

**ORDINANCE NUMBER 738**

**AN ORDINANCE AMENDING CHAPTER VII, ARTICLE 2, SECTIONS 7-203 AND 7-204 OF THE CITY CODE OF THE CITY OF LINCOLN CENTER, KANSAS TO AMEND THE SAME TO REGULATE RECREATIONAL BURNING WITHIN THE CITY, OPEN BURNING WITHIN THE CITY, AND ESTABLISHING PENALTIES FOR VIOLATIONS THEREOF.**

**BE IT ORDAINED, BY THE GOVERNING BODY OF THE CITY OF LINCOLN, KANSAS:**

**SECTION 1.** Section 7-203 of the City Code of the City of Lincoln Center, Kansas is hereby amended to read as follows:

7-203. SAME; AMENDMENTS.

(a) Wherever the word municipality is used in the code hereby adopted, it shall be held to mean the City of Lincoln Center.

(b) All sections of the BOCA National Fire Prevention Code relating to fireworks are hereby deleted in their entirety.

(c) Any provisions of this article which so conflict with the BOCA National Fire Prevention Code, 1999, shall supersede sections of the BOCA National Fire Prevention Code, 1999, adopted by the City of Lincoln Center.

**SECTION 2.** Section 7-204 of the City Code of the City of Lincoln Center, Kansas is hereby amended to read as follows:

7-204. RECREATIONAL BURNING; OPEN BURNING.

(a) Conformance with Article Required. A person shall not kindle or maintain or authorize to be kindled or maintained any open burning unless conducted and approved in accordance with this section.

(b) Definitions. The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

*Open burning.* The burning of materials wherein products of combustion are emitted directly into the ambient air without passing through a stack or chimney from an enclosed chamber. Open burning does not include road flares, smudge pots and similar devices associated with safety or occupational uses typically considered open flames or recreational fires. For the purpose of this definition, a chamber shall be regarded as enclosed when, during the time combustion occurs, only apertures, ducts, stacks, flues or chimneys necessary to provide combustion air and permit the escape of exhaust gas are open.

*Recreational fire.* An outdoor fire burning materials other than rubbish where the fuel being burned is not contained in an incinerator, outdoor fireplace, barbecue grill, or barbecue pit, and has a total fuel area of three (3) feet or less in diameter and two (2) feet or less in height for pleasure, religious, ceremonial, cooking, warmth or similar purposes.

*Portable outdoor fireplace.* A portable, outdoor, solid-fuel-burning fireplace that may be constructed of steel, concrete, clay or other noncombustible material. A portable outdoor fireplace may be open in design. or may be equipped with a small hearth opening and short chimney or chimney opening in the top. The term "Portable Outdoor Fireplace" shall not include an electric, gas, or charcoal barbecue grill used for the preparation of food.

(c) Recreational Fires. It shall be unlawful for any person, firm, corporation, partnership, association, organization, or governmental agency properly regulated by the City to burn or cause to be burned any outdoor fire within the City, unless the following conditions are met:

- (i) Portable outdoor fireplaces shall not be operated within 15 feet of any structure, property line, or combustible materials
- (ii) Portable outdoor fireplaces shall not be used on a combustible deck
- (iii) Portable outdoor fireplaces shall not be used under the balcony of any dwelling or structure.
- (iv) Portable outdoor fireplaces shall not be used when wind speed is in excess of 15 miles per hour.
- (v) Recreational fires must be enclosed by some noncombustible fire ring at least 1 foot in height above the ground and no more than 3 feet in diameter and shall not be constructed within 25 feet of any structure, property line or combustible materials.
- (vi) Outdoor fireplaces, other than portable, must be constructed of noncombustible materials and shall not be constructed within 15 feet of a structure, property line or combustible materials unless constructed under the provisions of the Building Code adopted by the City of Lincoln Center.
- (vii) Fires that are offensive or objectionable because of smoke emissions or when atmospheric conditions or social circumstances make such fire hazardous are prohibited.
- (viii) Combustible materials which could cause a fire to spread shall be eliminated or mowed short in the immediate area prior to ignition
- (ix) Ashes shall be discarded in a noncombustible container and kept outside of any structure
- (x) Only clean, dry, and seasoned firewood is permitted. Firewood can be a maximum of two (2) feet long.
- (xi) The use of flammable and combustible fluids such as gasoline, alcohol, diesel fuel, or kerosene to light and relight fires is prohibited.
- (xii) The burning of trash, garbage, leaves, asphalt, petroleum products, paints, rubber products, plastics, paper, cardboard, treated wood, construction debris, metal or any other substance that normally releases toxic emissions, dense smoke, or obnoxious odors is prohibited.
- (xiii) A burning or smoldering fire must be attended at all times by a person eighteen (18) year or older.

- (xiv) Buckets, shovels, a garden hose, or fire extinguisher shall be readily available for use while a fire is burning or smoldering.
- (xv) Burn bans by the State of Kansas, Lincoln County, or the City of Lincoln Center are strictly enforced and any recreational burning, other than in an appropriate barbecue grill, is prohibited during such burn ban.
- (xvi) Fires for the preparation of food when conducted in appropriate barbecue grills are permitted.

