

## TITLE 3

### REVENUE AND FINANCE

#### CHAPTERS:

- 3.02 Service Charge for Dishonored Instruments
- 3.12 Investment of Idle Funds
- 3.20 Procedure for Funding the Capital Improvements Fund
- 3.21 Central Garage Fund
- 3.22 Central Purchasing Fund
- 3.23 Personal Computer Replacement Reserve Fund
- 3.24 Information Technology Services Fund
- 3.25 Recreation Enterprise Fund
- 3.26 Mahaffie Operations Fund
- 3.30 Park Excise Tax
- 3.35 Transportation Improvements Excise Tax
- 3.40 Suits and Claims Against Officers and Employees (Repealed 2/19/91)
- 3.50 Procurement Policies
- 3.60 Risk Management Policy
- 3.70 Stormwater Management Fee
- 3.90 Tourism and Convention Promotion Fund
- 3.95 Park Sales Tax Fund
- 3.96 Golf Course Fund
- 3.97 Fire Levy Fund
- 3.100 Fire Insurance Proceeds Fund.

## CHAPTER 3.02

### SERVICE CHARGE FOR DISHONORED INSTRUMENTS

#### Sections:

- 3.02.010 Definitions.
- 3.02.020 Service Charge.
- 3.02.030 Effective Date.

**3.02.010 Definitions.** The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them in this section:

(1) Negotiable instrument. A writing considered to be a negotiable instrument within this chapter is any written security under the Uniform Commercial Code as adopted by the State of Kansas which may be transferred by endorsement and delivery or by delivery merely, so as to vest in the city the legal title, and thus enable the city to sue thereon in its own name. A negotiable instrument may take any of the forms of "check," "draft," "certificate of deposit" or "note." It may alternately be referred to in this chapter as "instrument."

(2) Credit card. Means any card, plate, coupon book or other credit device, existing for the purpose of obtaining money, property, labor or services on credit.

(3) Dishonor. An instrument or credit card is dishonored when it has been duly presented by the city and due acceptance or payment is refused or if presentment is excused and the instrument or credit card is not duly accepted or paid. Return of an instrument for lack of proper endorsement is not dishonor.

(4) Drawer. Any person, firm, partnership, corporation or association which draws an instrument and addresses it to the city. (Ord. 05-123 § 1, 2005; Ord. 83-103 § 1, 1983.)

**3.02.020 Service Charge.** Upon dishonor of any instrument held by the city the drawer will be responsible for payment of the amount stated on the instrument plus a service fee. Such service fee shall be adopted by the Governing Body of the City by resolution. The service fee is required to cover city administrative costs generated by processing of the dishonored instrument. (Ord. 02-119 § 1, 2002; Ord. 00-118 § 1, 2000; Ord. 83-103 § 1, 1983.)

**3.02.030 Effective Date.** The service charge provided for in this chapter will be effective for all dishonored instruments occurring on or after January 1, 2001. (Ord. 00-118 § 2, 2000; Ord. 83-103 § 1, 1983.)

## CHAPTER 3.12

### INVESTMENT OF IDLE FUNDS\*

#### Sections:

- 3.12.010 Authority.
- 3.12.020 Procedure and Restrictions.
- 3.12.030 Custody and Safekeeping.
- 3.12.040 Sale or Transfer.
- 3.12.050 Earnings and Records.

**3.12.010 Authority.** Temporarily idle moneys of the city not currently needed may, in accordance with the procedure prescribed in this chapter, be invested in:

(1) Direct obligations of United States government which mature within one year from date of purchase and which are guaranteed as to principal by the United States government; or

(2) Temporary notes of the city issued pursuant to K.S.A. 10-123; or

(3) Bank time certificates of deposit which are protected by the Federal Deposit Insurance Corporation.

The provisions of this chapter shall not apply to any funds of the city, the investment of which is expressly authorized or limited or prohibited by the Kansas Statutes Annotated. (Ord. 396-C # 1, 1970: prior code # 1-502.)

**3.12.020 Procedure and Restrictions.** The City Manager shall periodically report to the Governing Body as to the amount of moneys available for investment and the period of time such amounts will be available for investment, and shall submit such recommendations as deemed necessary for the efficient and safe management of city finances. The recommendations of the City Manager shall provide for an investment program which shall so limit the amounts invested and schedule the maturities of investments so that the city will at all times have sufficient moneys available on demand deposit to assure prompt payment of all city obligations. The Governing Body shall determine by resolution the amount, method and term of any investment and the type of investment made, subject to the provisions of this chapter. (Prior code # 1-503.)

**3.12.030 Custody and Safekeeping.** Securities purchased pursuant to this chapter shall be under the joint care of the City Clerk and City Manager and shall be held in the custody of a state or national bank or trust company, or shall be kept by such officers in a safety deposit box of the city in a bank or trust company. Securities in original or receipt form held in the custody of a bank or trust company shall be held in the name of the city, and their redemption, transfer or withdrawal shall be permitted only upon the written instruction of at least two such city officers. Securities not held in the custody of a bank or trust company shall be personally deposited by such officers in a safety deposit box in the name of the city in a bank or trust company, access to which shall be permitted only in the personal presence and under the signature of at least two such officers. (Prior code # 1-504.)

**3.12.040 Sale or Transfer.** If, in order to maintain sufficient moneys on demand deposit in any fund, as provided in Section 3.12.010, it becomes necessary to transfer or sell any securities of such funds, any two or more of the officers specified in Section 3.12.030 may transfer the securities to any other fund or funds in which there are temporarily idle moneys or shall sell such securities, and for such purpose they shall have authority to make any necessary written directions, endorsements or assignments for and on behalf of the city. Any such transfers or sales shall be reported in writing to the Governing Body at its next regular meeting. (Prior code # 1-505.)

**3.12.050 Earnings and Records.** The interest or other earnings from investments made pursuant to this chapter shall be credited pro rata to the fund or funds from which the investments were made and shall be used, insofar as possible, to relieve the ad valorem tax levies of the city. The City Clerk shall maintain a complete and detailed record at all times of all investments made pursuant to this chapter. (Prior code # 1-506.)

---

\*For statutory provisions pertaining to the deposit of public moneys, see K.S.A. 9-1401.

## CHAPTER 3.20

### PROCEDURE FOR FUNDING THE CAPITAL IMPROVEMENT FUND

**Sections:**

3.20.020 Policy Objectives.  
3.20.030 Budget Transfers Authorized.  
3.20.040 Use of Studies.  
3.20.050 Plan of Operation.  
3.20.060 Transfer Out of Fund.

**3.20.020 Policy Objective.** It is the policy objective of the Governing Body that the capital improvements fund shall be used to provide a financing mechanism to meet the city's present and future public infrastructure needs as set forth in the city's adopted Capital Improvement Plan, including the repair, restoration and rehabilitation of existing public facilities, and to avoid the cost of unnecessary indebtedness. (Ord. 87-09 § 1, 1987.)

**3.20.030 Budget Transfers Authorized.** The Governing Body is hereby authorized to make budgeted transfer of moneys from other city funds lawfully available for improvement purposes to the capital improvements fund, including moneys in the general fund.

Except for reimbursed expenses, no moneys shall be credited to such special fund except as may be budgeted annually, or transferred by the annual budget from other funds. Such fund shall not thereafter be subject to the provisions of K.S.A. 79-2925 to 79-2937, inclusive, and amendments thereto. In making the budget, the amounts credited to, and the amount on hand in, the capital improvements fund and the amount expanded therefrom shall be shown for the information of the taxpayers. (Ord. 87-09 § 2, 1987.)

**3.20.040 Use for Studies.** Moneys in such fund may be used to pay the cost of engineering and other advanced public improvement plans and studies, with the fund periodically reimbursed from bond proceeds, special assessments, or state or federal aid that may be available for the completed project. (Ord. 87-09 § 3, 1987.)

**3.20.050 Plan of Operation.**

- (a) The Governing Body shall adopt, and amend at least every two (2) years, a capital improvements plan.
- (b) The Governing Body shall annually, at the same time and as a part of the annual operating budget process, adopt an implementation plan identifying those improvements to be financed from the fund during the following year.
- (c) The City Manager shall annually, at the same time as part of the annual operating budget process, make recommendations for revenue allocations and budget transfers as may be necessary to finance those improvements scheduled for completion next year and to set aside moneys to be annually reserved for future improvements.
- (d) The Governing Body shall annually, at the same time and as a part of annual operating budget, authorize the revenue allocations and budget transfers necessary to finance those improvements scheduled for completion next year and to set aside moneys to be annually reserved for future improvements. (Ord. 87-09 § 4, 1987.)

**3.20.060 Transfers Out of Fund.** If the Governing Body determines that money which has been transferred to the capital improvements fund, or any part thereof, is not needed for the purpose for which it is transferred, the Governing Body, by adoption of a resolution, may transfer such amount not needed to the general or other fund from which it was derived and such transfer and expenditures thereof shall be subject to the budget requirement provisions of K.S.A. 79-2925 to 79-2937, inclusive, and amendments thereto. (Ord. 87-09 § 5, 1987.)

**CHAPTER 3.21**

**CENTRAL GARAGE FUND**

**Sections:**

3.21.010 Fund Established.

**3.21.010 Fund Established.** There is hereby established a central garage fund to fund central garage activities for the city. Moneys may be budgeted and transferred to such fund from any source which may be lawfully utilized for such purposes. (Ord. 97-87 § 1, 1997.)

