of field conditions

indicates that the use of such covers is not necessary to protect the public health and safety.

- 3) Firing. It shall be unlawful to explode a blasting charge by means of time, slow-burning or safety fuses or by any means other than some form of electrical apparatus. At least three (3) minutes before firing a blast, the blaster shall give warning thereof by causing a competent man, carrying a red flag, to be stationed at a reasonable distance from the blast at each avenue of approach or point of danger.
  - 4) Shoring. The blasting of rock contiguous to any structure shall be so conducted as not to cause damage thereto. To this end, weak walls or other supports shall be shored up, and rotten or decomposed rock shall be removed only by use of gads, picks or crowbars. When blasting in the vicinity of a weak structure is unavoidable, only light face blasts with short lines of resistance and charges shall be used.
  - 5) Tamping. Blasting charges shall be tamped only by means of wooden tamping rods, and explosives shall be pressed or set into place by steady, even pressure only. All strokes or blows with the tamping rods are forbidden, and no tamping rod shall be used which is frayed or split at the end.
  - 6) Unexploded charge. Immediately after firing a blast, the blaster shall cause all debris to be removed and shall thoroughly examine the rock and the drill holes to ascertain whether there remains any unexploded charge, and until this is done no drills shall be set up. In case a charge shall fail to explode, it must be exploded by drilling one (1) hole at least twelve (12) inches away, which shall be loaded and fired in the usual manner, but in no case shall the charge and tamping be removed from the hole without the special permission of the Fire Inspector. In case a blast shall fail to carry away the entire drill hole and leaves the lower part intact, no further drilling shall be done in that hole.
  - 7) Blaster's helpers. No person shall load holes in blasting operations except the blaster authorized by the license; provided, however, that while holes are being actually loaded, drillers and drill helpers may act as blaster's helpers under the direct supervision and responsibility of the licensed blaster.
  - 8) Capping cartridges. Cartridges, while being capped, shall be removed from any magazine to a distance of not less than fifty (50) feet and, after being capped, shall not be returned to a magazine. Cartridges shall be capped only as required for the work and for immediate use.
- L) Unless otherwise permitted by the Town Fire Inspector, all holes drilled or otherwise excavated for holding an explosive charge shall be at least six feet deep. If, however, the permit holder/blaster can demonstrate a need to use a hole less than six feet deep and that such a cavity will not endanger public safety, the Town Fire Inspector or his designated representative may, in his discretion, authorize the use of blast holes less than six feet deep.
- M) The blaster shall plan each blast and take every precaution in loading, delaying, initiation, confinement and stemming to control the throw of rock fragments and

debris and limit ground vibrations and the effect of air concussions to the greatest extent possible. When blasting is to be conducted within 50 feet or less of a property line and the adjacent property owner is not a party to the blasting operation, the blaster shall take all precautions practicable, utilizing any combination of recognized methods, to control blasting effects to the greatest degree possible.

- N) A record of each blast shall be kept by the blaster on a form approved by the Town Fire Inspector. All such records shall be retained by the permit holder and blaster as prescribed by state law and made available for inspection as a matter of public record.
- 1) The permit holder shall record the following information for each blast and provide the Fire Inspector with a duplicate copy at the end of each day:
    - a) The name and license number of the blaster.
    - b) The location of the blast.
    - c) The date and time of each blast.
    - d) The number of blasts.
    - e) The number, diameter and depth of each hole and distance between holes.
    - f) The burden depth.
    - g) The stemming length.
    - h) The make and type of explosives.
    - i) The delay make, number and period.
    - j) The weather conditions, including temperature, wind direction and speed.
  - 2) In addition, the following seismograph information must be recorded for each blast with a duplicate copy provided to the Fire Inspector:
    - a) The seismograph serial number.
    - b) The range/gain setting.
    - c) The date of last shake table calibration and microphone calibration.
    - d) The air channel low frequency limit.
    - e) The exact seismograph location and location in relation to the blast.
    - f) The peak over pressure readout.
    - g) The peak particle velocity readout.
    - h) The name of the operator.
- O) Accident notification. Where an accident involves personal injury, the permit holder shall immediately notify the Fire Inspector that an accident has occurred, and no further blasting shall be conducted until the Fire Inspector has had an opportunity to review the accident report and the permit. Any injury, accident or misfire involving explosives shall be recorded, and a full written report shall be

attached to the blast report filed with the Fire Inspector, including the names of all participants and witnesses and remedial actions taken. The Fire Inspector may require such additional, specific information from the blaster as he deems necessary and appropriate to assure the public health and safety. Following an accident involving personal injury, the Fire Inspector may amend the permit by adding whatever additional restrictions are deemed necessary to assure public health and safety is maintained and another similar accident does not reoccur.

