

Robert E. Myers

Attorney at Law

Licensed:

Kansas
Oklahoma

313 E. Maple, P.O. Box 495
Columbus, Kansas 66725

Telephone 620-429-3151
Fax 620-429-3146

May 10, 2006

INSURANCE DEPARTMENT
ATTN: MEL SCOTT
420 SW 9TH STREET
TOPEKA KS 66612-1678

Re: 40-3901 et seq.

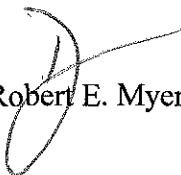
Dear Mr. Scott:

Please find Ordinance No. 593 and 594, passed by the City of Baxter Springs, Kansas in 1985. From review of the City's records it appears that the previous City Attorney or Clerk had submitted these Ordinances or provided copies thereof to your office. However, it is my understanding that you advised Ms. Wixon that such Ordinances were not on file with your office.

Pursuant to K.S.A. 40-3905, please notify the appropriate insurance companies that insured buildings or structures in the City of Baxter Springs of our current ordinance. It would be greatly appreciated if you could provide immediate notice to Farm Bureau, who we are currently dealing with on a structure within the city limits.

Should you have any questions, please feel free to contact my office at your convenience.

Sincerely,



Robert E. Myers

REM/ks
cc: Huey York, Mayor
City Clerk

RECORD OF ORDINANCES

Ordinance No. 593

AN ORDINANCE PURSUANT TO K.S.A. 40-3901 et seq., REQUIRING PAYMENT TO THE CITY OF BAXTER SPRINGS, KANSAS, OF A PORTION OF INSURANCE PROCEEDS COVERING A DAMAGED STRUCTURE TO BE PAID TO THE CITY OF BAXTER SPRINGS, KANSAS, WHERE SUCH DAMAGED STRUCTURE HAS NOT BEEN MADE SAFE AND SECURE AND PROVIDING PROCEDURES RELATIVE THERETO.

Section 1. Procedures. The City of Baxter Springs, Kansas, is hereby authorized to utilize the procedures established by K.S.A. 40-3901 et seq., whereby no insurance company doing business within the City of Baxter Springs, Kansas, shall pay a claim of a named insured for loss and damage to a building or other structure arising out of any fire or explosion located within the City of Baxter Springs, Kansas, where the amount recoverable for the loss or damage to the building or other structure under all policies is in excess of seventy-five percent (75%) of the face value of the policies covering such building or other insured structure unless there is compliance with the following procedures:

a. When final settlement on a covered claim has been agreed to between the named insured or insureds and the company or companies and said final settlement exceeds seventy-five percent (75%) of the face value of the policies covering a building or other insured structure, and when all amounts due the holder of a first real estate mortgage against the building or other structure, pursuant to the terms of the policies and endorsements thereto, shall have been paid, the insurance company or companies shall execute a draft payable to the City Treasurer of the City of Baxter Springs, Kansas, in an amount equal to the sum of Five Thousand Dollars (\$5,000.00) or ten percent (10%) of the covered claim payment, whichever is less, unless the Building Official of Baxter Springs, Kansas, has issued a certificate to the insurance company or companies that the insured has removed the damaged building or other structure, as well as all associated debris, or repaired, rebuilt or otherwise made the premises safe and secure.

b. Such payment of insurance proceeds shall be on a pro-rate basis by all companies insuring the building or other structure. Policy proceeds remaining after the payment to the City of Baxter Springs, Kansas, shall be disbursed in accordance with the policy terms.

c. Upon payment of the funds to the City as required in subparagraph a. of this section, each insurance company shall provide the City with the name and address of the named insured or insureds, the total insurance coverage applicable to said building or other structure, and the amount of the final settlement agreed to between the insurance company or companies and the insured or insureds; whereupon the Building Official shall contact the named insured proceeds have been received by the City of Baxter Springs, Kansas, and apprise them of the procedures to be followed under this ordinance.

Section 2. Fire Insurance Proceeds Fund. The City Treasurer is hereby authorized and shall create a fund to be known as the Fire Insurance Fund. All moneys received by the City Treasurer as provided for by this ordinance shall be deposited by him/her in an interest bearing account.

Section 3. Disposition of Insurance Proceeds. Upon receipt of said insurance proceeds:

a. The City Treasurer shall immediately notify the Building Official of said receipt and transmit all documentation received from the insurance company or companies to the Building Official.

RECORD OF ORDINANCES

Ordinance No. 594

AN ORDINANCE CREATING A LIEN UPON INSURANCE POLICY PROCEEDS FOR FIRE OR EXPLOSION TO SATISFY UNPAID TAXES OR CHARGES AGAINST THE INSURED PROPERTY.

Section 1. Creation of Lien. The Governing Body of the City of Baxter Springs, Kansas, hereby creates a lien in favor of the City of Baxter Springs, Kansas, in the proceeds of any insurance policy based upon a covered claim payment made for damage or loss to a building or other structure located within the City of Baxter Springs, Kansas, caused by or arising out of any fire or explosion, where the amount recoverable for te loss or damage to the building or other structure exceeds seventy-five (75%) percent of the face value of the policies covering the building or other structure. The lien arises upon any unpaid tax, special ad valorem levy, special assessment, or any other charge that has remained undischarged for at least one year prior to the filing of a proof of loss.

