

## RESOLUTION 2010-9

### A RESOLUTION REGULATING THE SALE, HANDLING, USE AND STORAGE OF FIREWORKS WITHIN HARVEY COUNTY, KANSAS AND REPEALING HARVEY COUNTY KANSAS RESOLUTION 2009-11

WHEREAS, K.S.A. 19-101a provides the board of county commissioners with the authority to transact all county business and to perform all powers of local legislation and administration it deems appropriate; and

WHEREAS, K.S.A. 31-134(b) affirms the authority of county governments to prohibit or regulate the sale, handling, use or storage of fireworks within a county's boundaries.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF HARVEY COUNTY, KANSAS, that the sale, handling, use and storage of fireworks within the unincorporated area of Harvey County, Kansas, is hereby regulated as hereinafter provided.

#### SECTION I: DEFINITIONS

1. **Fireworks.** The term "fireworks" shall mean and include 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.
2. **Consumer Fireworks.** Small firework devices containing restricted amounts of pyrotechnic composition designed primarily to produce visible or audible effects by combustion. Such 1.4G fireworks which comply with the construction, chemical composition and labeling regulations of the DOTn for Fireworks, UN 0336, and the U.S. Consumer Product Safety Commission as set forth in CPSC 16 CFR: Parts 1500 and 1507, are not explosive materials for the purpose of this Code. (The fireworks in this definition were formerly known as Class C, common Fireworks).
3. **Display Fireworks.** Large firework devices, which are explosive materials intended for use in fireworks displays and designed to produce audible or visual effects by combustion, deflagration or detonation. Such 1.3G fireworks include, but are not limited to, firecrackers containing more than 130 milligrams (2 grains) of explosive composition, aerial shells containing more than 40 grams of pyrotechnic composition, and other display pieces which exceed the limits for classification as 1.4G fireworks. Such 1.3G fireworks, are also described as Fireworks, UN0335 by the DOTn. (The fireworks in this definition were formerly known as Class B, Special fireworks).

#### SECTION II: SALE OF FIREWORKS PROHIBITED

Retail sale of fireworks and retail sale of consumer fireworks (1.4G) or display fireworks (1.3G) in any unincorporated area of Harvey County, Kansas is prohibited. This shall not apply to municipalities within the confines of Harvey County that have authorized such sales by ordinance.

### SECTION III: DISCHARGE OF FIREWORKS

**Illegal discharge.** A person shall not, at any time, ignite or discharge fireworks within 1,000 feet of any hospital, sanitarium, infirmary, retirement or nursing home, wild life reserves, or zoo; into, under or on a car, vehicle, motorcycle, or other means of transportation, whether moving or standing still; or on a public road or the right-of-way adjoining a public roadway. Fireworks shall not be discharged within 100 feet of any facility where fireworks are stored.

### SECTION IV: COMMERCIAL FIREWORKS DISPLAY

All individuals, corporations or organizations, desiring to engage in the commercial public display of fireworks ("display fireworks"), shall apply for and obtain a permit for the same from the Harvey County Emergency Management office. This permit will allow for the storage, handling, use and display, but not the sale, of Display Fireworks commonly used in commercial fireworks displays. It shall be a violation of this Resolution for any person, corporation or organization to engage in the commercial public display of fireworks without a permit. The following procedures, terms and conditions pertain to issuance of such permits:

- A. All permits shall be reviewed and are subject to the prior approval recommendations and conditions of the Board of County Commissioners of Harvey County, Kansas, or its designee.
- B. Each display shall be of such character and so located, discharged or fired, as in the opinion of the Board of County Commissioners of Harvey County, Kansas, or its designee after proper investigation, does not create a hazard to property or endanger any person.
- C. Applications for permits shall be made in writing at least ten (10) days in advance of the date of display and shall be accompanied by a fee of \$25.00 payable to Harvey County, Kansas.
- D. Permits issued shall be valid only for one day, and the date shall be specifically stated on said permit. An alternate date may be granted by the Board of County Commissioners of Harvey County, Kansas, or its designee in the event of inclement weather or burning ban.
- E. All permits issued hereunder shall be valid only at the location specifically stated on such permit. Such permits shall be issued only to those organizations or individuals wishing to provide a display for the public. At all times, such public fireworks displays shall be supervised by an individual holding a fireworks operator's license issued by the Kansas State Fire Marshal. Proof of Kansas license shall be provided to the Harvey County Emergency Management Director upon application for a permit.

- F. Any individual, corporation or organization seeking a permit must display to the Harvey County Emergency Management Director proof of insurance insuring against bodily injury and property damage in the amount of \$500,000.00 by single limit policy of damages arising out of any incident or aggregate incidences occurring during the fireworks display.
- G. No permit granted shall be transferable.