**§38-13.4. Vibration and concussion standards.**

- A) The maximum allowable concussion or air blast resulting from blast operations shall not exceed 130 decibels peak, measured at a flat frequency response (PMS two decibels) over the range of at least six to 200 hertz.
- B) When blasting is of a continuing nature, 124 to 130 decibels shall be the acceptable range.
- C) The permit holder shall report each blast exceeding acceptable parameters to the Fire Inspector within 24 hours. Following a blast exceeding acceptable parameters, the Fire Inspector shall have the authority to order blasting operations to be suspended, altered or stopped.

**§38-13.5. Notice of intent to blast; posting.**

- A) Not more than 20 days nor less than three days prior to a scheduled blast, the permit holder shall serve a notice of intent to blast, stating when and where blasting activity is scheduled to occur, on each occupant or user of each structure, commercial or residential, within 400 feet of the boundary of the property on which blasting is proposed and upon the owner or owners of any parcel of property immediately adjoining or abutting the parcel of property on which the blasting is to take place, regardless of the distance an adjoining owner is from the blast site. The notice shall include the blasting permit number, the permit holder's name, and emergency telephone numbers for police, fire and ambulance service and the time and location of each scheduled blast. A copy of the notice of intent to blast must be submitted to the Fire Inspector for his review and approval prior to distribution.
- B) The notice of intent to blast may be served by either personal service or certified mail. In the event that neither personal service nor certified mail can be effected, the applicant may request authorization from the Fire Inspector to serve the notice of intent to blast by posting a copy of such notice in each building or dwelling in a conspicuous place where it is reasonable to believe that persons entering or leaving the premises will see such notification.
- C) In the case of multi-occupancy structures, residential and commercial, located within 400 feet of the blast site, the notice of intent to blast shall be conspicuously and continuously posted at all commonly used entrances to the structure at least 20 and not less than three days prior to blasting. It shall be the blaster's responsibility to ensure that notice is unobstructed and remains posted at the

structure.

**§38-13.6. Liability Insurance; Surety.**

- A) Liability insurance. The permit required in §38-12 shall not be issued until the applicant shall submit to the Town of Kent a certificate of general liability insurance in the amount of one million dollars (\$1,000,000.) for personal injury and one hundred thousand dollars (\$100,000.) for property damage, executed by the carrier or its authorized representative. The certificate shall provide that said policy will not be canceled except on thirty (30) days' notice in writing to the Town of Kent. Should the Fire Inspector determine that the requirements of a particular case and the danger involved require public liability insurance coverage in greater amounts than above specified, he shall immediately certify his determination to the Town Clerk and simultaneously request that the Town Board fix the policy limits. The Town Board shall meet as expeditiously as possible for said purpose, and said Town Board is hereby authorized and empowered to fix the policy limits in such amount or amounts as the Town Board shall deem commensurate with the scope of the blasting operations and the dangers involved, not exceeding, however, the following amounts: two million dollars (\$2,000,000.00) for each person injured, three million dollars (\$3,000,000.00) for each accident and five hundred thousand dollars (\$500,000.00) property damage. Such liability insurance policy shall be issued by an insurance company authorized to do business in New York State and the certificate approved as to form and sufficiency by the Town Attorney, and, after such approval, said certificate of insurance shall be filed with the Town Clerk.
- B) Surety. Before the issuance of any permit required in §38-12, the applicant shall also file with the Town Clerk a letter of credit which shall be in the form prescribed by the Town Attorney and signed by the applicant as principal and by a solvent surety company authorized to transact business within the State of New York as surety thereon, and must meet with the written approval of the Town Attorney as to form, correctness and sufficiency of surety, and which surety shall indemnify all persons and the Town of Kent against any loss, expense, cost or damages of any kind or nature to persons or property resulting from blasting during the license period. The liability hereby imposed upon the applicant shall be one of absolute liability for any such loss, expense, cost or damages of any kind or nature to persons or property resulting from blasting, with or without trespass, and shall not depend upon any question of negligence upon his part or upon the part of his agents, servants or employees. The neglect of anyone to direct the applicant, his agents, servants or employees to take any particular precaution or to refrain from doing any particular thing shall not excuse the applicant from the liability hereby imposed upon him. Said surety, after approval by the Town Attorney, shall be filed with the Town Clerk. Each applicant for renewal shall furnish a surety as hereinabove provided.

