

Law Offices  
**STUMBO, HANSON & HENDRICKS, LLP**  
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Topeka, Kansas 66611  
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PROCESSED  
JUL 19 9 44 AM '01  
Walter G. Stumbo  
(1911 - 1998)

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Gary H. Hanson  
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Tom R. Barnes II  
Karen T. Poulton  
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July 18, 2001

Kathleen Sebelius  
Commissioner of Insurance  
Attn: Roberta Stuke  
420 SW 9th St.  
Topeka, KS 66612

**Re: City of Eskridge, Kansas - Ordinance Under  
Provisions of K.S.A. 40-3901 through 40-3904**

Dear Ms. Stuke:

Per your request, enclosed is a copy of Article 7 of the Code of the City of Eskridge, Kansas, adopted by the governing body of the City of Eskridge on July 12, 2000. This copy is being provided for your file.

Very truly yours,



GARY H. HANSON  
City Attorney for the  
City of Eskridge, Kansas

GHH:de

Encl.

REPEALED  
Jul 20 9 41 AM '01

**ORDINANCE NO. 459**

AN ORDINANCE ADOPTING THE CODIFICATION OF ORDINANCES OF THE CITY OF ESKRIDGE, KANSAS, AUTHORIZED BY ORDINANCE NO. 444 PROVIDING FOR THE REPEAL OF CERTAIN OTHER ORDINANCES NOT INCLUDED THEREIN, EXCEPTING CERTAIN ORDINANCES FROM REPEAL AND SAVING CERTAIN ACCRUED RIGHTS AND LIABILITIES.

Be it Ordained by the Governing Body of the City of Eskridge, Kansas:

Section 1. The codification of ordinances of the City of Eskridge, Kansas, authorized by Ordinance No. 444 and K.S.A. 12-3014 and 12-3015, as set out in the following chapters, Chapters I to XVI and Appendices A and B, all inclusive, and entitled the "Code of the City of Eskridge, Kansas, 2000," is hereby adopted and ordained as the "Code of the City of Eskridge, Kansas, 2000," and said codification shall become effective upon publication of no fewer than 10 copies of said code in book form.

Section 2. All ordinances and parts of ordinances of a general nature passed prior to July 1, 2000, in force and effect at the date of the publication of no fewer than 10 copies of the "Code of the City of Eskridge, Kansas, 2000," and this ordinance, are hereby repealed as of the date of publication of said code except as hereinafter provided.

Section 3. In construing this ordinance, the following ordinances shall not be considered or held to be ordinances of a general nature:

- (a) Ordinances pertaining to the acquisition of property or interests in property by gift, purchase, devise, bequest, appropriation or condemnation;
- (b) Ordinances opening, dedicating, widening, vacating or narrowing streets, avenues, alleys and boulevards;
- (c) Ordinances establishing and changing grades of streets, avenues, alleys and boulevards;
- (d) Ordinances naming or changing the names of streets, avenues and boulevards;
- (e) Ordinances authorizing or directing public improvements to be made;
- (f) Ordinances creating districts for public improvements of whatsoever kind or nature;
- (g) Ordinances levying general taxes;
- (h) Ordinances levying special assessments or taxes;
- (i) Ordinances granting any rights, privileges, easements or franchises therein mentioned to any person, firm or corporation;
- (j) Ordinances authorizing the issuance of bonds and other instruments of indebtedness by the city;
- (k) Ordinances authorizing contracts;
- (l) Ordinances establishing the limits of the city or pertaining to annexation or exclusion of territory;
- (m) Ordinances relating to compensation of officials, officers and employees of the city;
- (n) Ordinances of a temporary nature;

Provided, That the above enumeration of exceptions shall not be held or deemed to be exclusive, it being the purpose and intention to exempt from repeal any and all ordinances not of a general nature and general ordinances specifically excepted by this section.

Section 4. The arrangement and classification of the several chapters, articles, and sections of the code adopted by Section 1 of this ordinance and the headnotes and footnotes at the ends of the sections, are made for the purpose of convenience and orderly arrangement, and do not constitute a part of the ordinances, and therefore, no implication or presumption of legislative intent or construction is to be drawn therefrom.

