

(Summary Published in the *McPherson Sentinel* on _____, 2018, once)

ORDINANCE NO. 3264

AN ORDINANCE OF THE CITY OF MCPHERSON, KANSAS, CREATING DIVISION 6 OF ARTICLE III OF CHAPTER 86 OF THE CODE OF THE CITY OF MCPHERSON, KANSAS, RELATING TO GREASE MANAGEMENT; REQUIRING MINIMUM EQUIPMENT TO CONTROL GREASE DISCHARGE; MAINTENANCE AND MONITORING REQUIREMENTS OF FOOD SERVICE FACILITIES FOR CONTROLLING THE DISCHARGE OF GREASE; AUTHORIZING ESTABLISHMENT OF RATES, FEES AND CHARGES FOR GREASE MANAGEMENT; AND PROVIDING FOR ENFORCEMENT PROCEDURES.

WHEREAS, it appears to the City Commission of the City of McPherson, Kansas (the “City”) that the City should require grease control devices to be installed for the proper handling of liquid wastes containing grease; and

WHEREAS, there is not an acceptable method to verify that active grease control devices are being properly maintained following installation; and

WHEREAS, the City Commission has found and determined that it is necessary to create Division 6 of the Code of the City of McPherson, Kansas, as amended (the “Code”) to accomplish these purposes.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF MCPHERSON, KANSAS:

Section 1. From and after the effective date of this ordinance, Sections 86-224 through 86-232 inclusive shall be added to the Code of the City as follows:

Section 86-224 Title

This Article shall be known and may be cited as the “City of McPherson Grease Management Program”.

Section 86-225. Definitions.

For the purposes of this Program, certain abbreviations, terms, phrases, words and their derivatives shall have the following meanings:

Code means the Code of the City of McPherson, Kansas, as amended from time to time.

Director means the Director of the Public Works Department or his or her designee.

Food Service Facility or *facility* means a facility classified as a Risk Level 1 as defined by the Kansas Department of Agricultural Food Safety and Lodging Program.

Food service facility Owner or owner means the person or entity who has been issued a Food Safety License by the Kansas Department of Agriculture for the food service facility. Where the food service facility is owned or operated by a partnership, corporation, or other type of business entity, any manager or other individual who is authorized to accept process of service in a district court action may accept notice under this article.

Grease Management Program Inspector or inspector means a member of the City staff, designated by the Director to enforce the City of McPherson Grease Management Program.

Gray Water means all liquid contained in an interceptor that lies below the floating grease layer and above the food solids layer.

Grease means waste containing fats, waxes, grease or oils, whether emulsified or not, or containing substances which may solidify or become viscous at temperatures between 32-120 degrees Fahrenheit (0-49 degrees Celsius).

Grease Control Device (GCD) means a device that is designed to collect, contain, or remove food wastes or grease from the wastewater while allowing the balance of the liquid waste to discharge to the POTW. This could be either in the form of a *Grease Interceptor* or a *Grease Trap*.

Grease Control Permit (GCP) means an operating permit that will be issued to a food service establishment using one of the following classification levels;

- (1) *Class A* permit is issued to a Kansas Department of Agriculture Food Safety and Lodging Risk Level 1 establishment that has one or more grease control devices in operation.
- (2) *Class B* permit is issued to a Kansas Department of Agriculture Food Safety and Lodging Risk Level 1 establishment that does not have any grease control device in operation.

Grease Interceptor means an interceptor whose rated flow exceeds 50gpm or has a minimum storage capacity of one thousand (1,000) gallons or more and is a device located underground and outside of a food service facility.

Grease Trap means a grease control device whose rated flow is 50gpm or less and is a device located inside a facility. The Grease Trap must be designed to facilitate inspection, cleaning and maintenance operations.

Notice of Violation (NOV) means a written notice that a violation of the City of McPherson Grease Management Program has occurred.

Registered Grease Hauler or hauler means a grease hauler operating in accordance with this article who is authorized to perform inspection, cleaning, and grease disposal for food service facilities, having the necessary permits, registrations, or occupational licenses required by federal, state or city agencies having lawful authority.

Publicly Owned Treatment Works (POTW) means the publicly owned treatment works, including any device and system used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature and any sewers, pipes, and other conveyances, if they convey wastewater to a waste water treatment plant.

