

RESOLUTION NO. 04-13-2015

A RESOLUTION REGULATING ALL OPEN BURNING WITHIN THE UNINCORPORATED AREA OF GEARY COUNTY, KANSAS.

WHEREAS, Geary County, Kansas is a county municipal government with the power of home rule pursuant to K.S.A. 19-101 and the County Commission is the governing and legislative body of said municipality; and

WHEREAS, Geary County has previously adopted regulations prohibiting open burning within the unincorporated areas of the County and the proliferation of residential and business growth within the County necessitates that the County revise its burning regulations so as to effectively deal with the changing character of the County.

IT IS THE FINDING OF THE BOARD OF COUNTY COMMISSIONERS OF GEARY COUNTY, KANSAS that the character of the unincorporated area of the County is changing due to the consistent growth and increased residential density of the County; that such growth and density are endangered by periodic droughts and the proliferation of uncontrolled fires caused by careless burning practices; and that it is necessary to revise existing regulations and resolutions so as to insure the public health, safety and welfare.

IT IS HEREBY RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF GEARY COUNTY, KANSAS that the following resolution is hereby adopted, that all other resolutions relating to open burning are hereby repealed upon this resolution taking effect, and that said Resolution shall take effect upon publication in the official County newspaper.

ARTICLE ONE: OPEN BURNING

A. For the purposes of this Resolution, "open burning" means setting, starting, igniting, maintaining, spreading, fueling or failing to extinguish or taking precautions to prevent the spread of an open fire. An "open fire" shall be defined as the burning of fields, pastures, stubble, vegetation, debris, waste, trash, garbage, structures or any other material or matter when the resulting fire is not contained within a safe and fire proof container, with such container being constructed of fire resistant materials and with a lid, top or door that confines the sparks, ashes and embers of the fire safely within the container.

B. No person shall set, cause or permit open burning within the unincorporated area of Geary County, Kansas without obtaining a fire permit from the Geary County Emergency Services Office, 236 E. 8th Street, Junction City, Kansas (785) 238-1290, and, upon acquiring such a permit, shall comply with all of the conditions specifically stated in the permit and all laws of the State of Kansas as set out in the Kansas Administrative Regulations 28-19-645 thru 28-19-648 and any amendments thereto.

C. No person who has set a fire shall leave the fire unattended until the fire is out and/or appropriate precautions have been taken to prevent the fire from spreading.

D. No person shall set an open fire without first taking precautions to insure that the fire will be safely contained within the perimeters of the area sought to be burned and that the fire will present no danger to the health or property of adjoining landowners.

E. No person shall set an open fire, even if the person has a burn permit, unless they have received permission from Geary County Emergency Services (or their designee) at (785) 238-1290. This phone is answered by Emergency Services

personnel during business hours and then rolls over to a designated agency after hours and on weekends. No burning will be authorized or permitted when the County Commission, the Emergency Management Director or the Governor has declared a drought or health emergency and prohibited all open fires and notice thereof has been published once in the Official County or State newspaper or notice thereof has been given by inclusion of the notice on the County's website or by, broadcasting such notice on those radio, television or cable stations serving Geary County.

ARTICLE 2: EXEMPTIONS

A. A fire used for the preparation of food shall not be considered to be an open fire, as long as the fire is contained within a fireplace, stove, barbeque grill, barbeque pit or smoker.

B. A fire situated within a federal, state, county park or recreational area or private recreational area or private campground shall not be considered to be an open fire as long as the fire is contained to an area in which fires are specifically allowed and there have been no fire bans decreed by the Governor, the County Commission or the Emergency Management Director.

C. The burning of household trash or waste shall not be considered to be an open fire as long as the fire is contained within a safe and fireproof container or structure, with such container or structure having a lid, top or door that effectively prevents the escape from the container of ashes, embers or sparks. The container must be in good condition and free of large sections of rust or holes. The burning or incineration of combustible, toxic or hazardous materials within such containers or structures is expressly prohibited.

ARTICLE 3: PERMITS REQUIRED

A. Burn permits shall be required for all open burns or fires not specifically exempted in Article 2 of this Resolution.

B. A person requesting a burn permit shall contact the Geary County Emergency Services Office to obtain the permit during normal business hours. The requester will provide the following information for the permit: Owner's name of the property, legal address for the owner, locations of any potential burn site(s), home phone number, cell phone number, and e-mail address for communication purposes.