#### CHAPTER 3.22

#### CENTRAL PURCHASING FUND

**Sections:**

3.22.010 Fund Established.

**3.22.010 Fund Established.** There is hereby established a central purchasing fund to fund central purchasing activities for the city. Moneys may be budgeted and transferred to such fund from any source which may be lawfully utilized for such purposes. (Ord. 97-88 § 1, 1997.)

#### CHAPTER 3.23

#### PERSONAL COMPUTER REPLACEMENT RESERVE FUND

**Sections:**

3.23.010 Fund Established.

**3.23.010 Fund Established.** There is hereby established a personal computer replacement reserve fund to finance the acquisition of personal computers. Moneys may be budgeted and transferred to such fund from any source which may be lawfully utilized for such purposes, including equipment use charges on the various departments of the city to finance new replacement equipment. (Ord. 93-107 § 1, 1993.)

#### CHAPTER 3.24

#### INFORMATION TECHNOLOGY SERVICES FUND

**Sections:**

3.24.010 Fund Established.

**3.24.010 Fund Established.** There is hereby established an information technology services fund to fund information technology services activities for the city. Moneys may be budgeted and transferred to such fund from any source which may be lawfully utilized for such purposes. (Ord. 97-89 § 1, 1997.)

#### CHAPTER 3.25

#### RECREATION ENTERPRISE FUND

**Sections:**

3.25.010 Fund Established.

**3.25.010 Fund Established.** There is hereby established a recreation enterprise fund to fund recreation activities for the city. Money from the general fund shall be transferred into the recreation enterprise fund, but thereafter the fund shall be self-sustaining from user charges collected from recreational activities. (Ord. 93-106 § 1, 1993.)

## CHAPTER 3.26

### MAHAFFIE OPERATIONS FUND

**Sections:**

3.26.010 Fund Established.

**3.26.010 Fund Established.** There is hereby established a Mahaffie Operations Fund to fund operational activities at the Mahaffie Stagecoach Stop and Farm. Moneys may be budgeted and transferred into such fund from any source which may be lawfully utilized for such purposes, including moneys collected from events at the Stagecoach Stop and Farm. (Ord. 04-09 § 1, 2004.)

## CHAPTER 3.30

### PARK EXCISE TAX

#### Sections:

3.30.010	Purpose.
3.30.020	Definitions.
3.30.030	Applicability of Park Excise Tax.
3.30.040	Imposition of Park Excise Tax.
3.30.050	Amount of Park Excise Tax.
3.30.060	Collection of Park Excise Tax.
3.30.070	Annual Review.
3.30.080	Restriction on Use of and Accounting for Park Excise Tax Funds.
3.30.090	Appeals.

**3.30.010 Purpose.** A Park Excise Tax is hereby imposed on the development of land for the purpose of assuring that neighborhood parks, parkland and open space is available and adequate to meet the needs created by new development while maintaining current and proposed park and open space standards pursuant to the Olathe Comprehensive Plan. It is the intent of this ordinance to raise revenue from new residential development in order to provide neighborhood parks in developing residential areas. Revenue raised from nonresidential development may be used for neighborhood parks, parkland, or open space as deemed appropriate by the Governing Body. The Park Excise Tax shall be imposed by the city on the development of all land in order to raise sufficient revenue to address the public need for parks. (Ord. 96-87 § 1, 1996; Ord. 89-87 § 1, 1989.)

#### **3.30.020 Definitions.**

(a) Applicant--the property owner, or duly designated agent of the property owner, of land on which a building permit has been requested for residential or nonresidential development.

(b) Building--any enclosed structure designed or intended for the support, enclosure, shelter or protection of persons or property.

(c) Building Permit--the city permit required for new building construction and/or additions to buildings pursuant to the Building Code of the City of Olathe. The term 'building permit' as used herein shall not be deemed to include permits required for remodeling, rehabilitation or other improvements to an existing structure, or to the rebuilding of a damaged structure, or to permits required for accessory uses.

(d) City--the City of Olathe, Kansas.

(e) Development--the construction, erection, reconstruction or use of any principal building or structure for residential or nonresidential use which requires issuance of a building permit.

(f) Chief Building Inspector--the enforcement official responsible for technical review of building and other construction plans, issuance of building and land use permits, and enforcement of the various codes and ordinances relating to building and development in the City of Olathe.

(g) Dwelling--any building, or portion thereof, designed exclusively for residential occupancy and containing one or more dwelling units.

(h) Floodplain (100 year)--the land area adjoining a river, stream, watercourse, or lake which has the probability of flooding once every one hundred (100) years or a one (1) percent chance of flooding each year.

(i) Gross Floor Area--the square foot area of all space within the outside line of exterior walls including the total area of all floor levels.

- (j) Governing Body--the legislative body of the City of Olathe, Kansas.
- (k) City Planner--the city official responsible for review of building and development plans and preliminary and final plats.
- (l) Comprehensive Plan--the official, adopted comprehensive development plan for the City of Olathe, and amendments thereto; The Olathe Comprehensive Plan.
- (m) Neighborhood Parks--a recreation area within a residential neighborhood serving residents within a one-quarter (1/4) to one-half (1/2) mile radius. Such parks are five (5) to twenty (20) acres in size and generally contain play apparatus, small play fields, open space, park benches, picnic tables, and perhaps a shelter. Neighborhood parks may be located in or adjacent to streamway parks or community parks.
- (n) Nonresidential Development--all development other than residential development and public and quasi-public use, as herein defined.
- (o) Open Space--land used or to be used as park or open space associated with the city park or greenway system, but not including floodplains and steep slopes. Open space land includes the acquisition of such land, the construction of improvements thereon, and the expenditure of funds incidental thereto, including but not necessarily limited to planning, engineering and design work, utility relocation, provision of pedestrian and vehicular access thereto and purchase of equipment.
- (p) Parkland--land used or to be used as a city park, including both the acquisition of such land, the construction of improvements thereon and the expenditure of funds incidental thereto, including but not necessarily limited to planning, engineering and design of the park and improvements, utility relocation, provision of pedestrian and vehicular access thereto and purchase of equipment.
- (q) Property--a legally described parcel of land capable of development pursuant to applicable city ordinances and regulations.
- (r) Property Owner--any person, group of persons, firm or firms, corporation or corporations, or any other entity having a proprietary interest in the land on which a building permit has been requested.
- (s) Public and Quasi-Public Use--a development owned, operated or used by the City of Olathe, Kansas; any political subdivision of the State of Kansas, including but not limited to school districts; the State of Kansas, any agencies or departments thereof; the Federal Government, and any agencies or departments thereof. For purposes of this ordinance only, "places of worship" are hereby defined as quasi-public uses.
- (t) Residential Development--the development of any property for a dwelling or dwellings.
- (u) Subdivision Regulations--Chapter 18 of the City Code and including all duly adopted amendments thereto.
- (v) Zoning Ordinance--Chapter 19 of the City Code and including all duly adopted amendments thereto.
- (w) Single Family--Development containing one dwelling unit per structure and per lot.
- (x) Duplex--Development containing structures with two dwelling units per structure.
- (y) Multifamily Development--Development containing structures with more than two dwelling units per structure. (Ord. 96-87 § 1, 1996; Ord. 89-87 § 1, 1989.)

**3.30.030 Applicability of Park Excise Tax.** (a) This ordinance shall be uniformly applicable to residential and nonresidential development, but not to public and quasi-public uses on property in the City of Olathe which is or will be served by and is accessible to parkland and open space as herein defined. (Ord. 96-87 § 1, 1996; Ord. 89-87, §1, 1989.)

**3.30.040 Imposition of Park Excise Tax.**

(a) A Park Excise Tax shall be imposed on all residential and nonresidential development in the city.

(b) Imposition of the Park Excise Tax does not alter, negate, supersede or otherwise affect any other requirements of City, County, State or Federal legislation or regulations that may be applicable to a development, including city zoning and/or subdivision regulations that may impose open space and park or landscape requirements and standards.

(c) Upon receipt of an application for a preliminary plat, the City Planner shall preliminarily calculate the amount of the Park Excise Tax by multiplying the applicable residential or nonresidential tax rate by the number of dwelling units or floor area (in square feet) estimated for the proposed development for which subdivision approval is being sought. Such calculation shall be an estimate only for the benefit of the applicant and shall be subject to final determination at such time as applicant requests a building permit. (Ord. 96-87 § 1, 1996; Ord. 89-87 § 1, 1989.)

**3.30.050 Amount of Park Excise Tax.** The Park Excise Tax shall be at the following rate:

(a) From January 1, 2001 to December 31, 2005:

Residential Development:	\$260.00 per dwelling unit.
Commercial Development:	\$0.13 per square foot of gross floor area.
Industrial Development:	\$0.07 per square foot of gross floor area.

(b) From January 1, 2006 and all subsequent years, unless otherwise amended:

Residential Development:	\$520.00 per dwelling unit.
Commercial Development:	\$0.13 per square foot of gross floor area.
Industrial Development:	\$0.07 per square foot of gross floor area.

(Ord. 05-98 § 1, 2005; Ord. 96-87 § 1, 1996; Ord. 89-87 § 1, 1989.)

**3.30.060 Collection of Park Excise Tax**

(a) The Chief Building Inspector shall be responsible for the processing and collection of the applicable Excise Tax.

(b) Applicants for building permits for residential and nonresidential development subject to this ordinance shall submit the following information:

- (1) the number of dwelling units for residential development;
  - (2) the gross floor area for nonresidential development;
  - (3) both the number of dwelling units and the gross floor area for a mixed-use development;
- and
- (4) relevant supporting documentation as may be required by the Chief Building Inspector.

