

## ORDINANCE NO. 2019-ORD015

**AN ORDINANCE OF THE CITY OF DOUBLE HORN, TEXAS PROHIBITING BLASTING WITHIN THE CITY LIMITS; PROVIDING FOR PARTIAL EXEMPTION PERMIT; ESTABLISHING REGULATIONS PERTAINING TO BLASTING; ESTABLISHING CRIMINAL AND CIVIL PENALTIES FOR VIOLATIONS; DECLARING SUCH OFFENSES TO BE NUISANCES; PROVIDING FOR REPEALING, SAVINGS AND SEVERABILITY CLAUSES; AND PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE.**

**WHEREAS**, pursuant to Sections 51.001 and 51.032 of the Local Government Code, the City Council of the City of Double Horn (the "City Council") may adopt an ordinance, rule, or police regulation that is for the good government, peace, or order of the City of Double Horn, Texas (the "City") or for the trade and commerce of the City and is necessary or proper for carrying out a power granted by law to the City or to an office or department of the City, not inconsistent with state law, that the City Council considers proper for the government of the City; and

**WHEREAS**, pursuant to Subsection 217.022 of the Local Government Code, the City Council shall prevent to the extent practicable any nuisance within the limits of the City and shall have each nuisance removed at the expense of the person who is responsible for the nuisance or who owns the property on which the nuisance exists; and

**WHEREAS**, the City Council finds and determines, after extensive review of studies such as the Report of Investigations 8507, Structure Response and Damage Produced by Ground Vibration From Surface Mine Blasting, by D.E. Siskind, et al, for the United States Department of Interior, Office of Surface Mining, Reclamation and Enforcement, that surface mining operations and blasting, both generally and within and adjacent to the City of Double Horn, has an effect on property values, development, the economy, employment, property taxes and on the public and communities who live and work adjacent to such operations; and

**WHEREAS**, the City Council recognizes the inherent value of surface mining operations and the ability to use blasting techniques in certain development, demolition, and/or commercial activities; and

**WHEREAS**, the City Council finds that adopting blasting regulations as set forth in this Ordinance provides a reasonably balanced obligation of protecting property interests and public safety without infringing on the rights of and/or improperly infringing upon any land use, or unreasonably interfering with any reasonable investment backed expectations of existing property owners regulated by this Ordinance; and

**WHEREAS**, the City Council finds that the City conducted all acts necessary and has met all conditions precedent to the adoption and enforcement of this Ordinance, including publication of its passage; and

**WHEREAS**, the City Council finds the City possesses the police power of the state, which is delegated to cities by law, and hereby invokes such power to aid in the enforcement and the adoption this Ordinance; and

**WHEREAS**, the City Council finds that this Ordinance, when considered by the City Council has done so in full and complete compliance with the Texas Open Meetings Act at properly posted and conducted public meetings; and

**WHEREAS**, the City Council now deems it appropriate to establish regulations related to blasting herein within the city limits.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DOUBLE HORN, TEXAS:**

Section 1. Findings Incorporated. The above and foregoing premises are true and correct and are incorporated into the body of this Ordinance as if fully set forth herein.

Section 2. Adopted. The regulations set forth in Exhibit "A", attached hereto and incorporated as if fully set forth herein for all purposes, are hereby adopted. This Ordinance shall be maintained by the City Secretary, posted on the city website and a copy shall be available for public inspection during regular business hours.


Section 3. Savings/Repealing Clause. All City Ordinances shall remain in full force and effect, save and except as amended by this or any other Ordinance. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed or amended ordinance, nor shall the repeal or amendment prevent a prosecution from being commenced for any violation if occurring prior to the repeal or amendment of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

Section 4. Severability. Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. Double Horn hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional or invalid.

Section 5. Effective Date. This Ordinance shall be in full force and effect from and after its date of passage and approval, and publication as provided by law.

Section 6. Penalties. Penalties and enforcement of this Ordinance shall be in accordance with Attachment "A".

**DULY ADOPTED** by the City Council of the City of Double Horn, Texas on the 23<sup>rd</sup> day of October 2019.

  
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Cathy Sereno, Mayor

**ATTEST:**

Karen Maxwell  
Karen Maxwell, City Secretary

**APPROVED AS TO FORM:**

Patty L. Akers  
Patty L. Akers, City Attorney

## EXHIBIT "A"

### BLASTING ORDINANCE

#### SECTION 1. DEFINITIONS.

All technical industry words or phrases related to Excavation sites, Surface Mining Operations, and Blasting not specifically defined in this Ordinance shall have the meanings customarily attributable thereto by prudent and reasonable persons in the field of Excavation, Surface Mining and Blasting unless otherwise provided in this Ordinance. The following words, terms, and phrases, when used in this Ordinance, shall have the meanings ascribed to them in this section.

