

HOME RULE RESOLUTION HR-23-11-3

**A HOME RULE RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS
OF DOUGLAS COUNTY, KANSAS AMENDING CHAPTER 6, ARTICLE 1 OF
DOUGLAS COUNTY CODE REGULATING OPEN BURNING
FOR THE UNINCORPORATED AREAS OF DOUGLAS COUNTY, KANSAS**

WHEREAS, the Board of County Commissioners deem it necessary to establish criteria dealing with open burning within the unincorporated areas of Douglas County, Kansas and modify the regulations for open burning in the unincorporated areas of Douglas County, Kansas.

WHEREAS, the governing body deems it in the best interest of the public safety and the economy of the agriculture community that open burning should be regulated within the unincorporated areas of Douglas County, Kansas.

WHEREAS, recent changes in the overall makeup of certain portions of Douglas County, Kansas have created the need for diverse regulations and procedures to provide adequate fire protection for all. Portions of Douglas County, which were once mainly agricultural areas, now have become populated areas with numerous residential structures interfaced with farm and other agricultural property. With the increased population in these areas, uncontrolled and unregulated open burning poses an unreasonable threat to public safety. It is also acknowledged that some large portions of Douglas County, Kansas remain mainly agricultural areas and that open burning of grass and pasture is an important function in maintaining these areas. Without provisions for the open burning of pastureland, economic hardships could be imposed upon these property owners.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS, SITTING IN REGULAR SESSION AND INTENDING TO EXERCISE OF THE POWERS OF HOME RULE LEGISLATION PURSUANT TO K.S.A. 19-101a, DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. Adoption of Regulations on Open Burning. The Douglas County Code is hereby amended by enacting a new Chapter 6 (Fire Safety), Article 1 (Open Burning) which reads as follows:

CHAPTER 6. FIRE SAFETY

ARTICLE 1 OPEN BURNING

6-101 DEFINITIONS. As used in this Article:

- a) Open Burning means the burning of unwanted materials such as paper, trees, brush, leaves, grass, and other debris, where smoke and other emissions are released directly into the air without passing through a chimney or a stack. Open burning also includes incineration devices that do not control the combustion of air to maintain an adequate temperature and do not provide sufficient time for complete combustion.

6-102 OPEN BURNING ONLY ALLOWED IN LIMITED SITUATIONS. No person shall conduct, cause, or permit any open burning in the unincorporated areas of Douglas County except as allowed by the regulations, conditions, and limitations set forth in this Article. Allowed open burning is limited to the following:

- a) Agricultural open burning. The open burning of vegetation such as grass, woody species, crop residue, and other dry plant growth for the purpose of crop, range, pasture, wildlife, or watershed management (this includes the burning of routine brush piles accumulated from the property); provided, however, the open burning of brush, limbs, and other materials brought from offsite shall not be allowed under this Section.
- b) Residential open burning. Open burning on a residential parcel of nonhazardous household waste generated at the parcel (unless otherwise prohibited) including trees, brush, and yard waste. Prohibited materials for residential open burning include those materials set forth in K.A.R. 28-19-647(e)(2).
- c) Recreational open burning.
 - 1) Open burning for cooking, warming or ceremonial purposes on public or private land regularly used for recreational purposes; provided, however, any fire exceeding five (5) feet in diameter at its base requires notification as described in Section 6-103.
 - 2) Burning within a self-contained outdoor burning device designed for cooking or heating (barbecue grill or pit, camp stove, fire pit, etc.).
- d) Specifically approved open burning conducted in accordance with a burn permit granted pursuant to Section 6-108.
- e) KDHE approved open burning: Open burning in accordance with an application for approval granted by the Kansas Department of Health and Environment (KDHE) pursuant to K.A.R. 28-19-647 and approved by the fire control authority having jurisdiction over the area. Approval may be granted when there is no other practical means of disposal, it is in the public's interest, and it is not prohibited by the local government or local fire authority. These activities include the following:

- 1) Use of safety flares to dispose of flammable liquids and gasses;
- 2) Firefighter training (contact KDHE for additional specific requirements);
- 3) Fires to remove dangerous or hazardous materials;
- 4) Open burning of trees and brush not related to agricultural purposes, such as clearing land for development;
- 5) Open burning of only clean wood waste from construction projects carried out at the construction site (does not include engineered wood product wastes such as plywood and pressed-wood products, pressure-treated wood lumber, and painted or stained wood wastes).

