

## MEMORANDUM

To: Matt Debo, Director of Zoning and Environmental Health  
From: Paul Kritz, County Counselor  
Re: Application of Sanitary Code to Parcels Larger than 25 acres  
Date: October 16, 2023

During a recent meeting, you indicated there has been a misunderstanding about the Montgomery County Sanitary Code (hereafter “the Code”) requirements applying to parcels larger than 25 acres.

Section 1-4.1 establishes the jurisdiction of the Code. It states, “This Code shall apply to all unincorporated areas of the County of Montgomery, Kansas, except land used exclusively for agriculture, as defined in Section 1-5.2 of this Code.” Agriculture is defined as “any premises under one ownership which exceeds 25 acres in area and is used for the production of livestock or crops.”

Based on these provisions, several conditions must be met in order for a parcel to be exempt from the Code requirements:

- The parcel must be over 25 acres.
- The parcel must be under one ownership (i.e., it cannot be owned by multiple owners).
- The parcel must exclusively be used for the production of livestock or crops.

If any one of these conditions is not satisfied, the Code applies to the parcel. If a person acquires a parcel that qualifies for the exemption, and changes the use, in any way, that is contrary to the agricultural use exception, the Code applies.

An example is where a person owns a parcel with 25+ acres and uses it only to raise livestock. If that person builds a pole-barn on the property, in order to protect hay, that does not change the use of the property and the property would remain exempt from the provisions of the Code. However, if that person builds a house on the parcel, the property is no longer used exclusively for agriculture, and the parcel would then become subject to the Code requirements.

Another example is where a person owns a parcel with 25+ acres and uses it to raise crops. If that person builds a shop building on the property, in order to store a tractor and farm-related equipment, that does not change the use of the property and the property would remain exempt from the provisions of the Code. However, if the shop building includes living quarters, the property is no longer used exclusively for agriculture, and the parcel becomes subject to the Code requirements.

Land used “exclusively for agriculture” means just that. There can be no other use made of the property, even if it impacts only a small portion of the property. The minute a property ceases to be used exclusively for agriculture, the property becomes subject to the requirements of the Code.