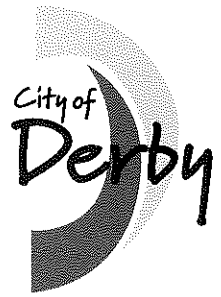


2005 DEC -6 AM 9:26



November 29, 2005

Mr. Ned Scott
Kansas Commissioner of Insurance Office
420 SW 9th Street
Topeka, KS 66612-1678

RE: Amending Ordinance Establishing an Insurance Proceed Fund
City of Derby, Kansas

Dear Mr. Scott:

Enclosed please find a copy of Ordinance No. 1839 adopted by the governing body of the City of Derby on November 8, 2005. This ordinance was published in the official newspaper of the City, the Derby Weekly Informer on November 16, 2005. An affidavit of publication is enclosed as well.

Ordinance No. 1839 amends Ordinance No. 1821 which established procedures for payment of a portion of the proceeds of certain insurance claim payments to the City, to be used to repair or remove structures damaged by fire, explosion or windstorm; and creating a lien on such proceeds for satisfaction of unpaid taxes, levies, special assessments, expenses and other charges. Earlier in the year a copy of Ordinance No. 1821 was sent to the Insurance Commissioner's office and you contacted the City of Derby to suggest that a reference to K.S.A. 40-3901 et seq would be more appropriate. Ordinance No. 1839 references that statute in Section 1.

If you have any questions, please do not hesitate to contact me or City Attorney Phil Alexander.

Yours truly,

A handwritten signature in cursive script that reads "Jean Epperson".

Jean Epperson
City Clerk/Director of Finance

Cc: Phil Alexander, City Attorney

City of Derby
Finance Office

611 N. Mulberry · Derby, Ks 67037-3533 · 316/788-1519 · Fax 316/788-6067
Homepage: www.derbyweb.com E-mail: Finance@derbyweb.com

Affidavit of Legal Publication

STATE OF KANSAS)
) ss.
 County of Sedgwick)

Jeff Cott, being first duly sworn, deposes and says: That he/she is Legal Manager of

The Derby Informer

a weekly newspaper printed in the State of Kansas, and published in and of general circulation in Sedgwick County, Kansas, with a general paid circulation on a weekly basis in Sedgwick County, Kansas, and that said newspaper is not a trade, religious or fraternal publication.

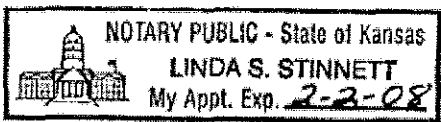
Said newspaper is a weekly published on Wednesdays, and has been so published continuously and uninterrupted in said county and state for a period of more than one year prior to the first publication of said notice, and has been admitted at the post office of Derby, Kansas, in said county as second class matter.

That the attached notice is a true copy thereof and was published in the regular and entire issue of said newspaper for 1 week the first publication thereof being made as aforesaid on the 16th day of November, 2005, with subsequent publications being made on the following dates:

Jeff Cott

Subscribed and sworn to before me this 17th day of Nov., 2005.

Linda S. Stinnett
 Notary Public



Printer's Fee: \$149.50

Additional copies: \$ _____

Legal Pu
 (Published in The Derby Informer on November 16, 2005)

ORDINANCE NO. 1839

AN ORDINANCE AMENDING ORDINANCE NO. 1821 OF THE CITY OF DERBY, KANSAS, ESTABLISHING PROCEDURES FOR PAYMENT OF A PORTION OF THE PROCEEDS OF CERTAIN INSURANCE CLAIM PAYMENTS TO THE CITY, TO BE USED TO REPAIR OR REMOVE STRUCTURES DAMAGED BY FIRE, EXPLOSION OR WINDSTORM; AND CREATING A LIEN ON SUCH PROCEEDS FOR SATISFACTION OF UNPAID TAXES, LEVIES, SPECIAL ASSESSMENTS, EXPENSES AND OTHER CHARGES, ALL PURSUANT TO K.S.A. 40-3901 ET SEQ.; AND REPEALING ORIGINAL ORDINANCE NO. 1821 OF THE CITY.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF DERBY, 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. Withholding and Payment of Insurance Proceeds to City. a. Whenever an insured building or other structure located within the City is damaged or destroyed by fire, explosion or windstorm, and there is payable to owner thereof or to another

building or structure
 b. Upon the hereinabove provided shall provide the (and address of th or insureds, the coverage applicab or structure, and t final settlement ag at between the insu the insured or insu the building offic named insured registered mail, ac such insurance pro received by the Cit the procedure est ordinance.