*Air Overpressure or Air Blast*<sup>1</sup> is the airborne shock wave or acoustic transient generated by an explosion. As this air wave (measured in decibels (dBL)) contacts structures, it causes walls to vibrate.

*Blasting* shall mean the firing of any Explosive Material that generates seismic waves and/or Air Blast. It does not include or apply to those explosives generally referred to as "fireworks", which is not governed under this ordinance.

*City Council* means the City Council of the City of Double Horn, Texas comprised of the five council members and the Mayor, unless contrary to Texas law.

*Decibel (dB)* shall mean a unit of sound pressure commonly used to measure Air Blast from explosives.

*Excavation* means the act of digging, mining or otherwise removing Minerals. This term does not include site grading or other site development activity that has been reviewed and/or authorized by the City of Double Horn; or site preparation activities on land that is the subject of a then applicable development permit or agreement with the City of Double Horn.

*Explosive Material* is a term which includes, but is not necessarily limited to, dynamite and other high explosives, slurries, water gels, emulsions, blasting agents, black powder, pellet powder, initiating explosives, or any other similar Blasting materials used in Excavation activities, as well as any detonators, safety fuses, squibs, detonating cord, igniter cord, and igniters.

*Flyrock* means the fragments of rock thrown and scattered during quarry blasting.

*Frequency* refers to how many waves occur within a second, which is measured in Hertz.

*Hertz* is a term used to express the frequency of ground vibrations and Air Blast; one hertz is one cycle per second.

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<sup>1</sup> See generally USBM standards

*Minerals* shall mean and shall include limestone, coal, lignite, uranium, clay, sand, hard rock, soil or other substances of value (commercial or otherwise), from natural deposits on or in the earth.

*Municipal Limits* means the municipal limits of the City of Double Horn, Texas.

*Noise* shall mean any undesired sound, especially a statistically random and persistent disturbance that provokes strong discomfort on the part of those people experiencing the noise.

*Noise Level* is the weighted sound pressure level called sound level, with measurement as defined in dB(A) below.

*dB(A) or dBA* is the term used to measure noise and involves quantifying both the rate (frequency in Hz) and intensity (pressure) relative to normal atmospheric pressure. People do not perceive all frequencies with the same sensitivity and are more responsive to higher frequencies. A dBA sounds level measurement weighs the various frequency components of sound as perceived by the human ear in order to yield a single number indicator of its relative intensity. The level so read is designated dB(A) or dBA.

*Partial Exemption Permit* means a permit issued from the Regulatory Authority, for a single event or for continuing operations, for a maximum term not exceeding a period of twelve (12) months to be automatically renewed annually at the end of the fiscal year, permitting a Permit Holder to conduct Blasting activities otherwise prohibited by this Ordinance.

*Peak Particle Velocity (PPV)* the measure of the intensity of ground vibration, specifically the velocity of motion of the ground particles as they are excited by the wave energy.

*Permit Holder* means either the Property Owner or any designee of the Property Owner, designated in writing by the Property Owner that has obtained a Partial Exemption Permit from the Regulatory Authority.

*Person.* Any individual, firm, business, entity, association, partnership, joint venture, or corporation.

*Property Owner* means the actual Property Owner or Owners as shown in the deed records of Burnet County.

*Regulatory Authority* shall mean the City of Double Horn, Texas.

*Surface Mining* means the mining of Minerals by Excavation or other commercial removal of the overburden lying above the natural deposit of Minerals and mining directly from the natural deposits that are exposed and those aspects of underground mining having significant effects on the surface.

*Surface Mining Operation* means those Surface Mining activities conducted at or near an Excavation site and concomitant with Surface Mining including extraction, storage, processing and shipping of minerals and reclamation of the land affected.

## **SECTION 2. BLASTING PROHIBITED.**

All non-permitted Blasting within the Municipal Limits is a public nuisance and is prohibited. It shall be unlawful for any person, entity, or Property Owner to conduct or allow blasting within the Municipal Limits without a Partial Exemption Permit. It shall be unlawful for any person, entity or Property Owner to violate, disobey, omit, neglect, or refuse to comply with any of the provisions set out in this Ordinance or the terms and conditions of any Partial Exemption Ordinance and if found to be in violation of these regulations or the terms and conditions of a Partial Exemption Permit shall be subject to the fines and penalties as established in this Ordinance.

Any violation of any state or federal law, rule, or regulation related to blasting now in effect or in effect at the time of the violation is additionally prohibited by this Ordinance.

