

CERTIFICATION OF CLERK

I, Brenda K. Wolf, the duly appointed, qualified, and Deputy City Clerk of Manhattan, Kansas, do hereby certify that the foregoing Ordinance was duly adopted at a meeting of the City of Manhattan, Kansas, held on the 20th day of March, 2001, and that said Ordinance has been compared by me with the original thereof on file and of record in my office, is a true copy of the whole of said original.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the City of Manhattan, Kansas, 21st day of March, 2001

Brenda K. Wolf, CMC, Deputy City Clerk

ORDINANCE NO. 6205

AN ORDINANCE ADDING NEW ARTICLE XVI TO CHAPTER 8 OF THE CODE OF ORDINANCES, CITY OF MANHATTAN, KANSAS RELATING TO THE ESTABLISHMENT OF A PROCEDURE FOR THE PAYMENT OF THE PROCEEDS OF FIRE INSURANCE POLICIES, PURSUANT TO K.S.A. 40-3901, ET. SEQ.

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

SECTION 1. That Chapter 8 of the *Code of Ordinances*, City of Manhattan, Kansas, is hereby amended by adding new Article XVI, which shall read as follows:

ARTICLE XVI: PAYMENT OF PROCEEDS OF FIRE INSURANCE POLICIES

Section 8-341 SCOPE AND APPLICATION.

The provisions of this Article create a procedure, pursuant to K.S.A. 40-3901, et. seq., regarding the payment of proceeds of any insurance policy based upon a covered claim payment made for damage or loss to a building or other structure, caused by, or arising out of, any fire, explosion, or windstorm. 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, caused by, or 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 Article.

Section 8-342 LIEN CREATED.

The governing body of the City of Manhattan hereby creates a lien in favor of the City of Manhattan 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 of Manhattan, 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 of Manhattan which is an encumbrance on real property, covered by the subject insurance policy, 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 8-343 SAME; ENCUMBRANCES.

Prior to final settlement on any claim covered by Section 8-342, the insurer or insurers shall contact the County Treasurer of either Riley County, Kansas, or Pottawatomie

County, Kansas, whichever is applicable, to determine whether any such encumbrances, as provided in Section 8-342, 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 of the appropriate county, and adequately describing the encumbrance the draft is intended to satisfy.

Section 8-344 SAME; PRO RATA BASIS.

Such transfer of proceeds, pursuant to Section 8-342, shall be on a pro rata basis by all insurance companies insuring the building or other structure.

Section 8-345 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 any policy, within the scope of this Article, covering any building or other insured structure, and after 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 balance of the proceeds of such policy, but not to exceed 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, indicating that the City has received proof, satisfactory to the City, that the insured has, or will, remove 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 payment of proceeds to the City 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 payment of the proceeds to the City, 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 notify the named insured or insureds by certified mail, return receipt requested, addressed to the address provided by the insurance company, that said insurance proceeds have been received by the City of Manhattan and further notifying them of the procedures to be followed under this ordinance. The failure of any insured to receive the notice provided for herein shall not invalidate any action taken by the City under this Article.

Section 8-346 FUND CREATED; DEPOSIT OF MONIES.

The City Treasurer is hereby authorized and shall create a fund to be known as the "Insurance Proceeds Fund." All monies received by the City Treasurer as provided for by Section 8-345, shall be placed in said fund and deposited in an interest-bearing account.

Section 8-347 BUILDING INSPECTOR; INVESTIGATION, REMOVAL OF STRUCTURE.

- (a) Upon receipt of monies as provided for by Section 8-345, the City Treasurer shall notify the Building Official of the time and date of said receipt, and transmit all documentation received from the insurance company or companies to the Building Official.
- (b) Prior to the expiration of thirty (30) days from the receipt of said monies by the City Treasurer, the Building Official shall determine, based upon investigation, whether or not the building, or other structure, covered by the subject policy, is unsafe or dangerous or is abandoned property, and whether or not he/she should file with the Governing Body of the City the statement authorized by K.S.A. 12-1752, as amended.
- (c) If the Building Official has made the determinations required by Subsection (b), he/she shall file the statement, in writing, as authorized by K.S.A. 12-1752, as amended, with the Governing Body of the City, by filing such statement with the City Clerk. The City Clerk shall note the time, and date, of the filing of such statement. Such statement shall be filed within thirty (30) days after receipt of the payment by the City Treasurer. The Building Official shall also notify the City Treasurer of the date and time of such filing, and such notice to the City Treasurer shall occur prior to the expiration of twenty-nine (29) days after the receipt of the payment by the City Treasurer.
- (d) If the Building Official does not make the determinations required by Subsection (b), and/or does not file the written statement authorized by Subsection (c), he/she shall so notify the City Treasurer. The Building Official shall provide such notification to the City Treasurer prior to the expiration of twenty-nine (29) days after receipt of the payment by the City Treasurer. Upon receipt of such notification, or upon expiration of twenty-nine (29) days after receipt of the payment by the City Treasurer without any notice from the Building Official, the City Treasurer shall release all such monies received, plus accrued interest, to the insured or insureds as identified in the communication from the insurance company or companies. Such release shall be accomplished within 30 days of the receipt of the monies from the insurance company or companies.

Section 8-348 REMOVAL OF STRUCTURE; EXCESS MONIES.

If the Building Official has proceeded under the provisions of K.S.A. 12-1750 et seq., as amended, all monies 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 8-349 SAME; DISPOSITION OF FUNDS.

If the Building Official, with regard to a building or other structure damaged by fire, explosion, or windstorm, determines that it is necessary to proceed pursuant to K.S.A. 12-1756, as amended, any proceeds received by the City Treasurer under the authority of Section 8-345 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 affect the release of the lien, if any, resulting therefrom. Should the expenses incurred by the City in the performance of actions taken pursuant to any of the provisions of K.S.A. 12-1750, et. seq., as amended, exceed the insurance proceeds paid over to the City Treasurer under Section 8-345, the City may proceed to collect such deficiencies pursuant to law, including the provisions of K.S.A. 12-1750, et. seq.

Section 8-350 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.

Section 8-351 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.

SECTION 2. This ordinance shall take effect and be in force from and after its publication in the official city newspaper.

PASSED AND ADOPTED BY THE GOVERNING BODY OF THE CITY OF MANHATTAN, KANSAS, THIS 20TH DAY OF MARCH, 2001.



Gary S. Fees, City Clerk

Karen McCulloh
Karen McCulloh, Mayor