(c) The Chief Building Inspector shall collect the applicable Park Excise Tax prior to issuance of a building permit for residential and nonresidential unless the applicant has submitted an appeal under the provisions of Section 3.30.090. (Ord. 96-87 § 1, 1996; Ord. 89-87 § 1, 1989.)

### **3.30.070 Annual Review**

(a) Prior to January 1, 1990, and every year thereafter, the City Manager or his duly designated agent, shall prepare a report to the Governing Body on Park Excise Taxes summarizing the administration and enforcement of the Park Excise Tax. In the preparation of such report, the City Manager or his duly designated agent shall review the following information:

- (1) a statement from the City Treasurer summarizing Park Excise Taxes collected and disbursed during the year;
- (2) a statement from the City Parks and Recreation Director summarizing neighborhood parks, other parkland and open space acquisition and development and the status thereof for the preceding year;
- (3) a statement from the City Planner summarizing the type, location, timing and amount of development for which building permits were issued in the year; a summary of changes to the Comprehensive Plan as they relate to parks and open space;
- (4) a statement and recommendation from the Parks & Recreation Advisory Board on any and all aspects of the Park Excise Tax and city park and open space needs;
- (5) a statement from the City Planner summarizing increases or decreases in land costs, engineering costs and construction costs in the City of Olathe as they relate to the acquisition and improvement of parks.

(b) The City Manager's Report shall make recommendations, if appropriate, on amendments to the ordinance, changes in the administration or enforcement of the ordinance, changes in the Park Excise Tax rate, and changes in the Comprehensive Plan.

(c) The Park Excise Tax rate shall be reviewed annually. Based upon the City Manager's report and such other factors as the Governing Body deems relevant and applicable, the Governing Body may amend the Park Excise Tax Ordinance including, but not limited to an amendment of the Park Excise Tax rate. If the Governing Body fails to take such action, the Park Excise Tax rate then in effect shall remain in effect.

(d) In the annual review process, the Governing Body shall take into consideration the following factors: land and construction costs; improvement cost increases as measured by actual experience during the year; changes in the design, engineering, location, or other elements of proposed parkland and open space; revisions to the Comprehensive Plan; and changes in the anticipated land use mix and/or intensity in new development areas of the city. (Ord. 96-87 § 1, 1996; Ord. 89-87 § 1, 1989.)

### **3.30.080 Restrictions on Use of and Accounting for Park Excise Tax Funds.**

(a) The funds collected by reason of the establishment of the Park Excise Tax must be used solely for the purpose of funding parkland and open space acquisition and development pursuant to the Comprehensive Plan or for reimbursement to the city for parkland and open space acquisition and development pursuant to the Comprehensive Plan. The funds collected from single family and duplex residential developments shall be used for the acquisition and improvement of neighborhood parks in the developing residential areas of the city. Funds collected from multifamily, commercial and industrial projects may be used for general park development.

(b) Upon receipt of Park Excise Taxes, the Chief Building Inspector shall transfer such funds to the City Treasurer who shall be responsible for the placement of such funds in segregated, interest bearing accounts designated as the "Park Excise Tax Account - General Parks and Open Space" and "Park Excise Tax Account - Neighborhood Parks." All funds placed in said accounts and all interest earned therefrom shall be utilized solely and exclusively for parkland and open space acquisition and development pursuant to the Comprehensive Plan. At the discretion of the Governing Body, other revenues as may be legally utilized for such purposes may be deposited to such accounts. The City Treasurer shall establish adequate financial and accounting controls to ensure that Park Excise Tax funds disbursed from such accounts are utilized solely and exclusively for neighborhood parks, other parkland and open space acquisition and development or for reimbursement to the city of advances made from other revenue sources, including the "bond and interest fund," to fund parkland and open space acquisition and development.

(c) The City Treasurer shall maintain and keep adequate financial records for said account which shall show the source and disbursement of all funds placed in or expended from such accounts.

(d) Interest earned by such accounts shall be credited to the accounts and shall be utilized solely for the purposes specified for funds of the accounts.

(e) Excise Tax funds collected shall not be used to maintain, repair or operate the park system or to operate recreational activities. Excise Tax funds shall only be used to acquire and improve parkland in the City of Olathe.

(f) The city may issue and utilize general obligation bonds, revenue bonds, revenue certificates or other certificates of indebtedness as are within the authority of the City in such manner and subject to such limitations as may be provided by law in furtherance of the financing and provision of parkland and open space as set forth in the Comprehensive Plan. Funds pledged toward the retirement of such bonds or other certificates of indebtedness may include the Park Excise Tax and other city (and non-city) funds and revenues as may be allocated by the Governing Body. Park Excise Taxes paid pursuant to this ordinance, however, shall be used solely and exclusively for parkland and open space acquisition and development as defined herein. (Ord. 96-87 § 1, 1996; Ord. 89-87 § 1, 1989.)

**3.30.090 Appeals.** After a determination by the Chief Building Inspector of the applicability of the Park Excise Tax or the amount of the Excise Tax due, an applicant or a property owner may appeal to the Governing Body. The appellant must file a Notice of Appeal with the City Manager within (30) days following the determination by the Chief Building Inspector. If the Notice of appeal is accompanied by a bond or other sufficient surety satisfactory to the City Attorney in an amount equal to the Park Excise Tax due as calculated by the Chief Building Inspector, the application shall be processed and construction of the development may begin. The filing of an appeal shall not stay the collection of the Excise Tax due unless a bond or other sufficient surety has been filed. (Ord. 96-87 § 1, 1996; Ord. 89-87 § 1, 1989.)

## CHAPTER 3.35

### TRANSPORTATION IMPROVEMENTS EXCISE TAX

#### Sections:

3.35.010	Purpose and Authority.
3.35.020	Definitions.
3.35.030	Levy and Payment of Tax.
3.35.040	Pledge of Revenues.
3.35.050	Exemptions.
3.35.060	Credits.
3.35.070	Procedure for Calculating and Making Credit and Applying for an Exemption.
3.35.080	Appeals.
3.35.090	Adjustment to Tax Rate.
3.35.100	Interpretation.

**3.35.010 Purpose and Authority.** The excise tax levied by this Ordinance on the act of platting real property in the City has for its purpose the raising of general revenues to be used for transportation improvements in the City. The City's authority to levy this excise tax is derived from Charter Ordinance No. 54, Article 12, Section 5(b) of the Kansas Constitution and K.S.A. § 12-137 and 12-138. (Ord. 98-106 § 1, 1998)

**3.35.020 Definitions.** For the purposes of Chapter 3.35, the following words have the following definitions.

- (a) Administrator. The City Planner of the City, or his or her designee.
- (b) Applicant. The person, firm, partnership, joint venture or corporation that seeks to exercise the privilege of engaging in the business of platting real property in the City by applying for Plat approval.
- (c) Area. The gross area of the real property included in a plat for which approval is sought measured in square feet less the area described in Section Five hereof.
- (d) City. The City of Olathe, Kansas.
- (e) Collector Street Standards. Those standards established by the City Engineer in the latest edition of the City of Olathe's "Technical Specifications and Design Criteria for Public Improvement Projects."
- (f) Commercial Zoning District. Retail Business (C-1 and CP-1), General Business (C-2 and CP-2), Community/Corridor Business (C-3 and CP-3), Central Business District (CBD) and Business Park (BP) zoning districts as described in the City's *Unified Development Ordinance*.
- (g) Governing Body. The City Council of the City of Olathe, Kansas.
- (h) Improvement. The design and construction of a public street and all appurtenances thereto.
- (i) Initial Improvement. The improvement of any road designated as a main trafficway from an unimproved road to at least collector street standards.
- (j) Initial Improvement Tax Rate. The rate of taxation designed to provide revenues to construct initial improvements to main trafficways.
- (k) Intermediate Traffic Signals. Traffic signals located at the intersection of a non-trafficway (arterial), public street and a main trafficway.

(l) Intermediate Traffic Signal Tax Rate. The rate of taxation designed to provide revenues for the construction of intermediate traffic signals.

(m) Main Trafficway. The section line roads, street and highways designated s main trafficways in Chapter 10.10 of this Municipal Code.

(n) Multi Family Zoning Districts. Two-family (R-2 and RP-2), Low Density Apartment Townhouse (R-3 and RP-3), Garden Apartment (R-4 and RP-4), Apartment House (R-5 and RP-5), and Manufactured Home Park (MHP) zoning districts described in the City's *Unified Development Ordinance*.

(o) Other Zoning Districts. The zoning districts described in the City's *Unified Development Ordinance* that are not single family, multi family, or commercial zoning districts as described in this section, including but not limited to, office buildings, industrial zoning districts and mixed use zoning districts.

(p) Plat. A recordable final plat giving the location and dimensions of land as one or more lots, blocks, tracts or parcels, and meeting the requirements of the Municipal Code of the City of Olathe and Kansas Statutes. The purpose for recording of a document, and the absence of lots, blocks, or public rights-of-way shall not affect its status as a Plat.

(q) Real Property. A legally described parcel of land capable of development pursuant to applicable City ordinances and regulations.

(r) Recordable. Capable of being recorded with the Register of Deeds of Johnson County, Kansas.

(s) Single Family Zoning Districts. The single family (R-1 and RP-1) zoning districts described in the City's *Unified Development Ordinance*.

(t) Tax. The Excise Tax levied by this Ordinance.