## **SECTION 3. SCOPE AND APPLICABILITY.**

Nothing contained herein is intended to, nor shall it be interpreted to mean, that future action of the Regulatory Authority is in any manner regulated, affected or constrained through the terms of this Ordinance; rather, all Regulatory Authority operations are specifically exempted from the provision of this Ordinance.

## **SECTION 4. PARTIAL EXEMPTION PERMITS - BLASTING.**

The City Council may, by the issuance of a Partial Exemption Permit to the Property Owner or designee seeking a Partial Exemption Permit, allow the Permit Holder to engage in an activity contrary to the prohibitions contained in this Ordinance for a single event or for continuing operations as defined herein upon the terms and conditions of the Partial Exemption Permit and upon a finding of the following conditions:

- a) Partial Exemption Permits may be issued for Blasting. Such permits may be issued by the City Council upon the finding of a complete application for a Partial Exemption Permit to conduct Blasting within the Municipal Limits as provided by this Ordinance and compliance with Section 5. All applications for Partial Exemption Permits must be in the form as provided in Attachment A.
- b) The City Council shall evaluate all information pertinent to the Partial Exemption Permit request exercising reasonable discretion to ensure the aspects contained in the findings of this Ordinance are adequately being mitigated and remediated by the applicant. If the City Council finds inadequate remediation or mitigation, it may deny the application, require additional conditions, or move to authorize the City to mediate with the applicant before taking final action on the application. The City Council will endeavor to make a determination with regard to the Partial Exemption Permit within sixty (60) days of the receipt of the administratively complete application. The decision of the City Council is final as to administrative remedies with the City and not subject to appeal. The City will timely notify the Property Owner and/or Permit Holder that the permit application is administratively complete. Notwithstanding, once the Property Owner and/or Permit Holder has been notified by City that it has submitted a timely permit application that is administratively complete, the Property Owner and/or Permit Holder is (1) authorized to continue blasting under any existing permit issued by the

City and (2) considered to be in compliance with this Ordinance, until the processing of the new permit application by the City is complete and a new permit is issued or denied.

c) Any Partial Exemption Permit otherwise approved by the City Council is not valid unless and until any and all terms and conditions are met, including proof of insurance, and all fees, including any payments for third party monitoring or easement locations are paid in full. Such validity shall be reviewed by the City annually for compliance with the Administrative Requirements of this Ordinance. Should the Permit Holder be out of compliance with the Administrative Requirements, the City shall give a ten (10) calendar day cure period for compliance.

#### **SECTION 5. REGULATIONS ON BLASTING WITH PERMIT.**

Blasting with a Partial Exemption Permit must be conducted pursuant to the limitations and conditions provided for such Blasting in this Ordinance and in the Partial Exemption Permit. All quarry blasting and surface mining operations are to be in strict compliance with any and all local, state, and federal regulations and permits with respect to the environment including air quality, water quality, and noise pollution. The Property Owner shall as part of the Partial Exemption Permit application submit a Mitigation Plan which includes construction of vibration and sound attenuation berms and placement or construction of such other measures as are necessary to meet the requirements of this Ordinance. An Applicants for a Partial Exemption Permit must demonstrate that the Mitigation Plan will meet the requirements of this Section 5 in addition to the Administrative Requirements in Section 4 in order to receive the Partial Exemption Permit.

All Blasting activity conducted by Partial Exemption Permit shall comply with the following regulations:

- a) **Distance Requirements and Mitigation-** No blasting shall occur from a distance less than 500 feet from the nearest adjacent property line. Property Owner can request a variance to the distance requirements from the Regulatory Authority upon a showing that the proposed variance will not cause a violation of the requirements set out in this Section 5.
- b) **Timing** - No Blasting shall occur on Saturdays, Sundays and legal holidays. Blasting operations shall only occur between the hours of 9:00 a.m. and 4:30 p.m. Monday through Friday. The Permit Holder shall notify the Regulatory Authority, or its designee, at least 30 minutes prior to each Blast. In the case of circumstances resulting in a potential danger to public safety requiring the detonation of explosives outside this time period, notification and approval of the detonation outside this time limitation may be obtained from either the Mayor, or designee, of the City of Double Horn, Texas. In the event that reasonable efforts have been made to obtain such approval, but the danger is imminent, approval shall be presumed.
- c) **Air Blast Limit** - Air Blast shall not exceed 134 dB as recorded by any monitor designated by the Regulatory Authority.
- d) **Ground Vibration Limit** - Ground vibration shall not exceed the frequency based PPV limit of 100% of the USBM Z-Curve as recorded by any monitor designated by the Regulatory Authority. See Attachment C.