6-103 OPEN BURNING REGULATIONS. Persons conducting open burning, as allowed in Section 6-102 (b), (d), and (e), shall comply with the following requirements and regulations:

- a) Prior to starting any burn, persons conducting any open burning shall make appropriate notification of such intention to burn as described in County Policy to include the following information:
 - 1) Location of the intended burn and the name, address, and telephone number of the person responsible for the open burning;
 - 2) Duration and schedule of the burning;
 - 3) Description of the proposed open burning to include, but not be limited to, size/acreage of the burn, material to be burned and reason for the burn; and
 - 4) Agreement to comply with the stated conditions for open burning within this Section.
- b) All open burning shall be conducted in accordance with the KDHE rules and regulations for Open Burning, K.A.R. 28-19-645 *et seq.*
- c) Nothing in this Article shall relieve any property owner or other responsible parties from the obligations of obtaining proper approvals from KDHE.
- d) A person shall not conduct an open burn that creates a traffic safety hazard. If conditions exist that may result in smoke blowing toward a public roadway, the person conducting the burn shall give adequate notification to the Highway Patrol, Sheriff's Office, or other appropriate state or local traffic control authorities before burning.
- e) A person shall not conduct an open burn that creates an airport safety hazard. If smoke may affect visibility at an airport, the person conducting the burn shall give adequate notification to the appropriate airport authorities before burning.

- f) The person conducting the burn shall ensure that the burning is supervised by a person over the age of 18 until the fire is extinguished.
- g) The person conducting the burning shall stockpile the material to be burned, dry it to the extent possible before it is burned, and assure that it is free of matter that will inhibit good combustion.
- h) A person shall not burn heavy smoke-producing materials including rubber tires, plastics, roofing, tar paper, old furniture, cloth or any petroleum base product nor trash that contains foam, chemically treated wood, electronics, chemicals, or hazardous materials.
- i) A person shall not initiate burning during the nighttime, which for the purposes of this resolution is defined as the period from two (2) hours before sunset until one (1) hour after sunrise (except agriculture and other specifically approved open burning). A person shall not add material to a fire after two (2) hours before sunset.
- j) A person shall not burn within 1,000 feet of any occupied dwelling unless the occupant of that dwelling has been notified before the burn.

6-104 AGRICULTURAL OPEN BURNING REGULATIONS. Persons conducting agricultural open burning, as allowed in Section 6-102 (a), must be in compliance with K.A.R. 28-19-648 (Agricultural Open Burning) and shall comply with the following requirements and regulations:

- a) Prior to starting any burn, persons conducting any open burning shall make appropriate notification of such intention to burn as described in County Policy to include the following information:
 - 1) Location of the intended burn and the name, address, and telephone number of the person responsible for the open burning;
 - 2) Duration and schedule of the burning;
 - 3) Description of the proposed open burning to include, but not be limited to, size/acreage of the burn, material to be burned and reason for the burn; and
 - 4) Agreement to comply with the stated conditions for open burning within this Section.
- b) A person shall not conduct a burn that creates a traffic safety hazard. If conditions exist that may result in smoke blowing toward a public roadway, the person conducting the burn shall give adequate notification to the highway patrol, Sheriff's Office or other appropriate state or local traffic control authorities before burning;

- c) A person shall not conduct a burn that creates an airport safety hazard. If smoke may affect visibility at an airport, the person conducting the burn shall give adequate notification to the appropriate airport authorities before burning; and
- d) The person conducting the burn shall ensure that the burning is supervised by a person over the age of 18 until the fire is extinguished.

6-105 PROHIBITIONS ON OPEN BURNING

- a) Open burning is prohibited during a Red Flag Warning.
- b) Open burning may be prohibited when a local determination is made by the County Administrator or his/her designee that a threat to the area exists or due to any other variables that could affect fire burning. These variables include, but are not limited to:
 - 1) Local jurisdictional authority;
 - 2) Resource limitations; and
 - 3) Local conditions of dryness.
- c) Open burning is prohibited on those days when a local or state governmental entity has imposed a county-wide or state-wide burning ban that includes the proposed burn location as set forth in Section 6-106 or other applicable law.
- d) The Officer in Charge or his/her designee of any fire service agency shall have the authority to deny any person permission to conduct open burning within their fire protection jurisdiction based upon the current or expected weather conditions, the availability of fire suppression and support resources, or other conditions which may create an unreasonable risk to the public's safety.

6-106 DECLARATION OF EMERGENCY.

- a) As provided in K.S.A. 48-932, the Chair of the Board of County Commissioners (BOCC) may declare that, due to low moisture conditions, or other relevant conditions, an emergency exists and that the open burning ban provided for in Section 6-105 shall take effect and be in force for periods not in excess of seven (7) days at a time. Such restrictions shall take effect and be in force twenty-four (24) hours after the filing thereof with the Douglas County Clerk.
- b) As an alternative to the procedure contained in subsection (a) of this Section, a majority of the BOCC may declare by ordinary motion that, due to low moisture conditions, or other relevant conditions, an emergency exists and that the open burning ban provided for in Section 6-105 shall take effect and be in force for periods not in excess of seven (7) days at a time. Such restrictions shall take effect and be in force twenty-four (24) hours after the filing thereof with the Douglas County Clerk.