c. The city s insured's proceeds that has accrued o received under sub 30 days after receipt unless the city has proceedings under 1 K.S.A. 12-1752, ar thereto. If the city under the provisior 1752, and amendr moneys in excess o to comply with th K.S.A. 12-1750 amendments theret of the building or salvage value, shal insured.

Section 3. Deposit of Moneys. shall create a fund the "Insurance Proc moneys received by as provided for in other than mone) satisfaction of enc provided in section 2 placed in said fund c an interest-bearing c
 Section 4. Pl Demolish or Oth Property Safe. a. l moneys as provide hereof of this ordi treasurer shall immec building official an

of Kansas announced the National Merit, Achievement and National scholars.

The National Merit scholarship is widely regarded as the most prestigious national award upon high school senior recipients being chosen on the basis of their academic abilities and activities.

Groendyk, the son of I Kathy Groendyk, is a freshman majoring in theatre and film.

Mick performs with K-State Men's Glee Club
 The Men's Glee Club

Community Calendar

November 16
 10 a.m.-noon • Mayor's office
 city hall (every Wednesday)
 7 p.m. • Derby Public Library
 meeting at library, 611 Main

November 17
 9:15 a.m. • PAT Cookie Booth
 at Pleasantview Elementary
 6:30 p.m. • Derby Lions Club
 meeting at Friends Church,
 N. Woodlawn
 6:45 p.m. • Joyful Page
 Book Club meeting at
 Public Library, 611 Main
 7 p.m. • Planning Commission
 meeting, city hall
 7:30 p.m. • DHS production
 People vs. Maxine Lowrey
 auditorium. Tickets, \$5
 \$3 for students, are available
 calling DHS at 788-8500

Business Review's "Salon of the Year" 5 Years Running

N. Baltimore • Derby
789-0110
 Design Team

Passed: 11-8-05
Published: 11-16-05

ORDINANCE NO. 1839

AN ORDINANCE AMENDING ORDINANCE NO. 1821 OF THE CITY OF DERBY, KANSAS, ESTABLISHING PROCEDURES FOR PAYMENT OF A PORTION OF THE PROCEEDS OF CERTAIN INSURANCE CLAIM PAYMENTS TO THE CITY, TO BE USED TO REPAIR OR REMOVE STRUCTURES DAMAGED BY FIRE, EXPLOSION OR WINDSTORM; AND CREATING A LIEN ON SUCH PROCEEDS FOR SATISFACTION OF UNPAID TAXES, LEVIES, SPECIAL ASSESSMENTS, EXPENSES AND OTHER CHARGES, ALL PURSUANT TO K.S.A. 40-3901 *ET SEQ.*; AND REPEALING ORIGINAL ORDINANCE NO. 1821 OF THE CITY.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF DERBY, 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. Withholding and Payment of Insurance Proceeds to City. a. Whenever an insured building or other structure located within the City is damaged or destroyed by fire, explosion or windstorm, and there is payable to owner thereof or to another interested party a claim payment in excess of 75% of the face value of the policy covering a building or other insured structure and when all amounts due the holder of a first real estate mortgage against such building or other structure pursuant to the terms of the policy and endorsements thereto have been paid, the insurer shall execute a draft equal to 15 per cent (15%) of the covered claim payment in favor of the city treasurer unless the building official of the City has issued a certificate to such insurer or insurers, certifying that the insured has removed the damaged building or other structure as well as all associated debris, or has repaired, rebuilt or otherwise make the premises safe and secure. In the event of multiple insurers, such transfer of funds shall be on a pro rata basis by all insurers of the building or structure.

