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**ORDINANCE NO. 3369**

**AN ORDINANCE OF THE CITY OF MCPHERSON, KANSAS  
AUTHORIZING THE CONDEMNATION OF VARIOUS TRACTS  
OF REAL PROPERTY FOR THE PURPOSE OF A MUNICIPAL  
WATER LINE.**

**WHEREAS**, the City of McPherson is a Kansas municipality and has the power of imminent domain including but not limited to such powers as provided pursuant to K.S.A. 26-201;

**WHEREAS**, pursuant to K.S.A. 26-201, the City of McPherson, Kansas has taken all necessary preliminary steps for the passage of this Ordinance, including passage of Resolution 22-8 and the filing with the City Clerk of the required legal descriptions on May 17, 2022;

**WHEREAS**, the City may condemn property outside its city limits under K.S.A. 26-208;

**WHEREAS**, by Charter Ordinance, the City created its Board of Public Utilities ("BPU") to install, operate and maintain electric and water services for city residents, that the City holds title to all real property utilized by the BPU.

**WHEREAS**, City owns real property in Harvey County, Kansas described as follows:

The South three-fourths (3/4) of the South Half (S/2) of the Southwest Quarter of Section Thirty-two (32), Township Twenty-two (22) South, Range Three West of the 6th P.M.;

AND

The Southeast Quarter (SE/4) of Section Thirty-two (32), Township Twenty-two (22) South, Range Three (3) West of the Sixth Principal Meridian;

hereinafter "**South Well Field**."

**WHEREAS**, the Division of Water Resources for the State of Kansas awarded BPU a water permit for municipal use for the South Well Field;

**WHEREAS**, BPU requires a waterline from the South Well Field to the City's water works in order to provide this water to the residents.

**WHEREAS**, a municipal water line is a valid, lawful purpose for the exercise of eminent domain.

**WHEREAS**, Mark D. Quastad owns the following parcel of ground in McPherson County, Kansas:

**PARCEL 12**

A 33' Waterline Easement situated in the Southeast Quarter of Section 6, Township 20 South, Range 3 West of the 6<sup>th</sup> P.M., McPherson County, Kansas being more particularly described as follows:

COMMENCING at Northeast corner of the Southeast Quarter of Section 6, Township 20 South, Range 3 West of the 6<sup>th</sup> P.M., McPherson County, Kansas; Thence Bearing S00°14'34"E, along the East line of said Southeast Quarter, a distance of 289.46 feet; Thence Bearing S89°30'26"W, a distance of 33.00 feet to a point on the West right-of-way line of 13<sup>th</sup> Avenue and the POINT OF BEGINNING; Thence continuing Bearing S89°30'26"W, a distance of 33.00 feet; Thence Bearing S00°14'34"E, a distance of 270.28 feet; Thence Bearing S36°43'26"W, a distance of 464.75 feet; Thence Bearing S81°45'31"W, a distance of 42.40 feet; Thence Bearing S36°43'26"W, a distance of 125.22 feet; Thence Bearing S53°14'29"E, a distance of 33.00 feet to a point on the West right-of-way line of Highway K-153; Thence Bearing N36°43'26"E, along said West right-of-way line, a distance of 98.68 feet to a P.I. in said West right-of-way line; Thence Bearing S53°16'34"E, continuing along said West right-of-way line, a distance of 30.00 feet to a P.I. in said West right-of-way line; Thence Bearing N36°43'26"E, continuing along said West right-of-way line, a distance of 450.00 feet to a P.I. in said West right-of-way line; Thence Bearing S53°18'54"E, continuing along said West right-of-way line, a distance of 10.00 feet to a P.I. in said West right-of-way line; Thence Bearing N36°41'06"E, continuing along said West right-of-way line, a distance of 69.07 feet to a P.I. in said West right-of-way line at the West right-of-way line of said 13<sup>th</sup> Avenue; Thence Bearing N00°14'34"W, along the West right-of-way line of said 13<sup>th</sup> Avenue, a distance of 298.01 feet to the POINT OF BEGINNING.

(Said 33' Waterline Easement containing 0.729 acres (31,745 square feet), more or less).

**WHEREAS**, Wesley D. Ediger and Deanna J. Ediger, husband and wife, own the following parcel of ground in McPherson County, Kansas.

**PARCEL 30**

A 33' Waterline Easement situated in the South half of the Northwest Quarter of Section 5, Township 21 South, Range 3 West of the 6<sup>th</sup> P.M., McPherson County, Kansas being more particularly described as follows:

The East 33.00 feet of the West 66.00 feet of the South half of the Northwest Quarter of Section 5, Township 21 South, Range 3 West of the 6<sup>th</sup> P.M., McPherson County, Kansas.