6-107 OPEN BURNING PROHIBITIONS DURING A BURN BAN. During a burn ban imposed in accordance with Section 6-105 or an emergency declared in accordance with Section 6-106, the open burning ban includes, but is not limited to, any open burning except:

- a) Recreational open burning as described in Section 6-102 (c);
- b) Open burning conducted in accordance with a burn permit granted pursuant to Section 6-108.

6-108 BURN PERMITS.

- a) A permit allowing any governmental authority or an owner or operator of any business to burn despite a burning ban under Section 6-105 or a burning ban under Section 6-106 may be granted by the BOCC upon the filing of an application therefore by the governmental authority or owner or operator of any business in Douglas County if the BOCC finds the following conditions are satisfied:
 - 1) The burning of trash, debris, or waste by the governmental authority or business is necessary and in the public interest;
 - 2) Such burning will be carried out at a location, at such a time, and in a manner that does not pose an unreasonable risk to neighboring property and the public health, safety and welfare;
 - 3) The business or governmental authority presents evidence of insurance determined by the BOCC to be adequate to insure against loss of life, other personal injury, or damage to any property occurring on or off the business premises that results either directly or indirectly from such burning operation;
 - 4) The business or governmental authority is in compliance with all other laws, rules or regulations of Douglas County at the time the permit is granted; and
 - 5) The proposed burn complies with all other applicable laws, rules or regulations, including but not limited to permits and other requirements of Kansas agencies.
- b) Any permit granted by the BOCC in accordance with this Section shall be subject to revocation at any time by a majority vote of the BOCC if the BOCC determines that the owner or operator is not conducting the burn in accordance with the conditions of the permit or if one or more of the findings made in accordance with subsection (a) of this Section are no longer applicable.
- c) The BOCC may impose such conditions upon the approval of a permit as it deems appropriate under the circumstances.
- d) Any burn pursuant to a permit must be conducted in compliance with all conditions that the BOCC may place upon the burn.

- e) The person conducting the burn pursuant to a permit must be in possession of the permit issued under the authority of the BOCC pursuant to this Section and shall present the permit to any law enforcement officer, representative of the jurisdictional fire department, or any Douglas County employee upon request.

6-109 PRESUMPTION. In assessing a criminal penalty or civil fine for any violation or failure to comply with any provision of this Article, it shall be considered *prima facie* evidence that the person owning, occupying, or controlling any property upon which open burning is conducted voluntarily caused or permitted such burning to occur.

6-110 INTERPRETATION AND SEVERABILITY. This Article is supplementary to other provisions or remedies authorized or prescribed by any other applicable law or rule or regulation enacted thereunder. The invalidity of any particular provisions of this Article shall not affect the validity of any other provision. This Article shall be liberally construed to the fullest extent permitted by law to effectuate the broad remedial purposes for which it is intended.

6-111 ENFORCEMENT AND PENALTIES.

- a) General Violation. Except as provided in subsection (b) of this Section, a person who violates or fails to comply with any provisions of this Article or engages in conduct in violation of this Article shall be guilty of a Class C misdemeanor.
- b) Violation of a Burn Ban. A person who knowingly violates or fails to comply with a county or state-wide burn ban shall be guilty of a Class A misdemeanor.
- c) Initiation of Criminal Proceedings. In addition to any other method of initiating a criminal proceeding under applicable law, any law enforcement officer or fire official of a governmental entity may initiate a criminal proceeding under this Article by forwarding the appropriate documentation to the district attorney for prosecution.

SECTION 2. Repeal of Prior Provisions. CHAPTER 6, ARTICLE 1. OUTDOOR BURNING as existing in the County Code before adoption of this Resolution, is hereby repealed and replaced with the Sections set forth above.

SECTION 3: The County Administrator or his/her designee will establish and maintain Douglas County open burning policies and procedures in accordance with this Home Rule Resolution.

SECTION 4. Effective Date. This is a Home Rule Resolution and shall take effect and be in force from and after its publication two (2) times in the official county newspaper.

PASSED, APPROVED and ADOPTED by the Board of Douglas County Commissioners of Douglas County, Kansas on this 29th day of November, 2023.

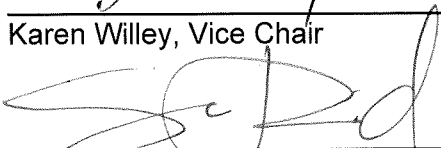
BOARD OF COUNTY COMMISSIONERS
OF DOUGLAS COUNTY, KANSAS:



Patrick Kelly, Chair




Karen Willey, Vice Chair



Shannon Reid, Member

ATTEST:



Jameson D. Shaw, County Clerk