Board of County Commissioners
Of
Chautauqua County, Kansas

ORDINANCE NO. 2019-1

AN ORDINANCE REGULATING OPEN BURNING WITHIN CHAUTAUQUA COUNTY, KANSAS AND ESTABLISHING PENALTIES FOR VIOLATIONS THEREOF

WHEREAS, the Chautauqua County Board of County Commissioners ("BOCC") has the authority to enact ordinances for the welfare of the people of Chautauqua County ("County") and to establish penalties for violations of such duly adopted ordinances;

WHEREAS, fire districts must respond to each report of a fire;

WHEREAS, from time to time, concerned citizens report fires which are, unbeknownst to such citizens; controlled and supervised;

WHEREAS, such inadvertent false alarms put at risk the lives, health and well-being of fire-fighters and others in the County and also put an unnecessary strain on the fire district budgets;

WHEREAS, various fire districts that serve rural districts within the County have experienced increased demands for fire-fighting services and responding to false alarms may affect their ability to respond to actual emergencies;

WHEREAS, from time to time persons conducting open burns do not inform either their local fire district or any other emergency response service; and

WHEREAS, the BOCC has determined that in order to protect the lives, health, and property of the people of the County, it is necessary to adopt regulations to govern open burning in the County;

NOW THEREFORE, IT IS ORDAINED AS FOLLOWS:

1. **Definitions**.

    a. "Open burning" or "open burn" means the open burning of waste materials, materials from salvage operations, structures, vegetation such as grass, woody species, crop residue, and other dry plant growth for the purpose of crop, range, pasture, wildlife or watershed management.

b. "Person" means a human being or an artificial entity, including but not limited to foreign and domestic corporations, limited liability companies, limited partnerships, limited liability limited partners, professional corporations, or trusts.

c. "Individual" means a human being.

d. "Review Committee" means a committee of two fire chiefs convened to determine whether a violation of this Ordinance has occurred, which Review Committee shall be comprised of two fire chiefs from other districts.

2. **Regulations**.

a. **Prior Notice**. All persons intending to conduct an open burn must notify the Chautauqua County Sheriff's Department dispatch ("Dispatch") of such intent at least thirty (30) minutes before ignition of the open burn.

i. **Information Required in Prior Notice**. The following information must be provided to Dispatch when providing prior notice of intent to conduct open burning:

1. Name of caller;
2. Name of individual conducting the open burn;
3. The name of the person or individual on whose behalf the open burn is being conducted;
4. A phone number (cell or landline) or other way to reach the individual conducting the open burn while they are conducting the open burn;
5. Location of the open burn including specific directions to the location;
6. Type of material being burned;
7. Number of acres to be burned (if applicable);
8. Approximate length of time it will take to conduct the open burn.

b. **Notice of Extinguishment**. The individual conducting the open burn shall notify Dispatch when the fire has been extinguished.

c. **Equipment and Personnel**. The individual conducting the open burn shall ensure that equipment and personnel sufficient to contain or extinguish the fire is readily available.

d. **Supervision of Open Burning**. The individual conducting the open burn shall supervise the open burn until the fire is extinguished.

e. **Duty to Extinguish Open Burn**. It is the duty of the individual conducting the open burn to ensure it is extinguished.

f. **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.

g. **Prohibitions**.

i. **Traffic Safety Hazards**. A person shall not conduct an open burn that creates a traffic safety hazard. If conditions exist that may result in smoke blowing toward a public roadway, the person conducting the open burn shall give adequate notification to the highway patrol, sheriff's office or other appropriate state or local traffic control authorities before open burning;

ii. **Airport Safety Hazards**. A person shall not conduct an open burn that creates an airport safety hazard. If smoke may affect visibility at an airport, the person conducting the open burn shall give adequate notification to the appropriate airport authorities before commencing open burning.

iii. **Weather Conditions.** No person shall conduct an open burn on a day that the National Weather Service's forecast indicates "very high or extreme fire danger" conditions exist or will exist during any portion of the day as determined by 8:00 a.m. of said day.

h. **Burn Ban**. The Chautauqua County Emergency Management Director ("Emergency Management Director") may impose a temporary countywide burn ban. A burn ban shall be imposed only in exigent circumstances including, but not limited to, the existence of one or more uncontained fires either in the County or in contiguous counties; and weather conditions indicating the existence of very high or extreme fire danger. The Emergency Management Director shall notify the BOCC of the burn ban's imposition as soon as possible and shall also notify the BOCC when the burn ban is lifted. The Emergency Management Director shall remove the temporary ban as soon as the reasons for such burn ban cease to exist or have been mitigated.

3. **Response to a Report of Fire Where Dispatch has been given Prior Notice of an Intention to Burn.**

a. **Dispatch.** If Dispatch receives a call reporting a fire and the fire is in the location where Dispatch has received prior notice of an intention to conduct an open burn, Dispatch shall notify the appropriate fire district of the call and of the prior notice.

b. **Fire District.** Upon receiving information from Dispatch of a fire in a location from which Dispatch has received prior notice of an intention to conduct an open burn, the Fire District may attempt to contact the individual conducting the open burn to ascertain if the open burn is contained. If the fire district is unable to immediately reach the individual conducting the open burn, the fire district must respond to the call as it would to a call that does not involve a location where prior notice of an intention to conduct an open burn has been given.

