

## ORDINANCE NO. 4265

### AN ORDINANCE REPEALING CITY CODE SECTIONS 46-171 THROUGH 46-181 AND REPLACING THEM WITH NEW LANGUAGE PERTAINING TO CLAIMS UPON PROPERTY INSURANCE PROCEEDS FOR CHARGES UPON REAL PROPERTY

*Be it ordained by the Governing Body of the City of Independence, Kansas:*

#### **Section 1.**

City Ordinance 3773, Codified as City Code Sections 46-171 through 46-181, inclusive, is hereby repealed and replaced with the following Sections.

#### **Section 2. Scope and Application.**

The City is hereby authorized to utilize the procedures established by K.S.A. Ch. 40, art. 39 (K.S.A. 40-3901 et seq.), whereby no insurance company shall pay a claim of a named insured for loss or damage to a 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 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 or arrived at between the named insured and the company such final settlement exceeds 75 percent of the face value of the policies 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 insured structure, pursuant to the terms of the policies and endorsement thereto, shall have been paid, the insurance company shall execute a draft payable to the Director of Finance, in an amount equal to the sum of 15 percent of the covered claim payment, unless the building Official of the city has issued a certificate to the insurance company that the insured has removed the damaged building or other structures, as well as associated debris, or repaired rebuilt or otherwise made the premises safe and secure.

b) Such payment of insurance proceeds 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 payment of the funds to the City as required in subsection (1) of this Section, each insurance company shall provide the City with the name and address of the named insured, the total insurance coverage applicable to such building or other structure, and the amount of the final settlement agreed to or arrived at between the insurance company and the insured, whereupon the Building Official shall contact the named insured by restricted mail to notify them that such insurance proceeds have been received by the City, and apprise them of the procedures to be followed under this Section.

**Section 3. Creation of lien.**

The Governing Body 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 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 policies covering such building or other insured structure. The lien arises upon any unpaid tax, special valorem levy, special assessment, 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 4. Responsibility of insurer.**

Prior to final settlement of any claim covered by the provisions of the preceding Section, the insurer shall contact the county treasurer to determine whether any such encumbrances are presently in existence. If the encumbrances are found to exist, the insurer shall execute and transmit in an amount equal to that owing under such encumbrances a draft payable to the county treasurer.

**Section 5. Insurance proceeds fund.**

The Director of Finance is hereby authorized and shall create a fund to be known as the insurance proceeds fund. All monies received by the Director of Finance as provided for by this article shall be placed in such fund and deposited in an interest bearing account.

**Section 6. Disposition of insurance proceeds**

Upon receipt of such insurance proceeds:

a) The Director of Finance shall immediately notify the Building Official of such receipt and transmit all documentation received from the insurance company to the Building Official.

b) Within 20 days of the receipt of such monies, the Building Official shall determine, after prior investigation, whether the City shall instigate proceedings under the provisions of K.S.A. 12-1750 - 12-1756

c) Prior to the expiration of the 20 days established in subsection (2) of this Section, the Building Official shall notify the Director of Finance whether he intends to initiate proceedings under K.S.A. 12-1750 - 12-1756.

d) The Building Official is hereby designated as the person charged with the administration of K.S.A. 12-1750 - 12-1756.

e) If the Building Official has determined that proceedings under K.S.A. 12-1750 - 12-1756 shall be initiated, he shall do so immediately, but no later than 30 days after receipt of such monies by the Director of Finance.

f) Upon notification to the Director of Finance by the Building Official that no proceedings shall be initiated under K.S.A. 12-1750 - 12-1756, the Director of Finance shall initiate the return of such monies plus accrued interest to the insured as identified in the communications from the insurance company. Such returns shall be accomplished within 30 days of the receipt of such monies from the insurance company.

#### **Section 7. Excess funds.**

If the Building Official has proceeded under the provisions of K.S.A. 12-1750 - 12-1756, all monies in excess of that which is ultimately necessary to comply with such provisions for the removal of the building or structure, less salvage value, shall be paid to the insured.

#### **Section 8. Reimbursement to the City for expenses.**

If the Building Official, 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 Director of Finance under the authority of Section 18-455 (1), as amended, 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 Building Official shall immediately effectuate the release of any lien resulting therefrom. Should the expenses incurred by the City exceed the insurance proceeds paid over to the Director of Finance under Section 18-455 (1), the Building Official shall

establish a new lien as authorized by K.S.A. 12-1756 in an amount equal to such excess expenses incurred.

**Section 9. Application of article provisions.**

This article shall apply to fire, explosion or windstorm claims arising on all buildings or structures.

**Section 10. Parties to insurance contracts.**

This article does 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 11. Immunity from 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. 40-2402 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.

**Section 12. Enforcing officer.**

The City Building Official is hereby designated as the "enforcing officer" and shall be the officer in charge of administering and enforcing the provisions of K.S.A. 12-1750 - 12-1756, inclusive.

**Section 13.**

This Ordinance shall take effect upon its publication in the official city newspaper.

*Adopted by the Governing Body of the City of Independence, Kansas, on the 14<sup>th</sup> day of December, 2017.*



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Fred D. Meier, Mayor

ATTEST:

Michael A. Borovetz  
Michael A. Borovetz, City Clerk