(u) Tax Rate. The rate of taxation applied to the Area of real property expressed in dollars per square foot.

(v) Unimproved Road. Any road, street or highway in the City that has been designated as a main trafficway and is not constructed to collector street standards as of March 1, 1999. (Ord. 02-52 § 1, 2002; Ord. 98-106 § 2, 1998)

### **3.35.030 Levy and Payment of Tax.**

(a) A tax is hereby levied on the act of platting real property in the City. The initial improvement tax rate shall be \$0.215 per square foot. The intermediate traffic signal tax rate is:

Single Family Zoning Districts \$.0037 per square foot  
Multi Family Zoning Districts \$.0120 per square foot  
Commercial Zoning Districts \$.0576 per square foot  
Other Zoning Districts \$.0098 per square foot

(b) Every applicant shall pay to the Administrator prior to recordation of an approved plat with the Register of Deeds, a tax equal to the area of the real property included in the plat multiplied by the current tax rate, less any applicable credits. The area of real property shall be finally determined by the Administrator. If multiple plats shall be filed in phases, the fee shall be due prior to each individual plat being recorded.

(c) No approved plat subject to this tax shall be recorded until the applicant has paid the tax in full.

(d) The Administrator shall forward all taxes collected to the Director of Financial Services who shall be responsible for the placement of such funds in an interest bearing account designated as the "Trafficway Excise Tax Account," in the Future Street Improvement Fund which account shall be capable of being accounted for independently of all other City accounts and subaccounts. All excise tax revenues shall be deposited into such account. All interest earned by the account shall be considered funds of the account. The funds in the account may be pooled with other City funds solely for the purpose of investment and for financial management; provided, however, that appropriate accounting controls have been adopted and implemented to ensure that the taxes collected and deposited to such account are utilized only for the purposes specified herein and pursuant to the applicable legal requirements.

(e) The Tax shall be paid by wire transfer, certified check, or cashier's check. (Ord. 05-126 § 1, 2005; Ord. 02-52 § 2, 2002; Ord. 01-105 § 1, 2001; Ord. 00-112 § 1, 2000; Ord. 99-94 § 1, 1999; Ord. 98-106 § 3, 1998)

**3.35.040 Pledge of Revenues.** All revenues received from the tax are pledged solely for the purpose of funding the initial improvement of main trafficways or intermediate traffic signals in the City of Olathe. At the discretion of the Governing Body, other revenues as may be legally utilized for such purpose may be deposited into the Trafficway Excise Tax account. The City may issue and utilize general obligation bonds or other certificates of indebtedness as are within the authority of the City in such manner and subject to such limitations as may be provided by law in furtherance of the financing and provision of the improvement of main trafficways. Funds pledged toward the retirement of bonds or other certificates of indebtedness may include the Trafficway Excise Tax and other City (and non-City) funds and revenues as may be allocated by the Governing Body. Trafficway Excise Taxes paid pursuant to this Ordinance, however, shall be used solely and exclusively for the initial improvement of main trafficways or intermediate traffic signals as defined herein. (Ord. 02-52 § 3, 2002; Ord. 98-106 § 4, 1998)

#### **3.35.050 Exemptions.**

(a) Prior to the passage of this Ordinance, the City had established a policy (Resolution No. 93-1119) which required a developer to pay a proportionate share of the costs of improving main trafficway designated streets by entering into an escrow agreement, by creating a benefit district and paying special assessments, or by constructing the improvement. From and after March 1, 1999, an exemption from payment of the Initial Improvement Tax (but not the Intermediate Traffic Signal Tax) will be granted for all land that fully complied with the policies of Resolution No. 93-1119. For the purposes this exemption, the phrase "fully complied" means:

- (1) The execution and filing of an escrow agreement acceptable to the City, along with the payment of any financial contribution required by the agreement, prior to March 1, 1999; or
- (2) The creation of a valid benefit district prior to March 1, 1999 and the levy of special assessments prior to January 1, 2001.
- (3) The construction of main trafficway improvements by a developer prior to March 1, 1999.

(b) Any replat of previously platted land which was approved by the City will be exempt from the payment of the excise tax levied hereunder.

(c) Land within any final plat may be entitled to an exemption if it meets the following criteria:

- (1) The land is a part of a single-unified ownership of property greater than 350 acres; and
- (2) The land contains an environmentally sensitive area; and
- (3) The topography of the land is so extreme that traditional section-line main trafficways are too expensive to be built; and
- (4) The owner of the land has entered into a developer's agreement with the City to pay for the construction of the main trafficways by the creation of benefit districts and the square foot assessments to be levied upon the land will equal at least the tax rate established in Section Three of this Ordinance. (Ord. 02-52 § 4, 2002; Ord. 98-106 § 5, 1998)

**3.35.060 Credits.** The excise tax to be paid on a final plat pursuant to this Ordinance shall be credited in full, or in part, for:

(a) After March 1, 1999, any land within any final plat which in whole or in part was or will be specially assessed for main trafficway improvements.

(b) Land permanently dedicated on a final plat to the City as a floodway area, public open space or for recreational use. Such area shall not include land required to be dedicated for street right of way.

(c) Land within any final plat where the developer has constructed all or a portion of an adjacent main trafficway. (Ord. 98-106 § 6, 1998)

**3.35.070 Procedure for Calculating and Making Credit and Applying for an Exemption.**

(a) The applicant shall be responsible for completing any application for an exemption or credit and for supplying all information necessary supporting the claim of exemption or for calculation of the area and the credit. Any application or request for exemption or credit shall be specifically made in writing to the Administrator prior to Planning Commission approval of any final plat and if no such request is made then the applicant is deemed to have waived any right or claim to any exemption or credit.

(b) Under no circumstances shall a credit be given in excess of the amount of Tax calculated to be due on the Plat.

(c) If multiple plats are to be filed in various phases, a separate calculation will be made for each plat and the payment will be due upon recording of the final plat. Credits, if applicable, will be given at the time a subsequent plat is recorded.

(d) The credit amount shall be calculated:

(1) By multiplying the land area of the final plat subject to a credit by the tax rate required to be paid; or

(2) In situations where the credit is given for developer construction of improvements by the reasonable and customary cost of said construction in Olathe. No credit shall be allowed for overlaying or other temporary improvements not to the City's standards for main trafficways, made as a condition of approval of zoning, approval of a final Plat or issuance of a building permit.

(3) The amount of any special assessment levied on land included in the Plat for payment of the cost of improvement to a main trafficway. Where not all of the land included in the Plat was subject to a levy for special assessments then the credit shall not exceed the amount of Tax that would be due calculated only on that area which was subject to the special assessments. If all of a tract against which a special assessment was originally levied is not included in the Plat, then the credit shall be the amount of the original special assessment which would be apportioned on an area basis to the portion of the original tract included in the Plat. (Ord. 98-106 § 7, 1998)

**3.35.080 Appeals.** The Administrator will determine at the time final approval is given by the Planning Commission to any final plat if the applicant is entitled to an exemption or a credit of all or a portion of the excise tax levied and paid pursuant to this Ordinance. The decision of the Administrator on the granting of an exemption or the amount of the credit may be appealed to the City Council, by the applicant, prior to consideration of the final plat by the Governing Body. The notice of appeal shall be in writing, filed with the City Clerk, and state with particularity the decision being appealed; the grounds for the appeal; and the specific relief sought. An appeal hearing shall be scheduled within thirty (30) days of the date of the filing of the appeal notice. The decision of the City Council is final.

The Governing Body shall have the power to hear and decide appeals where it is alleged that there is an error in the interpretation, application, calculation by the Administrator.

The filing of an appeal or other legal challenge with a court of competent jurisdiction shall not stay the imposition, calculation or collection of the excise tax as calculated by the City unless a bond, letter of credit or other approved and sufficient surety in the amount calculated by the Administrator is filed with the City. If such approved surety is received with the notice of appeal, the final plat may be recorded. (Ord. 98-106 § 8, 1998)

**3.35.090 Adjustment to Tax Rate.** The Governing Body shall periodically review the tax rate at such time as it deems necessary or appropriate; provided, however, that a formal review shall take place in January 2001 and not less frequently than in January of every second year thereafter. Whenever the tax rates are reviewed, appropriate public notice shall be given and a public hearing shall be held, regardless of whether the tax rates are actually changed. Any adjustment in the tax rate shall be effected by an ordinance that amends this Ordinance and such amending ordinance shall be made effective no sooner than sixty (60) days following final publication. (Ord. 02-52 § 5, 2002; Ord. 98-106 § 9, 1998)

### **3.35.100 Interpretation.**

(a) Liberal Construction: The provisions of this Ordinance shall be liberally construed to effectively carry out its purposes which are hereby found and declared to be in furtherance of the public health, safety, welfare, and convenience.

(b) Conflict: To the extent of any conflict between other City code, ordinances, or this Ordinance, the provisions of this Ordinance shall be deemed to be controlling, provided, however, that unless expressly provided herein, this Ordinance is not intended to amend or repeal any existing City ordinance or code or regulation which shall continue in full force and effect after the passage, approval, and publication of this Ordinance.

(c) Invalidity: If any chapter, article, section, subsection, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such chapter, article, section, subsection, sentence, clause, phrase, or portion of this Ordinance shall be deemed to be a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining provisions of this Ordinance nor impair or nullify the remainder of this Ordinance which shall continue in full force and effect.