b. Upon the transfer of funds hereinabove provided, the insurer shall provide the City with the name and address of the named insured or insureds, the total insurance coverage applicable to such building or structure, and the amount of the final settlement agreed to or arrived at between the insurer or insurers and the insured or insureds, whereupon the building official shall notify the named insured or insureds by registered mail, advising them that such insurance proceeds have been received by the City and describing the procedure established by this ordinance.

c. The city shall release the insured's proceeds and any interest that has accrued on such proceeds received under subsection (b) within 30 days after receipt of such moneys, unless the city has instituted legal proceedings under the provisions of K.S.A. 12-1752, and amendments thereto. If the city has proceeded under the provisions of K.S.A. 12-1752, and amendments thereto, all moneys in excess of that necessary to comply with the provisions of K.S.A. 12-1750 *et seq.*, and amendments thereto, for the removal of the building or structure, less salvage value, shall be paid to the insured.

Section 3. Fund created; Deposit of Moneys. The city treasurer shall create a fund to be known as the "Insurance Proceeds Fund." All moneys received by the city treasurer as provided for in this ordinance, other than moneys received in satisfaction of encumbrances as provided in section 2 hereof, shall be placed in said fund and deposited in an interest-bearing account.

Section 4. Proceedings to Demolish or Otherwise Make Property Safe. a. Upon receipt of moneys as provided in section 2 hereof of this ordinance, the city treasurer shall immediately notify the building official and transmit all documentation received from the insurer or insurers to the building official.

b. Within 20 days of receipt of such moneys, the building official shall determine whether the City will initiate proceedings under K.S.A. 12-1750 *et seq.*, and shall notify the city treasurer whether such proceedings will be initiated. If warranted, such proceedings shall be initiated within 30 days after receipt of such moneys by the city treasurer pursuant to section 2 of this ordinance.

c. If proceedings pursuant to K.S.A. 12-1750 *et seq.*, will not be initiated, the building official shall so notify the city treasurer, who shall forthwith return all moneys received pursuant to section 1 of this ordinance, together with accrued interest, to the insured or insureds as identified in the notice from the insurer or insurers.

d. Any moneys remaining after a building or structure has been made safe or demolished pursuant to proceedings under K.S.A. 12-1750 *et seq.*, shall be paid to the insured or insureds.

Section 5. Procedure for Immediate Hazard. In the event the building official determines it necessary to proceed pursuant to K.S.A. 12-1756 to demolish or otherwise make safe a building or structure damaged by fire, explosion or windstorm, any proceeds received by the city treasurer pursuant to section 2 of this ordinance shall be used to reimburse the City for any expenses incurred in connection therewith. Upon reimbursement of such expenses, the building official shall forthwith release the lien resulting therefrom. In the event such expenses exceed the moneys on deposit with the city treasurer therefore, the building official shall publish a new lien pursuant to K.S.A. 12-1756, in an amount equal to such excess.

Section 6. Lien for Unpaid Taxes, Levies, Assessments, Expenses and Other Charges. a. There is hereby created a lien in favor of the City in the proceeds of any insurance policy based upon a covered claim payment made for damage or loss to a building or other

structure, caused by or arising out of any fire, explosion or windstorms. The lien shall arise upon any unpaid tax, special *ad valorem* levy, special assessment or 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.

b. Prior to final settlement on any claim covered by this ordinance, the insurer or insurers shall contact the county treasurer of Sedgwick County, Kansas, to determine whether any such encumbrances exist. If such encumbrances exist, the insurer or insurers shall execute and transmit a draft payable to the county treasurer of Sedgwick County, Kansas, in an amount equal to the total of such encumbrances. When there is more than one insurer liable to make such payment, they shall transfer a *pro rata* portion of the total proceeds payable by all such insurers.

Section 7. Effective Date. This ordinance shall be effective from and after its publication once in the official City newspaper.

ADOPTED BY THE GOVERNING BODY this 8th day of November, 2005.



Dion P. Avello, Mayor

ATTEST:



Jean Epperson, City Clerk