

## **Open Burning in the Unincorporated Areas of Douglas County**

### **Policy**

The Board of County Commissioners (BOCC) deems it necessary to establish criteria for open burning within the unincorporated areas of Douglas County

All outdoor burning in the unincorporated area of Douglas County shall be conducted in accordance with Home Rule Resolution HR-23-11-4, Douglas County Code Section 6 (Fire), KDHE rules and regulations for Open Burning, K.A.R. 28-19-645 *et seq.* The procedures included in this policy are written in compliance with these rules and regulations.

### **Definitions**

**Open burning** – 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 is 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 policy and corresponding resolution. 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 gases.
  - 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).

**Burn permit** - A permit allowing an owner or operator to burn when a burn ban is in effect issued by the Board of County Commissioners (BOCC) and based on specific criteria.

#### **Open Burning Determination Procedure and Guidelines**

An open burning ban is based on specific criteria monitored by Emergency Management personnel, as designated by the County Administrator, and local jurisdictional authority. This decision to allow or prohibit open burning is made daily prior to 0800 hours. Once determined, the burn hotline and other notification methods are updated accordingly.

The following criteria are used for determining the issuance of an open burning ban:

1. Open burning is prohibited during:
  - a. Red Flag Warnings
  - b. Local, county, or state-wide burn ban
  - c. Rangeland Fire Index categories of Very High or Extreme
  - d. Rangeland Fire Index is High, but the forecast is for sustained winds of greater than 15mph.
  - e. Rangeland Fire Index is Low or Moderate, but the forecast is for sustained winds greater than 20mph.
2. Open burning may be prohibited when a threat to the area exists or due to any other variables that could affect fire burning. If these conditions are met after burning has been allowed, a notification will be made through the Northeast Kansas Notification System, social media, the Douglas County Burn Hotline, and other methods as necessary. No new burns will be approved and all previously logged open burning must cease. These variables include, but are not limited to:
  - a. Local jurisdictional authority
  - b. Resource limitations
  - c. Local conditions of dryness

### Emergency Declaration Process

If conditions warrant an outdoor burning ban for several days, Emergency Management can request an emergency declaration be signed by the Chair or Board of County Commissioners (BOCC).

1. An initial declaration may be issued by the Chair or by a majority vote of the BOCC based on moisture or other relevant conditions. The ban will be issued and take effect 24 hours after filing with the County Clerk. The ban shall not be in excess of 7 days at a time.
2. Extensions of the outdoor burning ban may be issued by majority of an ordinary motion of the BOCC for a period of time determined by the Board. The ban will be issued and take effect 24 hours after filing with the County Clerk.

### Allowed Burning During Open Burning Bans:

Open burning during a burn ban is only allowed for recreational open burning activities as defined above or with a burn permit issued by the BOCC.

### Burn Permits

1. The BOCC may issue a burn permit to a business or governmental authorities based on the following:
  - a. When it is necessary to burn trash, debris, or other waste that is a byproduct of the operation of the business or governmental operation
  - b. The burning can 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
  - c. 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
  - d. 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
  - e. The proposed burn complies with all other applicable laws, rules or regulations
2. Permits shall be subject to revocation at any time by a majority vote of the BOCC when it is determined that the owner or operator is not conducting the burn in accordance with the conditions of the permit or when the need stated in the application no longer applicable
3. The person conducting the burn must be in possession of the permit issued by the BOCC and shall present the permit to any law enforcement officer, representative of the jurisdictional fire department, or any Douglas County employee upon request.

### **Open Burning Requirements and Regulations:**

Regulations for Open Burning (Residential, KDHE permitting, specifically approved open burning not including recreational or agricultural open burning):

The following regulations must be followed when engaged in open burning.

