

# **CITY OF BAXTER SPRINGS**

*\*Randall Trease, Mayor \*Debbie Weston, City Clerk*

1445 Military Ave.  
P.O. Box 577  
Baxter Springs, KS 66713

May 8, 2014

Insurance Commissioner

420 SW 9th

Topeka, Ks. 66612

To Whom It May Concern:

Please find Ordinance 892, approved and passed on May 6, 2014 – AN ORDINANCE PURUANT TO K.S.A. 40-3901, et.seq., REQUIRING PAYMENT TO THE CITY OF BAXTER SPRINGS, KANSAS, OF A PORTION OF INSURANCE PROCEEDS COVERING A DAMAGED STRUCTURE TO BE PAID TO THE CITY OF BAXTER SPRINGS, KANSAS, WHERE SUCH DAMAGED STRUCTURE HAS NOT BEEN MADE SAFE AND SECURE, REPEALING ORDINANCES 593 AND 594 AND REPEALING ANY ORDINANCE OF PARTS OF ORDINANCES IN CONFLICT THEREWITH.

Pursuant to K.S.A. 40-3901, please notify the appropriate insurance companies of insured buildings or structures in the City of Baxter Springs of our current ordinance.

Should you have any questions, please feel free to contact my office at your convenience.

Sincerely,



Debbie Weston

City Clerk

Cc: Mayor

City Attorney

## **City Council Members**

*\*Carl Ikenberry\* Laurie Alquist\* Ed McAfee\* Sherri Howey\* Sue Gast\* Sherry Brown\* Jesse Haverfield\* Gary Sisco\*  
\*Robert Myers, Attorney\* DeAnn Hill, City Treasurer*

ORDINANCE NO. 892

AN ORDINANCE PURSUANT TO K.S.A. 40-3901, et. seq., REQUIRING PAYMENT TO THE CITY OF BAXTER SPRINGS, KANSAS, OF A PORTION OF INSURANCE PROCEEDS COVERING A DAMAGED STRUCTURE TO BE PAID TO THE CITY OF BAXTER SPRINGS, KANSAS, WHERE SUCH DAMAGED STRUCTURE HAS NOT BEEN MADE SAFE AND SECURE, REPEALING ORDINANCES 593 AND 594 AND REPEALING ANY ORDINANCE OR PARTS OF ORDINANCES IN CONFLICT THEREWITH.

**BE IT ORDAINED BY THE GOVERNING BODY OF  
THE CITY OF BAXTER SPRINGS, KANSAS:**

**SECTION I. 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 compliance with the procedures set out in this ordinance.

**SECTION II. 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, 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 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 III. SAME; ENCUMBRANCES.** Prior to final settlement on any claim covered by Section 2, the insurer or insurers shall contact the City Clerk of Baxter Springs, 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 City of Baxter Springs, Kansas.

**SECTION IV. 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 V. 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 Clerk of Baxter Springs in an amount equal to the sum of 15 percent of the covered claim payment, unless the code enforcement officer 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 ordinance, 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 code enforcement officer 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.

**SECTION VI. FUND CREATED; DEPOSIT OF MONEYS.** The City Clerk of Baxter Springs, Kansas is hereby authorized and shall create a fund to be known as the "Insurance Proceeds Fund." All moneys received by the City Clerk of Baxter Springs as provided for by this ordinance shall be placed in said fund and deposited in an interest-bearing account.

**SECTION VII. BUILDING INSPECTOR; INVESTIGATION, REMOVAL OF STRUCTURE.**

(a) Upon receipt of moneys as provided for by this ordinance, the City Clerk of Baxter Springs, Kansas shall immediately notify the code enforcement officer 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 code enforcement officer 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 ordinance, the code enforcement officer shall notify the City Clerk of Baxter Springs whether he or she intends to initiate proceedings under K.S.A. 12-1750 et seq., as amended.

(d) If the code enforcement officer 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 Clerk of Baxter Springs.

(e) Upon notification to the City Clerk of Baxter Springs, Kansas by the code enforcement officer that no proceedings shall be initiated under K.S.A. 12-1750 et seq., as amended, the City Clerk of Baxter Springs 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 VIII. REMOVAL OF STRUCTURE; EXCESS MONEYS.** If the code enforcement officer 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 IX. SAME; DISPOSITION OF FUNDS.** If the code enforcement officer, 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 of Baxter Springs 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 code enforcement officer 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 of Baxter Springs, Kansas under Section 5(a), the code enforcement officer shall publish a new lien as authorized by K.S.A. 12-1756, in an amount equal to such excess expenses incurred.

