

AN ORDINANCE RELATING TO REMOVAL OF FIRE AND EXPLOSION DAMAGED STRUCTURES; CREATING A FIRE INSURANCE PROCEEDS FUND; AND ESTABLISHING CERTAIN PROCEDURES.

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

SECTION 1. REGULATIONS ESTABLISHED; REQUIREMENTS OF INSURANCE COMPANIES. The City of Lyndon, Kansas 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 of Lyndon, Kansas 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 seventy-five percent (75%) of the face value of the policy 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 or insureds and the company or companies, and said 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 or companies shall execute a draft payable to the City Clerk of the City of Lyndon, Kansas in an amount equal to the sum of Five Thousand Dollars (\$5,000.00) or ten percent (10%) of the covered claim payment, whichever is less, unless the enforcing officer of the City of Lyndon, Kansas, 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 of Lyndon, Kansas shall be disbursed in accordance with the policy terms.

(c) Upon the transfer of the funds as required by subparagraph (a) of this Section, the insurance company shall provide the City of Lyndon, Kansas, 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 enforcing officer of the City of Lyndon, Kansas, shall contact the named insured or insureds by restricted mail, notifying them that said insurance proceeds have been received by the City of Lyndon, Kansas, and apprise them of the procedures to be followed under this ordinance.

SECTION 2. DEFINITIONS: For the purpose of this ordinance, the following words and terms shall have the following meaning:

(a) "Enforcing Officer" shall mean the City of Lyndon Building Inspector and/or other representative of the city that is designated by the City of Lyndon Governing Body and charged with the administration of the provisions of this ordinance.

SECTION 3. CREATION OF FIRE INSURANCE PROCEEDS FUND. The City Clerk of the City of Lyndon, Kansas, is hereby authorized and shall create a fund to be known as the "Fire Insurance Proceeds Fund". All monies received by the City Clerk as provided for by this ordinance shall be placed in said fund and deposited in an interest-bearing account.

SECTION 4. PROCEDURE UPON RECEIPT OF INSURANCE PROCEEDS.

(a) Upon receipt of said monies, the City Clerk of the City of Lyndon, Kansas, shall immediately notify the enforcing officer of the City of Lyndon, Kansas of said receipt, and transmit all documentation received from the insurance company or companies to the said enforcing officer.

(b) Within twenty (20) days of the receipt of said monies, the enforcing officer of the City of Lyndon 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 twenty (20) days established in subparagraph (b) of this Section, the enforcing officer shall notify the City Clerk whether he intends to initiate proceedings under K.S.A. 12-1750, et seq., as amended.

(d) If the enforcing officer has determined that proceedings under K.S.A. 12-1750, et seq., as amended, shall be initiated, he will do so immediately, but no later than thirty (30) days after receipt of said monies by the City Clerk.

(e) Upon notification to the City Clerk by the enforcing officer that no proceedings shall be initiated under K.S.A. 12-1750, et seq., as amended, the City Clerk shall return all such monies 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 thirty (30) days of the receipt of said monies from the insurance company or companies.

SECTION 5. PAYMENT OF EXCESS PROCEEDS. If the enforcing officer has proceeded under the provisions of K.S.A. 12-1750, et seq., as amended, all monies in excess of that which is ultimately necessary to comply with said provisions for the removal of the building or structure, less salvage value, if any, shall be paid to the insured.

SECTION 6. PAYMENTS MADE FROM FUND; LIEN. If the enforcing officer, with regard to a building or other structure damaged by fire or explosion, determines that it is necessary to act under K.S.A. 12-1756, any proceeds received by the City Clerk under authority of Section 1 (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 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 Clerk under Section 1 (a), the enforcing officer shall establish a new lien as authorized by K.S.A. 12-1756, in an amount equal to such excess expenses incurred.

SECTION 7. CITY CLERK TO NOTIFY INSURANCE COMMISSIONER. The City Clerk of the City of Lyndon, Kansas, is hereby authorized and shall notify the Commissioner of Insurance of the State of Kansas within fourteen (14) days of the adoption of this ordinance.

SECTION 8. APPLICATION OF ORDINANCE. This ordinance shall apply to fire and explosion damage to buildings or other structures.

SECTION 9. CITY NOT A PARTY TO INSURANCE CONTRACT. This ordinance shall not make the City of Lyndon, Kansas, 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 10. IMMUNITY GRANTED INSURERS. 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 11. REPEAL. Ordinance No. 574 is hereby repealed.

SECTION 12. EFFECTIVE DATE. This ordinance shall be in full force and effect upon its publication in the official city newspaper.

PASSED AND APPROVED this 6th day of June, 1994.

*James R. Wischropp*  
JAMES R. WISCHROPP - MAYOR

Attest:

*Kay Jones*  
\_\_\_\_\_  
Kay Jones, City Clerk

STATE OF KANSAS,        )  
COUNTY OF OSAGE,    )     ss:

I, the undersigned, hereby certify that I am the duly appointed and acting City Clerk of the City of Lyndon, Kansas; that the above Ordinance was passed by the council and approved by the Mayor on the 6th day of June, 1994, and it was published in the Osage County Chronicle, the official newspaper of the City on the 9th day of June, 1994, and that the record of the final vote of passage is shown ~~in~~ in ~~the~~ <sup>in</sup> minutes of the Governing Body.

*Kay Jones*  
\_\_\_\_\_  
Kay Jones, City Clerk

(SEAL)