

REVISED ORDINANCE NUMBER 54

A REVISED ORDINANCE ALLOWING THE CITY OF CARSON CITY, MICHIGAN TO WITHHOLD TWENTY FIVE PERCENT (25%) OF INSURANCE PROCEEDS FROM A MAJOR FIRE LOSS TO INSURE REBUILDING OR DEMOLITION OF THAT PROPERTY

THE CITY OF CARSON CITY ORDAINS:

CHAPTER 54.1

ESTABLISHMENT OF ORDINANCE

- 54.101 **SHORT TITLE.** This Ordinance shall be known as the Carson City Fire Insurance-Escrow Retention Ordinance.
- 54.102 **AUTHORITY.** Pursuant to Public Acts of 1969, No. 306, as amended by Public Act of 1984, No. 386, and codified in MCL 500.2845 and R 500.1261 et seq. of the Michigan Administrative Code, the City may withhold up to 25% from the payment for an insurance loss on real property.
- 54.103 **PURPOSE.** The purpose of this Revised Ordinance is to ensure rebuilding or demolition of the damaged property, to avoid existence of a Dangerous Building situation pursuant to Revised City Ordinance No. 54.
- 54.104 **ESTABLISHMENT.** With respect to any insured real property located within the City limits of Carson City, Michigan, when a claim is filed for a loss to insured real property due to fire or explosion and a final settlement is reached on the loss to the insured real property, any insurer shall withhold from that payment:
- (a). 25% of the actual cash value of the insured real property at the time of the loss; or
 - (b). 25% of the final settlement, whichever is less.
- 54.105 **APPLICABILITY TO CERTAIN PROPERTY; NOTICE TO COMMISSIONER.** This Ordinance shall apply only to property located within the City of Carson City and shall be effective upon its adoption by the city Council and with Notification in writing by resolution to the Commissioner of Insurance that the City has established a trust or escrow account to be used as prescribed by statute and this Ordinance and that the City intends to uniformly apply this Ordinance with respect to all property located within the City following written notification to the Commissioner.

CHAPTER 54.2
NOTICE REQUIREMENTS

54.201 **SETTLEMENT.** In the event that the insurer settles with the land owner, at the time that the 25% is withheld, the insurer shall give notice of the withholding to:

- (a). The Comptroller of the City of Carson City;
- (b). The Insured; and to
- (c). Any mortgagee having an existing lien or liens against the insured real property, provided the mortgagee is named on the policy for insurance.

54.202 **JUDGMENT.** In the event that a judgment is entered by a court of competent jurisdiction. Notice shall be given to the Court, and shall include the following:

- (a). The identity and address of the insurer;
- (b). Name and address of each policy holder, including any mortgagee;
- (c). Location of the real property;
- (d). Date of loss;
- (e). Policy number;
- (f). Claim number;
- (g). The amount of money to be withheld;
- (h). Statement that the City may have the withheld amount paid into a Trust or Escrow account if it shows cause, pursuant to Chapter 54.3, within 15 days that the money should be withheld to protect the public health and safety the City of Carson City, otherwise the withheld amount shall be paid to the insurer within 15 days; and
- (i). Explanation of the provision of this Section.

CHAPTER 54.3
ESCROW ACCOUNT PROCEDURE

54.301 **AFFIDAVIT BY FIRE CHIEF.** In order for the City to escrow the amount withheld by the insurer and to retain that amount, an affidavit must be prepared by the City Fire Chief that the damaged structure violates existing health and safety standards of the City of Carson City and that escrowing the amount to be withheld will insure the repair, replacement, or removal of the damaged structure.

54.302 **AFFIDAVIT-SETTLEMENT.** In the event of a settlement, the Fire Chief's affidavit shall be sent to:

- (a). The insurer;
- (b). The insured; and
- (c). Any mortgagees.

54.303 **RECEIPT OF AFFIDAVIT-SETTLEMENT.** Upon receipt of the affidavit from the City Fire Chief, the insurer shall forward the withheld amount to the City Comptroller, and shall provide notice pursuant to Section 54.201 of this Ordinance.

54.304 **AFFIDAVIT-JUDGMENT.** In the event of a judgment, the City Fire Chief's affidavit shall be sent to:

- (a). The insurer;
- (b). The insured;
- (c). Any mortgagee; and
- (d). The court in which the judgment is entered.

54.305 **RECEIPT OF RETAINED AMOUNT-JUDGMENT.** The Court shall order transmittal of the withheld amount to the City Comptroller, upon a motion made on behalf of the City, by the City Attorney.

54.306 **DECLARATORY RELIEF.** Within 30 days after the escrowing of the withheld amount, the City may apply to the Circuit Court for declaratory relief in order to establish its rights to the policy proceeds held in escrow by the City. The City has such a right to the proceeds upon a showing that the health, safety, and welfare of the inhabitants of the City of Carson City will be jeopardized unless such proceeds are granted; the court shall issue an order permitting the City to retain the proceeds as requested, in accordance with the provisions of this Ordinance. If the City fails to apply for declaratory relief within the 30-day period, or if declaratory relief is denied, the City shall immediately return to the insured the proceeds held in escrow.