If the application of any provision of this Ordinance to any person, applicant, or new development is declared, for any reason, to be invalid by a court of competent jurisdiction, the intent of the City Council is that such decision shall be limited to that particular circumstance immediately involved in the controversy, action or proceeding in which such decision of invalidity was rendered. Such decision shall not affect, impair, or nullify this Ordinance as a whole or the application of any provision of this Ordinance to any other person, applicant, or new development. (Ord. 98-106 § 10, 1998)

**CHAPTER 3.40. Suits And Claims Against Officers And Employees.** Repealed 2/19/91. (Ord. 91-08 § 2, 1991; Ord. 87-30 § 22, 1987; Ord. 612, 1977.)

**CHAPTER 3.50**  
**PROCUREMENT POLICIES**

**Sections:**

3.50.010	Definitions.
3.50.020	General.
3.50.030	Competitive Sealed Bidding.
3.50.040	Competitive Sealed Proposals.
3.50.050	Purchases Less Than \$25,000.
3.50.060	Sole Source Procurement.
3.50.070	Emergency Procurement.
3.50.080	Procurement of Professional Services.
3.50.090	Renewal/Extension Option.
3.50.100	Change Orders.
3.50.110	Property Acquisition.
3.50.120	Disposition of Property.
3.50.125	Disposition of Real Property.
3.50.130	Recycled Paper Product Preference.

**3.50.010 Definitions.** For the purposes of this Ordinance the following terms, phrases, words, and their derivations shall have the meaning given herein:

- (a) "Advantageous" connotes a judgmental assessment of what is in the City's best interest.
- (b) "Business" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.
- (c) "Change Order" means a written modification or addition to a purchase order or contract.
- (d) "City" is the City of Olathe, Kansas.
- (e) "City Manager" means the City Manager or his designated representative for the City of Olathe.
- (f) "Competitive Sealed Bid (IFB)" means a formal publicly advertised solicitation to prospective suppliers requesting their competitive firm price quotation in response to a detailed set of specifications. Not subject to discussion or negotiation after opening.
- (g) "Competitive Sealed Proposal (RFP)" means a publicly advertised request to prospective contractors for an offer of pricing, terms and conditions with reference to some work or undertaking. A solicitation document used for negotiated procurements.
- (h) "May" denotes the permissive.
- (i) "Practical" denotes what may be accomplished or put into practical application.
- (j) "Procurement" means buying, purchasing, renting, leasing, or otherwise acquiring any supplies, services, materials or equipment not connected to a Public Works construction project. It also includes all functions that pertain to the obtaining of any supplies, services, materials or equipment including description of requirements, selection and solicitation of sources, preparation and award of contract and all phases of contract administration. For the purposes of this Chapter, procurement shall not mean the solicitation or award of a Public Works construction contract.
- (k) "Public Works Construction Contract" means a contract to construct a public infrastructure project including, but not limited to, waterlines, sewer lines, streets, sidewalks, storm sewers, public buildings or facilities, and water or sewer treatment plants.

(l) "Responsible Bidder or Offeror" means a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.

(m) "Responsive Bidder" means a person who has submitted a bid that conforms in all material respects to the Invitation For Bids.

(n) "Services" means the furnishing of labor, time, or effort by a contractor.

(o) "Shall" denotes the imperative.

(p) "Supplies" means all personal property, including but not limited to equipment, materials, commodities and printing." (Ord. 06-136 § 1, 2006; Ord. 99-119 § 2, 1999; Ord. 95-15 § 2, 1995; Ord. 88-155 § 1, 1988.)

**3.50.020 General.** Competitive sealed bidding is the preferred method of procurement; however, competitive sealed bidding is not always practical and advantageous and in certain situations described in this chapter other methods of procurement, such as competitive sealed proposals, may be used. (Ord. 99-119 § 2, 1999; Ord. 95-15 § 2, 1995; Ord. 88-155 § 1, 1988.)

**3.50.030 Competitive Sealed Bidding.** Unless an alternative procedure is authorized by other sections of this chapter, all supplies, materials, equipment and services, when the estimated cost is \$25,000 and greater, shall be purchased by competitive sealed bidding from the lowest responsive and responsible bidder, after due notice inviting bids and unless specifically provided otherwise herein.

(a) Public Notice.

(1) Distribution. Invitation for Bids (IFB) or notices of the availability of Invitations for Bids shall be mailed or otherwise furnished to a sufficient number of bidders for the purpose of securing competition. Notices of availability shall indicate where, when, and for how long Invitations for Bids may be obtained; generally describe the supplies, materials or equipment desired; and may contain other information as is appropriate.

(2) Publication. Notice of every procurement of \$25,000 and greater shall be published once in the official City newspaper.

(3) Public Availability. A copy of the Invitation for Bids shall be available for public inspection at the designated City office.

(b) Bid Evaluation and Award.

(i) For bids with an aggregate value of between \$25,000 and \$50,000, the City Manager shall make an award as he determines to be the most advantageous to the City, taking into consideration price and any other pertinent evaluations factors.

(ii) For bids with an aggregate value of \$50,000 or greater, the City Manager shall recommend to the City Council an award as he determines to be most advantageous to the City, taking into consideration price and any other pertinent evaluation factors. The City Council shall make the final award. (Ord. 07-84 § 1, 2007; Ord. 99-119 § 2, 1999; Ord. 95-15 § 2, 1995; Ord. 88-155 § 1, 1988.)

**3.50.040 Competitive Sealed Proposals.** Competitive sealed proposals (RFP) shall be governed as provided in the following:

(a) Conditions for Use. Competitive sealed proposals may be used where it is necessary to insure fair and reasonable price analysis, but not to preclude competition for technical excellence. Generally, competitive sealed proposals may be used under the following conditions:

- (1) The procurement of professional services (except legal services).
- (2) The procurement of technical items or equipment.
- (3) The procurement of complex services.
- (4) The purchase of nonstandard items.

(b) Public Notice. Public notice of the Request for Proposals shall be given in the same manner as provided in Section 3.50.030 (Competitive Sealed Bidding).

(c) Evaluation of Proposals. The Request for Proposals shall state all of the evaluation factors. The evaluation shall be based on the evaluation factors set forth in the Request for Proposals. Factors not specified in the Request for Proposals shall not be considered.

(d) Award.

(i) For requests for proposals with an aggregate value between \$25,000 and \$50,000, the City Manager shall make an award to the responsible offeror whose proposal is determined to be the most advantageous to the City, taking into consideration price and the evaluation factors set forth in the Request for Proposals.

(ii) For Requests for Proposals with an aggregate value of \$50,000 or greater, the City Manager shall recommend to the City Council an award to the responsible offeror whose proposal is determined to be the most advantageous to the City, taking into consideration price and the evaluation factors set forth in the Request for Proposals. The City Council shall make final award. (Ord. 07-84 § 2, 2007; Ord. 99-119 § 2, 1999; Ord. 95-15 § 2, 1995; Ord. 88-155 § 1, 1988.)

**3.50.050 Purchases Less Than \$50,000.** The City Manager shall adopt operational procedures for making purchases having an aggregate value of less than \$25,000. Such operational procedures shall provide for obtaining adequate and reasonable competition and for making records to properly account for funds. For purchases having an aggregate value of between \$25,000 and \$50,000, the City Manager shall use the procedures of 3.50.030, unless alternative procedures are authorized by this chapter. A report detailing purchases between \$25,000 and \$50,000 shall be submitted to the City Council on a quarterly basis, post award. (Ord. 07-84 § 3, 2007; Ord. 99-119 § 2, 1999; Ord. 95-15 § 2, 1995; Ord. 88-155 § 1, 1988.)

**3.50.060 Sole Source Procurement.** A Contract under \$50,000 may be awarded for supplies, services, materials or equipment without competition when the City Manager determines that there is only one source available. A written record of the factors pertinent to such award will be maintained. For sole source contracts of \$50,000 and greater, approval of the City Council will be required. (Ord. 07-84 § 4, 2007; Ord. 99-119 § 2, 1999; Ord. 95-15 § 2, 1995; Ord. 88-155 § 1, 1988.)

**3.50.070 Emergency Procurement.** Notwithstanding any other provision of this Ordinance, the City Manager may make emergency procurements when there exists a threat to public health, welfare or safety provided that such emergency procurements shall be made with such competition as is practical under the circumstances. Such emergency condition is further defined as an immediate and serious need for supplies, services, materials or equipment that cannot be timely met through normal procurement methods and the lack of which would threaten:

- (a) The functioning of City government.
- (b) The preservation or protection of property; and/or
- (c) The health or safety of any person. (Ord. 99-119 § 2, 1999; Ord. 95-15 § 2, 1995; Ord. 88-155 § 1, 1988.)

**3.50.080 Procurement of Professional Services.** Professional services are generally associated with the following disciplines:

- (a) Architect, engineer and land surveying services.
- (b) Appraisal services.
- (c) Financial, accounting and auditing services.
- (d) Legal services.
- (e) Consulting services.
- (f) Health care services.
- (g) Insurance services.
- (h) Data processing consulting and programming services.
- (i) Testing and inspection services.
- (j) Photographic, art or marketing services.
- (k) Employment of temporary employees as advisors, lobbyists, etc.

The provisions of Section 3.50.040 (Competitive Sealed Proposals) shall apply to all procurements of professional services (except legal services) which are expected to be \$50,000 and greater. Procurement of professional services (including legal services) expected to be less than \$50,000 shall be made in accordance with the operational procedures authorized in Section 3.50.050 (Purchases Less Than \$50,000). Professional services uniquely applicable to a project may be determined to be a sole source service and may be negotiated with a single contractor in accordance with the procedures contained in Section 3.50.060 (Sole Source Procurement).

