ORDINANCE NO. 680

AN ORDINANCE AMENDING ARTICLE X OF THE BASEHOR CITY CODE, ENTITLED "BUILDING INSURANCE PROCEEDS FUND"

WHEREAS, during the 2016 legislative session the Kansas legislature adopted changes to K.S.A. 40-3901 et seq. which must be reflected in Article X of the Basehor City Code, entitled, "Building Insurance Proceeds Fund".

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF BASEHOR, KANSAS:

Section 1: That Article X of the Basehor City Code be amended with the addition of underlined text, and deletion of the stricken text as follows:

ARTICLE X. - BUILDING INSURANCE PROCEEDS FUND

Sec. 8-527. - 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, 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 policy covering such building or other insured structure, unless there is compliance with the procedures set out in this article.

Sec. 8-528. - Lien created.

The ~~mayor and city council~~ 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 a 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 advalorem 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. 8-529. - Encumbrances.

Prior to final settlement on any claim covered by section 8-528, the insurer or insurers shall contact the ~~e~~ County ~~t~~ Treasurer of Leavenworth 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, Leavenworth, Kansas.

Sec. 8-530. - Transfer on pro rata basis.

Such transfer of proceeds shall be on a pro rata basis by all insurance companies insuring the building or other structure.

Sec. 8-531. - 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 chief 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 are and secure.

(b) Such transfer of funds shall be on a pro rate~~a~~ 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 amount of the final settlement agreed to or arrived at between the insurance company or companies and the insured or insureds, whereupon the chief building inspector shall contract 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 article.

Sec. 8-532. - Fund created; deposit of moneys.

The city treasurer is hereby authorized to 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 article shall be placed in the fund and deposited in an interest-bearing account.

Sec. 8-533. - Building inspector; investigation, removal or structure.

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

(b) Within ~~20~~ 30 days of the receipt of said moneys, the chief 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~~ 30 days established by subsection (b) of this section, the chief building inspector shall notify the city treasurer whether he intends to initiate proceedings under K.S.A. 12-1750 et seq., as amended.

(d) If the chief building inspector 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 ~~30~~ 45 days after receipt of the moneys by the city treasurer.

(e) Upon notification to the city treasurer by the chief building inspector 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 ~~30~~ 45 days of the receipt of the moneys from the insurance company or companies.

Sec. 8-534. - Removal of structure; excess moneys.

If the chief building inspector 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.

Sec. 8-535. - Disposition of funds.

If the chief building inspector, 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 city treasurer under the authority of section 8-531(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 chief building inspector shall immediately effect the release of the lien resulting therefrom. Should the expenses insured by the city exceed the insurance proceeds paid over to the city treasurer under section 8-531(a), the chief building inspector shall publish a new lien as authorized by K.S.A. 12-1756, in an amount equal to such excess expenses incurred.

Sec. 8-536. - 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. 8-537. - 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 liability for withholding payment of any insurance proceeds pursuant to this article, or release or disclosing of any information pursuant to this article.

Section 2: That this ordinance shall take effect and be in force from an after its publication in the official newspaper of the City of Basehor, Kansas as provided by law.

PASSED by the City Council this 21st day of September, 2016.

APPROVED by the Mayor this 21st day of September, 2016.

SEAL

SEAL OF THE CITY OF BASEHOR, KANSAS
CORPORATE
SEAL

David K. Breuer, Mayor

ATTEST:

Katherine M. Renn, City Clerk

APPROVED AS TO FORM:

Shannon M. Marcano, City Attorney