

ORDINANCE 23-2

AN ORDINANCE ESTABLISHING THE LEVEL OF CULTIVATION TO THE MCPHERSON COUNTY PLANNING AND ZONING ORDINANCE #10-2.

McPherson County Planning and Zoning Ordinance #10-2, adopted the 6th day of December, 2010 and effective 1st day of January, 2011, shall hereby be amended to include the following Article 27.

ARTICLE 27 **LEVEL OF CULTIVATION**

Section 2701. Title.

1. This Ordinance may be known and may be cited and referred to as the “McPherson County Level of Cultivation Ordinance” to the same effect as if the full title were stated.

Section 2702. Intent.

1. The intent of the McPherson County Level of Cultivation Ordinance shall be to promote the health, convenience, order, and welfare of the present and future inhabitants of McPherson County, including, but not limited to, providing adequate light and air, protecting the tax base, and protecting property against blight and depreciation.

Section 2703. Level of Cultivation.

1. For the purpose of 49 C.F.R 198.248(a), the “level of cultivation” in McPherson County, unless waived in the manner provided in Section 4 and Section 5 herein shall be the greater of:
 - a. Not less than two (2) feet below all tile lines and drainage pipes and equipment on any cultivated agricultural land;
 - b. Not less than six (6) feet below the surface of all cultivated and non-cultivated agricultural land and the lowest point of any ditch in a public right of way;
 - c. Not less than six (8) feet below the surface of any right of way of any public drainage facility and any maintained or non-maintained drivable surface of any county, town or municipal street/highway and/or right of way.

Section 2704. Waiver of Depth Requirement.

1. In any easement granting right-of-way over cultivated agricultural land, the grantor of the easement may waive the minimum level of cultivation requirement of Section 2703 with respect to all or part of cultivated agricultural land. A waiver of the level of cultivation requirement of Section 2703 shall be effective only if the waiver:
 - a. Is separately and expressly stated in the easement agreement and included an express statement by the grantor acknowledging that the grantor has read and understood the waiver;
 - b. Is printed in capital letter and in language understandable to an average person not learned in law; and
 - c. Is separately signed or initialed by the grantor.

Section 2705. Waiver and Rules of Political Subdivisions.

1. Any political subdivision authorized by law to approve the use of the right-of-way of any public drainage facility or any public street or highway for a pipeline may:
 - a. Waive the minimum level of cultivation requirement of Section 2703 if the level of cultivation or other means approved for the use of the right-of-way adequately protects the health and safety of the public; or
 - b. Adopt and enforce by ordinance or resolution reasonable rules or regulations establishing a greater level of cultivation than the minimum required in Section 2703 and other measures for protection of public roads and drainage facilities under their jurisdiction.

Section 2706. Interstate gas pipelines exception.

1. Section 2703, 2704, and 2705 shall not apply to interstate natural gas pipelines subject to safety regulations under the federal Natural Gas Pipeline Safety Act of 1968, Public Law 90-481, as amended.

Section 2707 Violation and Penalty.

1. A violation of Article 27, the McPherson County Level of Cultivation Ordinance, shall be subject to Article 21, of the McPherson County Planning and Zoning Ordinances.
2. McPherson County reserves the right to take all legal actions afforded by law to uphold this ordinance.

Dated this 15th day of August, 2023

ATTEST:

Rick Beilke
Chairman of the McPherson Co. Board of
County Commissioners

Lindley Howard
McPherson County Auditor

FIRST READING: August 1st, 2023

SECOND READING: August 15th, 2023

ADOPTED: August 15th, 2023

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EFFECTIVE DATE: September 14th, 2023