

ORDINANCE NO. 1103

AN ORDINANCE RELATING TO STRUCTURES DAMAGED BY FIRE, EXPLOSION, OR WINDSTORM, CREATING A LIEN UPON INSURANCE PROCEEDS WITH RELATION TO SAID STRUCTURE; PROVIDING FOR THE DISBURSEMENT OF SAID INSURANCE PROCEEDS; CREATING AN INSURANCE PROCEEDS FUND AND REPEALING ORDINANCE NO. 1045; AND PROVIDING FOR A LIEN FOR CERTAIN TAXES DUE ON STRUCTURES DAMAGED BY FIRE, EXPLOSION, OR WINDSTORM.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF GIRARD, KANSAS:

Section 1. **SCOPE AND APPLICATION.** The City is hereby authorized to utilize the procedure established by K.S.A. 40-3901 et seq., whereby no insurance company shall pay a claim of 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 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 of this ordinance, the insurers shall contact the County Treasurer, Crawford 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, Crawford 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 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 15% of the covered claim payment, unless the Code Enforcement Officer 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 amount of the final settlement agreed to or arrived at between the insurance company or companies and the insured or insureds, whereupon the Code Enforcement Officer 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 Clerk is hereby authorized and shall create a fund to be known as the "Insurance Proceeds Fund". All moneys received by the City Clerk as provided for by this ordinance shall be placed in said fund and deposited in an interest-bearing account.

Section 7. **CODE ENFORCEMENT OFFICER; INVESTIGATION, REMOVAL OF STRUCTURE.**

(a) Upon receipt of moneys as provided for by this ordinance, the City Clerk shall immediately notify the Code Enforcement Officer of said receipt, and transmit all documentation received from the insurance company or companies to the Code Enforcement Officer.

(b) Within 20 days of the receipt of said moneys, the Code Enforcement Officer 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 Code Enforcement Officer shall notify the City Clerk whether he or she intends to initiate proceedings under K.S.A. 12-1750 et seq., as amended.

(d) If the Code Enforcement Officer has determined that proceedings under K.S.A. 12-1570 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 Clerk.

(e) Upon notification to the City Clerk by the Code Enforcement Officer that no proceeds shall be initiated under K.S.A. 12-1750 et seq., as amended, 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 30 days of the receipt of the moneys from the insurance company or companies.

Section 8. **REMOVAL OF STRUCTURE; EXCESS MONEYS.** If the Code Enforcement Officer 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 by the City Clerk to the insured or insureds as identified in the communication from the insurance company or companies.

Section 9. **SAME; DISPOSITION OF FUNDS.** If the Code Enforcement Officer, 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 Clerk under the authority of section 5(a) of this ordinance 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 Code Enforcement Officer 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 5(a) of this ordinance the Code Enforcement Officer 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 disposing any information pursuant to this ordinance.


Section 12. **NOTICE; STATE COMMISSIONER OF INSURANCE.** The City Clerk is herewith directed to file a copy of this ordinance and certified notice of the adoption of such with the Kansas State Commissioner of Insurance within 14 days of the adoption hereof.

Section 13. **REPEALING ORDINANCE NO. 1045.** Repealing Ordinance No. 1045 and any or all ordinances, parts of ordinances in conflict herewith are hereby repealed.

Section 14. **EFFECTIVE DATE.** This ordinance shall be in full force and effect from and after its passage, approval, and publication, according to law.

PASSED AND APPROVED BY THE GOVERNING BODY OF THE CITY OF GIRARD, KANSAS, THIS THE 18th DAY OF August, 1997.

ATTEST:


Coralie J. Bennett
Coralie J. Bennett, CMC
City Clerk

Jerry D. Staton
Jerry D. Staton, Mayor