

A-11

ORDINANCE NUMBER 489

AN ORDINANCE OF THE CITY OF HIGHLAND, KANSAS, RELATING TO THE ESTABLISHMENT AND IMPLEMENTATION OF AN INSURANCE PROCEEDS FUND PURSUANT TO K.S.A. 40-3901, ET SEQ.

WHEREAS, the City has a duty to protect the general health and welfare of its citizens and property interests by insuring that structures damaged by fire, explosion or windstorm be properly repaired or demolished; and

WHEREAS, the City is authorized to enact this ordinance pursuant to the authority of K.S.A. 40-3901, et seq. and its home rule authority.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF HIGHLAND, 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 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, the insurer or insurers shall contact the county treasurer of Doniphan 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 said county treasurer.

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 treasurer in an amount equal to the sum of 15 percent of the covered claim payment, unless the city clerk 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 ordinance, 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 city clerk shall contact the named insured or insureds by certified mail, return receipt requested, 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 and city treasurer are hereby authorized and shall create a fund to be known as the "Insurance Proceeds Fund." All moneys received by the City as provided for by this ordinance shall be placed in said fund and deposited in an interest-bearing account.

Section 7. ENFORCING OFFICER; INVESTIGATION, REMOVAL OF STRUCTURE.

(a) Upon receipt of moneys as provided for by this ordinance, the city clerk shall immediately notify the enforcing officer, appointed by the governing body pursuant to the provisions of ordinance number 488, of said receipt, and shall transmit all documentation received from the insurance company or companies to said enforcing officer.

(b) Within 20 days of the receipt of said moneys, the enforcing officer shall determine, after prior investigation, whether the City shall instigate proceedings under the provisions of ordinance number 488 of the City, as amended from time to time.

(c) Prior to the expiration of the 20 days established by subsection (b) of this ordinance, the enforcing officer shall notify the city clerk whether he or she intends to initiate proceedings under ordinance number 488, as authorized by K.S.A. 12-1750 et seq., as amended from time to time.

(d) If the enforcing officer has determined that proceedings under ordinance number 488 shall be initiated, he or she will do so as soon as expedient, but no later than 30 days after receipt of the moneys by the City.

(e) Upon notification to the city clerk by the enforcing officer that no proceedings shall be initiated under ordinance number 488, the City 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 enforcing officer has proceeded under the provisions of ordinance number 488, 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 enforcing officer, with regard to a building or other structure damaged by fire, explosion, or windstorm, determines that it is necessary to act under ordinance number 488, 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 expenses incurred by the City in proceeding under said ordinance. Upon reimbursement from the insurance proceeds, the enforcing 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 under Section 5(a), the enforcing officer shall publish a new lien as authorized by K.S.A. 12-1756 and ordinance number 488, in an amount equal to such excess expenses incurred.

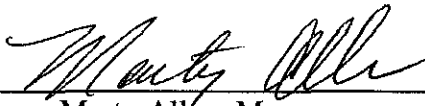
Section 10. EFFECT UPON INSURANCE POLICIES. This ordinance shall not make the City a party to any insurance contract, nor is the insurer liable to any party for any amount in excess of the proceeds otherwise payable under its insurance policy.

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. REPEALER-SAVINGS CLAUSE. All other ordinances or parts of ordinances of the City of Highland, Kansas, in conflict herewith, be and the same are hereby repealed. In the event any part or provision of this ordinance is held to be invalid, such invalidity shall not affect the remaining provisions hereof, which shall remain in full force and effect.

Section 13. EFFECTIVE DATE. The terms and provisions of this Ordinance shall take effect upon publication in the official City newspaper.

Passed by the Governing Body and approved by the Mayor of the City of Highland, Kansas, this 9th day of June, 2010.



Marty Allen, Mayor

ATTEST:



Bill Butrick, City Clerk

(SEAL)

I hereby certify that the foregoing is a true and correct copy of the original ordinance: that said ordinance was passed on the 9 day of June 2010 that the record of the final vote on its passage is found on page 489 of journal 9 that it was published in the Kansas Chief on the 24 day of June 2010



City Clerk