

ORDINANCE NO. G-1097

**AN ORDINANCE OF THE CITY OF EL DORADO AMENDING TITLE 3,
CHAPTER 3.08 OF THE EL DORADO MUNICIPAL CODE RELATING TO
INSURANCE PROCEEDS FUND**

**NOW, THEREFORE, BE IT ORDNANIED BY THE GOVERNING BODY OF THE
CITY OF EL DORADO, KANSAS:**

Section 1: Section 3.08.010 of the City of El Dorado Municipal Code is amended to read as follows:

3.08.010 Scope and application.

The city is authorized to utilize the procedures established by KSA 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 seventy-five (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 chapter. The insured is required to provide the city with all information requested in regards to their insurance policy.

Section 2: Section 3.08.020 of the City of El Dorado Municipal Code is amended to read as follows:

3.08.020 Lien--Created.

The governing body of the city 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 seventy-five (75) percent of the face value of the policy(ies) 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: Section 3.08.050 of the City of El Dorado Municipal Code is amended to read as follows:

3.08.050 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 seventy-five (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 clerk in an amount equal to the sum of fifteen (15) percent of the covered claim payment unless the Building Official 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 has repaired the structure to meet code for new construction.

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 section, 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 Building Official shall contact the named insured or insureds by registered mail, notifying them that said insurance proceeds have been received by the city and apprise them of the procedures to be followed under this chapter.

Section 4: Section 3.08.060 of the City of El Dorado Municipal Code is amended to read as follows:

3.08.060 Fund created--Deposit of moneys.

The city clerk is authorized and shall create a fund to be known as the fire insurance proceeds fund. All moneys received by the city clerk as provided for by this chapter shall be placed in said fund and deposited in an interest-bearing account.

Section 5: Section 3.08.070 of the City of El Dorado Municipal Code is renamed and amended to read as follows:

3.08.070 Building Official --Investigation--Removal/Repair of structure.

A. Upon receipt of moneys as provided for by this chapter, the city clerk shall immediately notify the Building Official of said receipt, and transmit all documentation received from the insurance company or companies to the Building Official.

B. Within twenty (20) days of the receipt of said moneys, the Building Official shall determine, after prior investigation, whether the city shall instigate condemnation proceedings under the provisions of Title 15 of the City of El Dorado Municipal Code.

C. Prior to the expiration of the twenty (20) days established by subsection (B) of this section, the Building Official shall notify the city clerk whether he or she intends to initiate condemnation proceedings under the provisions of Title 15 of the City of El Dorado Municipal Code.

D. If the Building Official has determined that condemnation proceedings under the provisions of Title 15 of the City of El Dorado Municipal Code, shall be initiated, he or she will do so immediately but no later than thirty (30) days after receipt of the moneys by the city clerk. The Building Official shall notify the insured of the options to remove or repair the structure. If the insured chooses to remove the structure they shall do so within 30 days of notification from the Building Official and in accordance with Title 15 of the City of El Dorado Municipal Code. If the insured chooses to repair the structure they shall do so in accordance with Title 15 of the City of El Dorado Municipal Code and the following:

1. The insured shall remove all damaged materials and debris, and request an inspection from the Building Official before applying for permits.
2. The Building Official shall inspect the structure to determine if repairs are feasible. If feasible, the Building Official shall approve all permit applications to proceed with repairs, provided all other documentation is in place. The Building Official shall have the authority to request 3rd party tests, inspections, and/or engineering reports be provided by the insured.
3. Repairs must be started within 30 days of fire, explosion or windstorm, and must be completed within 6 months of starting.
4. All aspects of the structure, including undamaged portions, shall meet code for new construction.
5. The Building Official shall not be obligated to release insurance proceeds to the insured until the repairs are complete and a new Certificate of Occupancy has been issued. The Building Official can release the insurance proceeds earlier when, acting in good faith, he or she has determined that the insured will complete the repairs in accordance with all applicable laws and regulations. The Building Official shall not release insurance proceeds until all of the following work has occurred: structural issues corrected; exterior building envelope completed; rough framing, plumbing, mechanical and electrical completed; public nuisance and safety issues abated.

