

CITY OF WESTWOOD, KANSAS
ORDINANCE NO. 776

AN ORDINANCE RELATING TO THE REMOVAL OF FIRE AND EXPLOSION DAMAGED STRUCTURES AND CREATING A FIRE INSURANCE PROCEEDS FUND AND ENACTING A NEW ARTICLE 4 TO CHAPTER IV BUILDINGS AND CONSTRUCTION OF THE WESTWOOD MUNICIPAL CODE.

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

Section 1: A new Article 4, Chapter IV of the Westwood Municipal Code is hereby enacted to read as follows:

4-401 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 or explosion, where the amount recoverable for 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 covering such building or other insured structure, unless there is compliance with the procedures set out in this article.

4-402 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% 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 \$5,000 or 10% of the covered claim payment, whichever is less, unless the building official 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 building official 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 procedures to be followed under this article.

4-403 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 moneys received by the City Treasurer as provided for by this article shall be placed in said fund and deposited in an interest-bearing account.

4-404 BUILDING INSPECTOR; INVESTIGATION, REMOVAL OF STRUCTURE.

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

(b) Within 20 days of the receipt of 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.

(c) Prior to the expiration of the 20 days established by subsection (b) of this section, the building official 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 building official 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 building official 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.

4-405 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.

4-406 SAME; LIEN CREATED.

If the building official, with regard to a building or other structure damaged by fire or explosion, 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 4-402(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 building official 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 4-402(a), the building official shall publish a new lien as authorized by K.S.A. § 1756, in an amount equal to such excess expenses incurred.

4-407 EFFECT UPON INSURANCE POLICIES.

This article 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.

4-408 INSURERS; LIABILITY.

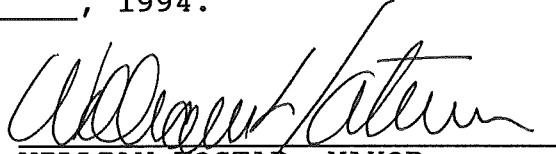
Insurers complying with this article or attempting in good faith to comply with this article shall be immune from civil and criminal liability and such action shall not be deemed in violation of K.S.A. § 40-2404 and any amendments thereto, including withholding payment of any insurance

proceeds pursuant to this article, or releasing or disclosing any information pursuant to this article.

Section 2. This ordinance shall take effect upon its publication in the official City newspaper.

PASSED by the Governing Body of the City of Westwood, Kansas, this 12th day of May, 1994.

APPROVED by the Mayor of the City of Westwood, Kansas, this 12th day of May, 1994.




WILLIAM KOSTAR, MAYOR

ATTEST:



LISA LENE, City Clerk

APPROVED AS TO FORM:



JAMES R. ORR, City Attorney

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AFFIDAVIT OF PUBLICATION

STATE OF KANSAS, JOHNSON COUNTY, ss: Georglann Thacker being first Duly sworn, Deposes and say: That she is legal publications manager of THE JOHNSON COUNTY SUN, a semi-weekly newspaper printed in the State of Kansas, and published in and of general circulation in JOHNSON County, Kansas, and that said newspaper is not a trade, religious or fraternal publication.

Said newspaper is a semi-weekly published at least weekly 50 times a year; has been so published continuously and uninterruptedly in said county and state for a period of more than five years prior to the first publication of said notice; and has been admitted at the post office of SHAWNEE MISSION, KANSAS in said County as a second class matter.

That the attached notice is a true copy thereof and was published in the regular and entire issue of said newspaper for one consecutive day (weeks/days) the first publication thereof being made as aforesaid on the 1st day of, June 1994, with subsequent publications being made on the following dates:

_____, 19____, 19____
 _____, 19____, 19____

Georglann Thacker

Subscribe and sworn to before me this 1st day of June 1994

Deanna J. Martasin

NOTARY PUBLIC

DEANNA J. MARTASIN
 NOTARY PUBLIC
 STATE OF KANSAS
 My Appt. Exp. January 25, 1996

My Commission Expires 1/25/96
 Printer's Fees 281.29
 Additional copies \$ _____

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(b) Within 20 days of the receipt of 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.

(c) Prior to the expiration of the 20 days established by subsection (b) of this section, the building official 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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Georgiann Thacker

day of June 19 94

Deanna J. Martasin

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DEANNA J. MARTASIN
NOTARY PUBLIC
STATE OF KANSAS
My Appt. Exp. January 25, 1996

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4-405 REMOVAL OF STRUCTURE, EXCESS MONIES

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4-406 SAME, ITEM CREATED.

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This article 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.

4-408 INSURERS; LIABILITY.

Insurers complying with this article or attempting in good faith to comply with this article 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 article, or releasing or disclosing any information pursuant to this article.

Section 2. This ordinance shall take effect upon its publication in the official city newspaper.

PASSED by the governing body of the city of Westwood, Kansas, this 12th day of May, 1994.

APPROVED by the Mayor of the City of Westwood, Kansas, this 12th day of May, 1994.

WILLIAM KOSTAK, MAYOR

LISA LENE, city clerk

JAMES W. ORR, city attorney

DEANNA J. MARTASIN
NOTARY PUBLIC
STATE OF KANSAS
My Appl. Exp. January 25, 1996