**§38-14. Storage of explosives.**

- A) Explosives, including special industrial high-explosive materials, shall be stored

- in magazines which meet the requirements of this article. This shall not be construed as applying to wholesale and retail stocks of small-arms ammunition, explosive bolts, explosive rivets or cartridges for explosive-actuated power tools in quantities involving less than 500 pounds of explosive material.
- B) Class I magazines shall be used for the storage of explosives when quantities are in excess of 50 pounds of explosive material.
  - C) Class I or Class II magazines shall be used for the storage of explosives in quantities of 50 pounds or less of explosive material, except that a Class II magazine may be used for temporary storage of a larger quantity of explosives at the site of blasting operations where such amount constitutes not more than one day's supply for use in current operations.
  - D) Class I and Class II magazines shall be located away from inhabited buildings, passenger railways, public highways and other magazines, in conformity with the provisions of the American Table of Distances for Storage of Explosives, except as provided in Subsection E of this section.
  - E) The Chief Fire Inspector or the Assistant Inspector duly appointed by the governing body of the municipality may authorize the storage of up to 50 pounds of explosives and 500 blasting caps in wholesale and retail hardware stores or other approved establishments. Explosives and blasting caps shall be stored in separate Class II magazines at approved locations on the first floor not more than 10 feet from an entrance. A distance of 10 feet shall be maintained between the magazines. Their location shall not be changed without approval of the Chief Fire Inspector or the Assistant Inspector duly appointed by the governing body of the municipality.
  - F) At the site of blasting operations, a distance of at least one 150 feet shall be maintained between Class II magazines and the blast area when the quantity of explosives temporarily kept therein is in excess of 25 pounds, and at least 50 feet when the quantity of explosives is 25 pounds or less.
  - G) Property upon which Class I magazines are located shall be posted with signs reading "Explosives -- Keep Off."
  - H) Class II magazines shall be painted red and shall bear lettering in white, on all sides and on the top, at least three inches high, reading "Explosives -- Keep Fire Away." [Amended 4-2-1973 by L.L. No. 3-1973]

**§38-15. Transportation of explosives.**

- A) Explosives shall not be transported on public conveyances.
- B) Vehicles used for transporting explosives shall be strong enough to carry the load without difficulty and shall be in good mechanical condition. If vehicles do not have a closed body, the body shall be covered with a flameproof and moisture proof tarpaulin or other effective protection against moisture and sparks. Such vehicles shall have tight floors, and exposed spark-producing metal on the inside of the body shall be covered with wood or other nonsparking material to prevent

contact with packages of explosives. Packages of explosives shall not be loaded above the sides of open-body vehicles.

- C) The attachment of any type of trailer behind a truck, a tractor-semitrailer or truck-full-trailer combination transporting explosives is prohibited. Explosives shall not be transported on any pole trailer.
- D) Every vehicle, when used for transporting explosives, shall be equipped with not less than one appropriate-type fire extinguisher, suitable for use on flammable liquid fires, filled and ready for immediate use and located near the driver's seat.
- E) Only those dangerous articles authorized to be loaded with explosives by United States Department of Transportation regulations shall be carried in the body of a vehicle transporting explosives.
- F) Every vehicle transporting explosives shall be marked or placarded on both sides, front and rear, with the word "Explosives" in letters not less than three inches high on contrasting background.
- G) Blasting caps or electric blasting caps shall not be transported over the highways of the municipality on the same vehicle with other explosives except by permission of the Chief Fire Inspector or the Assistant Inspector duly appointed by the governing body of the municipality.
- H) Vehicles transporting explosives shall not be left unattended at any time within the municipality.
- I) Vehicles transporting explosives shall be routed to avoid congestion of traffic and densely populated areas.

**§38-16. Reserved.**

**§38-17. Storage of blasting agents and supplies**

- A) Blasting agents or oxidizers, when stored in conjunction with explosives, shall be stored in the manner set forth in §38-14 for explosives. The quantity of blasting agents or oxidizers shall be included when computing the total quantity of explosives for determining distance requirements.
- B) Buildings used for the storage of blasting agents separate from explosives shall be located away from inhabited buildings, passenger railways and public highways, in accordance with the provisions of the American Table of Distances for Storage of Explosives.
- C) Semitrailers or full trailers may be used for the temporary storage of blasting agents, provided that they are located away from inhabited buildings, passenger railways and public highways, in accordance with the provisions of the American Table of Distances for Storage of Explosives.