Legal services expected to be \$50,000 and greater shall be governed by the following:

- (a) Not less than three (3) law firms shall be contacted to submit proposals for the services required by the City;
- (b) The proposals shall be submitted to the governing body, which shall award a contract based upon the proposal that is most advantageous to the City, taking into consideration not only price, but also technical competency.
- (c) The City Attorney shall maintain a list of law firms along with qualifications and specialties which may be utilized in requesting proposals. (Ord. 07-84 § 5, 2007; Ord. 99-119 § 2, 1999; Ord. 95-15 § 2, 1995; Ord. 88-155 § 1, 1988.)

**3.50.090 Renewal/Extension Option.** Unless otherwise provided by law, a contract for supplies, materials, equipment or services may be renewed or extended provided the term of the contract and conditions for renewal or extension, if any, are included in the solicitations. The option will only be exercised as it is deemed to be in the best interest of the City. Consideration will include price, quality, vendor performance, economic trends and other evaluation factors which would affect the City's best interest. The City Manager shall make recommendation for renewal/extension of any contract totaling \$50,000 and greater to the City Council for review. The City Council shall make final award as it is determined to be most advantageous to the City. The City Manager may award a renewal/extension for contracts totaling \$50,000 or less. (Ord. 07-84 § 6, 2007; Ord. 99-119 § 2, 1999; Ord. 95-15 § 2, 1995; Ord. 88-155 § 1, 1988.)

**3.50.100 Change Orders.** Change orders are issued to cover costs or address changes in terms and conditions associated with unforeseen problems not addressed in the bidding or contract document, or changes/modifications that may be recommended after a contract award. Change orders on contracts may be approved by the City Manager for amounts less than \$50,000. Change orders of \$50,000 or greater must be approved by the City Council; provided, however, that in instances where it is in the best interest of the City for a change order to be implemented prior to the next regularly scheduled meeting of the City Council, the City Manager shall have the authority to authorize the change subject to ratification by the City Council. (Ord. 07-84 § 7, 2007; Ord. 99-119 § 2, 1999; Ord. 95-15 § 2, 1995; Ord. 88-155 § 1, 1988.)

**3.50.110 Property Acquisition.** A contract for the purchase of interests in real property associated with an approved public improvement project may be approved by the City Manager if the cost for the acquisition is less than \$50,000. All other property acquisition shall require approval of the City Council. (Ord. 07-84 § 8, 2007; Ord. 99-119 § 2, 1999; Ord. 95-15 § 2, 1995; Ord. 88-155 § 1, 1988.)

**3.50.120 Disposition of Property.** The City Manager may transfer, sell, exchange or destroy any surplus, obsolete, abandoned or confiscated personal property without competitive bidding if such property has a value of less than \$50,000. No personal property shall be sold without receiving competitive bids if the value is \$50,000 and greater. For the purposes of this ordinance, a public auction shall qualify as competitive bidding. (Ord. 07-84 § 9, 2007; Ord. 06-136 § 2, 2006; Ord. 99-119 § 2, 1999; Ord. 95-15 § 2, 1995; Ord. 88-155 § 1, 1988.)

**3.50.125 Disposition of Real Property.** Except as provided otherwise by law, the Governing Body may convey, sell, trade, give, transfer, or exchange any real property in any manner that the Governing Body deems is in the best interests of the City. (Ord. 06-136 § 3, 2006)

**3.50.130 Recycled Paper Product Preference.** Notwithstanding any other provision of this Chapter, the Governing Body may, by Resolution, establish policies granting preferences in awarding contracts to vendors submitting bids for recycled paper products.” (Ord. 99-119 § 2, 1999; Ord. 95-15 § 2, 1995; Ord. 94-54 § 1, 1994.)

## CHAPTER 3.60

### RISK MANAGEMENT POLICY

#### Sections:

3.60.010	Short Title.
3.60.020	Purpose.
3.60.030	General Objectives.
3.60.040	Risk Reduction and Prevention.
3.60.050	Risk Retention.
3.60.060	Risk Transfer--Hold Harmless Agreements.
3.60.070	Risk Transfer--Insurance.
3.60.080	Joint Insurance Transfer and Retention.
3.60.090	Insurance Purchasing.
3.60.100	Insurance Coverages.
3.60.110	Risk Management Expense Fund.
3.60.120	Risk Management Reserve Fund.
3.60.130	Protection of Officers.
3.60.140	General Policy on Tort Liability Claims.
3.60.150	Program Administration.

**3.60.010 Short Title.** This ordinance shall be known and cited as the "Risk Management Policy Ordinance." (Ord. 89-98 § 1, 1989.)

**3.60.020 Purpose.** The purpose of this chapter is to set forth the general public policy objectives of the city as relates to risk management; to establish an orderly process and program for managing the risks of the city; to establish guidelines for the operation of the city's risk management program; and to implement a risk management program based on risk identification and measurement, risk reduction and prevention, risk retention, risk transfer and such other systems or techniques as may be appropriate. (Ord. 97-135 § 1, 1997; Ord. 89-98 § 1, 1989.)

**3.60.030 General Objectives.** The general objectives of the city's risk management program shall be to secure the following:

(a) The establishment, to the extent practical, of a hazard-free work and public-service environment which employees of the city and members of the general public, exercising reasonable care, may use in safety and security;

(b) The protection of the city, and thus its citizens and taxpayers, against the consequences of accidental or other losses which are financially catastrophic in nature, and the preservation of the city's fiscal and other assets and its public-service capabilities from serious loss, destruction or depletion;

(c) The minimization of the total, long-term cost to the city of accidental losses and their consequences by providing for the identification, measurement, prevention and control of risks; and

(d) The creation of a system of internal procedures providing a continuing reassessment of exposures to loss, loss-bearing capacity and available financial resources to protect against such losses, including insurance, self-insuring, self-funding, and pooling. (Ord. 89-98 § 1, 1989.)

#### **3.60.040 Risk Reduction and Prevention.**

(a) All existing operations, programs, equipment and facilities of the city should be identified and evaluated to determine the potential severity and frequency of accidental loss. All potential hazards to the public or to city employees should be reduced to their practical minimum. Those services or facilities which constitute a potential liability risk to the city disproportionate to the public need or benefits derived therefrom, should be discontinued where the city has discretion as to the continued performance or existence of such service or facility.

(b) It shall be the general policy of the city to utilize loss prevention techniques wherever possible, consistent with the cost involved. Efforts to prevent losses shall be given first priority. Loss prevention recommendations of federal and state agencies, insurance companies, and other experts shall be implemented whenever practical. (Ord. 89-98 § 1, 1989.)

### **3.60.050 Risk Retention.**

(a) It shall be the city's general policy to retain certain risks by self-insuring under the following circumstances:

(1) When the loss will occur with predictable frequency and in an amount which will not have a substantial impact on the city's financial position, recognizing:

- (a) the ability of the city to finance losses from its operating budget;
  - (b) the amount of the city's reserve fund described in Section 3.60.120;
  - (c) capacity of the city to borrow money to pay judgments and certain other losses;
- and
- (d) ability of the city to administer a self-insurance program, including the provision of legal defense;

(2) When the probability of occurrence is so remote that the cost of insuring the risk would be unwarranted use of public moneys;

(3) When insurance is not available, or available only at a prohibitive cost.

(b) Exceptions to these general guidelines shall be as listed in Section 3.60.070. (Ord. 97-135 § 2, 1997; Ord. 89-98 § 1, 1989.)

**3.60.060 Risk Transfer--Hold Harmless Agreements.** In all contractual relationships it shall be the general practice of the city to transfer to others, to the extent legally possible, all risk of loss from chance events resulting from the relationship of the contracting parties. However, before contractually transferring a risk to another party, that party's ability to assume the risk and control the loss, and the traditions of the parties and industry involved, as well as their financial worth shall be considered. In any event, all contractual agreements providing for any service, construction, leasing of real or personal property or other such agreements shall be reviewed by the City Attorney and the Risk Manager (see Section 3.60.150) to determine whether the city is legally and adequately protected against financial loss assumptions. (Ord. 89-98 § 1, 1989.)

### **3.60.070 Risk Transfer--Insurance.**

(a) It shall be the policy of the city to purchase insurance under the following circumstances:

(1) When required by law or contract.

(2) When other methods of risk management or risk transfer do not reduce the loss exposure to an acceptable risk retention level.

(3) When certain necessary services, including legal defense and claims handling, can best be provided through the purchase of insurance.

(4) When self-insurance, including deductibles, does not result in long-term economy for the city.

(5) When the potential severity and degree of risk may result in a loss which would substantially affect the financial capability of the city to continue to provide essential public services and facilities.

(Ord. 97-135 § 3, 1997; Ord. 89-98 § 1, 1989.)

**3.60.080 Joint Insurance Transfer and Retention.** The city will combine risk retention and risk transfer when purchasing insurance through the use of deductibles or a self-insured retention where practical. Recognizing that a substantial portion of the cost of insurance premiums result from an insurer's expenditures for legal defense and payments for comparatively small claims, the city will give special consideration, in the allocation of the city's insurance program to those insurers which provide significant savings for policies whereby the first \$100,000 per occurrence and \$500,000 aggregate per year is a financial responsibility of the city. In the case of liability insurance, such retention may be applied either to the final settlement, court costs and attorney's fees or only to the cost of final judgment as determined by agreement. (Ord. 89-98 § 1, 1989.)