4. **Violations and Civil Fines.**

a. **Failure to give Prior Notice**. If any person conducts an open burn without giving prior notice to Dispatch and said open burn is the subject of a false alarm requiring a fire district to respond, a fine of Two Hundred Dollars ($200.00) may be assessed.

b. **Failure to Contain or Extinguish Open Burn**. If any person conducts an open burn with proper notice but fails to contain or extinguish said open burn and a fire district is called to assist, a fine of Six Hundred Dollars ($600.00) may be assessed. **No fine shall be assessed if the person conducting the open burn had the equipment and personnel a reasonably prudent person conducting a similar open burn would calculate to be sufficient to control or extinguish the fire readily available, but due to an act of God or the supervening actions of another person, was unable to contain or extinguish said open burn.**

c. **Failure to give Prior Notice and to Contain or Extinguish Open Burn**. If any person conducting an open burn fails to give prior notice and fails to contain or extinguish said open burn and a fire district is called to assist, a fine of Eight Hundred Dollars ($800.00) may be assessed. **A fine of Two Hundred Dollars only ($200.00) may be assessed if there was no prior notice given, but the person conducting the open burn had the equipment and personnel a reasonably prudent person conducting a similar open burn would calculate to be sufficient to control or extinguish the fire readily available, but due to an act of God or the supervening actions of another person, was unable to contain or extinguish said open burn.**

d. **Failure to Observe a Burn Ban**. If any person conducts an open burn on a day on which the County or the State of Kansas has imposed a burn ban, a fine of One Thousand Dollars ($1000.00) may be assessed.

5. **Procedure for Assessment of Civil Fines.**

Review Committee. If a fire chief believes that there has been a possible violation of this Ordinance, said fire chief shall present the evidence to the Review Committee which shall determine whether a violation occurred. Both members of the Review Committee must concur in the determination of a violation. If both members do not concur, no determination of a violation may be found. If the Review Committee determines a violation has occurred and recommends that a fine should be issued, the Review Committee shall file the documents reviewed along with its recommendation in the County Clerk's office. The County Clerk shall turn over all such filings to the BOCC for review.

a. **Notice; Hearing.** Any person who is assessed a fine under this Ordinance is entitled to notice and an opportunity to be heard. The BOCC shall send written notice of the date on which the BOCC will consider the recommendation of the Review Committee no less than ten (10) days in advance thereof. Notice shall be sent to the individual who conducted the open burn and the person who owns the property on which the open burning that is the subject of the Review Committee's recommendation occurred. If the individual who conducted the open burn and the person who owns the property are one and the same person, only one notice need be sent. Any person who may be subject to a fine under this Ordinance may appear and be heard on the date set forth in the notice. The Review Committee or its designee may appear and be heard at said hearing. Appearances may be in person or by telephone.

b. **BOCC Decision.** The BOCC shall decide whether to accept the Review Committee's recommendation upon considering the following: (1) the recommendation and evidence presented by the Review Committee; (2) any evidence or reasons, if presented by the person that may be assessed a fine hereunder, that would justify the assessment of a lesser fine or no fine at all; and (3) the applicable sections of this Ordinance. The BOCC's decision shall be set forth in writing and mailed to the individual who conducted the open burn and the person who owns or controls the property on which the open burning that is the subject of the Review Committee's recommendation occurred. If the BOCC's decision is to accept the Review Committee's recommendation, the written decision shall specifically state (1) the amount of the fine, and (2) the section of this Ordinance under which said fine was assessed. The decision of the BOCC requires a majority vote of the county commissioners in attendance.

6. **Payment.** Payment by check or money order should be made payable to Chautauqua County and mailed to the following address:

Chautauqua County
Office of the Treasurer

215 N Chautauqua
Sedan, KS 67361

Payment may also be made in person at the Office of the Treasurer at the Chautauqua County Courthouse, 215 N Chautauqua, Sedan, KS 67361.

7. **Appeal**. Any person aggrieved by a decision of the BOCC hereunder has all rights of appeal as set forth in K.S.A. § 19-223.

8. **Lien Against Property.** Delinquent fines shall constitute an assessment against the affected property and are a lien against said property in the amount of the delinquent fine.

9. **Miscellaneous**.

   a. **Publication**. The Chautauqua County Clerk is directed to publish this Ordinance in the newspaper of general circulation as provided for by law.

   b. **Effective Date**. This Ordinance shall become effective as of Oct. 21, 2019

   c. **Retention of Prior Notices.** The Chautauqua County Sheriff's Department shall retain and maintain the lists of prior notices in a manner and for a period of time that complies with applicable law.

   d. **Liability under Other Regulations or Statutes.** Nothing in this Ordinance is intended to be or shall be construed as vitiating liability, whether criminal or civil, that the person or individual conducting the open burn, or the person who owns or controls property on which open burning occurs, may incur arising out of any other law or regulation, whether state, federal, or local.

   e. **Civil Nature of Fine.** Any fine issued hereunder is civil in nature. Nothing in this Ordinance is intended to be or shall be construed as imposing a criminal penalty.

   f. **Severability**. Should any section, clause, or provision of this Ordinance be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of this Ordinance as a whole, or any part thereof, other than the part so declared to be invalid.

   g. **Supercession.** This Ordinance No. 2019-1, hereby replaces and supercedes Ordinance No. 2018-1 which is hereby declared null, void, and of no further force or effect.

Commissioners present and voting were:

Rodney Shaw	Yea
Parker Massey	Yea
Jack Carpenter	Yea

Dated this 21st day of October, 2019.

BOARD OF COUNTY COMMISSIONERS
OF CHAUTAUQUA COUNTY, KANSAS

Rodney Shaw
Chairman

Parker Massey

Jack Carpenter

ATTEST:

Niki Collier, Chautauqua County Clerk