**§38-18. Mixing blasting agents.**

- A) Buildings or other facilities used for mixing blasting agents shall be located away

from inhabited buildings, passenger railways and public highways, in accordance with the provisions of the American Table of Distances for Storage of Explosives.

- B) Not more than one day's production of blasting agents or the limit determined by the American Table of Distances for Storage of Explosives, whichever is less, shall be permitted in or near the building or other facility used for mixing blasting agents. Larger quantities shall be stored in separate buildings or magazines.

**§38-19. Transportation of blasting agents.**

- A) Blasting agents shall be transported in accordance with the requirements for explosives in §38-15, except as provided in Subsection B.
- B) Every vehicle transporting blasting agents shall be marked or placarded on both sides, front and rear, with the word "Dangerous" and also the words "Blasting Agents" in letters not less than three inches high on a contrasting background.

**ARTICLE III, Oil-Burning Equipment**

**§ 38-20. Scope.**

This article applies to all oil-burning equipment except internal-combustion engines, oil lamps and portable devices such as blowtorches, melting pots and weed burners.

**§ 38-21. Definitions.**

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

**FUEL OIL** — Kerosene or any hydrocarbon oil conforming to Specifications for Fuel Oils of the American Society for Testing Materials, ASTM D396-48T, and having a flash point of not less than 100° F.

**OIL-BURNING EQUIPMENT** — An oil burner of any type, together with its tank piping, wiring, controls and related devices, including all conversion oil burners, oil-fired units and heating and cooking appliances, but excluding those exempted by § 38-120.

**§ 38-22. Permit required.**

A permit shall be required for the installation of any oil burner that utilizes a fuel oil tank in excess of 25 gallons in a building or in excess of 60 gallons outside of a building.

**§ 38-23. Use of approved equipment.**

Oil-burning equipment shall be of an approved type.

**§ 38-24. General installation requirements.**

- A. The installation shall be made in accordance with the instructions of the manufacturer.
- B. The installation shall be such as to provide reasonable accessibility for cleaning heating surfaces, removing burners, replacing motors, controls, air filters, draft regulators and other working parts, and for adjusting, cleaning and lubricating parts requiring such attention.
- C. After installation of the oil-burning equipment, a complete cycle of operation tests shall be conducted to make certain that the burner is operating in a safe and acceptable manner and that all safety devices function properly.

**§ 38-25. Fuel oil.**

The grade of fuel oil used in a burner shall be that for which the burner is approved and as stipulated by the manufacturer. Crankcase oil or any oil containing gasoline shall not be used.

**§ 38-26. Installation of fuel oil tanks.**

- A. An unenclosed inside fuel oil supply tank shall have a capacity of not more than 550 gallons. Not more than one five-hundred-fifty-gallon tank or two tanks of aggregate capacity of 550 gallons or less shall be connected to one oil-burning appliance, and the aggregate capacity of such tanks installed in the lowest story, cellar or basement of a building shall not exceed 1,100 gallons unless separation is provided for each 550 gallons of tank capacity. Such separation shall consist of an unpierced masonry wall or partition extending from the lowest floor to the ceiling above the tank or tanks and shall have a fire-resistance rating of not less than two hours.
- B. Stoves which are designed for barometric feed shall not be connected to separate oil supply tanks.
- C. Non-flue-connected stoves shall be prohibited.
- D. Gravity oil supply tanks installed in conversion range oil burners shall not exceed one six-gallon metal tank or two three-gallon glass bottles.
- E. Supply or storage tanks located above the lowest story, cellar or basement shall not exceed 60 gallons' capacity, and the total capacity of tanks so located shall not exceed 60 gallons.

- F. Oil supply tanks other than those furnished as an integral part of the stove or range shall not be located within five feet, horizontally, of any fire or flame, except that tanks of not over six gallons' capacity may be within this distance but not within two feet of the stove or range in which the burner is installed, provided that the temperature rise of the oil supply at this distance is not excessive when the burner is operated at full capacity.
- G. Tanks exceeding 550 gallons' individual capacity shall be installed in an enclosure constructed as follows: The walls of the enclosure shall be constructed of solid masonry units or poured-concrete construction having a fire-resistance rating of not less than three hours. Such enclosure shall be installed only on concrete or other fire-resistive floors and shall be bonded to the floors. Enclosures shall have tops of reinforced concrete at least five inches thick or of equivalent fire-resistive construction, except that where floor or roof construction above the enclosure is concrete or other fire-resistive construction, the walls may be extended to and bonded to the undersides of the construction above in lieu of the provisions of a separate top. Any openings to such enclosures shall be provided with fire doors or other approved closures and six-inch, noncombustible, liquidtight sills or ramps. Provision shall be made for adequate ventilation of such enclosures prior to entering for inspection or repairs on tanks.