CHAPTER 54.4 **RECEIPT OF MONEY**

54.401 **RECEIPT OF MONEY AND COMPTROLLER'S DUTIES.** Upon receipt of money and information from an insurer as prescribed in Section 54.103 and Chapter 54.3, the City Comptroller shall record the information and the date of receipt of the money and shall immediately deposit the money in an interest-bearing trust or escrow account established for purposes of this Ordinance. If the mortgage on the insured property is in default, the City Comptroller, upon written request from a first mortgagee of property with respect to which policy proceeds were withheld and placed into a trust or escrow account, shall release to the mortgagee all or any part of the policy proceeds received by the City with respect

to that property, not later than 10 days after receipt of the written request by the mortgagee, to the extent necessary to satisfy any outstanding lien of the mortgagee.

54.402 **COMMINGLING OF FUNDS PROHIBITED: EXPENSES.** Except as provided in Chapter 54.6, money deposited in an account pursuant to Section 54.401 shall not be commingled with City funds. Any interest earned on money placed in a trust or escrow account shall be retained by the City to defray expenses incurred.

CHAPTER 54.5
RELEASE OF FUNDS

54.501 **RELEASE OF ESCROW FUND TO INSURED; CONDITIONS.** Except as provided in subsection (c) herein, the policy proceeds deposited pursuant to Chapter 54.4 shall immediately be forwarded to the insured when the City Fire Chief receives or is shown reasonable proof of any of the following:

- (a). That the damaged or destroyed portions of the insured structure have been repaired or replaced, except to the extent that the amount withheld under this subsection is needed to complete repair or replacement.
- (b). That the damaged or destroyed structure and all remnants of the structure have been removed from the land on which the structure or the remnants of the structure were situated, in compliance with the City code requirements.
- (c). That the insured has entered into a contract to perform repair, replacement, or removal services with respect to the insured real property and that the insured consents to payment of funds directly to the contractor performing the services. Funds released under this subsection may be forwarded only to a contractor performing services on the insured property.

54.502 **REASONABLE PROOF REQUIREMENT.** Reasonable proof required under Section 54.501 shall include any of the following:

- (a). Originals or copies of pertinent contracts, invoices, receipts, and other similar papers evidencing both the work performed or to be performed, and the materials used or to be used, by all contractors performing repair, replacement, or removal services with respect to the insured real property other than a contractor subject to Subsection 54.501(b).
- (b). An affidavit executed by the contractor which has performed the greatest amount of repair or replacement work on the structure, or which has done most of the clearing and removal work if structure repair or replacement is not to be performed. The contractor shall attach to the affidavit all pertinent

contracts, invoices, and receipts and shall swear that these attached papers correctly indicate the nature and extent of the work performed to date by the contractor and the materials used.

- (c). An inspection of the insured real property to verify that repair, replacement, or clearing has been completed in accordance with Section 54.502.

CHAPTER 54.6

REASONABLE PROOF OF LOSS AND FINAL SETTLEMENT

54.601 **LAPSE OF TIME TO SHOW REASONABLE PROOF OF LOSS; USE OF RETAINED PROCEEDS; COMPLIANCE WITH LOCAL REQUIREMENTS.**

If with respect to a loss, reasonable proof is not received by or shown to the City Fire Chief within 445 days after the policy proceeds portion was received by the Comptroller, the City shall use the retained proceeds to secure, repair, or demolish the damaged or destroyed structure and clear the property in question so that the structure and property are in compliance with code requirements and other applicable City ordinances. Any unused portion of the retained proceeds shall be returned to the insured.

54.602 **FINAL SETTLEMENT; EXCLUSION.** A final settlement shall not include the payment of policy proceeds for personal property or contents damage or for additional coverage not contained in the Michigan standard policy requirements as set forth in MCL 500.2832. There shall not be liability on the part of, and a cause of action shall not arise against, an insurer or an agent or employee of an insurer for withholding or transferring money in the course of complying or attempting to comply with this Ordinance.

54.603 **FINAL SETTLEMENT; WITHHOLDING OF SUMS; PAYMENT.** If the insured and the insurer have agreed on the demolition costs or the debris removal costs as part of the final settlement of the real property insured claim, the insurer shall withhold one of the following sums, whichever sum is the largest, and shall pay the sum in accordance with this section:

- (a). The agreed cost of demolition or debris removal.
- (b). Fifteen percent (25%) of the actual cash value of the insured real property at the time of loss.
- (c). Fifteen percent (25%) of the final settlement of the insured real property claim.

