

# ORDINANCE NO. 08-2016

(Published in the Peabody Gazette-Bulletin on November 23, 2016)

## AN ORDINANCE ADOPTING THE CODIFICATION OF ORDINANCES OF THE CITY OF PEABODY, KANSAS, PROVIDING FOR THE REPEAL OF CERTAIN OTHER ORDINANCES NOT INCLUDED THEREIN, EXCEPTING CERTAIN ORDINANCES FROM REPEAL AND SAVING CERTAIN ACCRUED RIGHTS AND LIABILITIES.

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

### **Section 1. Adoption of the Code of the City of Peabody, Kansas.**

The codification of ordinances of the City of Peabody, Kansas, prepared by Citycode Financial, LLC, Wichita, Kansas, as set out in the following chapters, Chapters I to XV and Appendices A and B, all inclusive, and entitled the "Code of the City of Peabody, Kansas," is hereby authorized, adopted and ordained as the "Code of the City of Peabody, Kansas." The Code is authorized by ordinance and was made in conformity with K.S.A. 12-3014 and 12-3015 and amendments thereto. Said code shall be duly certified by the City Clerk. One copy of the code shall be filed in the office of the City Clerk and shall be designated as and shall constitute the official ordinance book. Three additional copies shall be filed in the office of the city clerk and shall be designated for use by the public.

### **Section 2. Repeal of general ordinances.**

All ordinances and parts of ordinances of a general nature passed prior to November 14, 2016, are hereby repealed as of the date of publication of said code except as hereinafter provided.

### **Section 3. Same; excepting certain ordinances from repeal.**

In construing this ordinance, the following ordinances shall not be considered or held to be ordinances of a general nature:

- (a) Ordinances pertaining to the acquisition of property or interests in property by gift, purchase, devise, bequest, appropriation or condemnation;
- (b) Ordinances opening, dedicating, widening, vacating or narrowing streets, avenues, alleys and boulevards;
- (c) Ordinances establishing and changing grades of streets, avenues, alleys and boulevards;
- (d) Ordinances naming or changing the names of streets, avenues and boulevards;
- (e) Ordinances authorizing or directing public improvements to be made;
- (f) Ordinances creating districts for public improvements of whatsoever kind or nature;
- (g) Ordinances levying general taxes;
- (h) Ordinances levying special assessments or taxes;
- (i) Ordinances granting any rights, privileges, easements or franchises therein mentioned to any person, firm or corporation;
- (j) Ordinances authorizing the issuance of bonds and other instruments of indebtedness by the city;
- (k) Ordinances authorizing contracts;

- (l) Ordinances establishing the limits of the city or pertaining to annexation or exclusion of territory;
- (m) Ordinances relating to compensation of officials, officers and employees of the city;
- (n) All charter ordinances;
- (o) Any appropriation ordinance or ordinances relating to a specific transfer of funds;
- (p) Any zoning ordinance or ordinances changing the zoning classification of any property within the city or amending the city's zoning map;
- (q) Ordinances of a temporary nature;
- (r) Any ordinance which is special, although permanent in effect;
- (s) Any ordinance, the purpose of which has not been accomplished.

Provided, that the above enumeration of exceptions shall not be held or deemed to be exclusive, it being the purpose and intention to exempt from repeal any and all ordinances not of a general nature and general ordinances specifically excepted by this section. Ordinances which are not of a general nature shall be numbered consecutively, approved by the governing body, published, and filed with the city clerk, but such ordinances shall not be prepared for insertion in this code, nor be deemed a part hereof.

**Section 4. Arrangement of and notations throughout the code.**

The arrangement and classification of the several chapters, articles, and sections of the code adopted by section 1 of this ordinance and the headnotes and footnotes at the ends of the sections, are made for the purpose of convenience and orderly arrangement, and do not constitute a part of the ordinances, and therefore, no implication or presumption of legislative intent or construction is to be drawn therefrom.

**Section 5. Accrued rights and liabilities.**

The repeal of ordinances as provided in section 2 hereof, shall not affect any rights acquired, fines, penalties, forfeitures or liabilities incurred thereunder, or actions involving any of the provisions of said ordinances or parts thereof. Said ordinances above repealed are hereby continued in force and effect after the passage, approval and publication of this ordinance for the purpose of such rights, fines, penalties, forfeitures, liabilities and actions therefor.

**Section 6. Severability.**

If for any reason any chapter, article, section, subsection, sentence, portion or part of the "Code of the City of Peabody, Kansas," or the application thereof to any person or circumstances is declared to be unconstitutional or invalid, such decision will not affect the validity of the remaining portions of this code.

**Section 7. Effective date.**

This ordinance shall be published in the official city newspaper and shall take effect and be in force from and after the publication of the "Code of the City of Peabody, Kansas" as provided in K.S.A. 12-3015.