**SECTION X. 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 XI. 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 XII.** All ordinances and resolution and parts thereof in conflict herewith are hereby expressly repealed in so far as they conflict herewith.

**SECTION XIII.** This ordinance shall be retroactive to January 1, 2014, and be in full force and effect from and after passage and publication in the Official City Newspaper.

**PASSED AND APPROVED** this 6<sup>th</sup> day of May 2014.

Attest:

Debbie Weston

City Clerk

APPROVED:

Harold Treas  
Mayor

(SEAL)

## RECORD OF ORDINANCES

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Ordinance No. 593

AN ORDINANCE PURSUANT TO K.S.A. 40-3901 et seq., REQUIRING PAYMENT TO THE CITY OF BAXTER SPRINGS, KANSAS, OF A PORTION OF INSURANCE PROCEEDS COVERING A DAMAGED STRUCTURE TO BE PAID TO THE CITY OF BAXTER SPRINGS, KANSAS, WHERE SUCH DAMAGED STRUCTURE HAS NOT BEEN MADE SAFE AND SECURE AND PROVIDING PROCEDURES RELATIVE THERETO.

Section 1. Procedures. The City of Baxter Springs, Kansas, is hereby authorized to utilize the procedures established by K.S.A. 40-3901 et seq., whereby no insurance company doing business within the City of Baxter Springs, Kansas, shall pay a claim of a named insured for loss and damage to a building or other structure arising out of any fire or explosion located within the City of Baxter Springs, Kansas, where the amount recoverable for the loss or damage to the building or other structure under all policies is in excess of seventy-five percent (75%) of the face value of the policies covering such building or other insured structure unless there is compliance with the following procedures:

a. When final settlement on a covered claim has been agreed to between the named insured or insureds and the company or companies and said final settlement exceeds seventy-five percent (75%) of the face value of the policies covering a 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 policies and endorsements thereto, shall have been paid, the insurance company or companies shall execute a draft payable to the City Treasurer of the City of Baxter Springs, Kansas, in an amount equal to the sum of Five Thousand Dollars (\$5,000.00) or ten percent (10%) of the covered claim payment, whichever is less, unless the Building Official of Baxter Springs, Kansas, 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 payment of insurance proceeds shall be on a pro-rate basis by all companies insuring the building or other structure. Policy proceeds remaining after the payment to the City of Baxter Springs, Kansas, shall be disbursed in accordance with the policy terms.

c. Upon payment of the funds to the City as required in subparagraph a. of this section, each 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 between the insurance company or companies and the insured or insureds; whereupon the Building Official shall contact the named insured proceeds have been received by the City of Baxter Springs, Kansas, and apprise them of the procedures to be followed under this ordinance.

Section 2. Fire Insurance Proceeds Fund. The City Treasurer is hereby authorized and shall create a fund to be known as the Fire Insurance Fund. All moneys received by the City Treasurer as provided for by this ordinance shall be deposited by him/her in an interest bearing account.

Section 3. Disposition of Insurance Proceeds. Upon receipt of said insurance proceeds:

a. 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.

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# RECORD OF ORDINANCES

Ordinance No. 574

AN ORDINANCE CREATING A LIEN UPON INSURANCE POLICY PROCEEDS FOR FIRE OR EXPLOSION TO SATISFY UNPAID TAXES OR CHARGES AGAINST THE INSURED PROPERTY.

Section 1. Creation of Lien. The Governing Body of the City of Baxter Springs, Kansas, hereby creates a lien in favor of the City of Baxter Springs, Kansas, in 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 of Baxter Springs, Kansas, caused by or arising out of any fire or explosion, where the amount recoverable for the loss or damage to the building or other structure exceeds seventy-five (75%) percent of the face value of the policies covering the building or other structure. The lien arises upon any unpaid tax, special ad valorem levy, special assessment, or any other charge that has remained undischarged for at least one year prior to the filing of a proof of loss.

Section 2. Responsibility of Insurer. Prior to final settlement on any claim covered by Section 1 hereof, the insurer or insurers shall contact the County Treasurer, Cherokee 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 said encumbrances a draft payable to the County Treasurer, Cherokee County, Kansas.

Section 3. Pro-Rate Basis of Proceeds. Such transfer of proceeds shall be on a pro-rate basis by all insurance companies insuring the building or other structure.

Section 4. Any ordinance in conflict with this ordinance is hereby repealed.

Section 5. This ordinance shall take effect upon publication in the City newspaper.

PASSED AND APPROVED BY THE GOVERNING BODY OF THE CITY OF BAXTER SPRINGS, KANSAS, this 25 day of June, 1985.

  
MAYOR

ATTEST:

Barbara Rice  
CITY CLERK