

ORDINANCE NO. G17-01

AN ORDINANCE CONCERNING PAYMENT OF INSURANCE PROCEEDS

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF EASTBOROUGH, 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, 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, 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 shall contact the county treasurer, Sedgwick County, Kansas, to determine whether any such encumbrances are presently in existence. If the same are found to exist, the insurer shall execute and transmit in an amount equal to that owing under the encumbrances a draft payable to the county treasurer, Sedgwick 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 concluded between the named insured and the company, 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 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 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.
- (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 between the insurance company or companies and the insured or insureds, whereupon the 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 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 in an interest-bearing account.

Section 7. BUILDING INSPECTOR; INVESTIGATION, REMOVAL OF STRUCTURE. Upon receipt of moneys provided for by this ordinance, the city treasurer shall immediately notify the building inspector, and transmit all documentation to the building inspector.

- (a) Within 30 days of the receipt of said moneys, the building inspector shall determine, whether the city shall instigate proceedings under the provisions of K.S.A. 12-1750 et seq.
- (b) Prior to the expiration of said 30 days, the building inspector shall notify the city treasurer whether he or she intends to initiate proceedings under K.S.A. 12-1750 et seq.
- (c) If the building inspector has determined that proceedings under K.S.A. 12-1750 et seq. shall be initiated, he or she will do so immediately but no later than 45 days after receipt of the moneys by the city treasurer.
- (d) Upon notification to the city treasurer by the building inspector that no proceedings shall be initiated under K.S.A. 12-1750 et seq., the city treasurer will return all such moneys received, plus accrued interest, to the insured within 45 days of the receipt of the moneys from the insurance company.

Section 8. REMOVAL OF STRUCTURE; EXCESS MONEYS If the building inspector has proceeded under the provisions of K.S.A. 12-1750 et seq., all moneys in excess of that which is necessary to comply with the provisions for the removal of the building or structure, less salvage value, shall be paid to the insured.

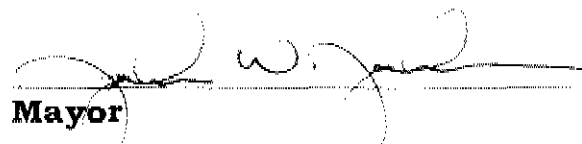
Section 9. SAME; DISPOSITION OF FUNDS. If the building inspector, with regard to a building or other structure damaged, determines that it is necessary to act under K.S.A. 12-1756, any proceeds received by the city treasurer shall be used to reimburse the city for expenses incurred by the city. Upon 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, 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.

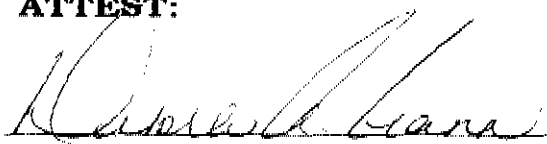
Section 11. INSURERS; LIABILITY. Insurers complying with this ordinance or attempting in good faith to comply with this ordinance shall be immune from civil and criminal liability and such action shall not be deemed in violation of K.S.A. 40-2404, including withholding payment of any insurance proceeds pursuant to this ordinance, or releasing or disclosing any information pursuant to this ordinance.

Section 13. EFFECTIVE DATE. This ordinance shall be in full force and effect from and after its adoption and publication in the official city newspaper.

ADOPTED AND PASSED, by the City Council of Eastborough this 28th day of March 2017.


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Mayor

ATTEST:


City Clerk