- e) **Air Particulate Limit** - Air Particulates shall not exceed the lowest permissible limits as identified in any required state or federal permits obtained by the Permit Holder or its blaster. A copy of all such permits shall be filed with the Regulatory Authority upon any new or renewal application for Partial Exemption Permit(s).
- f) **Noise Limit** - Noise shall not exceed 85 dB(A). Noise in excess of 85 dB(A), when monitored at the designated property line or a residence, shall constitute a noise level that is deemed reasonably calculated to disturb the peace and unreasonably offensive to the public. This noise limit does not apply to Air Blast.
- g) **Flyrock control** - Flyrock traveling in the air or along the ground shall not be cast from the Blasting site beyond the area under the control of the operator.
- h) **Voluntary Dispute Resolution Process** - as a condition of the Partial Exemption Permit for any continuing operations permit, the Property Owner shall establish a Voluntary Dispute Resolution Process for a property owner to avail themselves of, outside the confines of this Ordinance, in accordance with Attachment B.
- i) **Educational Materials**- as a condition of the Partial Exemption Permit for any continuing operations permit, the Property Owner shall assist the City in creating an Educational Program to be displayed on a City website, which shall include, at a minimum, video materials generally educating the public on the effects and causative factors of potential damages related to blasting.
- j) **Property Owner Liability** - Any Property Owner who permits or allows Blasting activities on their property in violation of this Ordinance violates this Ordinance and is held jointly and severally responsible for any such civil or criminal penalty, cost or fee, including attorney's fees expended in the pursuit of enforcing this Ordinance.

## **SECTION 6. ADMINISTRATIVE PROVISIONS AND REQUIREMENTS.**

- a) **Third-Party Monitoring** - all Blasting shall be monitored by a third-party industry technical expert selected and retained by the Regulatory Authority, in consultation with the Property Owner, and paid for through reimbursement to the Regulatory Authority by the Property Owner within thirty (30) days of receipt of invoice by the Regulatory Authority, to accumulate data with respect to the seismographic, frequency and Air Blast effects of said Blasting activities. Additionally in order to monitor environmental effects of blasting and surface mining operations with respect to particulate air quality and operational noise, monitor(s) may be utilized, at the discretion of the Regulatory Authority and in accordance with USBM standards, and paid for through the same reimbursement process, at designated locations to take air samples and record noise levels during Permit Holder's operations. Should any easement be required for monitor placement, the third-party shall be required to work jointly with the City in identifying the appropriate location and in obtaining same. Any costs associated with the acquisition of an easement shall be borne by the Property Owner and reimbursed to the Regulatory Agency through the application process.
1. Single event blasting operations, such as pool excavations or basement excavations may be monitored at the discretion of the Regulatory Authority by the third-party consultant. The cost of any such monitoring will be reimbursed to the Regulatory Authority by the Property Owner as a condition of the Partial Exemption Permit.



2. Any Blasting operations taking place beyond single events shall be regularly monitored, and such monitoring shall be performed at a minimum six and a maximum of nine different locations. Additionally, two noise monitors and two air particulate monitors may be utilized at designated locations. While the location of all monitoring devices will remain at the discretion of the Regulatory Authority and be in accordance with USBM standards, the Regulatory Authority, or its designee, will seek to recover, at least on a monthly basis, all data obtained from other than single event monitoring locations.

2.1 A seismographic record including both particle velocity and vibration-frequency levels shall be maintained for each blast.

2.2 Seismographs shall be self-triggering and capable of recording three mutually perpendicular components of ground motion time histories, in terms of velocity. Additionally, the units shall be capable of recording Air Blast levels and reporting the frequency as well as peak values for all vibration time histories.

2.3 Seismographic units shall be calibrated annually to ensure the units are operating within the specifications.

2.4 Air particulate monitor(s) shall be able to sample air on a continuous or intermittent basis and record air particulate size consistent with quarry operational air permitting requirements.

2.5 Noise monitor (s) shall be capable of monitoring and recording on a continuous or intermittent basis any noise level in excess of 85 dB(A).

3. All monitoring data obtained by monitoring devices used to monitor Quarry Operations including Blasting Activities and environmental effects shall be posted for public inspection at City Hall and shall be available for inspection by the public on the City's website.

