

(First published in Conway Springs Star August 18, 2005)

ORDINANCE NO. 1524

AN ORDINANCE AUTHORIZING THE CITY OF CONWAY SPRINGS TO UTILIZE THE PROCEDURES PROVIDED BY STATUTE CREATING A LIEN ON BEHALF OF THE CITY ON INSURANCE PROCEEDS WHEN THE DAMAGE TO A BUILDING OR STRUCTURE WITHIN THE CITY EXCEEDS 75% OF THE FACE VALUE OF THE POLICY.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF CONWAY SPRINGS, KANSAS:

Section 1. SCOPE AND APPLICATION. The city is hereby authorized to utilize the procedures established by K.S.A. 40-3901 et seq., whereby no insurance company shall pay a claim of a named insured for loss or damage to any building or other structure located within the city, arising out of any fire, explosion, or windstorm, where the amount recoverable for the loss or damage to the building or other structure under all policies is in excess of 75 percent of the face value of the policy covering such building or other insured structure, unless there is compliance with the procedures set out in this ordinance.

Section 2. LIEN CREATED. The governing body of the city hereby creates a lien in favor of the city on 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, caused by or arising out of any fire, explosion, or windstorm, where the amount recoverable for all the loss or damage to the building or other structure under all policies is in excess of 75 percent of the face value of the policy(s) covering such building or other insured structure. The lien arises upon any unpaid tax, special ad valorem levy, or any other charge imposed upon real property by or on behalf of the city which is an encumbrance on real property, whether or not evidenced by written instrument, or such tax, levy, assessment, expense or other charge that has remained undischarged for at least one year prior to the filing of a proof of loss.

Section 3. SAME; ENCUMBRANCES. Prior to final settlement on any claim covered by Section 2, the insurer or insurers shall contact the county treasurer, Sumner 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 the encumbrances a draft payable to the county treasurer, Sumner County, Kansas.

Section 4. SAME; PRO RATA BASIS. Such transfer of proceeds shall be on a pro rata basis by all insurance companies insuring the building or other structure.

Section 5. PROCEDURE.

(a) When final settlement on a covered claim has been agreed to or arrived at between the named insured or insureds and the company or companies, and the final settlement exceeds 75 percent of the face value of the policy covering any 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 policy and endorsements thereto, shall have been paid, the insurance company or companies shall execute a draft payable to the city treasurer in an amount equal to the sum of 15 percent of the covered claim payment, unless the chief building

inspector of the city 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 transfer of funds shall be on a pro rata basis by all companies insuring the building or other structure. Policy proceeds remaining after the transfer to the city shall be disbursed in accordance with the policy terms.

(c) Upon the transfer of the funds as required by subsection (a) of this ordinance, the 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 or arrived at between the insurance company or companies and the insured or insureds, whereupon the chief building inspector shall contact the named insured or insureds by certified mail, return receipt requested, notifying them that said insurance proceeds have been received by the city and apprise them of the procedures to be followed under this ordinance.

Section 6. FUND CREATED; DEPOSIT OF MONEYS. The city treasurer is hereby authorized and shall create a fund to be known as the "Insurance Proceeds Fund." All moneys received by the city treasurer as provided for by this ordinance shall be placed in said fund and deposited in an interest-bearing account.

Section 7. BUILDING INSPECTOR; INVESTIGATION, REMOVAL OF STRUCTURE.

(a) Upon receipt of moneys as provided for by this ordinance, the city treasurer shall immediately notify the building inspector of said receipt, and transmit all documentation received from the insurance company or companies to the building inspector.

(b) Within 20 days of the receipt of said moneys, the building inspector shall determine, after prior investigation, whether the city shall instigate proceedings under the provisions of K.S.A. 12-1750 et seq., as amended.

(c) Prior to the expiration of the 20 days established by subsection (b) of this ordinance, the building inspector shall notify the city treasurer whether he or she intends to initiate proceedings under K.S.A. 12-1750 et seq., as amended.

