

# City of Leawood

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KANSAS  
INSURANCE  
DEPARTMENT

January 19, 2001

Kathleen Sebelius  
Commissioner of Insurance  
420 SW 9th St.  
Topeka, Kansas 66612-1678

Dear Ms. Sebelius:

Enclosed for your records is a certified copy of Leawood's Ordinance No. 1882C which adds new sections to the Code relating to the establishment and implementation of an insurance proceeds fund pursuant to K.S.A. 40-3901 et seq.

Sincerely,

Martha Heizer  
City Clerk

OK  
K. Buehler  
1/22/01

**AN ORDINANCE ADDING A NEW ARTICLE 5 TO CHAPTER VIII OF THE CITY OF LEAWOOD CODE 2000, 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 LEAWOOD, KANSAS IN CONFLICT HEREWITH.**

WHEREAS, property damage caused by accidental fires, explosions or windstorms, if left abandoned and/or unrepaired, may constitute a hazardous and unsightly nuisance to the citizens of the City of Leawood, Kansas; and

WHEREAS, state law authorizes cities to pass an ordinance which establishes a fund in order to collect a portion of the insurance proceeds received whenever any building or structure in the City is damaged as a result of fire, explosion or windstorm where the amount recoverable is in excess of 75% of the face value of the policy covering the building or structure; and

WHEREAS, pursuant to said law, if the damaged structure is repaired or removed to the satisfaction of the City, the money is returned to the insured party. If not, the money in the fund is used to make the necessary repairs; and

WHEREAS, the Governing Body finds that the establishment of said fund will protect the health, safety, and welfare of the citizens of the City of Leawood.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS:

**Section 1: A new Section 8-501 is hereby added to read as follows:**

**8-501 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: A new Section 8-502 is hereby added to read as follows:**

**8-502 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: A new Section 8-503 is hereby added to read as follows:**

**8-503 ENCUMBRANCES**

Prior to final settlement on any claim covered by Section 2, the insurer or insurers shall contact the county treasurer, Johnson 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, Johnson County, Kansas.

**Section 4: A new Section 8-504 is hereby added to read as follows:**

**8-504 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: A new Section 8-505 is hereby added to read as follows:**

**8-505 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 in an amount equal to the sum of 15 percent of the covered claim payment unless the neighborhood service director 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 neighborhood service director

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:** A new Section 8-506 is hereby added to read as follows:

**8-506 FUND CREATED; DEPOSIT OF MONEYS**

The city finance director is hereby authorized and shall create a fund to be known as the "Insurance Proceeds Fund." All moneys received by the city finance department as provided for by this ordinance shall be placed in said fund and deposited in an interest-bearing account.

**Section 7:** A new Section 8-507 is hereby added to read as follows:

**8-507 NEIGHBORHOOD SERVICE DIRECTOR; INVESTIGATION, REMOVAL OF STRUCTURE**

- (A) Upon receipt of moneys as provided for by this ordinance, the city finance director shall immediately notify the neighborhood service director of said receipt, and transmit all documentation received from the insurance company or companies to the neighborhood service director.
- (B) Within 20 days of the receipt of said moneys, the neighborhood service director 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 neighborhood service director shall notify the city finance director whether he or she intends to initiate proceedings under K.S.A. 12-1750 et seq., as amended.
- (D) If the neighborhood service director 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 finance department.
- (E) Upon notification to the city finance department by the neighborhood service director that no proceedings shall be initiated under K.S.A. 12-1750 et seq., as amended, the city finance director 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:** A new Section 8-508 is hereby added to read as follows:

**8-508 REMOVAL OF STRUCTURE; EXCESS MONEYS**

If the neighborhood service director 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:** A new Section 8-509 is hereby added to read as follows:

**8-509 SAME; DISPOSITION OF FUNDS**

If the neighborhood service director, 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 finance department 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 K.S.A. 12-1756. Upon reimbursement from the insurance proceeds, the neighborhood service director 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 neighborhood service director shall publish a new lien as authorized by K.S.A. 12-1756, in an amount equal to such excess expenses incurred.

**Section 10** A new Section 8-510 is hereby added to read as follows:

**8-510 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:** A new Section 8-511 is hereby added to read as follows:

**8-511 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:** That this ordinance shall be construed as follows:

**INTERPRETATION**

A. **Liberal Construction:** The provisions of this Ordinance shall be liberally construed to effectively carry out its purposes which are hereby found and declared to be in furtherance of the public health, safety, welfare, and convenience.

B. **Invalidity:** If for any reason any chapter, article, section, subsection, sentence, portion or part of the proposed ordinance set out, or the application thereof to any person or circumstance is declared to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of the Code or other ordinances.

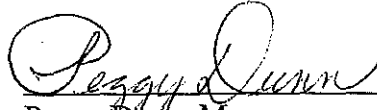
**Section 13:** That said ordinance shall become effective upon adoption and publication once in the official city newspaper.

**Section 14:** That the City Clerk is hereby directed to certify a copy of this ordinance to: Commissioner of Insurance, 420 S.W. 9th Street, Topeka, KS 66612, for filing.

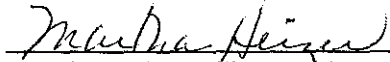
PASSED by the Governing Body this 16<sup>th</sup> day of January, 2001.

APPROVED by the Mayor this 16<sup>th</sup> day of January, 2001.

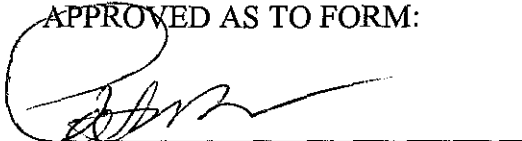
[SEAL]

  
Peggy Dunn, Mayor

ATTEST:

  
Martha Heizer, City Clerk

APPROVED AS TO FORM:

  
Patricia A. Bennett, City Attorney

CERTIFICATE

State of Kansas  
County of Johnson  
City of Leawood

I, Martha Heizer, City Clerk of the City of Leawood, Kansas, hereby certify that the above and foregoing is a true and correct copy of Ordinance No. 1882C as the same appears in my office.

In testimony whereof, I have hereunto signed my name and affixed the seal of said city this 19th day of January, 2001.

(S E A L)