(d) Bonfires. A bonfire shall not be conducted within three hundred (300) feet of a structure or combustible material and a pile no higher than eight (8) feet and a width of no more than twelve (12) feet. Conditions which could cause a fire to spread within three hundred (300) feet of a structure shall be eliminated prior to ignition. Notwithstanding this provision, bonfires may still be subject to enforcement of other city code provisions such as but not limited to the nuisance code.

(e) Prohibited Open Burning. It shall be unlawful for any person to dispose of refuse by open burning, or to cause or allow or permit open burning of any rubbish, trash, grass, or other fire on public or private property within the City, unless such burning is recreational burning as defined herein, and is in compliance with all conditions and requirements for recreational burning, or unless such person has obtained a permit from the governing body to do so in accordance with the procedure established by the governing body for the issuance of such permits. All such applications for burning permits shall first be submitted by the applicant to the city fire chief for approval and/or for such conditions or restrictions as may be imposed by the fire chief. All permits shall require the person seeking the permit notify the Lincoln County Sheriff's Office before proceeding with such authorized burning activity, and as otherwise set forth this in this Section Seven.

(f) Permit Required. Unless otherwise specified herein, a permit shall be required to be obtained from the governing body. A permit constitutes permission to maintain, store, use or handle materials, or to conduct processes which produce conditions hazardous to life or property, or to install equipment used in connection with such activities. Such permission shall not be construed as authority to violate, cancel or set aside any of the provisions of this article. Such permit shall not take the place of any license required by law. The following provisions shall apply to permits: (i) a permit shall be obtained from the city fire chief prior to kindling a fire for recognized silvicultural or range or wildlife management practices, prevention or control of disease or pests, or a bonfire. Application for such approval shall only be presented by and permits issued to the owner of the land upon which the fire is to be kindled. Application for permits shall be made by the fire prevention division in such form and detail as prescribed by the fire prevention division; and (ii) a permit shall continue until revoked or for such a period of time as designated therein at the time of issuance or as may be specified by this article, as it may be amended. All permits shall also require the person seeking such permit notify the Lincoln County Sheriff's Office before proceeding with such permitted burning. Permits shall not be transferable. Any change in use, occupancy, operation or ownership shall require a new permit.

(g) Enforcement. The fire chief, or his designated representative, is hereby authorized and directed to enforce all provisions of this article. Enforcement may be by the filing of a complaint in municipal court, by legal proceedings to enjoin nuisances, or in any other manner

authorized by law. An official of the fire department or of the Lincoln County Sheriff's Office is authorized to issue citations for a violation of this article. It shall be a violation of this article for any person being issued a citation for a violation of this article, to be filed in municipal court or any civil proceeding, to intentionally or knowingly fail to give the fire department official or Lincoln County Sheriff's Office his or her true name and address or to intentionally or knowingly fail to appear in accordance with the terms of a citation issued by the fire department official or Lincoln County Sheriff's Office. For purposes of this section, a person shall be in violation upon failure to provide the requisite identification information upon a request for identification being issued by a person known to be a fire department official or Lincoln County Sheriff's Office. The owner, lessee or occupant of the property or structure where a violation of this article takes place shall be deemed responsible for such violation. If the individual who is to receive the citation is not present, the fire department official or Lincoln County Sheriff's Office may send the citation to the owner of the property by certified or registered mail, return receipt requested. If said citation should come back unclaimed, the citation shall be sent regular mail. If this regular mailing does not come back unclaimed, then service shall be deemed completed.

(h) Compliance with State Regulations. Open burning shall only be permitted with prior approval from the state or local air and water quality management authority, provided that all conditions specified in the authorization are followed. Open burning shall be conducted in accordance with rules promulgated by the state department of health and environment, as amended, including but not limited to K.A.R. 28-19-645 through K.A.R. 28-19-648. Nothing herein shall require that the city verify the existence of the requisite permits, licenses, and site visits, mandated by other agencies.

(i) Attendance. Any open burning, as herein specified, including but not limited to bonfires and recreational fires, shall be constantly attended until the fire is extinguished. A minimum of one (1) portable fire extinguisher, with a minimum 4-A rating, or other approved on-site fire-extinguishing equipment, such as dirt, sand, water barrel, garden hose or water truck, shall be available for immediate utilization. The fire code official is authorized to require greater precautions when deemed necessary by the fire code official in his or her discretion, under existing or anticipated circumstances, and such additional precautions shall be addressed prior to the issuance of the permit.

(j) Violations and Penalties. Any person violating any provision of this article, upon conviction, shall be deemed guilty of a misdemeanor and sentenced as provided for in the Uniform Public Offense Code, as incorporated in Chapter XI, Article 1. A separate offense shall be deemed committed upon each day during or on which a violation occurs or continues to occur. Unless otherwise specifically set forth herein, allegation and evidence of culpable mental state are not required for the proof of an offense defined by this article.

**SECTION 3.** This ordinance shall be in full force and effect from and after its adoption and publication once in the official city newspaper.

INTRODUCED, PASSED, and APPROVED by the City Council of the City of Lincoln Center, Kansas, on this 11th day of April, 2022.

APPROVED:

By: \_\_\_\_\_

Travis Schwerdtfager, Mayor

Attest:

By: \_\_\_\_\_

Heather N. Hillegeist, City Clerk