

**ORDINANCE #129**

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

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

**SECTION I.** The City of Overbrook, 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 Overbrook, 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 Treasurer of the City of Overbrook, Kansas in an amount equal to the sum of Five Thousand Dollars (\$5,000.00) or ten per cent (10%) of the covered claim payment, whichever is less, unless the Mayor or his designated agent, hereafter referred to as the building inspector of Overbrook, 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 Overbrook, 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 Overbrook, 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 building inspector of the City of Overbrook, Kansas, shall contact the named insured or insureds by certified mail, notifying them that said insurance proceeds have been received by the City of Overbrook, Kansas, and apprise them of the procedures to be followed under this ordinance.

**SECTION II.** The City Treasurer of the City of Overbrook, Kansas, is hereby authorized and shall create a fund to be known as the "FIRE INSURANCE PROCEEDS FUND." All monies received by the City Treasurer as provided for by this ordinance shall be placed in said fund and deposited in an interest-bearing account.

**SECTION III. A.** Upon receipt of said monies, the City Treasurer of the City of Overbrook, Kansas, shall immediately notify the building inspector of the City of Overbrook of said receipt, and transmit all documentation received from the insurance company or companies to the said building inspector.

B. Within twenty (20) days of the receipt of said monies, the building inspector of the City of Overbrook, 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 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 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 thirty (30) days after receipt of said monies by the City Treasurer.

E. Upon notification to the City Treasurer by the 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 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 IV.** If the building inspector 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 V.** 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. 12-1756 any proceeds received by the City Treasurer under the authority of Section I (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 Treasurer under Section I (A), the building inspector shall publish a new lien as authorized by K.S.A. 12-1756, in an amount equal to such excess expenses incurred.

**SECTION VI.** The City Clerk of the City of Overbrook, 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 VII.** This ordinance shall apply to fire and explosion damage to buildings or other structures.

**SECTION VIII.** This ordinance shall not make the City of Overbrook, 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 IX.** 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 X.** This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

**PASSED BY THE GOVERNING BODY OF THE CITY OF OVERBROOK, KANSAS THIS 12TH DAY OF MARCH, 1986.**

**APPROVED**  
Calvin R. Ufford  
Mayor

**ATTEST:**  
Mildred J. Cannon,  
City Clerk