

ORDINANCE NO. 98

AN ORDINANCE PROHIBITING LITTERING WITHIN THE CITY OF LINN VALLEY, KANSAS AND PROVIDING A PENALTY FOR THE SAME.

IT IS HEREBY ORDAINED BY THE GOVERNING BODY OF THE CITY OF LINN VALLEY, KANSAS:

Section 1- Definitions.

As used in this ordinance:

"Appliances" includes, but is not limited to, washers, dryers, dishwashers, freezers, refrigerators, stoves, ranges, hot water heaters, furnaces, air conditioners and other such household appliances.

"Bulk quantities" means an amount of waste matter in an amount equal to or in excess of two cubic yards.

"Furniture" includes, but is not limited to, couches, chairs, tables, dressers, recliners, desks, mattresses, box springs and such other household furniture.

"Garbage" means all putrescible solid wastes, including but not limited to vegetable matter, discarded food containers or other matter that attends to the preparation, consumption, packing, canning, storage and decay of meats, fish, fowls, vegetables, and fruit.

"Littering" means the willful, reckless or negligent throwing, dropping, placing, depositing, or sweeping, or causing any such acts, of any waste matter on land or water in other than appropriate storage containers or areas designated for such purposes.

"Person" means any individual, firm, trust, partnership, association or corporation.

"Rubbish" means all nonputrescible solid wastes, including but not limited to trees, limbs, logs, automobile bodies, motor vehicle parts, tires, building materials, furniture, appliances, household goods, sod and dirt, metal, wood and rock.

"Waste matter" means discarded, used, or leftover substances including, but not limited to, a lighted or nonlighted cigarette, cigar, match, or any flaming or glowing material, or any garbage, trash, rubbish, container, packaging or construction material, carcass of a dead animal, any nauseous or offensive matter of any kind, or any object likely to injure any person or create a traffic hazard.

Section 2-Littering prohibited.

(a) It is unlawful to litter, as defined in subsection (c), in or upon any public or private property. Any person, firm, or corporation violating this section is guilty of an infraction.

(b) This section does not restrict a private owner in the use of his or her own property, unless the littering of waste matter on the property creates a public health and safety hazard, a public nuisance, or a fire hazard, as determined by a health department.

(c) As used in this section, "litter" means the discarding, dropping, or scattering of small quantities of waste matter ordinarily carried on or about the person, including, but not limited to, beverage containers and closures, packaging, wrappers, wastepaper, newspapers, magazines, cigarettes, and cigarette butts in a place other than a place or container for the proper disposal thereof, and including waste matter which escapes or is allowed to escape from a container,

receptacle, or package.

(d) If the throwing, dumping or depositing of litter was done from a motor vehicle, it shall be presumed that the throwing, dumping or depositing was done by the driver of the motor vehicle. Presumptions in this section may be overcome by proof that the person identified from the litter caused the litter to be collected and transported for disposal at an approved site by person licensed by the city to collect and dispose of solid waste.

(e) A person, firm, or corporation convicted of a violation of this section shall be punished by a mandatory fine of not less than one hundred dollars nor more than one thousand dollars upon a first conviction, by a mandatory fine of not less than two hundred fifty dollars nor more than one thousand dollars upon a second conviction, and by a mandatory fine of not less than five hundred dollars nor more than one thousand dollars upon a third or subsequent conviction.

(f) Except in unusual cases where the interests of justice would be best served by waiving or reducing the fine, the minimum fines provided by this section shall not be waived or reduced. Except that a court may order that the defendant perform community service specified by the court in lieu of the mandatory fines imposed, but such an order shall be entered only after the court has required the defendant to file an affidavit of such defendant's financial condition, and the court has found from the information contained in the affidavit that the defendant is financially unable to pay the fines imposed.

Section 3- Enforcement--Personnel authorized.

In addition to all law enforcement officers, the following personnel employed by the city shall have the power to enforce the provisions of this chapter: (1) all deputies under the supervision of the superintendent of the office of building and codes inspection; (2) all authorized personnel under the supervision of the director of public works.

Section 4- Violations not exclusive.

Violations of this chapter are in addition to any other violation enumerated within the ordinances of this code. This chapter in no way limits the penalties, actions or abatement procedures which may be taken by the city for a violation of this chapter which is also a violation of any other ordinances of the city or statute of the state.