4. Nothing in this section shall prohibit a Permit Holder or Property Owner from separately utilizing and/or entering into an agreement with the Third-Party Monitor selected by the Regulatory Authority for any other services.

b) **Proof of Insurance** - Permit Holder (or Property Owner) shall have in effect \$10,000,000 of insurance insuring against any loss or damage suffered by a third-party, naming City as additional insured, and shall provide to the Regulatory Authority all information necessary in order to verify insurance and that would allow a person to file a claim. The Regulatory Authority shall make the information available to any person wishing to file a claim.

c) **Annual Fee** - Any Partial Exemption Permit issued shall be automatically suspended for lack of payment of the required fee, or for failure to comply with this section, including without limitation any required payments for third party monitoring pursuant to Section 6. If Permit Holder's Partial Exemption Permit expires, there is no refund of any fee paid and the Permit Holder must re-apply for a new Partial Exemption Permit should they wish to continue or resume blasting activities within the Municipal Limits.

1. Should a Permit Holder be considered to be in non-compliance with this Section, they shall be afforded an opportunity of ten (10) days to cure.

2. Failure to cure under this Section shall cause immediate suspension of the Permit, until same is

cured.

3. Any suspension, hereunder, shall be lifted if the Permit Holder remedies such violation and the Permit will be in effect under its original terms.

d) **Inspection of Records-** as a condition of the Partial Exemption Permit, any Permit Holder shall allow the Regulatory Authority's designees to observe all Blasting activity to ensure compliance with this Ordinance and shall make all business records created within the past year and related to the alleged noncompliance available for inspection to the Regulatory Authority, to the extent necessary to ensure compliance and enforcement of this Ordinance. Any request for records shall be fulfilled within 7 days of request.

## **SECTION 7. ADMINISTRATIVE ENFORCEMENT.**

a) *Generally.* The City may use one or a combination of administrative enforcement efforts prior to and without judicial process to enforce these regulations.

b) *Withholding or Denying Permits and Approvals.* The City may withhold, revoke, or deny all permits, approvals, or other authorizations on any land, building, or structure for which there is an uncorrected violation.

c) *Suspension of Permits.* The City may suspend permits for a period of up to sixty (60) days to allow for the correction of the violation or the judgement of a court of competent jurisdiction.

d) *Stopping Work.* The City may stop work on any site, building, or structure on such property where an uncorrected violation exists. The Mayor or designee shall order the work stopped by notice in writing (referred to as a "stop-work order") served on any persons engaged in the doing or causing such work to be done. The stop-work order shall be posted on the property adjacent to the activity in question, and any such person shall stop work accordingly until authorized by the City to proceed with the work.

e) *Revocation of Permits and Approvals.*

1. *Revocation.* Any permit or approval required under these regulations shall be revoked when it is determined that:

1.1. There is a departure from the approved plans, specifications, limitations, or conditions as required under the permit or approval;

1.2. The permit or approval was procured by false representation;

1.3. The permit or approval was issued in error; or

1.4. There is a violation of any provision of these regulations.

2. *Written Notice.* When revoking a permit, the City shall provide written notice of such revocation to the Permit Holder, stating that the subject violation shall be corrected in no less than ten (10) days.

3. *Effect of Notice.* No Blasting may proceed after service of the revocation notice unless such work is to correct the violation.

## **SECTION 8. SUSPENSIONS AND PENALTIES.**

- a) Failure to provide access and/or inspection of records constitutes a voluntary suspension of any such Partial Exemption Permit effective upon the failure by the Permit Holder until same is cured. Any suspension, hereunder, shall be lifted if the Permit Holder remedies such violation and the Permit will be in effect under its original terms.
- b) Violation of any USBM standard in this Ordinance (numerical PPV or Air Overpressure limit violation) is classified as a Class C misdemeanor and upon conviction shall be punished by a fine of not greater than \$500 per violation.
- c) Violation of any provision of this Ordinance that affects fire safety, or public health and sanitation shall be subject to a fine of not less than \$500 nor more than \$2,000 per violation upon conviction.
- d) Each violation of any USBM standard in this Ordinance (numerical PPV or Air Overpressure limit violation) constitutes a separate violation and each day such a violation occurs is a separate violation.
- e) The remedies provided for in this Ordinance are not exclusive of any other remedies that the City may have under state or federal law. The City may take more than one enforcement action against any violator and enforcement actions may be taken concurrently.

## ATTACHMENT A

### Request for Partial Exemption Permit to Conduct Blasting Instruction Sheet

To be considered for a Partial Exemption Permit to conduct Blasting as defined in City of Double Horn, Code of Ordinances, please prepare a letter addressed to the attention of the Mayor for the City of Double Horn, Texas.

