

# OVERLAND PARK

K A N S A S

ABOVE AND BEYOND. BY DESIGN.

City Hall • 8500 Santa Fe Drive  
Overland Park, Kansas 66212  
913/895-6000 • Fax 913/895-5009

[www.opkansas.org](http://www.opkansas.org)

August 23, 2016

Insurance Commissioner Ken Selzer  
420 SW 9<sup>th</sup> Street  
Topeka, KS 66612

Dear Commissioner Selzer:

On August 15, 2016, the Governing Body of the City of Overland Park approved Ordinance No. BC-3133, concerning payment of insurance proceeds for damage or loss to buildings or other structures.

This ordinance complies with House Bill 2446, which amended K.S.A. 40-3901, et seq. to expand the ability of cities to place a lien on the proceeds of "any covered claims" for damage to a building or other structure in excess of 75% of the face value of the insurance policy. The City's procedure requires payment of an amount not to exceed 15% of the insurance proceeds for the damaged building or structure. Upon abatement, any remaining funds are released to the insured. The ordinance also increases the time period from 30 days to 45 days for the Building Official to commence legal proceedings or for the City to release the proceeds to the insured.

A copy of Ordinance No. BC-3133 is enclosed.

Sincerely,



Marian Cook  
City Clerk

Enclosure

ORDINANCE NO. BC-3133

AN ORDINANCE CONCERNING PAYMENT OF INSURANCE PROCEEDS FOR DAMAGE OR LOSS TO BUILDINGS OR OTHER STRUCTURES; AMENDING EXISTING OVERLAND PARK MUNICIPAL CODE SECTION 16.190.108.8.

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

SECTION 1. Overland Park Municipal Code Section 16.190.108.8 is hereby amended to read as follows:

**16.190.108.8**

Sections 108.8 through 108.8.11 of the 2012 International Property Maintenance Code are hereby amended to read as follows:

**108.8 Damage or loss to buildings or other structures.** Damage or loss to buildings or other structures shall comply with the provisions of Sections 108.8.1 through 108.8.11.

**108.8.1 Scope and application.** The City of Overland Park, Kansas, 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, 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 structure, unless there is compliance with the procedures set out in this Ordinance.

**108.8.2 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, 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.

**108.8.3 Same, encumbrances.** Prior to final settlement on any claim covered by Section 108.8.2, 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.

**108.8.4 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.

**108.8.5 Procedure:**

1. 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 Chief Financial Officer in an amount equal to the sum of 15 percent of the covered claim payment, unless the Building Official 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.
2. 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.
3. Upon the transfer of funds as required by Section 108.8.1, 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 certified mail, return receipt requested, notifying them that said insurance proceeds have been received by the City and apprise them of the procedures to be followed under this Ordinance.

**108.8.6 Fund created; deposit of moneys.** The Chief Financial Officer is hereby authorized and shall create a fund to be known as the "Insurance Proceeds Fund." All moneys received by the Chief Financial Officer as provided for by this Ordinance shall be placed in said fund and deposited in an interest-bearing account.

**108.8.7 Building Inspector; investigation, removal of structure.**

1. Upon receipt of moneys provided for by this Ordinance, the Chief Financial Officer shall immediately notify the Building Official of said receipt, and transmit all documentation received from the insurance company or companies to the Building Official.
2. Within thirty (30) 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.
3. Prior to the expiration of the thirty (30) days established by Section 108.8.7(2), the Building Official shall notify the Chief Financial Officer whether proceedings will be initiated under K.S.A. 12-1750 et seq., as amended.

4. If the Building Official has determined that proceedings under K.S.A. 12-1750 et seq., as amended shall be initiated, the Building Official will do so immediately but no later than forty-five (45) days after receipt of the moneys by the Chief Financial Officer.
5. Upon notification to the Chief Financial Officer by the Building Official that no proceedings shall be initiated under K.S.A. 12-1750 et seq., as amended, the Chief Financial Officer 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 forty-five (45) days of the receipt of the moneys from the insurance company or companies.

**108.8.8 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.

**108.8.9 Same; disposition of funds.** If the Building Official, with regard to a building or other structure damaged determines that it is necessary to act under K.S.A. 12-1756, any proceeds received by the Chief Financial Officer under the authority of Section 108.8.5(1) 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 resulting therefrom. Should the expenses incurred by the City exceed the insurance proceeds paid to the Chief Financial Officer under Section 108.8.5(1), 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.

**108.8.10 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.

**108.8.11 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 2. Existing Overland Park Municipal Code Sections 16.190.108.8 is hereby repealed.

SECTION 3. This ordinance shall take effect and be in force from and after its publication in an official City newspaper.

SECTION 4. Pursuant to K.S.A. 40-3905, the City Clerk shall notify the Commissioner of Insurance about the adoption of the Ordinance and shall provide a copy of this Ordinance to the Commissioner.

PASSED by the City Council this 15<sup>th</sup> day of August, 2016.

APPROVED by the Mayor this 15<sup>th</sup> day of August, 2016.



Carl Gerlach, Mayor

APPROVED AS TO FORM:

Stephen B. Horner  
Senior Assistant City Attorney

Marian Cook, City Clerk