- 54.604 **WITHHOLDING REQUIREMENTS; NONAPPLICATION.** The withholding requirements of this Chapter shall not apply if all of the following occur:
- (a). Within 15 days after agreement on the final settlement between the insured and the insurer, the insured has filed with the insurer evidence of a contract to repair as described in Section 54.502
 - (b). The insured consents to the payment of funds directly to the contractor performing the repair services. Funds released under this subdivision may be forwarded only to a contractor performing the repair services on the insured property.
 - (c). On receipt of the contract to repair, the insurer gives notice to the City in which the property is situated that there will not be a withholding under this Section because of the repair contract.

- 54.605 **DEFINITION OF FINAL SETTLEMENT; DETERMINATION.** As used in this section, “final settlement” means a determination of the amount due and owing to the insured, for a loss to the insured real property under the Michigan standard policy contained in MCL 500.2832 by any of the following means:
- (a). Acceptance of a proof of loss by the insurer.
 - (b). Execution of a release by the insured.
 - (c). Acceptance of an arbitration award by both the insured and insurer.
 - (d). Judgment of a court of competent jurisdiction.

Chapter 54.7

SEVERANCE CLAUSE AND CONFLICTING ORDINANCES

- 54.701 **SEPARABILITY.** If any section, subsection, paragraph, sentence, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.
- 54.702 **PRESENT ORDINANCE.** On the effective date of the adoption of this Revised Ordinance, Ordinance Number Fifty-Four as originally adopted on October 18, 1988 is superseded, repealed amended and revised in its entirety.
- 54.703 **CONFLICTS.** All other ordinances, amendments, and provisions which may be inconsistent or in conflict with this Ordinance are hereby repealed.

CHAPTER 54.8
EFFECTIVE DATE

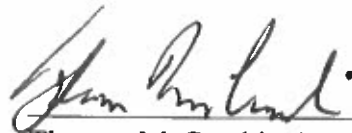
This Ordinance establishing the City of Carson City to withhold Twenty Five Percent (25%) of Insurance proceeds shall become effective thirty days after publication of the Revised Ordinance or thirty days after publication of a summary of its provisions in a local newspaper of general circulation. During this thirty-day period the Ordinance as it now reads shall remain effective, and thereafter shall be superseded pursuant to Chapter 54.7 of this Revised Ordinance.

CHAPTER 54.9
PUBLICATION

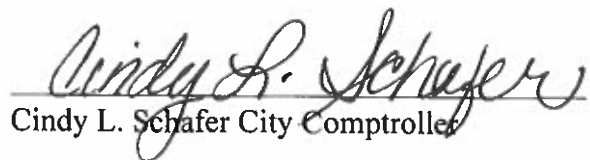
This Revised Ordinance was published in the Greenville Daily News on 10/2, 2021, pursuant to Section 14.2(b) of the Charter of the City of Carson City.

ADOPTION CERTIFICATION

We the undersigned, as Mayor and City Comptroller of the City of Carson City, Michigan, do hereby certify that Revised Ordinance Number 54 of the City of Carson City was introduced at a regular meeting of the City Council held on August 17, 2021 and was thereafter adopted at a regular meeting on September 21, 2021 by a vote of Six (6) for; Zero (0) against; and One (1) absent and Zero (0) abstaining .



Thomas McCrackin, Mayor



Cindy L. Schafer City Comptroller

AFFP

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Affidavit of Publication

STATE OF MICHIGAN }
COUNTY OF MONTCALM } SS

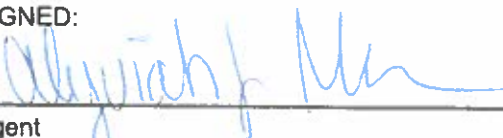
Alyviah Mason, being duly sworn, says:

That she is Agent of the Daily News Greenville, a daily newspaper of general circulation, printed and published in Greenville, Montcalm County, Michigan ; that the publication, a copy of which is attached hereto, was published in the said newspaper on the following dates:

October 02, 2021

That said newspaper was regularly issued and circulated on those dates.

SIGNED:



Agent

Subscribed to and sworn to me this 2nd day of October 2021.



Amber M. Rood, Ionia County, acting in the County of Montcalm, Montcalm County, Michigan
My commission expires: September 16, 2025

02111766 00282901 comp@carsoncitymi.com

City Of Carson City
123 E Main
Carson City, MI 48811

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THE CITY OF CARSON CITY ORDAINS:

That at a regular Carson City Council meeting held on September 21, 2021 adopted the following Revised Ordinance #54 as amended.

CHAPTER 54.1 ESTABLISHMENT OF ORDINANCE

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54.102 AUTHORITY. Pursuant to Public Acts of 1969, No. 306, as amended by Public Act of 1984, No. 386, and codified in MCL 500.2845 and R 500.1261 et seq. of the Michigan Administrative Code, the City may withhold up to 25% from the payment for an insurance loss on real property.

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(b). The Insured; and to
(c). Any mortgagee having an existing lien or liens against the insured real property provided the mortgagee is named on the policy for insurance.

This Ordinance can be found in its entirety at Carson City Hall located at 123 E. Main Street., Carson City, Michigan 48811

10/2/21