In the letter, please include:

1. The name of the Property Owner;
2. The name of the Applicant, if other than the Property Owner;
3. Written designation of the Applicant/Designee by the Property Owner, granting authority of the Applicant/Designee to act on behalf of the Property Owner;
4. The name of the Applicant/Designee's representative for purposes of the application (if the Applicant/Designee is not a natural person);
5. Copies of any state or federal licenses and permits authorizing the Applicant to possess and use explosives.
6. Complete contact information, including name, address, phone number, facsimile number and e-mail address for the City's use in processing the application. The contact information provided shall be used for all communications in connection with the processing of the application and the operation;
7. A full description of the designee's legal and factual relationship to the property(ies) upon which the Blasting shall be conducted;
8. A detailed description of the operation to be conducted;
9. The period of time the anticipated use shall continue;
10. Any supplemental information requested and deemed pertinent by the Mayor;
11. Any supplemental information the designee deems pertinent prior to City Council consideration;

Also, include with your letter, the attachments identified below:

1. Identify all real property where the activity of Blasting shall be conducted by street address (if any) and legal description. Any property not listed will not be included in any permit, if authorized. If multiple properties are to be considered, and some are not within the City limits, but are within the City's extra-territorial jurisdictional limits, please include each property in the list but designate the property with the comment: "ETJ Property".
2. A plan view drawing completed under seal by a licensed professional surveyor or civil engineer to appropriate scale, showing all properties listed for inclusion into the Partial Exemption Permit for Blasting.

3. If you are not the owner of the real property, a letter from the Owner executed before a notary, that they are the owner of the property and authorize the Permit Holder to act on their behalf in relation to blasting activities on the property.
4. Documentation and facts demonstrating that the Requestor's Blasting operation is going to be conducted in a manner that minimizes its related adverse impact on surrounding properties through compliance with the Ordinance. Please specifically list all steps taken, such as distance limitations related to adjacent properties, use of berms and any dust and noise remediation efforts, etc.
5. Documentation and facts demonstrating efforts by designee to protect and mitigate the perceived negative adverse effects such activity has on real property values, public safety, health and welfare interests, including the quality of life within the City, neighboring properties and the public.
6. Payment of the appropriate application fee, including any related City fees for monitoring blasting for each permitted Partial Exemption Permit site.

All applications for Partial Exemption Permit to conduct Blasting activities shall be submitted for review to the Mayor, who shall review such application to determine whether the request is complete. If incomplete, the City shall inform the designee what aspects of the application are insufficient and will provide the designee seven (7) business days to supplement and/or modify the application to permit it to be placed for City Council consideration as a completed application. Typically, it will take approximately sixty (60) days for review.

If the application meets all criteria provided by the ordinance as determined by the City, or by subsequent supplementation as provided in the determination of the City, the permit request shall be scheduled for City Council action as provided below for complete applications. Any application considered incomplete shall not be considered for approval by City Council. Any application that remains incomplete for a period of more than 60 days shall be considered withdrawn. Application fees in such event shall not be refunded.

If the request is found complete, the Mayor shall place the matter on the next regular City Council meeting agenda for action (but may include it on an agenda for a specially called meeting at his/her discretion). If the City Council approves the permit, the Mayor shall issue a Partial Exemption Permit to the Applicant, which is not transferable or assignable and is subject to suspension under the terms of the Ordinance.

## **Attachment B**

### **Citizen Blasting Complaints - Alternative Dispute Resolution**

For citizen complaints regarding blasting under a continuous blasting permit issued pursuant to the City's Code of Ordinances, there shall be available a voluntary Alternative Dispute Resolution Process ("ADR") which shall be administered by the Property Owner.

Unless otherwise agreed by the Property Owner the claim will be limited to physical property damage not to exceed \$10,000.00. The ADR will be non-binding.

Complainants must be an owner of the property affected and the property must be within the city limits of the City of Double Horn. The Complainant must agree that as a participant in the ADR process that this process is governed by and they will be bound by the confidentiality provisions of the Texas Civil Practice and Remedies Code § 154.073.

#### **Initiation of a claim**

Complainants will initiate a claim by submitting a claim form using a "user friendly" on-line process. In the claim form, the Complainant will describe the alleged damage, when it occurred, and the amount they are seeking as compensation. No interest or attorneys' fees may be awarded.

#### **Pre-ADR Process**

Once a claim is submitted, Property Owner will meet with the Complainant at his or her property to inspect and discuss the alleged damage and amount of compensation sought.

If requested by the Complainant, and determined to be warranted by the Property Owner, an industry technical expert shall prepare a Damage Claim Assessment for the incident.

If the Complainant is not satisfied with the proposed resolution by the Property Owner in the Pre-ADR, the Complainant can request a hearing.

#### **Requirements for a Hearing**

If the Complainant requests a hearing, they can present their claim to a panel of three independent industry technical experts ("Panel") jointly selected by the City and the Property Owner. The Panel will meet quarterly to hear qualified complaints.

A complaint shall qualify for a hearing only if the Panel determines that on its face, the complaint meets the minimum scientific requirements for a violation. This determination shall be made within 15 days of request of the hearing.

