

HOME RULE RESOLUTION 17-3-1

A HOME RULE RESOLUTION 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 or 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 citizens. 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 the 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 following is adopted as part of Chapter 6 (Fire Safety), Article 1 (Outdoor Burning) of the Douglas County Code:

DEFINITION, for the purpose of this resolution open burning shall be defined as 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 air to maintain an adequate temperature and do not provide sufficient residence time for complete combustion. Open burning pollutes the air and poses a fire hazard. The air pollution created by open burning can irritate eyes and lungs, obscure visibility, soil nearby surfaces, create annoying odors, and are a danger to those with respiratory conditions.

CHAPTER 6. FIRE SAFETY

ARTICLE 1 OUTDOOR BURNING

1. Persons conducting any outdoor open burning regulations, shall notify the Douglas County Emergency Communication Center or Jurisdictional Fire Department of such intention to burn prior to the burn and provide the following information and agree to the stated conditions:

- (a) Location of the intended burn and the name, address, and telephone number of the person responsible for the open burning.
 - (b) Duration and schedule of the burning.
 - (c) Description of the proposed open burning.
2. All outdoor burning shall be conducted in accordance with the Kansas Department of Health and Environment rules and regulations for Open Burning (K.A.R. 28-19-645 thru K.A.R. 28-19-648). For the purpose of these regulations "Agricultural 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 shall be exempt from the prohibition on the open burning of any materials imposed by K.A.R. 28-19-645, provided they follow all other conditions.
3. Nothing in this resolution shall relieve any property owner or other responsible parties from the obligations of obtaining the proper permit from the Kansas Department of Health and Environment.
4. 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.
- 6-101. OPEN BURNING ONLY ALLOWED IN LIMITED SITUATIONS. No person shall conduct 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, brush, limbs, and other materials brought from offsite shall not be burned.
 - (b) Residential open burning. Open burning at a residential premise containing five or less dwelling units and incidental to the normal habitation of the units.
 - (c) Ceremonial and cooking open burning. Open burning for cooking or ceremonial purposes on public or private land regularly used for recreational purposes. A ceremonial and cooking open burning fire shall not exceed five feet in diameter at its base. Ceremonial and cooking open burning fires that exceed this limitation require a permit granted pursuant to Section 6-107.
 - (d) Construction open burning. Open burning of clean wood from construction projects carried on at the construction site; provided, however, materials other than wood or materials brought from offsite shall not be burned.
 - (e) Specifically approved open burning. Open burning in accordance with a permit granted pursuant to Section 6-107.

6-102. OPEN BURNING REGULATIONS. Persons conducting open burning, as allowed in Section 6-101, shall comply with the following regulations:

- (a) 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.
- (b) 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.
- (c) The person conducting the burn shall ensure that the burning is supervised until the fire is extinguished.
- (d) The person conducting the burn shall notify Douglas County Communications Center or the local fire control authority with jurisdiction over the area before the burning begins.

6-103. OPEN BURNING PROHIBITED.

- (a) Notwithstanding any other provision in this Article, open burning is only allowed during a Low, Moderate, or High Rangeland Fire Index.
- (b) Open burning is prohibited during Very High, Extreme or Red Flag categories of the Rangeland Fire Index.
- (c) 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. Rangeland Fire Index is High, but the forecast is for sustained winds of greater than 15mph.
 - 3. Rangeland Fire Index is Low or Moderate, but the forecast is for sustained winds greater than 20mph.
 - 4. Resource limitations
 - 5. Local conditions of dryness
- (d) 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 6-104 or other applicable law.

6-104 DECLARATION OF EMERGENCY.

- (a) As provided in K.S.A. 48-932, the Chair of the Board may declare that, due to low moisture conditions, or other relevant conditions, an emergency exists and that the outdoor burning ban provided for in Section 6-103 shall take effect and be in

force for periods not in excess of seven days at a time. Such restrictions shall take effect and be in force 24 hours after the filing thereof with the Douglas County Clerk.

