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HR File
CODIFIED

HOME RULE RESOLUTION NO. HR-99- 3

WHEREAS, grassland and cropland are important to the Shawnee County and Kansas economies and protect watersheds, provide forage for livestock, refuge for wildlife and recreational opportunities; and

WHEREAS, open fires endanger air quality, grassland and cropland, real and personal property and the lives of residents and visitors in these areas; and

WHEREAS, dry and windy weather conditions and above normal temperatures combined with open fires initiated without first consulting local fire officials or departments, sometimes create fire hazards in the County; and

WHEREAS, once started, open fires often are difficult to control and strain both paid and volunteer fire district or department resources in the County and surrounding areas; and

WHEREAS, the damage caused by open fires that burn out of control can be minimized by requiring the public to obtain written permits prior to initiating such fires, and Shawnee County is desirous of implementing procedures for requiring such permits;

NOW, THEREFORE, the Board of County Commissioners of the County of Shawnee, Kansas, meeting in regular session on this 6th day of May, 1999, and intending to exercise its power of home rule pursuant to K.S.A. 19-101a, does hereby resolve as follows:

I. PROHIBITIONS

It shall be unlawful, and a violation of this resolution, for any person to:

- (a) cause or permit the open burning of any wastes, structures, vegetation, or any other materials on any premises within the unincorporated areas of Shawnee County, Kansas except as authorized by this resolution;
- (b) cause or permit open burning or agricultural burning without a permit;
- (c) refuse or neglect to comply with the conditions or limitations on or in any duly issued burning permit;
- (d) refuse or neglect to keep and maintain records required by this resolution;
- (e) refuse or neglect to make a burning permit or records required to be kept by this resolution available for inspection to the fire chief, the fire chief's designated representative or any law enforcement officer upon request;
- (f) impede, obstruct or hinder, or to otherwise prevent or attempt to prevent, any fire chief or firefighter in the performance of duties in connection with the administration and enforcement of this resolution; and
- (g) violate the terms and conditions of a burning ban issued by the Governor or the Board of Shawnee County Commissioners.

As used in this resolution "open burning" means setting, starting, igniting, maintaining, spreading, fueling or failing to extinguish an open fire. An "open fire" is any outdoor fire other than a small fire in a non-combustible container, the primary purpose of which is to cook food, such as, but not limited to, barbecue grills.

II. EXCEPTIONS TO PROHIBITIONS ON OPEN BURNING

- (a) The following open burning operations shall be exempt from the prohibition on open burning:
 - (1) open burning carried out on a residential premise containing five or less dwelling units and incidental to the normal habitation of the dwelling units, unless prohibited by any local authority with jurisdiction over the premises;
 - (2) open burning for cooking or ceremonial purposes, on public or private lands regularly used for recreational purposes;
 - (3) open burning for the purpose of crop, range, pasture, wildlife or watershed management in accordance with this resolution; or
 - (4) open burning approved by the fire department having jurisdiction pursuant to paragraph (b).
- (b) A person may conduct an open burning operation that is not otherwise exempt from the prohibition imposed by this resolution if the fire chief or the fire chief's designee finds that the open burning is:
 - (1) necessary, which in the case of burning for the purpose of disposal of any materials, shall mean that there is no other practical means of disposal;
 - (2) in the public interest; and
 - (3) not prohibited by state law or regulations.
- (c) Open burning operations for which an approval is required but which are deemed to be necessary and in the public interest include the following:
 - (1) the use of safety flares for disposal of flammable gases;
 - (2) fires related to the training of government or industrial personnel in fire fighting procedures;
 - (3) fires set for the removal of dangerous or hazardous liquid materials;
 - (4) open burning of trees and brush from non-agricultural land clearing operations; and
 - (5) open burning of clean wood waste from construction projects carried out at the construction site.

III. PRIMA FACIE EVIDENCE

It shall be prima facie evidence that the person who owns or controls property on which open burning has occurred has caused or permitted the open burning.

IV. FIRE DEPARTMENT FEE FOR SERVICES

- (a) A fee for services may be assessed on any landowner as provided in subsection (b), whenever a fire department responds to investigate or extinguish a fire which has been set, started, ignited, caused, maintained, conducted or spread in violation of this resolution, K.S.A. 65-3010 or K.A.R. 28-19-647, and amendments thereto. As used in this resolution "fee for services" means the reasonable costs or expenses associated with the apparatus, equipment, material and personnel activated, summoned or responding to investigate or extinguish the fire.
- (b) A fire chief or a duly authorized representative of a fire chief of a responding fire department, upon a finding that a landowner, or any employee or agent thereof or any person or entity under such landowner's direction and control has violated any of the provisions of this resolution, K.S.A. 65-3010 or K.A.R. 28-19-647, or amendments thereto, may assess a fee for services as provided in this resolution upon such landowner. In determining the amount assessed, such official shall consider the person's prior violations of prohibitions against burning, whether the violation was committed knowingly, intentionally or recklessly, and other aggravating or mitigating factors which bear upon the seriousness of the offense.
- (c) No fee for services shall be imposed pursuant to this resolution except upon the written invoice of the fire chief or the duly authorized representative of the fire chief to the landowner against whom the fee for services is to be assessed. Such written invoice shall be served upon the landowner either personally or by certified mail, return receipt requested, and shall state the violation, the fee for services assessed and the right of the landowner to appeal to the governing body of the fire department. Where the invoice is mailed, service is complete upon mailing.
- (d) Any landowner, within twenty (20) calendar days after service, may make written request to the governing body of the fire department for a hearing. Where the invoice was mailed, the landowner shall have an additional three (3) calendar days to make a written request for a hearing. The governing body of the fire department may affirm, reverse or modify the invoice of the fire chief or the authorized representative of the fire chief assessing a fee for services pursuant to this resolution. In so doing the governing body shall specify the reasons for its actions in writing and shall promptly notify the landowner in person or by certified mail, return receipt requested, of its decision.
- (e) Any fee for services paid or recovered pursuant to the provisions of this resolution shall be remitted to the treasurer of the governing body of the fire department or fire district involved.

