

ORDINANCE NO. 88-10

AN ORDINANCE RELATING TO STRUCTURES DAMAGED BY FIRE OR EXPLOSION: CREATING A LIEN UPON INSURANCE PROCEEDS WITH RELATION TO SAID STRUCTURE: PROVIDING FOR THE DISBURSEMENT OF SAID INSURANCE PROCEEDS: CREATING A FIRE INSURANCE PROCEEDS FUND: AND PROVIDING FOR A LIEN FOR CERTAIN TAXES DUE ON STRUCTURES DAMAGED BY FIRE OR EXPLOSION:

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF GALENA, KANSAS

SECTION 1: 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 or explosion, 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.

SECTION 2: 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, caused by or arising out of any fire or explosion, 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 remain undischarged for at least one year prior to the filing of a proof of loss.

SECTION 3. SAME; ENCUMBRANCES

Prior to final settlement on any claim covered by Section 2, the insurer or insurers shall contact the county treasurer, Cherokee 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, Cherokee County, Kansas.

SECTION 4: 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 5: 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 clerk in an amount equal to the sum of \$5000 or 10 percent of the covered claim payment, whichever is less, unless the 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) 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 final settlement agreed to or arrived at between the insurance company or companies and the insured or insureds. whereupon the building inspector shall contact the named insured or insureds by registered mail, notifying that that said insurance proceeds have been received by the city and apprise them of the procedures to be followed under this article.

SECTION 6: FUND CREATED; DEPOSIT OF MONEYS

The city clerk is hereby authorized and shall create a fund to be known as the "Fire insurance Proceeds Fund." All moneys received by the city clerk as provided for by this article shall be placed in said fund and deposited in an interest-bearing account.

SECTION 7: BUILDING INSPECTOR; INVESTIGATION, REMOVAL OF STRUCTURE

- (a) Upon receipt of moneys as provided for by this article, the city clerk shall immediately notify the building inspector of said receipt, and transmit documentation received from the insurance company or companies to the building inspector.
- (b) Within 20 days of the receipt of said moneys, the 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 building inspector shall notify the city clerk whether he or she intends to initiate proceedings under K.S.A. 12-1750 et. seq., as amended.
- (d) If the 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 clerk.
- (e) Upon notification to the city clerk by the building inspector that no proceedings shall be initiated under K.S.A. 1750 et. seq., as amended, the city clerk 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

SECTION 8: REMOVAL OF STRUCTURE; EXCESS MONEYS.

If the building inspector has proceeded under the provisions of K.S.A, 1750 et.seq., as amended, all moneys in excess of that which is ultimately necessary to comply with the provisions of the removal of the building or structure, less salvage value, if any, shall be paid to the insured.

SECTION 9: SAME; DISPOSITION OF FUNDS

If the building inspector, with regard to a building or other structure damaged by fire or explosion, determines that it is necessary to act under K.S.A. 1756, any proceeds received by the city clerk under the authority of section 5(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 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 clerk under section 5(a), the building inspector shall publish a new lien as authorized by K.S.A. 1756, in an amount equal to such excess expenses incurred.

SECTION 10: 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.

SECTION 11: INSURERS; LIABILITY

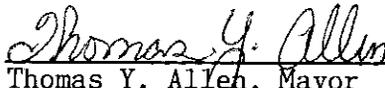
Insurers complying with this article or attempting in good faith to comply with this article shall be immune from civil and criminal liability and such action shall not be deemed in violation of K.S.A. 40-2404 and any amendments thereto, including withholding payment of any insurance proceeds pursuant to this article, or releasing or disclosing any information pursuant to this article.

SECTION 12: REPEALING CLAUSE

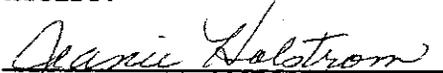
This ordinance repeals any ordinance in conflict herewith.

SECTION 13: This ordinance shall take effect and be in full force after its passage, approval and upon publication in the Galena Sentinel-Times.

PASSED BY the Governing body of the City of Galena this 7th
Day of June, 1988


Thomas Y. Allen, Mayor

ATTEST:


Jeanie Holstrom, City Clerk

(SEAL)