



## Legal Department

March 14, 2014

Kansas Insurance Department  
420 SW 9<sup>th</sup> Street  
Topeka, Kansas 66612-1678

To Whom It May Concern:

In doing research for a recent fire, I noticed that the City of Lenexa was not listed on the Kansas Insurance Department's Web site list for Fire/Windstorm Liens. The City of Lenexa ordinance relating to an insurance lien in case of fire, wind, or explosion was passed on September 19, 2000. The City of Lenexa believes a notification was sent. In order to make sure the Kansas Insurance Department is notified, I have enclosed with this letter a copy of the ordinance relating to Fire/Windstorm Liens so that the City of Lenexa will be included on the Kansas Insurance Department's Web site list.

If you have any questions, please feel free to contact me at 913-477-7624.

Sincerely,

A handwritten signature in black ink, appearing to read "S. McLaughlin", is written over a horizontal line.

Sean L. McLaughlin  
City of Lenexa  
Assistant City Attorney

ORDINANCE NO. 4343

AN ORDINANCE AMENDING TITLE 1, CHAPTER 9, BY ADDING ARTICLE H, SECTIONS 1-9-H-1 THROUGH AND INCLUDING 1-9-H-11, TO THE CODE OF THE CITY OF LENEXA, KANSAS, MORE SPECIFICALLY DEALING WITH ESTABLISHING A FIRE INSURANCE PROCEEDS FUND.

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 Lenexa; 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 Lenexa.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LENEXA, JOHNSON COUNTY, KANSAS:

**Section 1: A new Section 1-9-H-1 is hereby added to read as follows:**

**1-9-H-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: A new Section 1-9-H-2 is hereby added to read as follows:**

**1-9-H-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 (1) year prior to the filing of a proof of loss.

**Section 3: A new Section 1-9-H-3 is hereby added to read as follows:**

**1-9-H-3 SAME; ENCUMBRANCES.**

Prior to final settlement on any claim covered by Section 1-9-H-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 1-9-H-4 is hereby added to read as follows:**

**1-9-H-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: A new Section 1-9-H-5 is hereby added to read as follows:**

**1-9-H-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 Building Official 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 Building Official 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 1-9-H-6 is hereby added to read as follows:**

**1-9-H-6 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 ordinance shall be placed in said fund and deposited in an interest-bearing account.

**Section 7: A new Section 1-9-H-7 is hereby added to read as follows:**

**1-9-H-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 Building Official of said receipt, and transmit all documentation received from the insurance company or companies to the Building Official.

B. Within 20 days of the receipt of said moneys, the Building Official 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 Building Official 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 Building Official 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 Building Official 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.

**Section 8: A new Section 1-9-H-8 is hereby added to read as follows:**

**1-9-H-8      REMOVAL OF STRUCTURE; EXCESS MONEYS.**

If the Building Official 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 1-9-H-9 is hereby added to read as follows:**

**1-9-H-9      SAME; DISPOSITION OF FUNDS.**

If the Building Official, 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 1-9-H-5A 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 Building Official 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 1-9-H-5A, the Building Official 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 1-9-H-10 is hereby added to read as follows:**

**1-9-H-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: A new Section 1-9-H-11 is hereby added to read as follows:**

**1-9-H-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: 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 this Ordinance shall become effective upon adoption and publication in the official City newspaper.

APPROVED BY the Governing Body this 19<sup>th</sup> day of September, 2000.

SIGNED BY the Mayor this 19<sup>th</sup> day of September, 2000.



Joan Bowman  
Joan Bowman, Mayor

Sandra Howell  
Sandra Howell, Administration Director/City Clerk

APPROVED AS TO FORM:

Rebecca A. Swanwick Byler  
Rebecca A. Swanwick, Assistant City Attorney