

RESOLUTION NO. 2015 - 19
OPEN BURNING RESOLUTION

WHEREAS, it is in the best interests of the citizens of Jackson County, Kansas, for the County to establish a system of open burning over lands outside of the incorporated cities in said County by written permission. Per Kansas law, open burning conditions must adhere to guidelines as specified in Kansas Administrative Regulations: K.A.R. 28-19-645, K.A.R. 28-19-646, K.A.R. 28-19-647 and K.A.R. 28-19-648. This Resolution repeals Resolution No. 2008 - 01 establishing a system of open burning by written permit.

DEFINITIONS:

Agricultural Burning: Controlled 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.

Open Fire: Any fire that is not a contained fire. Any fire not in an acceptable burn container.

Contained Fire: Any fire within an acceptable burn container and any small fire in a non-combustible container whose primary purpose is to cook food or burn household waste (e.g. barbeque grills, etc.)

Acceptable Burn Container: Any non-combustible container, with a tight fitting non-combustible cover, that has vent holes no larger than one inch square.

NOW THEREFORE, IT IS RESOLVED, as follows:

Section I: Open burning prohibited.

A person shall not cause or permit the open burning of any wastes, structures, vegetation or any other materials on any premises except as authorized by this Resolution. A person shall not burn materials on any premises while a burning ban is in effect.

Section II: Responsibility for open burning.

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

Section III: Exceptions to prohibition on open burning.

- (a) The following open burning operations shall be exempt from the prohibition on the open burning of any materials imposed by Section I:
 - (1) open burning for cooking or ceremonial purposes on public or private lands regularly used for recreational purposes;
- (b) A person may obtain a KDHE exemption application as well as an open burning permit from the Holton Public Safety Office, 301 W. 4th, Holton, Kansas, (Phone: 785-364-3123) or any local Fire Department, to conduct an open burning operation that is not otherwise exempt by Section III. Such exemption may be granted through Kansas Department of Health & Environment (KDHE). This exemption may be granted on the basis of:

- (1) necessity, 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; or
 - (2) is in the public interest.
- (c) Open burning operations for which an approval is required but which are deemed necessary and in the public interest include the following:
- (1) fires related to the training of government or industrial personnel in firefighting procedures;
 - (2) fires set for the removal of dangerous or hazardous liquid materials;
 - (3) open burning of trees and brush from non-agricultural land clearing operations;
 - (4) open burning of clean wood waste from construction projects carried out at the construction site;
 - (5) open burning carried out on a residential premises containing 5 or less dwelling units and incidental to the normal habitation of the dwelling units;
 - (6) open burning for the purpose of crop, range, wildlife or watershed management; and
- (d) Each person with an approved open burning permit which is seeking an approval to conduct an open burning operation pursuant to this Resolution shall contact the Holton Public Safety Office, 301 W. 4th St., Holton, Kansas, (Phone: 785-364-3123) and provide the following information:
- (1) the location of the proposed open burning 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 state highway within 500 feet of the proposed burn; and
 - (f) the number of occupied dwellings within 1,000 feet of the proposed burn; and
 - (g) the reason why the proposed open burning is necessary and in public interest if the activity is not listed in subsection (c) of this section.

(e) Each open burning operation for which the Holton Public Safety Office issues an approval shall be subject to the following:

- (1) Each open burn operation must be ignited within one hour of approval from the Holton Public Safety Office.
- (2) If feasible, a person conducting the burn 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 which will inhibit good combustion. In addition, such person shall make a reasonable attempt to contain the burn, such as disking or back burning around the area to be burned and, if available, providing an additional water supply.
- (3) A person shall not burn heavy smoke-producing materials, including heavy oils, tires, and tarpaper.
- (4) A person shall not initiate burning during the nighttime, which for the purposes of this resolution is defined as the period from 2 hours before sunset until 1 hour after sunrise. A person shall not add material to a fire within 2 hours before sunset.
- (5) A person shall not burn during periods if the National Weather Service Rangeland Fire Danger Index indicates there is a "Low" fire danger and sustained wind speed of 15 miles per hour or greater; if there is a "Moderate" fire danger and sustained wind speed of 15 miles per hour or greater; if there is a "High" fire danger and sustained wind speed of 15 miles per hour or greater; if there is a "Very High" fire danger and sustained wind speed of 10 miles per hour or greater; or at any time when there is "Extreme" fire danger for Jackson County, Kansas.
- (6) 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.
- (7) A person shall not conduct a burn that creates any traffic or other safety hazard. If burning is to take place within 500 feet of a state highway, the person conducting the burn shall notify the Sheriff's office before the burning begins.
- (8) A person conducting the burn shall ensure that the burning is supervised until the fire is extinguished and notify the Holton Public Safety Office when the fire is extinguished.
- (9) A person conducting a burn shall do so under such additional conditions as a Fire District may deem necessary to prevent emissions which;
 - (a) may be injurious to human health, animal and plant life, or property;
or
 - (b) may unreasonably interfere with the enjoyment of life or property.
- (10) A Fire District may revoke any approval at any time, which notice may be written or oral, and given to the person who made the request.

- (11) Open burning permits will expire on December 31 of every odd year. An applicant may apply for an open burn permit on any date.

Section IV: Unlawful Acts.

It shall be unlawful for any person to do any of the following:

- (a) Violate any provision of this resolution.
- (b) Violate any provision of an approval issued under this resolution.
- (c) Knowingly make any false material statement, representation or certification in any request, record, report, approval or other document filed, maintained or used for purposes of compliance with this resolution. All information required to be given the Holton Public Safety Office under any of the provisions of this resolution is deemed to be material for the purpose of this section.

Section V: Criminal Penalties.

- (a) A violation under this Resolution shall be considered as a class A non-person misdemeanor and the violator is subject to a jail term of up to one year and/or fines as follows, payable to the applicable Fire District through the Clerk of the District Court:
 - (1) Upon a first conviction, a minimum fine of not less than \$500.00;
 - (2) Upon a second conviction, a minimum fine of not less than \$1,000.00;
 - (3) Upon a third conviction, a minimum fine of not less than \$1,500.00;
- (b) In addition to any other fines or penalties as above set out, the violator, if convicted in the District Court of Jackson County, Kansas, may be responsible for the payment of costs of the case and actual costs of any Fire District or emergency response to the incident. Conviction or diversion under this resolution may result in the loss of approval to conduct open burns for up to five (5) years from the date of occurrence, at discretion of the Fire District.
- (c) 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 proceeding therefore.
- (d) When possible, law enforcement officers pursuing prosecution of a violation of this Resolution shall, upon probable cause of a violation, issue a citation on a standard citation form and designate a court appearance date on the form in conformity with practice and procedure regarding mandatory court appearance on traffic misdemeanors.

This Resolution shall be in full force and effect from and after its publication in the official county newspaper.

Approved and past this 13th day of July, 2015.

THE BOARD OF COUNTY COMMISSIONERS

Janet Zwonitzer

Janet Zwonitzer, Chairman

William Elmer

William Elmer, Member

Robin Ladner

Robin Ladner, Member



Attest:

Kathy Mick

Kathy Mick, Jackson County Clerk