V. UNPAID FEES FOR SERVICES

- (a) The unpaid balance of any fee for services not paid within thirty (30) days after an invoice has been served or, where a hearing has been requested, within thirty (30) days after the governing body has notified the landowner of its decision shall be deemed delinquent and shall draw interest at a rate prescribed for delinquent taxes pursuant to K.S.A. 79-2968, as amended.
- (b) In a case where a fee for services invoice remains unpaid by December 31 of each year, the governing body of the fire department shall immediately notify the landowner against whom the fee for services was assessed in writing by certified mail, return receipt requested, that if the fee for services is not paid within thirty (30) days from the date of such notice of the amount remaining unpaid and any interest thereon shall be added to the fee for services amount and the total amount thereof shall become a lien upon the property upon which the violation occurred. A copy of the notice to the landowner, together with proof of notification, shall at the same time be filed with the register of deeds and the county clerk and if such amount is not paid within the next thirty (30) days, the county clerk shall spread the amount of such statement upon the tax roll prepared by the clerk and such amount shall become a lien against the entire contiguous tract of land upon which the violation occurred and shall be collected as other taxes are collected.
- (c) If any land subject to a lien imposed under this resolution is sold or transferred, the entire remaining unpaid balance of any fees for services plus any penalties assessed for nonpayment thereof shall become due and payable prior to the sale or transfer of ownership of the property, and upon collection shall be paid to the treasurer of the governing body of the fire department involved.

VI. RIGHT TO ENTER PROPERTY

For the purposes of administering and enforcing this resolution, the fire chief, or a duly authorized representative of the fire chief, and law enforcement officers, shall have the right to enter private property:

- (a) to inspect lands or property actually or reported to be burned as the result of open burning or agricultural burning;
- (b) to inspect and investigate complaints of violations of this resolution;
- (c) to inspect burning permits; and
- (d) to observe the open burning or agricultural burning, and the manpower and equipment available to control the burning.

VII. CRIMINAL PENALTIES

Any person violating or failing to comply with any of the provisions of this resolution or attempting to violate or fail to comply with the provisions of this resolution, shall be guilty of a Class C misdemeanor.

VIII. CIVIL REMEDIES PRESERVED

Nothing in this resolution shall be construed to abridge, limit or otherwise impair the right of any person to damages or other relief on account of injury to persons or property and to maintain any action or other appropriate proceedings therefore.

IX. BURNING PERMITS

- (a) Each person desiring to conduct any open burning operation shall first submit a written request for a burning permit to the fire department having jurisdiction on a form provided by such department.
- (b) Each burning permit shall be valid for such period of time as may be designated on the face thereof by the fire chief or the fire chief's designee issuing such permit.
- (c) The fire chief or his designee may revoke any burning permit upon thirty (30) days notice.
- (d) Burning permits shall contain at least the following information:
 - (1) the location of the proposed open burning, the landowner's name and address and the name, address and telephone number of the person responsible for the open burning;
 - (2) a description of the open burning including:
 - (A) the estimated amount and nature of material to be burned;
 - (B) the proposed frequency, duration and schedule of the burning;
 - (C) the size of the area to which the burning will be confined;
 - (D) the method of igniting the material;
 - (E) the location of any public roadways within one thousand feet (1,000') of the proposed burn;
 - (F) the number of occupied dwellings within one thousand feet (1,000') of the proposed burn; and
 - (G) evidence that the open burning has been approved by appropriate health and/or environmental authority having jurisdiction over the area or that such approval is not required; and
 - (3) the reason why the proposed open burning is necessary and in the public interest if the activity is not listed in subsection II(c) of this resolution; and
 - (4) any special conditions or restrictions imposed by the fire chief or his designee.
- (e) Each person applying for a burning permit or requesting an exemption from the requirements of obtaining a burning permit shall be provided a copy of this resolution when requested.

