

RESOLUTION NUMBER: 2022-16

**A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF KIOWA COUNTY, KANSAS, ENACTING REGULATIONS FOR OPENING BURNING IN KIOWA COUNTY, KANSAS AND SETTING FORTH PENALTIES FOR VIOLATIONS OF THE REGULATIONS REGARDING OPEN BURNING**

**WHEREAS**, K.S.A. 19-101a, et seq., and amendments thereto, authorizes the Board of County Commissioners of Kiowa County, Kansas to transact all County business and perform all powers of local legislation and administration it deems appropriate; and

**WHEREAS**, it has been determined by the Board of County Commissioners that there is a need to set forth a comprehensive regulatory practice regarding trash burning and open burning in the unincorporated areas of Kiowa County, Kansas; and

**WHEREAS**, the practice of open burning can be vital to the conduct of certain agricultural practices in Kiowa County, Kansas; and

**WHEREAS**, it is in the best interest of the citizens of Kiowa County that open burning is conducted in a safe manner and that proper fire protection be afforded during the conduct of open burning.

**WHEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF KIOWA COUNTY, KANSAS:**

1. Burning Permits: The open burning of any fields, lots, garden plots, debris, fence rows or household trash shall be allowed without a permit pursuant to the conditions set forth herein, except this Resolutions shall not exempt any person from abiding by applicable state statutes or administrative regulations, including but not limited to Kansas Administrative Regulations 28-19-645, 28-19-645a, 28-19-646, 28-19-647, and 28-19-648, or from obtaining a permit when required by Kansas Administrative Regulations 28-19-645, 28-19-645a, 28-19-646, 28-19-647, and 28-19-648. Nothing herein shall be construed as permitting
2. Trash Burns: "Household Trash" is defined as solid waste normally associated with the conduct of a household and does not include tires, metal debris, petroleum products, chemical product construction materials, or any other materials prohibited for burning by the Kansas Department of Health and Environment. Household Trash shall only be burned in compliance with Kansas Administrative Regulation 28-19-647 and shall only burned in a non-combustible container with a metal screen top containing holes no greater than ½ inch or in a manner approved by the Kiowa County Fire Department Chief. Household Trash shall be burned a minimum of 100

feet from any structure, with adequate clearance from combustible materials not intended for burning and shall be monitored and maintained by the responsible party.

3. Conditions for Open Burning: Each Open Burning shall be conducted and subject to the following provisions:
  - a. Burn Restrictions: No Open Burning for any reason shall occur when a Red Flag Warning issued by the National Weather Service is in effect, or when the Board of County Commissioners or the Governor has imposed a ban on burning, or when the Kiowa County Fire Department Chief or the Kiowa County Emergency Management Director has imposed a ban on burning except when an application for an exception to the Open Burning Ban has been approved by the Kiowa County Fire Department Chief as provided for in Paragraph 4.
  - b. Notification of Intent to Burn: Except for fires in permanent stoves, fireplaces, or barbeque grills on residential property or developed recreational sites, each person planning to conduct an Open Burn shall notify the Kiowa County Sheriff's Office One (1) hour prior to initiating the burn and shall provide the address location of the proposed burn, the name, address, and telephone number of the person responsible for the proposed burn. No burn may be commenced more than Two (2) hours after notification has been given to the Kiowa County Sheriff's Office. Notice shall also be given to all adjacent landowners and tenants prior to the proposed burn. Further, the Kiowa County Fire Department Chief is hereby authorized to restrict or impose additional safety precautions for any such proposed burn or to order that a proposed burn not be conducted or be terminated immediately if the conditions or circumstances of any burn warrant such action to protect persons or property.
  - c. Hours for Open Burning: No person shall initiate an Open Burning earlier than One (1) hour after sunrise nor later than one (1) hours before sunset, except as approved by the Kiowa County Fire Department Chief.
  - d. Wind Speed: No person shall conduct an Open Burn when the wind speed is less than Five (5) MPH nor more than Fifteen (15) MPH at the time of beginning of the Opening Burning or forecasted by the National Weather Service to be less than Five (5) MPH nor more than Fifteen (15) MPH during the duration of the proposed burn. Wind Speed must be obtained before beginning the Open Burning by contacting the Kiowa County Sheriff's Office.

- e. Supervision of Open Burn: The responsible party shall supervise and maintain any Open Burn from the time of ignition until the Open Burn is completely extinguished.
  - f. Fire Suppression Equipment: Any person initiating an Open Burn shall have adequate fire suppression equipment at the burn site to handle the type of material and size of the burn.
  - g. Traffic Hazard: No person shall conduct an Open Burn that creates a traffic hazard, airport, or other safety hazard, and nor burn shall take place within One-hundred (100) feet of a structure or roadway, except as authorized by the Kiowa County Fire Chief. When smoke from the Open Burn travels over a roadway, the appropriate law enforcement agency must be notified of the potential hazard.
4. Agricultural Burning: 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 exempt from the regulations on the open burning imposed by Section 3 of this Resolution, except for Paragraphs 3(a), 3(b) & 3(f), provided that the following conditions are met:
- a. The person conducting the burn shall notify the local fire control authority with jurisdiction over the area before the burning begins, unless the appropriate local governing body has established a policy that notification is 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 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 adequate notification to the appropriate airport authorities before burning;
  - d. The person conducting the burn shall insure that the burning is supervised until the fire is extinguished; and
  - e. When burning crop residue, either an operable tractor and disc or manned spray rig shall be on site and there shall be a minimum fire break of thirty (30) feet of tilled or plowed ground on all sides of the area to be burned.
5. Burn Ban Exception: A person may apply with the Kiowa County Fire Department Chief for an exception to an Open Burning Ban imposed by the Board of the County Commissioners, the Kiowa County Fire Department Chief, or the Kiowa County Emergency Management

