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AN ORDINANCE OF THE CITY OF NETAWAKA ESTABLISHING A FIRE, EXPLOSION AND WINDSTORM (INCLUDING TORNADO) INSURANCE PROCEEDS FUND IN THE CORPORATE LIMITS OF THE CITY OF NETAWAKA, JACKSON COUNTY, KANSAS AND CANCELLING ALL OTHER ORDINANCES OR PORTIONS OF ORDINANCES IN CONFLICT THEREWITH

BE IT ORDAINED by the Governing Body of the City of Netawaka, 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 buildings or structures covered 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 proceeds of any insurance policy based upon covered claim payment made for damage or loss to buildings or other structures 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% 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 un-discharged 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, Jackson 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, Jackson County, Kansas.

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 per cent 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 Clerk in an amount equal to the sum of 15 per cent of the covered claim payment, unless the Mayor 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 the above-named buildings and structures and the amount of the final settlement agreed to or arrived at between the insurance company or companies and the insured or insureds. The Mayor shall then contact the named insured or insureds by certified mail, notifying them when said insurance proceeds have been received by the company or companies and apprise them of the procedures to be followed under this Ordinance.

SECTION 6. FUND CREATED; DEPOSIT OR MONEYS.

The city Clerk is hereby authorized and shall create a fund to be known as the "Fire, Explosion and Windstorm Insurance Proceeds Fund." All moneys received by the City Clerk as provided for by this Ordinance shall be placed in said fund and deposited in an interest-bearing account.

SECTION 7. BUILDING INSPECTION; INVESTIGATION, REMOVAL OF STRUCTURE.

(a) Upon receipt of moneys as provided for by this Ordinance, the City Clerk shall immediately notify the Mayor of said receipt, and transmit all documentation received from the insurance company or companies to the Mayor.

(b) Within 20 days of the receipt of said moneys, the mayor 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 Mayor shall notify the City Clerk whether he or she intends to initiate proceedings under K.S.A. 1750 et seq., as amended.

(d) If the Mayor has determined that proceedings under K.S.A. 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 Clerk.

(e) Upon notification to the City Clerk by the Mayor that no proceedings shall be initiated under K.S.A. 12-1750 et seq., as amended, the City Clerk 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 mayor 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. SAME; DISPOSTION OF FUNDS.

If the Mayor, with regard to a building or 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 Clerk 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 Mayor 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 Clerk under Section 5 (a), the Mayor shall publish a new lien as authorized by K.S.A. 12-1756, in an amount equal to such excess 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.

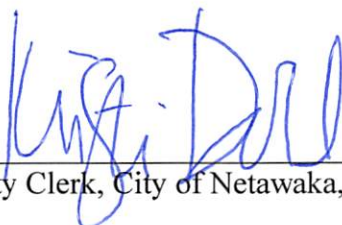
Insurers complying with this Ordinance and attempting in good faith to comply with this Ordinance shall be immune from civil and criminal liability and such action shall not be deemed in violation of K.S.A. 40-2404 and any amendments thereto, including withholding payment of any insurance proceeds pursuant to this Ordinance, or releasing or disclosing any information pursuant to this Ordinance.

THIS ORDINANCE shall become effective after publication in the official city newspaper and after a copy of such ordinance has been forwarded to the Kansas Insurance Commission.

PASSED AND APPROVED THIS 7th day of September, 2021.

(Seal)

APPROVED: 
Mayor, City of Netawaka, KS

ATTEST: 
City Clerk, City of Netawaka, KS