All costs of the ADR Process, including those of the hearing itself, any preliminary reviews, and the costs of the industry technical experts as selected by the Property Owner in relation thereto, shall be borne by Property Owner but in no event to exceed \$2,000.00 per hearing.

The following are the scientific requirements that must be met by the Complainant in order to qualify for a hearing, based on the category of the complaint:

- **For a Distance Complaint:** The complaint must be based on a blast that occurs closer than 500 feet from the nearest adjacent property line on the subject property from the nearest adjacent property line.
- **For a Timing Complaint:** The complaint must be based on a blast that occurs on a Saturday, Sunday, or legal holiday, or outside the hours of 9:00 a.m. and 4:30 p.m. Monday through Friday (unless the blast has been approved to take place outside these timeframes under the public safety exception by the Mayor of the City).
- **For an Air Blast Complaint:** The complaint must be based on a blast that exceeds 134 dB as recorded by any monitor designated by the City.
- **For a Ground Vibration Complaint:** The complaint must be based on a blast that exceeds the frequency based PPV limit of the USBM Z Curve as recorded by any monitor designated by the City.
- **For an Air Particulate Limit Complaint:** The complaint must be based on a blast that exceeds the lowest permissible limits as identified in any required state or federal permits for this site obtained by Property Owner.
- **For a Noise Limit Complaint:** The complaint must be based on a blast that exceeds 85 dB(A) as recorded by any monitor designated by the City at the designated property line or a residence (this noise limit does not apply to Air Blast complaints).
- **For a Flyrock Complaint:** The complaint must be based on a blast for which there is evidence that flyrock was cast from the blasting site beyond the area under control of the Property Owner or, if so designated, the Permit Holder.

If the Panel determines that a hearing is *not* warranted, the complaint shall be forwarded directly to the Property Owner for independent resolution with the Complainant. At any time after the request for a hearing is denied, the Complainant is free to take any other action they see fit.

If the Panel determines that a hearing *is* warranted, a hearing will be scheduled within 30 days of the filing of the complaint.

At any time prior to the hearing, Property Owner can choose not to contest the complaint and can settle the claim with the Complainant.

### **Hearing Procedure**

At the hearing, the Panel will hear the Complainant's claim and any rebuttal evidence presented by the Property Owner. *The burden of proof is on the Complainant to prove that the blasting caused the claimed damage.* The Complainant must prove by a "preponderance of the evidence" (i.e., more than 50%), that the blasting caused the alleged damage.

Before the hearing, the Property Owner will provide monitoring data to the Complainant and the Panel for all blasts around the time the alleged damage occurred.

The Panel will use the monitoring data and science based on USBM standards to determine by a

"preponderance of the evidence" whether the evidence points to blasting having caused the claimed damage. If the Panel finds that the blast caused the damage, the Panel will also determine the amount of the damage claim. The Panel shall have the authority to award damages in an amount not to exceed \$10,000. The Panel will prepare a written decision within 30 days of the completion of the hearing and will provide a copy to the Complainant and the Property Owner.

**Order of Hearing:**

At the hearing, both the Complainant and the Property Owner will have the opportunity to present evidence regarding the complaint to the Panel. The Panel will have the opportunity to review such evidence in making its determination. With this in mind, written evidence is the preferred method of presentation.

The following describes the order of the hearing:

1. Complainant will be afforded ten (10) minutes for Opening Remarks.
2. Property Owner or, if so designated, the Permit Holder will be afforded ten (10) minutes for Opening Remarks.
3. Complainant will be afforded twenty (20) minutes to present its evidence to the Panel. If such evidence is in writing, such evidence should consist of all proof of damages and any evidence in the form of causation connecting such damage to a specific blast(s). If such documentation is in the form of witness testimony, it should be in the form a sworn notarized statement. \*
4. Property Owner will be afforded twenty (20) minutes to present its evidence to the Panel refuting any claim of Complainant. If such documentation is in the form of witness testimony, it should be in the form a sworn notarized statement. \*

\* Although written evidence is the preferred method, testimonial evidence may be taken by the Panel at the sole discretion of the Panel upon a finding of good cause. If such a determination is made, the Presiding Officer of the Panel (determined by the Panel at the start of the hearing) shall have the authority to administer oaths, and testimony hereunder shall be sworn.