Section 5- Illegal dumping.

(a) It is unlawful to dump or cause to be dumped any wasted matter in or upon any public or private highway or road, including any portion of the right-of-way thereof, or in or upon any private property into or upon which the public is admitted by easement or license, or upon any private property without the consent of the owner, or in or upon any public park or other public property other than property designated or set aside for the purpose by the governing body having charge of that property.

(b) Any person violating this section is guilty of a misdemeanor. Each day that waste placed, deposited, or dumped in violation of this section remains is a separate violation.

(c) This section does not restrict a private owner in the use of his or her own private property, unless the placing, depositing, or dumping of the waste matter on the property creates a public health and safety hazard, a public nuisance, or a fire hazard, as determined by the health department.

(d) Whenever waste dumped in violation of this section is discovered to contain any article or articles, including but not limited to letters, bills, publications or other writings which display the name of a person thereon, addressed to such person or in any other manner indicating that the article belongs or belonged to such person, it shall be a rebuttable presumption that such person has violated this chapter. Presumptions in this section may be overcome by proof that the person identified from the letter or other item caused the waste to be collected and transported for disposal at an approved site by a person licensed by the city to collect and dispose of solid waste.

(e) Any person convicted of a violation of this section shall be punished by a mandatory fine of not less than two hundred fifty dollars nor more than one thousand dollars upon a first conviction, or by imprisonment for not more than twelve months, or by both such fine and imprisonment.

Upon a second or subsequent conviction by a mandatory fine of not less than five hundred dollars nor more than one thousand dollars or by imprisonment for not more than twelve months, or by both such fine and imprisonment. If upon the trial of any person found guilty of a misdemeanor hereunder, it shall appear to the court that the violation complained of is continuing, the court shall enter such order as it shall deem appropriate to cause the violation to be abated.

(f) The court may require, in addition to any fine imposed upon a conviction, that, as a condition of probation and in addition to any other condition of probation, a person convicted under this section remove, or pay the cost of removing, any waste matter which the convicted person dumped or caused to be dumped upon public or private property.

(g) Except when the court requires the convicted person to remove waste matter which he or she is responsible for dumping as a condition of probation, the court may, in addition to the fine imposed upon a conviction, require as a condition of probation, in addition to any other conditions of probation, that any person convicted of a violation of this section pick up waste matter at a time and place within the jurisdiction of the court for not less than twelve hours.

(h) Any person who places, deposits, or dumps, or causes to be placed, deposited, or dumped waste matter in violation of this section in bulk quantities, tires, furniture, or appliances shall be guilty of a misdemeanor, and upon a first conviction thereof shall be punished by a fine of not less than five hundred dollars or more than one thousand dollars, or by imprisonment for not more than twelve months, or by both such fine and imprisonment. Upon a second or subsequent conviction shall be punished by a fine of not less than one thousand dollars, or by imprisonment for not more than twelve months, or by both such fine and imprisonment. Upon a second or subsequent conviction of this subsection, the person convicted must serve at least five consecutive days imprisonment before the person is granted probation suspension or reduction of sentence or parole or is otherwise released. If upon trial of any person found guilty of a misdemeanor hereunder, it shall appear to the court that the violation complained of is continuing, the court shall enter such order as it shall deem appropriate to cause the violation to be abated.

(i) Except in unusual cases where the interests of justice would be best served by waiving or reducing the fine, the minimum fines provided by this section shall not be waived or reduced. Except that the court may order that the defendant perform community service specified by the court in lieu of the mandatory fines imposed, but such an order shall be entered only after the court has required the defendant to file an affidavit of such defendant's financial condition, and the court has found from the information contained in the affidavit that the defendant is financially

unable to pay the fines imposed.

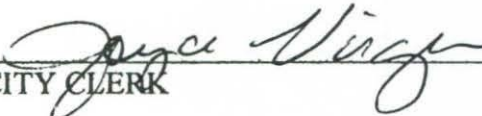
This ordinance shall become effective upon its passage and publication in the official newspaper of the City of Linn Valley.

ORDAINED THIS 13TH DAY OF NOVEMBER, 2006.



MAYOR

ATTEST:



CITY CLERK