#### SECTION V: DISCHARGE OR USAGE OF FIREWORKS

- A. Beginning at 8:00 a.m. (0800) and ending at 12:00 a.m. (0000), midnight, on July 1, 2, 3 and 4<sup>th</sup>, the discharge of Consumer Fireworks (1.4G) shall be allowed, unless otherwise restricted. In the event the Fourth of July Federal Holiday is observed on July 5<sup>th</sup> of any particular year, the discharge of Consumer Fireworks (1.4G) shall be allowed one additional day, beginning at 8:00 a.m. (0800) on said July 5<sup>th</sup> and ending at 12:00 a.m. (0000), midnight on July 5<sup>th</sup>.
- B. Discharge of Consumer Fireworks (1.4G) is allowed on private or residential property located within the unincorporated area of Harvey County during the dates and time established herein, and only with permission of any person or entity having an ownership interest therein. An adult residing on the property or having an ownership interest therein shall be in near proximity and shall supervise the use, explosion and/or discharge of fireworks on such property.
- C. Bottle rockets and other similar self-propelled firework(s) devices consisting of a tube and attached guiding stick or rod shall not be possessed, discharged, exploded or used, at any time.
- D. Discharge, explosion or use of fireworks of any kind shall not be allowed upon any public road, street, highway, avenue or alley or in any public park or public place within unincorporated Harvey County unless expressly approved in writing by the Harvey County Board of County Commissioners. Discharge, explosion or use of fireworks on any property owned by Harvey County shall not be allowed, unless expressly approved in writing by the Harvey County Board of County Commissioners.
- E. It shall be unlawful for any person to throw, cast or propel fireworks of any kind in the direction of or into the path of any person, group of persons, or any animal, or from or in the direction of any car, vehicle, motorcycle, or other means of transportation.

#### SECTION VI; STORAGE OF FIREWORKS

Any building, erection or structure, permanent or temporary, regardless of type of construction or materials, before use or occupancy as a structure to store, to offer for sale at wholesale, to expose for sale at wholesale, or to sell at wholesale any fireworks in the unincorporated areas of Harvey County shall be inspected by the Board of County Commissioners of Harvey County, Kansas, or its designee and a permit issued by the Board at least ten (10) days prior to such occupancy. It shall be unlawful for any person to use, utilize, or occupy any structure, building or other

appurtenance for the purposes enumerated herein above not so inspected by the Board or its designee. Permits issued in accordance with this provision shall be valid for one (1) year from the date of issuance and shall be issued following the inspection of the premises by the Board or its designee and the payment by the owner or occupant thereof of a permit fee of \$25.00. This section does not imply or allow the retail sale of any type of consumer or display fireworks.

#### SECTION VII: SEIZURE, PENALTY AND VIOLATIONS

1. Fireworks of any kind which are stored, offered for sale, exposed to sale, sold or held in violation of this resolution shall be subject to seizure by the Harvey County Emergency Management Director or its designee or any Harvey County Sheriff's officer. The stocks of fireworks seized hereunder shall be held by the Sheriff of Harvey County. The Sheriff of Harvey County shall hold such fireworks under seal in a safe place until final disposition of the charges against the owner; thereupon, the Sheriff of Harvey County shall dispose of the fireworks in accordance with a Court order; or if no Court Order is forthcoming, upon due notice to the owner (and any person with an interest therein) and opportunity to be heard.
2. Any person, firm or corporation who shall be convicted in a court of competent jurisdiction for violating the provisions of this Resolution shall be deemed guilty of a Class C Misdemeanor and in accordance with K.S.A. 21-4502 and K.S.A. 21-4503 shall be subject to a definite term of confinement in the county jail which shall be fixed by the court and shall not exceed one (1) month and/or a fine not to exceed \$500.00.

#### SECTION VIII: PROHIBITION OF USE OR DISCHARGE

Notwithstanding any other provision or permit authority herein to the contrary, the use or discharge of any consumer fireworks or display fireworks shall be prohibited whenever a Governor's ban on fires is in effect or when the County Commission and/or the County Emergency Management Coordinator declares an emergency, and the use or discharge of all consumer or display fireworks shall not be permitted until said ban or emergency is officially lifted.

#### SECTION IX: INVALIDITY IN PART

If any section, sentence, subdivision, clause or provision of this resolution or application thereof to any person, firm, corporation, partnership, or other entity or circumstances is held invalid or unconstitutional in a court of competent jurisdiction, the remainder of the resolution and the application of the section, sentence, subdivision, clause or provision to the other persons, firms, corporations, partnerships or entities not similarly situated or to other circumstances shall not be affected thereby.


#### SECTION X: REPEAL

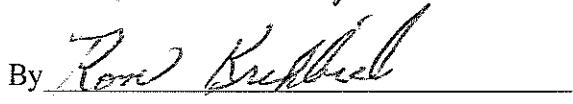
Harvey County Kansas Resolution 2009-11 concerning the sell and use of fireworks, is hereby repealed.

SECTION XI: This Resolution shall take effect and be in force from and after its adoption and publication in the official County newspaper.

PASSED and ADOPTED by the Board of Commissioners of Harvey County, Kansas this 19 day of April, 2010

BOARD OF COUNTY COMMISSIONERS  
OF HARVEY COUNTY, KANSAS

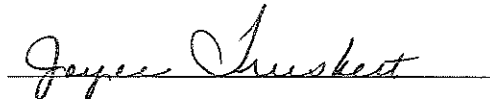
By   
George A. Westfall, Chairperson

By   
Ron Krehbiel, Member

By   
Marge Roberson, Member



ATTEST:

  
Joyce Truskett, County Clerk