

**City of McPherson**

400 E. Kansas Ave.  
P.O. Box 1008  
McPherson, KS 67460



City Administrator 620 • 245-2535  
City Attorney • 245-2535  
Public Works Director • 245-2545  
Fire Chief • 245-2505  
City Inspector • 245-2547  
Chief of Police • 245-1200  
Sanitarian • 245-2548  
Public Lands & Facilities • 245-2535  
Cemetery Sexton • 245-2568  
Tele Fax • 245-2549

July 18, 2016

Ken Selzer  
Kansas Department of Insurance  
State Insurance Commissioner's Office  
420 SW 9<sup>th</sup> St  
Topeka, KS 66612-1678

RE: Ordinance No. 3218  
Payment of Property Insurance Proceeds

Dear Commissioner Selzer:

Enclosed is our Ordinance No. 3218 which reflects the changes made by the state legislature in 2016, as it pertains to the payment of property insurance proceeds.

Please contact me with any questions or concerns.

Best Regards,

A handwritten signature in black ink, appearing to read "Nick Gregory", is written over a horizontal line.

Nick Gregory  
City Administrator

Mayor  
*Thomas A. Brown*

Commissioner of Public Facilities  
*Robert D. Moore*

Commissioner of Streets & Utilities  
*Larry E. Wiens*

(Summary Published in *The McPherson Sentinel* \_\_\_\_\_, 2016, once)

**ORDINANCE NO. 3218**

**AN ORDINANCE CONCERNING PAYMENT OF PROPERTY INSURANCE PROCEEDS**

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

**Section 1. Amendment to Chapter 2, Article V, Division 2.** From and after the effective date of this Ordinance, existing code sections 2-241 through 2-251, inclusive are deleted in their entirety and in their place the following is inserted.

Section 2-241. 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 ordinance.

Section 2-242. 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.

Section 2-243. SAME; ENCUMBRANCES. Prior to final settlement on any claim covered by Section 2-242, the insurer or insurers shall contact the county treasurer, McPherson 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 McPherson County, Kansas, county treasurer.

Section 2-244. 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 2-245. 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 lead 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), 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 lead building inspector 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 2-246. 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 2-247. BUILDING INSPECTOR; INVESTIGATION, REMOVAL OF STRUCTURE.

(a) Upon receipt of moneys as provided for by this ordinance, the city treasurer

shall immediately notify the lead building inspector of said receipt, and transmit all documentation received from the insurance company or companies to the lead building inspector.

(b) Within 30 days of the receipt of said moneys, the lead 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 30 days established by subsection (b), the lead building inspector shall notify the city treasurer whether the city intends to initiate proceedings under K.S.A. 12-1750 *et seq.*, as amended.

(d) If the lead building inspector has determined that proceedings under K.S.A. 12-1750 *et seq.*, as amended shall be initiated, the lead building inspector will do so immediately but no later than 45 days after receipt of the moneys by the city treasurer.

(e) Upon notification to the city treasurer by the lead 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 45 days of the receipt of the moneys from the insurance company or companies.

Section 2-248. REMOVAL OF STRUCTURE; EXCESS MONEYS. If the lead 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 2-249. SAME; DISPOSITION OF FUNDS. If the lead building inspector, with regard to a building or other structure damaged, 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 2-245 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 lead 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 2-245, the lead 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 2-250. 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 2-251. 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.

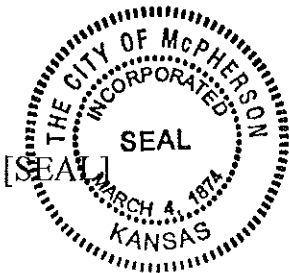
**Section 2. Repeal.** Any provisions of this Ordinance which shall be declared to be unconstitutional or otherwise invalid shall not affect the validity and authority of the other sections of this Ordinance.

**Section 3. Publication and Effective Date.** This ordinance shall take effect and be in full force and effect from and after its passage, signature and publication of a summary of this ordinance in the official city newspaper and posting of the full text of the ordinance on the city's website in compliance with K.S.A. 12-3007(b).

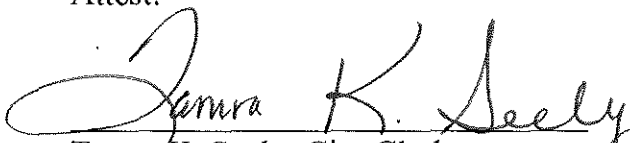
PASSED by the city commission and signed by the Mayor this 18<sup>th</sup> day of July, 2016.

CITY OF MCPHERSON, KANSAS

  
Thomas A. Brown, Mayor



Attest:

  
Tamra K. Seely, City Clerk

Ordinance No. 3218, Summary

On July 18, 2016, the City of McPherson, Kansas adopted Ordinance No. 3218 Concerning payment of property insurance proceeds for leases in excess of 75 percent of the face value of the policies covering a damaged building. A complete copy of this Ordinance is available at [www.mcpcity.com](http://www.mcpcity.com) or at the Municipal Center, 400 E. Kansas, McPherson, Kansas. Jeffrey A. Houston, City Attorney, certified this summary.<sup>i</sup>

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<sup>i</sup> Upon passage of this ordinance, send a copy to the Commissioner of Insurance at:

Insurance Commissioner  
420 S. W. 9th Street  
Topeka, KS 66612