



August 9, 2016

CITY COMMISSION

J. CHRISTOPHER LAW,
Mayor

ROY CESSNA

MELVIN L. DALE

JANET A. DOLL

DAN FANKHAUSER

Ken Selzer, CPA
Kansas Insurance Commissioner
Kansas Insurance Department
420 S. W. 9th Street
Topeka, Kansas 66612

Re: City of Garden City, Kansas
Ordinance – Insurance Proceeds Fund
And Procedures

Dear Mr. Selzer:

I am City Attorney for the City of Garden City, Kansas (City). In that capacity, I am enclosing Ordinance No. 2729-2016, recently passed by the Governing Body of the City on August 2, 2016, in regard to the establishment of an Insurance Proceeds Fund and Procedures.

If you have any questions, please contact me.

Very truly yours,

Randall D. Grisell
City Attorney

RDG:pbb

Enclosure

pc: Matthew C. Allen, City Manager
Celyn N. Hurtado, City Clerk

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(Published in the Garden City Telegram on the 6th day of August, 2016)

ORDINANCE NO. 2729-2016

AN ORDINANCE ESTABLISHING AN INSURANCE PROCEEDS FUND AND PROCEDURES; AMENDING CODE SECTION 18-87; REPEALING CURRENT CODE SECTION 18-87; ALL TO THE CODE OF ORDINANCES OF THE CITY OF GARDEN CITY, KANSAS.

BE IT ORDAINED by the Governing Body of the City of Garden City, Kansas:

SECTION 1. Section 18-87 of the Code of Ordinances of the City of Garden City, Kansas, is hereby amended to read as follows:

Section 18-87. Insurance proceeds fund.

- (a) *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, 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 section.
- (b) *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.
- (c) *Same; encumbrances.* Prior to final settlement on any claim covered by section 18-87, subsection (b), the insurer or insurers shall contact the County Treasurer of Finney 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 of Finney County, Kansas.
- (d) *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.
- (e) *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 city in an amount equal to the sum of 15 percent of the covered claim payment, unless the city 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 the funds as required by section 18-87(e)(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 the 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 city building official shall contact the named insured or insureds by certified mail, return receipt requested, notifying them that insurance proceeds have been received by the city and apprise them of the procedures to be followed under this section.

(f) *Fund created; deposit of moneys.* The city is hereby authorized and shall create a fund to be known as the "Insurance Proceeds Fund." All moneys received by the city shall be placed in said fund and deposited in an interest-bearing account.

(g) *Investigation, removal of structure.*

1. Upon receipt of moneys as provided for by this section, the city finance director shall immediately notify the city building official of said receipt, and transmit all documentation received from the insurance company or companies to the city building official.
2. Within 30 days of the receipt of said moneys, the city 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, or section 18-80, et seq.
3. Prior to the expiration of the 30 days established by section 18-87(g)(2), the city inspection department shall notify the city manager whether the city intends to initiate proceedings under K.S.A. 12-1750 et seq., as amended, or section 18-80 et seq.
4. If the city building official has determined that proceedings under K.S.A. 12-1750 et seq., as amended, or section 18-80 et seq., shall be initiated, he or she will do so immediately but no later than 45 days after receipt of the moneys by the city finance director.
5. Upon notification to the city finance director by the city building official that no proceedings shall be initiated under K.S.A. 12-1750 et seq., as amended, or section 18-80 et seq., the city finance director 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 45 days of the receipt of the moneys from the insurance company or companies.

(h) *Removal of structure; excess moneys.* If the city building official has proceeded under the provisions of K.S.A. 12-1750 et seq., as amended, or section 18-80 et seq., 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.

- (i) *Same; Disposition of funds.* If the city building official, with regard to a damaged building or other structure determines that it is necessary to act under K.S.A. 12-1750 et seq., or similar section, any proceeds received by the city finance director under the authority of section 18-87(e)(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. 12-1750 et seq., or similar section. Upon reimbursement from the insurance proceeds, the city 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 finance director under section 18-87(e)(1), the city building official shall publish a new lien as authorized by K.S.A. 12-1756, or section 18-80 et seq., in an amount equal to such excess expenses incurred.
- (j) *Effect upon insurance policies.* This section 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.
- (k) *Insurers; liability.* Insurers complying with this section or attempting in good faith to comply with this section 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 section, or releasing or disclosing any information pursuant to this section.

SECTION 2. Section 18-87 of the Code of Ordinances of the City of Garden City, Kansas, is hereby repealed, to be replaced as specified in this ordinance.

SECTION 3. If any section, clause, sentence, or phrase of this ordinance is found to be unconstitutional or is otherwise held invalid by any court of competent jurisdiction, it shall not affect the validity of any remaining parts of this ordinance.


SECTION 4. This ordinance shall be in full force and effect from and after September 1, 2016, and following its publication, in the Garden City Telegram, the official city newspaper.

APPROVED AND PASSED by the Governing Body of the City of Garden City, Kansas, the 2nd day of August, 2016.



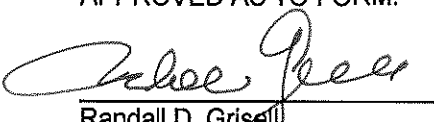
Chris Law, Mayor

ATTEST:



Celyn N. Hurtado
City Clerk

APPROVED AS TO FORM:



Randall D. Grisell
City Attorney