X. OPEN BURNING GENERAL TERMS AND CONDITIONS

- (a) Open burning shall be subject to the following conditions, except as provided in paragraph (b):
- (1) The person conducting the burning shall stockpile the material to be burned, dry it to the greatest extent possible before it is burned, and assure that it is free of matter that will inhibit good combustion.
 - (2) A person shall not burn heavy smoke-producing materials, including but not limited to heavy oils, tires and tarpaper.
 - (3) A person shall not initiate nor continue burning during the nighttime, which for the purposes of this resolution is defined as the period from two hours before sunset until one hour after sunrise without the prior express permission of the fire chief or the fire chief's designee. A person shall not add material to a fire after two hours before sunset.
 - (4) A person shall not burn during inclement or foggy conditions or on very cloudy days, which are defined as days with more than 0.7 cloud cover and with a ceiling of less than two thousand feet (2,000').
 - (5) A person shall not initiate or continue open burning or agricultural burning during periods when surface wind speed is less than 5 m.p.h. or more than 15 m.p.h. without the express permission of the fire chief or the fire chief's designee.
 - (6) A person shall not burn within one thousand feet (1,000') of any occupied dwelling, unless the occupant of that dwelling has been notified before the burn and an adequate fire break separates the dwelling and the area or property to be burned.
 - (7) A person shall not burn within two hundred fifty feet (250') of any structure unless an adequate fire break separates the structure from the area or property to be burned or a sufficiently equipped and competent fire watch is established until the fire is extinguished.
 - (8) A person shall not conduct a burn that creates a traffic or other safety hazard. If burning is to take place within one thousand feet (1,000') of a roadway, the person conducting the burn shall notify the highway patrol, sheriff's office, or other appropriate state or local traffic authority before the burning begins. If burning is to take place within one mile of an airport, the person conducting the burn shall notify the airport authority before the burning begins.
 - (9) The person initiating the burn shall insure that the burning is supervised by competent adults on site until the fire is extinguished.
 - (10) A person shall conduct an open burning operation under such additional conditions as the department may deem necessary including, but not limited to, conditions to prevent emissions which:

- (A) may be injurious to human health, animal or plant life, or property; or
 - (B) may unreasonably interfere with the enjoyment of life or property.
- (11) The person conducting the open burning shall have in such person's possession the burning permit, or an exact photocopy thereof, pertaining to the open burning being conducted.
- (b) The fire chief or the fire chief's designee may issue a burning permit for an open burning operation that does not meet the conditions set forth in subsection (a) upon a clear demonstration that the proposed burning:
- (1) is necessary and in the public interest;
 - (2) can be conducted in a manner that will not result in emissions which:
 - (A) may be injurious to human health, animal or plant life or property; or
 - (B) may unreasonably interfere with the enjoyment of life or property; and
 - (3) will be conducted in accordance with state law and regulations and such conditions as the fire chief or fire chief's designee deems necessary.

XI. ADDITIONAL REQUIREMENTS FOR 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 shall be conducted under the following conditions:

- (a) The person conducting the burn shall notify the local fire department(s) with jurisdiction over the area before the burning begins and once the fire is extinguished and the open burning operations concluded, unless the fire department has established a policy that such notifications are not required.
- (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 prompt and 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 prompt and adequate notification to the appropriate airport authorities before burning.
- (d) The person initiating the burn shall insure that the burning is supervised by competent adults on site until the fire is extinguished and shall insure that sufficient manpower and equipment are on hand to control the open burning at all times.
- (e) The person conducting the open burning shall have in such person's possession the burning permit, or an exact photocopy thereof, pertaining to the open burning being conducted.

- (f) A proper firebreak shall exist or be created for a least fifteen feet (15') on all sides of the area to be burned.

XII. RECORD KEEPING

- (a) Whenever notice is required or has been provided under any provision of this resolution the person making such notification shall keep a record of the name of each person and agency notified, the telephone number dialed to provide notice or other means of notification employed, and the time and date of all notifications made.
- (b) Records made and kept pursuant to this section shall be made available upon request for inspection and copying by the fire chief, the fire chief's designee or any law enforcement officer.
- (c) Records made pursuant to this section shall be kept and maintained for a period of twelve (12) months from the date of the fire.

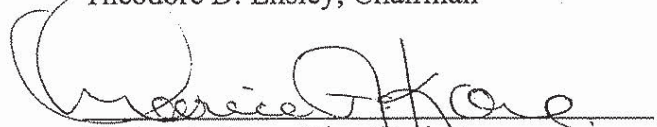
XIII. EFFECTIVE DATE

This resolution shall take effect upon publication in the official County newspaper.

IT IS SO RESOLVED.

**BOARD OF COUNTY COMMISSIONERS
SHAWNEE COUNTY, KANSAS**

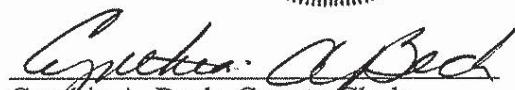

Theodore D. Ensley, Chairman


Marice A. Kane, Vice-Chair


Michael J. Meier, Member



ATTEST:


Cynthia A. Beck, County Clerk

APPROVED AS TO FORM AND LEGALITY
BY THE SHAWNEE COUNTY COUNSELOR'S OFFICE
DATE 04/4/99 BY 