Section 86-226. Facility Inspections

- (a) *Right of Entry.* Pursuant to Section 86-92 of the Code, each facility shall allow the Director or his or her designee (“GMP Inspector”) the right of entry upon real property for the purpose of inspection, observation, records examination, measurement, and sampling in accordance with the provisions of this Article.
- (b) *Inspections.* The inspector may inspect the facility at all reasonable times without delay to verify compliance with the requirements of this Article. The inspector may inspect all interceptors, plumbing connections, logbooks, associated files, and collect samples as necessary. The inspector shall record relevant observations including any repairs, replacements or other deficiencies. If deficiencies exist that do not result in non-compliance but require a response or corrective action, the inspector will provide a written report to the facility detailing the findings of the inspection. A copy of the inspection report will be provided to the facility.
- (c) *Response to inspection report.* For inspections that require a response or corrective actions the facility will have thirty (30) calendar days from receipt of the report to address and/or correct the items. At the discretion of the inspector a re-inspection may be required. For inspections that do result in a determination of non-compliance, the facility will be subject to enforcement procedures pursuant to 82-228 of this Article.

Section 86-227. Grease Control Devices.

- (a) *Permit required.* Any facility that is required to operate, maintain, install, enlarge, alter, repair, or replace a grease control device is required to obtain a Grease Control Permit (GCP) issued by the Director of Public Works or designee. The application for such permit shall be made on a form furnished by the City. The applicant shall supplement the application with any plans, specifications, and other information deemed reasonably necessary by the Director. The Director shall have thirty (30) calendar days to review the permit application. A non-refundable permit application fee shall be paid to the City at the time the application is submitted.
- (b) *Notification of Readiness for Inspection.* The Grease Control Permit (GCP) shall become effective after the installation is completed to the reasonable satisfaction of the inspector. The inspector shall be allowed to inspect the work at any stage of construction and, in any event, the applicant for the permit shall notify the inspector when the work is ready for final inspection and before the grease control device or any underground plumbing is covered. Failure to notify the inspector prior to backfilling any plumbing or apparatus will result in the facility having to uncover the plumbing and apparatus at the owner’s expense. The final inspection will require reasonable notice from the facility to the inspector or his/her representative.
- (c) *Requirements.* All facilities connected to the POTW are required to have a grease control permit in accordance with any and all applicable requirements in this Article.
 - (1) *New Facilities.* Facilities which are newly constructed, shall be required to have a Class A permit, install a grease interceptor according to the manufacturers design requirements, and maintain the grease interceptor according to the requirements contained in this Article unless they do not meet the standards for requiring a GCP as defined in Section 86-225.

- (2) *Renovated Facilities.* Renovated facilities or an existing facility which will be expanded to include a food service facility where such a food service facility did not previously exist, shall be required to have a Class A permit and install a Grease Control Device unless they do not meet the standards for requiring a GCP as defined in Section 86-225.
- (3) *Existing food service facilities with and without an existing GCD.* Food service facilities operating prior to the date of this Article that have an existing GCD shall be issued a Class A permit to operate and maintain the existing GCD, provided it is in good operating condition. Food service facilities operating prior to the date of this Article that do not have a GCD or have an existing GCD that does not meet the performance criteria in (3)(a), (b), and (c) shall be issued a Class B permit. These facilities will be exempt from installing a GCD or modifying an existing GCD. A Class B permit may be revoked and the facility may be required to upgrade their operations to meet the Class A standards if one or more of the following conditions become present:
- (a) The facility is found to be contributing grease in quantities sufficient to interfere with the normal operations of the POTW.
 - (b) The existing GCD no longer meets the performance criteria set forth in this Article.
 - (c) The wastewater discharge grease concentration is greater than 100 mg/L. from the initial issuance of the waiver.
- (d) *Maintenance Records.* Each facility shall maintain a bound logbook or electronic file in which a record of all GCD maintenance is entered. Maintenance information shall include, but not be limited to, date and time of the maintenance, estimated gallons removed from the GCD, any defects, details of any repairs required, and dates of repair completions, grease hauler manifests, plumbing contractor information and parts suppliers. This logbook shall be made available for review upon request. Records shall be maintained for a period of five (5) years.
- (1) *Self Reporting.* Each facility shall submit an annual report to the City in an approved format. This report may be submitted electronically or on paper, on or before February 1 for the previous calendar year. Each report shall include but not be limited to, records of the number of times the GCD has been cleaned since last report, the volume of liquids and solids removed on each occasion, as well as the grease hauler name and address. The report shall note repairs that have been made to the GCD including dates the repairs were completed and the individual contractor that made the repairs. Reports shall be deemed late and subject to all applicable fees if they are received by the City after February 1st.
- (e) *Grease Interceptors.* The grease interceptor shall be of sufficient size to provide a minimum 30-minute detention of the peak waste water flow. The minimum size allowed is 1,000 gallons. The maximum size allowed is 2,000 gallons. The grease interceptor shall be located as to be easily accessible for pumping and inspection. Indoor grease interceptors are prohibited in new facilities or a material remodeling of an existing facility, unless approved by the Director of Public Works. Grease interceptors shall be designed in accordance all applicable City code and shall be operated and maintained as follows:

- (1) *Pumping and maintenance.* Each facility shall be responsible for the costs of pumping, cleaning, and maintaining its grease interceptor. All facilities that have a grease interceptor shall utilize a registered grease hauler. Pumping services shall include the complete removal of all contents, including floating materials, gray water, bottom sludge, and solids from the grease interceptor. Grease interceptor cleaning shall include scraping excessive solids from the walls, floors, baffles, and all piping.
- (2) *Maintenance Inspections.* It shall be the responsibility of the facility to have a licensed plumber, or registered hauler, or professional inspector from a licensed company to inspect a grease interceptor during, or immediately after servicing to ensure that the grease interceptor is clean and that all fittings and fixtures inside the grease interceptor are in working condition and functioning properly. If the grease interceptor is not functioning properly, the servicing provider shall notify the facility and City in writing. The notice shall include a description of the malfunction.
- (3) *Pumping frequency.* Unless otherwise approved by the Director, each facility shall have its grease interceptor(s) pumped at least once every ninety (90) days or when any of the following criteria apply:
 - (a) When the settled solids layer exceeds the invert of the outlet pipe; or
 - (b) When the total volume of captured grease and solid material displaces more than twenty-five percent (25%) of the capacity of the interceptor; or
 - (c) When the interceptor is not retaining or capturing oils and greases.
- (4) *Pumping Variance.* Any facility which holds a current GCP may apply for a variance from the pumping frequency requirement. If the Director determines the proposed variance maintains compliance with sections (f) (3) (a), (b), and (c) above, the Director may grant a variance or modified schedule. Any variance or modified pumping schedule shall thereafter become a requirement under this Code, applicable to that permit holder, and shall be subject to further revision or revocation as necessary for the public health and the proper maintenance of the POTW.
- (5) *Disposal.* Wastes removed from each interceptor shall be disposed of in accordance with all applicable federal, state, and local laws. Grease, solid materials, and gray water removed from interceptors shall not be returned to the POTW except for food service facilities that use a two compartment pump truck where the compartments are fully separate with their own valve system so there is no cross contamination between the gray water and the grease/solids material. Subsequently, gray water may be re-introduced to the POTW provided the wastewater grease concentration does not exceed 100 mg/L.
- (f) *Alternative grease removal devices or technologies.* Alternative devices and technologies such as automatic grease removal systems shall be subject to written permission by the Director prior to installation. Permission to use the device shall be based on demonstrated and proven removal efficiencies and reliability of operation. The City may permit these types of devices on a case-by-case basis. The facility may be required to furnish analytical data demonstrating grease removal effectiveness. Permission to use alternative devices and technologies may be withdrawn by the City if the device fails to meet the performance criteria set forth in this Article, or interferes, or potentially harms the POTW.

Section 86-228. Enforcement.