5. Complainant will have five (5) minutes to refute any testimony brought by Property Owner.
6. Complainant will have five (5) minutes for Closing Remarks.
7. Property Owner will have five (5) minutes for Closing Remarks.
8. Complainant will have one (1) additional minute to refute Property Owner's Closing Remarks.
9. The Panel will close the Hearing.
10. The Panel will make a determination whether or not there is a need to go into closed session to discuss any matter presented.
11. The Panel will make one of the following determinations:
  - a. A finding of causation and grant the full amount of damages claimed by the Complainant;
  - b. A finding of causation and grant a lesser amount of damages claimed by the Complainant;

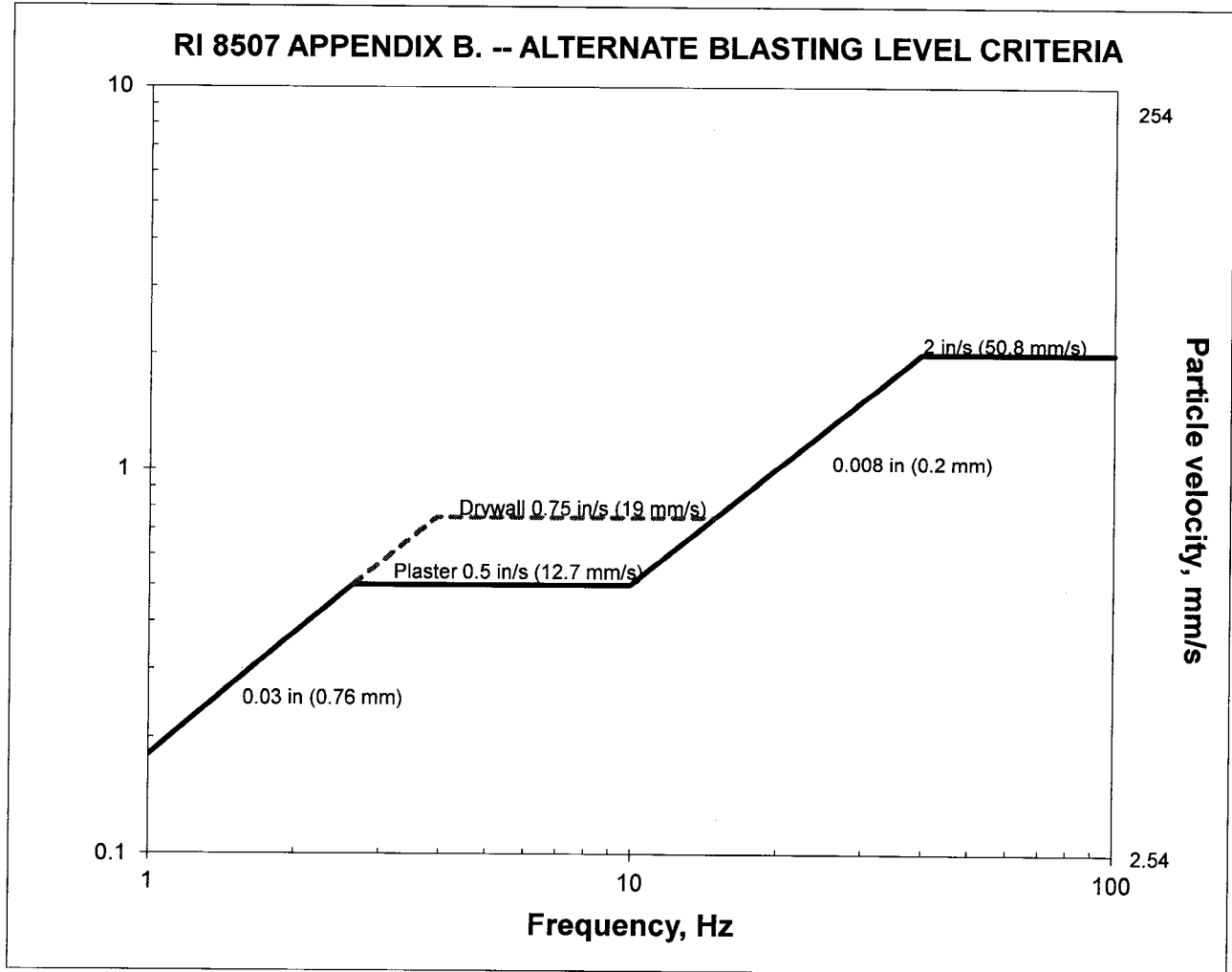


- c. A finding of no causation and grant no damages to the Complainant.

## Attachment C

### Ground Vibration

Safe levels of Blasting Vibration  
(Figure B-1, Page 73, US Bureau of Mines RI 8507)



#### Notes:

1. Vibration levels measured at the Seismographs installed at the Residential Structures in accordance with USBM requirements.
2. Most if not all the structures within the City of Double Horn are newer construction "Drywall" structures, therefore the Broken line applies.