Section 5. The repeal of ordinances as provided in Section 2 hereof, shall not affect any rights acquired, fines, penalties, forfeitures or liabilities incurred thereunder, or actions involving any of the provisions of said ordinances or parts thereof. Said ordinances above repealed are hereby continued in force and effect after the passage, approval and publication of this ordinance for the purpose of such rights, fines, penalties, forfeitures, liabilities and actions therefor.

Section 6. If for any reason any chapter, article, section, subsection, sentence, portion or part of the "Code of the City of Eskridge, Kansas, 2000," or the application thereof to any person or circumstances is declared to be unconstitutional or invalid, such decision will not affect the validity of the remaining portions of this code.

Section 7. This ordinance shall take effect and be in force from and after the publication of the "Code of the City of Eskridge, Kansas, 2000," as provided in K.S.A. 12-3015.

Passed by the Governing Body of the City of Eskridge, Kansas, this 3<sup>rd</sup> day of July, 2000.

/s/ Donald Rush, Mayor

ATTEST: /s/ Joe Elliott, City Clerk

(SEAL)

**CERTIFICATE OF THE CITY CLERK**

Office of the City Clerk  
City of Eskridge, Kansas

State of Kansas        )  
                                  )  
Wabaunsee County     )

I, Joe Elliott, City Clerk of the City of Eskridge, Wabaunsee County, Kansas do hereby certify that said city is a city of the third class of the mayor-council form of government under the statutes of Kansas; that this codification of the general ordinances of said city and the publication thereof in book form were ordered and authorized by the governing body by Ordinance No. 444 and in accordance therewith is entitled the "Code of the City of Eskridge, Kansas, 2000," that said codification was adopted as the "Code of the City of Eskridge, Kansas, 2000," by the governing body by Ordinance No. 459 passed on the 3<sup>rd</sup> day of July, 2000, as authorized by Section 12-3015 of the Kansas Statutes Annotated; that said Ordinance No. 459 and said codification of general ordinances as contained in this volume will take effect upon publication of 10 or more copies; that the publication of 10 copies of this code and adoptive Ordinance No. 459 constitute due passage of this code and all general ordinances contained therein; that the codification and adoptive Ordinance No. 459 as contained herein are true and correct copies; and that said publication imports absolute verity and is to be received in evidence in all courts and places without further proof as provided by 12-3015 of the Kansas Statutes Annotated.

I further certify that the "Code of the City of Eskridge, Kansas, 2000," and the matter therein contained will take effect upon publication and be in force from and after July 12, 2000.

Witness my hand and the seal of the City of Eskridge, Kansas, at my office in Eskridge, Kansas, this 3<sup>rd</sup> day of July, 2000.

/s/ Joe Elliott, City Clerk  
City of Eskridge, Kansas

(S E A L)

hereinabove defined, that there is evidence of rat infestation of the building or structure, the owner shall immediately institute appropriate measures for freeing the premises so occupied of all rats. Unless suitable measures for freeing the building or structure of rats are instituted within five days after the receipt of notice, and unless continually maintained in a satisfactory manner, the city is hereby authorized to free the building or structure of rats at the expense of the owner thereof and the city clerk shall submit bills for the expense thereof to the owner of the building or structure and if the same are not paid, the city clerk shall certify the amount due from the owner to the city treasurer, and the owner shall be promptly billed therefor. The expense thereof shall include the cost of labor, materials, equipment and any other actual expense necessary for the eradication measures. (Code 2000)

- 8-607.           **CONDITIONS CONDUCIVE TO HARBORAGE OF RATS.** (a) All food and feed kept within the city for feeding animals shall be kept and stored in rat-free and rat-proof containers, compartments, or rooms unless kept in a rat-stopped building.
- (b) It shall be unlawful for any person to place, leave, dump or permit to accumulate any garbage or trash in any building or premises so that the same shall afford food and harborage for rats.
- (c) It shall be unlawful for any person to accumulate or to permit the accumulation on any premises or on any open lot any lumber, boxes, barrels, bricks, stone or similar materials that may be permitted to remain thereon and which are rat harborages, unless the same shall be placed on open racks that are elevated not less than 12 inches above the ground, evenly piled or stacked.
- (d) Whenever conditions inside or under any building or structure provide such extensive harborage for rats that the health department deems it necessary to eliminate such harborage, he or she may require the owner to install suitable cement floors in basements or to replace wooden first or ground floors or require the owner to correct such other interior rat harborage as may be necessary in order to facilitate the eradication of rats in a reasonable time and thereby to reduce the cost of such eradication.
- (Code 2000)

