

CHEROKEE COUNTY RESOLUTION NUMBER: 10-2011

**AN ORDINANCE RELATING TO THE BANNING OF OUTDOOR BURNING
AND OPEN FIRES.**

WHEREAS, from time to time sustained periods of dry weather in the Cherokee County, Kansas area produce extremely dry vegetation and ground cover in the Cherokee County, Kansas area, Cherokee County, Kansas is defined as all that land contained within the lawfully described area comprising Cherokee County, Kansas including all cities, townships, incorporated areas and rural areas,

WHEREAS, vegetation is highly combustible during those sustained periods of dry weather and outdoor burning of any kind under such conditions is extremely hazardous; and

WHEREAS, extremely dry conditions justify the imposition of an outdoor burning ban in order to protect the health, safety and welfare of the general public; now therefore, in consideration of those home rule powers granted Cherokee County, Kansas by Kansas Statutes and the Kansas Constitution it is hereby ordained by the governing Board of Cherokee County Commissioners of Cherokee County, Kansas as follows:

SECTION 1. SCOPE OF ORDINANCE

This Ordinance shall apply to all areas of Cherokee County, Kansas but shall not interfere with the enforcement of nor supersede those ordinances adopted by the cities, townships or incorporated areas located within Cherokee County, Kansas. In plain language, those cities, townships or incorporated areas that have adopted ordinances relating to open fires within said entities shall remain in full force and effect.

SECTION 2. AUTHORITY TO BAN OUTDOOR BURNING

A. The Governing Board of Cherokee County Commissioners, Cherokee County, Kansas shall have the authority to temporarily ban outdoor burning whenever they determine that there is a significant fire danger in all or part of Cherokee County, Kansas, in order to temporarily ban outdoor burning, the Board of Cherokee County Commissioners shall make a written finding that the health, safety and welfare of the general public would be enhanced by the imposition of a temporary ban on outdoor burning.

B. Any such temporary ban on outdoor burning effectuated by the Board of Cherokee County Commissioners shall be effective immediately upon the signing of a written finding and resolution making the finding set forth in section "A" above. The temporary ban on outdoor burning shall remain in effect for thirty (30) days or until the temporary ban is rescinded, whichever occurs first. The Commission may extend the outdoor ban for successive thirty (30) day increments if conditions warrant. The Commission shall take reasonable steps to disseminate any findings, resolutions or bans issued under this ordinance. Reasonable steps to disseminate findings, resolutions or bans shall include, but not be limited to, press releases or publication in the newspaper or local television stations.

C. No part of this ordinance shall be construed to affect prior resolutions or orders of this governing body concerning the issue of county-wide burn bans nor the inherent authority of the governing body to protect the health, safety and welfare of the citizens of Cherokee County, Kansas.

SECTION 3. PENALTIES

A. Criminal Penalties. First Offense: A person violating any provision of this Ordinance or who fails to comply with any of its requirements is guilty of a class C nonperson misdemeanor, if so determined by the Court, and each day or portion thereof during which a violation is committed, continued, or not permitted shall constitute a separate offense. The penalty for each violation upon first offense is a fine of not more than \$500.00 and/or incarceration in the Cherokee County Jail for a period not to exceed 30 days. Second or Subsequent Offense: A person violating any provision of this Ordinance and whose acts are adjudged by the Court to be a second or subsequent offense shall be guilty of a Class B non-person misdemeanor. The penalty for each second or subsequent violation is punishable by a fine of not more than \$1,500.00 and/or incarceration in the Cherokee County Jail for a period not to exceed six months; for each successive violation.


B. Civil Action. In addition to any criminal penalty provision provided herein, Cherokee County, Kansas may take civil action against any person who violates any provision of this ordinance or who fails to comply with any of its requirements. Such civil action includes, but is not limited to, injunctive relief, license revocation, and abatement or all of the above. If Cherokee County, Kansas prevails in a civil lawsuit, the Court may award the County reasonable costs including, but not limited to, the costs of the responsible official's time, witness fees, attorney fees, court costs, and the costs of the County for abatement or of enforcement of an injunction, or both. Any or all of the remedies articulated above may be used by Cherokee County, Kansas to enforce this ordinance. Nothing contained in this ordinance shall prevent the County from taking such other lawful action as is necessary to prevent or remedy any violation.

C. The term "person" shall mean an individual human, a partnership (including partners and members), a corporation (including board members, officers, and managers), or any other entity of any kind.

SECTION 4. SAVINGS AND SEVERABILITY

If any provision, or portion thereof, contained in this ordinance is held to be unconstitutional, invalid, or unenforceable, such provisions, or portion(s) thereof, shall be deemed severed and the remainder of this ordinance shall not be affected and shall remain in full force and effect.

This ordinance shall take effect immediately upon publication.



Jack Garner--Chairman

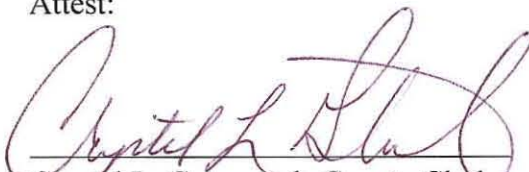


Pat Collins--Commissioner



Richard Hilderbrand--Commissioner

Attest:



Crystal L. Gatewood--County Clerk