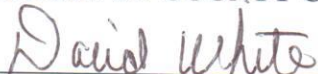
Director. Any exception to an Open Burning Ban approved by the Kiowa County Fire Department Chief shall be in writing and shall only be approved if adequate safeguards will be utilized to assure the safety of persons and property, the proposed burning is not otherwise prohibited by statute, regulation, or another burning ban not imposed by the Board of County Commissioners, the Kiowa County Fire Department Chief, or the Kiowa County Emergency Management Director, and it is demonstrated that the proposed burn is necessary for crop survival or in the public interest. Additionally, the approval of any exception to an Open Burning Ban shall be conditioned upon the responsible party for such proposed burn furnishing proof of a minimum of One-million Dollars (\$1,000,000) of liability insurance coverage for any damages that could result from such proposed burn. Further, the Kiowa County Fire Department Chief may revoke any approved exception at any time if conditions or circumstances of the proposed burn present an unreasonable risk to persons or property. If a person has been given approval to conduct an open burn pursuant to this paragraph but loses control of the fire, a fine of Two-hundred and Fifty (\$250) may be assessed and the person shall be responsible for reimbursement of all costs incurred by the Kiowa County Fire Department in extinguishing the fire.


6. Responsible Party: For purposes of any penalty to be assessed pursuant to any violation of this Resolution it shall be considered prima facie evidence that the person owning, occupying or controlling any premises upon which an Open Burn is initiated voluntarily allowed said Open Burn to take place and is responsible for the burn.
7. County Burn Bans: from time to time, depending on the moisture conditions the Kiowa County Board of Commissioners may impose a burn ban for portions or all of the county. Further, the Kiowa County Fire Department Chief or the Kiowa County Emergency Management Director are hereby authorized to from time to time impose temporary burn bans, not to exceed Seven (7) days, for portions or all of the county. Such temporary burn bans may be reissued by the Kiowa County Fire Department Chief or the Kiowa County Emergency Management Director for additional consecutive Seven (7) day periods as moisture conditions require. Such temporary burn bans shall be in force and effective upon notification of such burn ban being provided to the Kiowa County Sheriff's Office. Any person providing notice of a proposed burn to the Kiowa County Sheriff's Office pursuant to Paragraph 3(b) shall be notified of any burn ban imposed pursuant to this paragraph.

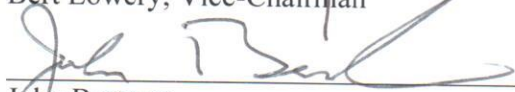
8. Violations: the violation of any of the provisions of this Resolution is hereby declared unlawful. Except as otherwise provided for in this Resolution any person or persons responsible for any burn in violation of this Resolutions shall be subject to the following penalties:
- a. Each violation of the terms of this Resolution by any person shall be deemed an unclassified misdemeanor subject to criminal prosecution, punishable with penalties for each separate offense by a term of confinement in the Kiowa County Jail not to exceed Thirty (30) days and/or a fine in an amount not to exceed Five-hundred Dollars (\$500). In addition to any other method of initiating a criminal proceeding under applicable law, any law enforcement officer may initiate a criminal proceeding under this Resolution by making an offense report and serving a citation and notice to appear in Court upon the alleged violator.
  - b. In addition to the penalties set out in Paragraph 7(a), any person or persons who violates the provisions of this Resolution may be ordered to pay restitution for the fire units involved as follows: Two-hundred Dollars (\$200) per fire unit vehicle called to bring the fire under control per hour, and, any and all expenses associated with bringing the fire under control.
9. Prior Resolutions: This Resolution repeals Resolution No. 2022-5 and any and all prior resolutions or parts of resolutions in conflict with the terms hereof are hereby repealed.
10. Effective Date: this Resolution shall be in full force and effect upon publication in the official county newspaper and until otherwise modified or repealed by the Board of County Commissioners of Kiowa County, Kansas.

Passed and adopted this \_\_\_ day of February, 2022

**BOARD OF COUNTY COMMISSIONERS OF KIOWA COUNTY, KANSAS:**

  
\_\_\_\_\_  
David White, Chairman

  
\_\_\_\_\_  
Bert Lowery, Vice-Chairman

  
\_\_\_\_\_  
John Bertram

Attest   
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Kristi Cooper, County Clerk