

ORDINANCE NO. 1074

OK
Beverly
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AN ORDINANCE RELATING TO STRUCTURES DAMAGED BY FIRES OR EXPLOSION AND CREATING A LIEN UPON INSURANCE PROCEEDS; CREATING A FIRE INSURANCE PROCEEDS FUND; PROVIDING FOR A LIEN FOR CERTAIN TAXES DUE ON STRUCTURES DAMAGED BY FIRE OR EXPLOSION OR WINDSTORM.

WHEREAS, the Kansas Legislature, in 1997, amended provisions found at K.S.A. 40-3901 et seq. related to the authority of a city to establish a lien upon insurance proceeds from damaged structures within its jurisdiction; and

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF TONGANOXIE, KANSAS:

SECTION 1: Scope and Application. The City of Tonganoxie 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 or 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 of Tonganoxie 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 or explosion, 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.

SECTION 3: Same; Encumbrances. Prior to final settlement of any claim covered by Section 2, the insurer or insurers shall contact the county treasurer, Leavenworth 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, Leavenworth 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 insured 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 inspector 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 insured's, 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 insured's, whereupon the building inspector shall contact the named insured or insured's 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.

SECTION 6: Fund Created. The City Clerk is hereby authorized and shall create a fund to be known as the "Insurance Proceeds Fund." All monies received by the City as provided for in 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 Clerk shall immediately notify the building inspector of said receipt, and transmit all documentation received from the insurance company or companies to the building inspector.

(b) Within 20 days of the receipt of said monies, the building inspector shall determine, after prior investigation, whether the City shall investigate 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 Ordinance, the building inspector 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 building inspector 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 monies by the City Clerk.

(e) Upon notification to the City Clerk by the Building Inspector that no proceedings shall be initiated under K.S.A. 1750 et seq., as amended, the City Clerk shall return all such monies received, plus accrued interest, to the insured as identified in the communication from the Insurance Company or Companies. Such return shall be accomplished within 30 days of the receipt of the monies from the Insurance Company or Companies.

SECTION 8. Removal of Structure; Excess Monies. If the Building Inspector has proceeded under the provisions of K.S.A. 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.

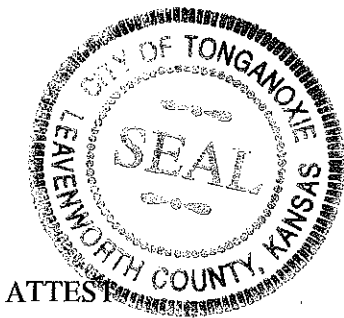
SECTION 9. Same; Disposition of Funds. If the Building Inspector, with regard to a building or other structure damaged by fire, explosion or windstorm, determines that it is necessary to act under K.S.A. 12-1756, any proceeds received by the City Clerk under the authority of Section 5(a) related to that building or other structure shall be used to reimburse the City for expenses incurred by the City in proceedings under K.S.A. 12-1756. Upon reimbursement from the insurance proceeds, the Building Inspector shall immediately effect the release of the lien resulting therefrom. Should the expenses incurred by the City exceed the insurance proceeds paid to the City Clerk under Section 5(a), the Building Inspector shall publish a new lien as authorized by K.S.A. 1756, in an amount equal to excess expenses incurred.

SECTION 10. Effect upon Insurance Policies. This Ordinance shall not make the City a part 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 withholding payment of any insurance proceeds pursuant to this Ordinance, or releasing or disclosing any information pursuant to this Ordinance.

SECTION 5: Effective Date. This Ordinance shall become effective on and after its publication in the official city newspaper.

PASSED by the Governing Body of the City of Tonganoxie, Kansas and approved by the Mayor on the 14th day of May, 2001.



John M. Franiuk

JOHN M. FRANIUK
Mayor of Tonganoxie, Kansas

Kathy Y. Bard

KATHY Y. BARD
Acting City Clerk, Tonganoxie, Kansas

I hereby certify that the foregoing is a true and correct copy of the original Ordinance; that said Ordinance was passed on the 14th day of May, 2001; that the record of the final vote on its passage is found on in the City of Tonganoxie Minutes Record; that it was published in the Tonganoxie Mirror on the 16th Day of May, 2001.

Kathy Y Bard

Kathy Y. Bard
Acting City Clerk

