

ORDINANCE NO. 3949

10/23/08
Eureka
Eureka

AN ORDINANCE RELATING TO THE ESTABLISHMENT AND IMPLEMENTATION OF AN INSURANCE PROCEEDS FUND PURSUANT TO K.S.A. 40-3901et seq. AND REPEALING EXISTING ORDINANCES OF THE CITY OF EUREKA, KANSAS IN CONFLICT HEREWITH.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF EUREKA, 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 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, Greenwood 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, Greenwood 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 property 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 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 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 proceeding 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 proceeding under K.S.A. 12-1750 et seq., as amended.
- (d) If the chief building inspector has determined that proceeding 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 receipts of the moneys by the city treasurer.
- (e) Upon notification to the city treasurer by the chief building inspector that no proceeding 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 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.


Section 9. 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 5 (a) relating to that building or other structure shall be used to reimburse the city for any expensed 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 5 (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.

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. Effective date. This Ordinance shall be effective upon its passage and publication once in the official city newspaper.

Passed by the Governing Body of the City of Eureka, Kansas, this 23rd day of October, 2000.


JAMES F. BOBEY, Mayor

ATTEST:


RENEE HARRINGTON, City Clerk



Kathleen Sebelius
Commissioner of Insurance
Kansas Insurance Department

October 5, 2000

Ms. Renee Harrington
City Clerk
P.O. Box 68
Eureka, KS 67045

RE: Fire Lien Ordinance

Dear Ms. Harrington:

You recently sent us a copy of your fire lien ordinance. In reviewing your ordinance we found that it does not reflect some recent changes in Kansas law. In 1997, the legislature amended K.S.A. 40-3901 and added the word "windstorm." Thus, cities and counties may now use this procedure to retain a portion of insurance proceeds in the event of a windstorm or tornado. I know that the City of Wichita found this helpful when a tornado hit Haysville and southern Wichita. Additionally, K.S.A. 40-3903, allows your city to retain up to 15% of the insurance proceeds." Your governing body may wish to adopt a new ordinance.

I have enclosed a photocopy of the relevant Kansas statutes. We also contacted Sandy Jacquot, Director of Law, with the League of Kansas Municipalities. Ms. Jacquot said that the League has posted a model fire lien ordinance on their website. You will find it at www.lkmonline.org.

If you, your city council or your city attorney have any questions, please give me a call. We would like to hear from you before proceeding. We can publish notice of your current ordinance. If you decide to amend this ordinance, you may prefer that we publish the new version instead. Either way, please just let me know. You may reach me at 785/296-7810.

Sincerely,

A handwritten signature in cursive that reads "Kathy Greenlee".

Kathy Greenlee
General Counsel

10/10
Renee called.
They will be updating
their old ordinance.

KAG

City of Eureka
P.O. Box 68
Eureka, KS 67045
(316) 583-6511

September 21, 2000

Insurance Commissioner
420 S.W. 9th Street
Topeka, KS 66612

To Whom It May Concern:

We were recently notified that you had not aware of our Insurance Proceeds Fund Ordinance. Enclosed please find a copy of the Insurance Proceeds Fund article and an Ordinance adopting the Code.

Sincerely,



Renee Harrington
City Clerk

ORDINANCE NO. 3850

AN ORDINANCE ADOPTING THE CODIFICATION OF ORDINANCES OF THE CITY OF EUREKA, KANSAS, AUTHORIZED BY ORDINANCE NO. 3591 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 Eureka, Kansas:

Section 1. The codification of ordinances of the City of Eureka, Kansas, authorized by Ordinance No. 3591 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 Eureka, Kansas, 1997," is hereby adopted and ordained as the "Code of the City of Eureka, Kansas, 1997," 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 January 1, 1997, in force and effect at the date of the publication of no fewer than 10 copies of the "Code of the City of Eureka, Kansas, 1997," 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.

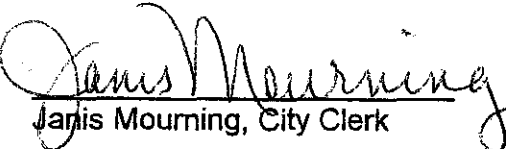
Section 6. If for any reason any chapter, article, section, subsection, sentence, portion or part of the "Code of the City of Eureka, Kansas, 1997," or the application thereof to any person or circumstances is declared to be unconstitutional or invalid, such decision will not affect the validity of the 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 Eureka, Kansas, 1997," as provided in K.S.A. 12-3015.

Passed by the Governing Body of the City of Eureka, Kansas, this 24th day of March, 1997.


Roscoe, Jackson, II, Mayor

ATTEST:


Janis Mourning, City Clerk

(SEAL)

ARTICLE 4. FIRE INSURANCE PROCEEDS FUND

- 7-401. 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 or explosion 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 1993)
- 7-402. 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 or explosion, 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 1993)
- 7-403. SAME; ENCUMBRANCES. Prior to final settlement on any claim covered by section 7-402, the insurer or insurers shall contact the county treasurer, Greenwood 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, Greenwood County Kansas. (Code 1993)
- 7-404. 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 1993)
- 7-405. 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 \$5,000 or 10 percent of the covered claim payment, whichever is less, 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 1993)

7-406. FUND CREATED; DEPOSIT OF MONEYS. The city treasurer is hereby authorized and shall create a fund to be known as the "Fire 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 1993)

7-407. 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 1993)

7-408. 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 1993)

- 7-409. SAME; DISPOSITION OF FUNDS. If the chief building inspector, with regard to a building or other structure damaged by fire or explosion, 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 7-405(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 7-405(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 1993)
- 7-410. 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 1993)
- 7-411. 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 1993)

ARTICLE 5. AUXILIARY FIRE DEPARTMENT

- 7-501. CREATION AND ESTABLISHMENT. There is hereby created and established an auxiliary fire department, which shall consist of members the number of which are to be determined from time to time by the city council. (Ord. 2590, Sec. 1)
- 7-502. APPOINTMENT AND DUTIES. Members of the auxiliary fire department shall be appointed by the chief of the fire department and shall perform such duties as are prescribed by him or her or by the city council. (Ord. 2590, Sec. 2)
- 7-503. COMPENSATION. Members of the auxiliary fire department shall serve without compensation. Provided, however, the city may purchase at its expense for the benefit of the members an accident insurance policy covering the members against accidental death or injury while the members are traveling to or from a fire or assisting in putting out a fire or performing such other duties as are directed by the chief of the fire department. (Ord. 2590, Sec. 3)

ARTICLE 6. FIREFIGHTERS RELIEF ASSOCIATION

- 7-601. MEMBERS; ORGANIZATION. The firefighters' relief association of the city shall consist of the members of the volunteer fire department of the city. The