**ADOPTED AND PASSED** by the governing body of the City on November 14, 2016 and **APPROVED AND SIGNED** by the Mayor.

(SEAL)

/s/ Larry Larsen  
LARRY LARSEN, Mayor

ATTEST:

/s/ Stephanie Ax Lago  
STEPHANIE AX LAGO, City Clerk

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Peabody, KS

Sign In

**ORDINANCE #893**

AN ORDINANCE RELATING TO THE IMPLEMENTATION OF AN INSURANCE PROCEDURE IN ACCORDANCE WITH K.S.A. 40-3901 et seq.

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

SECTION ONE. Scope and Application. The City shall pay a claim of a named insured for loss or damage to a building or other insured structure located within the city, arising out of any fire, explosion, or other cause, and recoverable for the loss or damage to the building or other insured structure in excess of 75 percent of the face value of the policy covering the insured structure, unless there is compliance with the procedure established by K.S.A. 40-3901 et seq., which shall apply to the procedures established by K.S.A. 40-3901 et seq., which shall apply to the procedures established by K.S.A. 40-3901 et seq.

SECTION TWO. Lien Created. The Governing Body shall create a lien in favor of the City on the proceeds of any insurance claim payment made for damage or loss to a building or other insured structure located within the City, caused by or arising out of any fire, explosion, or other cause, and recoverable for all the loss or damage to the building or other insured structure in excess of 75 percent of the face value of the policy covering the other insured structure. The lien arises upon any unpaid tax, levy assessment, expense or other charge that has remained unpaid for one year prior to the filing of a proof of loss.

SECTION THREE. Same, Encumbrances. Prior to the time a claim is covered by Section Two, the insurer or insurers shall contact the County Treasurer, Marion County, Kansas, to determine whether any such encumbrances exist. If the same are found to exist, the insurer or insurers shall pay an amount equal to that owing under the encumbrances as determined by the treasurer, Marion County, Kansas.

SECTION FOUR. Same, Pro Rata Basis. Such taxes shall be paid on a pro rata basis by all insurance companies insuring the building.

Page 1 / 16 SECTION FIVE. Procedure.

ORDINANCE #893

RECEIVED

AN ORDINANCE RELATING TO THE ESTABLISHMENT AND IMPLEMENTATION OF AN INSURANCE PROCEEDS FUND PURSUANT TO K.S.A. 40-3901 et seq.

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KANSAS  
INSURANCE  
DEPARTMENT

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

SECTION ONE. 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 TWO. Lien Created. The Governing Body of the City hereby created 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.


*Handwritten signature/initials*

SECTION THREE. Same, Encumbrances. Prior to final settlement on any claim covered by Section Two, the insurer or insurers shall contact the county treasurer, Marion 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, Marion County, Kansas.

SECTION FOUR. 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 FIVE. Procedure.

- a) When final settlement on a covered claim has been agreed to or arrived at between the named 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 25 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 policy terms.
- c) Upon the transfer of 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 procedures to be followed under this ordinance.

**SECTION SIX. 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 SEVEN. 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 EIGHT. Removal of Structure; Excess Moneys. If the chief building inspector has proceeded under the provision 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 NINE. 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 City for any expenses incurred by the City in proceeding 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.

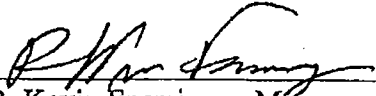
SECTION TEN. Effect upon Insurance Policies. This ordinance shall not make the City a party to any insurance contract, nor is the insurer liable to any party for any amount in excess of the proceeds otherwise payable under its insurance policy.

SECTION ELEVEN. 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 TWELVE. Effective Date. This ordinance shall be effective upon its passage and publication once in the official City newspaper.

PASSED AND ADOPTED by the Governing Body of the City of Peabody,  
Kansas, this 14<sup>th</sup> day of January, 2002.

(SEAL)

  
\_\_\_\_\_  
R. Kevin Ensminger, Mayor

ATTEST:

  
\_\_\_\_\_  
Cindy Harms, City Clerk



## ARTICLE 9. INSURANCE PROCEEDS LIEN

### 7-901. 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 article.

(Ord. 893; Code 2016)

### 7-902. 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.

(Ord. 893; Code 2016)

### 7-903. Same; encumbrances.

Prior to final settlement on any claim covered by section 7-902, the insurer or insurers shall contact the county treasurer, Marion 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, Marion County, Kansas.

(Ord. 893; Code 2016)

### 7-904. 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.

(Ord. 893; Code 2016)

### 7-905. 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), 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 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 article.

(Ord. 893; Code 2016)

**7-906. 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 article shall be placed in said fund and deposited in an interest-bearing account.

(Ord. 893; Code 2016)

**7-907. Building inspector; investigation, removal of structure.**

(a) Upon receipt of moneys as provided for by this article, 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 30 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 30 days established by subsection (b), 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 45 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 45 days of the receipt of the moneys from the insurance company or companies.

(Ord. 893; Code 2016)

**7-908. Removal of 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.

(Ord. 893; Code 2016)

**7-909. Same; disposition of funds.**

If the chief 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 7-905(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 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 7-905(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.

(Ord. 893; Code 2016)

**7-910. 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.

(Ord. 893; Code 2016)

**7-911. 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.

(Ord. 893; Code 2016)