

HOME RULE RESOLUTION NO. HR- 05- 3-1

A HOME RULE RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS RELATING TO AND AMENDING ARTICLE 2 OF CHAPTER VI OF THE DOUGLAS COUNTY CODE, REGULATING THE USE OF FIREWORKS AND THE ISSUANCE AND CONDITIONS OF PERMITS FOR THE SALE OF FIREWORKS IN THE UNINCORPORATED AREAS OF DOUGLAS COUNTY, KANSAS

WHEREAS, K.S.A. 19-101a, *et seq.* provides the Board of County Commissioners of Douglas County, Kansas (the “Board”) with home rule authority to transact all county business and perform all powers of local legislation and administration it deems appropriate; and

WHEREAS, consistent with its home rule authority, by Resolution HR-88-8-4 the Board has adopted certain regulations restricting the use of fireworks in Douglas County, Kansas (the “County”), which regulations are codified at Article 2 (Fireworks) of Chapter VI (Fire Safety) of the Douglas County Code; and

WHEREAS, the Douglas County Zoning Regulations permit retail sale of fireworks within the unincorporated areas of the County under certain circumstances; and

WHEREAS, the Board has the home rule authority and desires to adopt this Resolution to clarify the regulations concerning use and sale of fireworks in the County; and

WHEREAS, the Board has determined that regulations limiting the use and sale of fireworks is in the public interest and will further the public health, safety and welfare by reducing the potential for property damage and personal injury or loss of life due to fire caused by the careless use or sale of fireworks.

NOW THEREFORE, the Board of County Commissioners of Douglas County, Kansas, sitting in regular session and intending to exercise its powers of home rule legislation pursuant to K.S.A. 19-101a, does hereby resolve as follows:

1. Adoption. The following is hereby enacted to amend and restate Article 2 (Fireworks) of Chapter VI (Fire Safety) of the Douglas County Code:

**ARTICLE 2. USE AND SALES OF FIREWORKS**

6-201 DEFINITIONS. As used in this Article, unless the context clearly indicates otherwise, the following words and terms have the following meanings:

- (a) Fireworks mean any combustible or deflagrating composition, article, or device suitable for the use of the public for the purpose of producing a visible or audible effect by combustion, deflagration, or detonation and previously approved for transportation by the chemical laboratory of the United States Department of Transportation.

- (b) Fireworks Stand means any permanent or temporary building, trailer, tent, display, awning, canopy, temporary membrane structure, or location from which a Person sells or otherwise distributes Fireworks in the unincorporated areas of Douglas County, Kansas.
- (c) Operator means any Person who sells or otherwise distributes Fireworks or owns, manages or operates a Fireworks Stand.
- (d) Person means an individual, organizational entity of any type, partnership, church, corporation, limited liability company, trust, association of any type, or any agent, officer, employer, committee, or group of any of the foregoing.

6-202 **USE OF FIREWORKS PROHIBITED.** It shall be unlawful to ignite, explode, discharge, or use any Fireworks in the unincorporated area of the County, except as follows:

- (a) Date and Time Limitations. The use of Fireworks shall be allowed only during the following dates and times:

July 2	7:00 A.M. to 10:00 P.M.
July 3	7:00 A.M. to Midnight.
July 4	7:00 A.M. to Midnight.

- (b) Special Permit. The use of Fireworks may be allowed at dates and times other than those contained in Section 6-202(a) pursuant and strictly in compliance with a permit issued pursuant to Section 6-304 of the Douglas County Code.

- (c) Prohibited Locations. Notwithstanding the provisions of Section 6-202(a), it shall be unlawful to ignite, explode, discharge, or use any Fireworks:

- (1) within 1,000 feet of any hospital, sanitarium or infirmary; or
- (2) within 100 feet of any Fireworks Stand; or
- (3) into, under, from, or on a car or vehicle, whether moving or standing still; or
- (4) on any public roadway or the right-of-way adjoining a public roadway; or
- (5) on any private property without the express permission and direct supervision of the owner, occupier, or other Person having control of such property.