**3.60.090 Insurance Purchasing.**

(a) The city shall endeavor to purchase its property and casualty insurance coverage from a single source when the packaged arrangement proves financially advantageous to the city, and thus to its taxpayers and utility service users. Emphasis shall be given to total insurance costs, rather than the separate costs of individual policies. As a general rule, a multiplicity of separate insurance coverages shall be avoided.

(b) Notwithstanding any other city ordinance, insurance shall be purchased and placed in a businesslike manner, without preference or prejudice, at the lowest practical effective cost with special emphasis given to all benefits and levels of direct service to the city. The formal competitive bidding process shall be limited to a frequency no less than every three years, unless the current insurance company, broker or agent provides unsatisfactory service, cancels coverage or the Risk Manager determines that competitive bidding will produce significant savings due to a "soft insurance" market.

(c) Insurance will be placed only with those insurance companies or risk retention groups which may conduct business in Kansas, except as to such insurance as may be available only from non-admitted companies. Financial statements, or a rating of A+ or A in Best's Key Rating Guide, should be required from non-admitted companies.

(d) Insurance may be obtained by participating in a State of Kansas, Insurance Commissioner-approved "pool" which the Risk Manager has determined is properly funded and administered to adequately protect the city. (Ord. 89-98 § 1, 1989.)

**3.60.100 Insurance Coverages.** Subject to the provisions of this ordinance, the following should be observed in determining amounts of retention or transfer by insurance:

(a) Fire Insurance-Public Buildings and Contents: It shall be the city's policy to insure only property losses in excess of \$10,000 per occurrence. Buildings and contents losses which will total less than \$10,000 in any one occurrence (i.e., windstorm, flood, fire) will be met from budget appropriations. Buildings will be valued and insured at replacement cost, or at actual cash value when necessary. Property should be insured on an all-risk basis whenever possible.

(b) Automobile Liability Insurance on Motor Vehicles: Liability insurance shall be maintained on all city-owned, rented and non-owned motor vehicles used by city employees. The policy, with coverage of at least \$500,000 per occurrence, may be subject to a large self-insured retention consistent with the reserve fund.

(c) Physical Damage and Collision Insurance on Motor Vehicles: Collision and comprehensive insurance shall not generally be carried on city vehicles licensed for highway use with a gross weight of 10,000 pounds or less. Licensed vehicles with a gross weight in excess of 20,000 pounds may be insured subject to a deductible or self-insured retention no greater than \$25,000.

(d) Commercial (Comprehensive) General Liability Insurance: Except as otherwise provided in this ordinance, the city should carry general liability insurance to protect the city and its employees from tort liability for bodily injuries and property damage on all its properties and for all its operations. In addition, personal injury liability coverage should be carried as a policy endorsement where appropriate. The limits of liability for the above coverage shall be at least \$500,000 per occurrence and in such aggregate amount as recommended by the Risk Manager and approved by the City Council. Medical payments coverage may be provided when it is deemed advisable to provide financial aid, without regard to negligence or liability, to any person who may be bodily injured. The purchase of public officials liability insurance shall be subject to the provisions of Section 3.60.130.

(e) Workers' Compensation: The city shall provide workers' compensation benefits for its employees as required by law.

(f) Catastrophic Insurance: The city should maintain umbrella or excess liability insurance as needed to protect itself against any major, uninsured catastrophe as recommended by the Risk Manager and as approved by the City Council.

(g) Other Insurance: Other insurance shall be placed into effect upon the determination of necessity and recommendation for such coverages by the Risk Manager; or when required by law.

(h) Employee Fidelity Bonds: Employee fidelity bonds shall be secured for officers and employees as required by state law and city ordinances. (Ord. 89-98 § 1, 1989.)

### **3.60.110 Risk Management Expense Fund.**

(a) There is hereby created within the city's accounts a fund to be known as the risk management expense fund. Such fund shall be utilized as an operating fund, and also as a reserve fund as set forth in Section 3.60.120.

(b) To the maximum extent possible, all expenses involved in the payment of claims, purchase of insurance, provision of legal defense and other direct and indirect costs resulting from the implementation of the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*) shall be paid from the risk management expense fund. Any expenditures from this fund shall be disbursed in the same manner as other expenditures of the city, subject to the provisions of Section 3.60.140.

(c) To the extent feasible, and as may be advisable to meet local conditions under the Kansas property tax lid law, the annual budget of expenditures for each department or function of the city should include an amount for tort liability expense. Such amounts should be credited as an expense to the various funds and accounts and as a receipt to the risk management expense fund. It is the position of the City Council that the provisions of the Kansas Tort Claims Act permit such inter fund transfers and that it is advisable to show the full municipal costs of tort liability in a single fund.

(d) To the extent possible, and in accordance with K.S.A. 44-505c and 44-505f, all costs involved in the payment of workers compensation claims, judgements, and expenses shall be paid from the risk management expense fund.

(e) To the extent possible, and in accordance with K.S.A. 44-505c, the annual budget of each department or function of the city should include an amount for workers compensation expense. Such amounts should be credited as an expense to the various funds and accounts and as a receipt to the risk management expense fund. Such amounts shall be exempt from the limitations imposed under the provisions of K.S.A. 79-5001 to 79-5016, inclusive. (Ord. 97-135 § 4, 1997; Ord. 89-98 § 1, 1989.)

### **3.60.120 Risk Management Reserve Fund.**

(a) The city shall utilize the risk management expense fund as a liability reserve fund in accordance with K.S.A. 12-2615 for the purpose of providing moneys to reimburse the city, in whole or in part, from insurable losses not otherwise insured. Such liability reserve fund shall accumulate in annual installments no larger than \$250,000 to a total fund balance no greater than ten percent of the city's annual workers' compensation payroll. Such annual installments should be in addition to the annual estimated costs of insurance, legal defense and the processing of claims. Once the maximum is reached, the annual contribution shall be sufficient to replenish the fund, up to the maximum, but in no event shall the annual contribution exceed \$250,000. Moneys in such fund, not immediately needed, should be invested and the interest thereon credited to the fund.

(b) The city shall utilize the risk management expense fund as a workers compensation reserve fund in accordance with K.S.A. 44-505f and amendments thereto, for the purpose of payment of worker compensation claims, judgements and expenses from such moneys available to the city under the provisions of K.S.A. 44-505c, and amendments thereto, and by the transfer of moneys from any other funds or accounts of the city in reasonable proportion to the estimated cost of providing workers compensation benefits to the employees of the city compensated from such funds. Any balance remaining in such reserve fund at the end of the fiscal year shall be carried forward in to the reserve fund for the succeeding fiscal years. Interest earned on the investment of moneys in such fund shall be credited to such fund.

(c) The reserve funds will be annually examined as to their adequacy and a report of such adequacy furnished to the City Council as part of the city's annual audit. (Ord. 97-135 § 5, 1997; Ord. 89-98 § 1, 1989.)

**3.60.130 Protection of Officers.** The city shall, through insurance or other means, fully comply with the provisions of the Kansas Tort Claims Act, requiring the city to provide legal defense and pay judgments related to tort actions against city officers and employees operating legally and within the scope of their employment. The city shall purchase errors or omissions insurance, sometimes called public official liability insurance, when such coverage may be obtained at a moderate cost.

Pursuant to K.S.A. 75-6108, the city manager is hereby designated as the person to receive, and to determine eligibility of, any written requests from the city's officers and employees to provide a defense to civil tort actions or proceedings that may be filed against them. (Ord 91-08 § 1, 1991; Ord. 89-98 § 1, 1989.)

**3.60.140 General Policy on Tort Liability Claims.** The city recognizes that court decisions continue to develop a clearer understanding of the status of governmental immunity and liability under the Kansas Tort Claims Act. Further, the cost of commercial liability insurance in future years will be related to the loss experience of insurance companies writing such liability insurance. In addition, circumstances may arise where there will be strong public sympathy in support of payments to persons who may be injured as a result of the use of the city's services or facilities, notwithstanding the absence of negligence or tort liability. The following, as to the filing, settlement and payment of tort claims, are therefore established:

(a) All tort claims against the city, its officials, employees, agents and volunteers must be filed, as specified in K.S.A. 12-105b(d) only with the City Clerk.

(b) The city shall not require any insurance company to waive its use of the city's legal defenses against claims.

(c) The city shall not compromise or settle any uninsured tort claim unless there is reasonable evidence that the city may be legally liable, since such actions tend to precipitate similar claims and there are questions as to the propriety of using public funds for such purposes when there is no public benefit derived or any legal obligation. The City Attorney shall examine each uninsured tort claim filed against the city. If, in the judgment of the City Attorney, the city will probably not be found liable in the event of litigation, it shall be the policy of the city that the claim not be compromised or settled, regardless of the emotional merits of the case. The Risk Manager, with the assistance of the City Attorney, shall initiate claims settlement negotiations upon a finding of probable liability for all claims not serviced by an insurance company or contracted claims service company.

(d) The city shall endeavor to obtain liability insurance contracts which provide for the approval of the city prior to the settlement of any claim in excess of \$10,000 which has not been finally litigated. The City Council, meeting in executive session, will concur with or oppose such unlitigated settlements. It is recognized that the cost of legal defense constitutes a substantial share of the cost of insurance premiums. However, the discouragement of nonmeritorious claims and the development of a body of case law interpreting the Tort Claims Act is of long-term importance, to this city and to other Kansas local governments.