1. Prior to any outdoor burning, responsible parties are required to call the Douglas County Burn Hotline to verify if burning is allowed on the day of the burn. If burning is allowed, the Douglas County Emergency Communications Center shall be notified prior to starting any burn. Methods of notification include a telephone call to ECC or using the web page form with the following information:
  - a. Location of intended burn
  - b. Name, address, and telephone number of the responsible person(s)
  - c. Duration and burn schedule
  - d. Description to include size/acreage, material, and reason for burning
  - e. Agreement to comply with the rules and regulations stated in this policy
2. 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.
3. All burning must be supervised by a person who is at least 18 years old until the fire is extinguished. Additionally, occupants of a dwelling within 1000 feet of the burn shall be notified before burning.
4. Burning must not create a traffic safety hazard. If it is likely that smoke may blow toward a public roadway, the appropriate law enforcement agency shall be notified prior to burning.
5. Burning must not create an airport safety hazard. If it is likely that smoke may affect the visibility at an airport the appropriate airport authorities shall be notified prior to burning.
6. Materials being burned shall be stockpiled and dried to the extent possible to not inhibit good combustion. Heavy smoke-producing material including rubber tires, plastics, roofing, tar paper, old furniture, cloth, and petroleum-based products are prohibited.
7. Trash that contains foam, chemically treated wood, electronics, chemicals, or hazardous materials must not be burned as emissions release chemicals that pose a danger to human health and the environment.
8. A person shall not initiate burning during the nighttime, which for the purposes of this policy 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.

#### Regulations for Agricultural Open Burning:

1. Prior to starting any burn, persons conducting any open burning shall make appropriate notification of such intention to burn as described in this Policy to include the following information:
  - 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 to include but not limited to size/acreage of the burn, material to be burned and reason for the burn.
  - d. Agreement to comply with the stated conditions for open burning within this Section.
2. All burning must be supervised by a person who is at least 18 years old until the fire is extinguished.

3. Burning must not create a traffic safety hazard. If it is likely that smoke may blow toward a public roadway, the appropriate law enforcement agency shall be notified prior to burning.
4. Burning must not create an airport safety hazard. If it is likely that smoke may affect the visibility at an airport the appropriate airport authorities shall be notified prior to burning.

## **Enforcement**

Home Rule Resolution HR-23-11-4 is the legal binding document for enforcing and charging offenders in the Douglas County District Court. It is 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 except as allowed in this policy.

### Possible Charges (or other appropriate legal wording):

1. General Violation - any person who violates or fails to comply with any provisions or engages in conduct in violation of Home Rule Resolution HR-23-11-4 can be charged with a Class C misdemeanor.
2. 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 can be charged with a Class A misdemeanor.

### Procedures

Any law enforcement officer or fire official of a governmental entity may initiate criminal proceedings under Home Rule Resolution HR-23-11-4. The Fire Chief or designee or Law Enforcement Officer can execute this process at their discretion for safety, negligence, or other nature of the actions in question. The following is a general guideline for enforcement:

1. Upon recognition that formal action is necessary, obtain the responsible party's Driver's License and call the Emergency Communications Center (ECC).
2. 1st Contact - Education
  - a. During this first contact, the responsible party will be provided with verbal and written education related to the grievance.
  - b. When the responder calls in, ECC staff will obtain the full legal name, DOB, and driver's license number if available. The Dispatcher will check to see if that person is already in our system and if not they will add them to the system. ECC would then add a notice (Burn Warning) on that person's name file, and they'll add the associated call number and the authority.
    - i. The Dispatcher may dictate anything needed in the call comments as provided by the responder reporting the violation. Call comments will include that a "Burn Warning" was logged, who it was logged on, and who the authority was.
    - ii. This information would be accessible to any Dispatcher or person with approved access to look up at any time. If the warning is logged with the name, ECC will have the call and run number to look up any piece of information that was tied to this incident except for what was written in the report on the responder's end.

- c. Responder should document the incident within their documentation system to include any additional pertinent information for later reference if needed.
3. 2nd Contact - Verbal Warning
  - a. During this contact, the responsible party (RP) will receive a verbal warning along with printed information. The Chief or designee or LE Officer should highlight the consequences as well as educate on expected practices.
  - b. Upon call to ECC they would repeat the above process but enter it as a 2<sup>nd</sup> "Burn Warning" so that warnings can be tracked. ECC can look up and provide any information from the first call/warning that was issued if it was added to the call i.e., dictated and asked to be added to the call comments.
  - c. Responder should document the incident within their reporting system to include any additional pertinent information for later reference if needed.
4. 3<sup>rd</sup> Contact – Citation
  - a. Fire Chief or designee or LE Officer will call ECC with the " Burn Citation" using the steps above.
  - b. The responder should document the incident in their normal reporting system.
  - c. A final report of the interaction(s) with the RP will be described in an affidavit. The affidavit along with the previous Burn Citation reports and any other documentation should be forwarded to the DA's Office.