**§ 38-27. Installation of fill, return, supply and vent piping.**

- A. A fill pipe on a tank larger than 60 gallons shall terminate outside of a building at least two feet from any building opening. Every fill terminal shall be equipped with a tight metal cover.
- B. A return line from a burner or pump to a supply tank shall enter the top of the tank.
- C. An auxiliary tank installed in the supply piping between a burner and its main fuel supply tank shall be filled by pumping from storage tanks.
- D. All piping, except the burner supply line from a tank having a capacity of not over 550 gallons and the cross-connection between two such tanks having an aggregate capacity of 550 gallons or less, shall be connected into the top of the supply tank.
- E. The burner supply connection to tank or tanks having a capacity of more than 550 gallons shall be connected to the top of the tank, except that in commercial and industrial installations for Nos. 5 and 6 oil, the burner supply connection may be below the liquid level.
- F. Vent pipes shall terminate outside of buildings not less than two feet, measured vertically or horizontally, from any window or other building

opening. Vent terminals shall terminate in a weatherproof vent cap which shall have a minimum free open area equal to the cross-sectional area of the vent pipe. The static head of the vent pipe, when filled with oil, shall not exceed that pressure at which the tank was pressure-tested.

- G. Pressurized tank feed shall not be used.
- H. All tanks in which a constant oil level is not maintained by an automatic pump shall be equipped with an approved method of determining the oil level.

**§ 38-28. Pumps, piping and valves.**

- A. An oil pump not a part of an approved burner shall be a positive-displacement type which automatically shuts off the oil supply when stopped.
- B. All piping shall be standard, full-weight wrought-iron, steel or brass pipe, or brass or copper tubing. Aluminum tubing shall not be used between the fuel oil tank and the burner unit. Approved flexible metal hose may be used to reduce the effect of jarring and vibration or where rigid connections are impracticable, and shall be installed in compliance with its approval.
- C. Piping used in the installation of oil burners and appliances, other than conversion range oil burners, shall not be smaller than three-eighths-inch iron pipe size or three-eighths-inch-outside-diameter tubing. Copper or brass tubing shall have thirty-five-thousandths-inch nominal and thirty-two-thousandths-inch minimum wall thickness.
- D. Piping between conversion range oil burners and tanks shall be of standard steel, wrought-iron or brass pipe not smaller than 1/4 inch in size, or brass or copper tubing of not less than five-sixteenths-inch outside diameter with a wall thickness of not less than forty-nine-thousandths-inch.
- E. Pipe shall be connected with standard fittings, and tubing with fittings of approved type. If used, connections shall be of an approved type and installed in accordance with their approval. Unions requiring gaskets or packing, right and left couplings, and sweat fittings employing solder having a melting point of less than 1,000° F. shall not be used in oil lines. Cast-iron fittings shall be made tight with suitable lubricant or pipe compound.
- F. Readily accessible manual shutoff valves shall be installed at each point where required to avoid oil spillage during servicing. The valve shall be installed to close against the supply.

- G. Where a shutoff is installed in the discharge line of an oil pump not an integral part of a burner, a pressure-relief valve shall be connected into the discharge line between the pump and the shutoff valve and arranged to return surplus oil to the supply tank or to bypass it around the pump, unless the pump includes an internal bypass.

**§ 38-29. Manual stopping of oil flow to burner.**

Oil burners, other than oil stoves with integral tanks, shall be provided with some means for manually stopping the flow of oil to the burner. Such device or devices shall be placed in a convenient location at a safe distance from the burner.