(e) If the City Manager judges that the city would be found liable in the event of litigation, he is then empowered to negotiate a final uninsured liability claim settlement up to a maximum of \$10,000. The City Council will approve or disapprove uninsured settlements in excess of \$10,000. (Ord. 89-98 § 1, 1989.)

### **3.60.150 Program Administration.**

(a) The City Manager shall insure that procedures have been implemented for the administration of the risk management policy.

(b) The Risk Manager shall, within 90 days of the close of the city's fiscal year, prepare a risk management status report for submission to the City Council.

(c) All tort claims against the city, its officials, employees, agents and volunteers shall be filed in writing with the City Clerk in compliance with K.S.A. 12-105b(d). The City Clerk shall record the filing in a claim log, and then forward the claim to the Risk Manager for processing.

(d) No official, officer or employee of the city shall release any information or make any admissions which will have an effect on the outcome of any pending claim or litigation without the advice of the City Attorney; and, if an employee, the approval of the City Manager.

(e) Property damage accidents over \$2,500 and all bodily injury accidents involving city property, facilities, operations and personnel shall be reported to the Risk Manager by the most expedient means. All others shall be reported by the end of the next working day.

(f) Claims against insurance companies or individuals, determined to be responsible for damage to city property or for injury to city employees, will be filed by the Risk Manager with legal assistance and support provided by the City Attorney. (Ord. 89-98 § 1, 1989.)

## **CHAPTER 3.70**

### **STORMWATER MANAGEMENT FEE**

#### **Sections:**

- 3.70.010 Imposition of Stormwater Management Fee.
- 3.70.020 Collection.
- 3.70.030 Late Payment Penalty.
- 3.70.040 Accounts to be Established.
- 3.70.050 Administrative Review.
- 3.70.060 Rate Sunset. (Repealed 8-15-2006)

**3.70.010 Imposition of fee for stormwater management.** There is hereby imposed, assessed and levied upon the respective owners of all buildings or structures within the city occupied by them or upon any person or persons authorized by such owner or owners to occupy such building or buildings, a monthly stormwater management charge or fee used to construct or rehabilitate a stormwater management system designed to alleviate flooding in the city in accordance with the city's capital improvement program. Such fee shall be adopted by the Governing Body of the City by resolution. (Ord. 05-122 § 1, 2005; Ord. 02-120 § 1, 2002; Ord. 02-97 § 1, 2002; Ord. 01-96 § 1, 2001; Ord. 99-93 § 1, 1999; Ord. 95-81 § 1, 1995; Ord. 90-118 § 1, 1990.)

**3.70.020 Collection.** A bill reflecting the stormwater management fee shall be billed once each month. Such billing may be combined with the utility bill and service charges for water, sewer and/or sanitation services provided by the city to its residents. (Ord. 90-118 § 1, 1990.)

**3.70.030 Late Payment Penalty.** Utility service bills shall become due as established in Section 13.04.103 of the Olathe Municipal Code. Any customer failing to pay his/her utility service bill shall be assessed a penalty pursuant to the provisions of Section 13.04.103. Collection procedures and court action may be started on all bills remaining unpaid over ten (10) days after the due date. (Ord. 04-108 § 1, 2004; Ord. 95-81 § 2, 1995; Ord. 90-118 § 1, 1990.)

**3.70.040 Accounts to be Established.** All monies collected under the stormwater management fees established in this ordinance shall be accounted for in separate and readily identifiable revenue accounts which indicate the source of funds entered in said accounts. Interest earned on said accounts shall accrue to such accounts. The monies in said accounts shall be appropriated or utilized for stormwater related purposes including the construction, rehabilitation and/or maintenance of the stormwater management system in accordance with the city's capital improvement program and operational requirements. Lawfully available funds from other sources, including grants and general obligation bonds, may be combined with the funds received from the stormwater management fee and used for the construction of stormwater management projects. (Ord. 95-81 § 3, 1995; Ord. 90-118 § 1, 1990.)

**3.70.050 Administrative Review.** Any person wishing to protest any charge levied under this ordinance may do so in writing to the City Council. (Ord. 90-118 § 1, 1990.)

**3.70.060 Rate Sunset.** Repealed 8-15-06. (Ord. 06-92 § 1, 2006; Ord. 04-108 § 2, 2004; Ord. 02-120 § 2, 2002; Ord. 02-97 § 2, 2002; Ord. 01-96 § 2, 2001; Ord. 99-93 § 2, 1999; Ord. 97-142 § 1, 1997; Ord. 95-81 § 4, 1995; Ord. 95-13 § 1, 1995; Ord. 93-15 § 1, 1993; Ord. 90-118 § 1, 1990.)

## CHAPTER 3.90

### TOURISM AND CONVENTION PROMOTION FUND

**Sections:**

3.90.010 Fund Established.

**3.90.010 Fund Established.** Pursuant to Charter Ordinance No. 30, there is hereby established a Tourism and Convention Promotion Fund. Monies received into such fund shall only be expended for tourism and convention promotion activities. (Ord. 93-88 § 1, 1993)

## CHAPTER 3.95

### PARKS SALES TAX FUND

**Sections:**

3.95.010 Fund Established.

**3.95.010 Fund Established.** There is hereby established a Parks Sales Tax Fund. Monies received from the one-eighth of one percent (.125%) retailers sales tax approved by the voters of the city on December 7, 1999, shall be placed in the fund. The revenue from the fund shall be used to acquire and improve public parks and recreation areas. (Ord. 00-08 § 1, 2000.)

## CHAPTER 3.96

### GOLF COURSE FUND

**Sections:**

3.96.010 Fund Established.

**3.96.010 Fund Established.** There is hereby established a Golf Course Fund. Monies received from the operation of the city golf course shall be placed in the fund and expenditures relating to the operation of the golf course shall be paid for from the fund. (Ord. 01-08 § 1, 2001.)

## CHAPTER 3.97

### FIRE LEVY FUND

**Sections:**

3.97.010 Fund Established.

**3.97.010 Fund Established.** Pursuant to K.S.A. 19-3622, there is hereby established a Fire Levy Fund. Monies received for the operation of the city's fire department shall be placed in the fund and expenditures relating to the operation of the fire department shall be paid for from the fund. Monies may be budgeted and transferred to such fund from any source which may be lawfully utilized for such purposes. (Ord. 01-35 § 1, 2001.)

## CHAPTER 3.100

### FIRE INSURANCE PROCEEDS FUND

#### Sections:

3.100.010	Scope and Application.
3.100.020	Lien Created.
3.100.030	Same; Encumbrances.
3.100.040	Same; Pro Rata Basis.
3.100.050	Procedure.
3.100.060	Fund Created; Deposit of Moneys.
3.100.070	Building Inspector; Investigation, Removal of Structure.
3.100.080	Removal of Structure; Excess Money.
3.100.090	Same; Disposition of Funds.
3.100.100	Effect Upon Insurance Policies.
3.100.110	Insurers; Liability.

**3.100.010 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 of Olathe, 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 seventy-five percent (75%) 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 Chapter. (Ord. 97-96 § 1, 1997; Ord. 96-74 § 1, 1996.)

**3.100.020 Lien Created.** There is hereby created a lien in favor of the City of Olathe 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, explosion or windstorm where the amount recoverable for all 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(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. (Ord. 97-96 § 2, 1997; Ord. 96-74 § 1, 1996.)

**3.100.030 Same: Encumbrances.** Prior to final settlement on any claim covered by Section 3.100.020, the insurer or insurers shall contact the County Treasurer, Johnson 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, Johnson County, Kansas. (Ord. 96-74 § 1, 1996.)

**3.100.040 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. (Ord. 96-74 § 1, 1996.)

#### **3.100.050 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 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 in an amount equal to fifteen percent (15%) 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 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 insured, the total insurance coverage applicable to said building or other structure, and the amount of the final settlement agreement to or arrived at between the insurance company or companies and the insured or insured, whereupon the Chief Building Inspector shall contact the named insured or insureds by registered mail, notifying them that said insurance proceeds have been received by the city and apprise them of the procedures to be followed under this Chapter. (Ord. 98-51 § 1, 1998; Ord. 97-96 § 3, 1997; Ord. 96-74 § 1, 1996.)

**3.100.60 Fund Created; Deposit of Moneys.** The City Treasurer is hereby authorized and shall create a fund to be known as the "Fire Insurance Proceeds Fund." All moneys received by the City Treasurer as provided for by this Chapter shall be placed in said fund and deposited in an interest-bearing account. (Ord. 96-74 § 1, 1996.)

**3.100.070 Building Inspector; Investigation, Removal of Structure.**

(a) Upon receipt of moneys as provided for by this Chapter, 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 twenty (20) days of the receipt of said moneys, the Chief Building Inspector shall determine, after prior investigation, whether the city shall investigate 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 by subsection (b) of this section, the Chief Building Inspector 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 Chief 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 thirty (30) 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 thirty (30) days of the receipt of the moneys from the insurance company or companies. (Ord. 96-74 § 1, 1996.)

**3.100.080 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. (Ord. 96-74 § 1, 1996.)

**3.100.090 Same; 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 3.100.050 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 Chief 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 3.100.050, 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. (Ord. 97-96 § 4, 1997; Ord. 96-74 § 1, 1996.)

**3.100.100 Effect Upon Insurance Policies.** This Chapter 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. (Ord. 96-74 § 1, 1996.)

**3.100.110 Insurers; Liability.** Insurers complying with this Chapter or attempting in good faith to comply with this Chapter 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 Chapter, or releasing or disclosing any information pursuant to this Chapter. (Ord. 96-74 § 1, 1996.)