- (d) Prohibited Fireworks. Notwithstanding the provisions of Section 6-202(a), it shall be unlawful to ignite, explode, discharge, or use Fireworks prohibited under the laws of the State of Kansas, with the exception it shall be unlawful to ignite, explode, discharge, or use Fireworks commonly referred to as “bottle rockets” even if otherwise permitted under the laws of the State of Kansas.

6-203 **SALE OF FIREWORKS.** It shall be unlawful to sell or otherwise distribute Fireworks at a Fireworks Stand, except as follows:

- (a) Date Limitations. The sale or distribution of Fireworks shall be allowed only on the following dates within the unincorporated areas of Douglas County, Kansas: July 2, July 3, and July 4.
- (b) Prohibited Fireworks. Sale or other distribution of Fireworks shall be limited to Class “C” Fireworks authorized under the laws of the State of Kansas, with the exception that the sale or other distribution of Fireworks commonly referred to as “bottle rockets” is prohibited.
- (c) Permit Required. The sale or other distribution of Fireworks at a Fireworks Stand shall not be done without obtaining and holding a valid Fireworks Stand permit, issued by Douglas County Department of Zoning & Codes in accordance with this Article.
- (d) Appropriate Zoning. Fireworks Stands may only be located on, and permits may only be issued for, property as allowed by the Douglas County Zoning Regulations as they exist on the date the permit is granted. As of January 1, 2005, Fireworks Stands are allowed only in A, B-1, B-2, B-3, I-1, I-2 and I-3 Districts.

6-204 PERMIT APPLICATION FOR FIREWORKS STAND. Applications for a Fireworks Stand permit shall be on forms and according to procedures prepared by the Douglas County Department of Zoning & Codes and shall be accompanied by a \$100.00 application fee. Applications will not be made available or accepted before June 1<sup>st</sup> of each year and must be received by the Douglas County Department of Zoning & Codes on or before the close of business on June 26<sup>th</sup> of that same year. If June 26<sup>th</sup> is a day on which the office of the Department of Zoning & Codes is closed, the application must be received on or before the close of business on the next succeeding business day. Submitted applications shall, at a minimum, contain the following information:

- (1) The name, address, legal description, and phone number of the owner of the real estate upon which the Fireworks Stand is to be operated;
- (2) The name, address, and phone number of the Operator of the Fireworks Stand;
- (3) A diagram of the grounds on which the Fireworks Stand is to be located, showing the location of the Fireworks Stand; the location of all buildings, highways and any lines of communication; and the location of the off-street parking area designated for the Fireworks Stand;
- (4) If a sign will be used to advertise the Fireworks Stand, the diagram must show the location and size of the sign; and
- (5) The application shall contain a copy of the Operator’s current Kansas Retailers’ Sales Tax Registration Certificate.

No permit shall be issued if the Fireworks Stand does not or will not comply with the provisions of this Article.

6-205 FIREWORKS STAND REQUIREMENTS. All Fireworks Stands shall be subject to and operate in compliance with the following minimum requirements:

- (a) Compliance with the Law. The tract of real estate on which the Fireworks Stand is located, and any and all buildings thereon (whether or not the buildings are actually used in connection with the Fireworks Stand), shall not have been found to be in violation of any of the County's zoning, site-planning, building, plumbing, mechanical or electrical codes on or before the application for the permit is submitted. No permit shall be issued for a Fireworks Stand to be located on any real estate if any such violations have been determined on or before the application for the permit is submitted. In addition, any temporary or permanent structure used in connection with the Fireworks Stand shall comply with all applicable building codes relevant to the sale and storage of Fireworks, whether or not found to be in violation on or before the application for the permit is submitted. In addition, each Operator shall comply with all applicable local, state and federal laws and regulations, regardless of whether those legal requirements are specifically referenced herein. Without limiting the foregoing, all electrical systems and equipment, including temporary electrical connections, used in conjunction with the Fireworks Stand shall be installed and used in compliance with the National Electric Code or other applicable electric code, as then adopted and in force in the unincorporated areas of Douglas County, Kansas.
- (b) Distance from Road. All Fireworks Stands shall be located at least 25 feet from any road rights-of-way or highway rights-of-way.
- (c) Distance from Flammable Materials. No Fireworks shall be stored or sold within 50 feet of any source of flame, sparks, or more than one gallon of any flammable, combustible, or volatile liquid; provided, however, that the foregoing shall not apply to operable motor vehicles located more than 20 feet away from stored Fireworks or the Fireworks Stand.
- (d) Fireworks, Open Flames and Hot Objects. Fireworks, open flames and devices capable of igniting combustible materials shall not be used, discharged or exploded in or adjacent to any Fireworks Stand.
- (e) No Smoking/Alcoholic Beverages. Smoking and alcoholic beverages shall not be permitted within 100 feet of any Fireworks Stand or any adjacent areas where Fireworks are stored, sold or displayed. "NO SMOKING" signs shall be conspicuously posted inside and outside of the storage and/or sales location. The Operator shall enforce this provision with respect to all Persons at the Fireworks Stand. Both the Operator and the Person violating this provision may be subject to prosecution pursuant to Section 6-207.
- (f) Use of Awnings, Canopies, Temporary Membrane Structures and Tents. The use of awnings, canopies, temporary membrane structures or tents shall, in addition to all other requirements, comply with the following requirements:
- (1) Location. No temporary membrane structure, canopy or tent shall be located within twenty 20 feet of property lines, buildings, parked vehicles, internal combustion engines, other temporary membrane structures, tents, awnings, and/or canopies.

- (2) Flame-retardant Treatments. The sidewalls, drops, and tops of awnings, canopies, temporary membrane structures and tents shall be composed of flame-resistant material or shall be treated with a flame-retardant material.
- (g) Means of Egress.
- (1) Location of Exits. Exits shall be spaced at approximately equal intervals around the perimeter of the Fireworks Stand and shall be located such that all points are no more than 100 feet from an exit.
  - (2) Number of Exits. Every Fireworks Stand shall have at least 2 exits.
  - (3) Maintenance of Exits. The required width of exits, aisles and passageways to a public way shall not be less than 36 inches. Guide wires and other support members shall not cross a means of egress.
  - (4) Exit Signs. Exit signs shall be installed at required exit doorways and where otherwise necessary to clearly indicate the direction of egress.
- (h) Fire Extinguisher/Telephone. Each Fireworks Stand shall have at least 1 operable fire extinguisher and telephone on site for emergencies at all times. The telephone requirement may be satisfied by maintaining an operable wireless phone on site.
- (i) Posting of Rules. Each Fireworks Stand shall display a 3 foot by 3 foot sign visible to the public advising of the following rules:
- (1) Fireworks shall only be discharged on private property in the unincorporated areas of Douglas County, Kansas if an adult owner, occupier, or person having control of the property consents to and provides direct supervision of the discharge of fireworks.
  - (2) Fireworks shall not be discharged on any public street or roadway.
  - (3) Fireworks may be discharged in the unincorporated areas of Douglas County, Kansas only during the following dates and times:
 

July 2	7:00 A.M. to 10:00 P.M.
July 3	7:00 A.M. to Midnight.
July 4	7:00 A.M. to Midnight
  - (4) No smoking or alcoholic beverages are allowed at the Fireworks Stand.
  - (5) Violations are punishable by fines and/or confiscation of Fireworks.
- (j) Parking. Off street parking must be provided for all employees and customers, which shall be a minimum of 20 feet away from the Fireworks Stand and any Fireworks storage areas.
- (k) Site Preparation. Weeds and grass must be cut back a minimum of 100 feet from the Fireworks Stand.
- (l) Temporary Stand Removal. The temporary stand and signs shall be removed on or before July 8<sup>th</sup>.