**ARTICLE IV, Precautions Against Fire, General**

**§ 38-30. Bonfire and outdoor rubbish fires.**

- A. A permit is required to kindle or maintain any bonfire or rubbish fire or to authorize any such fire to be kindled or maintained anywhere in the Town of Kent.
  - (1) Permits required under this section will be issued by the State of New York through the Resident Forest Ranger or his duly authorized assistant.
- B. Location restricted. No person shall kindle or maintain any bonfire or rubbish fire, or authorize any such fire to be kindled or maintained, on any private land unless:
  - (1) The location is not less than 50 feet from any structure and adequate provision is made to prevent fire from spreading to within 50 feet of any structure; or
  - (2) The fire is contained in an approved waste burner located safely not less than 25 feet from any structure.
- C. Prohibition by Building Inspector, Chief of Fire Inspector or Inspector. The Building Inspector, Chief Fire Inspector or an Inspector may prohibit any or all bonfires and outdoor rubbish fires when atmospheric conditions or local circumstances make such fire hazardous.
- D. Supervision. All persons permitted to maintain a fire under this article shall remain at the location of the fire until all embers are extinguished.
- E. No person shall kindle or maintain a fire under this section on Sundays, national holidays or between the hours of sunset and sunrise.

- F. Prior to the commencement of burning under this section, the permit holder shall notify the Town of Kent Police Department of the start of burning. The permit holder shall also notify the Town of Kent Police Department when burning has been completed.
- G. There shall be no permits issued to permit any person to kindle or maintain any bonfire or rubbish fire or to authorize any such fire to be kindled or maintained anywhere in Sanitation District No. 1 in the Town of Kent. It shall be unlawful for any person to kindle or maintain any bonfire or rubbish fire or to authorize any such fire to be kindled or maintained anywhere in Sanitation District No. 1 in the Town of Kent.

**§ 38-31. Hot ashes and other dangerous materials.**

No person shall deposit hot ashes or cinders or smoldering coals or greasy or oily substances liable to spontaneous ignition into any wooden receptacle, or place the same within 10 feet of any combustible materials except in a metal or other noncombustible container. Such receptacles, unless resting on a noncombustible floor or on the ground outside the building, shall be placed on noncombustible stands, and in every case shall be kept at least two feet away from any combustible wall or partition or exterior window opening.

**§ 3832. Accumulations of waste material.**

Accumulations of wastepaper, hay, grass, straw, weeds, litter or combustible or flammable waste or rubbish of any kind shall not be permitted to remain upon any roof or in any courtyard, vacant lot or open space. All weeds, grass, vines or other growth, when the same endangers property or is liable to catch fire, shall be cut down and removed by the owner or occupant of the property.

**ARTICLE V, Operating Permits**

**§38-33. Operation permits required.**

Operating permits shall be required for conducting the activities or using the categories of buildings listed below:

- A. manufacturing, storing or handling hazardous materials in quantities exceeding those listed in Tables 2703.1.1(1), 2703.1.1(2), 2703.1.1(3) or 2703.1.1(4) in the publication entitled “Fire Code of New York State” and incorporated by reference in 19 NYCRR section 1225.1;
- B. hazardous processes and activities, including but not limited to, commercial and industrial operations which produce combustible dust as a byproduct, fruit and crop ripening, and waste handling;

- C. use of pyrotechnic devices in assembly occupancies;
- D. buildings containing one or more areas of public assembly with an occupant load of 100 persons or more; and
- E. buildings whose use or occupancy classification may pose a substantial potential hazard to public safety, as determined by resolution adopted by the Town Board of this Town.

Any person who proposes to undertake any activity or to operate any type of building listed in this section shall be required to obtain an Operating Permit prior to commencing such activity or operation.

**§38-34. Applications for operating permits.**

An application for an operating permit shall be in writing on a form provided by or otherwise acceptable to the Building Inspector. Such application shall include such information as the Building Inspector deems sufficient to permit a determination by the Building Inspector that quantities, materials, and activities conform to the requirements of the Uniform Code. If the Building Inspector determines that tests or reports are necessary to verify conformance, such tests or reports shall be performed or provided by such person or persons as may be designated by or otherwise acceptable to the Building Inspector, at the expense of the applicant.

**§38-35. Inspections.**

The Building Inspector or an Inspector authorized by the Building Inspector shall inspect the subject premises prior to the issuance of an operating permit.

**§38-36. Multiple activities.**

In any circumstance in which more than one activity listed in §38-33 of this section is to be conducted at a location, the Building Inspector may require a separate operating permit for each such activity, or the Building Inspector may, in his or her discretion, issue a single operating permit to apply to all such activities.

**§38-37. Duration of operating permits.**

Operating permits shall remain in effect until reissued, renewed, revoked, or suspended.

**§38-38. Operating permits non-transferable.**

Operating permits shall not be transferable and any change in use or occupancy of premises shall require a new operating permit.

