

OFFICE OF THE CITY CLERK
CITY OF MCCUNE
P.O. BOX 87
MCCUNE, KS 66753

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KANSAS
INSURANCE DEPARTMENT

ORDINANCE # 507

AN ORDINANCE RELATING TO STRUCTURES DAMAGED BY FIRE OR EXPLOSION; CREATING A LIEN UPON INSURANCE PROCEEDS WITH RELATING TO SAID STRUCTURE; PROVIDING FOR THE DISBURSEMENT OF SAID INSURANCE PROCEEDS, CREATING A FIRE INSURANCE PROCEEDS FUND PROVIDING FOR A LIEN FOR CERTAIN TAXES DUE ON STRUCTURES DAMAGED BY FIRE, EXPLOSIONS OR WINDSTORM.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF MCCUNE, 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 structures located within the city, caused by or arising out of any fire, explosion or windstorm, where the amount 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, 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 encumbrance a draft payable to the County Treasurer, Crawford County, Kansas.

SECTION 4. SAME: PRORATA 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 or covered claim has been agreed to or arrived at between the named insured or insured and the company or companies, and the final settlement exceeds 75 percent of the face value of the policy covering any building of a first real estate 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 \$5,000 or 10 percent of the covered claim payment, whichever is less, unless the chief building inspector of the city has insured 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 structures. 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 insured's, the total amount of the final settlement agreed to or arrived at between the insurance company or companies 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 treasurer is hereby authorized and shall create a fund to be known as the "Fire Insurance Proceeds Fund." All monies 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. BUILDING INSPECTOR INVESTIGATION, REMOVAL OF STRUCTURE.

(a) Upon receipt of monies as provided for by this ordinance, the city treasurer shall immediately notify the chief building inspector of said receipt, and transmit all documentation received from the insurance company or companies to the chief building inspector.

(b) Within twenty (20) days of the receipt of said monies, the chief building inspector shall determine, after price 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 twenty (20) days established by subsection (b) of this section, the chief building inspector 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 chief building inspector has determined that proceedings under K.S.A. 12-1750 et seq., as amended, shall be initiated, he or she shall do so immediately but no later than thirty (30) days after receipt of the monies by the city treasurer.

(e) Upon notification to the city treasurer by the chief building inspector that no proceedings shall be initiated under K.S.A. 12-1750 et seq., as amended, the city treasurer shall return all such monies received, plus accrued interest, to the communication from the insurance company or companies. Such return shall be accomplished within thirty (30) days of the receipt of the monies from the insurance company or companies.

SECTION 8. REMOVAL OF STRUCTURE, EXCES MONIES. If the chief building inspector 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 9. SAME; DISPOSTION OF FUNDS. If the chief building inspector, with regard to a building or other structure damaged by fire or explosion, determine that it is necessary to act under K.S.A. 12-1756, any proceeds received by the city treasurer under the authority of 5(a) relating to that building or other structure shall be used to reimburse that city for any expenses incurred by the city in proceeding under K.S.A. 12-1756. Upon reimbursement from the insurance proceeds, the chief building inspector shall immediately effect the release of the lien resulting there from. Should the expenses incurred by the city exceed the insurance proceeds paid over to the city treasurer under section 5(a) the chief building inspector 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 with holding payment of any insurance proceeds pursuant to this ordinance or releasing or disclosing any information pursuant to this ordinance

SECTION 12. MAKE SITE SAFE. Upon removal of any structure, the owner shall fill any basement or other excavation located upon the premises and take any other action necessary to leave the premises in a safe condition. If the owner fails to take such action, the enforcing officer may proceed to make the site safe.

SECTION 13. City Ordinance # 421 and all other City Ordinances in conflict with this Ordinance are herewith repealed.

SECTION 14. This Ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the Governing body of the City of McCune, Kansas, and approved by the Mayor of said City this 12th day of October 2009.

Mayor: Don Call

Attest: Dianne M. Nutt, City Clerk

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