- (a) Whenever the Director or designee determines that a grease control device requires pumping, repairs, maintenance, replacement, or any other violation resulting in non-compliance, enforcement shall be as follows:
 - (1) *Notice of Violation (NOV).* The inspector conducting the inspection shall issue a letter sent by first class mail or hand-delivered to the address listed on the permit notifying the facility owner that a non-compliance violation exists. The owner has ten (10) business days from the date on the letter to respond to the NOV. The owner shall submit in writing, a plan to develop a compliance schedule for correcting the violation(s). The plan and compliance schedule shall have a proposed completion date not to exceed ninety (90) days, absent a written extension granted by the inspector for good cause shown.
 - (2) *Re-inspection.* If a GCD requires re-inspection because of non-compliance found during a prior inspection, and all corrections were completed, there shall be no charge for this re-inspection. If all deficiencies were not corrected, a re-inspection fee shall be applied to this re-inspection and each additional re-inspection.
 - (3) *Repairs and Replacement.* The facility owner shall be responsible for the cost and scheduling of all repairs to or replacement of its GCD(s). Repairs and replacements required by the Director shall be completed within ninety (90) days of issuance of the NOV absent a written request for a time extension for good cause shown.
 - (4) *Noncompliance.* If the facility owner continues to violate the provisions set forth in this Article, or fails to initiate or complete corrective action in response to a NOV, or a City approved plan to rectify a violation, the Director may pursue one or more of the following options at the Director's discretion:
 - (a) Service the GCD and assess the costs to the facility owner or the property owner as provided for the assessment of costs when abating a nuisance under the Code; or
 - (b) Terminate sanitary sewer service from the facility;
 - (c) Any person violating any of the provisions of this article shall become liable to the city for any expense, loss or damage occasioned the city by reason of such violation, including such fines, penalties and other costs which may be assessed to the city for violation of sewage treatment plant effluent requirements, where such violation was created by a user of the sewage works who, in turn, is in violation of city, state or federal regulations;
 - (d) Any user that is found to have violated an order of the governing body or who failed to comply with any provision of this article, and the orders, rules, regulations and permits issued under this article, shall be fined not less than \$100.00, nor more than \$1,000.00 for each offense. Each day on which a

violation shall occur or continue shall be deemed a separate and distinct offense;

- (e) Any user that is found to have willfully or negligently failed to comply with any provision of this article, and the orders, rules, regulations and permits issued under this article, shall be fined not less than \$100.00, nor more than \$1,000.00 for each offense or by imprisonment for not more than six months, or both such fine and imprisonment. Each day on which a violation shall occur or continue shall be deemed a separate and distinct offense. In addition to the penalties provided in this subsection, the city may recover reasonable attorneys' fees, court costs, court reporters' fees and other expenses of litigation by appropriate suit at law against the person found to have violated this article or the orders, rules, regulations and permits issued under this article;
- (f) In addition to the penalties provided in subsections (a), (c), and (e), the city may recover reasonable attorneys' fees, court costs, court reporters' fees and other expenses incurred as a result.

(5) *Appeal of the Notice of Violation (NOV).* Any NOV may be appealed in accordance with Section 1-19 of the City of McPherson Code. The appellate designated to hear these matters shall be the City of McPherson governing body. The facility shall have ten (10) business days from the date on the letter of written notice of the NOV to file an appeal. Failure of the facility to file an appeal within the ten (10) business day time limit shall be a waiver of the right to appeal the Notice of Violation.

Section 86-229. Registered Grease haulers.

- (a) *Requirements.* Any person, firm, or business collecting, pumping, or hauling grease interceptor or grease trap wastes from businesses connected to the POTW must be a registered grease hauler. Prior to any work performed in the City, the City shall issue a license to the hauler. The hauler shall provide copies of permits, registrations, or occupational licenses required by federal and/or state agencies having lawful jurisdiction. The hauler shall pay a licensing fee, set by Resolution of the governing body from time to time each year at the time the license is issued.
- (b) *Spill reporting.* The hauler shall comply with all procedures and reporting requirements contained in federal, state and local regulations. The hauler shall be responsible for all clean-up procedures and costs. Any accident, spill, discharge of grease, solids, or gray water, which occurs within the City shall be reported to the Public Works Department by the hauler as soon as possible but no later than the next business day. For incidents resulting in immediate danger to health or environment the hauler must contact emergency services (911) without delay.
- (c) *Record keeping.* Grease haulers shall retain and make available for inspection, all records related to grease interceptor or grease trap pumping performed within the City within the last three (3) years. A grease hauler manifest or approved form shall be required to be signed by the hauler certifying the accuracy of the information on the manifest. The manifest shall include, but not be limited to, name, location, date and time of the facility serviced, estimated gallons removed from interceptor or trap, disposal times, dates, and locations.