**§38-39. Revocation or suspension of operating permits.**

If the Building Inspector determines that any activity or building for which an operating permit was issued does not comply with any applicable provision of the Uniform Code, such operating permit shall be revoked or suspended.

**§38-40. Fee for operating permits.**

The fee for operating permits, if any, shall be in accordance with the fee schedule adopted from time to time by resolution of the Town Board.

**ARTICLE VI, Fire Safety & Property Maintenance Inspections**

**§38-41. Inspections required.**

Fire safety and property maintenance inspections of buildings and structures shall be performed by the Building Inspector or an Inspector designated by the Building Inspector at the following intervals:

- A. Fire safety and property maintenance inspections of buildings or structures which contain an area of public assembly shall be performed at least once every twelve (12) months.
- B. Fire safety and property maintenance inspections of buildings or structures being occupied as dormitories shall be performed at least once every twelve (12) months.
- C. Fire safety and property maintenance inspections of all multiple dwellings not included in paragraphs §38-41(A) or §38-41(B), and all non-residential buildings, structures, uses and occupancies not included in paragraphs §38-41(A) or §38-41(B), shall be performed at least once every thirty-six months.

**§38-42. Inspections permitted.**

In addition to the inspections required by §38-41, a fire safety and property maintenance inspection of any building, structure, use, or occupancy, or of any dwelling unit, may also be performed by the Building Inspector or an Inspector designated by the Building Inspector at any time upon:

- A. the request of the owner of the property to be inspected or an authorized agent of such owner;
- B. receipt by the Building Inspector of a written statement alleging that conditions or activities failing to comply with the Uniform Code or Energy Code exist; or
- C. receipt by the Building Inspector of any other information, reasonably believed by the Building Inspector to be reliable, giving rise to reasonable cause to believe that conditions or activities failing to comply with the Uniform Code or Energy Code exist;

provided, however, that nothing in this subdivision shall be construed as permitting an inspection under any circumstances under which a court order or warrant permitting such inspection is required, unless such court order or warrant shall have been obtained.

**§38-43. OFPC Inspections.**

Nothing in this article or in any other provision of this local law shall supersede, limit or impair the powers, duties and responsibilities of the New York State Office of Fire Prevention and Control (“OFPC”) and the New York State Fire Administrator under Executive Law section 156-e and Education Law section 807-b.

Notwithstanding any other provision of this section to the contrary:

- A. the Building Inspector shall not perform fire safety and property maintenance inspections of a building or structure which contains an area of public assembly if OFPC performs fire safety and property maintenance inspections of such building or structure at least once every twelve (12) months;
- B. the Building Inspector shall not perform fire safety and property maintenance inspections of a building or structure occupied as a dormitory if OFPC performs fire safety and property maintenance inspections of such building or structure at least once every twelve (12) months;
- C. the Building Inspector shall not perform fire safety and property maintenance inspections of a multiple dwelling not included in §38-41(A) or §38-41(B) of this section if OFPC performs fire safety and property

maintenance inspections of such multiple dwelling at intervals not exceeding the interval specified in §38-41(C); and

- D. the Building Inspector shall not perform fire safety and property maintenance inspections of a non-residential building, structure, use or occupancy not included in §38-41(A) or §38-41(B) if OFPC performs fire safety and property maintenance inspections of such non-residential building, structure, use or occupancy at intervals not exceeding the interval specified in §38-41(C).

## **ARTICLE VII, Penalties**

### **§ 38-44. Violations.**

- A. It shall be unlawful to violate any of the provisions of this chapter or to fail to comply therewith, or to violate or fail to comply with any order made by the Building Inspector, Chief Fire Inspector or any Inspector pursuant to this chapter, or to build in violation of any detailed statement of specifications or plans submitted and approved under this chapter, or any permit issued pursuant to this chapter. Violations of this section shall be punishable by a maximum fine of \$500. Each day that a violation continues shall be deemed a separate offense.
  
- B. Compliance Orders. The Building Inspector and Chief Fire Inspector are authorized to order in writing the remedying of any condition or activity found to exist in, on or about any building, structure, or premises in violation of the Uniform Code, the Energy Code, or this chapter. Upon finding that any such condition or activity exists, the Building Inspector or Chief Fire Inspector shall issue a Compliance Order. The Compliance Order shall:
  - (1) be in writing;
  - (2) be dated and signed by the Building Inspector or Chief Fire Inspector;
  - (3) specify the condition or activity that violates the Uniform Code, the Energy Code, or this chapter
  - (4) specify the provision or provisions of the Uniform Code, the Energy Code, or this chapter which is/are violated by the specified condition or activity;
  - (5) specify the period of time which the Building Inspector or Chief Fire Inspector deems to be reasonably necessary for achieving

compliance;

- (6) direct that compliance be achieved within the specified period of time; and
- (7) state that an action or proceeding to compel compliance may be instituted if compliance is not achieved within the specified period of time.

