

(Summary Published in the Leavenworth Times on December 2, 2023)

ORDINANCE NO. 8227

AN ORDINANCE REGARDING CASUALTY INSURANCE PROCEEDS, AMENDING ARTICLE V (FIRE INSURANCE PROCEEDS) OF CHAPTER 20 (FIRE PREVENTION AND PROTECTION) OF THE LEAVENWORTH CODE OF ORDINANCES, AND ESTABLISHING NEW AND REPLACEMENT SECTIONS.

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

Section 1. Article V of Chapter 20 of the Leavenworth Code of Ordinances is hereby deleted in its entirety and amended to read as follows:

ARTICLE V. CASUALTY INSURANCE PROCEEDS

Sec. 20-116. Scope and application.

The city is authorized to utilize the procedures established by K.S.A. 40-3901 *et seq.*, such that if fire, explosion, windstorm, or other casualty causes damage to a structure that is covered by insurance and the covered claim payment is in excess of seventy-five percent (75%) of the face value of the policy covering the structure, then the insurance provider shall be required to pay to the city an amount not to exceed fifteen percent (15%) of the proceeds of such policy, as set forth in this article.

Sec. 20-117. Lien created.

The city commission of the city 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 seventy-five percent (75%) of the face value of the policies 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.

Sec. 20-118. Encumbrances.

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

Sec. 20-119. Procedure.

The following procedure shall apply in the implementation of this article:

- (1) When final settlement on a covered claim has been agreed to or arrived at between the named insured and the insurer, and the final settlement exceeds seventy-five percent (75%) 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 shall execute a draft payable to the city treasurer in an amount equal to the sum of fifteen percent (15%) of the covered claim payment, unless the chief building inspector or other designated official of the city has issued a certificate to the insurance company 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 this article, the insurance company shall provide the city with the name and address of the named insured, 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, whereupon the chief building inspector shall contact the named insured by certified mail, return receipt requested, notifying them that the insurance proceeds have been received by the city and apprise them of the procedures to be followed under this section.

Sec. 20-120. Fund created; deposit of moneys.

The city treasurer is 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 section shall be placed in the fund and deposited in an interest-bearing account.

Sec. 20-121. 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 or other designated code official or enforcing officer (as described in Article XI of Chapter 10 of the Leavenworth Code of Ordinances) of the receipt, and transmit all documentation received from the insurance company to such official.
- (b) Within thirty (30) days of the receipt of the moneys, the chief building inspector or other designated code official or enforcing officer shall determine, after prior investigation, whether the city shall instigate proceedings under the provisions of K.S.A. 12-1750 *et seq.*, and/or Article XI of Chapter 10 of the Leavenworth Code of Ordinances, as amended.

- (c) Prior to the expiration of the thirty (30) days established by subsection (b) of this section, the chief building inspector or other designated code official or enforcing officer shall notify the city treasurer whether he or she intends to initiate proceedings under K.S.A. 12-1750 *et seq.*, and/or Article XI of Chapter 10 of the Leavenworth Code of Ordinances, as amended.
- (d) If the chief building inspector or other designated code official or enforcing officer has determined that proceedings under K.S.A. 12-1750 *et seq.*, and/or Article XI of Chapter 10 of the Leavenworth Code of Ordinances, as amended, shall be initiated, he or she will do so immediately but no later than forty-five (45) days after receipt of the moneys by the city treasurer.
- (e) Upon notification to the city treasurer by the chief building inspector or other designated code official or enforcing officer that no proceedings shall be initiated under K.S.A. 12-1750 *et seq.*, and/or Article XI of Chapter 10 of the Leavenworth Code of Ordinances, as amended, the city treasurer shall return all such moneys received, plus accrued interest, to the insured as identified in the communication from the insurance company. Such return shall be accomplished within forty-five (45) days after the receipt of the moneys from the insurance company.

Sec. 20-122. Removal of structure; excess moneys.

If the chief building inspector or other designated code official or enforcing officer has proceeded under the provisions of K.S.A. 12-1750 *et seq.*, and/or Article XI of Chapter 10 of the Leavenworth Code of Ordinances, 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.

Sec. 20-123. Removal of structure; disposition of funds.

If the chief building inspector or other designated code official or enforcing officer, with regard to a building or other structure damaged, determines that it is necessary to act under K.S.A. 12-1750 *et seq.*, and/or Article XI of Chapter 10 of the Leavenworth Code of Ordinances, as amended, any proceeds received by the city treasurer under the authority of this article 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.*, and/or Article XI of Chapter 10 of the Leavenworth Code of Ordinances, as amended. Upon reimbursement from the insurance proceeds, the chief building inspector or other designated code official or enforcing officer 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 this article, the chief building inspector or other designated code official or enforcing officer shall publish a new lien as authorized by K.S.A. 12-1750 *et seq.*, and/or Article XI of Chapter 10 of the Leavenworth Code of Ordinances, as amended, in an amount equal to such excess expenses incurred.

Sec. 20-124. 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.

Sec. 20-125. 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.

Sec. 20-126. Insurance proceeds; proof of repairing or rebuilding.

In lieu of the payment of insurance proceeds, the insured may present satisfactory proof to the chief building inspector or other designated code official or enforcing officer that the insured has or will remove debris and repair, rebuild or otherwise make the premises safe and secure. Upon presentation of such sufficient evidence, the chief building inspector or other designated code official or enforcing officer, along with the city clerk, shall certify that adequate proof of repairing or rebuilding has been given and that the payment of insurance proceeds to the city shall not be paid, subject to any lien created by the city should the insured fail to rebuild, repair, or secure the property as presented. The insured shall be responsible for presenting such certificate to the insurer. The insured, in seeking such certificate, shall present a timetable showing when repairs or rebuilding will be completed; render architectural or engineering plans, subject to approval by the building official, showing the method, manner and materials to be used in repairing or rebuilding; and any other evidence deemed necessary by the building official to demonstrate that the repairs or rebuilding will be completed in a timely and lawful manner. Failure of the insured to comply with the certificate shall result in the institution of continuation of proceedings for abatement.

Sec. 20-127. Failure to pay insurance proceeds or to obtain a certificate in lieu of payment proceeds.

It is unlawful for any person to fail to provide the payment of insurance proceeds as required by this article unless a certificate in lieu of payment of proceeds has been obtained through the city.

Section 2. The city clerk shall notify the Commissioner of Insurance for the State of Kansas within fourteen (14) days after the adoption of this ordinance. Such notification shall state that the city has enacted an ordinance, pursuant to the authority of K.S.A 40-3901 *et seq.*, concerning payment of insurance proceeds to the city arising out of claims due to fire, explosion, windstorms, or other casualty. A copy of the notice shall be maintained by the city clerk.

Section 3. Article V of Chapter 20 of the Leavenworth Code of Ordinances, including Sections 20-116 through 20-126, inclusive, in existence as of and prior to the adoption of this ordinance, are hereby repealed.

Section 4. This ordinance shall take effect and be in force from and after its publication in the official city newspaper as provided by law.

PASSED and APPROVED by the Governing Body on the 28th day of November, 2023.

/s/ Jermaine Wilson

Jermaine Wilson, Mayor

{SEAL}

ATTEST:

/s/ Sarah Bodensteiner

Sarah Bodensteiner, CMC, City Clerk