E. Upon notification to the city clerk by the Building Official that no proceedings shall be initiated under the provisions of Title 15 of the City of El Dorado Municipal Code, the city clerk 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 sixty (60) days of the receipt of the moneys from the insurance company or companies.

Section 6: Section 3.08.080 of the City of El Dorado Municipal Code is amended to read as follows:

3.08.080 Removal of structure--Excess moneys.

If the Building Official has proceeded under the provisions of Title 15 of the City of El Dorado Municipal Code, all moneys in excess of that which is ultimately necessary to comply with the provisions for the removal of the building or structure shall be paid to the insured.

Section 7: Section 3.08.090 of the City of El Dorado Municipal Code is amended to read as follows:

3.08.090 Removal of structure--Disposition of funds.

If the Building Official, with regard to a building or other structure damaged by fire explosion or windstorm determines that it is necessary to act immediately to remove any unsafe condition, any proceeds received by the city clerk under the authority of Section 3.08.050(A) of this chapter relating to that building or other structure shall be used to reimburse the city for any expenses incurred by the city in removing any unsafe condition. Upon reimbursement from the insurance proceeds, the Building Official 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 clerk under Section 3.08.050(A) of this chapter, the Building Official shall publish a new lien as authorized by KSA 12-1756, in an amount equal to such excess expenses incurred. The Building Official shall have the authority to classify any structure that has been damaged by fire, explosion or windstorm, as an immediate hazard at anytime after the damaging event until the structure is removed or completely repaired to code for new construction.

Section 8: Section 3.08.120 of the City of El Dorado Municipal Code is created to read as follows:

3.08.120 Transfer of ownership

No person, who is regulated by this chapter and is responsible for compliance with this chapter shall transfer ownership of the structure damaged by fire, explosion or windstorm until compliance with this chapter has occurred or the grantee has furnished the Building Official a signed and notarized statement acknowledging compliance with this chapter is required. Insurance proceeds shall not be released until the structure is removed or repaired in accordance with this chapter or the grantee furnishes the Building Official a deposit equal to the amount of the insurance proceeds. The deposit shall be held by the City of El Dorado until compliance with this chapter has occurred.

Section 9: Section 3.08.130 of the City of El Dorado Municipal Code is created to read as follows:

3.08.130 Violation--Penalty

Any person, firm or corporation violating any of the provisions of this chapter shall, upon conviction thereof, be fined in any sum not exceeding five hundred dollars (\$500.00) per day. A separate offense shall be deemed committed upon each and every day during or on which a violation occurs or continues.

Section 10: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 11: That if any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional, such decision shall not affect the validity of

the remaining portions of this ordinance. The Commission hereby declares that it would have passed this ordinance, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional.

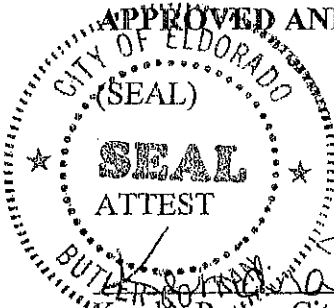
Section 12: That nothing in this ordinance shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance hereby repealed as cited in this ordinance; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this ordinance.

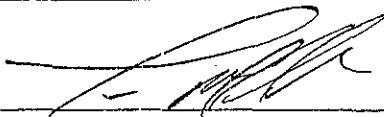
Section 13: That the City Clerk is hereby ordered and directed to cause this ordinance to be published once in the official city newspaper.

Section 14: That this ordinance and the rules, regulations, provisions, requirements, orders and matters established and adopted hereby shall take effect and be in full force and effect immediately after the date of its final passage and adoption.

PASSED by the governing body of the City on January 19, 2010

APPROVED AND SIGNED by the Mayor.





Tom McKibban, Mayor



Kendra Porter, City Clerk

APPROVED AS TO FORM



Jim Murfin, City Attorney