Section 2. Responsibility of Insurer. Prior to final settlement on any claim covered by Section 1 hereof, the insurer or insurers shall contact the County Treasurer, Cherokee County, Kansas, to determine whether any such encumbrances are presently in existence. If the same are found to exist, the insurer or insurers shall execute and transmit in an amount equal to that owing under said encumbrances a draft payable to the County Treasurer, Cherokee County, Kansas.

Section 3. Pro-Rate Basis of Proceeds. Such transfer of proceeds shall be on a pro-rate basis by all insurance companies insuring the building or other structure.

Section 4. Any ordinance in conflict with this ordinance is hereby repealed.

Section 5. This ordinance shall take effect upon publication in the City newspaper.

PASSED AND APPROVED BY THE GOVERNING BODY OF THE CITY OF BAXTER SPRINGS, KANSAS, this 25 day of June, 1985.


MAYOR

ATTEST:


CITY CLERK

RECORD OF ORDINANCES

Ordinance No. 593
Page 2

c. Prior to the expiration of the Twenty (20) days established in subparagraph b. hereof, the Building Official shall notify the City Treasurer whether he intends to initiate proceedings under K.S.A. 12-1750 et seq., as amended.

d. The Building Official is hereby designated as the person charged with the administration of K.S.A. 12-1750 et seq., as amended.

e. If the Building Official has determined that proceedings under K.S.A. 12-1750 et seq., as amended, shall be initiated, he shall do so immediately, but no later than Thirty (30) days after receipt of said moneys by the City Treasurer.

f. Upon notification to the City Treasurer by the Building Official that no proceedings shall be initiated under K.S.A. 12-1750 et seq., as amended, the City Treasurer shall initiate the return of said moneys plus accrued interest to the insured or insureds as identified in the communication from the insurance company or companies. Such return shall be accomplished within Forty (40) days of the receipt of said moneys from the insurance company or companies.

Section 4. Excess Funds. If the Building Official has proceeded under the provisions of K.S.A. 12-1750 et seq., as amended, all moneys in excess of that which is ultimately necessary to comply with said provisions for the removal of the building or structure, less salvage value, shall be paid to the insured or insureds.

Section 5. Reimbursement to the City for Expenses. If the Building damaged by fire or explosion, determines that it is necessary to act under K.S.A. 12-1756, any proceeds received by the City Treasurer under the authority of Section 1a hereof relating to that building or other structure shall be used to reimburse the City for any expenses incurred by the City in proceeding under K.S.A. 12-1756. Upon reimbursement from the insurance proceeds, the Building Official shall immediately effectuate the release of any lien resulting therefrom. Should the expenses incurred by the City exceed the insurance proceeds paid over to the City Treasurer under Section 1a hereof, the Building Official shall establish a new lien as authorized by K.S.A. 12-1756 in an amount equal to such excess expenses incurred.

Section 6. Application of Ordinance. This ordinance shall apply to fire and explosion claims arising on all buildings or structure.

Section 7. Parties to Insurance Contracts. This ordinance does not make the City of Baxter Springs, Kansas, a party to any insurance contract, nor is the insurer liable to any party for any amount in excess of the proceeds otherwise payable under its insurance policy.

Section 8. Immunity from Liability. Insurers complying with this ordinance or attempting in good faith to comply with this ordinance shall be immune from civil and criminal liability and such action shall not be deemed in violation of K.S.A. 40-2404 and any amendments thereto, including withholding payment of any insurance proceeds pursuant to this ordinance, or releasing or disclosing any information pursuant to this ordinance.

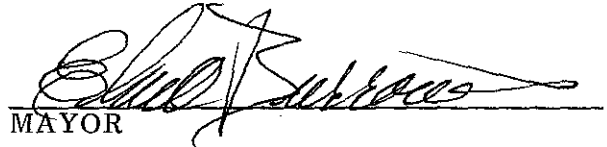
Section 9. Enforcing Officer. The Building Official of the City of Baxter Springs, Kansas, is hereby designated as the "Enforcing Officer" and shall be the officer in charge of administering and enforcing the provisions of K.S.A. 12-1750, inclusive. The Mayor of the City of Baxter Springs, Kansas, shall be and act as the Building Official under this ordinance.

Section 10. Any ordinance in conflict with this ordinance is hereby repealed.

RECORD OF ORDINANCES

Ordinance No. 593
Page 3

PASSED AND APPROVED BY THE GOVERNING BODY OF THE CITY OF BAXTER
SPRINGS, KANSAS, this 25 day of June, 1985.


MAYOR

ATTEST:


CITY CLERK

State of Kansas
County of Cherokee
City of Baxter Springs

I Donna Wixon, the City Clerk of the City of Baxter Springs, Kansas, hereby certify that the above and foregoing is a true and correct copy of Ordinance No 594 as the same appears in my office.

In testimony whereof, I have hereunto signed by name and affixed the seal of said city this 9th day of May, 2006.

Donna Wixon
Signature

(SEAL)

State of Kansas
County of Cherokee
City of Baxter Springs

I Donna Wixon, the City Clerk of the City of Baxter Springs, Kansas, hereby certify that the above and foregoing is a true and correct copy of Ordinance No 593 as the same appears in my office.

In testimony whereof, I have hereunto signed by name and affixed the seal of said city this 9th day of May, 2006.

Donna Wixon
Signature

(SEAL)