(said 33' Waterline Easement containing 0.936 acres (40,783 square feet), more or less)

**WHEREAS**, the John W. Gaeddert Trust dated January 15, 2004 and the LaDonna F. Gaeddert Trust dated January 15, 2004 own the following parcels of ground in Harvey County, Kansas:

**PARCEL 61**

A 33' Waterline Easement situated in the Northwest Quarter of Section 17, Township 22 South, Range 3 West of the 6<sup>th</sup> P.M., Harvey County, Kansas being more particularly described as follows:

The East 33.00 feet of the West 63.00 feet of the South 33.00 feet of the North 73.00 feet of the Northwest Quarter of Section 17, Township 22 South, Range 3 West of the 6<sup>th</sup> P.M., Harvey County, Kansas.

(Said 33' Waterline Easement containing 0.025 acres (1,089 square feet), more or less).

**PARCEL 63**

A 33' Waterline Easement situated in a portion of the Northeast Quarter of Section 19, Township 22 South, Range 3 West of the 6<sup>th</sup> P.M., Harvey County, Kansas being more particularly described as follows:

The West 33.00 feet of the East 63.00 feet of the North 323.78 feet of the Northeast Quarter of Section 19, Township 22 South, Range 3 West of the 6<sup>th</sup> P.M., Harvey County, Kansas. EXCEPT the North 30.00 feet thereof.

(Said 33' Waterline Easement containing 0.223 acres (9,694 square feet), more or less).

**PARCEL 65**

A Waterline Easement situated in the North half of the Northwest Quarter of Section 20, Township 22 South, Range 3 West of the 6<sup>th</sup> P.M., Harvey County, Kansas being more particularly described as follows:

The East 33.00 feet of the West 63.00 feet of the South 1,021.54 feet of the North half of the Northwest Quarter of Section 20, Township 22 South, Range 3 West of the 6<sup>th</sup> P.M., Harvey County, Kansas. EXCEPT the West 19.50 feet of the North 473.72 feet thereof.

(Said 33' Waterline Easement containing 0.562 acres (24,473 square feet), more or less).

#### **PARCEL 66**

A Waterline Easement situated in the South half of the Northwest Quarter of Section 20, Township 22 South, Range 3 West of the 6<sup>th</sup> P.M., Harvey County, Kansas being more particularly described as follows:

The East 33.00 feet of the West 63.00 feet of the South half of the Northwest Quarter of Section 20, Township 22 South, Range 3 West of the 6<sup>th</sup> P.M., Harvey County, Kansas. EXCEPT the South 269.19 feet thereof.

(Said 33' Waterline Easement containing 0.799 acres (34,797 square feet), more or less).

**WHEREAS**, in order for BPU to carry out its obligations and purposes, it is necessary to acquire a dominant but non-exclusive perpetual easement under, on and across the real estate described as Parcels 12, 30, 61, 63, 64 and 66 above for the purpose of surveying, erecting, constructing, replacing, removing, inspecting, maintaining, operating, repairing and utilizing, from time to time, an underground water line and associated equipment (collectively "Water Line") for the transmission of water. It shall also include the right to reasonable ingress and egress in, to, over, and across the real estate described above (the "Water Line Easement"), by the exercise of its power of eminent domain and pursuant to the procedures set forth in the Kansas Eminent Domain Procedure Act, K.S.A. 26-501, *et seq.*

**WHEREAS**, BPU, in connection with the construction, operation, maintenance, alteration, replacement, removal, relocation, and repair of the Water Line, shall take all necessary safety precautions so as not to pose any unreasonable safety risks to the underlying owners and shall not unreasonably prevent, interfere with, or impede use of the underlying owners' property for the operation.

**WHEREAS**, BPU will exercise its right of ingress and egress acquired herein by use of public roadways to the extent reasonably possible; provided, however, that BPU shall have the right of reasonable ingress and egress in, to, over, and across the real estate described above.

**WHEREAS**, BPU may construct, install or permit to be constructed or installed, fences, structures, buildings, or other improvements upon, in, or under or near the Water Line Easement but will minimize to the extent practical any improvements that would inhibit or impair any rights of the owners of the property so that the property owner shall have rights to use the property so long as such use does not impair the City's easement.

**WHEREAS**, the governing body of the City believes it is in the best interest of the City to amend the City Code to provide

**NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF MCPHERSON, KANSAS:**

**Section 1. Grant of Authority.** The above recitals are hereby incorporated. The Board of Public Utility and City Staff are hereby authorized to take all steps necessary to acquire by condemnation the above referenced tracts for the purposes detailed and the City Attorney is authorized to take all steps necessary to effectuate such condemnation.

**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).

**ADOPTED** by the governing body this 24th day of May, 2022.



CITY OF MCPHERSON, KANSAS

Thomas A. Brown

Thomas A. Brown, Mayor

Attest:

  
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Britta Erkelenz, City Clerk

Ordinance No. 3369, Summary

On May 24, 2024, the City of McPherson, Kansas adopted Ordinance No. 3369 authorizing the condemnation of various tracts of real property for the purpose of a municipal water line. A complete copy of this Ordinance is available at [www.mcpcity.com](http://www.mcpcity.com) or at the Municipal Center, 400 E. Kansas, McPherson, Kansas. Jeffrey A. Houston, City Attorney, certified this summary.