

CITY OF TOPEKA

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Mary Feighny
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October 17, 2016

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

Re: City of Topeka Insurance Proceeds Ordinance
K.S.A. 40-3901et seq. as amended by L. 2016, Ch.72

Dear Commissioner Selzer:

Pursuant to K.S.A. 40-3905, as amended, please find a copy of the City of Topeka's ordinance passed under the auspices of L. 2016, Ch. 72 expanding the ability of cities to require insurance companies to pay 15% of insurance proceeds for all casualty losses to buildings.

Please contact me if you have any questions.

Sincerely,

Mary Feighny
Deputy City Attorney

MF
Enclosure

1 (Published in the Topeka Metro News October 17, 2016)

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3 **ORDINANCE NO. 20029**

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5 AN ORDINANCE introduced by Interim City Manager Douglas Gerber, concerning
6 insurance proceeds for building loss claims, amending City of
7 Topeka Code Sections 8.80.010, 8.80.020, 8.80.040, and 8.80.050
8 and repealing original sections.
9

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

11 Section 1. That section 8.80.010, Scope and application, of The Code of the
12 City of Topeka, Kansas, is hereby amended to read as follows:

13 **Scope and application.**

14 The city is hereby authorized to utilize the procedures established by K.S.A. 40-
15 3901 et seq., whereby no insurance company shall pay a claim of a named insured for
16 loss or damage to any building or other structure located within the city, ~~arising out of~~
17 ~~any fire or explosion, or windstorm~~ where the amount recoverable for the loss or
18 damage to the building or other structure under all policies is in excess of 75 percent of
19 the face value of the policy covering such building or other insured structure, unless
20 there is compliance with the procedures set out in this chapter.

21 Section 2. That section 8.80.020, Lien, of The Code of the City of Topeka,
22 Kansas, is hereby amended to read as follows:

23 **Lien.**

24 (a) The ~~city council governing body~~ hereby creates a lien pursuant to K.S.A.
25 40-3902 in favor of the city on the proceeds of any insurance policy based upon a
26 covered claim payment made for damage or loss to a building or other structure located
27 within the city, ~~caused by or arising out of any fire or explosion, or windstorm~~ where the

28 amount recoverable for all the loss or damage to the building or other structure under all
29 policies is in excess of 75 percent of the face value of the policy covering such building
30 or other insured structure. The lien arises upon any unpaid tax, special ad valorem levy,
31 special assessment, or any other charge imposed upon real property by or on behalf of
32 the city which is an encumbrance on real property, whether or not evidenced by written
33 instrument, or such tax, levy, assessment, expense or other charge that has remained
34 undischarged for at least one year prior to the filing of a proof of loss.

35 (b) Prior to final settlement on any claim covered by this section, the insurer
36 or insurers shall contact the county treasurer to determine whether any such
37 encumbrances are presently in existence. If encumbrances are found to exist, the
38 insurer or insurers shall execute and transmit in an amount equal to that owing under
39 the encumbrances a draft payable to the county treasurer. A transfer of proceeds under
40 this section shall be on a pro rata basis by all insurance companies insuring the building
41 or other structure.

42 Section 3. That section 8.80.040, Procedure upon receipt of moneys –
43 Investigation, of The Code of the City of Topeka, Kansas, is hereby amended to read as
44 follows:

45 **Procedure upon receipt of moneys – Investigation.**

46 (a) Upon receipt of moneys as provided for by this chapter, the city treasurer
47 shall immediately notify the ~~police chief or designee~~enforcement official of such receipt,
48 and transmit all documentation received from the insurance company to the ~~police chief~~
49 ~~or designee~~enforcement official.