- 8-608.           **INSPECTIONS.** The building inspector is empowered to make such inspections and re-inspections of the interior and exterior of any building or structure as in his or her opinion may be necessary to determine full compliance with this article. (Code 2000)

#### **ARTICLE 7. INSURANCE PROCEEDS FUND**

- 8-701.           **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 article. (Code 2000)

8-702.

**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. (Code 2000)

8-703.

**SAME; ENCUMBRANCES.** Prior to final settlement on any claim covered by section 8-702, the insurer or insurers shall contact the county treasurer, Wabaunsee 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, Wabaunsee County, Kansas. (Code 2000)

8-704.

**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. (Code 2000)

8-705.

**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 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 chief building inspector 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 article.

(Code 2000)

- 8-706. 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 article shall be placed in said fund and deposited in an interest-bearing account. (Code 2000)
- 8-707. BUILDING INSPECTOR; INVESTIGATION, REMOVAL OF STRUCTURE. (a) Upon receipt of moneys as provided for by this article, the city treasurer shall immediately notify the chief building inspector of said receipt, and transmit all documentation received from the insurance company or companies to the chief building inspector.
- (b) Within 20 days of the receipt of said moneys, the chief 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 section, the chief 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 chief 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 chief 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.  
(Code 2000)
- 8-708. REMOVAL OF STRUCTURE; EXCESS MONEYS. If the chief 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. (Code 2000)
- 8-709. SAME; DISPOSITION OF FUNDS. If the chief 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 8-705(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 chief 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 8-705(a), the chief building inspector shall publish a new lien as authorized by K.S.A. 12-1756, in an amount equal to such excess expenses incurred. (Code 2000)
- 8-710. EFFECT UPON INSURANCE POLICIES. This article 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.  
(Code 2000)

8-711.

**INSURERS; LIABILITY.** Insurers complying with this article or attempting in good faith to comply with this article 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 article, or releasing or disclosing any information pursuant to this article. (Code 2000)



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INSURANCE  
DEPARTMENT

Gary H. Hanson  
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Tom R. Barnes II  
Karen T. Poulton  
Todd A. Luckman  
Wesley F. Smith

Walter G. Stumbo  
(1911 - 1998)

gary@stumbolaw.com

July 11, 2001

Kathleen Sebelius  
Commissioner of Insurance  
420 SW 9th St.  
Topeka, KS 66612

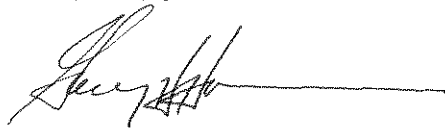
**Re: City of Eskridge, Kansas - Ordinance Under  
Provisions of K.S.A. 40-3901 through 40-3904**

Dear Commissioner Sebelius:

Pursuant to K.S.A. 40-3905, please accept this as notice by the City of Eskridge, Kansas that it has adopted an ordinance under the provisions of K.S.A. 40-3901 through 40-3904. The City would appreciate your office including the City of Eskridge in the list of cities having adopted such ordinances and providing that notice to the appropriate insurance companies, per K.S.A. 40-3905.

Thank you very much for your consideration.