C. The day that the burn is to be conducted, the person conducting the burn is required to call into Geary County Emergency Services. Permission to conduct the burn can be denied by Emergency Services for reasons to include: the wind speed to be in excess of 15mph during the burn period, lack of available firefighting equipment or firefighters. If permission to conduct the burn is granted, the following information is gathered and is made available to the 9-1-1 Center: Permit number, person conducting the burn, cell phone number of person conducting the burn, location of the burn, what will be burnt, if grassland- amount to be burnt, and start time of the burn.

D. During the month of April each year, only agricultural burns will be allowed as Geary County lies within the Flint Hills Management Burn area. No brush piles or trees will be allowed to be burnt during April. "Agricultural purposes" shall be considered to be the burning of stubble from fields and dead grass from pastures.

ARTICLE 4: EMERGENCY SITUATIONS

A. The Emergency Management Director or the County Commission are hereby authorized to prohibit all open burning within the County when conditions become so severe due to drought, natural or manmade disasters or national/state security reasons as to constitute a serious danger to persons and/or property within the County. Such authorization shall become effective upon notice of such to the general public by any or all of the following methods: written publication in the official County newspaper, written notice on the County's official web-site and/or oral and visual announcements on radio, television or cable stations serving the County.

B. The aforesaid prohibition on open burning shall be removed once the conditions causing the ban to be instituted have been sufficiently alleviated so as to no longer constitute a serious danger to the general public.

ARTICLE 5: PENALTIES

A. Any person who fails to obtain a permit as above required, who abandons a fire that has not been extinguished, who fails to adhere to the terms of the permit or who otherwise knowingly and willfully violates this Resolution shall be subject to prosecution in the District Court of Geary County, Kansas by the County Attorney.

B. A violation of this Resolution shall constitute a class C nonperson misdemeanor for the first offense and a class B nonperson misdemeanor for the second offense and a class A nonperson misdemeanor for a third or subsequent offense.

C. The Court, upon conviction of the person so charged and upon the County Attorney introducing a written invoice from the fire chief or duly authorized representative of the responding fire department stating an itemized list of the costs

incurred by the fire department for responding to the fire, may order that a person convicted of violating this Resolution be required to reimburse the fire department/fire departments for the costs incurred in fighting and extinguishing the fire caused by violation of this Article and make the reimbursement of such costs a condition of probation.

Criminal penalties:

(a) A class C nonperson misdemeanor carries a maximum penalty of thirty (30) days in jail and/or a \$500.00 fine. A class B nonperson misdemeanor carries a maximum penalty of six (6) months in jail and/or a \$1,000.00 fine. A class A nonperson misdemeanor carries a maximum penalty of One (1) year in the in jail and/or a \$2,500.00 fine.

(b) In the case of a continuing violation, every day such violation continues shall be deemed a separate violation.

(c) In addition to any other penalties which may be imposed, the violator of any provision of this resolution shall be subject to pay, as reimbursement to Geary County, Kansas, the sum of \$100.00 per hour, or any part of an hour, per vehicle used by the Department in response to any open burning caused by such violator.

(d) The Fire Chief or his designee shall provide an itemized statement to the County Clerk of the amount to be reimbursed to the County, the County Clerk shall immediately notify in writing the landowner or landowners on whose land such open burning occurred with an itemized statement of the costs thereof, and stating that unless such amount is paid within thirty (30) days from the date of the notice, that the amount shall become a lien upon their real estate. If such costs are not paid within 30 days they

shall be assessed against the property of the landowner; the County Clerk shall extend the same on the tax roll; and said Costs shall be collected by the County Treasurer and paid to the County as other real estate taxes are collected and paid.

(e) 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.

Civil Remedies:

In lieu of or in addition to the filing of a criminal complaint by the Geary County Attorney the Geary County Counselor is hereby authorized to file a civil lawsuit against any person or persons who violate this resolution and seek recovery of the actual damages and expenses incurred by the County to include attorney fees, Court costs and injunctions or restraining Orders when appropriate.

ADOPTED THIS 13 DAY OF April, 2015.

BOARD OF COUNTY COMMISSIONERS
OF GEARY COUNTY, KANSAS

Ben Bennett

BEN BENNETT, Chairperson

Florence C. Whitebread

FLORENCE WHITEBREAD, Commissioner

Larry Hicks

LARRY HICKS, Commissioner



Rebecca Bossemeyer

REBECCA BOSSEMEYER, County Clerk