- (d) *Grease hauler enforcement.* Enforcement actions against haulers in violation of this Article shall be as follows:
- (1) *Notice of violation (NOV)* A NOV will be issued to any hauler who is found to be in non-compliance with this Article. The hauler must respond in writing to the NOV within ten (10) working days of the date of the NOV.
 - (2) Grease Haulers may be suspended or revoked from hauling in the City for cause shown including, but not limited to any one of the following:
 - (a) Falsification of any information; or
 - (b) Discharging any grease, liquid, or solid waste into a non-authorized location; or
 - (c) Materially failing to comply with this Article after an opportunity to correct; or
 - (d) Loss or suspension of registered grease hauler status.

Section 86-230. Fees.

Fees and costs associated with this Article will be established pursuant to Resolution of the governing body adopted from time to time. The fees for any grease permit required by this Article shall be included as part of the monthly bill for utility services of the City, but shall be identified separately on said billing. Said fees shall be due at the same time as utility services of the City charges are due and the failure to pay said fees shall be considered a failure to pay utility services of the City charges and enforceable pursuant to the Code of the City of McPherson, Kansas. In addition, any time utility services of the City are established, or re-established to a property requiring a permit, all fees hereunder shall be paid current, as of the date such service is established or re-established. The fee is intended to be exempt from or not subject to the retailers' sales tax and should be interpreted accordingly. In the event that it is determined that retailers' sales tax applies to the grease permit fee or state law is amended, sales tax and any arrearages owed by the City shall be added to the fee after adoption of a resolution of the governing body authorizing the same.

Section 86-231. Enforcement

- (a) *Search or Inspection warrant.* The Director may seek a search or inspection warrant from the McPherson County District Court to gain access to a facility for the purposes of inspection and monitoring if such lawful entry under Section 86-226 of this Article has been denied by the owner.
- (b) *Injunctive and other relief.* The City may file a petition in the name of the City seeking the issuance of an injunction, damages, or other appropriate relief to enforce the provisions of this Program.
- (c) *Remedies nonexclusive.* The remedies provided for in this Article are not mutually exclusive. The City may take any, all, or any combination of these actions against a noncompliant party.
- (d) *Appeal of revocation or denial of grease hauler registration.* Any revocation or denial of grease hauler registration may be appealed in accordance with Section 1-19 of the City of McPherson

Code. The panel designated to hear these matters shall be the City of McPherson governing body. The hauler shall have ten (10) business days from receipt of written notice of denial or revocation of the registration to file an appeal. Failure of the hauler to file an appeal within the ten (10) business day time limit shall constitute a waiver of the right to appeal.

Section 86-232. Additional Criminal Offenses.

- (a) *Falsifying information.* Any person who knowingly makes any false statements, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this Article, or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required under this article, shall, upon conviction, be subject to a penalty in an amount not to exceed \$500.00, or by imprisonment for not more than sixty (60) days, or by both.

Section 2. Repeal. All or parts of the Code conflicting with the provisions of this Ordinance are hereby repealed.

Section 3. Publication and Effective Date. This ordinance shall take effect and be in full force and effect from and after its passage, signature and publication of a summary of this ordinance in the official city newspaper and posting of the full text of the ordinance on the city’s website in compliance with K.S.A. 12-3007(b).

PASSED by a majority of the governing body of the City and **SIGNED** by the Mayor this _____ day of _____, 2018.

CITY OF MCPHERSON, KANSAS

Thomas A. Brown, Mayor

[SEAL]

Attest:

Tamra K. Seely, City Clerk

(Published in the McPherson Sentinel, _____, 2018, once)

Ordinance No. 3264, Summary

On _____, 2018, the City of McPherson, Kansas adopted Ordinance No. 3264 creating division 6 of Article III of Chapter 86 of the Code of the City of McPherson, Kansas, relating to grease management; defining terms; authorizing uniform maintenance and monitoring requirements of food service facilities for controlling the discharge of grease; authorizing establishment of rates, fees and charges for grease management; providing for enforcement procedures. A complete copy of this Ordinance may be obtained or viewed free of charge at www.mcpcity.com or at the City Clerk's office in the Municipal Center, 400 E. Kansas, McPherson, Kansas. Jeffrey A. Houston, City Attorney, certified this summary as legally accurate and sufficient.