

Passed: June 28, 2016

Published: July 6, 2016

**ORDINANCE NO. 2276**

**AN ORDINANCE ESTABLISHING CHAPTER 8.12 OF THE DERBY MUNICIPAL CODE CONCERNING PAYMENT OF INSURANCE PROCEEDS AND REPEALING ORDINANCE NO. 1839 OF THE CITY AND FURTHER REPEALING ORDINANCE NO. 1821 OF THE CITY.**

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

**Section 1.** Chapter 8.12 of the Derby Municipal Code is hereby established as follows:

**Chapters 8.12 Insurance Proceeds**

**Sections:**

**8.12.010—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, 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 ordinance.

**8.12.020—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, 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 remained undischarged for at least one year prior to the filing of a proof of loss.

**8.12.030—Same; Encumbrances.**

Prior to final settlement on any claim covered by Section 8.12.020, the insurer or insurers shall contact the county treasurer, Sedgwick 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, Sedgwick County, Kansas.

**8.12.040—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.

**8.12.050—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 treasurer 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 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 ordinance, 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 amount of the final settlement agreed to or arrived at between the insurance company or companies and the insured or insureds, whereupon the building official shall contact the named insured or insureds by certified mail, return receipt requested, notifying them that said insurance proceeds have been received by the city and apprise them of the procedures to be followed under this ordinance.

**8.12.060—Fund Created; Deposit of Moneys.**

The city treasurer is hereby authorized and shall create a fund to be known as the "Insurance Proceeds Fund." All moneys received by the city treasurer provided for by this ordinance, other than moneys received in satisfaction of encumbrances as provided in 8.12.020 and 8.12.030 hereof, shall be placed in said fund and deposited in an interest-bearing account.

**8.12.070—Building Official; Investigation, Removal of Structure.**

(a) Upon receipt of moneys as provided for by this ordinance, the city treasurer shall immediately notify the building official of said receipt, and transmit all documentation received from the insurance company or companies to the building official.

(b) Within 30 days of the receipt of said moneys, the building official shall determine, after prior investigation, whether the city shall initiate proceedings under the provisions of K.S.A. 12-1750 *et seq.*, as amended.

(c) Prior to the expiration of the 30 days established by subsection (b) of this ordinance, the building official shall notify the city treasurer whether he or she intends to initiate proceedings under K.S.A. 12-1750 *et seq.*, as amended.

(d) If the building official 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 45 days after receipt of the moneys by the city treasurer.

(e) Upon notification to the city treasurer by the building official that no proceedings shall be initiated under K.S.A. 12-1750 *et seq.*, as amended, the city treasurer 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 45 days of the receipt of the moneys from the insurance company or companies.

#### **8.12.080—Removal of Structure; Excess Moneys.**

If the building official has proceeded under the provisions of K.S.A. 12-1750 *et seq.*, 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.

#### **8.12.090—Same; Disposition of Funds.**

If the building official, with regard to a building or other structure damaged, determines that it is necessary to act under K.S.A. 12-1756, any proceeds received by the city treasurer under the authority of 8.12.050 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 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 8.12.050, the building official shall publish a new lien as authorized by K.S.A. 12-1756, in an amount equal to such excess expenses incurred.

#### **8.12.100—Effect Upon Insurance Policies.**

This ordinance 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.

#### **8.12.110—Insurers; Liability.**

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 2.** Ordinance No. 1839 of the City of Derby is hereby repealed.

**Section 3.** Ordinance No. 1821 of the City of Derby is hereby repealed.

**Section 4.** Should any section, clause, sentence, or phrase of this ordinance be found to be unconstitutional or is otherwise held invalid by any court of competent jurisdiction, such invalidity shall not affect the validity of any remaining provisions herein.

**Section 5.** This ordinance shall be in full force and effect from and after its adoption and publication of said ordinance or a summary thereof in the official city newspaper.

**PASSED** by the City Council on the 28<sup>th</sup> day of June, 2016 and **SIGNED** by the Mayor.

  
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Randy White, Mayor

Attest:

  
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Karen Friend, City Clerk

Approved as to form:

  
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Jacqueline R. Butler, City Attorney