50 (b) Within 20 days of the receipt of the moneys as provided by this chapter,

51 the ~~police chief or designee~~enforcement official shall determine, based upon
52 investigation, whether the city shall instigate proceedings under the provisions of K.S.A.
53 12-1750 through 12-1756, as amended, and Chapter 8.60 TMC. For purposes of this
54 chapter, ~~police chief~~ the director of the department of neighborhood relations or
55 designee shall be the enforcement official ~~with responsibility for determining an~~
56 ~~immediate hazard, pursuant to K.S.A. 12-1750 et seq., and the administrator of the~~
57 ~~environmental code services program shall be the enforcement official with~~
58 ~~responsibility for enforcement of Chapter 8.60 TMC.~~

59 (c) Prior to the expiration of the 20-day period established in this section, the
60 enforcement official shall notify the city treasurer whether the city intends to initiate
61 proceedings under K.S.A. 12-1750 through 12-1756, as amended, and Chapter 8.60
62 TMC.

63 (d) If the enforcement official has determined that proceedings under K.S.A.
64 12-1750 through 12-1756, as amended, or Chapter 8.60 TMC shall be initiated, he or
65 she will do so immediately, but no later than 30 days after receipt of the moneys by the
66 city treasurer.

67 (e) Upon notification to the city treasurer by the enforcement official that no
68 proceedings shall be initiated under K.S.A. 12-1750 through 12-1756, as amended, or
69 Chapter 8.60 TMC, the city treasurer shall return all moneys received to the insured or
70 insureds as identified in the communication from the insurance company. Such return
71 shall be accomplished within 30~~45~~ days of the receipt of the moneys from the insurance
72 company or companies.

73 Section 4. That section 8.80.050, Removal of structure – Excess moneys, of

74 The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

75 **Removal of structure – Excess moneys.**

76 (a) If the enforcement official has proceeded under the provisions of K.S.A.
77 12-1750 through 12-1756, as amended, or Chapter 8.60 TMC, all moneys in excess of
78 that which is ultimately necessary to comply with the provisions for the removal of the
79 building or structure, less salvage value, if any, shall be paid to the insured.

80 (b) If the enforcement official, with regard to a damaged building or other
81 structure ~~damaged by fire, explosion, or windstorm~~ determines that it is necessary to act
82 under K.S.A. 12-1756 or Chapter 8.60 TMC, any proceeds received by the city treasurer
83 under the authority granted in this chapter relating to that building or other structure
84 shall be used to reimburse the city for any expenses incurred by the city in proceeding
85 under K.S.A. 12-1756 or Chapter 8.60 TMC. Upon reimbursement from the insurance
86 proceeds, the enforcement official shall immediately effect the release of the lien
87 resulting therefrom. Should the expenses incurred by the city exceed the insurance
88 proceeds paid over to the city treasurer under TMC 8.80.030, the enforcement official
89 shall publish a new lien in an amount equal to such excess expenses incurred.

90 Section 5. That original § 8.80.010, § 8.80.020, § 8.80.040, and § 8.80.050 of
91 The Code of the City of Topeka, Kansas, are hereby specifically repealed.

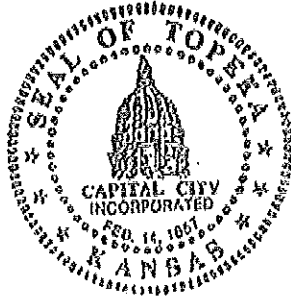
92 Section 6. This ordinance shall take effect and be in force from and after its
93 passage, approval and publication in the official City newspaper.

94 Section 7. This ordinance shall supersede all ordinances, resolutions or rules,
95 or portions thereof, which are in conflict with the provisions of this ordinance.

96 Section 8. Should any section, clause or phrase of this ordinance be declared

97 invalid by a court of competent jurisdiction, the same shall not affect the validity of this
98 ordinance as a whole, or any part thereof, other than the part so declared to be invalid.

99 PASSED AND APPROVED by the Governing Body on October 11, 2016.



CITY OF TOPEKA, KANSAS

Larry E. Wolgast
Larry E. Wolgast, Mayor

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107 ATTEST:

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110 *Brenda Younger*
111 Brenda Younger, City Clerk
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