

City of Victoria

"The Cathedral of the Plains"

November 28, 2000

1005 4th Street
P.O. Box 87
Victoria, KS 67671
Phone (785) 735-2259
Fax (785) 735-2260

Kansas Insurance Department
Kathy Greenlee
420 SW 9th Street
Topeka, KS 66612-1678

Dear Ms. Greenlee,

Enclosed is a copy the Ordinance relating to fire, explosion and windstorm liens. At the advice of council from the League of Kansas Municipalities and the discussion with your representatives the Governing Body decided to revise our existing Ordinance and add the windstorm option.

Thank you for your assistance on this matter. If there is anything else that you require from my office, please call.

Sincerely,

Brenda Reynolds

Brenda Reynolds
City Clerk

enc.

*OK
11/28/00
Brenda*



Published in the Hays Daily News, this 24th day of November, 2000.

ORDINANCE NO. B-447

AN ORDINANCE RELATING TO STRUCTURES DAMAGED BY FIRE, EXPLOSION OR WINDSTORM; CREATING A LIEN UPON INSURANCE PROCEEDS WITH RELATION TO SAID STRUCTURE; PROVIDING FOR THE DISBURSEMENT OF SAID INSURANCE PROCEEDS; CREATING AN INSURANCE PROCEEDS FUND; PROVIDING FOR A LIEN FOR CERTAIN TAXES DUE ON STRUCTURES DAMAGED BY FIRE, EXPLOSION OR WINDSTORM AND REPEALING EXISTING ORDINANCES OF THE CITY OF VICTORIA, KANSAS IN CONFLICT HEREWITH.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF VICTORIA, 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 a 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 structure located within the city, caused by or arising out of any fire, windstorm, 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 on any claim covered by section 2, the insurer or insurers shall contact the County Treasurer, Ellis 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, Ellis 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 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 chief 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 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 chief building inspector shall contact the named insured or insureds by registered mail, notifying them that said insurance proceeds have been received by the city and apprise them of the procedure 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 "Insurance Proceeds Fund." All moneys 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 moneys 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 20 days of the receipt of said moneys, the chief building inspector 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 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 will do so immediately but no later than 30 days after receipt of the moneys 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 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 or Structure; Excess Moneys. If the chief building inspector 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; Disposition of Funds. If the chief 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 treasurer 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 proceedings 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 therefrom. 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 withholding payment of any insurance proceeds pursuant to this ordinance, or releasing or disclosing any information pursuant to this ordinance.

Passed by the governing body of the City of Victoria, Kansas, this 20th day of November, 2000.



Attest:

Brenda Reynolds
Brenda Reynolds, City Clerk

Jerry Brungardt
Jerry Brungardt, Mayor

PUBLICATION

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DAILY NEWS, a daily

in the State of Kansas, and

of general circulation in Ellis

is, with a general paid circulation

basis in Ellis County, Kansas, and

newspaper is not a trade, religious or

publication.

newspaper is published daily, except

is published at least weekly 50 times a

has been so published continuously and

upt in said county and state for a

f more than five years prior to the first

ion of said notice; and has been admitted

ost office of Hays in said county as

lass matter.

he attached notice is a true copy therof

published in the regular and entire issue

newspaper for 1 consecutive week,

publication thereof being made as

l on the 24th day of November, 2000,

sequent publications being made on the

g dates:

20	_____	20
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Nary Karst

ed and sworn to before me this 24th
November, 2000.

[Signature]

Notary Public

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Fee..... \$180.95
 l copies..... \$
 \$180.95

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Published in the Hays Daily News, this 24th day of November, 2000.

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(b) Within 20 days of the receipt of said moneys, the chief building inspector 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 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.

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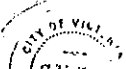
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Section 10. Effect Upon Insurance Policies. This ordinance shall not make the city a party to any insurance contract, nor is the insurer liable to any party for any amount in excess of the proceeds otherwise payable under its insurance policy.

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 withholding payment of any insurance proceeds pursuant to this ordinance, or releasing or disclosing any information pursuant to this ordinance.

Passed by the governing body of the City of Victoria, Kansas, this 20th day of November, 2000.



[Signature]



Kathleen Sebelius
Commissioner of Insurance
Kansas Insurance Department

October 5, 2000

Ms. Brenda Reynolds
City Clerk
P.O. Box 87
Victoria, KS 67671

RE: Fire Lien Ordinance

Dear Ms. Reynolds:

I recently found an old file containing information about your fire lien ordinance. When you adopted this ordinance in 1992, the law required you to submit a copy to us within 14 days. Fortunately, that 14 day requirement was removed by the legislature in 1997. That same year, the legislature made a couple of significant changes to the statutes that govern fire lien ordinances. The most significant change is the addition of the word "windstorm." Thus, cities and counties may now use this procedure to retain a portion of insurance proceeds in the event of a windstorm or tornado. Additionally, K.S.A. 40-3903, allows your city to retain up to 15% of the insurance proceeds."

