

ORDINANCE NUMBER 736

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 OPEN BURNING.

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. 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, barbeque grill, or barbeque 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.

(c) 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.

(d) 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.

(e) 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.

(f) Prohibited Open Burning. Open burning that is offensive or objectionable due to smoke or odor emissions when atmospheric conditions or local circumstances make such fires hazardous shall be prohibited. No person shall kindle or maintain any rubbish, trash, grass, or other fire on public or private property, unless such person has obtained a permit as otherwise provided for in this Article 2. The fire department official is authorized to order the extinguishment by the permit holder or the fire department of open burning which creates or adds to a hazardous or objectionable situation. The location for open burning shall not be less than five hundred (500) feet from any structure, and provisions shall be made to prevent the fire from spreading to within five hundred (500) feet of any structure.

(g) 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.

(h) Recreational Fires. Recreational fires shall not be conducted within twenty-five (25) feet of a structure or combustible material unless the fire is contained in a container approved by the chief of the fire department. Conditions which could cause a fire to spread within twenty-five (25) feet of a structure shall be eliminated prior to ignition.

(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 14th day of March, 2022.

APPROVED:

By: /s/ Travis Schwerdtfager
Mayor

Attest: (seal)

By: /s/ Heather N. Hillegeist
City Clerk