Very truly yours,



GARY H. HANSON  
City Attorney for the  
City of Eskridge, Kansas

GHH:de

cc: Joe Elliott, City Clerk

CERTIFICATE OF THE CITY CLERK

Office of the City Clerk  
City of Eskridge, Kansas

State of Kansas            )  
                                      )  
Wabaunsee County         )

I, Joe Elliott, City Clerk of the City of Eskridge, Wabaunsee County, Kansas do hereby certify that said city is a city of the third class of the mayor-council form of government under the statutes of Kansas; that this codification of the general ordinances of said city and the publication thereof in book form were ordered and authorized by the governing body by Ordinance No. 444 and in accordance therewith is entitled the "Code of the City of Eskridge, Kansas, 2000," that said codification was adopted as the "Code of the City of Eskridge, Kansas, 2000," by the governing body by Ordinance No. 459 passed on the 3<sup>rd</sup> day of July, 2000, as authorized by Section 12-3015 of the Kansas Statutes Annotated; that said Ordinance No. 459 and said codification of general ordinances as contained in this volume will take effect upon publication of 10 or more copies; that the publication of 10 copies of this code and adoptive Ordinance No. 459 constitute due passage of this code and all general ordinances contained therein; that the codification and adoptive Ordinance No. 459 as contained herein are true and correct copies; and that said publication imports absolute verity and is to be received in evidence in all courts and places without further proof as provided by 12-3015 of the Kansas Statutes Annotated.

I further certify that the "Code of the City of Eskridge, Kansas, 2000," and the matter therein contained will take effect upon publication and be in force from and after July 12, 2000.

Witness my hand and the seal of the City of Eskridge, Kansas, at my office in Eskridge, Kansas, this 3<sup>rd</sup> day of July, 2000.

Joe H. Elliott  
Joe Elliott, City Clerk  
City of Eskridge, Kansas

(SEAL)

*10/23/00  
K. S. Elliott*

RECEIVED  
CITY OF ESKRIDGE  
JUL 11 2000

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(b) It shall be unlawful for any person to place, leave, dump or permit to accumulate any garbage or trash in any building or premises so that the same shall afford food and harborage for rats.

(c) It shall be unlawful for any person to accumulate or to permit the accumulation on any premises or on any open lot any lumber, boxes, barrels, bricks, stone or similar materials that may be permitted to remain thereon and which are rat harborages, unless the same shall be placed on open racks that are elevated not less than 12 inches above the ground, evenly piled or stacked.

(d) Whenever conditions inside or under any building or structure provide such extensive harborage for rats that the health department deems it necessary to eliminate such harborage, he or she may require the owner to install suitable cement floors in basements or to replace wooden first or ground floors or require the owner to correct such other interior rat harborage as may be necessary in order to facilitate the eradication of rats in a reasonable time and thereby to reduce the cost of such eradication.

(Code 2000)

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## **ARTICLE 7. INSURANCE PROCEEDS FUND**

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- 8-702. **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. (Code 2000)
- 8-703. **SAME; ENCUMBRANCES.** Prior to final settlement on any claim covered by section 8-702, the insurer or insurers shall contact the county treasurer, Wabaunsee 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, Wabaunsee County, Kansas. (Code 2000)
- 8-704. **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. (Code 2000)
- 8-705. **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 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 chief building inspector 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 article.  
(Code 2000)

- 8-706. 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 article shall be placed in said fund and deposited in an interest-bearing account. (Code 2000)
- 8-707. BUILDING INSPECTOR; INVESTIGATION, REMOVAL OF STRUCTURE. (a) Upon receipt of moneys as provided for by this article, the city treasurer shall immediately notify the chief building inspector of said receipt, and transmit all documentation received from the insurance company or companies to the chief building inspector.
- (b) Within 20 days of the receipt of said moneys, the chief 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 section, the chief 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 chief 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 chief 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.  
(Code 2000)
- 8-708. REMOVAL OF STRUCTURE; EXCESS MONEYS. If the chief 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. (Code 2000)
- 8-709. SAME; DISPOSITION OF FUNDS. If the chief 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 8-705(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 chief 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 8-705(a), the chief building inspector shall publish a new lien as authorized by K.S.A. 12-1756, in an amount equal to such excess expenses incurred. (Code 2000)
- 8-710. EFFECT UPON INSURANCE POLICIES. This article 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.  
(Code 2000)

8-711. **INSURERS; LIABILITY.** Insurers complying with this article or attempting in good faith to comply with this article 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 article, or releasing or disclosing any information pursuant to this article. (Code 2000)