Back in 1992 we did not notify insurance companies of the existence of your ordinance. However, we are willing to do so now. Before we proceed, we want to make sure that we have current information. We also want to give you the opportunity to revise your ordinance in the event you have not done so.

I have enclosed a photocopy of the relevant Kansas statutes. We also contacted Sandy Jacquot, Director of Law, with the League of Kansas Municipalities. Ms. Jacquot said that the League has posted a model fire lien ordinance on their website. You will find it at www.lkmonline.org.

If you, your city council or your city attorney have any questions, please give me a call. We would like to hear from you before proceeding. We can either publish notice of the ordinance at this time or wait until you have made changes. Either way, please just let me know. You may reach me at 785/296-7810.

Sincerely,

A handwritten signature in cursive script that reads "Kathy Greenlee".

Kathy Greenlee
General Counsel

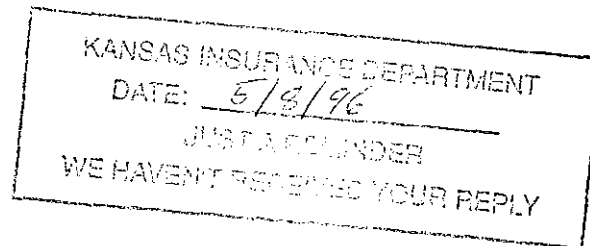


Kathleen Sebelius
Commissioner of Insurance
Kansas Insurance Department

COPY

March 15, 1996

MR DONALD F HOFFMAN
DREILING BICKER AND HOFFMAN
PO 579
HAYS KS 67601



Re: Fire Insurance Proceeds Ordinance
Victoria City Ordinance No. B-307

Dear Mr. Hoffman:

This letter follows our previous letter of May 25, 1994 regarding the above captioned Victoria City Ordinance. For your convenience we have enclosed a copy of our previous letter.

As stated in our letter Victoria City Ordinance No. B-307 was not in compliance with Kansas Statutes Annotated (K.S.A.) 40-3901 et. seq. Accordingly, the city ordinance must be amended to reflect a new effective date, must be re-adopted, and must be submitted to the department within 14 days of its adoption to be effective.

As we have not received any correspondence in response to our May 25, 1994 letter, we ask that you advise us as to the status of this matter. Please be advised that a lien may not be placed on any policy until the necessary amendments have been made and the newly adopted ordinance is filed with our office per Kansas law.

We are holding this matter in abeyance pending receipt of your reply.

Very truly yours,

Kathleen Sebelius
Commissioner of Insurance

Bill Wempe, CIE
Fire and Casualty Supervisor

BW:RDC:jbfc
4714



STATE OF KANSAS

KANSAS INSURANCE DEPARTMENT

420 S.W. 9th
Topeka 66612-1678 913-296-3071

1-800-432-2484
Consumer Assistance
Division calls only

MAY
KANSAS INSURANCE
EDUCATION MONTH

RON TODD
Commissioner

May 25, 1994

Dreiling, Bicker & Hoffman
Attorneys-At-Law
P.O. Box 579
Hays, KS 67601

COPY

Attention: Donald F. Hoffman

Fire Insurance Proceeds Ordinance

Gentlemen:

This will acknowledge receipt of Victoria City Ordinance No. B-307, relating to structures damaged by fire and explosions and creation of a lien upon insurance proceeds.

According to K.S.A. 40-3905, a city is required to notify the commissioner of insurance within 14 days after "adoption" of an ordinance authorized under K.S.A. 40-3901 et seq. Although the statute does not explicitly make it clear whether "adoption" means the date of approval of the ordinance by the city or the date it is to become effective, it is this department's position that adoption refers to the approval date. This department believes such an interpretation ensures the validity of the city's ordinance will not be subject to legal dispute.

In light of the above, it appears there is a problem with the submission of Victoria City Ordinance No. B-307. The ordinance was adopted on April 13, 1992, yet this department did not receive notice until May 7, 1992. Therefore, this department requests that the City of Victoria readopt Ordinance No. B-307 and provide this department notice within 14 days of the approval of such ordinance.

We are holding this matter in abeyance anticipating your response.

Very truly yours,

Ron Todd
Commissioner of Insurance

Bill Wempe, CIE
Fire & Casualty Supervisor

BW:JL:jlfc
2773