- (m) Damage Deposit/Bond. Any Fireworks Stand which gains its principle means of ingress/egress by crossing either a public hike or bike path shall post a \$1,000 refundable bond or pay a \$1,000 deposit to ensure that the path is not damaged by the operation. The bond shall be made payable to Douglas County.
- (n) Advertising Sign. Only one advertising sign can be erected to advertise each Fireworks Stand, which may be illuminated but shall not be flashing. The sign cannot be larger than 32 sq. ft. and must be located in the front of the Fireworks Stand but not on the road or highway rights-of-way, and shall not represent a safety hazard.
- (o) Sales Tax Registration Certificate. The Operator shall conspicuously display its current Kansas Retailers' Sales Tax Registration Certificate at the Fireworks Stand.
- (p) Only Fireworks May be Sold. Unless applicable zoning regulations and approved site-plans allow the sale of other items at retail, only Fireworks-related items may be sold at Fireworks Stands and sale of other items is strictly prohibited.
- (q) Fireworks Stand Permit. The Operator shall conspicuously display its Fireworks Stand permit at the Fireworks Stand.

6-206 **INSPECTIONS OF FIREWORKS STANDS; REVOCATION OF PERMIT.** One or more inspections of the proposed site for the Fireworks Stand may be required to ensure compliance with this Article prior to or after issuing the permit. By submitting any application for a Fireworks Stand permit, the applicant shall be deemed to have consented to all such inspections. If the applicant does not own the subject property, the filing of an application shall be deemed to be a representation by the applicant that the applicant has permission of the owner such that the applicant is authorized to consent to such inspection. Any permit previously issued may be revoked upon notice to the Operator if the Fireworks Stand is not operating in compliance with the provisions of this Article.

6-207 **VIOLATIONS, ENFORCEMENT AND PENALTIES.**

- (a) Criminal Penalties. Any Person who violates the provisions of this Article shall be guilty of a misdemeanor, punishable by a fine in an amount not to exceed \$500, confinement in the county jail for a period not to exceed one month, or both.
- (b) Initiation of Proceedings. In addition to any other method of initiating a criminal proceeding under applicable law, criminal proceeding may be initiated for violation of any provision of this Article by making an offense report and serving a uniform complaint and notice to appear upon the accused. The offense report may be forwarded to the district attorney for prosecution.
- (c) Continuing Violation. Each day that any violation occurs shall constitute a separate offense and shall be punishable as a separate violation. Provided, however, that if any person is found guilty of a violation hereunder and it shall

appear to the court that the violation complained of is continuing, then in addition to the penalty set forth, the court shall enter such order as it deems appropriate to cause the violation to be abated.

(d) Confiscation of Fireworks. In addition to the other provisions of this Section, whenever a Douglas County law enforcement officer, code enforcement officer or fire personnel has probable cause to believe that a person possesses Fireworks with intent to violate the provisions of this Article or has violated the provisions of this Article, the law enforcement officer, code enforcement officer or fire personnel may confiscate Fireworks from such person.

6-208 BURNING BAN. In the event that the Douglas County Board of County Commissioners has declared a burning ban during the 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> days of July in any year, no Fireworks shall be sold or discharged and no Fireworks Stands may be operated on such days. All permit fees for Firework Stands shall be refunded to the permit applicants.

6-209 PARTIAL INVALIDITY. If any provision of this Article or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are severable.

6-210 JURISDICTION. The provisions of this Article shall apply to the unincorporated areas of Douglas County, Kansas.

2. Repeal. Resolution HR 88-8-4, as codified at Article 2 (Fireworks) of Chapter VI (Fire Safety) of the Douglas County Code (Sections 6-201 through 6-204) is hereby repealed.

3. Effective Date. This Resolution shall take effect and be in force from and after its adoption and publication once in the official County newspaper.


IN WITNESS WHEREOF, the foregoing Resolution was adopted this 16<sup>th</sup> day of March, 2005.

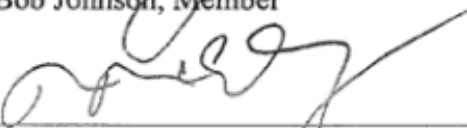
**BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS:**

  
\_\_\_\_\_  
Charles Jones, Chair

ATTEST:

  
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Jameson D. Shew, County Clerk

  
\_\_\_\_\_  
Bob Johnson, Member

  
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Jere McElhaney, Member