- (b) As an alternative to the procedure contained in paragraph (a) of this Section, a majority of the Board may declare by ordinary motion that, due to low moisture conditions, or other relevant conditions, an emergency exists and that the outdoor burning ban provided for in Section 6-103 shall be in force for such time period as determined appropriate by the Board. Such restrictions shall take effect and be in force 24 hours after the filing thereof with the Douglas County Clerk.

6-105 OUTDOOR BURNING PROHIBITIONS DURING BURN BANS. Except as provided in Section 6-106, during periods of an outdoor burning ban in accordance with Section 6-103 and an emergency declared in accordance with Section 6-104, the outdoor burning ban includes, but is not limited to the following

- (a) The careless use and disposal of smoking materials, including, but not limited to, cigarettes, cigars and pipes. All smoldering remains shall be discarded in inflammable containers and in a manner to reduce the potential for fires.
- (b) Building, maintaining, attending or using any open fire or campfire, except in permanent stoves or fireplaces or in barbecue grills in developed recreational sites or on residential home sites.
- (c) Burning of all fence rows, fields, wild lands, ravines, trash, debris or other areas or materials. Such burning may be exempted from these restrictions when it is necessary for crop survival and has been specifically approved in writing by both the Douglas County Sheriff's Office and the fire chief of the jurisdiction in which the burning is to take place. Crop survival means the burning of stubble in preparation for the planting of a crop.

6-106. BURN PERMITS.

- (a) A permit allowing an owner or operator to burn despite a burning ban under Section 6-104 or a burning ban under Section 6-105 may be granted by the Board of County Commissioners upon the filing of an application therefore by the owner or operator of any business or governmental authority in Douglas County, if the Board of County Commissioners finds the following conditions are satisfied:
 1. The burning of trash, debris, or waste that is a byproduct of the operation of the business or governmental operations is a business or governmental necessity.
 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 Board 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.
 5. The proposed burn complies with all other applicable laws, rules or regulations, including but not limited to permit and other requirements of Kansas agencies.
- (b) Any permit granted by the Board of County Commissioners in accordance with this Section shall be subject to revocation at any time by a majority vote of the Board of County Commissioners if the Board of County Commissioners 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 Board of County Commissioners 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 Board of County Commissioners may place upon the burn.
- (e) The person conducting the burn pursuant to a permit must to be in possession of the permit issued under the authority of the Board of County Commissioners pursuant to
- (f) 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- 107 PRESUMPTION. In levying 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.

6-108 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.

6-109 ENFORCEMENT AND PENALTIES.

- (a) Illegal Open Burning. Except as specifically permitted and in compliance with the terms and conditions in this Article, it shall be unlawful for any person to cause or permit any open burning of any wastes, structures, vegetation, or any other materials in the unincorporated areas of Douglas County.

- (b) General Violation. Any 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.
- (c) Violation of a Burn Ban. A person conducting or responsible for a knowing and willful open burn in violation of a county or state-wide burn ban shall be guilty of a Class A misdemeanor in accordance with K.S.A. 48-939.
- (d) 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 making an offense report and forwarding a copy to the district attorney for prosecution or by serving a citation and notice to appear in court upon the alleged violator.

SECTION 2. Repeal of Prior Provisions. CHAPTER 6, ARTICLE 1. OUTDOOR BURNING, Sections 6-101, 6-102, 6-103, and 6-104, as existing in the County Code before adoption of this Resolution, are hereby repealed. These sections are renumbered and amended as set forth above.

SECTION 3. Effective Date. This is a Home Rule Resolution and shall take effect and be in force from and after its publication once 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 March 2017.

BOARD OF COUNTY COMMISSIONERS
OF DOUGLAS COUNTY, KANSAS:

Mike Gaughan, Chair

Nancy Thellman, Member

Michelle Derusseau, Member

ATTEST:

Jameson D. Shew, County Clerk