

## **RESOLUTION NO. 2005-04**

### **RESOLUTION REGARDING OPEN BURNING AND CREATING A PERMITTING SYTEM FOR SUCH BURNING AND REPEALING RESOLUTION 2004-05, SAME, ADOPTED JANUARY 26, 2004**

**WHEREAS**, the Board of County Commissioners of Barton County, Kansas, have determined that uncontrolled and unauthorized open fires may present a danger to property and persons within the County; and

**WHEREAS**, the County Commissioners have determined that a formal policy that details the allowance, notification and permitting requirements that will reduce such danger.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of County Commissioners of Barton County, Kansas, pursuant to K.S.A. 19-101, et seq., that the following regulations be adopted in an effort to control burning within Barton County:

1. That this Resolution shall apply to the whole of Barton County, Kansas, except for any areas within the limits of any incorporated cities located in the County.
2. For the purpose of this Resolution, that no person, business, corporation or other entity shall cause or permit the open burning of any wastes, structures, vegetation or any other materials on any premises except as authorized by K.A.R. 28-19-648 and this Resolution. Further, that:
  - A) As authorized by the Kansas Administrative Regulations, the following shall be allowed, provided that all regulations as established within this Resolution are met:
    - (1) open burning carried out on private lands, unless prohibited by any local authority with jurisdiction; and
    - (2) open burning for the purpose of crop, range, pasture, wildlife or watershed management in accordance with K.A.R. 28-19-648 and as further described in Paragraph 3; or
  - B) A person, business, corporation or other entity may obtain approval if it is demonstrated that the open burning is:
    - (1) necessary, which in this case shall mean that there is no other practical means of disposal;
    - (2) in the public interest; and
    - (3) is not prohibited by any local government or local fire authority; and
  - C) Other open burning operations which are deemed to be necessary and in the public interest shall 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 nonagricultural land clearing operations; and
    - (5) open burning of clean wood waste from construction projects carried out at the construction site.
  - D) As used throughout this Resolution, person shall be any responsible person being of the age of majority.

3. For the purpose of this Resolution, as prescribed by K.A.R. 28-19-648, and any amendments thereto, 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 allowed, provided that the person conducting the burn shall notify the fire department with jurisdiction to obtain a permit.
4. That any person, business, corporation or other entity conducting open burning operations exempted by K.A.R. 28-19-648 must first obtain a permit to conduct such open burning operations from the Fire Chief having jurisdiction within Barton County. A copy of said "Application for Open Burning" is attached hereto as Exhibit A. That burn permits once issued hereunder shall remain valid unless revoked by the appropriate fire chief for good cause shown.

Said Fire Chief, or his or her designee, shall have exclusive authority to determine the location of the burning, the type and amount of materials to be burned, the dates for which the burn permit is valid and the time for which said materials may be burned. Said permits shall be subject to all applicable laws and administrative regulations, as included herein. Additionally, said Fire Chief shall determine the conditions under which burning shall be allowed. Such conditions may include the location, exposures, time of day, weather conditions, fire apparatus and staffing availability.

5. Any Fire Chief issuing a burn permit may revoke said permit at any time for good cause shown.
6. That open burning operations conducted under the herein provided burn permit shall take place only after notification is made, by the permit holder, to the Barton County Communications Department. Such notification shall be made within four hours of the anticipated time that the burning will begin. Further, that the burn permit number as issued by the designated Fire Chief shall be provided to Barton County Communications, along with the proposed location(s) of the open burning and the estimated time that the burning will conclude. If weather conditions or fire apparatus availability are not favorable, Barton County Communications is hereby authorized to deny permission for the open burning on each specific request. Location, time of day, weather conditions and fire apparatus availability will be considered before permission is denied by the Communications Department.
7. That all open burning operations conducted hereunder shall be supervised at all times by a responsible individual of majority age until such fire is extinguished. The burn permit shall be in the possession of this individual at all times during the duration of the burning operation. The Barton County Communications Department shall be notified when said burn is extinguished.
8. All burning operations conducted in accordance with this Resolution shall be completed with the permission of the landowner or tenant of the property upon which the burning operations are conducted. It is the responsibility of the permit holder to obtain the required permission as 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.
9. That permits issued under this Resolution shall be invalid in the event that the Board of County Commissioners of Barton County, Kansas, enacts a burn ban, as is prescribed per Kansas statutes for local disaster emergencies, at any time during the term of the burn permit. Burning operations, during burn bans, shall be conducted only under a special permit as issued by the Fire Chief having jurisdiction in the area where the burning operations are to be conducted.

10. That alleged violations of this Resolution may be filed by uniform complaint and notice to appear.
11. A responding agency shall have the right to collect restitution for expenses incurred by that agency for any expense caused by the violation of a permit as held by any person, business, corporation or other entity.
12. Nothing in this act shall be construed as creating a cause of action on behalf of any person against the County, a municipality or any of their agencies, instrumentalities or employees responsible for the application or enforcement of the provisions of this Resolution act.
13. That the provisions of K.A.R. 28-19-647 are superseded upon the adoption of this Resolution, pursuant to County home-rule power.
14. This Resolution is being adopted pursuant to County home-rule power and K.S.A. 19-101d. Violations of this Resolution by any person shall be punishable as a Class B Misdemeanor with penalties for each separate offense by a term of confinement in the Barton County Detention Facility not to exceed six months and \ or a fine in an amount not to exceed One Thousand Dollars (\$1,000.00). Any person who aids, assists or abets another in violating the provisions of this Resolution will be deemed to have committed a violation of the Resolution.
15. As authorized by K.S.A. 19-101d, the County may request the court enjoin violations of this Resolution.

**FURTHER**, that Resolution 2004-05, Same, adopted January 26, 2004, is hereby repealed; and

**FURTHER**, that this Resolution shall become effective upon publication in the official County newspaper.

**ADOPTED** this 31<sup>st</sup> day of January, 2005.