The Building Inspector or Chief Fire Inspector shall cause the Compliance Order, or a copy thereof to be served on the owner of the affected property personally or by registered or certified mail. The Building Inspector or Chief Fire Inspector shall be permitted, but not required, to cause the Compliance Order, or a copy thereof; to be served on any builder, architect, tenant, contractor, subcontractor, construction superintendent, or their agents, or any other person taking part or assisting in work being performed at the affected property personally or by certified mail, return receipt requested; provided, however, that failure to serve any Person mentioned in this sentence shall not affect the efficacy of the Compliance Order.

- C. Any person who shall fail to comply with a written order of the Building Inspector or Chief Fire Inspector within the time fixed for compliance therewith, and any owner, builder, architect, tenant, contractor, subcontractor, construction superintendent or their agents, or any other person taking part or assisting in the construction or use of any building or property, who shall knowingly violate any of the applicable provisions of this chapter or any lawful order, notice, directive, permit or certificate of the Building Inspector or Chief Fire Inspector made thereunder, shall be punishable by a fine of not more than \$500 or 15 days in jail, or both. Each day that an offense continues shall be deemed to constitute a separate offense.
- D. Except as provided otherwise by law, an offense under subsection (A) or (C) of this section shall not be a crime, and the penalty or punishment imposed therefor shall not be deemed for any purpose a penal or criminal penalty or punishment and shall not impose any disability upon or affect or impair the credibility as a witness, or otherwise, of any person convicted thereof.
- E. The Building Inspector, Chief Fire Inspector and any Inspectors as may be appointed by the Town Board shall have the authority to issue appearance tickets, under Article 150 of the Criminal Procedure Law of this state, for purposes of enforcement of the Uniform Code, the Energy Code and this Chapter.
- F. In addition to those penalties proscribed by the State Law, any Person who violates any provision of the Uniform Code, the Energy Code or this chapter, or any term or condition of any Operating Permit or other notice or order issued by

the Building Inspector or Chief Fire Inspector pursuant to any provision of this chapter, shall be liable for a civil penalty of not more than \$200 for each day or part thereof during which such violation continues. The civil penalties provided by this subdivision shall be recoverable in an action instituted in the name of this Town.

- G. No remedy or penalty specified in this chapter shall be the exclusive remedy available to address any violation described in this section, and each remedy or penalty specified in this section shall be in addition to, and not in substitution for or limitation of, the other remedies or penalties specified in this section or in any other section of this chapter, or in any other applicable law. Any remedy or penalty specified in this section may be pursued at any time, whether prior to, simultaneously with, or after the pursuit of any other remedy or penalty specified in this section, in any other section of this chapter, or in any other applicable law. In particular, but not by way of limitation, each remedy and penalty specified in this section shall be in addition to, and not in substitution or limitation of, the penalties specified in subdivision (2) of Section 382 of the Executive Law, and any remedy or penalty specified in this section may be pursued at any time, whether prior to, simultaneously with, or after the pursuit of any penalty specified in subdivision (2) of Section 382 of the Executive Law.

#### **§ 38-43. Abatement of violations.**

An action or proceeding may be instituted in the name of this Town, in a court of competent jurisdiction, to prevent, restrain, enjoin, correct, or abate any violation of, or to enforce, any provision of the Uniform Code, the Energy Code, this chapter, or any term or condition of any operating permit, compliance order, or other notice or order issued by the Building Inspector or Chief Fire Inspector pursuant to any provision of this chapter. In particular, but not by way of limitation, where the construction or use of a building or structure or property is in violation of any provision of the Uniform Code, the Energy Code, this chapter, or any stop work order, compliance order or other order obtained under the Uniform Code, the Energy Code or this chapter, an action or proceeding may be commenced in the name of this Town, in the Supreme Court or in any other court having the requisite jurisdiction, to obtain an order directing the removal of the building or structure or an abatement of the condition in violation of such provisions. No action or proceeding described in this subdivision shall be commenced without the appropriate authorization from the Town Board.