

City of
FWLER

508 Main Street
P.O. Box 47
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Office Hours:
Monday - Friday
8:00 a.m. to 12:30 p.m.

April 15, 2005

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

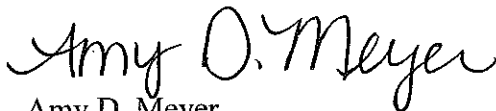
RE: INSURANCE PROCEEDS FUND

Dear Insurance Commissioner:

I am enclosed a copy of the City of Fowler's Ordinance #278 and a copy of Article 4 on establishment of an Fire Insurance Proceeds Fund. This has been brought to my attention, since we recently experienced a fire within our city limits on April 12, 2005, that you never have received a copy of this in you office so I am sending it to you now. We are in the process of updating our Codes and I will send you the update when it is available.

If you need any additional information, please feel free to give me a call.

Sincerely,



Amy D. Meyer
City Clerk

Enclosures

(b) All fireworks displayed for sale must remain in original packages, except where an attendant is on constant duty at all times where such fireworks are on display; provided, that fireworks in open stock may be kept in show cases or counters out of the reach of the public without an attendant being on duty.

(c) Signs reading "Fireworks for Sale--No Smoking Allowed" shall be displayed in the section of a store or premises set aside for the sale of fireworks. (Code 1994)

7-312. FIRE EXTINGUISHES REQUIRED. (a) Two functioning and approved fire extinguishes must be provided and kept in close proximity to the stock of fireworks in all permanent buildings where fireworks are stored, sold or displayed for sale.

(b) Small stands, temporarily erected to be used as a place for storing and selling fireworks only, shall have one such fire extinguisher, or in lieu of the fire extinguisher, a pressurized water hose with nozzle end within five feet of the fireworks stand. (Code 1994)

7-313. RESTRICTIONS AS TO GASOLINE INSTALLATIONS. It shall be unlawful to store, keep, sell, display for sale or discharge any fireworks within 50 feet of any gasoline pump, gasoline filling station, gasoline bulk station or any building in which gasoline or volatile liquids are sold in quantities in excess of one gallon, except in stores where cleaners, paints and oils are handled in sealed containers only. (Code 1994)

7-314. AUTHORITY OF FIRE CHIEF. The chief of the fire department is authorized to seize and confiscate all fireworks which may be kept, stored or used in violation of any section of this article, and all of the rules of the state fire marshal. He or she shall dispose of all such fireworks as may be directed by the governing body. (Code 1994)

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 1994)

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 1994)

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, Meade 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, Meade County, Kansas. (Code 1994)

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 1994)

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 1994)

- 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 1994)
- 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 1994)
- 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 1994)
- 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 1994)

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 1994)

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 1994)

ORDINANCE NO. 278

AN ORDINANCE ADOPTING THE CODIFICATION OF ORDINANCES OF THE CITY OF FOWLER, KANSAS, AUTHORIZED BY ORDINANCE NO. 274 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 Fowler, Kansas:

Section 1. The codification of ordinances of the City of Fowler, Kansas, authorized by Ordinance No. 274 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 Fowler, Kansas, 1994," is hereby adopted and ordained as the "Code of the City of Fowler, Kansas, 1994," 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 May 1, 1994, in force and effect at the date of the publication of no fewer than 10 copies of the "Code of the City of Fowler, Kansas, 1994," 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 Fowler, Kansas, 1994," 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 Fowler, Kansas, 1994," as provided in K.S.A. 12-3015.

Passed by the Governing Body of the City of Fowler, Kansas, this 18th day of May, 1994.

/s/ Larry Wentz, Mayor

ATTEST: /s/ Amy Meyer, City Clerk

(SEAL)