(d) If the building inspector has determined that proceedings under K.S.A. 12-1750 et seq., as amended shall be initiated, he or she will do so immediately but no later than 30 days after receipt of the moneys by the city treasurer.

(e) Upon notification to the city treasurer by the building inspector that no proceedings shall be initiated under K.S.A. 12-1750 et seq., as amended, the city treasurer shall return all such moneys received, 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 30 days of the receipt of the moneys from the insurance company or companies.

Section 8. REMOVAL OF STRUCTURE; EXCESS MONEYS. If the building inspector 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 the provisions for the removal of the building or structure, less salvage value, if any, shall be paid to the insured.

Section 9. SAME; DISPOSITION OF FUNDS. If the building inspector, with regard to a building or other structure damaged by fire, explosion, or windstorm, 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 5(a) 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 inspector shall immediately effect the release of the lien resulting therefrom. Should the expenses incurred by the city exceed the

insurance proceeds paid over to the city treasurer under Section 5(a), the building inspector shall publish a new lien as authorized by K.S.A. 12-1756, in an amount equal to such excess expenses incurred.

Section 10. EFFECT UPON INSURANCE POLICIES. This ordinance shall not make the city 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 11. INSURERS; 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 12. BUILDING INSPECTOR. For the purposes of this Ordinance the Building Inspector shall mean the Mayor of the City of Conway Springs, Kansas.

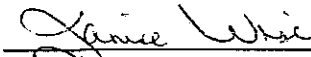
Section 13. EFFECTIVE DATE. This Ordinance shall take effect and be in force from and after its publication in the official City newspaper of the City of Conway Springs, Kansas.

ADOPTED AND APPROVED BY THE GOVERNING BODY THIS 11th DAY OF
August, 2005.



Mayor, Jeff McCullough

ATTEST:



City Clerk

Proof of Publication

STATE OF KANSAS
SUMNER COUNTY

SS.

RAYMOND J. CLINE

of lawful age, being duly sworn upon oath states that he is the Publisher

of the CONWAY SPRINGS STAR
and THE ARGONIA ARGOSY

THAT said newspaper has been published at least weekly fifty (50) times a year and has been published at least one year prior to the first publication of the attached notice:

THAT said paper is entered as second class matter at the post office of its publication;

THAT said paper has a general paid circulation on a weekly, monthly, or yearly basis in SUMNER County Kansas as is

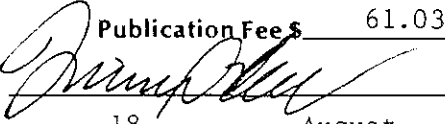
NOT a trade, religious or fraternal publication and has been

PRINTED and published in SUMNER County, Kansas,

THE ATTACHED was published on the following dates in a regular issue of said paper for a total of 1 consecutive times;

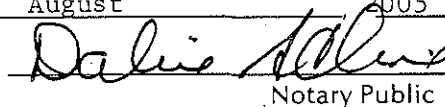
- 1st Publication was on the 18 day of August, 20
- 2nd Publication was on the _____ day of _____, _____
- 3rd Publication was on the _____ day of _____, _____
- 4th Publication was on the _____ day of _____, _____
- 5th Publication was on the _____ day of _____, _____
- 6th Publication was on the _____ day of _____, _____

Publication Fee \$ 61.03

(Signed) 

Witness my hand this 18 day of August, 2005

SUBSCRIBED and sworn to before me this 18 day of August, 2005

(Signed) 

Notary Public

My appointment expires 4-11-2008

DALICE A. CLINE

NOTARY PUBLIC
STATE OF KANSAS

LEGAL PUBLICATION

(Published in the Conway Springs Star and The Argonia Argosy, Thursday, August 18, 2005.)

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Jeff McCullough
Mayor

ATTEST:
Janice Wise
City Clerk